



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: United Kingdom

National correspondent

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## 1. Demographic and economic data

### 1. 1. General information

#### 1. 1. 1. Inhabitants and economic information

##### 1) Number of inhabitants

54439700

##### 2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	643786033297
Regional / entity level	

##### 3) Per capita GDP (in €)

22583

##### 4) Average gross annual salary (in €)

26121

##### 5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

096090

#### Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

Q1 - Population statistics Statistical Bulletin - August 2009

The estimated resident population of the United Kingdom was 61,383,000 in mid-2008

Q2 - Public expenditure outturn update 66/09. Table 1 for FY 08/09

Q3 - UK Output, Income and Expenditure Statistical Bulletin.

GDP at market prices Table A2

Check (economists) : IMF says for constant prices 2008 is 21,747

Q4 - Annual Survey of Hours and Earnings (ASHE) April 2008 figure - median used £25,100

Q5 - exchange rate from UK£ to € on 1 Jan 2009 1.2586. Source HMRC foreign exchange rates for the European Union 31.12.08 (average year to).

Q5 (amended): 0.96090€ per 1UK£ (Bank of England)

### 1. 2. Budgetary data concerning judicial system

#### 1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

##### 6) Total annual approved budget allocated to all courts (in €)

1437326465

##### 7) Please specify

The Ministry of Justice delegated budget to HMCS as at the end of 2008-09 financial year was:

Total Net Resource DEL £1235289000 (includes income of £-646150000)

Capital DEL £145838000

TOTAL £1381127000

Annual Managed Expenditure £175000000

The 2008-09 figures in Annex B of the HMCS Business Plan 2009-10 represent the delegated budget at the start of the 2008-09 financial year.

The budget figures do not represent actual outturn for the financial year.

NOTE the minus (-) figure is HMCS income. The expenditure has been shown as a positive figure.

**8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied**

**Please provide comments to explain the data provided under question 8:**

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	881587203
Annual public budget allocated to computerisation (equipment, investments, maintenance)		NAP
Annual public budget allocated to justice expenses		NA
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	274915184
Annual public budget allocated to investments in new (court) buildings	<input checked="" type="checkbox"/> Yes	95431366
Annual public budget allocated to training and education		NA
Other (please specify):	<input checked="" type="checkbox"/> Yes	177961286

Comment :

All figures are given in UK£.

The budget figures do not represent actual outturn for the financial year.

Salaries includes the set budget for salaries for all HMCS staff, agency and contract staff and judiciary.

IT expenses are passed through a MoJ corporate recharge to HMCS. These are not within the budget figure at question 6.

Court buildings includes the set budget for all HMCS estate costs.

The major project builds within the HMCS capital budget was set at £91700000 for 2008/09.

Other includes court costs, other judicial and staff costs, other operating costs and non-cash costs including depreciation and the cost of capital charge and the remaining capital budget net of the income budget.

**9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?**

Yes

No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years:

HMCS total savings made as £295000000 since its inception at 1 April 2005.

HMCS Savings – 2005/06 to 2008/09

2005/06 2006/07 2007/08 2008/09 TOTAL

Unfunded inflation 33,000,000 33,000,000 14,000,000 80,000,000

Imposed reduction 10,000,000 14,000,000 24,000,000

Agreed efficiencies 62,000,000 12,000,000 35,000,000 82,000,000 191,000,000

TOTAL Agreed

Savings 105,000,000 45,000,000 63,000,000 82,000,000 295,000,000

**10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:**

for criminal cases?

for other than criminal cases?

If yes, are there exceptions? Please specify:

HMCS has a system of court fees in place to cover the cost of its civil business. The civil business streams are family, civil (higher courts); civil (magistrates' courts) and non-contentious probate.

Fees can be reduced or removed for persons on low income or in receipt of state benefit.

The HMCS civil fee income target within our budget delegation was £-504558000.

The target figure does not represent actual outturn for the financial year. Actual net income collected in 2008-09 was £476593000.

The chart on p. 71 of the HMCS Annual Report for 2008/09 and sets out actual fee income collected for 2008-09 as a percentage of the civil business cost base. This can be found at [http://www.hmcourts-service.gov.uk/cms/annual\\_reports.htm](http://www.hmcourts-service.gov.uk/cms/annual_reports.htm)

**11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)**

476593000

**12) Total annual approved budget allocated to the whole justice system (in €)**

**Please provide information concerning the budgetary elements that included in the whole justice system budget:**

.  Amount 4032116766

Comment :

The total annual approved budget of UKP3,874,461 includes costs for the Legal Services Commission (which includes the legal aid funding as set out in Q13 and Q14, together with its administration costs); the legal Services Board; Her Majesty's Court Service (HMCS); the Tribunals Service; Criminal Injuries Compensation Authority (CICA); Criminal Cases Review Commission (CCRC); Office of the Public Guardian (OPG); Judicial Appointments Commission (JAC); Parole Board and Central Funds. Not included are the budgets of other Ministry of Justice agencies such as the Office of Criminal Justice Reform (OCJR) and crime policy; Judicial Offices and the National Offender Management Service (NOMS - which has responsibility for the HM Prison Service and probation)

**13) Total annual approved public budget allocated to legal aid (in €)**

**Please provide comments to explain the figure provided under question 13:**

.  Amount 1878704340

Comment :

The total annual approved budget of UKP1,805,247,00 is included in the budget given in Q12 and forms part of the costs of the Legal Services Commission.

Figures quoted for Q13,14,15,17 are for 2008-0 (1/4/08-31/3/09) as a proxy for the 2008 calendar year. The figures are quoted on a resource, not cash, basis.

**14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):**

	Annual public budget allocated to legal aid in criminal law cases	Annual public budget allocated to legal aid in non criminal law cases
Amount	1203200125	675504215

Comment :

Figures quoted for Q13,14,15,17 are for 2008-0 (1/4/08-31/3/09) as a proxy for the 2008 calendar year. The figures are quoted on a resource, not cash, basis.

**15) Is the public budget allocated to legal aid included in the court budget ?**

- Yes
- No

**16) Total annual approved public budget allocated to the public prosecution system (in €)**

**Please provide comments to explain the figure provided under question 16:**

.  Amount 771190551

Comment :

The figure given is UK£741,037,000

The Crown Prosecution Service(CPS) is the responsibility of the Attorney General's Office (AGO).

The Net Resource Departmental Expenditure Limit (DEL) for 2008/09 figure for the CPS, Revenue and Customs Prosecution Office (RCPO) and Serious Fraud Office (SFO) is given. The CPS and RCPO have since merged. This does not include Capital, and is for England and Wales only. Other Government Departments may make public prosecutions in specific cases but the above represents the overriding majority of approved public budget allocated for public prosecutions.

**17) Is the budget allocated to the public prosecution included in the court budget?**

Yes

No

**18) Authorities formally responsible for the budget allocated to the courts:**

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	No	No	No	No
Other ministry	No	No	No	No
Parliament	No	No	No	No
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	Yes	Yes	Yes	Yes

**19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):**

Her Majesty's Court Service (HMCS) is an agency of the Ministry of Justice. The Framework Document (which can be found at [www.hmcourts-service.gov.uk/cms/files/Framework\\_Document\\_Fina\\_Version\\_01-04-08.pdf](http://www.hmcourts-service.gov.uk/cms/files/Framework_Document_Fina_Version_01-04-08.pdf)) sets out the terms of an agreement reached by the Lord Chancellor and the Lord Chief Justice on a partnership between them in relation to the effective governance, financing and operation of HMCS with a view to preserving the due and independent administration of justice.

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

**Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.**

HMCS Annual Report

HMCS Business Plan

HMCS Delegated Budget

HMCS General Ledger

Q16: The figure refers to the sum of the Resource Departmental Expenditure Limits (RDEL) of the CPS and RCPO, which were still separate departments at that time, and that of the SFO for FY 2008-09. The figures are taken from the CPS Spring Supplementary Estimate 2008-09 ([www.hm-treasury.gov.uk/Search.aspx?terms=CPS+Spring+Supplementary+Estimate+2008-09](http://www.hm-treasury.gov.uk/Search.aspx?terms=CPS+Spring+Supplementary+Estimate+2008-09)) the RCPO Main Estimate 2008-09 ([www.hm-treasury.gov.uk/Search.aspx?terms=RCPO+Main+Estimate+2008-09](http://www.hm-treasury.gov.uk/Search.aspx?terms=RCPO+Main+Estimate+2008-09)) and SFO Spring Supplementary Estimate 2008-09 ([www.hm-treasury.gov.uk/Search.aspx?terms=SFO+Spring+Supplementary+Estimate+2008-09](http://www.hm-treasury.gov.uk/Search.aspx?terms=SFO+Spring+Supplementary+Estimate+2008-09)) publications, which are available on the HM Treasury website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

## 2. Access to Justice and to all courts

### 2. 1. Legal aid

#### 2. 1. 1. Principles

#### 20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes
Other	No	No

#### 21) If other, please specify (in regards to question 20):

#### 22) Does legal aid foresee the covering or the exoneration of court fees?

- Yes  
 No

If yes, please specify:

Under both criminal and civil legal aid schemes in England and Wales, applicants who are eligible for legal aid will be able to use that grant to pay for relevant court fees.

#### 23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

- Yes  
 No

#### 24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
Total	1,661,000
in criminal cases	623,000
Other than criminal cases	1,038,000

Comment :

Q23: In limited circumstances legal aid can be granted in civil cases concerning court enforcement orders.

Q24: figures are for financial year 2008/09

#### 25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

- Yes  
 No

#### 26) Does your country have an income and asset test for granting legal aid:

	Yes	Amount in €
for criminal cases	Yes	
for other than criminal cases?	Yes	

Comment :

Q25: yes provided the defendant meets the 'interests of justice test'.

Q26:

Eligibility for civil legal aid -

• Generally, legal aid in civil cases is available to anyone who qualifies, provided that the case is within the scope of the scheme. Each application is considered on an individual basis and is subject to statutory tests of the applicant's means and the merits of the

case. The rules for scope and qualification are in legislation or other documents laid before Parliament.

- Those in receipt of Income Support, income based JobSeeker's Allowance, Guarantee State pension credit or income related Employment Support Allowance automatically qualify financially for legal aid. Otherwise, they can obtain 'free', or non-contributory assistance, if they have a gross monthly income of less than £2,657, a monthly disposable income below £315 and disposable capital of £3,000 or less. If their monthly disposable income is between £316 and £733, or disposable capital between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs. Applicants can check their eligibility for legal aid by using the eligibility calculator on the LSC's website: [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

- In addition to qualifying financially, an applicant must also show that they have reasonable grounds for taking, defending or being a party to proceedings, and that it is reasonable, in the particular circumstances of the case, for legal aid to be granted.

Eligibility for criminal legal aid -

Legal aid eligibility for defendants appearing before the criminal courts

- Any defendant appearing before the magistrate's court or Crown Court must pass the 'Interests of Justice' test in order to qualify for a grant of representation. A number of factors are considered in assessing the 'Interests of Justice' – this includes whether the applicant, if convicted, is likely to suffer a loss of liberty or livelihood.

- In addition, the defendant must pass the relevant financial eligibility criteria:

(a) At the magistrates' court:

Initial Filter Stage

- Where an applicant's weighted gross annual income exceeds £22,325, he is financially ineligible for a grant of representation.
- Where an applicant's weighted gross annual income is £12,475 or less, he is financially eligible for a grant of representation.

More detailed assessment

- For those applicants whose adjusted gross annual incomes fall between the two thresholds, a more detailed assessment of their income is carried out.

- This provides for deductions in respect of income tax, national insurance, council tax, as well as actual housing, childcare and maintenance costs, and an allowance for living expenses.

- If as a result of these calculations, the applicant's disposable income does not exceed £3,398, he will be financially eligible under the new scheme.

(b) At the Crown Court:

How does the Crown Court means testing scheme work?

- Under the proposed scheme, applicants may be liable to pay a contribution towards their defence costs, subject to an assessment of their income.

- Using the same weighted scale adopted under the magistrates' court scheme, a Crown Court defendant whose gross annual income is less than £12,475 will not be liable to pay a contribution order. Equally, those applicants in receipt of one of the four 'passported' benefits, or under the age of 18, are exempt from paying a contribution order.

- If the applicant's gross annual income exceeds £12,475, they will be subject to the same more detailed assessment of their income, as used at the magistrates' court.

- If the applicant's annual disposable income does not exceed £3,398, they are not liable to pay a contribution order.

- If the applicant's annual disposable income exceeds this threshold, they will be liable to pay a contribution towards their legal costs.

**27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?**

Yes

No

Please provide comments to explain the answer under question 27:



Legal aid in England and Wales is designed to help those who can least afford to pay for legal advice, assistance and representation. The resources available for legal aid are limited and focus on the areas of law where they are most needed. Under the Access to Justice Act 1999, which came into force on 1 April 2000, a number of areas were made a priority, including those involving the welfare of children or an immediate or direct threat to the client's life or liberty. There are several areas of work that the Government believes do not have sufficient priority to justify legal aid. These are: personal injury (except clinical negligence) or damage to property; allegations of defamation or malicious falsehood; disputes arising in the course of business; those relating to companies or partnerships; those relating to trusts, except in family matters; boundary disputes; conveyancing; making wills; and matters before the Lands Tribunal and the Commons Commissioners.

Generally, legal aid in civil cases is available to anyone who qualifies, provided that the case is within the scope of the scheme. Each application is considered on an individual basis and is subject to statutory tests of the applicant's means and the merits of the case. The rules for scope and qualification are in legislation or other documents laid before Parliament.

From 6 April 2009, those in receipt of Income Support, income based Job Seeker's Allowance, Guarantee State pension credit or income related Employment Support Allowance automatically qualify financially for legal aid. Otherwise, they can obtain 'free', or non-contributory assistance, if they have a gross monthly income of less than £2,657 a monthly disposable income below £315 and disposable capital of £3,000 or less. If their monthly disposable income is between £316 and £733, or disposable capital between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs.

The Legal Services Commission (LSC) runs the legal aid scheme in England and Wales. Applicants can check their eligibility for legal aid by using the eligibility calculator on the Legal Services Commission's website, at [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk).

In addition to qualifying financially, an applicant must also show that they have reasonable grounds for taking, defending or being a party to proceedings, and that it is reasonable, in the particular circumstances of the case, for legal aid to be granted. The LSC must consider, for example, whether the case has a reasonable chance of success, whether the benefits of litigation would outweigh the cost to public funds, and whether the applicant would gain any significant personal benefit from proceeding, bearing in mind any liability to repay the costs if successful. These factors are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings.

In most cases, civil legal aid is not a right in the context of either the European Convention on Human Rights or the Human Rights Act 1998. Restrictions on the availability of legal aid including means testing, scope restrictions and the merits criteria are legitimate and necessary restrictions which ensure that legal aid funds are concentrated on the most deserving cases. This was recognised by the European Court in the case of *Steel and Morris v UK*, which emphasised the highly exceptional facts of that case.

**28) If yes, is the decision for granting or refusing legal aid taken by:**

- the court?  
 an authority external to the court?  
 a mixed decision-making authority (court and external)?

**29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?**

- Yes  
 No

Please specify:

1) Legal Expenses Insurance such as Before the Event (BTE) insurance generally comes as a subsidiary add-on to some other insurance or service for example motor and home insurance in England and Wales. Most BTE policies carry access to free legal advice by telephone.

According to a recent report 22.7 million adults had taken out BTE as an add-on to motor or household insurance.

It may also be possible to purchase BTE as a stand alone policy. However, the take up of this type of insurance by private individuals in England and Wales has not been as wide as it has been in Germany because most individuals would be unwilling to pay substantial premiums for a stand alone policy. It is unlikely that this type of insurance will flourish in England and Wales.

2) After the event (ATE) insurance was developed in the 1990s. Such insurance covers a litigant against any future liability for the costs of an opposing party. Sometimes ATE can cover for the costs risks, such as liability for own counsel's fees, expert fees, court fees or other disbursements. The use of ATE increased after conditional fee agreements were first permitted (1995). From April 2000 onwards the use of ATE became widespread as ATE insurance premium were made a recoverable item from the losing side. It is estimated that there are around 36 ATE insurers in England and Wales, offering 54 different products.

ATE insurance is usually taken out by claimants although it is open to defendants as well. However, as defendants are generally more likely to have pre existing insurance and or sufficient resources to contest the claim the take up among defendants is less frequent.

In practice CFAs and ATE go hand in hand in personal injury cases (in particular road traffic accident. However the use of ATE in large commercial cases is relatively rare.

**30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:**

	Yes (the decision has an impact on who bears the legal costs)
criminal cases?	Yes
other than criminal cases?	Yes

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Criminal – Generally, a convicted defendant would have to pay the legal costs while an acquitted defendant almost certainly would not.

Civil - This question asks states to indicate whether for instance in civil cases the party which has lost the case has to bear the costs of the winning party.

The general rule is that the unsuccessful party in legal proceedings will pay the costs of the successful party. However the court has in all cases to decide, taking into account all the circumstances, including the conduct of the parties, success on all or sum issues, any offers to settle made by either party, whether it should make an order for costs at all, or an order that does not follow the general rule (Civil Procedure Rules Part 44).

However, in the small claims track (claims up to £5,000) the court may only require one party to pay limited legal costs to the other. These rules apply equally to both parties and aim to allow reasonable costs to the successful party whilst at the same time limiting the costs risk for the unsuccessful party. This helps to avoid people be unwilling to take the risk of making a claim for a modest amount of money, which if they loose the case, could result in disproportionate costs being awarded against them.

**Please indicate the sources for answering the questions 24 and 26**

Q24 - LSCs statistical report which can be found at -[http://www.legalservices.gov.uk/aboutus/how/strategic\\_publications.asp](http://www.legalservices.gov.uk/aboutus/how/strategic_publications.asp)

Q25 – Criminal Defence Service (General No.2) Regulations 2001

Q26 – Criminal Defence Service (Financial Eligibility) Regulations 2006 and Community Legal Service (Financial) Regulations 2000 [as amended]

## 2. 2. Users of the courts and victims

### 2. 2. 1. Rights of the users and victims

**31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:**

legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es):  Yes

www.hmcourts-service.gov.uk  
www.justice.gov.uk  
www.tribunals.gov.uk  
Tribunals information can be found on the specific websites of each Tribunal, where it is legally possible to share the information. The main website would be the first port of call to find which Tribunal is specific to the enquiry.

case-law of the higher court/s? Internet address(es):  Yes

www.supremecourt.gov.uk  
www.judiciary.gov.uk  
www.tribunals.gov.uk  
For Tribunals information can be found on the specific websites of each Tribunal, where it is legal possible to share the information. The main website would be the first port of call to find which Tribunal is specific to the enquiry.

other documents (for examples forms)? Internet address(es):  Yes

www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do  
www.tribunals.gov.uk  
For Tribunals information can be found on the specific websites of each Tribunal, where it is legal possible to share the information. The main website would be the first port of call to find which Tribunal is specific to the enquiry.

**32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?**

- Yes
- No

If yes, please specify:

There is no obligation but it is usual, in practice, to do so.

Tribunals provide a daily court list (where applicable) for the Tribunal in advance and this is published on the Tribunal website.

**33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?**

- Yes
- No

If yes, please specify:

Victims are entitled to:

- information about how the justice process works. This is provided through leaflets, DVDs, the internet and face-to-face explanations by staff throughout the justice process.
- information about the progress of the investigation, charge, hearings, and trial. This is provided by the police and the Crown Prosecution Service throughout the justice process.

Both of these services are entirely free.

**34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:**

Victims of rape	Yes	Yes	Yes	No

Victims of terrorism	Yes	Yes	Yes	No
Children/Witnesses/Victims	Yes	Yes	Yes	No
Victims of domestic violence	Yes	Yes	Yes	No
Ethnic minorities	Yes	Yes	Yes	No
Disabled persons	Yes	Yes	Yes	No
Juvenile offenders	Yes	Yes	Yes	No
Other	No	No	No	No

Comment :

**35) Does your country have a compensation procedure for victims of crimes?**

- Yes  
 No

**36) If yes, does this compensation procedure consist in:**

- a public fund?  
 a court decision?  
 a private fund?

If yes, which kind of cases does this procedure concern?

Public fund applies only to victims of violent offences. Court-ordered compensation paid by offenders to victims can apply to any kind of case.

**37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?**

- Yes  
 No

If yes, please specify:

Courts collect performance data to assess the recovery rate of court-ordered compensation.

**38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?**

- Yes  
 No

If yes, please specify:

Prosecutors are required to take the impact of the offence on the victim into account when deciding whether to charge a suspect with an offence. If cases go to court they are required to introduce themselves to the victim beforehand. Where charges are dropped or altered, prosecutors are required to tell victims and explain the reasons why.

**39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?**

- Yes  
 No

If yes, please specify:

**2. 2. 2. Confidence of citizens in their justice system**

**40) Is there a system for compensating users in the following circumstances:**

- excessive length of proceedings?  
 non execution of court decisions?  
 wrongful arrest?  
 wrongful condemnation?

If yes, please specify (fund, daily tariff):

In general – An exgratia payment may be made where there is clear evidence of maladministration leading to tangible financial loss. This is paid from Area budgets and is based on what is fair rather than any financial cap.

Unlawful Arrest – Amounts are determined by case law precedent (Thompson) with an uplift based on the number of years since this precedent.

Unlawful Detention - This is also calculated on case law precedent (Evans) - £1000 for 1st week plus £100 for each subsequent day.

Wrongful condemnation – if it is about compensation for wrongful conviction, then yes UK law does have provision. See section 133 Criminal Justice Act 1988 “.....when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.”

Tribunals - there is a system for compensating users for excessive length of hearings but only within the guidelines of the Tribunal's Additional Costs policy where people, in certain situations, can claim for additional costs incurred if deemed excessive - this depends on why the case was delayed or adjourned etc.

**41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?**

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

The HMCS user survey, [www.justice.gov.uk/publications/hmcsusersurvey.htm](http://www.justice.gov.uk/publications/hmcsusersurvey.htm) asks, among other things, about general satisfaction with the justice system (not specific to the judiciary). Respondents are randomly selected at exits to the court buildings (judges and magistrates are excluded) so will include prosecutors, lawyers and visitors to the courts. However these groups are not specifically targeted.

The HMCS Crown Court Juror survey, [www.justice.gov.uk/publications/docs/hmcs-jurors-survey-2009.pdf](http://www.justice.gov.uk/publications/docs/hmcs-jurors-survey-2009.pdf), looks at each stage of the process of jury service to measure the expectations, attitudes and experiences of jurors. Jurors are asked to rate the service provided during the pre-court, at court and after court stages of their jury service. This survey is a subsidiary of the HMCS Court User Survey and is conducted by post on an annual basis

Witness and Victim Experience Survey (WAVES): a national telephone survey of victims and prosecution witnesses in cases that have resulted in a criminal charge- on the provision of information and services, and the extent to which this meets with expected standards. [www.justice.gov.uk/publications/docs/witness-victims-experience-survey.pdf](http://www.justice.gov.uk/publications/docs/witness-victims-experience-survey.pdf)

Tribunals have a national customer survey that deals with customers direct and their representatives. The survey is annual at national level; interviews are conducted on a quarterly basis throughout the year.

At time of writing the Tribunal customer survey for 2008-2009 will be published in February [www.tribunals.gov.uk](http://www.tribunals.gov.uk)

**42) If possible, please specify:**

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	Yes	No
Surveys at court level	Yes	No

**43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?**

- Yes
- No

**44) If yes, please specify:****Please give elements of information concerning the efficiency of this complaint procedure:**

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	Yes	Yes
Higher court	Yes	Yes
Ministry of Justice	Yes	Yes
High Council of the Judiciary	Yes	Yes
Other external organisations (e.g. Ombudsman)	Yes	Yes

**Comment :**

The HMCS (Ministry of Justice) target for answering complaints is set at replying to 90% within 10 days. In the financial year to date (April – Dec – 91.7%) the target is being exceeded. The HMCS complaint procedure covers complaints about the administration but not decisions by or conduct of the judiciary.

Judiciary - The Office of Judicial Complaints (OJC) deals with complaints regarding the personal conduct of individual judicial office holders.

All complaints are acknowledged within 2 working days of receipt and a first response to be sent within 15 working days. Where further investigation is needed, involving contacting the judicial office holder/obtaining independent evidence, it is aimed to complete investigations within 3 months of receipt.

### 3. Organisation of the court system

#### 3. 1. Functioning

##### 3. 1. 1. Courts

**45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.**

	Total number
First instance courts of general jurisdiction	543*
Specialised first instance Courts (legal entities)	0**
All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts)	573***

**46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):**

Comments:

Q45

First instance courts - The answer provided is the total number of courts on the HMCS estate but courts that have a split location are only counted once. For the purpose of this answer I have included the number of buildings that the Crown Court sits at. Buildings that contain more than one main HMCS function are only included once e.g. Bournemouth Combined Court, which undertakes both Crown Court and County Court business is only counted once. In summary the answer contains those locations where we undertake; Crown Court Work, Magistrates' Court work. County Court work, High Court Work and the PRFD.

The Royal Courts of Justice (RCJ) itself seems to have numerous different types of courts; Chancery, Technology, Construction, etc but as I believe that these only form a small part of the building's main function as a High Court, the property has been included in this response.

Specialised first instance courts - Some specialist approaches to dealing with domestic violence have been introduced into 127 existing magistrates courts and dedicated approaches to mental health and drugs are being piloted in a total of 8 magistrates courts. There are also some courts that focus their work on dealing with cases of community concern, for example the Community Justice Centre in North Liverpool. However, all of these courts operate within general jurisdiction and are not separately designated.

All the courts - The question appears to relate to the number of geographical locations we have. The answer includes the number of locations for all the different types of court on the HMCS estate, including "specialised courts". The answer also includes the total number of sites for courts that have a split location. The answer only includes properties on the permanent estate and does not include any temporary or local hirings.

The above figures DO NOT include data for Tribunals

TRIBUNALS:

In 2008 there were 125 buildings on the Tribunals estate. Of these hearings were held at 114 and 13 were in Scotland (the Tribunals Service England & Wales is responsible for some Tribunals in Scotland).

\*First Instance Courts of general jurisdiction (legal entities) - 1

The First-tier Tribunal was created by the Tribunals, Courts and Enforcement Act 2007 (TCE), and started work on 3 November 2008. It is intended to absorb the work of most central government tribunals. In its first phase of operation it took on the following jurisdictions: Asylum Support, Social Security and Child Support, Criminal Injuries Compensation, War Pensions and Armed forces Compensation (England and Wales only), Care Standards (England and Wales only), Mental Health (England only) and Special Educational Needs & Disability (England only).

\*\* Specialised first instance courts (legal entities) - 22

In addition there are 22 specialised first instance tribunals - these are Employment Tribunal, Special Immigration Appeals Commission, Adjudicator to HM Lands Registry, Proscribed Organisations Appeal Committee, Reserve Forces Appeals Tribunal, Gender Recognition Panel, Family Health Services Appeals Authority, General Commissioners of Income Tax, Special Commissioners of Income Tax, VAT & Duties Tribunals, Section 706 Tribunal, Charity Tribunal, Consumer Credit Appeals Tribunal, Estate Agents Appeals Panel, Transport Tribunal, Gambling Appeals Tribunal, Claims Management Services Tribunal, Information Tribunal, Immigration Services Tribunal, Adjudication Panel for England, Asylum and Immigration Tribunal, Lands Tribunal.

\*\*\* The TCE Act 2007 also created The Upper Tribunal, a superior court of record with jurisdiction throughout the United Kingdom. This began work on 3 November 2008. Its main functions are: to hear appeals against decisions of the First-tier Tribunals and some tribunals outside the unified system, that were previously dealt with by the Social Security and Child Support Commissioners, or other Courts. It will also deal with judicial review work delegated to it from the High Court and Court of Session, and will have a limited first instance jurisdiction for complex cases or cases where precedent may be set.

In 2009/10 the following Tribunals, Family Health Services Appeals Authority, General Commissioners of Income Tax, Special Commissioners of Income Tax, VAT & Duties Tribunals, Section 706 Tribunal, Charity Tribunal, Consumer Credit Appeals Tribunal, Estate Agents Appeals Panel, Transport Tribunal, Gambling Appeals Tribunal, Claims Management Services Tribunal,

Information Tribunal, Immigration Services Tribunal, Adjudication Panel for England, Asylum and Immigration Tribunal, Lands Tribunal have had their work transferred to the First-tier Tribunal and/or Upper Tribunal.

**47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?**

- Yes  
 No

If yes, please specify:

On the 13th October 2009, the Justice Secretary made a statement in the House of Commons about the closure of a County Court and proposals to consult on the closure of 21 under utilised courts. For most of the courts affected, cases are already being heard at nearby courts with better facilities. The Justice Secretary said the changes would help to deliver a more modern justice service that puts the needs of victims and witnesses first while providing best value for taxpayers.

Our priority is to provide a justice service which is accessible and responsive to the communities we serve and ensures victims, witnesses and other court users are supported. We keep the condition and use of court buildings regularly under review.

The six key principles of the estate strategy are:  
 Court provision should follow population distribution.  
 Strategic services and sites should be chosen for rural areas to ensure access to justice.  
 Resources should be focussed on business critical areas.  
 Specialised panels and courts will provide dedicated services.  
 Centralised back offices will improve the efficiency with which we deliver these services.  
 Court capacity should be matched to forecast workload.

**48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):**

	Number
a debt collection for small claims	216
a dismissal	26*
a robbery	248**

**Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):**

The small claims track is a proportionate method of dealing with straightforward cases of limited financial value. It is the normal track for:

- claims with a financial value of not more than £5,000 subject to the special provisions about claims for personal injuries and housing disrepair claims;
- any claim for personal injury which has a financial value of not more than £5,000 where the claim for damages for personal injuries is not more than £1000; and
- any claim which includes a claim by a tenant of residential premises against his landlord for repairs or other work to the premises where the estimated cost of the repairs or other work is not more than £1000 and the financial value of any other claim for damages is not more than £1000.

**Please indicate the sources for answering the questions 45 and 48:**

Q45:

HMCS - HMCS Estates team, Ministry of Justice  
 Tribunals - Tribunals Service 08/09 Annual Report at [www.tribunalservice.gov.uk/Tribunals/Publications](http://www.tribunalservice.gov.uk/Tribunals/Publications) and the Tribunal Service Property Compendium. this is not a public document as is held by the Tribunal Service Estates team

Q48:

\*Dismissal from employment - [www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk) for information. There are 26 employment tribunal hearing centres for dismissal cases.

If by "dismissal" the meaning is to "strike out a case", then all courts that hear a case have the jurisdiction to dismiss those claims - i.e all 216 county courts in England & Wales.

Part 27 of the Civil Procedure Rules [Definition of small claims]

Part 3.4 of the Civil Procedure Rules [Power to strike out a statement of case]

Section 15 of the County Courts Act 1984 vests original jurisdiction for small claims on all county courts in England and Wales

\*\* There are currently 248 Local Justice Areas, pending changes might reduce this by one or two. The source for this is the Local Justice Areas Order 2005. Each LJA is a single magistrates' court when considering the judicial structure of Magistrates' Courts, as opposed to the physical organisation or administrative organisation represented by court houses and offices



respectively.

3. 1. 2. Judges, courts staff

**49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)**

**Please provide comments to explain the answer under question 49:**

Number  1902

Comment :  
there are approximately 2,000 salaried professional judges

**50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:**

	Number
gross figure	7831
if possible, in full time equivalent	

**51) Please provide comments to explain the answer under question 50:**

There are approximately 8,000 part-time judges who are a mixture of judges sitting in mainstream courts and also Tribunal judges. They are paid fees on a daily basis

**52) Is there in the legal system non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).**

**Please provide comments to explain the answer under question 52:**

	Yes	Number
Do you have non-professional judges?	Magistrates	29500

Comment :  
Figure of 29,500 given for Magistrates (JPs) is approximate. JPs are lay persons and voluntary. They can claim travel and subsistence costs.

**53) Does your judicial system include trial by jury with the participation of citizens?**

- Yes
- No

If yes, for which type of case(s)?  
Criminal, civil and coroner cases

comment for Q54 below: In 2008 183,506 jurors attended jury service for criminal and civil trials. Information on jurors who attended coroner trials is not readily available.

**54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?**

183506

**55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.**

**Please provide comments to explain the answer under question 55:**

Number  19103

Comment :  
In 2008/09, the average FTEs (excluding agency and contract staff) were 19103.

[www.hmcourts-service.gov.uk/cms/files/HMCS-AnnualReportAndAccounts-2008-09.pdf](http://www.hmcourts-service.gov.uk/cms/files/HMCS-AnnualReportAndAccounts-2008-09.pdf)

www.hmcourts-service.gov.uk/cms/files/ Framework\_Document\_Fina\_Version\_01-04-08.pdf

**56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).**

- non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal	NA
- non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars	NA
- staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	NA
- technical staff	NA

Comment :

**57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:**

HMCS employs qualified legal advisers to advise the judiciary in the magistrates' courts on matters of law. Their functions and independence are set out in statute (sections 27-29 of the Courts Act 2003).

HMCS also employs fines officers (s36 and Schedule 5 to the Courts Act 2003) who make decisions on behalf of the court in respect of fine enforcement.

**3. 1. 3. Prosecutors**

**58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).**

Number  . 2868

Comment :

This figure is the number of legally qualified Crown Prosecution Service prosecutors in August 2009. At that time there were a further 492 trainee lawyers and Associate Prosecutors, the latter being not legally qualified and with limited powers.

**59) Do any other persons have similar duties as public prosecutors?**

- Yes  
 No

If yes, please specify:

Other Government Departments have prosecutors who specialise in offences that relate specifically to the work of the respective Departments.

**60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).**

**Please provide comments to explain the answer under question 60:**

Number  . 4745

Comment :

This figure includes caseworkers, who are involved in the preparation of cases for court and the support of advocates at court, and administrative workers.

**3. 1. 4. Court budget and new technologies**

**61) Who is entrusted with the individual court budget?**

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	Yes	No	No
Court President	No	No	No	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	No	Yes	Yes

**62) You can indicate below:**

- any useful comments for interpreting the data mentioned above

- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

The budget is prepared by HMCS HQ Finance Directorate and Operations & Performance directorate. Day to day management is for individual court managers and the evaluation and control of the budget is made by HMCS Regional Heads of finance together with HMCS Finance Directorate.

Please see the following links:

[www.hmcourts-service.gov.uk/cms/files/Framework\\_Document\\_Fina\\_Version\\_01-04-08.pdf](http://www.hmcourts-service.gov.uk/cms/files/Framework_Document_Fina_Version_01-04-08.pdf)

[www.hmcourts-service.gov.uk/cms/files/HMCSBusinessPlan-2009-10.pdf&ei=57oPS8PPE46j4Qa1rqmMBA&sa=X&oi=nshc&resnum=1&ct=result&cd=2&ved=0CA8QzqQoAQ&usg=AFQjCNFzd\\_I-6Q3LZnEuFoc8IS-v9gx7JQ](http://www.hmcourts-service.gov.uk/cms/files/HMCSBusinessPlan-2009-10.pdf&ei=57oPS8PPE46j4Qa1rqmMBA&sa=X&oi=nshc&resnum=1&ct=result&cd=2&ved=0CA8QzqQoAQ&usg=AFQjCNFzd_I-6Q3LZnEuFoc8IS-v9gx7JQ)

**63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Word processing	Yes	No	No	No
Electronic data base of jurisprudence	Yes	No	No	No
Electronic files	No	Yes	No	No
E-mail	Yes	No	No	No
Internet connection	Yes	No	No	No

**64) For administration and management, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	Yes	No	No	No
Court management information system	No	Yes	No	No
Financial information system	No	Yes	No	No

**65) For the communication between the court and the parties, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	No	Yes	No	No
Special Website	No	No	No	No
Other electronic communication facilities	No	Yes	No	No

**66) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?**

Yes

No

If yes, please specify the name and the address of this institution:

Judicial and court statistics are held and published by the Ministry of Justice, 102 Petty France, London SW1H 9AJ.

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your judicial system and the main reforms that has been implemented over the last two

years

### 3. 2. Monitoring and evaluation

#### 3. 2. 1. Monitoring and evaluation

**67) Are the courts required to prepare an annual activity report?**

- Yes  
 No

**68) Do you have a regular monitoring system of court activities concerning the**

- number of incoming cases?  
 number of decisions?  
 number of postponed cases?  
 length of proceedings (timeframes)?  
 other?

Please specify:

Not all activities are measured in all Jurisdictions.  
 Crown – Incoming Cases, Decisions, Ineffective.Cracked Trials, Timeliness.  
 Magistrates – Completed Cases & Timeliness.

**69) Do you have a regular system to evaluate the performance of each court?**

- Yes  
 No

Please specify:

Monthly Performance Reports.  
 In and End Year review Process.

**70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?**

- Yes  
 No

**71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:**

- incoming cases  
 length of proceedings (timeframes)  
 closed cases  
 pending cases and backlogs  
 productivity of judges and court staff  
 percentage of cases that are treated by a single sitting judge  
 enforcement of penal decisions  
 satisfaction of employees of the courts  
 satisfaction of clients (regarding the services delivered by the courts)  
 judicial quality and organisational quality of the courts  
 costs of the judicial procedures  
 other:

Please specify:

Different Jurisdictions measure different performance indicators.  
 Incoming cases is not available in the Magistrates Courts.

**72) Are there performance targets defined for individual judges (if no go to question 74) ?**

- Yes  
 No

**73) Please specify who is responsible for setting the targets:**

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

**74) Are there performance targets defined at the level of the courts (if no go to question 77)?**

- Yes
- No

**75) Please specify who is responsible for setting the targets:**

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

Targets are set at Area level by a joint Department/Judicial agreement

**76) Please specify the main targets applied**

Taken from the 2009-10 HMCS business plan

- 78% of cases commenced within target in the Crown Court
- Charged cases, average time taken from charge to disposal in the magistrates' courts – less than 6 weeks (new key performance indicator (KPI))
- Time taken to produce and send court results to the police:
- 95% court registers produced and despatched within 3 working days
- 100% court registers produced and despatched within 6 working days
- Payment rate for financial penalties in the magistrates' court – 85%
- 60% of all Community Penalties to be resolved within 25 working days of the relevant failure to comply
- To increase the proportion of defended small claims that are completed otherwise than by court hearing to 65% (new KPI)
- To increase the proportion of defended small claims that are completed (from issue to final hearing) within 30 weeks to at least 70% (new KPI)
- Increase the amount of civil work initiated online - 55% of eligible possession claims through PCOL (Possession Claim Online) and 70% of specified money claims through MCOL (Money Claim Online) To ensure that 48% of Care and Supervision cases in the county court and 56% in the magistrates' court are completed within 40 weeks
- To increase the proportion of residence and contact orders made by consent in the county courts (excluding cases involving allegations of harm) to at least 37% in each HMCS area
- To increase the 'very satisfied' element of the HMCS court user satisfaction survey from the 2007/8 baseline.

**77) Which authority is responsible for the evaluation of the performances of the courts:**

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, Please specify:

**78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?**

- Yes
- No

If yes, please specify:

Area level standards, national targets, charter mark.

**79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?**

- Yes  
 No

**80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:**

- civil cases?  
 criminal cases?  
 administrative cases?

**81) Do you have a way of analysing waiting time during court procedures?**

- Yes  
 No

If yes, please specify:

Timeliness is measured in Crown, Magistrates and County Courts.

**82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?**

- Yes  
 No

Please specify (including an indication of the frequency of the evaluation):

In and end year reviews at Region will look at Court level data where appropriate.

**83) Is there a system for monitoring and evaluating the functioning of the prosecution services?**

- Yes  
 No

If yes, please specify:

Her Majesty's Crown Prosecution Service Inspectorate is an independent body that reviews the operation of individual Areas of the prosecution service and conducts also thematic reviews (for example, advocacy and the prosecution of rape allegations).

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your court monitoring and evaluation system

The different Jurisdictions (Crown, Civil, Magistrates and Family) have different IT systems for case management which then feed to Management information, this means that data is not collected the same across the jurisdictions. Reporting on the jurisdictions is therefore not uniform, but will differ, for example it is possible to measure incoming cases in the Crown Court, but currently we do not have the same facility in the Magistrates Court.

The Constitutional Reform Act 2005 and concordat sets out the relationship between the judiciary and the Government. The Government cannot manage the performance of the judiciary. Management of the judiciary is a matter for the Lord Chief Justice of England and Wales.

## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General principles

**84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).**

NA

**85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?**

Yes

No

If possible, number of successful challenges (in a year):

**86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).**

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	2	NA	0	0
Civil proceedings - Article 6§1 (non-execution)	0	NA	0	0
Criminal proceedings - Article 6§1 (duration)	0	NA	0	0

### 4. 2. Timeframes of proceedings

#### 4. 2. 1. General information

**87) Are there specific procedures for urgent matters as regards:**

civil cases?

criminal cases?

administrative cases?

Please specify:

Criminal Cases - Applications can be made to a single justice of the peace out of court hours if necessary for example for police search warrant

Civil Courts and Administrative Court Cases – Yes. The Civil Procedure Rules (CPR) are rules of the court, which govern practice and procedure in the High Court, county courts and civil division of the Court of Appeal. The rules include provisions for individuals to bring urgent applications before the court if necessary. Examples of urgent applications may include applying for a stay in proceedings, payment of monies out of court and injunctions. Urgent applications should ordinarily be made within court hours. However, the courts are aware this may not always be possible; provisions are in place for Judges to be contacted out of hours and/or via telephone. To obtain an order under these circumstances there must in all cases be a real and justified urgency which will not wait proper notice, for example seeking an order to freeze assets.

**88) Are there simplified procedures for:**

civil cases (small claims)?

criminal cases (petty offences)?

administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

Criminal cases – Yes. While no new laws have been introduced, procedures in magistrates' court have been streamlined within the existing legal framework, by the CJSSS initiative.

Civil Courts and Administrative Court Cases – Yes. The overriding objective of the CPR is to enable the court to deal with cases justly. This includes ensuring that the parties are on an equal footing; saving expense; dealing with the case in ways which are proportionate to the amount of money involved; to the importance of the case and the complexity of the issues.

The small claims track provides a simple and informal way of resolving disputes. Claimants should be able to do this without a solicitor. A Small Claims Mediation Service is a free service set up to help court users who currently have an ongoing small claims case. However, since mediation is a voluntary process, it should be noted that mediation will only take place if both (all) parties agree. Mediation is less formal than a hearing before a judge. It is confidential, can be quicker, and can reduce the build up of costs, and if you are in an ongoing relationship with the other party or parties, a mediation agreement can provide for a more positive relationship in the future. Mediation also gives parties the opportunity to concentrate on the real issues of the case, which may be in addition to, or even different from, the legal issues. Parties may come to an agreement, which may include an explanation or an apology, which is something that a court could not order. The Small Claims Mediator is able to settle the majority of disputes over the telephone without the need for either party to attend court. Alternatively, if you prefer, a face-to-face mediation may be able to be arranged on court premises. If you feel uneasy about meeting or speaking to the other side in the dispute, the mediator can make special arrangements to prevent this happening.

In the event mediation is unsuccessful the case may proceed to hearing before the court.

**89) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?**

- Yes  
 No

If yes, please specify:

Criminal Cases – Yes. The Criminal Procedure Rules require courts to manage cases by taking action to ensure that cases progress and are ready for trial. The courts have powers to direct the parties where necessary to take various actions. The courts are required to set a trial date and set a timetable for actions to be completed before the trial, to monitor progress and to ensure the parties comply with any directions given by the court. Each party and the court should nominate an individual responsible for progressing the case.

Civil Courts and Administrative Court cases – Yes. The Civil Procedure Rules also give the courts case management powers so as to ensure cases are dealt with in a timely and effective manner. The rules provide that active case management includes: encouraging parties to co-operate with each other; identifying issues at an early stage; deciding promptly which issues need full investigation and trial; deciding the order in which issues are to be resolved; encouraging parties to use alternative dispute resolution e.g. mediation where appropriate.

4. 2. 2. Penal, civil and administrative law cases

**90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non litigious)*	NA	2426357	NA	NA
1 Civil (and commercial) litigious cases*	NA	298769	NA	NA
2 Civil (and commercial) non-litigious cases*	NA	2127561	NA	NA
3 Enforcement cases	NA	NA	752699	NA
4 Land registry cases**	NAP	NAP	NAP	NAP
5 Business register cases**	NAP	NAP	NAP	NAP
6 Administrative law cases	NAP	NAP	NAP	NAP
7 Other	NA	288278	306104	NA
Total criminal cases	NA	NA	2160172	



(8+9)				
8 Criminal cases (severe criminal offences)	39484	131696	129072	41582
9 Misdemeanour and / or minor offences cases	NA	NA	2031100	NA

**91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):**

Contested claims (Civil (and commercial) litigious cases) - note civil court cases can be finalised without court knowledge so no pending

The 298,796 given for incoming Civil (and commercial) litigious cases is actually the number of incoming defences. The pending figure of 60 000 on 31 Dec 2008 is a very rough estimate based on 20% of the incoming defences.

Enforcement = Excludes Magistrates (criminal) enforcement - data by fine amount not case based & Criminal Statistics 2008 figures not published until February 2009.

Figures for family courts are placed in OTHER - note that o/s figures are not published and internal figures are for certain types of work only so not supplied

Criminal cases (severe criminal offences) = Figures for Severe are taken from Crown Court data

Misdemeanour and/or minor offences cases = Figures for Misdemeanour are taken from Magistrates court data.

**92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).**

\* Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.

\*\* if applicable

Please check the consistency of data as mentioned under question 91.

**Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):**

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non-litigious)*	NA	3294	3094	NA
1 Civil (and commercial) litigious cases*	NA	3294	3094	NA
2 Civil (and commercial) non-litigious cases*	NAP	NAP	NAP	NAP
3 Enforcement cases	NAP	NAP	NAP	NAP
4 Land registry cases**	NA	3	4	NA
5 Business register cases**	NA	17401	19670	NA
6 Administrative law cases	NAP	12316	9208	NAP
7 Other	NA	58	43	NA
Total criminal cases (8+9)	NA	21259	19782	NA
8 Criminal cases (Severe criminal offences)	NA	7240	5774	NA
9 Misdemeanour and/or minor offences cases	2854	14019	14008	2873

Comment :

1) Assume all contested claims in JCS tbl 1.10

5) Heard originally at Magistrates and Crown courts but not in table 90

8) Crown Court appeals to Court of Appeal - incoming includes case that will be refused.

9) Magistrates court appeals to Crown Court - note that consistency check fails BUT published figures used. Admin system used for data allows this to occur

**93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table.**

If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

\* Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.

\*\* if applicable

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal to the highest instance court):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases* (litigious and non-litigious)	NA	51	64	NA
1 Civil (and commercial) litigious cases*	NA	51	64	NA
2 Civil (and commercial) non-litigious cases*	NA	0	0	NA
3 Enforcement cases	NA	NAP	NAP	NA
4 Land registry cases**	NA	NA	1	NA
5 Business register cases**	NA	NA	2	NA
6 Administrative law cases	NA	NA	13	NA
7 Other	NA	0	0	NA
Total criminal cases (8+9)	NA	11	18	NA
8 Criminal cases (severe criminal offences)	NA	11	18	NA
9 Misdemeanour cases (minor offences)	NA	0	0	NA

Comment :

Table 1.4 JCS 08 Used to include those without judgment

Table 1.5 JCS 08

**94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Jan. '08
Litigious divorce cases*	NA	128860	122673	NA
Employment dismissal cases*	NAP	NAP	NAP	NAP
Robbery cases	NA	13096	NA	NA
Intentional homicide	NA	705	439	NA

**95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

Please provide comments to explain the answers to question 92:

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance (average length)	2d instance (average length)	Total procedure (average total length)
Litigious divorce cases*	NA	2.4	225	NA	NA
Employment dismissal cases*	NAP	NAP	NAP	NAP	NAP
Robbery cases	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA

Comment :

robbery and intentional homicide – the 2008 England and Wales figures provided under ‘incoming’ represent the total number of defendants proceeded against and those provided under ‘resolved’ represent the total number of defendants found guilty. The figures are produced on the principal offence basis. In other words, offenders are only recorded once for each set of court proceedings resulting in sentencing against the principal offence involved.

intentional homicide includes murder and infanticide.

Not included but, for your information, the following figures are for cases where the principal offence included murder, attempted

murder, threat or conspiracy to murder, manslaughter, infanticide, child destruction, causing death by dangerous driving, manslaughter due to diminished responsibility, causing death by careless driving when under the influence of drink or drugs, causing death of a child or vulnerable person, causing death by careless or inconsiderate driving and causing death by driving unlicensed, disqualified or uninsured drivers.

Incoming (Proceeding against): 2,845

Resolved (Found guilty): 1,516

Q95:

\*\*\* Criminal figures will be available in February 2010.

**96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:**

Pending (Jan 2008)

No information available. We could find petitions without a decree absolute but that doesn't take in to account petitions resolved by a reconciliation or refusal to grant divorce.

Incoming cases

This is the number of petitions filed for dissolution of marriage or dissolution of civil partnership during 2008.

Resolved cases

This is the number of decree absolutes (divorces granted) in dissolution of marriage or dissolution of civil partnership cases during 2008.

This excludes cases where the couple reconcile and decide not to go ahead with the divorce or cases where the divorce was refused.

Pending (Dec 2008)

No information available. We could find petitions without a decree absolute but that doesn't take in to account petitions resolved by a reconciliation or refusal to grant divorce.

% Subject to appeal

Divorce decisions could be appealed although we don't have definite figures on the number that actually are. I suspect it's very few as most divorces are by mutual consent. Some earlier analysis suggested the respondent planned to contest the petition in 2% of cases and planned not to contest the petition in 83% of cases. There were no records for the other 15% of cases.

Also, Table 1.15 in JCS states that there were four appeals set down for hearing relating to matrimonial matters (Matrimonial Proceedings and Magistrates' Act 1960 or Maintenance Orders Act 1958 and Matrimonial Cause Act 1973) during 2008. One of these was dismissed and another was withdrawn or struck out.

% Pending over 3 Years

This is the percentage of dissolution of marriage and dissolution of civil partnership cases, where a decree absolute was made during 2008, where the time between petition and decree absolute was over 1095 (365 x3) days.

1st Instance (average length(days))

This is the median number of days from petition to decree absolute for dissolution of marriage and dissolution of civil partnership cases where decree absolutes were made in 2008.

2nd Instance - Appeal (average length days))

FamilyMan does not hold data on appeals made, to the High Court, against divorce decisions made in the county court (however, see note 2 under "% Subject to Appeal").

**97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.**

This is the median number of days from petition to decree absolute for dissolution of marriage and dissolution of civil partnership cases where decree absolutes were made in 2008.

Average length of proceeding for robbery and intentional homicide cases - we do not publish official statistics on this.

**98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):**

- to conduct or supervise police investigation
- to conduct investigation
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to end the case by dropping it without the need for a judicial decision
- to end the case by imposing or negotiating a penalty without a judicial decision
- other significant powers

Please specify:

To conduct or supervise police investigation : A Prosecutor might advise the police but this would not go as far as conducting or supervising a police investigation, There are some serious fraud cases in which the prosecutor can require the suspect to answer questions. Normally, however, the prosecutor may only suggest lines of enquiry to the police.

To appeal : A prosecutor can now appeal against terminating rulings or bail decisions.

To supervise enforcement procedures : As in 2004&2006 the response is no however the Crown Prosecutor does have this power/role but in a limited sense and only in relation to enforcement of confiscation and receivership

To end a case by imposing a penalty : YES - e.G. conditional caution

**99) Does the prosecutor also have a role in civil and/or administrative cases?**

- Yes
- No

Please specify:

The forfeiture of assets and appeals against certain judicial decisions.

**100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

**Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:**

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	1137375*	4005**	***		0****	1041354*****

Comment :

All figures are inclusive of prosecutions for motoring offences.

\* The figure for receipts represents the number of defendants whose case was received by the Crown Prosecution Service post charge.

\*\* Discontinued by the public prosecutor because the offender could not be identified represents the number of defendants whose case was dropped by the CPS post-charge because identification evidence was found to be unreliable or was missing.

\*\*\* Lack of an established offence or a specific legal situation and reason of opportunity cannot be directly equated with CPS analyses. Cases dropped by the CPS are recorded under the following explanatory categories:  
 Dropped on evidential considerations: 47,958  
 Dropped for public interest reasons: 20,883  
 Dropped because a prosecution was unable to proceed (eg because a witness failed to attend court): 20,181  
 Dropped for other reasons: 5,800

\*\*\*\* Crown Prosecutors do not impose or negotiate penalties; these can only be imposed by the courts after a finding of guilt.

\*\*\*\*\* Charged by the public prosecutor before the courts represents the number of defendants prosecuted by the CPS whose case was completed during the year.

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

**Please indicate the sources for answering the questions 90 to 95 and 100:**

Q94: Employment Dismissal - Information has been provided by the Strategic Planning and Information Unit, Tribunal Service, Ministry of Justice, and is taken from the Employment Tribunal Central Database.

Q100: The Compass Management Information System

## 5. Career of judges and prosecutors

### 5. 1. Appointment and training

#### 5. 1. 1. Recruitment, nomination and promotion

##### 101) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

Volunteer Magistrates who deal with 95% of all criminal cases in England and Wales, and a large number of civil cases, are recruited and selected by 101 local Advisory Committees. They are formally appointed by the Lord Chancellor with the concurrence of the Lord Chief Justice. Formal qualifications or legal training are not required, but those appointed must demonstrate six key personal qualities:

- i. good character
- ii. understanding and communication
- iii. social awareness
- iv. maturity and sound temperament
- v. sound judgement
- vi. commitment and reliability

The vast majority of the remaining judiciary – up to and including the High Court – are selected by the independent Judicial Appointments Commission (JAC), who then make recommendations to the Lord Chancellor for appointment. The JAC selects candidates on merit through fair and open competition. The JAC defines merit on the basis of five core qualities and abilities (Intellectual Capacity / Personal Qualities / An Ability To Understand And Deal Fairly / Authority And Communication Skills / Efficiency). A typical JAC selection exercise includes:

- i. Advertisement
- ii. Shortlisting – two methods are used either paper sift or qualifying test
- iii. References
- iv. Selection day – comprised of interview only, or interview and role play for entry level posts
- v. Panel decision
- vi. Statutory consultation
- vii. Good character checks
- viii. Recommendation of successful candidates to Lord Chancellor

Appointments for the Lord Chief Justice, Heads of Division (Master of the Rolls, President of the Queen's Bench, President of the Family Division, Chancellor of the High Court) and Lord Justices of Appeal are governed by ss.67-75 and ss.76-84 of the Constitutional Reform Act 2005 (CRA), and are made on the basis of selection by a specially constituted selection panel of the JAC.

Appointments to the Supreme Court (President, Deputy President and judges of the Supreme Court) are governed by ss.25-31 of the Constitutional Reform Act 2005, and are made on the basis of selection by a Supreme Court Selection Commission governed by Schedule 8 of the CRA.

##### 102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?
- An authority composed of non-judges only?
- An authority composed of judges and non-judges?

##### 103) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for the promotion of judges:

##### 104) Which procedures and criteria are used for promoting judges? Please specify.

There is no system of promotion for volunteer magistrates.

Judges are only eligible for promotion through fair and open competition. Once in a post, to proceed to the 'next level' all judicial office holders must apply through the JAC's normal processes: application for, sift, interview etc. There is no promotion through the ranks scheme.

**105) How are prosecutors recruited?**

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

**106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:**

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

**107) Is the same authority formally responsible for the promotion of prosecutors?**

- Yes
- No

If no, please specify which authority is competent for promoting prosecutors:

**108) Which procedures and criteria are used for promoting prosecutors? Please specify:**

Competence to undertake work of greater difficulty and complexity.

**109) Is the mandate given for an undetermined period for judges?**

- Yes
- No

Are there exceptions? Please specify:  
mandatory retirement age of 70 (Courts Act 2003).

Under the provisions of the Judicial Pensions and Retirement Act 1993 (JUPRA), a salaried judicial office holder will normally be required to vacate their office on their 70th birthday. A salaried judicial office holder who was appointed prior to JUPRA retains the compulsory retirement date applicable to them in their former office.

Fee-paid judicial office holders are initially appointed for a set period – usually 5 years – renewable automatically, subject to the upper age limit.

The Lord Chancellor may remove a judicial office holder on the grounds of inability or misbehaviour.

**110) Is there a probation period for judges? If yes, how long is this period?**

	Yes	Duration of the probation period (in years)
Probation period for judges		

**111) Is the mandate given for an undetermined period for prosecutors?**

- Yes
- No

Are there exceptions? Please specify:

**112) Is there a probation period for prosecutors? If yes, how long is this period?**

	Yes	Duration of the probation period (in years)
Probation period for prosecutors	Yes	0.5

**113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?****Please specify the length**for judges?  Yesfor prosecutors?  Yes**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

## 5. 1. 2. Training

**114) Nature of the training of judges. Is it compulsory?**

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president)
- In-service training for the use of computer facilities in the court

**115) Frequency of the training of judges**

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	Yes	No	No
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	No	Yes	No
In-service training for management functions of the court (e.g. court president)	No	No	Yes
In-service training for the use of computer facilities in the court	No	No	Yes

**116) Nature of the training of prosecutors. Is it compulsory?**

- Initial training
- General in-service training
- Specialised in-service training (specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service)

**117) Frequency of the training of prosecutors**

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
Specialised in-service training (specialised public prosecutor)	No	No	Yes
In-service training for management functions of the prosecution services	No	No	Yes

(e.g. head prosecutor and/or managers)			
In-service training for the use of computer facilities in the public prosecution service)	No	No	Yes

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter**
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court**
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years**

**Judiciary:**

In England and Wales judges are appointed from among experienced lawyers.

There are both part-time fee paid judges and salaried judges.

**Crown and County Courts Judiciary -**

In England and Wales, training is provided by the Judicial Studies Board (JSB). Induction training is provided for all newly appointed judges. This comprises a residential training course for about 5 days and sitting-in with an experienced judge.

Judges are also required to attend induction training before they sit in a jurisdiction in which they have just been authorised to sit (eg: Family Law, Serious Sexual Offences).

Continuing education (in-service training) for fee-paid and salaried judges is a mandatory requirement. Until recently all judges have been required to attend training every three years in each of the jurisdictions in which they sit (for example, many Circuit Judges sit in crime and civil) and they would be automatically called for training. However, in September 2009, the JSB published the first training prospectus for courts judiciary. Training is still mandatory, but judges can tailor their training to better meet their personal training needs. Salaried judges are required to attend a continuing education seminar once a year and fee-paid judges less than once a year (but a regular intervals once every two/three years). Salaried and fee-paid judges can choose which seminars to attend as long as they ensure that their education programme includes regular training in the type of work they are required to do as judges.

In the past IT training has been provided for members of the judiciary who were below the JSB's minimum level of IT competence, but as levels of IT competence have risen the need for such training to be provided as an formal module is no longer necessary. The current position is: when required, locally based IT applications training (eg: word/outlook) and assistance for judges is provided by a network of IT liaison judges and the use of IT is part of an optional module on one of the seminars in the prospectus.

Where appropriate, Human Rights aspects are included in the curriculum.

The JSB publishes regular papers and updates in civil, criminal and family law and procedures which are distributed to all judges electronically via eletters and on a training website.

The JSB is undertaking a learning needs analysis to identify the learning needs, if any, of courts and tribunals judiciary in management and leadership positions. If learning needs are identified the JSB will design and deliver a programme of courses for judicial leaders and managers

In addition to the above, training for judges and non-legal members who sit in specialist tribunals (eg employment, social security, immigration, tax) is provided through the jurisdictions themselves but broadly follows the pattern described above. Training is usually mandatory when a judge takes on a new specialist area.

**Prosecutors:**

In the Crown Prosecution Service (CPS), training on the ECHR is an integral part of training programmes for all levels of staff. Training on the EU post-Lisbon treaty is under consideration.

Our approach to the training of prosecutors is to:

- define training needs by combining the strategic aims of the organisation with the operational experience of local practitioners;
- design national training materials to meet the needs identified
- deliver the national training materials locally where possible using practitioners as tutors to adapt them to local circumstances;
- deliver the materials nationally where the target audience is small or a consistent message is essential;
- deliver in the most cost-effective ways possible, including the use of e-learning and video/audio conferencing and webcasts;
- evaluate thoroughly and make adjustments where necessary.

The main changes over the last two years have been the review of training programmes to blend e-learning with classroom training and the introduction of new procedures to ensure that training is driven by business need.

All prosecutors are required to complete Continuing Professional Development activity as required by their respective professional bodies. The requirements vary between 12 and 16 hours per annum.

In addition to the Crown Prosecution Service, there are a number of other Government departments that have a prosecution function, usually where the department in question has an investigative function. A high-level forum exists to ensure there is appropriate co-ordination generally. In relation to training, a programme focusing on cross-cutting issues is offered through the National School for Government. In addition, specialised training is offered by departments focusing on specific needs. Work with the CPS is underway to deliver a more integrated approach to training for prosecutors.



## 5. 2. Practice of the profession

### 5. 2. 1. Salaries

**118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

**Please provide comments to explain the answers to question 118:**

	Gross annual salary (€)	Net annual salary (€)
First instance professional judge at the beginning of his/her career	105,526*	**
Judge of the Supreme Court or the Highest Appellate Court	212,093***	**
Public prosecutor at the beginning of his/her career	28,508****	22,741*****
Public prosecutor of the Supreme Court or the Highest Appellate Instance		

Comment :

\*There are fee paid and salaried judges. The figure given is for judicial salary group 7. In 2008/09 judicial salaries ranged from £90,200 (which includes London weighting) for Asylum Support Tribunal Adjudicators (the only post below group 7), to £236,300 for salary group 1 (Lord Chief Justice). Under the system for England and Wales it is not possible to say what a salary would be for a judge at the beginning of their career.

\*\* This would depend on individual tax and national insurance

\*\*\* 2008/09 salary for Lords of Appeal in Ordinary (group 2). The salary for the Senior Lord of Appeal in Ordinary (group 1.1) was £211,000

\*\*\*\* figure is for national based prosecutors. For London based £32,296

\*\*\*\*\* figure is for national based prosecutors. For London based £22,800

**119) Do judges and public prosecutors have additional benefits?**

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	Yes	No
Housing	No	No
Other financial benefit	No	No

**120) If other financial benefit, please specify:**

**121) Can judges combine their work with any of the following other functions ?**

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	Yes
Research and publication	Yes	Yes	No
Arbitrator	No	No	Yes
Consultant	No	No	Yes
Cultural function	No	Yes	No
Other function	No	No	No

**122) If other function, please specify:**

Comment to Q121:

Research & Publication/Cultural Function - in limited circumstances, provided it is not contentious in any way and presents no conflict of interest.

A fee paid judge's primary activity is as a barrister or solicitor. His judicial role is secondary to his main 'employment' and he is free to combine his judicial work with other activities provided that they are not contentious, and do not present a conflict of interest.

**123) Can prosecutors combine their work with any of the following other functions ?**

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	No
Research and publication	No	No	No
Arbitrator	No	No	No
Consultant	No	No	No
Cultural function	No	No	No
Other function	No	No	No

**124) If other function, please specify:**

Employees of the Crown prosecution Service (CPS) have to seek permission if they want to take outside appointments.

**125) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

Yes

No

If yes, please specify:

**Please indicate the source for answering the question 118**

## 5. 2. 2. Disciplinary procedures

**126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:**

Prosecutors – the respective Civil Service departments for which they work, eg Crown Prosecution Service, and their respective professional bodies (the Solicitors' Regulation Authority and the Bar Standards Board).

Judges - The Office for Judicial Complaints (OJC) is an Associated Office of the Ministry of Justice and supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial conduct and discipline. The OJC consider and investigate complaints and conduct issues involving judicial office holders in England and Wales. Tribunal Presidents consider and investigate complaints and conduct issues in relation to tribunal judicial office holders and local Advisory Committees consider and investigate the same for magistrates. [www.judicialcomplaints.gov.uk](http://www.judicialcomplaints.gov.uk)

**127) Which authority has the disciplinary power on judges and prosecutors? Please specify:**

Prosecutors – the respective Civil Service departments for which they work and their respective professional bodies.

Judges - The Lord Chancellor and the Lord Chief Justice hold the power to discipline judicial office holders including tribunal members and magistrates.

**128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.****Please provide comments to explain the answers to question 128:**

	Judges	Prosecutors
Total number (1+2+3+4)	59	NA
1. Breach of professional ethics	NAP	NA
2. Professional inadequacy	NAP	NA
3. Criminal offence	2	NA
4. Other	57	NA

## Comment :

Prosecutors – there is no mechanism to collate this information from departments and professional bodies.

Judges - In 2008/09 there were 59 instances of formal disciplinary action taken by the Lord Chancellor and the Lord Chief Justice comprising formal advice, formal warning, suspension from office, formal reprimand or removal from office.

Informal action was taken in 16 instances and 20 judicial office holders resigned during the course of disciplinary proceedings against them.

**129) Number of sanctions pronounced against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

**Please provide comments to explain the answers to question 129**

	Judges	Prosecutors
Total number (total 1 to 9)	59	
1. Reprimand	33	NA
2. Suspension	1	NA
3. Withdrawal of cases	NAP	NA
4. Fine	NAP	NA
5. Temporary reduction of salary	NAP	NA
6. Degradation of post	NAP	NA
7. Transfer to another geographical (court) location	NAP	NA
8. Dismissal	25	NA
9. Other	0	NA

Comment :

Prosecutors – there is no mechanism to collate this information from departments and professional bodies.

Judges - under reprimand sactions of formal advice, formal warning as well as formal reprimand have been included.

**You can indicate below:**

**any useful comments for interpreting the data mentioned in this chapter**

**the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years**

The Judicial Discipline (Prescribed Procedures) Regulations came into force on 1 April 2006. Following a review, amendments to the Regulations came into force on 28 August 2008. The figures given above concerning judges have been taken from the Office for Judicial Complaints Annual Report 2008-2209 (at time of writing this has yet to be published).

## 6. Lawyers

### 6. 1. Statute of the profession

#### 6. 1. 1. Profession

**130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).**

153710 (including solicitors)

**131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.**

- Yes  
 No  
 Not applicable

**132) Number of legal advisors. If there is no data available, please indicate it (NA)**

NA

**133) Do lawyers have a monopoly of representation in (multiple options are possible):**

- Civil cases\*?  
 Criminal cases - Defendant\*?  
 Criminal cases - Victim\*?  
 Administrative cases\*?

\* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

Parties in criminal, civil and administrative cases are typically represented by barristers or solicitors with higher rights of audience. However, there are other persons and organisations who are able to represent clients as follows:

- Persons granted rights of audience by statute, such as local authority officers.
- Persons granted rights of audience at the discretion of the court.
- Any person has rights of audience in small claims cases (cases where the financial amount involved does not exceed £1000) as long as that person is present at the hearing.
- Parties to a case may represent themselves as 'litigants in person'.

Legal Executive Advocates who have attained a civil proceedings certificate can represent clients:

- In open court in the County Court in civil proceedings,
- Before Justices or a District Judge in the Magistrates Court in matters originating by complaint or application,
- Before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors,
- Before the Coroners Courts (where they can exercise rights of audience similar to those of solicitors and barristers).

Legal Executive Advocates who have attained a criminal proceedings certificate can represent clients:

- Before Justices or a District Judge in all adult magistrates courts and Youth Courts in matters within the jurisdiction of those courts,
- In the Crown Court of High Court before a judge in chambers to conduct bail applications,
- In the Crown Court on appeal from the Magistrates Court, the Youth Court on on committal of an adult for a sentence to be dealt with if any solicitor who employs the Legal Executive or any other solicitor or Fellow in the same employment as the Legal Executive appeared on behalf of the defendant in the Magistrates or Youth Court,
- Before Coroners' Courts.

Legal Executive Advocates who have attained a family proceedings certificate can appear before Justices or District Judge in the Family Proceedings Courts and before the Coroners Courts.

All patent attorneys have rights of audience and the right to conduct litigation in the Patent County Courts and on appeal from the Patent Office in the Patents Court, which is part of the High Court.

Patent attorney litigators have the right to conduct litigation in the High Court, the Patents Court and in the Court of Appeal on appeal from the Patents County Court or the High Court in any matter relating to patents, designs, trade marks or technical information.

Members of the Institute of Trade Mark Attorneys with litigators' rights can conduct litigation in the Chancery Division of the High Court and the County Court (including the Patents County Court) relating to trade mark, design and passing off cases.

#### **134) Is the lawyer profession organised through?**

- a national bar?  
 a regional bar?  
 a local bar?

Please specify:

The Law Society represents the interests of solicitors in England and Wales and also provides training and guidance.

The Bar Council represents the interests of barristers in England and Wales, and also regulates the education, training and discipline of barristers.

In addition, there are around 120 autonomous local law societies in England and Wales which represent the interests of their members.

Other sections of the UK legal profession also have their own professional organisations, such as patent attorneys (represented by the Chartered Institute of Patent Attorneys), trademark attorneys, (represented by the Institute of Trademark Attorneys), legal executives (represented by the Institute of Legal Executives) and costs lawyers (represented by the Association of Law Costs Draftsmen).

**Please indicate the source for answering the questions 130 and 132:**

### 6. 1. 2. Training

**135) Is there a specific initial training and/or examination to enter the profession of lawyer?**

- Yes  
 No

**136) Is there a mandatory general system for lawyers requiring continuing professional training?**

- Yes  
 No

**137) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?**

- Yes  
 No

If yes, please specify:

Q135: Individuals wishing to qualify as solicitors must complete the Legal Practice Course (LPC) and then complete a training contract with a law firm. Those wishing to qualify as barristers must complete the Bar Vocational Course (BVC) and also complete a pupillage with a barristers' chambers. Before taking the LPC or BVC, applicants must first complete a qualifying law degree. In addition, those wishing to become legal executives must complete the ILEX Professional Qualification in Law.

Patent attorneys and trademark attorneys are required to have a science, engineering, technology or mathematics degree and must pass the foundation and advanced examination papers set by the Chartered Institute of Patent Attorneys and the Institute of Trademark Attorneys.

Law costs draftsmen (costs lawyers) must take the ALCD Modular Training Course.

Q136: All solicitors in England and Wales must comply with the Solicitors Regulation Authority's continuing professional development (CPD) scheme. Solicitors must complete a minimum of 16 CPD hours each year.

Newly qualified barristers must complete 45 hours of CPD each year in their first three years of practice, including 9 hours of advocacy training and 3 hours of ethics training. After three years of practice, barristers must complete 12 hours of CPD each year.

Fellows of the Institute of Legal Executives must undertake 16 hours of CPD each year, while members of the Institute must undertake 12. Patent and trademark attorneys must also undertake 16 hours of CPD per year.

Costs lawyers must undertake 12 hours of CPD per year. Fellow and Associate costs lawyers must complete 9 hours per year.

Q137: Probate – lawyers wishing to conduct probate activities must attain a probate licence. In order to apply for a probate licence an individual must have passed the Qualifying Probate Examinations and passed the Practical Probate Training.

Solicitor-Advocates - solicitors wishing to obtain higher rights of audience and become Solicitor-Advocates must have practised as a solicitor for at least 3 years and be able to demonstrate experience of advocacy. If the solicitor cannot demonstrate experience of advocacy they must undertake a 12 month advocacy period during which they will build up a portfolio of cases and be supervised by a mentor.

Licensed Conveyancing – solicitors wishing to convert to being licensed conveyancers must apply to the Council for Licensed Conveyancers for a licence.

### 6. 1. 3. Fees

**138) Can users establish easily what the lawyers' fees will be?**

- Yes  
 No

Please provide comments to explain the answer under question 138

Fees vary between solicitors and solicitors' firms. Solicitors' costs may be presented to users in different ways, either as a fixed fee, hourly rate, conditional fee arrangement or as an estimate of the amount expected. The client may also have to pay expenses for completing searches, lodging documents or for experts' reports. Clients may also have to pay another party's legal costs, particularly if a client loses a case. Solicitors are required to tell clients at the beginning of a case how they calculate their charges and give an estimate of the total cost, but this figure may increase as the case progresses.

### 139) Are lawyers fees

- regulated by law?
- regulated by Bar association?
- freely negotiated?

Please provide comments to explain the answer under question 139:

Lawyers operating in the private sector are free to set their own fees. Some publicly-funded lawyers, such as legal aid lawyers, have standard fees that are regulated by the Government.

## 6. 2. Evaluation

### 6. 2. 1. Complaints and sanctions

### 140) Have quality standards been formulated for lawyers?

- Yes
- No

### 141) If yes, who is responsible for formulating these quality standards:

- the bar association?
- the legislature?
- other?

Please specify (including a description of the quality criteria used):

Lexcel is the Law Society's practice management standard. It is a scheme for any type of practice to certify that certain standards have been met following independent assessment. The Lexcel practice management standard is only awarded to solicitors who meet the highest management and customer care standards. Lexcel accredited practices undergo rigorous independent assessment every year to ensure they meet required standards of excellence in areas such as client care, case management and risk management. Lexcel assessment is a simple, transparent and independently assessed process which is available to any size or type of practice including in-house, local government and sole practitioners. It is valid for three years with annual monitoring visits and can be combined with other quality standards.

The Legal Services Commission is responsible for the management of the legal aid scheme in England and Wales. Quality Mark is the name given to its set of quality assurance standards for legal service providers. The standards are designed to ensure that a service is well run and has its own quality control mechanisms that assure the quality of the information or advice provided. The Quality Mark enables members of the public who are in need of legal advice and other help to receive a quality assured service. To carry out legal aid work organisations must obtain the Quality Mark standard appropriate for the level of service they provide. There are four different types of Quality Mark – the General Quality Mark, the Specialist Quality Mark, the Quality Mark for the Bar, and the Family Mediation Quality Mark.

Lawyers can also seek certification to the ISO 9001 standard and the Investors in People standard.

### 142) Is it possible to complain about

- the performance of lawyers?
- the amount of fees?

Please specify:

Clients who wish to complain about the performance of their lawyer may contact the Legal Complaints Service (LCS), an independent body set up by the Law Society. The LCS can handle complaints about poor service and fees.

If the client's complaint concerns matters of professional misconduct, fraud, dishonesty or non-payment of money, then the client must contact the Solicitors Regulation Authority (SRA), which has a range of disciplinary powers. If a client wishes to complain about the performance of a lawyer they did not instruct (for example, another person's lawyer), they must also contact the SRA.

Clients who wish to complain about the performance of their barrister must contact the Bar Standards Board, which deals with matters of professional misconduct and inadequate professional service. If the client wishes to complain about barristers' fees, they must contact the High Court for the barrister's bill to be taxed.

The Legal Services Act 2007 introduces a new complaints structure that will make it easier for users of legal services to seek redress. The Act establishes a new Office for Legal Complaints (OLC), which will be responsible for investigating complaints against lawyers and providing redress to complaints where appropriate. It is currently anticipated that the OLC will be up and running by 2010.

#### 143) Which authority is responsible for disciplinary procedures

- the judge?  
 the Ministry of justice?  
 a professional authority or other?

Please specify:

Under the provisions of the Legal Services Act 2007, approved regulators will be responsible for disciplinary procedures concerning the individuals and organisations they regulate. The Law Society, the Bar Council, the Chartered Institute of Patent Attorneys, the Institute of Trademark Attorneys, the Institute of Legal Executives, the Association of Law Costs Draftsmen are approved regulators under the Legal Services Act and will regulate solicitors, barristers, patent attorneys, trademark attorneys, legal executives and costs lawyers respectively.

#### 144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number	NA	NA	NA	NA

Comment :

#### 145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

	Reprimand	Suspension	Removal	Fine	Other
Annual number	NA	NA	NA	NA	NA

Comment :

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

The Legal Services Act 2007 ('the Act') will come into force on 1st January 2010. The Legal Services Act introduces a wide range of reforms, including the establishment of a number of "approved regulators", who will each regulate a certain sector of the legal profession. The approved regulators will regulate persons who are authorised to carry out "reserved legal activities" and other legal services. The Act will also establish a new Legal Services Board, which will oversee the approved regulators.

The Legal Services Act 2007 also introduces a new complaints structure that will make it easier for users of legal services to seek redress. The Act establishes a new Office for Legal Complaints, which will be responsible for investigating complaints against lawyers and providing redress to complaints where appropriate.



## 7. Alternative Dispute Resolution

### 7. 1. Mediation and other forms of ADR

#### 7. 1. 1. Mediation

**146) Does the legal system provide for mediation procedures? If no go to question 151**

Yes

No

**147) If applicable, please specify, by type of cases, the organisation of mediation**

	Possibility for private mediation proposed by the judge or court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Prosecutor
Civil and commercial cases	Yes	Yes	No	No	No
Family law cases (ex. Divorce)	Yes	Yes	Yes	Yes	No
Administrative cases	No	Yes	No	No	No
Employment dismissals	No	Yes	No	Yes	No
Criminal cases	No	No	No	No	No

**148) Is there a possibility to receive legal aid for mediation procedures?**

Yes

No

If yes, please specify:

\*\* Employment Mediation: There is a judicial mediation scheme in the Employment Tribunal. A case might be suitable for judicial mediation where it contains at least one complaint of discrimination and would take at least three days to hear if it went to a full Hearing on merits.

\*\*\*Additional comments regarding mediation in family law cases:

With regard to the possibility for mediation proposed by the court, the court lacks the powers to mandate parties to attend mediation sessions. It may however ask parties to family disputes over child contact (access to a child) to attend a meeting to learn about family mediation and how it could assist them reach agreement outside the court. Presently (end of 2009), the Legal Services Commission (the public body charged with administering the legal aid budget for England and Wales) has initiated a number of pilot schemes of court-annexed mediation in order to assess the effectiveness of such interventions in terms of costs savings and of court diversion (of cases) – we regret there are no findings at this stage to share with CEPEJ.

With regard to private mediators, the family mediation sector is chiefly self-regulating – there are a number of membership bodies in operation in England and Wales to which mediators belong. Similarly to other services, the provision of family mediation may be independently accessed by parties to family disputes outside of any formal referral process.

With regard to a public authority other than the court, family mediation may be advised by the Child Maintenance Enforcement Commission (CMEC) to parents who are in negotiations about the appropriate level of child maintenance due. Similarly, there is a number of non-State entities (for instance, agencies such as the Citizens' Advice Bureau which is a network of independent charities) that advise disputants about the benefits of family mediation.

With regard to a judge, in England and Wales, judges do not conduct mediation in their adjudicative capacity. There is scope for judges to participate at varying degrees in sessions which share an ADR quality and take place within the court proceedings framework. For instance, there is a stage during proceedings (namely, the Financial Dispute Resolution stage) for a financial order/ancillary relief to which the separating parties meet to negotiate an outcome – a judge is present and advises parties how a case with similar facts may be adjudicated should it go to final hearing, however, the judge does not make a decision, and is barred from hearing/deciding the case at any subsequent final hearing of that case. In connection to child contact disputes, there is a similar stage of proceedings during which 'in-court conciliation' takes place – the degree of judicial involvement during this stage varies but there is scope for a judge to be involved without making a decision. Again, both these interventions are not mediation in its strict sense – however they share an ADR quality because of the facilitating and non-adjudicating role of the impartial third party.

Q148: Legal Aid for mediation

Family Mediation: Yes, since 1997. Parties to family disputes who are entitled to public funding (legal aid) to take their case to court must first attend a meeting to learn about mediation and to discuss whether it would be suitable for their case. If they agree to take up mediation, the cost for it is paid by the State so long as the parties are entitled (because of their limited financial means) to public funding (legal aid).

Civil Mediation: There is generally much less legal aid available in civil cases. When funding civil and commercial mediation, the Legal Services Commission, which is responsible for providing legal aid (public funding), will expect the mediator to have been provided by a body accredited by the Civil Mediation Council (CMC). Details of accredited bodies are available on the CMC website ([www.civilmediation.org](http://www.civilmediation.org)). Mediators not provided by such a body may be funded but will need to satisfy the regional office that they have appropriate training and expertise.

**149) Number of accredited mediators. If there is no data available, please indicate it (NA)**

**150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

civil cases?	NAP
family cases?	NA
administrative cases?	NAP
employment dismissals?	NA
criminal cases?	NAP

**Please indicate the source for answering the question 150:**

Q149: Accreditation

Family mediation: Accreditation is a matter within the scope of the sector as the family mediation profession is chiefly self-regulated. We say chiefly, because there is a section of family mediators who hold contracts to provide publicly-funded

mediation who to an extent are regulated by the Legal Services Commission in that they must meet certain quality criteria to hold those contracts. There are about 200 family mediators who hold such contracts.

We have no exact number of accredited mediators outside the figure we have provided in connection to those accredited to provide publicly funded mediation. This is because this profession is self-regulated, and there are a number of membership organisations that offer accreditation. We are able however to estimate the figure to be between 700 – 1000 individuals as belonging to these organisations.

Civil Mediation: In civil, while there is no accreditation for individual mediators, organisations that provide civil and commercial mediation are encouraged to become accredited with the Civil Mediation Council (CMC). The CMC is an association of academics, professionals and providers in the field of civil mediation that has set an accreditation standard that includes:

- Adequate mediator training - mediators must have successfully completed an assessed training course that includes training in ethics, mediation theory, mediation practice, negotiation, and role play exercises.
- Code of Conduct - an appropriate written Code of Conduct for its members to follow that must be no less rigorous than EU Model Code of Conduct for Mediators published in 2004.
- Supervision and monitoring - adequate and appropriate supervision, mentoring, monitoring and pupillage for its mediators, including a programme of continuing professional development (CPD), a complaints scheme, and the opportunity for peer review.
- Adequate insurance
- Efficient administration

The Ministry of Justice requires all civil mediation provider organisations that want to be involved in court-referred mediation, to first become accredited with the CMC. Those organisations are then added to the list of providers of the National Mediation Helpline ([www.nationalmediationhelpline.com](http://www.nationalmediationhelpline.com)), and are able to undertake mediations referred by the courts, or direct from members of the public.

Currently, there are about 50 mediation organisations accredited by the CMC, of which 40 are part of the National Mediation Helpline.

Source: Family Mediation Branch, Ministry of Justice, Whitehall, London, UK.

#### 7. 1. 2. Other forms of alternative dispute resolution

##### **151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:**

Family: In connection to family disputes, we are aware (but are not involved in the promotion or any other activity) of the relatively recent advent of 'collaborative law' that is a practice involving the parties, their legal advisors, any experts that may be necessary (for instance, a child psychologist, a financial advisor, a pension advisor, and so on) in round-table negotiations. Should negotiations fail, their respective legal advisors are barred from participating in court litigation. This is considered by the proponents of collaborative law as incentivising all participants (including their legal advisors) to reach agreement.

Administrative: The Tribunals Service have piloted a form of ADR referred to as Early Neutral Evaluation (ENE). This was piloted in the Social Security and Child Support Chamber and restricted to Disability Living Allowance and Attendance Allowance cases. This involved the early assessment of a case by a trained judge who would make an assessment of the cases likely prospect of success. The judge would then invite the potential losing party to reconsider their position. Where a case did not appear straightforward the judge could make recommendations on the production of additional material/evidence. The pilot is currently being evaluated and a decision on its future has not yet been made.

##### **You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

Family: The Government is currently reviewing its policy on family mediation with a view to developing it further in order to encourage greater public awareness and take-up of family mediation. There are a number of ideas currently being considered.

Civil: A Small Claims Mediation Service was introduced into Her Majesty's Courts Service (HMCS) in 2007, since when that service has grown considerably. Over the past 12 months, the 25 mediators have conducted more than 10,000 mediations with a settlement rate of 73%. The service is free to parties with a defended small claim, and the vast majority (>90%) of mediations are conducted by telephone.

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

**152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154**

Yes

No

**153) Number of enforcement agents. If there is no data available, please indicate it (NA).**

571

**154) Are enforcement agents (multiple options are possible):**

judges?

bailiff practising as private profession ruled by public authorities?

bailiff working in a public institution?

other enforcement agents?

Please specify their status and powers:

County Court bailiffs — are employed by Her Majesty's Courts Service (HMCS), and are responsible for enforcing orders by recovering money owed under a county court judgment. They can seize and sell goods to recover the amount of the debt. They can also effect and supervise the possession of the property and the return of goods under hire purchase agreements, and serve court documents.

Civilian Enforcement Officers (CEO's) Magistrates' Courts — are employed by HMCS and are responsible for enforcing magistrates' court orders. They can seize and sell goods to recover the amount owed under a fine and community penalty notice. They can also execute warrants of arrest, committal, detention and distress issued by a magistrates' court under any one of a range of statutes, including those covering the enforcement of fines and community penalties. A CEO can execute such a warrant anywhere within England and Wales.

High Court Enforcement officers — are appointed on behalf of the Lord Chancellor and are responsible for enforcing court orders by recovering money owed under a High Court judgment, or a county court judgment transferred to the High Court. They can seize and sell goods to cover the amount of the debt. They can also enforce and supervise the possession of property and the return of goods.

Certificated bailiffs (including Approved Enforcement Agents (AEAs)— enforce a variety of debts on behalf of organisations such as local authorities. They can seize and sell goods to cover the amount of the debt owed. They also hold a certificate, which enables them, and them alone, to levy distress for rent, road traffic debts, council tax and non-domestic rates. They cannot enforce the collection of money due under High Court or county court orders.

An Approved Enforcement Agent is a person or firm contracted by Her Majesty's Courts Service for the purpose of executing warrants of the same type as can be executed by a Civilian Enforcement Officer.

The difference between Civilian Enforcement Officer and Approved Enforcement Agents is that the former are employed directly by HMCS while the latter are independent contractors.

Other people authorised to enforce debts are people who do not fall into any of the categories set out above but who are authorised by legislation to recover specific types of debts by seizing and selling goods to recover the amount of the debt owed. For example, legislation authorises tax collectors to seize and sell goods to recover unpaid taxes, stamp duty collectors to seize and sell goods to recover arrears of stamp duty, officers of Revenue and Customs to seize and sell goods to recover certain unpaid customs and excise duties, and authorised employees of the Child Maintenance and Enforcement Commission to seize and sell goods to recover unpaid child support maintenance payments. These people (and other persons authorised to recover debts on their behalf under the relevant legislation) do not have any general powers to seize and sell goods to recover debts – they may only do so in situations where legislation gives them specific authority.

**155) Is there a specific initial training or examination to enter the profession of enforcement agent?**

- Yes  
 No  
 Not applicable

**156) Is the profession of enforcement agent organised by?**

- a national body?  
 a regional body?  
 a local body?  
 not applicable

**157) Can users establish easily what the fees of the enforcement agents will be?**

- Yes  
 No  
 Not applicable

**158) Are enforcement fees:**

- regulated by law?  
 freely negotiated?  
 not applicable

**Please indicate the source for answering the question 153:**

Sources: online certified bailiff register, fed from court records. Bailiff contracts.

I have used this box to add comments re questions above

Due to the nature of the courts business (the magistrates' courts can issue civil orders as well as the civil courts) and the bailiff industry in the UK, where bailiffs can work across the jurisdictions, it is difficult to completely split civil and criminal enforcement functions.

Q 153: In the county courts there are currently: 493 Bailiffs; 76 Bailiff Managers; & 2 Pre Bailiff Officers - a total of 571. This comprises County Court bailiffs who work directly for HMCS. We estimate approximately 2000 Certificated Bailiffs (civil & criminal) including all AEAs of which approx 450 are contracted to work for HMCS. There are also approximately 400 CEOs and xx High Court Enforcement Officers.

Q156: Certified bailiffs are certified by civil order. They can be members of trade associations.

Q157: Yes and No depending on the type of bailiff action. See response to Q165. If the bailiffs are CEOs on magistrates' court business standard fees are set. Fees are not charged by county court bailiffs but the fixed cost of a warrant is added to the debt. Some offenders find it difficult to determine what applicable fees are applied by other bailiffs.

Q158: Fees charged by Bailiffs/Enforcement Officers

County court bailiffs — the fees charged by the county courts for using the bailiffs will be added to the amount owed. Any additional costs for removing and selling goods will be added to the amount owed.

Civilian Enforcement Officers (CEO'S) Magistrates' Courts — are not allowed to charge more than the amount of the fine. However, additional costs for removing and selling goods may be added to the amount owed.

High Court Enforcement officers — are entitled to charge fees and add them to the money owed.

Certificated bailiffs — are entitled to charge fees and add them to the money owed.

Certificated bailiffs — collecting council tax, community charge, distress for rent, road traffic debts and non-domestic rates, should leave a copy of the fee scales that they can charge when they visit. Bailiffs and enforcement officers are not allowed to charge more than the amounts stated for that piece of work in the scale of fees.

There is no statutory scale of fees for bailiffs enforcing magistrates' courts fines. Clients are advised to contact the magistrates' court direct and ask for the agreed scale of fees that bailiffs can charge.

### 8. 1. 2. Supervision

**159) Is there a body entrusted with the supervision and the control of the enforcement agents?**

- Yes  
 No

Not applicable

**160) Which authority is responsible for the supervision and the control of enforcement agents:**

- a professional body?  
 the judge?  
 the Ministry of justice?  
 the prosecutor?  
 other?

Please specify:

Q159: yes (either by the terms of HMC's contract, the High Court Enforcement Officer's Association or a County Court Judge, depending on the type of bailiff concerned)

Q160: Certificated bailiffs are certificated by a Circuit Judge in the County Courts.

Civilian Enforcement Officers (CEOs) can belong to a recognised Association (ESA, ACEA) but some choose not to.

High Court Enforcement Officers are controlled by the Senior Master of the High Court and regulated by the High Court Enforcement Officers Association to which they must belong.

County Court bailiffs are managed by bailiff managers and accountable to the District Judge of the county court by which they are employed.

**161) Have quality standards been formulated for enforcement agents?**

- Yes  
 No  
 Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

HMCS has specified various protocols and standards of behaviour in its contracts with private sector bailiffs.

The Senior Master is responsible for the High Court Enforcement Officers.

**162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?**

- Yes  
 No

if yes, please specify

There are a range of enforcement mechanisms within the civil and criminal courts which can be applied to public authorities as to any debtor or offender. Civil Enforcement mechanisms include: A "warrant of execution" gives court bailiffs the authority to take goods owned by a debtor from their home or business.

An "attachment of earnings order" is sent to a debtor's employer and gives the authority for an amount to be deducted from the debtor's earnings and sent to a court collection office then paid to the creditor.

A "third party debt order" freezes a debtor's assets and is usually made to stop the debtor taking money out of their bank account, building society, stocks and shares etc. Such an order may also be sent to anyone who owes the debtor money.

A "charging order" prevents the debtor from selling their assets such as property or land, without paying what is owed to the creditor.

In the event that creditors are uncertain about the most effective means by which the judgment can be enforced they can apply to the court for an Order to Obtain Information. This is not a form of enforcement as such; it is a way of obtaining information from the debtor. These oral examinations have proven to be effective in establishing details of assets which may be enforced against.

The court will order the debtor to come to court to be formally questioned by an officer of the court, on oath, about his or her finances (providing evidence as necessary), which will help the creditor decide whether it is worthwhile taking an enforcement step, and if so, which of the methods available is most likely to recover money owed. Failure to comply with an order to obtain information by a debtor may lead to the matter being referred to a Judge, who could impose a period of imprisonment for contempt of court.

### 163) Is there a system for monitoring the execution?

- Yes  
 No

If yes, please specify

Yes & No - Bailiffs in civil courts are monitored by bailiff managers and have set targets. Civil Bailiffs are accountable to the District Judge of the courts which issued the judgement order.

High Court Enforcement Officers are monitored by their Association.

Enforcement in the magistrates' courts is managed by Fines Officers. Bailiffs operating on behalf of the magistrates' courts are not monitored by courts staff, who have no powers of intervention once a warrant has been issued and before a return is made. AEs are monitored by their employer and by HMCS. complaints about CEOs are made to the court manager of the Magistrates Court concerned

Further information can be found in leaflet EX345 at [www.hmccourts-service.gov.uk/HMCCourtFinder/FormFinder.do](http://www.hmccourts-service.gov.uk/HMCCourtFinder/FormFinder.do)

### 8. 1. 3. Complaints and sanctions

### 164) What are the main complaints of users concerning the enforcement procedure? Please indicate a maximum of 3.

- no execution at all?  
 non execution of court decisions against public authorities?  
 lack of information?  
 excessive length?  
 unlawful practices?  
 insufficient supervision?  
 excessive cost?  
 other?

Please specify:

The return rate on civil warrants is relatively low where information on debtors is lacking and creditors bemoan the apparent inadequacy of civil enforcement powers.

Satisfactory execution of warrants is dependent on offender-supplied or creditor-supplied personal information. Courts intelligence systems are limited in locating whereabouts of offenders who do not appear before the court.

Alleged bad behaviour on the part of bailiffs

**165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?**

Yes

No

If yes, please specify:

Regulation of the High Court Enforcement Officers is regularly reviewed by the Senior Master in conjunction with the Association.

Courts Tribunals and Enforcement Act 2007 brought in legislation to enable regulation of the entire bailiff industry. This is intended to be implemented 2012.

Part 3 of the Tribunals, Courts and Enforcement Act 2007 makes a number of important reforms to bailiff law which will remove archaic and complex legislation. The changes will help debtors, creditors, bailiffs and the police understand what their rights and responsibilities are when debts are enforced. Provisions under the Act will clarify the existing law and introduce a comprehensive code governing, amongst other things:

- when and how a bailiff can enter somebody's premises;
- what goods they can and cannot seize and sell; and
- what fees they can charge

The current fee system for all enforcement agents is complex: each enforcement power brings with it a different fee structure. Some structures are laid down in statute; others exist only within contractual arrangements drawn up between an enforcement company and its clients. The fee structures themselves also lack clarity, making the fee charging process prone to abuse. The Tribunals, Courts and Enforcement Act 2007 will enable a unified fee regime to be introduced, which will ensure that bailiffs are adequately and fairly remunerated for the work they actually do.

**166) Is there a system measuring the timeframes of the enforcement of decisions :**

for civil cases?

for administrative cases?

**167) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court sits:**

between 1 and 5 days

between 6 and 10 days

between 11 and 30 days

more

If more, please specify

**168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

Total number of disciplinary proceedings	NA
for breach of professional ethics	NA
for professional inadequacy	NA
for criminal offence	NA
Other	NA

**169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.**

Total number of sanctions	NA
Reprimand	NA
Suspension	NA
Dismissal	NA



Fine	NA
Other	NA

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Courts Tribunals and Enforcement Act 2007. Part 3 – regulation of the bailiff industry. Part 4 – reform of civil enforcement mechanisms (not implemented)

June 2009 – introduction on certificated bailiff register online database (available to public).

Q166 - there is a system for measuring the time frames of the enforcement of decisions for civil and criminal cases

**Please indicate the source for answering the questions 167, 168 and 169:**

Courts records

Certificated Bailiff Register

**8. 2. Execution of decisions in criminal matters****8. 2. 1. Functioning****170) Is there a judge who is in charge of the enforcement of judgments?**

- Yes  
 No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

A county court Circuit Judge certifies all certificated bailiffs, of which many deal with criminal matters. Magistrates' courts (Judiciary, Magistrates, Legal Advisors and Fines Officers) are in charge of the enforcement of judgments and orders originating from the Crown Courts and magistrates' courts.

**171) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?**

- Yes  
 No

If yes, please specify:

Various. Courts are set annual targets for the payment of fines and the return on collection of civil debts. Payment rates (both with and without administrative write-offs) are monitored carefully and published monthly. Reviews include HMCS's Criminal Compliance and Enforcement Services – a Blueprint for 2008 to 2012 and the National Audit Office's report into fine collection (2006). The Ministry of Justice National Audit also review other elements of financial penalties such as victims surcharge, costs and compensation.

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

Courts Act 2003 introduced new sanctions to empower enforcement of financial penalties and to trace and keep in touch with offenders for the life of a fine.

The Courts Act 2003 introduced new roles and sanctions to improve fine enforcement, with strong incentives for defaulters to stay in touch with the court during the 'lifetime' of a fine; making it easier for the court to trace them, and deal with them should they default:

- Creation of Fines Officers, who are responsible for managing the collection and enforcement of financial impositions on behalf of the court.
- Mandatory use of Deduction from Benefits / Attachment of Earnings for previous defaulters and for payment of compensation awards.
- New offences of failure or refusal to provide means information and supplying false or misleading information.
- Registration on the Register of Judgments, Orders and Fines.
- Clamping and sale of vehicles.
- Increase of the fine element of any imposition by 50%.
- Fines payment work, which is designed to be used against those who are genuinely unable to pay their fines.

A string of changes to ensure that further improvements in performance are achieved and sustained have been identified since 2004. To date the major changes include:

- extensive use of texting non-compliant offenders detailing consequences of non-payment;
- better trained and equipped civilian enforcement officers, with more tracing tools at their disposal to track down non-payers;
- increased telephone debt chasing, and
- working with magistrates to get more fines paid on the day they are imposed.

Details regarding enforcement officers can be form in leaflet EX345 at [www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do](http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do)

## 9. Notaries

### 9. 1. Statute

#### 9. 1. 1. Functioning

#### 172) Do you have notaries in your country? If no go to question 177

- Yes  
 No

#### 173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

a private one (without control from public authorities)?		NAP
a status of private worker ruled by the public authorities?	<input type="checkbox"/> number	830
a public one?		NAP
other?		NAP

Comment :

In 2007 there were 830 notaries on the roll

#### 174) Do notaries have duties:

- within the framework of civil procedure?  
 in the field of legal advice?  
 to authenticate legal deeds?  
 other?

Please specify:

Until 1 January 2010, notaries were authorised to act as Commissioners for Oaths under the provisions of section 113 of the Courts and Legal Services Act 1990. From 1 January 2010, that authority is instead derived from the provisions of the Legal Services Act 2007.

#### Please indicate the source for answering the question 173

[http://www.legalservicesboard.org.uk/can\\_we\\_help/faqs/index.htm](http://www.legalservicesboard.org.uk/can_we_help/faqs/index.htm)

#### 9. 1. 2. Supervision

#### 175) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes  
 No

#### 176) Which authority is responsible for the supervision and the control of the notaries:

- a professional body?  
 the judge?  
 the Ministry of justice?  
 the prosecutor?  
 other?  
 not applicable

Please specify:

Prior to 1 January 2010, the admission to and regulation of the notarial profession in England and Wales was carried out by the Faculty Office on behalf of the Archbishop of Canterbury.

#### You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your system of notaries and the main reforms that have been implemented over the last

**two years**

With effect from 1 January 2010, the Faculty Office, although retaining frontline responsibility for the regulation of the notarial profession, is now itself subject to the oversight of the Legal Services Board, the new oversight regulator for legal services established under the provisions of the Legal Services Act 2007.

## 10. Court interpreters

### 10. 1. function

#### 10. 1. 1. Statute

#### 177) Is the title of court interpreter protected?

- Yes  
 No

#### 178) Is the function of court interpreter regulated?

- Yes  
 No

#### 179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

NA

#### 180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- Yes  
 No

If yes, please specify:

Q180: There is no legal requirement for an individual to hold formal qualifications to enable them to interpret/translate in the criminal courts in England and Wales. However, the rights to liberty and security, and to a fair trial, are fundamental human rights protected by the European Convention on Human Rights. HMCS is bound by Article 6 of the ECHR which includes the right to interpretation where needed. Article 6 states that everyone charged with a criminal offence has the right a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him b) to have the free assistance of an interpreter if he cannot understand or speak the language used in the court.

#### 181) Are the courts responsible for the selection of court interpreters?

- Yes  
 No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

comments for Q178: There is no single authority which I am aware of that regulates the function of an interpreter, but the National Register of Public Service Interpreters (NRPSI) has a Code of Conduct which applies to all their registered interpreters. If interpreters fail to adhere to this code and their behaviour is considered by NRPSI to be unprofessional or criminal etc, they can be dealt with by various disciplinary sanctions issued by NRPSI which could ultimately result in expulsion from the register.

HMCS might be said to have its own means of regulating the function of interpreters by investigating any claims of professional/criminal misconduct made against interpreters working within the courts and tribunals. Criminal allegations in particular will be the subject of enquiries by HMCS Fraud & Information Security Unit (FISU), who will refer such matters to the police if deemed necessary. The police will conduct their own investigations and subsequently determine whether or not the CPS (or relevant prosecuting authority) should be notified for a decision on whether charges will be brought against the interpreter/s concerned.

The Judiciary may also raise their concerns and disallow an interpreter from carrying out an assignment in court if they are dissatisfied with the quality of service being provided. In some instances, court staff would be entitled to refuse to allow an interpreter a court assignment if they are not satisfied that the interpreter is on the NR or with a recognised agency, or they are unable to verify the interpreter's identity/qualifications.

## 11. Functioning of justice

### 11. 1. Foreseen reforms

#### 11. 1. 1. Reforms

**182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:**

Tribunal Service: Currently, there are 32 Tribunals in the Tribunal Service - more will join in 2010.

Legal Aid: The Ministry of Justice has recently consulted on a set of proposals entitled: Legal Aid: Refocusing on Priority Cases. The consultation set out a range of proposals to ensure that the Department gets the best value from the resources put into legal aid, and to ensure that resources are targeted on meritorious cases. The proposals are focused on ensuring that legal aid is only being targeted on cases with real merit, and that the rules for granting funding are as robust as they need to be to ensure that this happens. The consultation set out a range of reforms to achieve this, to redirect resources onto high priority areas, and to ensure that funding is only granted to eligible clients.

The Ministry of Justice is developing rules of court to enable collective (i.e. class) actions to be introduced on a sector by sector basis. Rights of action will be introduced only where there is evidence of need, following an assessment of economic and other impacts and consideration of alternative approaches and in particular regulatory options.

On criminal procedures and evidence we have no legislation before Parliament at present and as we are in the run up to a General Election, we are not in a position to say what might be planned for the future.

The Law Commission is currently reviewing the High Court criminal jurisdiction and the law on expert evidence. This information is in the public domain (details can be found at [www.lawcom.gov.uk/criminal.htm](http://www.lawcom.gov.uk/criminal.htm)) but it will be a matter for the Government to decide whether to implement the Law Commission reports on these two topics when they are published, later in 2010.