HOUSE OF COMMONS

Justice Committee

Oral evidence: The work of the Lord Chief Justice of England and Wales, HC 663

Tuesday 8 November 2022

Ordered by the House of Commons to be published on 8 November 2022.

Watch the meeting

Members present: Sir Robert Neill (Chair); Maria Eagle; Dr Kieran Mullan; Karl Turner.

Questions 1 - 64

Witness

I: The Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales.

Examination of witness

Witness: The Lord Chief Justice.

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

Maria Eagle: I am a non-practising solicitor.

Karl Turner: I am a non-practising barrister, but for the purpose of this session, Sir Bob, I should declare that my wife is a fee-paid tribunal judge in the social entitlement tribunal and, indeed, in the immigration tribunal.

Q1 **Chair:** That is very helpful. Thank you very much.

Lord Burnett, I am always grateful to you for coming to see us. Perhaps I can kick off, if I may, by inviting you to have a look at what I suppose has been the most topical issue but by no means the only one that we would like to talk about. That is the position on the pressures in the Crown court and your assessment of where we stand with that in terms of backlogs, and whether the hopeful pausing, at least, of the CBA's industrial action makes any difference.

The Lord Chief Justice: Can I start by trying to explain some of the figures that get bandied around? From what I read in the press, in particular, there is a certain amount of confusion about that.

The outstanding case load in the Crown court pre-covid, by the measure used by HMCTS, the Ministry of Justice and the judiciary, was 40,350. Within that case load are three broadly different types of case: first, cases that have been sent up to the Crown court for sentencing—those are dealt with quickly in all cases; second, appeals from the magistrates court, which are relatively few in number; and, third, what are called trial cases. It is important to understand that most of those trial cases do not end up being trials, because at some point in the process the defendant or defendants plead guilty or, in a relatively small number, the prosecution is not proceeded with.

At the height of covid, that outstanding case load rose to 61,000. That was in the summer of 2021. Thereafter the figure began gently to decline, so that by April we were at 58,000. Now, the Bar action started fairly sotto voce, if I can put it that way, in April, and, as we all know, escalated. The last figures that have been published and thus statistically verified relate to August, when the figure had crept up again to a little over 61,000 outstanding cases; and my latest information is that unaudited figures suggest that they just topped 63,000 as the Bar action came to an end. Since then, over the last few weeks, the numbers have been gently declining.

I have put the figures like that because I am aware that a week or so ago you had evidence from the DPP, who spoke of an outstanding case load of, I think, 70,000 or 75,000. I think it is important to understand that the Crown Prosecution Service counts cases differently. It does not count individual cases; it counts individual defendants. That explains the—

Q2 **Chair:** The multi-handed cases: that is fine.

The Lord Chief Justice: So it is really important that, when the figures are considered, everybody is comparing like with like.

The broad picture remains that, as compared with pre-covid—so March 2020—we have about 50% more cases outstanding in the Crown court. That does not paint the complete picture, because the number of complex cases that are likely to end up as trials has increased disproportionately within that number. So it seems to me, at least, that the best efforts of everybody involved in the system are likely to result in only gentle reductions over time. That, in many ways, is disappointing.

Q3 **Chair:** Last week the Institute for Government came up with a calculation that was based on complexity adjustment—the sort of thing you used to put on the red form, or whatever it was. But their suggestion was that because of the amount of time those complex cases took it was almost equivalent to 80,000-odd simple cases. I do not understand the maths of that, but does that make any sense to you?

The Lord Chief Justice: I have not had an opportunity to look at the detail of that, so I am afraid I do not know the answer to it.

Just following through on what the current problems are—which, I guess, is what many are interested in—and what are the constraints on disposing of cases, they really fall into two distinct categories. The first is constraints on judicial resources, which simply means having a judge available to try a case. The second is a constraint on the availability of lawyers to conduct the cases. Those are the two significant factors that are likely to hold up a quick reduction in outstanding case loads.

At the moment, sitting days, the unit of currency with which every member of this Committee will be familiar, are not a problem, because we will not be able to sit as many days as we would like in this financial year. We do not have the judicial resources and the Bar action led to an inevitable reduction. Also, we have sufficient space with the Crown courts and the Nightingale courts.

As to judicial capacity, our Crown court judges are made up of two main categories. The first are the salaried judges and the second are the fee-paid recorders. In the most recent recruitment round for salaried Crown court judges recruitment fell short by 16 judges. Given that each judge sits about 200 days a year, that is quite a significant hit on capacity, and also a significant hit among the more experienced judges who can do the most difficult cases.

We have taken, certainly, every step that we can think of to try to mitigate the problem of reduced judicial capacity. We have encouraged recorders to sit more. We have lifted the limit on the number of days recorders can sit, but, as I know the DPP said to you last week, if too many of the experienced recorders are sitting, they are not available to do the difficult cases. That is a phenomenon that affects, if I may say so, not only the DPP but the defence side as well. None the less, many more recorder sitting days are being used, and there is another recruitment campaign for recorders under way.

The next step we have taken is to use a statutory provision that has never been used before, which enables district judges who sit in the magistrates court to sit in the Crown court. A cohort of district judges has been trained up to sit in the Crown court, to sit, we are hoping, about 50 days each over the course of the rest of this year.

Along with the Lord Chancellor, I have authorised a significant number of retired circuit judges to sit in retirement—something that was not possible when the sitting days were significantly restricted pre-covid.

The last action we are taking is to train and deploy deputy High Court judges who are assigned to the King’s Bench division to sit in crime if they wish to.

I think we have done everything we can to enhance judicial capacity, but I still doubt whether we will be able to sit as many days as theoretically we could this year or next.

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

Q4 **Chair:** That was a financial decision, wasn't it, basically?

The Lord Chief Justice: Essentially, yes, although it did follow—to be fair to Government—a reduction in the volume of cases coming in to some extent; but it maintained a backlog at an artificial figure.

With less work, fewer lawyers stuck with crime. That is what it came to. At the same time, for all the reasons you are very familiar with, the financial reward for doing crime was also, in real terms, reducing—and reducing quite fast. So the defence legal community, as it is sometimes called, is depleted. Therefore, there is not resilience within that defence legal community—it is the prosecution community as well—to do all the extra work that we are listing. So we have encountered a phenomenon of cases having to be stood out at the last minute, or adjourned on the day of the trial, because one or other side simply does not have a lawyer to prosecute or defend. The problem, as it seems to me, with a legal community that has been subject to attrition over many years, is that it is not possible simply to flick a switch and magic up hundreds or thousands of criminal lawyers. That is a problem that I fear may be with us for some time.

Q5 **Chair:** That is helpful. A couple of small points, and then we will move on. I understand the point about the manpower—personpower—shortage with judges and lawyers. In terms of the number of physical courtrooms, we have been shown some evidence where it has been reported that, on average, in October this year, about 20% of the Crown courtrooms were not being used. Is that essentially because you do not have the judges to sit in them rather than lack of availability of the rooms, their being out of service for repair, or something like that? I don't know if you could help with that.

The Lord Chief Justice: Whether the figure is 20%—that may be a rough and ready figure; I am not sure.

Q6 **Chair:** It is probably a rough and ready average.

The Lord Chief Justice: The basic problem is that there is a lack of judges. Inevitably from time to time there are some courtrooms that are out of use because of maintenance issues and problems of one sort or another, but the problem at the moment is not court space but judges.

We are also benefiting from a phenomenon that no one is able to explain, at least to my satisfaction, namely that the volume of cases coming into the Crown court at the moment remains significantly depressed as compared with pre-covid. Again, just to give you a flavour—and it varies around the country; it is not uniform—in overall terms, the volume of cases coming into the Crown court is somewhere between 10% and 15% lower than it was in 2019-20. Something that causes me concern verging on worry is that if those volumes picked up again it would present the system with really powerful problems.

Q7 **Chair:** Some real challenges, yes; I understand, because the CPS is working back normally and the magistrates courts are. That is interesting. Of course, the Government have a target for reducing the outstanding case level to 53,000 by March 2025. Do you think that is doable?

The Lord Chief Justice: Had you asked me in April, as we were coming down gently, I would have said there was a pretty good chance. Getting there from roughly 63,000 to 53,000 in two and a half years will require a reduction that I think is going to be very difficult, to be honest.

Q8 **Chair:** Even if you could achieve it, is that really enough? Would getting down to 53,000 be a satisfactory state of affairs?

The Lord Chief Justice: I know you have asked me this question before and I have said no. Ideally, we would like to get back to the position where cases that are ready to be heard can be heard, if not immediately, within a very short time. The outstanding case load is not a reflection of the number of cases that could be heard tomorrow were the capacity to be there.

The other point that I think is as important—perhaps more important than the number of outstanding cases—is the length of time that different types of cases take to come to trial. Very broadly, the proportion of cases not dealt with within six months has roughly doubled since covid. That is a figure I am also keeping a very close eye on and want to see come down.

Q9 **Chair:** That concerns you.

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

Q10 **Dr Mullan:** To echo your comments, it seems to me that perhaps the focus on the outstanding total number is almost the least important of those variations to what might be a suitable target that you have just mentioned.

The Lord Chief Justice: I am not sure one can rank them, but if I were a defendant or witness involved in a Crown court case I would not be terribly interested in how many other cases there were. I would be more

interested in knowing when it was likely or certain that my case would be heard.

At the moment, as you will appreciate, an enormous amount of effort over the covid period and since has gone into complying with custody time limits, which can be extended only under strict legal criteria. Those time limits are imposed by Parliament. The first step is always to try to get all the custody time limit cases on within the custody time limit and extend only if that is really necessary and appropriate in accordance with the law; but the focus, as there must be, on cases where defendants are in custody can lead to what everybody considers to be undesirable and unacceptable delays in cases where the defendants are not in custody.

In every Crown court the judges look at their case mix—no two courts are the same—and have to make difficult judgments about which cases to pull on and which cases to hold back. Most judges will try to bring on as quickly as possible those with vulnerable complainants or witnesses and those with young defendants. It is simply unacceptable to keep an 18-year-old waiting for two years—it is really all his adult life—and things of that sort, but it can mean that some cases that are not a very high priority by those criteria are taking much longer than any of us would like to see.

Q11 **Maria Eagle:** You started to talk about listing. Your annual report refers to the work of the Crown court improvement group to address the problem of overlisting. Would you like to explain the issue a bit and what the group has been able to do to address it?

The Lord Chief Justice: One starts from the basic premise that listing—what goes on in a court—is a matter for the judge. In every Crown court with which we are concerned here, the resident senior judge, working with the listing officer or officers, has to do this very difficult balancing exercise to list cases and get them on.

In an ideal world, every case listed for trial yesterday, shall we say, would be effective and start and finish, and the next one would be ready to come on. But that is not how the Crown court works; it is not how it could possibly work. Of the cases listed for trial on any given day, roughly 50% of them—it is a broad figure across the nation and varies from place to place—do not go ahead. About one quarter of them result in late pleas of guilty by the defendant which are acceptable to the CPS or prosecutor. So one quarter do not go ahead. For one reason or another, another quarter have to be adjourned properly on the application of the prosecution or defence because they have a problem. Maybe a witness has not turned up or something of that sort. So, in broad terms, about 50% of the cases listed do not go ahead.

Every court must have a reservoir of work that can fill the gap to avoid courts sitting doing nothing. That is why, through one mechanism or another, you need to overlist. In any two courts it is not the same. You can appreciate immediately that, if a judge is in charge of a court with

three courtrooms, his listing decisions will be very different from a judge with 10 courtrooms. One can take bigger risks with 10 courtrooms and so on. That is why you must have overlisting, and we are looking closely at the best way of doing it.

What we want to avoid, and are trying to avoid, is what might properly be called excessive overlisting. One of the things that the Crown court improvement group looked at earlier this year resulted from anecdotal evidence from the Bar and CPS that there is a really big problem with excessive overlisting around the country. The improvement group got all the data, which is not a bad start. You may not be surprised to know that the anecdotal evidence was not reflected in the data, but the data indicated a problem in some courts. For example, there were two courts where overlisting which resulted in the late adjournment of cases, either on the morning or a day or two before, was not consistent with what was going on elsewhere.

Those problems were dealt with, but it has also led to some careful thinking about the best way of approaching the question of having backers, floaters or a warned list, whatever one wants to call it. I hope that the improvement group will produce something within the next few weeks which will address that, and resident judges are fully up to speed with the thinking that is going on.

That has been one of the positive outcomes of the work of the improvement group, but it is not the only one. I am talking too much. I appreciate I am here to answer questions, so I should be talking quite a lot, but I am happy to explain that a little further if anyone would find it helpful.

Q12 **Maria Eagle:** The ineffective trial rates increased in the latest quarter to 31%, which is the highest it has been since quarter two of 2020. What can and ought to be done to reduce the ineffective trial rate in the Crown court?

The Lord Chief Justice: The reasons for trials being ineffective are mostly either that the prosecution is not ready or the defence is not ready for one reason or another. The work of the Crown court improvement group is, among much else, looking at that.

Perhaps I should explain a little about the improvement group for those who do not know what it is. This was something I established about 15 months ago. It brings together all the players in the criminal justice system in an environment which is confidential and avoids any finger-pointing. Starting at the beginning, it involves prisons, the prisoner escort service, the police, the CPS, probation, lawyers, the MOJ, HMCTS and judges. It is looking closely at how to ensure that cases where there will be a guilty plea come earlier. That requires, for example, a concentration of proper disclosure at the outset, because most defendants and their lawyers will be reluctant to consider what to do if they do not know what the case is against them.

The improvement group is concerned with more prosaic things. For example, at the moment cases are held up because lawyers cannot get interviews with their clients in prison; they cannot get video links to prison. There are inefficiencies because the prisoner escort service cannot get prisoners to court on time. So there is the prosaic, but there is also the really fundamental, which is to frontload the disclosure process to try to enable cases that will plead guilty to do so earlier.

The next part of it, which comes directly to your question—forgive me for taking rather a long run up at it—is that the improvement group and all its members have been looking closely at what we call better case management. That was a system introduced by the judiciary in 2015 and 2016 to try to make the first hearing in the Crown court effective and avoid subsequent hearings. A renewed document will be issued, I hope, within the next month, which is rejigging better case management.

Part of what has been discovered is that sometimes a hearing not too far ahead of a notional trial date is a very effective way of, first, shaking down whether there will be a plea; secondly, shaking down whether the case still has legs, to put it bluntly; and, thirdly, anticipating the sort of problems that currently cause trials to be ineffective. This group, which has been chaired brilliantly, if I may say so, first, by Lord Justice Haddon-Cave as senior presiding judge, and, secondly, by Lord Justice Edis as deputy senior presiding judge and now senior presiding judge, has been a really good example of the benefits of bringing everybody together to talk calmly, quietly and confidentially, with nobody pointing fingers, to look at the fundamentals and, rather than saying, as so often happens when you get groups together, "It's not my fault; it's their fault for the following five reasons", to say, "We need to look at what we are doing", and that is why we are looking at listing.

Q13 **Maria Eagle:** That is helpful. The sentencing power of the magistrates was doubled from six months. It is something they have been after for years. That has happened this year. To what extent will that extension of sentencing powers in a magistrates court relieve the pressure on the Crown court, or is it possible there could be perverse effects?

In giving evidence to the Committee in February, Kirsty Brimelow KC, now chair of the Criminal Bar, said that increasing sentencing powers could add to the backlog in the Crown court for the reason that the incentives in electing whether to go up to the Crown court were different. I will not read out the full quote, but she thought there might be perverse impacts. What has been happening and what is your view on how that is going to work?

The Lord Chief Justice: It is too early yet for there to be any empirical data on the impacts, but it was and remains my view that the change will have a positive impact on the work in the Crown court. It is unusual for me to disagree with Kirsty Brimelow, but on this occasion I fear I must.

The first is that there is a significant cohort of cases which are now not going to the Crown court for sentence. That relieves pressure, although it is not the biggest pressure.

The second is that there will always be a significant number of cases which the magistrates send to the Crown court for trial, even though the defendant is perfectly content to be tried in the magistrates court. Often, the reason the magistrates send the case to the Crown court is that they are worried or persuaded that, if the person were convicted, their sentencing powers would not be enough. Inevitably, with greater sentencing powers there will be fewer such cases going to the Crown court. Obviously, they are the either-way cases, which objectively are the less serious ones that go to the Crown court. They include an awful lot of cases involving violence—assault occasioning actual bodily harm and wounding—a lot of acquisitive crime and so on. Therefore, I suspect that in time we will see a slight diminution in the proportion of either-way cases going to the Crown court and it will leave the Crown court better able to deal with the more difficult cases.

Q14 **Maria Eagle:** How are the Nightingale courts now contributing to the capacity of the Crown court?

The Lord Chief Justice: There are fewer of them than there were because, as everyone understands, commercial organisations were very happy to make their accommodation available for Nightingale courts at the height of the pandemic when they could not use it for other things—for example, hotels, conferences centres and even somewhere in Peterborough cathedral. There were plenty of places. Some have gone back, but they have been particularly useful for dealing with non-custody cases and they continue to be useful for that purpose. Thinking of the Nightingale courts in London, they have been especially useful for dealing with some of the relatively lengthy regulatory and fraud offences that otherwise might have been kept waiting behind custody cases, so they are continuing to make a contribution.

Q15 **Dr Mullan:** You mentioned earlier the challenge around circuit judge recruitment. Could you start by saying how you think we could improve the campaign to recruit judges and what the barriers are to successful recruitment? I know you have touched on them, but perhaps you would remind us.

The Lord Chief Justice: We mentioned that the Judicial Appointments Commission last year did not recommend all the Crown court judges we would like. The bigger problem has been with district judges where, for three years, the number needed has not been recommended by the Judicial Appointments Commission.

Perhaps no two individuals who are on the cusp of thinking of becoming a salaried judge would have exactly the same reasons for deciding to go for it or not to go for it, but what has been done by the JAC, the judiciary, the Bar, solicitors and CILEX, the Chartered Institute of Legal Executives,

is to develop and put in place all kinds of mechanisms which enable people to discover what it is like to be a judge and encourage those with the necessary skillsets to apply to be judges.

I can identify the problem at the moment, but identifying solutions is more difficult. The problem is that an insufficient number of fee-paid judges—recorders becoming circuit judges and deputy district judges becoming district judges—are applying for the salaried posts and being successful in their applications.

Q16 **Dr Mullan:** To unpick that slightly, you mentioned being successful. Are the absolute numbers applying suitable? Are enough people applying? Are some not good enough, or if everybody who applied was given a post would it still not be enough?

The Lord Chief Justice: The numbers applying are not sufficient. The reality is that, if those applying were able to demonstrate through the independent process that they had the necessary skills, they would be appointed. That is the reality.

There are all kinds of reasons why people do not want to become salaried judges. For some, it is giving up the flexibility and control over their lives that they have as solicitors, barristers or legal executives. Obviously, there is not complete control, but basically you are in control. I know that some are concerned about lack of flexibility in working practices. We are trying to make it clear to people that flexible working is a possibility within the constraints of the job. Obviously, a Crown court judge doing only three days a week would not work because there would be almost nothing they could usefully do, but for many judicial offices there are opportunities for that.

Another problem that has been identified, but we think we have dealt with it, is the fear that if you are appointed you will be asked to go somewhere miles and miles from where you live. From time to time in the past somebody has been appointed and the only vacancy is 100 miles from where they live, so they end up living in a tiny flat in a town where they know nobody. That is undesirable. We do everything we can to avoid that.

The life of a judge has undoubtedly become harder. Judges of whatever hue work really hard. That is the way it has to be and will be for the foreseeable future, but it is also a disincentive for some. All these things go into the mix.

As you will remember, there was a real problem caused by the change to the rules governing pensions, which were eventually reversed by legislation earlier this year. The benefits from that reversal were built into recruitment a year ago, two years ago and three years ago when everybody knew it was coming. Like every other walk of the public sector, there are concerns about what will happen with pay and so on.

There are issues, which undoubtedly have an impact, about the raw conditions in which we work. If you are working in a firm of solicitors or barristers' chambers the chances are that if the roof leaks somebody will mend it fairly fast; if the loo does not work somebody will mend it; and if your computers do not work somebody will make them work that day. Now is not the time for me to rehearse everything I have said in the past on that, but I am pretty sure that the degeneration of the physical working environment in many courts is having an impact. All these things are having an impact.

Q17 **Dr Mullan:** You have mentioned people having to go a long distance. I intended to ask you whether there is a geographical pattern to the challenges of recruitment. Are there particular parts of the country that are really struggling and other parts doing well?

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

Q18 **Dr Mullan:** Is there weighting in what you pay people in London and the south-east? If so, do you think it is sufficient?

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

Q19 **Dr Mullan:** You have touched on the longer-term challenge of the shortage of advocates in the Crown court. Is this also part of the lack of people and lack of a pipeline from which you might recruit?

The Lord Chief Justice: I think it is. There is an anterior problem. We have been refilling the recorder pool for the past few years very successfully. The number of recorders has been growing. There was a period when Lord Chancellors did not sanction the recruitment of recorders because of all the problems that the Ministry had to contend with after the courts decided that part-time judges should be entitled to pensions because they were part-time workers under EU law. I am

putting it very shortly. There was a diminution in the pool of recorders and it is from recorders that Crown court judges are principally appointed—not exclusively because they can come from the district bench; they can come directly from the Bar, but usually some sort of judicial experience is needed.

My real concern for the future, the recorder pool having been quite successfully replenished, is the criminal Bar. I come back to the point I made earlier. The criminal Bar and criminal solicitors are simply fewer in number. That will mean that in time recruiting them as recorders and then Crown court judges will be more difficult.

Q20 **Dr Mullan:** To what extent could a further expansion in the use of recorders help to make up for the gap in what you describe as the long-term challenges?

The Lord Chief Justice: In the immediate future, persuading recorders to sit and book time long in advance so they can arrange their practices around it will be one of the keys to increasing judicial capacity, but I am acutely conscious of the circular argument, "I don't want to sit because I want to be doing the cases, but, unless you can find judges, I won't be doing the cases", so we have that circle.

Q21 **Dr Mullan:** Picking up your description of the particular challenges in London and the south-east, do you think that talks to the idea that there are parts of the country where there is greater choice, greater opportunity and greater ability to earn in the profession instead of becoming a judge?

The Lord Chief Justice: There is an element of that. I am not here to talk about money in judicial terms, but the reality is that the remuneration available to successful lawyers over the past 15 years—I take that period because that is how long I have been a judge—has gone up and up, whereas judicial pay in real terms has gone down and down. What many face is what might be called a growing public service premium. Becoming a judge is a public service. Nobody becomes a judge unless they wish to provide some public service. None the less, it is undoubtedly a factor affecting some people.

Q22 **Chair:** We can probably exclude successful criminal lawyers from that exponential growth in earnings, where they are publicly funded at any rate. The point is taken.

Do you find that point interesting in relation to recruitment to the High Court bench? Successful practitioners earn significant sums.

The Lord Chief Justice: The High Court recruitment problem was substantially caused by the destruction of the value of the pension. For many a practitioner wanting to become, and likely to become, a High Court judge who had made significant and prudent provision in practice, the judicial pension became worthless—not worth a penny. I am not making a bleeding-heart case—

Q23 **Chair:** Different considerations apply.

The Lord Chief Justice: That has changed. The High Court is back up to strength.

Q24 **Chair:** That is a fair point. I want to come to a different subject: the way in which the system deals with victims. The Government have decided to press ahead with the roll-out of section 28 cross-examination for various classes of witnesses in criminal cases. About a year ago, you entered some caveats about the policy's practical implications. How has that worked out since?

Are we yet in a position to know whether your concerns about the section's effectiveness in changing the acquittal or conviction rate have borne fruit yet, or do we need more time?

The Lord Chief Justice: I should say that judges are not concerned with conviction rates. We are concerned with providing defendants with a fair trial according to law.

One was hearing from those involved in cases where section 28 was being used—prosecutors, defendants and judges—that they thought that there was an increase in the eventual acquittal rate. I know that the DPP spoke to you very recently about this.

This time last year, or maybe a little earlier, I expressed the view that before section 28 pre-recorded cross-examination was rolled out generally it would be wise for policymakers and decision makers—the decision maker in this instance is the Lord Chancellor—to understand the impact a little more.

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

On the first of those points, I am not aware that the CPS has any statistics yet, and it is very much a matter for it and not for me.

As far as the second matter is concerned, you will remember that there were some particular problems about persuading lawyers to do section 28 cross-examinations because it diverted them from trials. Judges did what they could to accommodate, but if a section 28 cross-examination is going to take a whole day, as they do sometimes, it is a difficult balance in holding up a trial in which there might be three or four defendants.

There were some difficulties—may I put it as mildly as that?—about remuneration, which I know the MOJ has been looking at.

The section 28 programme has been rolling out slowly, but I do not think that one should duck the reality that it slows the disposal of business in the Crown court. There is a balance between having a section 28 hearing,

which is undoubtedly to the advantage of the complainant or witness concerned, and the trial taking longer, therefore delaying other trials.

Q25 **Chair:** Are you aware of statistics on the time gap between section 28 cross-examination and the rest of the trial—the substantive trial, if you like? Do you know how long that tends to be?

The Lord Chief Justice: I have not seen any statistics pulled together on that. Thinking about the practicalities, if you have captured the section 28 cross-examination fairly early, in the sort of cases that they are concerned with, it will make the final resolution of the case less urgent. That, I think, is inevitable.

Q26 **Chair:** One assumes that the smaller the gap, the better.

The Lord Chief Justice: Yes.

Q27 **Chair:** Continuity of counsel and judge.

The Lord Chief Justice: Yes, and there are other worries, as you will remember. The possibility of further disclosure coming along might cause the whole thing to have to be redone. None of this is free from difficulty.

Q28 **Dr Mullan:** During our inquiry into the draft Victims Bill, we heard from IDVAs and ISVAs. The statistics are that about one in five IDVAs and one in three ISVAs are not being allowed to accompany complainants in court. Can you think of any reason why an IDVA or ISVA would not be allowed to accompany someone they had been assigned to as part of the criminal process?

The Lord Chief Justice: I am afraid I am completely unsighted on this.

Q29 **Dr Mullan:** Independent domestic violence advocates and independent sexual violence advocates are assigned to victims to support them through the court process. The judge has to grant them permission to be in the court. On multiple occasions, they have not been given permission to accompany somebody either in video link evidence or in court. That seems to be an unusual state of affairs. I assumed there would be a presumption that they attend. This is not an issue that has come across your desk.

The Lord Chief Justice: I am afraid it has not, but it sounds as though you are talking about individual judicial decisions, on which it would be inappropriate, in any event, for me to comment, even if they were identified.

Q30 **Dr Mullan:** Given the opportunity to consider it in further detail, might you give guidance or a general direction to the judiciary? Would that not be your role, either?

The Lord Chief Justice: What I can do, now that you have raised it with me, is take it away and try to find out what is going on.

Q31 **Chair:** That is very useful. Thank you very much. In that context, I

wanted to ask you about the move to specialist courts—the RASSO courts, for example, of which we now have three. The Lord Chancellor announced enhanced measures because of the mix of their work. Will that help in prioritising or in triage, or is it simply a matter of the victim experience, giving them the best chance to give their evidence comfortably and fairly?

The Lord Chief Justice: I think, with respect, that there is an enormous amount of confusion about this. It has been agreed that, for the three courts, the various agencies responsible for looking after complainants and witnesses will work together to try to support complainants through the process. That is, obviously, desirable. If it is successful, I hope it will be replicated elsewhere. But that is not a specialist court.

Those who speak of specialist courts have in mind, I think, a physical court that does only one type of case. The reality is that, as far as rape and serious sexual offences are concerned, every Crown court in the country is a specialist court. No judge tries one of those cases without being authorised—ticketed—to do so. No judge tries one of those cases without going on a specialist course before doing so, and it is refreshed every few years.

The reality is that almost all Crown court judges are now authorised—ticketed—to do serious sex cases, and some recorders are so authorised. There would be no purpose—no advantage—in establishing four courts somewhere in London that do only sex cases. I do not know where we would put them. All the courts are doing sex cases every day.

Q32 **Chair:** You do not see any advantages in listing or anything of that kind.

The Lord Chief Justice: None whatsoever.

Q33 **Chair:** What about economic crime courts? Perhaps, again, it is an inaccurate description of what has been built in the City, for example, with specialists there. Is that another misnomer?

The Lord Chief Justice: I saw the Committee's report a week or two back. The thought that went through my mind, if I may say so, Sir, Robert, was: I wish you had asked us.

Q34 **Chair:** We are now.

The Lord Chief Justice: Serious fraud—big, commercial fraud—is relatively rarely prosecuted, but, when it is, it is always dealt with by specialist judges because it is work that requires specialist skills.

In London, Southwark Crown court tries everything but is the centre to which most of that serious fraud work goes—not just fraud prosecuted by the Serious Fraud Office, but serious commercial fraud. The court being built just off Fleet street, which will open in a few years' time, is among other things being earmarked for some serious fraud cases and serious cybercrime, which is linked in many ways.

The reality with other fraud is that less and less of it is being prosecuted. A cohort of cases is prosecuted by the relevant department—benefit fraud, for example, but not a huge number. When your report was published I looked at the figures for other types of fraud, although I cannot say I have them all in my mind now. The volume has gone down and down and down. With respect, the problem is not with anything that is going on in the courts but with getting the cases into court, which has not been happening in such great numbers.

Q35 **Karl Turner:** It was necessary to use video technology during the pandemic; cases literally could not get on unless they were done remotely. Are the criminal courts making the best use of video technology?

The Lord Chief Justice: The criminal courts make use of technology, and the position remains that, if it is in the interests of justice to allow somebody to attend remotely who wishes to attend remotely, that should happen. In the Court of Appeal criminal division, almost all appellants and lots of advocates attend remotely. A lot of preliminary and routine hearings in the Crown and magistrates courts are attended remotely by lawyers and others. Even in trials, witnesses can attend remotely, but it is not suitable for everything.

The use of technology is as widespread as it should be. It can be rarely advantageous, particularly to make life easier for those attending. It is a mistake to think that it necessarily speeds things up.

Q36 **Karl Turner:** Is a consensus emerging within the judiciary that video hearings are inappropriate for some criminal matters? Have you picked up on that?

The Lord Chief Justice: There are some statutory restrictions on the use of remote attendance in the Crown court. A Crown court trial will proceed pretty much as it used to, but occasionally an advocate will attend remotely. Even in a trial, advocates have attended remotely when they have been ill—not so ill that they cannot work, but ill with covid lightly, as it were.

Defendants can attend remotely in appropriate circumstances, and witnesses can give their evidence remotely. Most advocates are not very keen on having their witnesses give evidence remotely because there is a lack of immediacy and lack of engagement with the jury or the decision maker. None the less, it can happen.

Q37 **Karl Turner:** Is the technology up to it? Does it cut the mustard? Does it work efficiently?

The Lord Chief Justice: We mostly use cloud video platform—CVP—which for the most part is pretty good, but it is not perfect. My direct experience recently is using the system in the Court of Appeal criminal division and having problems. We had to adjourn while someone sorted it

out and then come back in and try again. That, I am afraid, is a feature of using remote technology.

Q38 **Karl Turner:** You are planning the video hearings service—the VHS system. Will that improve video hearings?

The Lord Chief Justice: I very much hope so. The video hearings service is a bespoke system that HMCTS has been developing for some years. It has been piloted in a number of places and jurisdictions. It has run into some technical difficulties, so it is a little stalled at the moment. When the technical problems are solved, the idea is that it will be a step up on what we are using at the moment.

Q39 **Karl Turner:** There has been some controversy over the use of the common platform. Is it fit for purpose?

The Lord Chief Justice: First, one needs to identify the purpose. At the moment, it is rolled out in roughly half our magistrates and Crown courts.

Its purpose is to replace what are quaintly called legacy systems—a polite way of saying, "Antiquated systems that at any moment could fall over, and if they did we would be in real trouble." It is designed to enable all participants in the criminal process to have access to all the materials they need and to ensure that people can see only what they should see. That is why it is called the common platform.

As I have explained often publicly, it has run into a lot of technical problems—more than it should have—and HMCTS is working hard to try to put them right. A light-touch review of the technical aspects is going on at the moment at the instigation of the Ministry of Justice, and the judiciary is contributing to it.

The aspect that appears to have been causing most trouble and has had a direct impact on some users in court is what is called resulting. Legal advisers in the magistrates court and clerks in the Crown court put into the system the result of the hearing they are looking at. It is designed to enable contemporaneous resulting. What has been happening—I am summarising it; forgive me—is that that resulting has proved to be much more difficult in many cases. In some courts, it has slowed things down and put the people doing it under a great deal of strain. That aspect is being looked at and, I hope, being put right by HMCTS.

Looking forward, we cannot carry on with the legacy systems, and the common platform is the only show in town. HMCTS has to be able to sort the problems, and those who use it—HMCTS staff, judges or the external users: the practitioners, police and so on—must be able to do so with confidence.

Q40 **Karl Turner:** That is very helpful. I understand that it has been so controversial that the PCS Union has decided to take industrial action over the issue. How is that affecting the court system?

The Lord Chief Justice: The detail of that would be for HMCTS. I shall try to summarise it—I hope accurately.

This concerns legal advisers in the magistrates courts, some of whom belong to the PCS, not all. A majority of them decided to take some action—it is only 100 or 150 people; I can give you the accurate number afterwards. For me, what was striking was that this was not a group of people saying, "We want more pay," or, "We want to work fewer hours." It was people saying, "We are trying to make this thing work and we can't, and it is really putting us under pressure."

I know that HMCTS, the Courts Service, is sensitive to that, which is why it is vital that the technical problems—the glitches; again, I use a modest word—that have affected the system are sorted, and those who use it are trained and have confidence in the resulting. This is a resulting problem.

Q41 **Chair:** We have talked almost exclusively about crime, but I want to move on to civil and family jurisdictions—not because they are less significant, but there may be less to cover.

Has there been any improvement in the county court backlog since you last gave evidence to us?

The Lord Chief Justice: The picture across the country of the time it takes to get interlocutory hearings and final hearings in the county court in small claims, fast-track claims and multitrack claims is very varied. The general picture is that there needs to be further improvement. Again, perhaps I do not need to go into the detail, but we have a group focused on working on those problems. Once again, the biggest problems are in London and the south-east, because of the shortfall in district judges.

Q42 **Chair:** The same issues as you have in crime apply to civil matters.

The Lord Chief Justice: It is the same issue. Progress is being made, and the Master of the Rolls, who is the Head of Civil Justice, and the Deputy Head of Civil Justice, Lord Justice Birss, are working within the civil justice system to try to sort out as many of these problems as they can.

Once again, a shortage of reliable data, which we have talked about in the past, has been a problem, and steps have been taken to try to deal with it. Progress is being made, but particularly in London and the south-east, many people and many of your respective constituents—

Chair: Certainly many of mine.

The Lord Chief Justice:—will tell you it is taking a long time to get a hearing.

Q43 **Chair:** Yes, I do get that.

Are you confident that the core case data, to which you alluded, will make a material difference?

The Lord Chief Justice: It seems to me that unless you know what is really going on you are not in a position to put it right. You have to be able to get to the heart of a problem, and that is why we are pursuing that course.

Q44 **Chair:** You mentioned that the system is paper-based and not digitised. What is the progress on digitisation?

The Lord Chief Justice: More and more of it is becoming digitised, and in time, with the modernisation programme, much of it will be digitised. On that front, we need to keep the Ministry of Justice's nose to the financial grindstone. We do not want the money to run out.

Q45 **Chair:** May I press you on what "in time" is likely to mean in practice?

The Lord Chief Justice: A couple of years for the things that are being developed and rolled out now, I suspect, is the timeline.

Q46 **Chair:** That goes beyond the March 2023 timeline for the civil reform project.

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

Q47 **Chair:** That is the plug. It needs more money, and in a couple of years you might be able to get there.

The final thing on the civil side is whiplash and the reforms with the online portal. It has been going since May 2021. Have you had any feedback on the effectiveness of it or on the throughput?

The Lord Chief Justice: Do I have the precise figures in my head? No. I am sure that we can make them available to you. The whiplash portal is designed to sort out cases largely before proceedings are issued. We need to send you the number of cases that have started in the whiplash portal, and then the number that have, as far as we know, resulted in proceedings being issued. That will give you some—

Chair: Some sense of progression.

The Lord Chief Justice: It should do. By comparison, the online money civil claims service has been an enormous success. More and more cases are issued through that and the damages online system.

Chair: Yes, we will want to look at the contrast.

Q48 **Maria Eagle:** I would like to ask about the Court of Protection before moving on to the family court. Liverpool Law Society practitioners tell me that it now takes about 12 months to get a court order where there is no lasting power of attorney and they have to apply to the Court of Protection. They reckon that 90% of complex cases are brought by

solicitors, but, in addition to the year for the order, they are having to wait an extra six months or more to get their fees paid. They say that there is a real issue with the Senior Courts Costs Office. Does it sound familiar that there are big delays in the Court of Protection in solicitors getting paid and in getting court orders?

The Lord Chief Justice: I have not heard that. We will make a note of it and ask, if we may, for further detail. I will take it up with the Vice-President of the Court of Protection and try to get back to you.

Q49 **Maria Eagle:** Thank you. It is one of those hidden issues. A lot of people come across the Court of Protection at a bad time and they are not necessarily going to their MPs about that.

Why are delays in private family law proceedings getting worse?

The Lord Chief Justice: The long and the short of it is that the number and complexity of those cases have grown. This has been on our radar for some time and a good deal of initiatives are under way to try to deal with it.

At the heart of it, we are talking about private law family claims: disputes between parents about what should happen to their children. As you know, many years ago public funding for those cases was withdrawn. That may have seemed at the time to save money in the legal aid fund, but I question whether, overall, it has saved money. I am not only looking at the increase in number of cases that come into the courts and fight in the courts—scrap in the courts—when parents are representing themselves.

Something that is completely overlooked is the wider economic cost of having parents fighting about their children rather than devoting themselves to their jobs and so on, and the yet wider cost of the damage that is done to children if their parents are scrapping. Contrary to what many people may think, getting lawyers involved at an early stage and giving their clients clear advice about what is likely to happen is likely to see cases sort themselves out rather than fight.

Some initiatives are trying to reduce the number of cases. Mediation schemes have been tried in various parts of the country that the Ministry of Justice has supported by providing funds to pay for mediators. All the evidence that we are hearing suggests that that works, so I hope that it might be expanded.

The Family Court is piloting some new ways of dealing with these cases to engage intensively with the parties at the outset. This is running at the moment in Dorset and North Wales. Those too seem to be providing benefits. In discussion with the President of the Family Division just very recently, I have been talking about trying this in various other parts of the country to try to sort things out.

The next thing that needs to be understood is that there is a perverse incentive in the availability of legal aid at the moment, which means that it is provided to anyone who makes a complaint of domestic abuse. Some serious work needs to be done on this, perhaps academic work, to see how that is distorting the system. Certainly, all the lawyers involved and many of the judges suggest that domestic abuse is alleged ritualistically, if I can put it that way, and then it does not feature in the case that follows. That is something causing a little difficulty.

Q50 **Chair:** It is pleaded to get the legal aid and then it drops away.

The Lord Chief Justice: Yes. The next thing that was happening, as a result of that in part, is that the hearings in these private law cases were taking longer and longer. Fact-finding hearings were delving into areas that were not necessary to decide to determine the ultimate issue. There have been some recent decisions in the Court of Appeal reigning that back.

More widely, there has been a fundamental review of private law cases conducted by the judiciary, leading to all sorts of procedural and practical changes. We are doing what we can.

Finally, the Ministry of Justice and its Ministers, over a year, have been really interested and helpful in looking at the way private law cases operate with a view to identifying policy levers that might keep some of those cases out of court. Bluntly, what is happening is that going to court is the first port of call, when it should be the last port of call.

Q51 **Maria Eagle:** I want to ask about transparency issues in the family court. The Committee's report on Open Justice welcomed the President of the Family Division's plans to improve transparency in the family court. Will the transparency review's recommendations lead to an increase in public confidence in the family court? There is an issue caused by secrecy or people's attitude to secrecy—a lack of understanding of why you have had the level of secrecy. Will it make a difference?

The Lord Chief Justice: I entirely support and applaud all the efforts being made by the President of the Family Division, through the transparency review and the involvement of so many groups and interested bodies, in trying to achieve an appropriate balance in circumstances where one is dealing with private family problems. I am not very keen on the word "secrecy", if you will forgive me. Keeping something secret is different from respecting confidentiality and balancing rights to privacy.

Maria Eagle: You are correct.

The Lord Chief Justice: It seems to me that the family court is on a journey at the moment and it is looking at it really carefully. Openness is becoming the leitmotif of the day, and that is a good thing.

Q52 **Maria Eagle:** Is it perceived secrecy by those who have made decisions

that they do not like?

The Lord Chief Justice:: I appreciate that, yes.

Q53 **Maria Eagle:** Are you confident that there are sufficient resources in the system to deliver the recommendations of the transparency review?

The Lord Chief Justice: That goes to a really big general issue. The reality at the moment is that the Courts Service has no spare money and no spare staff. Every time I read recommendations about things that should be done in the courts, the questions go through my mind: who is going to do it and who is going to pay for it? An example was the report you published last week, Chair, on Open Justice.

Chair: Yes.

The Lord Chief Justice: It was looking at things particularly through the eyes of the press and the difficulty they have reporting cases. I am not going to comment on your recommendations now. I went through them and thought, "Well, that's interesting, but who is going to do that?", and "That's interesting, but where's the money coming from to pay for that?"

This is a real problem that we and the Courts Service have in every respect already. Looking forward, it is obviously not going to become easier. We have the comfort of a statutory duty to fund an efficient and effective court system. That is something the MOJ and its Ministers, and of course the Treasury, must have regard to. Most people would be astonished at how little the administration of justice costs; how little all the courts, all the tribunals, all the judges—everything to do with it—costs. Occasionally, it is almost a parlour game I play with people who should know but often do not. I ask them, "How much do you think it costs to run all the courts?" Usually, they say, "Somewhere between £5 billion and £10 billion," because that does not sound very much.

The net cost is under £1 billion a year—under £1 billion. Gross cost, just under £2 billion; that is the amount of money put in each year. As to fees and other income, it varies, but it is £650 million to £700 million. Then the MOJ gets lots of fine money and things of that sort, which is usually about £400 million to £450 million. That takes no account of things like deferred prosecution agreements—there was one last week—which pays for the SFO many times over, and delivers hundreds of millions of pounds into the Treasury year on year.

We are reasonably good value for money, but I am not blind to the reality that at the moment government is as stretched as it has ever been.

Chair: Understood. On money, Mr Turner.

Q54 **Karl Turner:** You have not shied away in the past from speaking about the terrible state of court buildings. It is anecdotal, but you see on social media members of the Bar and solicitors tweeting from various robing rooms and advocate rooms when there are leaking ceilings and so on. It

is a mess. An awful lot of the court buildings are in a state.

You say in your annual report that all three of the Lord Chancellors in the recent reporting period have understood the problem about the condition of the court buildings but have only taken modest steps to find extra money for maintenance beyond that already allocated. Has the current Lord Chancellor come up with extra dosh?

The Lord Chief Justice: He did in his first iteration. We are about to discuss next year. In the settlement between the Treasury and the MOJ, which is without prejudice to his settlement with me—these are published figures—the Treasury only allowed £50 million a year capital spending on court maintenance. The Lord Chancellor, earlier this year, was able to do better than that. We agreed £70 million. A little extra money has been found since. Precisely how much, before the end of the financial year, I am not sure.

I am nervous about the settlement next year because the reality is that even the money we have had this year, leaving aside inflation, is not enough to keep up with the fundamental problems that we have. The consequence is that we are losing more and more sitting days in all jurisdictions through maintenance failure.

Chair: That is very clear.

Q55 **Maria Eagle:** The annual report says, "An investigation undertaken into behaviour within the judiciary found examples of behaviour that amounted to bullying, harassment or discrimination." What sort of behaviour was that and what is being done to address this problem?

The Lord Chief Justice: I cannot speak about the precise details of any particular complaint. However, I can explain what we have been doing to find out whether we have problems the same as or similar to the problems exposed in other organisations such as the civil service and here. I do not think on the screen people can see you, but by "here" I do not obviously mean the particular individuals in the room, but in Parliament.

In a welfare survey last year we asked some questions about whether people felt they had been the subject of inappropriate comments or behaviour. The answers suggested that some people did.

We then commissioned some independent work, I think from the same organisation that Parliament used to do some qualitative research.

Chair: Yes.

The Lord Chief Justice: That involved talking to lawyers, barristers and solicitors, and to judges to find examples of behaviour that might be considered inappropriate. They found some examples.

We then included further questions in our judicial attitude survey, which we have now had back and which are being analysed. Those have

confirmed that there are judges who have experienced behaviour that in one respect or another is inappropriate.

I can hear a Division bell.

Chair: We have a couple of minutes to vote. We can leave that as the last question.

The Lord Chief Justice: Would you like me to stay for a few minutes?

Chair: What would people like to do?

Maria Eagle: I can come back.

Chair: I am happy to come back. Mr Turner? I am happy to do that, yes. I am not voting in this Division myself.

Maria Eagle: More abdication of responsibility from the Tories.

Chair: I will suspend the sitting for the Division. Then we will be back. There are only a couple more questions, Lord Burnett. We will not be terribly long. We can do that.

The Committee suspended for a Division in the House—

On resuming—

The Lord Chief Justice: May I finish the answer to the question? I was explaining, before some left for the Division, that we have been gathering information about the problem identified in the question. In a sentence or two, I will say what we are proposing to do about it.

The first is that we will be issuing a short statement of behaviour expected of judges. I shall be taking further advice from the Judicial Executive Board and then the Judges' Council on it within the next couple of weeks. That should be ready to be made available to judges shortly thereafter.

With the help of those who have been advising us, we will give bespoke training to all our leadership judges in how to avoid particularly inadvertent inappropriate behaviour. It can be corrosive, even when people do not fully appreciate it. We are starting with our leadership judges, including all the presiding judges and other High Court leadership judges, the resident judges in the Crown court, the designated civil judges and the designated family judges and their equivalents in the tribunals. They will be trained first and expected to disseminate good practice.

Then, our plan, probably not now until well into next year, is to weave into induction and continuation training for all judges the essentials of good behaviour and avoiding inappropriate behaviour, particularly inadvertent inappropriate behaviour.

Unlike many organisations, we set out to find about this ourselves. We asked questions that we did not know the answer to, something as an

advocate we were always taught not to do. However, it was important to learn whether we had problems of the sort that other organisations have. I hope they are fewer than in many other organisations, but it would be folly to pretend that we do not have some problems and we are taking immediate steps to do what we can to mitigate those problems.

Q56 **Maria Eagle:** The University of Manchester study on racial bias in the judiciary was published recently and set out some quite worrying findings, with 56% of those surveyed stating they had witnessed at least one judge acting in a racially biased way towards a defendant, while 52% had witnessed discrimination in judicial decision making. The report found judicial discrimination to be directed particularly towards black court users, including lawyers, witnesses and defendants. That is a very worrying finding. What is your response to that study and the racial bias highlighted?

The Lord Chief Justice: When it was shown to me, a day or two before it was published, I made it clear immediately that we would take account of what it said in the work that we have already started doing.

It is important to understand a number of things about that report. In the foreword, the observation is made that there is a need for better data on topics of this nature. I agree. With respect to the report, it focuses on one or two aspects—for example, work that David Lammy did some years ago without fully understanding what it was that he found.

Also, it is important to understand the self-stated restrictions on that particular report. The methodology described in some detail in the early part of the report makes it clear that it is the result of a survey. It is a survey of a small number of people, which is inevitably self-selecting. More importantly, the report itself very properly emphasised the limits on what it was seeking to do. It said, "It's important to emphasise that all figures reflect the views of the survey respondents only and cannot be inferred to the wider legal professional populations." It also emphasised that it was a small sample size and the exploratory nature of the project. It made the point itself that it did not purport to be the foundation for broad conclusions but to provide a brief overview.

That is not to diminish the importance of the message that those respondents gave. We are taking it into account. Assuming the timing works, I am going straight from here to a meeting of our diversity committee where we will be talking not only about that report, but we will be talking about that report.

Maria Eagle: Thank you.

Chair: We will not delay you very much longer, I promise you, Lord Burnett. There are a couple of very quick topical matters.

Q57 **Karl Turner:** Briefly, I hope you wouldn't mind giving your opinion on live broadcasting of sentencing remarks of Crown court judges. Are they

likely to increase public confidence in the justice system and wider still in the sentencing of cases?

The Lord Chief Justice: I very much hope so. At the first press conference I gave when I became Lord Chief Justice, five years ago almost to the day, I indicated my hope that we would be able to move towards broadcasting sentencing remarks in high-profile cases. The reason was to increase transparency and to dispel misunderstandings. It took a long time to get the statutory instrument laid. It was then interrupted by covid. Now it is happening.

I am sure, Mr Turner, you will have seen the recent very high-profile examples of sentencing remarks that have been broadcast. It is early days. There have only been three so far, but we are moving in the right direction. I think it will help public understanding. Inevitably, for most people a snippet will be broadcast during a news report, whether picked up on TV or other media. For those who are really interested, more will be available to be seen. It is a very important step and long overdue.

Q58 **Karl Turner:** What is not broadcast is the actual application before the judge for the sentencing remarks to be broadcast in the first place. How is that decision made? How does the judge determine that it is in the interests of justice?

The Lord Chief Justice: That happens through the broadcasters effectively making a written application. It is done administratively and the judge decides.

Karl Turner: Okay.

Q59 **Chair:** Is there argument between the parties if the Crown, for example, is concerned?

The Lord Chief Justice: If the parties are concerned, yes.

Q60 **Chair:** If the Crown, for example, says, "We don't think it is a good idea."

The Lord Chief Justice: There can be very good reasons why you should not broadcast sentencing remarks, not least because of the risk of breaching statutory anonymity, for example, or other problems.

Q61 **Chair:** It is essentially done on the papers rather than in open court.

The Lord Chief Justice: Yes.

Q62 **Chair:** Finally, there has been a lot of talk about immigration and the amount of time it takes to deal with processing the claims of people who have arrived here and made applications.

I appreciate the policy on this tends to sit with the Home Office rather than the Ministry of Justice. It is, perhaps, an outlier in a sense from the mainstream work, but we have tribunal judges sitting in the immigration tribunals. Are you aware as to the volume at which immigration tribunals sit compared with recent history? ^^^

The Lord Chief Justice: I can tell you that the outstanding case load in the immigration tribunals has gone up in the period of covid. The extent to which they sit is determined by the allocation of sitting days by the Ministry of Justice. Obviously, I am conscious that there is a lot of controversial policy in the background to all of this.

Chair: Indeed, yes.

The Lord Chief Justice: The senior President of Tribunals would be the better person to talk in detail about it.

Chair: They would be better placed to do it, yes.

The Lord Chief Justice: There are projects in train at the moment to try to improve the effectiveness of tribunal hearings. At the moment too many are adjourned because, as often as not, the Home Office is not ready. I am conscious that the Home Office has a finite number of people dealing with a growing number of cases. So I am not being holier than thou or critical.

Chair: No.

The Lord Chief Justice: But from the perspective of the immigration tribunal—and I am conscious that there is someone here who has very deep direct experience, at least vicariously—the tribunal wants high-quality decisions made in the Home Office so that there are fewer appeals. The tribunal would like to see the recognition by the Home Office in advance of some appeals that the appeal is going to succeed so that time is not wasted. The tribunal would like to see the Home Office ready and fully prepared for all appeals. The tribunal itself is looking at its ways of working to speed up the number of cases that can be dealt with by any particular judge in any particular week.

However, it is inevitable there will be pressures on the immigration tribunal and there will need to be some consideration of expansion of resources.

Q63 **Chair:** Which will mean, for example, more funding for fee-paid judges to sit more days.

The Lord Chief Justice: Yes.

Q64 **Chair:** Thank you very much, Lord Burnett. I am very grateful for an update on that issue. I am also very grateful to you for your time and for your evidence, as always.

The Lord Chief Justice: Thank you. It is always a great pleasure to come along to see you. I look forward to doing it again.

Chair: Thank you very much. The session is concluded.