

**Address by Sir Terence Etherton, Master of the Rolls, at his Valedictory.
17 December 2020**

As on so many of these occasions there is praise that is given out to someone like myself who is leaving a position in the judiciary after a long period, it always seems so odd to see oneself depicted in these extremely expansive terms by so many of you.

I want to thank in particular the Lord Chief Justice, Jonathan Seidler, and David Greene. I know you've all brought in a great deal of work in trying to capture the themes which you see in my lifelong experience as a High Court judge, as a senior judge, as the Chancellor and then as the Master the Rolls.

The Lord Chief Justice has picked up what so many people don't understand, which is how much work the judiciary contribute outside the strict field of judicial adjudication. There's a massive amount of administration to improve the working of the system as a whole through the Judicial Executive Board. I believe it is a great honour to have served in that capacity, as well as a jurist and a judgment writer and indeed as a contributor to many improvements in terms of the law.

All three of you have picked up sympathetically on themes. There are some that run through my career and I think they play such an important part in my own contribution and desire to contribute to access to justice, and my concern with equality that I wanted just to pick these up.

As it happens, it has been a difficult period for me ever to have become a judge. I don't know how many of you know these things: I have given interviews. But when, after I took silk, the time arrived for seeing what I could do in order to make my own contribution towards the welfare of the public, I found that the possibility of time on the bench was barred to me. It was barred to me not because of any particular regulation or legislation. It was barred to me because I was a gay man and Lord Hailsham, who was Lord Chancellor for much of the 1970s, had put into effect a policy of not appointing gay men because he felt that it would lead to their blackmail. This was some two years after the Sexual Offences Act and was a perfectly outrageous soft policy, secret policy, to have

implemented. And although I say 'secret policy', it wasn't really because everybody knew that that was the policy of Lord Hailsham.

Of course, the only reason that people like Lord Hailsham felt there was going to be a 'discrimination' against the judiciary as a whole, or a backlash against the judiciary, was because Lord Hailsham felt that appointing an openly gay man would result in potential blackmail. But anyone with the slightest good sense, I would suggest, would immediately understand that if an openly gay man was, or is, open to blackmail, it's because of the very prejudices of the people like Lord Hailsham who espouse those particular concerns and values.

In the event, what we didn't know at the time was that by the time I became interested in becoming a High Court judge the rules had in fact changed and that policy of Lord Hailsham no longer applied. As I say, we didn't know that.

The turning point came not only with that particular change in policy, but it became clear when in 1997 it became possible for the first time to participate through what I would describe as an informal approach in writing to the ministry. To my complete astonishment, and I'm sure that of everybody else, my informal application was accepted. I had an interview with someone from the ministry and I was, in due course, appointed to become a High Court judge.

That brings me on to the second part of my leitmotif, which is that what has driven me, at every stage of my career, has been an attempt to make things better. For those who seek better access to justice; for those who seek to have more efficient justice; and for those who seek to have an appropriate policy for extending access to justice for all those whose lives and livelihoods would be improved by them.

In everything I have done that has been a leitmotif, and work at every stage, whether that be that in the Civil Justice Council in so many areas which I've contributed too that can be seen. Particularly all the work which is done by the Standing Committee of the Civil Justice Council to assist the accessibility of justice. So those are the two leitmotifs,

and I have to say that if I've achieved anything at all it has been in those two areas more than any other through my endeavours.

Now, everything that's been said about me in the last half an hour, not counting my own speech, has been very serious and I'm not quite sure to what extent I should take it with due seriousness or not. It's all very flattering but life is more chaotic than that. I referred to the appointments process. But that was not the end of my concerns.

As most judges will know, the first week of one's appointment is a very, very hectic one. Moving rooms; new cases; so many people to meet; so many things to be done. Of course, we all look forward to our first case and I found to my slight concern, without identifying the person in question, that the advocate before me spoke in a most extraordinary unexciting way, in a kind of a monotone which personally I had never come across before. So it was the combination of a difficult subject, which it was, and what to do about this phenomenon in advocacy because I was terrified that in my first week I would get a reprimand for falling asleep on the bench. So I went up to lunch at Gray's Inn, and I explained my problem to them and said look I have this advocate before me and not come across that person before as an advocate, although I had done when I was when I was leading as a QC at the bar, and this particular person seemed to be highly competent.

Well, they were quite clear about the matter. They said, you've got to get some MacKenzie's smelling salts. So, off I went to the Boots, next door to my Inn, and asked for smelling salts. Well of course, what I hadn't realised, because I'd never had MacKenzie's smelling salts before, is the effect of the rather strong ammonia. So a point came in the case when I took a rather deep inhalation of these smelling salts which made my whole body, and my head in particular, jerk back in a kind of drug-induced reaction. The counsel before me were very good, they sort of looked at each other, looked at me, and we just carried on but at least it told me something about smelling salts.

As the Lord Chief Justice has said, there have been many both meritorious and non-meritorious Masters of the Rolls. Some have been downright fraudulent and sometimes criticised by the House of Commons as people who were significantly open to corruption

in terms of assisting the progress of civil litigation. In one particular case the conduct of the Master of Rolls was considered so egregious by the Speaker that he was deprived of his office without any recourse to be re-elected, but he was allowed to remain Master the Rolls for another 20 years.

The curious feature about many of these Masters of the Rolls was their names. We all know what is said about the reflection of names in people, or their names in their temperament. These were all 17th-century Masters of Rolls who, as I've said who were also serving in the House of Commons. They have the most extraordinary names, The Lord Chief Justice has referred to the 17th-century Sir Julius Caesar, but there was also Sir Dudley Digges, Lord Colepeper, and Sir Harbottle Grimston. Somebody who has a name like that is certainly going to get unstuck. Indeed he got into a great deal of scandal because, according to the gossip at the time, he had made the decision to remove the coffin of his predecessor as Master of the Rolls and insert his own coffin in its place. It seems to me a most far-sighted policy of a well organised mind but really rather scandalous. This is not a subject I've had any cause to discuss with my predecessor.

Now, so far as thanking people is concerned. I have always thought that one of the main reasons for a valedictory is to thank all of those people who have served so loyally and helpfully to bring about success in my career. I want especially to thank on this occasion, my clerks; Harry Dunk, and Amanda Collins who served me for many years up to Joanna Panayiotou and Matthew Pettifer-Young.

Of course, I've also gone through a period when we've had quite a few Lord Chancellors, at one stage, there seemed to be a whole rush of them, but I'm happy to say that, in recent times, there has been much slower change. In that respect I'm extremely grateful to David Gauke and Robert Buckland and so far as I am concerned they are very important in the history of the judiciary and openness to justice because in my time as a senior judge, they are the first Lord Chancellors who have recognised the importance of civil justice. For political and other reasons for a Lord Chancellor the political pressure has been on crime and family, but never civil justice. But, under David Gauke and in particular Robert Buckland the importance of Civil in its contribution towards access to justice and the efficiency of justice at the local level has been really extraordinary and I have

managed to achieve many things which I would never have been able to achieve without the support of Robert Buckland. He has appreciated the economic impact, which is considerable, of improving access to justice and efficiency through improving local justice. That's a huge ship which will take time to turn about but I'm so thankful, as is anybody has an interest in justice, I'm so grateful for all that Robert Buckland has achieved and has helped me to achieve.

I've lived under regimes of Lord Chief Justices, they have come in many forms. At the beginning of the regime of each Lord Chief Justice we have had protestations that it all will be better. My experience is that it has become progressively better, but never quite as good as the promised land that we have been led to believe it might be. I hope that that is, if not the greatest thanks and appreciation, at least something that I can take away with me and leave with the Lord Chief Justice as an improvement in times which are getting much more difficult for the Judicial Executive Board.

Then, of course, there are all the courts ministers and officials without whom none of this system can run. We tend to criticise these officials, but they are the oil which keeps this whole complicated system working.

I want to come back now to diversity. As the Chief Justice has mentioned, Andrew and I entered into a civil partnership in 2000 and in 2006 we had on the very first day when it was permitted a religious ceremony for those who already civilly partnered. All the members of my division and their spouses were invited and all, apart from one came, as well as many others.

The vow that I took when I became a High Court judge was that as the first openly gay High Court judge, I would never deviate at all from being myself and from living a totally open and honest life as a gay man in a court setting. That is what I hope I've achieved. By and large, that has been the message that has been received, and received well, by the senior judiciary.

There have been occasional hiccups at one rather grand dinner, attended by members of the appellate committee, now the supreme court, and other very distinguished people,

the wife of a member of the appellate committee at one stage during the meal turned to Andrew, whom she was sitting next to, and said to him, why you here? A perfectly reasonable question, to which he gave the explanation. Once she had understood what the explanation was, she simply turned her back on him and didn't address a further word to him during the whole of the meal but that was unusual and by the time we got to our wedding day, we had the remarkable situation that they were over 300 invited guests who had accepted the invitation. It was an amazing event and if anything could more clearly set out what the impact of what a greater awareness of diversity is, it will be difficult to improve on that as an example. At the end of the ceremony everybody applauded, and one Lady Justice of Appeal said; "tell me of one occasion during the whole service when I was not in tears". So, I hope that I have kept to my promise to myself, to be if at all possible, a role model, because my experience is that role models have a greater impact than anything else.

Now, as the Lord Chief Justice had said, there were a number of firsts that I made. One obvious one is I am the first Master of the Rolls who has a husband. But on the same day as my appointment was announced on the Downing Street grid Andrew said excitedly to me, "you are trending". I'm going to be honest with you, this was a long time ago, and I said, what does that mean? He said, "you're the news of the moment". Now, I bet you today that virtually everybody would know perfectly well what trending is and that's because we have moved into a completely different age of IT, we are in a new world, which we must accept.

I could say a lot more and many people have said more in the course of this valedictory, but I think the most important things I wanted to say was to talk about people who played an exceptional role in my life. Highest on the ladder would be Andrew. We've been together for 42 years. In effect, we started and finished our careers together. We spent the greater part of our lives together and He has given me, through good and bad, wonderful guidance to my career in so many ways. Our relationship has been based so much on caring for one another, caring not only in the sense of caring whether we've been successful or successful but caring that we have made the right decisions in relation to important points.

There's a lot more that I can say. I'm extremely grateful to Jonathan Seidler for doing so much work in looking at my career, particularly in the field of possession actions. I'm very, very grateful indeed, to David Greene and all I want to say on that is I personally have had a wonderful and enriching association with the solicitors. At the moment, we can't have the once a year admission ceremony which I've enjoyed so much. I still share a more formal role with the Law Society through the appointment and dismissal of solicitors in particular cases. So for me, the Law Society is not a mere add-on. And I'm extremely grateful that David Greene has turned up today to represent the interests of the Law Society.

So parting with that overwhelming feeling of love and respect that I have for Andrew, particularly appreciating all of the experiences that we've enjoyed together which cannot be replicated I want to say a wonderful thank you to him for his support and to all of you who've attended for helping to advance those matters that are so crucial to me which is leaving things better in terms of access to justice. Leaving things improved in terms of access to justice which is at the end of the day is what the whole system is about.

Thank you very much.