

CONFERENCE

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(The Right Honourable The Lord Burnett of Maldon)

on

Tuesday, 23 November 2021

---

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

---

**CHAIR:** Yes, good to see you again face to face. Just the usual ground rules, as it were, that the Lord Chief will be able to talk about any subject you choose, whatever, but he obviously cannot talk about anything that is political, cuts across into parliament's domain, and he cannot talk about cases – you have been doing the job long enough to know this – but individual cases or other people's cases or anything like that. If you could just put your hands up when questions and I will indicate who to speak, and if you could say, before your first question, name and where you are from. We will be doing a transcript as we always do, which will get to you as soon as possible so you can check your shorthand against somebody transcribing. Great. We have got three quarters of an hour, up to that.

**THE LORD CHIEF JUSTICE:** Well I am very pleased to be able to welcome you back in person today after what seems like a rather long time. As we emerge from the pandemic I want the courts to be scrutinised and reported by journalists as they were before. Sir Andrew McFarlane has signalled our intention to open up the family courts further so that you can report them more fully, and soon it will be possible to film and broadcast sentencing remarks from the biggest crown court trials.

It has been important for the public to know, through you, that justice has continued to be done. I know that you face difficulties covering hearings, but the pandemic has not dimmed our collective commitment to open justice. Thanks to you and your colleagues across the country, as well as to judges, magistrates and the court staff who have been so innovative and resourceful to keep the system running, open justice has been sustained.

There has been much discussion of the need to reduce backlogs, especially in the crown court. I will do all I can to ensure cases are heard as soon as possible. That will require more judges, court staff, and enough capacity in the legal profession, the Crown Prosecution Service, and the police to bring cases to trial. Reducing backlogs in the family courts also requires all those who play a part to have enough capacity. This will need funding. Without enough money there will be no reduction to the delays in any jurisdiction. There must also be sufficient investment in the court infrastructure, buildings and technology, to avoid disruption caused by IT failures or a lack of maintenance.

We are continuing our efforts to increase the diversity of those who apply for judicial posts and to ensure the courts and tribunals provide an inclusive working environment in which all judges can thrive. I would like to draw your attention to the update published recently to the Diversity and Inclusion Strategy, which emphasises the role of leadership judges in promoting inclusion. From that you will see just how much is being done to attract to the judiciary the best from all backgrounds. I continue to work with the Lord Chancellor, the chairs of the Judicial Appointments Commission and Bar Council, the President of the Law Society and the President of the Chartered Institute of Legal Executives. We have distinct responsibilities but share the common aim to promote diversity in a practical sense, including encouraging suitably qualified lawyers to consider applying for judicial appointments and supporting those from underrepresented groups. We are making progress and will continue to give this agenda the sustained focus that it needs.

Now I will welcome questions.

**MARTIN BENTHAM, EVENING STANDARD:** Martin Bentham from the Evening Standard. After Sarah Everard's murder there was, you are fully aware, a big outcry about the failure of the criminal justice system to do enough in general to tackle violence against women. Obviously, I realise that you are at the end of the process, but has the Judiciary reflected on the role it can play in improving the operation of the criminal justice system in respect of violence against women, and as well as that, are there things that you see, if you cannot directly address them yourselves as the judiciary, that you think are needed to improve outcomes in this area?

**THE LORD CHIEF JUSTICE:** Well you make an important point that the courts only become involved in cases after there has been a charge, and there has been a great deal of public discussion in the sphere of violence against women, and more widely in connection with alleged sexual offences concerning the relatively small proportion of complaints that result in charges, and as I emphasise it is only after charge that a case comes into the courts. In the courts the overarching responsibility of the magistrates or judiciary is to ensure that there is a fair trial, and at the same time seek to ensure that everybody involved in the process is dealt with fairly and appropriately. In recent years, as you know, there has been an increasing use of special measures to enable complainants and witnesses to give their evidence in a way which reduces stresses and strains, and that is continuing, something that the judiciary has been deeply involved in. Once the cases come in to the courts the biggest concern that I have at the moment is that as a result of the growing outstanding caseload, growing before the pandemic and growing substantially during the pandemic, that cases are not being dealt with as quickly as I would like. Timeliness is important.

It is not simply a question of the volume of outstanding cases. In court crown courts in particular the resident judges – that is to say the judges in charge of each crown court – have an endless task of juggling priorities for trials. Cases where defendants are in custody are subject to custody time limits, which are dictated by parliament and can be extended only in accordance with clear legal principles. It follows that there is necessarily more of a focus on cases involving those in custody than those with defendants who are not. All of this, as it seems to me, feeds into the fundamental question that everyone involved in the system in the coming months and years has got to work hard to improve the throughput of cases through our criminal courts, supported by adequate funding from the government, not only for the courts and our part of the administration of justice, but also for the others involved in the system who similarly need to have the capacity to deal with the extra work that we are trying to put through the courts.

**MARTIN BENTHAM:** So briefly, the lack of funding and the lack of resources for the court to be able to expedite cases as quickly as possible is, in effect, undermining the ability of the courts to deliver the effective outcomes for victims of violence?

**THE LORD CHIEF JUSTICE:** At the moment we are finding that capacity, as I have often said which has many facets, is holding back the volume of work, but it is not money at the moment in the crown court. The capacity problems which we are facing at the moment are not connected with court space in the crown court. We have a shortage of judicial capacity. Now that is in part the consequence of the number of crown court judges having diminished as the volume of work coming into the crown court diminished, and as sitting days were cut leading up to the pandemic. We are seeking to make good that judicial shortfall in a number of different ways. The first way is to engage with the recorders, the fee paid judges who sit in the crown court practitioners, to encourage them to sit more. Secondly, I have authorised, with the concurrence of the Lord Chancellor, over the last nine months or so, a significant number of retired crown court judges to sit in the crown court to enhance capacity. Thirdly, we are deploying more High Court judges to do the big murder cases in particular to increase judicial capacity in the crown court. That is a significant issue at the moment.

The next issue is that in many parts of the country the legal profession, solicitors and barristers, are not able to keep up with the volume of work that we are trying to list in the crown court. You will have heard the Bar in particular talk of this, so too many cases cannot be dealt with because there is simply not the legal professionals to cope with them in some parts of the country at the moment. So those are examples of how capacity has many different facets.

**JONATHAN AMES, THE TIMES:** Just going to follow on from that, because obviously you made the point about judges, the shortage of crown court judges, the shortage... the problems with the legal profession and having advocates in the crown court. You made that point to the Justice Committee a few days ago. Can you give us... you also said that your recruitment attempts to get

more crown court judges was not as successful as you would like. What is the problem? Why can you not recruit judges to the crown court?

**THE LORD CHIEF JUSTICE:** Well we are recruiting judges, or should I say, the Judicial Appointments Commission is recommending for appointment judges to the crown court. But the reality is we have been seeking relatively large numbers in the last couple of years and the last JAC competition for circuit judges fell short by, I think, 12. That number can be checked but that is my recollection. Although that does not sound like very many, if each of them is sitting 200 days in the crown court, that is 2,400 days, which is a lot of work. There is a competition running at the moment, which we hope will deliver the full complement which we are seeking, but that is something for the future.

**JONATHAN AMES:** I suppose to put it bluntly, if we fall 12 short in the competition, is it the quality of the applicants or are you not getting enough applicants?

**THE LORD CHIEF JUSTICE:** There are a large number of applicants but the one thing that both the JAC and we have been absolutely clear about is that the bar for appointment must not be reduced or lowered. So there was an insufficient number who surmounted the necessary hurdle for recommendation by the Judicial Appointments Commission for appointment.

**JONATHAN AMES:** Does that worry you? Sorry to just ask one more one question, does it worry you that the the quality is not good enough?

**THE LORD CHIEF JUSTICE:** I am disappointed that we did not get the additional 12 that we would have liked, but it is not only in the circuit bench that we have been falling short in recruiting the salaried judges.

**CHARLES HYMAS, DAILY TELEGRAPH:** Obviously, one of the consequences of delay is that people may drop out of the criminal justice process, and that is particularly acute, it seems to me, in rape cases, and I do not know whether that is also correlated in the fact that the point was made about the fact that people who are in custody have to be prioritised. I do not know how many rape suspects are actually held in custody, but that delay, I am just wondering what your perception was of what the consequences were of these delays and that you cannot deliver on the speed that you want to do in order to cut them back. What does that mean for the victims?

**THE LORD CHIEF JUSTICE:** Just picking up on the first part of your question, if I may, figures have recently been published about fall out rates in a range of different types of case at different stages in the process. The greatest fall out rate appears to be between complaint and the police either investigating or there being a charging decision by the CPS. I do not carry all the figures around in my head I am afraid, but the fall out rate in the courts, once they get into the courts, is rather lower than elsewhere, but that is something, Charles, you will be able to check if you dig out the figures and somebody will be able to provide them to you. But delay is pernicious in all sorts of aspects of life and delay is deeply undesirable in the context of criminal trials. By that I mean delay that is unnecessary.

You will appreciate that many criminal cases take quite some time to be ready for trial. In cases involving sexual allegations, particularly between a complainant and defendant who know each other, disclosure is a real issue for the police and for the prosecution and can result in delay at all stages in the process. But clearly, the longer a case goes on the more likely it becomes that some part of the evidence will become stale for one reason or another. The figures that I have just referred to indicate that some complainants fall by the wayside. Whether that is because of delay or simply other reasons one will never know from looking at the statistics. But the broad approach of the judiciary has always been that we would like to try the cases as soon as practicable after they are ready to be heard, and that is why I hope we will never return to the situation that we

endured in the years leading up to the pandemic of sitting days artificially restricting the volume of cases that could be heard. We had courtrooms sitting empty with judges available to hear cases that were ready for trial, but for reasons that we all understand, at the time the money was not made available.

I am about to embark on the Concordat process, as it is called, which is essentially the discussion with the Lord Chancellor about the funding of the courts for the next financial year. I am reasonably confident that the funding for the crown court, which is the focus of your questions at the moment, will be sufficient to enable us to sit all the days that we will be capable of sitting.

**CHARLES HYMAS:** Is that what you are basically saying to the Justice Secretary, is that this easing or ending of any cap on the sitting days must continue now in perpetuity?

**THE LORD CHIEF JUSTICE:** That is what I would like to see the government agree. As I say, for the coming financial year, because there are constraints in the system which are completely independent of money, I am reasonably confident that there will be sufficient funds to provide the resources to sit the days we are capable of sitting. That is this coming year. Then there will be another negotiation in a year's time and so on but my position will be really very clear that to deliver on all the promises that are being made by government to the public about reducing outstanding caseloads, the money has to be available to enable the system to deal with as big a volume of cases as it is capable of doing.

**DOMINIC CASCIANI, BBC:** Hi, Dominic Casciani. Can I... just on this business of the crown court backlog, when we spoke to the Lord Chancellor shortly after his appointment, he could not give us any kind of estimate about when the backlog would be down to pre-pandemic levels. Since then obviously we have seen projections from the National Audit Office in its reports based on the figures being promised. Have you done any more work around that? Can you give us actually any kind of projection? I appreciate that there is margins of error in that about where we may end up in terms of the size of the backlog and the timeliness of cases a year out from it, or two years now, and just secondly, just in relation to that, given that Martin has mentioned the Sarah Everard case, that is a case which was dealt with incredibly efficiently and expedited through the system, roughly half a year from offence to conviction, I am just wondering if there are any lessons to be learnt about how that particular case was managed, notwithstanding the unique nature of this and whether or not that can play into everything else that is going on?

**THE LORD CHIEF JUSTICE:** All right, well I will try to pick up on those points. The answer to your first question, can I give a realistic estimate of when the system might be back to where it was in March 2020, is I am afraid, no. It depends on far too many variables. You will have seen the broad estimate given by the government in the materials published after the spending review but you will appreciate that into those broad projections go a series of variables, which any one of which can change and have a profound impact on outcomes. So I have spoken of judicial capacity, so there needs to be an estimate of how many days a year in the crown court judges, of one sort or another, will be available. There has to be an estimate of the capacity of the legal profession to keep up and the police but part of the equation which is extremely difficult to predict, or at least I find it extremely difficult to predict and so I will not, is the flow of work into the courts.

Now the flow of work into both the magistrates' courts and crown courts remains significantly below pre-pandemic levels. Why that is so is quite difficult to fathom, to be honest, and the biggest unknown, or to coin that phrase 'known unknown', is to predict both the volume of work coming in and its nature, and those two things are both extremely important. We hear constantly about the additional funding for 20,000 police officers and, again, in the spending review, which I read with a great deal of care, the funding for the final 8,000, as I remember, or thereabouts, has been committed. So it is inevitable that a large number of additional police officers across the country

will be doing much, including arresting people and sending cases to the CPS for charge, so there is bound to be an increase of work resulting from that.

There is also bound to be, as it seems to me, an increase of work and quite complex work coming into the courts as a result of the matters that Charles was asking me about a little while ago. There is a huge focus in government and the public on the way in which complaints of sexual offending are dealt with, complaints of domestic violence and, more generally, complaints involving violence against women, and the government is doing a great deal of work on that and it seems to be inevitable that there will be an increase in that nature of work coming in to the courts. So these are just examples of the variables which do make it, at least for me, very difficult to predict precisely what is going to happen, which brings me back really to where I started, namely that the funding has to enable the system to run at full capacity in all the various ways I have been describing, but I do not at all overlook the need for the judiciary, for me, senior judges and the judges who run the crown courts constantly to be looking at the way the cases are dealt with, and constantly to be looking at the way they are dealt with all the other major players in the system.

So to that end, earlier this year I established something which now inevitably runs under an acronym, the Crown Court Improvement Group, CCIIG, which is chaired by a senior judge but has input from all the major players in the system and they are looking at how cases are dealt with and the holy grail, the goal that we wish to achieve is to encourage those cases that end up with guilty pleas to plead earlier. Many do at an early stage but in the crown court many guilty pleas come quite late in the process, after the preliminary hearing. Secondly, there are cases which come into the system which have problems of one sort or another and we want constantly to be looking at case management to expose those cases sooner so that if they are going to be discontinued for one reason or another that that comes earlier on in the process as well. So we are conscious of the part that we need to play in this and, Dominic, it feeds into the last part of your question. Obviously I cannot talk about the Sarah Everard case as a case but the premise of your question was that it was given special treatment but it was not.

**DOMINIC CASCIANI:** Well what was curious for those of us who were was 'gosh', this case has actually got from charge to completion in a remarkably fast time. So was there something there which actually just made it work faster?

**THE LORD CHIEF JUSTICE:** Well it was a custody case and it was a case in the end in which there were pleas but even if there had not been, the trial date was fixed within the custody time limits and so I think it is a good example of how there may be a sort of sense that all cases coming into the courts are taking a very long time to be heard but that is not so and it is one of the reasons why when one looks at statistics, one has got to be jolly careful because averages can be deeply misleading.

**JANE CROFT, FINANCIAL TIMES:** I wanted to ask, really, you talked about a shortage of barristers and you also spoke last week of chickens coming home to roost, I just wondered really, obviously whether or not it is something that cannot easily be fixed, if you are kind of, as judges, trying to speed up cases in the crown courts, if there is not the capacity in the legal profession, that is not something that can be fixed very quickly and easily, presumably.

**THE LORD CHIEF JUSTICE:** Well, inevitably, if you have capacity issues in any organisation or any part of the economy, it is more than a question of clicking one's fingers and it is all solved. The legal profession supporting the criminal courts has contracted in recent years, according to the evidence provided by both the Law Society and the Criminal Bar Association and I have no reason to doubt the broad thrust of what they are saying, indeed it is something I have been talking about publicly pretty well from the moment I was appointed Chief Justice over four years ago, and so the

number of people available to do the work inevitably contracted as the work contracted, that is what one would expect in any ordinary structure. So, it will take a little bit of time to sort itself out.

There is, as you know, a pretty root and branch review of Legal Aid funding in the criminal context being carried out by Sir Christopher Bellamy. He has been looking, not only at rates of remuneration but also the whole structure of Legal Aid. I understand that his report is not very far away from completion, I do not know when he is hoping to get it to the government, but to the extent that he makes any proposals or recommendations which might ease the supply problem, as it would be called in other contexts, I hope that the government will look carefully at it but importantly, move quickly because, as you indicate, otherwise things may remain very sticky for some time.

**HARROON SIDDIQUE. THE GUARDIAN:** Hi, Harroon Siddique from The Guardian. Just following up that really, do you fear that if they do not that there could be industrial action particularly by barristers who have been making noises about that?

**THE LORD CHIEF JUSTICE:** I think that is a question that you need to put the chair of the Criminal Bar Association rather than to me. Of course, I would very much hope that there is nothing that dislocates the pretty strenuous efforts that are being made by so many people to deal with outstanding caseloads.

**MONIDIPA FOUZDER, LAW SOCIETY GAZETTE:** Monidipa Fouzder from the Law Society Gazette. Just to go back to judicial capacity and you mentioned that the competition and falling short in the number of people you wanted, in terms of judicial diversity, could you provide more detail on what we are actually doing with the Judicial Appointments Commission to encourage greater applications and selection from underrepresented groups? You mentioned earlier that the bar, you cannot lower the bar for appointment but are you looking at, not lowering the bar, but perhaps reviewing that bar, maybe setting a different bar?

**THE LORD CHIEF JUSTICE:** Well by the bar, I mean merit and quality. So, my unequivocal view is that the reputation of the judiciary in England and Wales which stands high internationally but stands high at every level depends upon appointing people who are of high standing to the judiciary. Your broader question I could answer shortly or chat to you for half an hour about. Last November, a year ago roughly, we published our diversity and inclusion strategy which was a really detailed attempt to look at and take steps to improve the diversity of the judiciary and that is outward facing to begin with, in other words, looking carefully at what we can do to increase the number of applicants from underrepresented groups for judicial appointment and also inward looking in the sense that we recognise that it is important that anybody thinking of applying for a judicial post, whether fee paid or salaried, whether in the courts or in the tribunals, should feel welcome and included, so diversity and inclusion strategy and I commend it to you, you will know it because it sets out in considerable detail what we plan to do over the five years from its publication.

One of the things we committed to doing was reporting annually on progress and that report was published a couple of weeks ago, forgive me, I forget precisely which day, which sets out in detail what we are doing for diversity and inclusion. Only yesterday we had a meeting of the diversity forum which comprises as its principals the Chair of the Judicial Appointments Commission, the Lord Chancellor, me, the Chair of the Bar, the President of the Law Society and the President of CILEX. This was the first meeting that the new Lord Chancellor attended and, again, what we are looking at is not talking about diversity but developing and pursuing strategies each of the participants which will increase the number of diverse candidates in the pool from which appointments are made, but again, over the last two years which is the period during which the forum has existed, significant pieces of work have been done, not least to produce comprehensive

statistics that illuminate what is going on in all different parts of the system so that we can identify where the candidates might be. Then we, the JAC, the Bar, the Law Society, CILEX, with the support of the Ministry of Justice and successive Lord Chancellors, have a whole host of initiatives which are designed to seek out and identify suitable candidates, support them, mentor them, encourage them and we hope lead to a greater number of applications which are successful. Never before has so much work been done by each of these organisations to try to improve the diversity of the judiciary.

**MONIDIPA FOUZDER:** Well I was just going to ask just if the proportion of black judge has been one percent since 2014, if, for instance, next year it goes to two percent, I mean if it is moving up, that is a good sign but is still a a very, very low number, and in reality, you are not going to see people... in the public will not see people who they can identify with. So at what point do you think... there is a lot of work being done for instance in application seminars to kind of encourage people to help them understand what is required to meet that high bar has that been set.

**THE LORD CHIEF JUSTICE:** Yes.

**MONIDIPA FOUZDER:** At what point do you think, "Hang on a minute, there is clearly a lot of interest, there is clearly a lot of people wanting to become a judge but they are just not getting to what final stage." At what point do you look at that... if you look at the strategy, for instance, it says work is ongoing with the JAC but it does not say... there is kind of scant detail on precisely what work is going on. At what point do you look at that second part of the process and also reveal... kind of you say there are strategies, but in terms of from the appointments perspective, when do you think, "We need to review that and we also need to tell the public and the processions what we are doing, because they are being disheartened by the..."

**THE LORD CHIEF JUSTICE:** Well, I mean it is all there. If you look at what we have been publishing it is all there, and if you look at what the JAC has been publishing it is all there. So too, I think, the Bar and the Law Society. But you have put your finger on something which is really important which has been illuminated by the work that we have been doing over the last two or three years. So when, as I say, when I became Chief the biggest focus was actually on gender balance in the judiciary and, so far as appointments are concerned, in broad terms, there is gender balance now. It will take some time to filter through the system because, inevitably, people are judges for quite a long time, or some are. So the gender balance was being looked at but because we now know so much more about the detail of the figures we are able to look closely at how it is playing out in every different part of the judiciary: tribunals, courts, fee paid, salaried.

Now, so far as ethnic diversity is concerned, one of the constant frustrations, frankly, that certainly I felt and lots of other people felt was the omnibus use of the term "BAME". Now, it was useful up to a point but now we are trying to break down the representation of different ethnic groups, and the figure you mentioned, that only one percent of the judiciary is black, that is to say Black African or Black Caribbean is one of those things that was rather subsumed when everybody simply spoke about "BAME". So what has become apparent is that there has been really quite significant progress in recruiting to the judiciary, all types of the judiciary. Lawyers of South Asian origin but not black. So there is more of a focus on that but what I would ask everybody to recognise is that because the judiciary is a second career and most fee paid judges become judges in their 40s, salaried judges late 40s, 50s, we are collectively fishing from the senior ranks of the solicitors' profession and the senior ranks of the Bar.

So, it is one of the reasons why it was important that the Judicial Diversity Forum should embark on a project which linked all the statistics available for not just the judiciary, not just the success rates of the JAC but also the ethnic composition in particular of the senior ranks of the Bar and the solicitors' profession. So that is important, and the other important thing to remember is that if we

are recruiting district judges who are 50, let us say, we are looking back to what was going on in schools and universities 30 years ago when things were different. So it is a complicated business which calls for rather more than a recital of headline statistics. So I can assure you that we have never been doing more, and if you have not had a chance get to look at the Diversity and Inclusion Strategy and our update, I really would encourage you to do so and to look at the materials that have been published by the Judicial Diversity Forum.

**LIZZIE DEARDEN, INDEPENDENT:** I just wanted to ask a question about the different kinds of backlog. Is there any way in which the backlogs in different strands of courts interact with each other? For example, is there any impact from appeals on crown courts, magistrates is recovering but crown is slower. Can you say anything about it and to what extent they interact with each other, or whether they are just completely separate?

**THE LORD CHIEF JUSTICE:** The magistrates courts in most parts of the country are getting pretty well back to where they were. It is not true everywhere and there are patches but in most parts of the country, appeals from magistrates courts to the crown court are well under control, so there is not a growing backlog. In London there is a large number of outstanding appeals from the magistrates court that need to be found slots in the crown courts and that again brings in a sort of balance that I was talking about earlier in answer to another question about which cases get priority. Obviously, for those involved in any case, they will think it must be given priority but the judges with the listing staff have to make difficult decisions, but in the crown court, accumulating appeals from the magistrates is not something – save in London – which I think is... at least that I have heard, is causing a problem.

Looking a bit more widely, I am sorry, I know everybody wants to talk about crime, in family there are larger outstanding caseloads than there were back in March 2000. It is not too bad but the family judiciary and the civil judiciary around the country largely comprises the same people, and so there are undoubtedly some, again, tensions and difficult decisions that have to be made about deployment, with priorities always being in peoples' minds.

**MARTIN BENTHAM:** Can I ask a question about... this is a media question about transparency and open justice.

**THE LORD CHIEF JUSTICE:** Yes, of course.

**MARTIN BENTHAM:** In a recent judgment Lord justice Fulford said the court will require justification, i.e. evidence and necessity, which is a point familiar to you, I am quite sure, and that more than just embarrassment and humiliation was required to justify diversion from the open justice principle. Also that the public can be expected to understand that just because somebody is accused of something, they automatically are not guilty, i.e. that mud does not automatically stick and that is not a reason for it.

**THE LORD CHIEF JUSTICE:** No.

**MARTIN BENTHAM:** Are you satisfied that those principles are actually being applied day-in, day-out by judges? Because I have to say, in my experience, it is too easy for people with... usually wealthy clients with expensive barristers, to turn and say, "We are going to suffer all this catastrophic damage" and to secure an anonymity order as a result of it without ever actually having to present specific evidence of what his... the damage that is going to be inflicted. Just on that, to expand on that slightly, also just on a point of principle, if it is a person who has got great wealth and their barrister says that they can suffer great, catastrophic financial damage as a result of this,

is that... how seriously should that be taken when the average person who is on, say, the minimum wage or whatever it might be, obviously does not have that argument that they are going to suffer big financial damage as a result of this but the impact on them will be just as severe? So is that an ethical way to proceed as well, to be, in effect, seduced by the argument that somebody has got a lot of money and a lot of business interest that can be harmed by disclosure of their identity in a relevant case? I think both of those things, I think, will benefit from being looked at and re-emphasised in my opinion.

**CHAIR:** That is really a speech rather than a question, is it not?

**MARTIN BENTHAM:** I just want to ask if the the Lord Chief Justice is confident these principles are actually being applied in the courts. Because I think, as members of the media, Dominic probably will elaborate on this, we are not entirely confident those principles are being adhered to.

**THE LORD CHIEF JUSTICE:** Well, I am not in a position to comment on the particular types of cases that you have identified but open justice is at the heart of what we do. Open justice is something that was devised, created, developed by the common law over centuries, and open justice is something that, in my opinion, is absolutely vital to the proper operation of the courts. As everybody will recognise, to every rule and every principle there are exceptions. Those exceptions themselves should be principled, and you started your question with a quotation from a judgment which identified those principles. Now, I would very much hope that they are being faithfully applied everywhere, and to be extent that anyone is concerned in an individual case and particularly in a high profile case of the sort that you were obviously adverting to, there are mechanisms to challenge any ruling. But I do not think there is any doubt about the commitment of the common law to open justice.

**CHARLES HYMAS:** In the field of immigration there has been a lot of discussion about the role of lawyers in the pursuit of deportation and others with relevant issues regarding to immigration, in which the government has criticised lawyers for being “leftie lawyers” and exploiting human rights legislation. Do you think that that is a fair criticism, or are there lawyers that you think are perhaps putting forward cases that may lack merit?

**THE LORD CHIEF JUSTICE:** Two questions in there. Lawyers act on instructions from their clients, that is what I did, that is what every lawyer does, and everyone is entitled to have their case argued, their case presented, subject only to professional obligations that lawyers owe to the courts and also the professional obligations that flow from the relevant codes of conduct. It is inevitable, in any field of litigation, that occasionally one side will become a little perplexed by what is being said by the other. But I think it is important to recognise that no lawyer in any case should be advocating his or her own points of view, they should be faithfully arguing the case that they have been retained or instructed to argue.

**JONATHAN AMES:** Thank you. Did the tax-payer get value for money from the Nightingale Courts? I mean there was sort of... we had an FOI request to find the answer from the MoJ that showed that quite a few of the courts were used not terribly efficiently, they were expensive, they did not hear that many cases. Are you satisfied that we got value for money and that you got value for money from the Nightingale programme? Secondly, just to tack on as another funding question, you made several references to the requirement of the government to fund... adequate funding to get us out of the backlog and to ensure that there are sitting days, etcetera. Have you got a... I mean, obviously, you are not in charge of Legal Aid or you cannot... you know, Legal Aid falls outside of your [inaudible 00:55:39] but have you got a figure in mind of what the courts need?

**THE LORD CHIEF JUSTICE:** So far as Nightingale Courts are concerned, they played an important part in increasing our capacity at a time when the physical capacity of the courts was the greatest constraining factor. It is difficult even now to think back to what things were like last May, nearly 18 months ago, when, after a seven week pause we got crown court trials running again. But they were very hungry of space, with some requiring three traditional court rooms to enable them to proceed and so then the so-called Nightingale Courts were an important part in expanding our capacity to do cases and particularly non-custody cases. So whether it turned out to be good value for money is something that others must judge, it is not a judgment I would presume to make.

So far as funding generally is concerned, Jonathan, no, I do not think there is a figure I can put on it because there are so many aspects of it which are important. We focused this morning on sitting days in the crown court but it is as important that the funding for the family justice system and the civil justice system and the tribunal system enables us not only to deal with accumulated outstanding caseloads but also with the volume of work coming in, and in family in particular it continues to rise in many of its areas of work. Also, critically, and much overlooked is the need to provide adequate money to maintain the court estate and to maintain our IT. We have a number of what are quaintly called "legacy" IT systems, which means quite old IT systems, which we rely upon at the moment and which have to be kept going. So we need... when I say "we", HMCTS needs sufficient funding to ensure that those systems do not fall over.

It is well known that many of our court buildings are in a pretty desperate state. I mean each of you visits them from time to time. Last week before the Justice Select Committee I had the delightful experience of hearing a former parliamentary undersecretary of state at the Ministry of Justice saying that he did not ever visit a court that he thought was in decent condition. Well, there are some good ones out there but not very many, and I am worried that at a time when public money remains tight, that there might be a tendency to restrict the money that goes to maintaining the courts, and you can only do that up to a point. It is exactly the same but writ large, as any of us knows, from a domestic environment. If you do not mend the gutters, sooner or later you have got to replaster the walls. It is not difficult but I recognise the Lord Chancellor has a very difficult balance to strike and also that the Treasury are not a soft touch.

[Ends]