

CONSTITUTION COMMITTEE

EVIDENCE SESSION WITH THE LORD CHIEF JUSTICE

on

Wednesday, 14 June 2023

The Rt Hon the Lord Burnett of Maldon, Lord Chief Justice and Head, Judiciary of England and
Wales, President, Courts of England and Wales

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THE BARONESS DRAKE CBE: Okay, good morning. Today this is an evidence session of the Constitution Committee with the Rt Hon. The Lord Burnett of Maldon, Lord Chief Justice and Head of the Judiciary of England and Wales and President of the Courts of England and Wales. I am conscious, Lord Burnett, that this is probably the last occasion of your appearance before this Committee in your current role, and you have actually made a lot of appearances before you, I think at least five.

THE LORD CHIEF JUSTICE: Mm-hmm.

THE BARONESS DRAKE CBE: I did not want the occasion to pass without actually putting on record our thanks for the frequency which you have come and engaged with us and fully dealt with the issues that we have raised, and I think a particular value were your contributions during the pandemic period and the implications for the Court. So formally, on behalf of the Constitution Committee, could I put on record our thanks for your contribution to the work of this Committee?

[Murmurs of agreement]

THE LORD CHIEF JUSTICE: Well, thank you very much indeed, Lady Drake. I do not want this to become a mutual admiration exercise *[laughter]* but can I put on record at this early stage my thanks to the Committee for the interest that it takes in the workings of the judiciary and also the working of the constitution, both of which are extremely important matters, and it has always been a pleasure to appear before your Committee, and I am very much hoping that that record will not be broken today.

THE BARONESS DRAKE CBE: We will certainly try not to break it. We have, obviously, as you would expect, as ever, quite a few questions we would like to put to you, but do you wish to make any opening comments before we go into questions?

THE LORD CHIEF JUSTICE: No, I think probably the best course is to go into the various questions you have, if that is convenient for you—

THE BARONESS DRAKE CBE: Yes.

THE LORD CHIEF JUSTICE: —and your members, and I might say something at the end, if the mood moves me.

THE BARONESS DRAKE CBE: *[Laughs]* All right, okay. Well, it would not surprise you that we did sort of reflect on the comments that you made at the Lord Chancellor's swearing in ceremony on 24th May this year in respect of the functions of the Lord Chancellor.

THE LORD CHIEF JUSTICE: Hmm.

THE BARONESS DRAKE CBE: So, maybe this is our opportunity to ask you what considerations led you to suggest that the role of the Lord Chancellor might be separated from the Secretary of State for Justice, or at least some of the higher responsibilities such as prisons?

THE LORD CHIEF JUSTICE: Yes. Well, this is a topic that this Committee is extremely familiar with. I was able, over the weekend, to remind myself of your sixth report from 2007, when Lord Falconer was a witness rather than a member of the Committee, where a number of the potential pitfalls that attached to the way the office was developing were identified by the Committee, if I may say so quite presciently. Then, of course, only recently you have looked again at the topic. It seems to me that one has to start with really asking the fundamental questions which you did in your recent report about what the Lord Chancellor is for, and how that is distinct from the ordinary role of a departmental minister. I mean, clearly, there are very high level constitutional functions,

which are identified in the Constitutional Reform Act itself, to uphold the rule of law to defend the independence of the judiciary, and to secure and provide sufficient funding for the Court Service. Those to some sound like high minded ideals, but they are in fact profoundly important to the operation of our constitutional settlement, and the Lord Chancellor is also responsible for the government policy work, which is necessary to improve and develop the operation of the courts, to do the “constitutional plumbing” as I call it, in respect of the judiciary and matters to do with the judiciary. The Lord Chancellor is also responsible for delivering whatever government policy may be in respect of the public funding of litigation of various sorts, and also responsible for the oversight of the legal profession.

All of those things are extremely important, and my concern, which was shared by a number of the witnesses who appeared before you in respect of your recent report, is that the political profile of the other aspects of the role as they have developed over the years, have the possibility of those core constitutional functions becoming of less importance and less significance. It also seems to me that the Lord Chancellor is particularly responsible for identifying within government the value of the rule of law, the value of an independent judiciary, the value of a vibrant and independent legal profession.

One of the struggles that I have had in my time as Lord Chief Justice, is to raise the eyes of the Treasury above the immediate balance sheet, if I can call it that, of money into the system, and what is delivered and what can be saved. In other words, the way government seems to work is to see the administration of justice as just another service, and it is not. It is not another service. It is something which underpins everything that goes on in society. Without a functioning judiciary and administration of justice, without a strong commitment to the rule of law, business will not flourish, business will not flourish, society will not flourish.

In recent years, a lot of work has been done on the underlying value of these things. Now, nobody would suggest that the value of education, for example, is to be calculated by the amount in GDP terms it contributes each year to the economy, because, clearly, an educated society is one that will deliver prosperity and long term benefits. The same can be said of health. No doubt the health sector does generate many billions in in GDP each year, but that is not what the point is, and I think the rule of law and the administration of justice is in the same sort of category.

So we have done work on this, and we have been speaking about it, I have given lectures on it, other judges have given lectures on it, and there is a greater understanding that the rule of law is one of the building blocks of prosperity. Now, my central thesis, if I can call it that, is that all of those things I have described, and the need to nurture the rule of law and everything that attaches to it is a really important part of what government should be doing and it deserves a minister who is not distracted by other matters. There are additional features, if I may, for just a moment or two. The Lord Chancellor, because of his or her special responsibilities with respect to the rule of law and the independence of the judiciary, has to be – has to be – a politician of considerable substance, who is able to say to the Prime Minister and to Cabinet colleagues, “No, you cannot do that.” One of the features of the system as it has developed, for good or ill, is that we have had a very high rate of turnover of Lord Chancellors. Now, of course, I recognise that in other departments, for reasons which perhaps it is indelicate to go into, there has been a very high turnover of ministers as well. But that is undesirable, and I also consider it undesirable that a Lord Chancellor should be a minister who is either actively or passively looking for promotion. One of the great advantages of the system as it really operated right through until Lord Clarke was Lord Chancellor was that none of the holders of the office were looking to become Home Secretary or Foreign Secretary or whatever the case may be. That, to my mind, enhances the possibility that the Lord Chancellor can have those very difficult conversations which from time to time I do not doubt are necessary. Then one has the adjunct of some of the most controversial and difficult areas of Home Office activity that were transferred over and, again, this was very much the subject matter of the part of the discussion back in 2007 in which Lord Falconer was much engaged, and

there are obvious conflicts of interest that arise there and, also, prisons are very, very political. At the moment, they are very political. It thus means that, understandably, the attention of the Lord Chancellor is likely to be substantially diverted to that side of the business of the Ministry. It is obviously the biggest part of the budget that the Ministry gets, and it also leads to good things that need to be done being put off because there are more pressing things that the Minister wants to do. Just to, I hope, make an appropriate comment, not *ad hominem* comments, I was very struck by an interview that Lord Mackay of Clashfern gave when he retired from the House of Lords last year – retired far too soon, in my opinion, if I may say so – about the importance of the Lord Chancellor being able simply to insist – insist – that time must be found in Parliament to deal with “constitutional plumbing” as I call it, things to do with the judiciary.

Now, I know there are issues that we may touch a little later in the session, which might be called “plumbing issues”, which have been put off because there is no parliamentary time or, to put it differently, there are more pressing parliamentary priorities. So all I am suggesting is that we have now had the current system, if we go back to 2007 as the effective kick-off, although it was earlier, for more than 15 years, and it is time to look at it calmly and rationally and to leave aside hyperbole, to try to avoid politics and party politics coming into it, and simply asking the fundamental question, “Is the current system serving the rule of law and the independence of the judiciary and the administration of justice generally, as it should be?”

THE BARONESS DRAKE CBE: Thank you. Well, your emphasis on the importance of the rule of law, of course, has been an increasing theme of this Committee and a source of concern to us, and in our report on the role of the Lord Chancellor and the Law Officers, we did say the arguments for and against the status quo are finely balanced and should be kept under review. But I think Lord Falconer would want to come in.

THE RT HON. THE LORD FALCONER OF THOROTON: First of all, could I endorse what Baroness Drake has said about your cooperation with the Committee, and, may I say, in terms of a Lord Chief Justice walking a tightrope, you have done a brilliant job. So many congratulations in relation to that. Could I also declare an interest as a practising member of the English Bar, and can I declare a further interest? My wife is the designated family judge in Luton and a circuit judge.

What you have just said about the role of the Lord Chancellor, my reading of what you are saying, and you must correct me if I am wrong is the question is, is the Lord Chancellor a strong enough player in government adequately to protect the rule of law? And, separately, is the Lord Chancellor too distracted by prisons in order to focus on maybe that fundamental role of protecting the rule of law and the constitutional plumbing that goes with it? Would that be a fair assessment of what you are saying?

THE LORD CHIEF JUSTICE: Yes, I think that encapsulates it reasonably well.

THE RT HON. THE LORD FALCONER OF THOROTON: I do not think that, again, correct me if I am wrong, you are not suggesting that we go back to the head of the judiciary being appointed by—

THE LORD CHIEF JUSTICE: No, no.

THE RT HON. THE LORD FALCONER OF THOROTON: You are not suggesting we go back to a Lord Chancellor appointed by the Prime Minister appointing all the judges?

THE LORD CHIEF JUSTICE: No, no, no, I think, just to be absolutely clear, looking at the Constitutional Reform Act and the collective changes to the role of the Lord Chancellor, I do not think anybody would suggest that the Lord Chancellor should exercise judicial functions. I doubt anybody would suggest that the Lord Chancellor should be the Speaker of the House of Lords, and

I doubt anybody would suggest that the Lord Chancellor should reassume the appointments functions which are now dealt with by the Judicial Appointments Commission on recommendations. I do appreciate, because I read fairly widely on this topic, that there are views that the Lord Chancellor should have a greater say in some judicial appointments, but on that I do not think it would be appropriate for me to comment.

THE RT HON. THE LORD FALCONER OF THOROTON: I do not think you are suggesting that the appointment of the Lord Chancellor should not be a job for the Prime Minister?

THE LORD CHIEF JUSTICE: Oh, certainly not. It is, it—

THE RT HON. THE LORD FALCONER OF THOROTON: It is the person the Prime Minister appoints and the leaving of that person to perform their constitutional obligations as set out in their Constitutional Reform Act?

THE LORD CHIEF JUSTICE: Well, I am, again, very conscious that this debate has been flowing around, and when the Committee was taking evidence from various people who have a deep interest in this before producing the last report, there were a lot of questions about whether the Lord Chancellor should necessarily be a lawyer, for example.

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE LORD CHIEF JUSTICE: And there were various views about it. I am aware that your view, Lord Falconer, is that it is the person who matters, rather than the qualifications that that person has.

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE LORD CHIEF JUSTICE: I broadly agree with that, but I think there is the subsidiary question about whether the way the office has developed to be an adjunct, as it now is, to a serious departmental office is good for the system.

THE RT HON. THE LORD FALCONER OF THOROTON: If you are saying that you should appoint a strong character able to say no, who, for example, will last a whole parliament, I would strongly agree with you. I think that is what you are saying.

THE LORD CHIEF JUSTICE: Essentially.

THE RT HON. THE LORD FALCONER OF THOROTON: In relation to the other bit, your focus, both today and in the speech you made at the installation of Alex Chalk as the Lord Chancellor is prisons is a bridge too far. If prisons were not with the Lord Chancellor, take it from me that they would be with the Home Office, which would probably be what you would think they would be. Do you think it is a good thing that what happens to defendants in court should be dealt with by the Home Office, and not by the person responsible for the courts? What I have in mind is you probably meet the Lord Chancellor regularly.

THE LORD CHIEF JUSTICE: Mm-hmm.

THE RT HON. THE LORD FALCONER OF THOROTON: The Lord Chancellor, whoever he or she may be, will, through his or her relationship with the judges, have a good understanding of what the judges are thinking. How often have you seen the Home Secretary in a professional capacity since you have been Lord Chief Justice?

THE LORD CHIEF JUSTICE: I have not seen the current incumbent since she became Home Secretary.

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE LORD CHIEF JUSTICE: But I think there was a home secretary who was in office for such a short period that I think we missed the opportunity, but I have met home secretaries regularly.

THE RT HON. THE LORD FALCONER OF THOROTON: Your relationship with the Lord Chancellor is of a completely different nature.

THE LORD CHIEF JUSTICE: That is true.

THE RT HON. THE LORD FALCONER OF THOROTON: The successful relationship that Lord Woolf and myself envisaged was one where the constitutional boundaries would be respected, maybe you are an independent judge, but you would cooperate in a whole range of areas, including how you would deal with the practicalities of sentencing. Why does that not make the prisons and probation appropriately with the Justice Department, not the Home Department?

THE LORD CHIEF JUSTICE: Well, there are two aspects to that. The first is that running the prisons is an operational matter. I mean, it is nuts and bolts, and we have at the moment a problem in the prisons, which you are reading about all the time. It is a problem that was clearly going to come, and it is disappointing that steps were not taken in time to avoid it. But those are nuts and bolts problems, and not questions about sentencing policy. I mean I think sentencing policy is something which would quite naturally, I think, sit with the Lord Chancellor, or at least in part. But the operation of the prisons – and we are seeing at the moment, the Ministry of Justice is dealing with a real problem in the prisons, which all of you will have been reading about. There have been times where, as you know, people remanded in custody or sentenced have been kept in police cells recently, there have been occasions often where people are being taken very long distances from where they really ought to be for their own sake and the sake of those who come to visit them. Those are absorbing a huge amount of time and energy. Now, that is a purely operational matter about prisons and it does not seem to me that that necessarily, or even logically, sits with the Lord Chancellor. My wider concern, as I have expressed it, and I appreciate that it was expressed very forcibly by some of those who gave evidence recently, is that when you have the operation of the courts and all of its adjuncts as representing only a very small part of what the Lord Chancellor does, it necessarily runs the risks of being downgraded. That is the real issue and the real risk.

There are other things that might logically attach to the Lord Chancellor which are a bit mixed up at the moment, for example, constitutional matters. Lord Falconer, when you were in office constitutional matters were within your department. I think they moved out at the beginning of the coalition years but I am not entirely certain, and quite where they sit now and with what enthusiasm they are looked at is something I simply do not know.

But I think it is not a question, if I may say so, of just going along the track and saying, 'This might usefully attach, this might not usefully attach', I think there is the much more fundamental question about whether the rule of law and everything that I have been trying to describe is sufficiently important to have a senior cabinet minister responsible for that and that alone.

THE BARONESS DRAKE CBE: Lord Falconer.

THE RT HON. THE LORD FALCONER OF THOROTON: Just one more question; do you not think that if you separated sentencing policy from the operational, running of the prisons, the problems would get massively worse? They are not good, I completely agree with what you are saying. My own experience is that if you left, as you had done until then – not you but the State

had – those issues, you separate operation of the prisons from Home Office policy, which is always to send more people to prison, the position would be very, very considerably worse.

THE LORD CHIEF JUSTICE: Yes, I must be careful not to express any personal views about sentencing policy, but I would make the observation at the moment that there is, at least in the public and political world, almost no measured and sensible debate about sentencing policy at all. What one sees too often is politician A saying, everybody should go to prison, and politician B in the other party saying, yes and for twice as long. That is not a very grown up way of debating really important issues.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Could I ask one very short question?

THE BARONESS DRAKE CBE: I do have a queue. As long as it is very short.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: I have a very short one. It is being suggested that capacity problems in the Prison Estate should dictate sentencing policy, but surely sentencing policy should actually dictate capacity issues in the Prison Estate?

THE LORD CHIEF JUSTICE: Well sentencing policy in the end is dictated by Parliament, and the obligation of Government is to provide sufficient places in prisons to house those who directly or indirectly Parliament has said should be there.

THE BARONESS DRAKE CBE: Lord Strathclyde. I am coming on to you, Lord Foulkes.

THE RT HON. THE LORD STRATHCLYDE CH: Lord Chief Justice, thank you very much for what you said in your first answer, which was a brilliant exposition of what I think you find is wrong with the current system, and although you ended with an appeal to make it as unpolitical as possible I think what you have just heard from Lord Falconer demonstrates how difficult that is. It reminded me of the debates that took place nearly 20 years ago now, and I could not help thinking in hearing you that one of the problems was that a change that took place in the role of the Lord Chancellor was done at haste, with seemingly little thought, and resulted in the whole ranges of compromises to create the system that we now have. There were two issues in the House of Lords which remain stuck in my mind; first was the vote on whether or not the Lord Chancellor should be a lawyer, be legally qualified to make the decisions that he did, and secondly that the post should remain in the House of Lords. It was Geoffrey Howe who called the role of Lord Chancellor 'the looming presence' in the Cabinet. He did not mean that as a physical presence, what he explained it was a sort of slightly detached political figure but legally qualified, and, as you said, with the ability to say no to the Prime Minister.

Do you think that part of the solution, notwithstanding the questions by Lord Falconer about the specific role on appointments or Judicial matters, which I largely agree, but do you think that some of the problem would be solved by making sure that the Lord Chancellor was legally qualified, and because of the very nature of the House of Lords being very different from the white heat of the House of Commons, that his or her position in the House of Lords would provide the answer to many of the questions that you raise?

THE LORD CHIEF JUSTICE: Can I come at that at two levels, if I may, Lord Strathclyde? The first is that the legal qualification I have always assumed was there to be a reflection of the need to have somebody who really understands the constitutional position. I think it is fair to observe that there are many who enter the House of Commons who do not have a very developed understanding of the various aspects of the constitution and the relationships, it is something we have been trying to work on to help with. Being a lawyer in a technical sense, knowing a little bit about conveyancing or public law, is not really what it is all about, it is about having in your bones an understanding

already of what the independence of the Judiciary means, what the rule of law means and matters of that sort.

As Lord Falconer observed in agreeing with me that it would be a good thing for a Lord Chancellor to be in post for a long time - whether anybody will manage as long as Lord Mackay did has to be doubted, but in office for a long time, in other words, not changing every year, two years or whatever – may suggest that the House of Lords is a good place for that minister, may suggest but it depends a little bit on what is attached to the job. Coming back of Lord Falconer’s observations it seems to me politically quite difficult to imagine that a Secretary of State for Prisons – if I can put the label that really should attach – could in today’s world be in the House of Lords.

THE RT HON. THE LORD STRATHCLYDE CH: Hence the roles would need to be divided as you said.

THE LORD CHIEF JUSTICE: What I hope I have made clear, in swearing in the new Lord Chancellor it was an opportunity for me really to pick up the baton that had been laid down by this committee and publicly say that I thought the issue needs to be looked at. I would not presume to suggest that I have had an opportunity to think through every implication of it and come up with what I would consider to be a fully developed scheme to present to anybody. I think I indicated that I would be happy to take part in the debate when I demit from office, should the debate be taken up elsewhere.

THE BARONESS DRAKE CBE: Thank you. You are quite right, we did lay down the baton and that is why it was welcome that you did make a contribution. Lord Foulkes, you had a question then I am going to move on.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Notwithstanding Lord Strathclyde’s unjustified attack on the previous labour government, I actually come to the same conclusion as him with the logic of what you are saying is an ideal Lord Chancellor would be someone in the House of Lords who was not seeking to be Home Secretary or Foreign Secretary, and therefore could continue for a while. He or she would be a member of the cabinet. That is the logic of what you are proposing, is it not?

THE LORD CHIEF JUSTICE: Well I can see the convenience of having the Lord Chancellor in the House of Lords because then that would, for all practical purposes, foreclose moving to an overtly political job as Secretary of State for anything. But whether it is necessary I think is something that would need to be thought through very carefully. I mean, for example, I do not want to be thought to comment on any Lord Chancellor who I have worked with over the last six years, six of them, one of them twice, but looking back to the early days, Jack Straw succeeded Lord Falconer, was in the House of Commons, but had already been Home Secretary and Foreign Secretary and clearly was not – well I assume – clearly was not looking for further preferment. Then his successor, Lord Ken Clarke, had also been pretty well everything in his career, and it was a terminus job, and that, I think, is more the important issue.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Without making any predictions or suggestions, purely hypothetically, when Sir Keir Starmer becomes Prime Minister at the next election—

THE BARONESS DRAKE CBE: I am conscious of the Judicial Guidance.

THE RT HON. THE LORD FOULKES OF CUMNOCK: —Lord Falconer would be a very good Lord Chancellor again.

THE BARONESS DRAKE CBE: Lord Chief Justice will not what to comment on—

THE LORD CHIEF JUSTICE: I think a sphynx like face, that one.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Sphynx like face, very good.

THE BARONESS DRAKE CBE: As we said in our report on the Lord Chancellor and Law Officers, the arguments for and against are finely balanced. I think that reflects, we sought to lay them out and I am sure it is an issue that is going to continue to be debated.

But if we could now move on to the issue of the backlog in the courts. Baroness Andrews.

THE BARONESS ANDREWS OBE: Good morning, Lord Burnett.

THE LORD CHIEF JUSTICE: Good morning.

THE BARONESS ANDREWS OBE: This is a very granular expression of many of the things you have been talking about. Last time you appeared before the committee last May you brought some rather startling figures of the increase in the number in the backlog, but also you gave us good advice about being aware of the timeliness and the issues of how many had been outstanding six months and 12 months. What are the current figures you have now that would compare with what you brought with you last time?

THE LORD CHIEF JUSTICE: Yes. Thank you for that. The broad point I sought to make last May was that obsessive focus on the number of outstanding cases in any jurisdiction only carries you so far. You need to know what the cases are, but more importantly anyone tied up in litigation in any field is not very bothered, I suspect, with the number of outstanding cases but wants to know when his or her case, in whatever form they are involved, is going to come on. In the Crown Court, at the moment, just to put the matter on record, the outstanding case load, which was coming down gently until the Bar action last year, has now begun to rise again. I think it is perhaps important for everybody to understand a little bit about why that is happening. For a very long time the volume of cases coming in to the criminal courts has remained depressed as compared with pre-Covid. But the position in the Crown Court now is that the cases coming in are on the rise and I think will be back to pre-Covid levels fairly quickly. The volume of work being transacted in the Crown Court has increased very substantially as compared with the year 2020, in other words pre-Covid. So roughly we are sitting about 25 percent more days a year in the Crown Court than we were in the financial year 2019/2020. But what has happened in the intervening period is that disproportionately the low hanging fruit has been gathered and so we have a higher mix of more difficult and longer cases, and so that is going to have an impact on how the overall caseload is managed.

Now so far as timeliness is concerned, the latest official figures give us the position up to the end of December 2022. I would expect it will not be long before some more official figures are published, but the position at the end of 2022 was that 49 percent of cases in the Crown Court had been outstanding for less than six months, 22 percent between six months and 12 months, and 29 percent over 12 months. That is obviously a worry.

Again, this may repeat a little of what I said last year, I am afraid I have not myself read what I said last year. There are important factors to bear in mind; first of all the majority of cases that come into the Crown Court as trial cases as they are called, in other words they have not been committed for sentence by the Magistrates, end up with pleas of guilty, something about two-thirds. One of the things we are doing as the Judiciary is to work with all the players in the system to bring forward the guilty pleas. Ideally when the case first gets to the Crown Court there will have been full

disclosure, there will have been plenty of opportunities for the defence lawyers to talk to the prosecution lawyers and the defence lawyers to talk to their clients, and if there is to be a guilty plea it should come very early. The reality is in many instances that does not happen for all sorts of reasons, and also being blunt about it, those facing serious criminal charges are perhaps more apt than others to put off to the last moment having to face reality.

But we are working hard to do that and I set up a group called the Crown Court Improvement Group, which has on it all of the players whose combined efforts are necessary to make the Crown Court work efficiently. So the prisons, PECS they are called, so these are the people who transport prisoners to court, and we lose a huge amount of time because of late delivery of prisoners, the CPS, the Police, the defence lawyers community, the Judges, Probation, etc. This has been an enormously successful enterprise because everybody meets together in a closed environment so they are not tempted to finger point because they can be candid confidentially and recognise the problems that their own part of the system is responsible for. Two things have happened, the first is that we have recently published a new Better Case Management Rule, which is being applied in all the Crown Courts and all of the players have signed up to it, so it includes the CPS putting in place new procedures to ensure disclosure happens sooner, which is critical if people are going to be properly advised, the prisons recognising that they have got to be able to enable lawyers to see people in custody otherwise they cannot get advice, and so on and so forth. The other thing we have done is to look really closely at the way cases are listed in the Crown Court. It is a very complex matter but there are differences of approach across the country, and the Senior Presiding Judge, Lord Justice Edis, and a small group of judges has worked up a listing protocol, which we very much hope will improve listing and avoid cases dropping out of the system.

But nonetheless, having December 2022, 29 percent of the cases in the Crown Court outstanding for more than 12 months is plainly unsatisfactory. As the Judiciary our aim would be to try, over time, to get to a position where all cases that are ready to be tried within six months are tried within six months. Obviously custody cases, those are people remanded in custody for trial, are dealt with as a priority because of the custody time limits that Parliament has specified. That is six months, essentially, although they can be extended for good reason, but it has to be... it is a fairly limited set of reasons. So the cases that are taking too long, by and large are those where defendants are on bail and are not of very high priority. So the sort of cases, even non-custody cases, that judges try to prioritise are those with vulnerable witnesses, for example, or vulnerable complainants, and some of the more difficult and sensitive sex cases. But there is a lot of work in the Crown Court which is taking too long, and the other point I am sure that I have made elsewhere before is that one needs to be a little bit cautious about statistics that cover the whole country, because the position is very different in different parts of the country. London and the southeast faces a particular problem. There are other parts of the country where the problems are very much less.

THE BARONESS ANDREWS OBE: Thank you very much indeed. Can I follow some of the statistics, to be absolutely clear? There seems to be some good news here.

THE LORD CHIEF JUSTICE: Yes.

THE BARONESS ANDREWS OBE: Insofar as there has been an increasing capacity, you say 25 percent, if there is 25 percent more work being done in the courts, and, as you said, that has picked up some of the low hanging fruit, so, possibly, you are expecting that to slow down in the coming months. But does that also reflect some improvement in the number of judges and lawyers, which was a thing that you pointed to last time?

THE LORD CHIEF JUSTICE: Yes.

THE BARONESS ANDREWS OBE: That was my first question. The second question is the over [inaudible]. Because I was not expecting you to say that. I thought those cases would be the more difficult cases, rather than the cases which were more routine and not a high priority. They are stuck there because they are not a high priority. Do you have any figures for how the longest time that people are being held [inaudible] beyond the 12 months? And, thirdly, the Crown Court Improvement Group, which clearly is really making an impact, is any of that in the public domain, so that we could actually read about the sorts of discussions that you are having? What it is that people have been able to do which is making a significant difference, as it were, and finally, and this is a slightly different order of question, when you were talking about your engagement with the Treasury to make them understand the relationship between the rule of law and a prosperous and secure society, the conditions in the courts, the frustration throughout the profession about the delays and so on, have you... I do not know whether this is out of order, but may I ask if you have had that sort of conversation, actually, when you make the case for more resources for the legal system?

THE LORD CHIEF JUSTICE: Yes, well I hope I can pick up each of those points in turn. Rather unexpectedly, at least it was unexpected for me, one of the major constraints that we had to deal with once COVID was coming to an end was a lack of judicial resource in the Crown Court. Those judicial resources are made up of the salaried circuit judges, the Crown Court judges, also recorders, the part time judges, practitioners who sit for at least three or four weeks a year, some much more, and also there are other cohorts, retired judges, district judges from the Magistrate's Court can sit and some do, and some deputy High Court judges. But we did not have enough, and one of the reasons and I am not sure whether we are going to come to this later, is that the competition to deliver Crown Court circuit judges last year fell short.

So we had an arrangement, in fact, with successive Lord Chancellors, from Sir Robert Buckland on for COVID and beyond, that we could sit as many days in the Crown Court as we could find the resources to sit, and that was judicial resources. So that has been a constraint, but it is moving in the right direction. This last financial year, we sat in the Crown Court 100,000, and I think 800 days and that, of course, was in a year where we had the Bar action, which led to all sorts of difficulties. We are expecting in this financial year to be able to sit at least a couple of 1,000 days more than that, and I hope more, but that has been a constraint. But the Crown Court competition, the circuit judge competition that is just about to be signed off has delivered the number of judges that were asked for. So that is an improvement.

There continues to be a problem, more in some parts of the country than others, in securing advocates to appear in all the cases that are listed, both for the defence and the prosecution, and that, I am afraid, is the result of a long term undermining and attrition of the criminal legal profession, and that is going to take time to repair. But the good news at least is that there is now as much work in the Crown Court as anyone is able and wishes to do. Any lawyer can be fully engaged, and part of the problem in the past, when the volume of cases was falling and the sitting days were falling up to COVID, was that not only was the rate of pay for the lawyers very poor, but actually there were too many lawyers for the work available. So we are now, at least the second part of that, in a different position.

I mean so far as the makeup of the cases that that are in that more than 12 months category, that too is mixed. So, inevitably, there are complicated cases, especially those that need quite a lot of detailed expert evidence, that are not ready to be tried within 12 months. But that is part of it. We also have quite large clutch of cases in the system, which arise from the... I am trying to use the correct expression, which arise from an encrypted telephone system being broken into by intelligence agencies around the world, and so that is called EncroChat, and there are quite a lot of defendants awaiting trial, against whom the evidence is quite substantially the content of their EncroChat phones, which they thought was completely secure. Now, all I can say is that there are there are an enormous number of legal arguments being run in respect of those cases which

continue, and a number of which have bubbled up to the Court of Appeal. So there are quite a number of those stuck in the system because the defendants themselves are running very complex arguments. But, as you say, there is too large a proportion of the relatively – relatively – less serious bail cases waiting too long. So far as the CC... forgive me, I must not use an acronym. So far as the Crown Court Improvement Group is concerned. The better case management document is in the public domain, and I will make sure a copy of that and anything else that is in the public domain relating to that group is sent to the to the clerk.

THE BARONESS DRAKE CBE: Thank you. Can we just adjourn the meeting for a few seconds, please?

[The proceeding is suspended]

THE RT HON. THE LORD FALCONER OF THOROTON: Lord Burnett, could we just move to the family system?

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FALCONER OF THOROTON: Could you give us your overview as to, first of all, is the family justice system under strain in relation to public law cases, those are cases where the child might be at risk and the state is wondering whether to take protective measures?

THE LORD CHIEF JUSTICE: Yes, it is under strain in the sense that the time these cases are taking, although it varies in different parts of the country, is too long. But the numbers of outstanding cases are coming down.

THE RT HON. THE LORD FALCONER OF THOROTON: Is that because COVID meant all of the bits of the system could not see cases that required the intervention of the state, for example, schools were not in session and, as a result, cases did not get to the courts? We saw the case yesterday of a horrific murder in which the public authority said the reason that person, the child had got murdered was because he had slipped through the cracks during COVID, and the courts are saying so many cases did not get to court because the social workers were not working, etcetera. Are you worried about that?

THE LORD CHIEF JUSTICE: Well, I am not sure that I am in a position to express a view about whether that is a phenomenon that is an important part of what has been going on, but what I am able to say is that, in February 2022 the outstanding number of public law cases in the system was just a shade over 13,800, and in February 23, a year later, it is a shade under 13,200, so it is a fall of about 5 percent, and there is an enormous amount of activity which is being led by the family judiciary, but also involving local authorities and Cafcass in particular, to try to shorten these cases, and to, as they call it, “make every hearing count” and, as I am sure you know, the President of the Family Division, with my entire blessing, has recently relaunched the Public Law Outline, which is designed to drive down the amount of time these cases are taking.

THE RT HON. THE LORD FALCONER OF THOROTON: Just one more question on private law.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FALCONER OF THOROTON: You emphasised the importance of mediation last time you were here. Dominic Raab, as the Lord Chancellor, endorsed that as a way. I felt, listening to what was being said, not by you, but by the MoJ, that maybe not enough money was going on, not enough drive was being given in relation to that, because mediation, people discover, works as a means of keeping people out to the courts. What do you think? Do you think

enough is being done to promote mediation throughout the system to stop, as it were, divorcing couples or parting couples rowing in front of the courts?

THE LORD CHIEF JUSTICE: Yes, the Ministry of Justice, both at official level and ministerial level is absolutely signed up to the importance of mediation, and our hope is that the funding available for mediation will increase, because, as you say, it keeps people out of the courts. It is really depressing when the first thing that a couple at war do is to go to court, rather than the last thing.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: I have a question before we leave backlog, and it relates to judicial recruitment, because last time you came to us you mentioned there was a problem about recruitment, both to the criminal Bar, and also to the judiciary, and can I divide my question into two parts? First of all, what is the present stage of the criminal Bar, and is there a problem and what could be done to sort it out? Then a second one is on judicial recruitment. Later today we have an order coming before us in Grand Committee which is a judicial appointments order dealing with legal executives who are being recruited, and I wondered whether the legal executives can participate in criminal trials, or whether they are essentially civil practitioners?

THE LORD CHIEF JUSTICE: So far as the criminal bar is concerned, trying to put it as shortly as possible, there were two big problems. One was remuneration did not go up for years. Secondly, the volume of work went down, and thus there was a very substantial drift away from the criminal Bar. When there are systemic problems, they cannot be solved overnight. The volume of work, as I have indicated, has gone up, the remuneration has gone up. I am not going to comment on whether it should go up further, but the criminal Bar and the criminal solicitors are still under stress. So far as the recruitment of legal executives are concerned, the order that you have referred to, Lord Hope, is one that in fact is designed to tidy up some anomalies in the system that that has been in place for some years. Relatively few, very few in fact, members of CILEx apply for judicial office, very few, and I would like to see more apply for judicial office within the scope of the legal skills that they have, and in time—

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Does that extend to criminal cases?

THE LORD CHIEF JUSTICE: Indeed.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Good.

THE LORD CHIEF JUSTICE: In time it might make a difference, but I do not think it is going to make a significant difference straightaway.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Well, can we move to Legal Aid and, Lord Thomas, you have a question on Legal Aid?

THE LORD THOMAS OF GRESFORD OBE KC: Well, no, it is increase in magistrates' sentencing powers is my question.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: I beg your pardon, yes, magistrates, I beg your pardon.

THE LORD THOMAS OF GRESFORD OBE KC: I suppose I should declare that I was appointed as assistant recorder in 1974, and I later served for many years as recorder and a deputy High Court judge. We also had a debate here on the 17th May on the removal of the increase in magistrates' maximum sentencing powers. The figures we were given by Lord Bellamy were that it had had a 3 percent impact on the backlog, that there had been a 35 percent increase in sentences between six months and 12 months, amounting to 500 prisoners, and so there was a

change of policy, and he put it that the new structure was posing risks to the prison system's ability to deal with the change in flow. The government decided they had to do everything possible to avoid running out of prison capacity, albeit at the expense of some increased pressure on the Crown Court. Now, have you seen any impact from the reversion in March this year to the various issues that I mentioned?

THE LORD CHIEF JUSTICE: Yes, well, the decision to reverse the power, I hope temporarily, was simply to slow down some cases going through the system. It was as simple as that, because if the case goes to the Crown Court it takes longer. It was buying a little bit of time in the spring. There was no evidence at all, and I have seen no evidence that magistrates were inappropriately using that power, and when the announcement was made by the Lord Chancellor that point was also made. Now, the reality is that it has not yet been possible to measure precisely how many extra cases are going into the Crown Court but talk to any magistrates, and no doubt you do, they will say, "Well, we are committing cases for sentence and also we are sending cases up for trial, which we would keep in the Magistrates Court because we do not have sufficient sentencing powers." The calculation of the MoJ originally, and I have no reason to suppose it was wrong, is that increasing magistrate sentencing powers would save 1,700 days in the Crown Court and, broadly speaking, the disposal rate in the Crown Court is one case per sitting day. You know, some obviously take weeks, others take half an hour, but that is the average. So I hope the power will be turned back on. It has obviously caused a lot of distress and annoyance to magistrates. It has also, frankly, wasted a good deal of our time and money in training the magistrates to do this for what turned out to be a rather short period. But of course the minute it is turned back on, there will be a spike in the prison population because the cases will be dealt with within two or three weeks as opposed to a couple of months.

THE LORD THOMAS OF GRESFORD OBE KC: The training was three hours only; do you think that is sufficient to give magistrates the increased powers of sentencing between six months and 12 months, which, as you know, is generally frowned upon as not giving sufficient time to do anything with a prisoner by way of rehabilitation?

THE LORD CHIEF JUSTICE: Well the training was worked out very carefully by the Judicial College and it is very much in the context, as you will appreciate, of magistrates already having to make decisions about whether their sentencing powers are sufficient, which involves them in having to make a broad assessment of where the sentence might end up were the person to be convicted or to plead. So, I have not heard any suggestions that the training was inadequate, and I think it is important to emphasise that there has been no suggestion, and there is no evidence of which I am aware, that magistrates have inappropriately used these powers.

THE LORD THOMAS OF GRESFORD OBE KC: Your view is that as soon as it is possible we should turn the switch in the other direction?

THE LORD CHIEF JUSTICE: That is my view.

THE LORD THOMAS OF GRESFORD OBE KC: Thank you.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Baroness Finn?

THE BARONESS FINN: Thank you. Good morning, Lord Burnett. My question really is, moving away, to the physical side of the courts and also the Courts and Tribunals Reform Programme. Firstly, on the physical state of the courts, last year you expressed concern that the £50 million allocated by the Treasury for capital funding was insufficient and correctly identified that dreadful working conditions in the courts benefitted nobody. I certainly have testimony from friends and colleagues in the legal profession to this effect. So basically, one year on, what is your assessment of the state of the Court Estate? Have your concerns increased or decreased?

THE LORD CHIEF JUSTICE: The background to this is that in the three year spending review notionally the Treasury allocated £50 million per year for capital spending in the courts. In fact last year the Lord Chancellor of the day, Dominic Raab, found £70 million, and also we had an understanding that if underspends came along there would be some more and the turnout was just over £80 million. The problem was that a lot of that extra money came at the end of the year when it was not possible to spend it on things that really mattered. So I have had continuing concerns. I am just coming to the end of the Concordat process, that is to say the settlement between the Government and the Judiciary for funding for the current financial year. I will not go into why it was not concluded before the beginning of the financial year, we have not got time, but I have engaged in great detail, not only with the Lord Chancellor on this topic but also with the Prime Minister. I am reasonably confident, but I am not going to anticipate the final Concordat settlement, that the position for this financial year will be much better and a point that I have been pressing for ages is that it is hopeless to deal with this on a year by year basis because so much of the big capital expenditure will straddle different years. So we are working towards an agreement now for the next financial year as well for capital spending. My expectation – I cannot say more than that – Lady Finn, is that we will be in a rather better position.

THE BARONESS FINN: Thank you very much. The next question is about the Courts and Tribunals Reform Programme, which is to introduce new technology and modernise working practices. The NAO gave in February a fairly critical report; it was over budget by ten percent, it was over time, it was supposed to take three years, it has taken over four years longer, so over twice as long, it has saved less than envisaged and there have been concerns expressed that it is not delivering the intended efficiencies. What is your assessment? Do you think that is fair assessment from the NAO and what would you think are the reasons for these problems?

THE LORD CHIEF JUSTICE: It is no secret that the modernisation programme generally has taken much longer than was expected, and the technical difficulties which HMCTS have had to deal with are much greater than they expected. What has happened recently, and it is in part in a response by HMCTS to the NAO report and other reports on this, has been what is described as a reset of the timetable. What was happening was that the timetable was being driven entirely by what were thought to be end dates for funding and there was growing concern – concern that I certainly had – that by looking at it simply by reference to when the money was said to be running out, if you ran too fast you would really ensure that big parts of the programme did not work because nobody would be ready to work them.

Last summer HMCTS did a great deal of thinking about this and came up with a proposal to reset the timetable for the remaining parts of the Modernisation Programme. I was consulted about this in September and formally the Judiciary agreed to the reset in October last year. Now, for reasons which I would not go into even if I had time, the Ministry of Justice did not agree to the reset until March and so there were six months lost to be perfectly honest, which have caused a few additional problems. But the point of it now is that the remaining big projects are going to be timed to ensure, first, that HMCTS can get the technical side of it right, there is absolutely no point having a system that is not working properly or is only working properly for 80 percent of the time. Secondly, it will enable HMCTS staff to be properly ready for it, and thirdly, and within my responsibility, it will enable us to ensure that judges are ready for the products before they come along, they are appropriately trained and understand what it is they have to do. We are bringing together the training of HMCTS and judges on some of these things and there is a great deal of work going on.

I should pay tribute particularly to Mr Justice Cobb and District Judge Tim Jenkins, who have been working like trojans to put together all of the systems that will support judges through this over the next year or so.

THE BARONESS FINN: Thank you for that, that sounds more encouraging going forward. One of the key concerns on the programme was on the common platform, which was a digital system

to join up the work of the criminal courts and the CPS, and this is proving more difficult and that is delayed. When I worked in the coalition government many years ago we tried to introduce the concept of government as a platform, which was a rather sensible initiative to join up the work of government departments so that education might be aligned with local government, etc, and it proved difficult and there was a lot of resistance as well rather than... and a training programme would have been required, etc. Unfortunately it was dropped and so it is a matter of regret that it has not happened, and, therefore, would you think it was a shame if this common platform was now abandoned and what steps would be taken to make sure that it could be a success?

THE LORD CHIEF JUSTICE: It cannot be abandoned because there is not any other show in town. So the starting point is that HMCTS and their technical staff have got to make sure that it works as intended. Now it is already in somewhere between 85 and 90 percent of our criminal courts. No-one would pretend that it has been glitch free but it is settling in in most places. The reset which gives time for it to be sorted and for everybody to be trained in it, I very much hope, will resolve the difficulties. Whether all the difficulties will be resolved and it works absolutely as was envisaged when it was planned nearly seven years ago originally, I would not be rash enough to say. But progress is being made, progress is being made.

THE BARONESS FINN: Thank you very much.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Lord Chancellor appeared before us in March and we touched on this subject briefly with him then, and he first of all said that the system must be made to work, so obviously he is in line with you in saying that is the system and we have got to make the best of it. But he said there were some promising signs in relation to probate and divorce proceedings, would you agree with that?

THE LORD CHIEF JUSTICE: Yes, certainly the online divorce system, so far as I am aware, has been very successful. Forgive me, Lord Hope, I am not completely on top of what is happening in the probate side of it. The civil products, so online money claims, damages claim, the whiplash portal and various others are coming along. There is a real need for everybody to understand that this programme that we have been living with now for longer than we had hoped is not the end of the story. One of the first speeches I made on this after I became Chief Justice nearly six years ago was that we had to be careful not to leave ourselves sitting in aspic of what was then thought to be 2020 or 2021. With technology nowadays there is a need constantly to be looking at it to upgrading it, taking advantages of developments, and that is very much what we hope will happen. So coming back to the Concordant process there is a part of it which is concerned with funding for technology outside the strict confines of the Modernisation Programme.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Thank you very much. I think we move to move legal aid. Lord Falconer?

THE RT HON. THE LORD FALCONER OF THOROTON: Yes. Civil Legal Aid first of all. It was decimated – I am not saying that in a political way but ten years ago there was an Act of Parliament that very significantly reduced it. Could you tell the committee what the effect of that decimation has been on court processes?

THE LORD CHIEF JUSTICE: It has had quite a profound impact on the family justice system, because broadly speaking, legal aid was taken away in respect of private family law disputes.

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE LORD CHIEF JUSTICE: Many of us think that it is occasionally short sighted for one little silo of government to save money without fully appreciating how it might add financial burdens, not only to government but also elsewhere in the system. I know the widely held view of the Family Judiciary

is that is precisely what has happened with the substantial reduction of availability of legal aid for family private law disputes. There has also then been a distorting factor introduced into legal aid in that legal aid is available in private family law disputes to those who make allegations of domestic abuse of one sort or another, but only to those who make the allegation and not the person who has to respond to the allegation. Now slightly flippantly I have said elsewhere that you do not really need a doctorate in psychology to understand that that is likely to distort the process, and that is, again, I think the view of the collective Family Judiciary.

There is a need, one way or another, for people who find themselves in dispute in the family context to have advice. A little earlier I made the observation that it is a shame that going to court is the first step for so many people rather than the last step, so we talked about that in the context of mediation. But there are also other ways of providing legal advice and assistance without necessarily re-erecting the system of legal aid that existed before the 2012 changes. I hope that Government is looking at that, I cannot predict entirely where that will end up.

In ordinary civil claims of course the picture is more complex because there are so many mechanisms for funding that exist for ordinary civil claims and legal aid funding is still available for certain types of civil claim, but it is more in the family area that I think the concerns exist.

THE RT HON. THE LORD FALCONER OF THOROTON: You know that the Government has announced a review of civil legal aid.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FALCONER OF THOROTON: That is not going to report until 2024. You have just referred there to the availability of early advice in family matters not just for those who make allegations of domestic violence. Is that something you would like to see happen before the conclusion of a review currently expected or predicted by the Government to report in 2024?

THE LORD CHIEF JUSTICE: The short answer is yes, the sooner the better, because I think it will keep cases out of the courts. But that is not the only reason why it is important. Families at war, parents at war are completely diverted by their family dispute from all other activity and it has a profound impact on ability to work and do all sorts of things. We also know that families at war do damage to children, they do damage to children educationally, they do damage to children emotionally, and long-term damage as well. So there is an enormous benefit in trying to resolve more of these cases quickly and to take the heat out of them, and propelling them into court, which is what actually happens at the moment, does not seem to me to be the best way of doing that.

THE RT HON. THE LORD FALCONER OF THOROTON: Just on criminal legal aid, you have referred in earlier answers to the problem about criminal legal aid solicitors, you have referred to the fact there is work at the moment but there is still a decline, a significant decline in the number of criminal legal aid solicitors' firms because the money has been so bad over such a long period of time. Lord Bellamy's report, Christopher Bellamy as he then was, was effectively saying give the £135 million but it is only a start, you have got to reinvigorate the criminal legal aid solicitors market and that is not happening at the moment. Have you got any views about what needs to be done?

THE LORD CHIEF JUSTICE: Well part of the process that has now been set up by Government following Lord Bellamy's review, and the decisions made by successive Lord Chancellors as a result, is a review body on which there will be representation from the legal professions. Its chair has not yet been identified but I think the expectation is that it will be a judge with some understanding of the way the criminal courts operate, that is still under discussion. There needs to be a constant look at this because certainly, insofar as the solicitors' profession is concerned, providing advice in police stations, the numbers of people available to do that continue to decline,

their age profile continues to rise and neither of those is a good thing. The reality is that the business model, and solicitors' firms are businesses, the business model for running a criminal legal aid practice was put under severe strain as a result of the failure to increase fees over time. Again, one comes to the simple proposition that if something has been knocked away it is not possible with a click of the fingers to get it all back, so I think this will take some time as solicitors' firms rebuild their criminal legal aid practices in the light of the increase of fees and the increase of work that is available now. But again, I am not an economist but it is all very well increasing fees but you cannot just sit and do nothing more if inflation is running at the sort of rates it is at the moment. So I am actually concerned and not entirely optimistic that the criminal legal profession, both sides, will recover quickly enough to be able to do the work that needs to be done.

THE RT HON. THE LORD FALCONER OF THOROTON: Thank you.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: We are going to move to the diversity of judicial recruits.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Lord Foulkes, and then Baroness Finn. Lord Foulkes?

THE RT HON. THE LORD FOULKES OF CUMNOCK: Ah, I thought she was going to start off, but what have you done to improve the diversity in the legal profession?

THE LORD CHIEF JUSTICE: In the legal profession, or in the judiciary?

THE RT HON. THE LORD FOULKES OF CUMNOCK: In the judiciary, sorry.

THE LORD CHIEF JUSTICE: In the judiciary. Well, we the judiciary, I think, are more active than any other part of the system in trying to encourage people from diverse backgrounds who have the necessary skills to apply for judicial office, that they are ready to fill. There is a sort of whole series of initiatives that we operate ourselves, and in concert with the legal profession and the Judicial Appointments Commission. A lot of it is organised through the Judicial Diversity Forum, which brings together the very senior people in all the players, so the Lord Chancellor, the chair of the Judicial Appointments Commission, me, President of the Law Society, President of CILEx, Chair of the Bar.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Have you got any statistics to show how successful you have been?

THE LORD CHIEF JUSTICE: Well, the statistics are published every year. The next statistics are coming along by the end of July, I think, and the position is as simple as this: that there is steady progress in almost all areas, both as to the ethnic makeup of the judiciary, and also gender balance. So it is moving in the right direction.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Well, is there another category, at least one other category that you might have in mind?

THE LORD CHIEF JUSTICE: There is, yes.

THE RT HON. THE LORD FOULKES OF CUMNOCK: And that is in terms of poverty and wealth and background education and...

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FOULKES OF CUMNOCK: What about that?

THE LORD CHIEF JUSTICE: There is, as far as one can tell, overall progress being made there. It is something that I have been particularly interested in since becoming Chief Justice, because I think social demographics actually also feed into the question of ethnic diversity as well, given that, historically, large groups of ethnic people coming to the UK tended to start in the lower paid jobs. We are working, through the Judicial Diversity Forum, on better definitions of how to capture socioeconomic background. It is actually very difficult. I mean there was a time when the question was “Did either of your parents go to university?” and, slightly facetiously, I always said, “Well, Prince Charles then, as he then was, would be a tick for social diversity.”

So that one does not really work, and so what is being looked for now is much more detail about the type of school somebody went to and if it was a private school whether they were on full scholarships and so on, free school meals and the occupations that parents held. But one of the things we are doing is to try to improve and increase the outreach we do to schools and universities.

THE RT HON. THE LORD FOULKES OF CUMNOCK: I was having a look at the background of some of the present occupants and I declare an interest, I went to a private school, but an awful lot of private school educated people still, and Cambridge seemed to do awfully well. Why do people from other universities not manage to get in? Oxford there are a few, and I mean the even the Supreme Court has a Manchester graduate in it.

THE LORD CHIEF JUSTICE: Yes, and well, I am just trying to think of the five most senior judges. I was at Oxford, so I am one of your minority for these purposes, but one of the Heads of Division was at Durham, another one was at Bristol. I know on the Judicial Executive Board, I have got somebody who was at Hull. I think things are changing quite quickly, but there is no doubt that in the upper reaches of the judiciary, just as in the upper reaches of the legal profession, there is a disproportionate representation of people from affluent backgrounds.

THE RT HON. THE LORD FOULKES OF CUMNOCK: We got evidence when we were looking at the senior civil servants appointments that people tend to appoint people like themselves, you know, who fit their own profile. How can you counter that?

THE LORD CHIEF JUSTICE: Well, we do not appoint judges. I mean that is the first thing that needs to be—

THE RT HON. THE LORD FOULKES OF CUMNOCK: [Reminded?], yes, yes.

THE LORD CHIEF JUSTICE: So the Judicial Appointments Commission makes the recommendations, which are then, under the system, almost always accepted, and I mean I can say from my own experience working with the Judicial Appointments Commission and its various Chairs, or the two chairs in my time, that they are absolutely alive to the need to put aside anything of that sort, and the panels that sift and interview for all Judicial Appointments are predominantly laypeople, not judges. So I just do not really think that is happening.

THE RT HON. THE LORD FOULKES OF CUMNOCK: What kind of laypeople? Because when we were looking at the people who appoint senior civil servants, then there tended to be the usual suspects, and people from a similar sort of background. Do you think the Judicial Appointments Board is sufficiently representative of all interests?

THE LORD CHIEF JUSTICE: Well, I think you would need to ask the Chair of the Judicial Appointments Commission for the detail of that, but I do know that they have worked really hard in recent years to ensure that their lay panellists, of which there are very many, because there is so

much work to be done, are a very diverse bunch themselves. So I think they are trying very hard to avoid precisely the concern that you are identifying.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Thank you very much.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Yes, Lord Keen, and then I will come back to Baroness Finn.

THE RT HON. THE LORD KEEN OF ELIE KC: Thank you, Chair. Lord Chief Justice, there have been an increasing number of appointments to the High Court Bench from the solicitor branch of the profession, particularly to the Chancery Division, and do you feel that if that can be pursued further it will give rise to an increasingly diverse pool of talent going on to the High Court Bench?

THE LORD CHIEF JUSTICE: Well, I certainly hope so. Again, we have worked very hard to encourage solicitors who have the right qualifications to become deputy High Court judges and then to apply to be High Court judges, and we have very intense mentoring schemes that are part and parcel of this, and work shadowing schemes and all sorts of things. I mean, there is an enormous amount that we do, and judges do it in their own time I should say. But there is a huge reservoir of untapped talent out there, and I think the main difficulty is encouraging some to think that a judicial career is for them, and a good thing to do. As you'll know, because I know from your question that you have looked at some of the recruits to the High Court Bench recently, we have had a really excellent crop coming in from particularly some of the well-known London firms. Many people who are in senior positions in the big London firms, when they get to their mid-50s are not thinking of taking on a new full-time and very demanding job, they are looking for different things, but we are making progress there.

THE RT HON. THE LORD KEEN OF ELIE KC: Thank you.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Baroness Finn?

THE BARONESS FINN: Thank you again. It is simply something that I sprung out of the supplementary evidence here, which is the then Lord Chancellor Dominic Raab said that looking at recently qualified barristers, 49 percent were women. We did a report a few years ago of women in Whitehall and realised that quite a lot of women were being recruited, probably in similar numbers, possibly more than men, but when you went further up the ranks, the percentages really diminished. I wondered what the status was, what steps are being taken to ensure sort of proper retention and promotion of, and progression of women and others? Because that is actually often a stumbling block.

THE LORD CHIEF JUSTICE: Yes. Well, the statistics that I mentioned that that are published now annually by the Judicial Diversity Forum are statistics that cover the whole of the legal world, and it is really important, when looking at the makeup of the judiciary, to have a very clear idea of the pool from which the judiciary is being recruited, and so the phenomenon that you have just described of there being, in proportionate terms, fewer women in the senior reaches of the legal profession, is something inevitably that feeds through into recruitment, particularly at the senior levels of the judiciary. But, within the judiciary itself, the opportunities for promotion have grown, looking at Lord Hope, if I may, and when Lord Hope first became a judge, that promotions did not happen very often. In our jurisdiction there was the odd promotion from Circuit Bench to High Court Bench, from District Bench to Circuit Bench, but now it is much more common, and so we have seen, and I will not name anybody, but you can find them very easily. We have seen some women come to the High Court Bench who started their judicial careers at a lower level, and that is much to be encouraged.

THE BARONESS FINN: Thank you.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Lord Falconer, I was going to ask for the next question, but you have got something on this one?

THE RT HON. THE LORD FALCONER OF THOROTON: Following up Baroness Finn's question, I am sure the statistics are wrong, but there is one out of 12 women on the Supreme Court.

THE LORD CHIEF JUSTICE: That is right.

THE RT HON. THE LORD FALCONER OF THOROTON: And there are 12 out of 36 women in the Court of Appeal.

THE LORD CHIEF JUSTICE: Yes, I think, I am not—

THE RT HON. THE LORD FALCONER OF THOROTON: I have counted from the website, and my maths is terribly wrong, so somebody needs to check that—

THE LORD CHIEF JUSTICE: That feels right, yes.

THE RT HON. THE LORD FALCONER OF THOROTON: 1 out of 12 on the Supreme Court means that the normal sized panel of five will very frequently be men only. Are you worried about that?

THE LORD CHIEF JUSTICE: Well, I think it would be more desirable if it were not that way.

THE RT HON. THE LORD FALCONER OF THOROTON: And can it be changed in the near future because of the increase in the retirement age?

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Well, we are going to have a questions from the President of the Court in a few weeks' time, so perhaps we can treat this fairly shortly?

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE LORD THOMAS OF GRESFORD OBE KC: I wonder if I might...? A quick question. When I was starting off in my career, former members of parliament were frequently appointed High Court judges or County Court judges, is a political career a negative these days in the appointment of judges?

THE LORD CHIEF JUSTICE: I am not aware of any serving Member of Parliament having applied for fee paid office in recent years. The last High Court judge who had been a Member of Parliament was Mr Justice Cranston, who was Solicitor General in the Labour government some time ago, forgive me, I cannot remember precisely when. You are absolutely right, Lord Thomas, that there were many Members of Parliament who were practising barristers who also sat as recorders. But I cannot immediately think of any who...

THE LORD THOMAS OF GRESFORD OBE KC: So does it disqualify people?

THE LORD CHIEF JUSTICE: No.

THE LORD THOMAS OF GRESFORD OBE KC: Having a political career?

THE LORD CHIEF JUSTICE: No.

THE LORD THOMAS OF GRESFORD OBE KC: Even if they never got to Parliament?

THE LORD CHIEF JUSTICE: No. It is not a disqualification, but there has been a change in culture in Parliament, has there not? I mean there has been a general change in culture which is more circumspect about outside interests and careers at all, and I mean, certainly I cannot think of a single Member of Parliament who sits as a recorder but I may be wrong.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: I would like to squeeze in two more questions before 12 o'clock, and, Lord Falconer, we have got your question about the intensive supervision centre?

THE RT HON. THE LORD FALCONER OF THOROTON: Yes, and the Intensive Supervision Courts pilot is due to be launched on the 26th June 2023. The pilot, as the government have made clear, involves an intensive series of interventions in the defendant's, hopefully, return to productive life, and it involves a single judge who will regularly review each participant's progress. So a judge has got an important role in relation to it and needs property to be informed. Is the judiciary sufficiently resourced to perform that role in relation to Intensive Supervision Courts?

THE LORD CHIEF JUSTICE: Well, so far as the pilot courts are concerned, the answer is yes. It will, of course, take judges away from other work that they would be doing, but it is an example, these are called "problem solving courts" in looser language. It is an example of interventions in sentencing which are absolutely focused on trying to prevent reoffending and getting the person concerned back to being a useful member of society. In other words, the intense focus is not on punish and throw away the key. But, as your question certainly implies, these are very resource-hungry proposals. I think we will have to see how the pilot goes, but if it is proposed that they be expanded, we have the same resources; we have the same judicial resources, the volume of work that needs doing is growing. There are other aspects of the work in the Crown Court that are absorbing resources: the Section 28 cross examination, members here will know what that is, and we do not have unlimited resources.

THE RT HON. THE LORD FALCONER OF THOROTON: I mean the idea of a judge engaged in supervising, regularly and purposefully, an offender is one that generally works. The judiciary have always been very cooperative and liked it. It does need resources, because it means the judge is more engaged in individual cases over a longer period of time.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FALCONER OF THOROTON: It has been tried previously, there was a court in Liverpool and it worked very well, but the resources were removed.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD FALCONER OF THOROTON: How many pilots are there, just one?

THE LORD CHIEF JUSTICE: I think it is five. It is five courts, is it not? I think it is five courts, and That is five out of 78 or 80 Crown Courts. So it will deal with a relatively small number of people, but they are people who otherwise would be going to immediate custody, almost certainly.

THE RT HON. THE LORD FALCONER OF THOROTON: And if it works, they would not, hopefully, be so often appearing in court?

THE LORD CHIEF JUSTICE: Well, that is the hope.

THE RT HON. THE LORD FALCONER OF THOROTON: Yes.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: The last question is artificial intelligence, not the least important, I think. Lord Keen?

THE RT HON. THE LORD KEEN OF ELIE KC: Thank you, Lord Chief Justice, I think the topic of artificial intelligence and its impact upon dispute resolution and the wider court system is one of considerable debate at the present time, and I think a particular interest of the present Master the Rolls. Now, I just wondered if you had any view on what impact you feel the introduction of further artificial intelligence might have on the court system? On the one hand, of course, you have got the very considerable financial investment that will be required, but on the other hand, you have the potential saving in the medium term upon the physical estate of the courts. I wondered if you had formed any views on this?

THE LORD CHIEF JUSTICE: I am not an expert in artificial intelligence, and I reflect that it is a label that is being applied to things that have been going on for ages. I mean internet search engines are artificial intelligence, and if one were to reel back to about last November almost nobody was talking about it, and now there is an outbreak of what appears to me to be close on national hysteria surrounding the subject. As it happens, in 2019 I set up a group to look at artificial intelligence, which was essentially a few judges and some academics, and we were quietly thinking of projects that might be undertaken, and then along came COVID. I am afraid that it was one of the things that fell down my list of priorities, but I do have an advisor on technology and AI in Professor Susskind, and I have had conversations with him and the broad sense at the moment is that things are moving so fast in that world, that it is almost impossible to predict where it is going to be even in six months, let alone a year or two.

My broad view, which I think accords with that of the Master of the Rolls who, as you say, does take a particular interest in this, is that the administration of justice and the courts should try to harness developments in technology which enhance the rule of law and what we do. We should never be the slave to it, but undoubtedly there will be ways in which artificial intelligence can be used to increase access to justice, for example. I think there will be very obvious ways in which artificial intelligence might be able to steer particularly litigants in person towards resolution of disputes. Let me give you an example, something that I think is already happening in Singapore. If you have a... I think this is right, and if I have got this not entirely right I will let you know, but if you have a road traffic accident in Singapore, you can now go on to a system, you tap in what you say happened. Obviously, that might not be entirely what did happen, but anyway, you tap it in, and it tells you roughly what the outcome of any litigation would be. Now, it is not binding, you can issue proceedings, but it is the sort of thing that would be I think, of some use. So I think AI is something which we want to be looking at to enhance access to justice. Now, you put your finger as ever on an important point: it would cost a lot of money. Do I think in the relatively near future that any government is going to say to my successor, "Lord Chief Justice, just tell me how much you want, and I will send you a cheque." That is not going to happen.

THE RT HON. THE LORD KEEN OF ELIE KC: But as against that, what you can say is that if you invest now, you may make significant savings in the medium term at least.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD KEEN OF ELIE KC: If you implement these. You mentioned Singapore, that system has been going for about four and a half years, I think.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD KEEN OF ELIE KC: And has been very successful.

THE LORD CHIEF JUSTICE: So I understand.

THE RT HON. THE LORD KEEN OF ELIE KC: In fact, the counter party is allowed to go into the system as well, and yet, after that, the result can be reported. You also have the small claims system is in place and the whiplash system, which have been very effective, I believe.

THE LORD CHIEF JUSTICE: Well, very effective in that they help with access to justice, but also these cases are just dealt with much more quickly than using paper and the way it was done in the past.

THE RT HON. THE LORD KEEN OF ELIE KC: If, going forward, we see the further development of commercial contracts being determined on the basis of systems such as blockchain, then the dispute resolution mechanisms are going to have to mirror the way in which these contracts were put together in the first place.

THE LORD CHIEF JUSTICE: Well, they are certainly going to have to develop to react to the new way in which business is being done and, again, as you will know, Lord Keen, we have tried to anticipate this through a number of working groups and producing statements of where those groups think the law sits to encourage international business to understand that the common law is capable of moving swiftly and nimbly, to deal with developments in business practice and technology, to encourage the use of English law clauses in contracts across the world and English jurisdiction [causes?].

THE RT HON. THE LORD KEEN OF ELIE KC: Does the Law Tech Delivery Panels still sit?

THE LORD CHIEF JUSTICE: Yes, I am pretty sure it does. But precisely what it is doing at the moment, I am afraid I do not know.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Can I ask whether you can carry your judges with you? I mean there are two things: judicial attitudes, and the 2022 survey indicated that views were divided as to whether or not some of the resources, IT resources, and so on, the artificial intelligence resources, were acceptable, and there is a question of training as well.

THE LORD CHIEF JUSTICE: Yes.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: I mean, if they are going to use these things, they need to be trained up. Do you have any comment about that?

THE LORD CHIEF JUSTICE: Well, training is absolutely critical if, in any world, something new is introduced, and I mean, looking outside our world, if a business were to introduce a new IT system and it did not train its staff properly, it would go bust fairly quickly, and deservedly so. So this has been part of what we have been trying to achieve in the modernisation programme, and continue to refine, that rather than dumping new products on judges, they are anticipated, they are explained and necessary training is given, and also we have to recognise that within a group of 1,000s of judges there are very differing levels of basic IT skills. You know, it is true, no doubt, in the House of Lords as well. We have some who are absolutely at the cutting edge, and we have others who still struggle with spreadsheets.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Well, we have come pretty well up to 12 o'clock, and I think we really have to release you now to go back to your duties. But thank you very much for finding time to come and see us, and for all the very useful bits of information, advice you have been giving to us. One happy feature of your retirement is that your disqualification will be lifted, and you will be able to come back and speak in the house and I speak for everybody, I am sure, when we hope very much that you will feel able to do that really after a rest, once you have

recovered from your retirement. *[Laughter]* So meantime, it is *adieu* and we look forward to having you back in the house and very soon.

[Multiple participants: "Hear, hear"]

THE LORD CHIEF JUSTICE: Thank you very much, Lord Hope, and I repeat my thanks to the Committee for its interest and its courtesy over the years. I have always thought the label "disqualified" which attaches to serving judges is a little harsh, because should any member of the public look on the House's website they might think that something awful had happened. *[Laughter]* *But* I do look forward to being able to play what I hope will be a useful and active part in the proceedings of the House come the autumn. Thank you.

THE RT HON. THE LORD HOPE OF CRAIGHEAD KT: Thank you very much.

[Ends]