was recoverable because 'it did not seem unreasonable in terms of the service it offered'. However, as regards the success fee in a straightforward case such as this settled out of court, a 20 per cent success fee was all the court would allow.

Personal injury lawyers were not too pleased with this ruling but were less pleased with the ruling of the Court of Appeal in *Halloran* v *Delaney* (2002) 146 Sol Jo 815 where the court ruled that in a straightforward road traffic case involving personal injury and settled out of court a success fee of only 5 per cent was appropriate. The judgment in *Halloran* was delivered by Brooke LJ who sat in the *Callery* case.

Sarwar v *Alam* [2001] 4 All ER 541 is also instructive. It decided that a claimant could recover an ATE premium even though he had a BTE insurance as part of his motor insurance, because the ATE insurance gave additional service. Nevertheless, the Court of Appeal advised solicitors involved in this type of litigation to see whether the client had BTE insurance and as to its adequacy. Failure to do this said the court could lead to ATE insurance taken out in addition being disallowed as a head of costs.

Intervention of the Civil Justice Council

The ruling in *Halloran*, in particular, had affected the willingness of lawyers to take on the large number of road traffic injuries cases where settlement without trial is common. The Civil Justice Council, set up by s 6 of the Civil Procedure Act 1997 to keep the civil justice system under review, then brokered a deal with the legal profession for road accident cases that are settled out of court for up to £10,000. Lawyers handling these cases will receive a basic fee of £1,400 plus an additional fee on a sliding scale, examples of which are as follows: £1,000 for a case settling for £1,000, £1,200 for a case settling for £2,000 and £1,950 for a case settling for £6,000. The Civil Justice Council consists of the Master of the Rolls, judges, lawyers, consumers of legal services to give lay advice and litigant representatives.

Advocates' fees

What is said above relates to the fees of the solicitor and court fees. If it is thought that the services of a barrister will be required, further negotiations will be expected with a member of the Bar. There is no compulsion for members of the Bar (or solicitors) to enter into conditional fee arrangements. Since September 1999, all barristers and solicitors have acquired full rights of audience on call to the Bar or admission to the Rolls (of solicitors), subject to satisfying the Bar or Law Society requirements. Thus, it may not be necessary to brief a barrister but to use a solicitor/advocate throughout the case. It may be necessary to seek the services of a barrister in a difficult case and in such cases the barrister is not likely to be prepared to enter into conditional fee arrangements.

Conditional fees – rights of defendant/claimant

The claimant must disclose the amount of the success fee to the defendant within seven days of entering into such an agreement or the commencement of proceedings. The conditional fee agreement may, of course, be entered into later than the commencement of proceedings. The basic fact of the claimant's insurance but not its details must also be disclosed to the defendant within seven days of commencement of the claim or of entering into the insurance (if later). The defendant (through his insurance company) can challenge the cost of the insurance on final assessment of costs. The above rules apply to disclosure and challenge by a claimant to a defendant where the latter has entered into a conditional fee agreement.

Payment of solicitors by hourly rates

Section 98 of the Courts and Legal Services Act 1990 provides for agreements between a solicitor and client relating to the hourly rate which the solicitor will charge. The agreement must be in writing and the court may set it aside if it is unfair or unreasonable. The intention here is to widen the number of situations in which a solicitor will agree the terms of business in advance with a client.

Legal aid

The availability of state-funded legal aid for litigation and legal advice in criminal and civil proceedings is considered in the chapters on Procedure. However, under the Access to Justice Act 1999 the Community Legal Service replaces the civil Legal Aid Scheme in the provision of funding for civil cases. It is administered by the Legal Services Commission which replaces the Legal Aid Board. CLS funding will not normally be available in cases that could be financed by a conditional fee agreement and will, in any case, not be available for personal injury claims, except for clinical negligence. The result of these changes will be a decrease in the number of cases where a party to a civil claim has the benefit of representation by state-funded legal aid.

It is worth noting here that more than 300 barristers including 60 QCs (see below) have agreed to offer their services free to the public through a scheme launched by the Bar. It is called the Bar Pro Bono Unit and will help people who have what are described as 'deserving' legal problems and who cannot afford legal advice. A register has been compiled of barristers willing to offer up to three free days on such a case.

The Bar Pro Bono Unit (alternatively called the Free Representation Unit) has extended its field of operation to litigants at the Employment Appeal Tribunal, in general to employees. Incidentally, the Lord Chief Justice Lord Woolf suggests that the expression *pro bono* should be rendered 'law for free'. The translation is 'for the public good' (*pro bono publico*).

The main legal professions

Although the changes in the provision of legal services effected by the Courts and Legal Services Act 1990 are immense the *main* participants in such provision will continue to be barristers and solicitors, the latter being assisted by legal executives. The nature of these professions is considered in outline below.

Barristers

Barristers conduct cases in court, and generally draft the statement of case which outlines the manner in which the case is to be conducted. They also give opinions on difficult legal problems.

There is, of course, nothing to stop a party presenting his own case, though when it comes to an appeal to the House of Lords, unless leave has been granted by the Court of Appeal, it is necessary for two Queen's Counsel to certify that it is reasonable to bring the case to appeal.

Call to the English Bar is the prerogative of the four Inns of Court – Lincoln's Inn, Gray's Inn, the Inner Temple and the Middle Temple. The Inns of Court are unincorporated societies governed by Masters of the Bench (benchers), who are judges or senior barristers, and call to the Bar is by the benchers.

Education and training

There are three parts to the course of training to be a barrister as follows:

- ***The academic stage***. Most students complete this stage by studying for a law degree. Some may prefer to take other degrees and must then take a one-year conversion course in law called the Common Professional Examination course. This is offered by the Inns of Court School of Law in London and at a number of teaching institutions throughout the country. Possession of a degree with at least lower second class honours plus the Common Professional Examination, where appropriate, constitute the minimum requirement for entry to the vocational stage which is not easy to achieve.
- ***The vocational stage***. This involves completion of a one-year full-time Bar Vocational Course at an approved institution which gives practical training in the special skills and knowledge required by a barrister. This training is provided by the Council of Legal Education and by some universities. After successfully completing the vocational course students are called to the Bar by their Inn.
- ***Pupillage***. Those intending to practise as a barrister in independent practice or to exercise rights of audience as an employed barrister are required to do pupillage for an aggregate of 12 months, six months of which must be spent in the chambers of a private practitioner (but see below). This period is non-practising. For the remainder of the period of 12 months, the pupil can do some practising work but not as part of an independent practice. A final certificate is given after 12 months which allows the barrister to enter independent practice.

Students who enter employment may undergo the whole period of pupillage as an employee. All practising barristers are required to undertake continuing professional development courses.

With effect from September 2008, pupillage will become mandatory not only for the purposes of practising but also to obtain the professional qualification and title of barrister. It is not easy to find a pupillage and, from 2008, those who have completed the Bar Vocational Course (which continues) but have failed to find a pupillage will not be able to benefit from the title of barrister. In other words, if you have completed pupillage you are a barrister, if you have not you go away without a professional qualification in a netherworld of part-qualification. The shortfall in pupillages in relation to BVC graduates will deter applicants.

Legal Services Consultative Panel

Section 35 of the Access to Justice Act 1999 puts in place the Legal Services Consultative Panel. This panel advises the Secretary of State for Constitutional Affairs on various issues including the education and training and conduct of lawyers in general.

Employed barristers

Provided an employed barrister has complied with the conditions set out above, he or she may appear in court but only for the employer.

Circuits

After call, a barrister intending to practise generally will join what was known as a Circuit but is now called a Region and will then practise within that Region though cases may be taken on others. There were six Circuits in England and Wales, i.e. Midland; North Eastern; Northern; South Eastern; Wales and Chester; and Western.

The structure of HM Court Service has changed and the six Regions are currently: Midland, North East, North West, London and South East, Wales and Cheshire, and South West.

There are no partnerships at the Bar, and one barrister cannot employ another, but it is usual though not essential for counsel to group together by taking a tenancy in chambers and employ a clerk who is responsible for the administration of the chambers, fees, appointments and instructions. There is, however, no objection to what is called 'purse-sharing' under which a particular chamber pools all its fees and each barrister draws the same monthly 'salary'. From the end of 2002 all pupil barristers are entitled to a minimum annual payment of £10,000 per year plus travelling expenses. This scheme received the statutory approval of the Lord Chancellor and is a step towards opening the Bar to a wider range of entrants regardless of their financial support from other sources, e.g. family. Vacancies must now be advertised.

Under a Bar Council code of conduct barristers are allowed to advertise, work without clerks and open chambers where they like. They are no longer restricted to setting up chambers in or near the Inns of Court.

Queen's Counsel

Experienced barristers may apply to 'take silk', i.e. to become Queen's Counsel which gives the entitlement to wear a silk gown in court. There is now a new appointments procedure for the appointment of QCs. A selection panel oversees and selects from applicants those whom the Queen will appoint as QCs. The Lord Chancellor has no power of veto on who is selected. Applications are invited once a year. The selection panel has legal and lay members. Applicants must outline how they meet a set of competencies and provide referees from the legal profession to back up the competencies. Applicants must pay a processing fee and a further appointment fee if they are successful. After appointment as Queen's Counsel, a barrister will not, in general, appear without a junior, i.e. another barrister who is not a QC, and his practice henceforth tends to be restricted to the more important cases requiring two counsel, i.e. a junior to deal with less difficult but time-consuming procedural matters and the drafting of pleadings, leaving the QC to concentrate on advocacy.

Until 1977 the rules of conduct laid down by the Bar *prevented* a QC from working without a junior. The rule was dropped following a report by the Monopolies Commission that the practice was contrary to the public interest. However, most QCs still claim that they need the assistance of a junior, and the scheme to avoid duplication of service appears to have failed.

There is, in general, no need to employ a QC, though only a QC can lead for the defence in a trial for murder.

Solicitor-Advocates may also apply to take silk.

Briefing and negligence

A barrister can, but will not always, deal directly with a client and will often be briefed by a solicitor, and then he cannot sue for his fees, though a solicitor who fails to pay over to counsel fees received from a client is liable to disciplinary action, and indeed under an arrangement between the Law Society and the Bar a briefing solicitor is personally liable, except in legal aid cases, to pay counsel's fees even if the solicitor has not received them from the client. However, s 61 of the Courts and Legal Services Act 1990 now allows a barrister to enter into a contract with a client for the provision of services and payment of fees. As we have seen more recently, the Bar Council has approved proposals which allow direct access to barristers by other professions, e.g. accountants and the public. Thus the usual route through a solicitor need not always be followed.

As regards fees, barristers are entitled to a 'brief fee' which covers preparation of the case plus the first day of the trial (if any). Added to this is a sum called a 'refresher' payable for the second and each subsequent day of the trial for however long it continues. The costs of one side for a week in court on, say, a contested personal injury case with a QC can run into

several thousands of pounds on top of which fees are also payable to the firm of solicitors involved in preparatory work.

As regards the liability of advocates, both barristers and solicitors, an ancient principle of the common law had in its developed state prevented advocates from being sued in negligence. The case of *Rondel* v *Worsley* [1969] 1 AC 19 upheld the immunity on considerations of public policy and confined it to acts closely concerned with the conduct of litigation in court. In *Rondel* the House of Lords thought that the possibility of claims being brought against advocates might undermine their willingness to carry out their duties to the court. A later case of *Saif Ali* v *Sydney Mitchell & Co* [1980] AC 198 confirmed the *Rondel* rule and applied the immunity to solicitors when acting in court as advocates. This development of immunity ended with the decision of the House of Lords in *Arthur J S Hall & Co (a firm)* v *Simons* [2000] 3 WLR 543. Section 62 of the Courts and Legal Services Act 1990 gave statutory confirmation of the common law position but, since the common law position is now changed, the effect of the Act is spent.

Hall v *Simons*, 2000 – Advocates: liability in negligence (**18**)

Conduct

In matters of conduct, counsel is under an obligatory duty to pursue his case in a proper manner. He must inform the court of all the relevant statutes and precedents, and, where a legal authority is against his argument, he must not suppress it, though he may attempt to distinguish or criticise it. In *Copeland* v *Smith* (1999) *The Times*, 20 October the Court of Appeal reaffirmed the importance of an advocate being aware of and bringing to the attention of the court all recent authorities and to be familiar with the Weekly Law Reports and the All England Reports but not necessarily others. The statement of Lord Justice Brooke in this regard is of interest. He said: 'By "recent authority" I am not necessarily referring to authority which is only to be found in specialist reports, but authority which has been reported in the general law reports. If a solicitors' firm or a barristers' chambers only take one set of the general reports, for instance the *Weekly Law Reports* as opposed to the *All England Law Reports* (or vice versa) they should at any rate have systems in place which enable them to keep themselves up to date with cases which have been considered worthy of reporting in the other series.' He must also ensure that his client has a fair hearing. If a prosecuting counsel in a criminal case is aware of facts which support the case for the accused, or lessen the gravity of the offence, he must state them. Counsel may not plead guilty for a client, but may persuade him to do so if it is in the client's interest.

In addition, barristers are required to act for any client whether legally aided or not in any field in which they profess to practise. This is called the 'cab-rank' rule which is referred to in s 17(3)(c) of the Courts and Legal Services Act 1990 as a matter for consideration in approving an application by, e.g., a professional body for authorisation of its members as advocates.

Special advocates

In cases involving national security, it is the practice to use lawyers as special advocates to present to the court secret evidence which is not made available to the defendant or his lawyers. The evidence is put before the court at a closed hearing. The object is to allow disclosure where the public interest and the interests of those supplying the information are at risk but only to the court through the special advocate.

In a major departure from previous practice, the House of Lords has ruled in favour of the appointment of a special advocate in a case not affecting national security.

In *Roberts* v *Parole Board* [2005] 2 AC 738, Harry Roberts, a police killer, was sentenced to life imprisonment in 1966. The term required to satisfy that sentence was 30 years. This had expired but he had not been released because an informant had alerted the authorities as to his involvement in drug dealing in prison. Roberts asked for parole. The witness statement of the informant in terms of the drug dealing was regarded as secret evidence and was not made available to Roberts' lawyers. It was presented to the Parole Board by an appointed special advocate and heard by the Board in closed session.

The House of Lords ruled by a majority of three to two that this evidence could be used by the Board to deny Roberts parole and keep him in prison.

The ruling has been criticised. The reform group JUSTICE intervened in the case on the ground that the use of the special advocate procedure was contrary to Art 5(4) of the Convention on Human Rights (the right for a prisoner to have detention fairly reviewed). Nevertheless, the House of Lords ruling stands.

Solicitors

The profession of solicitor is derived from three former branches of the legal profession. The early stages of litigation in the King's Bench and Common Pleas was conducted by *attorneys*; in the Court of Chancery by *solicitors*, so called because cases in Chancery could go on for years and the only way of getting the case moving was to employ a person to '*solicit*' or cajole the court into action, and in the Ecclesiastical Courts and Admiralty by *proctors*. These three branches fused in 1831 to form the Law Society, though their functions were not fused under the one name of solicitor until 1875. The Law Society is responsible for prescribing the qualifications and setting the examinations, issuing practising certificates and preserving minimum standards of behaviour. It also runs a compensation fund for those who have suffered from the wrongful acts and defaults of solicitors, supervises the charges made by solicitors for their work and provides a complaints system through the Office for the Supervision of Solicitors that reports to the Council of the Law Society.

Today a solicitor is in some respects a businessperson who advises his clients on legal, financial and other matters. His work is not all of a legal nature, but most of it requires legal training. Much of the work of a solicitor is concerned with property. He investigates title to land, prepares contracts of sale, conveyances and wills, and often acts as executor and trustee. He also assists promoters in company formation. As we have seen, since the passing of the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990 practising solicitors no longer have a monopoly of conveyancing, which may now be done also by licensed conveyancers who need not be qualified as solicitors.

There is a Practice Rule under which a solicitor should not, in general, act for both parties to a transaction though there are exceptions, e.g. where both parties are established clients. A solicitor is also entitled to act for both parties, even where their interests may conflict, if they consent after being fully informed of the difficulties that may emerge (*Clark Boyce (a firm)* v *Mouat* (1993) 143 NLJ 1440). In addition, it was decided by the Court of Appeal in *Re a firm of Solicitors* (1991) 141 NLJ 746 that a firm of solicitors will not be allowed to act for a present client against a former client if it was reasonable to anticipate that there was a danger that information gained by the firm while acting for a former client would be used against that former client.

The House of Lords has ruled that a solicitor does have a duty to disclose information to a later client which was obtained during the course of working for another client where this was likely to and has caused loss to the later client. A solicitor may be held liable in damages for breach of contract for the loss.

Thus, in *Hilton* v *Barker, Booth & Eastwood* [2005] 1 WLR 567, H engaged the defendants to act for him in the purchase of a development site on which he was to build flats and then sell the developed property to another client of the defendants. The defendants did not disclose that they were lending the client the deposit for the purchase, nor that the client/purchaser had been declared bankrupt and convicted of fraud. The bankrupt client failed to complete the purchase and the property was sold by a bank which had also lent the purchaser money on mortgage. The claimant's business collapsed and the court found that if the claimant had known of the matters which were not disclosed he would not have become involved in the transaction. The amount of damages was left to be assessed by a judge if the claimant and the defendants could not agree on the amount.

Their Lordships remarked that in such a situation it would be best for the solicitor not to act for the later client but advise that other solicitors be used.

In future the distinction between solicitors and barristers in the matter of advocacy in court will not be so marked as it has been in the past. As we have seen under arrangements set up by the Courts and Legal Services Act 1990 (as inserted by the Access to Justice Act 1999), solicitors, who wish to do so, are able to acquire wider rights of advocacy before our courts. However, many will continue to follow their traditional role as litigators involved in pre-trial work where their functions will be to prepare the case, ascertain the facts, arrange for the presence of the necessary witnesses and any documents which may be required, and conduct any disputes over costs which have been awarded after judgment.

Solicitors who have had experience in advocacy, either as part-time judges or as having formerly practised as barristers, are allowed to appear in the higher courts immediately; but most solicitors are required to complete Law Society training courses before being able to appear in the Crown Court, High Court, the Appeal Courts and the House of Lords. The Lord Chancellor has, however, ordered that they cannot wear wigs.

A number of solicitors have been given rights of audience in the Crown Court and High Court and beyond to the higher civil and criminal courts. In addition, these solicitor-advocates have been allowed to apply to be appointed Queen's Counsel and some have been appointed. Appointments have also been made to the High Court bench, and Court of Appeal positions which were formerly the prerogative of members of the Bar.

The normal route of qualification as a solicitor is a law degree followed by a one-year Legal Practice Course. Non-law graduates and mature entrants must follow a one-year educational stage before embarking on the LPC. This is followed by a two-year period as a trainee with a firm of solicitors. Under current proposals of the Law Society all training will be done in the practice thus cutting out the Legal Practice Course provided by various educational establishments and organisations. After this application must be made to the Law Society for admission as a solicitor, and admission must be approved by the Master of the Rolls, since a solicitor is an officer of the court. A person may then practise alone, or as a member of a partnership, and every practising and some employed solicitors must take out an annual practising certificate. Section 9 of the Administration of Justice Act 1985 allows solicitors to form incorporated practices. A number of solicitors are employed in local and central government departments and by commercial firms.

Lawyers' practising certificates

Section 46 of the Access to Justice Act 1999 gives the Bar Council the power to require barristers to hold a practising certificate in order to practise and the power to require payment by applicants for these certificates. The money received by the Bar Council is expended on education and training, as under s 47 is part of the money raised by the issue of solicitors' practising certificates.

Disciplining the legal profession

Under s 48 and Sch 7 of the Access to Justice Act 1999, the powers of the Law Society to discipline solicitors and investigate misconduct are extended. For example, the Law Society is given further powers to examine a solicitor's files or require details of bank accounts connected with the practice or of any trust of which he is or was a trustee.

Sections 51 and 52 set up the office of Legal Services Complaints Commissioner to oversee the handling of complaints against the legal profession. The power will be used if the Lord Chancellor feels that the relevant professional body e.g. the Law Society is not handling complaints against its members effectively. The Commissioner has power to investigate complaints, make recommendations as to how to handle them and ask the professional body to produce a plan to deal with complaints. If the professional body fails to do this, or to deal with a complaint as requested, the Commissioner may impose a fine.

Legal executives

The Institute of Legal Executives which was established in 1963 gives professional status to the unadmitted staff employed, e.g. in solicitors' offices. There are two examinations: the first leads to Associate membership of the Institute and the second, which is of higher standard, leads to Fellowship. Legal executives frequently carry heavy responsibilities in connection with the business of the firm. A great deal of the routine work in connection with, e.g., conveyancing also falls on them. Under arrangements put in place by the Courts and Legal Services Act 1990 (as amended by the Access to Justice Act 1999) legal executives are able to acquire wider rights in terms of (*a*) audience in our courts, and (*b*) pre-trial work as litigators. In this connection, some legal executives have qualified as advocates under the 1990 Act having passed appropriate tests and received advocacy certificates approved by the ILEX Rights of Audience Committee. Those concerned have extended rights of audience in civil and matrimonial proceedings in county and magistrates' courts. Legal executives are also approved persons to give legal advice to a worker who is entering into a compromise with an employer to compromise, e.g. an unfair dismissal claim (see further Chapter 19).

The Commissioners for Oaths (Prescribed Bodies) Regulations 1995 (SI 1995/1676) empower members of the Institute to administer oaths and take affidavits (i.e. where the oath is administered in connection with the verification of the contents of a document). This adds to the scope of their activities and means that solicitors and notaries are not the only persons who can administer oaths.

Notary public

A notary public is an officer of the law who is appointed by the Court of Faculties of the Archbishop of Canterbury. He is a civil lawyer empowered to verify, e.g., the signature of documents and authenticate the contents of documents. He may also administer oaths and declarations. In other words, his main function is to substantiate evidence of human activities. A notary will often also be a solicitor but this is not essential since there is a separate professional body called The Notaries Society.

Community justice centres: the community judge

The United Kingdom's first judge to sit in what are called community justice centres was appointed in October 2004. The appointee is a district judge and a former solicitor. He sits in the pilot 'one-stop justice centre' in Liverpool and deals with cases of anti-social behaviour and

low level crime. He also monitors the progress of offenders and oversees rehabilitation programmes. The centre is based on successful New York models and is a joint initiative between the Home Office, the Department of Constitutional Affairs and the Crown Prosecution Service.

Law centres

Since 1970 when the North Kensington law centre was set up there has been a growth in such centres which are sources of legal advice. They employ lawyers and some supporting lay staff and are funded by the local authority for the area in which they are situated and by legal aid income and sometimes by private donations. They work mainly in the fields of housing, employment and immigration. In recent times they have been desperately under-funded and some have closed. Nevertheless, where they do exist, they provide a vital legal service in some of our poorer communities.

A further development is the setting up of two legal advice centres by the College of Law in London. The centres are staffed by students supervised by lecturers of the College. It is hoped that this type of centre will extend to other parts of the country with staffing by lecturers and students from the university law schools.

Information and advice from non-lawyers

Those in business can obtain information and advice on legal matters from non-lawyers. Accountants are highly competent in the law of taxation and also in company law. Government departments can be helpful – for example the Department of Work and Pensions is prepared to advise on employment legislation, as HM Revenue and Customs is on tax and VAT regulations. There are also government-sponsored organisations which provide information and advice such as the Equal Opportunities Commission on sex discrimination. Those in business may also obtain useful information and advice from a relevant trade association and, of course, from their own professional institutes and associations. Advice on social matters such as rent reduction, security of tenure of property and social benefits can be obtained from Citizens' Advice.

Some other important judicial offices

The Lord Chancellor

The Office of Lord Chancellor continues to exist, but with radical changes effected in the main by the Constitutional Reform Act 2005. The object was to achieve what is known as the separation of powers, Montesquieu's French concept, which he thought was a characteristic of the British Constitution in the early eighteenth century but in fact was not.

This involves the separation of the judiciary from the executive and the legislature. The following are the consequences of that objective:

- On 12 June 2003 the Lord Chancellor's Department was renamed the Department for Constitutional Affairs. The Lord Chancellor, Lord Falconer, remained in that office but was also appointed by the Queen as Secretary of State for Constitutional Affairs. It was also announced that the Lord Chancellor would not sit as a Law Lord, nor would he hold office as the Speaker of the House of Lords and in fact a new Speaker has been elected by the Lords, i.e. Baroness Hayman.

- The Lord Chancellor will not in future be a member of the Cabinet. It so happens that in the transistional period Lord Falconer is holding the office of Lord Chancellor and is also a minister, in that he is the Secretary of State for Constitutional Affairs, and in that capacity can carry on Cabinet service.

Qualifications

Under s 2 of the Constitutional Reform Act 2005, a person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience. In this sense, the Prime Minister may take into account any of the following:

- experience as a Minister of the Crown;
- experience as a member of either House of Parliament;
- experience as a qualifying practitioner, i.e. a practitioner who has the 10-year senior courts' qualification to appear in the High Court, Court of Appeal and House of Lords (becomes Supreme Court) in relation to all proceedings, or an advocate or a solicitor in Scotland entitled to appear in the Court of Session and the High Court of Justiciary, or a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland;
- experience as a teacher of law in a university;
- other experience the Prime Minister considers relevant.

Under s 3 of the CRA 2005, the Lord Chancellor, other ministers of the Crown, and all with responsibility for matters relating to the judiciary or otherwise in the administration of justice must uphold the continued independence of the judiciary.

Functions

The Lord Chancellor has an important part to play, along with the Judicial Appointments Commission, in the appointment of the judiciary (see p 59). The Lord Chancellor is also responsible for a very large number of appointments of Presidents and members of tribunals, e.g. the President and members of the Lands Tribunal. The Lord Chancellor also retains the function of custody and use of the Great Seal of the United Kingdom. The Lord Chancellor retains functions under the Insolvency Act 1986, including the power to exclude a county court from having a jurisdiction to wind up companies and in connection with the making of insolvency rules which govern practice and procedure. There are still a number of functions in relation to judicial appointments where the appointment is made by the Lord Chief Justice but after consultation with the Lord Chancellor. An example is the appointment of members, judicial and lay, of the Employment Appeal Tribunal. The full list, which is much too long to be reproduced here, is set out in Sch 7 to the Constitutional Reform Act 2005.

Head and deputy head of civil justice

Section 62 of the Courts Act 2003 (as inserted by the Constitutional Reform Act 2005) states that there is to be a Head of Civil Justice who is the Master of the Rolls or, if the Lord Chief Justice appoints another person, that person. The Lord Chief Justice may also appoint a Deputy Head of Civil Justice. In the case of the Lord Chief Justice's appointments, consultation with the Lord Chancellor is required and the persons appointed by the Lord Chief Justice must be either the Chancellor of the High Court or an ordinary judge of the Court of Appeal. The Lord Chief Justice can delegate the above function to a senior judge, e.g. the Master of the Rolls or a Lord Justice of Appeal. It has been recognised that there is a need for a Head of Civil Justice to provide an overview of the system and give it consistency.

The Attorney-General and the Solicitor-General

The Attorney-General and the Solicitor-General are known as the Law Officers. The appointments are political and change with the government. As a rule, the Law Officers are not members of the Cabinet.

The Attorney-General

The Attorney-General is appointed by Letters Patent under the Great Seal, and is usually a member of the House of Commons. He represents the Crown in civil matters and can prosecute in important criminal cases. He is the Head of the English Bar, and points of professional etiquette are referred to him. He also advises government departments on legal matters, and advises the court on matters of parliamentary privilege. He can institute litigation on behalf of the public, e.g. to stop a public nuisance or the commission of a crime and to enforce or regulate public charitable trusts, because he acts on behalf of the public as a whole. Individuals do not have sufficient interest (or *locus standi*) to bring actions in these cases.

Where a person does not have sufficient *locus standi* to initiate proceedings himself, he may ask the Attorney-General to take proceedings. If the Attorney-General does act at the relation of a private individual, the action is known as a 'relator action' and the relator is responsible for the costs incurred. If the Attorney-General refuses to act, no court can compel him to do so.

The Solicitor-General

The Solicitor-General is the subordinate of the Attorney-General, and sometimes gives a joint opinion with him when asked by government departments. In spite of his title, he is a member of the Bar and he need not, strictly speaking, be in the House of Commons. His duties are similar to those of the Attorney-General and he is in many ways his deputy. Both Law Officers are precluded from private practice. The Law Officers Act 1997 provides that any functions authorised or required to be discharged by the Attorney-General may be discharged by the Solicitor-General.

The reason that the Solicitor-General is a barrister is merely a constitutional convention based on the fact that formerly only barristers had a right of audience in the higher courts. Since this is no longer the case, a future appointment may be of a solicitor with advocacy rights.

Gouriet v *Union of Post Office Workers*, 1977 – Law Officers: Attorney-General's enforcement of the law in the public interest (**19**)

Masters

Many matters arise for decision between the time of issue of the claim form and the trial of the action, e.g. what documents must be shown by one side to the other; what time should be allowed for putting in the statements of case and defences. In summary, a master is concerned with the management of a case pre-trial. Case management matters are, under the Civil Procedure Rules 1998, conducted at the appropriate Civil Trial Centre (see Chapter 5). These conferences are generally dealt with by a master (or district judge) particularly in multi-track cases (see further Chapter 5).