

# CONSTITUTION COMMITTEE

ANNUAL EVIDENCE SESSION WITH THE LADY CHIEF JUSTICE

on

Wednesday, 26<sup>th</sup> February 2025

The Rt Hon Baroness Carr of Walton-on-the-Hill, Lady Chief Justice,  
Judiciary of England and Wales

Chair: The Rt Hon. the Lord Strathclyde CH

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**CHAIR (THE RT HON. THE LORD STRATHCLYDE CH):** I can start by welcoming you all to this meeting of the House of Lords Constitution Committee. Today we are holding our annual evidence session with Lady Chief Justice, Baroness Carr of Walton-on-the-Hill. You are very welcome, thank you for coming along, and we are all looking forward to this session. I think you have got a few words that you might want to say right at the beginning before we start off on our evidence taking session, so please, Lady Carr.

**THE LADY CHIEF JUSTICE:** Well, thank you, Chair, and good morning to everyone, thank you for having me. It is a real pleasure to be here at last. I was in fact due to make my first appearance before this committee on the 5th of June, and then just a few days before that the election was announced, which was rather frustrating because I had been looking forward to it.

I would like to say a few words, they are very brief, certainly under five minutes, but I hope to share a few thoughts on a point of really pressing importance. Much constitutional water has passed under the bridge since last June, and I know that there is enormous constitutional expertise in this room, and I just therefore in that context wanted to say something about the constitutional context in which to examine the funding of the courts and tribunals, and really three points.

First, that it is important to recognise that the rule of law is not just about respecting constitutional boundaries, it is about a properly funded, and at its core lies, a properly funded and so a properly functioning justice system. You could put it another way, the rule of law is not free. HMCTS' 25-26 budget, that is the budget for the justice system, will be broadly around 1% of the health and social care budget, 2% of education and 3% of defence spending. Public funding for justice in England and Wales declined by 22% in real per person terms from 2009-10 to 2022-23 and over the same period overall government spending increased by 10% in real per person terms.

Can I emphasise at the outset that in making the case for proper funding of the justice system I am not in the business of simply asking for more money. The judiciary stands ready to play a full and active part in creating and supporting economic growth and modernisation.

We have really exciting judge-led initiatives in all our jurisdictions: digitisation, including the Online Procedure Rule Committee, listing projects, AI working groups and projects, early resolution courts, automatic referrals to mediations for small tract civil claims, the Criminal and Crown Court Improvement Group and, of course, we stand ready to accept the policy changes in all jurisdictions, including of course crime, that reflect the will of Parliament, subject always to proper resourcing and planning.

The second point: justice is referred to in the fiscal context often as an unprotected department, but in fact the courts and tribunals are protected and they are protected by law. Parliament imposed a statutory duty on the Lord Chancellor no less than three times in five years: the Courts Act 2003, the Constitutional Reform Act 2005, the Tribunal Courts and Enforcement Act 2007, to ensure that there is funding for the efficient and effective support of the courts and tribunals.

Now, I do not believe there has been much discussion about what "efficient and effective" means. What would the 21st century public understand it to mean? Perhaps we may touch on this later. But this statutory duty was relied on heavily by Lord Falconer, a former member of this committee, when the prisons and probation services were being brought under the umbrella of Ministry of Justice in 2007, and when it was suggested that the justice budget might need to be ring-fenced to protect it against the tensions that might arise, the answer was no, we have the statutory duty that I have just referred to. So it is a really important duty.

Thirdly and finally, we all know the link between the rule of law and economic growth. It is well established. We cannot have economic growth without a stable and effective justice system. We know that we have here the second largest legal sector in the world. The legal services revenue

increased from around £30billion in 2013 to £47billion in 23. Net exports of legal services rose by 80% in the past 10 years. We are talking seven, eight billion pounds now and we employ, the legal sector employs, in 2022 alone, just under 370,000 people here. And on this rests our country's reputation as a centre for justice and the rule of law, which is fundamental to our status as one of the world's leading financial centres. So we have got the largest insurance sector in Europe here. Assets under management here are more than £9trillion.

It is not just about big businesses, is it? There is huge economic advantage in resolving disputes quickly, efficiently, and at proportionate cost for everyone, because if family disputes are resolved quickly then the children will be happier, they'll be healthier, they'll be less likely to commit crime, and they are more likely to get jobs, and their parents are likely to be working better and more productively at work. If employment and contract disputes are resolved quickly and at proportionate cost, then businesses can function with confidence and certainty. Crime often gets the headlines, but in fact, to the vast majority of people in England and Wales, it is the other aspects of the justice system that are much more relevant to them. They are going to be affected by probate delays, building neighbour disputes, mortgage problems, insurance claims, problems with special educational need applications, enforcement problems.

So in short, Chair, if I may just briefly conclude? The independent judiciary, the rule of law and an effective, properly resourced justice system are the constitutional pillars underpinning our economy, our democracy and society, and they are no less important to them than the NHS, education, and defence. I hope that provides some constitutional food for thought.

**CHAIR:** Thank you very much, you have made it out extremely clearly, and I think we'll pick up some of those themes during the course of the questions and answers that will arise in the next hour and a half or so. I am going to ask the first question, which is about the independence of the judiciary and the workings of the Constitutional Reform Act 2005. But I particularly want to refer to what has been a recent controversy between you, the Prime Minister, and the leader of the opposition. Without raising anything to do with the case itself, it was really wondering to what extent is there a constitutional issue here which needs to be resolved satisfactorily between you and them? Whether there is a feeling that it is not criticising judges but criticising decisions that have been taken, which of course are part of the momentum for changing an aspect of law, is why were you seemingly so tough on the Prime Minister and the leader of the opposition, and can you just give us your thoughts on that whole episode?

**THE LADY CHIEF JUSTICE:** Yes, certainly. So these remarks were made at my press conference last week, following on from what I said to the media. Perhaps I can do a little better than repeat the thrust of what I said to the media that then led to the questions. I would say at the outset it is really important to understand that no one has ever suggested, and no one is saying that there should not be healthy, robust, open debate both in and outside Parliament, including criticism, if necessary, of judgments. That is fundamental. But the judicial process and judicial independence has to be respected at the same time. That's the fundamental point. So if judgments are wrong, you can appeal them. The judgment that was under discussion then is not the subject of appeal. But if judgments are wrong, there are routes of appeal. If the law is wrong, it is Parliament's prerogative to change it. So appropriate public debate inside and outside Parliament, based on fact, not misconception, is a sign of healthy democracy, it is a really important part of open justice, and anyone who knows me is that my commitment to transparency and open justice within the judiciary is second to none. So I embrace all of that. We must. It is the sign, as I say, of a healthy and open, functioning democracy. However, criticism of a judgment, debating a judgment, is one thing. Inaccurate reporting and the abuse of judges who cannot speak out to defend themselves is another. So the real trigger for my concern here, in the context of the need to respect the judicial process, is, frankly, the dangers that arise out of inaccurate reporting. So, without speaking about any individual cases in any detail, to imply, for example, that a Palestinian family was allowed to settle in this country under the Ukrainian Family Scheme is simply wholly wrong. But, as a result

of that headline and the publicity, without going into details or individuals, there have been extraordinarily serious security threats. We are talking about judges being doorstepped. We have a death threat to a judge. I am obviously not going to identify who that is. We have judges whose families live in fear, whose homes are targeted, who do not know whether to engage with what's going on on social media abuse because, on the one hand they do not want to read it because it is so distressing, on the other hand they want to be alive to whether or not somebody is saying that they are WhatsApping at the same time as standing next to that judge's child on a bus.

So it is really understanding not only the rule of law and the balance to be struck between healthy, robust criticism of judicial decisions, whilst respecting the judicial process, and in a context of being acutely aware of the responsibility that everyone carries, both in and outside Parliament. I described it to the press as a "shared responsibility". We have a shared responsibility. They are immensely powerful, they know that. So I welcome reporting, I welcome criticism, but what I have always asked for from day one is fair, objective, and accurate reporting. So I think that's my point in a nutshell. It is not about closing the debate down. The debate should be wide open, but it is for the courts to decide whether judgments are wrong, and it is absolutely unacceptable, as I must protect my judges and defend them, that they are exposed to the sort of comments and reporting that shatter their lives. They change the way we work on a day-to-day basis now. We are taking steps which I cannot divulge or share on a daily basis in relation to where we do things and how we do things.

**CHAIR:** Well, I think you have put that very well. To what extent do you think there is now a greater understanding with senior parliamentarians, and indeed the Judiciary, on precisely what you have said? In other words, there was a misconception and perhaps some misreporting of what happened, but there was no desire on you to change the constitutional arrangements which remain robust between...

**THE LADY CHIEF JUSTICE:** I do not enjoy having to stick my head above the parapet on these issues, but it is my job and I see it as my duty to stand up for my judges and the rule of law. My relationships with the Lord Chancellor and the Prime Minister on these sorts of issues are extremely constructive, open, and honest. So, when I have the opportunity, I am sure we can discuss these matters, but there's no tension as such. You might think it would be more worrying if there wasn't tension from time to time, but these are matters that can all be addressed in the appropriate way. But it is really important that nobody should think that I am here to cause trouble. It is simply what I consider to be my duty and the discharge of that duty.

**CHAIR:** Yes. Lord Anderson, did you have a supplementary...?

**THE LORD ANDERSON OF IPSWICH KBE KC:** Thank you very much. Good morning. I declare an interest as a member of the Bar of England and Wales. I think, if I may say so, rather an unsuccessful one in your Ladyship's court, but that's by the by.

**THE LADY CHIEF JUSTICE:** *[Laughs]* I remember it well.

**THE LORD ANDERSON OF IPSWICH KBE KC:** I was looking at this issue, in a sense, from the other side of the fence, and I had a look at Erskine May, paragraph 21.23, and that's our parliamentary rule or guide, and what that says is that unless the discussion is based upon a substantive motion, reflections must not be cast in debate upon the conduct of judges of the superior courts of the United Kingdom. It is been ruled over the years that reflections against judges generally are out of order, and that this applies equally to members of either House of Parliament. Indeed, that is stated in 21.23. Then, Erskine May refers to a ruling of the Speaker, 4<sup>th</sup> December 1973, that it can be argued that a judge has made a mistake, that he was wrong and that the reasons for those contentions can be given within certain limits, but reflections on a judge's character or motives cannot be made except on a motion, nor can any charge of a personal nature be made, except on a motion. And I had really two questions: first, does that formulation more or

less encapsulate what you were saying to us or is there something that you think needs to be added, or do you want to expand on the limits which apply?

**THE LADY CHIEF JUSTICE:** Not for the first and not for the last time you have gone into some helpful details, Lord Anderson.

**THE LORD ANDERSON OF IPSWICH KBE KC:** Yes, I hoped you had been notified of the rule, but maybe the message—

**THE LADY CHIEF JUSTICE:** I haven't, but it doesn't matter.

**THE LORD ANDERSON OF IPSWICH KBE KC:** Ah.

**THE LADY CHIEF JUSTICE:** It sounds as if I am a little more liberal than that rule would suggest.

**THE LORD ANDERSON OF IPSWICH KBE KC:** Right.

**THE LADY CHIEF JUSTICE:** But I think that where you capture what I am trying to say is a reference to attacks on judges' conduct. Now, I am sitting on a pile of newspaper articles here about outrageous judicial overreach, "lefty, liberal, outrageous" judges, "crazy" decisions. Those, without a shadow of a doubt, overstepped the mark, because they tread into the conduct. They are personal attacks on judges. So I have absolutely no difficulty with that, and I think I probably do broadly agree with what is there. It is just that I am keen to emphasise that I would not be one to stifle appropriate debate that is well-informed and appropriate. But when it descends to the person, I mean, you know this, Lord Anderson. Judges, literally, they are without defence, apart from Section 3 of the Constitution Act and my presence here, for example.

**THE LORD ANDERSON OF IPSWICH KBE KC:** I should apologise for ambushing you. An attempt was made to notify your office of relevant rule.

**THE LADY CHIEF JUSTICE:** I am sure it was, I am sure it was.

**THE LORD ANDERSON OF IPSWICH KBE KC:** I am sorry, that did not work out.

**THE LADY CHIEF JUSTICE:** I mean I've been looking at the Bill of Rights and things like that.

**THE LORD ANDERSON OF IPSWICH KBE KC:** Yes.

**THE LADY CHIEF JUSTICE:** But I hadn't got on to Erskine. But I will obviously look at that carefully.

**THE LORD ANDERSON OF IPSWICH KBE KC:** It sounds, if I may, interrupt that you may also agree with Sir Stephen Laws, when he wrote in the Daily Express, "Ministers and other parliamentarians need to be able to criticise the law in order to justify modifying it, and that when the law is encapsulated in judgments of the courts, this is bound to involve criticising judicial decisions."

**THE LADY CHIEF JUSTICE:** I completely agree with that.

**THE LORD ANDERSON OF IPSWICH KBE KC:** Yes.

**THE LADY CHIEF JUSTICE:** There is no question there must be the right, and I welcome that, I mean that helps us all. But it is respecting the process, which is that, you know, judgments stand until they are overturned and, fundamentally, as you can tell, because I am now repeating myself,

which is not helpful, it is the inaccuracy. We can all tolerate criticism, cannot we? We do not necessarily agree with it, provided it is accurate. I am often asked what do I hate most, and it is uninformed criticism. Informed criticism, absolutely fine, but uninformed criticism, not only helpful, but as I've been trying to emphasise, dangerous.

**CHAIR:** Lord Beith?

**THE RT HON. THE LORD BEITH:** In this context... you have stressed the importance of moral courage on the part of judges.

**THE LADY CHIEF JUSTICE:** Yes.

**THE RT HON. THE LORD BEITH:** And that's perhaps a concept we haven't heard in this particular context. What did you mean by it? Is it a greater problem than it has previously been and what might you do about it as Lord Chief Justice?

**THE LADY CHIEF JUSTICE:** Thank you. It is a topic very close to my heart, and so I would like to do it for justice if you'd just give me a moment to find my notes. Moral courage is fundamentally a function of judicial integrity, and if you could just give me a moment. *[Brief pause]* And I think the question, Lord Beith, is what am I doing to foster it? Do I think that there is a need to support it because it is dwindling? I think that is what underpins your question. I think in terms of moral courage and it being a function of judicial integrity we are fortified by objective evidence here as to the incorruptibility of the judiciary in England and Wales. A recent survey by the European Network of Councils covering I think 30 European nations showed that the judiciary for the UK are amongst the few who report complete absence of corruption. I think the most important thing in terms of fostering it and talking about it is to lead by example. So it is important to remember that I sit as a judge often, and I hope that I show fearless independence in my own judgments and I do difficult cases that are potentially controversial. That's the first point. The second point really is to show the judges that I have their back, that I am willing to step up to defend them and their work when necessary. I think judges will continue to do their work without fear or favour, as you can imagine. But whatever I can do to boost their confidence and support them in that endeavour, then I will and it is perhaps now more important than ever that I do that, and I think that judges need to feel supported by the executive and the legislature as well, the other two branches of the state. Because, after all, it is the judge's complete integrity that ensures justice for the citizen against the state, and for the state itself in its dealings. You will understand that the reason why foreign parties are so willing to invest in business here and to litigate here is because they can be certain that they will be before a judiciary of absolute integrity that will protect their investment in the case of challenge either way.

**THE RT HON. THE LORD BEITH:** Can I just stop you for a second and say that certainly we've all taken for granted, why is there now a problem, and does it require some extra effort on your part?

**THE LADY CHIEF JUSTICE:** Everything at the moment requires extra effort, *[laughs]* that sounds wrong. Everything requires a lot of effort at the moment. I certainly think that a campaign of social media abuse against judges working in a particular tribunal – you do not need to be the Lady Chief Justice to work this out – risks threatening judicial independence. That is why it is, on top of everything else, a real threat. That is why the rule of law is there, to prevent this happening. So I would not for a moment suggest that any judge here and now is doing anything any differently because they are public servants committed to their oaths to deliver justice without fear or favour.

But can I say it doesn't sometimes worry some of them? What if they decide this, what impact might that have on their family or what's going to be out on social media abuse the next day? And there is a campaign, I think that's recognised at the moment, in some areas. So, to be clear, I am

not suggesting that any judge is doing anything other than decide cases today, here and now, without fear or favour. But the risk is there. That risk has increased, in answer to your question, because, for example, of the febrile social media abuse environment, and so there is, in that sense, a greater need now.

**THE RT HON. THE LORD BEITH:** Yes.

**CHAIR:** Lord Bellamy.

**THE LORD BELLAMY KC:** Thank you, Lord Chairman. Lady, can I just bring up your earlier remarks about inaccurate reporting, which I think was your main problem?

**THE LADY CHIEF JUSTICE:** Yes, yes.

**THE LORD BELLAMY KC:** I've always understood that in the Netherlands, and perhaps in other places, there is something called the press judge.

**THE LADY CHIEF JUSTICE:** Yes.

**THE LORD BELLAMY KC:** Who is a judge whose job it is not to defend a decision, but simply to explain what the decision was, so that everything is done on the basis of accurate facts. Would there be any scope, do you think, or perhaps now some need for perhaps the Judicial Office to have a press aspect to make sure the public understands actually what the case was so as to counteract the inaccurate reporting of the case?

**THE LADY CHIEF JUSTICE:** Well, Lord Bellamy, as ever, you make a very good point, and we are, of course, ahead of the curve with things like press summaries. We have a communications office. Nearly all judgments are put up on the National Archives. I want more money in order to be able to put tribunal judgments and other courts that currently do not have their judgments put up. Judges speak through their judgments, so putting the judgments out there is really important. But your point about simplifying it is spot on. I have the luxury of being able to provide a press summary for all judgments that I deliver because I am not doing ten cases a day, five days a week. In the real world, without extra resources, the normal judge delivering a large number of decisions at high speed under enormous pressure is not going to have time to produce an accurate press summary. Sometimes I have found writing the press summary is more difficult than writing the judgment. Sometimes when you get to writing the press summary, you think, "I am not sure my judgment is going in the right direction because this isn't stacking up as I thought it would." So I totally understand. We do have press judges as such who can talk in neutral terms, who are trained to speak to the media about generic issues, what does this mean, what does a life term mean, etc., etc. But on individual cases it is tricky. Let's be fair, always want to be fair. Some of these cases are factually very complex and legally very complex. So if you look, for example, in the immigration field, you are often making an incredibly important, life-changing decision for a large number of people. You have got a lot of evidence, a lot of detail, and a lot of law. So your short point, I agree, press summaries and to aid understanding. There are, of course, some areas where, however simple and clear you make it, it is still not going to be reported in that way, because there are other agendas. But I do welcome the question and totally agree with you, that the more we can do within the resources we have to simplify and clarify what a decision actually means, the better.

**CHAIR:** Lord Burnett, and then Lady Hamwee and Lord Foulkes.

**THE RT HON. THE LORD BURNETT OF MALDON:** Just to come back to moral courage.

**THE LADY CHIEF JUSTICE:** Yes.

**THE RT HON. THE LORD BURNETT OF MALDON:** I mean, would you agree, Lady Carr, that this is an issue that affects everybody in the judiciary from top to bottom, and there might be an over focus on the higher levels of the judiciary? But at the levels where day-to-day decisions are being made, judges often have to make very difficult decisions, and sometimes decisions which involve accepting risk, and often decisions which are going to be unpopular with some. Your focus has been, for reasons we understand, on the immigration tribunal, but one thinks of the mental health tribunal. One thinks of the family courts, where hundreds of decisions a day are being made concerning children, which can be extremely difficult, and also in the criminal courts, where judges sometimes have to impose sentences that might be seen as very lenient, but for very good reason. And would you agree that these are all examples where the judges have to be absolutely firm and have moral courage to do the right thing?

**THE LADY CHIEF JUSTICE:** I could not agree more, and a good example of the difference between how lucky I am to have the advantage of being able to find time to write a press summary, and the judge sitting in a civil list, I mean, I have lists with me. Sometimes in a civil list, you will get, and, Lord Bellamy, you will know, in a family list, you will get ten, 15 cases in a day. You are in a very small room, and nearly every case is distressing. Even if you are extending time for payment of mortgage arrears, or... you know, it is a stressful environment, you are in tiny rooms, you do not have an usher, you do not have a clerk, and you are making a decision which, as you say, with increasing transparency, carries real risks to yourself. So moral courage has never been more important than before. And I welcome, if I may, the stress on the importance of looking at where the vast bulk of justice is administered, which is, in fact, in the Magistrates' Courts, and in the Civil and Family Justice Courts, and the Tribunals as well, particularly in Mental Health Tribunals and not necessarily immigration at all. So you are absolutely right, and we really need to concentrate and shine a spotlight on them and they will be less supported, less well supported often than others, as it were, in different higher jurisdictions. But they are the ones who really deserve the credit for what they do. It is not easy.

**CHAIR:** Lady Hamwee?

**THE BARONESS HAMWEE:** Thank you. Again, on the independence of the judiciary, but first of all let me declare an interest as a solicitor, though it is a very long time since I practiced, and apologise, because I am going to have to leave very soon and it is nothing personal. The speedy hearings of the prosecutions of rioters following the Southport murders, and whether they were fast tracked at the instigation of the government, and you have spoken about that. But there was a very clear political message coming from the government. I wondered whether you would like to say more about how those speedy prosecutions came about, and amplify or flesh out your comment about the independence of the judiciary in that situation?

**THE LADY CHIEF JUSTICE:** Thank you. So I think you rightly point out, I was quick to point out that these were independent decisions of judges being made entirely in accordance with their own duties for the administration of justice. So I describe the judiciary in this particular time, and what a stressful and dangerous time it was, the judiciary being entirely independent but connected. So there was a lot of entirely appropriate, constitutionally appropriate, working together to make sure that things happened efficiently. But the fundamental point is that under the Sentencing Act 2020, deterrence is one of the fundamental principles of sentencing, one of the aims of sentencing, and I have given a judgment in which I said that the weight to be attached to the principle of deterrence can vary over time. It is a flexible concept, and when you are faced with potential national civil riot, breakdown, disorder, the principle of deterrence was particularly important, for reasons that you will immediately understand. So what the judges were able to do was to prioritise, to decide in accordance with those principles, to prioritise those cases. Now, that did not mean that they were filling unused capacity. It meant that other work got pushed to the one side. But that is an entirely appropriate function, judicial function of a listing process, deciding whether or not to prioritise certain cases in, frankly, what was a time of emergency. So independent, but connected in a sense.



**THE BARONESS HAMWEE:** I do not want to stray where I should not, but the connection, is that the judges deciding that completely independently, aware of the social context, or is there a discussion with government as to whether this is appropriate?

**THE LADY CHIEF JUSTICE:** No, no, no, no discussion with government. What I meant by being connected is making sure we speak with the CPS, the Bar, probation to make sure that we had all the information, all the right people in the room at the same time to progress these cases. I mean the vast majority was short and simple cases because we had the CCTV, that's why we were able... and they were guilty pleas. So these cases could be done very quickly. So what I meant there was very much not discussions with government, far from it. These were entirely independent judicial decisions, but very much joining up in the criminal justice system across the board to make sure that we could get these cases through, and I think everyone has appropriately recognised the extraordinary contribution of the judges who were involved who, going back to one of the topics we started out on, may have had, and continue to have, very real, real-world difficulties as a result of their involvement in those cases.

**THE BARONESS HAMWEE:** Thank you.

**CHAIR:** Lord Foulkes.

**THE LADY CHIEF JUSTICE:** Yes, Lord Foulkes.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** Thank you, Lord Chairman. Can I first of all welcome the fact that the Chief Justice is a woman?

**THE LADY CHIEF JUSTICE:** Oh, thank you.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** That is a step in the right direction, but it is just a first step or one step towards equality and diversity in the judiciary. My concern is not about "lefty lawyers", quite the reverse. My experience is that most judges and magistrates tend to be from a rather privileged background, and then people, men and women from the street, feel they are not getting a fair hearing. Now, what is being done to make sure that the judiciary is diverse, with no disrespect to you or me, you know, to have Wycombe Abbey and Haberdashers' Aske's Boys' Schools represented on the judiciary, is not the most diverse example?

**THE LADY CHIEF JUSTICE:** No. Well, socio-economic diversity is something I spoke about at length when I made my first appearance before the Justice Select Committee. It is a very, very important issue. We are making strides. I mean, if you want to hear me on the diversity stats on women – unfortunately, not your question, but I am very happy to talk. But, I mean, we have more women judges in the tribunals than men now.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** What about black people and people from a poor background?

**THE LADY CHIEF JUSTICE:** Let's talk about socio-economic diversity. One of the real difficulties we have is tracking that and getting the statistical data available to show how we are doing. What I can say is that I am fully committed to, and all sections of the judiciary through... we have diversity and community relation judges, we work tirelessly with schools and universities, we have a very good targeted outreach programme running through the Judicial Diversity Forum and with the Judicial Appointments Commission reaching out to support people. We have mentoring schemes, we have 'You Be the Judge' days. We cannot solve it overnight, it is not easy, but it does need to be done, and I could not agree with you more that the judiciary needs to be as representative as it possibly can be.

We are not making progress with black judges, which you raise, in the way that I would like, for reasons which we are simply unable to work out. We aren't seeing the increase, particularly at the upper levels of the judiciary, but we are a pipeline profession, and this year you may have noticed, for those of you who are enthusiasts, that there were no black silks in the silk list this year, for example. So we have to work with the professions, we have to work... I do not like talking about from the bottom up, but I think we have to work across the board to work out what it is doing, and I am working with Lady Justice Whipple to set up a black judges network. We work with the Black Judges Crown Prosecutors Association, with the Black Solicitors Association. I think we need to listen more to what the problems and hurdles may be. We won't give up, but I think it is a long-term project.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** But could you... maybe you are the best person to do it, the right person to do it, could you not start a new initiative to try and get a more diverse...?

**THE LADY CHIEF JUSTICE:** If somebody can identify a new initiative that we have not thought of that will make a material impact and is deliverable I will be the first to sign up for it.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** Right.

**THE LADY CHIEF JUSTICE:** One of the actual challenges, I feel, is that the market is a bit too crowded. I think we need to make sure we are streamlined in our approaches, we do not overlap, we do not duplicate, so we are consistent in our messaging. So please do not think that there are not initiatives. There are, if not hundreds, then certainly tens of initiatives working in this very area. We have the first black female leader of the chair of the bar this year, Barbara Mills, who I am seeing very soon, she sees a lot of us, we are very excited to work with her to see what we can do. But the reasons for the shortage in numbers is not obvious. If it was obvious and if there was a clear solution, then I promise you we would be adopting it.

**CHAIR:** Lady Carr, I think you answered that question extremely fully. Lady Andrews, just the last one on this.

**THE LADY CHIEF JUSTICE:** Is that code for "too long"? I think that probably is code for too long *[laughs]*.

**THE BARONESS ANDREWS OBE:** Thank you very much. Good morning, Lady Carr, and thank you very much for that superb evidence so far. You began by talking very broadly and holistically about the nature of the resources that you needed, and the lack of resources, and the loss of resources, and you have been talking about a range of things to do with the support of the professionals, support of the judges, the ability of them to feel safe and respond, and now to the recruitment into the judiciary. It is a broad question actually, but to what extent do you think, if there had not been that loss of 22%, or had it been smaller loss even, that some of the issues which you now face could have actually been overcome, prevented, compensated for, actually by better resources differently used?

**THE LADY CHIEF JUSTICE:** Yes, I mean I think the story, and there are some experts in the room I know, the build up to where we are with the prisons crisis and with sentencing is now well known. There have been successive reviews advocating radical changes going back to the old review. If some of those recommendations had been implemented there and then, if there had been investment in prisons, and I won't talk about policies or politics, but clearly we are now a very long way down the road in terms of backlogs, and rowing back gets more difficult by the day. I have spoken recently in front of... was it the Justice Select Committee? It was, about the fact that deferring problems doesn't save money. It actually makes it more expensive. So if you take the

very simple example of the criminal case that cannot be heard, it has to be adjourned because there is not a sitting day, there is not funding for that day. You put it off for two years, ignoring the social loss, ignoring the damage to the quality of justice because memories fade, ignoring the attrition rate, that is to say, complainants and parties falling out because they lose faith in the system. You have got the additional expense of everybody working the case up again, the lawyers starting from scratch, et cetera, et cetera. So pushing everything into the long grass is absolutely not the answer and, of course, investment, consistent investment, proper investment, over the previous decades would not... we would not be finding ourselves in this position. You mentioned, if I may also, problems with morale and recruitment and we haven't talked a lot about morale, at least not yet. But the security problems that I have been raising are, of course, really relevant to recruitment, particularly, if I may say so, going back to Lord Burnett's point, at the District Bench level where we badly need judges, and Circuit Bench level as well, particularly in London, the Southeast and in the employment tribunals. So it all has a knock-on effect.

**CHAIR:** We are going to move on. We have spent a lot of time on that question and come up with lots of different issues, but I am going to call upon Lady Laing to ask her question.

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** Thank you, Lord Chairman. Turning, Lady Chief Justice, to the question of the relationship between the judiciary and government, and the challenges of the most recent concordat process, which has been much commented on, can I take you to the Post Office Horizon System—

**THE LADY CHIEF JUSTICE:** Yes, yes.

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** —Offences Act 2024? You have stated that that created a situation where, I quote, “Constitutional boundaries were at risk of being crossed or blurred.” I have to say that, this is not really declaring an interest, Lord Chairman, but I was in the position then as Deputy Speaker of the House of Commons chairing that.

**LADY CHIEF JUSTICE:** I remember, I remember.

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** I sat there for many an hour listening to it and I felt uncomfortable about the constitutional position that was being created, So perhaps that is declaring an interest, Lord Chairman, but it would be very interesting to hear what you have to say in retrospect about that. I believe that the government had the best intentions, but how does it affect the constitutional settlement?

**LADY CHIEF JUSTICE:** Thank you. I am sure we all felt desperate at the miscarriages of justice.

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** Indeed.

**LADY CHIEF JUSTICE:** So the spirit and the motion behind everything that happened, everybody could always understand that but I think Parliament accepted in its final debates with you and the chair, that the Act did breach the rule of law. It was openly accepted that it was inconsistent with the rule of law, but the position taken was that these were exceptional circumstances that justified taking that exceptional step and that this should not set a precedent. On the latter point, of course, I heartily concur, but the lesson to be learned is a very short and a very simple one. There must be comprehensive engagement with the serving judiciary at the earliest opportunity before there is any commitment to legislation of that nature. It is not for the judiciary to comment on policy, but we can comment on practical options and consequences. The Bill was passed without anybody having any evidence or any full engagement with any understanding of what precisely the judiciary could have managed without legislation.

I read comments from certain members to the effect that there was some disinclination to rely on retired judges, for example. I have no idea where that came from, it was not accurate. We were dealing with appeal cases within days. I sat on an appeal in January 2023, and we disposed of the matter, I think, within a week. So judges and courts, as many in this room will know, are very well experienced at dealing with a large number of high-volume cases, we had a good system for triaging, we had good connections with the defence barristers, we had good connections with the prosecutors and that is my answer to your question, and I welcome the question. That is the single takeaway, please. There must be full, early engagement with the serving judiciary before there is public commitment. So there was a public commitment to legislation very, very quickly, certainly in January itself, and once that commitment was made... *[Nods]*.

**THE RT HON. THE BARONESS LAING OF ELDELSLIE DBE:** Yes. Further to that, I fully appreciate what you are saying, you introduced your remarks by stating very clearly that this was an exception, that these were exceptional circumstances, and that it didn't create a precedent. It's always worried me that there will be people who say because something has been done once creates a precedent. Erskine May keeps on saying this over and over again. This judgment was made once, not your kind of judgment, our kind of judgment, was made once, and therefore that is now the rule.

**LADY CHIEF JUSTICE:** You are completely right, by definition, without being over loyally, it is a precedent.

**CHAIR:** Yes.

**LADY CHIEF JUSTICE:** It is something that has gone before, full stop. Therefore, it is a precedent. There have been many brilliant articles written, a particularly good one, if I may say so, by Sir Ken Macdonald, the former Director of Public Prosecutions, just explaining this. This is what distinguishes democracies from others. Once Parliament decides which particular group of people is sympathetic, and of course here everybody had the utmost sympathy with the sub-postmasters, but once it is for Parliament to decide who is a sympathetic group deserving of particular special treatment and not, then that is very dangerous territory, constitutionally very dangerous territory. So, it is a precedent, and that is one of the aspects that I understand concerns this committee.

**CHAIR:** Thank you. Lord Waldegrave, I think you had a question at this point?

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** I wholly agree with you, Lady Carr, on that matter, and I think that it was a very dangerous precedent which has now been set. Now out there, outside the Westminster bubble, there is quite a lot of talk about the conflict between judges and politicians. Are judges moving into territory that politicians should be legitimately in control of, and vice versa? There was one the other way, where we blurred the... I am interested in whether you think that the modern habit, which I deplore, like a lot of modern habits, of Parliament trying to bind its successor by putting policy issues into law, environmental targets, a whole range of things, now, they cannot constitutionally bind their successors, so they sort of half-try by saying this is a law. This seems to me to have the danger, and I would be interested in your comment on this, of making a whole range of government policy justiciable in just the sort of way which will inevitably put the judges into the territory of having to make judgments about things other people will say are quite justifiably political.

**LADY CHIEF JUSTICE:** Yes.

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** Do you have any views about this?

**LADY CHIEF JUSTICE:** Yes, you are absolutely right. Sometimes the subject matter before a judge will be politically controversial, but to be very clear, judges do not deal in politics. They find the facts on the evidence before them, and then they apply the law as it stands to them, but the optics, I think, is what you are driving at, and this goes back to why judges need to be defended and why there needs to be accurate reporting. They are not, in fact, being political, they are not, in fact, being controversial, they are applying the law as they see it to the best of their ability.

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** It is a little more than optics. I am trying to get you to criticise the politicians—

**LADY CHIEF JUSTICE:** Well, you are not going to succeed in that.

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** —in the way that I think many of us thought that was a bad precedent set over the infected blood victims, but making policy issues justiciable deliberately in order to try and bind your successes seems to me to run the risk of putting judges into the territory where the optics are going to be horrible for them, whatever they do.

**LADY CHIEF JUSTICE:** Yes. I think all I can say in response, appropriately, is that it is about promoting a better understanding of how the courts work and what judges are doing and the fair and accurate reporting point, but you can see it every day at the moment. Judges are being accused of being politically controversial and they are just not, they are doing their jobs.

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** There is an argument put forward by, for example, the Attorney General that there are two sort of concepts of law, I apologise, unlike all these great people, not for being trained in the law, but he calls it a thick concept of law and a thin concept of law, and he says the thin concept of law where judges just carry out the law as passed by Parliament and have no further point in developing it is pretty anaemic. He does not care for that, and he argues for a thicker interpretation of law. Is that a distinction that you recognise?

**LADY CHIEF JUSTICE:** No, I have read some of that, and it is not a distinction that I have thought about in any great depth, I have to say.

**THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL:** Yes.

**CHAIR:** Thank you. Lord Griffiths?

**THE LORD GRIFFITHS OF BURRY PORT:** Yes, it is a delight to listen to you, and as somebody who for most of his life has been neither a politician and certainly not a lawyer, but I am active at the moment as a member of the delegation from this Parliament to the Council of Europe, and I do sit on its Migration Committee, and transparency, the rule of law and immigration are words that have appeared in the conversation thus far, and that gives me the courage to ask a question about it. It is simply that we had three Acts of Parliament in the last Parliament that related to immigration. All of them were contentious and fiercely debated on the floor of the House.

**LADY CHIEF JUSTICE:** So Rwanda you are talking about?

**THE LORD GRIFFITHS OF BURRY PORT:** The Rwanda was the last one, illegal immigration and borders, the three of them, yes, and I do not know how you can help someone like me, who is none of the things that I have just said, to get his mind to engage with the processes that yield certain outcomes. When we debate migration in Strasbourg, we are constantly, well we have always on the Migration Committee, a permanent presence of a member of the Commission for Human Rights and for Refugees, so we always get points of law as perceived from that angle before us as we debate the issues of the day. When we came here to debate, I do understand the convention that governments take legal advice and are not obliged to disclose the legal advice, but it makes it

difficult for me in this sense. In Strasbourg, I hear very clearly enunciated, for example, Article 31 of a certain law about countries of origin and the rest of it, and I hear the Strasbourg view of it supported by very eminent members of the legal profession who sit on our benches, but the government, arguing that the rule of law is really sort of being targeted and undermined at certain points, but then the government sits behind the advice that it has received.

Fair enough if that is the convention, but it would help me to know the processes which create that outcome to allow me to judge between what is being put forward as consistent with the rule of law in this context and as a quite different point of view being argued in Strasbourg about what constitutes the rule of law, and they are diametrically opposed, and if those are the facts, and you have spoken again and again about the role of the judges to put the facts out, and if they are considered to be facts here, and considered to be facts here, what help can be given to the intelligent layperson, I exalt myself to that description, the intelligent layperson to make a judgment himself between the two opinions in respect to the way they play out against the expectations for us living in a country that is ruled by law.

**LADY CHIEF JUSTICE:** Well, if I may start, My Lord, by saying I think you would make a very good lawyer. The short answer is I think that the average judge sitting in the immigration tribunal will not have the time or resource to sit back and ask him or herself some of these questions. It will be a question of when we get the legislation coming in as you have identified, we have extensive training, so all the tribunal judges got trained for the Rwanda legislation that is no longer going through, and there will be explanatory notes, there will be training materials, and there will be judgments from Strasbourg and domestic authorities that will illuminate the right approach to be taken, but I do not think that there is an easy answer as to how you educate the non-lawyer on the street, as to how any tensions between the two opposing opinions. We have our laws, we apply them, finding facts is... you have got the standard of proof, the balance of probabilities, findings will be made, the evidence, I think that is quite accessible.

The more difficult areas and where I think the questions come in, where there is obviously, as ever, room for debate is where to strike, for example, an Article 8 balance, the competing considerations, and there is a balancing exercise to carry out, and the rule of law is often about law, not discretion. That was certainly one of Lord Bingham's eight principles, but there are obviously, for example, in an Article 8 balancing exercise, there are judgments to be made as to where the right balance lies, but it's not easy. I mean, I have a whole extra box in my head about what we need to make the rule of law more transparent, which doesn't answer your question in the European context that you are describing, but, in fact, the Chief Justice of New South Wales just sent me a lecture this morning that he gave at the opening of the term yesterday, speaking to one of my themes, is let us stop talking about the rule of law, let's try and explain what that actually means to the normal person. We all say it, it will provide and produce a different definition from each and every one of us around this room, and I think a step towards explaining what we're talking about to non-lawyers, the people who really matter, we want people to understand what to do, is to move away from those magic four words that we know, the rule of law, yes, four words, that we know what they mean to us, but to make it more concrete and accessible, and I think that's something that, again, we have a shared responsibility to work on. I think the judiciary has a responsibility and I think Parliament does as well.

**THE LORD GRIFFITHS OF BURRY PORT:** May I just follow up on that? If I felt certain that the kind of balancing exercise you have referred to had taken place and that considering everything what is before us is a responsible place to be, I would be content, I think, but I really do think that the political pressure to achieve the balance, well, not the balance, but to achieve a solution on this side of the argument rather than that side of the argument does need to be challenged by the legal profession itself. That can easily be perceived as having been put at the mercy of people who, for reasons of politics in terms of controlling immigration or whatever it is, have pushed for an outcome that is on one side of the case. Now, inevitably, you are going to have those complicated situations.

I would like to feel clear that when a government putting forward legislation of that kind says it is doing it and is respecting the rule of law, I would want to be convinced that that is in fact, the case. As it is stood, I have to confess, I felt it wasn't the case again and again and again and I also felt that there were very properly trained lawyers putting the government point of view through those debates, one or two of them who resigned because they did not feel able to continue to put some of those cases. It is very complicated.

**LADY CHIEF JUSTICE:** My sense, listening to your very eloquent remarks, is that these are probably problems that the judiciary cannot engage with. I think we just can't get involved in the politics or the policies. Whether the advocates are putting a particular case forward for whatever reason may be a different thing, but we really do not think about—

**THE LORD GRIFFITHS OF BURRY PORT:** I understand.

**LADY CHIEF JUSTICE:** —what the political pressures may be. We try and just focus on what the legislation says. Of course, there can be challenges to legislation, legislation can be overturned by Parliament, but we focus on the here and now and what the words of the statute say. We apply normal principles of statutory construction, not in a vacuum, but we really do not think about politics.

**THE LORD GRIFFITHS OF BURRY PORT:** I understand that and I am grateful for having allowed me to make my maiden speech.

**LADY CHIEF JUSTICE:** Oh, well, congratulations.

**CHAIR:** Thank you, Lord Griffiths.

**LADY CHIEF JUSTICE:** I was hoping to spend a bit of time on Wales, but I do not think I am going to be allowed to.

**CHAIR:** We are about to move to the question of one judiciary.

**LADY CHIEF JUSTICE:** Oh, right.

**CHAIR:** I ask Lord Murphy if he would like to ask his question.

**THE RT HON. THE LORD MURPHY OF TORFAEN:** Thank you very much indeed. I hope that the committee does not think Wales has dominated in the last 10 or 15 minutes. Lady Carr, the last 25 years in Wales has produced a huge change in the use and attitude towards the Welsh language of course, and I note that your own report recently was produced in Welsh, and there always has been some pressure with regard to the court proceedings being held in Wales, partly because people think that is a matter of principle, I do not necessarily share that view, but people believe that, but more significantly, in the north and west of the country, where Welsh is the first language, people are more comfortable in speaking in that language, and therefore judicial proceedings would be more effective if they were held with the medium of Welsh. There is a problem, of course, in getting Welsh-speaking judges, and I note that, for example, there was an employment judge vacancy in Wales recently, there were 20 applicants, none of whom could speak Welsh. That's okay from where I come from in south-east Wales, but it wouldn't necessarily be the case in Anglesey, and with an employment judge, obviously, you are dealing with people very often whose first language would be Welsh, so I would be grateful for your comments on that.

More generally though there has been quite a significant pressure from certain quarters over the last ten years or more for a Welsh judiciary. Again, I don't necessarily share that view, but it is an issue. What I do believe is the case is that because now that the Senedd has primary law-

making powers, it means there's now, and indeed before that was secondary legislation, there are, of course, or there is a body of Welsh devolved law which has built up, which applies only in Wales, and does that mean, for example, there have to be special arrangements for certain proceedings to be held in Wales, or do we, in fact, move towards the Senedd, more and more towards a separate Welsh judiciary. Purely uncontroversial.

**THE LADY CHIEF JUSTICE:** Totally uncontroversial. Lots and lots in that question, I will try and cover the ground but can I say at the outset obviously I cannot possibly comment on policy issues surrounding devolution and the like. But I will then row back and say I have just come from Wales. I had a very, very constructive meeting with the First Minister, who very generously met with me for an hour or so, and also the Counsel General, who I have now seen on several occasions. I had a parliamentary reception with the clerks to the Senedd and I actually had a very good meeting, a full hour, with the Speaker of the Senedd, and I am learning Welsh. I am not doing as well as I might, but I am getting there. I am going to answer your question, which I think can conveniently be split into two parts. The first is Welsh language and then the second is Welsh judges and law.

**RT HON LORD MURPHY OF TORFAEN:** Yes.

**THE LADY CHIEF JUSTICE:** So the Welsh language, of course, now has official and equal status with the English language in the courts and tribunals of England and Wales. The overriding objective, that is one of our primary civil procedure rules, now explicitly draws attention to the official status of the language and imposes an obligation on all parties to assist the court when using it. We have actually a dedicated Welsh Language unit, as you know I think, in Wales, and we have a Welsh Language stream with a Welsh Language Committee, all of which are very active. So if parties need to, or indeed want to, be heard and seen in Welsh, then that will be facilitated in Wales. I am acutely aware, having now visited quite a large section of Wales – from Anglesey to Cardiff, to Swansea to Newport, to Haverfordwest and St David's and going up to Bangor in October this year – but there are areas where people do not actually speak English.

So it is really important and I hope I demonstrated that commitment to the Welsh language through, for example, the publication of my annual report in Welsh for the first time and also a lot of my messaging now... it means I have to produce the messaging much earlier than I would like because there has to be time for translation, which puts pressure on me sometimes, but to make sure that many of my messages are now going up bilingually. I also have a 'phone a friend' or two, in Wales, when I want to say something in Welsh and I do not know how to, and she is a wonderful judge who helps me out on it. So the importance of Welsh is very much in my mind.

We have an awful lot of work going on. We have a Wales Training Committee, we have a Council of Wales, which is a sub-committee of the Judges Council, where Lord Lloyd Jones sits and all levels of judges within Wales are represented. I chair that committee regularly and my next meeting there with them is next week.

Look, post devolution, of course, there have been, particularly in education, planning, social services and residential tenancies, new legislation under the devolved powers. But there is only one law of England and Wales and I recognise there is often thought to be a paradox between an English court ruling on the legality or interpretation of a piece of Welsh law. But actually, I like to think without getting involved in policy matters at all, that you should all be very reassured that the courts and tribunals in Wales are really well looked after. We have judges sitting in both England and Wales, we have strong leadership through high court judges who are presiders of Wales and I think that Wales has, in many ways, the double benefit of having access to the entire English judiciary as well as the wonderful entire Welsh judiciary, but bespoke training... so there is bespoke training on Welsh legislation. So on all of the new legislation, there are discrete training courses within the judicial college to make sure that everybody who is hearing cases that relate to those legislations are properly trained to do it. We have got representatives from Wales on Welsh law on



our procedural committees, on our civil and family justice councils, and in fact the civil justice council, Lord Burnett will be pleased to hear, had its first meeting in Cardiff last October.

So we are going full steam ahead. I believe and hope that I am discharging my duties as Lady Chief Justice of Wales as well as England, and I know there is active debate about devolution – that is not for me to enter into – but we have been making huge strides in putting Wales to the fore and I am certainly very grateful for the exceptionally warm welcomes that I receive in Wales. I have had a tremendous time and I have roots in Wales that I will not go into now but I am happy to discuss in a private session... it involves cricket.

**RT HON. THE LORD MURPHY OF TORFAEN:** Thank you very much indeed, or should I say, “Diolch”?

**THE LADY CHIEF JUSTICE:** Diolch.

**CHAIR:** Lord Burnett.

**THE RT HON. THE LORD BURNETT OF MALDON:** Yes, could I widen the question to the topic of one judiciary and declare an interest as having spent five years developing this policy with successive Lord Chancellors. This of course is a project to bring the judiciaries of the tribunals and the courts closer together. It has been a long road but it has been uncontroversial politically so far and received the approbation of the last government, which issued a consultation toward the end of its life, and like so much else, the general election has resulted in a at least delay. I wonder if you could tell us in a few words what the One Judiciary Project hopes to achieve. Secondly, what progress is being made towards the legislative change that is necessary to achieve it.

**THE LADY CHIEF JUSTICE:** Thank you. As you say, My Lord, one judiciary has been long in the making. I think it predated your term and you took it over and I am trying to continue the work of yourself and my predecessors before you.

There are two aspects to one judiciary, as I see it. One is the drive for greater efficiency and better working practices, and I will explain what I mean by that in a moment. The second is a cultural aspect, a holistic desire to bring all parts of the judiciary – magistrates, coroners, tribunal judges, court judges – all together.

In terms of the practical sides of it, it is about achieving greater consistency between the working practices of the courts and tribunals, respecting differences but making it simpler, easier to understand and more efficient. Within that, I embrace learning from each other. The courts can learn from some good ideas that the tribunals have and the tribunals can learn from some good ideas that the courts have.

A good example is the virtual regions. The tribunals have been running virtual regions where work that cannot be dealt with by a judge in a particular centre can put the work up in the virtual region and another judge with capacity can pick it up. The courts have adopted that practice very successfully. That is a very good example of how much we can learn from the tribunals. It is also about cross-deployment, making better, more efficient use of judges so that they can sit in both courts and tribunals. If you are sitting in a property chamber, you may be very useful in a possession list. If you are sitting in a special educational needs tribunal, you may be very useful in a family case. So there is lots of scope for cross-deployment. It is also good for judges to have the opportunity. It is good for morale. It is good for judicial progression to be able to work in different jurisdictions. There is also something about achieving an alignment in terms and conditions. Particularly when it comes to the civil jurisdiction, there is an over-reliance on fee pay. That is to say, not full-time judges. That is all part of the work.

That is the practical side of it at a canter. The cultural side of it is about making everybody feel involved. Outside the courtroom, I like to think we are all equal. Outside the tribunal hearing room, we are all equal. We work by definition in our work in a very hierarchical way, but around a committee room, we all work together and can learn from each other. An inclusive culture that brings tribunals into the court for a cup of tea or a shared lunch together, brings the magistrates in, can only be a good thing. In difficult times, sometimes dark times, a small step can make a big difference. It is also about promoting diversity and inclusion in the courts. Diversity in the tribunals is significantly better than it is in the courts, both in terms of the female-male gender, socioeconomically and in terms of ethnicity. So that is something we can benefit from.

The second part of your question; it has taken a very long time and we have not got there yet. As you rightly say, My Lord, this is a piece of apolitical legislation upon which there has been consultation. The previous government supported it. I know that the Lord Chancellor supports it. She has offered her reassurance that she remains committed to delivering this really important reform. It is a matter of significant disappointment to me that, in what I accept was a very busy legislative agenda, nevertheless what the judiciary has been asking for for so long to improve and deliver a better justice system did not find its way onto the books. I am pressing hard, and I believe I have the Lord Chancellor's support on this, to get the issue in for the next slot, but it is a challenge and a frustrating one. We do not have all the levers. We do need this to go through.

We, the judges, understand what we need to work better in terms of delivering a service and if ever there were a pocket or an area where you only have to read the newspapers this morning to see fresh legislation coming in, the tribunals are front and centre of a lot of the new work coming in. For us to be asked for more and more without support, for example, for some uncontroversial legislation is disappointing.

On One Judiciary, though, My Lord, because I have not seen you for a while, I do not want you to think that we are just standing still. Despite the fact that we do not have the legislation that we want, we are doing an awful lot of work with a new flexible deployment strategy. We are now consulting on new working practices in the tribunals. We are streamlining governance structures. We have just appointed new circuit liaison presidents in the tribunals. We have just delivered a joint judicial attitudes survey involving coroners. We have refreshed intranet pages. So we are progressing it. We are not standing still, but we do need the support and commitment, actually, of the government to get this through.

**CHAIR:** Thank you very much. I would now like to move on to backlog and Lady Andrews has got a question.

**THE BARONESS ANDREWS OBE:** Thank you, Lord Chair. May I start by just saying, “Llongyfarchiadau, dach chi’n dysgu Cymraeg,” congratulations on learning one of the world’s most difficult languages in addition—

**THE LADY CHIEF JUSTICE:** It is. As a linguist, I can tell you, it is. Anyway, diolch.

**THE BARONESS ANDREWS OBE:** —In addition to your many other challenges, and to go back to yet another and very much a sharp-end challenge, which you have already referred to, which is the backlog, which is probably what, if you ask most people what they knew about the judicial system and how they had experienced it, it would be about how the courts work or are not working on their behalf. Do you think there is a point where the failure of the system expressed through the backlog becomes a real threat, actually, to the constitutional principle of access to justice? Have we reached that point, do you think? Are we likely to reach that point? What will stop us getting to that point? What are the realistic options or the sequence of decisions regarding resources or whatever, which is necessary? Given that the Leveson Review is under way, could you share with

us what steps you think are realistic, actually, and what the outcomes are likely to be, say, over three to five years?

**THE LADY CHIEF JUSTICE:** So that nobody behind me panics, I am not going to predict what anybody is going to say in the Leveson Review or, indeed, the Gauke Review, those two independent reviews that are going to report during the course of this year. However, I will be able, I hope to answer much of your questions.

As for a tipping point, I do not think I could identify a particular point or trigger when you can say, here is the number, here is the period of delay that means there is no longer access to justice in accordance with constitutional principle. I think this is a bit of an art, not a science but justice delayed is justice denied. It is glib, but it is really apposite. I will focus on crime, because I think that is the focus of your question, because you have mentioned the Leveson Review, but I would not want to go and talk about crime before flagging the serious delays in all jurisdictions.

In employment tribunal cases, we have hearings being listed in 2027. Family public law cases in London and the south-east taking 55 weeks against the statutory target of 26. We have small claims tracks in civil. Those actually very rarely go to trial, but when they do go to trial, they are coming on about a year away from listing. We can all make value judgments as to whether or not we think any of those periods are consistent with what you believe to be the constitutional principle of access to justice.

Let us turn to crime. We know that we now have criminal cases being listed as far away as 2028. I think that the judiciary and government do not disagree on the fact that radical change is needed in crime. As I say, it is not for me to predict what changes Parliament will wish to implement. I would repeat that we will be ready to implement, subject to proper modelling, planning and resources. I have been at pains to emphasise that I cannot predict, but what I can see is what options there might be. I find it difficult to see any option in any sphere that comes at no cost. It is an invest to save situation. We are so down, we are so far... the numbers, backlogs in crime will be well above 73,000 now in the Crown Court. We are over 333,000 open caseload in the Magistrates' Court.

So radical change will be needed, and obviously that is what the Lord Chancellor is looking at. We are engaging, I should add, in terms of providing practical information and feedback to both David Gauke's review and also to Sir Brian Leveson's review. We have a judicial response group, we meet regularly, and of course Sir Brian is also going out and about making his own inquiries, working out what options there might be.

In terms of what solutions there may be and what we are doing, My Lord, Lord Burnett, in the COVID crisis set up something called the Crown Court Improvement Group. That has now been expanded to be the Criminal Courts Improvement Group, so we are now embracing the magistrates in the work that this multi-agency cross-party group does. We have got prosecutors, we have got defence advocates, we have got solicitors, we have got the Bar and judges, of course, all in one room looking at initiatives to try and move forward and carry on working to reduce these backlogs, pending radical change.

By way of example, we have now local problem-solving groups, we have case coordinators, we have a pilot going on with the CPS for case coordinators. Lord Justice Edis, the former senior presiding judge, carried out a surge on rape cases over two years old, so that they were all disposed of, I think, by the end of last summer. We also announced and published yesterday, I believe, a magnificent piece of work by one of our Crown Court judges, His Honour Judge Martin Edmunds KC, a massive piece of work on listing to improve a more unified, consistent listing practice in the Crown Courts. He makes 48 sometimes quite far-reaching recommendations.

So we are doing on the ground everything we can, pending radical change. Of course, I do not have all the levers. The Crown Court judges have been working their socks off. When I go around and I visit the circuits, the lists that some of the judges are coping with are quite extraordinary. They are, frankly, like nothing I have ever seen in my time as a serving judge. You have Crown Court judges doing four sentences before the court day starts, running two trials side by side, doing three sentences after, whilst managing two juries and all the rest of it. It is staggering what they are doing.

I am pressing, as you would imagine, for the ability to sit to maximum capacity in the Crown Courts. You might think that goes without saying. Whether we are going to be able to make... it does feel that we are running up a down escalator, but every case matters. We cannot, even sitting to maximum capacity at the moment, diminish the backlogs, but we still have to do everything that we can. We must be able to sit to maximum capacity. We need to see what radical changes are being proposed during the course of the year, how and over what time frame they can be implemented, and whether or not, as we would all like to do, we start looking away from the fire brigading, forward to the town planning, what a future judiciary looks like in crime. We need more judges. We need more courts, do we need more resources... to get through this extraordinarily unprecedented level of backlogs.

**THE BARONESS ANDREWS OBE:** Thank you so much. May I follow up on that very specifically? The question that is nagging away at me is that you talk about the absence of levers. Some of the things you have been telling us about have been initiatives by individual judges, local good practice, things happening on the ground, which might be or might not be scalable up. One question is, can that be systemic improvement eventually? Secondly, things like the listing initiative. To whom would that recommendation be made and who could act on that and would that be a systemic change? Thirdly, when you talk about... it is this business of what levers do you have to create systemic change? Finally, if you were able to achieve maximum capacity, what would it look like? What difference would it make?

**THE LADY CHIEF JUSTICE:** So could some of these ideas be scaled up? Certainly. One of the important things, and there are experts in the room, that it's quite nuanced to understand, is that there are regional variations, sometimes reflecting better or worse practice, but also sometimes simply the product of the areas and the support around it. So it's not a one-size-fits-all solution sometimes, but there are ideas that we can scale up, and perhaps the case coordinator is a good example, and that is a pilot that we could roll out nationwide.

Listing, how does this work, and how would the recommendations go forward? So, under the Constitutional Reform Act 2005, listing is a judicial function. So Judge Edmunds' report was a report to me, and it will now... what I am asking to happen is that it goes to the Criminal Courts Improvement Group, and it will then go to the Criminal Procedure Rules Committee, and it will then be for me to sign off. So it's in my camp, so to speak. In terms of what levers I have, I take every opportunity I can to see the Lord Chancellor. I see the Prime Minister from time to time, and obviously other departments and agencies, and I make the case that I can. I hope as fairly and objectively, I understand the difficult fiscal environment. But I make the case that I can, and I communicate and share information as and when I can. And being willing, being willing to engage, it is nothing short of humbling when one goes and sees the judges with their lists, still ready to go and produce a 120, 90 page report on listing, on top of everything else, and they are still there for me, and ready to engage and help in a truly remarkable way. I think the final question was if I could have it all, what could I do? *[Laughs]* I haven't got a magic wand. You could say if we opened all the courts up to all with hundreds of more judges, what could we do? But I think we do need to town plan, and we do need to model, and we need to get through, frankly, what has been lurching from one crisis to another and get to a situation, a stable situation, where we are allowed to sit to maximum capacity and where we can then settle down, armed with the outcomes of the reviews and their implementation, and see what the future might look like.

**CHAIR:** Okay, Lord Bellamy?

**THE LORD BELLAMY KC:** Thank you, Lord Chairman. Lady Carr, could I just take up your point about maximum capacity, and in particular on the question of apparent restrictions on sitting days? Over-simplifying, one might think perhaps that the court system has got fixed costs of buildings, of judges, of staff, of IT systems, and that an extra sitting day is, in effect, a marginal cost of some extra expenses. So I am wondering if you have had the opportunity or have been given a detailed cost analysis distinguishing, as it were, between fixed and marginal costs, and what justifications are put forward, from a costs point of view, on the restrictions on sitting days. And in relation to that, assuming that there may be, or may not be, I don't know, some justifications in terms of marginal costs, do the calculations take into account the other side of the balance sheet, which you have yourself already mentioned, which are the costs of the external delays, the external costs in terms of effects on victims, on witnesses, on wasted trial preparation, and the other factors that you mentioned? I wonder if you could just expand a little bit on this area.

**THE LADY CHIEF JUSTICE:** Thank you, My Lord. The answer is I am not aware of any cost analysis that looks at the cost of having a court available, lights available, a jury available, staff available, and the cost is actually the £900 or £1,000, I do not know what a recorder fee is, the cost of a judge, an extra judge to come in that day.

**THE LORD BELLAMY KC:** Yes.

**THE LADY CHIEF JUSTICE:** That would be very valuable information. How you measure the social attrition, the cost to justice and all the rest of it is a little more intangible, but there will be other things that could be done, and I welcome your question and indeed the thrust of your analysis. I think it does lead into another aspect that you may be nudging at, which is whether or not the concept of a sitting day is fit for purpose anymore. So there has been debate about this, so to allocate funds by reference to a court sitting day, it's a very blunt tool and I think the Lord Chancellor and I agree that it is not one that really works. There are a number of reasons for that. It's basically crude, it's been used for a long time, but there are a number of problems with it. First of all, there's no single definition of what a sitting day is for HMCTS purposes. It has not been applied consistently across England and Wales. Fundamentally, and you may think astonishingly, it does not take account of judicial box work and, increasingly, as we try and keep more and more civil and family work out of the courts, box work is ever more important. It doesn't take account of discharge of other judicial responsibilities, so judges now train other judges, that is incredibly important to maintain quality and make sure there is judicial input. There are all sorts of leadership responsibilities that judges have to do. Judges assist the Judicial Appointments Commission to sit on panels selecting judges. So all sorts of extra work that is not factored into the sitting day metric, nor does the sitting day metric take account of when judges sit in other jurisdictions that are not their primary one. So lots of problems with the sitting day metric, and I think the Lord Chancellor and I agree that we need to look at that. But no, I agree, I agree that the questions you ask are the right ones.

**THE LORD BELLAMY KC:** It would appear from your answer that a detailed scrutiny of the approach to restrictions on sitting days is somewhat overdue.

**THE LADY CHIEF JUSTICE:** Yes.

**CHAIR:** All right, thank you very much indeed. Just before we wrap up, there is another question about the Transparency and Open Justice Board, and you said that the greatest threat to open justice comes from careless, sometimes inadvertent failures to protect its ideals. Can you just explain what you meant by this and can you give us some examples?

**THE LADY CHIEF JUSTICE:** Thank you. So this is about threats to open justice, not threats to constitutional boundaries as such, and so what I was talking about was careless, inadvertent lapses, for example, in publishing a list that goes out to the media containing inaccurate or partial information. I am talking about slips in providing core documents that external parties are entitled to, failure to deal promptly with requests by the media. What I was, Lord Chair, trying to explain, was my fundamental ambition to bring the need for transparency into the heart of the justice system. So it is not a bolt on. If you're a very busy judge, you have got a very complicated case and you get a late request with a complicated reporting restriction in place, but a late request from the media to do something, and it is hard and it is seen as an addition, and I want it to move from being a bolt on or an addition to being something that is front and centre of everything that judges do and to understand the importance of open justice, and that is what the Transparency and Open Justice Board is driving at. So we are about to pilot in the Court of Appeal Civil Division a new system for giving parties immediate access to core documents online.

So what I was trying to say was these are just careless slips by overworked staff and overworked judges that do affect access to justice and open justice, and trying to bring about a shift in culture so that we understand open justice is not an optional extra, but a fundamental core part of the justice system.

**CHAIR:** Well, thank you very much. We are going to end the public session soon, but Lord Anderson has a question.

**THE LORD ANDERSON OF IPSWICH KBE KC:** I am very grateful, Lord Chairman. You mentioned morale, and you also mentioned the latest Judicial Attitude Survey that I think was published on Monday.

**THE LADY CHIEF JUSTICE:** Yes.

**THE LORD ANDERSON OF IPSWICH KBE KC:** A quite remarkable survey, I think unique in the world, and one with a response rate of more than 90%. But the survey makes rather discouraging reading, and suggests that more than three-quarters of serving judges suffer from work-related stress symptoms, with higher figures for female and minority judges, and 30% say they're suffering from burnout.

**THE LADY CHIEF JUSTICE:** Yes.

**THE LORD ANDERSON OF IPSWICH KBE KC:** And I wonder if those are pictures that you recognise and, if so, what you would most like to happen to improve the morale of the judiciary?

**THE LADY CHIEF JUSTICE:** Thank you. Can I first echo your recognition of the fact this is groundbreaking, world-leading survey. I am not aware of any other jurisdiction that carries out a survey of this depth, which now for the first time asks about stress and workloads, and for the first time includes coroners, which is a very welcome addition into the body of the report and to thank the judges. I don't think, again, in terms of breaking ground, there is any other survey anybody in the room can think of where you have a more than 90% response rate. So it matters, because it's telling us reliable, or giving us reliable information. In one sense, should we be surprised that judges are stressed? Perhaps not, because this job is a very stressful one. Being a judge is hard. The facts are sometimes difficult, the law is sometimes difficult, the job of making a decision in all of our courts and in all of our tribunals can be complex and difficult, and we are talking about people who are public servants, they are deeply committed. They aren't people who shut the door and go home, they are people who care, and that adds to stress.

I am not going to spend time now going into the amount of work we are doing in the wellbeing area, which I think many would not recognise from many, many years ago. The support we provide both

in terms of critical incident support, ongoing support, police support, security support, but also in terms of mentoring judicial support. There is a lot going on and there is a lot of information and tools available, but the short answer, Lord Anderson, would be that we need to get on top of the backlogs so that... I mean, the stress for judges because of the backlogs is just enormous. So we need to get on top of the backlogs. We need to do our best to deal with listing practices. I need to lead and make sure that the judges know I have their backs and help them through difficult times of threat and we need, obviously, more resources, we need to explore the opportunities of digitisation, we need to have paper-free courts, we need to have proper IT. The list goes on. I do not want everybody to feel negative about this. There is so much good work going on, but this survey tells us, if we needed to be told, that the workloads of judges, the system in large parts is running on goodwill, judicial goodwill. That is not sustainable for the long-term future, and that is why I am pressing for long-term investment, as well as short-term remediation and, obviously, I would say the obvious, which is to allow the courts to sit to maximum capacity. But I think a lot of the stress is workload, but it's also, it is incredibly demoralising to see the backlog figures. It is the judges who go into court to tell the defendant that the case has to be adjourned and will come back in two years' time, and we are talking about rape cases, or in one case, I remember a judge coming in to me saying, in the Crown Court, "I've just had to tell a defendant in a criminal charge brought where the complainant is the next-door neighbour that the case is going off for two years and the defendant is in tears because that means their life at home is on hold for another two years, they can't go into the garden which adjoins," and all this sort of thing. So it is the judges who take the brunt of the backlogs in that sense. Of course, it's the parties who matter most, but it is the judges who have to deal with the day-to-day stress of those real-life situations, and the frustration is palpable, because the judges care. They care about the parties, and they care about the administration of justice.

**CHAIR:** Thank you, Lady Laing?

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** Thank you, Lord Chairman. Taking you back, Lady Chief Justice to your opening remarks to us this morning, you gave us a very viable and wide overview of funding of the justice system, and you gave us a lot of statistics. I just wondered to what extent the fact that the courts in London deal with a lot of international disputes could be... what's the right word? Assessed as a monetary value.

**THE LADY CHIEF JUSTICE:** Yes.

**THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE:** If an international contract of significant value has a prorogation of jurisdiction to England and Wales because of the faith in the quality and reliability of our justice system, would it be possible to put a broad monetary figure on what one might describe as "hidden exports"?

**THE LADY CHIEF JUSTICE:** I would love to see that figure. It's not a bespoke, discreet exercise that has been carried out, and I do not have the resources behind me or in the Judicial Office to carry out that particular piece of work, but you are absolutely right that the international draw of the English and Welsh Judiciary is second to none and underlying the figures that I gave you will be that. In a way, so the judiciary takes responsibility for this industry, these figures. I think the international statistics are that the Commercial Court, I think over 60% of all Commercial Court cases are exclusively international, over 75... yes, and over 75 percent involve at least one international party. So we have increasingly complex, increasingly high profile international cases being litigated here, and of course the courts support the Arbitration Service. So arbitrations are held here and so on and so forth, but it is absolutely the button to press, if I may say so, in terms of if I need to go to the big international picture and the big money figures.

So the international work of the judiciary outside the courts as well is something we have not touched on, but it is something that I am celebrating this year in May with a reception in the

Royal Courts of Justice because I don't believe that the outside world knows how much engagement we have on a budget, I think, of £169,000 a year engaging with countries across the Commonwealth, across Europe, many European institutions, and so on and so forth. So it's a huge agenda, huge engagement, and I think that should be celebrated and publicised.

But if I may finish by saying this is a really, really, really important point. If the mission is economic growth, I am not... and many in this room have spoken about this before, but the link between the rule of law and economic growth is well established and you cannot ignore it, and although the commercial courts, and I think you may know the Commercial Courts in the Rolls Building on Fetter Lane look magnificent, although we have had enormous estate issues there in the last 12 months, but they are state of the art, should be state of the art. You can't always separate them out completely from what is going on in the wider justice system. So, there is a reputational risk and a real risk to the economy and the state of the nation as a whole if the justice system as a whole is allowed to crumble.

**CHAIR:** Thank you. George, you have got a small, short supplementary?

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** You mentioned the international contact. My colleague, Lord Griffiths, mentioned earlier the Council of Europe. Have you yet had an opportunity to go to the European Court of Human Rights in Strasbourg?

**THE LADY CHIEF JUSTICE:** Yes, I was there. I had a wonderful visit. I can't remember what month it was. I am going to go for March 23, so I had a fantastic visit.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** And the relations between the legal system in England and Wales and the European Court, it's very good?

**THE LADY CHIEF JUSTICE:** Yes, it's extremely good.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** Right.

**THE LADY CHIEF JUSTICE:** So we always send out a delegation to the opening of the legal year and I had an extremely enjoyable, quite intense, it was hard work, we had a sort of full day's engagement with presentations, discussion of legal topics in an entirely appropriate way.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** It's a very impressive Court.

**THE LADY CHIEF JUSTICE:** It's beautiful, isn't it?

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** I had the opportunity of visiting it and being...

**THE LADY CHIEF JUSTICE:** If you read my annual report, which I promise you is an excellent read.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** In Welsh?

**THE LADY CHIEF JUSTICE:** In Welsh, then you will see a very nice picture of me in Strasbourg.

**THE RT HON. THE LORD FOULKES OF CUMNOCK:** Oh, brilliant, thank you very much.  
*[Laughter]*

**THE LADY CHIEF JUSTICE:** With the President and my good colleague, the Lady Chief Justice of Northern Ireland.



**CHAIR:** Oh, excellent. Lady Chief Justice, thank you very much indeed for taking the trouble to answer our questions.

[Ends]