



House of Commons

Committee on the  
Lord Chancellor's Department

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# **Courts Bill**

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**First Report of Session 2002–03**

*Volume I*





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Lord Chancellor's Department

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***Volume I***

*Report, together with formal minutes*

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## **The Committee on the Lord Chancellor's Department**

The Committee on the Lord Chancellor's Department is appointed by the House of Commons to examine the expenditure, administration, and policy of the Lord Chancellor's Department and associated public bodies.

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### **Committee staff**

The current staff of the Committee are Huw Yardley (Clerk), Richard Poureshagh (Committee Assistant) and Julie Storey (Secretary).

### **Contacts**

All correspondence should be addressed to the Clerk of the Committee on the Lord Chancellor's Department, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196. The Committee's email address is [lcdcom@parliament.uk](mailto:lcdcom@parliament.uk).

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## Summary

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This is the Committee's First Report since its establishment, in January this year, to scrutinise the work of the Lord Chancellor's Department and associated public bodies. It is the result of an early decision to undertake a brief inquiry into the very significant piece of legislation coming out of the Lord Chancellor's Department which is the Courts Bill. Although the Bill follows the report of the Auld Review of the criminal courts,<sup>1</sup> and was prefigured in the White Paper *Justice for All*<sup>2</sup>, it was not itself published in draft and as a result had been the subject of no direct pre-legislative scrutiny. The Committee therefore considered that it would be helpful to the House to produce a brief report highlighting the main issues of concern.

The Courts Bill will implement those recommendations contained in the Auld Review which the Government accepted in *Justice for All*. The main purpose of the Bill is to bring magistrates' courts into a unified court system with the county, Crown and High Courts. Provision is also made for the collection of fines, court security, judicial titles, periodic payment of damages and a transferral to the Lord Chancellor responsibility for appointing magistrates in the Duchy of Lancaster.

In this Report the Committee highlights the main issues that Members of the House may wish to consider on second reading and in Standing Committee, and makes a number of recommendations. Those recommendations include:

- Addressing the issue of accessibility and court closures by:
  - redrafting the general duty in clause 1 of the Bill to ensure that the Lord Chancellor has a duty to provide a system which is accessible, as well as efficient and effective; and
  - requiring the Lord Chancellor to consult local courts boards about decisions on places, dates and times of magistrates' court sittings.
- Considering further the precise role of the proposed courts boards.
- Questioning the extent to which the proposal to make justices' clerks civil servants may affect the effective performance of their functions.
- Exploring how proposed powers for new fines officers might impact on those on very low incomes.
- Considering the extent of the need for a police presence for court security and the accountability of the proposed court security officers.

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1 *Review of the Criminal Courts in England and Wales*, October 2001

2 Cm 5563, July 2002

- Accepting the amendment made in the House of Lords requiring the Lord Chancellor to have regard to the need to facilitate access to justice when setting fees.
- Supporting the proposed power to impose costs on third parties in cases where there has been serious misconduct, but calling for a draft of the regulations defining the scope of those powers to be made available when the House considers that part of the Bill.

# 1 Introduction

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1. This is the Committee's First Report since its establishment, in January this year, to scrutinise the work of the Lord Chancellor's Department and associated public bodies. It is the result of an early decision that we should undertake a brief inquiry into the very significant piece of legislation coming out of the Lord Chancellor's Department which is the Courts Bill. Although the Bill follows the report of the Auld Review of the criminal courts, and was prefigured in the White Paper *Justice for All*,<sup>3</sup> it was not itself published in draft and as a result had been the subject of no direct pre-legislative scrutiny. We therefore considered that it would be helpful to the House if we were to produce a brief report highlighting the main issues of concern, particularly those on which bodies submitting evidence to us have anxieties.

## The Courts Bill

2. The Courts Bill was introduced in the House of Lords on 28 November 2002. On introduction, the Bill was 113 pages in length, consisting of 101 clauses and 7 schedules. The Bill is due in the House of Commons for Second Reading on Monday 9 June, having been amended in a number of places during its passage through the Lords.

3. The White Paper *Justice for All*, which preceded the Bill, set out the intention to:

“legislate to integrate the management of the courts within a single courts agency to replace the existing Magistrates' Courts' Committees and the Court Service. This will build on the best attributes of both organisations to work to deliver decentralised management and local accountability within a national framework. The aim of the new agency will be to enable management decisions to be taken locally by community focused local management boards, but within a strong national framework of standards and strategy direction. It will be accountable to Parliament through the Lord Chancellor's department.”<sup>4</sup>

4. The White Paper recognised that the current fragmented court framework was divisive, inefficient and lacked national accountability. Accordingly, the proposals for a unified court management service requiring the “integration of management and local flexibility and accountability within a national framework of national standards” received much support and forms the basis for the Courts Bill.

5. If implemented, the Bill will make significant changes to the present court system, including the unification of the criminal courts and the abolition of the present Magistrates' Courts Committee structure. It will introduce new courts boards<sup>5</sup> and make provisions for fines officers and court security officers. It will also allow courts to make orders for costs against third parties in criminal proceedings and award damages in the form of periodical payments in personal injury cases. A central role is given to the Lord

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<sup>3</sup> Cm 5563, July 2002

<sup>4</sup> *Ibid*, p 148

<sup>5</sup> Originally known as “court administration councils”, but renamed by an amendment in the House of Lords

Chancellor under the Bill's provisions, which place him under a general duty to ensure an efficient and effective system to support the courts.

## Conduct of our inquiry

6. To assist Members of the House of Commons with their examination of the Bill, we decided to hold a brief series of evidence sessions before the Bill reached this House. Following an announcement by the Committee of its intention to take oral evidence on the Bill, we received written submissions from a number of organisations, including:

- Association of Justices' Chief Executives
- Law Society
- General Council of the Bar
- Magistrates' Association
- Justices' Clerks Society
- Central Council of Magistrates' Court Committees
- Medical Defence Union.

All these submissions were considered by the Committee. Those which are not otherwise available (from the organisations concerned)<sup>6</sup> are published with this Report.<sup>7</sup>

7. Oral evidence was taken from a total of 9 organisations and individuals over three sessions. They included the Law Society, the General Council of the Bar, the Magistrates Association, the Justices' Clerks' Society, Professor Lee Bridges (Legal Research Institute, University of Warwick) and Nicola Padfield (Institute of Criminology, University of Cambridge), as well as officials from the Lord Chancellor's Department. All the oral evidence is published with this Report.<sup>8</sup>

8. We have not attempted to conduct a detailed or comprehensive review of the Bill. This aim of this Report has been to highlight the most important and controversial measures in time for the Second Reading in the House of Commons. The areas we have concentrated on are:

- The scope of the Lord Chancellor's powers, including issues relating to court closures and accessibility (Parts 1 and 2 of the Bill)
- Courts Boards (Part 1)
- Justices' clerks (Part 2)
- Fines officers (Part 2)

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<sup>6</sup> Eg. Second Reading Briefs

<sup>7</sup> HC 526-II

<sup>8</sup> *Ibid*

- Court security (Part 4)
- Court fees and costs (Part 8).

### Further amendments planned

9. We understand that the Government is planning to bring forward significant amendments to the Bill as it currently stands in one area, namely fine enforcement. These may include amendments enabling wider use of Attachments of Earnings and Deductions from Benefits within the fines collection scheme, particularly for offenders with a track record of default. It may also include the creation of a new offence penalising those who fail to provide means information and/or the financial details necessary to allow an attachment order to be made. In addition, the Home Office are looking at the feasibility of alternative sentences including unpaid work instead of fines in particular circumstances. The new amendments and alternative sentences, if taken forward, will need to be piloted along with those already set out in Schedule 3.<sup>9</sup> **The Committee hopes that these amendments will be brought forward in time for Committee Stage rather than Report Stage, and that the timetable for Committee and Report Stages will allow for adequate scrutiny of provisions which have not been considered in the House of Lords.**

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<sup>9</sup> HL Deb, 8 May 2003, col 1256

## 2 Matters for debate

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### The scope of the Lord Chancellor's powers

10. Part 1 of the Bill places the Lord Chancellor under a general duty to provide an efficient and effective system to support the carrying on of the business of all the main courts in England and Wales, namely the Court of Appeal, the High Court, the Crown Court, the county courts and the magistrates' courts. Clause 1 of the Bill provides a statutory basis for the general duty. In practice, and as recommended by the Auld Review, the responsibility will be discharged by a single executive agency, as part of the Lord Chancellor's Department, replacing the present Court Service and the Magistrates' Court Committees.

11. The new court agency structure, supported by a network of local boards, has been presented as the best means of ensuring that decisions on the local delivery of justice are taken locally, whilst providing a national framework within which to improve standards of service across the board.<sup>10</sup> However, there is concern that, given the central role envisaged for the Lord Chancellor by the Bill, the general duty under clause 1 is insufficient.

### Accessibility

12. Since our oral evidence sessions a number of amendments have been made in the Lords to the Lord Chancellor's general duty in clause 1. A significant amount of debate in the Lords has concentrated on the issue of access to justice, particularly in relation to court fees. However, we recognise that accessibility is a much wider issue and covers physical proximity, physical access for the disabled and various other issues.<sup>11</sup> The reforms in the Bill are intended to improve the management of the courts, and the proposals for a unified courts administration are meant to enable better use of resources at national and local levels, including better use of the court estate. However, as highlighted by the Law Society, 'greater use of resources will not assist efficiency if the witnesses, families, victim and defendant cannot afford to travel to court.'<sup>12</sup> There is a risk that the merger between the higher courts and the magistrates' courts will reduce the number of courts and result in local justice being less accessible.

13. Professor Bridges from the University of Warwick suggested that clause 1 of the Bill should be redrafted to provide that the Lord Chancellor is under a duty to maintain an efficient, effective and *accessible* system of courts, including the Supreme Court, the County Court and magistrates' courts, and to ensure that appropriate services are provided to those courts.<sup>13</sup>

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<sup>10</sup> Lord Chancellor, Keynote speech at the Justices' Clerks' Society Annual Conference, Stratford-upon-Avon, 9 May 2003

<sup>11</sup> Q 68 [Professor Lee Bridges]

<sup>12</sup> The Law Society Parliamentary Brief, 9 December 2002

<sup>13</sup> Q 68

## Court closures

14. This brings us to the issue of court closures. Although the Bill does not deal specifically with this issue, **during the course of our inquiry it became evident that there were fears that the proposals in the Bill would make it too easy for the Lord Chancellor to close courts.** The provision of particular significance in this regard is clause 30, which empowers the Lord Chancellor to direct where and when magistrates' courts can sit and allows magistrates' courts business to be conducted at any place in England and Wales. The clause also allows the Lord Chancellor, with the concurrence of the Lord Chief Justice, to give directions as to the distribution of magistrates' courts business, excluding family proceedings.

15. Typical comments by witnesses on the subject of court closures included:

"... the Government proposals were driven by the need to cut costs rather than the need to establish an effective justice system which is locally delivered and locally accountable.... Provisions in the Bill will make it easier for the Lord Chancellor to shut down courts, further undermining local justice."<sup>14</sup>

"I think that the court closure programme will continue as a result of the continued modernisation and indeed there will probably be pressure for more court closures as there is pressure for more rationalisation but, in all of those cases, the key consideration at a local level has to be what is going to be the impact on people in this area of this closure should it go ahead or not."<sup>15</sup>

16. The Lord Chancellor's powers in the Bill could, of course, be used to re-open courts, as one of our witnesses pointed out:

"I think there could be scope for, perhaps, reversing court closures under unified administration because, obviously, the managers will be looking at the stock of court buildings as a whole, and because it has got "County Court" written on it today does not mean you cannot have "Magistrates' Court" on it tomorrow. That is actually a very positive thing that we think could happen and, in fact, is already happening in a less formal way with the Court Service and the magistrates' court service talking to each other in particular areas."<sup>16</sup>

17. There have been numerous court closures over the last twenty years and the issue is likely to remain a controversial one. Under the new national framework, the Lord Chancellor will become directly accountable for court closures and Ministers can be questioned in Parliament about them. Under the present system, the responsibility for closures lies with Magistrates' Courts Committees, operating within the resources made available to them by the Lord Chancellor's Department. The Lord Chancellor has an appellate role. We support the suggestion of Professor Bridges that the Lord Chancellor should be required to consult the courts boards about his decisions under clause 30,

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<sup>14</sup> Central Council of Magistrates' Courts Committees, Parliamentary Briefing Paper (not printed)

<sup>15</sup> Q 12

<sup>16</sup> Q 45

particularly in relation to court closures, and so utilise their knowledge and experience at local level.<sup>17</sup>

**18. Whilst we welcome the proposals for a unified administration, we recommend that the general duty in clause 1 of the Bill be redrafted to include a duty on the Lord Chancellor to provide a system that is accessible, as well as efficient and effective.**

**19. Moreover, we believe that the Bill as presently drafted may lead to centralised decision-making on court closures which does not take proper account of local circumstances. Accessibility includes ensuring that courts sit in places which are geographically convenient to victims, witnesses and other court users and are accessible by public transport. Accordingly, we recommend that the House pursue Professor Bridges' suggestion that the Lord Chancellor be required to consult the local courts boards about his decisions under clause 30.**

### **Court Administration Councils/Courts Boards**

20. Clause 4 of the Bill originally required the Lord Chancellor to set up court administration councils. Following an amendment passed by the House of Lords, the court administration councils have been renamed courts boards.<sup>18</sup> (We therefore use that term in the text of this Report.) The minimum requirements in respect of the composition of the courts boards are identified on the face of the Bill. Each board must include, amongst others, a judge and a lay justice. Clause 5 defines the role of the courts boards and imposes a duty on them to provide the Lord Chancellor with recommendations in relation to specific courts within the boards' remit.

21. The proposals for the new courts boards raised the greatest concern amongst those from whom we heard in the course of our inquiry. In the White Paper the Government envisaged the setting up of 42 local boards:

“we expect managers of courts to be accountable to new local management boards which will include representatives drawn for example from the judiciary, the magistracy, local court user groups, victims support groups, Local Authorities and the local community.... We expect the decision making to be decentralised to the local management boards, so that resources can be managed flexibly to meet local requirements.”<sup>19</sup>

The provisions in the Bill are, however, unclear as to the precise role, remit and composition of the new courts boards.

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<sup>17</sup> Qq 87–91

<sup>18</sup> HL Deb, 8 May 2003, col 1190

<sup>19</sup> Cm 5563, July 2002, para 9.24

22. The Magistrates' Association, for example, have stated:

“This is the area where we do have concerns because the Bill does not go into detail, it does not give ... the role and function of the councils and they are not the management boards that the White Paper described.”<sup>20</sup>

“...they are neither one thing nor the other; they are trying to be both consultative, representative and, partly, management. What we are seeking are proper management boards.... What is in the Bill, we believe, cannot work because what is required is a board that has one function and one function only, and that is to manage. If there is to be public accountability for how the courts are managed there needs to be other arrangements for that to be put in place.”<sup>21</sup>

23. The role of the courts boards, as it appears on the face of the Bill, is a purely consultative one. The Justices' Clerks' Society, however, oppose the involvement of the judiciary in the work of the courts boards, even on a consultative basis:

“No member of the judiciary should be involved with the operational management of the service and only with great caution in the strategic management... Even if it is to be a purely consultative body, the judiciary can be dangerously exposed... If local representatives become political in nature, the judiciary can be dragged into the political arena... For all these reasons the judiciary should not sit on these councils.”<sup>22</sup>

24. Clause 5(5) imposes a statutory duty on the Lord Chancellor to provide guidance to the boards about how they should discharge their functions. Clause 5(1) requires the courts boards to provide recommendations to the Lord Chancellor about how he should discharge the general duty imposed on him by virtue of clause 1.<sup>23</sup> Despite the obligation, in clause 5(2), to give due consideration to the recommendations of the courts boards when discharging his general duty, the Lord Chancellor is not actually required to give effect to those recommendations once considered. It is therefore difficult to see how the introduction of the courts boards will, in practice, fulfil the Government's aim of increased accountability. The management function envisaged in the White Paper has not been transferred to the Bill. The Lord Chancellor provides the courts boards with guidance, and he can do that more or less as he wishes.<sup>24</sup>

25. Following our inquiry, the exact remit and role of the courts board remains vague. We were informed by Lord Chancellor's Department officials that the courts boards were non-executive bodies with a consultative and managerial role,<sup>25</sup> but Yvette Cooper MP, Parliamentary Secretary at the Lord Chancellor's Department, has stated:

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<sup>20</sup> Q 33

<sup>21</sup> Q 39

<sup>22</sup> Briefing Paper from the Justices' Clerks' Society on clauses 4 and 5, February 2003 (not printed)

<sup>23</sup> See para 8, above

<sup>24</sup> Qq 113–119

<sup>25</sup> Qq 116, 125

“We envisage that the courts administration councils will take decisions or views on local court estate use.”<sup>26</sup>

This statement, whilst indicating in itself some confusion over the precise role of the courts boards, seems to imply that they might have more extensive powers than simply making recommendations. However, this larger remit is not evident on the face of the Bill. Furthermore, whilst some witnesses would welcome a greater executive role for courts boards, for others such an enhanced role would, as noted above, raise concerns about the proposed involvement of the judiciary.<sup>27</sup> **If the participants in the new structure have fundamentally conflicting views about what is and should be the role of the boards, conflict and confusion will certainly follow.**

**26. We strongly recommend that the House seek clarification as to whether the courts boards will have a management or merely an advisory role, how this should be defined in statute, and how the role will work in practice at a local level. Furthermore, the House will wish to explore the exact remit of the courts boards’ functions and why those functions are not defined on the face of the Bill, and are not expected to be defined in secondary legislation. If the manner in which the courts boards discharge their functions is to be set out in guidance, the House will wish to clarify the extent to which that guidance will be binding on the boards.**

27. The White Paper envisaged that the number of local boards would be 42. The Magistrates’ Association have expressed concern that the number of boards set up under the Bill might be fewer than 42, and they make a powerful case that the board areas should be co-terminous with other agencies such as the police, Crown Prosecution and Probation Services. In the last few years the Lord Chancellor’s Department has overseen a restructuring of Magistrates’ Courts’ Committees, in the face of significant opposition, on the basis that they needed to correspond in area to these services. The Magistrates’ Association believe that this structure has proved beneficial and that, given the wide-ranging responsibilities of the new bodies, areas any larger than this would be unworkable.<sup>28</sup> Co-terminosity would enable national priorities to be interpreted in the light of local circumstances and local needs.

28. The Bill proposes dividing England and Wales into local justice areas, each of which will have a courts board. Assurances have been given by officials in the Lord Chancellor’s Department that the 42 criminal justice areas will be a basic building block of the new organisation.<sup>29</sup> However, the Lord Chancellor has stated that the decisions have not yet been taken as to the number of courts boards or their precise composition.<sup>30</sup> Although the number of courts boards is not specified on the face of the Bill, clause 8 in Part 2 of the Bill provides that the Lord Chancellor may make orders altering the local justice areas. Any change in the local justice areas will necessarily affect the number of courts boards.

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<sup>26</sup> HC Deb, 8 April 2003, col 126

<sup>27</sup> See para 22 above. Memorandum from Malcolm Marsh, Honorary Secretary, Association of Justices’ Chief Executives (AJCE), January 2003 (not printed)

<sup>28</sup> The Magistrates’ Association, Courts Bill Briefing Paper, January 2003 (not printed)

<sup>29</sup> Q 123

<sup>30</sup> Keynote speech at the Justices’ Clerks’ Society Annual Conference, Stratford-upon-Avon, 9 May 2003

29. **The House may wish to explore the number of local justice areas that will be covered by the new courts boards and to seek assurances that co-terminosity with the criminal justice areas will remain.**

### Justices' clerks

30. Clause 27 provides for the Lord Chancellor to appoint and designate staff of the new courts agency to be justices' clerks and assistants to justices' clerks. The functions of the justices' clerks are provided for in clause 28. Clause 29 provides for the independence of justices' clerks when giving legal advice or performing the functions of a justice of the peace. Under the proposals, the justices' clerks will become civil servants and justices of the peace will no longer be consulted on the appointment or removal of a justices' clerk.

31. The proposals have raised a number of concerns amongst both magistrates and justices' clerks:

“This proposal fails to recognise the special relationship that exists between the justice clerk and the bench. It is vitally important that a specific link is retained between justices' clerks and groups of magistrates and we are concerned that no mention of this is made in the Bill. In particular justices should be consulted on the appointment of their justice clerk/principal legal advisor.”<sup>31</sup>

“The relationship between the magistrates and their clerk is vital to the operation of the Magistrates' Courts. It is based on mutual trust that builds over a period of time. In addition, it ensures independence of advice, as the justices' clerk cannot be removed against the wishes of the magistrates concerned, except by the Lord Chancellor in person. This is an important constitutional issue.”<sup>32</sup>

32. Little reassurance is gained from the proposal to make justices' clerks civil servants:

“Despite the reference to independence in Clause 24 [now 29], we do have serious concerns that when justices clerks become civil servants they will become subject to the direction of central government and thereby curtail their independence.”<sup>33</sup>

A helpful example of how the proposal to make justices' clerk civil servants might affect the performance of their role is given in a briefing paper on clauses 23 and 24 [now clauses 28 and 29] of the Bill by the Justices' Clerks Society:

“The Government or the new Courts Unified Administration wishes the magistracy to follow a certain course of action. The Justices' Clerk does not agree with the Governments'/ Administrations' interpretation of the law. He is obliged by the Code of Conduct of his profession to give honest and independent advice.

“The magistrates in that area begin to make representations to the Magistrates' Association and the management of the new administration. To a large extent their argument relies on their Justices' Clerk, as they are not themselves lawyers.

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<sup>31</sup> The Magistrates' Association, Courts Bill Briefing Paper, January 2003 (not printed)

<sup>32</sup> Briefing Paper from the Justices' Clerks' Society on clauses 23 and 24, February 2003 (not printed)

<sup>33</sup> The Magistrates' Association, Courts Bill Briefing Paper, January 2003 (not printed)

“The Justices’ Clerk is moved. There can be no appeal or comment upon this and the magistrates, without the legal support they feel necessary to argue the point, either become ineffective or withdraw their opposition.”<sup>34</sup>

**33. The House may wish to explore the extent to which the proposals under the Bill will affect the ‘special relationship’ between magistrates and the justices’ clerks and the ability of the clerks to provide consistent and independent legal advice.**

## Fines officers

34. Clause 36 of the Bill establishes the new role of fines officer. The responsibility of a fines officer will be to manage the collection and enforcement of fines. Schedule 3 to the Bill makes provision for the collection of fines and sets out the powers of the fines officers, including a discretion to vary a fine. Furthermore, a discount on the fine is available if paid without default. Following reassurances by the Lord Chancellor that fines and any increase in fines for non-payment would be set by the court and not the fines officers, the new role has been broadly welcomed. The Magistrates’ Association have stated:

“we are satisfied that the administrative powers of the fines officers will help to improve the collection of fines and that there would only be one opportunity to vary and a court would always have the opportunity to reserve a specific case. A very unusual or a fragile sort of case could be retained by the Court to supervise.”<sup>35</sup>

Other witnesses have gone so far as to say that the proposed powers of the fines officers are “*manna from heaven*”.<sup>36</sup>

35. The Law Society, have however warned that a reduction in fines for early payment is likely to impact unfairly on those who do not have the resources to be able to make an early payment, perhaps because they are dependent on a very low income to make payment from. Moreover, an increase in the fine upon default would not assist payment in such cases.

**36. Whilst we would welcome an improvement in fines collection, the House may wish to explore how the new powers will impact on those with very low incomes and how further accumulation of debt in such cases can be avoided.**

## Court security

37. Part 4 of the Bill makes provision for new court security officers for any place where court business will be conducted by the Supreme Court, county courts and magistrates’ courts. At present statutory provisions for court security only exist for the magistrates’ courts. The new provisions give court security officers significant powers in the exercise of their duty of search, exclusion, removal and restraint. They also have the power temporarily to retain articles that they reasonably believe ought to be surrendered because possession may jeopardise the maintenance of order in the building, or risk the safety of a

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<sup>34</sup> Briefing Paper from the Justices’ Clerks’ Society on clauses 23 and 24, February 2003 (not printed)

<sup>35</sup> Q 61

<sup>36</sup> Q 63

person in that building or because the article may be evidence of, or in relation to, and offence. Following an amendment made to the Bill in the House of Lords, the Lord Chancellor has a duty to make provisions as to the conditions to be met before a person can be designated as a court security officer.

38. The impetus for the changes to court security proposed in the Bill was the Auld Review. It highlighted the gradual withdrawal of a police presence in the courts and the disparity of security provisions and security powers between magistrates' courts and the Crown Court. The subsequent Government White Paper stated:

“We are concerned about increasingly violent and threatening behaviour in and around court rooms. This includes the intimidation of witnesses in criminal trials, attempted escapes by defendants, and attacks on judges, lawyers and other staff in the course of criminal, civil and family cases.”<sup>37</sup>

39. Our inquiry found opinion unanimous that improvements were needed in court security at all levels. In recent times there have been numerous reports of attempted escapes, attacks on judges, lawyers and other court users. In particular, there have been incidents where defendants have jumped out of the dock and launched projectiles in the direction of the Bench. Some of the attacks have caused serious injury.<sup>38</sup> Courts are sometimes reliant on the presence of police officers who are attending court as witnesses for assistance in such situations. Proposals in the Bill to strengthen the courts security systems were therefore generally welcomed.

40. However, some reservations were expressed in respect of the significant powers given to the court security officer under the Bill. The Law Society argued that:

“where any civilian exercises powers usually only exercised by the police, it is important to ensure that these powers are properly regulated and that those exercising them are accountable.”<sup>39</sup>

**41. The House may wish to consider whether there is sufficient clarity about when a police presence is required for court security purposes, and, given the significant range of powers available to court security officers under the Bill, whether the court security regime will be sufficiently accountable to the Lord Chancellor and/or the Courts Inspectorate.**

## Court fees

42. The County Courts Act 1984 currently empowers the Lord Chancellor to set county court fees by Order. The Courts Bill, if implemented, will partially repeal the County Courts Act 1984 and provide the Lord Chancellor with a single unified power to set the level of fees in the Supreme Court, county courts and the magistrates' courts, where another power does not take precedence.<sup>40</sup> Although there is a requirement for

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<sup>37</sup> Cm 5563, July 2002, para 2.27

<sup>38</sup> Q 1ff [Stephen Hockman QC]

<sup>39</sup> The Law Society Parliamentary Brief, December 2002 (not printed)

<sup>40</sup> Clause 87

consultation when setting court fees, the provisions, on introduction, attracted controversy due to the Government policy of recovering the full cost of the civil courts through court fees.

43. The Law Society consider that:

“full cost recovery is wrong in principle, requires levels of fees that limit access to justice and is limiting court resources to such an extent that the inefficiency of the courts is undermining the Woolf reforms”<sup>41</sup>

“Recovering the full costs of the running of the civil courts is not consistent with the aim of ensuring access to justice.”<sup>42</sup>

The Civil Justice Council, which the Lord Chancellor must consult before making an order in relation to fees in civil proceedings, warns that:

“the greatest threat to service provision is that fee increases may generate a vicious circle by dissuading potential litigants from using the courts, with the resultant reduced volume necessitating greater fee increase and more court closures”.<sup>43</sup>

44. The prospect of full cost recovery also raised concern in the Lords. As a result, an amendment has made requiring the Lord Chancellor “to have regard to the need to facilitate access to justice” when setting fees.<sup>44</sup>

45. The concept of full cost recovery “fails to recognise that the courts have a public as well as a private role.”<sup>45</sup> The judicial process serves important public functions by clarifying and developing the law and setting precedents for litigants to settle their cases or run their affairs, which is of wider benefit. Moreover, it is essential for society as a whole that there are functional and accessible courts for disputes to be resolved. We consider that full cost recovery may have an excessively deterrent effect on litigants and risks creating a system in which only the affluent can afford justice.

**46. We strongly recommend that the House accept the amendment made in the Lords which requires the Lord Chancellor to have regard to the need to facilitate access to justice, when setting fees. The House may also wish to explore alternatives to the concept of full cost recovery for funding the courts.**

### Third party costs

47. Clause 93 of the Bill provides for magistrates’ courts, the Crown Court and the Court of Appeal to have power to order a third party to pay those costs of parties to criminal proceedings which result from the third party’s serious misconduct. There is a right of appeal to a higher court from an order by a magistrates’ court or the Crown Court to pay third party costs. These could include cases where a newspaper or broadcaster has

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<sup>41</sup> The Law Society, Parliamentary Brief, February 2003 (not printed)

<sup>42</sup> Memorandum submitted by The Law Society, Ev 32

<sup>43</sup> *Ibid*, Ev 33

<sup>44</sup> HL Deb, 18 February 2003, cols 1113–1126

<sup>45</sup> Q 25

published material which, in the court's view, was prejudicial to a fair trial and led to a case having to be reheard. Officials from the Lord Chancellor's Department have stated that the provisions are aimed at any third parties who cause costs to be lost as a result of their improper actions, rather than only at media organisations.<sup>46</sup>

48. Reservations have been expressed by media organisations that the new proposals would act as a deterrent to local and regional newspapers reporting court proceedings. However, **it is essential that litigants, and particularly defendants in criminal proceedings, receive a fair and public hearing, as enshrined in article 6 of the European Convention on Human Rights. Recent cases underline the importance of this principle and the risk of serious miscarriages of justice and of very large costs to public funds if it is not observed. We therefore think it is right that the court should have the power to impose costs in cases of serious misconduct, but the scope of this power depends on regulations to be made under the Bill. We think that the House should have the opportunity to consider a draft of these regulations when considering this part of the Bill.**

# Conclusions and recommendations

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## Further amendments planned

1. The Committee hopes that the Government's proposed amendments relating to fine enforcement will be brought forward in time for Committee Stage rather than Report Stage, and that the timetable for Committee and Report Stages will allow for adequate scrutiny of provisions which have not been considered in the House of Lords. (Paragraph 9)

## Accessibility and court closures

2. Whilst we welcome the proposals for a unified administration, we recommend that the general duty in clause 1 of the Bill be redrafted to include a duty on the Lord Chancellor to provide a system that is accessible, as well as efficient and effective. (Paragraph 18)
3. During the course of our inquiry it became evident that there were fears that the proposals in the Bill would make it too easy for the Lord Chancellor to close courts. We believe that the Bill as presently drafted may lead to centralised decision-making on court closures which does not take proper account of local circumstances. Accessibility includes ensuring that courts sit in places which are geographically convenient to victims, witnesses and other court users and are accessible by public transport. Accordingly, we recommend that the House pursue Professor Bridges' suggestion that the Lord Chancellor be required to consult the local courts boards about his decisions under clause 30. (Paragraphs 14, 19)

## Court Administration Councils/Courts Boards

4. If the participants in the new structure have fundamentally conflicting views about what is and should be the role of the boards, conflict and confusion will certainly follow. We strongly recommend that the House seek clarification as to whether the courts boards will have a management or merely an advisory role, how this should be defined in statute, and how the role will work in practice at a local level. Furthermore, the House will wish to explore the exact remit of the courts boards' functions and why those functions are not defined on the face of the Bill, and are not expected to be defined in secondary legislation. If the manner in which the courts boards discharge their functions is to be set out in guidance, the House will wish to clarify the extent to which that guidance will be binding on the boards. (Paragraphs 25, 26)
5. The House may wish to explore the number of local justice areas that will be covered by the new courts boards and to seek assurances that co-terminosity with the criminal justice areas will remain. (Paragraph 29)

### Justices' clerks

6. The House may wish to explore the extent to which the proposals under the Bill will affect the 'special relationship' between magistrates and the justices' clerks and the ability of the clerks to provide consistent and independent legal advice. (Paragraph 33)

### Fines officers

7. Whilst we would welcome an improvement in fines collection, the House may wish to explore how the new powers will impact on those with very low incomes and how further accumulation of debt in such cases can be avoided. (Paragraph 36)

### Court security

8. The House may wish to consider whether there is sufficient clarity about when a police presence is required for court security purposes, and, given the significant range of powers available to court security officers under the Bill, whether the court security regime will be sufficiently accountable to the Lord Chancellor and/or the Courts Inspectorate. (Paragraph 41)

### Court fees

9. We strongly recommend that the House accept the amendment made in the Lords which requires the Lord Chancellor to have regard to the need to facilitate access to justice, when setting fees. The House may also wish to explore alternatives to the concept of full cost recovery for funding the courts. (Paragraph 46)

### Third party costs

10. It is essential that litigants, and particularly defendants in criminal proceedings, receive a fair and public hearing, as enshrined in article 6 of the European Convention on Human Rights. Recent cases underline the importance of this principle and the risk of serious miscarriages of justice and of very large costs to public funds if it is not observed. We therefore think it is right that the court should have the power to impose costs in cases of serious misconduct, but the scope of this power depends on regulations to be made under the Bill. We think that the House should have the opportunity to consider a draft of these regulations when considering this part of the Bill. (Paragraph 48)

## Formal minutes

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**Tuesday 3 June 2003**

Members present:

Mr A J Beith, in the Chair

Mr James Clappison

Ross Cranston

Mr Jim Cunningham

Mr Clive Soley

Mr Keith Vaz

Dr Alan Whitehead

The Committee deliberated.

Draft Report [Courts Bill], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 48 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the provisions of Standing Order No 134 (Select Committees (Reports)) be applied to the Report.

Several Papers were ordered to be appended to the Minutes of Evidence.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 10 June at 9.00am]

## Witnesses

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### (See Volume II)

#### Tuesday 11 March 2003

	<i>Page</i>
<b>Michael Napier and Vicky Chapman</b> , The Law Society	Ev 1
<b>Stephen Hockman QC and Brian O'Neill</b> , Bar Council	Ev 1
<b>Rachel Lipscombe and Sally Dickinson</b> , The Magistrates' Association	Ev 9
<b>Neil Clarke and Sid Brighton</b> , Justices' Clerks' Society	Ev 9

#### Tuesday 18 March 2003

<b>Professor Lee Bridges</b> , Legal Research Institute, University of Warwick	Ev 16
<b>Nicola Padfield</b> , Institute of Criminology, University of Cambridge	Ev 16

#### Thursday 27 March 2003

<b>Nick Smedley, Kevin Sadler, Martin Jones and Debora Matthews</b> , Lord Chancellor's Department	Ev 23
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## List of written evidence (appendices)

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### (See Volume II)

1	The Bar Council	Ev 31
2	The Law Society	Ev 32
3	The Magistrates' Association	Ev 34
4	Central Council of Magistrates' Courts Committees	Ev 36
5	Lord Chancellor's Department	Ev 38
6	Justices' Clerks' Society	Ev 40
7	The Magistrates' Association	Ev 41