

PRESS CONFERENCE

held by

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Thomas)

on

Wednesday, 30 November 2016

at

THE ROYAL COURTS OF JUSTICE, THE STRAND, LONDON, WC2A 2LL

Transcribed from the Audio Recording by
Apple Transcription Limited
Suite 204, Kingfisher Business Centre, Burnley Road, Rawtenstall, Lancashire BB4 8ES
DX: 26258 Rawtenstall – Telephone: 0845 604 5642 – Fax: 01706 870838

STEPHEN WARD: Right, so anybody who has not seen me before, I am Stephen Ward and I am the Head of News for the judiciary. Thank you all for coming. There are just a few ground rules. There is one thing that I am supposed to say. If there is a fire alarm, because there are not any planned, you should all make your way out. You can see where the street is. We are not expecting one. You will have seen the notice sent round that judges, and particularly the Lord Justice, can never talk about any cases they have done or other people have done and that applies particularly at the moment to the Article 50 case, there is some sensitivity about that, and it is very difficult for any judge to talk about anything that is party political or anything of that kind so, other than that, we welcome questions on anything but could you – I think the Lord Justice probably knows most of your faces – but for the benefit of a transcript afterwards, if you could just give your name and the organisation you are working for before you ask the question and I will take the questions one by one and I have got the sun in my eyes.

THE LORD CHIEF JUSTICE: We did not think of that.

STEPHEN WARD: Right. Martin.

MARTIN BENTHAM (EVENING STANDARD): You mentioned last week that you wanted to keep this country's commercial law, English law in general, as number one in the world whether or not we execute Brexit. Are you confident that that can be the case and what specific measures do you think are needed to secure that and maintain it?

THE LORD CHIEF JUSTICE: Number one, I think we ought to have a clear strategy as to what we want to achieve on which the legal profession, the government, the judiciary and everyone interested, including parliament, has clear agreement. Secondly, we must make certain that our courts remain attractive, not only in the sense that the law that we administer and that the quality of the judges is absolutely paramount, but also the state of the buildings and the state of the IT is good. Thirdly, that we must continue to strengthen the legal profession and make sure that it and the judiciary adapts to changing times and, four, we must not ignore what is quite strong competition now from overseas and, five, we must ourselves, because I think our Commercial Court and the parts of the Chancery Division that deal with international work have been leaders in insolvency and company reconstruction. We have been leaders as much as we have been in the commercial world so I think that we have got to keep all of those focused. We shall have a struggle, I have got no doubt, Brexit or no Brexit. I don't think Brexit is terribly relevant to that. We just must make certain that we retain our position.

MARTIN BENTHAM: Are you confident we can?

THE LORD CHIEF JUSTICE: I think to say that one was confident might give the air that one felt, well, we need not bother. I am confident we can if we work hard enough but work, it will require. Complacency would be a very, very bad thing to field, that that was my attitude or anyone's attitude.

CLIVE COLEMAN (BBC): The judiciary has faced unprecedented criticism in recent times. Can I ask you, as the head of the judiciary, what do you say in response to that and to maintain confidence in the independent judiciary?

THE LORD CHIEF JUSTICE: I think that our independence is paramount. We are an attractive jurisdiction because everyone knows, not only are the judges the best or amongst the best in the world but that we are totally uninfluenced by external events. If and insofar as we need to do things to strengthen that, this is something to which I would like to discuss but it is very difficult for me to discuss that now in the present context, i.e. anything I say in relation to that will be

interpreted by one person or by another as some comment on the existing case in relation to Article 50 and what people have said about it and I take the very firm view that it is better to wait until this is over.

CLIVE COLEMAN: Can I just ask—?

THE LORD CHIEF JUSTICE: That may be disappointing to you but I will have been asked by many people over the course of last year what my views were on Brexit. I said this is not a matter the judiciary can comment on and I take the view now that it is extremely difficult for me to make any comment at all which will not be interpreted one way or the other. I am sorry.

STEVE DOUGHTY (DAILY MAIL): Should there be criticism of judges?

THE LORD CHIEF JUSTICE: It depends what you mean by “criticism” and the difficult—

STEVE DOUGHTY: In newspapers for example.

THE LORD CHIEF JUSTICE: Pardon?

STEVE DOUGHTY: In newspaper stories.

THE LORD CHIEF JUSTICE: No, no, it depends where the dividing line is between criticism and abuse but again one can state that. To try and illustrate it would draw me into the question that Clive Coleman tried to ask me and I am sorry but I feel that it is not appropriate for me to be drawn into this at this time.

OWEN BOWCOTT (GUARDIAN): David Lammy was extremely critical of the disproportionate impact of sentences on ethnic minorities [INDISTINCT]. Do you think that he is wrong?

THE LORD CHIEF JUSTICE: I feel that when someone of the calibre of David Lammy raises these issues, one has to say, “Well, let us examine the problem.” The issue as to disparity in sentencing and confidence in the criminal justice system has emerged from time to time and when it emerged in the late 1990s, we looked at what appeared on the figures to be disparity in sentencing and a huge amount of work was done by Professor Hood and others which looked in detail, got the files out and studied them and I think that until you can actually look on a case-by-case basis, it is unsafe to come to any conclusion. So although I am very glad that the point has been raised, what it needs is detailed research, looking at the files by someone completely independent. There may be a problem in perception but if there is, that needs to be tackled by a hard examination of the evidence. The difficulty is, as you all know, the categorisation of offences under our system covers such a wide spectrum that you need to look at the cases. There may be issues, for example, in relation to times at which people plead, the kind of access to justice that they have, the kind of advice they are given, that all needs to be looked at but it does require proper independent research and there are plenty of excellent researchers to do it.

OWEN BOWCOTT: Do you think [INDISTINCT] ethnic minority judges, that that is making slow progress in relation to women and that that is part of the problem.

THE LORD CHIEF JUSTICE: Definitely but that is across the whole of our society. I think, as I understand Mr Lammy, he has, you know, looked at it in three categories: the gender balance, the number of South Asians who come into the legal profession and the judiciary, the number of black people and I think it probably is necessary to make that threefold distinction but, yes, we are doing everything we can to try and encourage people to come in and, secondly, to make certain that when they join the judiciary there is no glass ceiling.

FRANCES GIBB (THE TIMES): The courts are being flooded, we are told, with sex offence, sex abuse cases. How much of a problem is that and what knock-on effect does it have?

THE LORD CHIEF JUSTICE: It produces a number of different problems. The first is making certain that the procedure for the complainant is as fair as we can make it. We... more than a just amount of time, we spend considering whether we should enable victims of sex crimes to have their cross-examination done immediately after they had given their video interview. We have now run three pilots, one in Liverpool, one in Leeds and one in Kingston. They have all been successful and I am extremely hopeful that the Ministry of Justice will roll that out. That is one illustration of how I think we can deal with enabling people to give good evidence. The second issue is that we must make sure that when cases are presented, we bring them on as quickly as possible. This is proving quite a challenge because many of them, the defendants are on bail and we try to deal with those in custody first, and so there is a need to make certain we bring them on as quickly as possible and, thirdly, we have to take care of two people: the juries, who have to sometimes look at terrible things, and the judges who, if they have an unrestricted diet of this, it adds to the issues of morale and so I think we can identify all the issues.

The area where great improvement is necessary is better prediction of the volume of cases. There are two distinct categories. The first is historic and the second is contemporaneous. Contemporaneous depends on people coming into the police station and making a complaint. We need accurate figures as to the trends because historical trends, I do not believe, are accurate because I think we have made the environment in which people can complain better. Historic cases, we need a much better prediction. When a police force is conducting, say, a major investigation, that needs to be flagged up. As soon as the issues... that there are going to be cases coming from it, they must be notified so the entire pipeline of the system is ready to deal with it and, in my view, we are at a severe disadvantage in not dealing with this. This is not an issue that there is a joined-up criminal justice system and I have been saying this for some time. I have said it again quite strongly and I will say it again quite strongly now.

GRANIA LANGDON-DOWN (FREELANCE): You talked a lot judicial morale and problems with recruitment. Do you know yet if the Ministry of Justice has agreed a salary increase and has it been signed off yet?

THE LORD CHIEF JUSTICE: Nothing is agreed until it is agreed is something I have always learnt from my experience. I hope everything... nothing has been agreed. When something is agreed, I very much hope it will put in place the beginning of the solution to the problem. The most important thing as far as the judiciary is concerned is the review by the Senior Salaries Review Body which will, of necessary, take some time. I very much hope that it has been agreed that we will have a senior salaries review. It takes some time. I doubt whether it will report until into 2018. It always takes time. What we are looking for is an interim measure and then a proper examination. The last review which took place in 2011 was never implemented and this time I think there is a much greater all round, and I am very grateful to the chairman of the SSRB for this, he feels that really we must do a proper job and then do everything possible to implement the recommendations. So we are concentrating a lot of attention to that last.

GRANIA LANGDON-DOWN: You talk in your annual report about high-level career progression.

THE LORD CHIEF JUSTICE: Yes.

GRANIA LANGDON-DOWN: Could you expand on that?

THE LORD CHIEF JUSTICE: I will. One of the things that is happening now is that people are coming in to the judiciary, say, in their late 30s and therefore will have, on current retirement dates, 30-plus years. No doubt the younger of you may worry that you might have to work for

more than 30-plus years but that is something which adds to the problem. I do not believe that it is good for anyone to know they are joining something and they may be doing the same thing for 30 years and, therefore, what we need to do is to explore what they are interested in. Secondly, we need to absolutely introduce appraisal and we need, at this end, to give people encouragement to doing something else. If you look back to the time of the old Lord Chancellor's Department, although it did it by methods that these days would not be acceptable, all behind a screen, they did have some idea of career planning, like they do across the entire civil service and they do in any decent company. We have got to do it ourselves here and it is a deficiency that we are trying... we will cure as rapidly as we can. I am very anxious to make certain that whatever age, but particularly the young when they enter the judiciary, can see a variety of work and if they want to... they may be very content, many people say that they enjoy doing [trial? 00:15:47] work and they do not want to do anything else. Fine, but there are others who might want to do different things. They may have started in a tribunal or started as a district judge and they may want to do different things and I think we ought to make that possible.

JOSHUA ROZENBERG (FREELANCE): Can I try a quick supplementary to Frances's question about sex cases before I go on to my main question? The supplementary is do you have any views on anonymity for defendants, perhaps in all cases, up to the point of charge? So from arrest to charge, not from charge to trial, which has been talked about in the context of [INDISTINCT].

THE LORD CHIEF JUSTICE: I think that many people feel that if something is in an investigatory stage, particularly where charges may not be proceeded with, there can be huge detriment to the individual concerned. It is, I think, a sad fact that some cases take a very, very long time in investigation and I think this is a matter to which it does seem to me that this is an issue of public interest to which parliament ought to come to a decision. I do not think it can be done by judicial statement but I can see, on the one hand, the real detriment to the individual but, on the other hand, one has to balance against that, if one takes away sex offending, as you say, the principle will have to apply across the board, to another area, say, financial fraud. You know, if you suspected someone of serious financial fraud, should you make that completely anonymous and allow the person to continue in the meantime? So I do think there is a balancing exercise and it is something I do not believe the judiciary should make a decision on. It is a matter for parliament.

JOSHUA ROZENBERG: Thank you. The question I really wanted to ask was this. Last week, Lord Neuberger told us that he was going to retire on 30th September next year. Do you plan to retire on the same date?

THE LORD CHIEF JUSTICE: I have to retire at midnight on 21st October because my birthday is on the 22nd. My position is somewhat different in that I operate, I was going to say, on a 24/7, 365 basis but I can never tell when anything will come up. I believe that we live in a stage where – you would know better than me – that we live in a world that is somewhat unpredictable and I want to choose the right time for me to retire so that someone can take over at a convenient time. What that will be now is almost impossible to tell but will clarify itself as we get into next year but I shall certainly not be here on 22nd October and, beyond that, I think it is very difficult for me to be precise as to when it would be the right time to go but it will be some time in advance of that date. It is a difference in the kind of job that Lord Neuberger does and, you know, having to look after the entire judiciary and deal with government on a day-to-day basis. It is very difficult at this stage to find a convenient time.

JOSHUA ROZENBERG: If I press you very slightly further on that, if it is either in October or earlier, then obviously if it is much earlier than one needs to get into the arrangements for appointing your successor—

THE LORD CHIEF JUSTICE: Yes.

JOSHUA ROZENBERG: —and that would require some time and so on and so forth, so it is not going to be next month but—

THE LORD CHIEF JUSTICE: I would hope that we get around to the mechanism for appointing my successor early in the New Year.

JANE CROFT (FINANCIAL TIMES): Is there a real problem with litigants in person coming to court? Especially the Court of Appeal?

THE LORD CHIEF JUSTICE: Yes, it is a problem across the entire system. Some of you will remember when Lord Denning was Master of the Rolls some time ago. He used to have litigants in person. They used to take about ten minutes and he was... I have never seen anyone deal with them better. He was wonderful. So we have always had them. The problem is we have now far too many. In the Court of Appeal, the cases take up much longer. We have taken steps to try and deal with them by... particularly people who have huge quantities of paper and bring them along and we have a very valuable core of judicial assistants. Where the real problems lie, I think, are in the family courts. One of the things that is concerning us, and I think the concern has arisen recently, is the withdrawal of legal aid and legal assistance from private law family disputes. If you have a dispute about the children, it is obviously desirable that this is settled as soon as possible. There was a move to do more mediation but the difficulty with mediation is that unless you have someone who says, "Yes, the judge won't say anything different to the mediator," if someone has lost, they feel, "Well, why shouldn't we press on?" or they try and solve the thing themselves and what is beginning to emerge, and we need to study this in much more detail, is: is the withdrawal of legal aid causing a problem in resolving dispute between father and mother about the children. There is some evidence to indicate that attempts to settle these issues between the father and the mother exacerbate the problem in some cases and a dispute that is exacerbated takes more time to solve in the end. Whether the answer is legal aid or what they do in California, which is to provide a service where there is a lawyer at the court who can speak to both parties, I do not know, but everything thought that the numbers had dropped, everything was well. The numbers of cases are now rising again and we need seriously... this is a real problem and it is a problem for society which needs detailed examination.

HAYDEN SMITH (THE PRESS ASSOCIATION): Just following up on your comments at the committee last week about non-custodial sentences, do you think too many criminals being sent to prison?

THE LORD CHIEF JUSTICE: The most difficult decision a judge ever has to make is whether you send someone to prison or not and it is very important that where you are on the cusp of prison or no prison that you do have a realistic alternative to prison and that is why, and what I said last week is that you have tough community sentences available, particularly in a time where the prisons are overstretched. If you are sending someone to prison for a very short time, the ability of the prison to cope with that person is limited in current circumstances and what is absolutely essential is that you have, for magistrates in particular but also for judges, really good alternatives to prison and I think that this is something on which we need to look very much greater. There are two issues: how do you balance rehabilitation and punishment and what should the punishment be? Should you have some really tough kind of work for them to do? Should you make the punishment visible? These are issues that need to be debated but what is essential is we have a tough alternative to prison because I do think that one needs to debate the amount of resource the citizen is prepared to put into prisons before we go on increasing the prison population.

HAYDEN SMITH: Does that alternative exist at the moment?

THE LORD CHIEF JUSTICE: I think the difficulty at the moment is that there is not sufficient liaison between the judiciary and the National Probation Service and the community rehabilitation companies to ensure that there is that necessary degree of confidence. This is a cyclical problem. If one goes back to about 2000, there was a low level of confidence in probation. That was massively enhanced by the introduction of the probation trusts, with judges on the board who would go and talk, magistrates on the board would come back and have confidence and I think at the moment what I pick up is that we need to have much greater communication between those who provide the punishments in the community and the rehabilitation to instil confidence and this is something that needs to be worked on very much.

FRANCES GIBB (THE TIMES) Can I just follow on that question? It was just really can you say what would you regard to be a very, very tough community sentence?

THE LORD CHIEF JUSTICE: Well, I think it is a matter for debate. Over the years, and I have had discussions on this now for 15 years with various different secretaries of state, is the community work that people are being asked to do, is that sufficiently tough? Are the programmes they go on really challenging? You know, people who need thinking skills programmes. Are the people who really do not have thinking skills going on them and are they being challenged enough and I also think – this is much more controversial that I have raised it over the years – I mean, what visibility do you give to people who are doing community work?

FRANCES GIBB: Are you saying they should be more visible and what kind of programmes are—?

THE LORD CHIEF JUSTICE: What I think you need to do is you need to be able to say when someone is given a community punishment, a community sentence, yes, this is something that is a really tough alternative to prison and you can do this in many different ways including visibility. This is a controversial issue but it needs to be looked at. I am not saying necessarily we should do it but we need to look very much more carefully at how we give the public confidence and also give the person who... the judiciary confidence and particularly the magistracy, that a community sentence is, "I've got off." That is a disaster. Many defendants often say, "Phew, I've got off," and that is a terrible, terrible indictment of the system.

FRANCES GIBB: You would like to see them out there visibly cleaning the streets or cleaning graffiti?

THE LORD CHIEF JUSTICE: I am not saying I would necessarily want that. It is not for me to determine it. What I feel is that these are things on which it would be good to have proper, open debate across... and this is where, if I may say so, you all can play such an important part in getting what are these difficult issues debated. They are issues two ways. You know, you can say, "Well, making people visible, in some people destroys their confidence," and that is the last thing we want to do. On others you might think, "Well, visibility of punishment is a good thing." I just say, all I think it is right for me to do is to say making community penalties tough is something that we have not spent enough time looking at.

FRANCES GIBB I think Lord Phillips worked undercover cleaning up. Have you ever—

THE LORD CHIEF JUSTICE: No, I have never done that. I have been to see people. It is like, I believe, every judge should go to a prison once a year. It is a tall order but you need to know where you are sending people. I was reading somewhere somebody had been to Wormwood Scrubs recently but you need to go and see what it is like and, similarly, you need to see what community punishment is like. The judiciary needs to have confidence but I also think the press

needs to see because you have a role in helping people understand that what is being done to rehabilitate or to punish is something people can have confidence in.

GRANIA LANDGON-DOWN Would you like to see more problem solving courts?

THE LORD CHIEF JUSTICE: I think there are two kinds of problem solving courts and I think we need to distinguish the family problem solving courts which the President of the Family Division, Sir James, he is a great exponent. He takes the view that inadequate parenting, once identified, is better solved by dealing with the problem rather than taking the further children that may come along away. In crime, it is a balance again between where you put your resources and the North Liverpool Justice Centre, which was the main experiment we did, was extremely resource intensive and the view of the Ministry after an evaluation was that the amount of money we were putting into it did not justify continuation. I think that the magistrates can play a very important role in this. I think there is a lot to be said that they are not truly valued. They are certainly hugely valued by me but what you have got to face up to is if you have a problem solving in court, you may need more resources to deal with mental health issues, you may need resources to deal more with drug issues. You need those resources. I think setting up a problem-solving court without resources would be a terrible mistake because you would fail and there has got to be that commitment and I am sure that the Chancellor of the Exchequer has many, many calls on his resources at the moment.

JOHN HYDE (LAW SOCIETY GAZETTE): Just following up on litigants in person, have you seen any increase in McKenzie Friends? Is it time for more regulation of them?

THE LORD CHIEF JUSTICE: I think McKenzie friends, unpaid McKenzie friends, no one can have any possible objection to, provided that their role is defined. I think paid McKenzie friends introduces a prospect of having yet another part of a professional who is coming in to help litigants. One has to bear in mind, and I have seen this both in crime and in immigration, that someone who is under threat of removal or is accused of a serious crime is extremely vulnerable and it is very easy for someone to say, "Come on, I can help you." There was Mr [INDISTINCT] who was convicted, so I think I can safely say he is an illustration of it. There were others who help in immigration, I have seen them, who give legal advice that is simply wrong and you are preying on vulnerable people and that is why I am very, very cautious about payment to non-lawyers who try and assist vulnerable people. There is a real risk of exploitation or of giving advice the person wants to hear, not advice that they do not want to hear.

CLIVE COLEMAN (BBC): Can I ask about the law of homicide? You recently had the judgment on the Jogee case that went to the Supreme Court and I won't ask you to comment on it. But is there a feeling the law is built on a rickety structure [INDISTINCT]. What is your view of the current law of homicide and does it need to be overhauled?

THE LORD CHIEF JUSTICE: I said last summer that I really do believe in the criminal code and therefore I would naturally say, "Yes, this ought to be part of a criminal code." The history of the criminal code is very unfortunate. When someone proposed it in the 19th century, the judges were dead against it and when the judges came round to thinking it was a good thing towards the end of the last century, beginning of this, Lord Bingham was a great believer in it, the government was not so keen on it but it is something to be grappled with and if you just look at various old crimes that have caused a problem, one example of which is outraging public decency which is a catch-all offence that goes back a very long time. The other, which is slightly more controversial, is misfeasance in public office and I do believe there is an awful lot to be said for having what is our criminal law accessible and clear to everyone and I think that homicide is one of those areas which plainly should be included in it. The Law Commission has done some wonderful studies but I regret to say they gather dust. So, yes, but I see it as part of an overall long-term programme on which I am very keen.

STEVE DOUGHTY: Can I just return to the question please of community punishment and visibility?

THE LORD CHIEF JUSTICE: Yes.

STEVE: Would you be in favour of groups of offenders wearing stripped uniforms [INDISTINCT] to shame them?

THE LORD CHIEF JUSTICE: I am not saying that whether you should... There are plenty of ways of doing it without dressing people up but it is quite important... but whether it is the right thing or the wrong thing to do I do not think is for me to say but it is an issue that you need to discuss. I think that one of the things that I believe in doing is raising issues but I do not believe that the judge's duty is to try and express a view on it. What I think is important is this is a matter for debate and I can well and strongly see an argument to say, "No, no, this is terrible. It is completely alien to the British tradition and we don't want it." You can see another argument for saying, "Well, yes, it might be." I will tell you all I think is it ought to be debated. I do not have a particular view one way or the other because I do not believe it is for a judge to do that. I think it is for judges to say there is a problem with community punishment or a community sentence and we need to make certain that the public believe in them as being tough. How do we do that? And there are many options which I have mentioned to you.

OWEN BOWCOTT: Just to go back to the prisons. Obviously one problem is the large number of prisoners on IPP sentences. Do judges feel that some of them have been in too long and sentences have gone on longer than expected?

THE LORD CHIEF JUSTICE: At the beginning of this year, we gave judgment in a case where we looked at 13 appeals and I would much rather you look at... it is a judgment of the kind that we tend to write these days which contains a lot of general principles of appealing and specific illustrations, but there were cases where the evidence before us was that the continued detention of people was increasing the risk that they posed. There is nothing the judiciary can do about those who are in... subject to IPPs. We really said, "This is now a matter, I regret to say..." I am not passing the buck but this is really a matter for the government, for the Parole Board and for parliament. It is a problem. It is very good to see the numbers are coming down but we looked at all of these cases in a very clear way and I do not think, as a judge, I can go further than we went in that judgment.

JOHN HYDE: Do you have confidence that the online court will work and perhaps, more importantly, will users feel that justice has been done if they don't sit in court or don't see a judge?

THE LORD CHIEF JUSTICE: Yes but I had better give you more than a monosyllabic answer. Yes, I think that, first of all, the work that is being done does tend to show that the use of a modern type of system with forms and a website designed in a modern manner is user friendly. Secondly, the experience of the Financial Ombudsman Service in using case officers, effectively, to try and resolve disputes has worked and, thirdly, what we must make sure is that if people want to, they have access to a judge. We simply cannot take that away from people. I have never been a great enthusiast of compulsory mediation because I do believe that deprives people of the right to go to a judge and maybe, if you want to see a judge, you should not have that right taken away from you and it is a right.

STEPHEN WARD: There is probably time for one more.

FRANCES GIBB: Coming back to your departure, what is the likelihood of a woman succeeding you or do we not yet have women at that level of seniority and experience?

THE LORD CHIEF JUSTICE: We have an awful lot of potential successors. It would be wrong of me to... the one thing that is very clear is that a departing judge, just like a departing editor or a departing chief executive, should leave the selection of his successor to those entrusted with the appointment. That is not something I will comment on.

STEPHEN WARD: Thank you everybody. This time next year, you will know the answer.

THE LORD CHIEF JUSTICE: You will certainly know the answer a long time before that. Thank you all very much indeed and I am again very sorry I could not deal with the one area I know you are dying to ask me about but it is not politic to do so now. Thank you all very much.

[ENDS]