JUSTICE COMMITTEE

THE WORK OF THE LORD CHIEF JUSTICE

on

Tuesday, 8th November 2022

Transcribed from the Audio Recording by
Apple Transcription Limited
Kingfisher Business Centre, Burnley Road, Rawtenstall, Lancashire BB4 8ES
Telephone: 0161 850 0595

CHAIR: Good afternoon. Welcome to this session of the Justice Committee. Welcome to our witness, our guest, The Lord Chief Justice of England, Wales, Lord Burnett of Maldon. Very good to see you Lord Chief, and before we start we will just do our declarations of interest as usual. I am a non-practising barrister, former consultant to law firm.

MARIA EAGLE MP: I am a non-practising solicitor.

KARL TURNER MP: And non-practising barrister, but for the purpose of this session, Sir Bob, my wife is a fee paid tribunal judge in the Social Entitlement Tribunal, and indeed in the Immigration Tribunal.

CHAIR: That is very helpful. Thank you very much. Lord Burnett, always grateful for you to come to come and see us and perhaps if I can kick off, if I may, by just inviting you to have a look at what I suppose has been the most topical issue, but by no means the only one that we would like to talk about, which is the position of the pressures in the Crown Court and where we stand. Your assessment of that in terms of backlogs and whether or not the hopeful pausing at least of the CBAs industrial action makes any difference.

LORD CHIEF JUSTICE: Yes. Well, can I start by trying to explain some of the figures that get bandied around, because from what I read in the press in particular there is a certain amount of confusion about that? The outstanding caseload in the Crown Court, pre-COVID, by the measure that is used by HMCTS and the Ministry of Justice and the Judiciary, was 40,350. Within that caseload are three broad different types of case: the first cases that have been sent up to the Crown Court for sentencing. Those are dealt with quickly in all cases; the second, appeals from the Magistrates Court, which are relatively few in number; and the third, what are called trial cases. But it's important to understand that of those trial cases, most of them do not end up being trials because at some point in the process the defendant, or defendants, plead guilty, or in a small number, a relatively small number, the prosecution is not proceeded with. At the height of COVID that outstanding caseload got as far as 61,000, so that was in the summer of 2021, and thereafter the figure began gently to decline, so that by April we were at 58,000. Now, the Bar action started fairly *sotto voce*, if I can put it that way, in April and as we all know escalated. The last figures that have been published, and thus statistically verified, relate to August when the figure had crept up again to a little over 61,000 outstanding cases, and unaudited figures, my latest information suggests that they just topped 63,000 as the Bar action came to an end. Since then, over the last few weeks, the numbers have been gently declining.

Now, I have put the figures like that because I am aware that a week or so ago you had evidence from the DPP who spoke of an outstanding caseload of I think 70 or 75,000, and I think it's important to understand that the CPS, the Crown Prosecution Service, counts cases differently. They do not count individual cases, they count individual defendants and that explains the—

CHAIR: Multi-handed cases.

LORD CHIEF JUSTICE: So it is really important that when the figures are considered that everybody is comparing like with like. So the broad picture remains that as compared with pre-COVID, so March 2020, we have about 50 percent more cases outstanding in the Crown Court. Now, that doesn't paint the complete picture because the number of complex cases that are likely to end up as being trials has increased disproportionately within that number. So, it seems to me at least, that it means that the best efforts of everybody involved in the system are likely to result in only gentle reductions over time, and that in many ways is disappointing.

CHAIR: Last week, actually, the Institute for Government came up with a calculation which was based for complexity adjustment. That sort of thing you used to put on the red form, or whatever it was, [inaudible] that their suggestion was, but because of the amount of time those complex cases

took, it was almost the equivalent to 80,000 odd simple cases. I do not understand the maths of that, but does that make any sense to you?

LORD CHIEF JUSTICE: I have not had an opportunity to look at the detail of that, so I am afraid I do not know the answer to it. I do not know the answer to it, but just following through on what the current problems are, which I guess is what many are interested in and what are the constraints on disposing of cases. They really fall into two distinct categories. The first is constraints on judicial resources, which simply means having a judge available to try a case, and the second is a constraint on the availability of lawyers to conduct the cases. Now, those are the two significant factors that are likely to hold up quick reduction in outstanding caseloads. At the moment, sitting days, the unit of currency with which every member of this committee will be familiar, that is not a problem because we will not be able to sit as many days as we would like in this financial year, because we have not got the judicial resources and also because the Bar action led to an inevitable reduction, and also we have sufficient space with the Crown Courts and also with the Nightingale Courts. So, judicial capacity, our Crown Court Judges are made up of two main categories: the first are the salaried judges and the second are the fee paid recorders. Now, in the most recent recruitment round for salaried Crown Court Judges the recruitment fell short by 16 judges. Now, given each judge sits about 200 days a year, that is quite a significant hit on capacity, and also a significant hit amongst the more experienced judges who can do the most difficult cases.

We have taken certainly every step that we can think of to try to mitigate the problem of reduced judicial capacity. We have encouraged recorders to sit more. We have lifted the limit on the number of days recorders can sit. But as I know the DPP said to you last week, if too many of the experienced recorders are sitting they're not available to do the difficult cases, and that is a phenomenon that affects, if I may say so, not only the DPP but also the defence side as well. But nonetheless, many more recorder sitting days are being used and there is another recruitment campaign for recorders underway. The next step we have taken is to use a statutory provision which has never been used before, which enables district judges who sit in the Magistrates Court to sit in the Crown Court, and a cohort of district judges have been trained up to sit in the Crown Court. We are hoping to sit about 50 days each over the course of the rest of this year. I, along with the Lord Chancellor, have authorised a significant number of retired circuit judges to sit in retirement, something which wasn't possible when the sitting days were significantly restricted pre-COVID, and the last action we are taking is to train and deploy Deputy High Court Judges who are assigned to the King's Bench Division to sit in crime if they wish to. So I think we have done everything we can to enhance judicial capacity, but I still doubt whether we will be able to sit as many days as theoretically we could this year or next.

The problem with the legal profession is, I think, more deep seated. As you know, over many years before COVID, over a number of years at least, the sitting day allocation for the Crown Court was reduced and that meant that the volume of work available to be done by lawyers was reduced.

CHAIR: That was a financial decision, was it not, basically?

LORD CHIEF JUSTICE: Essentially, yes. Although it did follow, to be fair to government, it did follow a reduction in the volume of cases coming in to some extent but it maintained a backlog at an artificial figure.

CHAIR: Yes.

LORD CHIEF JUSTICE: So with less work fewer lawyers stuck with crime, that is what it came to, and at the same time, for all the reasons you are very familiar of, with the financial reward for doing crime was also, in real terms, reducing and reducing quite fast. So the defence legal community, as it is sometimes called, is depleted, and therefore there is not resilience within that defence legal community, and it is the prosecution community as well to do all the extra work that we are listing.

So we have encountered a phenomenon of cases having to be stood out at the last minute or adjourned on the day of trial because one or other side simply does not have a lawyer to prosecute or defend. The problem, as it seems to me, with a legal community that has been subject to attrition over many years, is that it is not possible simply to flick a switch and magic up hundreds or thousands of criminal lawyers, and so that is a problem which I fear may be with us for some time.

CHAIR: That is helpful. A couple of just small points and then we will move on; I understand the point about the manpower shortage, the person power shortage with the judges and lawyers. In terms of the actual physical number of court rooms, we have been shown some evidence that it's been reported that on average in October of this year about 20 percent of the Crown Court rooms were being unused. Is that essentially because you have not got the judges to sit in them rather than the lack of availability of the rooms or they're not being available, out of service for repair or something like that? I do not know if you could help with that?

LORD CHIEF JUSTICE: Whether the figure is 20 percent that may be a rough and ready—

CHAIR: Yes, I think it is probably a rough and ready average.

LORD CHIEF JUSTICE: —I am not sure but the basic problem is that there is a lack of judges, so inevitably from time to time there are some courtrooms that are out of use because of maintenance issues and maintenance problems of one sort or another. But the problem at the moment is not court space but judges.

CHAIR: Okay.

LORD CHIEF JUSTICE: We are also benefiting from a phenomenon that no one is able to explain, at least to my satisfaction, namely that the volume of cases coming into the Crown Court at the moment remains significantly depressed as compared with pre-COVID. So again, just to give you a flavour and it varies around the country, it's not uniform. In overall terms, the volume of cases coming into the Crown Court is somewhere between ten and 15 percent lower than it was in 2019-2020, and it is something that causes me concern, verging on worry, that if those volumes picked up again it would present the system with really powerful problems.

CHAIR: Some real challenges, yes.

LORD CHIEF JUSTICE: Yes.

CHAIR: No, I understand. Yes, because if CPS are working back at normal and the Magistrates Courts are yes, that is on the face of it interesting. So the government has got a target to reduce the outstanding case level to 53,000 by March of 2025, do you think that is doable?

LORD CHIEF JUSTICE: Had you asked me, Mr Chairman, in April, as we were coming down gently, I would have said a pretty good chance. Getting there from roughly 63,000 to 53,000 in two and a half years will require a reduction which I think is going to be very difficult to be honest.

CHAIR: And even if you could achieve it is that really enough? I mean would getting down to 53,000 be a satisfactory state of affairs?

LORD CHIEF JUSTICE: Well I know you have asked me this question before and I have said no. I mean ideally we would like to get back to the position where cases that are ready to be heard can be heard, if not immediately, within a very short time. Now, of course, the outstanding caseload is not a reflection of the number of cases that could be heard tomorrow were the were the capacity there. The other thing that I think is as important, perhaps more important than the number of

outstanding cases, is the length of time that different types of case are taking to come to trial. Again, just very broadly, the number of cases or the proportion of cases not dealt with within six months has roughly doubled since COVID, and that is a figure also I am keeping a very close eye on and want to see come down.

CHAIR: And that concerns you.

LORD CHIEF JUSTICE: There and there may be an opportunity in due course to explain a little of what we are doing to try to improve both the throughput of cases and also the timeliness of cases, but I will bide my time on that.

CHAIR: Do you want to come on this bit?

DR KIERAN MULLAN: Just echo your comments, it seems to me that perhaps the focus on the outstanding total number is almost the least important of those variations to what might be a suitable target that you have just mentioned.

LORD CHIEF JUSTICE: Well, I am not sure that one can rank them, but if I were either a defendant or a witness involved in a Crown Court case I would not be terribly interested in how many other cases there are, I would be more interested in knowing when it is likely or certain that my case was going to be heard. So at the moment, as you would appreciate, an enormous amount of effort over COVID period and since has gone into complying with custody time limits which can only be extended under strict, strict legal criteria and those are time limits that are imposed by parliament. So the first step is always to try to get all the custody time limit cases on within the custody time limit, and only extend if that is really necessary and appropriate in accordance with the law. But obviously the focus, as there must be, on cases where defendants are in custody can lead to what everybody would consider to be undesirable and unacceptable delays for cases where the defendants are not in custody. That is where the judges in every Crown Court look at their case notes, and no two courts are the same, and then have to make really difficult judgments about which cases to pull on and which cases to hold back, so most judges will look to try to bring on as quickly as possible those with vulnerable complainants or witnesses, those with young defendants because it is simply unacceptable to keep an 18 year-old waiting for two years. That is all his adult life, really, and things of that sort. But it can mean that some of the cases that are not a very high priority by those criteria are taking much longer than any of us would like to see.

CHAIR: Yes, Ms Eagle?

MARIA EAGLE MP: Thank you. Just started talking a little bit about listing; now your annual report refers to the Crown Court Improvement Group's work to address the problem of over-listing.

LORD CHIEF JUSTICE: Yes.

MARIA EAGLE MP: Would you like to just explain the issue a bit and what the group has been able to do to address it?

LORD CHIEF JUSTICE: Yes, one starts from the basic premise that listing, what goes on in a court is a matter for the judge, and so in every court, every Crown Court that we are concerned with here, the resident judge, the senior judge in the court, working with the listing officer or officers, has to do this very difficult balancing exercise to list cases and get them on. But in an ideal world every case that was listed for trial yesterday, shall we say, would be effective and start, and then finish and then the next one would be ready to come on. But that is not how the Crown Court works, it is not how it could possibly work. Of the cases listed for trial on any given day roughly 50 percent of them – again it is a broad figure across the nation and varies from place to place –

roughly 50 percent of them do not go ahead. About a quarter of them result in late pleas of guilty from the defendant, which are acceptable to the CPS or prosecutor, so that is from the defendant which were acceptable to the CPS or prosecutor. So, that is a quarter that do not go ahead. Then another quarter, for one reason or another, have to be adjourned properly on the application of the prosecution or defence, because they have got a problem; maybe a witness has not turned up or something of that sort.

So, in broad terms, about 50 percent of the cases listed do not go ahead. So, every court has to have a reservoir of work that can fill the gap to avoid courts sitting doing nothing. That is why you need, through one mechanism or another, to overlist, and in any two courts it is not the same. You can appreciate immediately that if a judge is in charge of a court with three courtrooms, the sort of listing decisions will be very different from a judge with ten courtrooms because you can take bigger risks with ten courtrooms and so on.

So, that is why you have to have overlisting, and we are looking closely at the best way of overlisting. But what we want to avoid, and what we are trying to avoid, is what might properly be called excessive overlisting. One of the things that the Crown Court Improvement Group looked at earlier this year resulted from anecdotal evidence from the Bar and the CPS that there is a really big problem with excessive overlisting around the country. So, what the Improvement Group did was to get all the data; not a bad start. You may not be surprised to know that the anecdotal evidence was not reflected in the data, but the data did indicate a problem in some courts. There were, for example, two courts where the overlisting, which resulted in the late adjournment of cases either on the morning or the day before or day or two before, was not consistent with what was going on elsewhere. So, those problems were dealt with, but it has also led to some careful thinking about the best way of approaching the question of having backers or floaters or a warned list, however one wants to call it, and the Improvement Group will be producing something, I hope within the next few weeks, which will address that, and the resident judges are fully up to speed with the thinking that is going on.

So, that has been one of the really positive outcomes of the work of the Improvement Group, but it is not the only one and I do not want to… I am talking too much, I appreciate I am here to answer questions and so I should be talking quite a lot, but I am happy to explain a little bit more of that if anyone would find helpful?

MARIA EAGLE MP: That is fine. Just talking about ineffective trials, the ineffective trial rates increased in the latest quarter to 31 percent—

THE LORD CHIEF JUSTICE: Yes.

MARIA EAGLE MP: —which is the highest it has been since quarter two of 2020. So, what can be done to reduce the ineffective trial rate in the Crown Court and what ought to be done?

THE LORD CHIEF JUSTICE: Yes, well, the reasons for trials being ineffective are broadly either… mostly either that the prosecution is not ready or that the defence is not ready for one reason or another. The work of the Crown Court Improvement Group is, amongst much else, looking at that. Perhaps I should just explain, to those who do not know what the Improvement Group is, a little about it. It is something I established about 15 months ago, which brings together all of the players in the criminal justice system in an environment which is confidential and avoids any finger pointing. So, it has, starting at the beginning, the prisons; it has the prisoner escort service; it has the police; it has the CPS; it has the probation; it has the lawyers; it has got MoJ; it has got HMCTS and judges. It is looking really closely at how to ensure that cases where there is going to be a guilty plea have the guilty plea come earlier. That requires, for example, a concentration on proper disclosure at the outset, because most defendants and their lawyers would be reluctant to consider what to do if they do not know what the case is against them. So, that is one thing.

It is concerned with more prosaic things. For example, cases are held up at the moment because lawyers cannot get interviews with their clients in prison. They cannot get video links to prison. There are inefficiencies because the Prisoner Escort Service cannot get prisoners to court on time, and things of that sort. So, there is the prosaic, but also the really fundamental, which is to front load the disclosure process to try to enable cases that are going to plead guilty, to plead guilty earlier.

The next part of it, which comes directly to your question, forgive me for taking rather a long run up at it, is that the Improvement Group and all its members have been looking closely at what we call Better Case Management, which was a system introduced by the judiciary in 2015 and 2016 to try to make the first hearing in the Crown Court effective and avoid subsequent hearings. Again, there is going to be a renewed document issued, I hope, within the next month, which is rejigging better case management. Part of what has been discovered is that sometimes a hearing not too far ahead of a notional trial date is a very effective way of, first, shaking down whether there is going to be a plea; secondly, shaking down whether the case has still got legs, to put it bluntly and; thirdly, anticipating the sort of problems that currently cause trials to be ineffective.

So, I think this group, which has been chaired, if I may say so, brilliantly, by First Lord Justice Haddon-Cave as senior presiding judge and now Lord Justice Edis as deputy senior presiding judge and now senior presiding judge, has been a really good example of the benefits of bringing everybody together to talk calmly, quietly and confidentially with nobody pointing fingers, to look at the fundamentals and rather than saying, as so often happens when you get groups together, 'Well, it is not my fault, it is their fault for the following five reasons,' to get people to say, 'Well yes, we need to look at what we are doing,' and that is why we are looking at listing.

MARIA EAGLE MP: Okay, that is helpful. Now, this May, the power of the magistrates to sentence was doubled from six months to… something they have been after for years, I might say.

THE LORD CHIEF JUSTICE: Yes.

MARIA EAGLE MP: That has happened this year. To what extent will that extension of sentencing powers staying in the Magistrates Court relieve the pressure on the Crown Court, or is it possible that there could be perverse effects? Certainly, giving evidence committee in February, Kirsty Brimelow KC, who is now chair of the Criminal Bar, said that increasing sentencing powers could add to the backlog in the Crown Court for reason of incentives being different as to whether to elect to go up. I will not read out the full quote, but she thought there may be perverse impact. What has been happening, what is your view on how that is going to work?

THE LORD CHIEF JUSTICE: It is too early yet for there to be any empirical data on the impacts, but it was and remains my view that the change will have a positive impact on the work in the Crown Court. It is unusual for me to disagree with Kirsty Brimelow, but on this occasion I fear I must. The first is that there is a significant cohort of cases which are now not going to the Crown Court for sentence. So, that relieves pressure, although it is not the biggest of the pressures. The second is that there is always a significant number of cases which the magistrates send to the Crown Court for trial, even though the defendant is perfectly content to be tried in the Magistrates Court. Often the reason that the magistrates send the case to the Crown Court is that they are worried or persuaded that if the person were convicted, their sentencing powers would not be enough. Inevitably, with greater sentencing powers, there will be fewer of those cases going to the Crown Court. Now, those are obviously the 'either way' cases, which are the objectively less serious cases to go to the Crown Court and include an awful lot of the violence, the assault occasioning actual bodily harm, wounding, a lot of acquisitive crime, and so on. So, in time, I suspect we will see a slight diminution in the proportion of 'either way' cases going to the Crown Court and it will leave the Crown Court better able to deal with the more difficult cases.

MARIA EAGLE MP: The Nightingale Courts, how are they contributing now to the capacity of the Crown Court?

THE LORD CHIEF JUSTICE: There there are fewer of them than there were, because, as everyone will understand, there were commercial organisations that were very happy to make their accommodation, their premises, available for Nightingale Courts at the height of the pandemic when they could not use them for other things; hotels, conference centres, places, even somewhere in Peterborough Cathedral. So, there were plenty of places and some of them have gone back, but have been particularly useful for dealing with non-custody cases and continue to be useful for that purpose. They have been especially useful, thinking of the Nightingale Courts in London, for dealing with some of the relatively lengthy regulatory offences and fraud offences that otherwise might have been kept waiting behind custody cases. So they are continuing to make a contribution.

DR KIERAN MULLAN MP: You mentioned earlier the challenge around circuit judge recruitment. I wonder if you could start by saying how we could improve the campaign to recruit judges and what the barriers are to successful recruitment. I know you have touched on it but if you would not mind.

THE LORD CHIEF JUSTICE: Yes, well, we mentioned that we did not have recommended by the Judicial Appointments Commission (JAC) last year all of the Crown Court judges we would like. The bigger problem has been with the district judges where for three years the number of judges needed has not been recommended by the Judicial Appointments Commission. Perhaps no two people, two individuals, who are on the cusp of thinking of becoming a salaried judge would have exactly the same reasons for deciding, 'Yes, I am going to go for it,' and, 'No, I am not going to go for it'. But what has been done by the JAC, by the judiciary, by the Bar, by the solicitors, by CILEX, the Institute of Legal Executives, is to develop and put in place all sorts of mechanisms which enable people to discover what it is like to a judge and to encourage people who have the necessary skillsets to apply to be judges. The problem at the moment, I can identify the problem – identifying solutions is more difficult – but the problem is there is an insufficient number of fee paid judges – so recorders becoming circuit judges and deputy district judges becoming district judges are applying for the salaried posts and being successful in their applications.

DR KIERAN MULLAN MP: Just to unpick that slightly – you mentioned about being successful. Are the absolutely numbers applying suitable, are there enough people applying but just not enough of them are good enough, or even if everybody who applied was given a post, would it still not be enough?

THE LORD CHIEF JUSTICE: The numbers applying are not sufficient and the reality is if those applying were able to demonstrate through the independent process that they have the necessary skills, they would be appointed. So, that is the reality. There are all sorts of reasons why people do not want to become salaried judges. For some, it is giving up the flexibility and control over your life that you have as a solicitor, or barrister, or legal executive. Not complete control, obviously, but basically you are in control. Some, I know, are concerned about a lack of flexibility and working practices, so we are trying to make it clear to people that flexible working is a possibility within the constraints of the job. Obviously, for a Crown Court judge it would not work only to do three days a week because there would be almost nothing that usefully you could do. But for many judicial offices there are opportunities for that.

Another problem that has been identified but which we think we have dealt with is a fear that if you are appointed, you will be asked to go somewhere miles and miles from where you live. Now, that has happened from time to time in the past, that somebody has been appointed, the only vacancy is 100 miles from where they live and they end up living in a tiny flat in a town they know nobody, and that is really undesirable. So, we will do everything we can to avoid that. The life of a judge

has undoubtedly become harder. Judges, of whatever hue, work really hard and that is the way it has to be and the way it will be for the foreseeable future, but it is also a disincentive for some.

So, there are all these things that go into the mix. There was a real problem, as you will remember, caused by the change to the rules governing pensions, which were eventually reversed by legislation earlier this year. I think the benefits from that reversal were built into recruitments to a year ago, two years ago, three years ago, when everybody knew it was coming. Like every other walk of the public sector, there are concerns about what is going to happen with pay and so on. There are issues, which undoubtedly have an impact, about the raw conditions in which we work. If you are working in a solicitors firm or a barristers chambers, the chances are that if the roof leaks, somebody will mend it fairly fast. If the loo does not work, somebody will mend it, and if your computers did not work, somebody will make them work that day. Now, is not the time for me to rehearse everything I have said in the past on that, but I am pretty sure that the degeneration of the physical working environment in many courts is having an impact. So, all of these things are having an impact.

DR KIERAN MULLAN MP: You have mentioned about you having to a long distance; I had intended to ask you whether there is a geographical pattern to challenges of recruitment. Are there particular parts of the country that are really struggling, other parts doing well?

THE LORD CHIEF JUSTICE: If I may say so, you have put your finger on an issue that is much overlooked. The biggest problems for the district bench and also for the Crown Court are in London and the South East. There have also been quite significant problems in parts of the Midlands. That is not to say that all is rosy in every other part of the country, and if I were to suggest it, I know I would get back to the Royal Courts of Justice to a few disobliging emails, but the real problem is London and the South East. It is having a really profound impact, particularly on the district bench in London and the South East. So, again, we are doing a lot to try to relieve the burden on district judges in general, but also in particular in London and the South East. So, we have set up a sort of regional court, virtual court, so that cases from London and the South East can be heard by deputy district judges sitting all over the country just to try to ease the burdens. But these are all sticking plasters rather than long term solutions.

DR KIERAN MULLAN MP: Does the system allow for… is there weighting in what you pay people in London and the South East? Is there a weighting, and if there is, is it sufficient, do you think?

THE LORD CHIEF JUSTICE: The only judges who get London weighting are district judges and judges at the equivalent level in the tribunals. So, there is a modest London weighting element in addition to the statutory pay for those within London. It is actually a much smaller percentage of income than is given to civil servants, for example, who qualify, but they are the only ones who get it.

DR KIERAN MULLAN MP: I wanted to also ask about, and you have touched on this being a longer term challenge, is the shortage of advocates in the Crown Court – is this also part of this lack of people and a lack of a pipeline that you might recruit from?

THE LORD CHIEF JUSTICE: Yes, I think it is. There is an anterior problem though, if I can just mention that? We have been refilling the recorder pool for the last few years very successfully, so the number of recorders has been growing. There was a period when Lord Chancellors did not sanction the recruitment of recorders because of all the problems that the Ministry had to contend with after the courts decided that part-time judges should be entitled to pensions because they were part-time workers. I am putting it very shortly. So, under the EU law. So, there was a diminution in the pool of recorders, and it is from recorders that the Crown Court judges are principally

appointed – not exclusively, because they can come from the district bench, they can come direct from the Bar, but usually some sort of judicial experience is needed.

I think my real concern for the future, the recorder pool having been quite successfully replenished, is that the Criminal Bar, I come back to the point I was making earlier, the Criminal Bar and the Criminal solicitors are simply fewer in number, and that is going to mean that, in time, recruiting them as recorders and then as Crown Court judges I think is going to be more difficult.

DR KIERAN MULLAN MP: To what extent could a further expansion in the use of recorders help make up for the gap in these, as you described, long term challenges?

THE LORD CHIEF JUSTICE: I think in the immediate future, persuading recorders to sit and persuading recorders to book time long in advance so they can arrange their practices around it, is going to be one of the keys to increasing judicial capacity. But I am acutely conscious of the circular argument, 'I do not want to sit because I want to be doing the cases, but unless you can find judges, I will not be doing the cases.' So, we have that circle.

DR KIERAN MULLAN MP: Finally from me, just picking up again on your description of particular challenges in London and the South East, do you think that talks to the idea that actually there are parts of the country where there is greater choice, greater opportunities, greater ability to earn in the profession, instead of becoming a judge?

THE LORD CHIEF JUSTICE: I think there is an element of that and the reality is… I am not here to talk about money in judicial terms, but the reality is that the remuneration available to successful lawyers over the last 15 years – I take that period because that is how long I have been a judge – has gone up and up and up, whereas judicial pay in real terms has gone down and down and down. So, what we are facing for many is what might be called a growing public service premium.

Now, becoming a judge is a public service. Nobody becomes a judge unless they wish to provide some public service. But nonetheless, it is a factor that is undoubtedly affecting some people.

DR KIERAN MULLAN MP: Thank you very much.

CHAIR: I suppose we probably exclude successful criminal lawyers from that exponential growth in earnings, where they publicly funded at any rate, but the point is taken. Do you find that interesting though, in relation to the High Court bench recruitment as well? Of course, there where your earning very significant sums as successful practitioners.

THE LORD CHIEF JUSTICE: Yes, the High Court recruitment problem was very substantially caused by the destruction of the value of the pension. For the sort of practitioner wanting to become and likely to become a High Court judge who had made significant and prudent provision in practice, the judicial pension for many became worthless, not worth a penny. So, I am not making a sort of bleeding heart case, it is just the reality.

CHAIR: No, but different considerations apply.

THE LORD CHIEF JUSTICE: But that has changed and so the High Court is back up to strength.

CHAIR: Up to strength, yes, that is a fair point. Yes, thank you. I just want to come on to something rather different now, and that is the way we deal with victims, if I might, within the system. The government has decided to press ahead with the roll out of Section 28, cross examination for various classes of witnesses in criminal cases. About a year or so ago, Lord Burnett, you were raising some caveats about the practical implications of the policy. I just wondered if you could help us as to how that has worked out since? Are we in a position yet to know whether your

concerns about the effectiveness in terms of the acquittal rate or conviction rate changing has borne fruit yet, or do we need more time?

THE LORD CHIEF JUSTICE: Well, first of all, I should say the judges are not concerned with conviction rates. We are concerned with providing a fair trial, according to law, to the defendants. But what one was hearing from those involved in cases where Section 28 was being used – from prosecutors, from defendants and also from judges – was that they thought that there was an increase in the eventual acquittal rate, and I know again that the DPP spoke to you about this very recently. So, I think it was this time last year or maybe a little earlier, I expressed the view that before the Section 28 pre-recorded cross-examination were rolled out generally, it would be wise for policy makers and decision makers, and it is the decision maker in this instance is the Lord Chancellor, to understand a little bit more about what the impact was.

I was also concerned about the way in which diverting resources, judicial resources and lawyer resource, and CPS resource and police resource, into a Section 28 hearing would impede recovery in the Crown Courts generally because the judges and everybody else could not be doing two things at once.

So, so far as the first of those points is concerned, I am not aware that the CPS has got any statistics yet, and it is very much a matter for them, not for me. So far as the second is concerned, there were, as you will remember, some particular problems about persuading lawyers to do Section 28 cross-examinations because it diverted them from trials. Judges did what they could to accommodate, but if a Section 28 cross-examination is going to take a whole day, for example, as they do sometimes, then holding up a trial in which there might be three or four other defendants, it is a very difficult balance. There were also some difficulties – can I put it as mildly as that? – about remuneration, which I know the MoJ has been looking at.

So, the Section 28 programme has been rolling out slowly, but I do not think one should duck the reality that it slows down the disposal of business in the Crown Court and there is a balance there. So, there is a balance between having a Section 28 hearing, which is undoubtedly to the advantage of the complainant or witness concerned, but the impact is that that trial takes longer and therefore that other trials are delayed.

CHAIR: I understand. Are there any statistics that you are aware of, Lord Burnett, about the time gap between the Section 28 cross-examination and the rest of the trial, substantive trial if you like. Do you know how long that tends to be?

THE LORD CHIEF JUSTICE: No, I have not seen any statistics pulled together on that. I mean, I suppose just thinking about the practicalities of it, you have captured the Section 28 cross-examination fairly early on, in the sort of cases that they are concerned with, it will make the final resolution of the case less urgent. So that, I think is inevitable.

CHAIR: One assumes that the less the gap, the better.

THE LORD CHIEF JUSTICE: Yes.

CHAIR: [Inaudible] counsel and judge.

THE LORD CHIEF JUSTICE: Yes, and there are other worries, as you will remember, the possibility of further disclosure [coming in?], which might cause the whole thing to have to be to be redone. So, none of this is free from difficulty.

CHAIR: Thank you very much. Dr Mullan, please.

DR KIERAN MULLAN MP: During our inquiry on the draft victims bill, we heard from IDVAs and ISVAs and universally there was reports, and I think the statistics are something like one in five IDVAs and one in three ISVAs not being allowed to accompany complainants in court. Can you think of any reason why IDVA and ISVA would not be allowed to accompany someone they had been assigned to as part of the criminal process?

THE LORD CHIEF JUSTICE: I am afraid I am completely unsighted on this, so—

DR KIERAN MULLAN MP: Independent Domestic Violence Advocates in the first instance, and Independent Sexual Violence Advocates. They accompany and are assigned to victims and to support them through the court process and we heard that… and their presence in the court has to come with the permission of the judge, and on multiple occasions they are not given permission to accompany somebody to court, either in video link evidence or in court itself. To me, that seems unusual state of affairs and I would have assumed there would be a presumption that they could attend. Is this a not an issue that has come across your desk?

THE LORD CHIEF JUSTICE: I am afraid it is not, but it sounds as though you are talking about individual judicial decisions—

DR KIERAN MULLAN MP: Yes.

THE LORD CHIEF JUSTICE: —which it would be inappropriate in any event for me to comment on, even if they were identified.

DR KIERAN MULLAN MP: Is it something that if you were given the opportunity to consider in further detail, that you might give guidance on or a general direction to the judiciary on, or would that not be your role either?

THE LORD CHIEF JUSTICE: What I can do, now that you have raised it with me, is take it away from here and I will try to find out what is going on.

DR KIERAN MULLAN MP: Thank you.

CHAIR: That is very useful, thank you very much. The other thing I wanted to ask you around that context and other things generally, because was the move towards some specialist course, the RASSO courts for example, we have got the three now, the Lord Chancellor has announced them, enhanced measures because of the mix of their work. Do you think that is going to help in terms of prioritising or triage, or is it simply a matter of the victim experience, giving them the best chance to give their evidence in a way which is comfortable and fair?

THE LORD CHIEF JUSTICE: I think, with respect, that there is an enormous amount of confusion about this. What has been agreed for the three courts is that the various agencies who are responsible for looking after complainants and witnesses will work together to try to support complainants through the process. Now, that is something which is obviously desirable. If it is successful, I hope that it will be replicated elsewhere. But that is not a specialist court. Those who speak of specialist courts, I think, have in mind somehow a physical court which does only one type of case. The reality is that so far as rape and serious sexual offences are concerned, every Crown Court in the country is a specialist court. No judge tries one of those cases without being authorised, ticketed, to do so. No judge tries one of those cases without going on a specialist course before doing so, which is refreshed every few years.

Now, the reality is that almost all Crown Court judges are now authorised, ticketed, to do serious sex cases and some recorders are authorised to do serious sex cases. But there would be no purpose, no advantage, in, I do not know, establishing four courts somewhere in London that do

only sex cases. I do not know where we would put them, and because all of the courts are doing sex cases every day.

CHAIR: You do not see an advantage in listing or anything of that kind?

THE LORD CHIEF JUSTICE: None whatsoever.

CHAIR: What about the idea of economic crime courts? Again, maybe it is an inaccurate description, what is being built in the City, for example, [inaudible] specialism there. Is that again another misnomer perhaps.

THE LORD CHIEF JUSTICE: Well, I saw your report, the committee's report, a week or two back on this. The thought that went through my mind, if I may say so, Sir Robert, is I wish you had asked us.

CHAIR: We are now.

THE LORD CHIEF JUSTICE: Well, we have serious fraud. So, big commercial fraud is relatively rarely prosecuted, but when it is, it is always dealt with by specialist judges because it is work that requires specialist skills. In London, we have Southwark Crown Court, which tries everything but is the centre to which most of that serious fraud work goes. It is not just fraud prosecuted by the Serious Fraud Office, but serious commercial fraud. As you say, the court that is being built just off Fleet Street, which will be open in a few years' time, is, amongst other things, being earmarked for some serious fraud cases and also serious cybercrime, which is obviously linked in many ways. But the reality with other fraud is that less and less of it is being prosecuted.

There is a cohort of cases that are prosecuted by the relevant department for benefit fraud, for example, not a huge number. But other types of fraud… when your report was published, I did look at the figures, although I cannot say I have them all in my mind now, the volume has just gone down and down and down. So, I think, with respect, the problem is not with anything that is going on in the courts, it is getting the case into the courts, which has not been happening in such great numbers.

CHAIR: Fair enough. Mr Turner?

KARL TURNER MP: Thank you very much indeed, Chair. Lord Chief, during the pandemic there was a necessity to use video technology. Of course, cases literally could not get on unless they were done remotely, and the committee is wondering about the criminal courts and whether the criminal courts are making the best use of video technology?

THE LORD CHIEF JUSTICE: Yes, well, the criminal courts make use of technology and the position remains that if it is in the interests of justice to allow somebody to attend remotely who wishes to attend remotely, that should be happening. So, by way of example, in the Court of Appeal Criminal Division, almost all of the appellants attend remotely and lots of advocates attend remotely. In the Crown Court and Magistrates' Courts a lot of preliminary hearings and routine hearings are attended remotely by lawyers and others. Even in trials, witnesses can attend remotely. It is not suitable for everything, but I think the use of technology is as widespread as it should be. It can be really advantageous, particularly to make life easier for those attending. It is a mistake to think that it necessarily speeds things up.

KARL TURNER MP: Yes, thank you. We were wondering whether there is a consensus emerging within the judiciary that video hearings are inappropriate in some criminal matters. Is that something like you have picked up on?

THE LORD CHIEF JUSTICE: Well there are some statutory restrictions on the use of remote attendance in the Crown Court, for example, and so a Crown Court trial will proceed pretty much as it as it used to, but occasionally an advocate will attend remotely, even in a trial. We have had advocates attend remotely when they have been ill, not so ill that they cannot work but ill with COVID likely, as it were. Defendants can attend remotely in inappropriate circumstances and witnesses can give their evidence remotely. Most advocates are not very keen to have their witnesses give evidence remotely because there is a lack of immediacy and a lack of engagement with the jury or the decision maker, but nonetheless it can happen.

KARL TURNER MP: Is the technology actually up to it? Does it cut the mustard as it were? Does it work efficiently?

THE LORD CHIEF JUSTICE: Yes, well, we use mostly a thing called Cloud Video Platform, CVP, which for the most part is pretty good, but it is not perfect and thus, my direct experience recently is using the system in the Court of Appeal Criminal Division and having problems which mean that we have to stop, adjourn while somebody sorts it out and then come back in and try again. That, I am afraid, is a feature of using remote technology.

KARL TURNER MP: I think you are planning the Video Hearing Service, VHS system, will that prove to improve video hearings?

THE LORD CHIEF JUSTICE: Well, I very much hope so. The video hearing system is a bespoke system that HMCTS have been developing now for some years. It has been piloted in a number of places and a number of jurisdictions. It has run into some technical difficulties and so it is a little stalled at the moment, but the idea, when the problems are solved, the technical problems are solved, is that it will be a step up on what we are using at the moment.

KARL TURNER MP: Okay, thank you. In terms of the Common Platform, there has been some controversy, I think, over the use of Common Platform, I am wondering is it fit for purpose?

THE LORD CHIEF JUSTICE: Well, first of all one needs to identify the purpose. At the moment it is rolled out in roughly half of our Magistrates and Crown Courts. Its purpose is to replace what are quaintly called “legacy systems”, which is a polite way of saying antiquated systems that at any moment could fall over, and if they did, we would be in real trouble. So it is designed and its purpose is to replace antiquated systems and it is designed to enable all participants in the criminal process to have access to all the materials they need, and also to ensure that people can only see what they should see. So that is why it is called a common platform. As I have explained, often publicly, it has run into a lot of technical problems, more than it should have done, and HMCTS are working hard to try to put those right. There is a light touch review of the technical aspects of it going on at the moment at the instigation of the Ministry of Justice and as the Judiciary is contributing to it.

The aspect of it that appears to have been causing most trouble and has had a direct impact on some of its users in court is what is called resulting. So this is the legal advisers in the Magistrates’ Courts and the clerks in the Crown Court, who put into the system the result of whatever the hearing is that they are they are looking at and it is designed to enable contemporaneous resulting. What has been happening, and I am really summarising it, forgive me, is that that resulting has proved to be much more difficult in many cases, and in some courts has slowed things down and has also put the people who are doing it under a great deal of strain. That aspect of it is also being looked at and, I hope, put right by HMCTS. But look looking forward, I come back to the legacy systems, we cannot carry on with those and the Common Platform is the only show in town, so HMCTS have got to be able to sort the problems, and those who use it, whether they are HMCTS staff, judges or the external users, the practitioners and police and so on, have got to be able to use it with confidence.

KARL TURNER MP: That is very, very helpful. I understand it has been so controversial that the PCS Union have decided to take industrial action over the issue.

THE LORD CHIEF JUSTICE: Yes.

KARL TURNER MP: How is that affecting the court system, the fact that they have taken strike action, effectively?

THE LORD CHIEF JUSTICE: The detail of that it would really be for HMCTS so I will try and summarise it, and I hope accurately. This concerned the legal advisers in the Magistrates' Court, some of whom belong to the PCS, not all and the majority of those decided to take some action. For me, what was telling about it is that this was not – I think it is only 100 people or 150 people, I can give you the accurate number afterwards – but for me what was striking about it was that this was not a group of people saying we want more pay or we want to work fewer hours, it was people saying we are trying to make this thing work and we cannot and it is really putting us under pressure. I do know that HMCTS, the Court Service, are sensitive to that, and that is why it is vital that the technical problems, the glitches – again, I use a modest word – that have affected this system are sorted, and those who use it are trained and have confidence in the resulting. This is a resulting problem.

CHAIR: Lord Burnett, we have almost talking exclusively about crime so far. If I can just move briefly, if I can, on to the Civil Family Jurisdictions, not because they are less significant but there may be less to cover. Backlogs in County Court, can you help me as to whether you think there has been any improvement since you last gave evidence to us?

THE LORD CHIEF JUSTICE: The picture across the country is very varied concerning the time it takes to get interlocutory hearings and then final hearings in the County Court in small claims, fast track claims and multitrack claims. The general picture is one where there needs to be further improvement, and again, the detail of it perhaps I do not need to go into, but we have a group focused on working on those problems. But once again, the biggest problems are in London and the southeast, and that is because of the shortfall in district judges, essentially.

CHAIR: So the same issues that you have prior advised to the Civil.

THE LORD CHIEF JUSTICE: Progress is being made and the Master of the Rolls, who is Head of Civil Justice, and the Deputy Head of Civil Justice, Lord Justice Burse, are working within the Civil Justice system to try to sort out as many of these problems as they can. Once again, a shortage of reliable data, something about which we have talked in the past—

CHAIR: You have raised this, certainly, [inaudible].

THE LORD CHIEF JUSTICE: —has been a problem and steps have been taken to try to deal with that. So progress is being made but particularly in London and the southeast there will be many people, many of your respective constituents—

CHAIR: Certainly in many of mine.

THE LORD CHIEF JUSTICE: —who will be telling you that it is taking a long time to get a hearing.

CHAIR: I do get that. The project with the court case data to improve those the quality that you alluded to, Lord Burnett, are you confident that will make a material difference?

THE LORD CHIEF JUSTICE: It seems to me that unless you know what is really going on and you measure it, you are not in a position to put something right. You have got to be able to get to the heart of a problem, and that is why we are we are pursuing that particular course.

CHAIR: I understand that. One of the points you also mentioned was the point that it is a paper based system still, we are not digitised. What is the progress on digitisation?

THE LORD CHIEF JUSTICE: Well, more and more of it is becoming digitised and in time, with the modernisation programme, much of it will be digitised, and on that front what we need to do is keep the Ministry of Justice's nose to the financial year grindstone. We do not want the money to run out.

CHAIR: Yes, because I was going to say, can I pressure you as to what in time is likely to mean in practise?

THE LORD CHIEF JUSTICE: Well, a couple of years for the for the things that are being developed and rolled out now I suspect is the is the timeline.

CHAIR: That goes beyond the March 2023 project timeline for the Civil Reform Project.

THE LORD CHIEF JUSTICE: Yes, the March 2023 date is not a cliff edge, because it was always expected that there would be the need to continue to develop and roll things out for the rest of next year. If I were a betting man I would say that it will run a little bit longer and I hope that the money will be made available.

CHAIR: So that is the plug. These are all money into it. A couple of years you might be able to get there. Final thing around the pure civil side is whiplash and then the reforms with the online portal. It has been going, I suppose now, since May 2021. Did you pick up any feedback as to the effectiveness of it and to what the throughput is through the portal or not, Lord Burnett?

THE LORD CHIEF JUSTICE: Do I have the precise figures in my head? No. I mean the whiplash I am I am sure that we can make them available to you. The whiplash portal is designed to sort cases out largely before proceedings are issued, and so what I what I think we need to send you is the number of cases that have started in the whiplash portal and then the number that have, so far as we know, resulted in proceedings being issued because that will give you some sense of—

CHAIR: Yes, that would give a sense of progression, would it not?

THE LORD CHIEF JUSTICE: Yes, it should do. But just by way of comparison the online Money Civil Claims Service has been an enormous success.

CHAIR: Yes, that is right, yes.

THE LORD CHIEF JUSTICE: More and more and more cases are issued through that and also the damages online system.

CHAIR: Yes we want to have a look at the contrast, if there be any there. Miss Eagle.

MARIA EAGLE MP: Thank you. I would like to ask you a quick question about the Court of Protection before moving on to the Family Court. Liverpool Law Society practitioners have raised this with me; they say it is now taking them about 12 months to get a court order out of the Court of Protection where there is no lasting power of attorney and they are having to make applications to the Court of Protection. They reckon 90 percent of complex cases are brought by solicitors, but

they are then having to wait, in addition to the year for the order, an extra six months or more to get their fees paid. They say there has a real issue with the Senior Court costs office not getting through the… does that sound familiar, big delays in the Court of Protection both for solicitors to get paid but also to get the court orders?

THE LORD CHIEF JUSTICE: That is not something I have heard of before so we will make a note of that and maybe ask, if we may, for further details and then I will take it up with the Vice President of the Court of Protection and try to get back to you.

CHAIR: Thank you.

MARIA EAGLE MP: Thank you very much. It is one of those hidden that a lot of people come across the Court of Protection at a bad time and then they are not particularly going to their MPs about it necessarily. Can I ask you why it delays in private Family Law proceedings getting worse?

THE LORD CHIEF JUSTICE: I think the long and short of it is that the number of those cases has grown and also their complexity has grown. Now, this is something that has been on our radar for some time, and a good deal of initiatives are underway to try to deal with this. Now, at the heart of it, of course we are talking about private law family claims, so these are disputes between parents about what should happen to their children. Now, as you know, now many years ago, public funding for those cases was withdrawn and whilst that may have seen may have seemed, at the time, to save money in the Legal Aid fund I do question whether overall it has saved money. I am not only looking at the increase in number of cases that come into the courts and then fighting the courts, scrapping in the courts when parents are representing themselves, but also something which I think is completely overlooked in this area, and that is the wider economic cost of having parents fighting about their children rather than devoting themselves to their jobs and so on, and the yet wider cost of the damage that is done to children if their parents are scrapping. Contrary to what many people may think, getting lawyers involved at an early stage and giving their clients clear advice about what is likely to happen is very likely to see cases sort themselves out rather than fight.

But there are some initiatives going on at the moment to try to reduce the number of cases. First, there has been mediation schemes tried in various parts of the country, which the Ministry of Justice has supported by providing funds to pay for mediators, and all the evidence that we are hearing suggests that that works and so I hope that that might be expanded. The second thing that is happening is that we, that is to say the Family Court, are piloting some new ways of dealing with these cases to engage intensively with the parties at the outset. This is running at the moment in Dorset and North Wales, and those two seem to be providing benefits. So I, in discussion with the President of the Family Division, just very recently have been talking about trying this in various other parts of the country to try to sort things out.

The next thing that I think needs to be understood is that there is a perverse incentive in the availability of Legal Aid at the moment, which means that it is provided to anyone who makes a complaint of domestic abuse, and some serious work needs to be done on this, perhaps academic work, to see how that is distorting the system. But certainly all the lawyers involved, and many of the judges, suggests that domestic abuse is alleged ritualistically, if I can put it that way, and then it really doesn't feature in the case that follows. So that is something which is causing—

CHAIR: So it is being pleaded to get the Legal Aid essentially then and then it drops away.

THE LORD CHIEF JUSTICE: Yes. Then the next thing that was happening was that, as a result of that in part, the hearings in these private law cases were taking longer and longer and longer, and fact finding hearings were delving into areas which were not really necessary to decide to determine the ultimate issue. So there has been some decisions in the Court of Appeal recently which are reigning that back. More widely there has been a fundamental review of private law

cases conducted by the Judiciary, which is leading to all sorts of procedural and practical changes. So we are doing what we can.

Then finally on this, the Ministry of Justice and its Ministers, now over a period of a year, have been really interested and helpful in looking at the way private law cases operate with a view to identifying policy leavers that might keep some of these cases out of court. Putting it bluntly, what is happening is that going to court is the first port of call when it should be the last port of call.

MARIA EAGLE MP: Thank you, that is helpful. I just want to ask you a little bit about transparency issues and the Family Court, because certainly the Committee's report on Open Justice I know welcomed the President of the Family Division's plans to improve transparency in the Family Court. Do you think the Transparency Reviews recommendations will lead to an increase in public confidence in the Family Court, because there is an issue there, but caused by the secrecy or people's attitude to the secrecy, a lack of understanding of why that you have had the level of secrecy that there has been; do you think it will make a difference?

THE LORD CHIEF JUSTICE: Well, I entirely support and applaud all the efforts that are being made by the President of the Family Division through the Transparency Review and the involvement of so many groups and interested bodies in trying to achieve an appropriate balance in circumstances where one is dealing with private family problems, and so I am not very keen on the word "secrecy", if you will forgive me, because keeping something secret is different from respecting confidentiality and balancing—

MARIA EAGLE MP: You are correct.

THE LORD CHIEF JUSTICE: —rights to privacy. But it seems to me that the Family Court is on a journey at the moment, it's looking at it really carefully, and openness is becoming the lead motif, shall I say, of the day, and that seems to me to be a good thing.

MARIA EAGLE MP: Do you think that it is perceived secrecy by those who—

THE LORD CHIEF JUSTICE: I appreciate that.

MARIA EAGLE MP: —have decisions made that they do not like generally, but are you confident that there are sufficient resources in the system to deliver the recommendations of the transparency review?

THE LORD CHIEF JUSTICE: I think, if I may say so, that goes to a really big, general issue. The the reality at the moment is that the court service has no spare money and no spare staff, and every time I read recommendations about things that should be done in the Courts, the question goes through my mind "Who's going to do it and who's going to pay for it?" An example, if I may say so, was the report you published, was it last week, chairman, on Open justice?

CHAIR: Yes.

THE LORD CHIEF JUSTICE: Which was looking at things particularly through the eyes of the press and the difficulty they have in reporting cases and so on. I am not going to comment on your recommendations now, but I went through them and I thought, "Well, you know, that is interesting but who's going to do that?" and "That is interesting but where is the money coming from to pay for that?" So I think this is a real problem that we have in every respect, and the Court Service has in every respect already, and, looking forward, it is obviously not going to become easier. But we do have the comfort of a statutory duty to fund an efficient and effective court system, and that is something which both the MoJ and its ministers and of course, the Treasury must have regard to. I think most people would be astonished at how little the administration of justice costs, how little

all the courts, all the tribunals, all the judges, everything, everything to do with it costs. Occasionally, it is sort of almost a parlour game I play with people who should know, but often do not. I ask them, "Well, how much do you think it costs to run all the courts and everything?" Usually, they say somewhere between £5 and £10billion, because that does not sound like very much. But if I tell you the net cost is under £1billion a year. Under a billion. Gross cost just under £2billion. That is the amount of money put in each year. Fees and other income, it varies but £650-700million, and then the MoJ gets lots of fine money and things of that sort, which usually £400-450 million, and that takes no account of things like deferred prosecution agreements. There was one last week which pays for the SFO many, many times over and delivers hundreds of millions of pounds into the Treasury year on year.

So I think we are reasonably good value for money. But I am not blind to the reality that at the moment government is as stretched as it has ever been.

CHAIR: Understood. Actually on money, Mr Turner?

KARL TURNER MP: Thank you very much indeed, chairman. You have not shied away, Lord Burnett, in the past about speaking about the terrible state of the court buildings. I mean, it is anecdotal, but you see on social media nowadays members of the bar, solicitors Tweeting from various robing rooms and advocate rooms, when there are leaking ceilings and so on. It is a mess, actually, most… an awful lot of the court buildings are in a state. Now, I think you say in your annual report that all three of the Lord Chancellors in the recent reporting period have understood the problem about the condition of the court buildings, but have only taken modest steps to find extra money for maintenance beyond that already allocated. Could you say whether the current Lord Chancellor has come up with extra dosh, if I can put it like that?

THE LORD CHIEF JUSTICE: Well, he did in his first iteration, and we were about to discuss next year. So in the settlement between the Treasury and the MoJ, which is without prejudice to his settlement with me, these are published figures, the Treasury only allowed £50million a year capital spending on court maintenance. The Lord Chancellor, earlier this year, was able to do better than that and we agreed £70million, and in fact a little extra money has been found since. Precisely how much before the end of the financial year, I am not sure. So I am nervous about the settlement next year, because the reality is that even the money we have had this year, leave aside inflation, is not enough to keep up with the fundamental problems that we have, and the consequence is that we are losing more and more sitting days in all jurisdictions to maintenance failure.

CHAIR: Thank you. That is very clear. Ms Eagle?

MARIA EAGLE MP: Now, the annual report says an investigation undertaken into behaviour within the judiciary found examples of behaviour that amounted to bullying, harassment or discrimination. Could you explain what sort of behaviour that was and what is being done to address this problem?

THE LORD CHIEF JUSTICE: The precise details of any particular complaint I cannot speak of, but what I can explain is what we we've been doing to try to find out whether we have problems the same as or similar to the problems that have been exposed in other organisations, the Civil Service and as you… I do not think on the screen people can see you, but here is what you were saying, and I do not obviously mean the particular individuals in the room, but in Parliament. So the first thing we did was in a welfare survey last year to ask some questions about whether people felt they had been the subject of inappropriate comments or behaviour, and the answer suggested that some people did. We then commissioned some independent work, I think from the same organisation that Parliament used—

CHAIR: Right, okay, yes.

THE LORD CHIEF JUSTICE: —to do some qualitative research. So that involved talking to lawyers, barrister and solicitors and to judges just to find examples of behaviour which might be considered inappropriate, and they found some examples. So what we then did was include further questions in our Judicial Attitude Survey, which we have now had back and which are being analysed and those that have confirmed that there are judges who have experienced behaviour which in one respect or another is inappropriate. Now, I can hear a division lobby, a division bell, which may mean—

CHAIR: We have got a couple of minutes to vote and we will probably have to leave that as the last question, if that is okay?

THE LORD CHIEF JUSTICE: Alright, would you like me to stay for a few minutes or…?

CHAIR: What would people like to do?

MARIA EAGLE MP: I can come back.

CHAIR: I am happy to come back, Mr Turner?

KARL TURNER MP: If you wish.

CHAIR: I am happy to do that. Okay, yes. I know I am not voting in this division myself.

MARIA EAGLE MP: Oh, more abdication [responsibility?] from the Tories. Sorry, that's…

CHAIR: Well, I will suspend the sitting for the division and then we will be back to. But only a couple more questions on that so we will not be terribly long.

[Proceeding suspended briefly]

CHAIR: I am not sure we're back yet. We have got enough [to worry?]. Yes, we can manage. There are three of us. Are we switched on?

UNKNOWN PARTICIPANT: Yes, we are.

CHAIR: You can see what I cannot see through there. That is great. Thanks.

THE LORD CHIEF JUSTICE: Yes. Well, Sir Robert, may I just finish the answer to the question? I was explaining before some left for the division that we have been gathering information, essentially, about the problem that was identified in the question. So perhaps now just in a sentence or two I should say what. We are proposing to do about it. The first is that we will be issuing a short statement of behaviour expected of judges. I shall be taking further advice from the Judicial Executive Board and then the Judges Council on it within the next couple of weeks, and then I hope that that will be ready to be made available to judges shortly thereafter. With the help of those who have been advising us, we will be giving bespoke training to all our leadership judges in how to avoid particularly inadvertent inappropriate behaviour which can be corrosive, even when people do not fully appreciate it. We are starting with our leadership judges, which includes all the presiding judges and other High Court leadership judges, the resident judges in the Crown Court, the designated civil judges, and the designated family judges and their equivalents in the tribunals. So they will be trained first and expected to disseminate good practise, and then our plan, probably not now until well into next year, is to weave into induction and continuation training for all judges the essentials of good behaviour and avoiding inappropriate behaviour, particularly inadvertent inappropriate behaviour.

So we, if I may say so, unlike many organisations, we set out to find out about this ourselves. We asked questions which we did not know the answer to, something as an advocate we were always taught not to do, but it was important to learn whether we had problems of the sort that other organisations have. I hope that they are fewer than in many other organisations, but it would be folly to pretend that we do not have some problems, and we are taking immediate steps to do what we can to mitigate those problems.

MARIA EAGLE MP: Thank you. Could I just ask about the University of Manchester study on racial bias and the judiciary which was published recently and actually set out some quite worrying findings, with 56% of those surveyed stating they'd witnessed at least one judge acting in a racially biased way towards a defendant, whilst 52% had witnessed discrimination in judicial decision making? The report found judicial discrimination to be directed particularly towards black court users, including lawyers, witnesses and defendants. Obviously, that is a very worrying finding. So what is your response to that study and the racial bias that it has highlighted?

THE LORD CHIEF JUSTICE: Well, when it was published, a day or two before it was published, it was shown to me. I made it clear immediately that we would take account of what it was saying in the work that we have already started doing. I think it is important though to understand a number of things about that report. In the forward the observation is made that there is the need for better data on topics of this nature and I agree. I think with respect to the report, it focuses on one or two aspects, so for example work that David Lammy did some years ago without fully understanding what it was he actually found. But I think also it is important to understand the self-stated restrictions on that particular report. The methodology which is described in some detail in the early part of the report makes it clear that it is the result of a survey, and it is a survey of a small number of people which is inevitably self-selecting, but, more importantly, the report itself very properly emphasised the limits on what it was seeking to do. So it said it is important to emphasise that all figures reflect the views of the survey respondents only and cannot be inferred to the wider legal profession or populations. It also emphasised that it was a small sample size and that there was an exploratory nature of the project. So I think it made the point itself that it did not purport to be the foundation for broad conclusions, but to provide a brief overview.
Now, that is not to diminish the importance of the message that those respondents were giving, and we are taking it into account, and, indeed, assuming the timing works, I am going straight from here to a meeting of our Diversity Committee, where we will be talking not only about that report, but we will be talking about that report.

MARIA EAGLE MP: Thank you.

CHAIR: We will not delay you very much longer, I promise you, Lord Burnett. Just a couple of very quick topical things if I might [inaudible]?

KARL TURNER MP: Thank you, Chair. Just very briefly, Lord Burnett, if you would not mind giving your opinion, live broadcasting and sentencing remarks of Crown Court judges. Are they likely to increase the public confidence in the justice system and wider still, I suppose, the actual sentencing of cases, in your opinion?

THE LORD CHIEF JUSTICE: Well, I very much hope so. I think at the first press conference I gave when I became Lord Chief Justice, which is five years ago almost to the day that I gave the press conference, I indicated my hope that we would be able to move towards broadcasting sentencing remarks in high profile cases. The reason was to increase transparency and to dispel misunderstandings. Now, it took a long time to get the statutory instrument laid and then it was interrupted by COVID, but now it is happening. I am sure, Mr Turner, that you will have seen the recent very high profile examples of sentencing remarks which have been broadcast. It is early days, because I think there have only been three so far, but we are moving in the right direction and I think it is something that will just help public understanding, and inevitably there will, for most

people, be a snippet broadcast during a news report, whether picked up on the TV or on other media, and for those who are really interested, more will be available to be seen. So I think it is a really important step, and long overdue.

KARL TURNER MP: Thank you very much indeed for that, Lord Burnett. The thing that is not broadcast is the actual application before the judge. For it to be broadcast, the sentencing remarks to be broadcast in the first place. So how is that decision made? How does the judge determine that it is in the interests of justice for that…?

THE LORD CHIEF JUSTICE: Well, that happens through the broadcasters making, effectively, a written application. So it is done administratively and the judge decides.

CHAIR: Okay. Is there argument between the parties, the crown for instance—

THE LORD CHIEF JUSTICE: The parties concerned, yes.

CHAIR: [Inaudible] for example, say we don't think—

THE LORD CHIEF JUSTICE: Yes and there can be very good reasons why you should not broadcast sentence sentencing remarks, not least because of the risk of breaching statutory anonymity, for example, or other problems of that sort.

CHAIR: Essentially, done on the papers that side of it, rather than open court?

THE LORD CHIEF JUSTICE: Yes.

CHAIR: Thank you very much, and then the final thing, there has been a lot of talk about immigration and the amount of time that it takes sometimes to deal with processing the claims of people who have arrived here and have then made applications. I appreciate that the policy leads on all this tend to sit with Home Office rather than Ministry of Justice and it is perhaps a little bit of an outlier in a sense from the mainstream work, but we have got tribunal judges sitting in the immigration tribunals. Are you aware as to the sort of the volume at which immigration tribunals are sitting at the moment as compared with recent history?

THE LORD CHIEF JUSTICE: I can tell you that the outstanding caseload in the immigration tribunals has gone up in the period of COVID, and the extent to which they sit is determined by the allocation of sitting days by the Ministry of Justice. Now, obviously, I am conscious that there is a lot of controversial policy—

CHAIR: Indeed, yes.

THE LORD CHIEF JUSTICE: —in the background to all of this, and the Senior President to Tribunals would be the better person to talk to in detail about it.

CHAIR: Better placed, [inaudible], yes.

THE LORD CHIEF JUSTICE: But there are projects in train at the moment to try to improve the effectiveness of tribunal hearings. Too many at the moment are adjourned because, as often as not, the Home Office are not ready.

CHAIR: Right.

THE LORD CHIEF JUSTICE: Now, I am conscious that the Home Office have a finite number of people dealing with a growing number of cases and so I Am not being holier than thou or critical.

But from the perspective of the Immigration Tribunal, and I Am conscious that there is someone here who has very deep, direct experience, at least vicariously, the Tribunal wants high quality decisions made in the Home Office so that there are fewer appeals. The Tribunal would like to see the recognition by the Home Office in advance of some appeals that the appeal is going to succeed so that time is not wasted. The Tribunal would like to see the Home Office ready for all appeals and fully prepared for all appeals, and the Tribunal itself is looking at its ways of working. To speed up the number of cases that that can be dealt with by any particular judge in any particular week. But it does seem to me that it is inevitable that there will be pressures on the Immigration Tribunal and that there will need to be some consideration of [expanding?] rates and resources.

CHAIR: Which will mean, for example, more funding for fee paid judges to sit more days?

THE LORD CHIEF JUSTICE: Yes.

CHAIR: Thank you very much, Lord Burnett. I am very grateful for that update on that issue. I am also very grateful to you for your time and for your evidence, as always.

THE LORD CHIEF JUSTICE: Well, thank you. It is always a great pleasure to come along to see you, and I look forward to doing it again.

CHAIR: Thank you. Thank you very much. The session is concluded. Order. Order.

[Ends]