

1. First questions

1.1 Introduction

The purpose of this Bench Book is primarily to help judges who are sitting for the first time in civil work in the county court whether they are sitting as a deputy district judge or as a recorder. It is hoped that the work will also be of benefit to more experienced part-time and full-time judiciary. Plainly the Bench Book cannot serve as a substitute for the standard practitioners' texts on the subjects which it covers. Rather it is intended as a guide to the key areas which the civil judge is likely to encounter working in the county court.

1.2 Sitting in the county court for the first time

Sitting in the county court for the first time, as deputy district judge or recorder, can be a challenging experience for even the most experienced practitioner. Sir Frank White's observations in earlier editions of this Bench Book still hold good:

‘There is no better jurisdiction in which to gain judicial experience. The variety and immediacy of the work can be both testing and invigorating. A quick reaction with little help is frequently called for, requiring not only a wide knowledge of substantive law and procedure, but a well-developed judicial instinct. This is not the place to attempt a definition of this elusive quality, but nowhere will its absence be more sorely felt, both by judge and litigant, than on the county court bench. There are main streams of work, but over the years there are very few corners of the law into which the county court judge will not have to peer as the lists unfold.’

Since the introduction of the Civil Justice Reforms on 26 April 1999, civil judges at every level now have unprecedented authority over the management of litigation from its inception, and the corresponding duty always to act so as to further the overriding objective articulated in Part 1 of the Civil Procedure Rules. Section 6 of the Human Rights Act 1998 (HRA) makes it unlawful for courts to act in a way which is incompatible with a Convention right. The county court has moved from the backwater of the justice system that it might have seemed to be in not very many years ago, to the mainstream.

1.3 The Judicial Studies Board (JSB)

For those about to sit, the JSB induction courses and the period of sitting in, are designed to give basic confidence and information. Many new part-time judges will have very substantial experience in some areas of county court work; for others almost all of it will be new. The idea of this Bench Book is to complement the work undertaken on the induction courses and to supplement the sitting-in process.

There is no longer a separate Bench Book for those exercising jurisdiction at district judge and at circuit judge level. Trial jurisdiction is concurrent in all cases where up to £15,000 is at stake and the number of multi-track cases actually tried is a small proportion of the number of cases heard. Case management jurisdiction is concurrent in all cases. Close co-operation between the

benches and flexible deployment of judiciary under the leadership of the designated civil judges is likely to be an increasing trend. This change is reflected in the continuation training which new civil judges are expected to attend on a three-year cycle. The JSB Civil Continuation Seminar is now combined; circuit judges and recorders, district judges and deputy district judges all attend the same residential seminar, with separate modules where appropriate. The aim of encouraging a consistent and coherent approach to civil litigation at every level of judge has only to be stated to appear desirable. The experience of participants always helps the JSB to assess whether it is moving in the right direction.

Attendance at seminars is often difficult for practitioners, but they are not optional. The Lord Chancellor expects all part-time and full-time judges to attend. Once a place on a seminar has been accepted, a participant wishing to postpone must obtain the personal permission of the chairman of the JSB Civil Committee, currently Mr Justice Owen.

1.4 The county court

The county court sits at more than 220 locations in England and Wales. Some of these are multi-court trial centres where circuit judges daily try very substantial cases; these centres will often also be district registries of the High Court, with district judges case managing a wide variety of High Court litigation. Others may be small courts servicing a remote locality, where a district judge sits once a week. You will find it interesting and useful to spend some time in the court office, understanding how it is run and what pressures its staff face.

There will be inevitable change to the structure of the civil courts as a whole as modernisation of the system takes place. In the medium and longer term, small courts may prove to be uneconomical and unnecessary. The labour-intensive back office work of the county court may be performed mainly by machine at any convenient place. Judicial work which cannot be done anywhere but locally may be done by a judge sitting in an *ad hoc* location, rather than by keeping a court open for the occasional sitting. More trial centres, offering flexibility and economy in judicial deployment, may be expected.

To keep abreast of these developments and ensure that they are fully informed by judicial perceptions of the interests of justice as well as the unique viewpoint of the judiciary as to the interest of litigants, judges at all levels need to be aware of movement outside the courtroom.

1.5 Keeping control

It may seem odd to mention at the outset powers you may never have to use. But it is suggested that an early familiarity with the *Conduct of hearings* chapter of the Bench Book, which deals with your powers to control your court and punish contempt, will give you confidence in handling tricky situations. Lawyers and litigants in person alike may be unaware of the extent of your authority and simply pointing it out courteously will often be all that is necessary.

The transition from sitting in crime to sitting in the county court is not a straightforward one. The formality which necessarily attends a criminal trial is rarely appropriate. However, a

balance has to be struck. Excessive informality risks obscuring the gravity which is of the essence of any judicial proceeding. Judges must find their own way of striking this balance.

1.6 The judge's role

The role of the judge in the county court, at either level, can no longer be expressed in traditional terms. The following celebrated quotation now has something of a period flavour, notwithstanding its essential validity:

‘The part of a judge at a trial of a civil action is to listen to the evidence, asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure, to see that the advocates behave themselves seemly and to keep to the rules laid down by law; to exclude irrelevancies and discourage repetition, to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies.’

Denning LJ, *Jones v The National Coal Board* [1957] 2 All ER 155

The positive duties cast upon the court by Pt 1 Civil Procedure Rules (CPR) and s.6 Human Rights Act 1998, together with the increasing number of litigants in person in the courts, mean that it is no longer possible for judges to act simply in accordance with this traditional exposition of their function in an adversarial system. Adapting the basic structure of this system to incorporate the obligation to be proactive in these areas, without forfeiting the appearance of impartiality, is one of the great current challenges for the judiciary. JSB seminars provide an opportunity for judges at every level to share their experiences of meeting the challenge.

1.7 Criminal conduct

In the course of civil and family proceedings in the county court it will sometimes be apparent that a criminal offence is very likely to have been committed by a party or witness. Obtaining housing benefit by deception and tax evasion are just examples. This discovery will often emerge in a private hearing. The judge either will not have been in a position to give a warning against self-incrimination or the very nature of the case suggests potential criminality. Judges who do direct that such matters be brought to the attention of the authorities rarely hear that any action has been taken.

What criteria should be adopted in deciding whether the judge should take the initiative in reporting the facts? The thorough judgment of Mr Justice Charles in *A v A; B v B* [2000] FLR 701 will repay study. The effective point is that if the court is able to remedy the situation itself, for example by making adverse costs orders or punish for contempt, reporting is rarely necessary. Where the court has no power to deal with illegal conduct that it is satisfied has occurred, there has to be a compelling reason for the court not to report the conduct. Otherwise the court is effectively condoning it. This judgment is not necessarily the last word, but it is certainly the first point of reference.

If you decide that papers should be referred to the DPP, HMRC or the local police, the letter should come from the court manager. But the judge should draft, or at least approve the letter and specify any documents to be attached. Whether full or part-time, the judge should also insist on a report of any action taken or reason for not taking action. Making one's own diary note for this purpose is essential.

1.8 Boxwork

It rarely comes in a box! But for the deputy district judge, case management and other paperwork is a huge part of the job from the outset. At circuit judge level, case management on paper is likely to be with regard the heavier cases; recorders are less likely to be asked to undertake it although they will often be asked to make paper decisions about matters concerning impending trials. (Never adjourn them except for the most compelling reasons, even if both sides agree.)

At either level, it is essential to take advantage of the experience of full-time judges. Some problems which appear intractable may be the subject of a standard order and in a feeder court you will need to know which cases may be retained and which transferred to the trial centre.

1.9 Case management

Practical help may be found elsewhere in this Bench Book. Here it is desired only to emphasise the positive nature of the court's legal obligations under Pt 1 CPR. However, experienced the practitioners and however new the judge, the court can never properly concede its case management powers to the parties or their lawyers. Of course, there will be many cases where the court will accept, with little questioning, what the parties propose and their numbers may increase as familiarity with judicial practice and expectations increases. But in the end, the decisions must be those of the judge and a case management order should never be expressed as a consent order.

It is also worth remembering the court's obligation to deal with as many aspects of the case as it can on the same occasion. Any application relating to a discrete point should be taken as an opportunity to review the whole progress of the case, where appropriate, and to make any necessary orders.

1.10 Human rights

Human rights as a discrete subject is not covered in this Bench Book. It was not thought helpful to include such material in a work such as this. Nevertheless, where the topics covered in this Bench Book impinge on human rights issues, those issues are dealt with.

The reader's attention is drawn nonetheless to the Practice Direction to Pt 16 CPR. This Practice Direction provides for the taking of human rights points in statements of case. It is important to be aware of the direction should the need arise.

In addition, the reader's attention is also drawn to Pt 39 for the way in which human rights materials are to be presented.

Overall a judge should be very cautious before permitting points to be raised which could have been pleaded, but have not been. That being said, the court, as a public body, has an obligation under s.6 HRA not to act in a way that is incompatible with Convention rights. You may be obliged to allow late points or even raise plain and obvious ones yourself, if you would be failing in your duty by not doing so.

1.11 Orders

Your handwriting may not be decipherable except by a graphologist. If you are making orders on paper, do ensure that they are as clear as you can make them. Check that the person with responsibility for drawing them up can read your writing, since the difficulty of contacting you later to clarify ambiguities simply leads to garbled orders. Do not use a personal shorthand for common phrases; the court staff may not be familiar with them. If you are making orders in court, require the parties to agree a minute whenever possible; but check before approving it to ensure its accuracy.

1.12 Conclusion

Sit as often as you can. Your confidence and the quality of your adjudication will increase with experience. Take the work seriously, but not yourself. Above all enjoy the work which, although challenging at times, is both rewarding and satisfying.