



JUDICIARY OF
ENGLAND AND WALES

THE RT. HON. LORD JUSTICE LEVESON

Crown and County Court Annual Reports 2007/2008

Introduction

Each year, a report is produced by every Crown Court and group of County Courts in England and Wales, giving a breakdown of the business and performance at each court, and describing any issues that have been encountered during the year. These reports describe the period between 1 April 2007 and 31 March 2008. The Crown Court Reports are written by the Resident judge and the Court Manager, and the County Court reports are produced by the Designated Civil Judge and Regional Director.

These annual court reports serve as an effective means of describing the current situation in the court system each year. Reference was made to the reports by Lord Justice Thomas when giving evidence to the House of Lords Select Committee on 6 December 2007: he described the reports as setting out 'the volume of business before the courts, how the courts are dealing with resources, what the success stories are and what the downside has been.' This introduction sets out and summarises the main themes that run throughout the reports, and highlights other less common issues which are of particular concern.

The format of the reports is very similar to previous years, consisting of a commentary representing the views of the Judge and official in charge of the court/s, and a breakdown of statistical information.

Observations common to the Crown Court and the County Courts

Judicial Appointments

In the introduction to last year's reports, I highlighted that there was a serious shortage in judicial manpower caused by delays in the appointments process. This shortage inevitably impacted on performance figures, with some courts having to make large reductions in sitting days as a result. I am pleased to report that there are fewer problems with delays in appointments this year although in a few areas we are still feeling some of the after effects of last year's shortage. I have no doubt (and am supported by statements in some of the reports) that we owe a great deal to the judges who postponed their retirement or came back from retirement to sit as deputies, and to the part time Judiciary who were willing to give up more time to judicial duties: they all have my sincere thanks. Without their assistance, it is my view that the

performance of the Crown Court would have suffered appreciably. Work continues on reducing delays in judicial appointments and I am also grateful to the JAC, constrained by their own resources and the necessary programming of competitions for doing their best to respond to our concerns whenever it has been possible to do so.

These difficulties have not removed all delay and this year also, there have been problems with the time taken for the appointments process to generate an identified appointee who is in a position to start, thereby leading to a shortage of judicial manpower in some areas. An example comes from the Western Circuit East Group of County Courts, where a District Judge gave notice that he had been successful in applying to the Circuit Bench, although a replacement was only able to start about a year later, leaving the post vacant and the need to cover the work in some other way.

Staffing

The lifting of the headcount limit was welcome news to hard pressed understaffed courts, but the benefits of this ability sensibly to recruit full time appointments have been adversely affected by continuing high staff turnover. Having repeatedly to train new staff takes up the valuable time of already over stretched more experienced staff. Wandsworth County Court for example, has a staff turnover of 62.7%, but this is of course not necessarily the case in all courts.

As in previous years, there are a significant number of comments describing the loss of experienced staff to higher paid jobs outside of HMCS. In a few courts, the amendment of regional pay differences and introduction of hotspot pay has contributed to problems with recruitment: an example is Coventry which has to compete with nearby Birmingham where the pay is now higher. The reports go on to describe the (more acceptable) problem of having to replace several members of management teams who have moved on to higher paid jobs.

None of these concerns take away from the very real debt of gratitude that we owe to our staff. Quoting Designated Civil Judges and Resident Judges, I could provide many examples of the praise offered to the dedication and diligence of staff (even in the places where the problems described above are most severe). They can be summarised by the succinct comment from the Leicester and Northampton group of County Courts, which describes the situation across the country:

“Once again, the DCJ wishes to pay tribute to the dedication and patience of staff, who continue to work, under great pressure and for modest reward.”

I would like to add my thanks to that unanimously expressed by the Resident Judges and Designated Civil Judges.

Estates

Some areas outlined improvements and a few refurbishments that had been carried out on their Court buildings, but these positive reports are

overshadowed by descriptions of courts which have outstanding urgent repairs. The problem with the court estate is most severe in the South East Region although other Regions are not without similar or related difficulties. Blackburn County Court, by way of example, is described as being “beyond worn out” and I note that Wakefield County Court has been served with a notice to quit by March 2009; to date, no new premises have been secured.

Neither are these simply as a consequence of deterioration in the fabric of the court. In Guildford Crown Court the layout of the building is such that trials have been affected by witnesses being approached, and following one trial which resulted in a conviction, jurors had bottles thrown at them by relatives of the defendants.

Having said that, however, I am encouraged by the positive references to long awaited improvements finally being made, although most of them refer only to cosmetic improvements. It is essential that the court estate is not allowed further to deteriorate because of increasingly restricted resources. While we are at the point where we are just managing to do enough to keep the buildings standing, failure to deal with the problems of our estate will quickly lead to the point where the administration of justice in some areas is even more seriously affected than it presently is.

Community Engagement

Efforts to improve the understanding shown by the general public both of the court system and the sentencing process are very important aspects of the extra-curricular activities which courts have undertaken. I am encouraged to see that there is a great deal of work going on in this area. The vast majority of courts reported participation in one form of community engagement or another, whether it was school/college visits, ‘You be the Judge’ events, open days, or the various aspects of inside justice week. I was pleased to see that there were mock trial events with the involvement of other agencies of the criminal justice system thereby providing the public with a realistic picture at the way in which different parts of the system come together in the court room.

In addition, many Courts also assisted their local communities in other ways, such as hosting work experience placements for students, providing training for police officers, or hosting events to raise money for charity.

By way of further example, Nottingham Crown Court has developed a partnership with the Nottinghamshire Road Safety Group and local schools, which aims to give 17 year olds the chance to observe and take part in mock trials of serious driving offences, so that newly qualified drivers can see the consequences of unsafe driving. Court staff and judges have taken part in a mock trial at a local school, and DVD recordings of the event have been shared amongst other schools in the area. It is hoped that this idea can be developed further so that all schools in the Nottinghamshire area are involved.

The Crown Court

The work of the Crown Court varies considerably, but each court has the task of delivering justice in a diverse range of circumstances facing different problems. In managing the business of the court, it is necessary for the Resident Judge, with the assistance of the Court Manager, to deal with a wide variety of issues:

- The volume of work received (receipts). The charts show the split between trials for the more serious crimes (class 1 and 2) and other cases (class 3), cases sent for sentence by the Magistrates' Courts and appeals from the Magistrates' Courts.
- The need to see that justice is delivered as swiftly as possible with no risk of being denied by being delayed. This is reflected in the figures for "outstanding trials" and in the figures showing the percentage of trials taking over 16 and 36 weeks to be reached.
- The number of cases that, on the day listed for trial are postponed (and thus 'ineffective'), and those where the defendant only then pleads guilty, or the prosecution either abandons the prosecution or accepts a guilty plea to a lesser charge (so that the case is 'cracked').
- The length of time each case takes. This is partly reflected in the average trial hearing time and the disposal rate.
- Ensuring that witnesses are heard without unreasonable delay, and, furthermore, that the time given by members of the public summoned for jury service is properly used. Performance in these areas is shown in the witness and juror timeliness and utilisation figures.

Interaction with other agencies

Both members of the judiciary and of the court staff regularly meet with other criminal justice agencies in formal meetings and on a less formal basis, with the aim of ensuring the various aspects of court business work effectively. The Court Users Group meeting, meetings between the Resident Judge and Chief Crown Prosecutor (as described in the *Protocol for Routine Liaison Meetings Between Resident Judges and Chief Crown Prosecutors*), Joint Performance Management meetings, and other inter-agency meetings are seen as an effective means of addressing any issues which arise, including those that relate to an increase in avoidable cracked and ineffective trials. Many reports describe a direct link between decisions made at these meetings, and changes in performance. It is widely recognised that a cross agency approach is essential for effectively dealing with any problems and thus increasing efficiency.

Cracked and Ineffective trials

There has been a real improvement in the ineffective trial rate this year, with the majority of courts indicating that there has been a significant reduction. According to the reports the main factors that have contributed to the improved performance are robust Plea and Case Management Hearings (PCMH), and monthly meetings between the Witnesses Care Unit, Crown Prosecution Service, Criminal Defence Service, and the Police. Such meetings can be used to predict which cases are likely to become problematic and why, so that preventative measures can be taken before the problems actually arise. Consistent with previous years, the main reason behind ineffective trials

remains the non attendance of witnesses, and to a lesser extent, defendants. The Case Progression Officer is seen as extremely important in contributing to a low ineffective trial rate.

Although work on ineffective trials appears to have met with some real success, the cracked trial rate seems to have risen overall, with few courts recording a decrease. The main reason behind cracked trials remains late guilty pleas on the day of the trial, although it is not clear if it is a disproportionate increase of such incidents that has led to the overall increase in cracked trials.

There is anecdotal evidence that the drive to reduce ineffective trial rates has led to the increase in cracked trial rates. One possible reason may be the increasing tendency to refuse adjournments when the prosecution is unprepared: an adjournment (i.e. an 'ineffective') becomes one that is abandoned ('cracked'). If there is a basis for this suggestion, it will inevitably serve to increase the number of cases which go for trial as defendants wait until the last moment to see if the prosecution has complied with all orders and the case is truly ready for trial admitting guilt only if it is. It is essential that we work to ensure that changes introduced to improve one aspect of performance do not have a negative effect on another aspect. Thus, if lowering the ineffective trial rate has indeed had the seesaw effect of increasing the cracked trial rate, we must focus our efforts so as to lower the pivot, rather than lowering one end of the seesaw to the detriment of the other.

I would like to emphasise one factor which is the main cause of ineffective trials and a common cause of cracked trials; that is the failure of witnesses to attend. The reports also note that trends suggest that this can be a factor in a defendant's decision to plead guilty at the last minute. If the witness attendance rate were to be improved, it would no longer be a worthwhile trade-off to lose a proportion of the credit for an early plea and wait to see if all the witnesses turn up before pleading guilty, on the chance that if a material witness does not attend, even if the case is not then abandoned, it might be possible to negotiate a plea to a lesser offence. I have been highlighting this issue during my circuit visits this year, and have been asking the judiciary to ensure that they make clear to any defendants pleading guilty at the last minute, the extent to which they have lost real credit for failing to admit their guilt at the first opportunity. To the credit of my judicial colleagues, I have repeatedly received the impression that they need no encouragement in this direction.

Timeliness

In general, performance on witness and juror utilisation and timeliness have improved, but there were many exceptions to this trend. I readily appreciate that targets in this area can be arbitrary, not least because of the large number of influencing factors that are beyond the control of the judiciary and court staff. There is also a strong positive correlation between performance in this area and the cracked and ineffective trial rate.

There was a strong trend of average waiting times going down, and a slight over all improvement against timeliness targets.

Prison Escort Contracts

It is pleasing to observe that there seem to be few reported instances of extreme late arrivals of prisoners to court in this year's reports. The good performance of last year has been maintained following much needed improvements in previous years. There were only one or two mentions of instances where the current prison population seems to have led to late arrival of prisoners, which is also encouraging, and again an improvement on last year. In rural areas (notably the South West and East Anglia), however, there were a few problems with late arrival of young and female prisoners. This is clearly attributed to the large distances involved due to the comparatively few facilities for the detention of young and female remand prisoners. Again delays were experienced by those courts that are at the end of the prison vans route.

A greater problem appears to be the shortage of dock officers, which causes delays in transport from the prison van to the courtroom, especially in multi-handed trials. This problem is most serious in, but not limited to, the South East. In some instances, for example at Guildford Crown Court, van crews have been used to assist the Dock Officers, but this will inevitably delay the departure of the Prison Van from the Court.

Workload

There was a near unanimous increase of receipts across England and Wales, with most of the exceptions being the result of changes to committal routes from Magistrates to Crown Courts, specifically designed to reduce overcrowded lists.

There was also a strong trend of increasing disposal rates, which can partially be explained by judicial numbers being closer to full complement this year following the appointments delays in 2006/07. This factor also contributed to the observed trend of a decrease in backlogs. Another factor contributing to the increasing disposal rate and decreasing backlogs was the increase in sitting day length observed in many reports. While this can be viewed as an increase in judicial efficiency, there are limits beyond which the length of the court day cannot be stretched not only because of the work done by the parties out of court (in preparation and agreement of evidence and issues) but also because of the many extra-judicial activities that judges are now required to undertake.

A lack of capacity coupled with a substantial rise in workload has meant that some courts in the Crown Court have been forced to use extra court rooms in nearby Magistrates' Courts to dispose of extra cases. This may be an effective short term solution for a court that is running over capacity, but this cannot be relied upon in the longer term. Efficiency is reduced by the inevitable issues that arise when listing cases at two different sites (one of which not having been designed to hear Crown Court trials), proving problematic for all of the criminal justice agencies involved. There will also be a serious problem if the work of the magistrates' courts increases again, and the magistrates need their court room back. We must work to find a long term solution to the underlying problem of capacity.

Transfer of Workload in the South East

Looking at what the reports from the South East say about committal routes makes interesting reading. Many of them mention complex committal routes that have changed at some point throughout the year as a result of and in order to cope with an increase in workload. One of the risks, however, is that the extra workload, coupled with a change in committal route means that court A then has too much work to deal with, which causes court A to pass some of the work they have to nearby court B, which then consequently has the same problem, leading to a change in committal route increasing the work of court C and so on. These transfers, carefully managed, are essential for seeking to equalise workloads across the Circuit as a whole, and as such I would encourage the judges and officials responsible to continue to work together in taking a view of the circuit as a whole to ensure committal routes are arranged in the most effective way.

Xhibit

There is one issue on which all of the reports are unanimous: Xhibit is not working as it should. The reports describe a system that often slows down to a level that makes it almost un-useable, and frequently goes down completely, which means that all work has to be duplicated manually wasting staff time and reducing morale. These shortfalls are having an unacceptable effect on court business at a time when we need to be as efficient as possible to obtain the most out of the pressed resources that we have. I would urge HMCS (with eDelivery Group) to examine the contractual commitments undertaken to establish whether a breach can be proved, with a view to seeking some recompense for the level of service provided. A remedial solution is being piloted by eDG (increasing the memory of the court PCs used to access Xhibit), but whether this will have the required effect remains to be seen.

Innovation

The breadth and volume of innovations that were described in this year's reports are a clear testament to the ingenuity of the Court staff and judiciary. For example Nottingham Crown Court uses a time variation when listing cases for PCMH, mention and sentence to assist practitioners and avoid cross courting. Providing a request is made before lunch the day before a listed hearing, that case can be listed either at 10:00, not before 12:00, or not before 14:00. This enables advocates to appear in a number of different courts during periods when they know other cases in which they are involved will not be called on. It is hoped that this will allow practitioners to appear at more PCMHs in which they are instructed for trial (as required) and thereby serve to increase overall efficiency.

Another example can be found in the Central Criminal Court, where a portable interpreters' booth has been acquired and which is used in multi-handed cases to enable one same language or two different language interpreters to be used rather than one interpreter per defendant. This has obvious cost saving implications.

Truro Crown Court has developed an innovative case listing and progression tool, which is available to all judiciary and staff within the Court and provides

links between a case progression spreadsheet, listing diary and case summary information. Once further enhancement work has been completed, this tool is set to become a model of best practice for Devon and Cornwall.

In order to achieve consistency of approach, all Plea and Case Management hearings at Bradford Crown Court are dealt with by one Judge who conducts all such hearings for a four month period. The Resident Judge notes that such active judicial intervention at an early stage is often beneficial and produces sensible results.

The County Courts

Workload

The general trend that is apparent this year has been an increase in total claims, however this trend was not without exceptions. There was also an overall increase in cases allocated to track, even in some of the courts that recorded a drop in claims. For obvious reasons, there was a big rise in almost all courts in housing, land recovery and possession claims, and a less marked rise in insolvency.

Despite this increase in workload there seemed to be a general pattern of a reduction in the number of sitting days. This stretching of resources was felt to be the cause of a reduction in performance against timeliness targets in some areas. There were however some courts which managed to increase or maintain performance against last year despite an increase in workload and a decrease in sitting days. An example of this was Thames Valley and Oxford Group, where total claims issued were up, claims allocated to all tracks were up, sitting days for Circuit and District Judges were down by 20%, but timeliness figures were slightly up. These remarkable results can be partially but not entirely explained by substantial increases in settlement after allocation for fast and multi track cases. Another contributing factor may be a greater number of full time judges available this year on the basis that, as a generality, they will be able to deal with cases more quickly and efficiently than will the part time judiciary.

Small claims mediation

The majority of comments on mediation are very positive, with relatively few instances where there is a very low take-up. Although there is more work to be done on raising awareness in some areas, the overall picture seems to be of an increasingly successful initiative which is reaping rewards already, and has the potential to save a substantial amount of court time. Although I shall follow the growth of mediation with interest, it is also important to monitor the cost effectiveness of the process (that is to say the professional judge time saved against the cost of the mediators).

IT

PCOL, eDiary and MCOL are described as slow and problematic, with eDiary still being slower than the paper system it replaced. There seems little change from the position I described in last years report.

Litigants in Person

Some of the County Court Reports describe problems caused by the ever increasing number of Litigants in Person, leading to a higher drain on Court time. When a litigant who is not a lawyer represents his or herself, extra time is taken for the case to be heard, as an inexperienced member of the public will not always be able to conduct their part of the proceedings as quickly and effectively as an experienced lawyer would. This problem is made worse by a trend for litigants in person who are on remitted fees to appeal as a matter of course, as it will give them what they see as an extra shot, but will cost them nothing.

I would like to clarify a point mentioned in the Chelmsford North Group report, on the subject of vexatious litigants, which is a particular problem in the area. The Designated Civil Judge notes in his report that they are awaiting clarification from the senior judiciary on the use of Civil Restraint Orders, which can be used to prevent vexatious litigants from clogging up the court system in the County Courts and Civil jurisdiction of the High Court. To deal with this concern, I have distributed a memo to the relevant judges to clarify the limitation of the Civil Restraint Order.

Close

Finally, I wish to conclude this introduction by once again expressing my thanks, indeed my profound gratitude, not only to the staff of HMCS but to all members of the judiciary, who work day in day out to ensure that the administration of justice is carried out fairly and efficiently to the ultimate benefit of society as a whole. If I single out those judges who exercise management responsibilities, it is not because I value the contribution of the others less: it is simply that I am particularly aware that I constantly impose upon Resident and Designated Judges on a wide variety of topics, making ever increasing demands on their time and I have never been met with anything other than the fullest co-operation.



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