



DEPARTMENT FOR CONSTITUTIONAL AFFAIRS (DCA)

A SINGLE CIVIL COURT?

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL03/05)**

APRIL 2005

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

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A SINGLE CIVIL COURT?

Executive Summary

- APIL considers the creation of a single civil court of first instance in England and Wales – through the amalgamation of the High Court and county courts – to be a positive step.
- APIL strongly supports the notion of specialist personal injury judges within the proposed unified court structure, and feels that this can be accomplished via the widespread use of ticketing and specialist lists.
- APIL proposes that the ticket system, while reflecting current specialist knowledge, should also reflect instances where judges have undertaken training in personal injury law, possibly via accredited training organisations such as the College of Personal Injury Law (CPIL).
- With the use of ticketing and specialist lists, APIL believes there is little need for the retention of the various divisions which currently exist within the court system.
- In order to avoid disruption to the service APIL believes that the existing judicial structure should be retained for the time being. We do, however, feel that the way judges are selected and trained should be amended so as to reflect the use of ticketing and specialist lists.
- APIL suggests that the creation of a single free-standing family court will allow non-family civil work to be ring-fenced in terms of budget and number of cases which need to be heard. It will also allow judges to devote their time to specialised areas of law, rather than splitting their time between family and other civil work.
- APIL feels that enforcement procedures need to be streamlined and made more efficient within any new single civil court.
- APIL is concerned with suggestions that judges will be allowed to manage judicial business and financial thresholds via the use of local practice directions as this would return local courts to pre-Woolf chaos.
- APIL suggests that the ability for the claimant to specify the location where a case should be heard should be re-instated.

Introduction

1. APIL welcomes the opportunity to put forward its comments on the Department for Constitutional Affairs (DCA) consultation on the formation of a single civil court. Please note, however, that due to APIL representing the interests of negligently injured claimants our response will be predominantly confined to court usage in respect of personal injury litigation.
2. In general APIL considers the creation of a single civil court of first instance in England and Wales – through the amalgamation of the High Court and county courts – to be a positive step. Furthermore, it reflects other changes which have occurred recently within the civil justice arena: namely the introduction of a unified code of practice and procedure for both the High Court and county courts - the Civil Procedure Rules (CPR); and the formation of Her Majesty's Courts Service (HMCS) representing a single administrative body for all courts (except the House of Lords)¹. Indeed, difficulties have arisen within the current system due to the operation of a single code of practice and procedure within a non-unified court system. APIL anticipates that a single civil court will alleviate some of these problems.

Specialist judges and the use of ticketing

3. APIL strongly supports the notion of specialist personal injury judges within the proposed unified court structure. The “twin evils” identified by Lord Woolf in his civil justice review, were cost and delay. Specialist judges would go some way to resolving these problems, and by having a clear understanding of the specific law relating to the case in front of them, it would also ensure justice is done. For example, APIL members report that the use of a specialist asbestos-litigation procedural judge -

¹ From 1 April 2005 all Crown, county and magistrates' courts will fall under the remit of the HMCS, ending the current structure whereby magistrates' courts are run separately by 42 local committees and all other courts are run by the Government. Instead the HMCS will work in partnership with 42 local courts' boards which will review and make recommendations on how the courts are run and where they are located.

Master Whitaker - in the High Court in London has meant that decisions are being made more quickly, resulting in compensation for dying victims being provided more expediently. In addition, Master Whitaker supplements his specialist knowledge by having informed dialogue with both claimant and defendant lawyers in the field of industrial disease. This naturally speeds up the litigation process as he is able to make his judgment based on the latest legal knowledge as well as the views of both parties.

4. In order for specialist personal injury judges to hear personal injury cases, APIL supports the proposal that *“judges with expertise in particular specialist areas could be given authority (‘tickets’) to deal with ... specialist work”*² and that *“specialist business lists”*³ should be used to facilitate the deployment of judicial staff. APIL feels these specialist lists should be made publicly available so that injured claimants can see that the judge hearing their case is experienced in personal injury law.

5. APIL proposes that the ticket system, while reflecting current specialist knowledge, should also reflect instances where judges have undertaken training in particular areas of law. Such a system is already in place within family and criminal law, and we certainly believe it should be extended to other areas of law. In reference to specialist judicial training, APIL has for many years offered accredited training courses in all aspects of personal injury litigation. Indeed APIL’s training arm – the College of Personal Injury Law (CPIL) – provides accreditation for both claimant barristers and solicitors. CPIL was formed in partnership with The College of Law and is monitored by an Academic Quality Council (AQC) which includes representatives from the Law Society, academia and the Bar Council.

² Consultation document – page 25 – paragraph 24

³ Ibid – page 32 – paragraph 45

6. The CPIL accreditation scheme is based on entry to CPIL on one of five levels as follows:

- Associate (for those least experienced and least qualified in personal injury law);
- Member (for those with up to 5 years post qualified experience)
- Litigator (for those with 5 to 10 years post qualified experience)
- Fellow (for highly experienced litigators with more than 10 years experience in practice)
- Senior Fellow (for those with more than 15 years experience and who have distinguished themselves through the years by their outstanding contribution to personal injury law and practice).

7. Practitioners must apply for membership of CPIL by application form. This form requires applicants to detail their experience and expertise in personal injury law and practice. This information is assessed by an independent CPIL panel, which decides whether the application for membership at a certain level should be accepted or rejected in accordance with objective criteria. In order to retain CPIL membership, however, practitioners must maintain a learning log and undertake a minimum amount of CPIL training courses, ranging from 15 hours over three years for associate level members to 50 hours over five years for fellows and senior fellows. An accreditation system for personal injury judges using, or based on, CPIL would allow a “ticket system” to be operated successfully.

8. With the focus of the proposed single civil court being on specific types of cases being heard by specialist judges, APIL believes there is little need for the retention of the various divisions which currently exist within the court system. The removal of divisional boundaries will allow specialist judges to deal with cases in a unified manner and it will also avoid unnecessary complication.

Judicial Structure

9. While APIL believes that the existing judicial structure should be retained for the time being within a single civil court – in order to avoid disruption to the service – we feel that the way judges are selected and trained should be amended so as to reflect the use of ticketing and specialist lists. In particular APIL suggests that the judicial career structure should be made more flexible and promotion should be partially based on merit as measured by objective criteria – e.g. different levels of CPIL accreditation. With a single civil court this would allow a judicial hierarchy to be established which would accurately reflect both the knowledge and experience of those making judicial decisions.

10. APIL feels that the current appointment process, with judges being appointed in their fifties, has led to a judicial career being seen as a resting place for rather tired practitioners. In addition there is a feeling that once you are appointed a district judge it is unlikely that you will move up to a higher level. In order for the judiciary to attract more diverse and younger professionals, potentially at the height of their powers, there needs to be a transparent promotion structure in place. One possible alternative to the current system is that after qualifying as a solicitor, barrister or legal executive and gaining five years experience, a lawyer would either be promoted to the judiciary or apply to join a ‘judge school’. Further promotion would then be based on experience and continuing qualifications. With such a visible career structure established, it will be much easier to attract candidates at the height of their powers (late 30s/early 40s).

11. For a full discussion of APIL’s suggestions relating to judicial appointments, please see Appendix A for APIL’s response to the DCA’s constitutional reform consultation on ‘a new way of appointing judges’.

A separate family court

12. APIL believes that the removal of family matters from the current civil court system to a single free-standing family court would greatly benefit personal injury litigation. At the moment personal injury litigation has to share court space and time with family matters, and as both matters are defined as civil in nature, they are governed by a single set of financial and case targets. By removing family cases from the civil court, this allows court targets to be re-calculated and non-family civil claims to be ring-fenced in terms of budget and number of cases which need to be heard.
13. Another difficulty within the current system is that some courts are overly dominated by family work, leading to the marginalisation of other civil work. For example, in Coventry it is currently very difficult to get any non-family cases heard due to there not being enough court space. This inevitably leads to personal injury cases being heard in courts outside Coventry such as Walsall or Nuneaton. APIL feels that the trauma of a hearing is considerable for anyone, especially if you are injured, so being moved to non-local courts will cause further unnecessary distress, anxiety and expense.
14. The removal of family cases from the new single civil court would also mean that judges would not have to split their time between personal injury work and family cases. At the moment judges have to hear civil cases regardless of their own legal background. This inevitably leads to judges who have a background in family law hearing personal injury cases, and vice versa. The combined effect of removing family cases from the civil court, and the proposed use of ticketing and specialist lists, will be that judges at all levels will be able to concentrate on cases in which they have particular knowledge. This will inevitably lead to greater efficiencies, in both time and money, when cases reach court.

Enforcement

15. APIL feels that under a new single civil court it should be easier for claimants to gain enforcement against defendants, and as such we suggest that the mechanisms relating to enforcement should be streamlined and a single court bailiff be used. An example of the need for better procedures is the writ of Fieiri Facais – or writ of FiFa – which is a large and complex form which needs to be completed prior to any enforcement action being taken. With more efficient technology and better systems in place the time needed to complete and submit the writ will be considerably shortened.

16. While it is unusual for personal injury actions to result in writs of enforcement against an individual – for instance, in a road traffic accident, the liable individual is usually represented by his insurance company – there are selected incidences when this happens. For example, if the individual who caused the negligent injury is uninsured but has sufficient financial resources, the court may award compensation against him. Also there are occasions when insurance companies will refuse to honour an insurance policy due to the non-disclosure of some material fact and the defendant therefore becomes liable for the damages awarded by the court; this may result from the negligent party being dishonest in some way in terms of the facts of the incident. In both of the above examples, the difficulty occurs when the judgment needs to be enforced. The use of better technology – such as electronic forms – and a single enforcing agent would be a huge improvement and make the system more effective and efficient.

Use of Practice Directions

17. APIL is concerned about the suggestion that the judiciary would make the *“necessary detailed rules about allocation of cases between tiers through rules, practice directions etc”* as well using practice directions to decide *“[t]he allocation and management of judicial business”*. We

believe that such a move would be a backwards step, and return the civil justice system to pre-Woolf problems, with local practice directions creeping back into the system. While APIL members report that locally derived practice directions can be a real boon, it is widely acknowledged that such a state of affairs makes it increasingly difficult to practice in non-local courts. APIL believes that a primary driver behind the consultation is to make things simple. With the introduction of numerous locally derived practice directions, court business will return to the chaos of pre-1998.

18. In order to tackle this concern APIL proposes that - as far as reasonably practicable - the operation of the new single civil court should be governed, in the majority, by statute. Yet in order to maintain a certain level of flexibility, APIL suggests that an advisory public body – such as the Civil Justice Council – should be permitted to make practice directions. In order for these practice directions to work effectively, however, there needs to be both professional and regional representational input into their drafting. In addition, any new practice direction needs to be issued from a single source and be applicable nationwide. This will allow a certain amount of flexibility, whilst also removing uncertainty. This certainty will provide lawyers with the protection and security of knowing what to expect when they enter court.

Financial limits

19. In addition to the general concern about the use of practice directions, APIL is specifically concerned by the suggested removal of statutory rules relating to the allocation of cases based on financial limits. Without the protection of a statutory framework, APIL believes that allocation will become fragmented and regionalised resulting in cases being heard by different levels of the judiciary in different courts in the country. For example, if the financial threshold for case allocation is decided by judges themselves, there is a worry that they may decide that the personal injury threshold for cases within the small claims court is too low

and decide to increase it arbitrarily to £5000, or possibly higher. While this example is hypothetical, APIL feels that the allocation of cases should be governed by statute, so that lawyers and claimants have the security and protection of knowing the exact scope of the court's jurisdiction.

Modernising the civil court system

20. While APIL is encouraged to note the consultation document's recognition of other court initiatives, we feel the role of information technology (IT) needs to be developed hand-in-hand with the formation of any new single civil court. Since the Court Service consulted on this subject in April 2001 – *'Modernising the civil courts'* - there appears to have been very little progress in this area⁴. APIL believes that the introduction of 'business centres' (for back-office administrative process handling) and 'hearing centres' (where judges would sit and hear cases), each supported by modern IT, would increase efficiency. This centralisation of services must not, however, be at the expense of local services. For example, while it would make sense to have the administrative handling centralised into large metropolitan areas, the hearing centres need to be able to be accessed by the community at large. APIL would suggest that the savings made by the 'back-rooming' of administrative processes should therefore be re-directed into more effective IT and more hearing centres in the local community.

Claimant able to choose location of action

21. APIL believes the rules stating that the party who is bringing the action should be able to choose where the procedural matters of the case are heard should be re-instated. We believe that the wishes of the injured person should be paramount, with court location being once such instance. The reason for this is that APIL members report that it is

⁴ Please see Appendix B for a copy of APIL's response to the Court Service consultation 'Modernising the Civil courts' (April 2001).

sometimes necessary to travel considerable distances in order to get a case heard. As mentioned before this is likely to dissuade witnesses from testifying and will make an already difficult process for the claimant worse.

22. To avoid this problem, APIL suggests, IT should be more readily used, with the allocation questionnaire being web-based. Within the allocation questionnaire online it would be possible to customise it to the needs of the local legal community, with a series of tick boxes indicating the local courts – or potentially hearing centres – in the local area. Claimants could then indicate their preference in terms of court location and the case could be allocated accordingly.

Appendix A

THE DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

**CONSTITUTIONAL REFORM:
A NEW WAY OF APPOINTING JUDGES**

NOVEMBER 2003

THE DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

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A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

NOVEMBER 2003

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5,000 members in the UK and abroad. Membership comprises solicitors, legal executives, academics and barristers whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

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A NEW WAY OF APPOINTING JUDGES

Introduction

1. APIL welcomes this opportunity to respond to the Department for Constitutional Affairs (DCA) consultation paper on a new way of appointing judges. This paper should be considered in conjunction with APIL's response to the DCA consultation on '*the future of Queen's Counsel*' and '*a Supreme Court for the United Kingdom*'. In particular, this paper, combined with the further consultation on a new Supreme Court, deals with issues of great constitutional importance due to their focus on changes to the judiciary's relationship with the executive and the legislature.
2. In attempting to tackle these issues, it should be noted that many of the questions detailed in the DCA consultation are not necessarily aimed at claimant organisations such as APIL. As a result, we do not seek to answer all the questions, but will respond to those which are relevant to the victims of personal injury and to solicitors and barristers undertaking personal injury work.

Options for change

Different models of Commission

3. One of the primary issues concerning the establishment of a Judicial Appointments Commission (JAC) "*is the precise role it is charged with carrying out in the appointments system.*"⁵

⁵ Department for Constitutional Affairs Consultation Paper 'Constitutional reform: a new way of appointing judges' July 2003, page 13

4. As such the DCA proposes three main models:

- an Appointing Commission which would itself make those appointments which the Lord Chancellor currently makes personally and directly advise The Queen on appointments above that level without any ministerial involvement;
- a Recommending Commission which would make recommendations to a minister as to whom he or she should appoint (or recommend that The Queen appoints); or,
- a Hybrid Commission in which the Commission would act as an appointing commission in relation to the more junior appointments (for example, part-time judicial and tribunal appointments) and as a recommending commission in relation to more senior appointments.

Model 1: An Appointing Commission

Selection process

5. As proposed by the DCA:

“In this model, after running the appointment process and assessing the candidates, the Commission would itself make the decision whom to appoint, with no involvement by ministers at any stage. It would directly appoint candidates to those posts which the Lord Chancellor has directly made appointments to, and would recommend appointments directly to The Queen for posts above that level. Ministers would not be formally consulted about whom to appoint, although they would of course be informed of the outcome. The Commission would, in other words, take over the full powers of the Lord Chancellor and Prime Minister in this area.”

6. APIL believes that the Judicial Appointments Commission should be wholly responsible for the recruitment, selection and promotion of the judiciary, and totally independent from the Government. As such, APIL supports the appointing commission model, as detailed above, because it best meets these requirements. Indeed it is envisaged that the Judicial Appointments Commission will be formulated in a similar fashion to other independent regulatory bodies, such as the Electoral Commission.

Constitutional issues

7. APIL believes that having a commission which appoints judges without any ministerial involvement would remove any potential for allegations that particular judicial appointments were made according to a minister's direct personal preference or to party or other affiliation.
8. In addition APIL considers it necessary for the processes by which a decision is made to be set down in statute so that the commission enjoys the firmest of footings independent from government as well as providing maximum transparency and openness.
9. In respect of whether the commission appoints directly or by recommendation to The Queen, APIL feels that either option would ensure judicial independence. Thus APIL would support the option that causes the least amount of constitutional upheaval and delay.
10. If the current proposed scheme appears to work effectively, there should be further consultation on the possibility of standardising the judicial appointments process across the United Kingdom.

Promotions

11. APIL believes that the judicial career structure should allow for promotion on merit and should also be flexible, allowing movement between different levels of the judiciary.

12. A principle driver for the current constitutional reforms has been the need to increase diversity within the judiciary. APIL feels that the current appointment process, with judges being appointed in their fifties, has led to a judicial career being seen as a resting place for rather tired practitioners. In order for the judiciary to attract more diverse, and younger, people, there needs to be a transparent promotion structure in place. With such a visible career structure established, it will be much easier to attract candidates at the height of their powers (late 30s/early 40s).
13. In respect of the appointment of senior judges, for example to the Court of Appeal or to Head of Division, the DCA proposes that there should be some prior consultation with the relevant Secretary of State. APIL is strongly opposed to any political interference in the judicial appointments process, regardless of the seniority of the appointment, and such ministerial consultation would be decidedly contrary to the need for separation of powers. Moreover we see no reason in principle or practice why this level of appointment should be less dependent on open objective competition.

The Supreme Court

14. APIL proposes (in our response to the DCA consultation – *Constitutional Reform: a Supreme Court for the United Kingdom*) that the appointment of judges to the newly proposed Supreme Court should be made by an independent Supreme Court Judicial Appointments Commission. Due to the fact that the Supreme Court would deal with both legal and constitutional issues for the UK (amalgamating the responsibilities of the judicial committee of the Privy Council and the appellate committee of the House of Lords, excepting Scottish criminal cases and commonwealth cases), any such commission would have to contain representatives from all jurisdictions within the United Kingdom.

15. Rather than establish a completely new commission charged with the relatively small amount of appointments which would be necessary to accommodate the Supreme Court, an appointing commission could be drawn from the three commissions and boards (servicing England and Wales, Scotland and Northern Ireland) which deal with normal judicial appointments. This Supreme Court Judicial Appointments Commission would have the same basic structure as the normal commissions, with the same general composition.

16. For further details of APIL's views concerning a Supreme Court, please refer to APIL's response to the DCA consultation – *Constitutional Reform: a Supreme Court for the United Kingdom*.

Coroners

17. APIL has strongly endorsed the removal of responsibility for coroners from local authority appointment. To this effect APIL has commented:

“It is critical that a unified coronial service is introduced and APIL proposes replacement of the current system with a national coronial organisation comprising a full-time coroner for each region of England, Wales and Northern Ireland. The new coroner’s department should be brought under the auspices of the Lord Chancellor’s Department, with coroners appointed and financed by the LCD, not by local authorities.”⁶

18. APIL still feels these comments are pertinent, and would wish to see any new national coroners’ department brought within the newly established Department for Constitutional Affairs (DCA).

19. APIL considers including coroners in the remit of the Judicial Appointments Commission would be inappropriate as the role of a coroner, whilst judicial in the widest sense, is fundamentally different.

⁶ APIL response to ‘Certifying and investigating deaths in England, Wales and Northern Ireland’ November 2002

The status and organisation of the commission

20. APIL agrees with the DCA in that *“the Commission will be established by legislation, and that it will have legal personality, rather than being a mere emanation of the Department for Constitutional Affairs”*.⁷

21. Of the three options detailed by the DCA, APIL considers the most appropriate legal structure for the new Judicial Appointments Commission to be that of a non-departmental public body. This means that the commission will be responsible for recruiting and employing its own staff. The commission would be independent of Government but would be sponsored by the Department for Constitutional Affairs and would look to the department for funding.

22. In terms of reporting to a select committee, APIL believes that this is inappropriate for the regional Judicial Appointments Commissions due to their diversity of structure and procedure. Accountability should be via their transparent procedures and structured complaints systems.

23. In addition, APIL believes that it is more appropriate that the highest level of judicial appointment needs the greatest scrutiny, due to the level of legal impact such appointments can have. As such we have proposed that the Supreme Court JAC should be answerable to an independent select committee, much the same as the Electoral Commission (please see APIL’s response paper)

⁷ Department for Constitutional Affairs Consultation Paper ‘Constitutional reform: a new way of appointing judges’ July 2003, page 22

Other functions

Policy relating to appointments

24. The criteria for judicial appointment are designed to ensure that those appointed to judicial office are the most suitably qualified and able to perform their role in meeting the following objectives: to ensure the effective delivery of justice; and to improve the level of public confidence in the justice system.
25. In respect of who is eligible to be considered, as long as a candidate has met the initial qualification requirements, then all qualified lawyers should be equally eligible to apply for judicial posts whether in private practice, employed by a trade union, in government service, working in-house or as academics. This will allow for consistency across all judicial appointments. Different kinds of legal experience should not carry different weight in recruitment, or be indicative of a lack of impartiality.
26. APIL believe it is in the public interest to ensure that judges are able to make decisions based on the merits of a case, without reference to any personal bias. Whilst recognising that in reality individuals do have their own prejudices, we believe that as professionals, judges should be trusted to be able to set aside any bias, and not allow personal views to affect the overall outcome of a case.
27. Whilst fully endorsing the impartiality of judges, we do not agree that membership of lobbying organisations should automatically disqualify judges from hearing related types of cases. We believe that judges should be trusted to be able to set aside their personal thoughts and parties should not take issue merely with the point that a judge is a member of a group that may have interests in particular areas of law. Such restrictions amount to disqualifying judges with relevant experience from hearing cases in the very area of law in which they have developed expertise. This is manifestly unjust to judges and would deprive litigants

of experienced and well informed judges. Furthermore, it would consign judges with relevant experience to handling cases in the area of law where they have little or no current experience as practitioners, an illogical result.

28. APIL firmly believes that experienced lawyers should apply to become members of the judiciary to exercise their skill and expertise. It would be unsatisfactory if personal injury practitioners were deterred from doing this on the grounds that they come from a polarised practice, i.e. predominantly claimant or defence orientated. The reality of personal injury practice for many is that practitioners predominantly handle either claimant or defence work. To deal with any perception or danger of bias, we would suggest that judges continue to swear an oath of office.

29. In respect of the criteria for selection, which should be regularly reviewed, there should not be a focus solely on advocacy skills but also on inter-personal skills and skills in the management of time, personnel and cases and proven legal skills. This is not to discount current criteria which should still be considered. Qualities such as legal knowledge and experience, intellectual and analytical ability, sound judgement, decisiveness, communication and listening skills, authority and case management skills, integrity and independence, fairness and impartiality, understanding of people and society, maturity and sound judgment, patience and courtesy, and commitment, conscientiousness and diligence.

30. APIL believes, however, that for there to be legitimacy to the appointment of judges, the assessment of these criteria has to be an open and transparent process. The previous method of selection, that of secret consultation or 'secret soundings', amongst high ranking members of the judiciary, is neither open nor transparent.

31. We believe that the criteria adopted for the selection of judges should be set and defined. Further, the criteria should be published, tested publicly

as to whether they are deemed to be appropriate, and systems should be established that allow scrutiny as to whether the criteria have been applied and assessed objectively.

32. In addition, the appointment process should incorporate standard good recruitment practice, including open competition for all judicial posts with objective and transparent criteria. APIL believes strongly that informal consultations, or 'secret soundings', to assess suitability for appointment should not take place. In view of this, APIL has declined to participate in any future secret soundings procedures.

33. We support, therefore, the use and expansion of assessment centres. We have been encouraged by past meetings with the Lord Chancellor's Department (LCD) (now the Department for Constitutional Affairs), and their piloting of such centres⁸. We should note, however, that assessment should focus on the wide range of skills (as mentioned above) required of a judge and just legal and advocacy skills. All judges, for example, should have excellent inter-personal skills and the ability to manage time, cases and personnel effectively.

34. APIL also feels that the recruitment process should be conducted as quickly as practicable to reduce disruption for all applicants and agrees that the current recruitment or selection procedures for certain appointments do not operate as efficiently as they could. Whilst APIL believes that informal consultation, such as 'secret soundings', are neither fair nor transparent, they also tend to be the lengthiest stage of the competition for judicial places. Removing secret soundings will,

⁸ APIL met with the LCD Judicial Group – 5 September 2002: APIL took part in discussions with the Lord Chancellor's Department (now the Department of Constitutional Affairs) in relation to an assessment centre being piloted for three particular competitions; Deputy District Judge (civil); Deputy District Judge (magistrates) and Deputy Masters. The applicants were assessed under three categories: without consultation; with reference to consultees nominated by the candidates; and with reference to 'automatic' consultees. Activities included role play, a written test to establish level of legal knowledge, and interviews. There was a lay assessor, as well as assessors representing the legal system. APIL was encouraged by the quantifiable aspects proposed by the assessment centre, but expressed disapproval of the continuation of the use of consultations.

therefore, shorten the selection procedure and help to minimise the disruption caused to applicants. Furthermore, APIL endorses the gathering of references from referees appointed by the candidate in conjunction with a candidate performing successfully either in an interview or at an assessment centre.

35. Finally, APIL would like to stress that the overwhelming criterion for judicial appointment should always be merit.

Increasing Diversity

36. APIL agrees with the DCA in that the judiciary is currently not reflective of the society it serves. We believe more can, and should be, done to enable the judiciary to be more reflective without reducing quality.

37. While the measures which would enhance diversity are outside of the remit of this particular response, APIL does have some preliminary suggestions. For example, we propose part time sittings of judicial posts. This should be organised so as to better accommodate the working practices of all. In addition, APIL members have suggested that steps should be taken to make the judiciary more attractive to younger professionals, potentially at the height of their powers. One possible alternative is that after qualifying as a solicitor, barrister or legal executive and gaining five years experience, a lawyer would either be promoted to the judiciary or apply to join a 'judge school'.

Training judges and magistrates

38. APIL firmly believes that appropriate training should be provided to all those appointed to judicial positions. Training and performance monitoring should be conducted on a continuing basis during service. We believe there should be initial and ongoing training for judges.

39. Although we believe that the training programme for judges has

developed well in the past few years, we would suggest incorporating further elements such as “customer service” training. We would also suggest the introduction of an ongoing appraisal system for judges, to ensure they continue to work effectively.

40. As well as a need for basic training, APIL strongly endorses the notion of specialist judges. The “twin evils” identified by Lord Woolf in his civil justice review, were cost and delay. Specialist judges go some way to resolving these problems and ensuring justice is done, since they clearly understand the issues and can make a sound judgment in view of the evidence before them.

41. Further, in fast track cases, it is imperative that the presiding judge has some experience of civil law in order to carry out his “case management” role. One must also bear in mind that the trial hearing is restricted to one day in fast track cases, and an experienced judge is essential in ensuring the trial progresses expeditiously.

42. Whilst fully endorsing specialist judges, we recognise and accept that this is not always possible or practical. Nor would we go so far as to say that practice within a particular field is a prerequisite to hearing a case of that nature. However, in such circumstances, we would suggest as a minimum, the requirement that judges undertake basic training programmes.

43. We would also advocate the introduction of a “ticket system”, whereby judges that have undertaken training in particular areas of law, are granted the right to hear cases of that nature. This system is already in place within family law and criminal law, and we certainly believe it should be extended to other areas of law.

44. In referring to the advantages of having specialist training in particular areas of law, APIL would like to take this opportunity to draw the DCA’s attention to the College of Personal Injury Law (CPIL). CPIL is overseen

by an independent academic quality council, which includes representatives from the Law Society, academia and the Bar Council. It provides accreditation for both barristers and solicitors but is open to such practitioners who work predominantly for the claimant only. CPIL does not, therefore, currently administer an accreditation scheme suitable to all personal injury practitioners. It has always been the intention, however, as confirmed with Lord Woolf in the early stages of CPIL's development, that CPIL should evolve into a neutral training and accreditation scheme for all personal injury practitioners, including judicial appointees.

45. The CPIL accreditation scheme is based on entry to CPIL on one of five levels as follows:

- Associate (for those least experienced and least qualified in personal injury law);
- Member (for those with up to 5 years post qualified experience)
- Litigator (for those with 5 to 10 years post qualified experience)
- Fellow (for highly experienced litigators with more than 10 years experience in practice)
- Senior Fellow (for those with more than 15 years experience and who have distinguished themselves through the years by their outstanding contribution to personal injury law and practice).

46. Practitioners must apply for membership of CPIL by application form. That form requires applicants to detail their experience and expertise in personal injury law and practice. This information is assessed by an independent CPIL panel, which decides whether the application for membership at a certain level should be accepted or rejected in accordance with objective criteria. An accreditation system for personal injury judges using, or based on, CPIL would allow a "ticket system" to be operated where personal injury cases would be heard by judges with training in that field.

Preserving judicial independence

47. APIL believes there should be complete separation between the legislature and judiciary and from the role of Lord Chancellor and the newly created role of Secretary of State for Constitutional Affairs (both roles are currently held by Lord Falconer).

48. With the Lord Chancellor sitting in the House of Lords and the Cabinet as well as acting as the most senior judicial figure, his role as preserver of judicial independence has recently become untenable.

49. APIL believes that whilst the role of protecting judicial independence both within and outside of government should be enshrined in statute and continue with the Secretary of State for Constitutional Affairs, the person filling the role should be a government minister and Member of Parliament (MP), rather than a senior judge and member of the House of Lords. The post holder would also need to sit in the Cabinet. The advantages of this arrangement would be that the Secretary of State for Constitutional Affairs would be accountable to the House of Commons, and the change would right the historical anomaly which meant that the previous Lord Chancellor was the only member of the Cabinet not to be accountable in this manner.

Membership

Membership groups in the Commission

50. Commissions in other jurisdictions are mostly a combination of judges, practising lawyers, and lay people (often including those with experience of personnel management and appointments). APIL agrees with the DCA in that the Judicial Appointments Commission for England and Wales should have the same basic composition of skills and professions.

51. APIL purposes that the Judicial Appointments Commission should be drawn from four groups as follows:

- The judiciary
- Qualified lawyers and legal academics
- Lay people with expertise in recruitment and training methods
- Lay people representing the community as a whole.

Balance of membership

52. The key to establishing a successful, well-respected, independent commission is to get the balance of members right. It is imperative that there is a good balance of members from a reasonably wide range of different groups and backgrounds, so that no one section dominates and the commission can form a strong identity, distinct from the vested interests of the groups from which its members are drawn.

53. APIL disagrees with the DCA proposal that the commission should have 15 members, and that each of the three groups mentioned would be equally represented; thus there would be five members from the judiciary, five legally qualified members and five lay members. We agree that no one group should dominate the commission, but we feel that there should be the same number of lay members as legally qualified members. At the moment lay members only represent 33 per cent of the commission, whilst we propose that the lay members should constitute 50 per cent of the commission.

Tenure

54. In order to ensure complete independence when it comes to appointing judges, APIL believes that the commissioners should be assured security of tenure. This would ideally mean that they serve for a pre-determined fixed length of time. Yet their contracts must be sufficiently protected to ensure they are not able to be removed from office for making a decision or recommendation that is contrary to the will of the executive or those who appointed them.

55. Admittedly there would be a need for some statutory provisions to allow for the removal of a commissioner should circumstances arise in which it was no longer appropriate from him to remain in office.

**Selected Questions in DCA Consultation Paper – Constitutional Reform: A
New Way of Appointing Judges**

Question 1:

Do you prefer:

- i. An appointing commission?**
- ii. A recommending commission? or**
- iii. A hybrid commission?**

What are your reasons?

56. APIL believes that the Judicial Appointments Commission should be wholly responsible for the recruitment, selection and promotion of the judiciary, and totally independent from the Government. As such, APIL supports the appointing commission model, as detailed above, because it best meets these requirements. Indeed it is envisaged that the Judicial Appointments Commission will be formulated in a similar fashion to other independent regulatory bodies, such as the Electoral Commission.

57. APIL believes having a commission which appoints judges without any ministerial involvement (such as appointing commission) would remove any potential for allegations that particular judicial appointments were made according to a minister's direct personal preference or to party or other affiliation.

58. In respect of whether the Commission appoints directly or by recommendation to The Queen, APIL feels that either option would ensure judicial independence. Thus APIL would support the option that causes the least amount of constitutional upheaval and delay. (See *paragraph 3 – 10*)

Question 4:

Do you have a view as to any special arrangements that will need to be made by the Commission in dealing with senior appointments from among the existing judiciary?

59. APIL believes that the same structure and methods can be effectively used by the Judicial Appointments Commission to deal with senior appointments from among the existing judiciary, as are used to appoint new members to the judiciary.

60. As with other appointments, however, the assessment of the relevant criteria has to be done in an open and transparent process. The previous method of selection, that of secret consultation or 'secret soundings', amongst high ranking members of the judiciary, is neither open nor transparent.

61. In respect of the appointment of senior judges, to the Court of Appeal or to Head of Division, the DCA proposes that there should be some prior consultation with the relevant Secretary of State. APIL is strongly opposed to any political interference in the judicial appointments process, regardless of the seniority of the appointment, and such ministerial consultation would be decidedly contrary to the need for separation of powers.

62. APIL believes that the judicial career structure should allow for promotion on merit and should also be flexible, allowing movement between differing levels of judicial post. *(See paragraph 11 – 13)*

Question 7:

Do you agree that the appointment of coroners should be brought into line with that of other judicial office holders?

63. APIL considers including coroners in the remit of the Judicial Appointments Commission would be inappropriate as the role of a

coroner, whilst judicial in the widest sense, is fundamentally different.
(See paragraph 17 – 19)

Question 11:

What formal status should the Commission have? Should it be:

- i. a Non-Departmental Public Body?**
- ii. a Non Departmental Public Body supported by an agency?**
- iii. a non-Ministerial Department? or**
- iv. should it have some other status? If so what?**

64. Of the three options detailed by the DCA, APIL considers the most appropriate legal structure for the new Judicial Appointments Commission to be that of a non-departmental public body. This means that the Commission will be responsible for recruiting and employing its own staff. The Commission would be independent of Government but would be sponsored by the Department for Constitutional Affairs and would look to the Department for funding.

65. In terms of reporting to a select committee, APIL feels that this is inappropriate for the regional Judicial Appointments Commissions due to their diversity of structure and procedure. Accountability will be via their transparent procedures and structured complaints systems. (See paragraph 20 – 23)

Question 12:

Do you agree that the Commission should take on those functions which relate directly to the appointments process (paragraph 88) and that the Government should retain responsibility for policy relating to appointments (paragraphs 90-92)? If not, please provide views on which responsibilities should, and which should not, pass to the Commission and why.

66. The criteria for judicial appointment are designed to ensure that those appointed to judicial office are the most suitably qualified and able to

perform their role in meeting the following objectives: to ensure the effective delivery of justice; and to improve the level of public confidence in the justice system.

67. APIL feels that there are numerous improvements needed in the current criteria and process of judicial appointments. In summary, we would like to highlight the following points:

- Different kinds of legal experience should not carry different weight in recruitment, or be indicative of a lack of impartiality.
- The impartiality of judges is essential, but we strongly oppose the view that judges should be disqualified merely on the basis of membership of organisations such as APIL.
- To diminish accusations of bias, we would suggest judges continue to be required to swear an oath of office.
- The selection criteria for judicial appointments should be set and clearly defined.
- The appointment process should incorporate standard good recruitment practices, including open competition for all judicial posts with objective and transparent criteria.
- We strongly discourage the use of secret consultations in the appointment process, and would prefer to see the use of assessment centres encouraged and expanded.
- APIL also feels that the recruitment process should be conducted as quickly as practicable to reduce disruption for all applicants.
- Finally, APIL would like to stress that the overwhelming criterion for judicial appointment should always be merit. (*See paragraphs 24 – 35*)

Question 13:

Do you agree that the Commission should be tasked with establishing how best to encourage a career path for some members of the judiciary?

68. APIL agrees with the DCA in that the judiciary is currently not reflective of the society it serves. We believe more can, and should be, done to enable the judiciary to be more reflective without reducing quality.

69. While the measures which would enhance diversity are outside of the remit of this particular response, APIL does have some preliminary suggestions. For example, we propose more part time sittings. This should be organised so as to better accommodate the working practices of all. *(See paragraphs 36 – 37)*

Question 14:

What other steps could be taken by the Commission to encourage diversity?

70. In addition to our response to question 13, APIL members have suggested that steps should be taken to make the judiciary more attractive to younger professionals, potentially at the height of their powers. One possible alternative is that after qualifying as a solicitor, barrister or legal executive and gaining five years experience, a lawyer would either be promoted to the judiciary or apply to join a 'judge school'.

71. As mentioned above, APIL considers the measures which would enhance diversity as being outside of the remit of this particular response. *(See paragraphs 36 – 37)*

Question 17:

Should the responsibility of the Secretary of State for protecting judicial independence be enshrined in statute?

72. APIL feels that whilst the role of protecting judicial independence both within and outside of government should be enshrined in statute and continue with the Secretary of State for Constitutional Affairs, and the person filling the role should be a government minister and member of parliament (MP), rather than a senior judge and member of the House of Lords. The post holder would also sit in the Cabinet. The advantages of this arrangement would be that the Secretary of State for Constitutional Affairs would be accountable to the House of Commons, and the change would right the historical anomaly which meant that the previous Lord Chancellor was the only member of the Cabinet not to be accountable in this manner. *(See paragraphs 47 – 49)*

Question 19:

Should the Commission include judicial members, legally-qualified members and lay members as proposed?

If so, how should the balance between the membership groups be struck?

If not, how should the Commission be constituted?

73. Commissions in other jurisdictions are mostly a combination of judges, practising lawyers, and lay people (often including those with experience of personnel management and appointments). APIL agrees with the DCA in that the Judicial Appointments Commission for England and Wales should have the same basic composition of skills and professions.

74. APIL purposes that the Judicial Appointments Commission should be drawn from four groups as follows:

- The judiciary
- Qualified lawyers and legal academics
- Lay people with expertise in recruitment and training methods

- Lay people representing the community as a whole.

75. APIL, however, disagrees with the DCA proposal that the commission should have 15 members, and that each of the three groups mentioned would be equally represented; thus there would be five members from the judiciary, five legally qualified members and five lay members. We agree that no one group should dominate the commission, but we feel that there should be the same number of lay members as legally qualified members. At the moment lay members only represent 33 per cent of the commission, whilst we propose that the lay members should constitute 50 per cent of the commission. *(See paragraphs 50 – 53)*

Appendix B

**COURT SERVICE CONSULTATION
MODERNISING THE CIVIL COURTS**

24 APRIL 2001

COURT SERVICE CONSULTATION

MODERNISING THE CIVIL COURTS

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

24 APRIL 2001

The executive committee would like to acknowledge the assistance of the following people who contributed to the preparation of this response:

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MODERNISING THE CIVIL COURTS

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes the opportunity to respond to this consultation document, which seeks views on the modernisation of the civil courts. Modernisation is fully supported and, indeed, is vital if the civil justice reforms are to operate as intended and to their full maximum. In his “Access to Justice” interim report published in 1995, Lord Woolf in chapter 13 “stressed the importance of the role of IT in supporting the implementation of [his] more general recommendations...”¹ He further stated that judicial case management technology and an IT strategy for the civil justice system were “**fundamental**” as they constituted the tools needed “to support [his] main proposals...”² His general conclusion on this issue was that a vision of a modernised civil justice “in seven to ten years’ time” ought to be devised.³ It is extremely regrettable that such a vision is still a mere proposal in view of the fact that five years have passed since the recommendation was made.

¹ Chapter 21, para. 1

² Chapter 21, para. 2

³ Chapter 21, para. 36

3. In summary, APIL supports modernisation of the civil courts which includes the following facilities:

- Sufficient local court services based on analysis of regional need
- An IT, telephone and video infrastructure that allows a “joined up” court service rather than a fragmented court service as currently available. This would allow court users to deal with their local court regardless of the location of the court in which the relevant claim has been issued. This would extend to accessing information locally; being able to give evidence locally by video link to another court; allowing telephone conferences between solicitors offices and judge’s chambers (for example, case management conferences)
- Use of electronic facilities to allow direct contact with the relevant judge/court and to assist with procedural requirements such as filing, notification by the court, case management and access to court records
- Judicial case management technology to allow for a consistent, efficient national approach including direct access by the judiciary to electronic court diaries
- Ongoing adequate and appropriate training of the full and part time judiciary and all court staff.

4. Before responding to the particular questions raised in the consultation paper, APIL would like to outline several, more general, but fundamental points. Firstly, the consultation paper refers to the provision of court services as “business services”. APIL does not dispute that the court service should become more efficient and reduce unnecessary costs and that this can, to some extent be achieved, through the adoption of some “business sense”. The court service, however, is a vital public service and it should allow for the fulfilment of the human right to a fair trial⁴. It should not be run as a business to the detriment of this democratic purpose nor be hindered by having to be self-financing. The modernisation project should not be seen as a means of

⁴ Article 6, European Convention of Human Rights and Fundamental Freedoms

reducing the cost of the Court Service but as a means of improving this cornerstone public service.

5. Secondly, it is stated that the “modernisation project” has a £43 million budget. In his “Access to Justice” final report Lord Woolf stated:

“The additional information that I have received since publication of [the interim] report, both here and abroad, has strengthened my conviction that sensible investment in appropriate technology is fundamental to the future of our civil justice system.”⁵

APIL has grave concerns that £43 million is not a “sensible investment” and is far too small a budget to achieve the necessary modernisation proposed by the Court Service. We would invite the Court Service to provide a breakdown of this budget but would provisionally state that a larger budget is necessary to achieve what would, in the long term, be cost saving and efficiency improving reforms. APIL would also invite the Government to commit to long-term investment in the modernisation of the civil courts as it represents not just a long-term, but an on-going project.

6. Increasing efficiency through the streamlining of services and centralisation must not occur at the expense of local services. The introduction of IT within the court system and new methods of delivering court services must not preclude those who can only, or would rather, deal with the court on a face to face basis. Related to this is the point that those without access to computers or without computer skills, for example, the elderly, should not be discriminated against. Local courts should not be closed until the modernisation proposals can deliver by the proposed alternative means the required court services in those areas.
7. APIL is also concerned about the proposed prioritisation of the different stages of modernisation. Replacement of the IT infrastructure is only a medium term

⁵ Chapter 21, para. 1

priority. It must, however, be fundamental to any modernisation and the implementation of any of the proposals.

8. Finally, APIL is extremely concerned that these proposals have been made **before** the assessment and analysis of regional need of court services, population distribution, public transport and road networks. The proposals should, in fact, be based on such an analysis. For this reason, it is at times difficult to judge the adequacy and appropriateness of the proposals because the proposals are not made in context.

DEVELOPING ACCESS TO SERVICES BY TELEPHONE

Q1 Do you agree that customers should be able to give instructions to the court by telephone?

9. APIL strongly believes that court users should be able to give instructions to the court by telephone if this method is preferred. This would remove the need for lawyers and clients to attend court where appropriate, which can be both time consuming and costly. The introduction of this proposal would improve the efficiency of the Court Service, the service provided by lawyers to personal injury victims specifically and litigants generally and reduce costs to both the litigants and the Court Service.

Q2 Can you identify services that you would like the court to provide by telephone?

10. APIL envisages that the area that could most benefit from greater use of the telephone is that of case management conferences (CMCs). Much time and money is involved in attending CMCs which could be avoided through greater use of telephone conferencing where it is appropriate.

Q3 Are you satisfied that the appropriate levels of security can be achieved in order that the court can deal with claims that instructions have been falsified?

11. The introduction of new technologies and greater use of telephones within the court service obviously raises some concern about security. No system, however, is flawless and APIL is confident that security issues can be resolved satisfactorily, provided sufficient consultation with experts, investment and training takes place.

INTERNET AND E-MAIL SERVICES

Q4 What are your views on the use of the technologies outlined on pages 36 – 38?

12. The introduction of on-line transactions, e-mail transactions, automation and workflow, links to government websites and access to public records are fully supported. These proposals would provide a much improved, more efficient service to court users, provided security issues are satisfactorily resolved. The on-line issue of money claims and customer partnerships are not directly relevant to personal injury litigation and so no comment is made upon these proposals. The introduction of such technologies, however, should not preclude or discriminate against court users without access to the necessary IT.

Q5 What a) services and b) information do you think should be available via the internet?

13. The proposed availability of the following information and services over the internet are fully supported:

- Electronic issue of all cases

- Electronic notification by the court
- Direct access for court users enabling them to initiate transactions, for example, to enter judgment by default
- Case management and progression
- Electronic filing
- Access to the records of the court

14. To expand on the above, it would be extremely useful to be able to access interactive court forms over the internet that could be completed on screen and forwarded to the relevant judge or court and the opponent. This would be particularly useful for court orders, uncontested applications, listing questionnaires and allocation questionnaires.

Q6 What are your views on the opportunity for electronic partnerships for particular customers or processes?

15. APIL cannot envisage any electronic partnerships in the context of personal injury claims and so no comment is made upon these proposals.

REDUCING COSTS AND EXTENDING SERVICES THROUGH CENTRALISED ADMINISTRATION

Q7 What are your views on the development of a more distinct small claims business within the courts, supported by a customer contact centre and a video network?

16. Due to financial limits, few personal injury claims fall within the small claims track. Proposals to increase the efficiency of the service devoted to small claims, however, do appear sensible. A centre concentrating on the administration of small claims incorporating increased use of electronic services could save extremely valuable court time and reduce the cost of such

claims, thereby increasing “proportionality” within the civil justice system as envisaged by the civil procedure rules.

Q8 What are your views generally on the issues raised by the proposals for centralisation of administration?

17. The centralisation of administration is supported, as it is believed that it would greatly improve the efficiency of the Court Service and reduce its costs. It would also assist with the unification of a fragmented, regional-based court system. It is only supported, however, if, as is stated on page 39/40 of the consultation document:

- Local court services are still available for those who require them;
- Staff are adequately and appropriately trained.

18. APIL would particularly like to see centralisation of certain aspects of the court service such as the accounts system. Court accounts are currently held individually by each court and payments to one court cannot be made through another. This is extremely inconvenient and is an area for improvement.

Q9 What views do you have on our early thinking about the business centre approach and the centralisation of services?

19. As has been noted in response to questions 8 and 9, the business centre approach and centralisation of services are supported provided sufficient note is taken of the points made by the Court Service on page 39/40 of its consultation paper as follows:

- Local court services must not be removed despite the centralisation of administration

- The technology infrastructure must be adequate and appropriate if centralisation and business centres are to operate successfully
- The links from administrative centres to hearing centres must be effective
- Staff should be fully trained and changes should not lead to the loss of experienced staff

EXTENDING HOURS OF SERVICE

Q10 How important to you are extended hours of service for a) office services and b) hearings?

20. If many services are to be available via the internet, many services will be available 24 hours a day and this is supported, provided lawyers are not required to be available on the same basis. 24 hour services in other areas are not advocated as they are likely to increase the costs of legal services.

Q11 What office hours of service would you like to see from the courts?

21. APIL does not believe that there are any particular problems with the current hearing and court office opening hours, though it may be useful to introduce normal office opening hours of between 9am to 5.30pm. It may, however, be appropriate to review hours of service once implementation of the proposals has begun.

Q12 In which areas do you want 24-hour service?

22. There are no particular areas of personal injury litigation in which a 24 hour service is highly desirable. If more services are available via the internet and e-mail, however, those services would usefully be available on such a basis.

NEW WAYS OF GETTING PROCEDURAL ADVICE AND INFORMATION

Q13 Are there other electronic ways by which the Court Service should deliver advice and information?

23. The proposed electronic ways by which the Court Service should deliver advice and information are welcomed and APIL cannot currently envisage any other electronic ways by which the Court Service should deliver advice and information. This should, however, be regularly reviewed.

Q14 Do you agree that there is a wider advice role for our staff and do you have views on how such a service might be developed?

24. On page 47 of the consultation document it is noted that it would be useful if court staff were able to provide more than just “procedural advice” but it is unclear what further advisory role is envisaged. In principle, however, it is believed that the more services court staff can deliver to the community, the better, provided all staff are adequately and appropriately trained.

“GATEWAY” PARTNERSHIPS PROVIDING ACCESS TO SERVICES

Q15 What other areas may be suitable for a similar approach?

25. APIL is currently unaware of any areas within personal injury litigation which could benefit “gateway” partnerships providing access to justice. Many personal injury victims visit the Citizens Advice Bureaux for advice before consulting solicitor. At this stage, however, the personal injury victims would require legal advice rather than advice or information relating to the Court Service.

Q16 In what other ways should the Court Service seek to extend its services to the citizen?

26. It is extremely difficult to respond to this question in view of the fact that an assessment of community needs has not yet taken place as outlined in paragraph 7.

PROVIDING LOCAL SERVICES COST EFFECTIVELY

Q17 Do you agree that the current network of county courts does not represent the ideal geographical network?

27. APIL is concerned about the court closures that have been taking place and does not believe that further court closures should take place before the implementation of the modernisation proposals and adequate services are provided but by different means. Without the assessment of community needs it is difficult to adopt a definitive view as to whether the current network of county courts does not represent the ideal geographical network.

Q18 Do you agree that there is scope for new ways of using our estate to deliver the services we provide?

28. Provided local courts and local court services are retained, APIL has no objection to a review of the use of the Court Service estate, especially if this is likely to lead to more efficient and economic use of space and buildings, provided community needs are still adequately served.

Q19 Do you have other suggestions as to how the Court Service might address this issue?

29. It is imperative that a review is conducted into regional need, population distribution and analysis of public transport and road networks before the provision of local court services is reformed.

FLEXIBLE LOCAL VENUES

Q20 What are your views on the proposed approach to local hearing venues?

30. APIL is not opposed in principle to the proposal that hearing venue structure should be based on the use of hired facilities and shared use with magistrates' courts and other tribunals. APIL would, however, be opposed to this proposal if it resulted in a reduction of time available for county court hearings as this would directly reduce access to justice. Even if this results in fewer hearing venues than currently available, other court services such as the provision of information should be retained on a local basis. Again, however, it is difficult to assess whether the proposals are adequate as they are not based on the analysis of regional community needs.

A STRATEGIC AND PARTNERSHIP APPROACH TO THE COURT OFFICE

Q21 Do you agree that the citizen (as opposed to other practitioners) essentially only requires a small range of the services?

31. It is agreed that most communication with, or advice on, the court service is provided by lawyers in the context of personal injury litigation, as most personal injury victims require a lawyer to adequately pursue their claims. It is still essential, however, that local court services are retained so that information is available on a local basis when it is required.

Q22 What are your views on the proposition that some of the key services provided by the courts might be made available at a wider range of outlets?

32. The more that court services are integrated into the community, the better, provided those services adequately serve the community's needs. The provision, however, of services at a wider range of outlets should not lead to a fragmented and confusing court service within a local community.

Q23 What are your views on the notion that the front office of the court might be a shared facility within another agency?

33. APIL has no particular objections in principle to this proposal providing the services available are still adequate and appropriate for the geographical location.

REDUCING ATTENDANCE BY USING TECHNOLOGY

Q24 How do you think that the Court Service should develop video services for the civil and family courts?

34. It is believed that in the context of personal injury litigation telephone conferencing would be more useful than video conferencing. It is envisaged, however, that video conferencing would assist with the taking of expert and lay evidence at trials. Video links are used in criminal proceedings in the context of, for example, child abuse cases, and there is no reason why they would not be similarly useful in civil proceedings. It would be useful because it is likely to increase the availability of witnesses and prevent delays in hearing dates. Such a system would be reliant, however, on all hearing centres having sufficient video facilities and trained staff so that witnesses can give evidence at their local court at a hearing in another court. It should be noted,

however, that experts would still have to be available following the provision of video evidence to assist instructing lawyers with, for example, cross examination.

Q25 In which areas do you believe that personal attendance can be reduced, and in which areas do you do you consider that it will continue to be necessary?

35. As noted above, it would be extremely useful to allow uncontroversial witnesses and experts to participate in a hearing via a video link rather than attend in person.

SERVICE FROM ANY “BRANCH”

Q26 Should we aim to provide access to service at every court, or are there limits in respect of particular services?

36. It is not believed that it is necessary to provide all services in all courts. It is proposed by the Court Service, and it is accepted, that it may be sensible to streamline hearing venues. At the very least, however, every local community should have access to information on the court service. In addition, it would be extremely useful if the court service was less fragmented so that services for all courts are available from the local court, even if that is not the court through which the case has been issued.

Q27 What are your views about the impact on parties of the way in which hearing venue is currently decided, and on the opportunities to reduce that impact?

37. However the hearing venue is decided, if the claimant, defendant and witnesses live in different locations, problems will be experienced for those

involved. Greater use of video links as discussed above, however, would greatly reduce any problems experienced and increase the efficiency of the system.

SUPPORTING THE JUDICIARY TO ENABLE DISPUTES AND OTHER MATTERS TO BE RESOLVED JUSTLY

Q28 What are your views on which are the most important technologies available to support the work of judges?

38. In his final report, Lord Woolf described judicial case management technology as “fundamental” because it was one of the “tools needed to support [his] main proposals.” APIL agrees with this statement. Much concentration is now placed on judicial control on the progression of a claim and judges must be given the necessary tools to achieve what is envisaged of them in the civil procedure rules. This would include having access to the case file electronically and the ability to contact parties by e-mail and telephone to reduce the need for court hearings and increase efficiency.

39. The above, however, depends upon appropriate and adequate investment in software, equipment and expert training for all judges whether full or part time.

Q29 Are there other technologies that would help to support judges or provide improved customer service?

40. The only other technology currently available that APIL believes would be of use to both the court and court users is “Livenote” i.e. voice recognition software. Trials using this equipment are shorter and more effective than they would have been if the traditional manual methods of recording the evidence had been employed.

DEVELOPING THE ELECTRONIC FILE

Q30 What are your views on the potential for electronic filing?

41. This proposal is strongly supported and will be extremely useful. It means that once documents are complete and ready to be filed, they can simply be e-mailed to the relevant court or judge and the other parties. This would be extremely efficient. Provision would have to remain, of course, for the filing of records in the traditional manner. Common procedures and standards on electronic filing, however, would have to be agreed.

Q31 How do you think XML schemata should be developed in order to secure the widest possible uptake and exploitation?

42. APIL believes that this is a matter best addressed by IT experts.

WHAT PRICE TECHNOLOGY IN THE COURTROOM

Q32 Which technologies do you think would have the greatest potential benefit?

43. The civil procedure rules are based on the premise that they will be supported by a modernised IT infrastructure. E-mail, the internet, telephone and video conferencing would appear to have the greatest potential benefit. This question suggests, however, that a costs benefit analysis will take place on the introduction of new technologies which would be extremely regrettable and extremely undesirable. Full and proper investment should be made into this project.

Q33 What are your views on how the costs of courtroom technology should be born or apportioned within the system?

44. APIL feels strongly that the court service should be publicly funded and that individual courts should not be required to be self-financing. This point has been outlined in the introductory paragraphs of this response. However the court service is funded, investment in courtroom technology is fundamental to the modernisation of the courts.

PUBLIC ACCESS vs. PRIVACY AND SECURITY

Q34 Do you believe there are areas that are unsuited to electronic service delivery as a consequence of privacy and security requirements?

45. Provided the system is sufficiently secure, APIL does not believe that any aspects of personal injury litigation are unsuitable for electronic service delivery.

Q35 How extensive should internet search facilities and public access facilities be?

46. Internet search facilities and public access facilities should be as extensive as possible subject to security and confidentiality.

Questions 36-40 do not concern personal injury litigation and for this reason, no response is provided to these questions.

MAINTAINING TRADITIONAL SERVICES BUT BECOMING MORE EFFICIENT

Q41 Do you have views on the contracting out of services?

47. The court service is a public service and it is strongly believed that the core services provided should be provided by the state and not be contracted out. As a public service, the providers should be fully accountable to the public served. Some areas may, however, benefit from contracting out such as the provision of accounts and IT services. This is because these parts of the service are essentially self-contained and would benefit from experienced contractors.

Q42 What are your views on the provision of electronic court services by licensed 3rd party providers?

48. As noted above, APIL is not opposed to IT services being provided by contractors or licensed 3rd party providers provided that such contractors only provide and support the IT infrastructure necessary to deliver the public service.

Q43 What are your views on proposals for fee incentives and electronic payment?

49. APIL is concerned about the proposal that electronic payment should be encouraged through fee incentives. Electronic payment should be available as it provides an extremely efficient method of accounting and this proposal is fully supported. The introduction of fee incentives would, however, discriminate against those unable to afford the technology to allow electronic payment and, for this reason, cannot be supported.

INVESTING IN THE RIGHT INFRASTRUCTURE, BUT CONCENTRATING ON THE CUSTOMER

Q44 What are your views on our proposals to provide internet access to the services of the Claims Production Centre, and the County Court Bulk Centre?

50. The proposals do not concern personal injury litigation and so no response is made to this question.

Q45 Are there other developments in electronic services in the short term that you think would enhance customer service?

51. As noted in the introductory paragraphs, it is believed that it is of paramount importance that the necessary infrastructure should be put in place for the proposed modernisation of the civil courts and that this should be a short term (rather than medium term) priority.