

IN THE COURT OF APPEAL

Royal Courts of Justice
The Strand
London
WC2A 2LL

Monday 2nd October 2017

Before:

THE MASTER OF THE ROLLS
(The Rt Hon Sir Terence Etherton)

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(The Rt Hon Sir Brian Leveson)

THE PRESIDENT OF THE FAMILY DIVISION
(The Rt Hon Sir James Munby)

THE CHANCELLOR OF THE HIGH COURT
(The Rt Hon Sir Geoffrey Vos)

THE SENIOR PRESIDENT OF TRIBUNALS
(The Rt Hon Sir Ernest Ryder)

and

THE LORD HIGH CHANCELLOR
(The Rt Hon David Lidington MP)

on the occasion of the affirmation of

The Rt Hon Sir Ian Duncan Burnett

as

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

Computer aided transcription by
Wordwave International Ltd (a Merrill Communications Company)
165 Fleet Street, London EC4A 2DY
Telephone 020 7404 1400; Fax 020 7422 6138
(Official Shorthand Writers to the Court)

Speeches by:

The Master of the Rolls (The Rt Hon Sir Terence Etherton)

The Lord Chancellor (The Rt Hon David Lidington MP)

The Attorney General (Mr Jeremy Wright QC)

The Chairman of the Bar (Mr Andrew Langdon QC)

The President of the Law Society (Mr Joe Egan)



Tuesday 2nd October 2017

THE MASTER OF THE ROLLS:

Lord Chancellor, Mr Attorney, Mr Langdon, Mr Egan, ladies and gentlemen, today we have the great pleasure and privilege of welcoming, as the new Lord Chief Justice of England and Wales, Sir Ian Burnett, or as he was formerly known to many of us – Ian from Essex. I will say no more in this address about his connections with that beautiful county because, with great restraint, I have made a personal vow to say nothing about TOWIE, or, to those not so familiar with reality TV, The Only Way is Essex.

Sir Ian has had a very distinguished career. He was educated at St John's College, in Southsea, and went from there to study law at Pembroke College, Oxford. He was called to the Bar by Middle Temple in 1980, which awarded him an Astbury Scholarship.

He was a pupil at Temple Garden Chambers, where he then became a member, staying there for the rest of his career at the Bar. For the final five years, he successfully negotiated the hazards of being head of chambers, always a good indicator of whether a character is inclined to the dark side, proving himself to be a benign and popular leader.

He built up a significant and highly respected practice focused on public and administrative law, personal injury and health and safety law. He acted as junior counsel to the King's Cross Fire inquiry and to the inquiry into the convictions of the Guildford Four and Maguire family. He was leading counsel to the inquiry into the Southall rail crash and into train protection systems following the Paddington train crash. His final case at the Bar was as counsel to the inquest into the deaths of Diana, Princess of Wales and Dodi al Fayed.

He was junior counsel to the Crown, Common Law, from 1992 and was appointed a Queen's Counsel in 1998.

Sir Ian was involved in many judicial review and public law cases, including acting as Queen's Counsel for the government in two of the most important constitutional cases of the early 2000s following 9/11. They were the Belmarsh case, in which the House of Lords declared that the detention of non-nationals under section 23 of the Anti-terrorism Crime and Security Act 2001 was incompatible with Articles 5 and 15 of the Convention, and its sequel in which the House of Lords held that evidence of a suspect or witness obtained by torture is inadmissible.

Sadly for him, Sir Ian found himself on the losing side in both cases but, reflecting his optimistic outlook on life, he will readily tell you that it is sufficient consolation that, if you add together all those who agreed rather than disagreed with his case at every level, he was in fact the overall winner.

Having served as a Recorder from 2000, sitting in crime in the Crown Court, he was appointed in 2008 to the High Court, and assigned to the Queen's Bench Division. He sat on civil and criminal cases and was a Judge of the Administrative Court. He was Presiding Judge of the Western Circuit from 2011 to 2014, when he was appointed to the Court of Appeal. He also sat as Deputy Chairman of the Security Vetting Appeals Panel. He has been the Court of Appeal Judge with responsibility for extradition cases and supervising Lord Justice for immigration and asylum and public appeals.

Outside those many judicial functions Sir Ian also served, with notable success, as Vice Chairman of the Judicial Appointments Commission from 2015 until March 2016 and was its Acting Chairman from April to September 2016.

In the course of his distinguished judicial career, he has acquired among his colleagues a universal reputation for calmness, balance, good sense and humour. After some considerable research, there is, to my knowledge, only one recorded incident of a loss of equilibrium. That was when loud noises were heard to come from his room in what became known as ... "Ian's domestic with his computer".

We will also have a relatively youthful and certainly a very energetic and active Lord Chief Justice. I understand that Sir Ian was rather athletic in his younger days, captaining tennis at school. This enthusiasm for exercise now manifests itself in his latest accessory – a Fitbit wristband. This is to measure his achievement of a minimum target of 10,000 steps a day. I am delighted by this. In order to achieve or exceed that target, it is plainly highly desirable that, rather than my slogging over to his room in the Central Block at the Royal Courts of Justice, he should race over to the East Block and skip up the stairs to my room on the second floor.

Those of you who are familiar with these things will know that Fitbit is teaming up with Adidas with a new smartwatch, which will enable wireless music, payment features (whatever they are), improved GPS and heart-rate tracking. He may yet be the first Lord Chief Justice to be seen in the Royal Courts of Justice, headphones atop, jigging down the corridor.

Sir Ian is certainly not a typical conventional establishment figure. On Lord Buckmaster's appointment as Lord Chancellor in 1915, the then Master of the Rolls wrote to the new Lord Chancellor to say that all the judges, without exception, were members of the Atheneum, and that Buckmaster would presumably also wish to become a member. It appears that the only club of which our new Lord Chief Justice is or has been a member is the Pizza Express Club.

He tells me that when he included it in his Who's Who return, they replied that it was not the type of club they had in mind.

The only area of activity where the passage of time might disclose a slight lessening of excellence is that of legal authorship. He was the consultant editor of the Asylum and Human Rights Appeal Handbook and the lead author of the Guidelines for the Assessment of General Damages in Personal Injury Cases. Both were published by the Oxford University Press. I regret to report that his most recent royalties statement from OUP shows that he owes them £1.19 due to the large number of returns.

On a more serious note, this is a time when the judiciary and the court system at all levels face great challenges. I have no doubt that Sir Ian's wide experience both in and out of court, his temperament and the high regard in which he is held will provide the best possible means of meeting those challenges on behalf of the judiciary a whole.

It is a great pleasure to see so many members of his family here today, especially his wife Caroline and his children Robert and Helen.

We welcome Sir Ian as our new Lord Chief Justice of England Wales with great pleasure and affection, and all look forward to his leadership over the coming years.

THE LORD CHANCELLOR:

I have great pleasure in adding my voice to this chorus of approval. I am delighted to welcome Sir Ian as our new Lord Chief Justice – the most senior job that the judicial system of England and Wales has to offer.

I am sure Ian will not mind my remarking that he is only the second youngest holder of this ancient title, having been pipped by a few months by Lord Parker of Waddington back in 1958. The Master of the Rolls has already sung his virtues, and I fully endorse that assessment. I look forward very much to working with Sir Ian, who is clearly an outstanding judge and will be an outstanding leader into the future.

But, of course, in ushering in Sir Ian, we must also say goodbye to Lord Thomas, who has shown such wisdom, intellect and verve as a leader and champion of judges. I am sure you would all wish to join me in bidding him farewell in what I consider perhaps to be the most appropriate way: *Diolch o galon i chi am eich ymroddiad i'r swydd a'ch gwaith dygn, di-flino dros y blynyddoedd. Dymunaf pob bendith i chi yn y dyfodol.*

Now, lest anyone mistook that for Estonian – the last language I referred to, to pay tribute during my Foreign Office days – or indeed happens not to be both a fluent and particularly forgiving Welsh speaker, I hope that I said: "Thank you very much for the dedication and the hard work that you have tirelessly shown to the role over the years. I wish you all the blessings for the future."

Sir Ian will now take on the constitutional responsibilities of Lord Chief Justice. And together we will work to ensure that justice is at the centre of our society; to secure access to justice for all, whatever their means or abilities; to provide the wherewithal through which the judges can administer justice openly and swiftly without fear or favour, affection or ill-will. He takes up his role as we navigate the United Kingdom's exit from the European Union and, Sir Ian, we are grateful for the stability you will provide as we move forward. On that issue of Brexit, it is perhaps worth revisiting the words of Lord Thomas when he said: "*Brexit does not affect the quality or certainty of English law, or the standing of our courts or London's arbitration*

centres. They remain as before June last year... Our legal profession will continue to be expert and world-respected. Our judges will continue to be drawn from the highest ranks of that legal profession. They will continue to be renowned for their expertise impartiality and integrity. All the key features that made London into the leading centre for dispute resolution will continue unchanged."

Our courts, after all, are grounded in the Rule of Law; and our law is a breathing, living entity. Throughout history it has offered a measured, thoughtful and certain response to changing circumstances and will, I am sure, do so countless times again. It is a system that forms laws from the lives of men and women, rather than directing them to live under forms of law. In our ancient, established and unbroken democracy, the law – our law – is truly among this nation's most treasured aspects. In the words of Rudyard Kipling – and what I hope will not be too controversial: "*All we have of freedom, all we use or know - This our fathers bought for us long and long ago. Ancient Right unnoticed as the breath we draw – Leave to live by no man's leave, underneath the Law*".

Our law does much more than establish and govern a legal system. It is at once part of the fabric of history and also the beating heart of modern society: it is synonymous with quality and incorruptibility. As impartial and fearsomely independent judges, acting under the leadership of the Lord Chief Justice, it is your task to preside over this law so that, with our support, citizens, institutions, investors and businesses can have faith in the future.

Robust economies, after all, depend upon the existence of clear law to govern societies and commerce; and without you all – without that tradition and practice of judicial independence, the Rule of Law would be but an empty shell.

As the latest in a long line of holders of this august office, Sir Ian personifies what the Rule of Law stands for and the rights it enshrines. During his career, without fear or favour, he has variously stood up for the "little man" in common-law cases, taken part in major public inquiries, has represented the government – and has also acted to hold authority to account, as counsel in cases of miscarriages of justice.

So, he is no stranger to challenging authority – and this is just as it should be. Judges allow us to live in a society where no individual and no government is above the law, where executive power is balanced by a strong judiciary and a scrutinising legislature. It was not always so, of course. A former Lord Chancellor, Francis Bacon, once admonished judges thus: "*Let them be lions, but yet lions under the throne; being circumspect that they do not check or oppose any points of sovereignty.*"

Fully four hundred years later, I will steadfastly uphold the independence of the judiciary of England and Wales in your duty to be lions.

Now, on occasion, in the coming months and years, there will doubtless be some uncomfortable discussions between the 21st century judiciary and the Executive – and that, too, is as it should be, with discord, then giving way to discussion and finally to harmony.

Sir Ian, you were once asked why you became a lawyer. You replied: "My teachers at school noticed I could do joined-up writing and was quite argumentative. Despairing of anything else, they suggested the Bar."

So, today let us congratulate not only Sir Ian but also his teachers for talent-spotting the second youngest Lord Chief Justice in this nation's history. Congratulations – and thank you.

THE ATTORNEY GENERAL:

My Lord, the position of Lord Chief Justice dates back, officially, to 1880, and it is interesting to note, for me at least, that six of the seven earliest holders of the office had previously been Attorney General. It is almost certainly a good thing that this is no longer the expected career progression.

But if the career path has changed, so has the role of the Lord Chief Justice, perhaps most significantly in the wake of the Constitutional Reform Act.

In Sir Ian Burnett, we have someone well suited and well prepared for the work of a modern Lord Chief Justice. Distinguished in his career at the Bar and on the Bench, he has dealt with a wide range of civil, family and criminal matters. As former counsel in a number of high profile public inquiries, he knows the importance of maintaining public faith in our legal system. And as a former Vice Chairman of the Judicial Appointments Commission, he knows that maintaining that faith requires a judiciary of the highest quality.

Sir Ian is, my Lord, as we have heard, the youngest Lord Chief Justice in 50 years, so from a personal perspective it is a particular pleasure to be sharing in the ancient responsibility of defending the Rule of Law with another young person.

My Lord, in this respect the role of the Lord Chief Justice remains unchanged – among the 400 or so statutory responsibilities of the job, what surely matters most is that the bearer of this title upholds and enhances the standing, the independence and the effectiveness of our system of laws.

My Lord, we can all be confident that Sir Ian will fulfil those responsibilities in the fine traditions of so many illustrious predecessors, and I welcome him warmly to his new position today.

THE CHAIRMAN OF THE BAR (MR ANDREW LANGDON QC):

My Lord, in welcoming you on behalf of the Bar, it occurs to me that I must not over-state our enthusiasm. If you were to get the impression that at the Bar we might have been clapping each other on the back at the news, you might begin to suspect that we think we are in for an easy ride.

Similarly if, at the news of your appointment, there was to be dancing in the streets and joyful singing in the prisons, those concerned about Law and Order might raise an eyebrow and you might react with a heavy hand.

The best reaction to the appointment of a new Lord Chief Justice must surely be somewhere on the scale between quiet satisfaction, through restrained indifference, or perhaps even a mild dose of trembling apprehension.

Trembling though of course I am, it is difficult for me personally not to smile as I do so, because I know that amongst your proudest boasts is the fact that you were for three years the Presiding Judge of the Western Circuit, during which time I was its Leader.

Those were not necessarily easy years, but you navigated them, my Lord, if I may say so with a mixture of calm authority and wise restraint in the face of a great deal of disquiet under the tenure of a particular Lord Chancellor.

Lord Chancellors have, if the present one will forgive me, rather come and gone since then. But in fairness, the current Lord Chancellor has again made plain his determination to uphold and, when necessary, defend the independence of the judiciary. Not that he needs our encouragement, but he will know how noisy the Bar will be if there were to be any lapse.

Each of your predecessors has brought something of their own experience to the office. My Lord, we welcome the fact that you come from a Common Law tradition. As to Administrative Law, you have already shown, when sitting in the Divisional Court, a determination where necessary to hold the Executive to account.

I have no doubt that during your tenure, that determination will stand us all in good stead and serve to reassure us that the balance of our Constitution will be maintained.

Your service in the Judicial Appointments Commission means that you know much more than many about the state of the judiciary.

As a judge at first instance (which, my Lord, not long ago you were) and as a practitioner before that, you came to know the value of those, many unsung, who work for public funds, and you will know the vulnerability of those who appear unrepresented or in practical terms have insufficient access to the justice of our courts – of *your* courts, as they now are.

No one is pretending, my Lord, that any of this will be easy. The court reform programme by itself is formidably ambitious and it is to be principally delivered on your watch.

But our international reputation is strong, and the Bar's pride in what we are capable of delivering, if enabled to do so, is perhaps unparalleled, anywhere.

So, my Lord, it all lies ahead – and rumour just confirmed by my Lord, the Master of the Rolls, that you have spent recent weeks subjecting yourself to a fierce physical training regime to raise yourself to the peak of fitness.

May I just say this? Your predecessor was an energetic holder of your office and your relative youth has been much commented upon. But I wonder if, for the sake of the rest of us, you might resist the temptation to prove that with the advantage of youth you can move faster still?

You are surrounded, if I may say so, by frighteningly clever brothers and sisters on the Bench, and I hope you will share the load with them. It is important for all of us that they are kept busy, because no one enjoys a judge who is becoming bored.

I say with some confidence, my Lord, that you can count on the Bar, which, perhaps with a little more than quiet satisfaction at your appointment, is determined to play a full part in the future that awaits us all.

PRESIDENT OF LAW SOCIETY (MR JOE EGAN):

My Lord, as President of the Law Society of England and Wales, on behalf of the solicitors' profession I welcome you to the post of Lord Chief Justice.

We, as a profession, look forward to working with you.

Through your work in the High Court and prior to that in the County and Crown Courts, your Lordship has confronted some of the country's most difficult constitutional questions ranging from assisted dying to terrorism.

In a recent case relating to the Suicide Act, your Lordship, paraphrasing Lord Neuberger, emphasised the principle of parliamentary sovereignty stating: "*Judges should not express their own personal views on the moral questions which arise in deciding what is the best way forward as a matter of policy*".

That is a sentiment with which I am sure everyone in this courtroom agrees. It rightly emphasises respect for the will of Parliament, the separation of powers and the supremacy of the Rule of Law. These principles are perhaps now more important than ever. Respect for the Rule of Law is demonstrated through the promotion of access to justice.

The question of access to justice was considered by your Lordship in one particular context three years ago. Proposals to limit the number of criminal legal aid contracts were challenged by the profession and your Lordship said that a high degree of fairness was required in considering "... *the impact upon those who secure the contracts and upon access to justice.*" That led ultimately, one might suggest, to the survival of a number of firms with the consequent impact upon clients being able to access justice.

We are grateful for your Lordship's care and concern for access to justice.

In the same way, we warmly welcome the Supreme Court's judgment ruling Employment Tribunal fees unlawful and emphasising the constitutional right of access to justice.

We also recognise the need for modernisation of the court system and we welcome the investment being made in that sphere. We are working closely with members of the judiciary and the Courts Service in support of this modernisation programme.

We are delighted, too, to be working with the judiciary and the Bar through the Brexit Law Committee, which was set up by your Lordship's predecessor.

As the Master of the Rolls has said, there are challenging times ahead. We have no doubt that your Lordship will tackle them head on and we look forward, as officers of the court, to assisting in any way we can.

Lord Chief Justice, we welcome you to your new role and wish you longevity and every success in that role.

THE ATTORNEY GENERAL: My Lord, I move that these proceedings be recorded in the Books of the Queen's Bench Division.

THE MASTER OF THE ROLLS: So be it. It shall be done.
