

The **independence** of the judiciary is a fundamental principle of the **rule of law**.

Judges have a key role in controlling the exercise of power by the state through judicial review and through the **Human Rights Act 1998**, with the power to issue section 4 declarations of incompatibility – **A and X and others v Secretary of State for the Home Department (2004)**

Judiciary Hierarchy

Superior Judges

Head of the Judiciary - President of the Courts of England & Wales (in practice the Lord Chief Justice) (Constitutional Reform Act 2005)

Most senior judges - Justices of the Supreme Court - Supreme Court & Privy Council (Constitutional Reform Act 2005 replaced the House of Lords with the Supreme Court in 2009)

Court of Appeal - Lord & Lady Justices of Appeal (Head of Criminal Division)

Lord Chief Justice (Head of Civil Division)

Master of the Rolls

High Court - sit in 3 divisions (Family, Chancery, Queens Bench Division)

Inferior Judges

Circuit judges - Crown Court & County Court

Recorders - (part-time) County Court & Crown Court

District judge - Magistrates' court

District judges - County Court

Role of Lord Chancellor - Constitutional Reform Act 2005 has maintained the role but the powers of the Lord Chancellor have been severely curtailed as a result of the Act. The Lord Chancellor is now head of the Ministry of Justice: he is no longer head of the judiciary and no longer sits as a judge in the House of Lords.

Judiciary Appointments Process

- **Constitutional Reform Act 2005** - Establishment of **Judicial Appointments Commission**.
- Judicial Appointments Commission - 14 members (5 lay, 5 judges, 2 legal professionals, a lay magistrate and a tribunal member) appointed by the Queen on the recommendation of the Lord Chancellor.
- **Tribunals, Courts and Enforcement Act 2007** - eligibility to become a judge no longer based on numbers of years of rights of audience, but now on number of years post qualification experience.
- **Crime and Courts Act 2013** - new selection process, 'equal merit provision'.

Dismissal: there are 5 ways by which a judge may leave office:

1. Dismissal - High Court judges and above (**Act of Settlement 1700; Courts Act 1971 & Constitutional Reform Act 2005**).
2. Suspension from office (**Constitutional Reform Act 2005** - set up disciplinary procedures)
3. Resignation
4. Retirement – usually retire at 70
5. Removal due to infirmity

Independence

- **Judicial independence** is of paramount importance. It is a necessary condition of impartiality and, therefore, of a fair trial. Judges should be independent (from the Executive, interest groups, and litigants); should have an independent pay review; have no other paid appointment or profession or business; not sit on a case where has or appears to have personal interest/bias - e.g. Lord Hoffmann in Re Pinochet Urdarte (1999)
- **Threats to judicial independence** from the supremacy of Parliament - judges are subordinate to the will of Parliament. Note the recent Gina Miller Brexit case, R (Miller) v Secretary of State for Exiting the European Union (2017).
- **Judges have been seen to show political bias:** see R v Ponting (1985). As well as political bias, some cases show a bias towards the right wing of the political spectrum, e.g. - Bromley London Borough Council v Greater London Council (1982); Council of Civil Service Union v Minister for the Civil Service (1984); Thomas v NUM (1985).

