JUDICIARY OF
ENGLAND AND WALES

Civil Courts Structure Review: Final Report

by Lord Justice Briggs

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1. Introduction

1.1. This is my Final Report, following the conclusion of the Civil Courts Structure Review. I submitted my Interim Report ("IR") to the Lord Chief Justice and the Master of the Rolls on 24 December 2015, as instructed, and it was published early in January 2016.[1]

1.2. The IR marked the conclusion of Stage 1 of the Review. That stage was, for reasons of urgency explained in IR 1.12, characterised by a brief period of research, limited 'Chatham House' mainly oral consultation, and the IR had to be written with little benefit from statistics commissioned for the purpose. In the result it contained a relatively detailed (but not statistically underpinned) picture of the existing structure of the civil courts, a description of work then in progress and a summary of the essential features of the HMCTS Reform Programme, to the limited extent that the programme had reached a stage of clear definition, in relation to the civil courts.

1.3. At the heart of the IR (at chapter 5) lies a quite detailed SWOT analysis of the existing civil courts structure (viewed on the assumption that work then in progress would be completed). That analysis was the foundation for the description of the main options for structural change which then followed, and contained the underlying rationale for the provisional views as to structural change set out in chapters 6 to 11 of the IR, and summarised in chapter 12. The same type of analysis has formed the basis of the conduct of Stage 2 of the review ("Stage 2"), by myself and my Hard Working Group, our purpose being to identify how best by structural change to preserve the strengths, address the weaknesses, maximise the opportunities and manage the threats of, and facing, the civil courts.

The layout of this final report

1.4. I have considered whether I could construct a final report (as I did during the Chancery Modernisation Review[2]) in the form of an amended version of the IR, incorporating all additional material by way of additions and amendments, so as to avoid a reader approaching the subject for the first time having to read two reports rather than one. I have concluded that this would not be practicable, for the following reasons. First, much the greatest part of the feedback which I have received during the consultation process has followed publication of the IR. Secondly, I am, unusually, reviewing a moving target, both in the form of the Reform Programme, and because of the large amount of work in progress, much of which has moved on since December 2015. Thirdly, consultation since then has suggested that a large part of the stakeholder community has read the Interim Report, and would not wish to have to read it again, buried in a final report which incorporated most of it by way of repetition. I must therefore apologise to those coming to this subject afresh for the fact that, to gain a full appreciation of my conclusions about the subject matter of this review, both reports will need to be read.

1 https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf
2 https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CMR/cmr-final-report-dec2013.pdf

1.5. With some exceptions, I have tried as far as possible to follow the essential layout of the IR, making corrections to my description of the current structure where guided by feedback this year, bringing up to date my description of work in progress, and of the developing Reform Programme. I have a little to say by way of adjustment to the SWOT analysis, following which I will address the main options for change in much the same order as they are set out in the IR, and conclude with a summary of conclusions and a list of recommendations.

1.6. I will continue to use acronyms, abbreviations, words and phrases having the meanings attributed to them in the Glossary at the end of the IR, repeated as Annex 1 for convenience. I recommend that this report (and the IR) be read in electronic rather than paper form. This will facilitate using the links in the footnotes, and make the statistics in Annex 4 easier to digest.

Terms of reference

1.7. My Terms of Reference for this review continue to be as set out in paragraph 1.1 of the IR, subject to the following adjustments:

- I am now requested to make a written final report to the Lord Chief Justice and to the Master of the Rolls by the end of July 2016.
- Whereas in Stage 1 I conducted an initial review under the heading "The Future of the Divisions" (see IR 8.30 ff), mainly limited to the effect of the divisional fault line within the Rolls Building, my work may now be overtaken by a more wide-ranging review of judicial governance, affecting the divisional structure not merely of the civil courts, but of the criminal and family courts, and the tribunals as well. While I shall summarise the thrust of the limited feedback which I have received in relation to this question, and address some of the pros and cons of different solutions, it is agreed that it is a subject which has now outgrown the essentially civil confines of my review, and about which I should not therefore make final recommendations.
- As anticipated (see IR chapter 9 and 12.20), urgent steps to address the excessive burdens facing the Court of Appeal have already been taken, and made the subject of a separate public consultation by the Civil Procedure Rule Committee ("CPRC"), which was issued in late May 2016[3]. The outcome was that the CPRC approved all the recommendations except for one. I will therefore be too late in this report to make relevant recommendations. Nonetheless, the substantial written feedback on this subject received by early March 2016 was reported to the meeting of the full Court of Appeal in March 2016, and taken into account in the deliberations and decisions then and thereafter made.

The Hard Working Group

1.8. My original Hard Working Group of Stewart J, HHJ Bird, DJ Lethem and Richard Goodman of HMCTS was necessarily reconstituted to deal with Richard Goodman's promotion to a senior role within HMCTS, whereupon he was replaced by Clare Galloway, also of HMCTS, who has her own leadership role in relation to the development of Online Court, now in

3 https://consult.justice.gov.uk/digital-communications/appeals-to-the-court-of-appeal

progress. Both she and Richard have, in succession, continued to provide invaluable wise guidance and assistance, as have the rest of the Hard Working Group. I owe a large debt of gratitude to each of them. This report would have been impossible without their assistance but, as in relation to the IR, I take full responsibility for its contents, and in particular for its shortcomings.

Conduct of Stage 2 of the Review

1.9. Stage 2 began with a necessarily short period for written feedback, following publication of the IR in mid January. Written feedback of immense value was received from a wide range of judges, stakeholder groups and associations, firms and individuals. Annex 2 sets out a list of those who responded in writing. Their contribution was both well informed and helpful. Some consultee organisations simply invited me to treat as open what I had previously learnt from them on a Chatham House basis during Stage 1.

1.10. Although I sought to set a deadline for written response to consultation of the end of February 2016, material continued to arrive during most of March, by which time I had embarked on a third round of consultation, consisting of more than 60 meetings both in and outside London, with judges, stakeholder groups and associations and in public. These meetings are summarised in Annex 3.

1.11. My purposes during this third round of consultation have been threefold. First and foremost I have sought and received a wealth of educative comment upon the subject matter of this review from those most qualified to provide it, right across England and Wales. In this respect, the written and in particular oral responses have remedied what I regarded as an inadequate period for consultation prior to the IR. I am now satisfied that I have consulted as widely and deeply upon the subject matter of this review as would be appropriate, regardless of time constraints.

1.12. Response to consultation has ranged widely (and differently as between different provisional recommendations) from enthusiasm, through cautious support, neutrality, scepticism, outright opposition and even a small amount of hostility. I shall have to describe this feedback in varying amounts of detail as I address the options for structural change later in this report. Generally, I consider it fair to say that responses have become more supportive of (or less opposed to) my provisional recommendations over time, particularly where it has been possible to obtain feedback from the same groups on two or more occasions.

1.13. This leads me to the second main purpose of my round of open, oral consultation during March to June 2016. Consistent with the provision in my Terms of Reference relating to the Reform Programme, I have unashamedly sought to encourage engagement by stakeholders of all kinds with the revolutionary objectives which that programme seeks to achieve. By "engagement" I mean active participation coupled with sharing responsibility for a successful outcome. I have specifically sought engagement from judges, from those voluntary and pro bono agencies serving the needs of LiPs and from professional stakeholders of all kinds, in particular within the bar and the solicitors' profession. I have done this both by speaking

at meetings and by writing articles, in both the Counsel Magazine[4] and the Law Society's Gazette[5].

1.14. I recognise that some of my provisional recommendations, and some of the ambitions of, and plans comprised within, the Reform Programme have understandably been viewed, at least initially, by many groups with a stake in the civil justice system as representing unwelcome developments, changes to established and much-loved ways of doing things, as threats to the livelihoods of some, as potential obstacles to access to justice, in particular by those challenged in the use of IT, and as a dumbing down of important aspects of the traditionally very high quality of the service provided by our civil courts, apparently to serve a political decision to devote less of the nation's resources towards their funding.

1.15. I do not regard any of these concerns as merely fanciful, still less do I think that they are otherwise than genuinely and, in many cases, reasonably held. They have been, almost without exception, moderately and courteously expressed, and they deserve to be answered. They have required me to reconsider most of my provisional views and recommendations, and I shall address them at length throughout this report.

1.16. Addressing these many and often repeated concerns has become almost a separate, self standing, third purpose of my final round of oral consultation. Despite my invitation on every occasion to consultees to provide trenchant observations rather than limit themselves to questions, a substantial part (often the majority) of the meetings which I have attended have been taken up by my responding to questions and expressions of concern. In many cases concerns have been alleviated by consultees simply being given information about details of the Reform Programme not available to them from any other source.

1.17. In this role, I have become, largely by default, the public face of at least the civil part of the Reform Programme, since HMCTS has not yet established any interface with the public (although it has with judges) by which the development of the programme is made transparent and publically available.[6]

1.18. I will largely cease to perform this role upon delivery and (if thought fit) publication of this final report. As will appear, I regard stakeholder engagement with the Reform Programme (and with all of my other recommendations, if approved) as an essential prerequisite for their success. If that engagement is to be secured and maintained, I consider it essential that HMCTS establishes a means of providing ongoing, publically available, up to date information about the progress of the Reform Programme. My work on this review leaves me in no doubt that ignorance in this respect breeds fear, fear breeds hostility and the combination causes lack of engagement.

4 http://www.counselmagazine.co.uk/articles/the-online-court

5 http://www.lawgazette.co.uk/law/practice-points/civil-justice-my-vision-for-the-online-court/5055277.article

6 An exception to this is public consultation on the first round of court closures, which concluded in early 2016. https://consult.justice.gov.uk/digital-communications/proposal-on-the-provision-of-court-and-tribunal-es

Statistics

1.19. The IR was, not unreasonably, criticised for being almost devoid of statistical underpinning. So it was, but this was even then in the process of being remedied by two statistical exercises, designed to ascertain the time actually taken by judges when working on, or hearing, different parts of cases of different types. Both have come to be known as Time & Motion ("T&M") studies. The first was undertaken in the Court of Appeal during May to July 2015, but the conversion of the raw data into useful information then took many months. This was due to the incompatibility of the Court of Appeal's ancient RECAP database with any modern system, the complete inability of the outside contractor responsible for its maintenance to provide remote access to it, other than at excessive cost and delay, and the unfortunate departure due to ill-health of the only person with a sufficient knowledge of its curious workings, who had, incidentally, expanded it to accommodate the assembly of the raw data in the first place. The invaluable assistance of Professor Dame Hazel Genn and her colleague Nigel Balmer from UCL enabled an impending disaster to be averted, but it took until very shortly before the March 2016 meeting of the full court (arranged to consider how to address its chronic overload of work), before the raw data could be analysed to the extent necessary to derive valuable management information from it. The Genn Balmer report on that data is now in the public domain, forming part of the evidence underlying the public consultation on Court of Appeal reforms undertaken by the CPRC in May 2016. It is also annexed to this report for convenience, in section 5 of Annex 4.

1.20. The second exercise consisted of a similar T & M study of the work of the judges at 12 selected County Court hearing centres around country. The raw data was assembled for it by the judges themselves completing paper forms (since the equally ancient Caseman system used for the County Courts' case-related database was wholly incapable of being adapted to accommodate time-related information). The raw data was assembled during the last three months of 2015, and the analysis became available in June 2016, having been prepared by HMCTS's excellent statistical team, headed by Fiona Weller (now McGladrigan). That analysis is now also set out in section 5 of Annex 4.

1.21. Both these T & M studies followed, and were loosely modelled upon, a similar exercise which I commissioned as part of the Chancery Modernisation Review in 2013, which studied the whole of the chancery operation in the Rolls Building, and the chancery work of two main regional trial centres, Manchester and Leeds. Its results can be found in Annex 2 to the Chancery Modernisation Final Report (see note 2 above).

1.22. I shall comment upon the information derived from these two recent exercises, where specifically relevant, in the course of this report. But certain general points need to be made about the compiling, analysis and use of time-related statistics in connection with case-related activities. The first is that none of the various, incompatible and old-fashioned electronic databases on which case-related information is currently stored for the civil courts routinely record any reliable time-related information about the judicial workload, other than listed hearing days, and it is only by chance that one of them (RECAP) was even capable of being adapted for that purpose.

1.23. The second is that time-related information of this kind is a vital management tool, all the more so now that fiscal stringency is leading to an ever more intensive focus upon the efficiency with which the processes of the courts are carried out. As will appear, the T & M study carried out for the Court of Appeal radically altered the previously anecdotal perceptions of the aspects of its workload which were contributing most to its overload. Both it and the County Courts T&M study have shed important light on the question whether litigants in person take up more court time than represented parties.

1.24. Thirdly, apart from these three studies (that is the current two and that carried out in 2013 for the CMR), I am not aware of any similar study carried out in relation to the civil courts, either before or since, or that there is any current planning that it should be done, either on an intermittent or rolling basis.

1.25. I therefore recommend that, at an early stage in the planning and design by HMCTS of the common database (or databases) to be used for the civil courts in substitution for the unsatisfactory and incompatible types currently in use, careful consideration be given to making space for time-related statistics of the type reflected in the T & M studies annexed to this report (and to the CMR), and to the automation of that process, so far as current technology makes that possible. In that context, it seems to me that since it is part of the objective of the Reform Programme (at least in relation to the civil courts) that the materials upon which judges and staff have to work in the preparation and trial of cases should as far as possible be stored and presented electronically, rather than on paper, it ought not to be technically difficult to enable time spent on those materials to be recorded automatically, without the imposition of a no-doubt annoying and time-consuming requirement upon judges and staff to complete time sheets manually. There will be much that can usefully be learned from looking at the case management systems of large law firms (if professional engagement with the Reform Programme makes this possible). Those firms have been collecting data of this kind for many years, not merely for the purposes of billing, but as an essential part of the effective and efficient management of a modern business.

1.26. I would add one caveat. It has been a cardinal principle of the three T&M studies which I have commissioned that they should not be used, or indeed be capable of being used, as a means of investigating the productivity of individual named judges. Their purpose has been to compile averages, rather than to act as a spy in the cab.

1.27. There is good reason for this. There is a very wide range, among the judiciary, in the speed with which they do their work. Speed is not, even slightly, a measure of judicial quality. Indeed, I have received expressions of concern that individual productivity should not be recorded, not merely from judges who think that they work relatively slowly, but from those who perceive that others might think that they work too quickly. Putting it another way, the purpose of assembling time-related information about the discharge by the judiciary of its workload is not to encourage the slow to speed up or the fast to slow down, but simply to derive reliable averages about the time needed for particular types of work. In my view, the adverse effect upon judicial morale of any more intrusive individual scrutiny would easily outweigh any supposed benefits of doing so.

Reviewing Other Online Court and ODR Systems

1.28. It has been forcibly put to me by more than one distinguished consultee that my provisional view that the Online Court (as described in chapter 6 of the IR) would be a major contributor to effective access to civil justice would not, even if it hardened into a final view, carry much weight if I took no steps to review the work being done to this end in other, broadly comparable, jurisdictions. To the extent that time and the very limited financial resources for this review has made it possible, I have endeavoured to do so. I joined a judicial HMCTS team visit to the Court Service of the Netherlands for a detailed one-day briefing upon their progress in the same direction (which is a little in advance of ours). The principal designer of the Dutch Rechtswijzer ODR system was kind enough to demonstrate and explain it to me, together with the plans for its extension to property disputes, on his visiting London. During the course of a 3 day visit to Vancouver and Victoria, I was able to view the operation of the three ODR systems being developed there, and to discuss one of them, namely the Civil Resolution Tribunal ("CRT") in detail with members of its design team. The CRT is much the nearest precedent for the currently proposed Online Court within the Reform Programme[7].

1.29. Within this country, I have also had demonstrated to me the now completely online Traffic Penalty Tribunal ("TPT")[8] and discussed it both with its designers and chief adjudicator. I have had similar demonstrations of CE File (at the Rolls Building), and of the new online system for paperless trials in the Crown Court known as DCS (at Southwark Crown Court). I have also had demonstrated various privately available ODR, paperless trial and other relevant IT systems, including Cybersettle, Klaim and Magnum.

1.30. I have also briefly discussed attempts at digital reform by the New Zealand Justice Ministry.

1.31. I had planned and would have wished to visit and inspect the pioneering work on public legal education being done in California, but financial constraints limited me to doing so by video conference and telephone.

1.32. These 'sideways views', and in particular my visit to British Columbia, have been of the greatest value in providing both precedent and context to my review of the development of an online civil court for England and Wales. I wish to express my gratitude to all those who gave freely of their time, skill and experience in connection with their trial-blazing work, to some of which I will refer in more detail later in this report.

Brexit

1.33. I have carried out this review against the background of the existing EU membership of the United Kingdom. I have not researched, still less consulted upon, what might be the consequences of exit from membership upon the structure of the civil courts. It is such an intensely political matter that it would hardly have been an appropriate subject for a judge-led review in any event.

7 https://www.civilresolutionbc.ca/
8 https://www.trafficpenaltytribunal.gov.uk/

1.34. The national referendum has resulted in a vote for the UK to leave the EU. While no-one can say at the time of writing what the effects of this will be on reforms in the justice system, there are likely to be consequences that may impact upon some of my my recommendations, which will need to be addressed both by HMCTS and those with responsibility for considering their implementation.

1.35. My view is that the reforms upon which HMCTS has embarked, coupled with the recommendations in this report, are likely to be all the more necessary in the light of Brexit, so as to ensure that the courts, and the civil courts in particular, are best prepared to play their important part in addressing the consequences of the vote to leave the EU.

2. The Current Structure

2.1. This short and rather scrappy chapter amplifies, and in certain respects corrects, the description of the current structure of the civil courts in chapter 2 of the IR, as the result of further research, consultation and the passage of time.

The County Court

2.2. This section supplements IR 2.37 – 44, in relation to the number of County Court hearing centres, and the distribution of civil ticketed Circuit Judges among them. It also references and comments upon statistics now available about the workload of the County Court.

2.3. At the time of preparing the IR a planned closure programme affecting Crown Courts, County Court hearing centres and Magistrates Courts was the subject of public consultation. The physical court estate was therefore largely excluded from my terms of reference, and that remains the case. Nonetheless that consultation has now concluded and the MoJ has announced its conclusions as to the closure programme. 36 County Court hearing centres are planned to close, subject to provision of alternative hearing facilities. Plans for re-locating the workload of the closing centres are being put in place, on the general principle that local alternative provision will be considered where increased travel time to court is considered a particular issue.

2.4. It remains the case that this round of closures is unlikely to be the last, and that further closures of County Court hearing centres may be included, although the number and identity of those which may be affected has yet to be decided, still less published for consultation. In the meantime the concept of a temporary (or 'pop up') court has now been piloted for a single day at Aberystwyth, and the observed results are being studied, together with feedback from the court users, staff and the judge concerned. While it remains to be seen how much more economical a travelling court will prove to be than one in a fixed location, the pilot did not reveal any insuperable technical or logistical impediments to the rolling out of the concept more widely in due course. The main difficulty, namely transporting large quantities of paper files to the venue, is one that will largely subside as and when the move to a paperless court is completed, provided always that the temporary venues have reliable Wi-Fi connections, something which cannot, at least at present, be guaranteed in many rural locations. The requirements for judicial security will continue to be an important aspect of the design and operation of temporary courts.

2.5. In IR 2.16 and 2.39 – 40 I noted that, apart from the 23 Designated Civil Judges (and the specialist Senior Circuit Judges in the main regional trial centres) there was very little Circuit Judge availability to hear civil cases outside central London and Manchester. Detailed statistics have now been assembled, and cross-checked against information supplied from every DCJ at my request (for which I am most grateful). The results form part of Annex 4. The following points deserve particular note:

2.5.1. In 4 DCJ areas (even taking account of their High Court sittings) there is not a single CJ based there who does more than 40% civil work.

2.5.2. In 7 DCJ areas, some of them very large, with substantial resident populations, the DCJ is the only full-time judge of CJ rank doing more than 25% civil work. These include the very large areas of Devon and Cornwall, Hampshire Dorset and Wiltshire, East Anglia, and Northumbria and North Durham. The population in these areas ranges between 4.2 million and 1.7 million respectively.

2.5.3. The few civil ticketed CJs who assist the DCJ often do as little as 15% or 20% civil, with either crime of family as their main workload. 25% is in my view, and that of many consultees, too low a percentage of civil workload for it to be done efficiently and consistently well.

2.5.4. Although the pattern is not entirely uniform, the DCJs themselves spend most of their time doing a combination of High Court cases (as s.9 deputies) and appeals from DJs in small claims and fast track cases. The specialist SCJs do almost entirely High Court work. The result is that the availability of CJs to do trials in the County Court, outside Central London, is substantially smaller than the statistics suggest.

2.5.5. Anecdotally, it appears that the currently very low availability of CJs for County Court work represents a large reduction from the levels formerly available. This is only matched to a very small extent (and only recently) by the fall-off in Multi-track work which is mainly attributable to the large rises in issue fees for that type of civil case. The overall result is that more and more of the County Court trial work is devolving upon District Judges, to whom even Multi-track work is increasingly released. It also leads to cases being issued in or transferred to the High Court due to lack of local judicial expertise, which are not truly High Court work in terms of value, complexity or public importance.

2.6. I have not been able to ascertain whether this reduction in the availability of CJs for civil County Court work is the result of a policy to reduce the civil commitment, or recruitment difficulties, or the effect of the squeeze on civil sitting days adversely affecting the extent to which CJs with civil tickets are able to build up substantial (i.e. 40% or more) civil practices.

The High Court

2.7. I have nothing of substance to add to my description of the High Court in IR 2.48-66. Such statistics as are available to provide detail about the activities of the High Court are gathered in sections 2 and 3 of Annex 4. High Court statistics are particularly unsatisfactory at present, for the following reasons. First, the activities of the High Court in the regions are recorded on the same Caseman database which also records the activities of the whole of the County Court. In many respects, regional High Court activity is just recorded without any distinction from County Court work, such that the two courts' work simply cannot be disentangled. Secondly, the High Court work of the RCJ and Rolls Building is separately

recorded on two separate and incompatible systems, BMS in the RCJ and CE File in the Rolls Building. Thirdly, statistical work during Stage 2 has revealed alarming differences in the statistics provided from different sources within the RCJ, such that I have found it difficult to place confidence in them. In particular, the more recent work on transfers into and out of the Queen's Bench Division has shown the figures reported in IR 5.84 to be seriously inaccurate; see now section 2 of Annex 4. But the overall message, that too many cases were being transferred in, remains correct.

2.8. These difficulties are to a large extent the understandable consequence of the sub-division of the High Court into separate divisions, courts and lists, for the purpose of specialisation. Apart from the Chancery Division, none of it has been the subject of a time and motion study. It is to be hoped, and I firmly recommend, that the digitisation of the High Court in all its manifestations be designed and installed on a much more standardised and informative basis than at present, so as to be able to provide reliable business management information on demand, whenever needed.

The Court of Appeal

2.9. The 2015 Time and Motion study mentioned in IR2.70 has now been completed and audited by Professor Dame Hazel Genn and her colleague Nigel Balmer. Their report is included within section 5 of Annex 4. It bears out the headlines described in the section of IR Chapter 2 on the Court of Appeal, subject to one exception. The headlines, also gathered in section 1 of Annex 4, show that the court currently labours under an excess in its annual incoming workload, beyond its capacity to do the work, of over 9,400 hours, and that it had (on 31 January 2016) an accumulated backlog of work, in the form of pending appeals and applications for permission to appeal, of more than 46,800 hours. This figure has risen since then, probably to more than 50,000 hours. Against that, the annual contribution of a single LJ to the case-related workload of the court, after allowing for leadership and management duties, is only 1,500 hours. The court may therefore be described as being 7 LJs short of the complement needed to cope with its workload (after allowing for assistance from retired and HCJ deputies at the current level). The Government has made it clear to the Master of the Rolls, after considering the results of the Time and Motion study, that no additional LJs will be made available in the immediate future.

2.10. The exception referred to above is that the Time and Motion study did not confirm the general understanding (which I fully shared at the time of writing the IR: see para 9.3) that the main contributor to the court's overload was the weight of permission to appeal ("PTA") applications, which has increased by 54% over 5 years. Despite that increase, the Genn Balmer report shows that PTA work still only forms about 17% of the workload measured by time taken, while full appeals represent 80%. It seems clear that the main cause of the overload must lie in an increase in the weight of full appeals themselves, even though they have only slightly increased in number. In the absence of any earlier time and motion study to serve as a comparator, the reasons for that increase in weight must to some extent be a matter of conjecture.

2.11. I would offer two explanations. The first is that the complexity of the law which falls to be analysed on appeal is constantly increasing. Secondly, since the court is giving permission to appeal for a roughly constant number of full appeals from a greatly increased number of applications, it seems reasonable to think that a higher threshold for PTA is unconsciously being applied, with the result that those given permission represent a more concentrated class of the hardest cases.

2.12. As noted in IR2.71, the decreasing capacity of LJs for case related work, attributable to the large increase in their leadership and administrative work, is itself likely to be a significant cause of the current overload, quite apart from any increase in the level of the incoming work.

2.13. The other confident assumption which the Time and Motion study failed to prove was that more time is taken in dealing with appeals by (or including) LiPs than for represented parties. There is no doubt that the number of appeals has increased with the rise in the number of LiPs, because they lack advice on the merits, and often bring hopeless appeals. But the Genn Balmer report fails to demonstrate that they take longer either to hear, or to prepare for. Nor do the statistics positively prove the opposite, because of the insuperable difficulty of comparing like cases with like in terms of inherent weight. It may well be that the LiPs bring the lightest cases, and the represented parties the heaviest, so that the apparent statistical equivalence in the time taken over them by the court paints a superficially misleading picture.

Small Claims Mediation

2.14. This section amends IR2.30, in which I described the small claims mediation service as constrained by the size of its team of mediators, so that it responds only to about 35-40% of the national demand, as indicated by the parties ticking the appropriate boxes on the Directions Questionnaire.

2.15. Further research has revealed that the position is a little more complicated than that. Parties requesting a small claims mediation are sent a form offering a single date. They are told that if they cannot accept that date then their case is deemed not to be suitable for mediation. A similar consequence flows from a negative answer to certain other questions contained in the form. The constraints imposed by that form, coupled with limited period available in which mediation can be set up before the case is transferred to the local hearing centre are both major contributors to the limited proportion of those parties originally requesting mediation that in fact obtain one. The present position is that the period within which to arrange a mediation, together with the contents of the form are both under review, steps have been taken to increase the number of mediators from 14 back to the original 17 and to introduce a second mediastion appointment if the first is not suitable. This is likely to increase the proportion of small claims litigants able to obtain this service, but still only to a relatively modest extent.

Civil/ADR

2.16. This section supplements and corrects paragraphs 2.86 to 2.93 of the IR, mainly as the result of court visits conducted since December 2015.

2.17. There is a form of small claims conciliation (to use an umbrella term) carried out by District Judges in certain County Courts hearing centres in the Hampshire, Dorset and Wiltshire area, and also in Romford. It works in the following way.

2.18. First, all cases in the small claims track are routinely called in for a conciliation and case management session. Attendance is compulsory, and parties not attending have their claims (or defences as the case may be) dismissed or struck out, with liberty to restore which is only very rarely exercised.

2.19. The DJ conducting the list (which will include up to twelve cases in a morning's session) then invites each pair of parties to consider settlement, and provides assistance in the form of informal early neutral evaluation, in much the same way as is done at financial dispute resolution hearings in the Family Court.

2.20. Those cases which do not settle there and then are given the benefit of case management directions designed to enable the parties to prepare for a final hearing much more effectively than is customary in the Small Claims Track.

2.21. Statistics kept by the originator of the scheme in the Hampshire, Dorset, Wiltshire area (now HH Judge Dancey, but then a DJ) suggest that 25% of the entire small claims track list is disposed of due to non-attendance, 50% at the conciliation hearing, and a significant proportion of the remaining 25% settles before trial, due (anecdotally) to progress towards settlement achieved at the conciliation hearing.

2.22. This scheme bears an interesting relationship with the Small Claims Mediation service. While it is operated by judges, at much greater expense per hour to the court service than that provided by the small claims mediators, it brings about settlement of a much higher proportion of the small claims issued and deals in half a day with more than double the number of cases dealt with by a typical small claims mediator in a whole day.

2.23. I have found no convincing explanation why this form of judicial conciliation is being practised only in a small number of specific parts of England. It is possible that there are other parts where it is being practised, of which I remain unaware. The main argument against its more general use which has prevailed to date appears to be that cases which do not settle by means of this process therefore have to receive two doses of judicial attention, one at the conciliation hearing, and the other (which has to be by a different judge) at the trial. This is, of course, correct as far as it goes, but it does not follow that the overall economic analysis ought to be regarded as adverse to the use of this form of judicial conciliation. I will refer again to this issue in chapter 6 below.

2.24. More generally, further research and consultation has suggested that the extent to which mediation has reached a satisfactory steady state, as an alternative to determination of disputes in court is, at best, patchy in the civil courts of England and Wales. The current perception of the Civil Mediation Council appears to be that it is broadly satisfactory for high value claims and, (subject to the difficulties already described) for small claims, but that there is a substantial proportion of claims of moderate value where mediation is insufficiently used. Furthermore there appears to be a particular shortfall in the potential penetration of mediation in relation to personal injuries and clinical negligence claims. Feedback from the International Mediation Institute (to a board meeting of which I was kindly invited in London in May 2016) suggests that this particular shortfall is not a consequence of the underlying nature of those types of dispute, because personal injury and clinical negligence claims are widely and successfully mediated in other countries.

2.25. I described in IR 2.89 how the court service used to provide free space after court hours for short mediations, and then funded the National Mediation Helpline. I have tried to ascertain why those two services were discontinued. It appears that the after hours service was regarded as less satisfactory than a nationally organised service, and that the latter was discontinued because of the expense to the MoJ of funding its administration (but not its performance) on a contracted-out basis.

2.26. Whatever may have been the justification for the discontinuation of those services, and their replacement by a service which only addresses small claims, (and only a moderate proportion of those), I regard the outcome as less than satisfactory. Both the out of hours and mediation helpline services sought to harness the skills of trained (and now accredited) mediators at strictly limited cost to the litigants, not merely for small claims, but for County Court claims in the Fast Track and Multi-track, where at present mediation has achieved a less than adequate penetration. The laudable efforts of accredited trainers in mediation have produced a substantial over-supply of trained and qualified mediators who, it is reasonable to suppose (and as was demonstrated by the after hours service) are likely to be prepared to offer their services at very competitive rates, and sometimes pro bono. Since there is a general consensus (which I share) that it is usually better for parties to civil litigation to be empowered to settle their own disputes, than to have them determined in court, I consider that, both within and beyond the confines of the proposed Online Court, steps ought actively to be taken to re-establish or replace those now discontinued services on a much broader basis than is currently represented by the Small Claims Mediation service.

2.27. It has also been suggested from within the mediation community that the presence of a free Small Claims Mediation service is acting as a discouragement to parties to small claims to mediate (at the cost of paying a qualified mediator) before issuing proceedings, contrary to (at least the aims of) the Mediation Directive. I have been directed to a website which gives that discouragement in terms. I have not been able to verify this anecdotal evidence statistically, but I do not mean thereby to dismiss it.

2.28. In sharp contrast, it is widely believed within the same community that the recent sharp rises in issue fees for Multi-track civil claims has led to an increase in mediation before the issue of

proceedings. These are cases which might well previously have mediated after issue, so the increased fees do not necessarily increase the proportion of underlying disputes that go to mediation. Nor does the increase in pre-issue mediation mean that these cases necessarily settle any earlier down the process of incurring disproportionate costs. This is because more of the costs are also now incurred pre-issue, for example by detailed exchanges of pre-action correspondence between solicitors, sometimes including draft statements of case, witness statements and even experts' reports.

3. Work in Progress

3.1. This is (inevitably) another rather limited chapter bringing up to date my description of work currently in progress (other than the Reform Programme) in the civil courts. IR chapter 3 sets out a largely sufficient description, save where notes in this chapter are necessary to address developments since December 2015.

Costs

3.2. Perhaps the most significant development under this heading is that Jackson LJ (to whose magisterial report I referred in IR 3.2) has now resumed active moving and shaking in the field of civil litigation costs, in particular by the delivery of a number of recent lectures about the present effect and future development of his reforms.[9] Although not currently working in an official capacity, Jackson LJ's unique stature and authority in this field means that his active return to this subject is, in my view, likely to trigger a resumed interest among policymakers and stakeholders in the further development of his existing reforms, and into further progress, in particular in the extension of a fixed recoverable costs regime beyond its present boundaries. He is also about to publish a book on the subject.

3.3. His general approach, which he has been kind enough to share with me in outline, is that he regards the pursuit of an extended fixed costs regime, the further development, improvement and streamlining of costs budgeting and costs management, and the introduction of modern IT into the process of costs assessment as all working alongside the introduction of an Online Court as measures which contribute in a complementary way, rather than in competition, to the provision of an effective overall remedy for the adverse effects upon access to justice constituted by the continuing disproportionality between costs and value at risk in large parts of the workload of the civil courts. At IR 3.4 I noted that costs reforms could be either an adjunct or an alternative to structural change for this purpose. In my view the costs reforms which Jackson LJ is now seeking to pursue are indeed an adjunct to the recommendations for structural change made in this final report. I understand this to be common ground between us.

3.4. I was taken to task by Jackson LJ for having perhaps (but unintentionally) given the impression in IR 3.3 that his reforms were primarily focussed upon curing disproportionality in the cost of conducting personal injuries litigation, whereas in his view they are of much wider import. He is of course right to say that his reforms addressed disproportionality of costs across the whole spectrum of civil litigation and that, in particular, his proposals about costs budgeting and costs management are by no means limited to personal injuries cases. Nonetheless I think it fair to comment that it is in the field of personal injuries litigation where his reforms have been most successful whereas, as noted in IR 3.8, there continues

9 Confronting costs management: https://www.judiciary.gov.uk/wp-content/uploads/2015/05/speech-jackson-lj-confronting-costs-management-1.pdf; Fixed costs – the time has come: https://www.judiciary.gov.uk/wp-content/uploads/2016/01/fixedcostslecture-1.pdf; The case for a CLAF: https://www.judiciary.gov.uk/announcements/speech-by-lord-justice-jackson-the-case-for-a-claf/ ; The future for civil litigation and the fixed costs regime: https://www.judiciary.gov.uk/wp-content/uploads/2016/05/lj-jackson-future-for-civil-litigation.pdf

to be a debate about the cost/benefit of active judicial costs management, in the bracket between £25,000 and £10,000,000 where it is, contrary to his recommendation, currently compulsory.

3.5. In parallel with Jackson LJ's renewed activity, there is a general increase in the attention being given by stakeholders and government to aspects of the costs regime relating to the civil courts. First, the Civil Justice Council ("CJC") held a stakeholders' forum on fixed recoverable costs in February. The government supports the principle of extending fixed recoverable costs and is considering the way forward, including how best to deal with differences between types of civil litigation. The MoJ is considering, but has not yet made, proposals for fixed recoverable costs in this area. There is, in parallel, policy consideration within the Department of Health about an extension of the fixed costs regime relating to clinical negligence cases. The Master of the Rolls has himself publicly supported an extension of fixed recoverable costs in a recent lecture.[10]

3.6. Government is also reviewing the hitherto less than successful DBA (Damages Based Agreements) structure for funding civil litigation costs, again following a report published by the CJC[11]. No public consultation has yet been issued.

3.7. The prospect of the establishment of a CLAF (Contingency Legal Aid Fund) is now actively being considered by a joint working party set up by the Bar Council, The Law Society and CILEx. This was a proposal considered but not recommended in the Jackson Report, but Jackson LJ is now a supporter of its creation (see his lecture 'The Case for a CLAF' noted above). If it could be established and made to pay its way, it could (and does in some other countries) make a real contribution to access to justice by filling part of the large gap left by the withdrawal of Legal Aid.

3.8. The CJC has very recently published a working party report on the possible extension of the QOCS regime in certain specific areas. It is mainly concerned with complaints against the police, and claims that the conduct of personal injury claims were negligently handled.[12]

3.9. The CJC has also commissioned a working party report on BTE (Before The Event) Insurance, but a report is yet to be prepared or published.

3.10. I mentioned at various places in the IR a government proposal, announced in the 2015 Autumn Statement, to raise the threshold for personal injury cases in the Small Claims Track (and therefore to remove significant costs shifting), so as to include claims between £1,000 and £5,000. Again, the anticipated MoJ consultation on this proposal has yet to be published, but is likely to appear later this year. In the meantime the issue has generated significant interest (and no little dismay) among stakeholders, to the extent that a mediated forum about it was held by the CJC on 7 July 2016. I explain elsewhere in this final report the importance of this proposed change in the context of the prospective workload to be

10 https://www.judiciary.gov.uk/announcements/harbour-lecture-by-lord-justice-dyson-mr-confronting-costs-management/

11 https://www.judiciary.gov.uk/announcements/damages-based-agreements-dbas-publication-of-cjc-recommendations/

12 https://www.judiary.gov.uk/wp-content/uploads/2011/03/cjc-qocs-2016-report.pdf

allocated to the Online Court: see chapter 6 below.

3.11. Finally, the CPRC has itself been at work in relation to aspects of costs reform, in particular in relation to costs budgeting, costs management by the court, and the relationship between phased expenditure on costs and costs assessment.

3.12. I mention these various, as yet largely ill-defined, developments for completeness. Some of them, such as the setting up of a CLAF, may significantly improve access to justice. Some may assist in addressing the current disproportionality between costs and value at risk. Others, such as the proposed adjustment of the small claims threshold for personal injuries claims, are widely perceived to risk a significant reduction in access to justice. None of them, individually or in the aggregate, lead me to qualify the recommendations made later in this final report, save only in relation to the question whether small personal injuries claims would be better accommodated within the new Online Court, than in the current Small Claims Track of the County Court, if the relevant threshold for that track is indeed raised.

Court Fees

3.13. I summarised the work in progress and current government policy in relation to court fees at IR 3.10-18. I am not aware of any change in the government policy there summarised. More recent statistics show, by way of update to IR 3.12, that the effect of the April 2014 fee increases was to cause only a temporary fall in Fast Track claims, which have since recovered. A long term rising trend in small claims has continued (there having been no fee increases in that track), but Fast track claims show no clear pattern of growth or decline. By contrast, the fall in Multi-track claims has continued thereafter, and most commentators suggest that this is indeed caused, at least in substantial part, by the much steeper fee increases attributable to those claims than to the Fast Track. It may therefore reasonably be concluded that the current fee policy does discourage access to the civil courts for claims where the amount claimed exceeds £25,000. The relevant statistics may be found in Annex 4.

3.14. Meanwhile, the lawfulness of the very large fee rise in the Employment Tribunal which I described in IR 3.11 as having been affirmed notwithstanding challenge, is now back in issue, due to permission to appeal being given by the Supreme Court in R (Unison) v Lord Chancellor [2015] EWCA Civ 395. The appeal to the Supreme Court has yet to be heard.

3.15. The latest publicly available figures for 2015-16 show that the total operating expenditure for HMCTS was £1,893 million which was offset by fee income of £741 million. In the civil jurisdiction, where enhanced fees were implemented in February 2016, £522 million in fees were collected giving a surplus in the civil jurisdiction of £95 million when taking into account its operating expenditure of £404 million. This surplus is no mean sum, but much less than was projected.

3.16. Finally under this heading, experience of using the new "Help with Fees" form has been reported during Stage 2 consultation as highly satisfactory. The use of LiP friendly language has greatly improved efficiency, and reduced the need to return incorrectly completed forms.

Thus the hope that it would do so set out in IR 3.18 appears to have been entirely fulfilled. An online version of the form is about to come into use.

The Rolls Building

3.17. I described in IR 3.23 a project to introduce a fast track trials scheme for insolvency work heard by the Registrars, alongside a complete re-casting of the Insolvency Rules. Consistent with a trend recognised and encouraged in the Chancery Modernisation Review, the Registrars as specialist judges are conducting insolvency and companies court trial work, much of which had previously had been heard by High Court Judges. They hear trials up to two weeks in length and except in vacation run three trial lists. In this context the Registrars initiated the proposed fast track scheme designed for High Court insolvency trials which came into effect on 6th April 2016. Three insolvency express trials are now progressing through the court.

3.18. The Registrars' jurisdiction is also being extended to enable them to make Administration orders and to grant injunctions in the context of winding up proceedings. This will assist in relieving pressure on the Chancery High Court Judges.

3.19. These initiatives are taking place alongside a complete re-writing of the Insolvency Rules, which govern bankruptcy and insolvency proceedings, largely (but not entirely) in substitution for the CPR. The policy behind the rule changes expected to take effect in 2017 is to save costs in insolvency proceedings. Three short examples will give a flavour of the changes. First, all debtors' petitions (renamed 'bankruptcy applications') have from April 2016 been moved out of the courts. Secondly, no court order will be required (currently such an order is needed) for an office-holder to communicate by email or via a website. Lastly, a process of deemed consent is introduced to meetings held by office-holders. This is because the cost of convening a meeting by an office-holder was often wasted as no-one attended.

The County Court/High Court Boundary

3.20. The study to which I referred in IR 3.25, designed to facilitate transfer down of High Court work to the CLCC has borne fruit. There are now early triage processes in force in both the Chancery Division, the Queen's Bench Division and the CLCC designed to facilitate the early transfer to the County Court of cases which do not really deserve the attention of the High Court. The statistics in section 2 of Annex 4 show that this early triage process is bringing about a welcome increase in the number of cases transferred down, much of it going to the CLCC. That centre is achieving excellent performance against target in relation to the time taken to bring Multi-track cases to trial, and it is the one County Court hearing centre in the country where there is a satisfactory provision of Circuit Judges with civil expertise, sufficient to undertake the extra workload being passed down from the High Court. I refer to this in more detail in chapter 8 below, where I also make recommendations for large changes in the financial thresholds separating the High Court from the County Court, mentioned in IR 3.26.

The Salford Legal Adviser Pilot

3.21. This vital pilot has, during its first six months, demonstrated that the concept of allocating to legally trained and experienced Case Officers work previously done by District Judges, to be carried out under close judicial training and supervision, is indeed a viable and beneficial reform. I refer to it in more detail in chapter 7 below. The pilot has now been extended for a further year and the types of work allocated to the Case Officers within it slightly increased in the light of experience, on the authority of the CPRC.

Routes of Appeal - Changes Affecting the Court of Appeal

3.22. The two changes described as proposals in IR 3.30-3.33, namely re-routing appeals in private family law cases and from final judgments in the County Court from the Court of Appeal to the High Court have both been implemented, and are due to come into force, in relation to new appeals, in October 2016.

3.23. Finalisation of the statistical analysis of the 2015 Time and Motion study (for which see section 5 of Annex 4) has enabled the saving in the Court of Appeal's workload to be quite precisely time-costed. The re-routing of private law family appeals will save a net 2,056 hours and the rerouting of appeals from final orders in the County Court will save a net 3,347 hours. As explained in more detail in chapter 9 below, these two changes will by no means even eliminate the currently excessive workload of the Court of Appeal, running at over 9,400 hours, let alone do anything to enable the court to reduce its enormous backlog of work, which now probably exceeds 50,000 hours. Nonetheless, in combination with the further proposals explained in chapter 9, they will play a significant part in doing so.

3.24. Again, I describe the outcome of the internal review of the Court of Appeal's procedures, referred to in IR 3.34 in more detail in chapter 9.

3.25. Finally, the proposed changes to the routes of appeal in bankruptcy and insolvency matters have also been implemented with the same October 2016 commencement date. This piece of work in progress has therefore been completed, and will help reduce pressure on the the High Court Chancery judges.

The Court Estate

3.26. I need to say nothing in this chapter about developments under this heading. They all form part of the Reform Programme, and are dealt with elsewhere.

Litigants in Person

3.27. Following the CJC 4th National Forum on LiPs, in January 2016 an overarching CJC-

sponsored strategy for greater access to justice for those without means was introduced. There are 3 immediate "delivery priorities", and each now has a task group at work. In addition a core group meets fortnightly. The "delivery priorities" are:

3.27.1. developing an organised core web presence (to improve the ability to locate sources of help);

3.27.2. scaling-up early initial legal advice (to ensure problems are evaluated early, and that people can identify and access the most appropriate course for resolution);

3.27.3. furthering public legal education (to equip people to avoid, recognise and resolve disputes).

3.28. As liaison judge for the PSU, Jackson LJ has established a pro bono advocacy scheme for the Court of Appeal, following the success of the CLIPS scheme in the Chancery Division.

3.29. As described elsewhere, HMCTS has now established a LiP Engagement Group for Civil, Family and Tribunal jurisdictions in the Reform Programme. Its expert members have been chosen and it has commenced regular meetings.

3.30. The PSU continues to expand, planning to open units in the court centres of 4 more cities this year, namely Bournemouth/Southampton, West London (Family Court), Hull and Coventry. This will bring its current total to 20 units in 16 cities.

IT, Enforcement and Boundaries

3.31. I need say nothing in this chapter under any of these headings. They are fully addressed later in this final report. Even though the work in progress on IT described in IR 3.46-52 largely pre-dated the Reform Programme, its further development has become bound up with that programme to an extent that it makes no real sense to address it separately.

4. The HMCTS Reform Programme

4.1. Chapter 4 of the IR contained a brief introduction to the Reform Programme, and its consequences for the civil courts in particular. Large parts of the rest of the IR, and chapters 6, 7 and 10 (in particular) of this final report contain a great deal of further information about it. It is therefore unnecessary to do much more in this catch-up chapter than outline the progress of the programme since December 2015, highlighting those parts of it relevant to the civil courts.

Process

4.2. As anticipated in IR 4.4, Sprint 2 was indeed completed by the beginning of 2016. The outcome was a business case (which I have not been shown in detail) which I am told does validate the investment of £736 million in the Reform Programme during the period which began in April 2016. The result was that money for the implementation of the programme started to flow this April, enabling work to start in earnest on the detailed design and development of the various projects comprised within it. The programme is now at the beginning of its delivery stage.

4.3. So far as is relevant to the civil courts, the current stage of the programme has included the following elements:

4.3.1. The commencement and inception meetings of what is currently called the Civil Money Claims project, which is tasked both with the development of the Online Court (i.e. for money claims up to £25,000) and with the digitisation of the rest of the civil courts.

4.3.2. The Assisted Digital project, tasked with developing measures for the assistance of court users challenged in the use of online services, across all the relevant jurisdictions.

4.3.3. The RCJ Project, which is considering updating of IT systems within the Royal Courts of Justice, including the Rolls Building..

4.3.4. In the meantime the Civil Judicial Engagement Group has continued to meet, so as to provide expert judicial input into the design process, and commentary on the assumptions upon which the business case is based. This group, which I now chair, has met three times since December 2015 and it is anticipated that it will continue to meet regularly throughout the life of the Reform Programme. The programme of court visits by members of the HMCTS reform team which the civil JEG recommended is progressing, and is reported to have delivered substantial value to the design team in familiarising them with the realities of civil litigation, as it is currently conducted.

4.3.5. On my recommendation, an engagement group ("the LiPEG") consisting of expert representatives of the pro bono and advice agency community has been set up, and is

now meeting regularly, under the chairmanship of Mr Justice Knowles. It is expected to make a vital contribution to the development of Assisted Digital, as well as to the use of language suitable for litigants without lawyers in all the online software, forms and rules to be developed for the Online Court.

4.3.6. Steps have now been taken to establish one or more professional engagement groups, designed to tap into the wealth of expertise and experience available among the legal professions, and to foster the closer engagement of those professions with the Reform Programme. This is, again, a most welcome development.

4.3.7. Consistent with my provisional recommendation in IR 6.17-32 and 12.25.1, I understand that the MoJ has agreed to implement the concept of the Online Court. Legislation is being prepared to provide for a new online procedure and for the development of a wholly new kind of simplified procedure rules for the Online Court. A new online rules committee will cover Civil, Family and Tribunals, and will be separate from the existing rules committees. This is to my mind a very welcome early development pursuant to which, even in advance of the passing of the requisite legislation, the development of the Online Court can proceed in a way which maximises its prospects of increasing access to justice for litigants without lawyers.

4.3.8. Meanwhile, and as expected, the CPR will continue to govern the High Court and the County Court, even after they have both been digitised. The MoJ has yet to decide whether the Online Court should be a part of, or separate from, the County Court. Even if the former, the Online Court is not intended to be subject to the CPR.

IT

4.4. Significant and successful progress has continued to be made since December 2015 in the roll-out of CE File in the Rolls Building, and of the DCS system for enabling paperless trials to take place in the Crown Court. Both of them were originally commissioned prior to the commencement of funding for the Reform Programme in April 2016. CE File enables online issue and filing of claims and documents in the Rolls Building, currently on a voluntary basis, but now constitutes the basis for all storage of case files there. It also enables case management information to be recorded online. The CPRC has recently approved the beginning of a staged process of making the use of CE File compulsory for court users in the Rolls Building, which is expected to be completed by April 2017.

4.5. For its part, DCS is now in regular use for paperless case management hearings in the Crown Court, and increasingly for trials, short of the heavily documented business fraud trials, although preparation to extend it to them as well has already started.

4.6. Work is now proceeding, but no decision has yet been taken, in identifying the requirements of an IT platform for use generally within the civil courts (including the Court of Appeal). Neither CE File nor DCS would currently provide, on its own, a sufficient form of digitisation for everything required in the civil courts, which includes issue, filing, case progression, the

collection of business management information and the facilitation of paperless trials. There is a general perception (which I welcome) that a common IT structure which would serve all those requirements across the whole of the Civil, Family and Tribunals jurisdictions would be greatly preferable to the current plethora of different, mainly rudimentary, systems currently in use.

4.7. No decision has yet been taken as to whether either of the new systems (CE File and DCS) could be adapted to serve all those purposes, or whether some combination of them or some wholly different system or systems should be used for that purpose.

The Court Estate

4.8. I have nothing to add to IR 4.15-18 under this heading, save to note that, following the completion of the public consultation on court closures, 36 of those proposed for closure (i.e. all but 5) have been confirmed, and either are or will soon be closed, as and when alternative facilities for the workload of those courts are identified and become available.

4.9. In the meantime, testing of a temporary court hearing venue (a method of alternative provision) has been carried out in Aberystwyth. Following the lessons learned from that experience, work is underway to implement alternative provision at the 8 sites where closure is contingent on alternative provision being established. The first alternative court hearing venue for civil work is due to open later this year. The continuing development of temporary courts will no doubt provide valuable further learning for the expansion of the concept in other areas where the closure of permanent courts would otherwise leave an unacceptable gap in the provision of civil justice across the country.

Case Officers

4.10. I deal with the latest developments under this heading fully in chapter 7 below, and need add nothing by way of amplification of IR 4.19-23.

Transparency and Open Justice

4.11. Thinking in relation to this important subject continues to develop, in line with the established principles summarised at IR 4.25. Work to establish the legal framework within which transparency solutions must operate is nearing completion, and I expect more detail on these solutions to emerge in the coming months. One practical manifestation of transparency already in operation consists of the publically accessible booths in the reception area of the Rolls Building, which have been designed and brought into operation to enable the public to have an appropriate level of access to online civil case files now digitised by use of the CE File platform.

5. Strengths, Weaknesses, Opportunities and Threats

5.1. The SWOT analysis in IR chapter 5 lay, in many respects, at the heart of the Interim Report. It represented my best attempt to distil, in a single narrative, the essence of those strengths in the civil courts structure which needed to be preserved, the weaknesses which ought to be addressed, the opportunities which then existed to do so, and the threats which might lie in the way of successful reform. It was based upon time-limited research and consultation, but the more wide-ranging and intensive processes of the study, statistical analysis and consultation during Stage 2 have largely confirmed my then provisional analysis.

5.2. It would involve needless repetition for me to re-state those large parts of IR chapter 5 which I continue to regard as holding good at the end of Stage 2. That chapter remains compulsory reading as my main explanation for most of the recommendations made in this final report. Nonetheless I shall in this chapter address a number of specific aspects of the SWOT analysis in the IR, in order to explain how those Stage 2 processes have caused it to be confirmed or, in minor respects, adjusted. In certain instances, things have happened since 2015 which have strengthened or modified my views. For the most part, they have not been altered, but have been reinforced, by the intensive process of written and oral consultation of which I have been the beneficiary.

5.3. Generally, consultation tended to focus much more upon chapters 6 - 12 of the IR, containing as they did provisional recommendations for change, rather than upon the analysis (including the SWOT analysis) which preceded them. For the same reason, my summary of a great deal of the consultation responses has also been collected in chapters 6 and following of this report, although substantial parts of it could (but for inevitable repetition) have been set out in this chapter 5. This applies, in particular, to consultative responses about opportunities and threats facing the Online Court project (collected in chapter 6).

5.4. More generally, readers may assume that, where I have not commented upon specific parts of IR chapter 5 in this chapter (or later in this report), those parts are to be taken as fully confirmed.

Strengths

The Judiciary

5.5. I have little to add to IR 5.4-5.8, save to remedy a partial omission. The combination of consultation during Stage 2, coupled with meetings with many of the judges concerned, and some limited observation of their work in court, persuades me of the widespread quality of the District Judges, both in terms of the range of subject matter with which they have to deal, often with minimal assistance from advocates, and also in relation to their development within the Small Claims Track of investigatory skills, in sharp contrast with

the general adversarial culture of the civil courts. This enables them to deal justly with a large body of small cases which, understandably because in so many of them the litigants are unrepresented, come to court for trial in a frequently ill-prepared form, largely bereft of the professionally prepared statements of case, witness statements, disclosure and expert evidence which assists judges in the Fast Track and Multi-track, and even more so in the High Court.

5.6. The particular judicial skills of being able to be one's own lawyer and of applying investigatory techniques to cases involving unrepresented litigants are an undoubted strength of our civil courts at the Small Claims Track level, which both need to be preserved through any process of reform, and which will provide an essential foundation for the successful operation of the Online Court.

5.7. I gained this firm view not merely from more than 20 meetings with District Judges all round the country, and from watching the skill and speed with which quantum disputes about personal injury claims were adjudicated in the Birkenhead County Court, but also from a widespread perception among consultees that the work of the District Judges in the Small Claims Track was widely appreciated by litigants.

The Civil Courts

5.8. My summary in the IR of the strengths of the High Court, both in London and regionally, was fully borne out by consultation during Stage 2. I shall have more to say about this in chapter 8 but, generally, confidence in the quality and practices of the High Court manifested itself both expressly, in positive terms during consultation, and in the negative sense that there were few complaints about its performance, particularly within the Rolls Building, save for a concern that the presence of the High Court needed strengthening in the main regional trial centres.

5.9. As for the Court of Appeal, my perception in IR 5.20 that the balance currently struck between written and oral presentation by the procedure of the Court of Appeal commands high public respect was vigorously borne out by consultation, in particular by the widespread dismay expressed by many consultees at the prospect that the right of oral renewal of an application for permission to appeal might be abrogated. As will appear in chapter 9, that is a particular aspect of that balance which will now be disturbed, but it will be done in order to preserve by the only means perceived to be available the larger prize of retaining the full oral presentation and argument of appeals for which permission is given.

5.10. Consultation during Stage 2 has not confirmed the broad view described in IR 5.20 that the Court of Appeal has the requisite number of LJs, even if it does provide a sufficient balance between specialist expertise and overall judicial skill. The majority of consultees would unquestionably prefer a substantial increase in the judicial complement of the Court of Appeal, as their preferred solution to the grave difficulties created by its overload of work. Again, chapter 9 contains my explanation why this is not perceived by the proponents of the pending Court of Appeal reforms to be currently available.

5.11. Finally, consultation during Stage 2 did not, at least with any unanimity, endorse my view in IR 5.22 that, even if all the then proposed closures were implemented, the County Court would still provide sufficiently widespread locally accessible civil justice all round England and Wales. All but five of the proposed closures are to go ahead, and there is real concern among my consultees, both generally and in relation to a small number of particular locations that, even if there is no further round of closures, the County Court has lost its status as the provider of civil justice in every regional location that needs it.

5.12. These concerns are fully understandable, in particular when they emanate from residents of cities or rural areas from which an existing permanent County Court hearing centre is to be removed. As someone who resides near a cathedral city from which all the courts are to be removed, I have every sympathy with their concerns.

5.13. Nonetheless, the objective question to be addressed is whether, after those closures, the provision of permanent County Court hearing centres strikes an appropriate balance between the obvious benefits of maintaining regional centres for civil justice and the sometimes disproportionate cost of doing so in places where the permanent courts are currently under-utilised, in need of major repair, or both. This objective question is not part of my Terms of Reference (since the current closure programme was already subject to public consultation when this Review was commissioned), and I express no view about it. I would only observe that the continued provision of adequate local justice is likely to depend very heavily upon the success or failure of the project for the development of temporary courts, to which I have made reference in chapter 4.

Weaknesses

5.14. There was nothing very provisional about my view, in IR 5.23-52, that the single, most pervasive and indeed shocking weakness of our civil courts is that they fail to provide reasonable access to justice for the ordinary individuals or small businesses with small or moderate value claims, save for certain specific categories of litigants. Public consultation has fully endorsed that view, and my analysis of the reasons for it, under the IR chapter 5 headings: Courts Designed by Lawyers for Lawyers: Disproportionate Expense and Risk attributable to Legal Representation: and LiPs at Grave Disadvantage in the Civil Courts.

5.15. Some consultees, including the Civil Justice Council, Justice, the Legal Education Foundation and the Pro Bono sector, endorsed that view and all or parts of its supporting analysis in express terms. Others, in particular judicial and professional stakeholders who might have been expected to offer a contrary view if it were maintainable, impliedly endorsed it by their lack of challenge to those parts of the IR. Specifically, I made it a practice at most of my Stage 2 meetings to ask those attending (and in particular professional stakeholders) whether any of them would recommend to a non-legally qualified friend of theirs the undertaking of civil litigation (other than in relation to personal injuries) in connection with a dispute with a value at risk of £25,000 or less. I cannot recall a single occasion upon which any of more than 1,000 consultees attending in the aggregate, answered that challenge in the

affirmative.

5.16. This central weakness in the service provided by the civil courts therefore remains the bedrock upon which all my recommendations about the creation and development of the Online Court are based.

Work Overload and Delay - Problem Areas

5.17. The continuing overload and delays affecting the Court of Appeal constituted, by a long margin, the second most serious complaint about the civil courts, arising from the consultation during Stage 2. The size and make-up of the workload, and the extent of the court's inability to deal with it, have all been established in precise, time-costed terms by the Time and Motion study carried out in 2015, and the analysis of its results are set out both in the Report by Professor Dame Hazel Genn and her colleague Nigel Balmer, and in the highlights summary, both in Annex 4. I deal with them in more detail in chapter 9.

5.18. A particular concern of consultees, expressed forcibly by stakeholders in the success of the international business and property work of the Rolls Building, is the debilitating effect upon the competitiveness of the English Courts as a forum of choice for international litigants caused by the fact that, however effectively the workload is managed in the Rolls Building, its prompt discharge is largely undermined by the delays which then affect any appeals, save where they are expedited (which cannot be guaranteed). Bearing in mind the very substantial foreign earnings which are made and, more importantly, underpinned by the service provided from the Rolls Building, in terms of the fostering of international legal and accountancy services in London, this ought to be regarded as a national rather than merely sectional concern. Earnings, employment opportunities and tax revenues in amounts which exceed the cost of providing additional judicial resources to the Court of Appeal by many orders of magnitude are perceived, rightly in my view, to be at risk.

5.19. Nor should it be thought that this grave weakness should be regarded as "problem solved" merely because the package of reforms has now largely been approved by the CPRC and will shortly be put in place. Those reforms provide an opportunity to balance the incoming workload with the court's judicial resources for dealing with it, but only to make a modest contribution to reducing the enormous backlog of work, costed as a result of the statistical analysis now annexed to this report in excess of 46,000 hours as at 31st January 2016, and probably now in excess of 50,000 hours. Their success will depend upon the meticulous management of the court's workload, the maximisation of the time of the judges available for case-related work (rather than leadership and management) and the continued morale of the judges under an unremittingly heavy workload.

5.20. Furthermore, and as anticipated, the backlog has since got substantially worse. The current level of outstanding applications for permission to appeal has increased since 31 January 2016 and the waiting times for the determination of applications and full appeals are now 6 months for a paper PTA, a further 8 months for an oral renewal, and up to a further year for a full appeal, a total of 26 months for an appeal which passes through all 3 stages without being expedited. The package of reforms will come into effect only in October 2016 and,

even then, it will take up to two years before their beneficial consequences work their way through the accumulated backlog, so as to bring the current workload within manageable bounds.

5.21. Finally under this heading, the analysis of the apparent disparity between the increase in incoming work and the number of full appeals, at IR 5.58-59, has needed to be substantially amended as a result of the completion of the detailed statistical analysis of the fruits of the T & M study. Rather than repeat them here, the analysis is set out in chapters 2 and 9 of this report.

Costs and Case Management Conferences

5.22. There was a lively debate during Stage 2 consultation about whether the benefits of costs management identified in the Jackson Report would justify the substantial time still required to be devoted to it, in terms of a decrease in the disproportionality of costs as against value at risk in the types of case subjected to that discipline, and in a hoped-for reduction in the amount of detailed assessment of costs following trial. I have not had either the time or the resources with which to carry out any scientific assessment of that question. The majority of professional stakeholder consultees have, on a fairly narrow balance, tended to doubt whether the game is worth the candle, whereas the prevailing judicial view is that, although it is taking time to bed down, the costs management process is a very worthwhile addition to the court's case management powers.

5.23. Certain trends have, since December 2015, begun to manifest themselves. It was too early to tell, in December 2015, whether the introduction of costs management would produce the large hoped-for falling off in the amount of post-trial detailed assessment, because of the relatively recent introduction of costs management, coupled with the inevitable time lag between most CCMCs and trials. I am however now advised by the Senior Costs Judge that a sufficiently discernible trend is emerging, which points depressingly away from a conclusion that any such reduction in detailed assessment is likely to occur.

5.24. There appear to be three reasons for this discouraging outcome. The first is that costs management only fixes the future costs from the time of the CCMC, leaving the costs incurred before then still requiring detailed assessment after trial. This implies no criticism of the CCMC process, which would be hopelessly unwieldy if costs already incurred needed (otherwise on an exceptional basis) to be subjected to a form of after the event adversarial review. Secondly, there are a substantial number of cases where reasons (which cannot be dismissed as fanciful) are advanced for departing from the court-imposed or agreed budget. Thirdly, most cases settle before trial, but not at some convenient date which coincides with a completed phase of work for which costs have been budgeted. The result is that large parts of the work remain subject to detailed assessment in the absence of a budget which neatly fixes their amount.

5.25. There appears to be better news in relation to the time typically taken for costs management, both in the RCJ and regionally. The current perception of the relevant judiciary is that the times needing to be allocated for costs management are at last starting to reduce, albeit only

at this stage to a modest extent.

5.26. There is however some concern among stakeholder consultees that the recent decision of the Court of Appeal in *Sarpd Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120, at paras 31 – 53, may serve to undermine that otherwise welcome development, by suggesting that the CCMC is the time and place for contesting the reasonableness and proportionality of costs already by then incurred, rather than only the estimates for costs still to be incurred. Whether or not this is what the court really did decide, even a perception that it may have done so is likely to cause adverse consequences for the required length of CCMC hearings, at least in the short term. This is receiving the early attention of the CPRC.

Trials in the Patent Court

5.27. I noted at IR 5.64-66 that delays in the Patent Court were rising to a level (approaching 18 months) which might threaten its competitiveness as against European competitors. A significant step was the selection of a patent specialist for appointment to a recent vacancy among the Chancery Judges so that the Division now has three judges who were patent specialists before appointment. In addition the Patents Court issued a practice statement in December 2015 which emphasised the importance of a trial within one year of issue where possible, clarified listing practice (including emphasising that if the convenience of counsel made a significant difference to the time which a case must wait for trial, the case may be listed without reference to counsel's convenience), and explained that the court would use its case management powers in a more active manner than hitherto with this objective in mind. These steps do appear to be succeeding in reducing waiting times.

Operational Management and Judicial Training

5.28. I have a little to add to this section of chapter 5 of the IR (paragraphs 5.69-72). The coming revolution in both IT and court structure (once freed from the tyranny of paper) still lies mainly in the future, and so many fundamental decisions still have to be made within the confines of the Reform Programme that it may fairly be said that it is still too early to devise detailed training programmes for something which has yet to be sufficiently defined.

5.29. Local leadership groups are now in place and starting to perform a useful function, in particular dealing with cross-jurisdictional issues.

5.30. It is still a matter of concern that the Judicial College has yet to be allocated any budgeted funding with which to carry out the judicial training necessary to accommodate the coming revolution, still less the training of Case Officers who are to be engaged in undertaking some of the more routine aspect of the work of the District Judges, and the judges who will be needed to supervise the Case Officers: see chapter 7 below. Most of the training will have to be provided (in accordance with the College's usual practice) by judges. Their time does not come free since, even though it is part of the work for which they are paid a salary, time spent training and indeed being trained represents a drain on their availability for doing case-related work, leaving a gap which has to be filled by fee-paid deputies.

5.31. Finally, so far as I am aware, nothing has yet been done to budget for, still less put in place, any significant increase in the regional administrative and secretarial staff complements with which to assist regional leadership judges, such as Presiders, DCJs and regional liaison judges.

Managing the Civil Workload and Raising the Status of Civil Justice

5.32. This subject remains a matter of real concern, not least because it has yet to be agreed at senior judicial level, or within HMCTS or MoJ, that this is in fact a weakness in the structure of the civil courts at all. Rather than repeat matters of detail, I have collected my conclusions and recommendations about this in chapter 8. It is not a matter which received much attention in public consultation. This was not because the concern is ill-founded, but rather because it is essentially an internal matter which the predominantly public and external nature of my consultation process largely passed by. My concern was however fully endorsed at the annual conference of the Designated Civil Judges in June 2016. I remain firmly of the view, expressed in IR 5.78-9, that Civil is the Cinderella that lays the golden eggs.

District judges' Box Work

5.33. I have nothing to add to IR 5.88-91, save to note that further consultation during Stage 2 with District Judges all round the country has broadly confirmed what is there stated. I had hoped to be able to present useful statistics on box work, but the level of returns made during the 12 County Courts T&M study did not provide a sufficiently reliable basis for doing so.

Statistics

5.34. I have dealt with this perceived weakness in chapter 1 above. In short, the inability of the current obsolete collection of different IT systems to record adequate business management information about the workload of the civil courts is urgently in need of attention, and is likely to receive it as part of the Reform Programme.

Enforcement of Judgments and Orders

5.35. Again, to avoid repetition, I have brought up to date my perceptions about the serious weaknesses in this part of the service of the civil courts, and my recommendations for change, in chapter 10 below. In summary, nothing during Stage 2 has assuaged my concern that enforcement remains the Cinderella of the civil courts, although there is now a large measure of agreement about how a major part of those deficiencies may be remedied.

Opportunities

5.36. Generally speaking, research and consultation during Stage 2 has confirmed my provisional view about the opportunities offered by the Reform Programme as a means of addressing most of the weaknesses which I have identified in IR chapter 5, and confirmed in this chapter. Above all, my visit to British Columbia, and meetings with the team designing

the Civil Resolution Tribunal there, coupled with my meetings with those responsible for the design and roll-out of other online dispute resolution systems, including the Traffic Penalty Tribunal here, all tend to confirm my provisional perception that the combination of digitisation and the rationalisation of court space in fewer, larger, hearing centres and more business centres, offers unprecedented opportunities for beneficial reform, rather than merely for saving money, although that is of course an important objective.

5.37. Save however that the Reform Programme has continued (in the manner described in chapter 4) and that funding for it remains committed, not a great deal has happened within the confines of the Reform Programme in terms of developing those opportunities with detailed design, which either adds to or for that matter detracts from my provisional perceptions, set out in IR 5.105-111. In particular, there is as yet no specific plan for further rationalisation of the physical court estate of which I am aware, still less for the setting up of new business centres, or the enlargement of current business centres, and the plans for the Online Court and civil digitisation generally are still at a very early stage of development. This is not a criticism. The Reform Programme has only been funded from April 2016.

Threats

5.38. Little has happened during Stage 2 to alter, increase or reduce my perception of the general threats described in IR 5.112-128, save that consultation has tended to show that I am in good company in thinking that they are all matters of significant concern.

5.39. The same is largely true of the specific threats identified in IR 5.129-133, and I deal with some of them at length in chapter 6, in particular the need to ensure that the Online Court does not deny access to justice for those challenged by the use or ownership of computers, and the general concern about the poor history of large scale government IT procurement projects.

5.40. This is however a convenient place to say a little more about two specific threats, namely lack of engagement with the Reform Programme, and judicial morale and recruitment. The first of those has, I think, receded whereas the second has not.

5.41. Having now been consulting widely on this Review for some nine months, I have been struck by the extent to which engagement with the Reform Programme has extended and deepened over time. I have touched briefly upon this in chapter 1 above. My reasons for concluding that the threat of lack of engagement with the proposed reforms, or of root and branch opposition to them, has diminished are as follows.

5.42. First, there already is an exceptional level of judicial engagement, at all levels of the judiciary, which has been noted with surprise and admiration by judicial colleagues abroad. The early formation of judicial engagement groups for each of Civil, Family and Tribunals aspects of reform has been a major contributor to the success of judicial engagement, both because it has encouraged the provision of expert assistance from the outset, and because it has been seen as an earnest of the desire of HMCTS that it should persist throughout the Reform

Programme.

5.43. Judicial engagement is also being pursued at the most detailed level of planning and design. For example DJ Lethem, a member of my Hard Working Group, was a full member of the project team designing the civil Online Court and civil digitisation during the whole of its recent inception week in Manchester.

5.44. The formation of local leadership groups has also been a contributory factor, although their promise still lies mainly in the future.

5.45. There were understandable reasons why the District Judges might at an early stage have regarded the Reform Programme, and in particular the promotion of ODR and the increased use of Case Officers, as a potential threat to the careers of some of them. The combination of a perception that there will be plenty for them to do in the reformed civil courts, and in the Online Court in particular, coupled with imaginative leadership of their Association has produced a marked increase in their engagement with the Reform Programme as a judicial group, which repeated meetings over time with particular regional groups of District Judges has brought home to me very clearly.

5.46. I would also like to pay tribute to the DCJs for their particular contribution to this review by their organising all my regional visits, to 13 cities in September 2015 and 10 cities between March and June 2016. Without that assistance my public oral consultation would have been a poor shadow of that which was in fact achieved.

5.47. The same general improvement in engagement has occurred, if anything even more clearly, as between HMCTS and those providing pro bono and advice services to those unable to afford lawyers. Again, a dedicated engagement group (the LiPEG) has been formed and has started to meet to foster that very constructive relationship. It shows every prospect of making a major contribution to the success of the Reform Programme, and of the Online Court in particular.

5.48. For perfectly understandable reasons, the legal professions have probably found it harder than most groups to engage with the Reform Programme, or at least with the Online Court part of it. But again, HMCTS is now taking active steps towards the formation of one or more professional engagement groups. I have received very reassuring offers of support for various aspects of the Reform Programme, both from the Law Society and from the Bar Council.

5.49. Let there be no doubt that the success of the Reform Programme in achieving, at the same time, very substantial economies in the cost of delivery of a civil justice service and revolutionary improvements in the manner of its delivery depends critically upon maintaining and deepening the engagement with that programme of all relevant stakeholder groups, both professional and public. I am happy to say that I am much less apprehensive than I was in December 2015 about whether this essential condition will be satisfied. It cannot of course be guaranteed or taken for granted, but all the trends, so far

as I have been able to observe them between September 2015 and now, seem to me to be moving in the right direction.

5.50. The reform project also depends for its success on the whole-hearted support of judges. Much is now expected of them in terms of additional leadership responsibilities and increased workload, all at a time when pay and pensions have fallen in real terms, not least because of the effect upon the judiciary of recent changes in the tax treatment of pensions. It will be vital to maintain judicial morale and commitment in the months to come to enable successful delivery of the reform project. This will be a challenge at a time when the loss of morale and the pay and pensions issues are causing increased pressures on recruitment and retention amongst both the senior judiciary and the circuit bench.

6. Online Court

6.1. The concept (still unhappily) named the Online Court has been much the most intensive subject of consultation and debate during Stage 2 of this Review. General reactions have ranged from straight condemnation: "it will just be an expensive disaster" (from the Young Bar) to the warmest of welcomes: "I am the happiest man in England" (from Prof Richard Susskind), with every shade of approval, scepticism and disapproval in between. While I cannot entirely exclude the possibility that self-interest may have motivated some commentators, and that some feedback has been based on misconceptions about what is proposed, the overwhelming bulk of the written and oral feedback which I have received, both for and against the concept, has been well thought out, well focussed and penetrating. All the questions which I raised for debate in the IR have been well and truly addressed.

6.2. In overall terms, most of the feedback about the Online Court has been firmly supportive of the essential concept of a new, more investigative, court designed for navigation without lawyers. Very few have rejected the concept out of hand. Some, perfectly understandably, lament the fact that a generous provision of Legal Aid, sufficient to enable all court users to be professionally represented, would be preferable, but there is nothing I can do or recommend about that. Most of the criticism has been about particular aspects of the design, and of its potential implications. Much the largest concern has been about the need to cater for those who would be challenged by the need to communicate with the court by computer.

6.3. Meanwhile the concept of the Online Court has itself been moving onwards, both in the planning now being undertaken by HMCTS and MoJ, in my thinking and that of my Hard Working Group. Above all, it is now the subject-matter of a specific work project within the Reform Programme, tasked with its design, development and eventual roll-out.

6.4. In this chapter I shall first address the main criticisms of the Online Court. For those which I consider carry real weight I shall make recommendations which take them into account. Then I shall re-consider the questions about the concept about which I invited and received feedback during Stage 2. Finally I will look in more depth at each of the 3 stages in its procedure. They are (1) an automated online triage stage designed to help litigants without lawyers articulate their claim in a form which the court can resolve, and to upload their key documents and evidence; (2) a conciliation stage, handled by a Case Officer; and (3) a determination stage, where those disputed cases which cannot be settled are determined by a Judge, by whichever of a face to face trial, video or telephone hearing or determination on the documents is the most appropriate.

Main Criticisms

6.5. Those who are critical, sceptical or fearful of the Online Court concept have made their views

known under the following main headings:

6.5.1. That the Online Court will provide second-tier, second class justice to those wrongly viewed as having less important claims, by comparison with the current traditional civil court structure.

6.5.2. That a large majority of the court users needing to use the Online Court will be denied access to justice by the requirement to go online, due to difficulties of various kinds with computers, unless a parallel paper path to court is preserved long term, or the Online Court itself made voluntary.

6.5.3. That the exclusion of lawyers (whether by design or by the economic consequences of the chosen costs regime) will be a cause of injustice in the many cases where there will not be a level playing field, and will encourage the growth of paid McKenzie friends and others with an undesirable influence upon vulnerable litigants.

6.5.4. That the bringing into operation of the Online Court is a rash step in the dark, for which there is no comparable precedent to provide the requisite minimum level of confidence that it will work.

6.5.5. That £25,000 is a wrong and unnecessarily high level at which to set the ceiling of the court's jurisdiction.

6.5.6. That the Online Court will be blighted by government incompetence in IT, or by under-funding during both design and operation.

6.5.7. That the creation of an interactive automated process of triage at stage 1, across the whole range of case types planned to fall within the Online Court's jurisdiction, is beyond the capacity of current IT, and will never replace bespoke advice on the merits from a lawyer.

6.5.8. That culturally normal conciliation at stage 2 will deter litigants from ADR pre-issue, and that the Small Claims Mediation model is inadequate for a jurisdiction up to £25,000.

6.5.9. That determination of disputes about substantive rights other than at a face to face hearing will deprive the loser of that basic feature of English justice, namely a day in court.

6.5.10. That online justice threatens a loss of open justice and transparency.

Second Class Justice

6.6. The essence of the criticism under this heading appears to be that since the Online Court is a form of ODR (online dispute resolution) in which hearings are to be discouraged and human contact with litigants made by unqualified Case Officers rather than judges, the structure is

inherently inferior to the traditional model, and based upon a flawed perception that claims up to £25,000 don't really matter in the same way as much larger claims. The Bar has been in the forefront of this critique.

6.7. I think that this criticism is based upon two misconceptions, and that it is in any event wrong. The first misconception is that amounts below £25,000 (or £10,000 for that matter) are regarded by anyone as of secondary importance to the litigants. £25,000 is at least as much as the average person's annual take-home pay, and those advocating the Online Court are well aware that much smaller sums can be of critical importance to individuals and small businesses. It is precisely because claims are of such importance to ordinary litigants, and currently cannot be litigated at proportionate cost using lawyers, or satisfactorily without representation, that the large effort and investment to create an Online Court is being made.

6.8. The second misconception is that the justice offered by the Online Court would be a form of ODR. While a form of online dispute resolution (where the parties seek to settle online without the intervention of a further human participant) may well be a part of the process, the main form of conciliation at stage 2 is to be by human intervention, while all decisions about substantive rights are to be made by a judge.

6.9. Nor would the process of the Online Court in any way be second class. By comparison (for example) with the Small Claims Track in the County Court (whether on paper or via MCOL), where the unrepresented litigant is offered a blank sheet of paper (or blank screen) on to which to write their claim, the Online Court will provide interactive triage designed to assist them to articulate their claim, and to upload their evidence. This will give both the court and the opposing party early information about the opposing party's case, in sharp contrast with what currently happens in many small claims where one or both parties are LiPs. Cases which need face to face hearings will still get them, and video or telephone hearings where these offer a more convenient but still just solution. The judges resolving the claims will be the same as in the County Court, and there will be a proper avenue for appeal. Case management decisions by Case Officers will be subject to a litigant's right of reconsideration by a judge.

6.10. I suspect that the essence of the 'second class' criticism arises from a comparison between the Online Court and traditional litigation with lawyers engaged on both sides under a full retainer. But this ignores the harsh reality that such litigation is so expensive that it is either unaffordable or imprudent, where modest sums are at stake, save where Legal Aid or some special costs regime (such as protects personal injury claimants) provides otherwise: see IR5.23ff.

Litigants Challenged by Computers

6.11. This has been one of the most widespread concerns about the proposed Online Court, and it applies to any digitisation of court processes where litigants cannot be assured of the services of a lawyer or other person experienced in online communication. I began to address it at IR 6.54 – 59. I cannot recall a single meeting during Stage 2 of this review where the concern

was not mentioned, and it also featured prominently in written feedback. Those expressing this concern included the Bar Council, CAB, the Chancery Bar Association, the Law Society, the Pro Bono sector and the Young Bar. It has, as I expected, been the subject of intense debate.

6.12. To my mind, the starting point is that there is no conceivable form of litigation process which will not be a challenge to a significant class of litigants without lawyers. Many LiPs find themselves tongue-tied when required (or permitted) to address the court orally. Many of them prefer paper, but they struggle when unaided, and presented with a blank page, to achieve focus on the essentials which need to be communicated. Many find it very hard to marshal their documentary and other evidence. A significant number have learning or language difficulties which make any form of meaningful communication about a complex subject-matter difficult, regardless of the format. These people all need help when approaching the court, and our present system of advice agencies tries to prioritise their needs, but falls well short of meeting them in full.

6.13. There will be many (in particular among the silent class of current non-users of the civil courts) who will find that the interactive process of stage 1 triage in the Online Court will be of real assistance in enabling them to navigate their way through a dispute in court, in sharp contrast for example with the blank screen presented by MCOL, or with the traditional paper based-processes for issuing, defending and generally participating in civil proceedings. Furthermore there will over time be an increasing number of younger court users for whom online communication is easier than using paper. Against that, there will be a significant class with specific challenges in using computers rather than paper and post. They will include the still large number of those living mainly in rural areas with no access to broadband, those who cannot afford a lap-top or desk-top computer, and those who for a variety of understandable reasons regard moving to computer after a life spent communicating on paper a step too far.

6.14. I have not found a sufficiently comprehensive study which provides a reliable indicator of the proportion of would-be litigants in the Online Court who would be challenged in one or more of those ways. It is plainly a significant class, and almost certainly larger than the national average, but even if it were as low as that, it would be a large enough class to need special assistance, if the Online Court is eventually to be made compulsory. Help will still be needed for those equally challenged by computer and paper.

6.15. It is not a realistic answer in my view to seek to solve the problem of the computer challenged by the permanent retention of a parallel paper-based equivalent to online access. This is what currently exists alongside the new online issue and filing service provided in the Rolls Building by CE File. The result is that the hybrid service costs more than either a purely paper-based or purely online service, because of the staff required to scan and file online the originating process and other paper documents still posted or delivered by hand. It is of course only a stop-gap while the online service is being rolled out and proved, and unlikely to last for long. Online issue and filing in the Rolls Building will eventually become compulsory. Nor can a paper-based alternative provide the advantages of stage 1

interactivity or file access to be offered by the Online Court.

6.16. I have already explained why, in my view, the Online Court cannot be designed as a permanently voluntary alternative to the traditional civil court: see IR6.50ff. Nothing in the feedback during Stage 2 has caused me to think otherwise, although a short trial period when the new Online Court is voluntary may be possible as part of the roll-out process. The designers of the CRT in British Columbia have already reached, and legislated for, the same conclusion.

6.17. The solution lies in my view in the most intense search for, funding, development and testing of services to assist the computer-challenged, sometimes called "Assisted Digital". This is the solution which I understand would be preferred by most of the Pro Bono and advice sector contributors who have provided feedback to me. They might otherwise have opposed the concept of the Online Court root and branch, on behalf of their many computer-challenged clients. Instead they are participating, by means of the LiP Engagement Group ("LIPEG"), with HMCTS in finding solutions to these undoubted difficulties. I regard the cautious engagement of these groups with the process, rather than opposing it, as a telling indicator of the appropriate response to this serious concern.

6.18. Some parts of the solution are becoming clear. Designing all the IT for use on smartphones and tablets rather than just on desk-tops and lap-tops is widely regarded as greatly widening the class of court users likely to benefit from it, as is already being done with the design of the CRT in British Columbia, and with public legal education online in California. The PSU in particular has told me that many of its clients possess and are adept at using smart phones (and to a lesser extent tablets), while relatively few of them own computers. Furthermore the PSU uses many students as its volunteers. Even though they are required not to offer legal advice, it would be hard to imagine a group with higher computer literacy skills, with which to assist clients going online.

6.19. I adhere to the view set out in IR6.58 that, although the existing advice and support agencies already have the skills best suited to providing face to face assistance to the computer challenged, over and above the limited and insufficient service likely to be provided by a telephone help-line, they cannot just be left to do so unaided. Either they will need to be funded to expand to meet a largely new demand for digital assistance, or HMCTS will have to recruit and train its own national force of helpers for that purpose. Neither will be cheap, but on balance I would expect the first of those options to be the more effective, both in terms of quality and value for money.

6.20. There is nonetheless one problem which may attend use of the voluntary agencies for this purpose, and that is the difficulty which they experience in providing service to a consistent standard across the whole country. I do not by this mean that they currently provide a sub-standard service anywhere. There are simply many areas where they have no current presence, even though some of them, such as the PSU, are expanding rapidly. This will be a real challenge, and there may continue to be areas where a prescribed minimum level of service will have to be undertaken (or paid for) by HMCTS.

6.21. This issue dovetails with a wider question about public legal education, absent from the IR, but which I address in more detail below. In short, being challenged by the need to use computers is only one aspect of achieving adequate access to justice with minimal assistance from privately funded lawyers. It needs to be addressed in that wider context.

Excluding Lawyers and Encouraging McKenzie Friends

6.22. It is not a design objective of the Online Court to exclude lawyers. The underlying rationale is that whereas the traditional courts are only truly accessible by, and intelligible to, lawyers, the new court should as far as possible be equally accessible to both lawyers and LiPs.

6.23. In this respect the Online Court is to be contrasted with the CRT in British Columbia, where the governing legislation does exclude lawyers, save where the adjudicator decides otherwise on a case by case basis. On the contrary, the current conception of the Online Court is designed to be as accessible to lawyers as it is to LiPs. Furthermore there will be by-passes around, or simplified routes through, stage 1 for litigants with lawyers (or legal departments), since they will not need the automated interactive triage designed to enable LiPs to articulate their case.

6.24. The types of litigation for which the Online Court is being designed make this dual accessibility inevitable. For example a claim by a consumer against a business may well involve lawyers for the defendant. A bulk claim by a utility company against an individual will probably have a legal department for the claimant. The current pattern in the Small Claims Track in the County Court frequently has lawyers on one side or the other, and representation by lawyers in the Fast Track is the norm. The statistics about this are in Annex 4.

6.25. There is however real force in the objection (mainly by the Law Society and the Bar Council) that a costs regime for the Online Court, modelled on the Small Claims Track, with recovery only of court fees, some disbursements and something for misconduct of litigation (as suggested in IR6.60-1), may destroy the economic model which currently underpins a high level of legal representation for the pursuit of modest claims in the Fast Track, and bring about a lawyer-free Online Court by economic means.

6.26. There is also great force in the notion that everything possible should be done to construct an economic model which encourages qualified lawyers to offer, and litigants to seek, early bespoke advice on the merits of their cases (claims or defences) before pursuing or defending litigation in court. This proposal received widespread support during Stage 2 If that advice could be provided separately from the current form of full retainer, it might be available at affordable cost rather than, as at present, disproportionate cost.

6.27. Neither of these propositions is simple or straightforward. Both need unpicking, in order to extract from them learning which is likely to contribute to the design of a new court which furthers access to quality justice.

6.28. A recoverable costs regime is, on its own, by no means a clear promoter of access to justice. On the contrary, it contains two elements which tend to do the exact opposite. The first is that the risk of having to pay the opposing party's costs is a powerful disincentive to going to court at all, particularly in the pursuit of small to moderate claims. The second is that the prospect of recovering costs from the opposing side is a powerful economic incentive to lawyers driving up the cost of litigation. This can apply to claims of all sizes. Professor Adrian Zuckerman has been saying this since the mid 1990s, but only recently have his warnings been heeded. An appreciation of the truth of those two points lies behind current moves to bring about a large increase in the areas of civil litigation covered by a fixed recoverable costs regime.

6.29. But a fixed or budgeted recoverable costs regime, backed by Qualified One-way Costs Shifting ("QOCS") plus uplifted damages has, in the sphere of personal injury (including clinical negligence) litigation been a powerful promoter of access to justice, in an area where the playing field is at first sight sharply tilted against the individual claimant, facing a sophisticated insurance company as the real (even if not nominal) defendant. It was the very asymmetry inherent in such litigation which led Jackson LJ to recommend such a regime for personal injuries. He did not do so for professional negligence claims in the non-clinical sphere, even where the claimant is an individual or small business. The result is that access to justice for the pursuit of those claims lags far behind that for personal injuries, as the professional negligence bar and lawyers' associations have made clear to me.

6.30. The fixed recoverable costs regime for personal injuries claims in the Fast Track, coupled with QOCS and the damages uplift, has been a very successful promoter of CFA based legal representation, and the highly efficient conduct of quite small claims (above £1,000 for PI rather than the general lower limit of £10,000) via the RTA Portal, originally designed for road traffic accident claims, but since extended to public and employer liability claims. The Portal is accessible only to lawyers and insurers, but otherwise is a forerunner of stage 1 of the Online Court, in the sense that it is an online tool for communicating information about claims, and leads to many being settled without recourse to court. A large part of its caseload consists of claims under £5,000.

6.31. There is widespread apprehension among PI lawyers' associations that the proposed move of PI claims in the £1,000 to £5,000 bracket from the Fast Track (with its fixed recoverable costs) to the Small Claims Track (with minimal recoverable costs) will destroy the economic base upon which access to justice for these claims is founded. Without the prospect of costs recovery when successful, it is said that solicitors will be unable to offer CFA based retainers. DBA based retainers are not successful even now, and a damages recovery below £5,000 will leave an insufficient proportion for paying the lawyers without digging too deeply into the damages to make it attractive to prospective claimants, even if the current 25% cap were removed. Individuals with personal injuries would be unable, they say, to navigate the pitfalls of obtaining medical expert evidence, and they would go like lambs to the slaughter in a contest with experienced insurers' claims departments, both in settlement negotiations and at trial. The Portal is not designed for, or accessible to, LiPs. By comparison with the Portal, the Small Claims Track would be an inefficient vehicle for the determination of such

claims.

6.32. A very important aspect of this type of litigation, funded by CFAs on a prospect of fixed costs recovery, is that solicitors make an early and informed appraisal of the merits, and advise their clients accordingly. They do so because the viability of the economic model based on CFAs makes it important for them to choose and then fund only the claims most likely to succeed, and to avoid the rest. Unmeritorious claims do not get to court, and litigants with such claims receive appropriately deterrent advice at the outset. Without the offer of a CFA, most claimants lack the resources, or the appetite for risk, with which to go to court.

6.33. A design of new court accessible to LiPs which does not stimulate the provision of early bespoke advice on the merits for would-be litigants (claimants and defendants alike) from a qualified lawyer would I think risk giving rise to a number of unattractive features. First, litigants with poor and even hopeless cases would not be suitably deterred. The requirement to pay an issue fee is not of itself a deterrent which separates those with good cases from those with poor or hopeless cases. It deters all equally, except those with entitlement to Help with Fees (the old fee remission) who may not be deterred at all.

6.34. Secondly, it opens the door to unqualified and uninsured advisors, including paid McKenzie friends, whose presence alongside the LiP may be less easy for the judge or the mediator to detect online, on the telephone or even using video, than in a face to face court environment. This serious development has already gained considerable traction as the result of the progressive withdrawal of Legal Aid, and is the subject of a recent consultation by the Judicial Executive Board[13].

6.35. Thirdly it leaves the individual or small business litigant seriously exposed to under-settling their claim when opposed by experienced and skilful opponents, such as insurers, in asymmetric types of litigation, and even to the blandishments of unqualified mediators seeking a settlement to add to their score, regardless or (if not legally qualified) unaware of the merits or substantive justice of the case.

6.36. These disadvantages establish a serious case for seeking every way, in the design of the Online Court, to encourage the provision of early bespoke advice on the merits of individual cases by qualified lawyers. Some have suggested, but I am not persuaded, that this itself can be provided online. True it is that very simple, standardised guidance can be provided online about the essential legal elements of many case-types. But this will not (at least at the current stage of IT development) be a substitute for bespoke advice, sensitive to the infinitely variable facts or individual cases. Nor can the provision of it simply be left to the pro bono advice agencies, unless funded again at a level which may approximate with the re-provision of Legal Aid.

6.37. Nor is it lightly to be assumed that either the solicitors' profession or the bar will easily be able to adapt to a model which makes the provision of such early advice, uncoupled (or unbundled) from a full, expensive retainer, a practical possibility. The Law Society is actively

13 https://www.judiciary.gov.uk/announcements/mckenzie-friends-consultation/

exploring unbundling, but apprehensive of incurring negligence liability for providing less of a service than regarded at present as culturally normal. The bar does promote direct public access, but is apprehensive that it lacks the business structures and investment which would enable it to compete with solicitors as the would-be litigant's first port of call. Many of its members regard the essence of the bar as being a reference profession, mainly accessible through solicitors, rather than in direct competition with them.

6.38. I do not underestimate these professional difficulties, but I consider that the time has come for facing up to them and overcoming them to the extent that affordable early advice on the merits of a case becomes generally available, uncoupled from the disproportionate expense of a full retainer. I consider that some incentive to doing so could be provided by making the obtaining of that advice, from a qualified lawyer, an element of fixed recoverable cost in proceedings in the Online Court. This departs from the currently low risk aspect of litigating in the Small Claims Track, but if the amount recoverable is kept to the minimum necessary to incentivise the provision of that advice, the deterrent effect of risking having to pay it to a successful opponent may be able to be kept within bounds.

6.39. I have reached the same conclusion, although with less confidence, about making provision for some fixed recoverable cost in respect of some legal representation at some trials. There will be cases where a dispute of fact, unsupported by contemporaneous documents, is central to the outcome of the proceedings, and therefore warrants skilled cross-examination from an experienced advocate. Again, making available an element of fixed recoverable cost would provide a further incentive for the provision of an unbundled (or direct access) affordable professional service, where critically necessary to the achievement of a just outcome. Fixing the levels of fixed recoverable cost for these items will be a difficult task, for which the extensive engagement of professional and other stakeholders will be needed. It is beyond the scope of my terms of reference. It is a subject about which work by the Civil Justice Council would be very welcome, in addition to the work which the Council is already doing on fixed costs.

A Rash Step in the Dark?

6.40. I acknowledge at once that, at the time of delivery of this report, there is not in actual operation anywhere in the world a recognisable precedent for the Online Court. The nearest precedent will be the CRT in British Columbia but, after some delay (which I was told was attributable to delayed funding rather than design problems), even it is only beginning its soft launch about now, and a full launch only next year. Furthermore the CRT is a type of compulsory non-binding adjudication, rather than a court which finally determines substantive rights.

6.41. There are in fact now working precedents for most of the novel aspects of the proposed Online Court. First, ODR is now well established as a method of dispute resolution, for example by eBay, where it resolves more disputes than do the English civil courts and, more relevantly, in the form of Cybersettle, which enables parties to lodge settlement offers online,

on a confidential basis, and then declares a binding settlement when offers match or overlap. Secondly, online investigative triage, designed to help LiPs articulate their grievances and settle them, is now established in both the Netherlands in the form of Rechtswijzer, and in British Columbia in the form of MyLawBC, operated by their Legal Services Society. There is even a simplified form of online dispute determination in England, in the form of the recently launched Traffic Penalty Tribunal. I have had all these demonstrated to me, as well as the prototype version of the CRT. They all appear to work, even though generally at a lower level of sophistication than would be needed for the range of cases to be addressed by the Online Court. Nor is online interactive triage confined to court processes. Similar processes have been established for tax purposes, in Ohio in the USA, and to a limited extent in the online Income Tax return now in use in the UK.

6.42. Next, court sponsored culturally normal conciliation is already part of the Small Claims Track, the Family Court in the form of FDR hearings, and in Chancery cases about estates and inheritance. There will therefore be nothing particularly novel about stage 2 of the Online Court, and Case Officers of different types are already in use in various parts of the civil courts. Paperless hearings at stage 3 will follow the full roll-out of paperless hearings in the Crown Court, now just being put into operation. Hearings by telephone and (to a lesser extent) video are already tried and tested. Finally, the concept of a less adversarial, more investigative court is already the norm in most of Europe, and informally practised by DJs when dealing with disputes involving LiPs in the Small Claims Track.

6.43. What will be novel in the planned Online Court will be the putting of all those elements together within the concept of a court, coupled with a deliberate priority in design to make the whole process navigable by litigants with no, or greatly reduced, assistance from lawyers. Even that objective has long inspired the procedure of the Employment (and some other) Tribunals.

6.44. A clear majority of those who have provided feedback during Stage 2 share my view that the Online Court is a concept for which the time has come. They include the CAB, the Chartered Institute of Arbitrators, CILEx, the Council of Circuit Judges, the City of London Law Society, the Civil Justice Council, Justice, the Law Society, the Legal Education Foundation and the Pro Bono sector generally. While I have no doubt that its design and launch will be attended by setbacks, teething troubles and unexpected difficulties, I consider that the objective of making the civil courts more generally accessible to individuals and small businesses, for a just resolution of their simpler and small to modest value disputes at proportionate cost, fully justifies the risks in stepping a little into the unknown, and even the small risk that the time, money and effort about to be devoted to it may turn out to have been wasted.

6.45. Those risks are in any event capable of being minimised by a through process of testing before launch, by a soft launch in stages, (as is being done for the CRT), and by ongoing development of the first generation model after launch, as its inevitable teething troubles emerge. This is an ongoing process which is already being applied to the launched TPT and CE File systems, for each of which a test-bed version of the relevant IT platform continues

to be maintained by its designers, alongside the publicly operational version, and used for designing and testing improvements in the light of experience which are then transferred to the operational version. I understand that the same is true of the DCS system in the Crown Court.

6.46. Some consultees, including some of those supportive of the Online Court concept in principle, have expressed concern about whether the whole project can be delivered by April 2020, as required by the current time-line for the Reform Programme. This is a real challenge, but it is encouraging that HMCTS is already making an early start on the design of the stage 1 triage process which, for reasons discussed below, is the item with the longest critical path in the Online Court project.

The £25,000 Ceiling

6.47. A number of commentators have urged that the Online Court should be confined to the current Small Claims Track limit of £10,000. They include the Law Society, the Legal Education Foundation, the Federation of Insurance Lawyers, some judicial groups, the Personal Injuries Bar Association and the Young Bar. It would on that basis simply replace that track, and leave all Fast Track cases in the County Court, as at present, dealt with pursuant to the CPR in an environment designed for, and navigable only by, lawyers. The justification offered for this view is that cases of a higher value are too important and often too complex to be dealt with by the proposed procedure for the Online Court, that they need legal representation throughout, and that the risks of letting loose a new and untried method of litigation at such a high level of value are too great.

6.48. By contrast, some commentators have suggested that the £25,000 ceiling is too low. They include the City UK and Justice in particular. Their reasoning is that if the ceiling is intended to correspond with the level of value at risk below which litigation with lawyers is usually disproportionately expensive, then the real ceiling (or the Line as I have called it in the IR) is much higher. Many put it above £50,000 or £100,000. Some suggest £200,000. The City UK suggests £250,000.

6.49. I agree with some aspects of both sides of this argument. My own expectation is that if a serious statistical study were conducted for the purpose of identifying the Line, it would be proved to lie well above £25,000. I have been forced to rely upon the essentially anecdotal views of many consultees, most of whom would also put the Line above £25,000, although they have ranged very widely indeed, without a reliable concentration around any particular figure.

6.50. But I also agree that there is good sense in a 'soft launch' for the Online Court, encompassing cases where the current concentration of LiPs is at its highest, and where the advantages of the proposed investigatory triage in stage 1, by comparison with the procedure of the Small Claims Track, are clearest, as consultation (especially among the DJs) has confirmed.

6.51. The main objection to adopting £10,000 as a steady-state ceiling for the Online Court is that it would simply deprive the new court of too much of its intended effect in replacing an over-lawyerish procedure and culture for straightforward and modest value disputes. The Small Claims Track already seeks to serve and encourage LiPs, both by disapplying aspects of the CPR and minimising costs shifting. The small claims culture of investigatory judgecraft does much to minimise the disadvantages of an adversarial culture for LiPs. There is said to be a generally high level of court user satisfaction with it.

6.52. By contrast, the £25,000 ceiling for the Fast Track is already intended to separate out relatively straightforward cases of moderate value (suitable for trial in a day or less, with no more than one expert witness) from those higher value and more complex cases which call for the full adversarial panoply of the Multi-track. But no-one would call it fast. The target time from issue to trial of 50 weeks in the Fast Track is frequently missed, as the relevant table in section 3 of Annex 4 shows.

6.53. I made a point at most of the many public and stakeholder meetings convened during Stage 2 of asking how many of the lawyers present would even think of recommending to their unqualified friends the conduct of litigation in the civil courts (as currently constituted) for the resolution of a (non PI) dispute with a value at risk of up to £25,000. I cannot recall a single affirmative answer. This rough and ready survey provides telling confirmation that the compromise figure of £25,000 for the initial Line (i.e. ceiling for the Online Court) does not withdraw from the current civil courts a significant body of cases which can be litigated with legal representation at proportionate cost and risk. Similar surveys, such as that reported on to the December 2015 CJC Forum by Law for Life, have reached that same conclusion about the disincentive to use the civil courts, albeit not by reference to the £25,000 Line.

6.54. My recommendation therefore is that £25,000 should remain the first steady-state ambition as the ceiling for the planned Online Court (apart from PI and other excluded case types). Nonetheless I do consider that there is a good case for a soft launch of the new court, by which that ambition is sought to be achieved in one or more stages. In British Columbia the plan is to achieve a soft launch by starting with a particular type of dispute (for which there is public clamour for an alternative to litigation in the courts). In this jurisdiction I consider that the £10,000 threshold for the Small Claims Track (apart from PI and housing disrepair claims) may offer a worthwhile stepping stone, but I recommend that a final decision upon the best type of soft launch be made only as the initial design process is developed further.

Underfunding or inadequate IT

6.55. I referred in IR 5.122 and 132 to under-funding and incompetent IT procurement as potential threats to the successful introduction of digitisation in the civil courts, and to the introduction of the Online Court in particular. Consultation during Stage 2 has shown that both these concerns are widespread. Examples are not hard to find, both within the court service and more generally within digitisation processes within government service. The successive failures to digitise the processes of the courts now within the Rolls Building before

the successful procurement and implementation of CE File is an example in point, where it might have been thought that the international reputation of those courts would have been most likely to lead to those risks being avoided. The cessation of Government financial support to the National Mediation Helpline and its partial replacement by a narrowly scoped Small Claims Mediation service is an example of apparently good concepts under-performing due to funding constraints.

6.56. The written and oral consultation processes which followed the IR have not shed much light upon the extent and gravity of these threats, save in certain limited respects, which I shall shortly describe. Some limited assistance may be derived from the experience of the roll-out of digitisation projects which have already been designed, such as EJudiciary, CE File, the TPT and the DCS in the Crown Court. I have gained some insight into the particular nature of the difficulties likely to face the design and roll-out of the Online Court from my visit to British Columbia, and from learning more about how existing comparable systems both work and are maintained.

6.57. Before looking at the detail, it is worth focusing on the underlying question which needs to be addressed. The question is not in my view whether there are real risks that procurement will be poor and funding inadequate. There plainly are such risks, and they are by no means fanciful. The question is whether they are of such a gravity and nature that it would be better to seek to avoid them by continuing with the paper-based, lawyerish systems which we have, backed up as they are by limited, antiquated and obsolete IT, rather than pursue the objectives of the Reform Programme, and the Online Court in particular, with the benefit of the very substantial funding which has been made available for that purpose.

6.58. In addressing that question, the starting point must be that the Reform Programme as a whole, and the Online Court part of it in particular, is founded and funded upon a perception based upon a business case accepted by HM Treasury that a digitised court system will be cheaper to run than the current system, to an extent which justifies substantial investment to achieve that end, even during a time of austerity. Justice is not a protected aspect of government expenditure, and the working assumption is that the current mainly paper-based system would be more expensive to run, and therefore more vulnerable to further cuts, than a digitised system. The fact that over the long term the civil courts largely pay their way does not make them immune from vulnerability to cuts, because of the settled policy to seek to use hoped-for surplus revenues from civil court fees to fund loss-making parts of the court service, such as tribunals and crime.

6.59. Nothing in my research and consultation during this review suggests that this perception is not fundamentally correct, even if some of the assumptions upon which the business case for reform is based turn out to be wrong. Digitisation of paper processes saves money, as is illustrated in most walks of business life, and the paper-heavy nature of the civil courts' processes are likely to make them a case in point, rather than a rare exception.

6.60. But the question whether the same underlying logic supports the introduction of the proposed Online Court as part of the process of digitisation is a more subtle one, and it may

face particular vulnerabilities to poor procurement and under-funding which do not threaten digitisation above the Line, at least not in quite the same way. In theory at least, the civil workload now in the Small Claims and Fast Tracks (i.e. below the Line) could be digitised, with large savings, without introducing anything like the Online Court. There is already a digitised RTA Portal through which the early stages of many PI claims are undertaken, which has already expanded beyond its original scope, and which could expand further. It is privately run and funded by the relevant professional and insurance stakeholders, and costs the taxpayer nothing. There is a digital system for issuing money claims up to £1m (in theory) in MCOL, which could be modernised and expanded to progress claims all the way to trial. Bulk claims already reach the courts by a modern digitised process, which would probably be capable of similar extension. PCOL already handles the early stages of several types of possession claim.

6.61. The main feature of the proposed Online Court which sets it apart from any process of digitisation along the above lines is its stage 1 interactive triage process. It is this which (if it works) would provide a quantum leap in the navigability of the civil courts by those without lawyers on a full litigation retainer. Without it, the blank sheet (or blank screen) approach of the existing systems would leave the court as un-navigable as before. By contrast there is already an element of stage 2 in the Small Claims Mediation service, and the move away from the default assumption in stage 3 that every case needs a full face to face trial is by no means one which LiPs (or the advice agencies who speak for them) would necessarily support.

6.62. My study of comparable systems here and abroad suggests that the design and ongoing maintenance of stage 1 of the Online Court is not solely, or even mainly, an IT challenge. It is primarily an exercise in knowledge engineering. It depends first upon a detailed and accurate understanding of the underlying law relating to each case type within the court's jurisdiction. This body of law will change over time as the result of legislative intervention and judicial interpretation. Secondly it requires the construction of a series of questions for litigants (in the form of a decision tree for each case type) which will extract from them the alleged facts and evidence about their case which the court will need to know in determining it (and to which the opposing party will need to be able to respond). Thirdly it will require the questions to be framed in non-legal language (and in more than one language, since Welsh will need to be included). Fourthly the whole edifice will then need to be coded into interactive digital form, before rigorous testing.

6.63. The experience of the designers of the CRT is that the first three of these processes (collectively called the knowledge engineering) are the most novel, challenging and time-consuming. The final IT stage is, relatively, quick and easy in the hands of an IT expert. All of them, and in particular the first, will need ongoing maintenance and improvement over time, once the system is in operational use. Even at the design stage, the four processes have to be subjected to iterative testing and review, including supervised trial operation by ordinary individuals, with the results being continually fed back into the design.

6.64. Most commentators also advocate the inclusion, as part of the online entry portal to the

Online Court and within stage 1, of online commoditised explanations of the basic legal principles relevant to particular case types, and of up to date guidance as to available sources of ADR, affordable and free legal advice. All of this will need to be constantly monitored and updated, rather like a loose leaf (or online) legal textbook.

6.65. Overall, the price of offering a civil court navigable by litigants without lawyers on a full retainer is that the state will be undertaking a part of that which lawyers currently offer to the diminishing number of would-be court users who can both afford and choose to incur the disproportionate cost. There will of course be a fee for the service, but it is not one which the current level of court fees has to pay for, and it is not clear that civil litigation will be able to sustain a significant further rise in court fees.

6.66. But the stage 1 triage process will also generate its own substantial efficiency savings, quite apart from (and additional to) the savings inherent in digitisation and automation. It will arm the court at the earliest stage with the essential information needed to conciliate, manage and if necessary determine the case. It will focus the parties on the key issues, and assist in deterring the bringing of hopeless cases. Almost all District Judges to whom I have spoken agree that it should transform the efficiency of the small claims process, and all cases involving one or more LiPs.

6.67. I would expect the stage 1 triage process in the Online Court to be particularly vulnerable both to poor procurement and to under-funding, both in design and in operation. Some consultees, including even the CJC working group which produced the seminal ODR report, have asked whether the Online Court might be constructed and rolled out from the bottom up, as it were, developing stages 2 and 3 first, and leaving the more challenging stage 1 to last.

6.68. I disagree fundamentally with that over-cautious approach. In my view the Online Court is only worth proceeding with if it offers a real prospect of greatly improved access to justice to those individuals and small businesses who (or which) cannot afford, or cannot sensibly put at risk, the disproportionate cost of legal representation on a full retainer. Stage 1 is the essential part of the Online Court for achieving that objective. It is, furthermore, the hardest and most time-consuming part of the process to design and test. If it is not embarked upon now, most commentators agree that it is unlikely to be ready for public use when the Reform Programme closes. This does not mean that the concepts which underlie stages 2 and 3 cannot in the meantime be piloted within existing courts, or included within developments in the Tribunal Service. But it would be wrong in my view to delay the development of stage 1 of the civil Online Court until stages 2 and 3 have been put in place.

6.69. The experience of the design of similar systems, here and abroad, does not suggest that there are any inherently insuperable IT technical challenges in the way of a successful design and roll-out of an Online Court containing stage 1 in the form which I have described. It is in operation, albeit in a much simpler form, in the Rechtswijzer system for family disputes in the Netherlands and Canada, and about to be extended to landlord and tenant disputes in the Netherlands. The design and testing of a much more comparable system, as the

Solutions Explorer element in the CRT, is well advanced, and a 'beta' (i.e. trial) version of it has just become available online. I said in IR5.132 that the TPT and Ejudiciary were examples of successful IT developments within the UK which gave reason for hope that IT government procurement disasters may be a thing of the past. There have undoubtedly been teething troubles with Ejudiciary, but these have been attributable to persistent difficulties in achieving the migration to it of data systems in current use (such as F Diary) from the intractably troublesome legacy system (DOM 1) which it replaces. The TPT is now handling large numbers of (admittedly simple) cases successfully. To that may now be added CE File in the Rolls Building and the new DCS system which is already delivering paperless filing, case management and even trial of criminal cases in the Crown Court, to the apparent delight of its designers and judicial users.

Stage 1 beyond current IT capacity, and won't replace the lawyer's advice on the merits

6.70. I have largely dealt with this criticism above. In summary I accept the second part of it, but not the first. I have explained how I would recommend building into the costs structure of the Online Court a measure to encourage the provision of early bespoke advice on the merits from a qualified lawyer.

Stage 2 will deter litigants from pre-issue ADR, and the Small Claims mediation model is inadequate for cases up to £25,000 VaR

6.71. It is certainly not the intention behind the design of the Online Court to deter would-be court users from seeking any available ADR, and treating the civil court as a last resort. But there is anecdotal evidence that some potential business defendants to consumer claims are resisting early ADR on the basis that the current Small Claims Mediation service is free, and therefore preferable. I have been directed to a website giving precisely that advice. Underlying the anecdote is the undeniable commercial reality, affecting all pre-issue ADR, that a reluctant potential defendant may be tempted to see whether the claimant is prepared to incur the cost of issue fees (and other legal costs) before being prepared to negotiate.

6.72. I am not persuaded that this risk of deterrence should lead the court to turn its back on providing or sponsoring culturally normal conciliation (to use an umbrella term preferable to ADR) for those disputes which have led to the issue of proceedings, provided always that everything is done first to encourage would-be litigants to seek to settle their disputes before going to court. A high proportion of civil disputes which do lead to the issue of proceedings continue to settle before trial, by the use of mediation or other means of conciliation.

6.73. There are particular reasons why I regard this as an essential element in a new court designed for navigation by litigants without lawyers. First, many litigants know little about modern means of conciliation unless lawyers provide that information. That was the experience of the Family Court, upon the withdrawal of Legal Aid, which led to the creation of the MIAM.

6.74. Secondly, the stage 1 process of the Online Court is designed to give both parties that level of information about each other's case, the absence of which is often an impediment to successful pre-issue ADR. Sophisticated pre-action protocols are designed to fill that gap in litigation normally conducted between represented parties, but stage 1 triage is likely to replace that in cases of the type suitable for the Online Court. I would add that, despite suggestions by a few consultees to the contrary, I do not regard the erection of a pre-action protocol procedure as at all suitable to the Online Court. At the most it might recommend a simple exchange of correspondence.

6.75. By contrast there is real force in the criticism that the one hour telephone mediation currently on offer in the Small Claims Track may well be sub-optimal for some of the cases at the higher end of value and complexity within an Online Court with a jurisdiction up to £25,000. I have received a few anecdotal descriptions of participation in such a mediation which suggest that it can on occasion be crude indeed. As noted in IR 2.30, currently the mediators do not even have the court file, containing the basic details of the dispute. This particular disadvantage should however be cured by the availability to the mediator of an online case file containing the fruits of the stage 1 process.

6.76. I am minded to depart from my provisional view, at IR 6.13, that conciliation within stage 2 of the Online Court should be built simply upon the Small Claims model. I develop that under the heading Stage 2 below.

Loss of the Traditional Day in Court

6.77. This criticism, made by many consultees, can be levelled at any reform which proposes departing from a face to face oral hearing for every aspect of court proceedings. The face to face oral process is a distinctive and much valued part of our court procedure, and proposals which would tend to reduce it need careful evaluation and clear justification.

6.78. The criticism is of particular force when made on behalf of LiPs. Reliable although anecdotal evidence suggests that they have greater distrust of telephone hearings than do lawyers. There is by contrast a good level of court-user approval of the day in court provided by the Small Claims Track short trial, which is almost always face to face.

6.79. There are a number of reasons which, in the aggregate, lead me to adhere to the view that a departure from a default assumption that there must always be a traditional face to face trial is justified. First and foremost, all that is proposed to be discarded is the default assumption. Many cases which cannot be settled will still be directed to a face to face trial. A direction by a Case Officer to the contrary will be subject to a litigant's right to have the question reconsidered by a judge. Several types of case, where face to face determination is regarded as necessary, will be excluded from the Online Court altogether, such as claims for possession of homes.

6.80. Secondly, the first alternative, video hearing, will offer much of the essence of the day in court, particularly as court video technology improves from its currently rather clunky state.

It will also offer a remote day in court to those facing difficulties in personal attendance.

6.81. Thirdly, and this is closely related to the preceding point, the closure of many County Court hearing centres will make it more convenient for litigants to use video to connect with the judge than to travel the greater distances required for a face to face hearing.

6.82. Fourthly, the growth of remote means of communication as alternatives to face to face communication in all aspects of life will, I would expect, tend to make determination of substantive legal rights otherwise than face to face less of a departure from the cultural norm than it may be perceived to be at present.

6.83. Fifthly, some element of the 'day in court' experience is frequently derived from available methods of conciliation. There is, for example, a high level of customer satisfaction with the adjudication service offered by the Financial Services Ombudsman, in which the communication is mainly in writing and by telephone.

6.84. Finally, some attenuation of the expectation of a day in court seems to be a necessary reflection of the need to find more cost-effective ways of determining civil disputes, even those which properly command the attention of a judge. In many continental jurisdictions determination mainly on the documents is a cultural norm, with face to face hearings sometimes reduced to a matter of formality.

Online Justice Threatens Open Justice

6.85. This would be a serious criticism if it were true. But I do not think it is, for the reasons set out in IR4.24-27. In summary, HMCTS is well ahead in the process of ensuring that transparency and open justice is fully adhered to in the Online Court, as in all other areas of digitisation within the Reform Programme. The Civil JEG is broadly satisfied with progress to date, and there is good reason to think that modern IT can facilitate better public access to civil proceedings than exists at present.

6.86. This is plainly a concern that will need to be kept under constant review as the design and testing of the Online Court proceeds, just as it is in connection with the roll-out of CE File in the Rolls Building.

The Outstanding Questions

6.87. I summarised the issues which then appeared to need to be addressed in Stage 2 of this review at IR chapter 12.25. To the extent that my analysis of the criticisms of the proposed Online Court does not already do so, I address each in turn below.

Whether the Online Court should be a separate court with its own bespoke rules, or a branch of the County Court governed by the CPR with appropriate amendments.

6.88. The originally active debate about this issue has moved on since the publication of the IR. Feedback about it has generally tended, by a large majority, to favour the separate court with own rules option. Those of the opposing view included the Chancery Bar Association and the Personal Injuries Bar Association. The main reasons for the opposing view concerned avenues for cases which passed through the permeable membrane into the County Court on the grounds of complexity, or by way of appeal, a point with which I deal separately below.

6.89. I am informed that the MoJ has now reached its own policy view in favour of separate rules and procedure for the Online Court, governed by a new, separate, rules committee, and is preparing primary legislation to that end. Their main driver for this decision is the view, which I continue to share, that nothing less will bring about the change from an excessively lawyerish culture necessary to enable those without lawyers on a full retainer to navigate the court's processes. But the MoJ has yet to decide whether the Online Court should be part of, or separate from, the County Court. I continue to regard making the Online Court a new and wholly separate court as a very important element in bringing about the necessary culture change, and I so recommend. My reasons for doing so sufficiently appear from paragraphs 6.17 – 32 of the IR. At that stage the question was a still matter of live debate among the judicial members of my Hard Working Group, but their opinion on the point now coincides with mine.

6.90. It is also proposed that the necessary new rules, in a simple a form as possible, should be devised under the guidance of a new committee charged with making rules not only for the Online Court but also for LiP oriented courts and tribunals across the whole field of civil, family and tribunals. The new committee is to include those with the requisite skills in knowledge engineering (as described above), IT and subject-matter expertise, rather than a predominance of judges and lawyers, as for example in the CPRC. Since there is much which the civil courts have to learn from family courts and tribunals which have for long aspired to the objective of being navigable by LiPs, that is probably all to the good.

6.91. There will remain a problem about how to regulate cases which pass from the Online Court to the County Court due to complexity. Some amendment of the CPR to accommodate such cases will be needed, but I do not regard that as particularly difficult, or urgent, in advance of the formulation of rules for the Online Court. To treat it as decisive would be to allow the tail to wag the dog.

The types of claim which should be included within, or be excluded from, the Online Court, assuming that £25,000 is used as the planned steady-state value ceiling.

6.92. A small number of consultees have favoured populating the Online Court with specifically

chosen case types, rather than adopt a general approach with opt-outs. Most (largely professional stakeholders motivated by perceptions about case types within their particular expertise) have focussed upon particular case types qualifying for exclusion. Meanwhile the promoters of the CRT in British Columbia have chosen a general approach, but focused upon a particular single case type for a soft launch, a year ahead of the rest, both to meet popular demand and as a pilot scheme from which to learn early lessons about the final design of the remainder.

6.93. The starting point is to define the general class for inclusion. The early thinking of HMCTS had been to include all money claims below £25,000, but only 'specified' (i.e. debt) rather than 'unspecified' (i.e. damages) claims. This would of course automatically exclude all claims in tort, such as PI and professional negligence, but would introduce debilitating uncertainty and technicality in cases where, for example, a contract claim depended upon an accepted repudiation (replacing all debt claims thereafter with damages claims). It would also tend to exclude, for example, claims in debt where the response consisted of a counterclaim for damages for breach of the underlying contract. The limitation to money claims, whether or not specified, would also exclude claims for an injunction or other form of non-monetary relief, and possession claims, even where founded upon the failure to pay a debt, whether rent or mortgage instalments.

6.94. I can see no good reason to exclude unspecified money claims en bloc, other than as a fortuitous but clumsy way of excluding particular case types, such as PI and clinical negligence, which may separately deserve exclusion on particular grounds. Assessing damages is not inherently more complex in every case than quantifying debt, and certainly not to such an extent that it would always, or even usually, be too complex for the Online Court. But I can see every reason at least to start with a limitation to money claims, unaccompanied by any other non-monetary remedy. Here the exclusion would not be clumsy or fortuitous, because non-monetary claims, e.g. for an injunction or for specific performance, commonly raise issues of a complexity to the resolution of which the first generation Online Court may only aspire.

6.95. There has been virtually unanimous support for the wholesale exclusion of claims for the possession of homes, and even those few which (in IR6.43(a)) I originally thought might perhaps be safely included. I have been easily persuaded by a paper from the Housing Law Practitioners Association ("HLPA") that they are no more suitable for the Online Court than other possession claims, and no-one has suggested otherwise. I need therefore say no more about them.

6.96. There has, similarly, been no significant appetite for the inclusion of PI claims (including those based on clinical negligence), at least those which are, or will remain in, the Fast Track, with its fixed recoverable costs and streamlined Portal for their litigation. I have already explained the underlying economic justification for their exclusion, which sustains a vibrant (some would say overheated) market for legal representation based on CFAs.

6.97. A much more difficult question arises if the MoJ implements current government policy

to raise the threshold below which PI claims fall into the Small Claims Track from £1,000 to £5,000. I was perhaps over-simplistic in assuming (in IR6.48) that the claims thereby downgraded to the Small Claims Track should simply fall into the Online Court, as it were by default. This was a matter of extensive debate at the annual conference of the Personal Injuries Bar Association, which I attended, and it produced no clear outcome. In my view this should be a matter for the choice of PI claimants. If they were otherwise forced into the Small Claims Track and thereby deprived of legal representation, then I cannot see why they should be excluded from the benefits with which the Online Court is (or could be) designed to provide them. But if the PI stakeholders can re-construct a new economic model which keeps such claims in the RTA Portal, and if that route would be incompatible with the Online Court (which does not necessarily follow for disputed claims) then again, the decision should lie with the claimants.

6.98. I was pressed by stakeholders on both sides of the non-clinical professional negligence arena to exclude all those claims from the Online Court, mainly on the grounds of their typical complexity, and their asymmetry where the claimant is an individual or small business facing an experienced professional backed by determined insurers. This is not a type of claim where there is currently a satisfactory level of access to justice. Claimants receive none of the benefits of QOCS and the damages uplift, but they are nonetheless barred by the Jackson reforms from the advantages of ATE premium and large success fee recovery which used to provide an (also overheated) economic model for their pursuit by lawyers. They were treated in that way because non-clinical professional negligence is not inherently asymmetric, many of the claimants being banks, property developers and investment institutions.

6.99. The Professional Negligence Lawyers Association has for over a year been seeking to remedy the deterrent disproportionality of claims of this kind by the promotion of a voluntary adjudication scheme, loosely modelled on the successful scheme now much used in the construction industry. In its first year it attracted very little business, but it has recently been re-launched, with the apparent support of the previously reluctant insurers, at an event which I attended to wish it well. But if it continues not to thrive (and there are many who believe that it will only do so if made compulsory) then the difficulty of making compulsory a scheme for non-binding adjudication might perhaps be overcome by attaching as a specialist stage 3 in the Online Court a panel of professional negligence experts sitting as Recorders or deputy DJs. But this is for the future, after the Online Court has attained its majority while engaged with simpler fare. In the meantime the request for exclusion seems to me to be well founded on the grounds of complexity, and I so recommend.

6.100. Small intellectual property claims are already well catered for by the Intellectual Property Enterprise Court ("IPEC"), formerly the Patent County Court. It is the only part of the High Court with its own small claims track. The specialist and often complex nature of these cases make them clearly unsuitable for the Online Court.

6.101. The only other case type seeking exclusion remains housing disrepair claims against landlords. In IR6.49 I suggested that these claims might qualify for exclusion from mandatory assignment to the Online Court, if statistics proving the availability of an

active CFA market for such claims were provided, but that they should still be admitted to the Online Court on a voluntary basis. Again, the HLPA provided a helpful paper, and explanation at a meeting, but with only a few statistics. The position appears to be as follows. Before LASPO many of these claims received Legal Aid. Jackson LJ recommended that they should be included within the QOCS regime, but this was not implemented. Since then, a reasonable CFA market has built up, based on taking only those cases with strong prospects of success, to offset the risks of costs liability to the landlord and non-recovery of claimants' costs. Some limited Legal Aid still funds urgent cases affecting tenants' health, and many claims include application for an order that the landlord carry out the repairs, rather than just (or even primarily) damages, which would take them out of the money-claims-only general jurisdiction of the proposed Online Court.

6.102. I am persuaded that there should not be compulsory inclusion within the Online Court of the damages-only sector of these claims, particularly where fixed costs recovery still supports an economic model for CFAs. But I continue to see no reason why there should not be voluntary admission of these cases, where a tenant claimant so wishes. It might be said that this may cause an anomaly where the disrepair claim is (as often happens) raised by way of counterclaim in possession proceedings by the landlord based on rent arrears. At the moment I cannot see how these counterclaims could easily be brought within the Online Court if the possession claim is to be excluded.

Assessing the size of the class of court users, actual and potential, who will be challenged in the use of computers, and therefore need assistance, identifying the types of assistance required, and the ways and means of providing it.

6.103. I have addressed this issue above. I have not been persuaded to any confident view about the size of the relevant class, among those who would wish to use the Online Court, but it is clearly large enough to need special assistance. I am content to leave the identification and design of the best form of assistance, and its funding, to be worked on by the LiPEG (Litigant in Person Engagement Group), but on the clear understanding that fully funded it must be if the Online Court is eventually to be made compulsory for those cases within its jurisdiction, as I consider that it should be.

Identifying any items qualifying for limited costs shifting, other than court fees, and whether the generally limited scope for costs shifting should be subject to a conduct exception.

6.104. Again I have dealt with this issue above. I recommend that the basic provision for costs shifting should be that in use in the Small Claims Track, including for misconduct, but also providing modest fixed costs recovery for early bespoke advice on the merits from a qualified lawyer, and for advocacy at trial where really necessary.

Deciding whether any other route of appeal than to a Circuit Judge would be appropriate, and the rules to govern such appeals.

6.105. I have received no feedback which seeks to persuade me to depart from my provisional view, in IR 6.63, that an appeal should lie, with permission in the usual way, to the Circuit Judge, at least in all cases where the decision in the Online Court is by a District Judge, and I so recommend. A second appeal should go to the Court of Appeal, subject to the usual more stringent permission test.

6.106. It has however been suggested that no appeal should lie on a question of fact. I have not been persuaded by this. The requirement to obtain permission ought usually be sufficient to weed out those appeals grounded on nothing more than that the unsuccessful party disagrees with the judge's findings, even though the permission stage may entail some additional burden upon hard-pressed Circuit Judges. Whether there should be a right to seek permission orally is a separate question, which I address in chapter 9.

6.107. The final question under this heading relates to the rules to be applied to any appeal. I received little feedback on this, but the choice lies between using the CPR, which already make full provision for appeals from the Small Claims Track, or a separate, much more simple, appeals section in the Online Court's new rules. I would unhesitatingly choose the latter. The appeals section of the CPR is long and complicated. It would be much fairer to impose a small appeals section of the Online Court rules on the Circuit Judge than to impose any part of the CPR on the unsuspecting litigant.

The Three Stages in More Depth

Stage 1

6.108. I have come to realise that the description of stage 1 of the Online Court in the IR (at paras 6.8-12) involves a considerable over-simplification. My description assumed that there was an issued claim, and a real dispute about it, between litigants all of whom need interactive triage. But none of those assumptions covers the whole ground. There needs to be a stage 0, a stage 0.5 and by-passes. Stage 0 will have to include, for claimant and (perhaps) defendant, all those pieces of vital guidance about treating litigation as a last resort, about the sources of affordable or free advice, and perhaps some commoditised summaries of the essential legal principles.

6.109. Stage 0.5 will have to include provision for a short exchange between the parties designed to find out whether there really is a dispute which the court needs to resolve. This recognises the fact that the majority of claims issued in the civil courts are undisputed. This includes over 90% of bulk claims. In such cases the court is being resorted to for enforcement rather than for dispute resolution, so that the full panoply of stage 1 triage is unnecessary. Rather than exclude such claims from the Online Court altogether (which would deprive defendants of the opportunity to navigate a disputed bulk claim) the better option would be to provide

a short-cut route to ascertaining whether there is a dispute at all.

6.110. The traditional solution to this early precaution is for the service of a Claim Form, requiring an Acknowledgment of Service stating whether the defendant intends to contest the claim. The claimant usually has the option whether to include or attach full Particulars of Claim. Similar but simplified provision will need to be made in the Online Court, at least to ensure that time-consuming uploading of documents and evidence needed to prove a claim is not wasted on cases where there is really no dispute.

6.111. By-passes address the reality that legally represented parties (on both sides) will not need, and should not necessarily have to be driven through, the whole of the interactive questioning needed to extract the key details of a case from the uninitiated LiP. This sounds easy. Give the lawyer representative (or company legal department) the usual blank screen and virtual document folder, and leave them to do the rest. But the reality is a little more complicated. Where the claimant is legally represented, the elegant particulars of claim placed on the blank screen will need to be capable of being 'read' by the Online Court software, so that it can then triage the (probably) unrepresented defendants through an articulate response to what is being alleged against them. The same may apply as between the legally represented defendant and the LiP claimant who may need to reply. These difficulties may mean that the represented party will still have to use an interactive type of form, even if given a much greater liberty as to how to populate it.

Stage 2

6.112. As noted above I have repented of the view that a sufficient model for stage 2 of the Online Court is to be found in the existing Small Claims Mediation service run from Northampton Bulk Centre, and provided by experienced but not legally qualified employees of HMCTS working mainly from home on the telephone. I have no doubt that it (or an expanded version of it) will be an essential part of the stage 2 conciliation offering, but it will be unlikely to be suitable for cases at the higher end of a court with jurisdiction up to £25,000, and there may be many cases at all levels of value which would benefit more from some other kind of conciliation process, such as ODR, judicial ENE or private mediation, such as used to be available under local County Court out of hours schemes or, latterly, from the National Mediation Helpline prior to its early demise.

6.113. The choice of the most suitable conciliation process for each case should be a matter for the experienced, judicially trained and supervised, Case Officer in conjunction with the litigants themselves. It may be that the Case Officers could themselves be trained telephone mediators, but an unsuccessful mediation by one of them would, as some commentators have suggested, risk ruling them out from the further necessary management of the case, and the selection of an appropriate mode of stage 3 determination. Furthermore the conduct of occasional mediations on the telephone may unduly interfere with the efficient handling of a virtual pile of electronic box work.

Stage 3

6.114. I have little to add to my description of this determination stage beyond the description in the IR, save to draw attention to the potential for including, as part of a centrally managed Online Court, specialist experts sitting as judges for deciding cases which would be too complex for the non-specialist multi-ticketed DJs who currently decide most of the cases in the Small Claims and Fast Track. This may greatly reduce the need to provide a permeable membrane between the Online Court and the County Court in cases of specialist complexity. But it is probably an idea for the future, when a first generation Online Court has settled down.

Public Legal Education

6.115. The provision of the Online Court as a means of increasing access to justice for ordinary people needs to be viewed in the context of the provision made nationally for public legal education, that is, educating would-be court users about the essentials of the service provided by the courts for the vindication of their civil rights, including the basics of navigating court process, alternatives to court proceedings and some of the essentials of both substantive and procedural law. I touched upon the work being done in this regard in IR 5.52.

6.116. It would in my view be quite wrong to think that the support needed for would–be users of the Online Court is limited to Assisted Digital, with all the rest of the assistance simply being provided online, as part of the three stage process explained above, once the user has received the help needed to get online. On the contrary, I consider that the level of the success of the new court in extending access to justice will depend critically upon parallel progress being made with public legal education generally. The tradition in this country has been to think of Legal Aid as performing that function, by funding private lawyers to provide the necessary education to those unable to afford it for themselves, with voluntary agencies such as the CAB filling particular gaps. It is not therefore surprising that, now that Legal Aid has largely been withdrawn in relation to civil litigation, we are generally less well advanced in the provision of public legal education than some countries where there has never been Legal Aid at a comparable level. I have in mind California and British Columbia in particular.

6.117. I cannot improve upon the general summary of this point in the written response to this review of The Legal Education Foundation, a UK charity dedicated to improving public legal education, as follows:

"TLEF is about to publish an examination of the work of the self-help centres in the California courts. A senior administrator in one of California's counties advanced the proposition that this provision more than saves its cost by empowering litigants who would otherwise be unable to handle working on their own. The provision provides online, telephone and physical assistance, offering major training programmes for small groups of self-represented litigants. The self-help centres have facilitated the integration of video and training within the court process beyond what is possible with the Personal Support Units in our courts or the limited assistance provided by organisations such as the Royal Courts of Justice CAB. Any restructuring of the courts must allow for expenditure on, employment and accommodation of staff whose job is to help litigants in person within the

court service. The Ministry of Justice or the Courts themselves should urgently investigate how other jurisdictions, such as California, provide assistance in situations where legal aid is not available. A small team of full-time staff will be required, albeit that volunteers can be deployed. It would also seem likely that simply providing telephone assistance will not be enough. The success of courts in California, such as those in Orange and Los Angeles counties, in providing assistance through dealing with groups of litigants facing the same problems by way of collective training should be noted. It is through ways like this that jurisdictions without levels of legal aid at our traditionally high levels have learnt to cope with large numbers of self-represented litigants and we need to learn the lessons of this."

6.118. My visit to British Columbia, and my video contact with California, fully confirmed this perception. I attach a link to a forthcoming report (not quite yet available but which I have seen in draft) describing and illustrating current progress in a number of states in the USA, including California, and a link to a summary of the Justice Access Centre project in British Columbia[14]. I was privileged to visit the Justice Access Centre in Victoria, on Vancouver Island. A large part of the ground floor of the combined court centre there is given over to house the Justice Access Centre. It includes IT facilities for LiPs to fill in forms on computer terminals, with assistance when needed. It houses advice agencies along the lines of the RCJ Advice Bureau and the PSU, and duty counsel, providing pro bono advice and advocacy for civil and family matters. Immediately adjacent, but still within the court centre, is the Law Centre run by the University of Victoria, which operates as a virtual law firm, where students provide both advice and advocacy under supervision by tutors, for those unable to afford legal representation. The Justice Access centre is only 3 years old, but the Law Centre has been running for over 30 years[15].

6.119. I do not mean by this comparison to belittle what is now being done in this country to the same end. For example, my visit to Sheffield revealed a similar Law Clinic run on campus by Sheffield Hallam University, with a recently established one morning a week help desk at the court centre. Other universities provide similar clinics, but the striking difference in Victoria was the greater level of integration of the university law centre with the local court, than anything comparable in this country. Victoria has a population of only 80,000, although the court centre serves a metropolitan area of about 350,000, yet its facilities for public legal education and free assistance for LiPs are at the moment more extensive, and better housed, than those in the RCJ, including the CLCC.

The Name

6.120. I noted in IR6.3-5 how unsuitable was the name 'Online Court' as a key to its distinguishing features. The name has gathered significant traction because it was so described in the ODR Report to the CJC which first proposed the concept[16], but it continued to confuse throughout Stage 2 of this review, for the reasons already described. My request in the IR

14 http://www.srln.org/node/997/report-resource-guide-serving-self-represented-litigants-remotely-srln-2016 http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legal-help/jac

15 http://thelawcentre.ca/ https://www.judiciary.gov.uk/wp-content/uploads/2016/07/the-law-centre-powerpoint-presentation-march-2016.pdf

16 https://www.judiciary.gov.uk/reviews/online-dispute-resolution/

for alternative names produced a small number of responses, for which I am grateful, but no clear winner. Current contenders include Citizens Court, Open Court, Accessible Court, Court 21 – Accessible Solutions Online, Small Claims Court, but they are all unsatisfactory for a variety of reasons.

6.121. There is general agreement that the name needs to include 'Court', so as to place the new court alongside the High Court and the County Court and to distinguish its process from mere non-binding adjudication, ADR or ODR (although elements of the last two will of course be included). Words such as Accessible or Open are regarded as potentially over-critical of other courts as lacking those features. The current front runners, within my Hard Working Group and the HMCTS project team, are 'Civil Resolution Court' and 'Online Solutions Court'. I prefer the latter, for the following reasons:

6.121.1. 'Solutions' is a more user-intelligible word than 'Resolution' for the important purpose of capturing the central concept that the new court will seek to resolve disputes by whatever appears to be the best available method, rather than just prepare them for full trial. Resolution is the R in ADR. Solutions is used in British Columbia to describe stage 1 of the process of the CRT as the 'Solutions Explorer', and in the new Family Solutions Centre in the Central Family Court in London.

6.121.2. Although the new court is indeed to be a civil court, that is a distinction which says and means more to judges, lawyers and administrators than to court users.

6.121.3. Retaining Online (but only temporarily) as part of the name will provide a link with the existing name, while at the same time telling would-be users where the new court is to be found and accessed.

Wales

6.122. The Online Court is planned to be one of the civil courts of England and Wales. No decisions have yet been made about where any business centre or centres for it should be, but it is clear that hearing centres for stage 3 determinations will include centres located in Wales, and some forms of stage 2 conciliation (such as judicial ENE and after hours face to face mediations) will take place there as well.

6.123. This Welsh dimension was the subject of very helpful consultation responses, including from the Welsh Government and from members of the judiciary sitting in Wales, and reviewed in detail during a meeting in Cardiff in early June. Two main themes emerged, which may be summarised as Welsh language and Welsh law.

6.124. Taking language first, HMCTS is fully committed to giving Welsh equality with English as a language for conducting litigation in Wales, in accordance with the requirements of the Welsh Language Act 1993, on the basis that the conduct of particular cases in the Online Court will or may be Welsh business, even if primarily conducted online, in a virtual environment with no particular geographical location. There is, as far as I am aware, no

issue about this as between HMCTS and the Welsh Government.

6.125. The commitment does however have large implications in the context of the design of stage 1 of the Online Court, and the knowledge engineering in particular. They arise at the point where the elements of the case-specific decision trees have to be clothed in LiP friendly language for court users. It may not be enough to draft this in English and then just translate it into Welsh. An original Welsh language input may be necessary, to ensure that the product is fully idiomatic.

6.126. Further implications arise in connection with the need to provide Welsh speaking Case Officers at stage 2, and Welsh speaking judges at stage 3. Currently the essentially geographical location of County Court processes means that the requisite complement of Welsh speaking judges and court staff can be, and is, provided at court centres located in Wales. There is also the necessary Welsh element in the staff at the Salford business centre. These requirements are bound to change when the Online Court begins to provide a service which is very much less geographically located than the County Court in its present form, both because Case Officers will communicate mainly by telephone, email and online, and because determination at stage 3 will be by video, telephone and documents as well as by face to face trial.

6.127. Welsh law presents a much more recent and unpredictable challenge. It arises from the conferral of legislative powers upon the Welsh Assembly in 2011. Within the civil courts context this has already led to a substantial divergence between Welsh and English law in relation to Housing, and it is reasonable to suppose that this divergence can only increase, although at a wholly unpredictable rate.

6.128. There are emerging, at a political level which prohibits me from commenting, two competing theories about how this divergence in law will impact upon the currently unified court structure for England and Wales. One is headed 'Distinct Jurisdiction' and the other 'Separate Jurisdiction'. The essential difference appears to be that a distinct Welsh jurisdiction will mean only that the parts of a continuing unified jurisdiction exercised in Wales will have to take on distinct elements (for example in the recruitment and deployment of local judges expert in Welsh law) whereas a separate jurisdiction contemplates an entirely separate court service with its own separate judiciary.

6.129. There are obvious implications from this dichotomy for the Online Court. If the concept of a separate Welsh jurisdiction were to prevail, there would, presumably, need to be a separate Welsh Online Court, with its own business centre, staff, judges and Case Officers. But even if the Distinct Jurisdiction model prevails, the unified Online Court will still need bespoke Welsh elements in it, including Welsh stage 1 triage and knowledge engineering in those areas of the subject-matter where Welsh and English law have diverged[17].

6.130. It is not for me to do more than alert the designers of (and stakeholders in) the Online Court

17 See also the Law Commission's report on the Form and Accessibility of the Law Applicable in Wales http://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/

to these implications. Both the language and law elements may give rise to real increases in the complexity and cost of the design and implementation of the new court. I understand that the language element has already been budgeted for.

Fees

6.131. I was asked from time to time in consultation during Stage 2 what would or might be the fee structure for the Online Court. Save for a tacit understanding that its processes would not be free (subject of course to Help with Fees), I am not aware that this important question has yet been addressed. As I have made clear, court fees are not part of my terms of reference.

7. Case Officers

7.1. This subject provoked rather less feedback in Stage 2 than it did before the IR. This is I think because the main features of the Case Officer role had been hammered out, in particular in discussions between HMCTS and the Civil JEG, leading to conclusions in principle with which most commentators have been broadly content.

7.2. There has been a little further development of the detail of the Case Officer concept within the civil courts by HMCTS since publication of the IR. The most important development is that it is now settled that Case Officers should be independent of government (although employed by HMCTS) and subject to a system of authorisation, direction and supervision that resides ultimately with the Lord Chief Justice (for the civil courts) rather than the Lord Chancellor. This welcome development should give confidence to court users that the procedural and case management decisions of Case Officers will be conducted independently of government policies and, in particular, financial objectives so that, for example, decisions by Case Officers in the Online Court about the appropriate mode of resolution of cases which cannot be settled will be uninfluenced by any undue pressure to choose the mode which is least burdensome upon resources.

7.3. The main concerns expressed during consultation since publication of the IR have centred on the need to ensure that Case Officers are appropriately qualified, trained and supervised, and that the management of all but straightforward cases continues to be a judicial function as it is at present. These are matters largely falling within the four items for further analysis in Stage 2 set out at IR 12.26, and I will address them under those four headings later in this chapter. One further item has however emerged, which was insufficiently flagged up in the IR. That is, how, by whom, and in what location should Case Officers be actively supervised.

Supervision and Location of Case Officers

Supervision

7.4. There was a large measure of agreement during consultation that the best guarantee of the quality of the performance by Case Officers of functions previously undertaken by judges is that they should be actively supervised by judges in the performance of their duties. By 'actively supervised' I do not mean simply that there should be a reporting line from Case Officers terminating with a judge, but that they should work in close proximity with a supervising judge, preferably in the same office space, so as to be able to have recourse, whenever needed, to judicial advice and guidance, and so as to be able to pass difficult files to a judge, where necessary, for decision.

7.5. The development of this close relationship between Case Officers and judicial supervisors (I would not hesitate to call it teamwork) is likely to address and allay the following concerns in particular. First, there is the general concern that Case Officers (even if legally qualified and trained) will not without the benefit of judicial experience be able to deliver the same quality

of service in the performance of functions currently carried out by judges. Plainly, this concern will be met to a substantial degree if the daily work of Case Officers is performed as part of a team headed by a supervising judge.

7.6. Secondly, there is real concern about how to identify a clear dividing line between straightforward case management decisions, suitable to be made by Case Officers, and case management of the more complex type, properly regarded as a judicial art: see IR 7.28-7.31. There, I suggested that the current £25,000 boundary between the Fast Track and Multi-track represented a line below which most case management could be done by Case Officers, but above which most would have to be done by judges. But there will still be numerous instances below that line where skilled case management will on occasion be necessary, and it will be virtually impossible to prescribe, in advance, a satisfactory list of such cases by type. Much better in my view would be a working relationship under which Case Officers could, on a case by case basis, seek the guidance of their supervising judge where less than straightforward decisions, or decisions outside that Case Officer's experience, had to be made. In some incidences a steer from the judge would be sufficient to enable the Case Officer to make the decision. In other cases the file could simply be passed to the judge for decision. This is in my view likely to be a far better solution than attempts to form complete lists of types of decision suitable, or unsuitable, to be made by Case Officers.

7.7. Thirdly, concern has been expressed by HMCTS and others that the conferral upon parties of an unfettered right to have a Case Officer's decision reconsidered afresh by a judge would lead to inefficiency and expense, and tend to reduce the effectiveness of the Case Officer role as an important part of an efficient civil court service. Again, it seems to me that, although such an unfettered right of reconsideration will be a necessary long-stop, the more practicable assurance of quality in Case Officer decision making would lie in the establishment of close judicial supervision and teamwork, so as to minimise those cases in which parties were dissatisfied, and to reduce parties' expectations that an application for reconsideration would produce a different result.

7.8. There are three precedents supporting this view. The first is the very low level of referrals for reconsideration of decisions by judicially trained legal advisers in a pilot run for the First tier Tribunal (Health, Education and Social Entitlement Chamber) in 2011. The second is in the close supervisory relationship between ombudsmen and adjudicators in the Financial Ombudsman Service ("FOS"). There, the parties have an absolute right to have adjudicators' decisions reconsidered by an ombudsman, but such is the level of teamwork between the two that the right is, in fact, only sparingly exercised.

7.9. The third precedent is in the Salford Legal Advisor Pilot, where persons equivalent to Case Officers have been performing limited functions previously undertaken by judges under close supervision from a team of experienced Deputy District Judges on a rota basis. During the first six months of that pilot, only four decisions were the subject of requests for reconsideration, and on all those occasions the legal advisor's decision was upheld. It is fair to say that the workload of the legal advisors relates mainly to undisputed matters rather than active case management, so that the scope for reconsideration requests is much less.

Location

7.10. This requirement for teamwork between Case Officers and supervising judges gives rise to an important issue about where Case Officers should be located. In the new digitised environment where the tyranny of paper has been broken, there will be major opportunities to develop the concept that much of the handling, progression and management of civil cases can be dealt with in one or a small number of business centres, leaving trials and other hearings involving judges to be dealt with at a reduced number of hearing centres. This is a development which has, of course, started in the County Court, as described in IR 2.25-2.36. But the County Court business centre at Northampton has always been judge-free. The Salford centre has always had DJs doing box work on a rota basis, even before the setting up of the Legal Advisor Pilot.

7.11. At IR 7.34 I assumed, perhaps too readily, that the natural location for teams of Case Officers would be in the relevant civil business centres, in particular because their concentration in one or a small number of such centres would enable teams to be built up of sufficient size to admit specialisation within them, and therefore greater expertise. In its report "What is a court?", at para 3.5, Justice roundly took issue with this assumption, upon the basis that this would involve separating Case Officers from judges, and be destructive of the necessary personal relationships, informal discussion and teamwork between them.

7.12. This raises a large and difficult question, to which it is not possible at this stage for me to offer a single answer. Nor is it likely that the same answer will necessarily serve all the different civil courts, even though all of them are likely to benefit from the services of Case Officers. No decisions have yet been made about the number of business centres which may be established to serve the civil courts, still less about their location. Nor has it been decided where the boundary line (in terms of case progression and management) should lie as between business centres and hearing centres.

7.13. Nonetheless I would tentatively identify the following working principles as being of assistance in the making of these important decisions, and decisions about the location of Case Officers in particular.

7.14. First and foremost, like Justice, I regard it as essential that the building of teamwork between Case Officers and supervising judges be done on a face to face basis, that is, with Case Officers and supervising judges working together in the same building, and preferably in the same office space. It is not, in my view, a relationship that can be developed on the telephone or, still less, by email or online. It is a relationship that will need to be constructed between people who know, trust and respect each other.

7.15. Secondly, I consider that it is both unlikely and undesirable that judges will be willing, still less required, to base themselves permanently in business centres, rather than in hearing centres. Even if a few may welcome the opportunity of a career change from judging cases to managing a team of Case Officers, permanent departure from the business of judging is likely to reduce the contribution which they would be able to make to the quality of

decision-making by their Case Officer teams.

7.16. Thirdly, there is solid advantage in concentrating civil Case Officers in as small a number of large teams as possible. At the risk of endless repetition, the civil courts (even at the Online Court level) include a much larger number of different and sometimes specialist case types than do the criminal or family courts, or even tribunals viewed individually. The underlying law has now become so complex that it is quite unrealistic to expect persons at the Case Officer pay-grade to become experts across even the whole civil field, let alone a multi-jurisdictional field which takes in criminal, family and tribunal work as well.

7.17. This principle tends to support the location of Case Officers in business centres rather than hearing centres. In particular, if it were considered necessary for every significant hearing centre to have one or more Case Officers, they would be so thinly distributed as to need to become, in effect, jacks of all trades.

7.18. The fourth principle is that breaking the tyranny of paper will make it more practicable for particular case-related functions, including the Case Officer function, to be performed remotely from each other. An online case file may be accessed from anywhere within (or even without) the jurisdiction, provided there is internet access. It is not therefore necessarily to be assumed that the future model for a business centre will be a single large office block staffed by hundreds of employees, as at Northampton and Salford. Even though Northampton is geared to accept online cases, it still operates largely on paper, and Salford does so exclusively.

7.19. It might be said that the resolution of the competing principles outlined above might lead to the most appropriate location of Case Officer teams within the largest of the current hearing centres, in London and the major regional civil justice centres. But I recognise that there are, of course, economic factors which may point strongly the other way. It is notorious that it is difficult to recruit and retain staff of the requisite quality to serve in court back offices in London due to the high competitive wage levels and cost of transport for commuters. Furthermore, some at least of those hearing centres are in places where rental levels are high, and most of them are already fully occupied.

7.20. It may be (and I put it no higher than that) that the Salford example, where judicial supervision has been possible on a rota basis, offers a possible way forward. Salford is located conveniently near the second largest civil justice centre in the country, at Manchester. By contrast, Northampton is near a quite modest County Court centre, and I would expect it to be much harder to establish a team of supervising judges there, than at Salford.

7.21. I therefore recommend that early consideration be given to the large question (only at the fringes of my terms of reference) where the civil business centre or centres should be established, and that a prime objective in that process of planning should be that a small number of substantial teams of Case Officers be accommodated, with face to face supervision by judges as an essential requirement. If economic considerations require

that business centres be located away from major hearing centres, then there may be no alternative but to accommodate Case Officer teams in the largest hearing centres so as to ensure appropriate judicial supervision, rather than in the business centres.

Conciliation by Case Officers in Stage 2 of the Online Court

7.22. I have largely dealt with this issue in chapter 6 above. In my view:

(a) The primary function of the Case Officer at stage 2 will be case management for resolution, that is, finding the most appropriate means of conciliation for each case, and the most appropriate means of determination of those cases which cannot be conciliated.

(b) It may well be possible for Case Officers to combine that function with their own provision of simple telephone mediation, on the Small Claims Mediation model, provided that they receive mediation training in addition to the essential Case Officer training to which I will refer later.

(c) I do not regard Case Officers as suitable for the provision of ENE, and most consultees agree. Cases which require a face to face traditional mediation are likely to be best served by full-time or at least specialist private mediators, rather than Case Officers.

(d) I would not regard the conduct of an unsuccessful telephone mediation as sufficient to require the Case Officer to send the file to a colleague for case management for resolution. Nonetheless I acknowledge that some consultees have taken a more rigorous view that, at the moment when a mediation is undertaken, the Case Officer would become barred from any further participation in the management of the case.

7.23. It may, initially at least, be difficult for Case Officers to turn down the prospect of seeking to resolve a particular case by their own telephone mediation, rather than referring it to a judge for ENE or to a private mediator. Nonetheless I would expect Case Officers rapidly to learn from unsuccessful attempts to settle unsuitable cases (with adverse consequences for their success rates) how to distinguish between those which are appropriate for a short telephone mediation, and those which are not.

A Practical but Flexible Line Between Routine and Complex Case Management

7.24. In IR 12.26.2 I suggested that this was a problem likely to arise mainly in the County Court rather than the Online Court, and that it might be a matter of sensible working practices rather than hard lines and rules. It will be apparent from the foregoing that I adhere to that view, although I would expect the problem to arise in all civil courts, including even the Court of Appeal, where some management of appeals is, and has for a long time been, expertly carried out by the court's team of lawyers (who are Case Officers in all but name).

7.25. Some commentators have suggested that there should be no case management of any kind

in the High Court by Case Officers. That may be right if, as it should be, the service of the High Court is reserved for the most complex, important and high value cases: see chapter 8 below. But I would not wish to close off that possibility entirely.

Specialisation, Qualification, Training and Experience of Case Officers

7.26. There has been a solid and nearly unanimous groundswell of opinion during Stage 2 that Case Officers should all have some level of legal qualification and experience. Those expressing that view included the Association of District Judges, Pro-Mediate, CILEx, the Council of Circuit Judges, the Federation of Insurance Lawyers, Justice, the Law Society, the Merseyside Judges and the South Eastern Circuit. This was, in large part, by way of reaction to my provisional review, at IR 7.32-34 that court back office experience might well be a substitute for legal qualification for Case Officers performing some, although not all, of the functions likely to be assigned to them.

7.27. There is a danger of this argument going round in semantic circles. It undoubtedly depends upon what is conceived to be the characteristic function of the Case Officer. If it is limited to performing functions hitherto carried out by judges, at a lower cost to the taxpayer, i.e. being the upper tier of those involved in case management and administration below judges themselves, then it seems to me that a requirement for some level of legal qualification and experience would be entirely appropriate. If on the other hand the label of Case Officer is to be applied to anyone (other than a judge) involved in any way in the court's handling, administration or management of cases, then there will be many such functions which do not require legal qualification, some of which are identified in IR 7.33.

7.28. The original concept (during Sprint 1 of the Reform Programme), was that Case Officers should be of the former category: that is, taking on some of the more routine parts of judges' workload, and not all case-related administration. By contrast, the recent thinking of HMCTS appears at times to tend towards the latter concept, so as to include as Case Officers anyone in a back office or business centre with case-specific responsibilities. The current thinking is that Case Officer should be used as a name for two main categories, (i) legally qualified and (ii) qualified only by experience, with the common feature that they are HMCTS staff who have been authorised to carry out some part of the jurisdiction of the court.

7.29. I have, during Stage 2, slowly become convinced that the advantages of making it part of the brand name of Case Officer that the person has some level of legal qualification and experience outweighs the more flexible view which I took in the IR. In my view the relevant legal qualification should be that of a law degree or equivalent. By 'equivalent' I mean something like (but not limited to) the qualification of solicitor or barrister. I would also recommend a requirement for some practical experience in the law, and ideally in litigation, whether in a law firm, court back office or business centre. I would in particular recommend that some legal qualification and some practical experience be a requirement for a Case Officer performing the stage 2 conciliation and case management function in the Online

Court.

7.30. It may well be a better way of cementing that brand name to call those in this upper tier Case Lawyers rather than Case Officers. A number of those currently performing the relevant functions in the civil courts are already called lawyers, and the removal of that distinctive appellation may be unwelcome to them, and bad for both recruitment and retention.

7.31. I make it clear that my recommendations relate to the status of Case Officer or Case Lawyer within the civil court structure. It may well be that different considerations may prevail in family, tribunals and crime, about which I would not be qualified to comment.

7.32. My reasons for those recommendations are as follows:

(a) If the primary reason for the creation of a new position of Case Officer (or Case Lawyer) is to be the transfer to them of some functions currently (but unnecessarily) being performed by judges, then I consider that a required element of legal qualification and experience is a necessary and beneficial guarantee to the court-using public that this transfer of functions will be to persons with the requisite qualities to perform them reliably. This was a major theme of the feedback which I received in Stage 2.

(b) I am not deterred by the perhaps inevitable consequence that many of those currently engaged by HMCTS to perform case-related functions in back offices and business centres would not thereby be classified as Case Officers (or perhaps Case Lawyers). They can continue (as in many courts, including the Court of Appeal) to be classified as case managers or case administrators, with no adverse consequences for the performance of their roles.

(c) There is at present a very substantial surplus of those both with law degrees and qualifications as solicitor or barrister who do not thereafter achieve legal careers in private practice, from whom Case Officers (or Case Lawyers) could be recruited at competitive rates of remuneration. The over-supply of professionals with those qualifications within England and Wales is currently notorious.

(d) Specifically in relation to the Online Court, the Case Officer function at stage 2 will call for the ability to conduct a rapid appraisal of online files compiled or contributed to by litigants in person, so as to ascertain the legal essentials of each case calling for resolution, the best form of conciliation and the best mode of determination of those cases which do not settle. Legal qualification and experience will, I would expect, be invaluable for the reliable and high quality discharge of that important function. It is only if this function is discharged efficiently that it will offer savings as against the formidably high productivity of the District Judges, when performing the same function at present in the County Court.

7.33. None of this means that those who, in the employ of HMCTS, currently discharge invaluable functions, as small claims mediators, debt payment adjudicators and cost assessors need now to obtain qualifications so as to enable them to be described as Case Officers (or Case Lawyers). They can continue to perform those functions under their current titles. Alternatively they can all be called Case Officers, and the separate designation of Case Lawyer preserved for the upper tier which perform functions currently carried out by judges.

7.34. I consider it to be clear that the training of Case Officers should also be a judicial function. By that I mean actually carried out mainly by judges, not just managed by them. The Judicial College has informed me that, in principle, it would be prepared to provide that training, but that this would need a budget allocation which is not yet been made available. In this context I am referring to my concept of Case Officer or Case Lawyer, that is a legally qualified and experienced person performing functions currently carried out by judges, not simply anyone employed on case-related duties.

Reconsideration of Case Officers' Decision by a Judge

7.35. Feedback during Stage 2 has been almost unanimous that the conferral upon Case Officers of decision-making functions currently performed by judges makes it essential that litigants affected by those decisions have an unqualified right to have them referred to a judge for reconsideration afresh. I agree, and I adhere to my provisional view, in IR7.37, that a mere right of review is too limited, and that a right of appeal would be inappropriate, both because the Case Officer is not a judge, and because an appeal would then require Case Officers always to give reasons for decisions, which would be likely to be time-consuming and inefficient.

7.36. Some concern has however been expressed that an unqualified right of reconsideration might be abused by litigants, especially by LiPs with no advice about the merits of the decisions of which they disapproved. Plainly, if all Case Officer decisions ended up being sent for reconsideration by judges, then there would be little point in giving the decision-making function to the Case Officer in the first place.

7.37. Nonetheless I am by no means persuaded that this concern justifies the restriction of a right to reconsideration, save by the imposition of a tight time-limit, and perhaps by imposing some sanction if an application for reconsideration is found to have been abused.

7.38. I consider that the best assurance that Case Officers' decisions will not routinely be subjected to reconsideration lies, as I have said, in the close judicial training and judicial supervision of Case Officers. Once the general quality of their decision-making becomes established, and it is understood that a reconsideration will usually be carried out by the judge who supervises their work in the first place, I would expect that (as in the FOS and at Salford) requests for reconsideration will become exceptional. In any event I would limit reconsideration to a document-based exercise, not requiring a hearing, save in the very rare case where the judge doing the reconsideration thinks that a hearing is necessary.

8. Number of Courts and Deployment of Judges

8.1. In chapter 8 of the IR I sought to set in motion a wide-ranging debate under this heading, having by then reached only two firm conclusions, namely that the creation of a unified civil court could not be undertaken and completed ahead of the implementation of the Reform Programme, and that the creation of the Online Court as a separate court should not for that reason alone lead to the simultaneous replacement of the County Court: see IR 12.14.

8.2. Chapter 8 was an early attempt at a response to my perception that the civil court structure suffered from a number of weaknesses, set out in IR 5.69-87. I have re-examined those perceived weaknesses in the light of the further consultation, study and statistical analysis carried out during Stage 2, and my conclusions about them are set out in chapter 5 above. In outline, I have concluded that:

8.2.1. There continues to be an under-provision of judicial and other resources for civil justice outside London, at all levels and types of case.

8.2.2. There is a similar under-provision of such resources for civil justice in the County Court as opposed to the High Court.

8.2.3. There are insufficiently firm regimes in place to ensure that work which ought to be done regionally, rather than in London, and in the County Court, rather than in the High Court, is allocated accordingly.

8.2.4. The results of these weaknesses are (or include) the following:

i. Too many claims are issued in London, and in the High Court.

ii. Too many cases issued elsewhere are transferred to London and to the High Court.

iii. Not enough cases are transferred from London or from the High Court.

iv. Excessive pressures from inappropriate work are therefore placed on the London and High Court Judges and Masters, and the associated court facilities.

v. Cases therefore tend to have longer waiting times in London, and in the High Court, than elsewhere.

vi. High Court judges are therefore disabled from providing additional assistance to the over-burdened Court of Appeal.

8.3. Although there have been valuable contributions to the resolution of the issues raised in this chapter from particular consultees, general debate about them at the oral and public consultation during March to June 2016 tended to be overshadowed (or at least muted) by the much more intensive focus given by consultees to issues arising from the creation of the Online Court, and the greater use of Case Officers. Nonetheless, the combination of that consultation, the outcome of further statistical work, and further study generally has made it possible for me to provide firm recommendations in place of the mainly provisional views set out in the IR, with the exception (anticipated in IR 8.53) that time and other priorities have

stood in the way of any detailed re-examination of the number and geographical distribution of the DCJ areas. To a lesser extent, firm recommendations about divisional reform have been impeded by a growing perception that this is not an exclusively civil structure question, but is likely to form an important part of a much broader debate about judicial governance and deployment.

Should there be a Unified Civil Court ("UCC")?

8.4. I set out what I then perceived to be the main arguments for and against the creation of a UCC at IR 8.8-16, and my provisional conclusions at IR 8.17-28. I will not repeat them here. In my view the main parameters of the debate remain largely unchanged, but certain aspects of them deserve a closer analysis, against the question whether a move to a UCC would address the revealed weaknesses in the performance of the current structure.

8.5. The starting point is that there is an increasing groundswell of support within the Reform Programme towards the creation of a single online Portal for the issue and conduct of all court proceedings, at least within the boundaries of Civil, Family and Tribunals, as currently constituted, to the extent that I now regard this outcome of the Reform Programme as practically inevitable. This, coupled with the facility with which fully digitised case files and documents can be handled, stored, progressed and managed anywhere with a Wi-Fi connection, and transferred with great facility from place to place, has fundamental consequences against which the debate about a UCC needs to be concluded.

8.6. The first, and much the most important, consequence is that the process of issuing a claim, through the Portal, does not of itself have any geographical consequence at all. Even if the claim is required to be issued in an identifiable court (by the Portal software) that will have no necessary geographical consequence, since courts (as systems for the resolution of civil disputes) will be a virtual rather than a physical concept. This has been largely recognised by Justice in its "What is a Court" Report[18], although in my view its underlying thinking stops slightly short of a full recognition of this important consequence of full digitisation.

8.7. This uncoupling of issue of proceedings from geographical location has already largely occurred in the County Court. Issue of a claim under Money Claims Online ("MCOL") or by the SDT system for bulk claims leads to the claim being handled, initially, in Northampton but then (only if disputed) being transferred to an appropriate County Court hearing centre in accordance with protocols which pay attention to, but which are not bound by, the claimant's choice or party preference. More recently, the same has become true of paper issue of proceedings in the County Court, where claims are initially handled at Salford and, if disputed, transferred to an appropriate hearing centre by a more or less identical process. No-one thinks of choosing to issue, or issuing, a County Court claim in Northampton or Salford. They are simply issued in the County Court and then given a geographical location by the court itself.

18 http://2bquk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2016/05/JUSTICE-What-is-a-Court-Report-2016.pdf

8.8. The same is not yet true for the High Court. Claims are issued either in the Principal Registry (i.e. in the RCJ or Rolls Building, depending upon the type of case) or in a specific District Registry, each of which have a distinct geographical location. Subject to the exception mentioned below, issue is still achieved by personal attendance or by post, both of which necessarily assume a geographical location at which issue takes place.

8.9. The arrival of CE File as the new (but still optional) system for online issue of proceedings in the Rolls Building courts has not changed that geographical link with issue in practice, precisely because it is only available for issue in the Chancery Division, the Commercial, Mercantile and Admiralty Courts and the TCC, and only if issue is sought at the Principal Registry. The Commercial and Admiralty Courts have no other location than in the Rolls Building. Thus all issue of proceedings online through CE File is, in effect, still issue in the Rolls Building, where CE File is administered, and the cases managed and tried.

8.10. The creation of a mandatory Portal for the issue of all civil claims (regardless whether extended to Family and Tribunal claims as well) could easily achieve for the High Court the same disconnection between issue and geographical location that has already been achieved for the County Court. It could, and in my view should, entirely replace the existing Principal and District Registries, as a single virtual venue for issue. It would then be possible, and indeed natural, for the claim to be directed to an appropriate geographical location (which might include a business centre for handling and management and the same or a different hearing centre for trial) by court decision rather than purely party choice, albeit paying the same respect to party preference as is currently done in the County Court, to the extent appropriate.

8.11. Of course, the parties would, and in my view should, retain the right to choose the particular Division, Court or List within which the claim should be resolved, subject to the court's power to direct otherwise in particular cases. In many cases, such as the Chancery Division or the Administrative Court, this would have no particular geographical consequence. In others, such as the Commercial Court or the Intellectual Property Enterprise Court, it would, since those courts only hear cases in single locations. Even then, the facility for case handling and management in business centres might lead to aspects of the workload of those courts being handled otherwise than in London which is, for economic reasons, a very unattractive location for a business centre, due to high rents, wages and commuting costs.

8.12. In summary therefore, the creation of a single online Portal for the issue of all civil proceedings can relatively easily be designed so as to give the courts, rather than the parties (and in practice the claimants) control of the geographical location of the handling, management and determination of a claim, without having to erect a UCC for the purpose.

8.13. The question remains however whether the same can be said in relation to the currently sub-optimal distribution of cases between the High Court and the County Court, which is currently governed, at least initially, by party choice subject to thresholds in the rules, but subject also to the courts' own powers to transfer cases up, or down, where appropriate, either on application by a dissatisfied party, or on the court's own initiative.

8.14. A single Portal will not achieve this result because a Portal is not itself a court, vested with authority to make decisions of any kind. It has no staff, no management structure and, at least while current technological limitations continue, no 'brain'. It is simply a form of gateway, leading to the claim being dealt with in one of a number of different virtual courts.

8.15. Much the strongest argument in favour of creating a UCC (at least out of the current County Court and High Court) lies in the ability thereby to confer upon the court, rather than upon the parties, the initial decision about the level (and expertise) of judge required for dealing with each incoming claim, and that this would march hand in hand with the creation of a single Portal for the issue of all civil cases: see IR 8.10-11. The typical model would envisage all incoming claims being triaged on arrival, either automatically by reference to value at risk or case-type, or by Case Officers or the most junior level of judges, and finding their way up to the higher levels of case management or trial judge only where evidently justified by the amount at risk, by the complexity of the case or by its public importance. I am told that this is how private law children work is triaged in the Family Court.

8.16. I have however been persuaded, on balance, that this undoubted advantage is insufficient to justify the creation of a UCC out of the current County Court and High Court, and that the benefits of improved allocation of cases between those two levels of court can be achieved substantially as well by other means which do not involve the destruction of a horizontal dividing line within the civil courts which I think retains very substantial value. My reasons follow.

8.17. In most cases, the choice facing the claimant is not merely whether to issue the case in the High Court or the County Court, but (if the former) within which more or less specialist part of the High Court to issue it. Most claimants above the Line (below which the Online Court is to have jurisdiction) will be legally represented, and know well which particular court is the appropriate forum for the claim. Thus, disputes as to whether a claim should have been issued in the Chancery Division or Queen's Bench Division (or, more particularly, in the Chancery Division, Commercial, Mercantile or Admiralty Courts or TCC within the Rolls Building) are fairly rare. Sometimes there is only one appropriate court. Other cases may perfectly properly be issued in two or more different courts or lists, but can be dealt with appropriately in all of them. To impose a system of early triage or gate-keeping upon all cases would risk creating a burden on the court service which is currently carried out, usually effectively, by the parties, at no expense to the court.

8.18. Secondly, and this is a point much relied upon by stakeholder consultees, to require all cases to be issued, for triage and gate-keeping to an appropriate court, in a unified civil court would significantly risk undermining the attractiveness of particular English courts, as against their international competitors. This is unquestionably true of the Commercial Court, but it is also true to perhaps a lesser extent of the Companies Court, the Patent Court and the Intellectual Property Enterprise Court within the Chancery Division, and also of the TCC. Further, the Mercantile Courts have themselves (albeit not uniformly) been viewed as an attractive forum for dispute resolution in particular regional cities, albeit not within a wider international context. Further, the Chancery Division's reputation for expertise in trust-

related matters substantially underpins the international reputation of English trust lawyers, whose services are resorted to (subject to local monopoly restrictions upon the practice of advocacy) in courts all round the world which habitually apply the common law, including equity.

8.19. Thirdly there has, for as long as a debate about creating a UCC has existed, been a concern on the part of court-using stakeholders that the imposition of a gate- keeping structure at the bottom of a unified civil court pyramid would be likely to be used as a means of preventing high value, complex or publically important cases reaching the higher levels of judges, either due to governmental pressure upon resources, or due to a desire of judicial gate-keepers to keep inappropriate cases for themselves. By contrast, the present system under which inappropriately issued cases are transferred up from the County Court or down from the High Court respond to more appropriate concerns, either that the County Court judges lack the requisite expertise, or that the case does not deserve or need the specialist expertise of the High Court.

8.20. Fourthly, the High Court/County Court dividing line continues to represent (as described in IR chapter 2) an important line between, on the one hand, an essentially generalist County Court with widely distributed hearing centres (including, in the future, temporary courts) around England and Wales and, on the other hand, a High Court vertically divided into subject-matter specialist lists, with a much more limited geographical coverage, suitable for the larger, more complex and publically important cases. Now that the concept of a court is to lose all or most of its geographical or physical identity, the preservation of that basic structural dividing line seems to me to be all the more necessary: see IR 8.23.

8.21. Fifthly, I am persuaded, in answer to the questions raised in IR 8.18-22 that, notwithstanding the creation of the Online Court with an ambition to acquire jurisdiction over cases (other than for personal injuries and a few others) up to £25,000, the County Court will retain a sufficient caseload to maintain a realistic nationwide presence as an intermediate level of court between the High Court and the Online Court. This is primarily because I am recommending (see below) a substantial rise in thresholds, designed to require a larger proportion of Multi-track cases to be issued in the County Court, and the removal of any of the existing value constraints on the County Court's jurisdiction. There will in any event remain a very large class of personal injuries (including clinical negligence) cases within the jurisdiction of the County Court even if the small claims threshold for personal injuries is raised from £1,000 to £5,000, which is not inevitable. Similarly, there will remain a substantial body of claims, including non-money claims, claims relating to housing, and other claims within CPR Part 8 which are are not proposed to be accommodated within the Online Court. Finally, as noted in IR 8.22, digitisation leading to courts becoming virtual rather than physical, readily addresses what used to be problems about minimum size or workload of particular courts.

8.22. A conclusion (which is now common ground amongst most commentators) that the Online Court should be a separate court with its own primary legislation, rules and LiP friendly culture means that the merger of the County Court with the High Court would not in any

event create a fully unified civil court.

8.23. More generally, consultation during Stage 2 has tended to confirm my provisional perception that the High Court brand remains valuable and attractive, both internationally and as a focus within the main regional cities, for the provision of high quality legal services, both by the court itself and by the legal and accountancy professionals whose practises tend to thrive when adjacent to a large, high quality court centre. By this I mean a centre for the management and trial of cases, rather than merely for their issue.

8.24. For all those reasons I recommend that the division between the High Court and the County Court be retained, subject to adjustment of thresholds and the continued improvement of procedures for transfer of inappropriately issued cases, to which I refer below. As is explained in Chapter 10, the retention of separate courts does not prevent the unification within one of them of processes for the enforcement of judgments.

The Future of the Divisions

8.25. There is a sufficient summary of the history of the Divisions, and of the debate about their future, in chapters 2 and 8.30-39 of the IR, which needs no elaboration. At IR 8.39 I concluded that it was a debate that had in the past generated more heat than light, but that it ought to be revisited because, if not grappled with now, it probably never would be.

8.26. This debate generated neither much heat, nor much light, during Stage 2 of this review. Most of those few who did contribute would probably prefer to remain anonymous. The general response of stakeholders in the Rolls Building courts was that, however illogical, the divisional split there caused no real difficulties that could not be lived with, and would probably best be left alone. Their particular concern was that nothing should be done which might, even accidentally, undermine the attraction to international legal business constituted by the work of the Commercial Court.

8.27. I do not intend to make specific final or firm recommendations about this issue. This is in particular because it has implications spreading well beyond the purely civil sphere, affecting both criminal and family business, and the work of the Tribunals. It is a question which, in my view, should not be left to go to sleep, but rather dealt with as a major part of a wider debate about judicial deployment and governance, by the Judicial Executive Board.

8.28. Nonetheless, it may assist if, with the benefit of the limited consultation which has been forthcoming, I say something about what appear to be the available choices, looking at the matter purely as a divisional split between Queen's Bench and Chancery judges and their respective workloads.

8.29. Consultation during Stage 2 has identified the following three options for structural change, in descending order of radicality:

8.29.1. Abolition of the divisional structure so that (at least) the Queen's Bench and Chancery

High Court judges form a single group.

8.29.2. Retention of the Queen's Bench/Chancery divisional structure, but with an adjustment of the boundaries between the two.

8.29.3. Retention both of the existing structure and boundaries, but with a greatly increased facility for cross-listing and cross-ticketing.

(1) Abolition

8.30. This most radical solution has the following advantages:

8.30.1. It best reflects an appreciation that the Divisions are really a historical relic dating back to the 19th Century, and that it is virtually impossible to create a water-tight dividing line in terms of workload which will neatly separate two groups of High Court judges on any entirely satisfactory or logical basis.

8.30.2. It avoids the difficulty that any attempt to change the current divisional boundary line so as to reflect present work streams is likely to go out of date over time, as it has done in the past.

8.30.3. It maximises the scope for flexible listing across a large group of High Court judges, and the building up of portfolios of different specialisations by each of them.

8.30.4. It maximises the ability of the High Court judges to respond by re-deployment to large (but presently unforeseeable) changes in the burden of the High Court's civil workload, and the requirements of essentially civil work-streams currently being undertaken in some parts of the Upper Tribunal system.

8.30.5. It probably maximises the availability of the largest possible number of High Court judges to assist with the criminal workload.

8.31. The potential disadvantages of this radical solution are as follows:

8.31.1. The existing divisions foster a form or collegiality and esprit de corps which tends to strengthen the expertise of each Division's judges (including, at least in the Chancery Division, deputy judges) for handling the work which is characteristic of each Division. While there is substantial collegiality within the High Court bench as a whole, its strength may tend to be inversely proportional to the size of the group, so that abolition of the Divisions would, on balance, detract from their existing collegiate strengths.

8.31.2. The current High Court judges applied for, and were appointed to, specific Divisions, and many may consider their abolition to be a significant change in the terms of the appointment for which they applied, unless the change and its consequences are

handled with the utmost sensitivity, and spread over a substantial period of time.

(2) Moving the Boundary between the Chancery and Queens Bench Divisions

8.32. This less radical proposal would accommodate the current judges and workload of the Chancery Division (including the IPEC), the Commercial and Admiralty Court, The Mercantile Court and the TCC within an expanded Business and Property Division. It is the proposal described in outline in IR 8.32-39. Its advantages may be as follows:

8.32.1. It brings together, under a single divisional 'roof', a body of work which already has a recognisable coherence, since it deals with disputes about business and property. There is an on-going debate about whether all or some parts of the property work do lie naturally within that grouping, to which I return below.

8.32.2. It brings under single divisional leadership both the judges (including deputy judges) and workload of the Rolls Building courts.

8.32.3. The same types of workload are already discharged in the main regional High Court trial centres (Cardiff, Bristol, Birmingham, Manchester and Leeds) by groups of Senior Circuit Judges who share the workload together very effectively, without excessive regard to current divisional boundaries. I shall have more to say about that sub-structure under "Deployment of Judges" below.

8.32.4. This proposal would, better than any other, be likely to lead to a more rapid harmonisation of the different practices and procedures of those courts. Currently Chancery, Commercial, Mercantile and TCC all have their separate guides and distinctive practices. Some of those differences are fully justified by reference to the differing demands of the various specialist parts of the workload, but other differences are essentially historical. It is noteworthy that the new initiatives in the Rolls Building (the Financial List and the Fast and Flexible Trial pilot schemes) adopt a unified approach to practice and procedure.

8.33. The perceived disadvantages of this proposal are as foreshadowed in IR 8.36. Nothing in my consultation during Stage 2 has tended to suggest that they have lost their force. They are as follows:

8.33.1. The risk that the substantial contribution towards the discharge of the criminal workload of the High Court judges made by the Commercial and TCC judges might be reduced if they were transferred to a business and property division which might be regarded as an enlarged successor to the Chancery Division.

8.33.2. The perceived risks to the distinctive brand name and international attractiveness of the Commercial Court.

8.34. I am not myself persuaded that either of these perceived disadvantages is well founded. As to the first, I can see no reason why judicial membership of a new business and property division should insulate a High Court judge from responsibility for making an appropriate contribution to the criminal workload. Several recently appointed Chancery judges gained criminal experience as Recorders before appointment, and would be both well qualified and, I believe, willing to assist. There is no reason why judges appointed to the Queen's Bench Division on the basis that they would make such a contribution should cease to do so on a change in the divisional boundaries.

8.35. As to the second, it would be no part of such a proposal that there should cease to be a Commercial Court, a Mercantile Court or a TCC. It would be for consideration whether the general work of the Chancery Division (i.e. outside its specific courts) would be grouped within a new Chancery Court (or Court of Chancery), or some other arrangement of specialist lists. But I have never understood why that should adversely impact upon the brand name and undoubted international attractiveness of the Commercial Court. Nonetheless I acknowledge a real concern expressed to me in consultation, in particular by City UK and COMBAR, that it would in their view be unwise and unnecessary even to take a small risk of that outcome.

(3) Listing Flexibility

8.36. This least radical proposal would leave the existing Divisions, and their boundaries, substantially intact, but build upon the achievements already made in the creation of the Financial List in the Rolls Building, and the successful shared listing arrangements (including provision for hearing of urgent and interim applications in a common list) already in operation, albeit to differing degrees, in the five main regional trial centres. The main advantages of adopting this course are that it would avoid all, or at least most, of the perceived disadvantages inherent in the two more radical alternatives, while providing a more flexible deployment of the relevant judges, in particular within the Rolls Building, than is currently achieved.

8.37. The disadvantages of taking this course are that it would do little to promote the harmonisation of practice and procedure between the two Divisions and different sub-courts, and that because there would not be unified leadership or management, the achievement in practice of more flexible common listing would continue to be, probably, as difficult as it currently is, in the Rolls Building in particular.

8.38. I have commented in IR 5.86-87 upon the differing levels of effectiveness of the regional leadership of Chancery High Court work, by comparison with Mercantile and TCC work. This third proposal has partially been achieved in terms of flexible listing outside London, where the absence of common leadership of the three specialist work streams has not proved in fact to have been an impediment to an appropriate level of list sharing, at least in Manchester and Leeds.

Property Work

8.39. There have from time to time (and in particular at the time of the opening of the Rolls Building) been suggestions that a merger of the Chancery, Commercial and TCC Divisions and Courts into a single business court would be easier if all or part of the property work of the Chancery Division were sent elsewhere. Candidates for removal include personal insolvency (i.e. bankruptcy), trusts, inheritance and property disputes involving individuals (sometimes defined as consumers). I have not been persuaded that the apparent attraction of defining the work to be retained as business disputes (rather than business and property disputes) justifies such a change. My reasons are as follows:

8.39.1. There are already in place well-established procedures for allocating, between the Chancery Division and the County Court, cases of this kind on the basis of value, complexity and public importance. In my view these processes could be substantially improved by the raising of relevant thresholds (see below), but they are not inherently unsuited for achieving an appropriate allocation of cases of this type. Furthermore it is clear that the recently adopted early triage processes are making those procedures for allocation more effective.

8.39.2. By contrast, the exclusion from the work of the Chancery Division (or a merged business division) of disputes because they are between individuals and not essentially about business would be a less satisfactory basis for allocation. For example:

i. Some very large disputes, running to many millions of pounds, arise in relation to private family trusts and estates, and there are a small number of personal bankruptcies where the amounts in issue also run to many millions of pounds.

ii. Trusts is a coherent body of law, all about interests in, and administration of, property, which spans the estates of deceased persons, pensions, companies large and small, and constitutes the legal framework for the determination of disputes from the simple TOLATA case about beneficial ownership of a house, to disputes about the ownership of derivatives and other intangible investments in huge international insolvencies, such as the Lehman cases, many of which were about trusts. The same coherence applies to the recognition and enforcement of fiduciary duties, of trustees, executors, insolvency office holders and company directors.

iii. There is a similar coherence between personal bankruptcy and corporate insolvency, all of which is deliberately governed and aligned by the same statute (the Insolvency Act 1986) and the same body of judge-made common (i.e. equity) law. It is all about the administration of an estate for the collective benefit of its stakeholders, just as is the administration of trust property in an inter vivos settlement or deceased's estate.

8.39.3. Relatively modest trust, property and bankruptcy work (of a value or complexity unsuitable for the Rolls Building) is nonetheless a mainstay of the workload of the specialist Chancery S.9 Circuit Judges and District Judges in the five main regional trial

centres. It is all High Court work, and those regional centres would probably not be viable as High Court centres without it.

8.39.4. Above all, trust, property and insolvency (personal and corporate) work requires, on frequent occasion and sometimes regardless of value, expertise which is only available from the Judges, Masters and Registrars (and regional specialist Chancery section 9 judges and District Judges) of the Chancery Division. There is simply nowhere else for those cases to be sent.

District Registries and Regional High Court Trial Centres

8.40. In IR 8.40-43 I raised for further consultation the question whether the number of District Registries should be further reduced, or the concept altogether abolished and, as a sub-issue, whether the Central London County Court should be given non-issuing District Registry status. In the event, these issues were not significantly addressed either in the written or subsequent oral consultation during Stage 2. I have nonetheless reached the following conclusions about them.

8.41. First, I consider it to be clear (as noted above) that the creation of a single Portal for the issue of all civil proceedings will entirely replace the function of the District Registries as geographically distinct locations where High Court proceedings may be commenced. Further, the placing of case files online means that they will not in future need to be (or be in fact) regarded as located in any particular place, such as is inherent in the concept of a District Registry. It follows that, in my view, the District Registry concept has a limited life, and ought to be abolished once the single Portal and full digitisation of all High Court case files comes in to operation, and I so recommend.

8.42. In the meantime, I recommend that the number of District Registries be further reduced so as to include only those places where significant High Court case handling, case management and hearing activity continues to take place. There is in my view no point in having a District Registry where the only function is to issue a claim, following which it is transferred for handling, management and trial to some other location.

Should the County Court at Central London acquire a District Registry Status?

8.43. This is something of a twilight question, in view of what I regard as the impending demise of the District Registry concept. It arises because, in complete contrast with all other centres where there is a significant concentration of Circuit Judges with civil expertise and S.9 tickets as deputy High Court judges, the CLCC has no District Registry status which would enable its judges to sit in the Thomas More Building (the new home of the CLCC) within the RCJ in their deputy High Court capacity. Although a number of the Circuit Judges at the CLCC have S.9 tickets, they have to sit elsewhere (for example in the Rolls Building in connection with specialist civil work) in order to make use of them.

8.44. If the conferment of non-issuing District Registry status on the CLCC would enable the S.9 judges there to sit as deputy High Court judges whenever convenient, it seems to me to be plain that this should happen. In the longer term, and in particular when case files are fully digitised and can be moved around with complete facility, the absence of any High Court back office facility at the Thomas More Building should not matter at all. For as long as paper files continue to exist, this may however be a question calling for pre-planning, so that any necessary back-up to the S.9 judges can be provided on site, rather than from some other part of the RCJ or from the Rolls Building. But even if the back-up had to be provided in a limited sense remotely, it still seems sensible that this facility to the S.9 judges at the CLCC should be made available as soon as possible.

Deployment of Judges

8.45. In IR 8.44-51 I made a number of provisional suggestions as to how perceived weaknesses in the allocation of judges to the civil workload, particularly in the regions, might be remedied. Further consultation and research enables me now to make final recommendations in more detail. I will do so by starting with the heaviest of cases, and working downwards.

Reinforcing the principle that no case is too big to be resolved in the regions

8.46. Consultation during Stage 2, in particular with stakeholders from the regional bar, has powerfully reinforced my perception that a major factor which tends to lead to the excessive concentration of the largest civil cases upon London (by contrast with criminal cases) is the inability of regionally based lawyers to assure their clients that a category A case will definitely be tried by a High Court judge if issued in a regional trial centre. In my view the civil court structure needs to be arranged in such a way that enables this assurance to be given without qualification. The question is, how is this to be achieved?

8.47. The current arrangements under which High Court judges are made available to hear category A civil cases outside London depend largely (subject to an exception which I mention below) upon carving out time in the diaries of single High Court judges visiting on circuit (including for that purpose the two Chancery supervising judges). The result is that there is hardly ever more than one High Court judge with real (rather than theoretical) availability to hear civil cases in any one regional trial centre at the same time. In some regional centres, such as Leeds, there are frequently none. It also means that judges visiting on circuit, and in particular the regional supervising judges, are limited to trials falling within their circuit availability. For the regional supervising judges, this may be either one or two weeks, plainly insufficient for many if not most category A trials.

8.48. Single judge listing is inherently inefficient. For the judge, (as I know well from my experience as northern Chancery supervising judge), it is either feast or famine. The continuing propensity for even the largest cases to settle at the court door means that it is more often famine, and a waste of that judge's valuable time. It is generally impracticable

for category A cases to be double-listed before the same judge. If both cases stand up, there is no other judge to whom the second case can be sent, and the consequences of a necessary (and probably lengthy) adjournment cannot be contemplated. Furthermore, the main listing priority for visiting Queen's Bench judges on circuit is the criminal list, around which civil cases may be fitted but not, in reality, category A cases.

8.49. Some have suggested that there should in future be a move to establishing groups of High Court judges permanently located in the regions. Unless this was done in threes (which would be an excessive full-time allocation in almost all regions) this would not of itself produce an efficient structure for listing category A cases and would, as has long been recognised, be inimical to the maintenance of collegiality among the High Court judges as a whole.

8.50. I consider that the solution to this conundrum lies in treating regional category A cases as a burden on the London lists of the relevant High Court judges but on the basis that, when the case reaches its hearing date, a London judge is allocated to hear it in the relevant regional centre, not as part of a circuit visit, but as an allocation to a specific case. This will no doubt require travel to regional centres outside ordinary circuit commitments, and (in the more distant centres) weekday residence in judges' lodgings, but that is in my view a price worth paying.

8.51. There is already a precedent for this system within the Chancery Division, which has for some time sought to make good the principle that no chancery case is too large to be tried in the regions by sending out a nominated Chancery judge (sometimes one who has recently retired from full-time sitting) to hear category A cases in the regions. I recommend that this precedent be followed generally across all the civil jurisdictions. It means of course that category A cases in the regions would join longer waiting lists than prevail generally in those regions, since there would be no good reason to allow them priority over other cases waiting to be heard by the London-based team of High Court judges. Nor will the adoption of this system increase the burden on the High Court lists since, if it succeeds, it will ensure that category A cases which are currently issued and tried in London are in future, where there is an appropriate regional connection, tried and heard regionally. Its effect should therefore be neutral so far as concerns the workload of the London-based judges, but will nonetheless relieve London of some court space requirement, at the cost of imposing that requirement on regional trial centres.

8.52. Arrangements will need to made to ensure that category A cases can be case managed in the regions as well. But with the advent of electronic case files and improved video, even those cases which cannot be managed by a locally based judge (e.g. because they are docketed to the trial judge) can be managed remotely, without dragging the parties or their legal teams to London.

Fostering the Growth of Regional Centres of Civil Specialist Excellence

8.53. Below the category A cases, High Court cases requiring specialist civil expertise are almost entirely dealt with by locally resident judges, that is specialist Senior Circuit Judges for trial and (in the case of Mercantile and TCC cases, management) and Chancery specialist DJs for Chancery case management. Ensuring that regional trial centres do this work both efficiently and well enough to stop the work leeching away to London requires teams of at least three specialist (usually Senior) Circuit Judges in each centre, both to enable efficient listing to take place and to ensure that urgent and interim applications can be heard on a regular and speedy basis by suitably qualified judges when necessary.

8.54. It is almost always unrealistic to expect that these sufficient concentrations of specialist judges can be made available for any particular specialisation (Chancery, Mercantile or TCC) in any single regional trial centre. The only current exception is Birmingham, where there are three Chancery Senior Circuit Judges, and a sufficient concentration of Chancery ticketed District Judges to provide the requisite case management. But there is a sufficient concentration of specialist Circuit Judges, viewing the three specialisms in the aggregate, in Cardiff, Birmingham, Manchester and Leeds, although not (quite) in Bristol, and not at all in Liverpool or Newcastle, although all those places have sufficient specialist District Judges to do the High Court work done by Masters and Registrars in London.

8.55. In order to make these concentrations of three or more specialist Circuit Judges work effectively, there need to exist practices for list sharing and the provision of urgent and interim hearings across the three specialisations. These practices are well established in Manchester and Leeds, but less well in Birmingham, although there are plans for improvement there. Bristol has only two specialist Senior Circuit Judges, while the three in Cardiff are effectively multiple listed and all spend a significant proportion of their sitting time in hearing centres elsewhere in Wales.

8.56. I consider that the development of regional civil specialisation makes it essential that the minimum specific gravity of three or more specialist Circuit Judges be treated as a high priority, and that those who are recruited for those positions undertake the work upon the basis that they will be sharing the specialist civil workload with their colleagues in Chancery, Mercantile and TCC as appropriate, albeit of course that, as far as possible, cases with a particular specialist requirement in one of those areas are tried by the relevant specialist judge wherever possible. Nonetheless many cases within the three civil specialisations are capable of being issued and tried in more than one of Chancery, Mercantile and TCC.

8.57. Bristol, Liverpool and Newcastle each deserve special consideration, because they lack the requisite number (in the case of Bristol) or any (in the case of Liverpool and Newcastle) resident specialist Senior Circuit Judges. For some time the needs of Liverpool have been met by Circuit Judges from Manchester, and the needs of Newcastle from Leeds. I see no reason why these arrangements should not continue, although there are now real difficulties in providing urgent or interim cover in Newcastle (due to the large distance between

that city and Leeds), which may threaten its continued status as a centre of specialist civil expertise of any kind. Having regard to the very large geographical area served by the Newcastle courts, it would in my view be most unfortunate if it ceased to be able to offer a specialist civil court service at all.

8.58. Bristol has a significant concentration of specialist civil solicitors and counsel, and a substantial caseload of Chancery and Mercantile work, but is threatened by its proximity to London (likely to be increased by electrification of the Great Western Railway). There is a precedent for list sharing between Bristol and Cardiff in relation to Administrative Court work. I tentatively suggested during visits to Bristol and Cardiff during Stage 2 that some form of list sharing might assist the timely and efficient handling of the Chancery, Mercantile and TCC work. This did not generate much enthusiasm, and the Mercantile and TCC Court users Committees did not embrace the idea either.

8.59. It was forcefully impressed upon me during consultation in Stage 2 that, in order to compete with the specialist civil offering in the Rolls Building, the regional centres need not merely a concentration of judicial expertise, but also properly trained and dedicated back office management staff, for listing, case handling and progression. Again, I recommend that this be treated as a priority.

8.60. Finally under this heading, concern was expressed at the competitive advantage from time to time enjoyed by the Rolls Building by its development of new procedural techniques, such as those for speedy trials, and those involving bespoke regimes limiting disclosure, with which the regional centres struggle to compete. It must be recognised that the Rolls Building strives to develop and modernise its procedure in response to international competition, rather than merely to out-perform regional specialist centres. Nonetheless it seems to me that, where such procedures are developed and shown to be successful in the Rolls Building, priority should be given to extending them to the main regional specialist trial centres so as to maximise their prospects of effective competition for the relevant work.

Greater concentration of Civil Expertise among the Circuit Judges and District Judges

8.61. I set out at IR 5.73-85 and 8.44 my perception that the provision of judges for civil work outside London is deficient in two main respects. First, there are an insufficient number of Circuit Judges with either civil-only practices or practices with a sufficient proportion of civil work in them to enable them easily to provide the requisite expertise. Secondly, even among the District Judges, where there was a less acute lack of numbers, too few of them were ticketed either exclusively for civil work, or to a sufficient degree to develop the requisite expertise. I also noted that there appeared to be an operational management gap between the Designated Civil Judges, who lead and manage the discharge of the civil workload around the country and either the Head or Deputy Head of Civil Justice, in sharp contrast with the direct management structures evident in the Family Court and in relation to Chancery work. I also made certain provisional recommendations for addressing these

perceived weaknesses.

8.62. Further research and consultation during Stage 2 has confirmed as accurate my perception of the weaknesses, and enabled me to make firm recommendations as to how they should be addressed.

8.63. The statistics in section 4 of Annex 4 show starkly how serious these deficiencies are. Some examples follow:

8.63.1. Of the 23 DCJ areas, no fewer than five lacked a single CJ who devoted 50% or more of his time to civil County Court work. Eleven areas had only one CJ in that category. Three areas had two, two areas had three, one had four or more. The only exception was the CLCC (including the Mayors & City Court) which had thirteen, but that exceptional court undertakes almost the whole of the Multi-track civil work for Greater London, with a population of 8.5 million. It is in my view no coincidence that the CLCC is the only DCJ area which achieves (and indeed betters) the current target time limits for the hearing of Multi-track cases, whereas all the others, without exception, fail to do so.

8.63.2. Section 4 of Annex 4 shows (at Table 20) the stark contrast in terms of the deployment of judges of equivalent seniority to civil County Court and Family Court work, for the twelve months to March 2016. Circuit judges sat 8,136 days in the County Court but 25,520 days in the Family Court. By contrast District Judges sat 40,424 days in the County Court but 36,130 days in the Family Court. Deputy District Judges were deployed for 23,388 days in the County Court and only 5,997 days in the Family Court. If the days sat in the Family Court by magistrates are disregarded, the overall days sat by Circuit and District Judges in the County and Family Courts were broadly equivalent (74,218 and 71,153 respectively). Furthermore, the proportion of days sat in the Family Court by fee paid (rather than full-time salaried) judges was less than 10%, whereas it was 35% in the County Court.

8.63.3. The same table shows that 86% of the workload of the County Court (measured in days) is discharged by DJs or DDJs, and only 14% by CJs, their deputies and Recorders. This reflects anecdotal evidence that, save in certain exceptional areas, almost all of the Fast Track trials are conducted by DJs, and an increasing number of Multi-track trials are also directed to be heard by DJs on a case by case basis.

8.63.4. Section 4 of Annex 4 also shows that an unacceptable proportion of the judicial time allocated to County Court work is delivered by judges for whom civil work is less than 40%, and even less than 20%, of their practices. Opinions may differ as to the minimum proportion of a judicial practice which needs to be devoted to civil work to enable that judge to perform it efficiently and with the requisite expertise. Those whom I have consulted have tended to regard 40% as an acceptable minimum, although I accept that the realities of judicial allocation and financial constraints may mean that a slightly lower percentage might occasionally be regarded as sufficient. But it is in my view plain that 20% or 25% is insufficient, not least because of the much wider diversity and legal

complexity of the civil caseload, compared with the criminal or family caseload.

8.64. It has been suggested to me that this perceived problem is more apparent than real because, although target hearing times are not always met, there is no deep seated problem of extended delays in the management and hearing of cases in the County Court regionally. I have acknowledged that delay is not a general problem, certainly at County Court level, at IR 5.53. Nonetheless I think this suggested analysis is wrong, for the following reasons.

8.65. First, the acute shortage of Circuit Judges at the County Court level is one of the reasons why too many cases are transferred up to London on the basis that the local court lacks the requisite civil expertise. It is also a main reason why too many cases are issued in London, and in the High Court rather than the County Court, in the first place, due to a perception that the requisite expertise is only to be found there. Put another way, the under-resourced County Court judiciary manage to discharge the civil workload without unacceptable delays only because the workload is, itself, less than that which ought to be issued and dealt with in the County Court in the first place.

8.66. This is, to an important extent, a matter of perception. The older litigators among us can all remember a time when a dispute of any substance in the County Court (and even the routine possession lists) would be dealt with by the local County Court judge rather than the District Registrar (i.e. what are now called Circuit Judge rather than District Judge). Now, in sharp contrast with family cases, the overwhelming majority of the County Court workload is discharged by the most junior available level of judge, and in too many cases by deputies rather than salaried DJs.

8.67. Secondly, a knock-on consequence of the under-provision of judicial resources in the County Court, and the consequential overload of the High Court with cases that ought not to need to be dealt with there, is that the High Court judiciary is itself disabled from providing additional assistance in relief of the Court of Appeal's overload, because it is excessively and unnecessarily deployed upon a stream of cases which would better be managed and tried in the County Court.

8.68. I am recommending (below) that a substantial raising of the thresholds below which cases cannot be brought in the High Court (and consequential removal of certain outdated limits on County Court's equity jurisdiction) should be used as a means of forcing cases down to the County Court, and thereby relieving pressure on the High Court. This maybe described as the "stick" part of a "carrot and stick" process of incentivisation. But the "carrot" must consist of measures designed, and seen publicly to be designed, to increase the judicial capacity of the County Court to deal with cases which ought to be managed and tried there.

8.69. There are two solutions to this under-provision of civil judicial resource. The first is, quite simply, to increase the number of civil-only or predominantly civil Circuit Judges. I recognise that this has funding implications in a time of austerity, but the shortage of civil Circuit Judge resources has been getting worse for many years and has now in my view, and that of many consultees, reached an acute stage. Furthermore the civil courts are now generating

a surplus of fee income over running costs greatly in excess of the relatively modest amount which would be needed for this purpose. I do not thereby mean to criticise or approve the government policy to make a profit from the provision of civil justice. That is not a matter for me. I mean simply that the realisation of that policy is unlikely to be optimised if the service provided is deficient in quality due to under-investment.

8.70. The second solution, which does not of itself require any increase in the complement of judges, is to seek to introduce a principle that any judge undertaking civil work should be deployed on the basis that his or her practice consists of not less than 40%, or in certain areas 35%, civil (rather than family or criminal) work. I would apply this both to Circuit Judges and District Judges. Its effect would be that, in the discharge of civil work, those judges would be likely to be both more productive in their use of time and to produce an even higher quality of output, than judges whose civil practice consists only of 20% or 25% civil work.

8.71. I recognise that there may be parts of the country where the judicial resource is so thinly spread that this cannot be achieved. But there are many parts where it could be, but is currently not, achieved, where that principle might lead to a better allocation of judicial resources to civil work.

8.72. This leads me to return to a concern, expressed in IR 5.73-85, that weaknesses in the judicial discharge of the civil workload are (although not caused) nonetheless exacerbated by the operational management gap between the Head and Deputy Head of Civil Justice and the DCJs around the country. This weakness was endorsed by the DCJs themselves at their annual conference in June. I suggested at IR 8.51 that this gap might be filled by a more active workload management role for the Deputy Head of Civil Justice (DHCJ). Having sought to fill that gap myself for the last six months, by direct communication with the DCJs, I am not persuaded that it is a sufficient solution. On the contrary, I consider that the model offered by the Family and Chancery Regional Supervising Judges has thus far been better suited for that task. While I acknowledge that the pastoral care of regional judges (across the whole of crime, civil, family and perhaps tribunals) is best conducted by the existing team of Presiding Judges, reporting to the SPJ, I remain unconvinced that this structure (focussed as it is understandably on crime as a primary responsibility) really meets the operational management needs of the civil workload, and the need to champion the needs of civil in the usually unequal competition for resources.

8.73. I also recognise that it is by no means certain that an increase in the number of regional supervising High Court judges with specific operational rather than pastoral responsibility is necessarily the correct solution. A partial alternative might be to have a model based on the Chancery Supervising judges, but reporting also to the DHCJ, with a role which includes the whole of the specialist civil jurisdictions, including Mercantile and TCC. It has been suggested to me during Stage 2 that the Civil Presiders (usually the junior of two in each circuit) could fulfil the role in relation to the County Court and the non-specialist part of civil, even if it might be a challenge for those mainly experienced in crime. They would report to the DHCJ in relation to specifically civil operational matters, while continuing to report to

the SPJ in relation to pastoral and other cross-jurisdictional matters. This would however split the operational management of civil, which may well best be undertaken as a single whole. But to require the Deputy Head of Civil Justice, based in London, and with a full judicial workload in the Court of Appeal, personally to discharge this responsibility all round the country would, I fear, be a bridge too far for him or her. This is an aspect of judicial governance which goes beyond merely civil structures, about which I do not therefore make any final recommendation, beyond saying that it should not be left to continue as it is.

Thresholds and Procedures for Transfer between the High Court and the County Court

8.74. If, but only if, steps of the kind already referred to can be taken so as materially to increase the capacity of the County Court for undertaking civil cases, then I recommend that the following steps be taken to ensure, as far as possible, that it actually happens.

8.75. The first is to remove the remaining, outdated, restrictions on the County Court's jurisdiction, namely £350,000 in relation to the value of trusts and estates, and the absurdly low £30,000 limit on its probate jurisdiction. I consider that these limits should not merely be raised, but removed altogether. They serve no sensible purpose, not least because the level of complexity or public importance which will ordinarily be decisive of the question whether a trust, estate or probate case needs the attention of the High Court will frequently have little to do with the value of the estate in question or even, for that matter, the value at risk, which may only be a fraction of the value of the estate.

8.76. Next, the thresholds below which claims may not currently be issued in the High Court (£100,000 generally, but £50,000 for personal injuries) should in my view be substantially raised. I have considered whether a common threshold, applicable in both the Chancery and Queens Bench Divisions, and to all kinds of work, should replace the two current thresholds. In my view there should be a single common threshold. I can see no rational justification for a continuing distinction between personal injuries and other claims. Although there are currently different levels below which claims are considered for transfer down to the County Court, in the Queens Bench Division (£250,000) and in the Chancery Division (£500,000), there appears again to be no obvious justification for the distinction, nor any reason why that distinction should be cross-applied to the imposition of a threshold below which claims may not be issued in the High Court.

8.77. I am conscious that this has been a thoroughly contentious issue in the past, and that proposals to raise jurisdictional limits and thresholds have frequently met with widespread opposition, usually on the basis that the requisite expertise for many of the affected cases is concentrated in the High Court, and that value thresholds are a poor determining factor, compared with complexity and public importance.

8.78. Nonetheless I remain convinced that value thresholds, below which claims must at least be started in the County Court, perform a useful function, even if they may then be made

the subject of an application to transfer up to the High Court, where complexity or public importance makes that justified. Furthermore transfer up (or for that matter down) will tend to become a simpler and swifter process once digitisation of the civil courts is implemented. The more important objection is that cases should not be required to be litigated in a court which lacks the requisite expertise, but I have made it clear that my recommendations as to the removal of jurisdictional limits and the increase of thresholds should be conditional upon the strengthening of the civil judicial resources in the County Court to which I have referred.

8.79. All in all, I consider that the choice lies between a common threshold of £250,000 and £500,000. On balance I prefer the latter, but would be content to see it achieved in two steps, starting with £250,000 and observing its consequences. By value I mean value at risk, rather than, for example, the value of an entire estate in a case where the relevant dispute affects only part of it.

Transfer Up and Down

8.80. Steps need to be taken (whether by judicial training or the promulgation of protocols) to ensure that, as far as possible, cases which generally need to be transferred from a local County Court hearing centre on the grounds that it lacks the requisite judicial expertise, get transferred not routinely to London (as happens too frequently at present) but to the nearest regional trial centre with the requisite expertise. This change should be facilitated by the steps which I already have described to improve the specialist civil judicial resources in the main regional trial centres.

8.81. If the excessive numbers of transfers up to the High Court cannot be controlled by those means, it may be necessary to consider the introduction of a process whereby a proposed transfer up does not take place until it has been approved by the High Court Master or Registrar (or in the case of the Mercantile Court, TCC or Commercial Court, the case management judge) in the proposed transferee court. At present, cases are simply transferred without such scrutiny, and the transferee court is frequently, and understandably, reluctant simply to transfer them back down again, for fear of giving the impression to the parties that the court system does not know its left hand from its right hand.

8.82. Transfer down is now the subject of early triage procedures in the Chancery and Queen's Bench Divisions which ought, if applied with sufficient rigour, to be sufficient to ensure that the High Court is not inappropriately burdened with cases which do not require its attention. Early indications are that these early triage systems are leading to a sustained improvement in the ratio between transfer in and out, both in the Chancery and Queen's Bench divisions.

Number of DCJ Areas. Status of, and support for, DCJs.

8.83. As I anticipated in the Interim Report, I have not been able to carry out a sufficiently thorough analysis of this question of the number of DCJ areas to be able to offer any firm recommendations.

8.84. Nonetheless consultation and further research has persuaded me to the firm view that early consideration needs to be given to improving both the status of DCJs and their administrative support. I have made it clear both in the IR and elsewhere in this final report that the DCJs perform a vital civil leadership and management role, upon which the satisfactory judicial conduct of the non-specialist civil caseload around the country, mainly in the County Court, absolutely depends. There is no satisfactory civil judicial management or leadership structure above or below them for that purpose, apart from the role of the civil Presiders, who currently have no reporting line to the Head or Deputy Head of Civil Justice. Not all the DCJs have dedicated administrative staff.

8.85. The majority of the DCJs are not even Senior Circuit Judges, and yet they are expected to lead regional judicial teams which include Circuit Judges (although far too few of them). Even those that are Seniors get no recognition as having a special local status, in sharp contrast for example with the Resident judge or the Recorder in major cities (who leads locally in crime). None of them receive any additional remuneration for the large administrative burden which DCJ responsibility places upon their shoulders. I understand (although the detail is confidential) that the post of DCJ is currently regarded as insufficiently attractive to generate satisfactory numbers of recruits.

8.86. It would of course be wrong to suggest that DCJs are the only class of judges for whom increasing leadership and management responsibilities threaten recruitment and morale. But they play such a vital role in the leadership and management of civil justice that early attention to raising the level of their status and support is in my view clearly justified.

9. Rights and Routes of Appeal

Appeals to the Court of Appeal

9.1. As anticipated in IR 9.6, 9.36 and 12.28, resolution of the issues arising from the grave overload in the work of the Court of Appeal have moved since then from a matter for debate as to the future, to work in progress. The Time and Motion study carried out in the summer of 2015 has (despite formidable problems with the computer upon which its results were collated) been completed and audited by Professor Dame Hazel Genn and Nigel Balmer, both of UCL. Their report is copied at Annex 4, section 5. I have described the lessons learned from it in chapter 2 above (at 2.9-2.13). In outline it fully justified the perception that the court was grossly overloaded with work, but more from the increased burden of full appeals (although they did not greatly increase in number) than from increased work on applications for permission to appeal (as had wrongly been anticipated).

9.2. The completion of the Genn/Balmer report enabled the Court of Appeal's Hard Working Group to complete its work and to deliver a report and recommendations to the full court at a meeting in early March 2015, at which the recommendations were (with one small exception) endorsed. Shortly thereafter the Master of the Rolls resolved upon the pursuit of a package of reforms, some requiring primary legislation, some Rule and Practice Direction changes, and some changes in the internal management of the court's caseload.

9.3. Those decisions were made in the light of a summary of the extensive written feedback which I had by then received, in response to the outlining of most of those proposals in IR chapter 9. That feedback may be summarised for present purposes as follows:

9.3.1. There was general agreement that the delays both in full appeals and in the determination of permission applications had reached a thoroughly unsatisfactory state, which posed a substantial threat to the timeliness (and therefore quality) of civil justice generally, and to the competitiveness of the civil courts on the international stage in particular. This was borne out by the findings of an international survey of civil appeal processes in twelve different jurisdictions carried out by Allen & Overy[19], which placed the Court of Appeal of England and Wales towards the poorest performing end of the spectrum of comparable jurisdictions in terms of time.

9.3.2. Only one consultee suggested that the court's difficulties should be alleviated by truncating the time taken to hear full appeals.

9.3.3. Many commentators took the view that there should be an increase in the court's complement of Lord Justices.

9.3.4. Most commentators welcomed the greater use of High Court Judges as deputies assisting in the Court of Appeal, particularly in areas of their specialist expertise.

19 This forms part of the CPRC public consultation papers. See note 20 below.

9.3.5. There was general approval of the proposal to sit more two judge courts.

9.3.6. The clear majority of commentators were opposed to any cutting down of the right to an oral renewal of an application for permission to appeal which had been refused on the documents.

9.3.7. There was general opposition to any raising in the threshold tests for the grant of permission to appeal.

9.4. The proposals which the full court approved at its meeting in March, and upon which the Master of the Rolls resolved were, in summary, as follows:

9.4.1. To go ahead with the (already decided upon) re-routing of appeals from final decisions in the County Court and from private family matters in the Family Court, from the Court of Appeal to the High Court.

9.4.2. Greatly to increase the number of two judge courts.

9.4.3. To replace the right of oral renewal of an application for permission to appeal with a duty upon the LJ considering the application on the documents to adjourn it into court for an oral hearing before him or herself if necessary for a fair determination of the application.

9.4.4. To raise the ordinary threshold for permission to appeal from "real prospect of success" to "substantial prospect of success", and to make that explicitly part of the second appeal test, as it is of the first appeal test.

9.4.5. To make technical changes designed to ensure that appeals which are in substance second appeals have to satisfy the second appeal threshold.

9.4.6. To make better use of specific judicial expertise in the determination of permission to appeal applications.

9.4.7. To make various changes to the rules and practice directions about preparation of bundles and skeleton arguments designed to streamline the court's procedures.

9.4.8. Further to raise the number of judicial assistants.

9.5. The proposed changes did not include any attenuation of the length of oral hearing of full appeals. This is because it is generally considered that this feature of the court's procedure is one of the jewels in its crown by comparison, for example, with the procedure of the Supreme Court of the USA, the ECHR and the CJEU.

9.6. Nor did the proposals include an increase in the number of LJs. This was because, in consultation with the MoJ, the Master of the Rolls had satisfied himself that there was no prospect that such an increase would be authorised by government in the current financial

circumstances.

9.7. Finally, the proposals did not include any specific steps to increase the level of assistance provided to the Court of Appeal by High Court Judges sitting as deputies. This was because, first, the re-routing of two significant streams of the Court of Appeal workload to the High Court was regarded as likely to impose as great a burden on High Court Judges in relation to what had previously been the Court of Appeal's workload as was considered reasonable. Secondly it was because of the perceived increase in the pressures upon High Court Judges, in particular in the light of increasing difficulties in their recruitment, and an increase in the level of early retirements.

9.8. It will be immediately apparent that this package of proposals did not respond affirmatively to the thrust of the written consultation responses, to the effect that (i) there should be no attenuation of the right of oral renewal, and (ii) that there should be no raising of the threshold test for permission to appeal. This was not because those responses were ignored. On the contrary, they were fully taken into account. But careful time-costing of the available proposals, set along side the evidence derived from the Genn/Balmer report demonstrated that, without an increase in the number of its judges, the court simply could not even stem the annual excess in its workload (currently running at over 9,400 hours per annum) let alone make any inroad into the unacceptable delays caused by the backlog (of more than 46,000 hours) without at least replacing the right of oral renewal of PTA applications. The highlights of that time-costing analysis are set out in Annex 4, section 1. Accordingly, the court faced an inevitable increase in the delays in its handling of appeals, with no other available means of stemming, let alone reducing them.

9.9. The number of judicial assistants is to be raised to 26, with effect from October 2016. The rest of the package of proposals which I have summarised were put to the CPRC at its meeting in May, with an invitation (which the committee accepted) that they be made the subject of its own public consultation[20], with a view to decisions being made about the requisite rule changes at its July meeting.

9.10. The public response to consultation included further opposition to the raising of the threshold test and to the removal of oral renewal of PTA applications, although it was by no means unanimous. The CPRC approved all those parts of the package needing implementation by Rule or Practice Direction change, except the raising of the threshold merits test for permission to appeal. This proposal was adjourned for further review, in the light of a disinclination to have two slightly different merits thresholds for appeals to different courts. There will probably be further consultation as to whether the raise in the threshold from "real' to 'substantial' prospect of success should be applied to all appeals, rather than only to appeals to the Court of Appeal.

9.11. Meanwhile the small parts of the package needing changes to primary legislation are likely to be pursued in Parliament.

20 https://consult.justice.gov.uk/digital-communications/appeals-to-the-court-of-appeal

9.12. The result is that, as I anticipated, the proposals as to structural reform of the Court of Appeal have indeed largely run their course by the time of the delivery of this final report.

Other appeals

9.13. The package of reforms to which I have referred thus far relate only to appeals to the Court of Appeal, or appeals formerly to the Court of Appeal which have been re-routed to the High Court. There is a further question whether appellate pressures upon both the High Court and indeed County Court would also justify similar reforms. In particular I received feedback from the Council of Circuit Judges to the effect that pressures on appeals from District Judges to Circuit Judges were reaching a level which made it appropriate to consider such measures at this stage. The High Court Judges Association endorsed that view from its own perspective, as did the DCJs at their annual conference in June.

9.14. It would in my view be premature to make any firm recommendations about such changes at this stage. My reasons follow. First, although considerable time & motion statistical analysis has now been carried out in relation to the workload of Circuit Judges, the study was not addressed to this issue, and does not appear to me to disclose anything like the compelling case for such changes as was disclosed in the Court of Appeal by the Genn/ Balmer report and subsequent analysis. Nor does the evidence about the time taken to bring cases in the High Court and County Court to trial amount to a compelling case of the kind which currently faces the Court of Appeal.

9.15. Secondly, the proposal to attenuate rights of oral renewal are in part justified on the basis that, by then, the parties will have had a substantial first instance hearing, usually before (now, in the light of the changed routes of appeal) a senior experienced judge, generally either in the High Court or in the Upper Tribunal. The same argument carries much less force at High Court and County Court appellate level.

9.16. Thirdly, it seems to me sensible first to examine in the light of experience how the package of reforms affects the quality and timeliness of the work of the Court of Appeal, before considering whether to apply all or any parts of it to appeals to the High Court or County Court judiciary.

9.17. Leaving aside the raising of the threshold merits test, I do not therefore recommend any immediate change to appellate procedures below the Court of Appeal, but I readily acknowledge that the question whether there should be some such changes needs to be kept under constant review.

10. Enforcement of Judgments and Orders

10.1. In chapters 10 and 12.30 of the IR I tentatively suggested:

10.1.1. That enforcement of judgments and orders was a seriously weak aspect of the service provided by the civil courts, in need of close attention.

10.1.2. That it would be advantageous to create, for the first time, a unified service for the enforcement of the judgments and orders of all the civil courts.

10.1.3. That, wherever possible, the processes for enforcement should be rationalised, digitised and centralised, retaining judicial supervision and involvement only where necessary and appropriate.

10.1.4. That a unified service should retain that which is best, and discard that which is worst, of the different methods for enforcement currently available separately in the High Court and County Court.

10.1.5. That consideration should be given to the question whether digitisation might open up new methods or procedures for enforcement not currently available.

10.1.6. That the current creditor-initiated processes for obtaining information about the assets and resources of a judgment debtor might be improved by placing the initial responsibility on the debtor, whenever the debtor intended not to comply, on time and in full, with a judgment or order.

10.2. As I hoped, consultation and feedback on these issues during Stage 2 has been extensive, informative and vigorous. In certain respects consultation has disclosed a remarkable level of virtual unanimity. In one respect, namely the relative merits and demerits of the services of High Court Enforcement Officers ("HCEOs"), Enforcement Agents ("EAs") and County Court bailiffs, consultation has disclosed wide ranging and fundamental differences of view, the resolution of which goes way beyond the scope of this review, limited as it is to structural recommendations, and beyond both the time and resources available to me and to my Hard Working Group. I am afraid therefore that I will disappoint some consultees by declining to resolve some of those issues although I consider that they thoroughly deserve further close review as a subject in their own right. In one respect the consultation process fell short of what I may have hoped, namely identifying new methods or procedures for enforcement made possible by digitisation. The one concrete proposal (to which I refer below) gives rise to its own difficulties which themselves call for further analysis.

Unification

10.3. The proposal in IR 10.2-6 that the procedures and processes for the enforcement of judgments and orders should be unified (even if there is not to be a unified civil court

generally) received widespread and virtually unanimous approval among consultees, including those on both sides of what might be described as the enforcement debate, that is those representing the interests of judgment creditors and judgment debtors. It might be thought, therefore, that I need do little more in this final report than firmly recommend it. But that simple outcome is complicated by the following three factors.

10.4. First, it was not necessarily an assumption of those who supported this proposal during consultation during Stage 2 that I would conclude, as I have done, that there should be no general unification of the civil courts, but rather the creation of a third, namely the Online Court, in addition to the continuing High Court and County Court. Consultees may have been supportive, opposed to, or indifferent about that outcome. I need therefore to justify recommending simultaneously the continuation of a non-unified civil court system alongside a unified service for enforcement.

10.5. Secondly, there is no doubt that a unification of this kind would, although I think simple in outcome, involve no small amount of work on changes to procedure rules, and even (although I have not studied this in depth) some primary legislation. I acknowledge that there is a significant amount of primary legislative change associated with the Reform Programme, and that the resources of MoJ policy officials and parliamentary draftsmen, let alone parliamentary time, are not unlimited.

10.6. Thirdly, unification of enforcement will necessarily break down some of the existing barriers to the use of particular methods of enforcement, such as HCEOs for execution over goods and possession of homes, which some consultees regard as affording important and appropriate protection, in particular to vulnerable classes of judgment debtor. More generally, and as anticipated in IR 10.7, unification of enforcement necessarily requires a choice to be made as to the appropriate enforcement measures available under a unified service, and in particular a choice between different measures currently available as between the High Court and the County Court.

10.7. Taking those matters in turn, I am satisfied that a unified enforcement service can lie comfortably and appropriately alongside non-unified civil courts. As explained in IR 10.3-4 (at a time when my provisional view already was that there should be no unified civil court generally) there is a fundamental disconnect between the issues which may have to be addressed in determining disputes leading up to a judgment, and issues arising in relation to enforcement of that judgment. The disconnect is at its greatest in relation to money judgments (and money orders, such as orders for the payment of costs), but less marked in relation to non-monetary obligations, such as compliance with an injunction or with an order for specific performance.

10.8. For the reasons set out in chapter 8, I consider that separate civil courts continue to be much the preferred structure for allocation of cases about different issues, where the complexity of our civil law requires ever-increasing judicial specialisation. But once a money judgment has been obtained, and is not stayed (for example pending appeal) then the issues which may require judicial attention in relation to its enforcement are essentially connected with

the assets and resources of the judgment debtor, together with other, sometime sensitive, matters such as vulnerability to the loss of a home. Those issues will usually have little or nothing to do with the issues which (in a contested case) had to be resolved prior to judgment.

10.9. I have already acknowledged that unification may require a significant amount of change, including amendment and replacement, of relevant rules and legislation. The question here is whether the benefits of unification could be achieved by some other means, that would make this work unnecessary. It has, for example, been suggested that substantially all the benefits of unification could be achieved by requiring all applications and communications for or about enforcement to be channelled through a single Portal, regardless of the court to which they relate, by harmonising the procedures for enforcement between the relevant civil courts, so that they all could be undertaken, regardless of the court concerned, by the same IT, the same back office staff and Case Officers, and the same judges, and even in a single location. The process would, it is said, treat the identity of the court concerned as an irrelevance.

10.10. Some consultees have even suggested that enforcement need not be regarded as a court function at all, even if disputes occasionally arising during an enforcement process needed to be sent to a court from time to time for resolution. A similar model has recently been adopted for debtors' own petitions in bankruptcy.

10.11. There are in my view a number of problems with that analysis. The starting point is that enforcement is inherently a court process. The majority of civil claims already come to the court for enforcement rather than for the resolution of any dispute. These include most of the bulk claims, sent electronically to the Northampton Bulk Centre. Many methods of enforcement, particularly against individuals, have consequences for them, depending upon how they are implemented, which means that the public rely upon the courts to ensure that enforcement is fair, just and socially acceptable, and that enforcement against the judgment debtor does not interfere with the rights of third parties where, for example, a possession or charging order is sought to be imposed upon or enforced in relation to a house in shared ownership or occupation by persons other than the judgment debtor.

10.12. It is therefore of prime importance that enforcement applications, and communications about enforcement, are made to a court and dealt with under judicial supervision, and by judges in the event of disputes, rather than merely to a government service or even (as some have suggested) a privatised service.

10.13. It follows therefore that the erection of a common Portal for enforcement does not by itself generate the benefits of unification, nor does the harmonisation of different enforcement processes as between the different originating courts. Just as I have described the Portal as an essentially brainless gateway through which proceedings are issued into a court (see chapter 8) the same would be true of a single Portal for enforcement, so that unification in practice would not be achieved by the Portal unless the communications were thereby made to a single court for enforcement purposes.

10.14. There is substance in the fear of some consultees that unification without more would break down existing barriers which are perceived to protect vulnerable classes of judgment debtor from certain types of enforcement, such as by HCEOs, which are widely perceived to give rise to risks of unduly harsh treatment, even though the extent of these risks is vigorously challenged by those consultees representing, and making widespread use of, HCEOs and EAs. It is also true that several types of claims against classes of vulnerable debtors can only be made in the County Court, either because the value of the claim is below the High Court threshold, or because the County Court has exclusive jurisdiction (as it does in relation to many types of claim for possession of residential property).

10.15. But these barriers are, at present, a very imperfect form of protection. Any County Court judgment over £600 can be transferred to the High Court for enforcement. The same is true for orders of possession of residential property, and private landlords regularly seek and obtain orders for transfer of orders for possession to the High Court, precisely because the large delays occasioned by using the under-performing County Court bailiff service means that landlords fear serious loss of rental income (or use) of their properties following the obtaining of judgment.

10.16. By contrast, other barriers to particular types of enforcement are imposed by primary legislation, which would be unaffected by unification of enforcement, or which could easily be replicated. An example is the prohibition of enforcement otherwise than by County Court bailiffs of judgments arising from Consumer Credit Act regulated agreements.

10.17. More generally, I consider that appropriate restrictions upon the use of particular types of enforcement would much better be achieved by legislation or procedure rules specifically designed for the purpose, than by barriers which depend upon the court in which the judgment was obtained, and which are in any event permeable and less than fit for purpose.

10.18. For all those reasons, I remain persuaded that unification of enforcement procedures within a specific single court is well worthwhile, notwithstanding the retention of separate courts for the determination of disputes, and that the benefits of unification of enforcement make it well worth undertaking the potentially intricate work of rule and legislative change which may be required.

10.19. That said, if current pressures upon those who would have to undertake such work make it impracticable in the short term, harmonisation of enforcement processes notwithstanding the retention of separate courts for it is nonetheless well worth pursuing as a second-best solution, provided that it is understood as a matter of principle that the whole of the process is a court process, requiring judicial supervision, and the judicial determination of any relevant disputes. In particular harmonisation of processes, and the use of common IT, and perhaps even judges authorised to supervise and sit in more than one court for the purpose, may pave the way to eventual unification at a time when the requisite resources permit, and will in the meantime reap some, but in my view by no means all, of the prospective benefits.

10.20. The goal of unification of an essentially court process necessarily requires it to be decided

what court should be used for the purpose. The theoretical options are to use one of the existing courts (the High Court or the County Court) or the new Online Court, or a new enforcement court formed for the purpose. Analysis of this question (which has not been ventilated to any significant extent during public consultation) has led me and my Hard Working Group to the clear conclusion that the County Court should be used for this purpose, that is for the enforcement of judgments and orders of the High Court, the County Court and the Online Court. The establishment of a yet further new court should be a last resort, and offers no particular advantage. The Online Court would be no better placed in relation to enforcement than a new enforcement court. In a competition between the County Court and the High Court, the County Court is the obvious winner, for the following reasons:

10.20.1. Issues arising on the enforcement of money judgments are most unlikely to call for the specialist judicial expertise characteristic of the High Court.

10.20.2. The more generalist County Court is already widely established across the country, in sharp contrast with the High Court, and therefore well-placed for the supervision of types of enforcement, such as possession of land and execution over goods, which take place at defined geographical locations.

10.20.3. The County Court already has, but the High Court does not have, established business centres from which the centralised supervision and management of other forms of enforcement, such as charging orders, attachment of earnings or third party debt orders can best be administered on a digitised and centralised basis. Indeed, digitisation and centralisation of some of those processes has already begun there, and (albeit that it is very early days) appears to be progressing satisfactorily.

10.20.4. The County Court lies between the Online Court and the High Court in terms of the likely value of the money judgments and orders calling for enforcement.

10.21. There would nonetheless need to be a permeable membrane between the County Court and the High Court for enforcement purposes, just as there needs to be between the Online Court and the County Court for determination of less straightforward disputes, so that disputes about enforcement which really do call for High Court judicial expertise can readily be sent there for determination. These are likely to include disputes about cross-border enforcement[21]. It may well be that enforcement of adjudication awards in the construction industry should only be enforced by the TCC. I am proposing no change to the procedure for the enforcement of arbitration awards, for which applications are directed mainly to the Commercial and Mercantile Courts, save where the subject matter otherwise requires.

Rationalisation, Digitisation and Centralised Enforcement

10.22. IR 10.9 contains my summary of reasons why (in my then provisional view) centralisation and digitisation offers important opportunities to improve enforcement processes, beyond

21 see for example *Taurus Petroleum v SOMO* [2015] EWCA Civ 835

those which may already be regarded as work in progress. The main advantages are the provision of an improved service to those seeking enforcement (by the use of interactive online forms that help applicants avoid or correct errors), a great increase in the speed of the administrative parts of the process, and the removal of a great deal of routine form-checking and other box work from the workload of District Judges and Masters, which does not begin to warrant the deployment of their experience and expertise.

10.23. These potential advantages were fully recognised by all those consultees who commented upon them, subject only to the requirement, with which I agree, for continued judicial supervision of enforcement processes, to the extent appropriate to ensure that they are applied justly and with due regard to the vulnerabilities of judgment debtors. Transfer of enforcement-related functions from judges to Case Officers potentially raises the same concern as does the same process more generally, as is addressed in chapter 7 above. But again, adherence to the principle that Case Officers should be judicially controlled, trained and actively supervised should in my view ensure that these concerns are adequately addressed.

10.24. I therefore recommend without qualification that rationalisation, centralisation and digitisation of enforcement processes, to the maximum practicable extent, be pursued, based on the encouraging example already in progress in relation to charging orders and attachment of earnings. The detail of these processes is beyond the scope of this structural review.

Retaining the Best and Discarding the Worst

10.25. There are some enforcement processes which are available only in one court rather than another. An example is attachment of earnings, which is only available in the County Court. It seems to me clear that, in principle, all enforcement processes currently available in the separate courts should be available in a unified enforcement court. If unification is not to be pursued, the same principle would suggest that processes available only in one court should be extended to the others.

10.26. There is a quite separate question what enforcement processes should be available in relation to judgments and orders made in the new Online Court, if there is not to be a unified single court for enforcement. In that event, it seems to me that the obvious solution is to provide (in the primary legislation creating the new court) for its judgments and orders to be, for all purposes relating to enforcement, treated as County Court judgments and orders. For my part, I cannot see why any process for enforcement currently available in the County Court should not be made available for the enforcement of the orders made in the new Online Court, subject only to any statutory restrictions relating to particular types of judgment debt.

10.27. A much more difficult question, under this heading, relates to the different processes for physical enforcement (that is execution against goods and possession of land, including homes) currently available in the High Court and the County Court. The High Court uses HCEOs. The County Court uses its employed bailiff service. I would add that there is a third

mode of enforcement, by Enforcement Agents (formerly called certificated bailiffs) for the enforcement of judgments in the Magistrates Courts, which include not merely fines and other matters arising out of criminal proceedings, but orders arising from failure to discharge what most would regard as civil liabilities, such as council tax. Enforcement Agents also play a major part in the enforcement of High Court judgments and orders, as agents for HCEOs.

10.28. There has been a wide ranging debate during Stage 2 about which of these various modes of physical enforcement are better, vis-à-vis each other, both generally and for the enforcement of particular types or values of judgment. The debate may be baldly summarised by saying that most judgment creditors would prefer the HCEO/EA model to be available for the enforcement of all kinds of judgments and orders, or at least available in competition with the employed County Court bailiff service, so that judgment creditors have a choice. Those representing judgment debtors have proposed that a unified enforcement court should simply offer a version (improved if necessary) of the current County Court bailiff service.

10.29. The main arguments of the judgment creditors (put forward uniformly by the largest and the smallest within that class) including both the Civil Court Users Association and individual small business consultees, are that although the privatised services of HCEOs and EAs are more expensive, and perhaps excessively so for very small debts, they are both much speedier and more effective modes of enforcement, compared with the under-funded, under-staffed and under-motivated County Court bailiffs.

10.30. The main arguments on behalf of the judgment debtors are that the privatised services are so expensive that a modest debt can be more than doubled, in its burden upon the judgment debtor, by the accrual of enforcement fees, and that despite a recent regulatory regime imposed by means of the Tribunals Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013, some privatised enforcement officers and agents still commonly enforce in ways involving unfairness and oppression for vulnerable judgment debtors, and a high continuing level of complaints.

10.31. These opposing arguments were advanced, both in writing and at consultation meetings, with force, skill, persistence and vigour. The rival propositions were all in dispute, save only for the often repeated assertion that the County Court bailiff service suffers from unacceptable delays, which went entirely unchallenged. This serious blight upon the quality of that service appears to be caused by under-investment, and it calls for urgent attention.

10.32. The resolution of the issues raised by this wide-ranging debate extends, as I have said, well beyond my terms of reference and I am in any event ill-equipped in terms of both time and resources to offer any resolution of them. All I am able to say, by way only of negative recommendation, is that if progress is made towards either the unification or harmonisation of enforcement processes, it would be wholly unsatisfactory to provide only for physical enforcement by state-employed bailiffs on the County Court model, for as long as their service continues to be, as is unchallenged, gravely afflicted in its quality by delays and under-performance. Whether the lack of a remuneration structure based in any respect on successful outcomes is also properly to be regarded as a defect in the County Court bailiff

service is not something upon which I consider that I am equipped to reach any conclusion. Nonetheless there is at least a real risk that an increase in resources for the County Court bailiff service sufficient to eradicate the current delays would not necessarily deal with all its alleged defects, by comparison with the more incentivised private service offered by HCEOs and EAs.

10.33. Finally, although the current regime, uncomfortably split between the services of state employees and private contractors, is the product of relatively recent legislation and regulation, the dissatisfaction on all sides with that compromise seems to me to justify subjecting it to a detailed bespoke review, as soon as resources for that purpose permit.

Placing Responsibility for the Provision of Information about Assets and Resources upon the Judgment Debtor

10.34. At IR 12.30.4 I raised for consultation whether there should be a default assumption that judgments and orders for payment of money should themselves require a judgment debtor who fails (or who is unable) to pay the debt within the stated time to take initial steps to facilitate enforcement, such as disclosure of assets and income resources, rather than leave the judgment creditor to have to take the initiative, as at present. This proposal received a mixed reception in consultation. There was a widespread view that the current procedure for obtaining such information from judgment debtors was slow, unwieldy and old fashioned, so that it could at least be greatly improved by rationalisation and digitisation. Some suggested that use could be made by way of precedents of the draft debt Pre Action Protocol, which contains a Common Financial Statement/Standard Financial Statement process designed to provide similar information to prospective claimants, so as to avoid unnecessary proceedings. Alternatively, the online debt solutions project being advanced by the Insolvency Service was put forward as another useful precedent.

10.35. Although there was no general objection on behalf of judgment debtors to being required to take more of an initiative towards disclosing assets and resources, concern was expressed about data protection issues, and about any automated link between enforcement processes and information about judgment debtors held by other government agencies. This was the only new process which might flow from digitisation.

10.36. A more general concern was raised to the effect that many debt claimants are content to obtain a judgment without themselves taking any steps towards its enforcement, either because of the adverse effect upon the debtor's credit rating (and therefore the deterrent effect of the proceedings) or because many judgment creditors simply sell their judgment debts, leaving them for enforcement by specialist buyers, and therefore potentially rendering up-front provision of financial information by the judgment debtor a worthless and in some cases commercially damaging encumbrance.

10.37. Another objection to the proposal was that if money judgments routinely imposed such a requirement upon judgment debtors, then creditors would be left with the stark alternative

of pursuing an application to commit the debtor as the only real sanction for default in providing the required information, whereas the current, more nuanced, process at least brought home to debtors minded initially to put their heads in the sand that a process was beginning which might eventually lead to that outcome, with a better prospect of achieving the debtors' co-operation in the meantime.

10.38. Faced with that mixed response I do not feel able to turn this proposal into a firm recommendation. Nonetheless it seems to me that the principle of transferring the initiative to disclose assets and resources to a debtor who does not intend to comply with a money judgment, and takes no steps to seek time for payment by instalments, is essentially right. Converting that principle into a practicable proposal which meets the various reservations and concerns which I have summarised is, again, beyond the scope of this structural review.

11. Boundaries

11.1. In IR chapter 11 I identified certain boundary issues, between the civil courts, as the subject matter of my review, and the Family Courts and Tribunals, and between the civil courts and ADR, primarily in order to raise them as matters for consultation and debate during Stage 2. Each of those boundaries received some attention during consultation but they remained, perfectly properly, matters on the edge of my review.

11.2. It is therefore appropriate that I deal only in outline with these boundary issues. Generally, they involve matters which go well beyond my experience and expertise, and that of my Hard Working Group. Most of them are being looked at by subject-matter experts better placed than me to bring forward detailed proposals. As indicated in IR chapter 11, there are already proposals being prepared (in different stages of advance) in relation to most of the matters which I there identified. In this chapter, I will largely confine myself to comment upon the implications of those proposals for the existing civil courts, rather than upon their implications for the Family Courts and Tribunals to which they relate.

11.3. One issue, not adverted to at all in the IR, affects the boundaries between Civil and both Family and Tribunals. That is the extent to which, in the development of digitisation generally, and the design of a new LiP orientated Online Court, benefits may be expected by approaching aspects of the task on a common jurisdictional basis, that is by looking across Civil, Family and Tribunals, rather than at each jurisdiction separately. Analysis of this question appears in a new, final section to this chapter.

Civil and Family

11.4. In IR 11.2-7 I provisionally recommended that the Family Court be given Inheritance Act and TOLATA jurisdiction, so as to put right what appeared to have been an omission at the time of the creation of that court. I recommended it as a shared rather than exclusive jurisdiction because, in relation to both those types of claim, there is a broad spectrum between claims closely allied to the mainstream of the work of the Family Court, and claims much more closely allied with traditional Chancery jurisdiction in relation to disputes about wills and probate.

11.5. These provisional recommendations provoked no significant response during Stage 2, either by way of approval or disapproval. I am content to assume that there was nothing inherently wrong in my provisional recommendations. The only theoretically contentious aspect is whether jurisdiction in relation to TOLATA and Inheritance Act claims should be assigned exclusively either to the family or civil courts. For the reasons already given, which mirror those which underlie the similar proposal in relation to the Property Tribunal (see below), I consider that the preservation of shared jurisdiction, in a way which ensures that the whole of any particular dispute can be fully dealt with in one set of proceedings in one court or the other, is preferable to attempts to carve out exclusive jurisdiction in relation to a

subject which, by its nature, straddles the two.

Civil and Tribunals

11.6. There are, again, two specific items under this heading, namely:

11.6.1. The boundary between the work of the County Courts and the Property Chamber of the First tier Tribunal ("the Property Tribunal").

11.6.2. The shared jurisdiction of the civil courts on the one hand and the Employment Tribunal and Employment Appeal Tribunal on the other.

There has been significant progress during the period of this review by others, more expert than me, in developing proposals in relation to both these topics, since publication of the IR. I will address them in turn.

County Courts and Property Tribunal

11.7. At IR 3.57-60 and 11.9 I noted the work being carried out for the Civil Justice Council on this subject, together with a pilot scheme designed to facilitate the transfer of suitable cases between the County Court and the Property Tribunal. A final interim report was delivered to the CJC in May 2016 and has since been published.[22] I will call it "CJC Property Report". It is, if I may respectfully say so, an excellent example of the specialist work commissioned in recent years by the CJC. In this case, it was prepared by a highly qualified team of specialist judges, court users and academics headed by Siobhan McGrath, the President of the Property Tribunal.

11.8. The main recommendations of the CJC Property Report are as follows:

- A list of specified property disputes where flexible deployment can be used should be drawn up for consideration by the Lord Chief Justice and the Senior President of Tribunals.
- In the case management of such cases, judges should decide whether the court or the tribunal is the most appropriate forum
- The County Court and the Tribunal should have the power to transfer cases to each other and
- The County Court and the Tribunal should have the power to retain cases that they would otherwise have had to transfer.
- In deciding whether to retain or transfer a case, judges should take into account: the need to avoid a multiplicity of proceedings; proportionality; the desirability for the case to be decided by those with expertise in property matters and the parties' funding arrangements.

The Report makes the following additional recommendations for further work, with a view to the

22 https://www.judiciary.gov.uk/wp-content/uploads/2011/03/final-interim-report-cjc-wg-property-disputes-in-the-courts-and-tribunals.pdf

preparation of a further report by September 2016.

- The pilot deployment project currently being undertaken by the Tribunal;
- A provisional list of specified disputes;
- A protocol for the procedures to be adopted in transferred and retained cases;
- Recommendations in appropriate cases for the designation of Tribunal centres as County Court offices;
- Recommendations for the ticketing and training of judges;
- Opportunities for the enhancement and co-ordination of IT support for deployment;
- Recommendations for ADR in property disputes;
- Engagements with HMCTS in respect of practice and procedure

11.9. The CJC Property Report makes reference to, and applies, my preliminary views about the project in IR 3.57-58 and 11.9, and adopts the same guiding principle that every dispute should be capable of being resolved by a single set of proceedings in one court. Rather than pursue the theoretically ideal objective of creating a new court with exclusive jurisdiction for a particular subject matter, it recommends giving effect to the above principle by appropriate provisions for the issue and transfer of cases in and between courts with shared jurisdiction, and the cross-deployment of appropriately trained and ticketed judges.

11.10. It will be apparent that the CJC Property report sets out in considerable detail a solution to the problem of shared jurisdiction to which I have referred under the previous Family Court heading, by reference to a principled approach with which I wholly agree, at least in the context of an environment in which, quite recently, it has been thought fit that jurisdiction in relation to particular areas of litigation should be shared between a non-specialist County Court and a specialist tribunal. There may come a time at which a more fundamental review of the tribunal structure leads to a readiness of government to legislate for a more thoroughgoing re-alignment, at least of those parts of the tribunal structure which deal with disputes between private parties, rather than disputes between a private party and the state, in the context of which the creation of a specialist housing court with exclusive jurisdiction might be appropriate. But as matters stand I commend both the reasoning and the recommendations of the CJC Property Report without reservation.

Employment Tribunal and Employment Appeal Tribunal

11.11. At IR 11.10-19, I provided an initial analysis of the pros and cons of three possible ways forward for the Employment Tribunal namely:

11.11.1. Leaving it (and the Employment Appeal Tribunal) uncomfortably stranded between the Civil Courts and the main Tribunal Service.

11.11.2. Bringing both Tribunals broadly under the wing of the structure of the civil courts.

11.11.3. Making both Tribunals part of the Tribunal Structure, as First tier and Upper Tribunals respectively.

I also touched briefly on the question whether the EAT should be given its own first instance jurisdiction for cases of the highest complexity and public importance. I concluded at IR 12.31 that others would be likely to have a more important and decisive influence on these large questions than me. I remain of that view.

11.12. Nonetheless, I received a large amount of well informed and detailed response during Stage 2, mainly in writing, but also at some meetings, in particular with the Employment Law Bar Association. I also learned, indirectly and a late stage, that there was apprehension in some quarters that the concept of a convergence between the ET (and EAT) and the civil courts might lead to the adoption for employment litigation of the Civil Procedure Rules and, more generally, the culture of the civil courts, even extending to the use of wigs and gowns by counsel.

11.13. Let me begin by doing all I can to dispel that concern. At IR 11.18 I said:

"There is no reason why bringing the ET and the EAT within the Civil Courts Structure should mean that the CPR would have to be applied to them. I have already explained why I consider it strongly arguable that the new OC should have its own bespoke rules, and the ET's Procedure Rules may be a useful source of assistance in their formulation."

I firmly adhere to that view. The ET has over many years developed its own distinctive culture, procedure and rule structure, adapted in particular for accessibility to litigants in person. Although the law which governs disputes within the jurisdiction of the ET has grown immeasurably in detail and complexity since the ET was first created, to the extent that employment disputes are legally driven to a degree which the progenitors of the tribunal could not have imagined, it would nonetheless plainly be a retrograde step if a convergence with the civil courts was accompanied by the adoption of the CPR, or of a culture in which lawyerish language inhibited its navigability by litigants without lawyers. The answer to legal complexity in this field continues to lie in the deployment of appropriately trained and experienced expert judges, who need to be able to apply complex law to factual disputes without, necessarily, having the assistance of lawyers in every case, or even in a majority of them.

11.14. Subject to that important clarification, the concept of a convergence between the ET and the civil courts, both of which deal primarily with disputes between private parties rather than between a private party and the state, attracted substantial support from consultees during Stage 2, including the support of the specialist employment judiciary, professional stakeholders and the Discrimination Law Association.

11.15. Generally, the manifestation of that concept particularly supported was the creation of an Employment and Equalities Court, as a civil court with specialist judiciary, forming

part of the civil court structure, but with exclusive jurisdiction in relation to employment and equality disputes, its own rules, procedure and culture, and a route of first appeal to the EAT as a specialist appeal court. Some consultees, such as the Employment Lawyers Association, favoured the re-structuring of such a court along the lines of the Law Society's tiered proposal: summarised at IR 3.62. There was no significant support for leaving the ET and the EAT in their state of current isolation, and the third alternative of a merger with the Tribunal Service was, to the extent that it was supported at all, treated as a workable rather than preferred alternative to a convergence with the civil courts.

11.16. I will probably disappoint some consultees (having regard to the admirable detail of their responses) and relieve others (because of my lack of expertise in this area) by failing or at least declining to enter into the detail of the consultation responses which I received, still less seeking to resolve issues revealed by a comparison between them. These are all matters being actively considered by the relevant judiciary and stakeholders. I will confine myself to the following short observations, which I offer by way of assistance rather than firm recommendations.

11.17. First, I note that the leading proposal for an Employment and Equalities Court differs from the current proposals for dealing with shared jurisdiction issues between Civil and Family, and between the County Courts and the Property Tribunal, by being in its essentials a proposed court with exclusive rather than shared jurisdiction. I can see the force in the general thrust of this proposal, and I recognise that the considerations which have led to my preference for a shared jurisdiction solution in relation to TOLATA, Inheritance Act and other property work may not have the same force in relation to employment and equality matters. But I would add two caveats.

11.18. The first is that an exclusive jurisdiction solution assumes a readiness for primary legislation and wide ranging structural change at a governmental level (including both MoJ and BIS) which may not currently be available, both because of constraints upon the requisite time of policy makers, parliamentary draftsman and legislators, and because of possible political objections, yet to be explored. If that wide ranging change, involving the creation of a wholly new court, is unattainable in the short or even medium term, then it seems to me that it will nonetheless be necessary to address the unsatisfactory jurisdictional limits which currently prevent many employment cases being dealt with, in full, in the civil courts or in the ET, in much the same way as jurisdiction sharing solutions are being used in relation to property work. There is already developing cross-deployment of the requisite specialist judges which should make that solution, albeit second best in the eyes of most, nonetheless well worth pursuing.

11.19. Secondly, I would observe that there are some aspects of what may loosely be described as employment law which have traditionally been resolved in the civil courts, and which may be found as part of the subject matter of a wider dispute between the parties, the whole of which could not easily be accommodated in a new Employment and Equalities Court. I have in mind, for example, a dispute about the interpretation or lawfulness (as a restraint of trade) of covenants restricting the activities of an employee during or, in particular, after

employment, which depend upon the law about restraint of trade, and which commonly arise in disputes between businesses, where one has inherited the services of one or more employees from the other in circumstances giving rise to claims about misuse of confidential information, intellectual property and business goodwill. In defining the types of dispute within the exclusive jurisdiction of an Employment and Equalities Court, it would be necessary carefully to exclude issues of that kind, lest the creation of a new court with exclusive jurisdiction give rise to the same problems of being unable to determine the whole of a dispute in one court, that currently bedevil the civil courts, the Family Court and the specialist tribunals at the moment.

11.20. Leaving aside shared or exclusive jurisdiction, my second area of comment concerns the question whether to give the EAT a first instance jurisdiction of its own, separate from that of the ET (whether or not they are transformed into an Employment or Equalities Court structure). This was a suggestion, canvassed in the IR, which met with varying responses from which no general thrust, for or against, could be identified. There was an understandable concern on the part of the ET judiciary that top-slicing part of their existing jurisdiction would take away from them some attractive cases of the highest complexity and public importance, with which they were accustomed to deal, and for which they had the requisite expertise. Other consultees thought that a structure similar to that which separates the High Court and the County Court, pursuant to which cases of the greatest complexity and public importance went straight to the EAT (with a first appeal, rather than second appeal, to the Court of Appeal) would nonetheless be appropriate, and would cause no significant diversion of an attractive part of the caseload from the ET judges.

11.21. I merely note these differences of view. I continue to think that, however structured, there is a case for a top-tier of employment and equalities work to be directed towards a court with judges of High Court seniority and experience, with a first appeal to the Court of Appeal, but I am content to leave that question, and the identification of an appropriate boundary, to those better qualified to resolve

Civil and ADR

11.22. This is a boundary which I dealt with very briefly indeed at IR 11.20-21. The only aspect of it about which I invited further consideration was whether it would be appropriate to introduce some adaptation of the MIAM (Mediation, Information and Advice Meeting) within civil litigation generally, so as to increase the prospect that parties undertake mediation or other forms of ADR before the issue of proceedings. In so doing, I consider that I confined my review of this boundary too closely.

11.23. I have set out in chapter 2 of this report my current perception, in the light of further consultation and research during Stage 2, that the boundary between Civil and ADR is probably only satisfactory in cases of the highest value, and that there are distinct shortcomings in the availability and use of pre-issue ADR for cases of modest and low value, caused in part by the abandonment of court sponsored or supported mediation schemes

and the abandonment of the National Mediation Helpline, albeit partially masked by the effect of the large increase in issue fees postponing the point at which, while still incurring disproportionate costs, parties actually take the step of issuing proceedings, and therefore the apparent increase in pre-issue mediation.

11.24. I have in chapter 6 of this report made recommendations for a substantial widening in the scope for making different types of conciliation available within stage 2 of the Online Court, as one means of making good this deficiency, going substantially further than the provisional recommendations I made in the IR. Nonetheless there remain deficiencies above the proposed £25,000 ceiling for the Online Court's proposed jurisdiction, and deficiencies in relation to types of case which are not intended to be accommodated by the Online Court at all, such as personal injuries (above the small claims threshold), clinical negligence claims, and claims for non-monetary remedies. Experienced representatives of the mediation community have suggested that, in terms of value at risk, cases between £10,000 and about £250,000 fall within that area for which there is as yet insufficiently effective provision for pre-issue ADR.

11.25. There is a limit to which a review of the structure of the civil courts can provide a comprehensive solution to this perceived deficiency, not least because, apart from the limited provision of a stay to enable the parties to attempt ADR, and the proposals for culturally normal conciliation within the new Online Court, the court's role is limited, in particular at the pre-issue stage.

11.26. Nonetheless, I do consider that a perceived gap in provision between £10,000 and about £250,000 is well suited to being addressed by re-establishing the court-sponsored, relatively low cost mediation services which were formally provided in many County Courts after hours (by private suppliers using free provision of court premises). It was most unfortunate that an active provision of ADR at this level (typically suitable for claims in the County Court) was first superseded by a national service on the basis that it had previously been perceived to be patchy, geographically speaking, and then the national service closed down after only a short period of operation for reasons not obviously connected with its effectiveness .

11.27. I therefore recommend that steps be taken to re-establishing the after-hours provision of mediation facilities in County Court hearing centres. I understand that preliminary thinking about doing so is now being undertaken at the CLCC. This is, in my view, a very welcome development.

11.28. I have also been persuaded by demonstrations of ODR platforms in British Columbia and the Netherlands, and a recent demonstration of Cybersettle, a USA designed system for confidential settlement bids online, that ODR has a much larger role to play in the settlement of civil claims of all types and value than I had previously thought.

Cross-Jurisdictional Digitisation

11.29. The Online Court is not the only new (or existing) court for which the introduction of

modern IT pursuant to the Reform Programme would provide a step-change in its ability to assist litigants with no, or with minimal, legal advice or representation. Work is already being undertaken for the same purpose within the Family Court, in the context of divorce and in the Tribunal Service in relation to a project known as SSCS (Social Security and Child Support) a part of the Social Entitlement Chamber of the FtT. The question arises how far the detail design and planning work for these three separate jurisdictions would be assisted by a joined-up approach to the process of design, and in particular to the introduction of IT.

11.30. This is not a matter upon which I was able to engage in significant consultation during Stage 2, because it emerged as a potential issue only very late in the process. It is undoubtedly a boundary question, and I therefore offer some tentative principles by which it might best be resolved.

11.31. First, there is plainly no real prospect that a single court or entity could be developed which would work satisfactorily across all three jurisdictions. Although Civil and Family both focus upon disputes between private parties, the SSCS jurisdiction is mainly concerned with disputes between private parties and the state. The legal issues and levels of complexity are entirely different across the three jurisdictions. In short, each needs bespoke design, focussed upon achieving what is best for that jurisdiction, rather than a compromise 'one cap fits all' solution which, in reality, serves none of them well.

11.32. Subject to that, there is obvious advantage to be gained by a cross-jurisdictional common approach to the identification of the most suitable IT systems and platforms, with a view to using substantially the same one for each, albeit with bespoke variations. Savings and efficiencies are bound thereby to be improved, and there are numerous functions which, for all purposes, are common to each jurisdiction. Examples are the logging of personal details and passwords, payment of fees, systems for uploading electronic documents and smart-phone prompts provided to litigants as deadlines for taking specified steps approach.

11.33. Secondly, there is a very important community of interest between the three jurisdictions in developing a common approach to LiP-intelligible language. This is an area where both the Family Court and the Tribunal Service is currently well ahead of the civil courts, in the drafting of their own rules and forms, but there is no particular reason why a language which is the best that can be made intelligible to the ordinary users of the civil courts should be in any material respect different from that best suited to users of the Family Court and to the non-state users of the Tribunal Service.

11.34. Steps are already being taken to include within the forthcoming primary legislation a modified rules committee designed specifically to oversee the making of new, minimal, LiP intelligible rules for all types of Online Court. Provided that sufficient attention is given to the detailed bespoke requirements of each (such as to the structure and language of stage 1 of the civil Online Court) I consider that this element of cross-jurisdictional co-ordination is very welcome.

12. Final Conclusions and Recommendations

12.1. Most of this final chapter is taken up with a list of detailed recommendations which I now make, having concluded the extensive research, consultation and analysis which has characterised this review. That list contains cross-references to the earlier passages in this report which explain and justify each detailed recommendation.

12.2. The requirement for detail in such a list means that it inevitably risks failing to see the wood for the trees, as an expression of my overall conclusions, which now follow.

Overall Conclusions

12.3. The judges, managerial and administrative staff of the civil courts of England and Wales continue to provide a world-class justice service to those with civil disputes, and those needing the courts' assistance in the enforcement of rights and obligations, even if not disputed.

12.4. The quality of this service is marred by five main weaknesses. The first is the lack of adequate access to justice for ordinary individuals and small businesses due to the combination of the excessive costs expenditure and costs risk of civil litigation about moderate sums, and the lawyerish culture and procedure of the civil courts, which makes litigation without lawyers impracticable. The second consists of the inefficiencies arising from the continuing tyranny of paper, coupled with the use of obsolete and inadequate IT facilities in most of the civil courts. The third consists of the unacceptable delays in the Court of Appeal, caused by its excessive workload. The fourth lies in the serious under-investment in provision for civil justice outside London. The fifth consists of the widespread weaknesses in the processes for the enforcement of judgments and orders.

12.5. Taking those weaknesses in turn, the remedies for the first lie in the introduction of a new Online Court, broadly in the manner being pursued by the HMCTS Reform Programme, and an extension in the regime for fixed recoverable costs which, not being a structural change, falls outside the scope of this review. These remedies are complementary.

12.6. The Online Court project offers a radically new and different procedural and cultural approach to the resolution of civil disputes which, if successful, may pave the way for fundamental changes in the conduct of civil litigation over much wider ground than is currently contemplated by its first stage ambition, to resolve money claims up to £25,000 subject to substantial exclusions.

12.7. Its success will be critically dependent upon the painstakingly careful design, development and testing of the stage 1 triage process. Without it, it will offer no real benefits to court users without lawyers on a full retainer, beyond those inadequately provided by current practice and procedure. Pioneering work in British Columbia suggests that it will be a real

challenge to achieve that objective by April 2020, but one which is well worth the effort, and the significant funding budgeted for the purpose.

12.8. The success of the Online Court will also be critically dependent upon digital assistance for all those challenged by the use of computers, and upon continuing improvement in public legal education.

12.9. The second weakness, reliance on paper and obsolete IT, is intended to be fully addressed by the second main plank of the Reform Programme, so far as it affects the civil courts, namely the digitisation of all the processes of those courts. My research during this review gives me very considerable confidence that this challenging project will succeed, although of course not without teething troubles. The progress made with Ejudiciary, CE File in the Rolls Buiilding and the DCS system in the Crown Court persuades me that, on a clear balance, the concerns naturally arising from past government-sponsored IT failures will be overcome. It is therefore appropriate to approach issues about the structure of the civil courts on the working assumption that, probably, but not certainly, those courts will be essentially paperless, and supported at every stage by up-to-date IT by the end of the Reform Programme, provided that the funding for it continues to be available.

12.10. The reforms (now largely implemented) to the practice and procedure of the Court of Appeal provide a platform upon which its chronic overload and consequential delays may be addressed, albeit that the current backlog of pending work will take several years to reduce to a level consistent with achieving reasonable hearing times. But that improvement cannot simply be taken for granted. Its achievement will depend upon meticulous management, and upon the continued discharge by the court's judges of an exceptionally heavy workload without undue distraction in the form of leadership and administrative responsibilities.

12.11. Under-investment in the provision of a civil justice service outside London has reached a critical stage, particularly in the wholly inadequate provision of Circuit Judges for civil work, and the constant prioritisation of the requirements of the Family Court over those of the civil courts. That under-investment causes, in turn, an excessive concentration of cases in the High Court and in London in particular, which do not really need to be resolved there, with knock-on adverse consequences for the availability of the High Court judiciary to assist the Court of Appeal as deputies in the discharge of its excessive workload. I make detailed recommendations for putting right this imbalance between London and regional civil justice, few of which fall within the confines of the Reform Programme.

12.12. Finally, the shortcomings in the quality of the enforcement of civil judgments and orders would best be addressed by a unification of those processes within a single court, namely the County Court, and this would more than justify the work on the amendment and tidying up of primary legislation and procedure rules necessary to bring about this entirely uncontentious objective. Nonetheless, a second best solution (if unification cannot be given sufficient Parliamentary and MoJ attention) is to achieve as much of that as possible by the centralisation, rationalisation, harmonisation and digitisation of the processes of enforcement.

12.13. I have not in this review been able to carry out a small number of the possible tasks which have arisen during the course of my work, and in public consultation in particular. These include:

12.13.1. Reaching a firm conclusion about the future of the Divisions. This was because, on more detailed examination, the issues concern all the courts, rather than merely the civil courts.

12.13.2. Researching and forming a view about the question whether the number and geographical boundaries of the DCJ areas should be changed. Time and limited resources precluded this.

12.13.3. The question whether the reforms to the practice and procedure of the Court of Appeal should be extended to appellate processes in the lower courts. This was mainly because of the absence of the requisite detailed evidence about the effect of the appellate burden upon the judges of those courts.

12.13.4. The strengths and weaknesses of the physical enforcement services provided respectively by the High Court Enforcement Officers, the Enforcement Agents and the County Court bailiffs. This was because of the breadth and vigour of differing views, coupled with the absence of the requisite time and resources within this review to resolve the issues.

12.13.5. Boundary issues, as between the civil courts and the Tribunals in particular. These are matters best left to those better qualified than me to propose detailed solutions.

12.14. I have, in particular, not sought to deal with issues as to the extension of a fixed recoverable costs regime, as an additional solution to the inadequate access to justice weakness described above. Fixed recoverable costs is in principle and at first sight an increasingly attractive solution, but its beneficial effect depends entirely upon the detail, and upon appropriately fixing (and subsequently reviewing) the amounts recoverable for specific items of work. This is a project worthy of an entirely separate review in its own right.

Recommendations

12.15. I now set out my specific detailed recommendations.

Statisitics

1. Replacement IT systems for the civil courts should be designed with a view to providing management information about judicial time spent on the various parts of the civil workload, as collected in the Time and Motion studies of the work of the Court of Appeal (in 2015) the County Courts (in 2015-6) and the Chancery Division (in 2013), assembled automatically as far as possible and in such a way as to anonymise the individual judges concerned: (1.25-27)

Mediation

2. Re-establish a court-based out of hours private mediation service in County Court hearing centres prepared to participate, along the lines of the service which existed prior to the establishment and then termination of the National Mediation Helpline: (2.26)

Costs management

3. The CPRC should urgently consider the implications of the *Sarpd Oil* case upon the conduct of CCMCs: (5.26)

Training

4. Funding the Judicial College to provide the training for Judges and Case Officers necessitated by the Reform Programme should be treated as a priority: (5.30)

Online Court

5. The Online Court should eventually be made compulsory as the forum for cases within its jurisdiction, save where otherwise recommended and subject to the power of the court to transfer cases to a higher court on grounds of complexity or public importance: (6.16)

6. There needs to be an intensive search for, funding and development of Assisted Digital resources for those challenged by the need to access the Online Court by electronic means, rather than the preservation of a parallel paper path: (6.15 and 17). Such assistance should include the making of the Online Court accessible by tablet and smart phone rather than just desktop and laptop computers: (6.18), and serious consideration should be given to funding the voluntary agencies to expand their services to meet this requirement, as an alternative or supplement to a service provided from within HMCTS: (6.19)

7. A limited fixed recoverable costs regime should be developed for the Online Court, designed to be or contribute to an economic model for the provision of early, bespoke, affordable advice to would-be litigants on the merits of their case (including defence) from a qualified lawyer, by the use of unbundled services from solicitors and direct access to barristers: (6.22-39) A modest element of fixed costs might also support the provision of skilled cross-examination in cases really needing it: (6.39). Otherwise the costs regime for the Online Court should be modelled on that applicable to the Small Claims Track: (6.104).

8. The early start made on the design, development and testing of the knowledge engineering needed for stage 1 of the Online Court should continue to be treated as a priority: (6.61 -69).

9. £25,000 is an appropriate first steady-state ambition as the ceiling for the Online Court's jurisdiction: (6.47-54). But it should be approached in stages by a soft launch of the new court, either by using an initial ceiling of £10,000, or by launching the service of the court by reference to specific case types: (6.54).

10. Stage 1 of the Online Court should not be postponed to the development of Stages 2 and 3: (6.68).

11. The materials accessible to court users by engaging with the Online Court should emphasise that litigation should be regarded as a last resort, after using all available means of pre-issue ADR: (6.108).

12. Conciliation measures available to users at Stage 2 of the Online Court should not be limited to short telephone mediations. Case Officers should identify and recommend to parties the conciliation method best suited to their case, which may include ODR, both telephone and face to face mediation, and judicial Early Neutral Evaluation: (6.112-3 and 7.22-3).

13. The need for transparent and open justice needs to be kept under constant review as a priority in the design of the Online Court: (6.85-6).

14. The Online Court should be a new court, separate from the County Court, authorised by primary legislation, and regulated by simple rules made by a new cross jurisdictional Online Court rules committee, rather than by the CPR: (6.88-91). Limited amendment to the CPR will be needed to accommodate cases transferred from the Online Court on grounds of complexity or public importance: (6.91).

15. The Online Court's jurisdiction should extend to all money claims up to £25,000, save for specific exclusions, and should include unspecified claims: (6.92-4).

16. Claims for possession of homes (even if accompanied by a money claim) should at least initially be excluded from the Online Court: (6.95).

17. Personal Injury (including clinical negligence) claims should also be excluded if they would otherwise fall within the Fast Track or Multi-track: (6.96). But voluntary admission of PI claims which are, or are hereafter brought within, the Small Claims Track, may need to be considered: (6.97).

18. Professional (non clinical) negligence claims will also quality for exclusion on the grounds of typical complexity and asymmetry, at least until a means of having them determined by specialist judges in Stage 3 of the Online Court can be developed: (6.98-9).

19. Intellectual property claims should be excluded from the Online Court, since there exists a highly regarded specialist court, IPEC, with its own small claims track, for their determination: (6.100).

20. Claims for damages only for breach by landlords of repairing obligations should not be required to be brought in the Online Court (if they would otherwise qualify for the Fast Track), but tenants should be able to do so if they wish. Claims seeking an order that the landlords do the work, and counterclaims in response to possession claims should be excluded: (6.101-2).

21. Appeals from determinations of cases in the Online Court should lie from the District Judge in the Online Court to the Circuit Judge (or Recorder) in the County Court. Second appeals should go to the Court of Appeal. Permission to appeal should be required at both stages: (6.105). Appeals should lie on questions of fact and law: (6.106). The procedure for first appeals from the Online Court should be laid down in the new Online Court rules, not in the CPR: (6.107).

22. Two additional early stages of the process in the Online Court should be designed (beyond the 3 stages outlined in the IR). The first should alert would-be court users to

alternative forms of resolution, sources of free or affordable advice, and basic commoditised legal guidance. The second should be designed to ascertain whether there really is a dispute between the parties which the court needs to decide, or whether the claim is for enforcement of rights or obligations not in dispute: (6.108-10).

23. By-passes around detailed Stage 1 triage will be needed for parties with legal representation, or corporate litigation departments. But the by-passes will still have to generate particulars of claim which the Online Court software can read and digest: (6.111).

24. Determination of all disputes about litigants' substantive rights and duties, which cannot be settled at Stage 2, should be made by judges (usually District Judges or their Deputies) at Stage 3, by whichever of a traditional trial, a video hearing, a telephone hearing or on the documents (or by some combination of those) is best suited to the individual case, and as directed by the Case Officer, subject to the parties' right to have the mode of determination reconsidered by a judge: (6.8-9 and 7.35-8).

25. Continued improvement in the provision of public legal education should be carried out, alongside but in addition to Assisted Digital, following the lead given by the courts and voluntary agencies in California and British Columbia, as a joint activity by HMCTS and the voluntary agencies: (6.115-119).

26. The new Online Court should be called the Online Solutions Court, with a view to removing Online from the name once its continuity with the name Online Court is established: (6.120-121).

Case Officers

27. The most senior body of Court Service officers ("Case Officers") with case-related responsibilities, to whom it is intended to assign work (mainly box work) currently done by judges and who will undertake the stage 2 function in the Online Court, should all have legal qualifications and experience: (7.26-33). They might best be called Case Lawyers: (7.30).

28. All Case Lawyers (i.e. Case Officers of the type identified above) should be trained by judges: (7.34), actively supervised by judges, preferably in the same office space: (7.4-5), and answerable to the Lord Chief Justice, so as to be independent from, although employed by, HMCTS: (7.2).

29. An early decision needs to be taken about the location of Case Officers, as between hearing centres and business centres: (7.10-21). The principles which should inform that decision are (i) the need for active, face to face, judicial supervision: (7.14), (ii) the unlikelihood that supervising judges could be permanently located in a business centre, rather than on a rota basis: (7.15), (iii) the advantages of concentration of Case Officer teams to secure specialisation: (7.16), (iv) the ability to conduct different case-related functions in separate locations, made possible by breaking the tyranny of paper (7.18). The location of business centres within or near to major hearing centres may make this decision easier: (7.19-20).

30. There should be an unfettered right for a party to have any decision by a Case Lawyer (i.e. Case Officer of the type identified above) reconsidered afresh by a judge: (7.35-38).

Number of Courts and Future of the Divisions

31. There should be no general unification of the civil courts: (8.1, 8.4-24).

32. The time has come for decision about the future of the Divisions, having regard to the implications for all the courts, Criminal, Civil and Family, and the Tribunals: (8.27). This goes beyond the confines of a review of the civil courts.

33. From the perspective of the civil courts the options are: (i) abolition of the Divisions (8.30-31), (ii) moving the boundary between the Queen's Bench and Chancery Divisions, and renaming the latter to reflect its focus upon business and property work: (8.32-35) and (iii) greatly increased listing and ticketing flexibility, enabling judges to sit frequently outside their Division: (8.36-38).

34. The property work of the current Chancery Division should not be split off from the rest of its work: (8.39)

35. No change should undermine the identity or international reputation of the Commercial Court, or the other specialist courts in the Rolls Building: (8.35).

District Registries and Regional High Court Trial Centres

36. The concept of the District Registry as a place for the issue of High Court proceedings will eventually be replaced by a single Portal for the issue of all civil proceedings, and should then be abolished: (8.41).

37. In the meantime the number of issuing District Registries should be confined to the regional centres which manage and try High Court cases: (8.42).

38. The County Court at Central London should be given a short term non-issuing District Registry status (for as long as the District Registry concept survives) if that is the only way of enabling its resident S.9 judges to conduct High Court work there, provided that adequate back office facilities are put in place while case handling remains paper-based: (8.43-4).

Deployment of Judges

39. Effect should be given to the principle that no case is too big to be resolved in the regions by placing the burden of allocating a High Court judge to a category A case upon the London lists, but so that they try the case in the appropriate main regional hearing centre: (8.46-52). Arrangements for the management of those cases regionally, taking full advantage of improved video hearing technology, need also to be made: (8.52).

40. Regional resolution of specialist High Court cases should be strengthened, based upon teams of a minimum of 3 senior Circuit Judges (between Chancery, Mercantile TCC and Administrative work) in each centre, sharing lists and providing continuous cover for urgent and interim applications: (8.53-56) and specially trained back office staff: (8.59).

41. Special arrangements for the preservation and strengthening of specialist work capacity at Bristol, Liverpool and Newcastle need to be made. Liverpool should continue to be supported from Manchester. Newcastle should be better supported from Leeds: (8.57-8).

42. The reduction in the number and availability of Circuit Judges to do County Court work (outside London) has reached a wholly unacceptable level: (8.61-8). Steps should be taken (i) to increase the number for whom civil work constitutes the whole or a majority of their judicial practice: (8.69), and (ii) to ensure that all Circuit Judges doing civil work do it as a not less than 40% part of their judicial practice: (8.70).

43. The operational management gap for civil work between the Head and Deputy Head of Civil Justice (on the one hand) and the Designated Civil Judges on the other should be addressed, by one or more of the following measures (i) the appointment of regional civil liaison judges, on the Family and Chancery model, (ii) by using the same model to include only specialist civil work, (iii) by establishing liaison and a reporting line between the civil Presiding Judge in each circuit and the Deputy Head of Civil Justice, in relation to civil operational matters: (8.72-3).

Thresholds and Procedures for Transfer between High Court and County Court

44. All the remaining financial limits on the jurisdiction of the County Court should be removed: (8.75).

45. The value thresholds below which a claim cannot be issued in the High Court should be increased immediately to £250,000, with a view to a second increase to £500,000: (8.74-79). They should apply to all types of claim, with no lower limit for personal injuries as at present: (8.76).

46. Steps should be taken to ensure as far as possible that cases for which a local centre lacks the requisite expertise are transferred not to London but to any nearer regional centre with that expertise, if necessary by the imposition of a requirement that transfer to London requires the consent of the relevant London triage Judge, Master or Registrar: (8.80-81).

47. The early triage procedures now in place in the Chancery and Queen's Bench Divisions in London, and in the CLCC, should be rigorously applied to ensure that cases which do not need High Court determination are transferred to the County Court at the earliest stage: (8.82).

48. Steps should be considered to raise the status of the DCJs and to provide them with better dedicated administrative support: (8.84-86).

49. The question whether the number and location of DCJ areas should be altered remains in need of review: (8.83)

Routes of Appeal

50. There should in due course be a review of the question whether the reforms to the procedure of the Court of Appeal should be extended to cover appeals to the High Court and to Circuit Judges in the County Court, based upon better time and motion evidence than is currently available, and in the light of experience of the reforms in the Court of Appeal: (9.13-17).

Enforcement of Judgments and Orders

51. There should be a single court as the default court for the enforcement of the judgments and orders of all the civil courts (including the new Online Court): (10.3-18).

52. That court should be the County Court: (10.20). But there will need to be a permeable membrane allowing appropriate enforcement issues to be transferred to the High Court (e.g. cross-border issues), and special provision for the enforcement of arbitration awards, in accordance with current practice and procedure: (10.21).

53. If unification is currently not pursued, then centralisation, harmonisation, rationalisation and digitisation of enforcement should in any event be pursued as part of the Reform Programme. Save for physical enforcement procedures, the means of enforcement should be equally available in all civil courts: (10.22-24).

54. The use of a Common Portal for enforcement may be acceptable, provided the principle is maintained that all enforcement is a court controlled process, rather than a purely or mainly administrative process: (10.10-13)

55. Even in the absence of unification, all judgments and orders of the new Online Court should be enforced by the County Court, and be deemed to be County Court judgments and orders for that purpose: (10.26).

56. The strengths and weaknesses of enforcement by High Court Enforcement Officers, Enforcement Agents and County Court bailiffs deserves a separate review: (10.28-33). But urgent steps need to be taken to address the under-investment and consequential delays which clearly undermine the quality of the County Court bailiff service: (10.31).

57. Further consideration needs to be given to transferring the initiative for triggering the provision of information about a judgment debtor's means and resources from the creditor to the debtor: (10.38).

Boundaries

58. The Family Court should be given a shared jurisdiction (with the Chancery Division and the County Court) for dealing with Inheritance Act and TOLATA disputes: (11.4-5).

59. The proposals about resolving jurisdictional anomalies between the Property Chamber of the FtT and the civil courts set out in the May 2016 Report to the Civil Justice Council are recommended: (11.7-10).

60. There continues to be a case for convergence between the Employment Tribunal (and Employment Appeal Tribunal) and the civil courts, but the detail is a matter beyond the scope of this review: (11.11-21).

61. There is a need to fill a perceived ADR gap between small claims (served by the Small Claims Mediation service) and higher value claims, above £250,000. This may be addressed by (i) the provision of a wider range of dispute resolution services in the Online Court than just the Small Claims telephone mediation, (ii) the reinstatement of after-hours low cost private mediation services in the County Court hearing centres, and (iii) the greater use of ODR: (11.22-28).

62. The decision of HMCTS to approach the provision of IT solutions and LiP friendly language development for online courts on a cross jurisdictional basis is welcomed and recommended: (11.29-34).

Last Word

12.16. It is for others to decide which of the above recommendations should be implemented, and by what means. In my view, if they are all substantially implemented, then the essentially high quality of the civil justice service provided by the courts of England and Wales will be greatly extended to a silent community to whom it is currently largely inaccessible, and both restored and protected against the weaknesses and threats which currently affect it.

Annex 1 - Glossary

ACAS
The Advisory, Conciliation and Arbitration Service – An organisation that provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. It is widely known for its provision of conciliation to resolve workplace problems.

ADR
Alternative Dispute Resolution – ways of attempting to resolve disputes so as to avoid litigation. Mediation is the primary form of ADR.

After the Event Insurance (ATE)
After the Event Insurance – Insurance by one party against the risk of it having to pay its opponent's legal costs, where the insurance policy is taken out after the event giving rise to court proceedings (e.g. an accident involving personal injury).

ASBI
Anti-social Behaviour Injunction – an injunction that prohibits the person in respect of whom it is granted from engaging in housing-related anti-social conduct of a kind specified in the injunction.

Assisted Digital Support
Assisted digital support is for people who can't use online government services on their own. The support can be someone guiding a user through the digital service or entering a user's information into the digital service on their behalf. It can be provided by the private, voluntary or public sectors.

ATE Premium
A sum of money paid or payable for insurance against the risk of incurring a costs liability in proceedings.

Attachment of Earnings
A Court Order that can be applied for by a creditor that if successful allows for deductions to be made from a debtor's wages and paid directly to the creditor.

BIS
The Department for Business Innovation and Skills.

Further information on its role can be found here: https://www.gov.uk/government/organisations/department-for-business-innovation-skills

Brooke Report
In January 2008 the Judicial Executive Board, comprising the senior judges in England and Wales, invited Sir Henry Brooke, a retired Appeal Court judge, to conduct an inquiry into the question of civil court unification.

The full report can be found at: https://www.judiciary.gov.uk/publications/civil-courts-unification/

CACD
Court of Appeal (Criminal Division) – The Court that hears appeals from the Crown Court.

Case Officers
Civil servants authorised to exercise a limited number and category of case specific functions.

Also see **Delegated Judicial Officer (DJO).**

CaseMan
The computerised case management system for County Court and District Registry cases.

CCBC
County Courts Business Centre, or Bulk Centre – This is a facility located in Northampton which was set up by HMCTS to deal with straightforward debt claims issued electronically, by Secure Data Transfer.

Further information can be found here: https://www.justice.gov.uk/courts/northampton-business-centre/ccbc

CCMCC
County Court Money Claims Centre is part of the CCBC based in Salford and is an online service that allows county court claims to be issued for fixed or unspecified sums by individuals and organisations over the internet. It also currently handles claims issued in traditional paper form whether for specified or unspecified sums.

Further information can be found here: https://www.justice.gov.uk/courts/northampton-business-centre/money-claim-online

CFA
Conditional Fee Agreement – An agreement under which a lawyer agrees only to be paid by their client in the event that the client's claim succeeds – a 'no win – no fee agreement.' Where the client's claim does succeed, the lawyer is paid their normal fee and an additional amount, known as a success fee. The success fee is not calculated as a proportion of the amount recovered by the client.

CFT
Civil Family and Tribunals, part of the HMCTS Reform Programme. See paragraph 1.10 of the review.

Chancery Applications Court
Deals with interim applications in the Chancery Division, it sits daily in Court 10 in the Rolls building.

A guide to its work can be found here: https://www.judiciary.gov.uk/publications/guide-litigants-person-chancery

Chancery Division
The Chancery Division is a part of the High Court of Justice (the other divisions being the Queens Bench Division and Family Division).

Further information on the work it undertakes can be found here: https://www.justice.gov.uk/courts/rcj-rolls-building/chancery-division

Chancery Modernisation Review
The Chancery Modernisation Review was conducted by Lord Justice Briggs and was commissioned by the Chancellor of the High Court in January 2013.

The report and background can be found here: https://www.judiciary.gov.uk/publications/chancery-modernisation-review-final-report/

Charging Orders
A charging order is an order obtained from a court by a judgment creditor, by which the property of the judgment debtor in any stocks or funds or land stands charged with the payment of the amount for which judgment shall have been recovered, with interest and costs.

Chatham House basis
A principle according to which information disclosed during a meeting may be reported by those present, but the source of that information may not be explicitly or implicitly identified.

Circuit Judges (CJs)
Circuit judges are judges in England and Wales who, primarily, sit in the County Court, Crown Court and Family Court.

Further information on their role can be found here: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/ciruit-judge/

Citizens Advice (formerly Citizens Advice Bureau) (CAB)
A charitable organisation which has offices throughout the country at which the public can receive free advice and information on civil legal, and other, matters.

Civil Judicial Engagement Group (Civil JEG)
A group of judges representing all levels of the judiciary and every part of the country who work with the HMCTS officials on the civil part of the Reform Programme.

Civil Justice Council (CJC)
The CJC is an advisory public body established under the Civil Procedure Act 1997. It is responsible for overseeing and co-ordinating the modernisation of the civil justice system.

Further information on their role can be found here: https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/

Civil Procedure Rule Committee (CPRC)
The Civil Procedure Rule Committee was set up under the Civil Procedure Act 1997 to make rules of court for the Civil Division of the Court of Appeal, the High Court and the County Court.

Further information can be found here: https://www.gov.uk/government/organisations/civil-procedure-rules-committee

Civil Procedure Rules (CPR)
The Civil Procedure Rules – The primary rules of court for civil litigation in England and Wales.

The rules can be found at: http://www.justice.gov.uk/courts/procedure-rules/civil

CLCC
The Central London County Court.

Competition Appeal Tribunal (CAT)
The Competition Appeal Tribunal is a specialist tribunal, further information on its work can be found here: http://www.catribunal.org.uk

Conciliation
An umbrella expression used in the report to include all types of ADR and also conciliation services provided (or to be provided) by the court service.

Costs Budgeting and Costs Budget
Costs budgeting is the management of costs throughout the litigation process. The Civil Procedure Rules require parties to prepare a costs budget detailing their likely costs based on considering the issues in the case, the procedural stages and the amount of time each stage of the litigation is likely to take. The court then approves or amends those budgets at Costs and Case Management Conferences ("CCMCs").

County Court
The County Court deals with civil (non-criminal and non-family) matters.

Types of civil case dealt with in the County Court include:

- individuals and businesses trying to recover money they are owed;
- individuals seeking compensation for injuries, or damages for breach of contract or other wrongs;
- landowners seeking orders that will prevent trespass, or for possession at the end of a tenancy.

Further information on the County Court and the work it does can be found here: https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/

County Court Bailiff
County Court bailiffs are employees of HMCTS and are responsible for enforcing orders of county court by recovering money owed under county court judgments. They can seize and sell goods to recover the amount of the debt. They can also serve court documents and effect and supervise the possession of property and the return of goods under hire purchase agreements.

Delegated Judicial Officers
Term used in the early stage of the HMCTS Reform Programme to refer to civil servants authorised to exercise a limited number and category of functions on a case specific basis. Called Case Officers in this report.

Deputy District Judge (DDJ)
Deputy District Judges are part time fee paid judges who carry out the same function as District Judges.

Deputy High Court judges (S.9 Judge)
An existing judicial officer holder or suitably qualified senior lawyer appointed by the Lord Chief Justice to sit part time as a deputy judge of the High Court.

Designated Civil Judge (DCJ)
Designated Civil Judges are Circuit Judges or Senior Circuit Judges who have general oversight of, and responsibility for, the conduct of non-family civil business at the courts within a specified area, usually one or more counties. They have leadership responsibility for all judges (other than High Court Judges) doing civil work within their specified area.

Designated Family Judges (DFJ)
Every care centre has a DFJ who is responsible for it and for other Family Courts in the area which have been designated as hearing family work. DFJs are Circuit Judges, or in some cases Senior Circuit Judges. They are responsible for leading all levels of the family judiciary other than High Court Judges at the courts for which they have responsibility, and for ensuring the efficiency and

effectiveness of the discharge of judicial family business at those courts.

Direct Access
A scheme whereby members of the public may now go directly to a participating barrister without having to involve an instructing solicitor or other intermediary. In the past it was necessary for clients to use a solicitor or other recognised third party through whom the barrister would be instructed.

Directions Questionnaires (DQs)
The directions questionnaire is a form that has to be filed with the Court giving the court certain information about the claim including the approximate sum in dispute; which witnesses of fact are likely to be called; whether expert evidence is necessary; how disclosure of electronic documents will be dealt with; how long the parties think the trial is likely to last and an estimate of costs.

The Form (N181) can be found here: http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n181-eng.pdf

If the claim is allocated to the small claims track the form N180 is used: http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n180-eng.pdf

District Judges (DJs)
District judges are full-time judges who deal mainly with the majority of cases in the County Court. They are assigned on appointment to a particular circuit and may sit at any of the County Court hearing centres or District Registries of the High Court on that circuit.

Further information on their role can be found here: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/district-judge-role

Divisional Court
A divisional court, in relation to the High Court of Justice of England and Wales, means a court sitting with at least two judges. Matters heard by a divisional court include some criminal cases in the High Court (including appeals from Magistrates' courts and in extradition proceedings) as well as certain judicial review cases.

The usual constitution of a divisional court is one Lord or Lady Justice of Appeal and one High Court Judge.

DOM1
The Computer network used by the Ministry of Justice and HMCTS

Early Neutral Evaluation (ENE)
Early neutral evaluation is a process, provided both privately and on occasion by the court, in which an early indication is given of what the outcome might be if the matter were to be finally adjudicated in court.

Employment Appeal Tribunal
The Employment Appeal Tribunal is a specialist tribunal and its primary role is to hear appeals from Employment Tribunals in England and Wales, and Scotland.

Further information can be found here: https://www.gov.uk/courts-tribunals/employment-appeal-tribunal

Employment Tribunal (ET)
The Employment Tribunals is a specialist tribunal established to resolve disputes between employers and employees over employment rights. The tribunal will hear claims about employment matters such as unfair dismissal, discrimination, wages and redundancy payments.

Further information on the work of the ET can be found here: https://www.gov.uk/courts-tribunals/employment-tribunal

Ex Officio Member
An ex officio member is a member of a body (a board, committee, council, etc.) who is part of it by virtue of holding another office.

Family Division
The Family Division is part of the High Court of Justice along with the Queen's Bench Division and the Chancery Division.

Further information can be found at: https://www.gov.uk/courts-tribunals/family-division-of-the-high-court

Fast Track
One of the tracks that a case can be allocated to by the Court when lodged (the others being the Small Claims Track and Multi-Track). Tracks were introduced by the Woolf Reforms and were intended to assist in making sure that all cases were dealt with proportionately and in accordance with the overriding objective.

If a claim has a financial value of between £10,000 and £25,000, and likely to take no more than a day to try, then it is likely to be allocated to the Fast Track. The rules and practice direction relating to the Fast Track can be found here: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part28

Financial Ombudsman Service
The Financial Ombudsman Service is a free service for consumers that tries to help settle disputes between them and UK-based businesses providing financial services, such as banks, building societies, insurance companies, investment firms, financial advisers and finance companies.

Further information can be found here: http://www.financial-ombudsman.org.uk/about

First-tier Tribunal Property Chamber
The First-tier Tribunal Property Chamber is one of seven chambers of the First-tier Tribunal which settle legal disputes and are structured around particular areas of law. The First-tier Tribunal Property Chamber handles applications, appeals and references relating to disputes over property and land.

Further information on the Tribunal and areas of work it covers can be found at: https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

Fixed Recoverable Costs
Costs which are fixed in amount by rules of court, rather than be case specific assessment or costs management.

Framework Document
The Framework Document sets out a partnership agreement reached by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals in relation to the effective governance, financing and operation of HMCTS.

The Framework document can be found here: https://www.gov.uk/government/publications/hm-courts-and-tribunals-service-framework-document

Hard Working Group (HWG)
This is the small group who have helped with this report. Please see paragraphs 1.3 to 1.4. for their details.

High Court Enforcement Officers (HCEO)
A High Court Enforcement Officer (HCEO) is an officer of the High Court of England and Wales responsible for enforcing judgements of the High Court, often by seizing goods or repossessing property.

High Court Judges (HCJ)
High Court Judges are Judges that are assigned to one of the three divisions of the High Court – the Queen's Bench Division the Family Division and the Chancery Division.

High Court judges usually sit in London, but they also travel to major court centres around the country. They hear serious criminal cases, important civil cases and appeals in the High Court and assist the Lord Justices to hear appeals in the Court of Appeal.

HMCTS
HMCTS is an executive agency of the Ministry of Justice, operated under a partnership between the Lord Chancellor and Lord Chief Justice, and is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.

IPEC – Intellectual Property Enterprise Court
The Intellectual Property Enterprise Court was previously known as the Patents County Court, but it is now part of the High Court. It is a court for bringing relatively simple and moderate value proceedings involving intellectual property matters such as patents, registered designs, trade marks, unregistered design rights and copyright.

Further information on the Court can be found at: https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/the-chancery-division/courts-of-the-chancery-division/intellectual-property-enterprise-court

Jackson Report/Reforms
In November 2008 the Master of the Rolls appointed Lord Justice Jackson to lead a fundamental review of the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate cost.

Lord Justice Jackson published a preliminary report in May 2009 and a final report in December 2009.

The Jackson Reforms refer to the changes made following the publication of his report, largely pursuant to his recommendations.

The final report can be found here: https://www.judiciary.gov.uk/publications/review-of-civil-litigation-costs-final-report

Judicial Assistants (JAs)
Judicial Assistants are qualified lawyers who assist the Judges of the Court of Appeal and the Justices of the Supreme Court by carrying out research in connection with appeals and summarising

applications for permission to appeal.

More information on their role can be found here: https://www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/civil-division/judicial-assistants

Judicial College
The Judicial College is the organisation responsible for training judges in the courts of England and Wales and tribunals judges in England & Wales, Scotland and Northern Ireland.

Further information on the role of the College can be found here: https://www.judiciary.gov.uk/about-the-judiciary/training-support/judicial-college

Judicial Executive Board (JEB)
As part of the changes to the judiciary introduced by the Constitutional Reform Act 2005, a Judicial Executive Board was created, comprising senior members of the judiciary. Its purpose is to assist the Lord Chief Justice with his executive and leadership responsibilities.

More information can be found here: https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/how-the-judiciary-is-governed/judicial-executive-board

Law Society
The Law Society is the professional association that represents and governs the solicitors' profession for the jurisdiction of England and Wales.

Litigants in Person (LiPs)
A litigant in person is an individual, company or organisation that is a party to legal proceedings but not represented by lawyers.

Lord Chief Justice
Lord Chief Justice is the judge who is the Head of the Judiciary of England and Wales, a role previously performed by the Lord Chancellor.

The Lord Chief Justice is also the President of the Courts of England and Wales and responsible for representing the views of the judiciary to Parliament and the Government.

Lord/Lady Justice (LJ)
A Judge of the Court of Appeal.

Master of the Rolls
The Master of the Rolls is the Head of Civil Justice, and the second most senior judicial position in England and Wales, after the Lord Chief Justice.

Masters
A Master is a Judge of the Queen's Bench Division or Chancery Division whose role is concerned primarily with procedural matters such as applications and case management. They also try an increasing number of cases, where a High Court Judge is not required.

MCOL
Money Claims Online – An electronic system which allows litigants to issue simple, straightforward claims for money online. Administered at the Northampton Bulk Centre.

Mercantile Court
The Mercantile Courts are regional courts of the Queen's Bench Division of the High Court with specialist Circuit Judges, dealing with commercial or business disputes, in London and the main regional cities.

Further information on the Mercantile Courts can be found at: https://www.justice.gov.uk/downloads/courts/mercantile-court/mercantile-court-guide.pdf

MIAM
Mediation, Information and Advice Meeting – an early stage in private law family proceedings designed to inform parties about the availability of ADR.

Mitchell and Denton Cases
These were two cases in which the Court of Appeal (first in Mitchell and clarified in Denton) set out the approach to be taken by Courts when dealing with applications for relief from sanctions under CPR 3.9 after the rule had been amended following the Jackson reforms.

Mitchell can be found here: http://www.bailii.org/ew/cases/EWCA/Civ/2013/1537.html

Denton can be found here: http://www.judiciary.gov.uk/?p=51071

Multi-Track
One of the three tracks to which a civil case can be allocated after it has been issued.

Northampton Bulk Centre
See CCBC.

OC – Online Court
See Chapter 6 of this review for further details in relation to the proposed OC for England and Wales.

ODR
Online Dispute Resolution -Dispute resolution which uses technology to assist the resolution of disputes between parties.

The CJC report on ODR which is mentioned in Chapter 6 of this review can be found here: https://www.judiciary.gov.uk/reviews/online-dispute-resolution

Part 7 Cases (Pt 7 cases)
Part 7 refers to Part 7 of the Civil Procedure Rules and the issue of a Part 7 claim form is the usual method of bringing a civil claim.

Part 8 Cases (Pt 8 cases)
Part 8 refers to Part 8 of the Civil Procedure Rules and it is an alternative procedure to the usual method of bringing a civil claim (Part 7) It is mainly aimed at resolving disputes where a claimant is seeking the court's decision on a question which is unlikely to involve a substantial dispute of fact.

PCOL
Possession Claims Online. An electronic system which allows litigants to issue simple, straightforward claims for possession claims online.

Personal Injury (PI)
Personal Injury is a term used to describe any type of physical or mental injury which has been

caused to an individual.

Personal Support Unit (PSU)
The Personal Support Unit is an independent charity that supports people going through the court process without legal representation, by providing practical and emotional support, but not advocacy or legal advice. They have thirteen offices in eleven Courts in England and Wales.

Further information on them can be found at: https://www.thepsu.org

Planning Court
The Planning Court forms part of the Administrative Court and deals with all judicial reviews and statutory challenges involving planning matters.

Further information can be found here: https://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/the-planning-court

Practice Direction (PD)
Practice Directions accompany and amplify the Civil Procedure Rules and give practical advice on how to apply and act in accordance with the rules themselves.

The Rules and Practice Directions can be found here: https://www.justice.gov.uk/courts/procedure-rules/civil/rules

Pre–Action Protocols (PAP)
These set out how the courts expect parties to behave prior to commencement of any claim. They are primarily designed to assist the parties to resolve disputes without recourse to starting proceedings in court.

A list of the PAPs can be found here: https://www.justice.gov.uk/courts/procedure-rules/civil/protocol

President of the Family Division (PFD)
The President of the Family Division is the head of the Family Division of the High Court of Justice in England and Wales and Head of Family Justice.

President of the Queens Bench Division (PQBD)
The President of the Queen's Bench Division is the head of the Queen's Bench Division.

Further information on the role can be found here: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/profile-pqbd

Pro Bono work
Advice given or professional work undertaken voluntarily and without payment as a public service.

QB Judges
Judges of the Queen's Bench Division.

Qualified One Way Costs Shifting (QOCS)
The ordinary rule in litigation is that the losing party pays the winning party's legal costs. This is known as costs shifting. One way costs shifting is where the ordinary rule is changed so that when the winning party is a claimant the defendant pays the claimant's litigation costs. Should however the defendant win, the claimant does not have to pay the defendant's litigation costs.

Queen's Bench Division (QBD)
The Queen's Bench Division is one of the three divisions of the High Court together with the Chancery Division and Family Division.

Further information can be found here: https://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench

Reform Programme
The HMCTS Reform Programme – see Chapter 4 of this review for full details.

Registrar
Registrars in Bankruptcy are judges who sit in the Chancery Division of the High Court, both in the Bankruptcy Court and in the Companies Court. The jurisdiction involves hearing and determining a wide variety of personal and company insolvency cases, as well as matters involving specialised aspects of company law not related to insolvency.

There is also Admiralty Registrar (who is also a Queens Bench Master).

Further information can be found here: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/high-ct-masters-registrars

Rolls Building Courts
The Rolls Building is a court complex in London that houses the Chancery Division as well as the Admiralty and Commercial Court, and the Technology and Construction Court.

Royal Courts of Justice (RCJ)
The Royal Courts of Justice, commonly called the Law Courts, is a court building in London which houses the Court of Appeal, part of High Court and the Central London County Court.

Rules
See Civil Procedure Rules (CPR).

Salford Business Centre
The building in which the County Court Money Claim Service for the whole of England & Wales is based. This handles the early stages of money claims issued on paper, rather than electronically.

Salford Legal Advisers Pilot
This is a pilot scheme running from 1 October 2015 to 30 September 2016 and covers claims issued at Northampton Bulk Centre, Money Claims Online and the County Court Money Claims Centre in Salford. The pilot scheme (see Practice Direction 51K) allows Legal Advisers to carry out some routine and basic procedural applications, under judicial supervision.

Further information can be found here: http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51k-the-county-court-legal-advisers-pilot-scheme

Second Appeal
A second appeal is an appeal to a higher court from a decision of a lower court which was itself made on appeal.

Section 9 Judge
See **deputy High Court judges**.

Senior Circuit Judge (SCJ)
Senior Circuit Judges carry out the full duties of a Circuit Judge and, in addition, hear particularly demanding or specialist cases.

Senior President of Tribunals
The Senior President of Tribunals is the independent and statutory leader of the tribunal judiciary. The office of the Senior President of Tribunals is independent of both the Executive and the Chief Justice, and was established under the Tribunals Courts and Enforcement Act 2007.

Further information on the role can be found here: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/senior-president-tribunals

Senior Presiding Judge (SPJ)
The Senior Presiding Judge for England and Wales is a member of the Court of Appeal appointed by the Lord Chief Justice to supervise the Presiding Judges for the various judicial circuits of England and Wales, The Senior Presiding Judge is responsible for deployment and personnel issues for all circuits and acts as a "general point of liaison" for the courts, judiciary and Government.

Small Claims Track
One of the three tracks that a civil case can be allocated to by the Court when lodged. A case will normally be allocated to the small claims track if the value is under £10,000, or a lower amount if the claim is for personal injuries or housing disrepair.

SWOT analysis
A structured planning method used to evaluate the strengths, weaknesses, opportunities and threats involved in a project or in a business venture.

TCC
The Technology and Construction Court.

Third Party Debt Orders
A means of enforcement of a court judgment whereby a judgment creditor can recover monies owed by a judgment debtor) from a third party who is either holding money for the judgment debtor (usually a bank or building society) or who owes the judgment debtor an amount of money for whatever reason.

TOLATA Claim
A Claim under The Trusts of Land and Appointment of Trustees Act 1996, usually about the beneficial ownership of land.

Totally without Merit (TWM)
If a case is certified as being totally without merit by a Judge at the paper consideration of a permission to appeal application or an application for then there is no right to request that the decision be reconsidered at an oral hearing.

Unified Civil Court (UCC)
A proposed unification of the High Court and County Court that was last considered by the Brooke Report in 2008.

Value at Risk (VaR)
The value, expressed in monetary terms, of that which is really in dispute between the parties to a civil case.

White Book
A book that sets out the rules of practice and procedure in the Civil Courts, including the Civil Procedure Rules, Practice Directions and Court Guides.

Woolf reforms
Reforms introduced following the publication in July 1996 of a review of the civil justice system by the then Master of the Rolls, Lord Woolf which resulted in the introduction of the Civil Procedure Rules.

The final report can be viewed here: http://webarchive.nationalarchives.gov.uk/+/http:/www.dca.gov.uk/civil/final/contents.htm

Annex 2 - List of those who sent responses to the Interim Report

ACAS

Adrian Jack (Justice of the Supreme Court of Gibraltar)

AdviceUK

Allen & Overy

Andrew Clutterbuck QC

Andrew Roy (Barrister)

Anne-Marie Lavelle

Anthony Pavlovich (Barrister)

Aslam Mohammed (Solicitor)

Association of Costs Lawyers (ACL)

Association of District Judges (ADJ)

Association of High Court Masters and Registrars

Association of Personal Injury Lawyers (APIL)

Association of Recruitment Consultants

Atlantic Chambers

Bar Council

Berwin Leighton Paisner LLP

Bill Skirrow (Director, Pro-Bono Community)

Byron Carron (Retired District Judge)

CBI (joint response with TUC)

CEDR

Centre for Justice

Chancery Bar Association

Chapel Associates Ltd

Charles Murray (Barrister)

Chartered Institute of Arbitrators

Chartered Institute of Credit Management

Choice Housing Ltd

Chris Tagg (Solicitor)

CILEx (Chartered Institute of Legal Executives)

Citizens Advice

City of London Law Society

City UK

Civil Court Users Association

Civil Enforcement Association

Civil Justice Council

Civil Justice Council ODR Committee

Civil Procedure Rule Committee

Clarify Now

Commercial Court Judges

Community Legal Outreach Collabaration Keele (CLOCK)

Council of Circuit Judges Civil Sub-Committee

Council of Employment Judges

Dechert LLP

Discrimination Law Association

District Judge Adam Taylor

District Judge Harold Godwin

District Judge Hywel James (in conjunction with HHJ Mererid Edwards)

District Judge Karen Doyle

District Judge Keith Etherington

District Judge Stephenson

District Judge Tim Gray

East Anglian Chambers

Eleanor Holland (Barrister)

Employment Judge T M Garnon

Employment Law Bar Association (ELBA)

Employment Lawyers Association

Equality and Human Rights Commission

Expert Evidence Ltd

Federation of Small Businesses

Forum of Insurance Lawyers (FOIL)

Freshfields Bruckhaus Deringer LLP

GEMME

Gideon Shirazi (Barrister)

Greg Callus (Barrister)

HHJ Brian Rawlings

HHJ Graham Robinson

HHJ Mark Pelling

HHJ Mererid Edwards (in conjunction with District Judge Hywel James)

HHJ Moulder

HHJ Richard Pates (In conjunction with HHJ Richard Pearce)

HHJ Richard Pearce (In conjunction with HHJ Richard Pates)

High Court Enforcement Officers Association Ltd

Hill Dickinson LLP

Hodge Jones & Allen LLP

Housing Law Practitioners Association (HLPA)

Hugh Sims QC (Barrister)

iJustice

Independent Legal Direct Ltd

James Perry (Solicitor)

Jane Wess

Jim McMillan (Consultant, National State Courts Williamsburg VA USA)

John Dunn (Solicitor)

John Ogden

John Sorabji (Legal Advisor to the Lord Chief Justice and Master of the Rolls)

Judge Brian Doyle (President of the Employment Tribunal)

Judicial College

Julie Nind

Justice

Kennedys

Kevin Kearney

Lady Justice Arden

Law for Life

Law Society

Legal Education Foundation

Litigant in Person Support Strategy

Liverpool Law Society

London Solicitors Litigation Association (LSLA)

Lord Justice Jackson

Lord Justice Longmore

Lord Justice McCombe

Lovetts Solicitors

Low Commission

Manchester Law Society (Civil Litigation Committee)

Marston Holdings

Masood Ahmed (University of Leicester – in conjunction with Qasim Nawaz of First Resolve)

Masters of the Queen's Bench Division

Matt Peacock (OMC Partners)

Mayer Brown LLP

Merseyside Employment Law

Merseyside Judges

Money Advice Trust

Money Advice Trust

Mortimer Clarke Solicitors

Mr Justice Edwards-Stuart

Mr Justice Langstaff

Mr Justice Norris

Mrs Justice Simler (President of Employment Appeal Tribunal)

Nabarro LLP (Real Estate Dispute Resolution Team)

North East Circuit

Opus 2 International

Pablo Cortez (University of Leicester)

Personal Injuries Bar Association (PIBA)

Peter Risk (Chapel Associates Ltd)

Presiding Judges of the Welsh Circuit

Professor Christopher Hodges (University of Oxford)

Professor Robert Turner (Cambridge University)

ProMediate (UK) Ltd

Property Litigation Association

Public Concern at Work

Qasim Nawaz (First Resolve – in conjunction with Masood Ahmed of University of Leicester)

RCJ Advice

Regional Employment Judges

Registry Trust Ltd

Restons Solicitors

Richard Walford (Barrister)

Robert Onslow (Barrister)

Roger Cohen (Berwin Leighton Paisner LLP)

Sam Barron

Shoosmiths LLP

Sir Henry Brooke

Small Claims Mediation Service

South East Circuit

Steve Wykes (National Secretary Council of Tribunal Members Association)

Steven Levinson (Solicitor)

Steven Myers

TECBAR

The Sheriffs Office

Thompsons Solicitors

Tobias Haynes (Trainee Solicitor)

Tom Cooney (ORACLE)

Tony Allen

TUC (joint response with CBI)

UK Association of Part Time Judges

Visionhall Information Systems

Welsh Government

Welsh Language Commissioner

William Wood QC

Young Barristers' Committee

Annex 3 - Visits and meetings during Stage 3 Consultation

Visits

17th February	The Hague
14th March	Sheffield
18th March	Stoke
4th April	Winchester
11th April	Leeds
18th April	Manchester
25th April	Birmingham
26th April	Traffic Penalty Tribunal (London Office)
29th April	Liverpool & Birkenhead
30th April to 4th May	British Columbia (Vancouver & Victoria)
9th May	Bristol
20th May	Central London County Court
27th May	Exeter
18th May	Rolls Building (CE Files demonstration)
6th June	Cardiff
14th June	Southwark Crown Court (Crown Court Digital System demonstration)

Meetings

25th January	Association of District Judges
29th January	HMCTS Board
1st February	Mrs Justice McGowan
11th February	Mr Justice Knowles and Mrs Justice Asplin

23rd February	Professor Roger Smith
29th February	Financial List Users Committee
1st March	Litigant in Person Engagement Group
3rd March	Anthony Hurndall (Director Centre for Justice)
7th March	Commercial Litigation Association Conference
14th March	Sheffield Hallam University (Access to Justice Seminar)
15th March	South East Circuit (Access to Justice Committee)
16th March	QB Court Users Group
17th March	Professional Negligence Lawyers Association
	Dr Jin Ho Verdonschot & Frances Singleton (Rechtwijzer)
18th March	Council of Circuit Judges Civil Sub-Committee
6th April	Civil Court Users Association
7th April	City UK
9th April	Personal Injuries Bar Association (PIBA)
12th April	Law Society
13th April	Housing Law Practitioners Association
19th April	Professional Negligence Bar Association
20th April	Association of High Court Masters
26th April	Advice Agencies
27th April	Chancery Bar Association
28th April	The Commercial Bar Association
2nd May	Civil Resolution Tribunal (Victoria, British Columbia)
	Attorney General of British Columbia
	Victoria Justice Access Centre
	Court Transformation Suite (Victoria)
3rd May	Legal Services Society (Vancouver)

	Justice Education Society (Vancouver)
10th May	The Bar Council
12th May	Association of Litigation Support Lawyers
16th May	Association of Personal Injury Lawyers
17th May	Civil Enforcement Association
	Forum of Insurance Lawyers
18th May	Employment Law Bar Association
19th May	Administrative Law Bar Association
23rd May	Westminster Forum
	International Mediation Institute
	Bonnie Hough (Judicial Council of California) – By Skype
25th May	Andrea Coomber (JUSTICE)
	Young Barristers Committee
	Professional Negligence Lawyers Association
6th June	Welsh Government
8th June	Association of Costs Lawyers
9th June	Law Society
16th June	High Court Judges Association
21st June	RCJ Listing Officers
22nd June	Judicial College
24th June	Designated Civil Judges Conference

Annex 4 – Statistics

Contents

Introduction

1. Some of the information set out in this annex has been compiled as a direct result of, or for reasons closely connected with this review and has played an important part in the recommendations made. Other information is included for the purpose of providing as detailed a description of the workload of the civil courts as is reasonably possible from the data which is regularly gathered by HMCTS.

2. This annex is divided into 5 sections. One each for (1) the Court of Appeal, (2) the Queen's Bench and Chancery Division in the Royal Courts of Justice and the Rolls Building and (3) the High Court in the District Registries and the County Court. There is then (4) a general section dealing with judges' sitting days and fees and (5) a final section setting out two Time and Motion studies (a) the Genn/Balmer Court of Appeal report which is already in the public domain and (b) a survey carried out for this review of judicial time undertaken in 12 selected County Court hearing centres in order to ascertain the real burden of different types of work.

3. The need to separate out the Queen's Bench Division and the Chancery Division at the Royal Courts of Justice and at the Rolls Building from the regional High Court centres and the County Court is an accident of geography and IT. In short, one IT system (Caseman) is used to collate data in the County Court (including the Central London County Court and the outer London courts) and in the regional High Court centres, whilst the Queen's Bench Division in the Royal Courts of Justice and the Chancery Division in the Rolls Building use different systems of data collection.

4. It therefore follows that specific data for the High Court in the regions (as distinct from the County Court) is difficult to come by. The surprising consequence is that County Court work and High Court work in the Regions are often recorded under one heading.

5. An important exception to this amorphous approach is the sitting time of Judges. Section (4) of this Annex contains data on the number of days judges in each Designated Civil Judge (DCJ) area sit doing civil work.

Section 1 - Court of Appeal

6. The Genn/Balmer report has been in the public domain since 20 May 2016 when it was published as part of a consultation on potential rules changes aimed at relieving some of the pressure on the Court of Appeal's time. The report therefore needs little introduction. It was the product of a detailed Time and Motion study of the work of the Court of Appeal carried out in May – July 2015. A full copy of it is included in section 5.

7. The Assumptions and Highlights document (copied below in italics) distils critical features of the predicament of the Court of Appeal as at 31 January 2016 in terms of a workload measured in judicial hours, and applies a time-value to the main reforms in the court's procedure and practice described in Chapter 9 of the Final Report. The essential tools for the time costing are time coefficients for each type of the court's work derived from the 2015 T&M study, then applied to the regularly collected data on the Court of Appeal's computer database, RECAP, as at the later reference date. The other elements in the basis of the calculations are set out in the document.

Assumptions and Highlights

1. Backlog: 46,812 hours

Total judicial time required to determine all the cases outstanding and ready to refer to an LJ or to list, as at 31/1/16 (having included a deduction for the annual settlement rate for PTAs and full appeals at 50% of the annual settlement rate, to reflect the fact that there will still be future settlements of cases in the Backlog but also to allow for the fact that part of the annual settlement rate will already have been achieved in relation to the cases that end up sitting there).

2. Annual shortfall: 9,482 hours

Total judicial time required to determine all cases filed in the year to 31/1/16 (having deducted the total number of cases that settled during the year) minus the total judicial time spent determining cases in that year.

3. Savings from family routes of appeal reform: 2056 hours

All appeals from a Circuit Judge in private law child and divorce cases will divert to the High Court under this reform. It is assumed that PTA for appeals to the High Court will be granted at the same 30% rate as currently applies in the CA and that the CA will itself receive PTA applications from one side or the other in 70% of those cases (this reflects the high incidence of LiPs). To calculate the time savings for the CA, it has been assumed that 5% of appeals diverted will be leapfrogged to the CA and 5% of appeals diverted will return as full second appeals. Of the PTAs which will still reach the CA from the diverted caseload, it is assumed that they will take 30% less time to determine (whether at paper or oral stage) because they are second appeals. It has been assumed that PTAs refused on paper will be renewed at the same rate as the CA average over the last 5 years. The savings have been adjusted to take account of the proportion of cases which are determined other than by a LJ (e.g. settlements, no jurisdiction, dismissal by a Master etc.)

4. Savings from County Court routes of appeal reform: 3347 hours
Appeals from all County Court decisions will be to the next level of judge under this reform. Therefore, appeals from "final decisions" in Part 7 multi-track cases in the County Court will divert away from the CA. It is assumed that PTA for appeals to the next level of judge will be granted at the same 30% rate as currently applies in the CA and that the CA will itself receive PTA applications from one side or the other in 50% of those cases. To calculate the time savings for the CA, it has been assumed that 5% of appeals diverted will be leapfrogged to the CA and 5% of appeals diverted will return as full second appeals. Of the PTAs which will still reach the CA from the diverted caseload, it is assumed that they will take 30% less time to determine (whether at paper or oral stage) because they are second appeals. It has been assumed that PTAs refused on paper will be renewed at the same rate as the CA average over the last 5 years. The savings have been adjusted to take account of the proportion of cases which are determined other than by a LJ (e.g. settlements, no jurisdiction, dismissal by a Master etc.)

5. Savings from Oral Renewal reform: 2929 hours
This figure is separate from, i.e. additional to, the savings at 3 and 4 above. The calculation recognises that without a right of oral renewal the time to deal with some paper PTAs is likely to increase (a 10% uplift in time across the whole current paper PTA population has been included) and that there will be a rate of call-ins (a rate of 10%

across all the relevant categories of case has been assumed). The saving is therefore calculated as 90% of (the total time required to determine all oral PTAs filed in the year minus the time for all oral PTAs in the diverted County Court and Family business covered by the 'in the pipeline' reforms at 3 and 4 above) MINUS 10% of the total time required to determine all paper PTAs filed in the year (i.e. including the paper PTAs in the categories which will be diverted under the 'in the pipeline' reforms at 3 and 4 above). The MINUS element overstates the additional time for consideration of paper PTAs under the oral renewal reform, but that has to be set off against an element of additional oral PTA hearings returning under the County Court and Family routes of appeal reforms; and for modelling purposes these are assumed to cancel each other out.

6. Savings from 2 LJJ courts
We currently sit an average of eight 3 LJ courts every week.
Scenario 1: Sit four 3 LJ courts and four 2 LJ courts every week. The time saving has been calculated by assuming this will free up 4 LJ per week consisting of a 40 hour week minus the average weekly admin time spent by a "standard" LJ and minus the average time spent on paper PTAs.
Scenario 2: Sit six 3 LJ courts and two 2 LJ courts every week. As above but assuming this will free up 2 LJ per week.
Scenario a): It has been assumed that before the oral renewal reform has been introduced and the benefits in time this will bring, LJ sitting in 2 LJ courts will require two extra reading days every 3 weeks.
Scenario b): After the oral renewal reforms have been introduced, the time savings have been calculated without allowing for additional reading/judgment writing days for judges in 2 LJ courts.

Scenario 1 (4 x 3LJ courts + 4 x 2LJ courts):
a) 4011 hours (before oral renewal reform)
b) 4619 hours (after oral renewal reform)

Scenario 2 (6 x 3LJ courts + 2 x 2LJ courts):
a) 2006 hours (before oral renewal reform)
b) 2310 hours (after oral renewal reform)

7. Savings from second appeals test being introduced for EAT appeals: 774 hours

The time saving has been calculated using the numbers of EAT cases filed in the year to 31/1/16 i.e. not taking account of any of the above reforms. It has been assumed that paper and oral PTAs will take 30% less time because they are second appeals. It is also assumed that because of the more stringent PTA test, there will be 40% less EAT appeals.

Notes:
All figures above are in judicial hours.
All unit figures include hearing time and exclude linked cases.
All Recap figures are for year 1/2/15 – 31/1/16.

Section 2 - Queen's Bench Division and the Chancery Division at the Royal Courts of Justice and at the Rolls Building

8. The data set out here deals only with civil work done in the Rolls Building and in the Royal Courts of Justice in London. What follows should be read with the caveat set out at paragraph 2.7 of the Final Report firmly in mind.

9. Each Division now operates a triage system which enables (at least in theory) certain data on value and transfer to be recorded manually. Claims are sent to a Master for triage once Particulars of Claim have been filed. The Master will consider at that point whether the case is suitable for hearing in the High Court in London, and will transfer the case out if it is not.

10. The information set out in this section is derived from the Business Management System (BMS) used at the Royal Courts of Justice, from internal claim allocation data partly collected manually during the triage process and from management information produced by HMCTS for operational purposes. The figures are in line with official statistics published within the Civil Justice Statistics Quarterly but may differ slightly due to different extraction dates and measure definitions.

11. This triage system has provided some very useful data but is in its early life and requires more time to bed down before the information it produces can be regarded as wholly reliable. Data on transfers, value and the source of cases transferred in and the destination of cases transferred out set out below have in part derived from triage data and in part from other sources.

12. Queen's Bench Division

12.1. In the calendar year 2014 the table set out below shows 515 cases were transferred in and 530 transferred out. Inclusive of transfers in QBD issued 5437 claims. Excluding transfers in (deducting 515) the number of new claims issued was 4922.

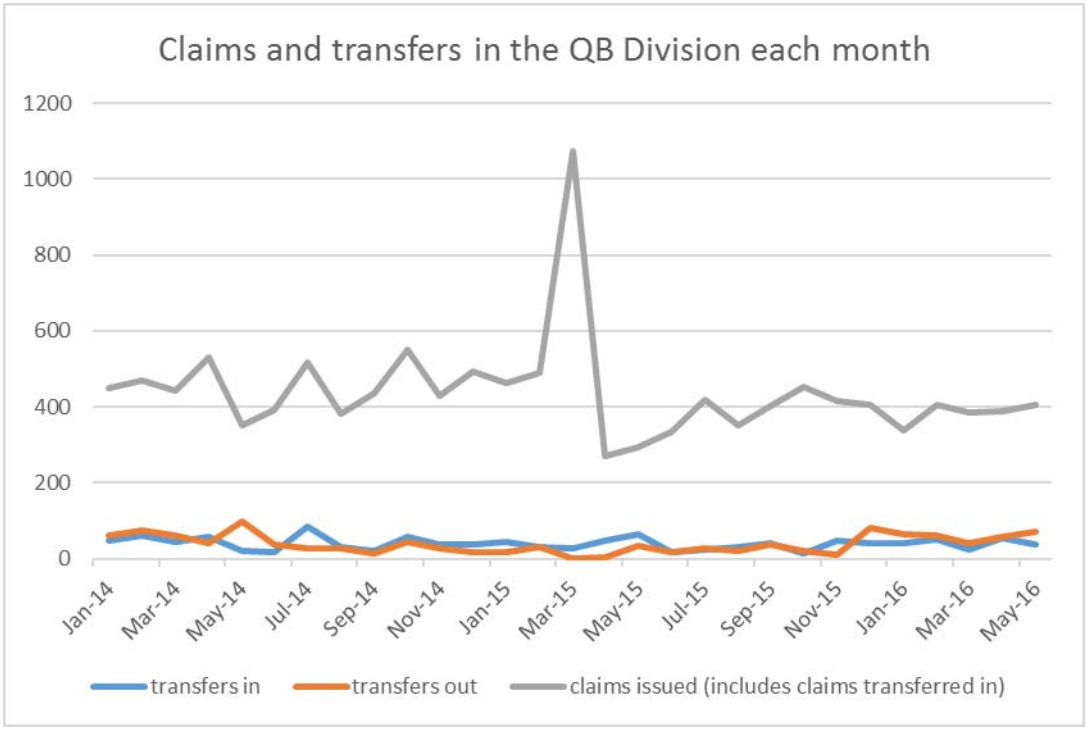
12.2. In the calendar year 2015 the table set out below shows 433 cases were transferred in and only 299 transferred out. The low level of transfer out against transfer in was concentrated in the period from March to May, and reversed from December, when early triage began. Since then transfer out has been running consistently ahead of transfer in, and this is likely to continue. Inclusive of transfers in QBD issued 5375 claims. Excluding transfers in (deducting 433) the number of new claims issued was 4942.

12.3. Graph 1 shows the number of issues and transfers in and out over the given periods. The spike in issues in March 2015 is attributable to the rise in issue fees. The spike was followed by a drop off in the number of claims issued followed by a slow and partial recovery of numbers over time and then a steady state return to issue numbers below those before the fee increase.

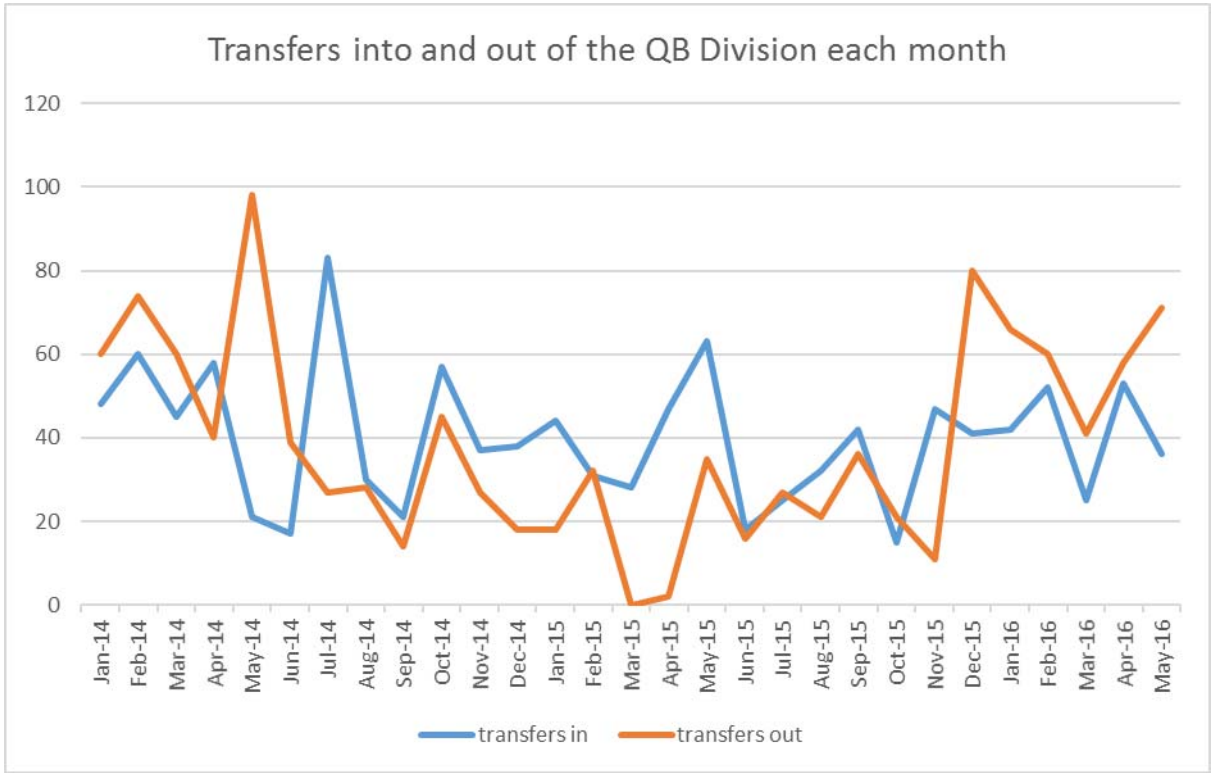
Table 1: QBD Claims Issued and Transfers In and Out Each Month

Queen's Bench Division - claims issued and transfers in and out each month			
	transfers in	transfers out	claims issued (includes claims transferred in)
Jan-14	48	60	448
Feb-14	60	74	469
Mar-14	45	60	442
Apr-14	58	40	529
May-14	21	98	351
Jun-14	17	39	393
Jul-14	83	27	516
Aug-14	30	28	382
Sep-14	21	14	435
Oct-14	57	45	551
Nov-14	37	27	429
Dec-14	38	18	492
Jan-15	44	18	464
Feb-15	31	32	490
Mar-15	28	0	1074
Apr-15	47	2	272
May-15	63	35	295
Jun-15	18	16	336
Jul-15	25	27	418
Aug-15	32	21	350
Sep-15	42	36	402
Oct-15	15	21	454
Nov-15	47	11	415
Dec-15	41	80	405
Jan-16	42	66	338
Feb-16	52	60	407
Mar-16	25	41	384
Apr-16	53	58	390
May-16	36	71	405

Graph 1: Claims And Transfers In QBD Each Month



Graph 2: Transfers In And Out (Larger Scale)



12.4. The following data is an estimate of the value of all claims that have been through QBD triage and includes cases issued in QBD and cases transferred in. Of the 1530 claims with an attributed monetary value:

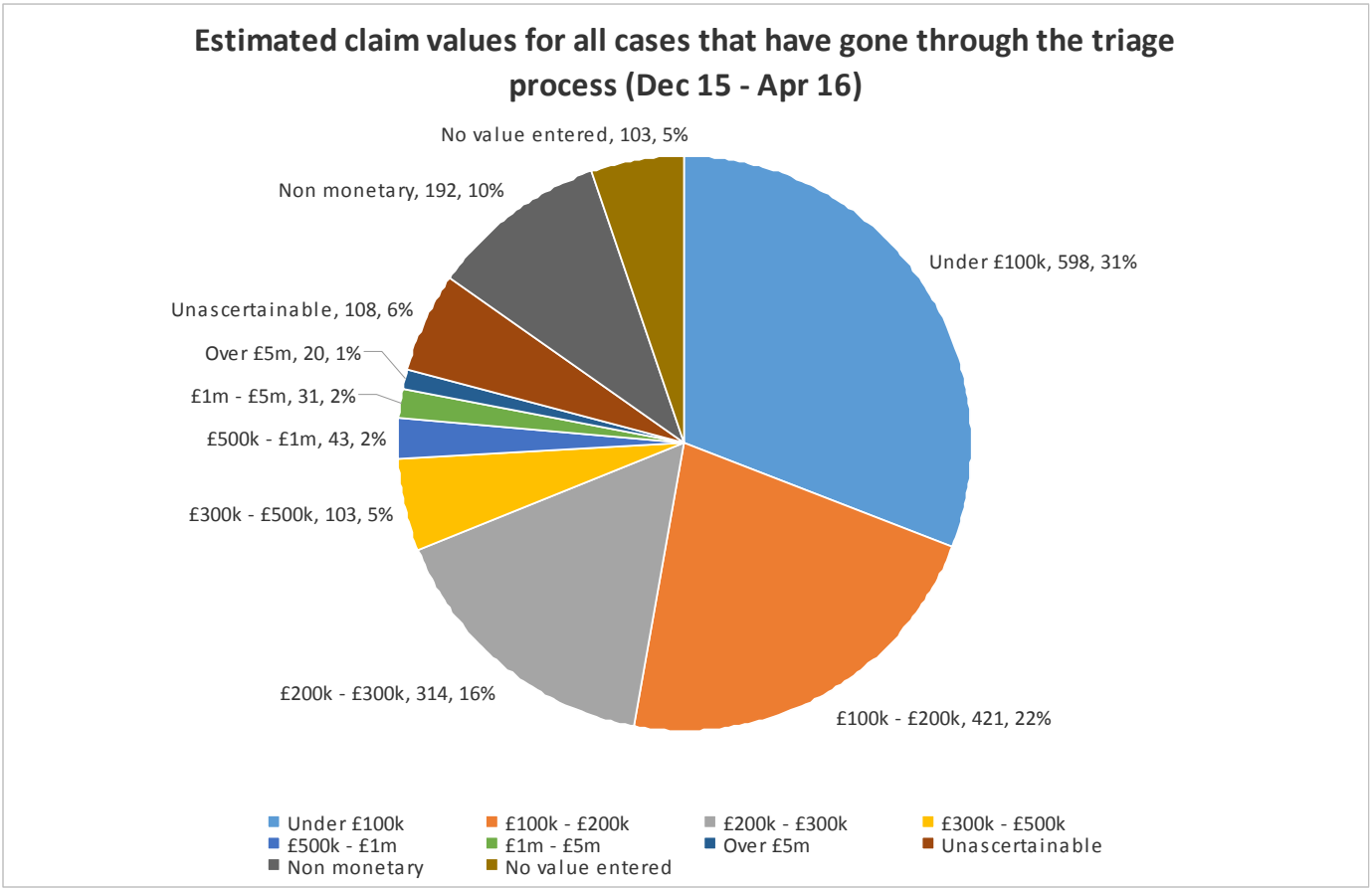
12.4.1. 94% (1436) have a value of £500,000 or less,
12.4.2. 87% (1333) have a value of £300,000 or less and
12.4.3. 39% (598) have a value of £100,000 or less

An additional caveat for this data should be noted; the current fees order mandates the maximum fee of £10,000 for all cases valued at over £200,000. There are some £200,000+ claims issued where the exact value of the claim isn't certain, so they are issued with a stated value of '£200,000+'. This is particularly common in, but not limited to mesothelioma cases where the value doesn't crystallise until expert witness evidence is presented. Some of these claims will ultimately be worth £250,000, while others will be worth £10,000,000+. However these £200,000k+ cases will all be put in the £200,000 - £300,000 category if there is no other information available at triage to provide a more accurate estimate. As such there will likely be some cases in the '£300,000 or less' category that will ultimately end up with a higher value.

Table 2: QB Triage Data Table

Estimated claim values for all cases that have gone through the triage process (whether issued or transferred in to QB)						
	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	Total
Under £100k	110	114	144	119	111	598
£100k - £200k	95	85	70	81	90	421
£200k - £300k	68	54	63	61	68	314
£300k - £500k	15	18	20	23	27	103
£500k - £1m	7	7	11	9	9	43
£1m - £5m	9	5	3	10	4	31
Over £5m	5	3	3	6	3	20
Unascertainable	19	26	8	20	35	108
Non monetary	33	24	67	42	26	192
No value entered	39	4	31	11	18	103
Total	400	340	420	382	391	1933

Chart 1: Estimated claim values for all cases that have gone through triage Dec.15 To April 16

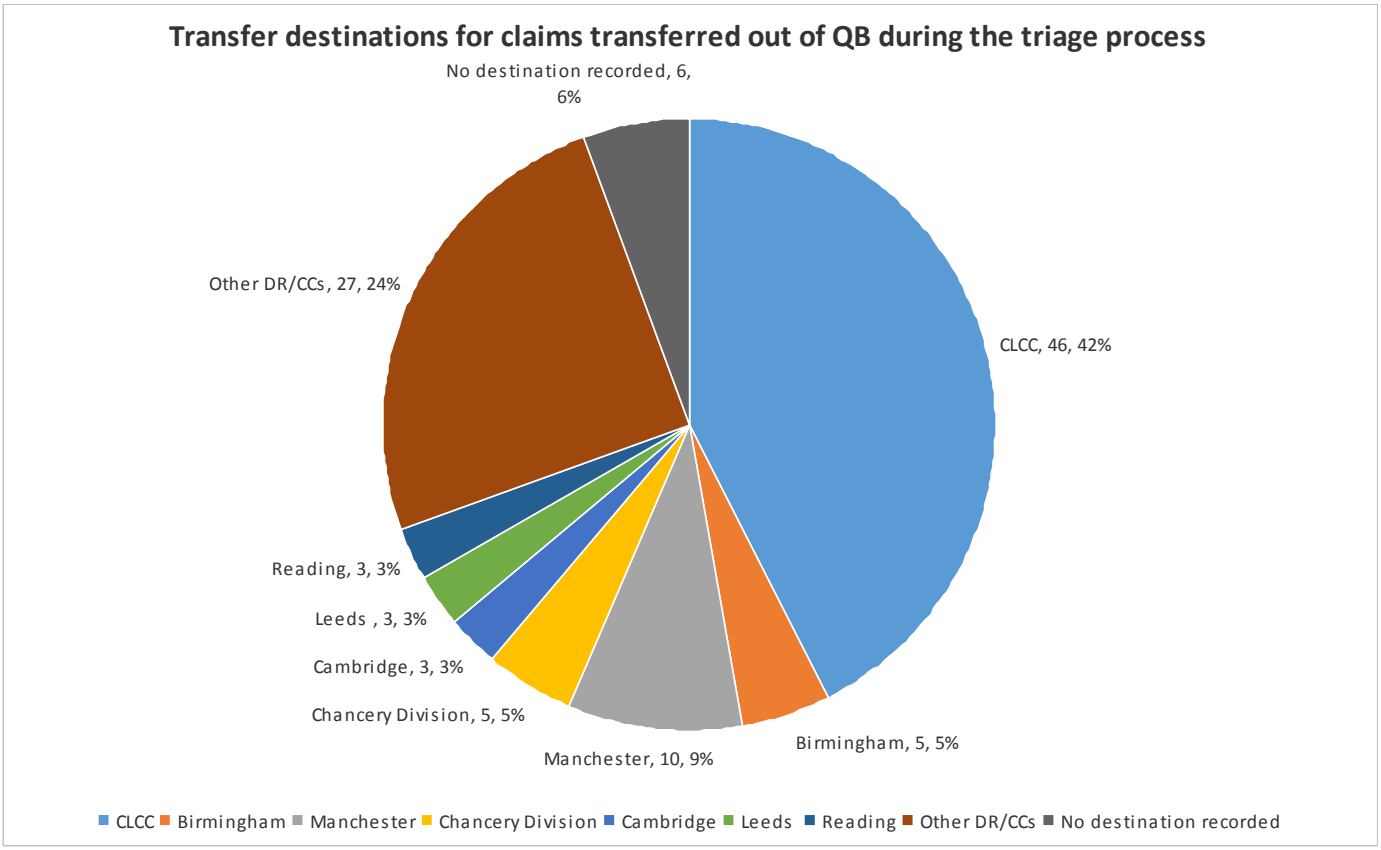


12.5. For cases transferred out during the triage process between December 2015 and April 2016 of the 108 for which data is available the largest single recipient of cases was the CLCC taking 43% (46 cases).

Table 3: Transfer Destinations For Claims Transferred Out Of QB In Triage

Transfer destinations for claims transferred out of QB during the triage process	
Summary Destinations	Dec 15 - Apr 16
CLCC	46
Birmingham	5
Manchester	10
Chancery Division	5
Cambridge	3
Leeds	3
Reading	3
Other DR/CCs	27
No destination recorded	6
Total	108
All Destinations	Dec 15 - Apr 16
CLCC	46
Birmingham	5
Manchester	10
Northampton	1
Chancery Division	5
Romford	2
Bristol	2
Croydon	1
Brentford	1
Truro	2
Cambridge	3
Oxford	2
Brighton	1
Chelmsford	1
Exeter	1
Leeds	3
Liverpool	1
Norwich	2
Peterborough	1
York	1
Newcastle	1
Portsmouth	1
Reading	3
Swansea	1
Nottingham	1
Canterbury	1
Evesham	1
Swindon	1
Winchester	1
No destination recorded	6
Total	108

Chart 2: Transfer destinations for claims transferred out of QBD



12.6. The available data for the same period suggests that 205 cases were transferred in to QBD, of those 157 had an ascribed monetary value:

12.6.1. 97% (152) have a value of £500,000 or less,

12.6.2. 92% (144) have a value of £300,000 or less and

12.6.3. 68% (107) have a value of £100,000 or less

Table 4: Estimated claim values for cases transferred in to QBD 1.12.15 To 27.5.16

Estimated claim values for cases transferred into the QB Division that have gone through the triage process (data is for the period 1 Dec 15 - 27 May 16)	
Under £100k	107
£100k - £200k	27
£200k - £300k	10
£300k - £500k	8
£500k - £1m	3
£1m - £5m	1
Over £5m	1
Unascertainable	12
Non monetary	21
No value entered	15
Total	205

Chart 3: Estimated claim values for cases transferred into QBD

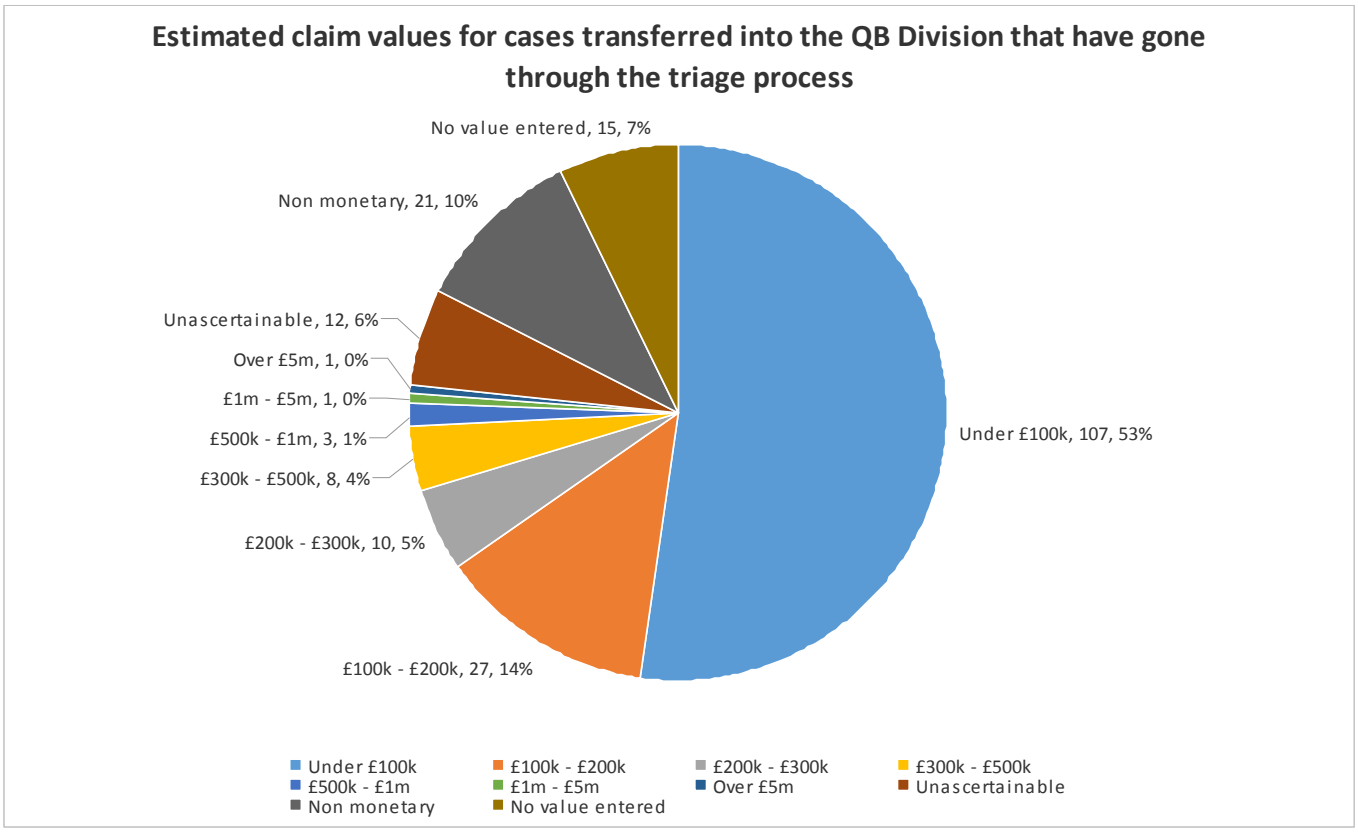
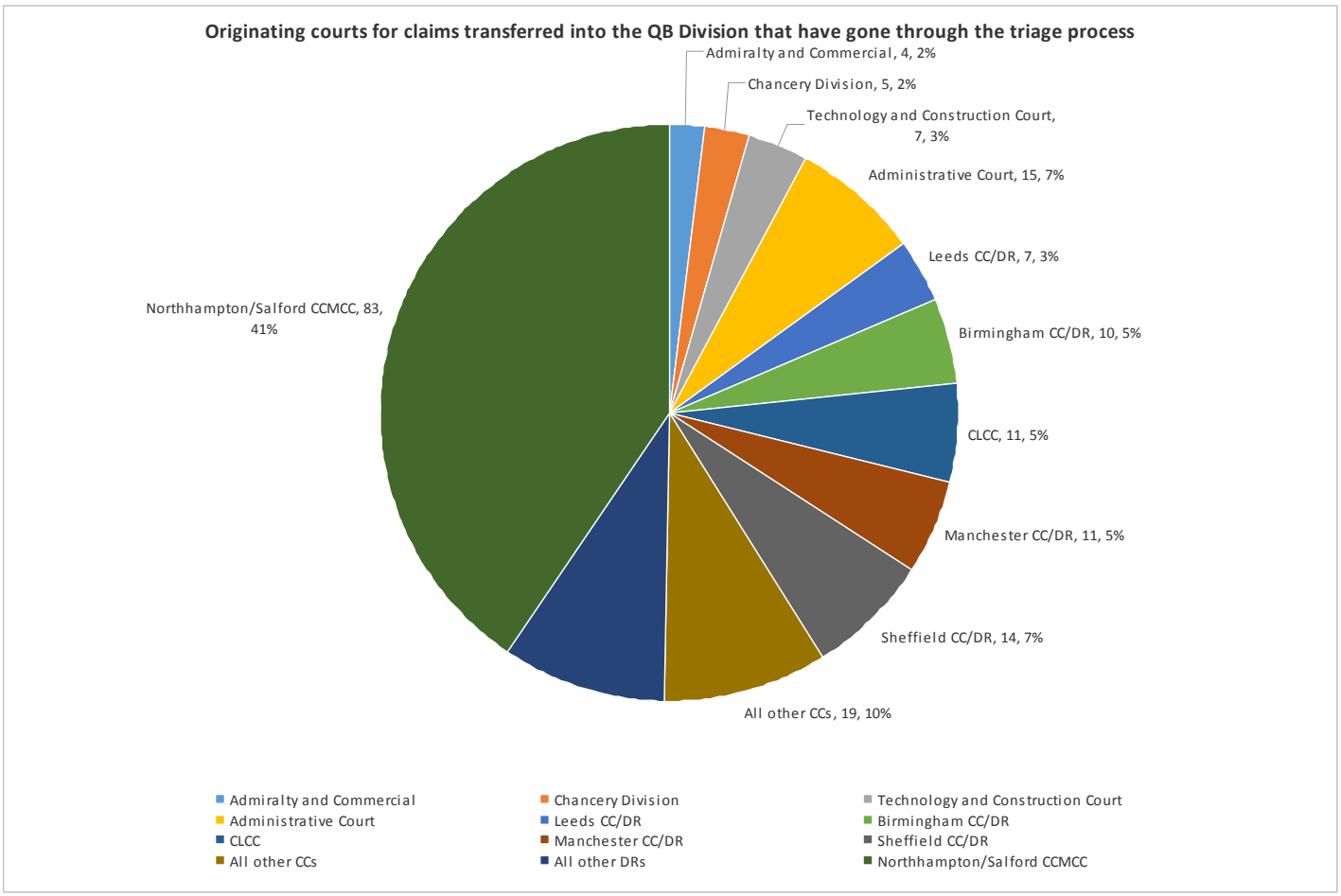


Table 5: Originating courts for claims transferred into QBD that have gone through triage

(Data is for the period 1 Dec 15 - 27 May 16)	
Summary	
Admiralty and Commercial	4
Chancery Division	5
Technology and Construction Court	7
Administrative Court	15
Liverpool County Court	5
Leeds CC/DR	7
Birmingham CC/DR	10
CLCC	11
Manchester CC/DR	11
Sheffield CC/DR	14
All other CCs	14
All other DRs	19
Northampton/Salford CCMCC	83
Total	205
All originating courts	
Administrative Court	15
Admiralty and Commercial	4
Birmingham CC/DR	10
Bournemouth & Poole County Court	1
Brentford	2
Brighton CC/DR	1
Bristol CC/DR	2
Bury St Edmunds CC/DR	1
Canterbury County Court	3
Cardiff CC/DR	1
Northampton/Salford CCMCC	83
CLCC	11
High Court Chancery Division	5
Cheltenham and Gloucester County Court	1
Croydon CC/DR	1
Eastbourne CC/DR	2
Kingston upon Thames County Court	1
Leeds CC/DR	7
Lincoln County Court	1
Liverpool County Court	5
Manchester CC/DR	11
Newcastle Upon Tyne CC/DR	3
Norwich CC/DR	2
Oxford	1
Portsmouth CC/DR	2
Reading County Court	1
Salisbury CC/DR	1
Sheffield CC/DR	14
Technology and Construction Court	7
Watford County Court	1
Woolwich County Court	1
York CC/DR	3
non named County Court	1
Total	205

Chart 4: Originating Courts For Transfers Into QBD



12.7. The limitations of the available data mean that it is not possible to draw firm conclusions about how the value of claims in the QBD has changed over time.

13. Chancery Division

13.1. In the calendar year 2014 the table set out below shows that 463 cases were transferred in and 434 transferred out. Inclusive of transfers in, the Ch.D issued 4631 claims. Excluding transfers in (deducting 463) the number of new claims issued was 4168.

13.2. In the calendar year 2015 the table set out below shows 188 cases were transferred in and 477 transferred out. Inclusive of transfers in, the Ch.D issued 4128 claims. Excluding transfers in (deducting 188) the number of new claims

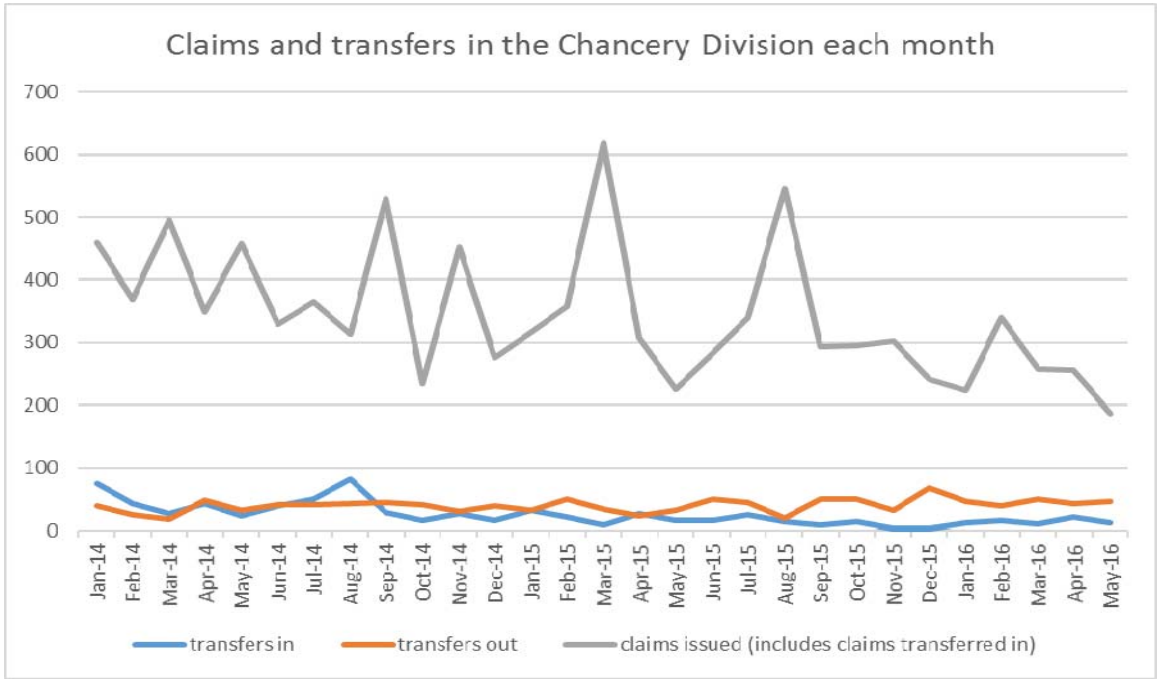
issued was 3940.

13.3. Graph 3 shows the number of issues and transfers in and out over the given periods.

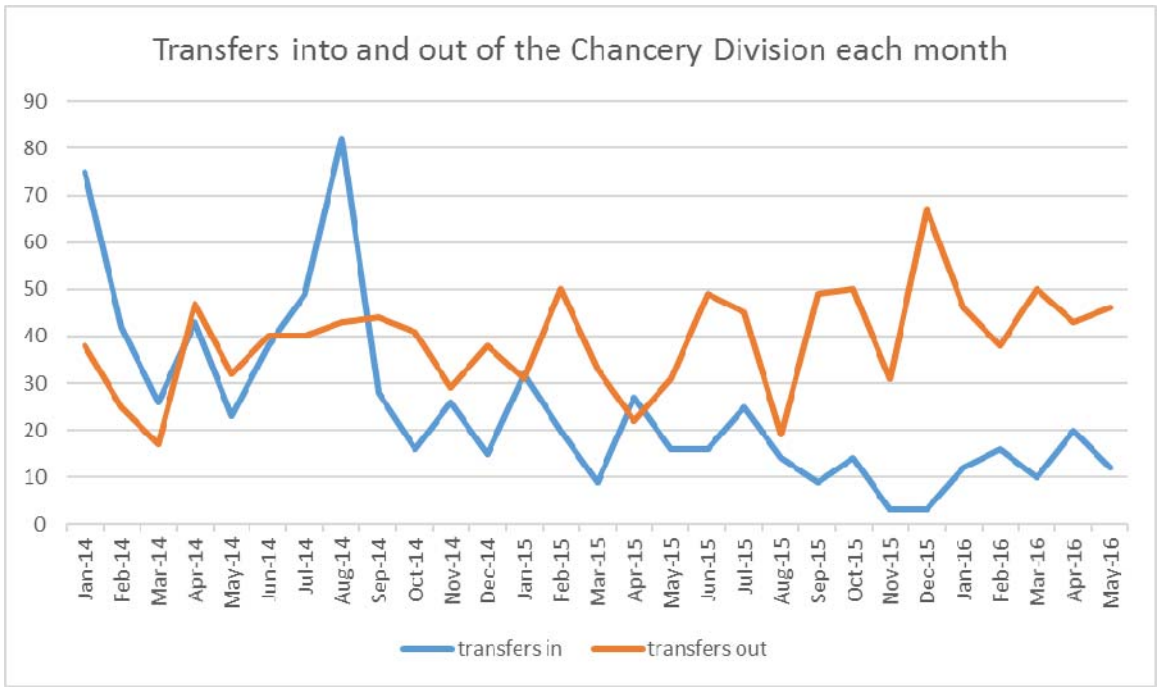
Table 6: Ch.D Claims Issued And Transfers In And Out Each Month

Chancery Division - claims issued and transfers in and out each month			
	transfers in	transfers out	claims issued (includes claims transferred in)
Jan-14	75	38	460
Feb-14	42	25	370
Mar-14	26	17	495
Apr-14	43	47	350
May-14	23	32	457
Jun-14	38	40	329
Jul-14	49	40	365
Aug-14	82	43	314
Sep-14	28	44	530
Oct-14	16	41	234
Nov-14	26	29	452
Dec-14	15	38	275
Jan-15	32	31	316
Feb-15	20	50	359
Mar-15	9	33	619
Apr-15	27	22	308
May-15	16	31	225
Jun-15	16	49	283
Jul-15	25	45	340
Aug-15	14	19	546
Sep-15	9	49	293
Oct-15	14	50	295
Nov-15	3	31	303
Dec-15	3	67	241
Jan-16	12	46	223
Feb-16	16	38	341
Mar-16	10	50	257
Apr-16	20	43	255
May-16	12	46	187

Graph 3: Of claims and transfers In Ch.D each month



Graph 4: Of Transfers In And Out (Larger Scale)



13.4. The following data is an estimate of the value of all claims that have been through Ch.D triage and includes cases issued in Ch.D and cases transferred in. Of

the 83 claims with an attributed monetary value:

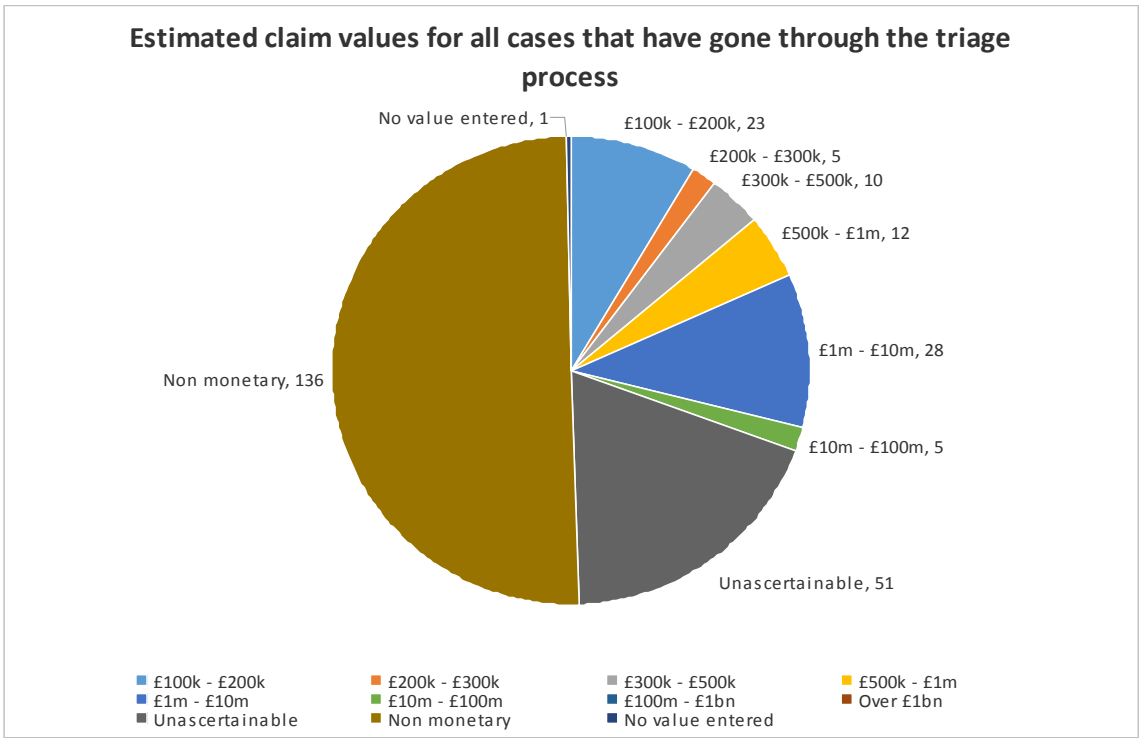
13.4.1. 46% (38) have a value of £500,000 or less,

13.4.2. 34% (28) have a value of £300,000 or less

Table 7: Estimated claim values for All Ch.D claims through triage 21.12.15 To 27.5.16

Estimated claim values for all Chancery cases that have gone through the triage process (whether issued or transferred in to Chancery, data is for the period 21/12/15 - 27/05/16)	
£100k - £200k	23
£200k - £300k	5
£300k - £500k	10
£500k - £1m	12
£1m - £10m	28
£10m - £100m	5
£100m - £1bn	0
Over £1bn	0
Unascertainable	51
Non monetary	136
No value entered	1
Total	271

Chart 5: estimated claim values for Ch D cases that have gone through triage

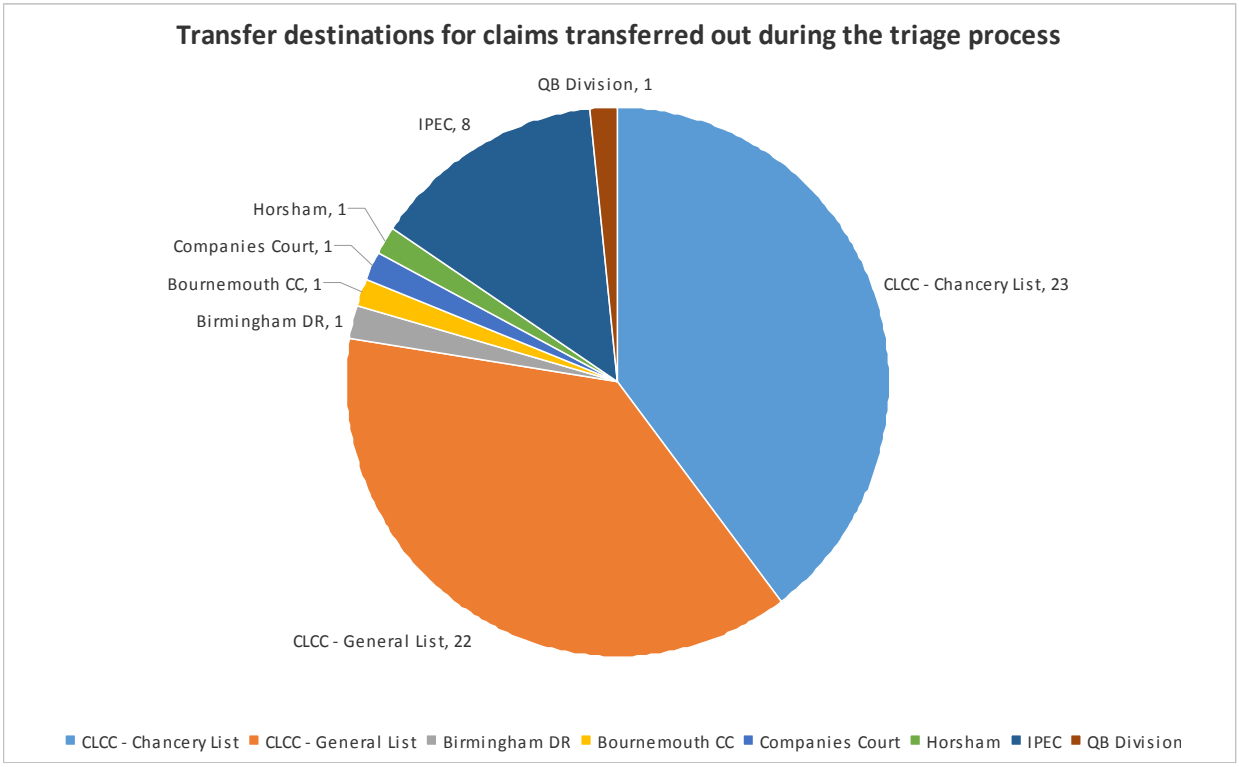


13.5. For cases transferred out during the triage process between 21.12.15 and 27.5.16 of the 58 for which data is available the largest single recipient of cases was the CLCC taking in total 78% (45 cases).

Table 8: Transfer Destinations For Claims Transferred Out Of Ch.D In Triage

Transfer destinations for claims transferred out during the triage process (data is for the period 21/12/15 - 27/05/16)	
CLCC - Chancery List	23
CLCC - General List	22
Birmingham DR	1
Bournemouth CC	1
Companies Court	1
Horsham	1
IPEC	8
QB Division	1
Total	58

Chart 6: Destination of claims transferred out Of Ch D



13.6. The available data for the same period suggests that 36 cases were transferred in to Ch.D, of those 15 had an ascribed monetary value:

13.6.1. 73% (11) have a value of £500,000 or less,

13.6.2. 60% (9) have a value of £300,000 or less

Table 9: Est. Claim values for cases transferred in to Ch.D .21.12.15 To 27.5.16

Estimated claim values for cases transferred into the Chancery Division that have gone through the triage process (data is for the period 21 Dec 15 - 27 May 16)	
£100k - £200k	7
£200k - £300k	2
£300k - £500k	2
£500k - £1m	1
£1m - £10m	3
£10m - £100m	0
£100m - £1bn	0
Over £1bn	0
Unascertainable	7
Non monetary	13
No value entered	1
Total	36

Chart 7: estimated claims values for claims transferred into Ch D

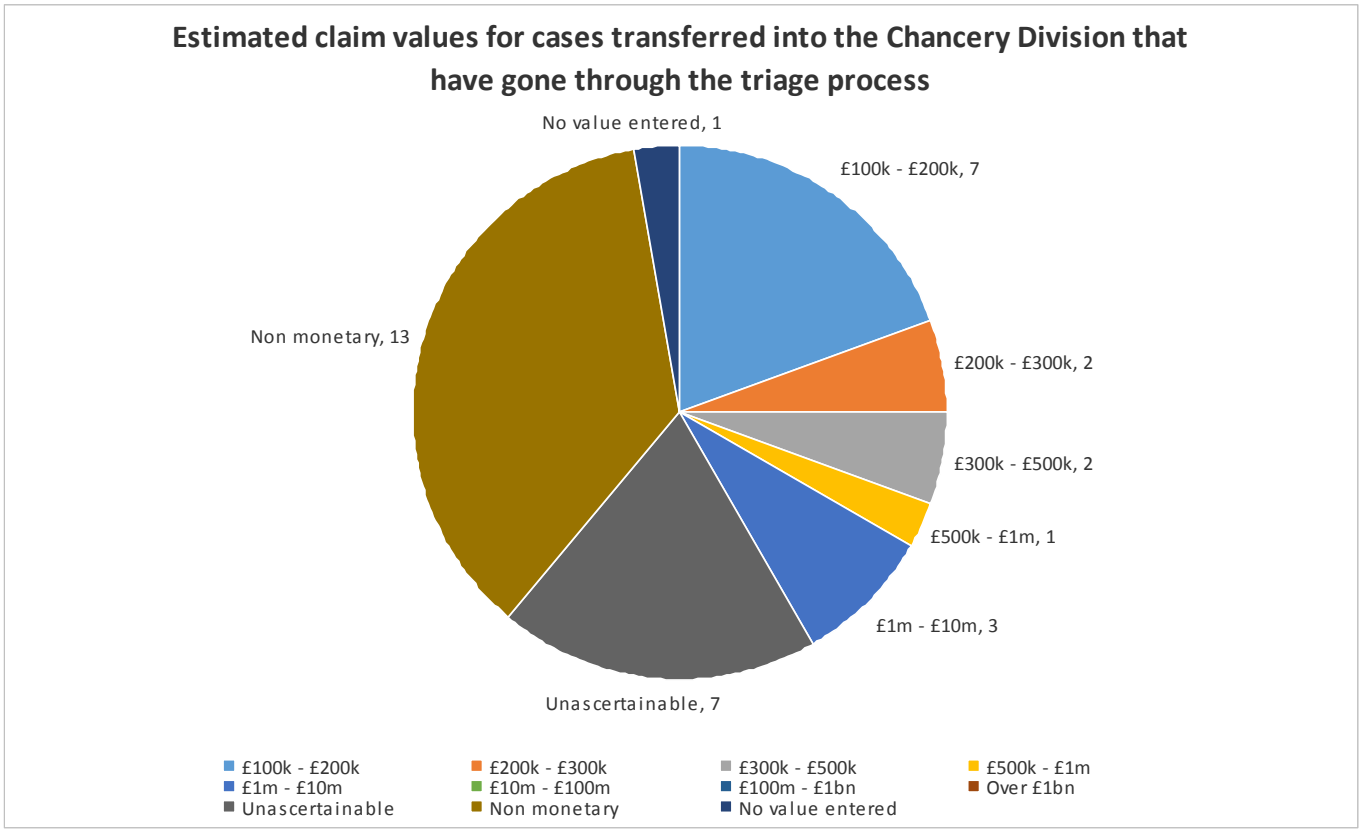
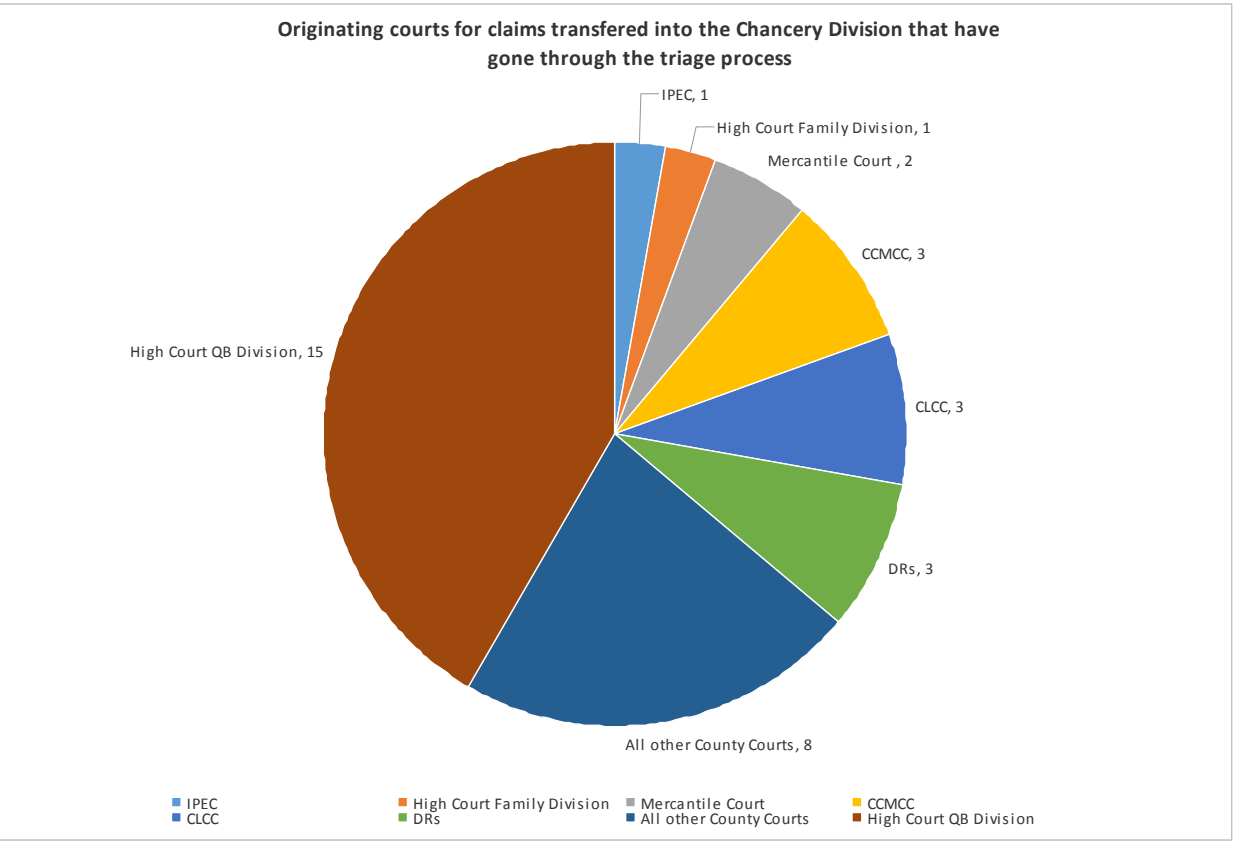


Table 10: orig. Courts for claims transferred into ch d that have gone through triage

Originating courts for claims transferred into the Chancery Division that have gone through the triage process (data is for the period 21 Dec 15 - 27 May 16)	
Summary	
IPEC	1
High Court Family Division	1
Mercantile Court	2
CCMCC	3
CLCC	3
DRs	3
All other County Courts	8
High Court QB Division	15
Total	36
All originating courts	
Bournemouth & Poole DR	1
Bristol CC	1
CLCC	3
Barnet CC	1
Bow CC	1
Weymouth CC	1
CCMCC	3
High Court Family Division	1
Gloucester and Cheltenham CC	1
Guildford DR	1
Hereford CC	1
IPEC	1
Manchester DR	1
Mercantile Court	2
Newport CC	1
Norwich CC	1
High Court QB Division	15
Total	36

Chart 8: Originating Courts



13.6.3. Of the 36 cases transferred in from other courts that went through triage, 11 were transferred out again as a result of the triage process, 9 were transferred to CLCC.

Section 3 – County Court and Regional High Court

14. For historical, geographical and IT related reasons High Court work in the regions is generally not distinguished from County Court work. The data recorded in the following tables relates to all County Court and to all QB and Ch.D work outside the Rolls Building and the RCJ. The data is partly derived from management information produced by HMCTS for operational purposes. The figures are in line with official statistics published within the Civil Justice Statistics Quarterly but may differ slightly due to different extraction dates and measure definitions.

15. Issues allocation and hearing

15.1. The data in each table relate to financial years from 1 April to 31 March. the unspecified claims table (table 12) excludes PCOL (possession Claims Online) and Personal Injury claims. The All Claims table (table 13) includes Personal Injury claims but excludes PCOL.

15.2. Allocations are recorded only when an order allocating the claim to a track has been made. Consequently, Part 8 claims, which are allocated by default to the Multi-track without the need for an order are not counted in the number of allocations.

15.3. The number of hearings recorded relates only to final hearings.

15.4. The All Claims table includes all issues including Part 8 claims and claims for possession.

15.5. The great majority of lower value specified money claims are not defended and few of the claims issued are allocated to track or reach a final hearing

Table 11: Table Specified Money Claims

	Specified money Claims								
	Up to 10K			over 10K up to 25K			over 25K		
FY	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16
Issue	978834	1066207	1117701	32436	33584	28227	11693	12314	8920
Allocation: Small Claim	60607	65991	67086	590	874	1010	66	60	59
Allocation: Fast Track	2092	813	862	2820	2541	2638	451	421	476
Allocation: Multi Track	228	179	167	252	203	185	1500	1286	1240
(total no. allocated)	62927	66983	68115	3662	3618	3833	2017	1767	1775
Hearing: Small Claim	29792	32477	34180	233	426	482	24	29	26
Hearing: Fast Track	966	373	308	744	704	725	123	113	135
Hearing: Multi Track	64	42	35	89	65	46	331	274	211
(total no. hearings)	30822	32892	34523	1066	1195	1253	478	416	372

Table 12: Table Unspecified Money Claims

	Unspecified		
FY	2013/14	2014/15	2015/16
Issue	14779	12334	9343
Allocation: Small Claim	1729	1256	1086
Allocation: Fast Track	3276	1660	1695
Allocation: Multi Track	3068	2441	1991
(total no. allocated)	8073	5357	4772
Hearing: Small Claim	788	650	561
Hearing: Fast Track	864	441	360
Hearing: Multi Track	825	560	372
(total no. hearings)	2477	1651	1293

Table 13: All Claims

	All Claims		
	All incl. unspecified		
FY	2013/14	2014/15	2015/16
Issue	1400177	1468990	1521624
Allocation: Small Claim	64594	69762	70928
Allocation: Fast Track	64520	56901	63883
Allocation: Multi Track	20416	18902	17373
(total no. allocated)	149530	145565	152184
Hearing: Small Claim	31525	34364	36100
Hearing: Fast Track	10900	9674	11999
Hearing: Multi Track	3459	2901	2539
(total no. hearings)	45884	46939	50638

16. Enforcement

16.1. The data in each table relate to financial years from 1 April to 31 March.

16.2. The tables record the number of orders made for each type of enforcement order. Table 15 excludes enforcement orders made in Personal Injury and PCOL claims. Table 16 includes enforcement orders made in Personal Injury claims but excludes PCOL enforcement orders.

Table 14: Table Enforcement Specified Money

	Specified money Claims								
	Up to 10K			over 10K up to 25K			over 25K		
FY	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16
Enforcement: Issue charging order	35713	38702	32137	6874	6599	4426	3018	2448	1821
Enforcement: Issue 3rd party debt order	2924	2421	2380	356	292	265	250	193	159
Enforcement: Warrant of execution	81402	105898	146940	2245	1602	944	131	116	63
Enforcement: Order for questioning	15512	18133	12229	1515	2326	1382	500	487	390
Enforcement: Attachment of earnings	61816	75775	83224	2757	3733	5496	431	549	496
Enforcement: Warrant of possession	9	13	7	4	1	3	3	4	6
Enforcement: Warrant of delivery	4	7	8	5	3	1	1	0	0
(total no. of enforcement orders)	197380	240949	276925	13756	14556	12517	4334	3797	2935

Table 15: Table Enforcement Unspecified Money

	Unspecified Money Claims		
FY	2013/14	2014/15	2015/16
Enforcement: Issue charging order	807	676	548
Enforcement: Issue 3rd party debt order	85	68	64
Enforcement: Warrant of execution	197	140	92
Enforcement: Order for questioning	285	200	345
Enforcement: Attachment of earnings	87	92	59
Enforcement: Warrant of possession	21	26	20
Enforcement: Warrant of delivery	4	4	4
(total no. of enforcement orders)	1486	1206	1132

Table 16: Table Enforcement All Claims

	All Claims		
	All incl. unspecified		
FY	2013/14	2014/15	2015/16
Enforcement: Issue charging order	54830	56514	47395
Enforcement: Issue 3rd party debt order	4456	3735	3457
Enforcement: Warrant of execution	86071	109457	149251
Enforcement: Order for questioning	20310	23461	17034
Enforcement: Attachment of earnings	69703	84212	92407
Enforcement: Warrant of possession	32712	33760	33581
Enforcement: Warrant of delivery	403	346	621
(total no. of enforcement orders)	268485	311485	343746

17. Timeliness

17.1. The data in tables 17, 18 and 19 shows the percentage of claims in each DCJ area which are within target. In each table green indicates an area where the target

has been reached, amber indicates an area where the target has almost been reached and red indicates an area where the target has not been reached. The relevant targets (see IR 5.11) are

17.1.1. 70% of SCT claims to reach final hearing within 30 weeks of issue.

17.1.2. 65% of FT claims to reach final hearing within 50 weeks

17.1.3. 65% of MT claims to reach final hearing within 80 weeks

Table 17: SCT

Location	*Receipt to Allocation Avg wait (weeks)*	*Allocation to Hearing Avg wait (weeks)*	*Receipt to Hearing Avg wait (weeks)*	***% of claims reaching a hearing within 30 weeks***
National	17.2	14.6	31.8	69.40%
Avon, Som and Glos Group	16.5	12.4	28.9	76.30%
Birmingham CJC	18	16.5	34.5	60.50%
Cheshire and Merseyside	16	12.4	28.4	77.60%
Cleveland and South Durham	17.5	15.1	32.6	69.90%
Devon and Cornwall Group	15.5	14.9	30.4	67.40%
Dorset, Hants, Isle of Wight and Wilts	15.3	17.1	32.4	64.20%
East Anglia	16	12.6	28.6	72.70%
Greater Manchester	16.4	13.8	30.2	73.20%
Hereford and Worcester	16	12.5	28.5	76.50%
Humberside	18.8	9.5	28.3	76.70%
Kent, Surrey and Sussex	19.2	15.8	35	64.10%
Lancashire and Cumbria	16.9	14.4	31.3	68.90%
Central London and Mayors and City	19	13.4	32.4	71.20%
Other London Courts	18.6	15.4	34	69.60%
North and West Yorkshire	15.8	14.1	29.9	71.60%
Northants and Leicester	19.2	14.9	34.1	57.60%
Northumbria and North Durham	15.6	15.9	31.5	69.90%
Notts, Derby and Lincs	16.2	14.7	30.9	71.20%
South Yorkshire	16.7	12.1	28.8	73.20%
Staffordshire and Shropshire	16.7	15.2	31.9	71.10%
Thames Valley, Beds and Herts	18.1	17.1	35.2	59.40%
Wales	16.2	12.7	28.9	80.40%
West Midlands and Warks	16.2	13.4	29.6	71.30%
*Business Centre is excluded				

Table 18: FT

Location	*Receipt to Allocation Avg wait (weeks)*	*Allocation to Hearing Avg wait (weeks)*	*Receipt to Hearing Avg wait (weeks)*	***% of claims reaching a hearing within 50 weeks***
National	21.7	28.2	49.9	67.90%
Avon, Som and Glos Group	18.9	26.4	45.3	75.30%
Birmingham CJC	22.6	26.9	49.5	68.10%
Cheshire and Merseyside	18.3	25.4	43.7	80.60%
Cleveland and South Durham	19.6	26.8	46.4	72.90%
Devon and Cornwall Group	22.4	31.4	53.8	48.30%
Dorset, Hants, Isle of Wight and Wilts	21.2	30.1	51.3	63.60%
East Anglia	20.5	28.7	49.2	66.20%
Greater Manchester	19.6	23.9	43.5	80.00%
Hereford and Worcester	20.4	26.4	46.8	68.20%
Humberside	20.9	27.5	48.4	69.80%
Kent, Surrey and Sussex	26.7	30.9	57.6	52.90%
Lancashire and Cumbria	24.4	30.5	54.9	54.20%
Central London and Mayors and City	19.8	26.4	46.2	83.00%
Other London Courts	23.2	29	52.2	68.30%
North and West Yorkshire	20.2	29.4	49.6	65.70%
Northants and Leicester	22.1	32	54.1	48.00%
Northumbria and North Durham	24.7	29.5	54.2	57.10%
Notts, Derby and Lincs	21.3	26.8	48.1	68.40%
South Yorkshire	19.9	28.4	48.3	69.30%
Staffordshire and Shropshire	21.2	28.9	50.1	67.50%
Thames Valley, Beds and Herts	22.7	32.4	55.1	54.80%
Wales	20.1	24.7	44.8	77.70%
West Midlands and Warks	19.5	27.7	47.2	67.50%

Table 19 MT

Location	*Receipt to Allocation Avg wait (weeks)*	*Allocation to Hearing Avg wait (weeks)*	*Receipt to Hearing Avg wait (weeks)*	*% of claims reaching a hearing within 80 weeks*
National	36.5	45.7	82.2	62.10%
Avon, Som and Glos Group	31.3	55.3	86.6	54.80%
Birmingham CJC	27.3	44.3	71.6	64.50%
Cheshire and Merseyside	27.5	50.6	78.1	64.90%
Cleveland and South Durham	41.6	43.2	84.8	56.10%
Devon and Cornwall Group	32.2	54.3	86.5	52.50%
Dorset, Hants, Isle of Wight and Wilts	38.2	40	78.2	55.80%
East Anglia	31.8	48.2	80	67.20%
Greater Manchester	38.4	50.1	88.5	57.80%
Hereford and Worcester	21.9	54.7	76.6	66.70%
Humberside	44	40.8	84.8	50.00%
Kent, Surrey and Sussex	48.3	49.6	97.9	44.10%
Lancashire and Cumbria	47	53.2	100.2	33.30%
Central London and Mayors and City	28.6	42	70.6	78.00%
Other London Courts	39.1	31.2	70.3	80.40%
North and West Yorkshire	30.6	51.9	82.5	59.90%
Northants and Leicester	49.5	38.6	88.1	56.10%
Northumbria and North Durham	54.5	64.5	119	34.00%
Notts, Derby and Lincs	48.2	44.6	92.8	48.80%
South Yorkshire	41.5	52.6	94.1	39.50%
Staffordshire and Shropshire	41.6	45	86.6	44.40%
Thames Valley, Beds and Herts	41.9	42.9	84.8	61.60%
Wales	38.5	41	79.5	61.70%
West Midlands and Warks	33.7	48.4	82.1	66.00%

Section 4 - General

18. Sittings (see para. 8.63.2 of the Final Report)

18.1. The table records the number of sitting days for each type of Judicial office holder in the financial year from 1 April 2015 to 31 March 2016.

18.2. Lines 1 to 3 relate to the County Court and the Family Court. They provide the comparisons for the deployment of judges (salaried and fee paid) for Civil and Family work referred to in Ch 8 of the Final Report.

18.3. The "other" column, showing 28,145 sitting days in the Family Court includes Magistrates and legal advisors sitting in the Family Court.

18.4. Line 4 relates to High Court sittings outside the Rolls Building and the Royal Courts of Justice. High Court Judges sat on civil matters (in effect) in the cities outside London for 774 days. The majority of High Court work was dealt with by Deputy High Court Judges who sat for 3,260 days. Of the judges sitting on High Court civil matters out of London 97% were salaried. It follows that the great majority of this High Court work is dealt with by Circuit Judges sitting as Judges of the High Court and by District Judges.

18.5. Details of the number of fee paid and salaried sittings are not collected for the Royal Courts of Justice and for the Rolls Building. The great majority of Deputy High Court Judges sitting there are likely to be fee paid.

Table 20: Sittings

Work type	Heads of Division	Lord / Lady Justice	High Court Judge	Deputy High Court Judge	Circuit Judge	Deputy Circuit Judge	Recorder	District Judge	Deputy District Judge	Other	Total	Salaried	Fee paid	Salaried %
Civil County Court	0	0	10	2	8136	56	2150	40424	23388	53	74218	48585	25,633.25	65%
Family County Court	0	2	73	1	25520	308	3124	36130	5997	28145	99299	89744	9,554.50	90%
Total County	0	2	83	3	33656	364	5274	76553	29385	28198	173517			
High Court Civil	0	23	774	3260		0	0	1006	47	2	5112	4953	158.5	97%
High Court Family	0	66	592	347	283	0	0	626	1	0	1915	1852	62.5	97%
RCJ/Rolls	288	2092	10944	1453	1216	0	567	81	0	0	16641			
Total High Court (inc on Circuit)	288	2181	12309	5060	1499	0	567	1713	48	2	23667			
Total overall	**288**	**2183**	**12392**	**5063**	**35155**	**364**	**5841**	**78266**	**29433**	**28200**	**197184**			

19. Circuit Judge Sittings in each Designated Civil Judge area

19.1. The tables set out in this section deal with the civil sittings (measured as full sitting days) of Circuit Judges in both the High Court and County Court in each of the 23 Designated Civil Judge areas in England and Wales for the financial year from 1 April 2015 to 31 March 2016. The recorded percentage is a percentage of a full

sitting year of 185 days for a CJ.

19.2. The tables record the number of civil days sat in any given area even if the sitting Judge is not based in that area. For example, Northumbria and North Durham (based at Newcastle) record in table 23 below, CJ HC sittings record 9 High Court Chancery days sat by Circuit Judges. There are no Specialist Circuit Judges based in Newcastle and these sitting are very likely to have been supplied by the Specialist Judges based at Leeds.

19.3. It is notable that, when account is taken of High Court sittings (see para.2.5 and 8.63 of the Final Report):

19.3.1. In 4 DCJ areas (Cleveland and South Durham; Hereford and Worcester; Humberside; and Other London Courts) there are no circuit judges who sit on civil for 40% of more of their time.

19.3.2. In 7 DCJ areas (Devon and Cornwall; Dorset, Hampshire and the Isle of Wight; East Anglia; Hereford and Worcester; Lancashire and Cumbria; Northumbria and North Durham; and South Yorkshire) there is only one circuit judge who sits for 25% or more of his or her time in civil

20. Further (see para.8.63 of the Final Report):

20.1. Taking no account of High Court sittings:

20.1.1. In 5 DCJ areas (Birmingham; Cleveland and South Durham; Hereford and Worcester; Humberside; Other London courts) no circuit judge sits for 50% or more of his or her time in civil (4 if account is taken of HC sittings when Birmingham drops out).

20.1.2. In 11 DCJ areas (Avon, Somerset and Gloucestershire; Devon and Cornwall; Dorset, Hampshire and the Isle of Wight; East Anglia; Lancashire and Cumbria; Northampton and Leicester; Northumbria and North Durham; South Yorkshire; Staffordshire and Shropshire; Thames Valley, Bedfordshire and Hertfordshire and the West Midlands) only 1 circuit judge sits for 50% of more of his or her

time in civil (10 if account is taken of HC sittings when Avon, Somerset and Gloucester drops out).

20.1.3. In 3 DCJ areas (Cheshire and Merseyside; Greater Manchester; and Nottingham, Derby and Lincolnshire) there are 2 circuit judges who sit 50% or more in civil (2 if account is taken of HC sittings when Greater Manchester drops out)

20.1.4. In 3 DCJ areas (Kent, Surrey and Sussex; North and West Yorkshire; and Wales) there are 3 circuit judges who sit 50% or more in civil (2 if account is taken of HC sittings Avon, Somerset and Gloucestershire is added and North and West Yorkshire drops away as it has 6 judges sitting for 50% or more and Wales drops away as it has 4).

20.1.5. In only 1 DCJ area (CLCC and Mayors and City) are there 4 or more circuit judges sitting for 50% or more of their time in civil [if account is taken of HC sittings there are 5, Birmingham, Greater Manchester; CLCC and Mayors and City; North and West Yorkshire and Wales]

21. Generally, and taking 40% as the minimum time needed to afford the judge the requisite experience (see para.8.63.4):

21.1. Taking account of HC sittings:

21.1.1. 4 DCJ areas have no civil judges with the requisite experience.
21.1.2. 9 have only 1.
21.1.3. 10 have 2 or more and of those 8 have 3 or more.

21.2. Taking no account of HC sittings:

21.2.1. 4 DCJ areas have no civil judges with the requisite experience
21.2.2. 11 have only 1
21.2.3. 8 have 2 or more

22. The CJ High Court sitting data for the 7 centres outside London shows of 3084.5 HC days sat by CJs:

22.1. Manchester accounted for 32%,

22.2. Birmingham for 27%

22.3. Leeds for 17%.

22.4. Bristol for 15%

22.5. Cardiff for 7%

22.6. Liverpool for 2% and

22.7. Newcastle for 1%.

Table 21: CJ Sittings (County Court and High Court)

DCJ AREA	Population	Total county court sitting days	Total HC sitting days	Total civil sitting days in the CC and in the HC	Judicial Numbers			
					Up to 25%	25% to 40%	40% to 50%	50% or more
Avon, Somerset and Gloucestershire Group (Based at Bristol)	2,257,146	206	465	671	6	0	0	3
Birmingham Civil Justice Centre	1,101,360	327.5	844.5	1172	10	2	0	6
Cheshire and Merseyside	2,430,284	548	52	600	2	2	1	2
Cleveland and South Durham	808,794	39.5	0	39.5	5	0	0	0
Devon and Cornwall Group (Based at Exeter)	1,707,447	182	17.5	199.5	4	0	0	1
Dorset, Hampshire, Isle of Wight and Wiltshire (Based at Winchester)	3,398,326	234.5	6	240.5	7	0	0	1
East Anglia	4,219,655	298.5	2	300.5	11	0	0	1
Greater Manchester	2,732,854	411.5	979.5	1391	1	2	0	8
Hereford and Worcester	1,072,702	62	0	62	2	1	0	0
Humberside	923,876	38.5	0	38.5	6	0	0	0
Kent, Surrey and Sussex	4,594,865	537	2	539	11	0	0	3
Lancashire and Cumbria (Preston Combined)	1,969,853	253	19.5	272.5	4	0	0	1
Central London County Court and Mayors and City	8,538,689	2089.5	0	2089.5	5	3	0	13
Other London courts		38	0	38	5	0	0	0
North and West Yorkshire	2,927,747	584	518	1102	5	0	0	6
Northampton and Leicester Trial Centre	1,881,914	242	0	242	1	1	0	1
Northumbria and North Durham	1,952,473	162	20	182	4	0	0	1
Notts, Derby and Lincs	2,755,499	326	0	326	5	0	0	2
South Yorkshire	1,365,847	160.5	0	160.5	2	0	0	1
Staffordshire and Shropshire	1,067,847	215	0	215	0	1	0	1
Thames Valley, Bedfordshire and Hertfordshire	4,138,065	359	6	365	13	1	0	1
Wales (Based at Cardiff)	3,092,036	601	217.5	818.5	3	1	0	4
West Midlands and Warwickshire (Coventry Cmbd)	2,471,375	222	0	222	0	0	1	1

Table 22: CJ county court sittings

DCJ AREA	Population	Total county court sitting days	Judicial Numbers			
			Up to 25%	25% to 40%	40% to 50%	50% or more
Avon, Somerset and Gloucestershire Group (Based at Bristol)	2,257,146	206	6	0	0	1
Birmingham Civil Justice Centre	1,101,360	327.5	15	1	1	0
Cheshire and Merseyside	2,430,284	548	0	2	1	2
Cleveland and South Durham	808,794	39.5	5	0	0	0
Devon and Cornwall Group (Based at Exeter)	1,707,447	182	4	0	0	1
Dorset, Hampshire, Isle of Wight and Wiltshire (Based at Winchester)	3,398,326	234.5	7	0	0	1
East Anglia	4,219,655	298.5	11	0	0	1
Greater Manchester	2,732,854	411.5	4	2	0	2
Hereford and Worcester	1,072,702	62	2	1	0	0
Humberside	923,876	38.5	6	0	0	0
Kent, Surrey and Sussex	4,594,865	537	11	0	0	3
Lancashire and Cumbria (Preston Combined)	1,969,853	253	4	0	0	1
Central London County Court and Mayors and City	8,538,689	2089.5	5	3	0	13
Other London courts		38	5	0	0	0
North and West Yorkshire	2,927,747	584	6	0	0	3
Northampton and Leicester Trial Centre	1,881,914	242	1	1	0	1
Northumbria and North Durham	1,952,473	162	2	0	0	1
Notts, Derby and Lincs	2,755,499	326	5	0	0	2
South Yorkshire	1,365,847	160.5	2	0	0	1
Staffordshire and Shropshire	1,067,847	215	0	1	0	1
Thames Valley, Bedfordshire and Hertfordshire	4,138,065	359	13	1	0	1
Wales (Based at Cardiff)	3,092,036	601	3	2	0	3
West Midlands and Warwickshire (Coventry Cmbd)	2,471,375	222	0	0	1	1

Table 23: CJ HC sittings

CITY	City Population	Total HC sitting days	Judge Numbers				Sitting Days						
			Up to 25%	25% to 40%	40% to 50%	50% or more	Chanc.	QB.	TCC	Merc	Divisional A/C	Civil Appeals	Admin
BRISTOL	442,474	465	1	0	0	3	144	99	7	198	0	0	17
BIRMINGHAM	1,101,360	844.5	4	1	0	5	435.5	138	171.5	46	0	0	53.5
LIVERPOOL	473,073	52	3	0	0	0	20	24	8	0	0	0	0
MANCHESTER	520,215	979.5	3	0	0	6	300	1	311	292	4	0	71.5
LEEDS	766,399	516.5	5	0	0	3	295	17.5	53.5	37	0	0	113.5
NEWCASTLE ON TYNE	289,835	20	4	0	0	0	9	9	0	0	0	2	0
CARDIFF	354,294	207	4	1	0	1	62	17	21.5	74.5	0	0	32

23. District Judge Sittings in each Designated Civil Judge area

23.1. The data covers the period 1 April 2015 to 31 March 2016. The recorded percentage is a percentage of a full sitting year of 190 days for a DJ. Taking account

of HC sittings,

23.1.1. every DCJ areas has at least 2 DJs who sit for 40% or more of their time on civil, and

23.1.2. 13 areas have 10 or more DJs who sit for 40% or more of their time in civil.

23.2. The DJ HC sittings data for the 7 main centres outside London merits further explanation. Cardiff, records no District Judge civil sitting days in the High Court. This is because in Cardiff a DJ sitting on civil is likely to have a mixed list of HC and CC work. Unless a full day is spent on exclusively High Court matters the day will be recorded as a civil County Court sitting day. The same point is likely to apply to the populous DCJ areas of Kent, Surrey and Sussex and of Lancashire and Cumbria each of which shows no HC DJ sittings in the DJ sitting table.

Table 24: DJ Sittings (High Court and County Court)

DCJ AREA	Population	Total county court sitting days	Total HC sitting days	Total civil sitting days in the CC and in the HC	Judicial Numbers			
					Up to 25%	25% to 40%	40% to 50%	50% or more
Avon, Somerset and Gloucestershire Group (Based at Bristol)	2,257,146	945	49	994	5	3	3	4
Birmingham Civil Justice Centre	1,101,360	1451	409	1860	5	3	1	10
Cheshire and Merseyside	2,430,284	2412.5	164	2576.5	7	3	2	16
Cleveland and South Durham	808,794	776.5	0	776.5	3	1	2	4
Devon and Cornwall Group (Based at Exeter)	1,707,447	816.5	1	817.5	4	6	0	3
Dorset, Hampshire, Isle of Wight and Wiltshire (Based at Winchester)	3,398,326	1793.5	1	1794.5	3	9	4	7
East Anglia	4,219,655	2329.5	0	2329.5	5	3	0	16
Greater Manchester	2,732,854	3653.5	314.5	3968	4	3	7	22
Hereford and Worcester	1,072,702	406.5	0	406.5	0	0	2	2
Humberside	923,876	501	0	501	3	1	2	2
Kent, Surrey and Sussex	4,594,865	2526	0	2526	2	11	4	13
Lancashire and Cumbria (Preston Combined)	1,969,853	1186.5	0	1186.5	3	4	1	6
Central London County Court and Mayors and City	8,538,689	2064.5	3	2067.5	3	2	1	10
Other London courts		6363	2	6365	16	4	4	36
North and West Yorkshire	2,927,747	2169.5	33	2202.5	5	8	2	12
Northampton and Leicester Trial Centre	1,881,914	655.5	2	657.5	1	4	2	2
Northumbria and North Durham	1,952,473	1371.5	18.5	1390	5	2	4	6
Notts, Derby and Lincs	2,755,499	1279	1	1280	6	2	4	5
South Yorkshire	1,365,847	1332.5	0	1332.5	4	1	1	9
Staffordshire and Shropshire	1,067,847	571.5	0	571.5	6	4	0	2
Thames Valley, Bedfordshire and Hertfordshire	4,138,065	2366.5	1	2367.5	5	5	7	12
Wales (Based at Cardiff)	3,092,036	2220.5	0	2220.5	8	5	5	10
West Midlands and Warwickshire (Coventry Cmbd)	2,471,375	1248	2	1250	7	4	2	6

Table 25: DJ County Court Sittings

DCJ AREA	Population	Total county court sitting days	Judicial Numbers			
			Up to 25%	25% to 40%	40% to 50%	50% or more
Avon, Somerset and Gloucestershire Group (Based at Bristol)	2,257,146	945	5	4	3	3
Birmingham Civil Justice Centre	1,101,360	1451	7	1	4	7
Cheshire and Merseyside	2,430,284	2412.5	7	4	2	15
Cleveland and South Durham	808,794	776.5	3	1	2	4
Devon and Cornwall Group (Based at Exeter)	1,707,447	816.5	4	6	0	3
Dorset, Hampshire, Isle of Wight and Wiltshire (Based at Winchester)	3,398,326	1793.5	3	9	4	7
East Anglia	4,219,655	2329.5	5	3	0	16
Greater Manchester	2,732,854	3653.5	4	4	8	20
Hereford and Worcester	1,072,702	406.5	0	0	2	2
Humberside	923,876	501	3	1	2	2
Kent, Surrey and Sussex	4,594,865	2526	2	11	4	13
Lancashire and Cumbria (Preston Combined)	1,969,853	1186.5	3	4	1	6
Central London County Court and Mayors and City	8,538,689	2064.5	3	2	1	10
Other London courts		6363	16	4	4	36
North and West Yorkshire	2,927,747	2169.5	5	9	1	12
Northampton and Leicester Trial Centre	1,881,914	655.5	1	4	2	2
Northumbria and North Durham	1,952,473	1371.5	5	2	4	6
Notts, Derby and Lincs	2,755,499	1279	6	2	4	5
South Yorkshire	1,365,847	1332.5	4	1	1	9
Staffordshire and Shropshire	1,067,847	571.5	6	4	0	2
Thames Valley, Bedfordshire and Hertfordshire	4,138,065	2366.5	5	5	7	12
Wales (Based at Cardiff)	3,092,036	2220.5	8	5	5	10
West Midlands and Warwickshire (Coventry Cmbd)	2,471,375	1248	7	4	2	6

Table 26: DJ HC sittings

CITY	City Population	Total HC sitting days	Type of HC work			
			Chanc.	QB.	Civil Appeals	Admin
BRISTOL	442,474	49	47.5	1	0.5	0
BIRMINGHAM	1,101,360	409	250.5	158.5	0	0
LIVERPOOL	473,073	164	164	0	0	0
MANCHESTER	520,215	314.5	314.5	0	0	0
LEEDS	766,399	31.5	27.5	4	0	0
NEWCASTLE ON TYNE	289,835	18.5	18.5	0	0	0
CARDIFF	354,294	0	0	0	0	0

24. Fees

24.1. The fee increases which came into effect on 9 March 2015 are set out below.

24.2. The table does not include the discounted rate for issue through the bulk centres. It can be seen that the increases do not impact on claims below £10,000.

Table 27: Fees

Fees as at 21.3.16		fees as at 22.4.14	% inc
amount	court issue	court issue	
0-300	35	35	0
300-500	50	50	0
500-1000	70	70	0
1000-1500	80	80	0
1500-3000	115	115	0
3000-5000	205	205	0
5000-10000	455	455	0
10000	500	455	10%
20000	1000	610	64%
40000	2000	610	228%
90000	4500	910	395%
150000	7500	1315	470%
190000	9500	1315	622%
200000	10000	1515	560%
250000	10000	1720	481%

Section 5 – Time and Motion studies

Court of Appeal
T&M Data Analysis

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March 2016

Introduction

1. The data and reliability

The analyses presented in this report are derived from T&M questionnaire data collected over a three month period in the Court of Appeal, combined with information extracted from the Court's RECAP database. The analyses have been produced under considerable time pressure. Although real effort has been taken to ensure that the data incorporated into the analyses are as 'clean' as possible, there are several potential sources of inaccuracy. For example:

a. The **design of the questionnaires** and the **choice of questions** asked. Have they captured all of the information that ideally should be included in the overall calculation of time spent? What might be missing?

b. The **completion of questionnaires**. It is difficult to record time precisely, even if running a stop-watch or using a time-recording 'app'. There was variation in the way questionnaires were completed, possible inaccuracies and mistakes in calculating fractions of hours, and likely variation in approach to 'rounding up' for fractions of hours.

c. There were difficulties in **combining questionnaire data** with RECAP data.

With those warnings, however, our experience has been that through the various iterations of the analyses, during which data were refined and cleaned and the analyses repeated, the broad picture has remained constant and the relative time spent on different areas of the Court's work, and different subject areas, has not altered dramatically. The consistency of the picture gives some confidence about drawing broad inferences from the data. Considerable care was taken in dealing with missing data as a result of questionnaires not being completed. A cautious process of 'grossing up' was adopted to impute missing values, using the information from completed T&M questionnaires combined with information from RECAP (such as subject area and hearing times) to calculate and apply average times.

It is therefore appropriate to have reasonable confidence in the overall time estimates attributed to different areas of the Court's activities and different subject areas. The T&M

study provides useful baseline data and should be a valuable tool for additional analyses now and in the future. However, in using the results of the study to assess the impact of proposed reforms to the Court's procedures there are dangers in applying overly complex assumptions about how behaviour or practice is likely to change. The T&M data quantify actual judicial activity on real cases. The further away one moves from that reality into complex speculation, the greater the potential for error to be incorporated into results. **There is no substitute for actually evaluating reforms. A system for monitoring and evaluating the reforms should be implemented.**

2. Approach to missing time data in the T&M study

While data on time spent by judges was available for the majority of paper hearings, oral hearings and full appeals, there was a minority of cases where questionnaires were not filled in (or not filled in for all judges involved in a case). Since the key aim of the study was to be able to estimate the total time spent across all cases it was necessary to make assumptions about the time spent on cases where questionnaires were not filled in. The approaches for the three datasets were as follows:

Paper: For paper hearing we had a single judge per case. If the questionnaire had not been completed, we were restricted to information available from RECAP (such as subject area). We used the limited data available from RECAP, and how it related to cases with known time data, to impute time data where it was missing.

Oral PTAs: Oral hearings differ somewhat from paper hearings in that there were some cases with more than one judge. In some cases with missing questionnaires we could only use RECAP data (as for paper), but in others where data for the second judge on a case was missing, but the questionnaire was filled in for the first judge it was possible to read across data from the first judge to aid imputation of time values.

Full appeals: For full appeals questionnaires were filled out by none, one, two or three of the judges involved in a case. RECAP data including case number and number of judges was used to establish exactly what information was missing. Where no data was available, imputation relied on data from RECAP, such as subject area, number of judges, and hearing time. Where data were available for some, but not all of the judges it was possible to read across questionnaire data from other judges to aid imputation of time values.

A note on interpreting tables

In the tables a number of simple summary statistics are provided as follows;

Mean – This is the sum of the 'time taken' values divided by the number of values. It is commonly used measure of central tendency. However, it is important to note that it can be susceptible to outliers or extreme values. In the appeal court data there are a number of particularly high time values (with time taken forming what is called a skewed distribution). As a result, we have also included the median, which is not influenced by outliers.

Median – This is the central value in a list of values, which is found by arranging all the 'time taken' observations from lowest value to highest value and picking the middle one. It is not influences by extreme values and as a result, is a particularly useful measure of central tendency when we have a skewed distribution.

Valid N (or simply N in some tables) – This is the total number of observations (in this case, the total number of times)

Minimum – The smallest observed value

Maximum – The largest observed value

Sum – The sum of the values (in this case the sum of the times). This is used to determine exactly how much time can be attributed to a particular group or type of case.

Table Sum % - The percentage of all time made up by a particular group. This is used to determine exactly what percentage of the time can be attributed to a particular group or type of case.

A note on linked and non-linked cases

In some circumstances, appeals are listed together because either they involve the same parties or because they raise overlapping legal issues and it is convenient for the court to hear them together

The time and motion study included both linked and non-linked cases, but at an early stage in the analysis it was noted that the distribution of linked cases varied between different subject areas and that there was a large number of linked cases (45) within the Chancery appeals included in the T&M study. Because the time spent on linked cases is considerably shorter than that spent on non-linked cases, the inclusion of linked cases in our analyses of time taken to deal with appeals had a distorting effect on average times. Since a key purpose of the T&M study was to estimate average time spent on cases within different subject areas it was decided that most of the analysis would be based only on non-linked cases. **Thus all tables presented in this report use T&M data from non-linked cases**. **All pie charts**, which present overall time distribution between different areas and categories of

work within the Court of Appeal, **include all cases in the T&M study i.e. both linked and non-linked cases.**

Analysis of Full Appeals

Analysis of questionnaire data

This analysis is based on questionnaire and RECAP data for 268 full appeal cases. Importantly, time taken by judges (and hearing time) was adjusted for number of linked cases. Values were imputed (using a statistical procedure called multiple imputation) for a comparatively small number of appeals/questionnaires without data on time spent by judges. A separate note is available setting out a) how time taken was calculated for lead and non-lead judges b) how time for linked cases was calculated and adjusted and c) how missing data on time taken was imputed.

Distinguishing linked and non-linked cases

The table below shows the differences in average total time comparing the samples of ordinary appeal cases (188) with linked cases (80). Adopting the original approach to linked cases (dividing total time taken between the number of linked cases) the mean total time for non-linked cases is 48,88 hours compared with 19.23 for linked cases.

Table 1. Total time taken by judges for linked and non-linked full appeals

	Appeal Time					
	Count	Mean	Median	Minimum	Maximum	Sum
Non-linked cases	188	48.88	44.75	6.69	180.00	9188.63
Linked Cases	80	19.23	10.03	5.60	83.96	1538.44

1. Total time taken on appeals

Across 188 non-linked cases, a total of 9,188.63 hours were spent on full appeals by all judges. The mean number of hours spent was just under 49 hours with a median just under 45 hours (Table 2). The distribution of time spent on (non-linked) full appeals by judges is shown in Figure 1.

Table 2. Total time spent on (non-linked) full appeals by judges

Appeal Time					
Count	Mean	Median	Minimum	Maximum	Sum
188	48.88	44.75	6.69	180.00	9188.63

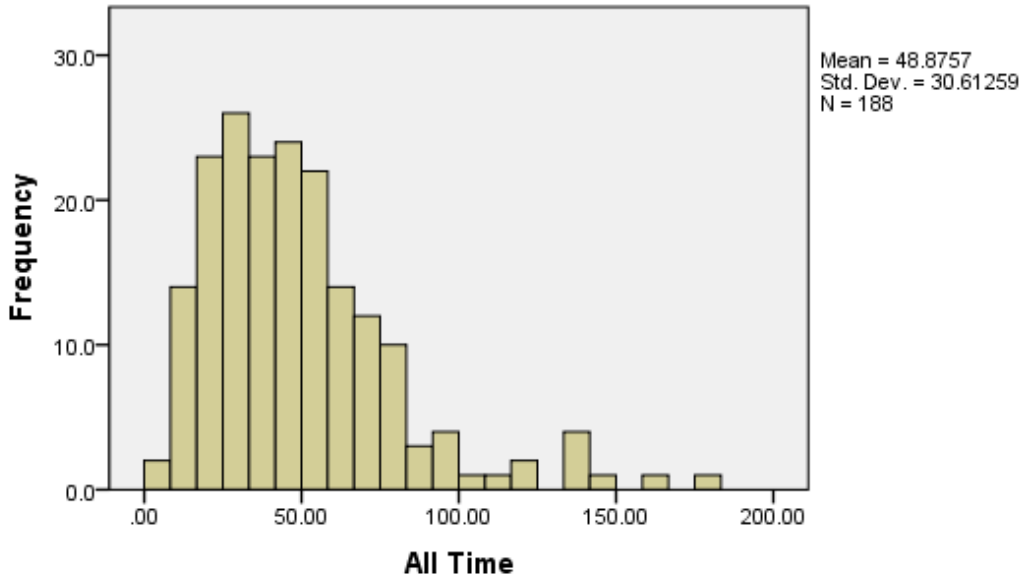


Figure 1. The distribution of time spent on (non-linked) full appeals by judges

2. Total time taken on appeals by lead and non-lead judges

The mean time taken on appeals by lead judges on non-linked appeals was just over 27 hours (median of 22 hours) as compared with a mean of around 22 hours (median just over 19 hours) for (generally two) non-lead judges (Table 3). The distribution of time spent on (non-linked) full appeals by lead and non-lead judges is shown in Figures 2 and 3.

Table 3. Total time spent on (non-linked) full appeals by lead and non-lead judges

	Appeal time					
	Count	Mean	Median	Minimum	Maximum	Sum
Lead	188	27.06	22.00	2.75	122.00	5060.08
Non-lead	188	21.96	19.33	2.98	74.00	4128.56

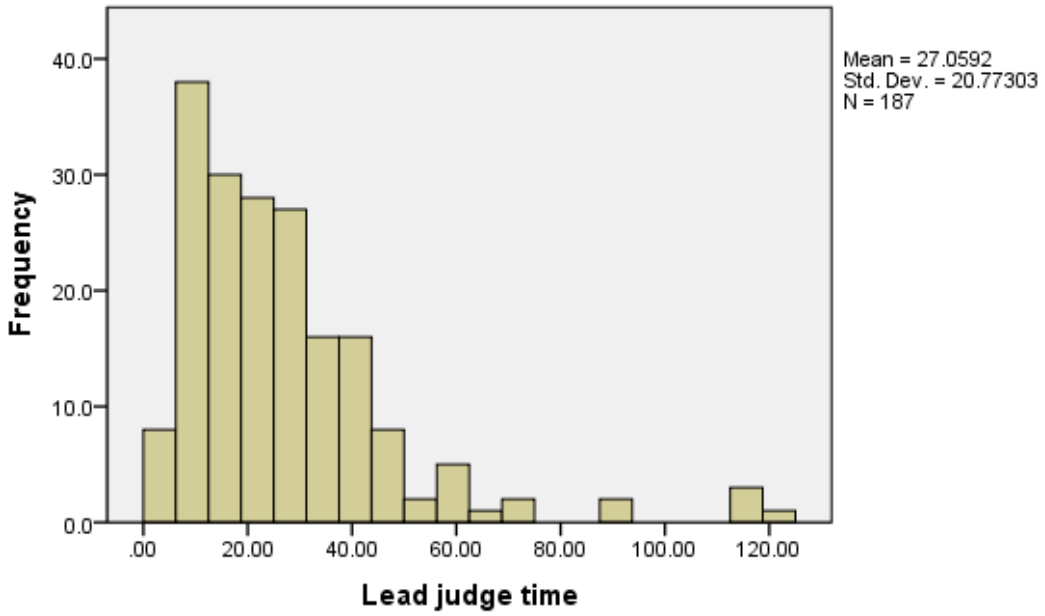


Figure 2. The distribution of time spent on (non-linked) full appeals by lead judges

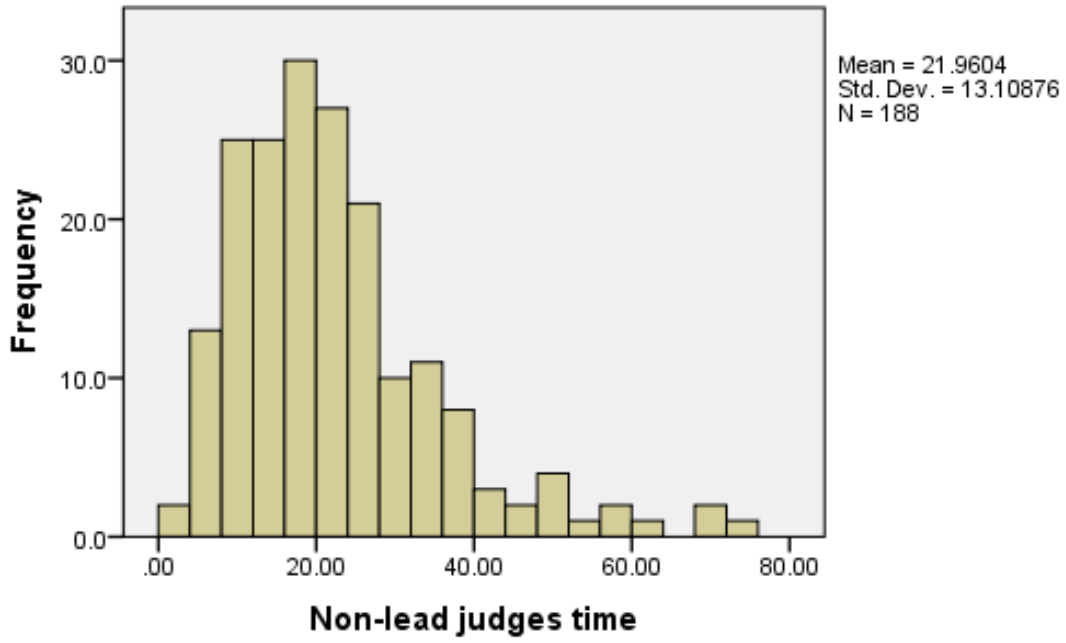


Figure 3. The distribution of time spent on (non-linked) full appeals by non-lead judges

Looking at all appeals (linked and non-linked cases), overall lead judges spent 5,938 hours on appeals compared to 4,801 for (generally two) non-lead judges. This equated to 55.3 per cent of all time being spent by lead judges and 44.7 per cent by non-lead judges (Figure 4).

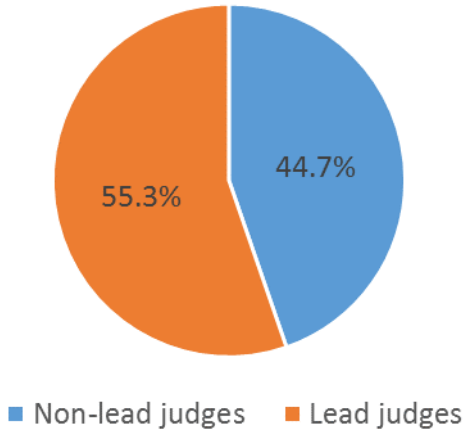


Figure 4. Total time spent by lead and non-lead judges on all appeals (linked and non-linked cases)

3. Total time taken in relation to subject area

Comparison of time taken on appeals in different subject areas showed that commercial cases had the longest mean times (82 hours on average, although the number of cases here is relatively small). Looking at the final two columns of Table 4, while (non-linked) commercial cases make up 10 per cent of appeals, they account for 17 per cent of all time spent by judges. Figure 5 shows the percentage of all time spent on different subject areas, but includes both linked and non-linked appeals.

Table 4. Total time spent by all judges on (non-linked) full appeals by subject area

Subject area	All Time							
	Count	Mean	Median	Min	Max	Sum	Col N %	Col Sum %
Public law	26	51.64	53.75	20.00	83.00	1342.68	13.8%	14.6%
Commercial	19	81.99	65.34	23.00	180.00	1557.81	10.1%	17.0%
Family	45	30.39	26.00	6.69	77.30	1367.43	23.9%	14.9%
Immigration/Asylum	24	35.38	34.63	6.75	80.25	849.24	12.8%	9.2%
Chancery	32	66.09	60.75	19.00	139.11	2114.73	17.0%	23.0%
Clin. neg/PI/Other Prof. neg.	9	57.56	55.50	21.50	92.00	518.00	4.8%	5.6%
County Court/HighCourt QB	29	44.34	39.50	11.00	105.10	1285.73	15.4%	14.0%
Employment	4	38.25	37.00	13.00	66.00	153.00	2.1%	1.7%

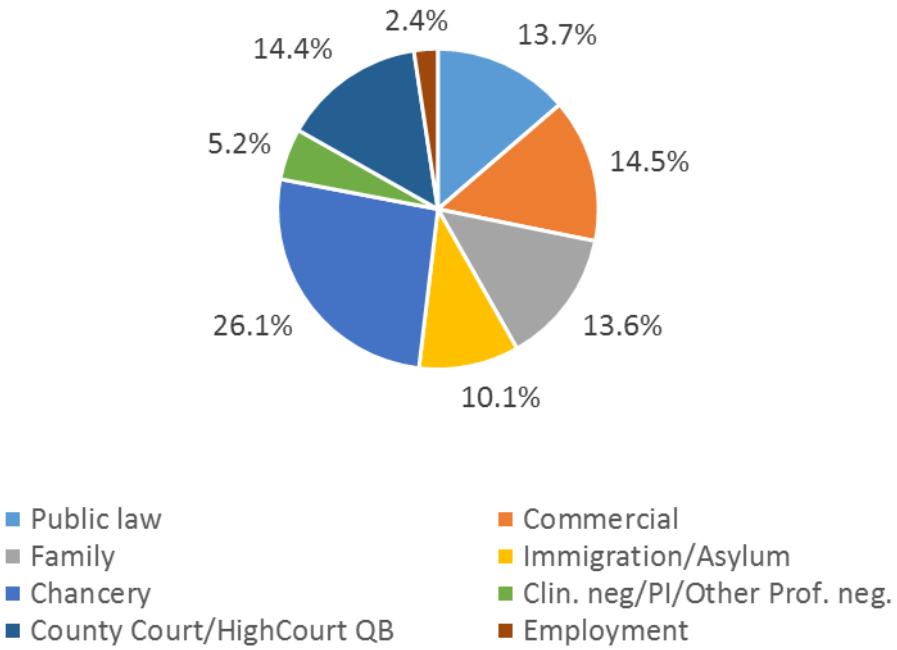


Figure 5. Total time spent by all judges on all appeals (linked and non-linked cases) by subject area

4. Time taken by lead and non-lead judges in relation to subject area

Tables 5 and 6 show the time spent on full appeals by lead and non-lead judges by subject area (non-linked appeals only). Figures 6 and 7 show the percentage of all time spent on different subject areas by lead and non-lead judges, including both linked and non-linked cases.

Table 5. Total time spent on (non-linked) full appeals by lead judges

Subject area	Lead Judge Time							
	Count	Mean	Median	Min	Max	Sum	Table Sum %	Col N %
Public law	26	25.77	26.50	9.00	42.00	669.98	13.2%	13.8%
Commercial	19	44.34	30.50	8.00	122.00	842.52	16.6%	10.1%
Family	45	16.35	14.50	3.00	43.50	735.79	14.5%	23.9%
Immigration/Asylum	24	18.52	18.13	2.75	38.75	444.47	8.8%	12.8%
Chancery	32	40.86	37.75	9.75	116.00	1307.61	25.8%	17.0%
Clin. neg/PI/Other Prof. neg.	9	30.33	31.75	10.50	58.00	273.00	5.4%	4.8%
County Court/HighCourt QB	29	24.33	22.00	4.50	72.65	705.44	13.9%	15.4%
Employment	4	23.25	19.50	8.00	46.00	93.00	1.8%	2.1%

Table 6. Total time spent on (non-linked) full appeals by non-lead judges

Subject area	Non-lead judges time							
	Count	Mean	Median	Min	Max	Sum	Table Sum %	Col N %
Public law	26	25.87	24.00	8.00	46.00	672.70	16.3%	13.8%
Commercial	19	37.65	30.00	15.00	74.00	715.29	17.3%	10.1%
Family	45	14.30	12.16	4.50	43.00	643.38	15.6%	23.9%
Immigration/Asylum	24	16.87	16.00	3.00	41.50	404.77	9.8%	12.8%
Chancery	32	25.22	23.55	6.11	52.00	807.13	19.5%	17.0%
Clin. neg/PI/Other Prof. neg.	9	27.22	22.00	11.00	50.00	245.00	5.9%	4.8%
County Court/HighCourt QB	29	20.01	20.00	2.98	49.00	580.29	14.1%	15.4%
Employment	4	15.00	17.50	5.00	20.00	60.00	1.5%	2.1%

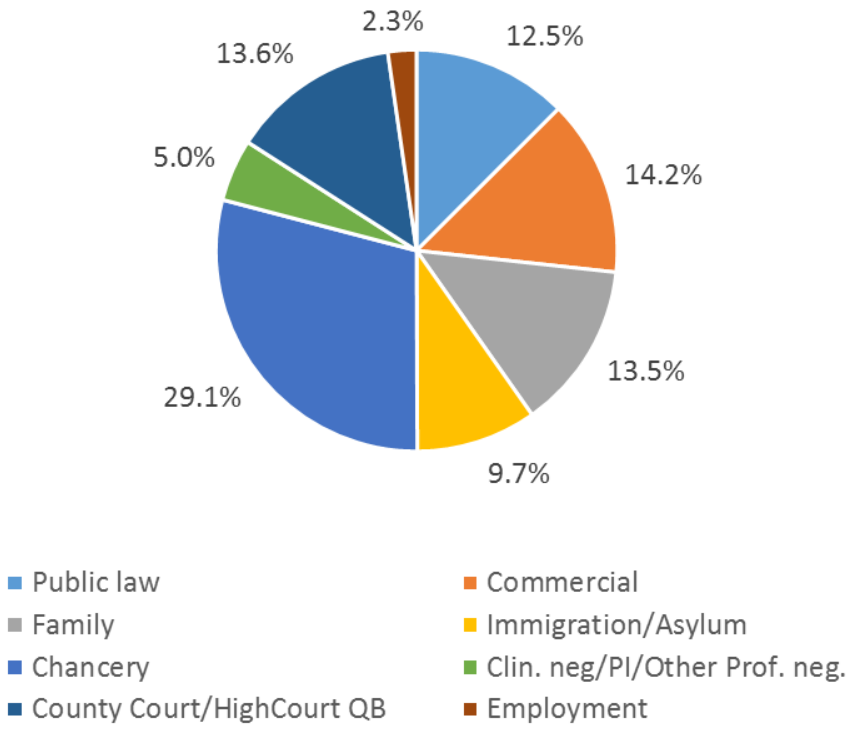


Figure 6. Total time spent by lead judges on all appeals (linked and non-linked cases) by subject area

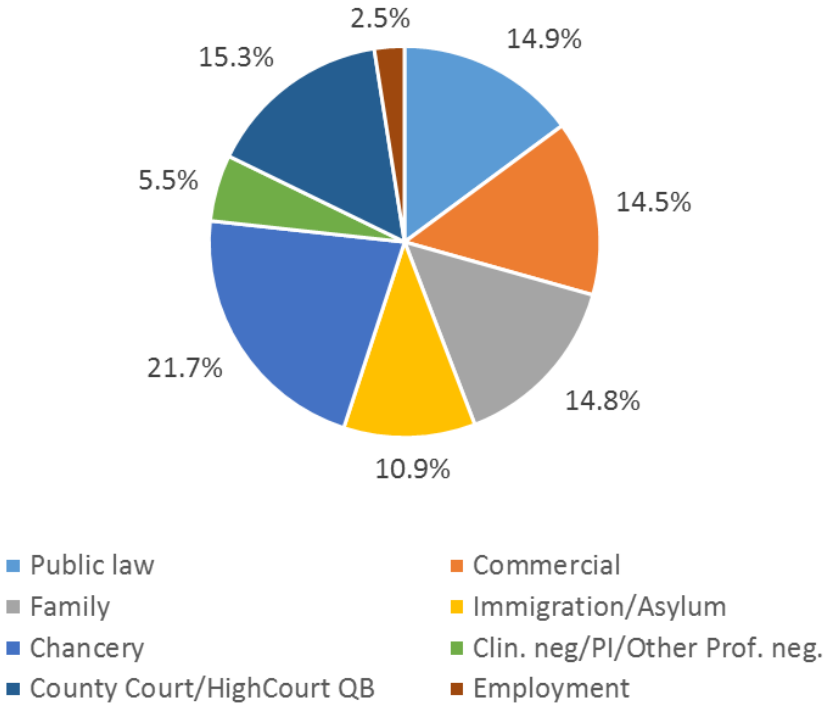


Figure 7. Total time spent by non-lead judges on all appeals (linked and non-linked cases) by subject area

5. Time taken in relation to LIP applicants vs. represented applicants

Of the 188 non-linked appeals, LIP information was available for 164 and analysis for this section is restricted to these cases. Non-linked cases with LIPs made up only 6.7 per cent of appeal cases and 7.1 per cent of all time spent (Table 7). Differences in mean/median time spent on cases involving LIPs and those without LIPs was relatively small (and non-significant). Table 8 and 9 show time spend by lead and non-lead judges on (non-linked) LIP and non-LIP cases. Figures 8, 9 and 10 show percentage of time spent on LIP and non-LIP full appeals (including linked and non-linked cases) by all judges, lead judges and non-lead judges respectively.

Table 7. Total time spent by all judges on (non-linked) full appeals involving/not involving LIPs

	All Judges Time							
LIP	Count	Mean	Median	Minimum	Maximum	Sum	Table Sum%	Column Sum %
N	153	49.12	45.25	6.75	180.00	7514.79	93.3%	92.9%
Y	11	51.91	49.00	13.00	120.53	571.04	6.7%	7.1%

Table 8. Total time spent by lead judges on (non-linked) full appeals involving/not involving LIPs

	Lead Judge Time							
LIP	Count	Mean	Median	Minimum	Maximum	Sum	Table Sum %	Column N %
N	153	27.31	22.00	2.75	122.00	4178.26	93.2%	93.3%
Y	11	27.89	27.50	8.00	51.25	306.75	6.8%	6.7%

Table 9. Total time spent by non-lead judges on (non-linked) full appeals involving/not involving LIPs

	Non-lead judges time							
LIP	Count	Mean	Median	Minimum	Maximum	Sum	Table Sum %	Column N %
N	153	21.81	20.00	2.98	74.00	3336.52	92.7%	93.3%
Y	11	24.03	18.00	5.00	69.28	264.29	7.3%	6.7%

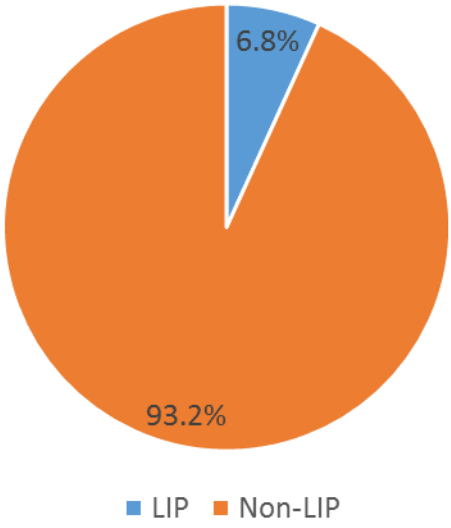


Figure 8. Percentage of time spent on LIP and non-LIP full appeals (linked and non-linked) by all judges

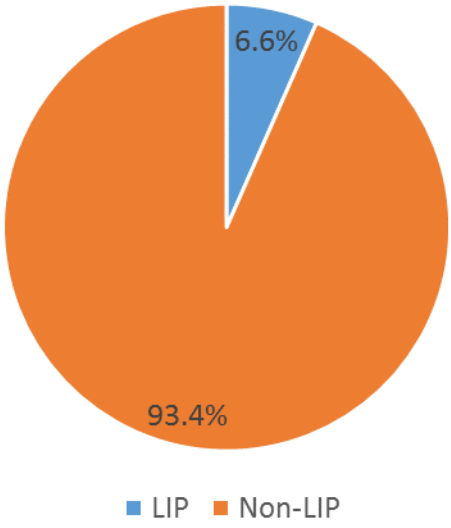


Figure 9. Percentage of time spent on LIP and non-LIP full appeals (linked and non-linked) by lead judges

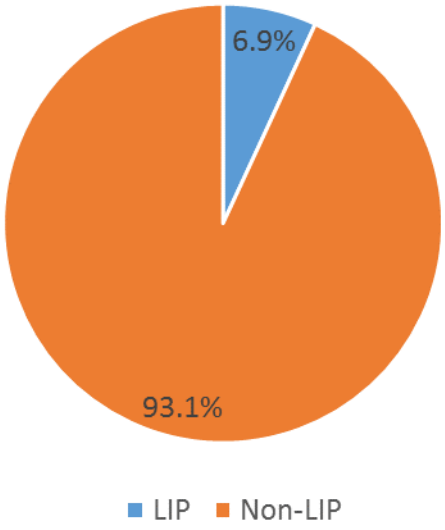


Figure 10. Percentage of time spent on LIP and non-LIP full appeals (linked and non-linked) by non-lead judges

6. Elements of time taken

Since this section is dealing with each element that makes up total time taken by lead and non-lead judges, analysis reverts to only appeals with questionnaire data (rather than using imputed values). It also includes all cases, both linked and non-linked. Essentially, this section sums each of the elements of time taken for lead and non-lead judges for all valid questionnaire entries and examines the percentage of total time each of these elements makes up. Table 10 and Figure 11 present elements of time taken for lead judges, with similar information for non-lead judges in Table 11 and Figure 12.

Table 10. Time spent on different activities by lead judges on full appeals (linked and non-linked cases)

Lead judge activities	Sum of time	% time
Pre-hearing preparation - Reading day	764	14.5%
Pre-hearing preparation - Other times	550	10.5%
Preparing judgment - standard working day	1421	27.0%
Preparing judgment - outside these hours	707	13.5%
Preparing judgment - during court vacation	625	11.9%
Consequential time	263.0	5.0%
Hearing time	926.67	17.6%

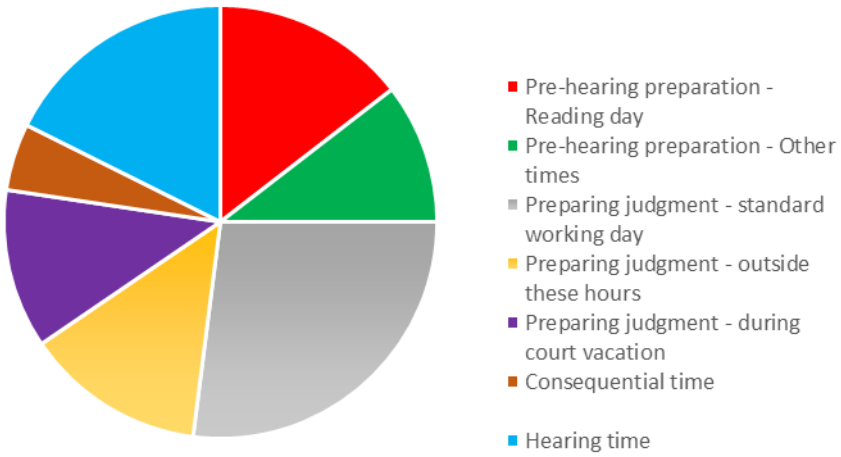


Figure 11. Time spent on different activities by lead judges on full appeals (linked and non-linked cases)

Table 11. Time spent on different activities by non-lead judges on full appeals (linked and non-linked cases)

Non-lead judges activities	Sum of time	% time
Pre-hearing preparation - Reading day	1165	26.5%
Pre-hearing preparation - Other times	565	12.8%
Preparing judgment - standard working day	211	4.8%
Preparing judgment - outside these hours	52	1.2%
Preparing judgment - during court vacation	17	0.4%
Draft of judgment time	557	12.7%
Hearing time	1835	41.7%

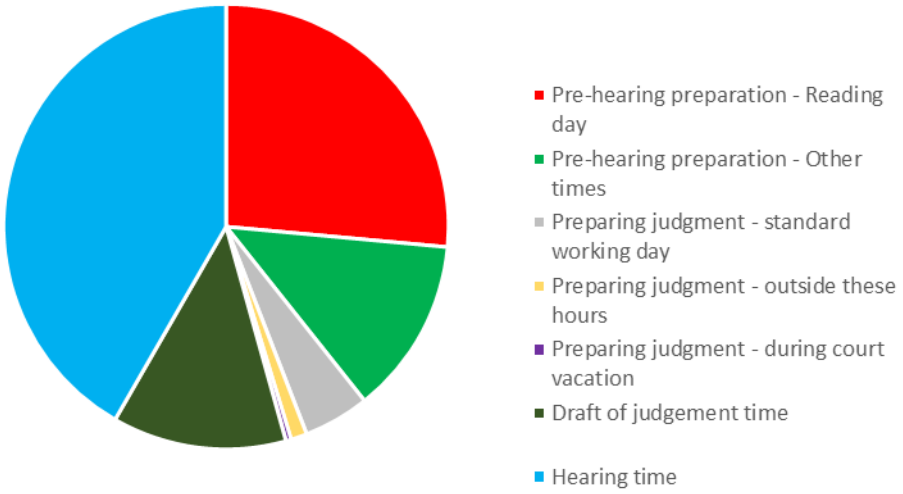


Figure 12. Time spent on different activities by non-lead judges on full appeals (linked and non-linked cases

Analysis of Oral PTAs

Analysis of questionnaire data

There were 349 oral cases of which 308 were non-linked cases. The majority of analysis uses these 308 cases, though if linked cases are included, this will be marked clearly. Questionnaires were missing for a subset of cases/judges, with time taken by judges imputed in these cases (as previously discussed).

1. Overall time taken, preparation time and hearing time – all cases

Taking oral cases together (excluding linked cases), Table 11 shows the time taken on oral PTAs overall, and split into preparation, hearing and reserved judgment time. Figures 13 to 16 show the distribution of time taken (again excluding linked cases) overall and for preparation, hearing and reserved judgment time. Of the total time taken on oral PTAs, **preparation time** is the largest component (making up 73 per cent of all time), with a mean of 2.45 hours and median of 2.00 hours. **Hearing time** constitutes 24% of total time taken on oral PTAs, with a mean hearing time of 0.83 hours and a median of 0.68 hours. The maximum hearing time was 11.50 hours. Time spent on **reserved judgments** constitutes 3% of total time on oral PTAs with a mean of .10 hours.

Table 11. Time spent by judges on oral PTAs overall, and split into preparation, hearing and reserved judgment time (linked cases excluded).

	Total time taken on oral PTA						
	Count	Mean	Median	Minimum	Maximum	Sum	% time
Total Time	308	3.36	2.75	.00	29.25	1035.75	100%
Preparation Time	308	2.45	2.00	.00	14.25	751.54	72.5%
Hearing Time	308	.83	.68	.00	11.50	253.27	24.4%
Reserved Judgment Time	308	.10	.00	.00	10.50	30.94	2.9%

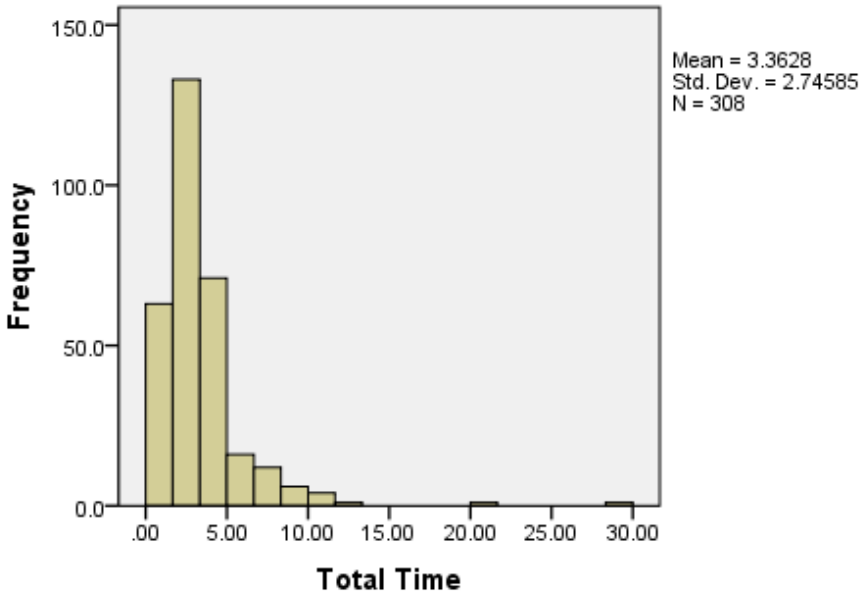


Figure 13. The distribution of time spent by judges on (non-linked) oral PTAs

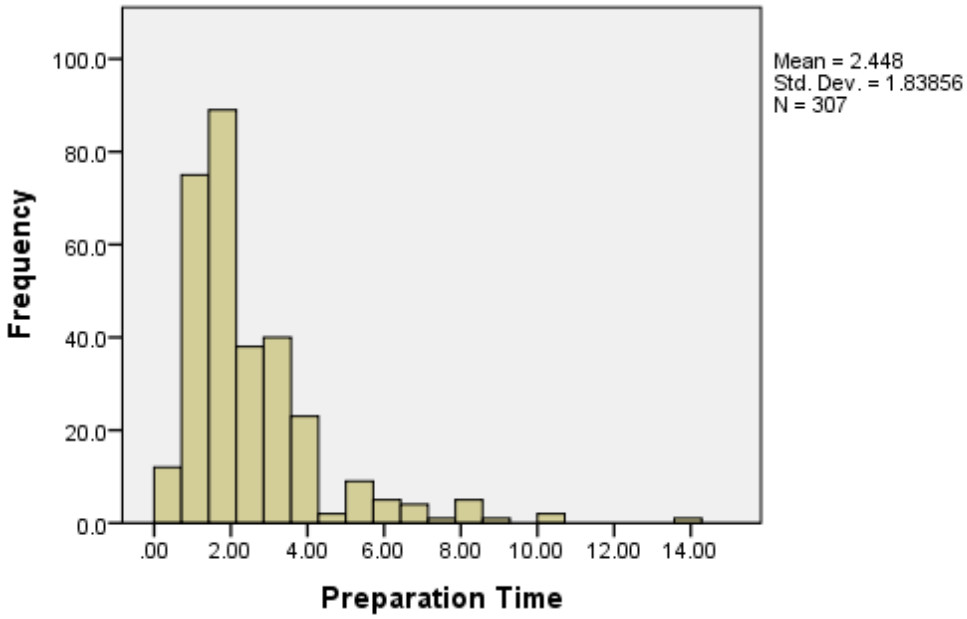


Figure 14. The distribution of preparation time spent by judges on (non-linked) oral PTAs

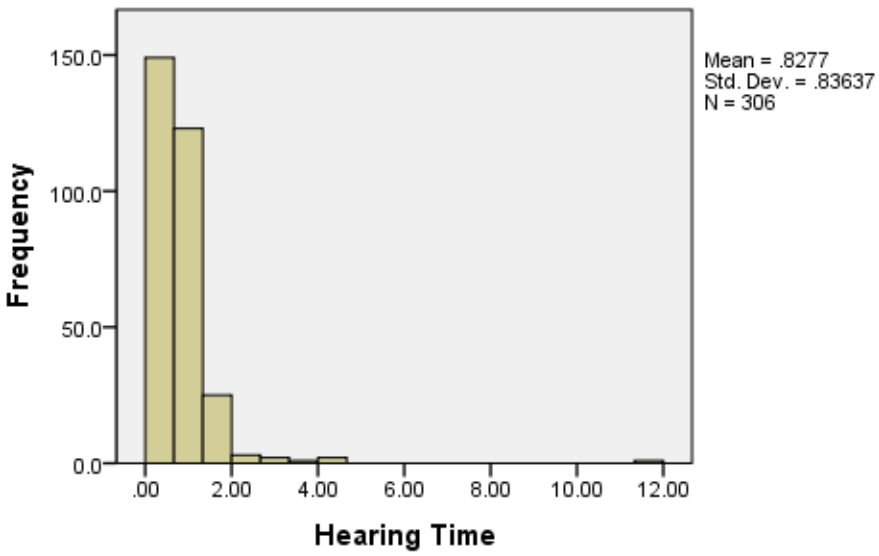


Figure 15. The distribution of hearing time spent by judges on (non-linked) oral PTAs

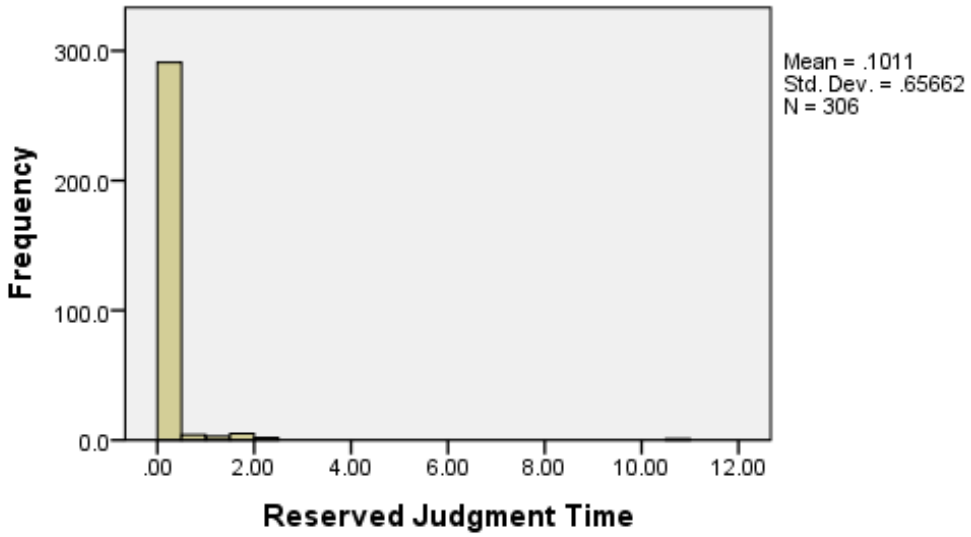


Figure 16. The distribution of reserved judgment time spent by judges on (non-linked) oral PTAs

2. Time taken in relation to subject area

There were notable differences in average time taken between different subject areas. The highest means are for commercial (though there were only twelve commercial cases), chancery and county court/HC, although these subject groups represent a relatively small proportion of total time spent on oral PTAs (commercial 8% of total time; county court 15%; and Chancery 14% of total time taken). Because of the volume of cases, family and immigration together represent 43% of all time taken on oral PTAs, despite lower mean time times. Table 12 illustrates total time spent by judges on (non-linked) oral PTAs, split by subject area. Tables 13, 14 and 15 present similar information, looking solely at preparation, hearing and reserved judgment time (and all using non-linked cases only). The pattern was broadly similar for preparation time by subject area, with immigration and family cases accounting for about 43% of all preparation time spent on oral PTAs.

Table 12. Total time spent by judges on (non-linked) oral PTAs, split by subject area (non-linked cases only)

Subject Area	Total Time							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Public Law	30	3.92	3.37	1.00	10.00	117.46	9.7%	11.3%
Commercial	12	6.94	5.79	1.50	21.50	83.32	3.9%	8.0%
Family	69	2.49	2.40	.00	8.25	172.00	22.4%	16.6%
Immigration/Asylum	102	2.67	2.45	.75	9.25	272.05	33.1%	26.3%
Chancery	33	4.38	3.50	1.50	11.50	144.38	10.7%	13.9%
Clinical negl./PI/Other prof. negl.	6	2.79	2.63	1.50	4.50	16.73	1.9%	1.6%
County Court/High Court QB	35	4.41	3.50	1.00	29.25	154.46	11.4%	14.9%
Employment	21	3.59	3.07	1.25	8.50	75.35	6.8%	7.3%

Table 13. Total preparation time spent by judges on (non-linked) oral PTAs, split by subject area (non-linked cases only)

Subject Area	Preparation Time							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Public Law	30	3.07	2.65	1.00	8.00	92.20	9.7%	12.3%
Commercial	12	4.32	3.61	1.00	10.00	51.83	3.9%	6.9%
Family	69	1.81	1.74	.00	7.75	123.20	22.4%	16.4%
Immigration/Asylum	102	1.96	1.50	.50	8.00	200.02	33.1%	26.6%
Chancery	33	3.28	3.00	.50	10.00	108.39	10.7%	14.4%
Clinical negl./PI/Other prof. negl.	6	2.25	2.13	1.00	4.00	13.48	1.9%	1.8%
County Court/High Court QB	35	3.04	2.50	.75	14.25	106.47	11.4%	14.2%
Employment	21	2.66	2.24	1.00	6.00	55.95	6.8%	7.4%

Table 14. Total hearing time spent by judges on (non-linked) oral PTAs, split by subject area (non-linked cases only)

Subject Area	Hearing Time							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Public Law	30	.79	.75	.25	2.00	22.86	9.7%	9.0%
Commercial	12	2.19	1.58	.25	11.50	26.32	3.9%	10.4%
Family	69	.69	.75	.00	1.75	46.80	22.4%	18.5%
Immigration/Asylum	102	.68	.50	.25	3.00	69.01	33.1%	27.2%
Chancery	33	.99	.75	.25	2.50	32.66	10.7%	12.9%
Clinical negl./PI/Other prof. negl.	6	.54	.50	.49	.75	3.24	1.9%	1.3%
County Court/High Court QB	35	1.05	.75	.25	4.50	36.68	11.4%	14.5%
Employment	21	.75	.69	.25	1.75	15.70	6.8%	6.2%

Table 15. Total reserved judgment time spent by judges on (non-linked) oral PTAs, split by subject area (non-linked cases only)

Subject Area	Reserved Judgment Time							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Public Law	30	.09	.00	.00	2.00	2.64	9.7%	8.5%
Commercial	12	.42	.20	.00	1.50	5.06	3.9%	16.4%
Family	69	.03	.00	.00	2.00	2.15	22.4%	6.9%
Immigration/Asylum	102	.03	.00	.00	1.50	3.02	33.1%	9.8%
Chancery	33	.09	.00	.00	1.50	3.08	10.7%	10.0%
Clinical negl./PI/Other prof. negl.	6	.00	.00	.00	.00	.00	1.9%	0.0%
County Court/High Court QB	35	.32	.00	.00	10.50	11.29	11.4%	36.5%
Employment	21	.18	.00	.00	1.50	3.70	6.8%	12.0%

3. Time taken in relation to LIP applicants vs. represented applicants

Information on LIPs was available for 275 of 308 non-linked oral PTAs. The tables and charts below suggest that overall, taking all cases together the average time taken on oral PTA work is **higher** where the applicant is **represented** than when the applicant is a litigant in person (3.58 for represented applicants as compared with 2.94 for LIPs). **As a note of caution**, further detailed analysis would be needed to properly interpret these findings. Issues to do with weight of case, representation on the respondent side, and other factors need to be considered. Table 16 shows total time spent by judges on oral PTAs (non-linked cases only) by representation. Figure 17 shows the distribution of time spent by representation (non-linked cases only). This is followed by similar information for preparation time (Table 17 and Figure 18), hearing time (Table 18 and Figure 19) and reserved judgment time (Table 19 and Figure 20).

Looking at these elements in turn, average preparation time was **higher** for **represented** applicants (2.62) than for LIPs (2.13), with a few represented cases involving long preparation time (maximum of 14.25 hours for represented applicants as compared with a maximum of 10.00 hours for LIPs). LIPs account for 42% of oral PTA caseload and just over one third (37%) of preparation time for oral PTAs. Average hearing times at oral PTAs was somewhat longer where the applicant was represented (.85) than when the applicant was a LIP (.76). Average time taken for reserved judgments again showed that the time for represented applicants was somewhat longer than for LIPs.

Table 16. Total time spent by judges on oral PTAs (non-linked cases only) by representation

		Total Time by representation							
		Count	Mean	Median	Minimum	Max	Sum	% caseload	% time
LIP	N	160	3.58	2.75	.75	29.25	572.75	58.2%	62.9%
	Y	115	2.94	2.50	.00	21.50	338.25	41.8%	37.1%

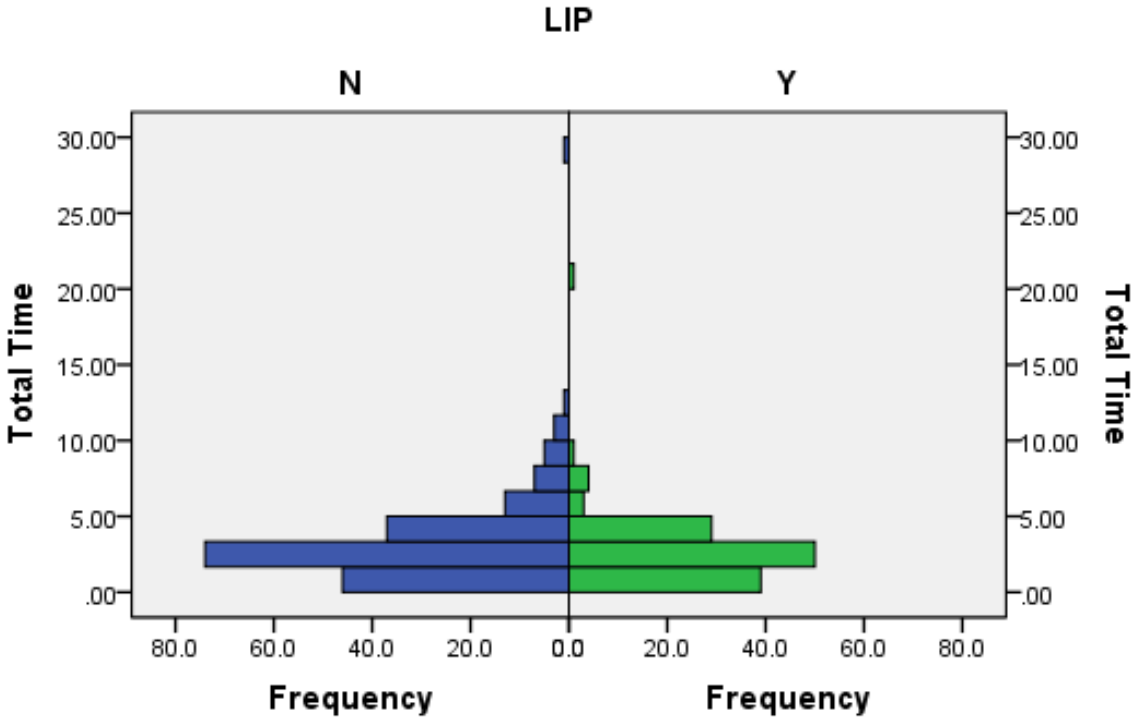


Figure 17. The distribution of time spent by judges on oral PTAs by representation (non-linked cases only)

Table 17. Total preparation time spent by judges on oral PTAs (non-linked cases only) by representation

		Preparation Time by representation							
		Count	Mean	Median	Minimum	Maximum	Sum	% of caseload	% time
LIP	N	160	2.62	2.00	.50	14.25	418.75	58.2%	63.3%
	Y	115	2.13	2.00	.00	10.00	243.25	41.8%	36.7%

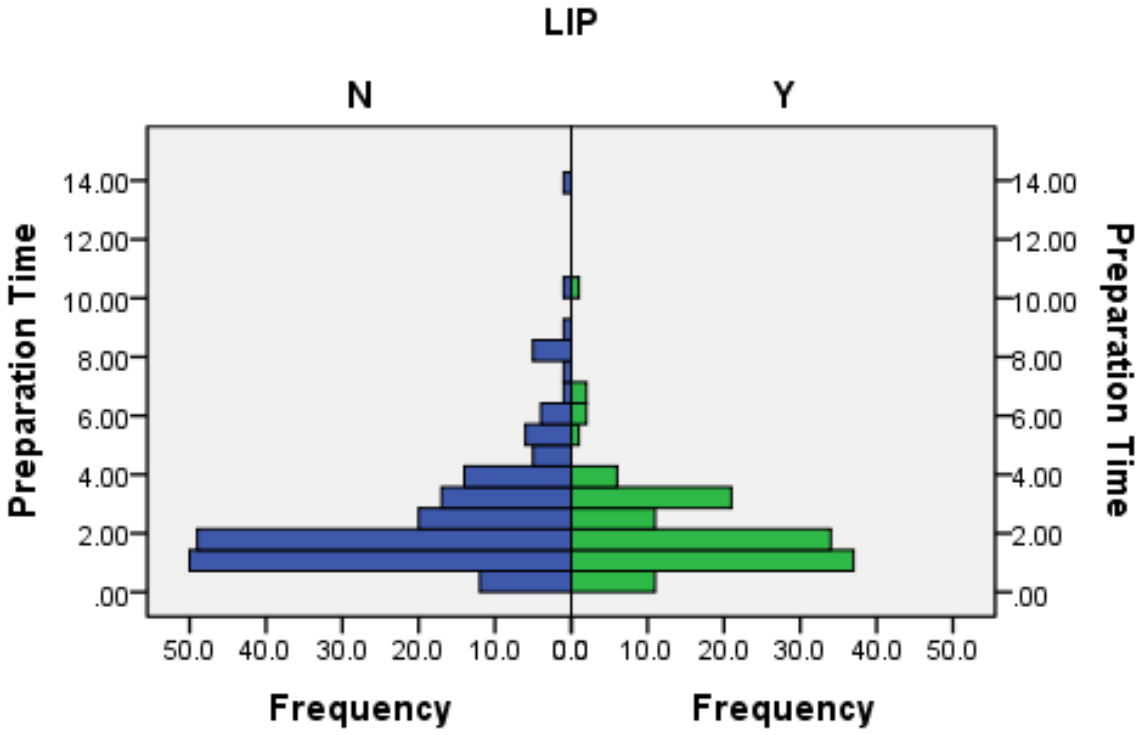


Figure 18. The distribution of preparation time spent by judges on oral PTAs by representation (non-linked cases only)

Table 18. Total hearing time spent by judges on oral PTAs (non-linked cases only) by representation

		Hearing Time by representation							
		Count	Mean	Median	Min	Max	Sum	% of caseload	% time
LIP	N	160	.85	.75	.25	4.50	134.75	58.2%	60.8%
	Y	115	.76	.50	.00	11.50	87.00	41.8%	39.2%

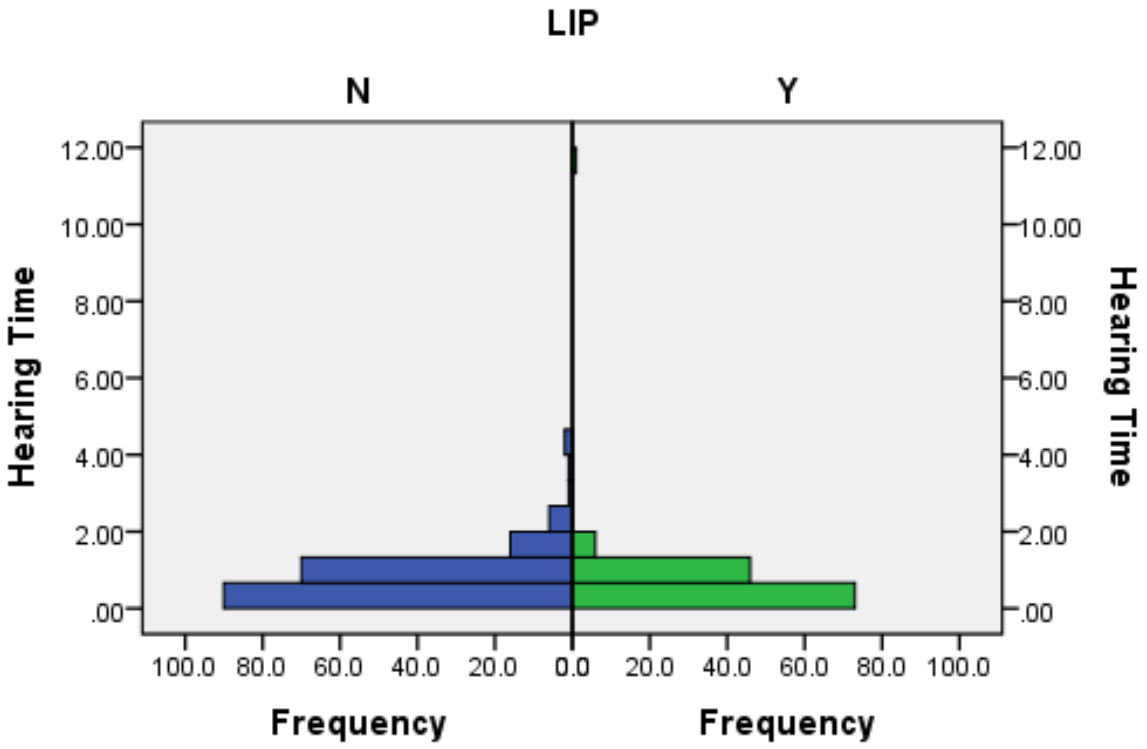


Figure 19. The distribution of hearing time spent by judges on oral PTAs by representation (non-linked cases only)

Table 19. Total reserved judgment time spent by judges on oral PTAs (non-linked cases only) by representation

		Reserved Judgment Time by representation							
		Count	Mean	Median	Minimum	Maximum	Sum	% of caseload	% time
LIP	N	160	.12	.00	.00	10.50	19.00	58.2%	70.4%
	Y	115	.07	.00	.00	2.00	8.00	41.8%	29.6%

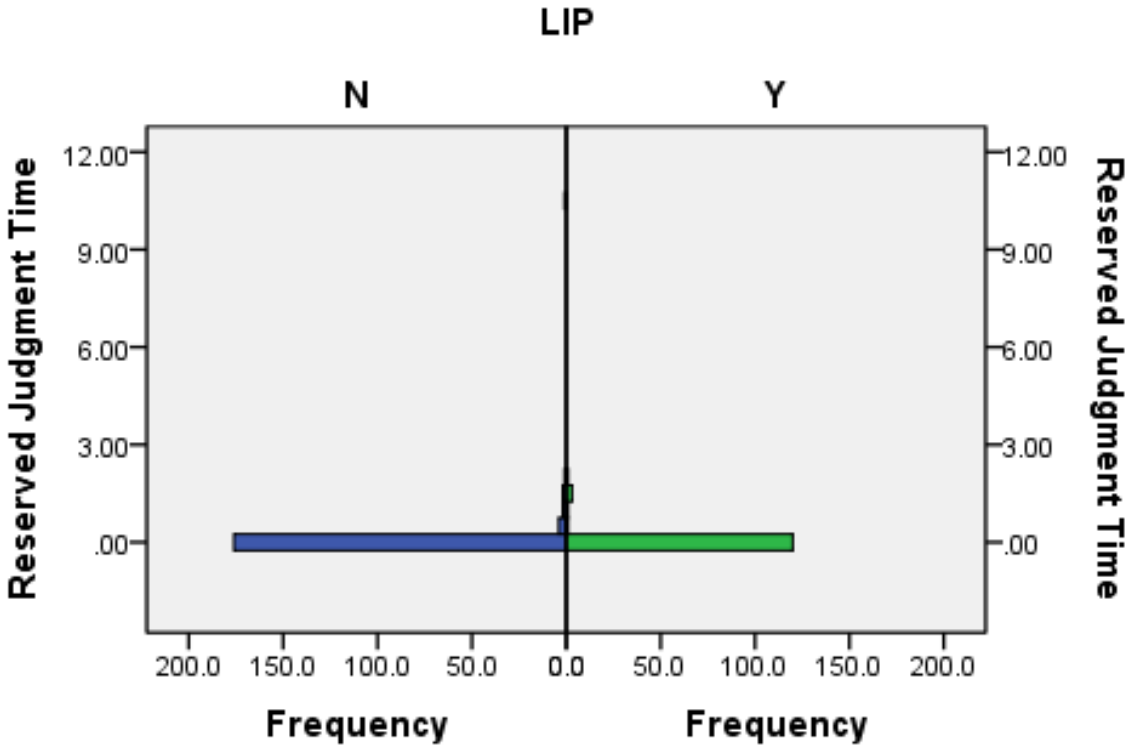


Figure 20. The distribution of reserved judgment time spent by judges on oral PTAs by representation (non-linked cases only)

4. Time taken in relation to judicial expertise

Table 20 shows total time taken on oral PTAs (non-linked cases only) by the expertise of the lead judge. Similar information follows for preparation time (Table 21), hearing time (Table 22) and reserved judgment time (Table 23). Table 24 then split the information in Table 21 by subject area (again non-linked cases only), though this information should be interpreted with some caution, given the very small numbers of cases for some combinations of subject area and lead judge expertise.

Table 20. Time taken on oral PTAs (non-linked cases only) by the expertise of the lead judge

Expertise	Total Time in relation to expertise							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Missing	30	3.75	3.07	2.23	11.16	112.50	9.7%	10.9%
Expertise to be a sole specialist on a constitution	183	3.03	2.50	.00	21.50	553.75	59.4%	53.5%
Sufficient expertise to be lead judge but only with expert on the constitution	49	4.60	3.25	1.00	29.25	225.50	15.9%	21.8%
Expertise to do oral PTAs (and paper PTAs) only	30	2.97	2.50	1.00	7.75	89.00	9.7%	8.6%
Expertise to do paper PTAs only	9	3.19	3.50	1.50	4.50	28.75	2.9%	2.8%
No Experience / Expertise	7	3.75	4.25	1.25	7.50	26.25	2.3%	2.5%

Table 21. Preparation time taken on oral PTAs (non-linked cases only) by the expertise of the lead judge

Expertise	Preparation Time in relation to expertise							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Missing	30	2.72	2.24	1.73	7.11	81.54	9.7%	10.8%
Expertise to be a sole specialist on a constitution	183	2.21	2.00	.00	10.00	402.25	59.4%	53.5%
Sufficient expertise to be lead judge but only with expert on the constitution	49	3.30	2.50	.50	14.25	161.75	15.9%	21.5%
Expertise to do oral PTAs (and paper PTAs) only	30	2.10	2.00	.50	5.00	63.00	9.7%	8.4%
Expertise to do paper PTAs only	9	2.50	2.50	1.00	4.00	22.50	2.9%	3.0%
No Experience / Expertise	7	2.93	3.50	1.00	6.00	20.50	2.3%	2.7%

Table 22. Hearing time on oral PTAs (non-linked cases only) by the expertise of the lead judge

Expertise	Hearing Time in relation to expertise							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Missing	30	.91	.68	.49	3.16	27.27	9.7%	10.8%
Expertise to be a sole specialist on a constitution	183	.81	.50	.00	11.50	147.25	59.4%	58.1%
Sufficient expertise to be lead judge but only with expert on the constitution	49	.99	.75	.25	4.50	48.50	15.9%	19.1%
Expertise to do oral PTAs (and paper PTAs) only	30	.66	.50	.25	1.50	19.75	9.7%	7.8%
Expertise to do paper PTAs only	9	.53	.50	.50	.75	4.75	2.9%	1.9%
No Experience / Expertise	7	.82	.75	.25	1.50	5.75	2.3%	2.3%

Table 23. Reserved judgment on oral PTAs (non-linked cases only) by the expertise of the lead judge

Expertise	Reserved Judgment Time in relation to expertise							
	Count	Mean	Median	Min	Max	Sum	% caseload	% time
Missing	30	.13	.08	.00	.78	3.94	9.7%	12.7%
Expertise to be a sole specialist on a constitution	183	.02	.00	.00	1.50	4.00	59.4%	12.9%
Sufficient expertise to be lead judge but only with expert on the constitution	49	.31	.00	.00	10.50	15.25	15.9%	49.3%
Expertise to do oral PTAs (and paper PTAs) only	30	.21	.00	.00	2.00	6.25	9.7%	20.2%
Expertise to do paper PTAs only	9	.17	.00	.00	1.50	1.50	2.9%	4.8%
No Experience / Expertise	7	.00	.00	.00	.00	.00	2.3%	0.0%

Table 24. Time taken on oral PTAs (non-linked cases only) by the expertise of the lead judge and subject area

Subject Area	Expertise groups LJ														
	No Experience / Expertise			Expertise to do paper PTAs only			Expertise to do oral PTAs (and paper PTAs) only			Sufficient expertise to be lead judge but only with expert on the constitution			Expertise to be a sole specialist on a constitution		
	Total Time			Total Time			Total Time			Total Time			Total Time		
	Count	Mean	Median	Count	Mean	Median	Count	Mean	Median	Count	Mean	Median	Count	Mean	Median
Public Law	0	.	.	1	3.50	3.50	2	5.13	5.13	6	6.13	5.38	15	2.67	2.25
Commercial	0	.	.	0	.	.	1	4.50	4.50	3	5.83	6.00	5	7.80	6.00
Family	0	.	.	1	4.50	4.50	7	2.93	2.25	4	2.44	2.63	52	2.41	2.00
Immigration/Asylum	2	2.88	2.88	5	2.70	2.50	12	2.35	1.88	12	2.85	2.25	64	2.63	2.25
Chancery	1	2.25	2.25	0	.	.	3	3.25	3.00	6	3.17	2.88	22	4.97	4.13
Clinical negl./PI/Other prof. negl.	1	1.50	1.50	1	3.25	3.25	0	.	.	0	.	.	3	3.25	2.75
County Court/High Court QB	2	6.25	6.25	0	.	.	2	1.75	1.75	12	6.73	4.50	17	2.96	2.50
Employment	1	4.25	4.25	1	4.00	4.00	3	4.08	4.25	6	4.58	3.50	5	2.40	2.25

Analysis of Paper PTAs

Paper PTAs

The analysis was based on data from 1,033 non-linked cases (of a total of 1,103 cases). As previously, time was imputed for a small number of cases.

1. **Overall time taken – all cases**

Table 25 shows the time taken by judges on (non-linked) paper PTAs, with the distribution of time taken shown in Figure 21. The mean time taken for paper PTAs was 1.11 hours with a relatively wide range from a minimum of 0.00 (value entered on some questionnaires) to a maximum of 16 hours.

Table 25. Time taken by judges on (non-linked) paper PTAs

Time Taken					
Count	Mean	Median	Minimum	Maximum	Sum
1032	1.14	1.00	.00	16.00	1173.84

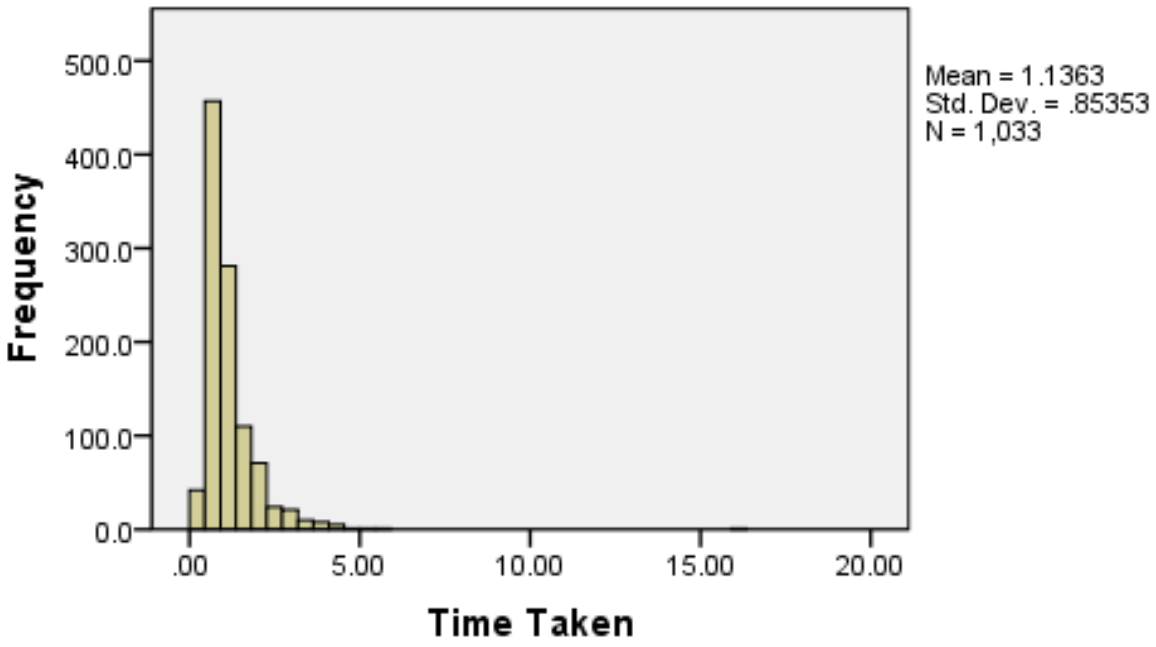


Figure 21. The distribution of time by judges on (non-linked) paper PTAs

2. **Time taken in relation to subject area**

Table 26 shows the variation in time spent on (non-linked) paper PTAs by subject area. The longest average time was in clinical/prof neg cases, followed by commercial. Immigration

cases had a somewhat lower mean time (1.01 hours), but because of their volume constituted a high proportion of the total amount of time taken on paper PTAs (41% of total time spent on paper PTAs).

Table 26. The time spent on (non-linked) paper PTAs by subject area

Subject area	Time Taken							
	Count	Mean	Median	Min	Max	Sum	Col N %	Col Sum %
Public law	138	1.22	1.00	.17	4.33	168.02	13.4%	14.3%
Commercial	54	1.32	1.00	.50	4.33	71.33	5.2%	6.1%
Family	101	1.34	1.00	.25	5.50	135.42	9.8%	11.5%
Immigration/Asylum	466	1.03	.85	.17	4.00	481.30	45.2%	41.0%
Chancery	95	1.26	1.00	.00	4.00	119.28	9.2%	10.2%
Clinical negligence/PI/Other prof. negl.	30	1.72	1.00	.33	16.00	51.50	2.9%	4.4%
County Court and High Court QB	88	1.03	.75	.25	5.00	90.92	8.5%	7.7%
Employment	57	.95	.79	.17	3.00	53.99	5.5%	4.6%
Missing (incl 1 trusts)	3	.69	.75	.58	.75	2.08	0.3%	0.2%

3. Time taken in relation to LIP applicants vs. represented applicants– all cases

Table 27 shows the time taken by judges on (non-linked) paper PTAs by representation. Figure 22 shows the distribution of time spent by representation. Overall, the average time taken on paper PTAs appeared to be higher where the applicant was **represented** than when the applicant was a litigant in person (1.18 for represented applicants as compared with 1.05 for LIPs) and represented cases accounted for about three-quarters of time spent on paper PTAs. The interpretation of these data will require some care and it would be worth looking in more detail at the cases in relation to outcome of PTA.

Table 27. Time taken by judges on (non-linked) paper PTAs by representation

LIP	Time Taken							
	Count	Mean	Median	Minimum	Maximum	Sum	Column N %	Column Sum %
N	725	1.18	1.00	.17	16.00	856.37	72.7%	74.9%
Y	272	1.05	.83	.00	4.17	286.68	27.3%	25.1%

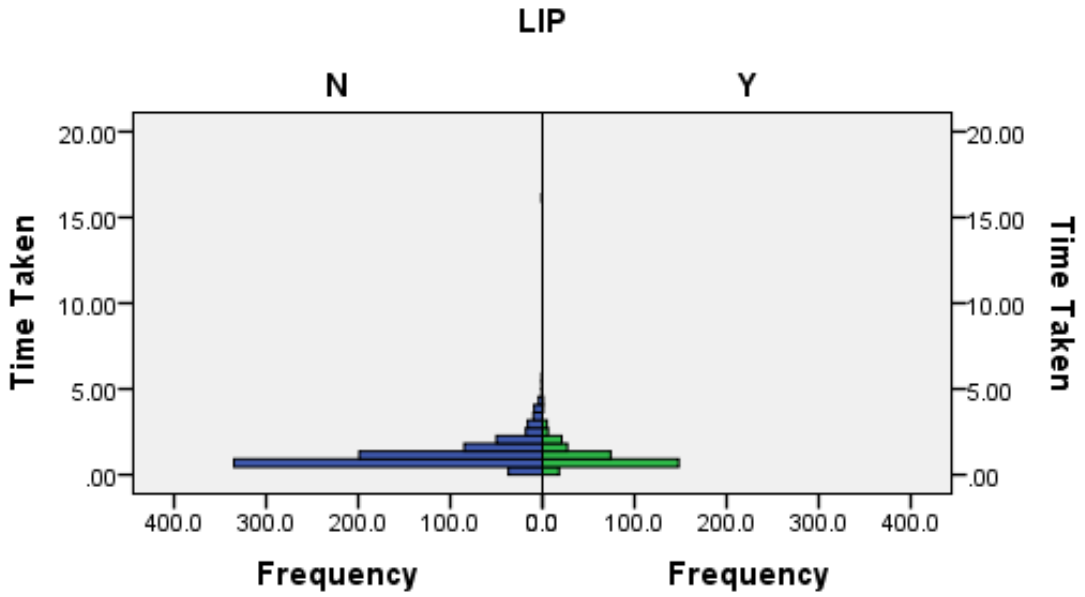


Figure 22. Distribution of time taken by judges on (non-linked) paper PTAs by representation

4. The interaction between subject area and representation in time taken

Table 28 shows the time taken by judges on (non-linked) paper PTAs by representation and subject area. In all subject areas except clinical negligence etc. and employment, the mean time taken on paper PTAs appears to be higher for cases involving represented applicants than for LIPs. The difference is greatest in family cases with a mean of 1.59 hours for represented cases as compared with mean of 1.11 hours for LIPs.

Table 28. Time taken by judges on (non-linked) paper PTAs by representation and subject area

	LIP															
	N								Y							
	Time Taken								Time Taken							
Subject Area	Count	Mean	Median	Min	Max	Sum	Column N %	Column Sum %	Count	Mean	Median	Min	Max	Sum	Column N %	Column Sum %
Public law	77	1.27	1.00	.33	4.33	97.58	10.6%	11.4%	59	1.16	1.00	.17	4.17	68.43	21.7%	23.9%
Commercial	45	1.37	1.00	.50	4.33	61.83	6.2%	7.2%	5	1.10	1.00	.75	2.00	5.50	1.8%	1.9%
Family	49	1.59	1.00	.33	5.50	78.00	6.8%	9.1%	51	1.11	.83	.25	3.00	56.50	18.8%	19.7%
Immigration/Asylum	375	1.06	1.00	.17	4.00	396.62	51.7%	46.3%	90	.93	.75	.25	2.50	83.85	33.1%	29.2%
Chancery	69	1.30	1.00	.50	4.00	89.75	9.5%	10.5%	23	1.15	1.00	.00	3.00	26.53	8.5%	9.3%
Clinical negl./PI/Other prof. negl.	23	1.89	1.00	.33	16.00	43.50	3.2%	5.1%	1	2.00	2.00	2.00	2.00	2.00	0.4%	0.7%
County Court and High Court QB	58	1.10	.75	.25	5.00	63.58	8.0%	7.4%	25	.94	.75	.33	2.50	23.58	9.2%	8.2%
Employment	27	.89	.75	.17	1.58	24.00	3.7%	2.8%	17	1.16	1.00	.50	3.00	19.70	6.3%	6.9%
Missing (incl 1 trusts)	2	.75	.75	.75	.75	1.50	0.3%	0.2%	1	.58	.58	.58	.58	.58	0.4%	0.2%

5. Time taken on paper PTAs by judicial expertise

Table 29 shows the time taken by judges on (non-linked) paper PTAs by judicial expertise. The majority of paper PTAs were dealt with by judges with the expertise to be a sole specialist (66%) and only a very small minority had either no experience (1%) or expertise only to undertake paper PTAs (6%). Comparison of average time taken on paper PTAs in relation to expertise showed that those with no experience spent around double the average time compared with those with expertise to be sole specialist or expertise to do oral and paper PTAs. However, the number of cases involving no expertise was rather small and the difference less notable when comparing median time taken. On the whole, the mean and median difference in time between the more experienced and less experienced judges was not particularly large.

Table 29. Time taken by judges on (non-linked) paper PTAs by judicial expertise

	Time Taken							
Expertise	Count	Mean	Median	Min	Max	Sum	Col N %	Col Sum %
Expertise to be a sole specialist on a constitution	684	1.09	.83	.03	5.50	745.58	68.6%	65.2%
Sufficient expertise to be lead judge but only with expert on the constitution	147	1.27	1.00	.33	5.00	187.25	14.7%	16.4%
Expertise to do oral PTAs (and paper PTAs) only	93	1.13	.85	.00	4.00	104.88	9.3%	9.2%
Expertise to do paper PTAs only	61	1.27	1.00	.17	4.00	77.25	6.1%	6.8%
No Experience / Expertise	12	2.34	.75	.50	16.00	28.08	1.2%	2.5%

6. The interaction between subject area and expertise in time taken

Table 30 shows the time taken by judges on (non-linked) paper PTAs by judicial expertise and subject area.

Subject area	Expertise														
	Expertise to be a sole specialist on a constitution			Expertise to do oral PTAs (and paper PTAs) only			Expertise to do paper PTAs only			No Experience / Expertise			Sufficient expertise to be lead judge but only with expert on the constitution		
	Time Taken			Time Taken			Time Taken			Time Taken			Time Taken		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Public law	100	1.25	1.00	9	.84	.75	9	1.06	1.00	1	4.33	4.33	17	1.16	1.00
Commercial	31	1.35	.75	2	1.58	1.58	1	2.00	2.00	0	.	.	16	1.27	1.08
Family	86	1.38	1.00	1	2.00	2.00	0	.	.	0	.	.	13	1.07	.75
Immigration/Asylum	324	.99	.83	52	1.15	.85	38	1.33	1.08	5	.73	.75	46	1.01	.83
Chancery	58	1.03	.75	7	1.58	1.42	5	1.57	1.42	2	.96	.96	20	1.79	1.58
Clinical negligence/PI/Other prof. negl.	13	1.03	1.00	2	.88	.88	0	.	.	3	5.83	.75	6	2.15	2.50
County Court and High Court QB	58	.97	.75	5	.90	.75	1	1.00	1.00	1	.67	.67	18	1.36	1.25
Employment	13	.79	.75	15	1.01	.75	7	.89	1.00	0	.	.	9	1.34	1.00
Missing (incl 1 trusts)	1	.75	.75	0	.	.	0	.	.	0	.	.	2	.67	.67

Table 30. Time taken by judges on (non-linked) paper PTAs by judicial expertise and subject area.

Miscellaneous figures

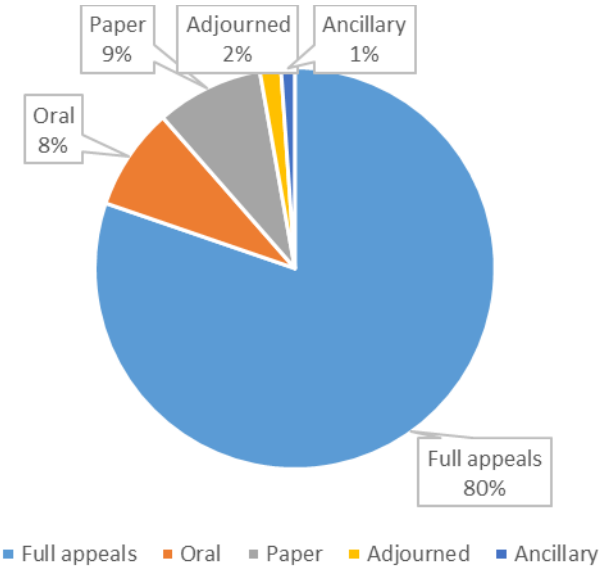


Figure 23. Breakdown of time taken on all cases (PTA+A included in appeals) excluding admin and sitting in other Divisions in hours (linked and non-linked cases)

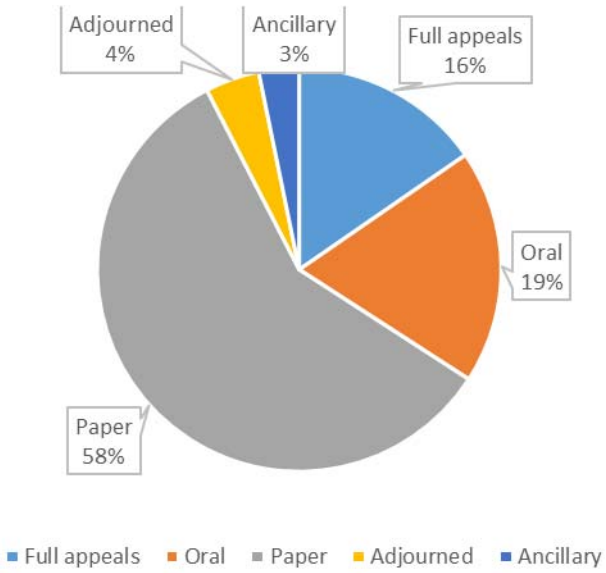


Figure 24. Percentage of cases (PTA+A included in appeals) excluding admin and sitting in other Divisions (linked and non-linked cases)

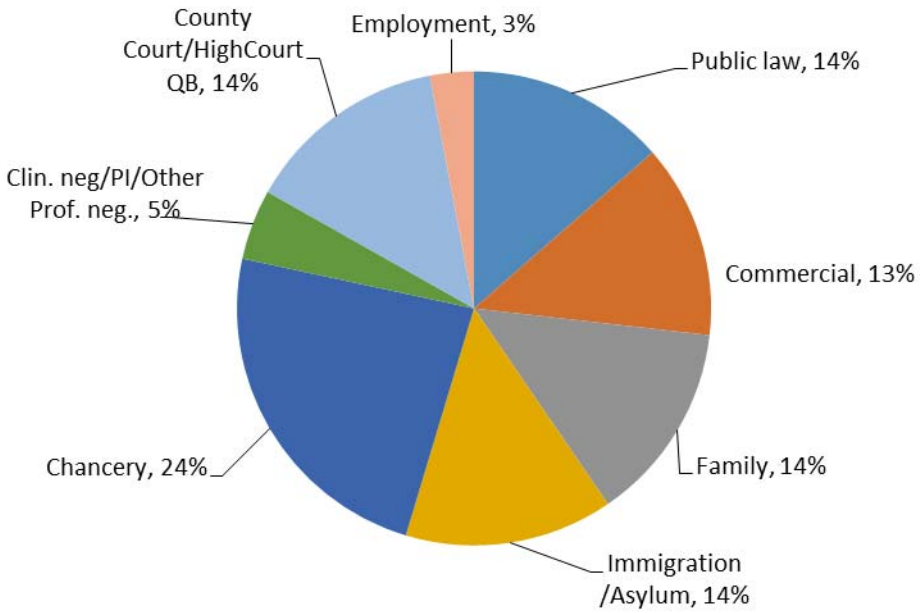


Figure 25. Total time spent on subject areas (paper, oral and full appeals), including linked and non-linked cases

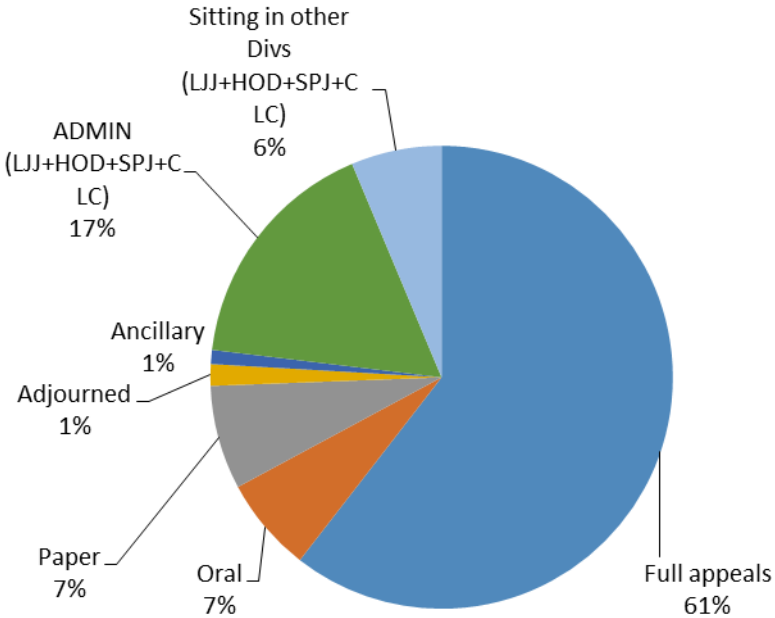


Figure 26. Breakdown of total time spent including admin time and sitting in other divisions (including linked and non-linked cases)

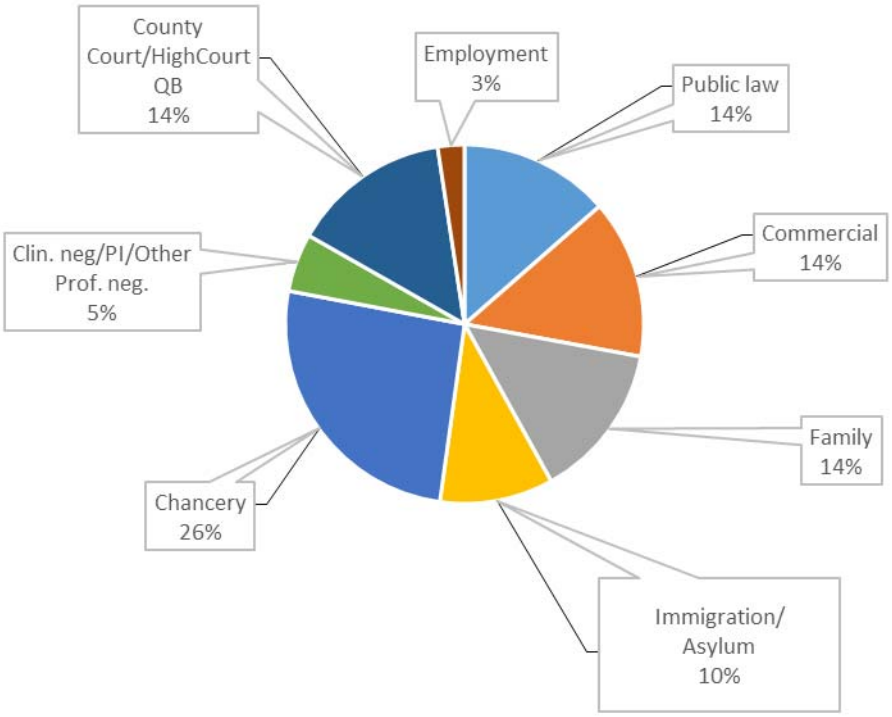


Figure 27. Percentage of time spent on each subject area for full appeals, including linked and non-linked cases

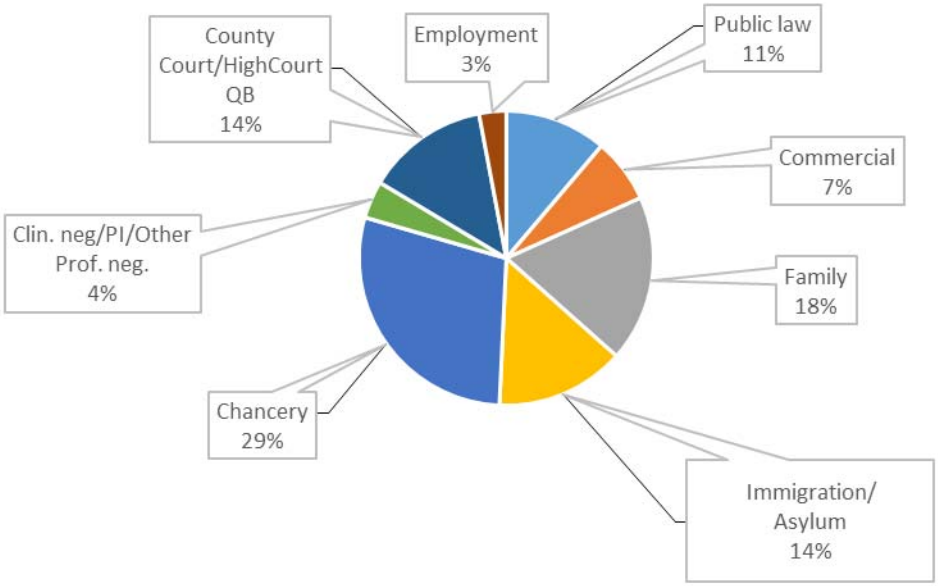


Figure 28. Percentage of cases in each subject area for full appeals, including linked and non-linked cases

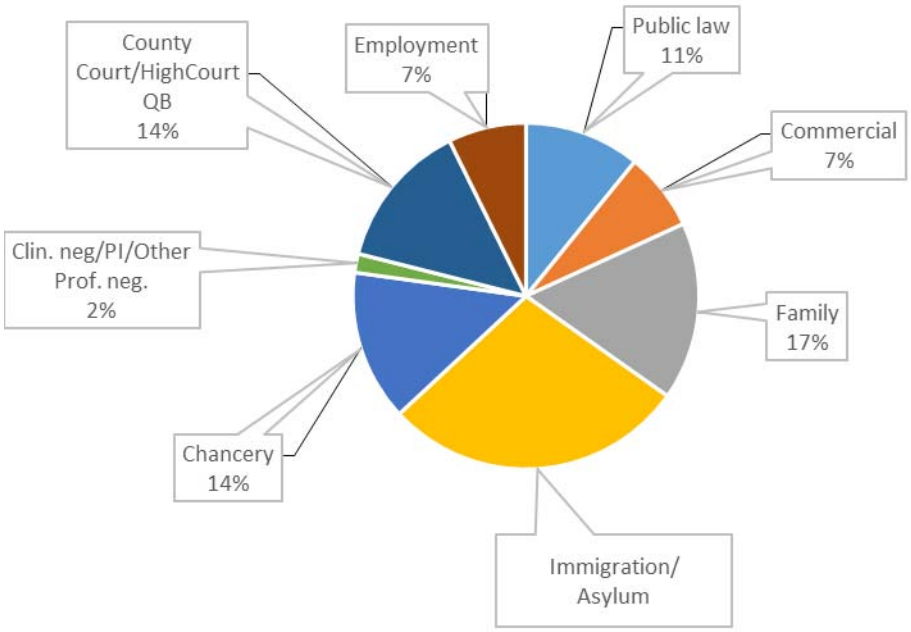


Figure 29. Percentage of time spent on each subject area for oral PTAs, including linked and non-linked cases

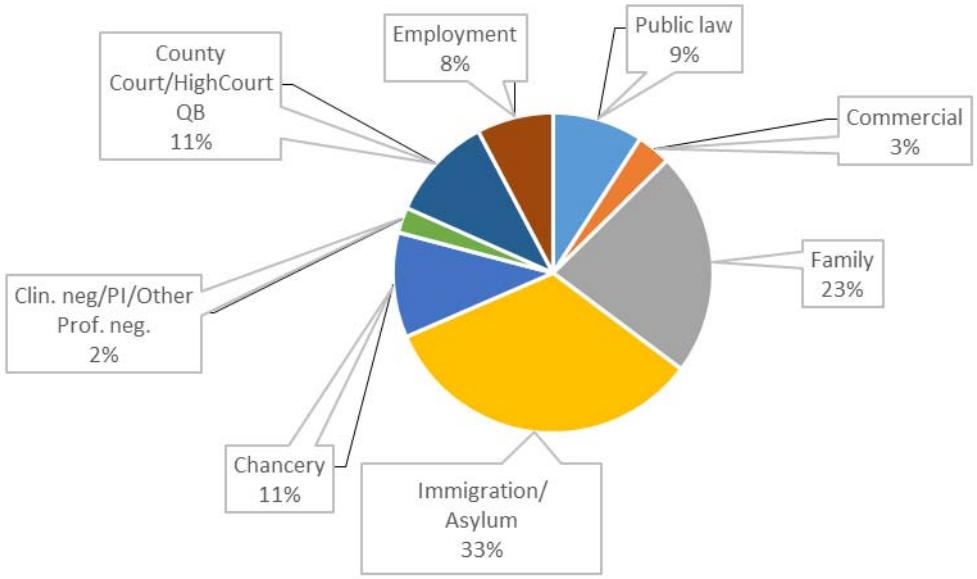


Figure 30. Percentage of cases in each subject area for oral PTAs, including linked and non-linked cases

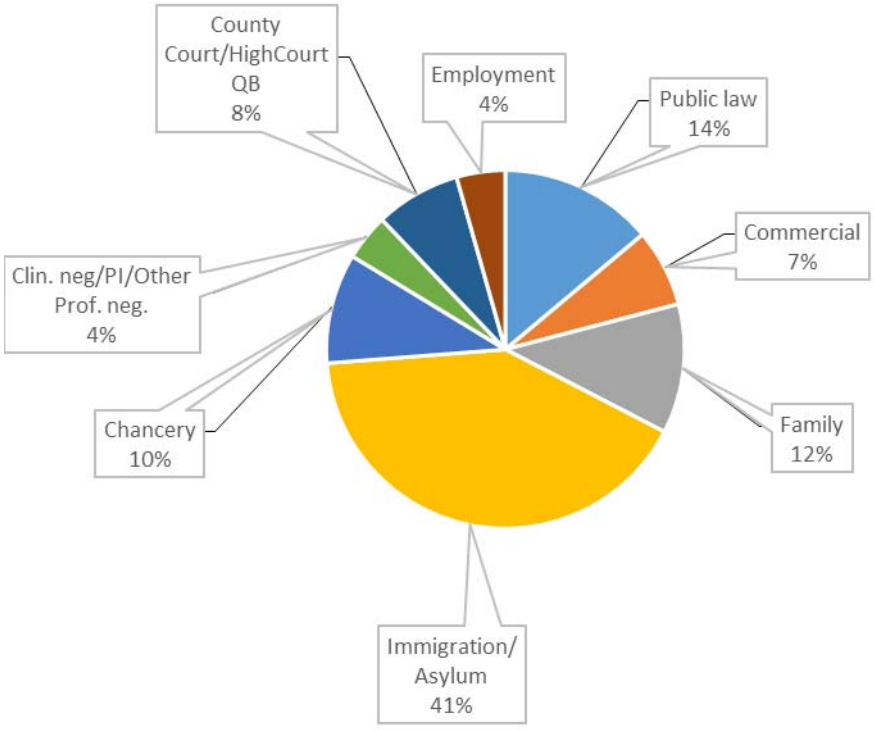


Figure 31. Percentage of time spent on each subject area for paper PTAs, including linked and non-linked cases

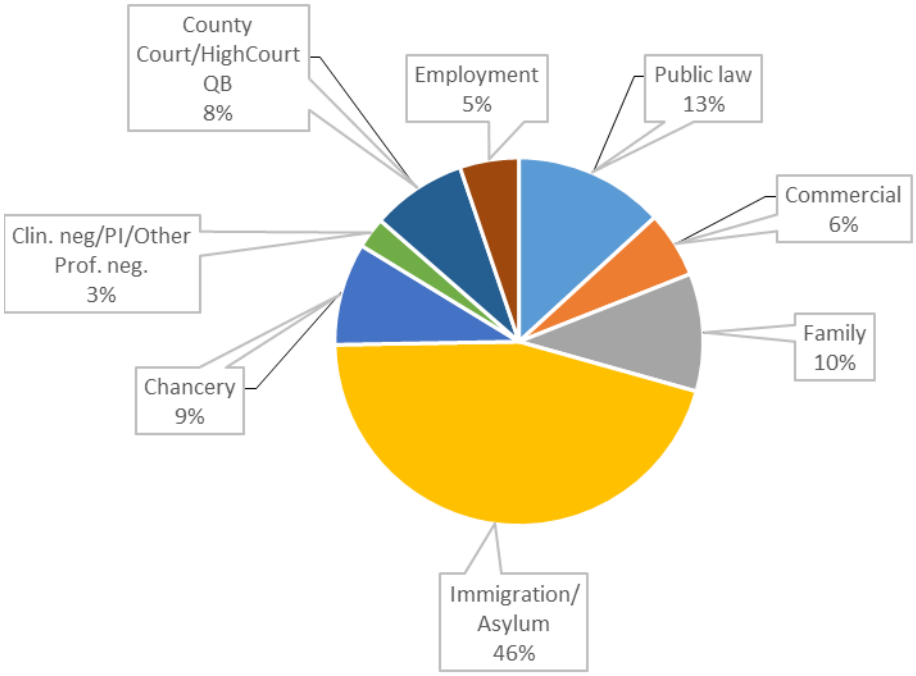


Figure 32. Percentage of cases in each subject area for paper PTAs, including linked and non-linked cases

25. **The 12 County Court Hearing Centre "Time And Motion" Study**

26. A brief description of the exercise can be found at paragraph 1.20 of the Final Report. Data was gathered from Aberystwyth, Birmingham, Brighton, Bromley, Haverfordwest, Ipswich, Manchester, Northampton, Oxford, South Shields, Truro and Tunbridge Wells between 4 October 2015 and 31 December 2015. The results of the analysis were then collated into the report which now appears below.

27. The report provides details of the time that the judiciary recorded being spent on the preparation time, the actual hearing time and the time that was spent writing judgments. These were split into two main categories: final hearings and other hearings. In total 571 returns in respect of final hearings were analysed, of those:

    27.1. SCT claims accounted for 164 (29%)
    27.2. FT for 65 (11%)
    27.3. MT for 44 (8%)
    27.4. Cases not allocated or where there was no recording of allocation accounted for 298 cases (52%)

28. One of the aims of the data collection exercise was to understand how much judicial time was spent on given parts of the civil courts' workload. In summary:

    28.1. When the judicial time taken to deal with all 571 final hearings was collated the following appeared:

        28.1.1. The average time to deal with a final hearing was 1 hour 34 minutes, of which
            28.1.1.1. Preparation accounted for 25 mins (27%)
            28.1.1.2. Hearing time for 1 hour 1 min (65%)
            28.1.1.3. Judgment writing 7 minutes (8%)

28.2. When the judicial time taken to deal with the 164 final hearings in SCT claims was collated the following appeared:

28.2.1. The average time to deal with a final hearing was 1 hour 21 minutes of which

28.2.1.1. Preparation accounted for 19 mins (24%)

28.2.1.2. Hearing time for 55 mins (69%)

28.2.1.3. Judgment writing 6 minutes (7%)

28.3. When the judicial time taken to deal with all 65 final hearings in FT claims was collated the following appeared:

28.3.1. The average time to deal with a final hearing was 3 hours 27 minutes of which

28.3.1.1. Preparation accounted for 48 mins (23%)

28.3.1.2. Hearing time for 2 hours 25 mins (70%)

28.3.1.3. Judgment writing 13 mins (7%)

29. There were 2446 returns submitted in respect of hearings that were not final hearings. Of those:

29.1. SCT claims accounted for 172 (7%)

29.2. FT for 180 (7%)

29.3. MT for 255 (10%)

29.4. cases not allocated 1532 (63%)

29.5. where there was no recording of allocation accounted for 307 (13%)

30. The following appears from the harvested data in respect of non-final hearings:

30.1. When all 2446 non final hearings are considered:

30.1.1. The average time to deal with a non-final hearing was 42 minutes of which

30.1.1.1. Preparation accounted for 15 mins (36%)

30.1.1.2. Hearings for 23 min (55%)

30.1.1.3. Judgment writing for 3 mins (8%)

30.2. When all 172 SCT non final hearings are considered:

30.2.1. The average time to deal with a non-final hearing was 1 hour 11 mins of which

30.2.1.1. Preparation accounted for 22 mins (31%)

30.2.1.2. Hearings for 45 min (64%)

30.2.1.3. Judgment writing for 3 mins (5%)

30.3. When all 180 FT non final hearings are considered:

30.3.1. The average time to deal with a non-final hearing was 1 hour 5 mins of which

30.3.1.1. Preparation accounted for 20 mins (31%)

30.3.1.2. Hearings for 34 min (53%)

30.3.1.3. Judgment writing for 10 mins (16%)

30.4. When all 255 MT non final hearings are considered:

30.4.1. The average time to deal with a non-final hearing was 1 hour 14 mins of which

30.4.1.1. Preparation accounted for 28 mins (39%)

30.4.1.2. Hearings for 38 min (52%)

30.4.1.3. Judgment writing for 6 mins (9%)

31. The report sets out how many of the full hearings referred to above had at least one party who was a LiP. The following appears:

31.1. Of the 164 SCT final hearings 96 of the claims (59%) involved at least one LiP

31.2. Of the 65 FT hearings 9 of the claims (14%) involved at least one LiP

31.3. Of the 44 MT hearings 9 of the claims (20%) involved at least one LiP

32. The data collected shows that final hearings before DJs and DDJs are slightly lengthened if an LiP is involved, and that non-final hearings take less time if LiPs are involved:

32.1. For DJs:

32.1.1. 44% of final hearings before DJs involved at least one LiP. Those cases take on average 1 hour 15 mins to complete. The 56% of cases where no LiP is involved take on average 1 hour 10 mins to complete.

32.1.2. 32% of non-final hearings involve at least one LiP. They take on average 34 mins of the DJ's time. The remaining 68% where no LiPs are involved take on average 41 minutes.

32.2. For DDJs:

32.2.1. 34% of final hearings before DDJs involved at least one LiP. Those cases take on average 1 hour 27 minutes to complete. The 66% of cases which do not involve an LiP take on average 1 hour 20 mins to complete.

32.2.2. 26% of non-final hearings involve at least one LiP. They take on average 46 mins of the DDJ's time. The remaining 74% where no LiPs are involved take on average 38 minutes.

Civil Survey

Conducted on behalf of Lord Justice Briggs

October – December 2015
HMCTS

Contents

Executive Summary

Lord Justice Briggs published his interim report on the Civil Court Structure Review in December 2015. Prior to the final report being published Lord Justice Briggs commissioned a sample survey of a small number of courts to provide a greater insight into the current resource demands of the judiciary. The key requirement of the survey was to identify the breakdown between the time spent by the judiciary preparing the case, the time that is actually spent in the courtroom and the time that is taken to write up the judgment of each case. The survey was supported by Her Majesty's Courts and Tribunals Service.

There is an immediate and growing need for more detailed information on the use of judicial resources and which is not available via the current case management system. This information is imperative for the Judiciary and HMCTS to understand how resources are used in the civil courts. The data collected within the survey provides some insight into the data requirements that should be mandatory in a new case management system e.g. the ability to be able to record the start and finish times of hearings, granularity of cases, whether parties are represented and also numbers of witnesses.

The courts that took part in the survey were selected on the basis of the volume of workload, timeliness of cases and geographical location. In identifying the courts to take part on the survey there was no self-selection by judiciary or courts. Based on this selection of courts the volume of returns account for 23% of the overall hearings that took place in the selected courts between October and December 2015.

The volume cases sampled overall provide an in depth review of the time spent by the judiciary on preparation, hearing time and writing up. This report provides an accurate summary of the data returns that were provided during the sample survey. This report does not draw any specific conclusions from those results. The data collected during the survey can be segmented in many way.

It is important to be aware of the following when attempting to draw conclusions from the results in this report.

- The sample sizes were often too small to draw conclusions that were statistically significant.
- The responses to the survey were proportionately low for small claims and fast track compared to the expected returns and therefore may not be entirely representative.
- There are a number of variables in the survey that would warrant further analysis. For the purpose of this report the analysis has been focussed on key statistical data sets

The key survey findings were

- The average percentage of time spent on both hearing preparation and writing the judgment was 35%.
- The presence of witnesses tends to result in longer hearing times.
- There is considerable variability in full hearing times.
- There was no clear picture on the relationship between litigants in person and hearing times.
- Multi track full hearings and fast track hearings had longer hearing times than other track types.

Annex A provides details of the survey design and validation

Annex B provides detail on the analysis covering the County Court and the High Court / District Registry

Annex C provides a copy of the guidance that was provided to the courts along with a copy of two survey forms, Full/final hearings in the County Court and Other Hearings in the County Court, to provide an illustration of the forms. A copy of all forms are available if required.

Introduction

1. During 4th October and 31st December 2015 a total of 12 courts were involved in a data collection exercise commissioned by Lord Justice Briggs. The duration of the survey was constrained to three months due to the resource impact of conducting a manual survey and the impact on both the judiciary and the administration. As the length of time over which the survey was limited, it was agreed that in areas where there was insufficient information/a small sample size a more focussed survey may be required at a later date to analyses specific data sets.

Main objective:

To provide analysis of the length of time that each Judge Type[1] spends on preparing for a case, the actual hearing time and writing up time, per allocation of case and case type.

2. A number of sub-objectives were agreed to collect additional information for each case. The volume of the returns for these categories are small and therefore reduce confidence in the conclusions. Nevertheless, the data provides an insight into some aspects of civil cases that has not previously been available.
   - The number of litigants in person
   - The number of witnesses that gave evidence
   - Value of the judgment
   - Where cases were adjourned and whether the reason was due to the parties or the court

3. The survey was not designed to analyse the performance of individual judges and/or productivity levels.

[1] Judge Types used in the survey are High Court, Circuit, Recorders, District Judges and Deputy District Judges

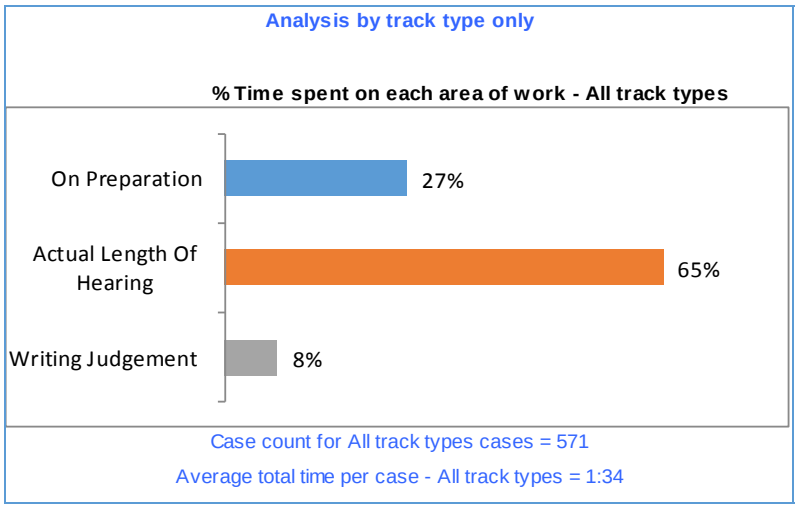
Key Findings

4. This section sets out to present the headline analysis that address the key survey objective and the sub objectives. It was not possible the address the sub objectives around the potential drivers of adjournments and the impact of the value of the judgment on hearing times. This was due to the lack of robustness around the data on judgment value and adjournments.

Time spent on pre and post hearing work components of total hearing time

Full/Final Hearings

5. Across all track and judge types, there is a significant amount of time spent on the pre hearing preparation and the writing judgment after the hearing.
6. There are three components of total hearing time, these being, preparation time, actual hearing time and writing judgment time. In the case of **full/final hearings** the analysis showed that an average of 35% of the time associated with a full hearing spent on either preparing for the hearing (27%) or writing the judgment after the hearing (8%) with 65% spent on the actual hearing. .

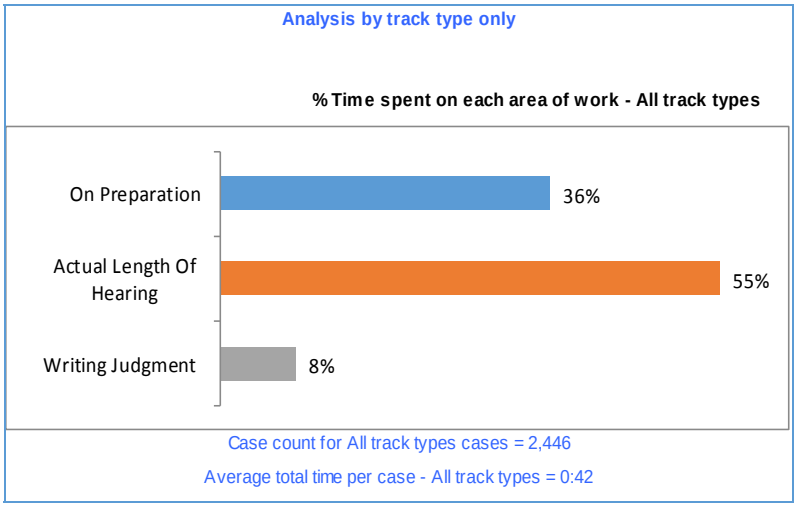


Key Findings Chart 1

7. There is considerable variation in these proportions when we look at the various specific track types / judge types. The percentage of time spent on preparation ranges from 23% and 24% for fast track and small claims track to 37% for unallocated cases. While the percentage of time spent writing judgments ranges from 3% on unallocated cases to 13% on multi track cases. In terms of the hearing time itself, the percentage of time spent on the actual hearings ranges from 60% on multi track cases to 70% on fast track hearings.

Other Hearings

8. In the survey, the percentage of time spent on pre hearing preparation and the writing judgment after the hearing for other hearings was higher than for final / full hearings. There was an average of 44% of the time associated with other hearings a full hearing spent on either preparing for the hearing (36%) or writing the judgment after the hearing (8%).

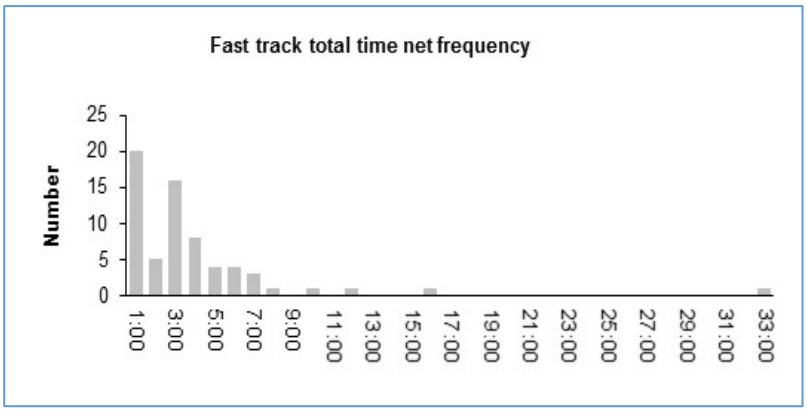


Key Findings Chart 2

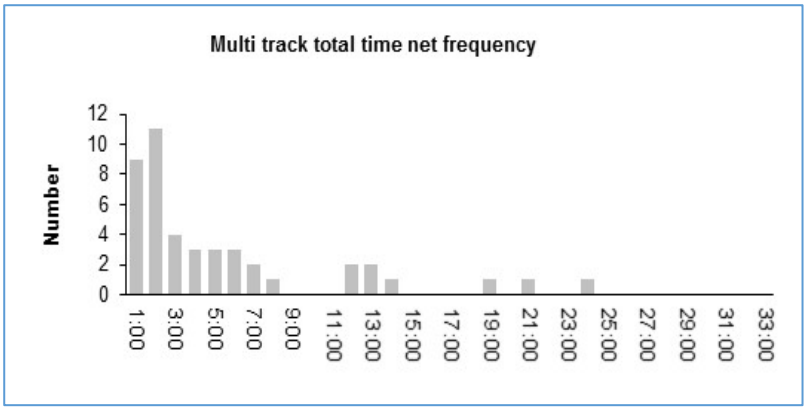
9. As with full hearings, there is variability when looking at these percentages across the various track types / judge types.

Variability in Hearing times

10. During the survey, there was considerable variability in hearing times amongst full hearings even when looking at hearing times for the same track.
11. When we observe all full hearings irrespective of the allocated track, the data shows that a quarter had hearing times of less than 15 minutes while a quarter had hearing times greater than 1 hour 50 minutes.
12. When we observe hearing times within the same track, we again observe considerable variability even within what should be a more homogenous set of hearings. For multi track cases, a quarter had full hearings of less than 1 hour 20 minutes while a quarter had full hearings greater than 6 hours. For fast track, a quarter had hearings of less than 55 minutes with a quarter having hearings of more than 4 hours.
13. The following charts illustrate the variability in the total time associated with a full hearing including the preparation and writing judgment activities associated with the actual hearing for fast track and multi track cases.



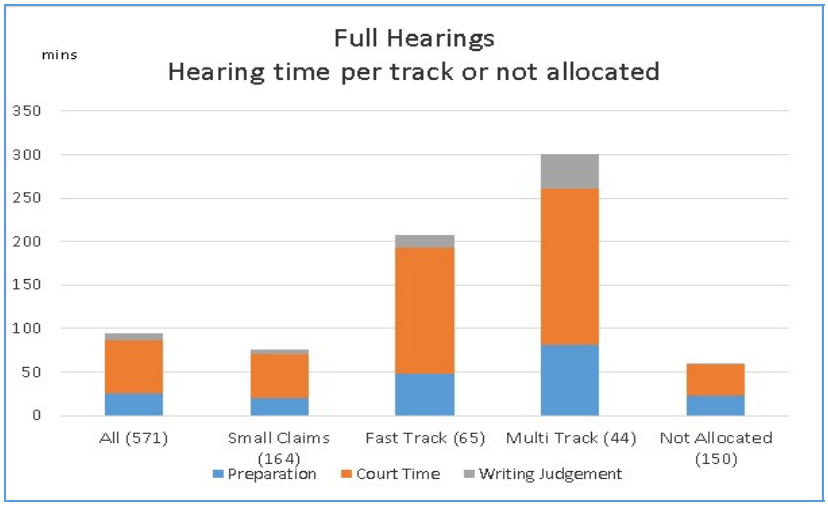
Key Findings Chart 3



Key Findings Chart 4

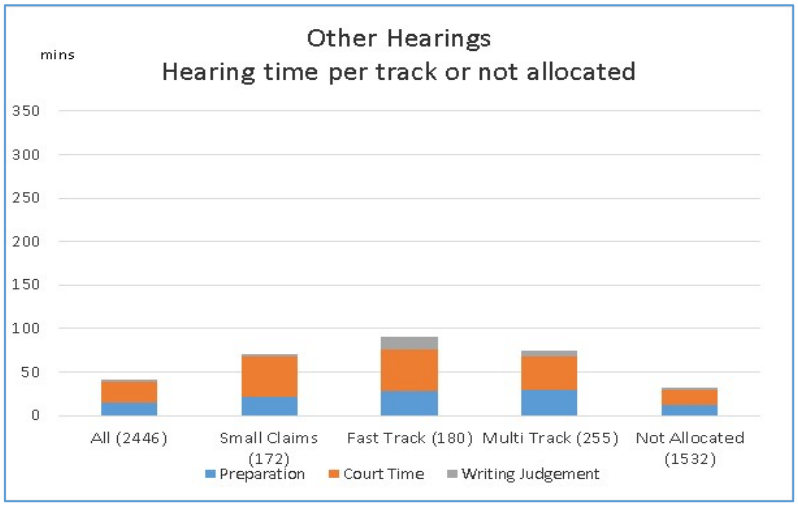
Track Type

14. Multi track and fast track cases appear to have longer total full hearing times than small claims and unallocated cases.
15. If we look at the chart below, we see that for full hearings, the survey indicated that multi track and fast track hearings had longer total (inclusive of preparation and writing judgment time) hearing times than small claims track and unallocated to track full hearings. Again given the sample size and other issues around the survey, we cannot conclude that observed relationship is significant.



Key Findings Chart 6

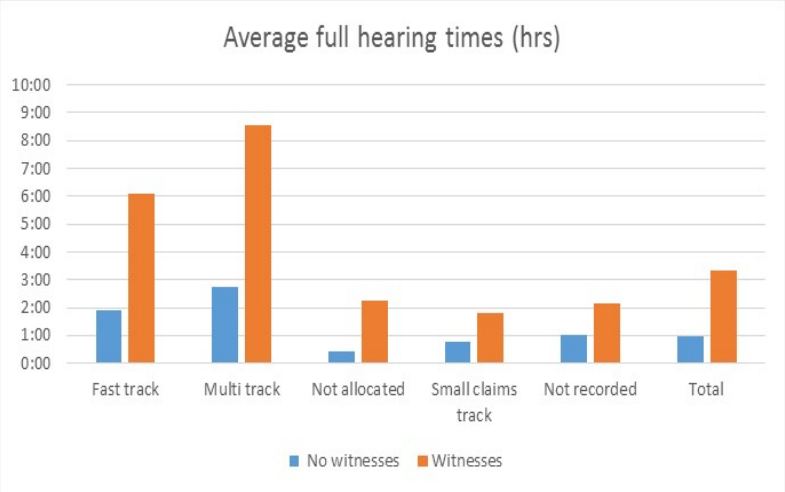
16. Looking at the chart below, it appears that the picture for other hearings was not as clear regarding the relationship between track type and total hearing type.



Key Findings Chart 7

Witnesses

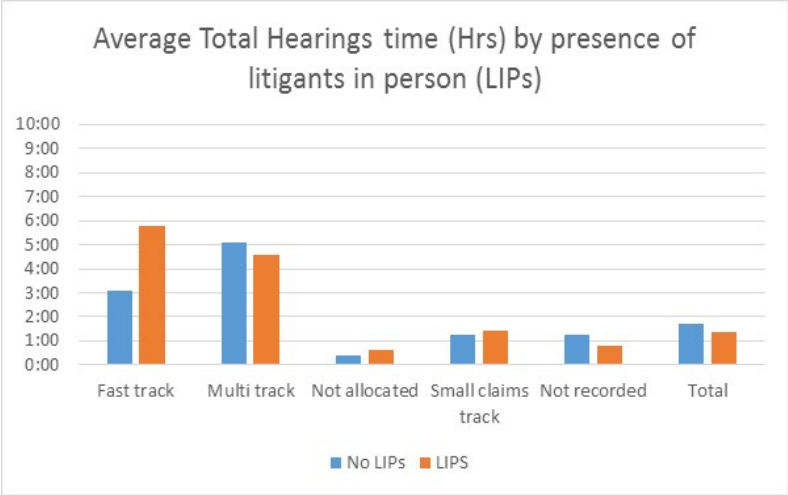
17. Full hearings with witnesses were observed to have longer hearing times.
18. The chart below compares total hearing times for cases with and without witnesses for all track types. It shows that in the survey, cases with witnesses had much longer hearing times than cases without witnesses for all track types although we should add that given the sample sizes in the survey, we cannot definitively conclude that the presence of witnesses lead to longer hearing times.



Key Findings Chart 8

Litigants in Person

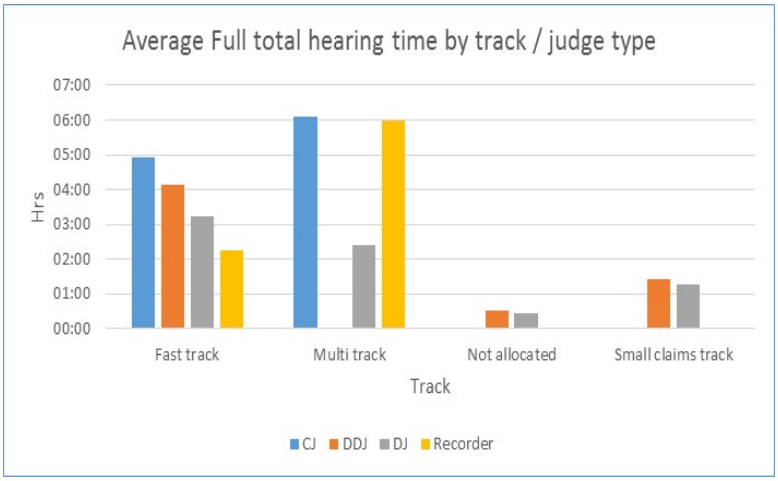
19. The survey indicates that the relationship between the presence of litigants in person and total hearing time in full hearings is not straightforward.
20. The graph below shows the average total hearing times split both by cases with litigants in person and cases without litigants in person and also track types. It shows that for fast track, not allocated and small claims, cases with litigants in person had longer hearing times. However it also shows that for multi track and non-recorded cases, cases with litigants in person have shorter hearing times. The sample sizes are not large enough to make firm conclusions from this data (See Annex A).



Key Findings Chart 9

Track / Judge Type

21. The graph below shows the average total hearing times for full hearings split by judge type and track type. This data is shown for all the judge type / track type combinations where there was a sample size of at least five cases.



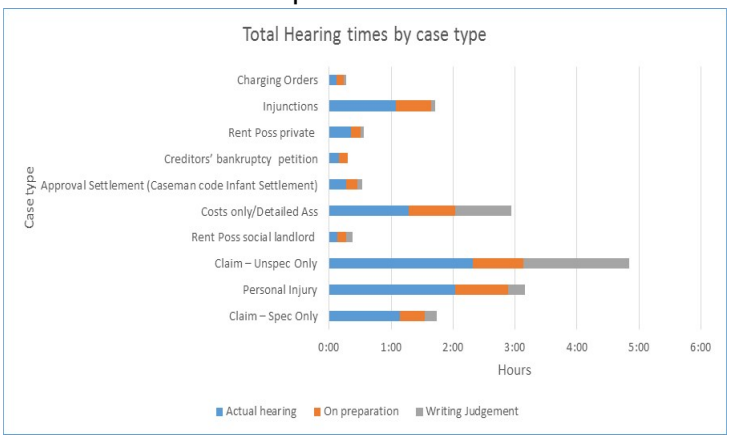
Key Findings Chart 10

22. The graph suggests that multi track cases in the survey had the longest average total hearing times (including the preparation and writing judgment times) with the not allocated to track cases having the shortest average hearing times. Circuit judges in the survey seemed to have longer hearing times than deputy district judges and district judges.

23. However while these survey results reflect the timings observed in the survey, we must caution against drawing any conclusions from these results given the issues mentioned before particularly around sample size particularly when some of these track / judge types had fewer than 10 cases.

Case type

24. The graph below shows the total hearing times for full hearings segmented by the three components of the hearing, the preparation time, the actual hearing time and the writing judgment time, this data is shown for all the case types where there was a sample size of more than 15 cases.



Key Findings Chart 11

25. The graph shows that claim unspecified only cases had the longest average total hearing time of almost 5 hours. Of this the actual hearing was the longest component of the hearing time with an average actual hearing time of 2 hours and 19 minutes. The case type with the shortest overall total hearing time was Creditors' bankruptcy petition which on average takes just 18 minutes.

26. Looking at the three individual hearing time components, personal injury cases have the longest average preparation time (51 minutes), while claim unspecified only cases had the longest average actual hearing times (2 hours.19 minutes) and writing judgment times (1 hour 42 minutes) .

27. However while these survey results reflect the timings observed in the survey, we must caution against drawing any conclusions from these results given the issues mentioned before particularly around sample size.

Annex A

Survey Validation and Objectives

28. All returned entries following a validation exercise were collated in a spreadsheet format that allows the data to be viewed in a number of ways. Each category of return has been analysed in the same way allowing a number of variables to be viewed together. The main combinations that have been made are:

Allocation type

Judge Type

Case type

Representation

Witnesses

The Survey

Design

29. The survey was designed to identify:
    - The amount of time that was spent preparing a case, the hearing time and the writing of the judgment
    - The level of judge that was dealing with the category of work
    - Whether the judge was either full time or fee paid member of the judiciary
    - The allocation level of the type of work
    - Work category

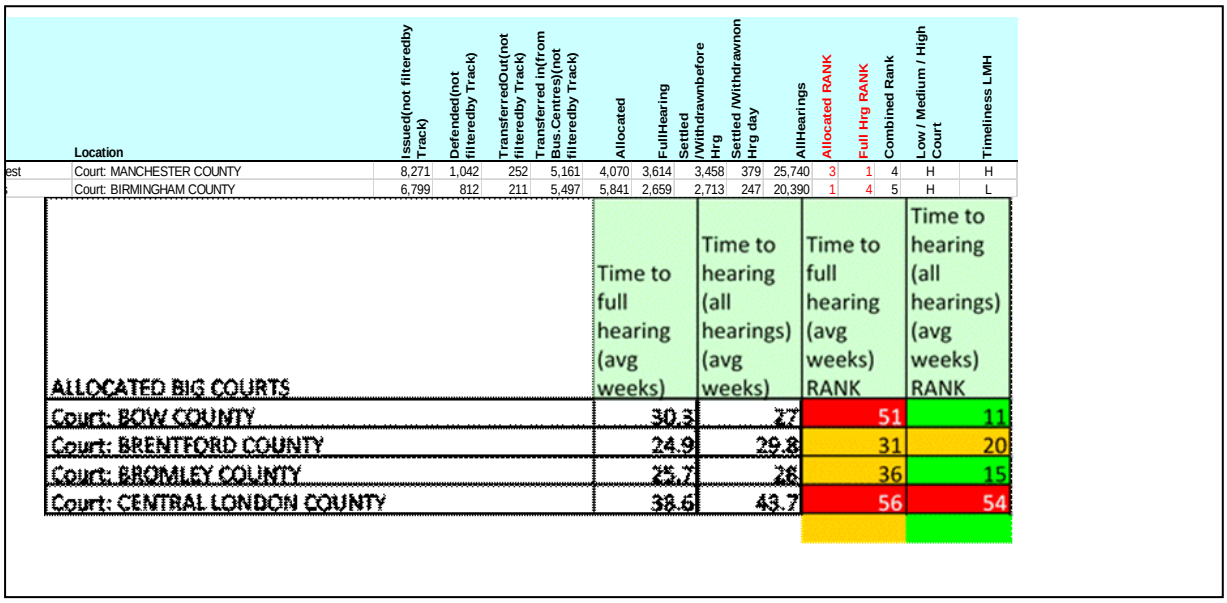
30. The survey was split into separate forms to identify the hearing type and the court e.g. High Court, County Court etc:

    - Civil Case Sampler A General County - Final Hearing
    - Civil Case Sampler B General County - Other Types Of Hearing
    - Civil Case Sampler C High Court/District Registry - Final Hearing
    - Civil Case Sampler D High Court/District Registry - Other Types Of Hearing
    - Civil Case Sampler E Admin Court – Final Hearing
    - Civil Case Sampler F Admin Court – Other Types Of Hearing

- Civil Case Sampler G General County – Block Listing
- Civil Case Sampler H High Court/District Registry - Block Listing Summary
- Box Work Compiler – General County Court
- Box Work Compiler – High Court/District Registry
- Box Work Compiler – Admin Court

Determining which courts to include in the sample

31. Three key factors were used to determine the courts chosen in the survey, they were:
    - Geographical, at least one court from each regions/circuit
    - Volumes, 3 characteristics were used to group each court into a high, medium or low category:
        - The volumes of allocations to track
        - The number of full hearings
    - Performance
        - Timeliness performance using the average time to hearing, covering both final hearings and other hearings



	Location	Issued(not filteredby Track)	Defended(not filteredby Track)	TransferredOut(not filteredby Track)	Transferred in(from Bus.Centres)(not filteredby Track)	Allocated	FullHearing	Settled /Withdrawnbefore Hrg	Settled /Withdrawnnon Hrg day	AllHearings	Allocated RANK	Full Hrg RANK	Combined Rank	Low / Medium / High Court	Timeliness LMH
est	Court: MANCHESTER COUNTY	8,271	1,042	252	5,161	4,070	3,614	3,458	379	25,740	3	1	4	H	H
	Court: BIRMINGHAM COUNTY	6,799	812	211	5,497	5,841	2,659	2,713	247	20,390	1	4	5	H	L

ALLOCATED BIG COURTS	Time to full hearing (avg weeks)	Time to hearing (all hearings) (avg weeks)	Time to full hearing (avg weeks) RANK	Time to hearing (all hearings) (avg weeks) RANK
Court: BOW COUNTY	30.3	37	51	11
Court: BRENTFORD COUNTY	24.9	29.8	31	20
Court: BROMLEY COUNTY	25.7	28	36	15
Court: CENTRAL LONDON COUNTY	38.6	43.7	56	54

Table 2 – example of two criteria for choosing courts

32. The list of courts to take part in the survey was agreed with Senior Judiciary, MOJ analysts and HMCTS Delivery Directors. The courts that were

recommended for the survey were then shared with Designated Civil Judges and Delivery Directors to ensure that the courts selected had the capacity to take part in the survey. A list of the courts is shown below:

- Aberystwyth
- Birmingham
- Brighton
- Bromley
- Haverfordwest
- Ipswich
- Manchester
- Northampton
- Oxford
- South Shields
- Truro
- Tunbridge Wells

Pilot

33. A small pilot of the survey was conducted in Manchester Civil Justice Centre to test the use of the forms by the judiciary and identify any amendments that were required to the forms. The sample survey resulted in the following amendments being made:
    - adding Court of Protection to box work and High Court hearings
    - charging orders and third party debt orders added to box work and hearings in County Court and High Court to include enforcement
    - making clear in the instructions to "tick one box only"
    - the number of witnesses
    - the "value" box for final hearings only
    - adding "was this an appeal" on all forms

The final survey can be found at Annex 1

Launch of the Survey

34. The survey was launched by Briggs LJ writing to all Designated Civil Judges with leadership responsibility for the courts that were taking part in the survey. A supporting communication was also sent to HMCTS Delivery Directors and the court leads in each location.

The Survey Period

35. The survey was conducted during October to December 2015. During the first weeks of the survey it was clear that there were a number of inaccurate or incomplete forms being returned and in some instances no forms at all were submitted. In order to rectify issues a Question and Answer weekly email was

set up so that all courts could see the issues raised and the responses to these forms, this included both administrative queries and judicial issues. HHJ Bird led on responses relating to judicial queries that the administration team was unable to answer.

Comparison of outcome of survey to resource usage

36. A comparison of the survey results for small claims and fast track cases was made to the current allocation of sitting days. When taking the hearing time element only of Small Claims and Fast Track full hearings and other hearings associated with each track and multiplying by the volume data for a given period of time (2015/16 hearing volumes), assuming a 5 hour sitting day, the results are within 91% of the actual sitting days used in the same period.

	$Workload \times \left(\left(\frac{\frac{full\ hearing \times time}{60}}{5} \right) \right)$		
	Analysis Results (Full Hearings and Other Hearings)	Actual Sitting days 15/16	Percentage Comparison
Small Claim	11419.9	12539	91%
Fast Track	8997.12	9836	91%

Table 3 - comparison of results to sitting days

37. A similar comparison is not possible for Multi Track cases as the volumes that are recorded on the HMCTS Performance Database do not currently differentiate between multi track cases in the High Court and District Registry and those multi track cases conducted in the County Court jurisdiction.

Analysis of Data

Survey Volumes

38. All of the forms that were returned by the courts were input into an excel based work book.
39. Table 4 shows the volumes of returns that were used in the analysis. A number of returns were rejected due to the forms being incomplete.

	Small claims track		Fast track		Multi track		Other Hearings		
Court	Full hearing	'Other' hearings	Full hearing	'Other' hearings	Full hearing	'Other' hearings	Full hearing	'Other' hearings	'Other' hearings II
Bromley Cty	12	28	4	20	0	11	14	213	397
Birmingham Cty	5	59	25	73	32	161	59	597	1715
Northampton	30	13	1	16	1	16	28	205	223
South Shields	4	4	0	0	0	0	0	36	76
Manchester	23	11	21	33	13	100	29	390	507
Oxford	19	7	2	8	3	16	11	125	125
Ipswich	0	29	0	7	0	9	0	292	292
Brighton	15	7	5	3	3	23	57	76	120
Tunbridge Wells	4	0	0	1	0	3	14	14	55
Brighton & Tunbridge Wells	19	7	5	4	3	26	71	90	175
Truro	35	13	6	12	9	17	87	40	75
Haverfordwest	7	4	2	3	0	2	12	22	53
Aberystwyth	10	3	0	5	0	4	2	22	25
Haverfordwest/Aberystwyth	17	7	2	8	0	6	14	44	78
	164	178	66	181	61	362	313	2032	3663

Table 4 – volumes of returns included in the survey by court

Allocation type	Full hearing	Other hearing
Small Claims	17%	20%
Fast track	25%	20%
Multi Track	52%	100%
Other (non allocated) hearings	20%	25%

Table 5 – proportion of forms received from the courts compared to the actual case load recorded for the same period

40. Table 5 compares the proportion of returns that have been included in the survey to the comparator volumes recorded in the HMCTS database.

Data Analysis undertaken and available in excel format.

41. Each sample for full hearings and other hearing types have been analysed consistently to provide data in the following categories for reading, court hearings and the writing of the judgment:

- all cases
- allocated track and non-allocated case
- judge type

- allocation and judge type
- case type

For each of the above categories the following analysis is conducted:

- The frequency of the number of witnesses by case
- The percentiles (broken into 25 % categories) for the overall judicial time
- The total time by net frequency
- The total time by cumulative frequency
- The median, mean, standard deviation, minimum and maximum for reading, court hearings and writing judgment time

Box work and Block listed cases were analysed separately but due to issues with data quality and sample sizes it was decided not to present this analysis in this report.

Full hearings (Sampler A) - a hearing where an order or a final judgment is made

All track types - Sample size 571

42. The sample includes cases in the county court where a final determination was made. Cases include those that were allocated to track and where the case had not been allocated to track or no track identified in the survey.

Track	Volume	Percentage of the total of full hearings
Small Claims	164	29%
Fast Track	65	11%
Multi Track	44	8%
Not allocated	150	26%
Not recorded	148	26%

Table 6 track type proportions as used in the analysis

43. Table 6 records the volume of returns that were received representing full hearings and the proportion of these between tracks.

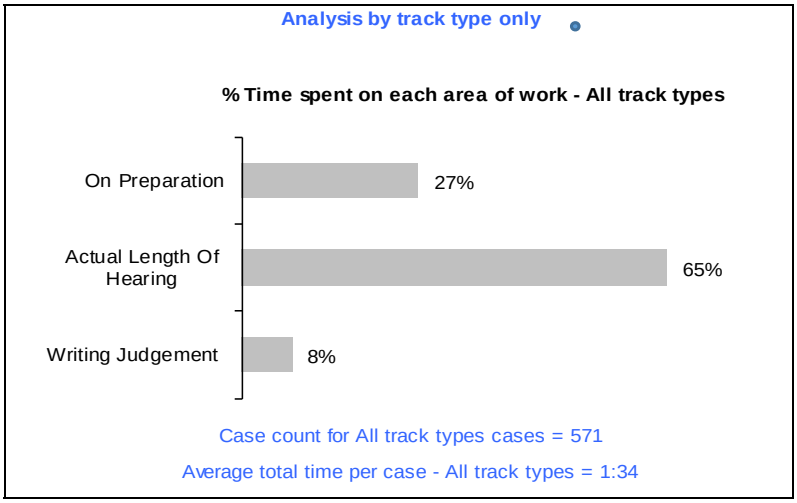


Figure 3 – All cases, division of resource

44. Figure 3 provides a breakdown of all full hearings recorded and a division of the time between preparation, court time and writing the judgment. A total of 571 returns were included in the analysis with an average time that was spent on all full hearings showing as 1 hours and 34 minutes.

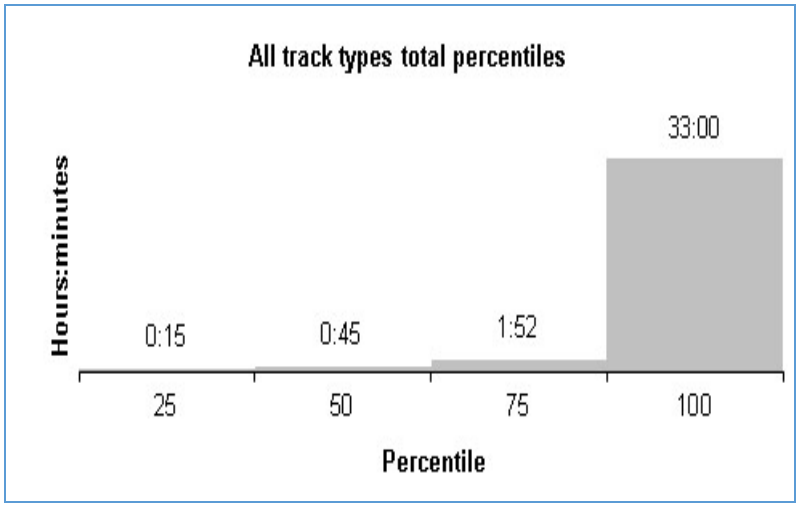


Figure 4 –all track types by percentile

45. Figure 4 shows the results broken down in percentiles. 50% of cases had a total time of 45 minutes recorded.

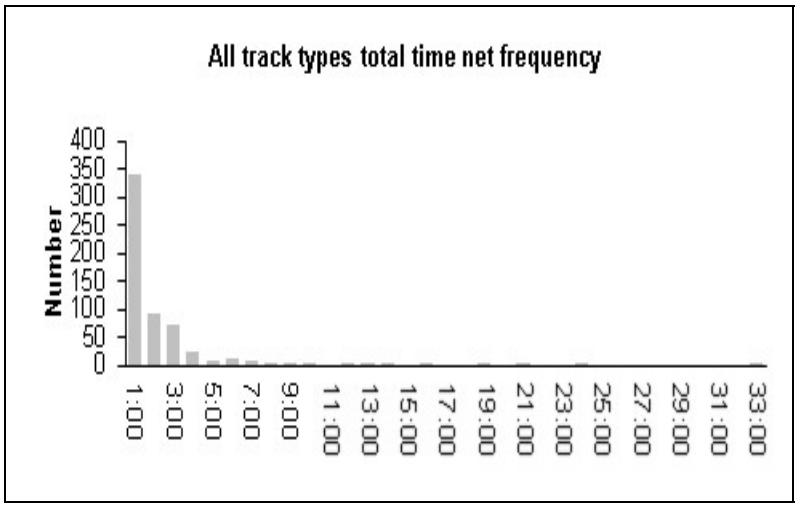


Figure 5 – all track types frequency chart

46. Figure 5 shows the net frequency of the distribution of the total time spent on a full hearing with 50% of the cases taking 45 minutes or less and analysis of the data shows that 75% of all cases heard within 1 hours 52 minutes.

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgement	All track types total
MEDIAN	0:15	0:20	0:00	0:45
MEAN	0:25	1:01	0:07	1:34
STDEV	0:35	1:59	0:34	2:44
MAX	5:00	24:00	7:20	33:00
MIN	0:00	0:00	0:00	0:01
Case count for All track types cases = 571				

Table 7 – all cases statistical summary

47. The standard deviation[2] of the hearing time is 1 hour 59 minutes and when viewed alongside the mean of 1 hour 1 minute implies variability in final hearings. This is not unexpected as the cases cover small track money claims through to the more complex unspecified multi-track cases where one hearing is shown to have taken 24 hours (and a total time of 33 hours). Table 8 shows the same statistical data with the case recorded as taking 33 hours (in table 7) removed. As can be seen when comparing the two tables the median value remains the same with the mean reducing by 2 minutes. Cases have been included in the count where at least one of the three components of a hearing is greater than 0 (e.g. 0.1). Therefore when the data is combined into the table a minimum value of 0 may be recorded in the preparation element as a single case may have recorded 0 preparation time but 1 minute or more in the hearing or writing time.

48. Table 8 replicates table 7 removing the case that has been recorded as 33 hours (this single case is correctly recorded and relates to a high value appeal claim). When this is removed the median values do not change and there is a marginal change of 3 minutes in the total mean but there is a 20 minute reduction in the standard deviation.

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgement	All track types total
MEDIAN	0:15	0:20	0:00	0:45
MEAN	0:25	0:59	0:06	1:31
STDEV	0:35	1:44	0:31	2:24
MAX	5:00	15:00	7:20	23:30
MIN	0:00	0:00	0:00	0:01
Case count for All track types cases = 570				

Table 8 –all cases-statistical summary (outlier of 33 hours removed)

Small Claims – sample size 164 cases

[2] Standard Deviation is used to quantify the amount of variation to the mean. A SD close to 0 indicates data points very close to the mean.

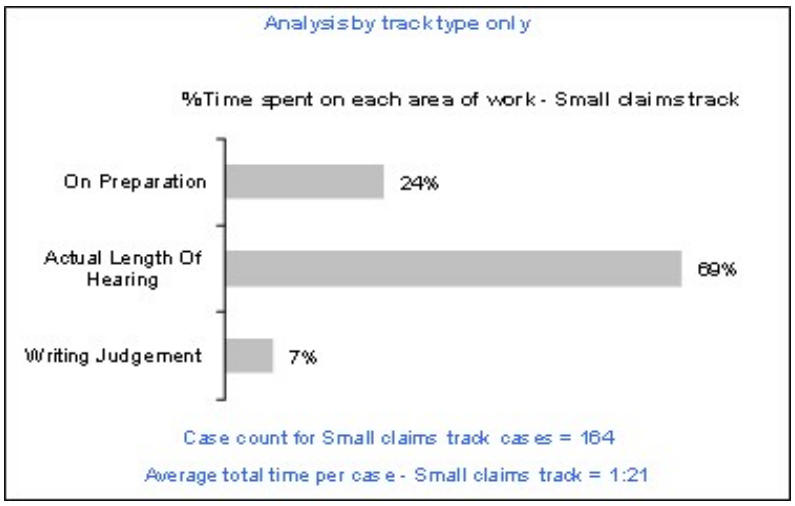


Figure 6 – Small claims division of resources

49. Figure 6, provides a breakdown of the full hearing category into the small claims track. The average time spent on a small claims hearings (average 1 hour 21 minutes) is 13 minutes less than all cases (1 hour 34 minutes) and there is a modest increase in the proportion of time that is spent on the hearing time compared to all cases.

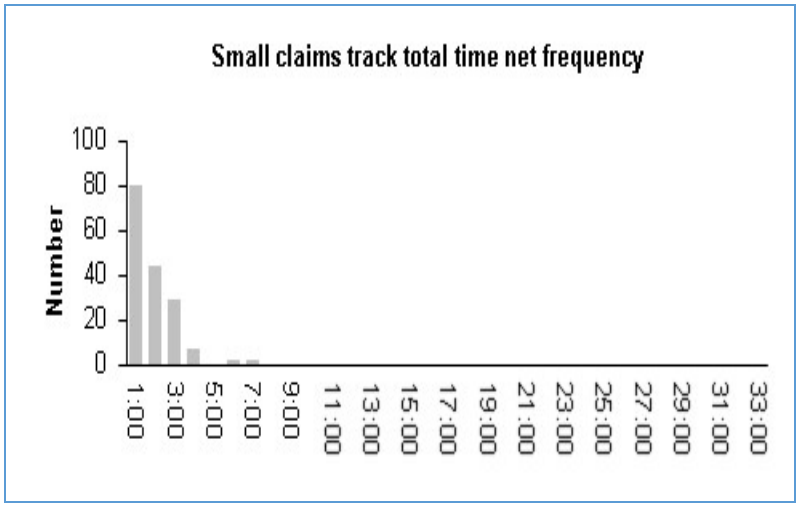


Figure 7 small claims frequency chart

50. Of the 164 claims included in the small claims analysis, figure 7 shows that 80 claims were completed within 1 hour. Further analysis, shown in figure 8, shows that 25% of small track cases take less than 30 minutes of judicial time with 75% of cases allocated to small track taking less than 1 hour 55 minutes of judicial time compared to 1 hours 52 minutes for all cases.

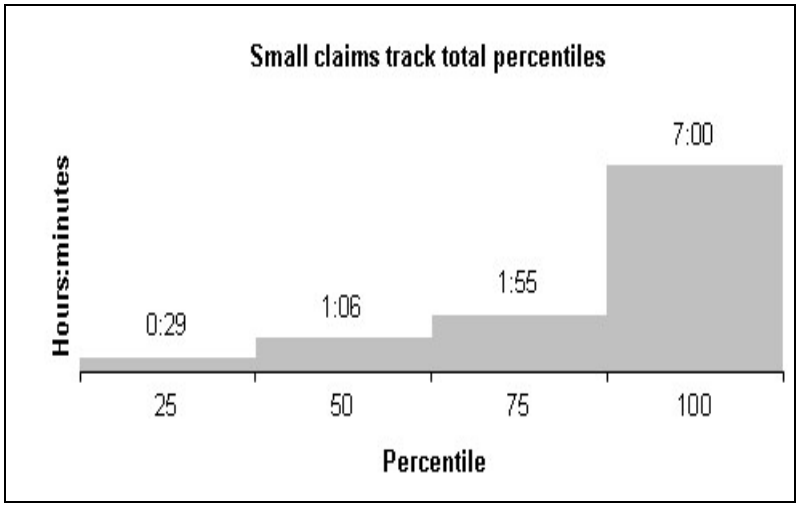


Figure 8- small claims percentiles

	Small claims track On Preparation	Small claims track Actual Length Of Hearing	Small claims track Writing Judgement	Small claims track total
MEDIAN	0:15	0:40	0:00	1:06
MEAN	0:19	0:55	0:06	1:21
STDEV	0:14	0:58	0:16	1:10
MAX	1:15	5:05	2:00	7:00
MIN	0:00	0:00	0:00	0:05
Case count for Small claims track cases = 164				

Table 9 – small claims statistical table

51. 50% of the cases took more than 1 hour to prepare, hear and write the judgment giving a median value of 1 hour 6 minutes as shown in table 9.

Fast Track – Sample size 65cases

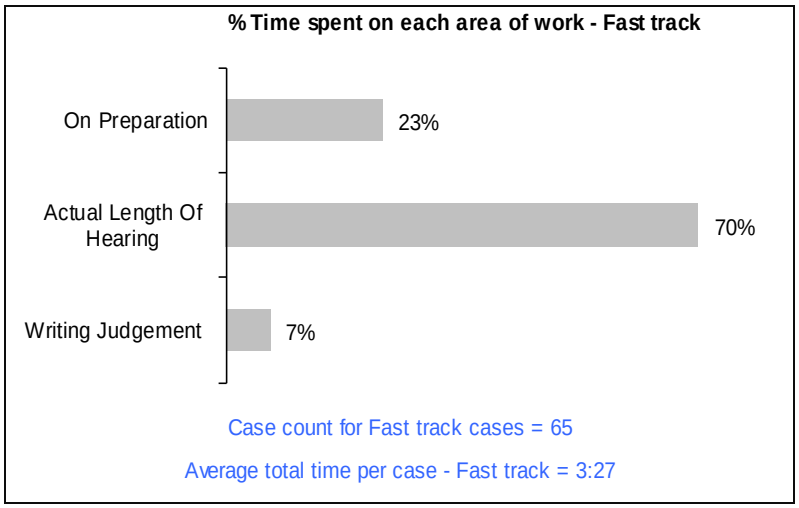


Figure 9 – fast track, division of resources

52. Figure 9 provides a breakdown of Fast Track Full Hearings. The average time for a fast track 3 hours 27 minutes, almost 2 hours 10 minutes longer than a small claim. There is almost the same distribution of the proportion of time for preparation when comparing fast track cases to small claims. However when looking at the actual timings, we observe an increase of 28 minutes for preparation and an additional 1 hour 45 minutes of hearing time relative to the small claims cases.

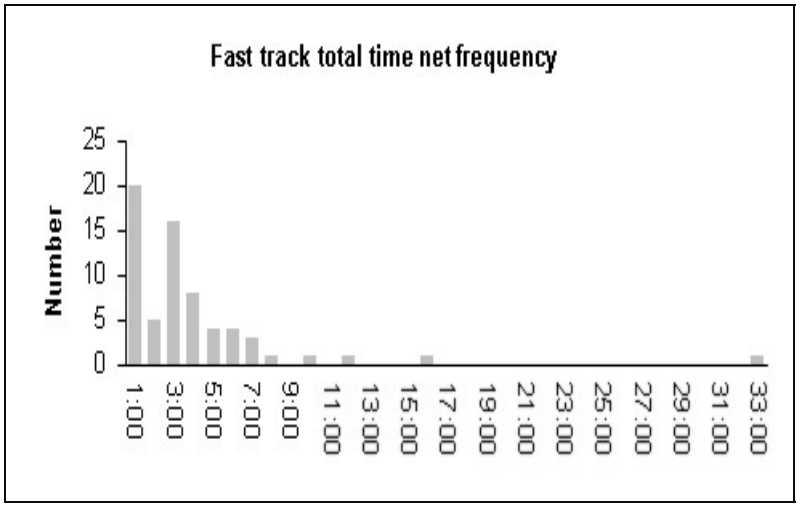


Figure 10 – fast track frequency chart

53. Of the 65 fast track case recorded in the survey, figure 10 shows that 20 cases were dealt with in 1 hour. Further analysis, shown in figure 11, shows 25% of fast track cases take less than 55 minutes or less of judicial time with 75% of cases allocated to fast track taking 4 hours or less of judicial time.

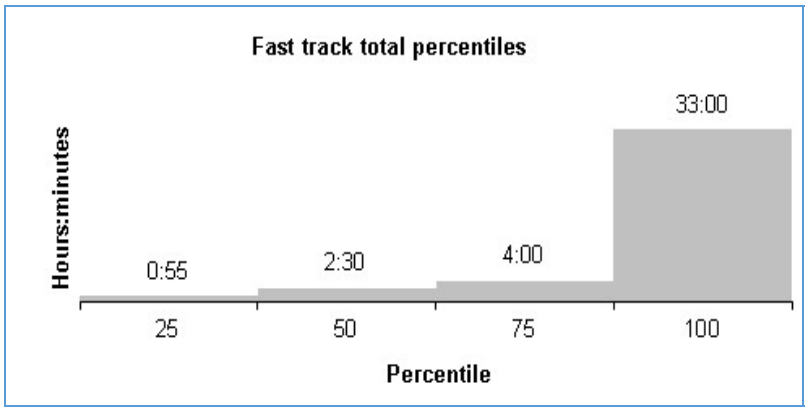


Figure 11 – fast track percentiles

	Fast track On Preparation	Fast track Actual Length Of Hearing	Fast track Writing Judgement	Fast track total
MEDIAN	0:40	1:55	0:00	2:30
MEAN	0:48	2:25	0:13	3:27
STDEV	0:36	3:41	0:52	4:39
MAX	3:00	24:00	6:00	33:00
MIN	0:00	0:00	0:00	0:06
Case count for Fast track cases = 65				

Table 10 – fast track statistical summary

54. The majority of fast track cases took 2 hours and 30 minutes or less to prepare, hear and write the judgment, however the spread of these timings is extensive with a standard deviation of 4 hours 39 minutes. The survey includes a single case of 33 hours. When removing the outlier case of 33 hours the statistical information shown in Table 11 changes in all categories except the median value for preparation time and the median value for the total of the case. Whilst the sample size is relatively small this provides an indication of the difficulty in standardising the time taken per fast track case as it will vary considerably when listing.

	Fast track On Preparation	Fast track Actual Length Of Hearing	Fast track Writing Judgement	Fast track total
MEDIAN	0:40	1:42	0:00	2:30
MEAN	0:46	2:05	0:08	2:59
STDEV	0:32	2:31	0:28	2:49
MAX	2:30	14:42	3:00	15:12
MIN	0:00	0:00	0:00	0:06
Case count for Fast track cases = 64				

Table 11 – full hearing fast track with outlier removed

Multi Track – Sample size 44 case

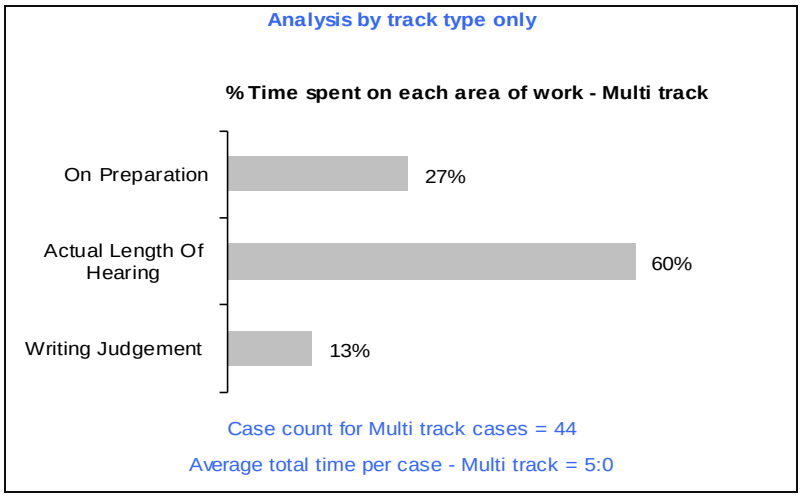


Figure 12 – multi track cases, division of resources

55. The average time that a multi track case is longer than other case types due to the nature of the work that assigned the case to the multi track. The survey does however provide further insight into how the resource is used. There is a greater proportion of the time spent on the preparation and writing up of the cases than in the other tracks with the pre and post hearings work together equating to 2 hours with 3 hours spent hearing the case.

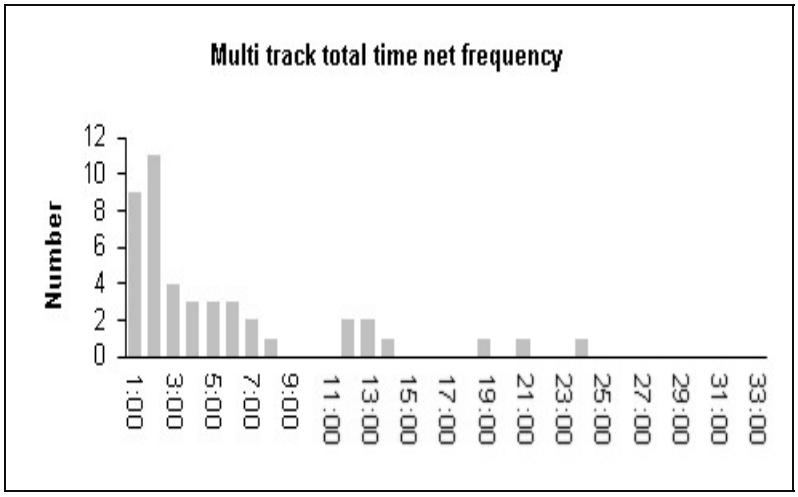


Figure 13 – multi track frequency chart

56. Of the 44 multi track cases recorded in the survey, figure 13 shows that 9 were cases were completed within 1 hour. Figure 13 shows 25% of multi track cases take less than 1 hour 20 minutes or less of judicial time with 75% of cases allocated to multi track taking 6 hours 3 minutes or less of judicial time.

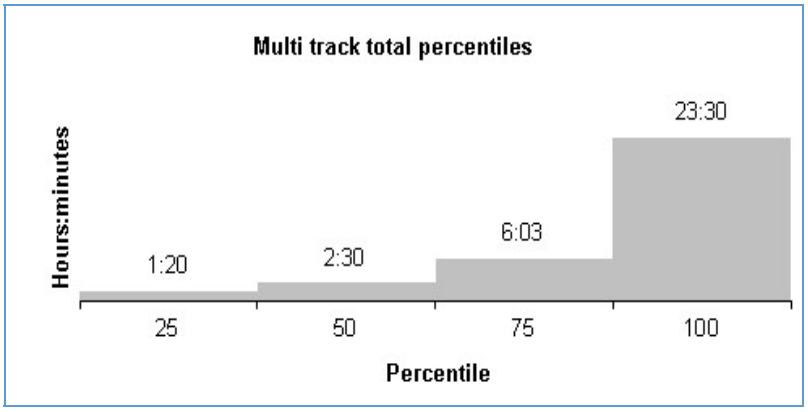


Figure 14 – mulit track percentiles

	Multi track On Preparation	Multi track Actual Length Of Hearing	Multi track Writing Judgement	Multi track total
MEDIAN	1:00	1:12	0:00	2:30
MEAN	1:20	3:01	0:38	5:00
STDEV	1:10	3:54	1:32	5:39
MAX	5:00	15:00	7:20	23:30
MIN	0:00	0:00	0:00	0:25
Case count for Multi track cases = 44				

Table 12 – multi track statistical summary

57. As shown in table 12 the standard deviation in multi track cases is greater than other tracks primarily due to the lack of homogeneity amongst these cases and to a lesser degree the small sample size. It is recommended that there is further analysis conducted of multi track cases to provide greater assurance of these results.

Not Allocated – Sample size 150

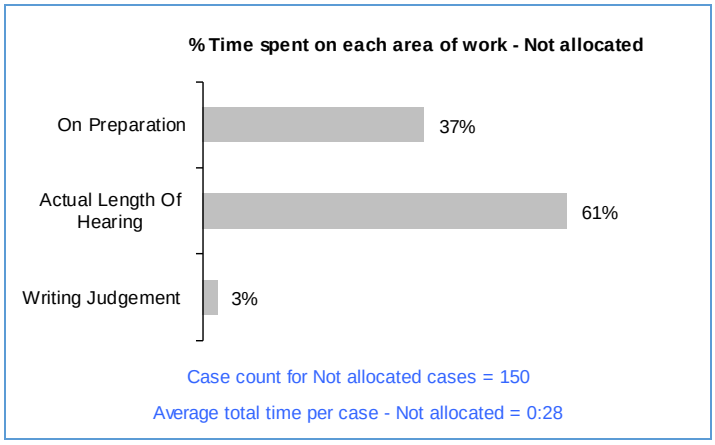


Figure 15 – full hearings not allocated

58. 26% of full hearing returns were marked as not allocated to a specific track. These cases have been specifically marked in the survey as not allocated to a track as opposed to the form being incomplete. The average time taken for these case was shorter than those cases that were allocated to a track, the proportion of time that is recorded as being spent on preparation is longer than with allocated cases. It is unclear from the survey the reason for this.

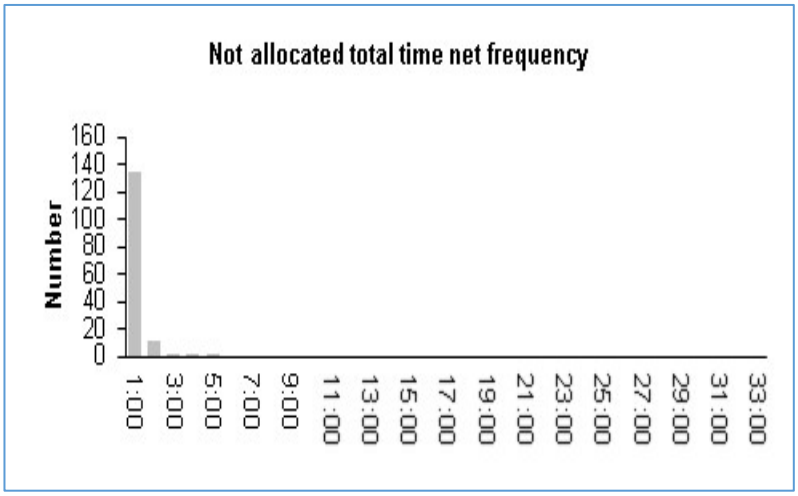


Figure 16 – full hearings not allocated frequency chart

59. Figure 16 shows that of the 150 cases used in the sample that were not allocated, 136 were completed within 1 hour. Overall the cases that have not been allocated to track are short with 50% of hearings being completed within 16 minutes.

	Not allocated On Preparation	Not allocated Actual Length Of Hearing	Not allocated Writing Judgement	Not allocated total
MEDIAN	0:06	0:09	0:00	0:15
MEAN	0:10	0:17	0:00	0:28
STDEV	0:12	0:29	0:02	0:37
MAX	1:30	4:00	0:10	4:35
MIN	0:00	0:00	0:00	0:01
Case count for Not allocated cases = 150				

Table 13 full hearing not allocated statistical summary

60. Table 13 shows the median value for cases that have not been allocated is 15 minutes. The standard deviation, relative to the mean, is high. This has been skewed by a single long entry of 4 hours 35 minutes. When this entry is removed, as shown in table 14, the standard deviation is reduced by 6

minutes, the mean is reduced by 1 minute whilst the medium value for all 3 elements remains the same.

	Not allocated On Preparation	Not allocated Actual Length Of Hearing	Not allocated Writing Judgement	Not allocated total
MEDIAN	0:06	0:08	0:00	0:15
MEAN	0:10	0:15	0:00	0:27
STDEV	0:12	0:22	0:02	0:31
MAX	1:30	2:30	0:10	4:00
MIN	0:00	0:00	0:00	0:01
Case count for Not allocated cases = 149				

Table 14 full hearings not allocated outlier removed

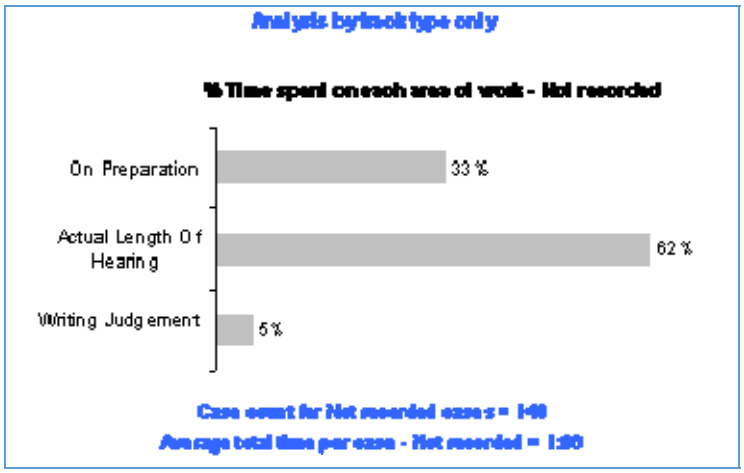


Figure 17 full hearings not recorded to track, division of resource

61. 26% of returned forms did not indicate which track that the form related to or if the form had not been specifically allocated to a track. These forms included information on the 3 key time elements of the survey and have been included in the analysis. The average length of hearing for these cases is 1 hour and 6 minutes, which is closest in timings to small claims hearings as opposed to the more complex fast track and multi track cases.

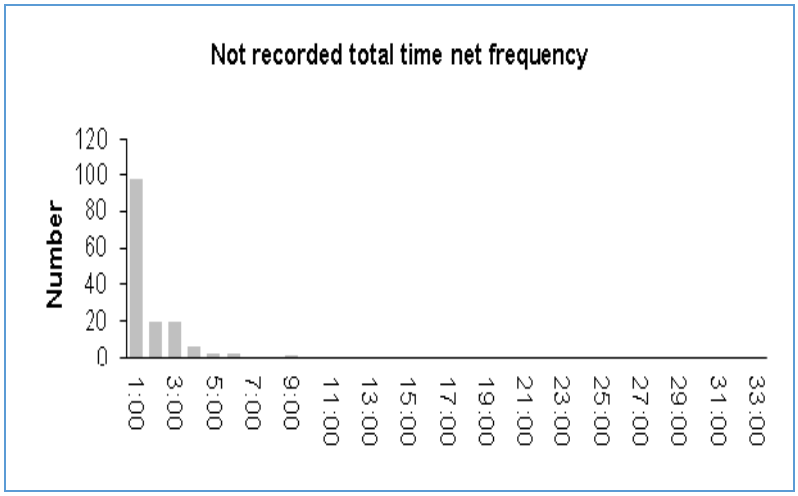


Figure 18 - hearings not recorded to track, frequency chart

62. 50% of these cases are recorded as taking 33 minutes or less.

	Not recorded On Preparation	Not recorded Actual Length Of Hearing	Not recorded Writing Judgement	Not recorded total
MEDIAN	0:10	0:15	0:00	0:33
MEAN	0:21	0:40	0:03	1:06
STDEV	0:33	0:54	0:16	1:18
MAX	4:00	4:30	3:00	9:00
MIN	0:00	0:00	0:00	0:02
Case count for Not recorded cases = 148				

Table 15 hearing not recorded to track, statistical summary

63. There is a small number of longer running cases that are recorded against this which influences the standard deviation and perhaps distorts the mean. The general statistical makeup of these cases is generally more in keeping with small claims cases than cases in other tracks.

Judiciary – total survey 571

64. All full hearing survey forms also requested the type of judge that was hearing the case. As you would expect the volumes of small track hearings are predominantly heard by District and Deputy District Judges with Circuit Judges proportionally dealing with multi track cases (table 18) . The table below shows the judge types that are included in the survey and the associated volumes and proportions.

Judge Type	Volume	Percentage
Circuit Judge	29	5%
Recorder	13	2%
District Judge	294	51%
Deputy District Judges	179	31%
Not recorded	56	10%

Table 16 – Judge type proportions (as used in the analysis)

Each judge type is broken down into categories to show the amount of time that is spent on preparation, court time and writing up time.

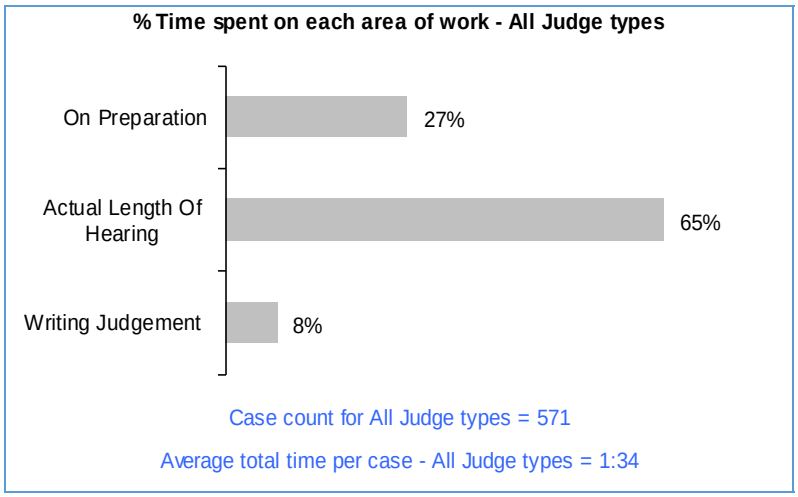


Figure 19 all judge type, division of resources

65. Overall, the average time spent by judges per case is 1 hour 34 minutes, where 27% is spent on preparing the case, 65% in court and 8% on writing up the judgment.
66. The longest average hearing time for the judiciary is recorded by Circuit Judges, with the overall judicial time per case being 5 hours and 34 minutes. The shortest being by District Judges at 1 hour 12 minutes. This broadly reflects the complexity of the cases that each type of judges hears, with Circuit Judges dealing predominantly with multi track cases (table 13).

Judge type			
	Total Time	**Count Of Cases**	**Average time per case**
CJ	161:30	29	5:34
Recorder	53:26	13	4:06
DJ	355:33	294	1:12
DDJ	247:41	179	1:23
Not recorded	82:56	56	1:28
Total	**901:06**	**571**	**1:34**

Table 17 – average time by judge type final hearings

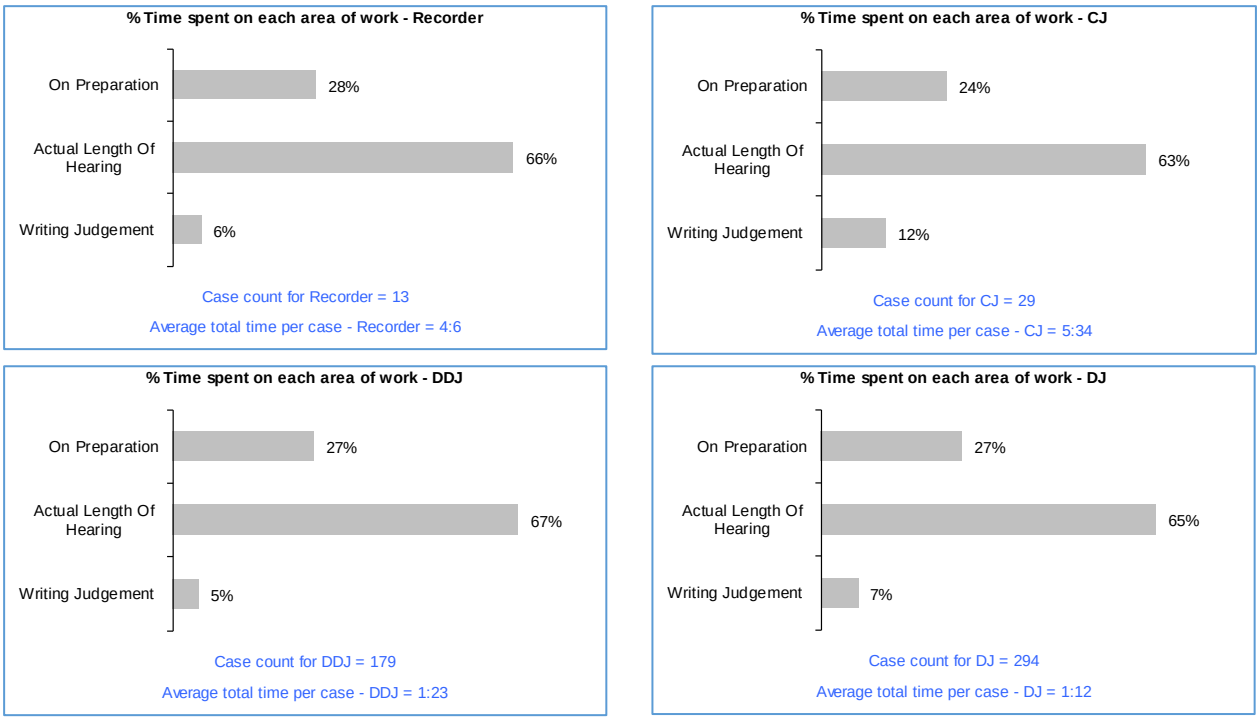


Figure 20 division of resources by judge type

67. Table 16 provides details of the numbers of cases in the survey that were recorded against each judge type. Over half of the cases that were not allocated or the allocation track was not recorded were dealt with by District and Deputy District Judges.
68. Of the returns, 66% of multi track cases were dealt with by a Circuit Judge (50%) or a Recorder (16%). 96% of small claims were dealt with by District Judges (54%) or Deputy District Judges (42%). 82% of all cases recorded were by District or Deputy District Judges with 7% being Circuit Judges or Recorders. A further 10% of returns did not record the judge type.
69. Circuit Judges and Recorders dealt predominantly with multi track cases, table 13 (29 of the 42 cases recorded by Circuit Judges and Recorders, accounting for 55% of the multi track hearings). District Judges and Deputy District Judges predominantly deal with Fast Track and Small claims and account for the majority of not allocated and not recorded responses.

Volumes by Judge type and track

Track		CJ	DJ	Recorder	DDJ	Not recorded	Total
Fast track	Number of cases	5	30	5	16	9	65
	% of total	8	46	8	25	14	
Multi track	Number of cases	22	10	7	2	3	44
	% of total	50	23	16	5	7	
Small claims track	Number of cases	0	89	0	69	6	164
	% of total	0	54	0	42	4	
Not allocated	Number of cases	2	91	1	47	9	150
	% of total	1	61	1	31	6	
Not recorded	Number of cases	0	74	0	46	29	148
	% of total	0	50	0	30	20	
Total	Number of cases	29	294	13	179	56	571
	%of total	5	51	2	31	10	

Table 18 matrix of volumes by judge type and track

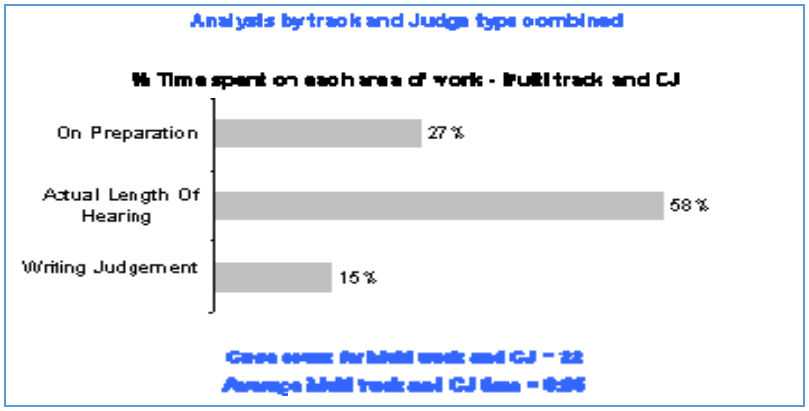


Figure 21 – multi track and circuit judge, division of resoure

70. Figure 21 provides an example of combining the track of case with the judge type. When comparing the division of time between preparation, hearing and writing judgments, Circuit Judges spend a higher proportion of their time (15%) writing judgments when dealing with multi track cases, this is the highest proportion compared to all of the other judge and track combinations. However given the small sample size (22), we cannot state that this inference is significant.
71. The sample survey when broken down into track type and judge type is less robust due to the increased number of variables that in turn reduces the sample size.

Other hearings (Sampler B)

All Track Types – sample size 2,446

72. The total number of cases used in the sample size to cover hearings that exclude a full hearing is 2,446, significantly higher than the returns for full hearings. As with the other samplers the data can be compared in a number of ways, this report provides a selection of key data sets.

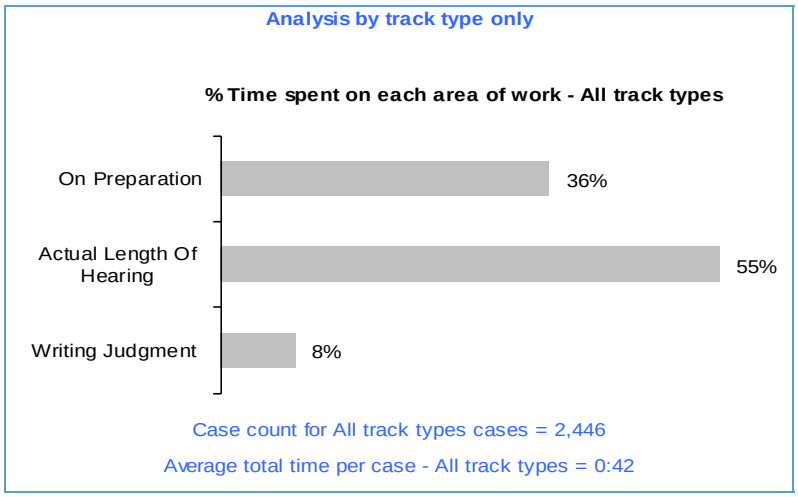


Figure 22 – all other hearings, division of resource

43. Figure 22 records the average time taken on other hearings is 42 minutes, this is 52 minutes less than the cases spent on a full/final hearing. The proportion of time spent on preparation for other hearings is 9% greater than the preparation time for full hearings with 15% less time being spent on the hearing time. This is not unexpected due to the extensive variety of hearing types, including interlocutory hearings, which fall into this category

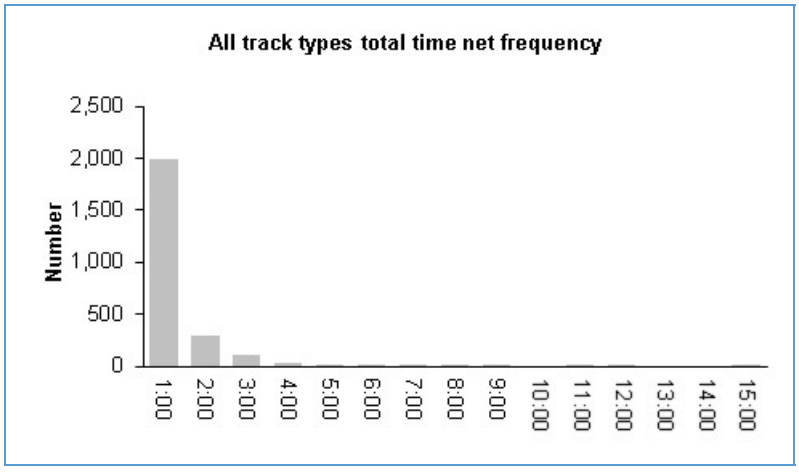


Figure 23 - all other, hearings frequency chart

73. Figure 23 shows that of the 2,446 other hearings that were recorded, 80% of these were less than 1 hour, the majority of other hearings take 25 minutes or less. This low value of time for other hearings time is largely driven by cases that have not been allocated to a track.

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgment	All track types total
MEDIAN	0:10	0:10	0:00	0:25
MEAN	0:15	0:23	0:03	0:42
STDEV	0:22	0:35	0:25	1:00
MAX	6:42	10:00	10:00	14:50
MIN	0:00	0:00	0:00	0:01
Case count for All track types cases = 2,446				

Table 19 – all other hearings, statistical summary

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgment	All track types total
MEDIAN	0:10	0:10	0:00	0:25
MEAN	0:15	0:23	0:02	0:41
STDEV	0:22	0:33	0:17	0:54
MAX	6:42	5:10	6:00	9:00
MIN	0:00	0:00	0:00	0:01
Case count for All track types cases = 2,443				

Table 20 – other hearings statstical summary (3 outliers cases removed)

74. Table 19 includes 3 cases that were each recorded as taking over 10 hours. To see of these cases skew the findings, table 19 is replicated at table 10 with these cases removed. In comparing tables 19 and 20 there is no difference in the mean or medium for the length of hearing and only a 1 minute reduction in the mean value for the writing up of cases. The variance from the mean (standard deviation) is reduced by 6 minutes in the total of all 3 elements.
75. It is worth noting the high volume of returns that were received for other hearings, 2,446. Approximately 90% of all hearings that take place in the county court come within the category of 'other' hearings with 10% being full/final hearings.

Small Claims – Sample Size 172

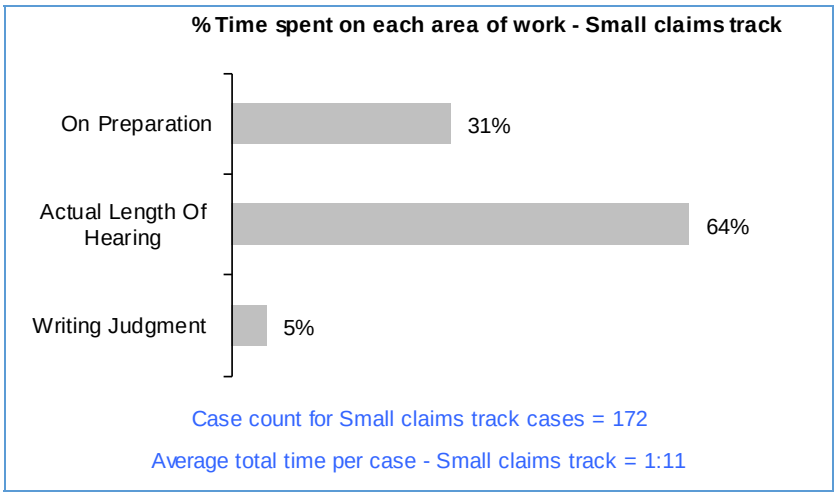


Figure 24 – other hearings, small claims, division of resources

76. Figure 24 shows the average time for small track other hearings as 1 hour and 11 minutes, with a higher proportion of time spent on the hearing element when compared to all other hearings (figure 22).

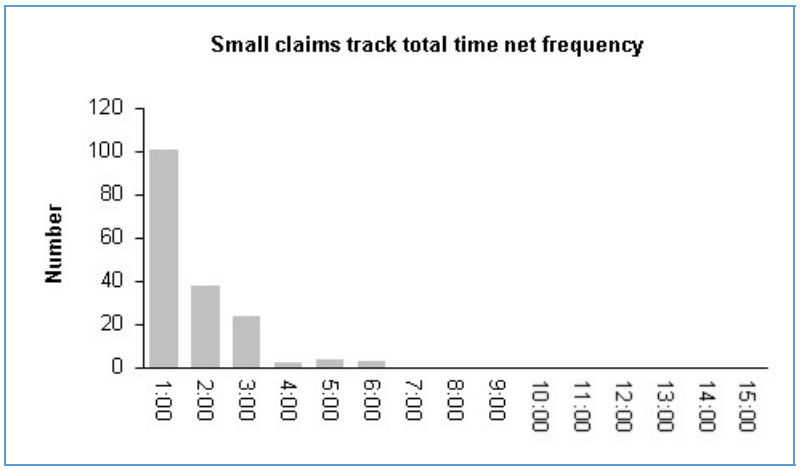


Figure 25 – other hearings, small claims frequency chart

	Small claims track On Preparation	Small claims track Actual Length Of Hearing	Small claims track Writing Judgment	Small claims track total
MEDIAN	0:15	0:30	0:00	0:50
MEAN	0:22	0:45	0:03	1:11
STDEV	0:17	0:52	0:13	1:06
MAX	1:30	4:40	2:30	6:00
MIN	0:00	0:00	0:00	0:02
Case count for Small claims track cases = 172				

Table 21 – other hearings, smal claims statistical table

77. Table 21 shows the average time taken to hear small claims other hearings is 1 hour 11 minutes compared to full hearings which take an average of 1 hour 20 minutes. 75% of small claims other hearings take 1 hour 41 minutes or less, 14 minutes less than the same comparator on full hearings. Approximately 65% of small claims hearings are not final hearings. 50% of small claims other hearings are completed within 50 minutes.

Fast Track –Sample Size 180

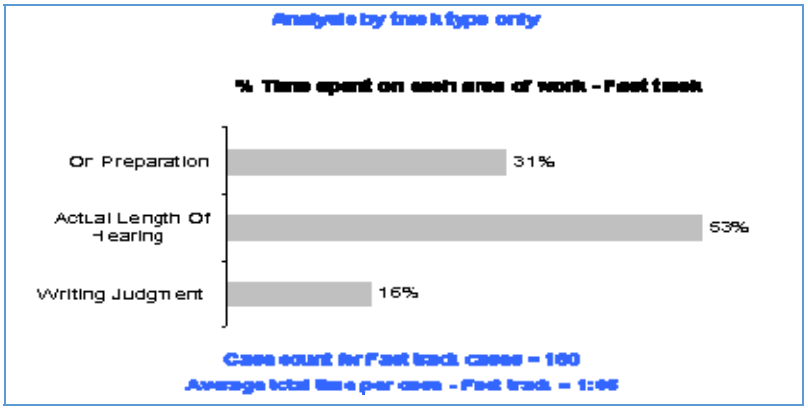


Figure 26 – other hearings, fast track, division of resource

78. Figure 26 shows that the average time in the survey to hear 'other' hearings that have been allocated to fast track is 1 hour 05 minutes, which is 6 minutes shorter than the average time for a small claim in the survey.

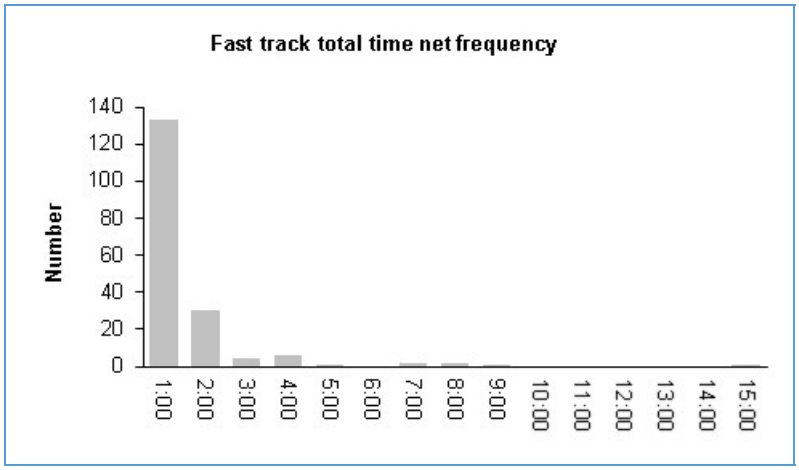


Figure 27 – other hearings, fast track frequency chart

79. Figure 27 analysis of the data suggest that the majority of other hearings in fast track cases take 40 minutes or less.

	Fast track On Preparation	Fast track Actual Length Of Hearing	Fast track Writing Judgment	Fast track total
MEDIAN	0:15	0:20	0:00	0:40
MEAN	0:20	0:34	0:10	1:05
STDEV	0:21	1:00	0:45	1:40
MAX	2:00	10:00	6:00	14:50
MIN	0:00	0:00	0:00	0:02
Case count for Fast track cases = 180				

Table 22 – other hearings, fast track statistical table

80. The standard deviation for fast track cases is greater than that for small claims, indicating that fast track cases are less homogenous than small claims track cases, however the median value of fast track cases is also shorter than small claims indicating that the conclusion of fast track cases, is correct based on this sample.

Multi track – Sample Size 255

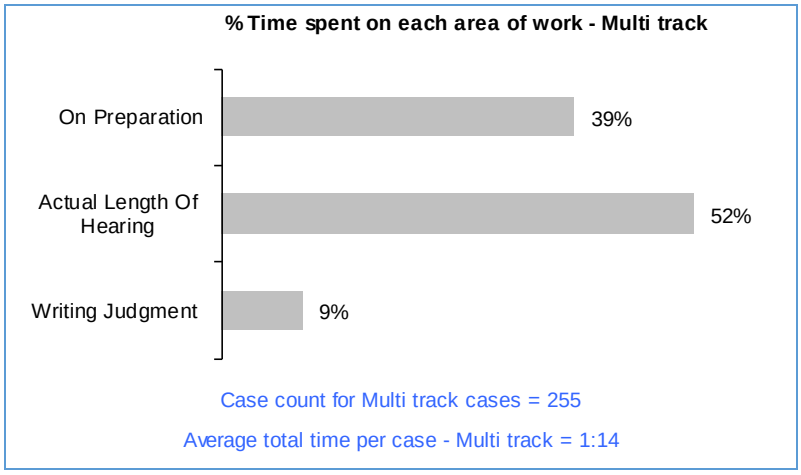


Figure 28 – other hearings multi track, division of resources

81. Other hearings in multi track cases are significantly less in time than full hearings at 1 hours 14 minutes compared to 5 hours. There is also an increase of 12% in the proportion of time spent on case preparation in these other hearing multi track cases compared to the final multi track hearings.

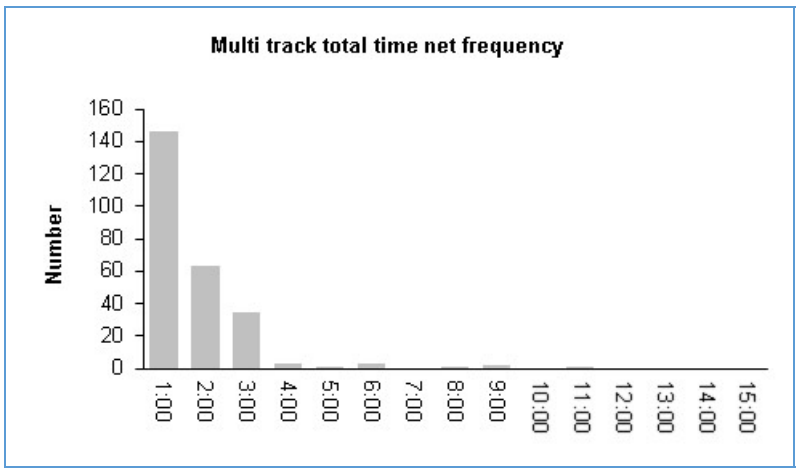


Figure 29 – multi track frequency chart

	Multi track On Preparation	Multi track Actual Length Of Hearing	Multi track Writing Judgment	Multi track total
MEDIAN	0:20	0:30	0:00	0:50
MEAN	0:28	0:38	0:06	1:14
STDEV	0:34	0:40	0:41	1:17
MAX	5:00	5:00	10:00	10:05
MIN	0:00	0:00	0:00	0:02

Case count for Multi track cases = 255

Table 23 – multi track statistical table

82. Table 23 shows the average time for multi track other hearing is 1 hours and 14 minutes. The mean ranges across other hearing types from 1 hour 5 minutes (for a fast track case) to 1 hour 14 minutes (for a multi track case).

Not Allocated – Sample Size 1,532

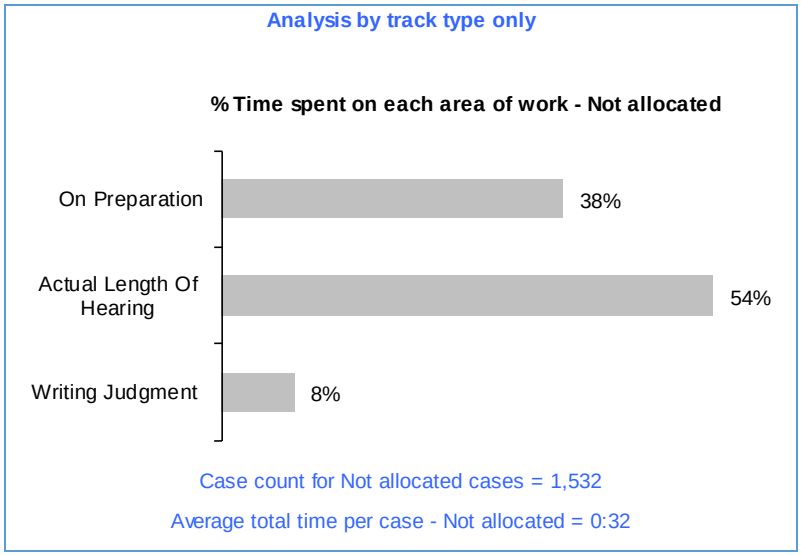


Figure 30 – other hearings, not allocated, division of resources

83. Other, not allocated hearings provided one of the largest sample responses of the survey. 92% of these cases being recorded by a District Judge or a Deputy District and compares to the not allocated cases in the full hearing sample they take almost half the time. As with the full hearing survey, it would appear where cases have not been allocated to a track the hearings are generally shorter in duration, with 50% taking 20 minutes or less and will be flexible in listing patterns.

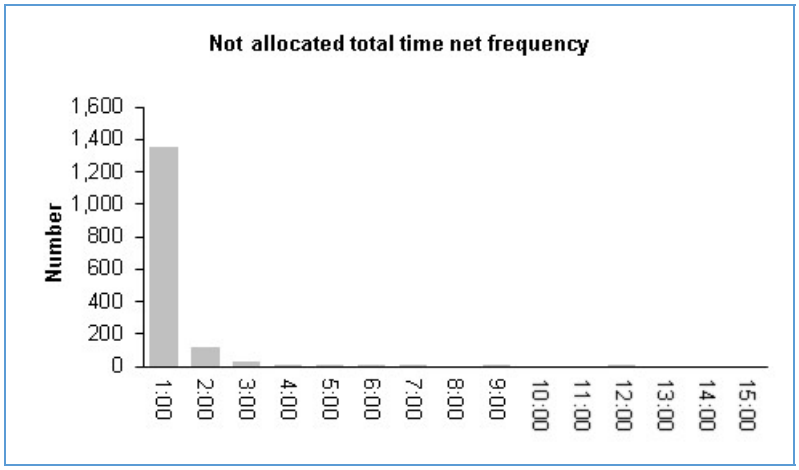


Figure 31 – other hearings, not allocated, frequency chart

	Not allocated On Preparation	Not allocated Actual Length Of Hearing	Not allocated Writing Judgment	Not allocated total
MEDIAN	0:06	0:10	0:00	0:20
MEAN	0:12	0:17	0:02	0:32
STDEV	0:21	0:25	0:21	0:48
MAX	6:42	5:00	10:00	11:30
MIN	0:00	0:00	0:00	0:01
Case count for Not allocated cases = 1,532				

Table 24 – other hearings not allocated statistical table

84. Table 24 highlights the median value for hearings that have not been allocated to a specific track, is just 10 minutes. In resource terms, once you multiply what is a relative small hearings time, by the high volume of cases that are recorded in the category, the overall resource impact will be significant.

Not Recorded – Sample Size 307

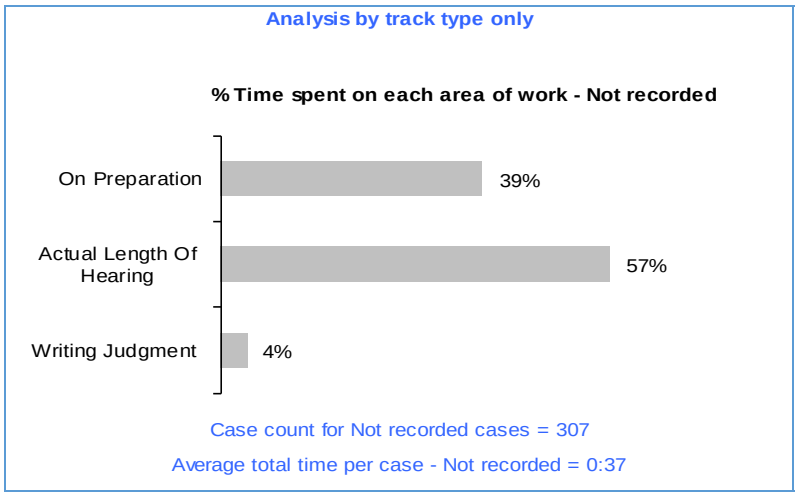


Figure 32 - other hearings, not recorded, division of resources

85. Figure 32 shows 307 forms were returned but did not record a track type or indicate that the case had not been allocated. These cases record an average time per case of 37 minutes, slightly shorter that the all cases return (average 42 minutes). These cases also indicate a slightly less proportion of time spent on writing up, 4% compared to 8% in all cases. The swing time being taken mainly from the preparation element.

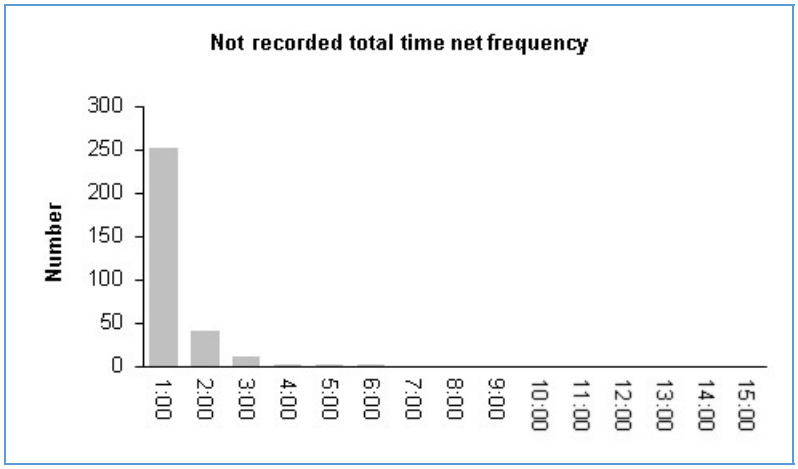


Figure 33 – other hearings, not recorded frequncy chart

	Not recorded On Preparation	Not recorded Actual Length Of Hearing	Not recorded Writing Judgment	Not recorded total
MEDIAN	0:10	0:10	0:00	0:25
MEAN	0:14	0:21	0:01	0:37
STDEV	0:15	0:30	0:05	0:39
MAX	2:30	5:00	1:00	5:20
MIN	0:00	0:00	0:00	0:01
Case count for Not recorded cases = 307				

Table 25 – other hearings, not recorded statistical chart

Judiciary

Judge Type	Volume	Percentage
High Court	3	0.01%
Circuit Judge	174	7.1%
Recorder	10	.4%
District Judge	1403	57.4%
Deputy District Judges	682	27.0%
Not recorded	174	7.1%

Table 26 – other hearings, returns by judge type

86. Table 26 shows the volume and proportion of returns by judge type for other hearings. 84% of other hearing returns were completed by District and Deputy District Judges.

Judge type	Total Time	Count Of Cases	Average time per case
Lord/Lady Justice	0:00	0	0:00
HCJ	4:00	3	1:20
Deputy HCJ	0:00	0	0:00
CJ	224:30	174	1:17
Recorder	7:37	10	0:45
DJ	908:08	1,403	0:38
DDJ	463:04	682	0:40
Not recorded	120:07	174	0:41
Total	**1727:26**	**2,446**	**0:42**

Table 27 – average length of time by judge type

87. Table 27 shows the difference in average time per case between a District Judge and a Deputy District Judge for other hearings is 2 minutes whereas the difference between a Circuit Judge and a Recorder is 32 minutes. No conclusions can be drawn from this data to indicate the timeliness of the full time judiciary to part time judiciary due to the small sample size

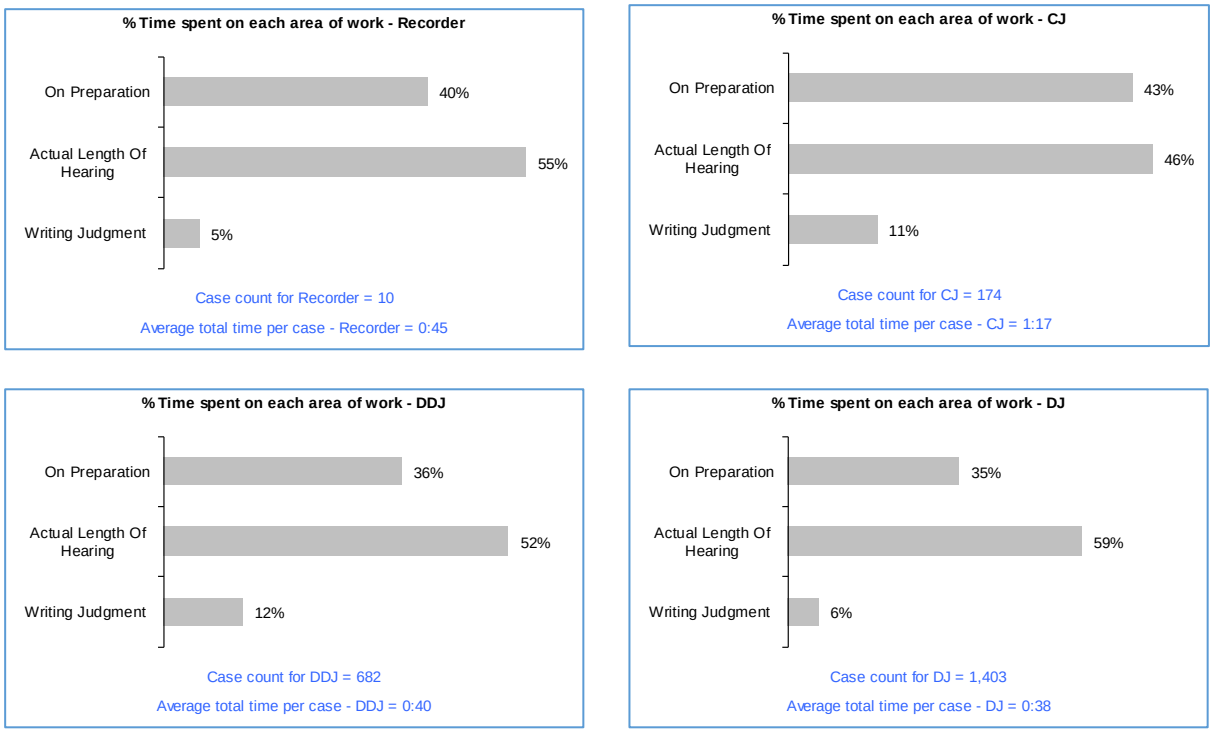


Figure 34- other hearings by judge type

88. Of the 2,446 returns in the other hearing category, 7% did not record the judge type. When comparing the 93% of returns for other hearings that did record a judge type figure 34, to the judicial times for full hearings (figure 20) the average time across all judge types is significantly lower. Interestingly, the proportion of time that is spent on preparation increases, in the case of Circuit Judges by almost 20%.

Block listed cases

89. A number of cases are predicted to be short in hearing time and are often listed together in a court. These cases are typically possession cases, charging order and specified money claims (of low value). These case are a mixture of final hearings and preliminary hearings. The recording of this data did not require the track of the case to be recorded.

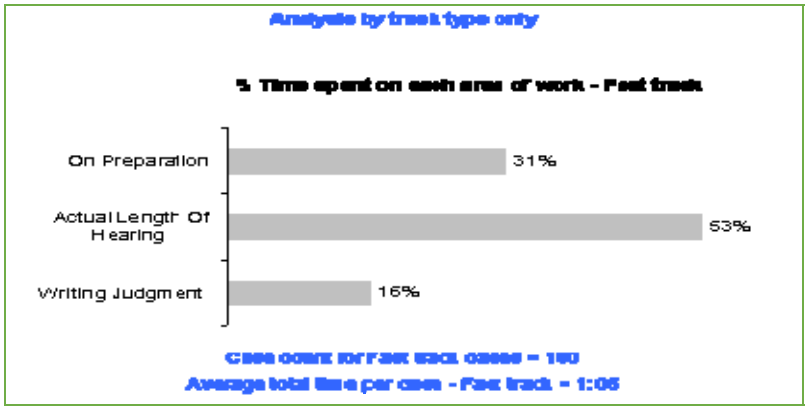


Figure 35 – block listing, division of resource

90. Figure 35 illustrates the time spent on preparation, court time and writing judgment time for cases that were block listed. The sample exercise provided details of 1,561 cases that were block listed with the average time for a case recorded as block listed is 17 minutes, with the time distributed between preparation, hearing time and writing time showing a slightly shorter proportion than other cases in the writing time (4%).

	All Judge types On Preparation	All Judge types Total Length Of Hearings	All Judge types Total Time Spent Writing Judgments	All Judge types Total time per case
MEDIAN	0:05	0:08	0:00	0:14
MEAN	0:08	0:18	0:01	0:28
STDEV	0:10	0:33	0:06	0:44
MAX	1:20	4:20	1:50	5:30
MIN	0:00	0:00	0:00	0:01
Sum of cases listed for All Judge types = 1,561				

Table 28 – block listing, statistical table

Litigants in person

91. Each form allowed for the recording of Litigants in Person to be recorded against the case so that it could be established if cases were taking longer where parties were representing themselves compared to those that were legally represented. The following analysis refers to county court cases only.
92. Table 29 shows the numbers and proportion of cases that were represented in the return for full hearings. Overall the table shows that cases where people are represented are slightly shorter (around 20 minutes) than those where people were not represented, this is as 'all' cases are influenced by the significant differences in the timings recorded by Circuit Judges. Cases that are dealt with by a Circuit Judge record a higher proportion as represented (83%) compared to those that are dealt with by a District Judge. As already established this is a consequence of the complexity of the case.
93. 59% of cases that were allocated to the small claims track were recorded as Litigants in Person, compared to 20% for multi track cases and 14% fast track cases. When reviewing cases dealt with by District Judges a 3% increase is recorded in the time taken by cases that involve Litigants in Person, this is greater in the samples provided for Deputy District Judges where the difference is 8%. In cases that are dealt with by Circuit Judges these are considerably quicker where there are litigants in person, it is unlikely (particularly given the sample sizes) that a conclusion can be drawn from the difference in the circuit judge timings without further investigation into the complexity/variables of cases. It is also likely the more complex the case the more likely that the parties will be represented. However, where the case is heard by a Recorded Judge the opposite is shown and it takes almost double the time to hear a litigant in person. The sample size for both data sets is small.
94. The sample size when viewing Litigants in person for District Judges and Deputy District Judges is greater and in both the judge categories there is a small but not significant increase in the time taken when the parties are not represented.
95. There are a numbers of returns that did not record the judge type, these samples indicate that the time taken where the parties are not litigants in person is almost double the time taken. However with the small sample sizes we cannot draw any conclusions from these cases.

Judge type	Judge type excluding Litigants in person				Judge type - Litigants in person				
	Total Time	Count Of Cases	Average time per case	% of cases without LIPs	Total Time	Count Of Cases With LIPs	Sum Of LIPs	Average time per case	% of cases with LIPs
Lord/Lady Justice	0:00	0	-	-	0:00	0	0	0:00	-
HCJ	0:00	0	-	-	0:00	0	0	0:00	-
Deputy HCJ	0:00	0	-	-	0:00	0	0	0:00	-
CJ	145:13	24	6:03	*83*	16:17	5	11	3:15	*17*
Recorder	38:11	11	3:28	*85*	15:15	2	6	7:37	*15*
DJ	193:22	165	1:10	*56*	162:11	129	191	1:15	*44*
DDJ	158:30	118	1:20	*66*	89:11	61	90	1:27	*34*
Not recorded	64:29	33	1:57	*59*	18:27	23	30	0:48	*41*
Total	**599:45**	**351**	**1:42**	***61***	**301:21**	**220**	**328**	**1:22**	***39***

Table 29 – full hearings, comparisons of cases where parties were represented compared to those not represented

Track type	Track type excluding Litigants in person				Track type - Litigants in person				
	Total Time	Count Of Cases	Average time per case	% of cases without LIPs	Total Time	Count Of Cases With LIPs	Sum Of LIPs	Average time per case	% of cases with LIPs
Fast track	172:47	56	3:05	*86*	52:00	9	17	5:46	*14*
Multi track	178:42	35	5:06	*80*	41:20	9	22	4:35	*20*
Not allocated	36:09	92	0:23	*61*	35:43	58	74	0:36	*39*
Small claims track	86:45	68	1:16	*41*	134:48	96	155	1:24	*59*
Not recorded	125:22	100	1:15	*68*	37:30	48	60	0:46	*32*
Total	**599:45**	**351**	**1:42**	***61***	**301:21**	**220**	**328**	**1:22**	***39***

Table 30 – full hearings, comparisons of cases where parties were represented compared to those not represented by track type

96. Not surprisingly when the data is presented by track type (Table 20) the results are similar, with multi track cases taking longer when the parties are represented which is a reflection of the complexity of the case possibly more so than the impact of litigants in person. For small claim and fast track cases where an individual represents themselves, the cases do take slightly longer. Again with the small sample sizes we cannot draw firm conclusions.

Judge type	Judge type excluding Litigants in person				Judge type - Litigants in person				
	Total Time	Count Of Cases	Average time per case	% of cases without LIPs	Total Time	Count Of Cases With LIPs	Sum Of LIPs	Average time per case	% of cases with LIPs
Lord/Lady Justice	0:00	0	-	-	0:00	0	0	0:00	-
HCJ	2:40	2	1:20	*67*	1:20	1	1	1:20	*33*
Deputy HCJ	0:00	0	-	-	0:00	0	0	0:00	-
CJ	159:26	121	1:19	*70*	65:04	53	66	1:13	*30*
Recorder	3:57	7	0:33	*70*	3:40	3	3	1:13	*30*
DJ	649:07	949	0:41	*68*	259:01	454	608	0:34	*32*
DDJ	325:31	505	0:38	*74*	137:33	177	220	0:46	*26*
Not recorded	89:18	121	0:44	*70*	30:49	53	65	0:34	*30*
Total	**1229:59**	**1,705**	**0:43**	***70***	**497:27**	**741**	**963**	**0:40**	***30***

Table 31 – other hearings, comparisons of cases where parties were represented compared to those not represented by track type

97. The data collected for 'other' hearings does mimic that for full hearings where across all judge types cases are slightly shorter when people are not represented. This small difference is not significant. The difference in timing for other hearings for Circuit Judges is again too small (6 minutes) to be significant The returns for District Judges show an opposite picture to full hearings where cases that are represented now take slightly longer. The proportion of case that are shown as represented in other hearings is 9% greater than those recorded for full hearings.

Witnesses

Track type	Track type excluding witnesses				Track type - witnesses				
	Total Time	Count Of Cases	Average time per case	% of cases without witnesses	Total Time	Count Of Cases With witnesses	Sum Of witnesses	Average time per case	% of cases with witnesses
Fast track	78:40	41	1:55	*63*	146:07	24	64	6:05	*37*
Multi track	74:12	27	2:44	*61*	145:50	17	64	8:34	*39*
Not allocated	60:32	145	0:25	*97*	11:20	5	14	2:16	*3*
Small claims track	58:32	74	0:47	*45*	163:01	90	169	1:48	*55*
Not recorded	134:52	135	0:59	*91*	28:00	13	28	2:09	*9*
Total	**406:48**	**422**	**0:57**	***74***	**494:18**	**149**	**339**	**3:19**	***26***

Table 32 – full hearings, witnesses

98. The analysis on witnesses is based solely on county court data.

99. 26% of cases recorded for full hearings recorded witnesses involved. The large majority of cases in the sample without witnesses were not allocated to track or the track was not recorded. The majority of cases without witnesses were small claims. It is not surprising that the returns showed a significant increase in time taken per case across all track types (including those where the case was either not allocated or not recorded) in the average time when the case involves witnesses.

100. Of the cases that involved witnesses 55% were related to specified money claims and 16% to personal injury claims.

Cases

101. This analysis on cases is based on county court cases and excludes High Court and District Registry cases.

102. The type of case was recorded in each sample so that there is a more granular understanding of the case mix than currently available on caseman (the civil courts case management system) and that there is more appreciation that the impact that these cases have on judicial time.

103. Table 32 shows the recordings by case type for full hearings and table 40 for other hearings. The largest collected case type sample was for specified money claims where the sample size was 173 cases with an average of 1 hour 29 minutes.

104. Specified Money Claims provide the highest sample size (173) and therefore the most robust timings with an average if 1 hour 29 minutes. Unspecified money claims records the longest average time of 3 hours and 41 minutes with a sample size of 43 cases.

105. Of the total time that has been recorded in the survey, 55% is as a result of two categories:Specified Money Claims and Personal Injury, in volume terms the two case types account for 45%. This provides an inidcation of how increases or decreases in specific types of work will impact on the resources required.

	Total Time	Count Of Cases	Average time per case
3rd Party Debt Orders	0:05	1	0:05
Acc Poss,	16:48	7	2:24
Approval Settlement (Caseman code Infant Settlement)	8:37	19	0:27
Bailiff Cert	0:00	0	0:00
Charging Orders	4:01	17	0:14
Civil penalty appeal	0:00	0	0:00
Claim – Multi/Oth	13:05	7	1:52
Claim – Spec Only	258:41	173	1:29
Claim – Unspec Only	159:00	43	3:41
Commercial Landlord and Tennant (Caseman code Orig L&T 24 and 34)	0:00	0	0:00
Costs only/Detailed Ass	39:16	22	1:47
CPR PT 75	0:00	0	0:00
Creditors' bankruptcy petition	6:07	22	0:16
Debtor's bankruptcy petition	2:18	5	0:27
Demotion claims	0:00	0	0:00
Forfeiture - Tenant	8:45	6	1:27
HRA Claim	0:00	0	0:00
Injunctions	28:17	18	1:34
Insolvency Application (Case man Code Orig Appln)	4:31	11	0:24
Mort Poss,	5:31	13	0:25
Order to attend court for questioning	0:00	0	0:00
Originating application for Tribunals (enforcement of a Tribunal Award)	0:12	1	0:12
Part 55 I	0:00	0	0:00
Part 55 II	0:00	0	0:00
Part 8 Claim	10:19	13	0:47
Personal Injury	239:47	86	2:47
Personal Injury Clinical Negligence	10:45	4	2:41
Pre Issue Appln	4:58	2	2:29
Rent Poss private	9:33	19	0:30
Rent Poss social landlord	10:46	41	0:15
ROG	2:14	8	0:16
Stage 3 Portal cases	0:30	1	0:30
Winding up petition	0:20	1	0:20
Not recorded	56:40	31	1:49
Total	**901:06**	**571**	**1:34**

Table 33 – full hearings by case type

106. Mirroring table 33 using data from the sampler for all hearings in table 34, Specified Money Claims and Personal Injury account for 40% of the total time and 29% of the volume.

	Total Time	Count Of Cases	Average time per case
3rd Party Debt Orders	0:58	5	0:11
Acc Poss,	15:01	34	0:26
Approval Settlement (Caseman code Infant Settlement)	93:53	211	0:26
Bailiff Cert	0:30	4	0:07
Charging Orders	11:35	68	0:10
Civil penalty appeal	0:40	1	0:40
Claim – Multi/Oth	35:09	30	1:10
Claim – Spec Only	338:28	331	1:01
Claim – Unspec Only	190:06	182	1:02
Commercial Landlord and Tennant (Caseman code Orig L&T 24 and 34)	5:30	5	1:06
Costs only/Detailed Ass	55:21	31	1:47
CPR PT 75	0:18	1	0:18
Creditors' bankruptcy petition	9:42	32	0:18
Debtor's bankruptcy petition	4:23	13	0:20
Demotion claims	0:00	0	0:00
Forfeiture - Tenant	12:59	11	1:10
HRA Claim	1:15	1	1:15
Injunctions	90:18	62	1:27
Insolvency Application (Case man Code Orig Appln)	25:29	50	0:30
Mort Poss,	27:54	80	0:20
Order to attend court for questioning	1:14	2	0:37
Originating application for Tribunals (enforcement of a Tribunal Award)	3:04	5	0:36
Part 55 I	7:57	12	0:39
Part 55 II	0:05	1	0:05
Part 8 Claim	157:22	203	0:46
Personal Injury	347:03	355	0:58
Personal Injury Clinical Negligence	32:44	32	1:01
Pre Issue Appln	12:58	30	0:25
Rent Poss private	36:02	98	0:22
Rent Poss social landlord	124:20	424	0:17
ROG	6:06	25	0:14
Stage 3 Portal cases	16:41	26	0:38
Winding up petition	1:05	4	0:16
Not recorded	61:16	77	0:47
Total	**1727:26**	**2,446**	**0:42**

Table 34 – other hearings by case type

Annex B

Sample C –High Court/ District Registry Final Hearing Sample size 40

Full Hearings all track types

107. Due to the small volume of returns that were made for this category this report does not segment the returns any further. Also the small sample size means that we cannot draw any inferences from this data.

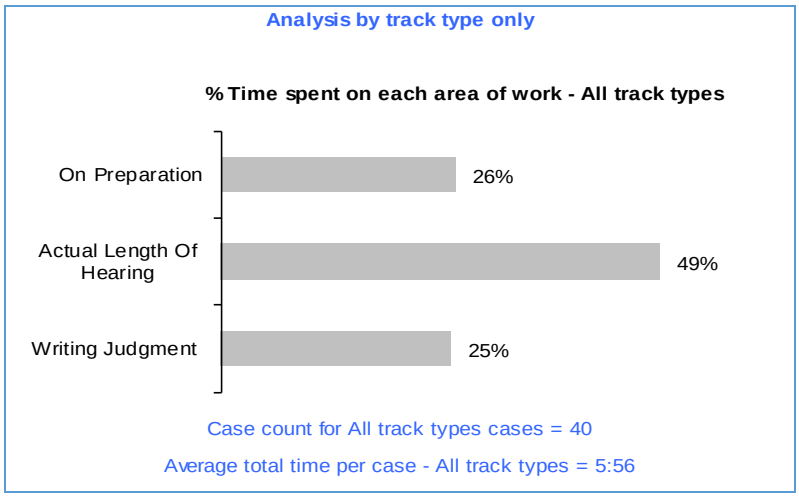


Figure 36 high court/district registry full hearings, division of resources

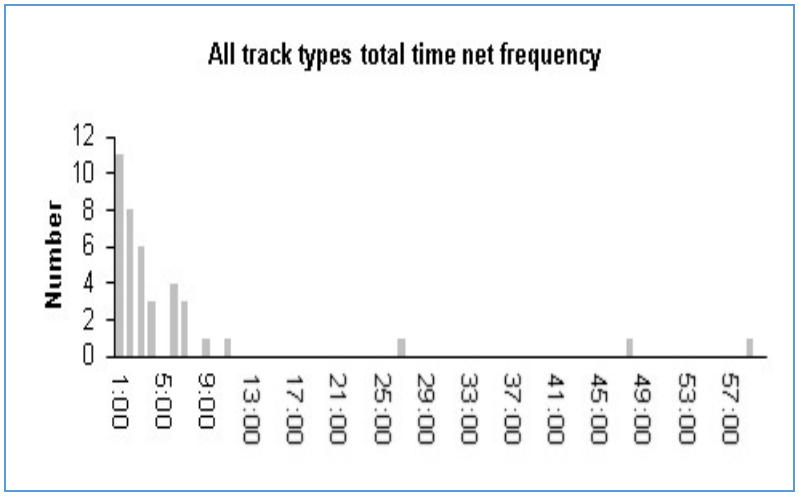


Figure 37 –high court/district registry full hearings, division of resources

108. Within the sample there is great variability in the time taken for example one case took over 58 hours while another took less than 10 minutes resulting in a high standard deviation. Whilst the results are interesting by highlighting that alone, statistically the results are not significant enough to draw any conclusion and should therefore not be used as a basis for any resource analysis.

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgment	All track types total
MEDIAN	0:45	0:57	0:00	2:00
MEAN	1:32	2:53	1:30	5:56
STDEV	1:49	6:24	5:57	11:53
MAX	8:00	35:00	30:00	58:30
MIN	0:00	0:00	0:00	0:09
Case count for All track types cases = 40				

Table 36 - high court/district registry full hearings, statistical table

Sampler D – Other High Court Hearings Sample Size 307

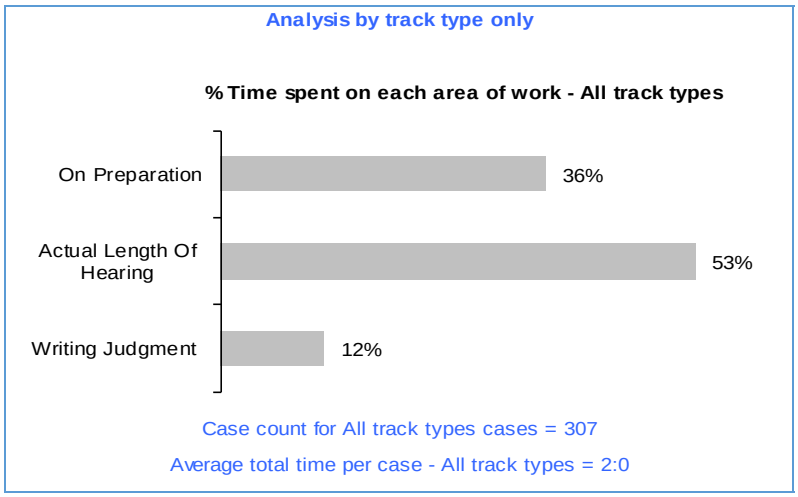


Figure 38 - high court/district registry other hearings, division of resources

109. The other hearing time is almost 4 hours less that for a full hearing with the average being 2 hours (over 50% are completed in just over 1 hour) and the proportion of time spent writing the judgment is less than with the full hearings. The standard deviation, as with the standard deviation in the full

hearings, indicates a wide variety of cases amongst the sample. As before, caution should be exercised when seeking to make inferences from such a small sample.

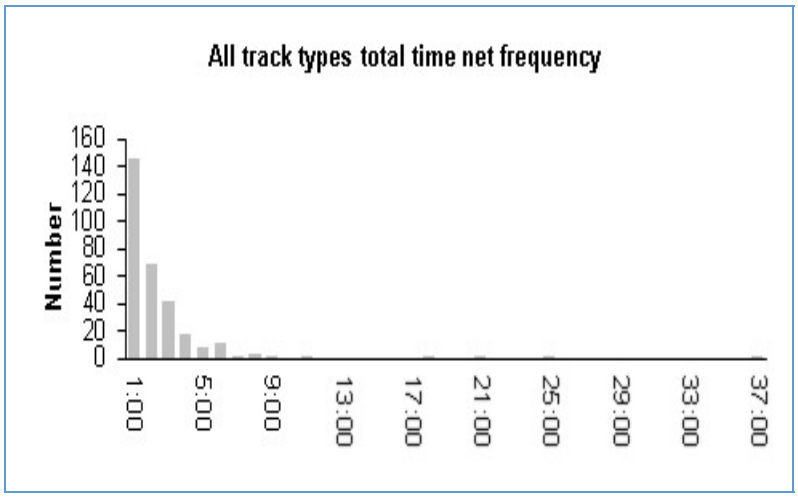


Figure 39- high court/district registry other hearings, frequency chart

	All track types On Preparation	All track types Actual Length Of Hearing	All track types Writing Judgment	All track types total
MEDIAN	0:30	0:30	0:00	1:05
MEAN	0:43	1:03	0:13	2:00
STDEV	1:06	1:58	1:36	3:23
MAX	10:00	21:45	24:00	36:33
MIN	0:00	0:00	0:00	0:01
Case count for All track types cases = 307				

Table 36 - high court/district registry other hearings, statistical table

Annex C

Sampler Forms - Guidance to staff

CIVIL CASE SAMPLER FORMS A – H AND BOX WORK COMPILERS

Purpose of sampler

Data provided by you on this return will be used by the Ministry of Justice to measure the amount of judicial time spent on different types of case, and the levels of litigants in person participating in those cases

Type of sampler

There are 8 different case sampler - please use the relevant one for each type of case

Civil Case Sampler A General County - Final Hearing

Civil Case Sampler B General County - Other Types Of Hearing

Civil Case Sampler C High Court/District Registry - Final Hearing

Civil Case Sampler D High Court/District Registry - Other Types Of Hearing

Civil Case Sampler E Admin Court – Final Hearing

Civil Case Sampler F Admin Court – Other Types Of Hearing

Civil Case Sampler G General County – Block Listing

Civil Case Sampler H High Court/District Registry – Block Listing

Instructions for completion of samplers A-F

Please complete the following details (these appear on the first page of the form) prior to attaching it to the file and giving it to the Judge:

Court name

Case number

Names of parties

Type of track (except Admin Court) (Small claims, Multi track, Fast track or Not allocated) – please circle

Judge type – please circle

Case type - tick the relevant box. Please choose one type. The case type should come from CaseMan (except Admin Court)

Instructions for completion of samplers G and H

These samplers are for use when cases are block listed e.g. Mortgage Possession Hearings.

Please complete the following details (on the first page of the form) prior to attaching to the batch of files and giving to the Judge

Court Name

Judge Type – please circle

Case Type – Please use one form per case type listed e.g. against Mort Poss, record the total number listed in the block.

Box work compilers

There are 3 different types of box work compiler for completion by the judiciary

Box Work Compiler – General County Court

Box Work Compiler – High Court/District Registry

Box Work Compiler – Admin Court

Please ensure that the appropriate type of forms are available for completion.\

CIVIL CASE SAMPLER A

GENERAL COUNTY - FINAL HEARING

Note: Rows 1 - 34 to be completed by staff prior to the judge receiving the case for preparation

1	COURT					
2	CASE NUMBER					
3	NAMES OF PARTIES					
4	TYPE OF TRACK	SMALL CLAIM	MULTI TRACK	FAST TRACK	NOT ALLOCATED	
5	JUDGE TYPE	HIGH COURT JUDGE	CIRCUIT JUDGE	DISTRICT JUDGE	RECORDER	DDJ

CASE TYPE * Please choose one type only (case type should be taken from CaseMan)

6	Acc Poss,		2	Personal Injury Clinical Negligence	
7	Claim – Spec Only		2	ROG	
8	Claim – Unspec Only		2	Winding up petition	
9	Claim – Multi/Oth		2	Creditors' bankruptcy petition	
1	Forfeiture - Tenant		2	Debtor's bankruptcy petition	
1	Mort Poss,		2	HRA Claim	
1	Rent Poss private		2	Demotion claims	
1	Rent Poss social landlord		2	Part 55 I	
1	Injunctions		2	Part 55 II	
1	Insolvency Application		3	Approval Settlement	

	(Case man Code Orig Appln)			(Caseman code Infant Settlement)	
1	Commercial Landlord and Tennant (Caseman code Orig L&T 24 and 34)		3	Stage 3 Portal cases	
1	Originating application for Tribunals (enforcement of a Tribunal Award)		3	Costs only/Detailed Ass	
1	Part 8 Claim		3	Charging Orders	
1	Personal Injury		3	3rd Party Debt Orders	
2	Pre Issue Appln				

Note:Rows 35 - 44 to be completed by Judge following preparation and hearing

	TIME SPENT BY JUDGE:	HOURS/ MINUTES
3	ON PREPARATION (including time parties are given before start)	
3	ACTUAL LENGTH OF HEARING (including time parties are given after start)	
3	WRITING JUDGMENTS (Inc dealing with any matters arising)*	

3	NUMBER OF ANY LIP's	

3	NUMBER OF WITNESSES THAT GAVE EVIDENCE	

4	VALUE OF CASE AT JUDGMENTS OR IF NO JUDGMENTS APPROX VALUE OF CLAIM £	

4	CASE ADJOURNED	DUE TO COURT	DUE TO PAR TIES

4	CASE SETTLED **	

4	IS JUDGMENTS RESERVED IN THIS CASE? Y/N	

4	WAS THIS AN APPEAL? Y/N	

* Permission to appeal, the form of order and costs

** Prior to hearing but after Judge's preparation

CIVIL CASE SAMPLER B

	GENERAL COUNTY - OTHER TYPES OF HEARING	Note: Rows 1 - 34 to be completed by staff prior to the judge receiving the case for preparation				
1	COURT					
2	CASE NUMBER					
3	NAMES OF PARTIES					
4	TYPE OF TRACK	SMALL CLAIM	MULTI TRACK	FAST TRACK	NOT ALLOCATED	
5	JUDGE TYPE	HIGH COURT JUDGE	CIRCUIT JUDGE	DISTRICT JUDGE	DDJ	RECORDER

CASE TYPE * Please choose one type only (case type should be taken from CaseMan)

6	Acc Poss,		2	Personal Injury Clinical Negligence	
7	Claim – Spec Only		2	ROG	
8	Claim – Unspec Only		2	Winding up petition	

9	Claim – Multi/Oth		2	Creditors' bankruptcy petition	
1	Forfeiture - Tenant		2	Debtor's bankruptcy petition	
1	Mort Poss,		2	HRA Claim	
1	Rent Poss private		2	Demotion claims	
1	Rent Poss social landlord		2	Part 55 I	
1	Injunctions		2	Part 55 II	
1	Insolvency Application (Case man Code Orig Appln)		3	Approval Settlement (Caseman code Infant Settlement)	
1	Commercial Landlord and Tennant (Caseman code Orig L&T 24 and 34)		3	Stage 3 Portal cases	
1	Originating application for Tribunals (enforcement of a Tribunal Award)		3	Costs only/Detailed Ass	
1	Part 8 Claim		3	Charging Orders	
1	Personal Injury		3	Third Party Debt Orders	
2	Pre Issue Appln				

Note:Rows 35 – 42 to be completed by Judge following preparation and hearing

	TIME SPENT BY JUDGE:	HOURS/MINUTES
3	ON PREPARATION (including time parties are given before start)	
3	ACTUAL LENGTH OF HEARING (including time parties are given after start)	
3	WRITING JUDGMENTS (Inc dealing with any matters arising)*	

3	NUMBER OF ANY LIP's	

3	VALUE OF CASE AT JUDGMENTS OR IF NO JUDGMENTS APPROX VALUE OF CLAIM £	

4	CASE ADJOURNED	DUE TO COURT	DUE TO PARTIES

4	CASE SETTLED **	

4	WAS THIS AN APPEAL? Y/N	

* Permission to appeal, the form of order and costs

** Prior to hearing but after Judge's preparation