

Role of judges in criminal trials

- **Before the beginning of the trial**
 - Set dates for the trial
 - Set a venue for the trial
 - Hold a meeting to arrange a timetable by which certain things must be done (if heard in the Crown Court)
 - May arrange bail
- **During the trial**
 - Decide issues of law, e.g. Admissibility of Evidence (jury is absent from the room while this is done)
 - Keep order in the courtroom
 - Listen to evidence
 - Apply relevant statutes
 - Follow binding precedents
 - Sumps up facts and evidence to the jury
 - Advise the jury on relevant issues of law
 - Decide whether the decision of the jury will stand or decide to change their decision
 - Will pass sentence often in a separate hearing, e.g. a prison sentence, a fine, community
- **After the trial**
 - Decide sentence if D is found guilty service ('community orders')
 - Decide whether sentences are correct
 - Approve appeals
 - If a case is appealed, judges consider new evidence and new points of law

Role of judges in civil trials

- **Before the beginning of the trial**
 - Help the parties to prepare for the trial and advise on Alternative Dispute Resolution
 - Set timetables by which certain things must be done, e.g. exchanging witness statements
 - Hold meetings between the parties to check everything is on track and make any necessary changes to the timetable
 - Set date and venue for the trial
- **During the trial**
 - Preside over the court
 - Listen to evidence
 - Decide legal issues, e.g. Rules of Procedure in the courtroom or Admissibility of Evidence
 - Apply relevant statutes
 - Follow any binding precedent
 - Weigh up evidence and come to a decision in favour of one of the parties = unbiased and independent decision
 - Order parties to behave in a certain way
- **After the trial**
 - A case may be heard in a judge's private room, but judges may decide a case purely on paper evidence
 - If D is found liable, judges make orders, e.g. compensation or injunction
 - Approve appeals
 - If a case is appealed, judges may review D's liability or the amount of compensation and consider any new points of law

District judges

Inferior judges, who serve in the Magistrates' Court. Sit on their own to decide facts and law. Decide sentencing if D pleads/is found guilty. Practically they are paid magistrates. 1st rank on the civil hierarchy. Deal with small claims cases of under £10,000 and can also hear other cases for larger amounts

Recorders

Part-time inferior judges, who are appointed for 5 years. Mainly used in criminal cases, but can be used in civil trials as well. Must have been barristers or solicitors for at least 7 years.

Circuit judges

Full-time judges in the Crown and County Courts, who have certain responsibilities. They are inferior judges. Decide facts of law. Make a decision about who has won the case in civil trials. Sit with a jury in criminal cases and decide sentencing. Go around a circuit of courts.

Justices of the SC

Superior judges. Hear about 100 cases annually (appeals). Usually hear a majority of civil cases. Hear cases appealed only on a point of general public importance and have complicated technical areas of law (e.g. planning or tax law). Sit at an uneven number panel (min. 7 judges). Create binding precedents. Highest ranked judge is called Dame Brenda Hale.

Lord Justices of Appeal

Superior judges. Sit in both CA divisions and hear appeals. Heavier workload than the SC Justices. Have over 7,000 applications of appeals against sentence or conviction annually. Sit on their own to hear applications, but in a panel of 3 to hear cases. Could be a panel of 5 in rare occasions. Hear 1,800 criminal and 3,000 civil appeals yearly. May find appeals against the finding of liability or an appeal about the remedy awarded, e.g. the amount of money given as damages. Create binding precedents.

High Court judges

Superior judges. Try cases of first instance (never been tried before) on their own. Hear witness evidence, decide what the law is and make the decision as to which side has won the case. Decide how much should be awarded to the winning claimant in claims for damages. Hear County Court appeals. High Court judges in the QBD division hear criminal appeals from the Magistrate's Court by a special case stated method (appeals only). Two judges hear appeals. Known as 'puisne' judges.

TYPES OF JUDGES

The Judiciary

Judiciary is a collective word for judges

Master of Rolls – president of the CA and is in charge of laws made by judges

Lord Chief Justice is the most senior judge and makes appointments

Qualifications:

- Set in the Courts and Legal Services Act 1990 as amended by the Tribunal, Courts and Enforcement Act 2007
- Based on legal qualifications + relevant legal experience for a number of years

Appointment:

- Made by the Queen; this keeps selection and appointment separate from government

Selection

- Up to 2005 = done by the Lord Chancellor in a secretive system; Lord Chancellor is a political appointment => judges selection was not independent from political influence
- After 2005 = Constitutional Reform Act 2005 changed the system; Judicial Appointments Commission deals with selection and advertised vacancies for judicial positions, interviews applicants and recommends appointments to the Lord Chancellor



Way in which independence is protected	Explanation	Comment on how independence is protected
<p>Security of tenure</p> <ul style="list-style-type: none"> ➤ Superior judges can't be sacked unless both Houses of Parliament agree ➤ Complaints against judges maintain independence as they are investigated by the Judicial Conduct Investigations Office and then reported to the Lord Chancellor and Lord Chief Justice ➤ Inferior judges: <ul style="list-style-type: none"> ▪ Circuit judge Bruce Campbell was dismissed for evading customs duty on whisky and cigarettes in the 1970 ▪ Recorder Constance Briscoe was convicted and imprisoned for perverting the course of justice by lying and then altering her witness statement regarding her involvement in a case where a Cabinet Member and his wife had 'swapped driving points' 	<p>Act of Settlement 1701 – can hold office while of good behaviour + cannot be dismissed by the government</p> <p>Same provision is contained in the Senior Courts Act 1981 for High Court judges and Lord Justices of Appeal and in the Constitutional Reform Act 2005 for the Justices of the Supreme Court</p> <p>1830 – power was used to remove an Irish judge (Johan Barrington) who misappropriated £700 from court funds</p>	<p>Cannot be dismissed by the government</p> <p>Can only be removed by the monarch following a petition presented by her to both House of Parliament</p> <p>Protection from political whims</p>
<p>Immunity from trial</p>	<p>Judges are given immunity from prosecution for any acts they carry out in performance of their judicial function; superior judges cannot be sued for their decisions</p>	<p>Allows a judge to perform his duties without a fear of repercussions</p>
<p>Independence from the executive</p>	<p>Superior judges cannot be dismissed by the government; can make decisions which may displease the government without the threat of dismissal; s.3 Constitutional Reform Act 2005 grants independence; must be able to make decisions without the fear of repercussions</p>	<p>Can make decisions, which may displease the government without the threat of dismissal</p>
<p>Independence from the legislature</p>	<p>Generally not involved in Parliament (full-time judges cannot be MPs; measures are not as strict for part-time judges)</p>	<p>Judiciary was separated from the legislature after the creation of the SC in 2009; independence results in fairness</p>
<p>Independence from case</p>	<p>Must not try any case where judges have a particular interest at</p>	<p>Creates independent and unbiased decisions</p>

	<p>e.g. Pinochet Case 1998</p> <ul style="list-style-type: none"> ➤ Case involved the extradition of Augusto Pinochet (former Chilean head of state) to Chile to face trials ➤ Amnesty International took part in the case, but Lord Hoffmann (judge) was part of Amnesty International and would act in their interests ➤ Case was retried with a new panel of judges 	
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Reasons for judiciary independence:

- 1) Protects the liberty of the individual from abuse of power by the executive + supports democracy; government opposition could be imprisoned if the judiciary was influenced by the government
- 2) Courts stated that the government could not start the process of leaving the EU without consulting Parliament despite protests; the judiciary's independence was defended, e.g. as during Brexit
- 3) Judges should not fear repercussions when carrying out their function, e.g. in judicial review cases when deciding when an Act or a decision by the government departments is reasonable
- 4) Judges must be free to exercise their judicial powers without interference from litigants, the state, the media, powerful individuals or entities
- 5) Independence is important when the judge deals with criminal/civil cases; court needs to be sure that the judge cannot be influenced by an outside party or by the judge's personal interests

Advantages of judiciary independence:

- 1) Fairness ensured in all cases; the judge has to base the judgement only on the facts of the case and this is granted by the prosecution in the form of protection over judges
- 2) Judges can exercise their power of judicial reviews of government Acts/decisions without facing repercussions; thus, they can protect citizens from biased decisions; judges are also carefully selected and are impartial
- 3) Judicial independence is beneficial for the public, thus it is supported by it; it ensures that all citizens would be tried fairly and in accordance to the law

END.