



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD BURNETT OF MALDON

ASSOCIATION OF DISTRICT JUDGES ANNUAL SEMINAR
11 JUNE 2021

1. The conference of the Association of District Judges was one of the first important judicial events to become a casualty following the lockdown in March last year. I am so glad that it has been possible for this year's conference to go ahead but I am disappointed that it has not been possible to conduct it face to face. Nonetheless, I very much welcome the opportunity to join you this afternoon, to say a few words and have an opportunity to answer some questions.
2. The last 16 months have been quite extraordinary for almost everybody in society, but they have been particularly remarkable and difficult for all those involved in delivering justice. It is almost impossible, even after the relatively short passage of time, to bring to mind all of the pressures that collectively we faced. Nor is it easy to be able adequately to describe the astonishing achievement in all jurisdictions in England and Wales in sustaining the administration of justice, in ways which have drawn admiration from around the world, in the face of adversity the like of which has never been seen before.
3. During the course of those 16 months I have had opportunities to express my profound thanks to the judiciary of England and Wales for its collective achievement in continuing to serve the nation and ensuring that the wheels of justice continued to turn.



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4. It was vital that we kept going. And in all jurisdictions we did just that. But, my goodness, how difficult it was. The problems faced in each jurisdiction and each sub-jurisdiction were not the same. However, it is clear that collectively the district bench faced as formidable a series of obstacles as anywhere in the system. Without your dedication, your willingness to adapt and your collective subjugation of personal interest to the wider public interest we serve, the civil and family courts would have ground to a halt. My thanks to you and admiration of you are unbounded.

5. In the initial days and weeks following the first COVID lockdown in March 2020 you quickly enhanced the use of telephone hearings and then moved increasingly to commercially available video platforms to conduct the majority of your hearings. That short description gives no insight into the intense difficulty of doing so. Hearings were often conducted in physical circumstances which were very difficult for you and also, it must be said, for parties and their legal representatives. The technology was often poor. Nonetheless you persevered despite the adverse circumstances and completed countless thousands of hearings in both the jurisdictions you serve. You all know that the outstanding caseload, particularly in the family court, was steadily growing before COVID and continues to grow. Delay in that environment can cause additional harm to those who have come to the courts to resolve disputes. Excessive delay in the civil courts undermines the ability of individuals and businesses to resolve disputes which are of great importance to them. There was, and is, a tendency of many who have little idea of what goes on in hearings of different sorts to assume wrongly that face to face engagement is rarely necessary.



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6. But during the last 14 months we have been faced with the exquisite dilemma in some circumstances of holding hearings in sub-optimal conditions, or not holding them at all. The technology available to us improved with the general roll out of the Cloud Video Platform. All of us who have used it know that it is far from perfect. It is, in all circumstances, vulnerable to the fragile broadband or Wi-Fi links of all its users, including the courts. I have said recently to the Constitution Committee of the House of Lords that our experience during the COVID emergency of using technology to enable some or all of the participants in judicial proceedings to attend remotely will inform the extent to which its settled use is baked into the system. That said, it is simplistic to suggest that we can draw up definitive lists that identify the type of hearing some or all participants can attend remotely, and those that they cannot. The nature of the hearing is one matter, but the identity and nature of the participants is another. And as lawyers we know from our experience that a vast amount of important business which resolves much dispute is conducted between the parties or their representatives immediately before a hearing when they meet and talk.

7. I have said before that the COVID emergency has resulted in taking three steps forward in the use of technology and inevitably, in the light of experience, we will take one step back. But there will be no going back to February 2020. In all jurisdictions the watchwords will be “the interests of justice”. Those interests are not identical with the interests of legal professionals nor even our personal interests as judges. If one looks at the various types of hearing as a spectrum it is easy to identify at one end, jurisdiction by jurisdiction, which should now be conducted remotely, almost by default, and those at the other end of the



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spectrum, those which simply cannot be. It is the area in between, which is of varying width depending upon the jurisdiction, where the answer is less clear.

8. In due course, rule changes and practice directions may be required to aid consistency across the country. In the meantime, when sufficient understanding of experience is available, it will be helpful for heads of jurisdiction to provide some indicators or guidance of their expectations, mindful always that none of us should intrude upon the independent discretionary decision-making of judges. I expect that the President of the Family Division said something similar this morning.
9. It is important that judges should operate from court buildings, save for a very good reason, whatever may be the position of litigants, witnesses and lawyers. That helps to ensure that all those involved, even if they are attending remotely, are more likely to appreciate the importance and solemnity of the occasion. It is much more likely that a participant will treat a hearing casually or disrespectfully if there is no sense of the court being the place where the judicial arm of the state dispenses justice.
10. There is much focus on recovery in all jurisdictions. In family the outstanding caseload has grown substantially. Recovery includes using our courts and judicial resources to their full capacity. As all those attending this conference will know well, the number of District Judges available to sit in the family and civil courts is reduced because the competitions run by the Judicial Appointments Commission in recent years have not led to the recommendation for appointment of as many new District Judges as are needed. By contrast, the competitions for fee paid judges have enabled the pool of deputy District



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Judges to be replenished. I am grateful to the District Judges who have continued to play their part in training the new deputies. Recovery, at least in the short term, will require the additional deployment of deputy District Judges. Collectively we must get new appointees in a position to sit as soon as possible. But capacity is something which has facets extending beyond the physical availability of courts with judges to sit in them. Particularly in family, increasing the volume of work disposed of and the speed at which it is dealt with depends upon the ability of critical other public sector players to keep pace. In particular, I think of local authorities and CAFCASS. In civil, there are external players involved in large numbers of cases who, similarly, must be able to keep up.

11. A further important capacity issue revolves around the availability of staff to support the courts. The headcount of HMCTS staff has increased since the summer of last year. That was necessary particularly to support the use of technology which has proved to be very labour intensive. If, as both I and the Lord Chancellor plan, volumes of work transacted in all our courts will increase, not only will we need additional judicial resources to support that work but we will need the staff necessary to enable it to happen. For as long as I can remember, a particular problem relating to HMCTS staff has been raised time and time again. For reasons that seem odd to an outsider the civil service pays people at the same grade in different departments very different rates. It then has a system which enables people to transfer between departments. The courts service pays less than many other departments and agencies. It is no surprise, that a longstanding problem faced by HMCTS has been that it recruits staff, it trains them and then loses them to another department or agency paying significantly more at the same grade. I have made no secret of my view, including before a parliamentary committee, that this is a quite extraordinary state of



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affairs. The Ministry of Justice is working on a proposal to try to alleviate this difficulty which I understand is now in discussion with employee representatives. This is not the work of a moment, but I would like to assure you that as head of the judiciary I have brought continuing pressure to bear on this issue and the Lord Chancellor is doing all he can to find a solution.

12. The burdens of COVID have engulfed us at the same time as we are coping with change. The modernisation programme has been running for some years but it is only relatively recently that it has had a direct impact upon much of the work of the district bench. More will be happening between now and the beginning of 2023. In both civil and family the aim it is to get rid of much of the paper that blights the conduct of proceedings, just as it has been got rid of in the Crown Court. There is a need to replace the clunking systems that underpin the work of our courts to avoid the risk of technological failure, quite apart from improving the way in which work is done. In civil, the expansion of the online civil money claims will continue. The first damages digital release went live only two weeks ago and will be developed over the next year before, it is thought, full roll-out in the summer of 2022. Work is underway developing the online functionality for specified higher value claims; so too possession. In family the public law digital service, which as we all know has not been free from difficulty, is being rolled out and there are similar plans for private law claims. District Judges are involved in all of these and their contribution is vital. The scheduling and listing project is also being piloted. It will be rolled out, all being well, towards the end of the year.



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13. Change can be difficult because it takes time to get used to new systems and they can be extraordinarily frustrating as teething troubles, or worse, are sorted out. All of these modernisation programmes are designed to make life easier for all those we serve, to improve the administration of justice and to enhance access to justice. Once we get used to them, they generally make our lives easier as well. I am conscious of the burden that the modernisation programme is placing on the district bench, particularly as a number of significant developments are coming along at much the same time. I am grateful for both your cooperation and forbearance in all this and also for the time and trouble that so many of your number are taking to develop and improve the various projects.
14. I would like to turn finally to welfare and morale issues. There has been a great deal of work going on over the last two years to improve the welfare support available to judges and at the same time to enhance the capacity of the human resources department in the Judicial Office. All of the recent developments have been made available and described to the judiciary on the intranet but I am conscious that all are very busy and may not have picked up some important pieces of work.
15. I shall summarise a handful of them. In November 2020, after work led by Lady Justice Simler and the Judicial Diversity Committee of the Judges' Council, a new five-year strategy on judicial diversity and inclusion was published. Its four core objectives are first, to create an environment in which there is greater responsibility for the reporting of progress in achieving diversity and inclusion. Secondly, to support and build a more inclusive and respectful culture and working environment within the judiciary. Thirdly, to support and develop the career potential of existing judges. Then fourthly, to support greater



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understanding of judicial roles and achieve greater diversity in the pool of applicants for judicial roles.

16. A report on progress will be published in November 2021 and I intend that there should be annual reporting after that.
17. At the same time as the development of the Judicial Diversity and Inclusion Strategy, I commissioned a Judicial Health and Wellbeing Strategy which was published in February. The aim of the strategy is to create a cohesive approach to judicial health, well-being and welfare. I wish to ensure that the right well-being support is available to judges and that mechanisms are in place to monitor and evaluate the effectiveness of what is being provided to support judicial well-being. This strategy was developed in consultation with the judicial human resource committee of the Judges Council. It contains six core objectives which align with those of the Diversity and Inclusion Strategy. It focuses on the need for leadership judges to play an important part in promoting well-being and healthy working practices. You will all be aware that a well-being survey was launched in May this year. It includes important new questions on workplace culture and is designed, in part, to explore the extent of concerns about harassment, discrimination and bullying. The survey will be dealt with in the usual way with publication following rigorous analysis alongside a statement of next steps.
18. In December 2020 we brought together all the policies and support resources on the judicial intranet. That makes it easier for judges who wish to take advantage of the available support to do so. We have a grievance policy which enables one judicial officeholder to



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raise a concern about another. That was amended in December 2020. Presentations to promote welfare services have been taking place since December 2020. There have been eleven to date. Emails have been sent to all judges. Both the emails and the presentations have been designed to raise awareness of the available welfare support and how to deal with concerns or complaints. There is a judicial helpline which provides a confidential telephone service to judges for practical and emotional support. That is available 24 hours a day every day of the year. It is an external service with expert clinicians available used by many ordinary employees. It is entirely confidential.

19. There has been work underway to develop a whistle blowing policy following the decision of the Supreme Court that the relevant legislation applied to judges. It has been developed by human resource professionals with some general oversight from Mrs Justice Eady and more recently Lady Justice Simler. The Judicial HR Committee of the Judges Council has a role to assist me and the Senior President of Tribunals by providing a judicial perspective on the development and maintenance of policies, procedures and guidance for judicial welfare. Its membership includes judges and magistrates from all levels. That committee has been involved. It saw the policy in draft at the end of last year and was asked to seek comments in confidence from the judicial associations on the draft document. The HR committee saw the document again earlier this year and sought comments again in April. It did so again in May. The draft had continued to evolve as you would expect.
20. The comments of all those involved have been taken on board by the professionals who are responsible for the drafting of the policy which was for the first time, as it happens,



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provided to me, the Senior President of Tribunals and members of the Judicial Executive Board only yesterday.

21. A cohort of judges drawn from across the judiciary has been identified to act as “whistle blowing judges”. All being well, those judges will receive their training on the policy next week in the expectation that it will be published before the end of this month.
22. There is much else that is done constantly to support the welfare, well-being and safety of judges. Perhaps I should finish by noting the work in developing supportive protocols with the police to deal with the relatively rare circumstances in which there is a credible threat to a judge.
23. At your conference in my first year as Lord Chief Justice I was able to speak of my personal experience of appearing before countless District Judges as a common law civil practitioner hurtling around the county courts of England and Wales. My understanding of the work of District Judges had been greatly enhanced in my time as presiding judge on the Western Circuit. The job had changed in the interim beyond recognition. But I explained the importance, the centrality, of the district bench to the administration of justice in the family and civil courts. I repeat my admiration for what you do, often in very difficult circumstances, and my heartfelt thanks for the outstanding contribution that the District Bench has made over the last 16 months in sustaining the rule of law in England and Wales and ensuring that the service we provide to the public has continued despite COVID-19.