

PRESS CONFERENCE

held by

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Burnett of Maldon)

on

Tuesday, 5th December 2017

at

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

OPENING REMARKS

Many thanks for coming this morning to my first press conference as Lord Chief Justice.

I've been Chief Justice now for two months, so it is still early days. I took on the job because I thought I might have something to contribute and could build on the work of my predecessor, Lord Thomas. The job has three main components. First, as Head of the Judiciary and President of the Courts in England and Wales. Secondly, to sit as a judge, particularly in cases of public interest. And thirdly, with the Lord Chancellor and Senior President of Tribunals, to oversee the Courts and Tribunals Service which runs and manages all our jurisdictions. There is a huge amount to do, but there are two things that I have been particularly concerned about: to increase awareness of what judges do, together with their centrality to maintaining the rule of law; and, to secure the reforms necessary to bring the working of our justice system up to date.

Independent and open justice and a free press are both fundamental to a society that values liberty under the rule of law.

Pressure of time makes it difficult for you and your colleagues to report more than a few cases here in the High Court and Court of Appeal, or up and down the country in the Magistrates', Crown, County and Family Courts or Tribunals.

But most people get their knowledge of judges from the reports they see and read – inevitably the biggest and most newsworthy – or from TV and film dramas which are fictional. So, I doubt whether most people appreciate the nature of the work done by our judges on a day-to-day basis.

Our unpaid magistrates deal with the majority of criminal cases and many family cases. We have almost 600 professional district judges who deal with criminal cases and who decide the majority of civil disputes, involving individuals or businesses, as well as many family cases. We have a roughly similar number of circuit judges who preside over cases in the Crown Court and who hear larger civil and family disputes. And there are Tribunals Judges resolving a wide range of disputes, including many between the individual and the State.

Nobody should underestimate how difficult and harrowing it can be to deal regularly with family cases concerning child protection, or criminal cases involving serious violence or sexual abuse.

Our judges work incredibly hard making important, often life-changing decisions; day in, day out, in difficult circumstances. What goes on in court is only part of what a judge has to do. There are

long hours out of court away from the public gaze. I want people to know that. Their daily diet gives them a uniquely broad insight into what is going on in society, especially when things are going wrong.

They are a pretty remarkable group of women and men who put public service above personal gain.

I believe greater understanding will lead to greater respect.

Of course judges must earn that respect, and should not be immune from criticism for their decisions; but fair criticism is different from abuse. By this I mean those cases where judges face a torrent of personal abuse for decisions they have made – increasingly online and in social media – and a growing number of cases where judges are threatened and physically abused. Some is calculated to intimidate judges individually or collectively. Such abuse is capable of undermining the rule of law. Judicial independence and impartiality is at the heart of the rule of law.

So I want to build on the work already being done in schools to enable children to learn about the justice system, the rule of law and the independence of the judiciary. Lesson plans are available and perhaps it is something worth focussing on more. We have hundreds of judges visiting schools and working in their local communities and supporting school visits to the courts. This is unsung work of great value.

I mentioned the reform programme. This is a one-billion pound, six-year project to which the Government has given its commitment to bring our Courts and Tribunals, and our administrative practices, up to date. I'd like to say a few words about why this programme is so important to the administration of justice.

It has three broad aims. First, to make the administration of justice more efficient. Secondly, to improve access to justice; and thirdly to improve the conditions for the public and for court staff, professionals and judges.

It is quite remarkable that towards the end of the second decade of the 21st century many of our courts still operate on paper-based systems. A digital case system has been introduced into the criminal courts over the last two years which has already saved the need to print 33 million pages of paper. A parallel system is being rolled out in the civil courts. Many routine cases in the Magistrates' Courts – fare evasion, traffic offences and such like – are being dealt with online. This is really just the beginning. It is transformational and will make dealing with our courts and tribunals – for individuals, businesses and lawyers alike – quicker and simpler.

Improving access to justice is at the heart of the reform programme. Pilots for dealing with divorce and probate online are working well. So too is the online civil money claim service. When we reach our goal, it should be possible for a very large number of civil disputes to be resolved using online facilities with appropriate judicial input when it is needed, but rarely requiring the parties to attend court. And an example of simplification is a new online "help with fees" service which takes about 5 minutes – replacing a 26-page form. There will be many more which together add up to a dramatic change.

And we aim to improve our buildings – some are in a terrible state – and our technology, in particular, to make the conditions of those who work in or use the justice system better.

So, as I've described, I'm taking over at a time of great change for our world and the way we serve society, and with much cause for optimism if we can get it right.

QUESTION AND ANSWER SESSION

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STEPHEN WARD (HEAD OF NEWS, JUDICIAL OFFICE): Thank you. So, Martin?

MARTIN BENTHAM (LONDON EVENING STANDARD): Martin Bentham from the Evening Standard.

THE LORD CHIEF JUSTICE: Yes.

MARTIN BENTHAM: One of the criticisms that has been raised by a former minister, in particular, is that you are responsible for the prisons crisis and have washed your hands of the prison crisis in one sense, too many people, and so on. What do you say to that, first of all, in terms of [*inaudible*] understand what you do, and, secondly, from your experience of people that are... seem to abuse the criminal courts, and particularly the younger offenders, are there things that the judiciary see could be done, not necessarily by you but by others to prevent more people coming back in, in the way we are doing?

THE LORD CHIEF JUSTICE: It is well-known that the prison population has broadly doubled since 1993. It has been relatively stable over the last four or five years. The public figures suggest that there has been an increase in sentences particularly over four years but a decrease in sentences at the lower end and quite importantly a marked reduction in the number of young offenders going into custody. Now, as you will appreciate, the statutory scheme that governs sentencing requires all other options to be considered first before custody or imprisonment for adults. That is what is at the heart of what judges do. As is also well-known, parliament has increased the sentences for a number of offences, particularly sexual offences, in the last 15 or so years and judges are required to sentence not only within the statutory scheme but also in accordance with the guidelines that are issued by the Sentencing Guidelines Council. That, too, is a statutory requirement and the Sentencing Guidelines Council, as you know, consults widely before identifying the appropriate ranges for the different categories of offence. So, judges are doing what parliament has required them to do in sentencing but there are various areas where there are quite heartening signs, and as I have mentioned in particular, the reduction in the use of custody for young offenders.

STEPHEN WARD: Grania, then Owen. Grania.

GRANIA LANGDON-DOWN (FREELANCE): Going back to your—

THE LORD CHIEF JUSTICE: Sorry, could you—

GRANIA LANGDON-DOWN: Sorry, Grania Langdon-Down.

THE LORD CHIEF JUSTICE: Yes.

GRANIA LANGDON-DOWN: I am freelance. I am doing this for LexisNexis. I say this for a Crown Court judge who bravely said there is all this talk of the billion pounds but he said what are you going to do for fighting for Legal Aid on the basis that he has defendants in murder cases trying to defend themselves and in terms of buildings, if the loos flood, drip into the jury room and he is expected to run a court with the respect... I mean, how much are you going to be driving and overseeing that this money is actually used?

THE LORD CHIEF JUSTICE: There are two questions there. So far as Legal Aid is concerned, that of course in the end is a matter for the government and as you will appreciate there is a review underway of the legislation on Legal Aid, which the government announced I think three or four weeks ago. So, that is something which is underway. The government will consider all representations it gets and then report sometime in the summer. So far as the condition of our buildings is concerned, I mentioned in my statement that some of them are in a dreadful condition. Some of them are magnificent. Some of the newer buildings are as good as any working environment. The court service is now ensuring that every penny of the budget allocated for repairs is being spent. It came as something of a surprise to me recently to learn that for some years at least the allocated budget for repairs wasn't completely spent but that now is happening. The second thing is that I am very conscious that there are in many of our courts a number of problems which are relatively minor and shouldn't take a great deal of effort to sort. One of the first things I did on being announced as Chief Justice was to speak to the Chief Executive of HMCTS, the court service, and asked that a fund be found to spend on relatively minor but important repairs and that it should be made available and spent this financial year. I am happy to say that she was enormously receptive to that, as was the Lord Chancellor, and so we have secured a fund which is being allocated as I speak. All of the courts across the country were asked to bid for money to deal with these relatively minor but very irritating problems in some of our courts. The allocation is underway and it will be spent by the end of the financial year.

GRANIA LANGDON-DOWN: Just two points on that, one of which will you be... how concerned are you about Legal Aid and will you be on behalf of the judiciary putting in anything to the review?

THE LORD CHIEF JUSTICE: We have been asked to comment and we will comment. At this stage it is premature for me to indicate what those comments might be.

GRANIA LANGDON-DOWN: But generally when you look at the rise in litigants in person, is this something that concerns you now you are taking over the present judiciary?

THE LORD CHIEF JUSTICE: Litigants in person can be a problem for judges but not always. It is quite interesting that we now have quite a lot of evidence, it is anecdotal rather than properly empirical, that suggests that litigants in person do not necessarily clog up the courts. Some shorten the cases, others lengthen the cases, but as a general proposition it usually assists judges to have professionals in front of them if that is at all possible.

GRANIA LANGDON-DOWN: Could you put a figure on the fund, how much was allocated—

THE LORD CHIEF JUSTICE: Yes, initially, five million.

STEPHEN WARD: Next, Owen Bowcott.

OWEN BOWCOTT (THE GUARDIAN): Owen Bowcott from the Guardian. You talked about obviously some sums of money can be spent on online justice. I mean, how far do you envisage online justice going? At the moment, it is dealing with relatively minor traffic offences and such matters. Are you worried that the use of virtual courts are going to mean that you have a court in

which there is no judge and no lawyer and possibly no defendant? It is all really done online and what does that mean for transparency of legal justice?

THE LORD CHIEF JUSTICE: Again, I think there are two points there. So far as online use is concerned, it strikes me as faintly odd when one compares dealing with courts with, for example, how we all now do insurance or book holidays. I mean 15 years ago, that was all paper based, endless telephone conversations and so forth and now we settle down on a Saturday or Sunday morning and it is done in a flash on the computer. So, the online services that we have in mind will enable litigants, and also professionals who are representing litigants, to do routine submission of information and documents online, rather than having to fill out lengthy forms and deliver them in paper. So far as hearings where all the parties aren't present are concerned, I personally dislike the term "virtual hearings" because that rather gives the impression that people will be sitting at computers in rather the same way that those who enjoy gaming online can go and sit in London playing a game with someone in Alabama. That is simply not what is going to happen. Rather than virtual hearings, these are going to be hearings enabled by video and telephone. I mean we have them already in many respects. Telephone hearings in the Civil courts have been taking place I think for 20 years and in the Court of Appeal Criminal Division, for example, almost all of the appellants now appear by video link rather than coming in person but the critical thing to bear in mind is that in the event that a hearing is needed but which all the parties need to be present that will be something that the judge decides but many hearings do not require that. In the County Court at the moment many interlocutory hearings are conducted by telephone and if we were to return to the system that operated when I was at the bar as a young barrister going round all the County Courts, one would travel a couple of hours each way for a five-minute hearing. That doesn't make any sense, but the important thing is that there will remain judicial control and if the interests of justice require the physical presence of parties in court, that is what will happen.

OWEN BOWCOTT: And just as a follow-up, what is the next category of offences that will go online? We have traffic offences and official licences and tenancies at the moment. What do you envisage next?

THE LORD CHIEF JUSTICE: It is not necessarily going to be categories of cases as this project rolls out over the next few years. It will be also categories of hearings. So, routine hearings which deal sometimes with listing matters; sometimes with simple bail applications; sometimes taking a plea; that is the sort of thing that we hope will not require the routine attendance of everybody at court on every occasion.

STEPHEN WARD: Michael.

MICHAEL CROSS (LAW SOCIETY GAZETTE): Michael Cross from the Law Society Gazette. Can we deal with that money for fixing these irritating and minor problems? What sort of problems are we talking about? Are we talking about spending money by the next financial review, which is by the 31st March? This may be a very dim question, but why was this money sitting unspent in previous years?

THE LORD CHIEF JUSTICE: That I cannot answer because I can only really answer for what has been happening since I became involved but the other question, when you said you had spoken to a Crown Court judge who had told you about a leak, that is the sort of thing that drives people mad and it is very difficult for any court user, whether judge or professional or juror, to understand if there is a relatively minor maintenance problem, why it cannot be fixed instantly. The money that has been secured, and I am enormously grateful to the Lord Chancellor for so readily signing this off, is available to all of our courts across the country and what has happened is that the court official responsible in each court for maintenance has been asked to find projects

and make a bid essentially and the latest information I had only in the last couple of days is that those bids were now in and that most, if not all of them, should be able to be satisfied.

GRANIA LANGDON-DOWN: Is the money on top of the reform—

THE LORD CHIEF JUSTICE: it is nothing to do with the reform programme.

GRANIA LANGDON-DOWN: Yes, so it is completely separate.

THE LORD CHIEF JUSTICE: It is completely separate, yes.

STEPHEN WARD: Olivia.

OLIVIA RUDGARD (DAILY TELEGRAPH): Olivia Rudgard from the Telegraph. There have been some discussions here about contempt of court orders and whether they are still functional in the social media age, tweeting any aspects of the case [*inaudible*], potentially identifying them on social media. Do you share those concerns or do you think the law should change in a substantive way to deal with problems such as social media?

THE LORD CHIEF JUSTICE: There have been one or two cases where inappropriate use of social media has compromised trials and, as you know, the Attorney General is seeking evidence on that matter at the moment to try to gauge whether there is anything other than a very isolated problem but I don't accept that juries, by and large, disregard the quite clear directions they are given. The directions given by judges relating to the use of social media have evolved enormously over the last few years. It is quite interesting. I started sitting as a Recorder almost 20 years ago when such things were not a concern at all. They became a concern and all of us as judges said something at the beginning of a trial to warn jurors not to go online, not to share anything, but that has all been now formalised and very clear and explicit directions are given by judges at the beginning of criminal trials. Conscious of the potential risk at least, we commissioned work from Professor Cheryl Thomas to devise various straightforward guides and posters effectively to put in jury rooms to make it clear what jurors can and cannot do and so that too has happened but we have to recognise that the way people operate generally in society changes all the time and the ubiquitous use of social media by people is just something we have to live with. What we have to do is to give appropriate warnings to ensure that jurors understand where the boundaries are and I have no reason to suppose that there is a general misunderstanding about that or a general disregard by jurors of what they are told.

STEPHEN WARD: Jon...

JON IRONMONGER (BBC): It is Jon Ironmonger from BBC News. In respect of looking at transparency issues as a priority and in pilot courts they would be involving cameras in some sentencing remarks. How has that pilot gone and are there are plans to roll it out nationally and what further efforts will be taken to increase transparency in courts?

THE LORD CHIEF JUSTICE: You are referring to a pilot of filming sentencing remarks I think in April across the country. As you are aware, this was something I commented on last week when interviewed for Law in Action. The pilot is being evaluated and it is not without some difficulty. In particular, there are two aspects which need to be looked at carefully. The first is the question of exposing judges to potential risk if these things are broadcast and the second is that the inevitable problem that I am afraid some people behave differently, not judges, but some people behave differently in court if they know that something is being recorded but I am on record as suggesting that the broadcasting of sentencing remarks, at least in cases of high public interest, is something that should be looked at very carefully.

STEPHEN WARD: Frances.

FRANCES GIBB (THE TIMES): Frances Gibb from the Times. Sorry, I think you have covered this a little bit but just in case it is a different aspect. Prison overcrowding, how concerned are you about it? What should judges be doing about it in terms of their sentences that they give to take account of it, and would you be against the use of the court cells to ease the problem?

THE LORD CHIEF JUSTICE: You are right. That was the first question I was asked and I dealt with it at some length, so forgive me if I do not cover all the ground again but the new aspect that you brought into the questioning is whether I would favour the use of court cells to ease overcrowding. The first point is that although the prison population, as the statistics published by the government show, is very high, there remains significant headroom, as they call it, between the current numbers and the capacity of the prisons. So, I do not think it likely that there is going to be an immediate crisis. I would not be happy for courts to be used as surrogate prisons.

STEPHEN WARD: Olivia, then Grania.

OLIVIA RUDGARD: You have talked quite a lot about the issues of social media, about how you will deal with [inaudible 00:29:36] social media abuse and the risk of attack. Do you think there is enough being done to support judges with mental health and do you think more should be done, and if so what kind of thing?

THE LORD CHIEF JUSTICE: Mental health perhaps puts it at a slightly alarmist level but one of the things that we are very conscious of is that particularly for judges who spend a lot of their time dealing with the type of harrowing family cases I refer to and also those who have a fairly relentless diet of serious sex cases, it can have an impact and so we are making available professional support to judges who feel that it would assist them. This is a new initiative that has been in development for some months now which was in the pipeline before I became Lord Chief Justice but it is something that I very much support. I suppose judges are fairly self-contained individuals, perhaps inevitably given that they come from the legal profession where people tend to be quite self-contained but none of us are invulnerable to the effects of the materials that we see in the course of our professional lives and even as an appellant judge sitting in the Court of Appeal Criminal Division, there are some pretty shocking material that comes across our desks and which we have to take into account to be able to determine the cases before us. So, it is important that we recognise that judges are human and that we put in place support mechanisms to assist those who need it.

OLIVIA RUDGARD: Is that just coming in now or is it already [inaudible]?

THE LORD CHIEF JUSTICE: It is coming in now.

STEPHEN WARD: Grania.

GRANIA LANGDON-DOWN: Yes. How concerned are you about problems with retention and sort of diversity issues within the judiciary? You know, a lot of conservative pensions and pay conditions are putting off younger judges and you cannot get High Court judges to fill the roles and that women are not making... a minority of judges are not making the progress that they could have elsewhere.

THE LORD CHIEF JUSTICE: So far as diversity is concerned, I recognise that a judiciary that broadly reflects society is likely to command confidence and respect but the picture on diversity is in fact fast changing. Since 2010, the proportion of women judges in our courts has gone up by a third from 21 percent to 28 percent. In tribunals, the proportion of women judges is now 45 percent. Those are higher figures than in the senior ranks of the legal profession from where we

get our judges. One of the great strengths of the British judiciary, which I think contributes to its high standing, is that it is a second career. People come to it usually in middle age, having sat first as part-time judges but we have to remember that the pool from which we recruit our judges, whether part-time or salaried is the legal profession and figures for those from non-white backgrounds also are showing substantial change. The picture in the tribunals now is that ten percent of those who declare their ethnicity are from non-white backgrounds. It is a little less in the courts at seven percent. Whilst that is less than the overall ethnic minority representation in the population, best estimates are about 14 percent at the moment, it does not seem to me that the overall percentage in the population is really the appropriate comparator. You really need to look at the proportion of non-white people in the legal profession and perhaps more generally in the working population within the age cohorts where most judges sit. So, 80 percent of judges are over the age of 50, for example, and in that age group only nine percent of the working population is from an ethnic minority and the proportions are much lower for those over 60, for example, when many of the very senior judiciary sit in age terms. So, the figures are perhaps rather better than those people would assume and what is so encouraging is that when one looks at the age profile of the judiciary, the younger the cohort of judges, the greater the proportion of both women and ethnic minority representation.

GRANIA LANGDON-DOWN: Would you see a time, sort of maybe a second career judiciary, a stream, a fast track stream of non-white—

THE LORD CHIEF JUSTICE: Yes, fast track stream has shades of the Civil Service and those who enter from university into a fast stream. What we are doing is encouraging judges at all levels to think about their futures and we are encouraging those who think that they are well placed to move up the ranks to prepare themselves and make applications. It is then of course a matter for the Judicial Appointments Commission whether the judge in question satisfies the criteria for the job that is being considered but if you look across what is going on in the judiciary at the moment, there is a good proportion of judges who are moving from District Judge to Circuit Judge. There are Circuit Judges who are moving to the High Court bench and so on. So, it is not so much a career judiciary but a recognition that there are those who have started off at a relatively modest level in the judiciary who may well have great potential. One of the areas where it seems to me we need to be looking particularly is that the very high relative proportion of women in the Tribunals and also amongst the District bench, for example, may well be a reflection that some have chosen to leave the professions, either as barrister or solicitor, and move to judicial office rather younger than might otherwise have been the case for all sorts of reasons and I think there is likely to be a reservoir of real talent amongst that group that we should be looking to encourage for future promotion.

STEPHEN WARD: Owen, then Jon.

OWEN BOWCOTT: Owen Bowcott. There are instructions that I understand recently have been issued to judges that in criminal cases on first appearance the nationality of the defendant has to be ascertained. Are you happy with that, as many magistrates obviously are concerned that justice is not going to be portrayed as [*inaudible*]? Are you hoping that that is not undermining impartiality or that it is of a value to ask defendants?

THE LORD CHIEF JUSTICE: it is a statutory requirement. We have to apply the law and it would be quite inappropriate for me to express a personal opinion about a statutory requirement of that sort.

STEPHEN WARD: Jon...

JON IRONMONGER: How confident are you that the UK and EU courts will be able to deal with each other appropriately when the Brexit deal is achieved?

THE LORD CHIEF JUSTICE: I have absolutely no concerns about personal relationships. You will appreciate that Brexit is at a very delicate stage and it cannot be emphasised enough that there is simply no place for any judge to be expressing any view about politics and perhaps in particular the politics obviously surrounding Brexit.

STEPHEN WARD: Frances?

FRANCES GIBB (THE TIMES): Notwithstanding that, your predecessor did say that judges needed advice from parliament over Brexit and how to interpret the law in terms of calling for Brexit. Is that your view?

THE LORD CHIEF JUSTICE: As you know, Lord Thomas and Lord Neuberger and Lady Hale collectively and separately I think before the constitution committee asked that whatever may come out of the then bill that was in the offing, now before parliament, please make it as clear as possible, so that judges are not left in an exposed position, and I think it is sufficient for me to say that I hope we can get clarity.

STEPHEN WARD: Right, thank you very much everybody. So, we have got time for one more if anybody has a burning issue. Cathy.

CATHY GORDON (PRESS ASSOCIATION): Cathy Gordon from the Press Association. So, it is a very general question, possibly looking well ahead, you have only just taken over the job and you said there is a huge amount to do. Is there one thing as Lord Chief Justice that you really do want to achieve and what would be the proudest thing that you can do?

THE LORD CHIEF JUSTICE: Yes, I would like to be seen to have helped improve the morale of the judiciary.

STEPHEN WARD: Thank you very much everybody. Thank you, Lord Chief Justice.

[Ends]