

International Association of Judges
First Study Commission
Annual Meeting: Vienna November 2003

Answers by the United Kingdom to the Questionnaire

The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system

Introductory remarks:

In England and Wales there is no High Council of Justice or analogous body in the organisation and management of the national judicial system. There is a “Judges’ Council”. That body only represents judges’ views on all matters that concern the judges (such as pay and conditions, proposed legislation, the court structure and administration). However the Judges’ Council has no executive power in the organisation or management of the national judicial system.

The administration of the judiciary is currently organised by the Lord Chancellor and his department, the newly entitled Department for Constitutional Affairs (formerly known as the Lord Chancellor’s Department). This branch of the Government, along with its executive agency, the Court Service, and the Treasury are responsible for the administration of justice, including the allocation of resources.

In June 2003 the Government announced that it intended to abolish the ancient office of Lord Chancellor. That office has, traditionally, combined the role of Head of the Judiciary, cabinet minister and “speaker” of the House of Lords. The Government has also proposed sweeping changes in the manner in which judges are chosen for appointment. It has also proposed the creation of a Supreme Court in the place of the House of Lords as the final appellate court in the UK. All these matters are currently being considered by the judiciary, the legal profession and the general public. It is expected that, following this consultation, the Government will introduce legislation. At present no one knows what will be contained in the legislation.

Therefore all the answers given to this Questionnaire deal with the current position, whilst acknowledging that in a year’s time the situation may be very different indeed.

The current procedure for the appointment of Judges is as follows: Lords of Appeal in Ordinary (so called “Law Lords” who sit in the House of Lords), the Heads of Division (the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor) and Lord Justices of Appeal (who sit in the Court of Appeal) are appointed by the Queen on the recommendation of the Prime Minister, who in turn takes advice from the Lord Chancellor.

The Queen appoints High Court judges, District Judges (Criminal) and Circuit Judges, on the recommendation of the Lord Chancellor.

The Lord Chancellor appoints other judges directly, including lay Magistrates.

The Department for Constitutional Affairs supervises to a limited extent the conduct of the judiciary. Though the Lord Chancellor has no power to penalise high court judges and above in any

way, judges may be reprimanded following investigation where their judicial or extra-judicial conduct has given ground for complaint. There is no formal disciplinary body, code of conduct or procedure, however. It should be noted that the Lord Chancellor does have the power to remove circuit judges and below from office on the ground of incapacity or misbehaviour and can remove lay magistrates at his own discretion at any time. As for removal of judges of the High Court and above this may only be done by Her Majesty on an address presented to her by both Houses of Parliament. Nor is there any system of evaluation of the work of a judge; the possibility of appeal to a higher court provides a judicial process of 'evaluation'.

In addition to the Executive's role in the organisation and management of the judicial system, there are Heads of Divisions, who are Lords Justices presiding over the Divisions of the High Court. There are three Divisions: the Queen's Bench Division (QBD), the Chancery Division and the Family Division. The Heads of Division have administrative responsibility for their division as well as presiding over panels of the Court of Appeal and Divisional Courts. The Lord Chief Justice is responsible for the QBD and the Court of Appeal (Criminal Division), the Master of the Rolls for the Court of Appeal (Civil Division), the President of the Family Division is self-explanatory and the Vice-Chancellor superintends the Chancery Division. The process of appointment is set out above.

The organisation known as the Judicial Studies Board (JSB) provides training and instruction for all full-time and part-time judges in the skills necessary to be a judge. It also has an advisory role in the training of lay magistrates and of chairmen and members of tribunals. A Circuit Judge is seconded to the JSB full-time as Director of Studies. There are five committees; criminal, civil, family, magistrates and tribunals chaired by either a High Court judge or a Court of Appeal judge. The Lord Chancellor, who remains responsible for allocating resources to the Board, appoints the Chairman and Members of the Board. As such the Board is not wholly independent.

Against that background, I answer the questions as follows

1. Constitution/Composition

There is no Superior Council of the Judiciary or an analogous body, or bodies, in our Judicial System.

2. Responsibilities of the Superior Council or the analogous body

I refer to the introductory passages set out above as setting out those bodies who have responsibility for a) the appointment and promotion of judges; b) the training of judges; c) the disciplining of judges and d) the allocation of resources.

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages.

3.2 If you do not have such a body:

a) Is the creation of such a body contemplated?

Though it is contemplated that the current appointment procedure for judges be changed, the Government's current proposal is to establish an independent Judicial Appointments Commission. In other words, it is not contemplated that a Superior Council or analogous body be established which would have as one of its tasks, inter alia, the appointment of judges. However, the

Government has expressed itself open to suggestions as to the best way of dealing with complaints against the judiciary if, as the Government proposes, the office of Lord Chancellor is abolished in due course and, therefore, it is still a live issue what changes the constitutional reforms of our system will introduce.

b) *How do you view the advantages and disadvantages of such a body?*

This question cannot be answered, given that there is not one in England and Wales.

4. Particularities/Criticisms

No comment to make.

5. Topics

5.1 What topics do you propose for next year's meeting of the 1st Study Commission?

I have none to propose at present.

Mr Justice Aikens

Convenor of the United Kingdom section of the International Association of Judges