

Justice Select Committee

Oral evidence: [Work of the immigration and asylum tribunals](#), HC 1152

Tuesday 25 April 2023

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Members present: Sir Robert Neill (Chair); Tahir Ali; Janet Daby; Maria Eagle; Dr Kieran Mullan; Edward Timpson.

Questions 1 - 83

Witnesses

[I](#): Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association; and Rowena Moffatt, Public Law Practitioner, Doughty Street Chambers.

[II](#): Mr Justice Ian Dove, Chamber President of the Upper Tribunal, Immigration and Asylum Chamber, The Rt Hon. Sir Keith Lindblom, Senior President of Tribunals; Judge Melanie Plimmer, Chamber President of the First-tier Tribunal, Immigration and Asylum Chamber.

Examination of witnesses

Witnesses: Zoe Bantleman and Rowena Moffatt.

Chair: Welcome to this session of the Justice Committee looking at the work of the immigration and asylum tribunals.

We are grateful to the Judicial Office for facilitating our visit to the tribunals at Hatton Cross. It was extremely helpful, and some of that learning will perhaps be used in the course of this session.

I welcome our witnesses, but first we must make our declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

Edward Timpson: I am a former Solicitor General with a practising certificate but I am not currently undertaking any cases. My brother is chair of the Prison Reform Trust. I am a member of JUSTICE.

Q1 **Chair:** Welcome, Ms Bantleman. Please introduce yourself.

Zoe Bantleman: I am the legal director of the Immigration Law Practitioners' Association.

Q2 **Chair:** Rowena Moffatt joins us remotely.

Rowena Moffatt: I am convenor of the courts and tribunals working group at ILPA and a barrister in private practice at Doughty Street Chambers.

Q3 **Chair:** Various representatives and organisations have submitted written material, which we have had a chance to look at.

It has been reported to us that the case backlog before the first-tier tribunal is about 29,000. From the practitioner's point of view, what is the reason for the size of the backlog?

Zoe Bantleman: I can see from the practitioner perspective what may be one of the causes for part of the backlog.

In ILPA's evidence to the Ministry of Justice at the beginning of my time as legal director—December 2021—we noted that the online system had many advantages but that it had the potential to create a more protracted, bureaucratic and rigid process between the filing of the appeal notice and the substantive hearing.

We noted two key bottlenecks in our evidence to the Ministry of Justice: in the respondent—the Home Secretary—serving her bundle; and in the respondent's review. The review is a very helpful part of the process. It is a mandatory review that the Home Secretary must undertake and can result in the claim being conceded and withdrawn. When the claim is



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withdrawn, it is pretty crucial to the delay and the number of cases in the backlog.

Do you want me to go into further detail?

Q4 Chair: We shall come to some of that later. I am struck by the fact that it is taking about a year for asylum appeals in human rights cases to be heard. Do the same considerations apply, or is there anything beyond them?

Zoe Bantleman: I think it was predominantly those two issues.

Rowena Moffatt: I have practised in the tribunals for 12 years. I have not noticed a massive change in delays between a case being lodged in the tribunal and it having a substantive hearing. These delays are not new.

What causes them is a difficult question for practitioners to answer; the tribunal is probably better placed to speak to that.

I reiterate everything Ms Bantleman said and add that the pandemic has to be factored into account. On 23 March 2020, all listed cases were delisted overnight and transformed into case management hearings. The tribunals took a while to get back up to speed. Some cases were not suitable for remote hearings and could not be heard for a year or more.

That has to be factored in when you are looking at today's backlog, because it is still relevant. I emphasise that the two bottlenecks that Ms Bantleman points to are on the respondent side.

We will get on to respondent delays, but in my view those are the key problems under the reformed system.

Q5 Chair: Have you noticed any change in the type of work that you as a practitioner and your members undertake? Has it become more complex?

Zoe Bantleman: From our members' perspective, under the reform programme there is much more front-loading of the evidence in the work that is being done.

A specific document—an appeal skeleton argument—has to be produced in advance of the hearing. We have noticed that sometimes the appellant's bundle has to be updated multiple times. It is uploaded once and updated in advance of the hearing. The same goes for the appeal skeleton argument.

Rowena Moffatt: Over the decade or so for which I have been involved things have become considerably more complex. There has been an attrition of appeal rights away from the simpler appeals under the rules—whether you met the rules or not—to much more complex arguments that now are human rights and protection-based, which by their nature are inherently more complex. That requires greater time and, yes, takes



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longer to determine. There has been an increase in complexity over the years.

Q6 Chair: The Prime Minister is on record as saying he wants to eliminate the backlog in the asylum case load. Is that practical? How can it be done? What impact will it have on workload in the system and the sector?

Zoe Bantleman: It is difficult to understand the full scale of the impact of the policy. On 1 March 2021, ILPA and 179 other organisations and individuals representing or having an interest in supporting refugees wrote to the Home Secretary about the asylum questionnaire, not because we think the progression of asylum cases is not important—we think that it is vitally important—but because the way in which it is done is crucial.

It is important to consider the context in which legal representatives are acting. They are acting in a crisis of capacity; there is a very small number of specialist asylum providers in the UK, and the number of legal aid providers, due to the legal aid crisis and the deserts across England and Wales in particular, make it a very difficult context.

Our position is that the streamlined asylum processing in the asylum questionnaire is something on which someone should have access to legal advice and representation if they so wish.

I understand from the Home Office—it has written unequivocally to ILPA—that that is not its position. It does not view the legal representative as necessary in the completion of an asylum questionnaire. We think that the very nature of the questions that need to be addressed requires legal advice and representation.

With the crisis in capacity, it is likely that a proportion of the 12,000 people in the first cohort of the five high-grant nationalities will not have a legal representative. The Home Office has not, to my knowledge, published statistics on the proportion of the initial cohort who are without a legal representative. Given that these are high-grant-rate nationalities—95% and above—it is likely that a large number of the 12,000 will be granted asylum, in which case the impact on tribunals at this point in time is likely to be quite low.

Some of them may be withdrawn. The Home Office has made it clear in its policy guidance that it proposes to apply paragraph 333C of the immigration rules, which allows it to treat a claim as withdrawn if a person does not comply with the provision of information, including in a questionnaire. Some of these might be withdrawn, and further representations and stresses are placed on the tribunals and courts system.

More importantly, this is only the beginning—the tip of the iceberg in relation to streamlined asylum processing. The latest statistics show 80,148 cases in the legacy backlog that will need to be decided in



approximately eight months' time, in line with the Prime Minister's intention. That is a large number of cases, but again we have no idea how many of them are unrepresented but will be able to find a legal aid representative. Some of them will be from low-grant-rate nationalities. It is likely that some will be refused and possibly certified as clearly unfounded, and that will place pressure on either the first-tier or the upper tribunal.

Q7 Chair: Does your association have a view on the impacts—never mind the merits, but the practicalities of the workload—of the Illegal Migration Bill, which the House will consider again tomorrow?

Zoe Bantleman: Yes, we have quite a few views. We prepared a briefing for Second Reading in the House of Commons laying out some of them. I saw 72 pages of amendments today, in which I must admit I am not fully versed.

The Illegal Migration Bill is likely to have a significant impact on representatives and their capacity. The upper tribunal is likely to bear the brunt of the capacity and workload that is likely to arise from the Bill. The new fast-track procedure in legal proceedings starts in the upper tribunal.

Rowena Moffatt: There is going to be an obvious knock-on impact on the tribunal's work from the 80,000 cases in the legacy backlog that will need to be determined by the end of this year, if the Prime Minister is correct in what he says. Many of them will be non-high-grant-rate countries, so we can expect a lot more refusals. With a backlog in the tribunals of some 30,000 already and whatever comes from the legacy cases, there will obviously be a big impact.

Then we have the different question of the Illegal Migration Bill. The oddity is that it takes cases away from the first tier and shunts them to the upper tribunal. We are looking potentially at removing the main case load of the first tier and putting a huge increase on resource in the upper tribunal.

Ms Bantleman mentioned to me in our pre-discussion that the Bill introduces a provision that would make all first-tier judges upper tribunal judges—they would be able to sit in upper tribunal cases. That points to the fact that what is being suggested is unworkable.

Q8 Dr Mullan: Are you saying that extending the role of the first tier is unworkable? Are you referring to the first tier acting as the upper tier, or just generally?

Rowena Moffatt: On the removal of any appeal rights for asylum cases and the attrition of the role of the first tier, the whole structure of the tribunal system—the first-tier tribunals and the upper tribunal—is for there to be a two-tier approach whereby appellants have an appeal as of right to the first-tier tribunal and an appeal on a point of law to the upper tribunal. The Illegal Migration Bill removes the basis of that system. We think it is returning to a pre-unified tribunal system—the single tribunal—



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and going backwards in time, and taking the immigration and asylum chamber out of sync with the rest of the unified tribunals service.

That has not been properly thought through. The impact on the upper tribunal—currently a more specialised tribunal with specialised judges dealing with points of law—is quite surprising. It will be a massive change. There will be a need to do something with the first-tier tribunal judges, who essentially will not have any work.

Q9 Dr Mullan: I was interested in whether you had anything specific to say about that. I thought you were alluding specifically to feedback on the ability of the first tier to extend its role. Do you think it is capable of that? What would be the challenges of the specific element?

Rowena Moffatt: It is certainly a different role from their current one. The tribunal will be better placed to speak to the training in place for first-tier judges and when they move on to the upper tribunal, but currently you cannot apply for a job in the upper tribunal before you have gone through the first tier. I think that is right, but don't quote me on it.

Q10 Chair: We can ask those who sit on it.

Rowena Moffatt: They certainly are different roles. I find it hard to understand how a first-tier judge who is versed in hearing cases as a primary decision maker could do a different role in the upper tribunal without significant training.

Q11 Dr Mullan: My understanding is that the bar would be set a lot higher for a claim to succeed and that therefore fewer people might lodge a claim. Do you see logic in that thinking, or do you think that people will lodge a claim anyway?

Zoe Bantleman: I anticipate that fewer appeals—full stop—will be heard in tribunals under the Illegal Migration Bill. The vast majority of asylum and human rights claims will be declared inadmissible under the Bill. We are talking not about a human rights or asylum claim per se being heard in the upper tribunal under the legal proceedings section of the Bill but, rather, about the suspensive appeal process. The human rights process would run concurrently.

It is helpful to note, perhaps, that the suspensive appeal process is not for every national and for removal to every country; it relates only to a person challenging removal to a third country—not to their own country of nationality or origin. For countries listed as a safe country in section 88A of the 2002 Act, as introduced by the Bill, they will not be able to lodge any human rights or asylum claim that would result in appeal in the first-tier tribunal or upper tribunal, unless very exceptional circumstances detailed in the Bill applied.

Only the suspensive appeal process would run concurrently to a human rights claim as to why a particular person could not be removed to a third



country. Yes, that would have quite a high threshold of serious or irreversible harm. We will understand tomorrow what that means.

Chair: We have quite a bit of ground to cover, so perhaps we had better move on and return to those topics later.

- Q12 **Maria Eagle:** The tribunal's 2022 annual report noted a big increase in the volume and complexity of appeals under the EEA regulations and EU settlement scheme, such that receipts apparently now make up 36% of all receipts in the first-year tribunal. The numbers are going up.

Do you recognise that trend from your work? Following the Home Office's acceptance of Mr Justice Lane's December judgment on pre-settled status, do you expect the number of appeals—of receipts—to reduce?

Zoe Bantleman: From our feedback, the courts and tribunals working group does not hear of an excessive number of European appeals. Our European working group—a separate working group within ILPA—often hears of appeals, but they usually relate to quite complex matters such as durable partners and deportation appeals. These might simply be the more contested issues that come to light through the working group.

Ms Moffatt and I were discussing the IMA case earlier. We could not see the direct correlation between the High Court's IMA judgment and the effect it would have on tribunals appeals or resources. It was not my understanding that the vast number of appeals before the first tier or upper tribunal were in relation to people who had pre-settled status and were bringing an appeal on the basis that they had not made a subsequent application, whether it be for further pre-settled status or settled status, which was my understanding of that judgment.

- Q13 **Maria Eagle:** You are not detecting an increase in the volume and complexity of the cases being received in the first-tier tribunal, as set out in the tribunal's annual report.

Zoe Bantleman: The membership may be absorbing it without commenting directly to me on it, but, no, it has not been brought directly to my attention.

What has been brought to our attention is the increased number of appeals relating to very complex areas of appendix EU, problems with the immigration rules and complexity within the immigration rules giving rise to appeals and to appeal hearings where the appeal should have been conceded.

- Q14 **Maria Eagle:** Is that similar to your experience, Ms Moffatt?

Rowena Moffatt: Yes, we were discussing it earlier. In my practice I had not picked up on a significant uptick in appeals under the EUSS or with an EU element.



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I certainly agree about the excessive complexity. This is another area where there has been an increase. Contrary to the stated intention, there has been an increase in complexity.

Q15 Edward Timpson: We have heard a little about the reform programme across HMCTS and specifically in relation to tribunals, where it was launched in January 2020. We have had a little water under the bridge, despite covid intervening.

What is your assessment of the reform programme—good or bad? What success has it created, and what teething problems have you come across?

Rowena Moffatt: We understand from our working group and from my practice that it generally has been very successful in avoiding the breakdown of lists, so avoiding late adjournments, and in increasing quality. With the skeleton argument, barristers are able to be involved earlier in the process and to advise on the evidence. Prior to the reform programme, barristers quite often would be instructed a week before the hearing, sometimes a day before the hearing. It is unusual these days for that to happen.

The other key point that has been very useful is the built-in formal reform stage. The feedback to our working group on its usefulness has been mixed. One practitioner wrote to say that 50% of their cases had been withdrawn at the review stage, but that is not the experience of others. Perhaps it depends on the type of law—I am not sure of the reasons for it.

Overall, there has been positive feedback on the reform programme. The teething problems mostly relate to problems with the respondent's engagement, with delays in the uploading of the respondent's bundles, which they are meant to do within 28 days. Not infrequently, they do not comply with that. The tribunal does not routinely impose sanctions for non-compliance in that respect. It is difficult for appellants, because in some cases the tribunal tells you to upload your evidence without the respondent's evidence, but if you do not know the evidence against you it is very difficult to prepare your case effectively.

As I say, there have been some differences in views between practitioners.

Zoe Bantleman: Overall, ILPA's view is that the reform process has been a positive. There have been minor teething issues in relation to digital reform, which are suffered across the board whenever there is digital transformation. We have identified those and usually the tribunal has been quick to try to resolve them in individual cases.

There are important structural issues that you have already identified that, if addressed, would make the system even more successful than it has been.



Q16 Edward Timpson: When we went to Hatton Cross we were given a demonstration of the application of the digital platform. One of the issues was around those who are unrepresented or may have a vulnerability—whether they were able to access and therefore play a full part in the process. Have you come across that, and should we be concerned about it?

Zoe Bantleman: As ILPA, we are slightly less likely to be able to comment on that because we are a membership organisation of legal representatives. It is less likely that we would see such cases.

Q17 Edward Timpson: Do you have any insight, Ms Moffatt?

Rowena Moffatt: I don't, unfortunately, probably because of the nature of my work as well. All I would point out is that in the standard directions there is a specific annexe for unrepresented appellants. They have different directions from those who have representation.

Under the standard directions, there is the ability to lodge your appeal not on the MyHMCTS platform. I believe you can still use the paper forms and ask the tribunal to go along that route. Unfortunately, like Ms Bantleman, the nature of my practice means that I do not have insight into unrepresented appellants.

Q18 Dr Mullan: How often, in your experience, are remote hearings used, and how useful have you found them as a post-pandemic tool that you may continue to use?

Rowena Moffatt: Overall, the feedback on remote hearings has been very positive. I understand from the 2022 annual report of the Senior President of Tribunals that while in-person hearings are the default position, the tribunal recognises the benefits for broader users of remote hearings as an option and will still use them.

It is difficult for me to say how often they are being used, but I can certainly say from my experience that they are being used. Generally, the tribunal has been quite responsive to requests to use them. For example, if a witness cannot attend in person because they are not located close to the tribunal, the tribunal will facilitate the witness giving evidence remotely—a hybrid hearing.

There is historical evidence. A 2013 Bail Observation Project showed that there was a negative impact on outcomes when remote hearings were used. There is not yet any data from the current context on the correlation between remote hearings and outcomes—that remains to be seen—but in the right case a remote hearing can be very positive.

Clearly, there are potential issues around vulnerability, although there are two lines of thought about that. Ideally, you should always have input from the appellant. In ILPA's view, and in my view, the tribunal should never force a remote hearing on an appellant. There should be case-by-case assessment to enable an appellant to give the best evidence.



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In certain vulnerable cases, the best evidence may be given face to face, whereas in others, based on medical evidence, on the instructions of the appellant, it may be best if evidence is given remotely. There needs to be case-by-case analysis.

Q19 Dr Mullan: Can you, Ms Bantleman, think of circumstances where the use of remote evidence works well?

Zoe Bantleman: One thing that might be relevant to bear in mind is the legal aid issue. If representatives have to travel across the country to attend hearing centres, rather than putting expenses on the public purse, it would be logical to allow a remote hearing as long as fairness and justice were still possible.

Q20 Dr Mullan: We have asked about remote hearings for other court settings. Is there the possibility of a slight tension between people representing clients who would benefit greatly from being able to hold two or three cases in different parts of the country and get more work than if they were physically to travel, and what might be in the best interests of their clients? Do you recognise that tension? How well do you think your members are handling it?

Zoe Bantleman: I think there is that tension. One of my members said, "for most of our clients remote hearings are convenient, perhaps preferable, and do not interfere with access to justice. It does make it easier for counsel and us attending hearings, especially if they take place outside of London"—this member is located in London—"as well as for clients who do not live particularly near to cities where tribunals are based."

We have, however, had some issues with hybrid hearings, which are slightly distinct from remote hearings. In particular, we wrote to Judge Campbell about some hearings at Taylor House last year. There were directions for the hearing to take place in person—face to face—but counsel or the representative of the Home Office did not appear in person and comply with those directions. Ultimately, the hearing was converted into a hybrid hearing, where some people, as today, attended remotely and others attended in person. This can be extremely difficult for vulnerable appellants. We wrote to Judge Campbell about one of our members who has a specific disability that made it difficult for them to attend hybrid hearings. If they had known it was going to be a hybrid hearing they could have made representations, but they did not want to delay the hearing.

Q21 Dr Mullan: Do you notice any variation in how centres make use of it? If there is a big variation, it makes you worry that perhaps we do not have a clear-minded view on how best to make use of it.

Zoe Bantleman: We have noticed that not all courtrooms are as well set up for remote and hybrid hearings as others. It is a matter of facilities. In our letter in relation to Taylor House we identified one courtroom that is not particularly well suited for hybrid hearings.



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Rowena Moffatt: I am afraid I do not have information on different centres. I am London-based.

Q22 **Dr Mullan:** I want to ask about the quality of Home Office decision making, or at least how you might view the quality of it, regarding the success of the first-tier tribunals. To what extent do you think that successful appeals are based on new information, changes in the law or things that the Home Office could not have been in a position to know about at the point of the appeal? To what extent could appeals have been avoided if Home Office decision making had been of a higher quality?

Zoe Bantleman: One thing that is difficult to know in the reform programme—the vital aspect that makes it so helpful—is the review and the potential for withdrawal. In the withdrawal decision, it is not always made abundantly clear why the decision has been withdrawn. Without that, it is a little difficult to comment on what has ultimately changed the Home Office's mind.

Q23 **Dr Mullan:** I guess I mean not just the withdrawal but the successful appeals. Why are appeals successful? Is it because of things that could have been avoided in the first place or because new information came forward?

Rowena Moffatt: It is often a combination of various factors. There are three things: poor decision making; new information coming to light; and a change in country conditions or new country guidance. With the long lead time in appeals, it is not uncommon that a change in the law halfway through makes the appeal unsustainable.

It is one of those three factors, and quite often it is a combination of the first and second. In my experience, there is generally some element of poor Home Office decision making.

It is relevant to note that historically the Home Office has explained the reason for the high overturn rate on appeal by reference to new evidence being provided at the appeal stage. The reform process was designed with the review to remove that problem. At the review stage they could withdraw the case and it would not go on to appeal.

I have not noticed a massive change in cases being overturned after the review stage. If the Home Office was right and it was essentially just new evidence, there would not be any cases being pursued post review to appeal that would be overturned. We know that is not the case.

What has happened since the reform procedure has been rolled out shows that it is not just new evidence; poor decision making plays a significant role in why cases are overturned.

Zoe Bantleman: Can I add something in relation to the evidence and perhaps add a fourth factor or reason to Rowena's list? Sometimes, an appellant or an applicant at the relevant time had the evidence necessary to satisfy the Home Office but were not aware of the Home Office's



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concern. Because of the way Home Office decision making takes place, it is not a dialogue or communication line between the Home Office and applicant. They are not able to provide that piece of evidence; they do not understand the case to answer until they receive the refusal letter, at which point they and their representative can go away and provide the evidence needed. Sometimes, that results in the review having the case withdrawn, and sometimes it results in a successful appeal at the hearing.

Q24 Dr Mullan: When we say “poor decision making”, can you give us a real-world example? What things do they get wrong?

Rowena Moffatt: It would mean not applying the correct country guidance. That is an egregious level. At a lower level, a more difficult level, the point would be credibility findings that are unsustainable, or plausibility findings that are speculative and do not have regard to the background country evidence.

A lot comes down to credibility, and quite often the findings are unreasonable, and that comes to light when the judge looks at it. There are more obvious ones where a country guidance case has been missed or they have applied the law incorrectly.

Q25 Dr Mullan: In some of the difficult cases—releasing a foreign criminal from detention—the Government would not want to be the holder of that decision. Do you see evidence that sometimes they just say no to cases because they do not want to take the decision and would rather have the judiciary do it?

Zoe Bantleman: It is very difficult to comment.

Chair: You are not in a position to say.

Q26 Dr Mullan: I assume it is the same for you, Ms Moffatt.

Rowena Moffatt: Yes.

Chair: We will ask the Home Office about that at some point.

Q27 Janet Daby: Are presenting officers adequately prepared and trained for hearings? The Independent Chief Inspector of Borders and Immigration reported that “Presenting Officers feel disincentivised to withdraw cases as they will then have to prepare a case from the ‘float list’ on the day of the appeal hearing, which one PO described as ‘hurting yourself,’ ‘it is much easier to prepare [the case], perform it and lose it than to withdraw it’”.

Do you recognise that? Can we have your view on it?

Zoe Bantleman: Not being a presenting officer, it is very difficult to comment on the intentions of withdrawing. We hear of claims being conceded on the day of the appeal hearing or shortly before it, which suggests that if a presenting officer had reviewed it there would have



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been the possibility of conceding earlier at the review stage or before the day of the hearing.

I have evidence from a member in relation to presenting officers and how often they are present. They say: "Of the four appeals I personally conducted under the reform programme which went to a hearing there was a Home Office presenting officer present at the hearing in only two of them. In that asylum matter the judge stated in the determination: 'a presenting officer failed to attend on behalf of the respondent. This was most unhelpful, especially since the respondent has been silent within the refusal letter and within the respondent's review as to what their position would be if I were to make a finding in the appellant's favour that he was a homosexual and wanted to live as an openly gay man in his country of origin.' In one case where there was a Home Office presenting officer I was contacted directly by him the day before the hearing. He asked me to send him our bundles, saying that he had not been provided them internally. In the determination the first-tier tribunal judge said: 'the HOPO's submissions were unfortunately not as clear as they could have been.'"

I do not have any recent evidence myself in relation to Home Office presenting officers, but I merely relay that from one of our members. Ms Moffatt might have more recent experience.

Rowena Moffatt: The general view among barrister practitioners is that the standard of presenting officer is generally poor, with due respect to them. That probably relates to the findings of the ICIBI report on the lack of training and on these individuals not being lawyers.

For anyone who is not aware, the float list means that a presenting officer will be asked to pick up a case after 10 am, read the bundle, which could be 300 pages, and present it on the same day. It is not an enjoyable process for anyone involved. I am not able to speak to whether that is a disincentive, but perhaps it speaks for itself.

Anecdotally, there are withdrawals on the day of the hearing. That often happens because of pressure from the judge to narrow the issues. It is difficult for presenting officers. They cannot make a decision by themselves; they have to take instructions from a senior caseworker. That will often make things more difficult because they will not get hold of the senior caseworker and the case will be put back for a few hours for them to take instructions. Sometimes, it is not even possible to take instructions.

All those things militate against withdrawals and in favour of going through the motions and losing the appeal.

Q28 Janet Daby: To what extent are there delays in the Home Office engaging with the process under the reform programme? What should the tribunals do to ensure that the Home Office complies with relevant timeframes? Do you have any concerns with the time taken by the Home



Office to action decisions once it has decided to withdraw a case?

Rowena Moffatt: We have already observed that there are significant points of delay. The 28 days within which they are meant to provide the bundle are frequently not observed. Even when the directions are sent stating that it should be provided within X date, sometimes that is simply not observed.

The tribunal needs to be more proactive in engaging with the Home Office and convening a case management hearing to focus the Home Office's mind, or indeed in using its cost powers to do so.

We have evidence from a member who points to significant problems in the implementation of judgments. For example, it took 13 months for leave to be granted after a case was allowed, which is inexplicable. It is not unusual for successful appellants to wait up to four months to receive leave. These are cases where there does not need to be any substantive casework; it just needs simple security checks—there really is no explanation of why it should take so long.

Zoe Bantleman: On 6 April 2023, we wrote to the Home Office about Home Office implementation of appeals and the fact that they were delayed, because this was such an issue experienced across the membership.

Q29 **Janet Daby:** Concerns have been raised with the Committee that there are lawyers who are prepared to exploit vulnerable people, persuading them to appeal their cases where there is little or no prospect of success in order to take their money and accept the fees. Do you recognise these concerns? If so, what steps should be taken to tackle this practice?

Zoe Bantleman: I make no supposition or comment on the actions of any particular lawyers. I do not think I am asked to comment on that. If there are concerns about any particular lawyer, I can confirm who is a member of good standing of ILPA.

It is important to note that there is established jurisprudence—the Hamid jurisdiction and procedure of the High Court—but I do not see that that comes within the remit of what we are discussing today in relation to asylum and immigration tribunal appeals. There are also regulatory bodies and procedures to ensure that various legal representatives comply with their professional and ethical legal obligations.

One thing that is perhaps important to note is that ILPA has consistently had concerns regarding the hyperbole and rhetoric against the legal community. It is important to remember that, while some lawyers may take the title of activist, many are simply trying to execute their professional obligations and do not wish to take part in any culture war. They are advising on the very same areas of law and issues as the Government's and Home Office's own lawyers.



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The immigration Minister, Robert Jenrick, said on 20 February 2023 in relation to the Knowsley incident that human rights lawyers abused and exploited our laws at times. When asked to clarify it, he said: "We are monitoring the activities, as it so happens, of a small number of legal practitioners, but it is not appropriate for me to discuss that here."

I went to the Home Office to try to understand what the monitoring of these activities meant. They called an engagement meeting, and when we asked the permanent secretary, Patricia Hayes, about it she was not able to provide any clarification. The Home Office subsequently said to me, "I can confirm that when considering representations the Home Office ensures that firms raising immigration matters have the correct regulatory credentials. If evidence exists that obligations have been breached, we may refer them to regulators."

Therefore, if this is simply about whether or not people are regulated, that is one thing, but the hyperbole is very concerning and the rhetoric can be dangerous. I would point out that there have been attacks against the legal community in the past.

Q30 **Janet Daby:** Ms Moffatt, do you have anything to add?

Rowena Moffatt: I have nothing to add.

Q31 **Chair:** Ms Bantleman, do you know how many practitioners are members of ILPA? You do not have to be; it is a membership organisation. Do you know what percentage of practitioners your organisation covers?

Zoe Bantleman: There are nearly 4,000 individual contacts across the UK, and we estimate that that represents about 80% of all practitioners in immigration, asylum and nationality law.

Q32 **Tahir Ali:** My questions are related to the Nationality and Borders Act and accelerated detained appeals. If implemented in full, what impact will the Nationality and Borders Act have on the work of the tribunal? Does the tribunal have the resources required to process the cases relating to priority removal notices to meet the timetable for ADAs?

Zoe Bantleman: I will not comment on the tribunal and its resources, given that it is here today to comment on those things, but I point out that ILPA has raised its concerns from the outset in relation to both expedited appeals and accelerated detained appeals under the Nationality and Borders Act and the ousting of the supervisory jurisdiction of the higher courts in relation to expedited appeals.

In relation to accelerated detained appeals, as with the fast-track procedure that preceded it, ILPA has been very clear from the outset that it is concerned about the limitation on the judiciary to make decisions that would ensure the fairness of the cases.

Q33 **Tahir Ali:** Ms Moffatt?

Rowena Moffatt: I have nothing to add.



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Q34 **Dr Mullan:** If someone was improperly advising people to lodge appeals without a reasonable prospect of success, how would that get noticed by the system? Does someone look at the degree to which it is happening? Does a judge take note of the fact that this keeps happening? How do we know whether that happens?

Chair: Are you in a position to say?

Zoe Bantleman: I am not in a position to speak for the judiciary, but I assume that others would be able to make relevant references to regulatory bodies if there were any concerns that a person was not acting in line with their professional and ethical obligations.

Rowena Moffatt: In certain cases where a barrister is instructed, I am aware of cases in the past where colleagues have had to advise clients that they should be referring the solicitor to the SRA.

Chair: That would be the thing to do.

Q35 **Maria Eagle:** What is your overview of the sustainability of the immigration legal aid sector? We have touched on it as a peripheral comment, but do you have anything to say about that? If you do think there is a concern about its sustainability, what is needed to increase its sustainability? Do you want to start on this, Ms Moffatt? I am conscious that you keep having to go second.

Rowena Moffatt: It is withering away. It is probably one of the things that I think is most concerning in relation to access to justice for vulnerable people. It is now incredibly difficult to find a solicitor who will represent an asylum applicant. The whole sector is withering simply because there is not enough money.

In relation to controlled work, there has been no increase in the hourly rate since 2007. There has been a significant rise in the cost of living and the cost of doing the work in relation to staff salaries and other costs, such as rent, and so on. Therefore, the base is simply no longer there.

In addition, since 1 April of this year a new fixed fee has been introduced for this work in the tribunal. It has increased since the initial fee from 2020, but essentially for barristers it creates a very difficult problem. There is a bolt-on fee for the appeal hearing, which is £300. The preparation fee is now about £1,000. I understand from speaking to colleagues that some solicitor firms are proposing that barristers prepare the appeal skeleton arguments and do all the appeal preparation and advice in conference beforehand for £300, which clearly is not viable for any junior barrister.

Essentially, barristers are not likely to do this work any longer simply because it is not viable for them. Good solicitors are leaving the arena because it is not viable for them. We are facing a situation that undermines representation of very vulnerable people.



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It also undermines the reform system because the whole point of that was to front-load the process and get barristers involved early so that they could be advising on the evidence and drafting appeal skeleton arguments.

My fear is that we will go back to the pre-reform system. Barristers will be instructed late in the day. Skeleton arguments will be drafted by solicitors, and barristers will then be in an invidious position where they need either to draft a skeleton argument for free, essentially, or go to court without a skeleton argument that they would endorse and try to do the advocacy there, which is obviously not good for justice or the appellant.

Q36 **Maria Eagle:** Ms Bantleman, do you have anything to add?

Zoe Bantleman: There are a few other trends to note. The first is that immigration, asylum and nationality law is not becoming more simplified; it is becoming more complex. The Illegal Migration Bill and the Nationality and Borders Act only add to that, so it is an increasingly complex area of law requiring specialist knowledge and expertise. On top of that, we have legal aid deserts across England and Wales, and capacity issues because of the large number of claims and appeals and fewer practitioners to service that demand.

If you add to that the cost of living crisis, inflation and the fact that fees have not risen, it is basically a disaster that is brewing. That is what we are seeing now. The extension notices for the next year of legal aid have just gone out. Concurrently, the review of civil legal aid is running, but that does nothing in the interim to stabilise or ensure that civil legal aid—in particular, immigration and asylum legal aid—is made sustainable in the short term. As stakeholders, we have no understanding from the Ministry of Justice as to what will be done following the review of civil legal aid, given that the extensions will take us only until the end of August 2024.

Whether those policies and the findings of that review will be implemented in time for a new legal aid contract—it has now been extended for another year beyond the end of the standard civil contract—and result in change and make the system sustainable is still highly questionable. We do not have clear answers.

Q37 **Edward Timpson:** Ms Moffatt, referring to the point you made about presenting officers and the quality of the advocacy and preparation of the work that you see, are there any opportunities outside of live cases to have contact, conversation and share feedback, potentially to provide peer review or training opportunities, or are you very much just ships in the night that meet only if you happen to be doing a case together?

Rowena Moffatt: My experience is that it is the latter. I am not sure whether Ms Bantleman will be aware of anything else through ILPA, but I am not aware of any forum where we exchange experience.



Q38 **Edward Timpson:** Do you think that would be helpful?

Rowena Moffatt: I do not think it would hurt. Whether or not it would be helpful, I do not know, but it is worth a try.

Zoe Bantleman: It is also worth remembering that presenting officers are not required to be qualified persons in the same way as appellants' representatives are on the other side.

Chair: It is not like the Bar, where you get to know people in the robing room—you cannot build that sort of connection. That is understood.

Ms Bantleman and Ms Moffatt, thank you very much for your time and evidence. It has been very helpful. We are very grateful to you.

Examination of witnesses

Witnesses: Sir Keith Lindblom, Judge Melanie Plimmer and Mr Justice Ian Dove.

Q39 **Chair:** Sir Keith, Mr Justice Ian Dove and Judge Melanie Plimmer, welcome; it is very good to see you all. Thank you very much for coming to give evidence. I apologise for the slight delay. Perhaps I may ask you to introduce yourselves for the record.

Sir Keith Lindblom: I am Senior President of Tribunals, having held that position for about two and a half years.

Mr Justice Ian Dove: I am a High Court judge. I am the chamber president of the upper tribunal, immigration and asylum chamber, and have been since October.

Judge Melanie Plimmer: I am chamber president of the first-tier tribunal, immigration and asylum chamber, and I have held that position since November. Prior to that, I was an upper tribunal judge.

Q40 **Chair:** I think you heard pretty much the whole of the first panel representing practitioners. I do not want to repeat anything more than is necessary, but, having heard the practitioners' view, and from your own experience, what is your assessment of the current case load of the first-tier and upper tribunals: the numbers, any changes in complexity, for example, or the nature of them? What would your assessment collectively be?

Sir Keith Lindblom: The first thing to say is that the case load is and continues to be very considerable. That is not necessarily a bad thing in itself, provided the tribunal can discharge its workload efficiently and effectively and without undue delay. I think that is the crucial question.

Of course, the resources of the tribunal are always under pressure. Resources include the judiciary, but one must not forget that they extend to the administrative staff who assist us—legal officers in particular, who are, as we will no doubt discuss later in the hearing today, a vital resource in themselves—the IT resource now undergoing reform and the



estate. All of that has to be considered when one is looking at the ability of the system to cope.

I am not sure that I would discern any increase in the complexity of the work. It can be both legally and factually complex, and I think one must bear in mind that many of the decisions being made are important to the Government, but they are important in a personal way to those who are claimants and appellants. It might be fair to say without exaggeration that some of the decisions are the most important ones made in that person's life.

Q41 **Chair:** Is there anything to add to that?

Mr Justice Ian Dove: As far as the upper tribunal is concerned, first, at present our case load is manageable; and, secondly, there is some flexibility because we have deputy upper tribunal judges who sit on a fee-paid basis and can be commissioned to expand our capacity.

Judge Melanie Plimmer: Can I touch on complexity? One looks at the figure of 29,000. Those are 29,000 real cases. What types of cases are they? Back in 2014, that might have been a combination of visitor visa, immigration rules-based cases or much more simple types of cases for representatives to prepare and for judges to determine. Now, all our cases involve fundamental human rights, international protection or deprivation of citizenship.

It is fair to say that over the past few years the cohort of the case load has become more complex, although the senior president is right that that is not a recent phenomenon, but it is an important one to note. Indeed, it is one that the Home Office inspectorate noted in its report.

Q42 **Chair:** Sir Keith, as an overview, is there any geographical variation in the pressures on case load?

Sir Keith Lindblom: I do not think there is an acute difference between regions. Clearly, pressures in London and the south-east in this jurisdiction of the tribunals, as in many others, are the most intense, as one might expect, but I do not think that this is an acute problem in itself.

Q43 **Chair:** We have seen the HMCTS statistics: 54 weeks for appellate cases on asylum matters to be cleared, and 45 weeks for human rights cases. Those are quite significant timeframes for such important decisions. Is there anything that can be done to reduce those? What are the tribunals doing within the resource available?

Sir Keith Lindblom: We are doing a good deal. Last year, I set up the tribunals action group, which is a small group of chamber presidents and me sitting regularly to discuss how we can improve case management and progression, and focus on shorter and more swiftly produced decisions.



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That is yielding fruit. We rely on the co-operation of the two parties who appear in these cases. You have been hearing a good deal about that in the previous part of this session. The tribunal will always have to depend on the preparedness of the parties and their ability and willingness to engage in case management.

In that sphere, the legal officer is pivotal. We are focusing on expanding the duties of the legal officer so that the crucial maxim is observed: that judges do only what judges alone can do. I think that is a crucial guiding principle. We are being proactive, but we depend upon the co-operation of the parties to make it fully effective.

Q44 **Chair:** How often is that co-operation lacking?

Sir Keith Lindblom: I am not going to put a proportion of cases to the Committee. It can be a problem to a significant degree. Even now, under the reformed system, where we encourage a more focused approach earlier, parties, in particular the Home Office, are still coming in a large number of cases not as fully prepared as we might wish to see. The reasons for that may be many, and I do not in any way minimise the pressures that apply to the Home Office with which it has to cope.

We must not ignore that, but the whole system is now set up, as the Committee has been told, to ensure that the cases that do not need to be before the tribunal do not come to the tribunal and that issues that do not need to be disputed and deliberated upon are not litigated. The tribunal is making active efforts to ensure those objectives are met.

Q45 **Chair:** We know this is a political matter. The Prime Minister wants to clear the backlog in asylum cases by the end of the year. I do not ask you, as members of the judiciary, to comment on a matter of policy. Are there any practical implications for the work of the tribunals on which you can properly comment?

Sir Keith Lindblom: Of course, that will translate to some degree into a flow of cases, which presumably will be additional in large numbers to the existing case load if the backlog is to be significantly diminished.

We have to bear in mind also that there is in prospect not only the Nationality and Borders Act but the Illegal Migration Bill, which, as the Committee has noted, is now progressing through Parliament. These are additional pressures. The tribunal will always strive to do its best to discharge the business before it with the resources available to it, but there is certainly no room for complacency.

Q46 **Chair:** In December 2022, the MOJ said that it was making £5 million available to enable the tribunals to take up to 9,000 additional cases a month up to the end of March of this year. Was that target met?

Sir Keith Lindblom: I do not think it was quite met. It was substantially successful. I do not think that it reached quite that level. No doubt



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precise figures could be supplied, but I do not have them at my fingertips.

Q47 **Chair:** I do not know whether either Judge Plimmer or Mr Justice Dove have any thoughts.

Judge Melanie Plimmer: The senior president is right. We believe it to be substantially met. If I may explain why we may have just fallen short, it is very difficult not just for the judiciary but for the judiciary working with listing staff, legal officers and all the staff to gear up quite so suddenly, but I believe that using the resources we had we were able to make significant inroads.

Q48 **Chair:** Is there any indication of any similar funding in the future?

Sir Keith Lindblom: Certain ideas are being considered. I am perhaps not at liberty to reveal conversations that are being had about that.

Q49 **Chair:** I understand that. You mentioned the Illegal Migration Bill, as it currently is. Again, I would not ask you to comment on the policy or merits of the Bill. I got the sense that there might be some practical impact on working and case load, for example. Has that been assessed by either chamber?

Mr Justice Ian Dove: The upper tribunal is the place to which a lot of the work from the Illegal Migration Bill would be directed. Plainly, it is difficult to plan or strategise until one has an idea of what the potential case load may be. That has yet to be identified.

As the senior president said, the judiciary will always remain willing and able to do what it can with the resources that HMCTS is given. I suspect that, if one did the analysis, the proportion of those resources that are judicial salaries is relatively minor.

The currency in which the HMCTS economy works is sitting days. It is key to understand how many sitting days would be provided, because, on the back of that, one is able to make business cases for judges, and our administrative staff are able to make their business cases for more administrators and legal officers to ensure that the work is done.

Therefore, the answer to your question is that, until we have some clear idea of the workload that may be coming through and the case load that may arrive, it is very difficult to plan.

To pick up one of the points that my colleague Judge Plimmer made, we have the flexibility of having fee-paid judiciary to come and help us, but we need to have sufficient notice, because generally speaking they are busy practitioners who need to make space in their diaries and know that when we book them, they will remain booked and will sit.

Q50 **Chair:** As with other jurisdictions, you are fishing in the same pond for the next judges as you are for the advocates.



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Mr Justice Ian Dove: And they and other people with busy professional diaries want to know where they stand.

Chair: I understand that. You picked up Ms Moffatt's point. I think she used the phrase that the changes—leaving aside the merits of them—could in practice get the system “out of sync”, but that it was changing a system of progression from first tier to upper tier and fast-tracking. Does that have any particular practical implications other than where personnel are required?

Sir Keith Lindblom: If I may just describe some of the more strategic aspects and then turn to Mr Justice Dove, I think that the first thing to note, which was stressed by Ms Moffatt in her evidence, is that the present structure of the tribunal is a two-tier one, and the role and resourcing of the upper tribunal, immigration and asylum chamber is largely directed to appellate work.

The present proposals in the Bill, which may or may not become legislation in due course—we know not—would rather reorientate the role of the upper tribunal into a first-instance role with a compulsory timescale for determination.

That will necessarily have its effect on the prioritisation of work. It may be—this is entirely on a conjectural basis at the moment, because we do not know how it will turn out—that much of the work of the upper tribunal, with the resources available to it, will turn out to be work that is related to the new legislation, because it simply has to be under the law.

Q51 **Chair:** Does the provision for judges of the first-tier tribunal to be able to sit as judges of the upper tribunal potentially assist, or create a problem perhaps for Judge Plimmer's chamber in losing judges?

Sir Keith Lindblom: It can be both, for the reasons you have indicated. You cannot have judges in two places at the same time. Potentially, we can sit up first-tier judges, but that will have an impact necessarily on the resource of the first-tier chamber.

Judge Melanie Plimmer: I am quite sure no judge will be expected to sit up without adequate training. I can certainly say, not just as the president but as chair of the Judicial College tribunals committee, that training is taken extremely seriously by the tribunal, and only those judges who have been appropriately trained will be entitled to sit.

Mr Justice Ian Dove: That was a point I was about to make myself. There is a key issue in relation to training for all of this legislation that needs to be achieved before judges will be equipped to undertake the work. We have only a limited number of judges across the whole of the immigration and asylum chamber. As the senior president said, they cannot be in two places at once.

Q52 **Chair:** I do not know whether you can help me with this. Was there any consultation with the senior judiciary about this proposal?



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Sir Keith Lindblom: There have been conversations, as one would expect, but I think it is fair to say that there is always appropriate dialogue respecting the constitutional boundaries.

Chair: I am glad to hear that.

Q53 **Maria Eagle:** I want to go back to the point about the annual report. Last year, it noted a significant increase in the number and complexity of appeals relating to the EU withdrawal agreement and EU settlement scheme. Our practitioners had not particularly noticed that in their experience. Have you noticed that from where you are? If so, what impact has it had on the capacity of the tribunals to do their work?

Sir Keith Lindblom: For our part, we would endorse the evidence that the Committee heard earlier this afternoon. It does not seem to have become an acute problem. It may be that one is speaking of a relatively small number of cases ultimately within the scope of these provisions, but it is certainly not something that resounds with me as a problem.

Mr Justice Ian Dove: The reality is that a lot of Home Office decisions were being made in relation to the withdrawal agreement and the EU settlement scheme, so certainly in the upper tribunal there have been significant numbers of cases, as in the first tier, around that, because the fuel for what we do is decisions by the Home Office. Whatever it is devoting its resources to making decisions about ends up on our desk, by and large.

I know that, for instance, there is currently a not insignificant number of cases stayed pending a Court of Appeal decision in relation to a particular aspect, not Mr Justice Lane's decision but different aspects of that part of the immigration rules. One tends to find—I have been a member of the immigration judiciary for nearly 20 years—that these things do come and go.

Judge Melanie Plimmer: Quite often, it is difficult to predict what will come and what will go in this field, but what we can predict with some certainty is that the EUSS cohort will decrease because there was a cut-off point by which you had to apply.

If I can add to the point about complexity, it may well be that the practitioners were not seeing the EUSS cases, which tended not to be represented because they were not legally aided. That then enhanced the difficulties for judges faced with brand-new legislation that turned on the withdrawal Act. I am sure you have had a chance to look at that Act. I need say no more.

There was a challenging time. That has become easier for two reasons: first, we have had upper tribunal guidance cases to take us through the complexities; and, secondly, I have appointed lead judges in this area of law who have prepared checklists to guide judges through the tangle that



is that particular area of law. While it was complex, perhaps we are seeing the wood from the trees a little bit more now.

- Q54 **Maria Eagle:** I notice in some of the remarks on the judgment in January of Judge Canavan and Deputy Judge Mailer refusing the Home Secretary's appeal against the ruling with respect to EUSS some quite sharp words about the state of the legislation. It was said that "some parts are barely comprehensible even to experienced legal professionals, including the Secretary of State's own representatives, who through no fault of their own seem unable to explain the meaning of the provisions to the Tribunal with any confidence." It seems to relate in part to the rules relating to whatever a durable partner might be, when it is at home.

To what extent is there a lack of legal clarity—it might not be only in relation to the EU withdrawal stuff, although that was particularly rushed legislation, shall we say—in some of the language being used in provisions in immigration law? We are seeing this legislation and draft legislation coming through thick and fast. To what extent is that causing you more problems in determining cases?

Sir Keith Lindblom: We have to be careful here. I do not want us to be drawn towards a boundary.

- Q55 **Maria Eagle:** I do not want to draw you.

Chair: I am very conscious of that.

Sir Keith Lindblom: The thrust of the question, if I can take it in a general way rather than inviting us to comment on specific legislation—I am sure the hon. Member was not inviting us to do that—is that immigration law is not a simple and straightforward code; it is a dynamic code that evolves rapidly, as we have seen, and the tribunal has to stay on top of it. That is not always an easy thing to do, but it is the duty of the tribunal to do it. We will always seek to do our job within the framework of the statutory code, some of which will be complex, some of which will be challenging and some of which over time will be reformed and changed. Beyond that, it is probably sensible not to go.

Mr Justice Ian Dove: The only thing I would add is that the decision to which you are referring is not a decision about legislation, or certainly not primary or secondary legislation, but about the immigration rules. The upper tribunal and the first-tier tribunal spend an awful lot of time understanding and applying the immigration rules, which have to cover enormous complexities of situations, and sometimes that is what we are here for.

Judge Melanie Plimmer: Both the Court of Appeal and members of the House of Lords, as it then was, and the Supreme Court now, have also made comments on the complexity of the immigration rules.

- Q56 **Chair:** Purely out of interest, what percentage of applicants are unrepresented before the tribunal?



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Judge Melanie Plimmer: I do not have any clear figure that I can give you, but what I can say is that in our experience the majority are represented.

Q57 **Chair:** But perhaps less so by the time it gets to the upper tribunal.

Mr Justice Ian Dove: Yes.

Q58 **Chair:** I suppose that unrepresented defendants raise demands in your jurisdiction, just as they do in others that the Committee is familiar with.

Sir Keith Lindblom: That is certainly right. One of the primary responsibilities of any tribunal judge at either level is to ensure that the hearing is always fair, allowing for the difficulties of often very vulnerable people in this and other tribunal jurisdictions if they are not represented, and that is, as it were, part and parcel of the work of a tribunal judge. It is very much of the style and culture of tribunals justice.

Judge Melanie Plimmer: It is also very much part of the training judges are given. You may have come across the "Equal Treatment Bench Book", which has a chapter devoted entirely to unrepresented litigants. *[Interruption.]*

Chair: We will suspend the sitting for one or possibly two Divisions.

Sitting suspended for a Division in the House.

On resuming—

Q59 **Edward Timpson:** You will remember from the first session some exchanges about the reform programme, trying to establish how well it has bedded in and some of its successes and teething problems. From your perspective, how do you think it is going? Where have there been areas of improvement, and where is it still in motion, as it were?

Sir Keith Lindblom: Let me make some general points to begin with.

I like to describe reform as necessary modernisation. In my view, we had no choice about it and it was a good thing to confront the need to modernise ways in which we work both in courts and in tribunals. The endeavour is well founded.

It has not been entirely straightforward. There have been delays and teething problems across the system, but overall the judiciary, certainly in the tribunals, welcomes modernisation and seeks to embrace it and make the best of it. It sees the advantages of online working and digital process not only in providing accelerated procedures but in focusing efforts at case management and case progression. Those are all positive things.

Where we have struggled is in the compatibility of systems. For example, if the Home Office is using a system that does not speak, as it were, the same language as the system that the tribunal is using, potentially we



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have a challenge. That is one of the things we have to confront, but overall the benefits—you have been told about some of them in case management and the early focus on issues through the review process and appeals skeleton argument process—are all good things.

I imagine the question also embraces the whole question of remote hearings, but perhaps that is a separate thing that we can consider in further questions. I would like to invite my colleagues to say their piece on this, too.

Mr Justice Ian Dove: There are perhaps two types of reform or modernisation I want to focus on. First, there is the technological side of it. The ability to have all of my case load on here rather than in a skip that I cart around from home to work is tremendous. It creates a real cultural challenge for judges to start to work in a completely different way, but, by and large, everybody has embraced that. I want to pay tribute to my colleagues who have taken up that challenge.

Akin with the first tier, I have two IT lead liaison judges who interface with HMCTS and are at the vanguard of enabling us to move forward. We have introduced an app within Word on our computers that now enables us to produce orders, templates and electronic documents much more simply.

From that perspective, reform has been tremendously successful. Obviously, it has glitches. Nobody introduces an IT system that suddenly works brilliantly on the first occasion. We are working our way through those.

The big challenge for us in the upper tribunal is what is known in the trade as mandation. When I started, that was a new word, but I soon learned to love it. It amounts to the idea that all of our litigants—the Home Office as well as appellants—will be responsible for uploading their own documentation on to the system. That does not occur at the moment, but it will be very liberating when we can get over that issue. That is one side of it.

The other side of it is the procedural side, about which I know my colleague Judge Plimmer will be able to say a lot more, because that has been much more necessarily active in the first tier than perhaps in the upper tier.

In the upper tier and across the chamber we are committed to procedural rigour from all parties who appear before us. What it means is that the issues are identified early and are pursued—they are the only issues that are pursued—to ensure that we have efficient and effective hearings and make the best use of the tribunal's time, in accordance with what the procedure rules call the overriding objective, which is the same across all kinds of proceedings but is particularly important for us.



Judge Melanie Plimmer: As far as the first-tier tribunal is concerned, at the moment there are probably three main challenges. The first is that we are operating in effect two systems: 60% of our cases are on reform, but we are simultaneously working on what we refer to as the legacy appeals. That can bring its own challenges, but we are working really closely with HMCTS to reduce legacy and increase reform, and month on month we are seeing the fruits of that working together partnership.

Q60 **Edward Timpson:** What is the balance sheet looking like at the moment?

Judge Melanie Plimmer: It is 60:40, but going in the right direction. The second factor is what was referred to earlier—I like this phrase—as digital structural issues. What we mean by that is that by and large judges have welcomed the move to digital working. As Mr Justice Dove said, it is so helpful to have everything in one place at all times.

Digital has found it less easy to work with us, and that is where the teething issues have come up. You cannot predict that this type of appeal will throw up these issues. The CCD is the reform system we use. The CCD has not contemplated it. There needs to be a fix. That fix is added to a queue of fixes that needs to be prioritised. We have lead IT judges, and I am extremely lucky that my lead IT judges are professional IT people; that is their background, and they then came to the law. That has helped enormously to deal with those issues, again working together.

The third matter is that reform depends upon legal officers progressing cases. You have heard the senior president talk about the importance of legal officers. There are resourcing issues as far as legal officers are concerned and cases can get “stuck”. Recently, we have noticed that that has become a greater problem because of the resourcing of legal officers. Judges are stepping in to hold non-compliance hearings at an early stage rather than non-compliance being allowed to go on because the legal officer does not have the time to deal with it.

I described it as a brick-wall case. Both parties have met a brick wall and are going to do something about it. We are not just going to seek compliance; we are going to take the opportunity at that time to narrow the issues in dispute and see whether the case can be the subject of an early withdrawal.

Q61 **Edward Timpson:** How long have these non-compliance hearings been in effect? We have heard, as you just intimated, that legal officers are struggling sometimes effectively to review cases, especially appeal skeleton arguments.

Judge Melanie Plimmer: It is very recent.

Q62 **Edward Timpson:** It is something we might want to review a few months down the line.

You talked quite a lot about how it has impacted and improved the ability



of the bench to manage cases and make sure you get to the heart of the issue much earlier. There are other players within this, including those about whom you are making decisions. Going back to an earlier point about those who are unrepresented and those who are vulnerable, do you have any concerns about their ability to engage with the justice system through digitalisation and, if so, how are you dealing with it?

Sir Keith Lindblom: It is vital to understand that the tribunals under this jurisdiction in particular, as well as others, are dealing with very vulnerable people as a large proportion of the cohort of parties before them. Judges are well versed in the techniques of ascertaining the needs of particular parties and making sure that the hearing is always a fair one. That is the essential objective.

The vulnerable person is not necessarily digitally challenged, but may often be, and it is always important to ensure that the digitally challenged are not disadvantaged in the tribunal process and ultimately at the hearing. I would express confidence that the tribunal's judiciary is very good at making those judgments.

Judge Melanie Plimmer: About 2,000 digital applications were made from appellants in person. Digital uptake by appellants in person has been reasonably high. We think there is a great deal of satisfaction because it is bespoke. They are not expected to follow the same process as one who is represented, and they also have an opt-out provision and can interact with the tribunal on paper, if that is what they would prefer.

Mr Justice Ian Dove: It is the same answer from me.

Q63 **Edward Timpson:** My last question on the reform programme relates to bail applications. When do you expect those to be brought under the auspices of this programme? Would you expect to see a high number of these cases being dealt with prior to the hearing stage as a result?

Sir Keith Lindblom: I do not know that we have a precise date to give the Committee, but I think I am right in saying that the new bail process is being tested at Hatton Cross. That has been going on since August 2022. Judge Plimmer may be able to say what its end date is; I know not, but I do not think we foresee any particular difficulties in implementation of that new process.

Judge Melanie Plimmer: What we will require is better digital facilities within the detention estate, because detainees will be able to access that reform only with that. That is very much a work in progress.

Q64 **Edward Timpson:** I alluded a moment ago to remote hearings. Now that we are out of the pandemic, what use are you seeing of remote hearings? How are you assessing the impact on all of those involved? Is there any research that you can share with us?

Sir Keith Lindblom: To make some general points that my colleagues may wish to amplify, remote hearings have a proven place in our justice



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system. That goes for the tribunals just as much as it does for the courts. I think I am right in saying that there is no preconceived proportion or pattern of the use of remote hearings.

I would endorse what was said earlier this afternoon in evidence: particular kinds of cases can lend themselves quite well to remote hearings. I am thinking in particular of a case where there are submissions to be made, perhaps as the lion's share of the business of the case and not evidence to be given and tested by cross-examination. Such cases where submissions really predominate can lend themselves particularly well to remote hearings.

The next point, which perhaps is the most fundamental, is that the mode of hearing is a judicial decision and decisions are made case by case, not by a preordained policy. It is true to say that remote hearings will continue to play a significant part in tribunal justice. One of the benefits conferred upon us by the covid pandemic was the enforced realisation that we can work in a different way; we can use remote and hybrid processes and keep the justice system moving, which was what we managed to do with some success in that very difficult period.

One of the lessons learned from that experience is that remote hearings can facilitate the speedier delivery of justice and access to justice. We have to make sure that the vulnerable litigant is never disadvantaged, but I think it is also true to say that many vulnerable litigants may prefer to have a remote hearing because they feel more secure in giving their evidence to the tribunal by that mode.

Those are some general observations, but I turn to my colleagues for anything more specific.

Mr Justice Ian Dove: Most of the work that we do remotely is error of law hearings, which, exactly as the senior president says, commend themselves to the potential for a remote hearing.

The key point from our perspective is the one Ms Bantleman was making, which is that it is a useful tool, so it is using that tool in the right cases when justice suggests that that is the right way to go. As the senior president said, that will always be a judicial decision and will be case-sensitive rather than something that operates by way of a rule. For instance, in the upper tribunal we do not have a policy in relation to that; it is simply something that can be applied for or that the judge may think is the right way to deal with it.

Judge Melanie Plimmer: I, too, was pleased to hear the evidence earlier that the tribunal has been responsive to requests to use remote hearings. I hope we have been just as responsive to the question of not using remote hearings. That is an important point. We will consider applications either to have a remote hearing or to convert a hearing that has been listed remotely to a face-to-face hearing, and in doing so we will



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always consider the overriding objective: can these proceedings be completed fairly and justly using that particular method?

That is our priority. However, there have also been some benefits to judicial deployment. We referred to London and the south-east having predominant hearings. Sometimes we are able to use fee-paid judges who reside outside England even—Scotland or the northern regions—to conduct those hearings. That reduces waiting times, but we would never list a hearing to be heard CVP for the convenience of a judge; we would do so only where it is suitable for all parties to proceed in that way.

Q65 Edward Timpson: Do you have any update on the progress of the roll-out of the video hearing service?

Sir Keith Lindblom: Yes. Again, my colleagues may be able to give more precision. The video hearing service has proved, with some revision along the way—ultimately, a successful tool. The implementation of it has not always been easy; there have been difficulties, but we have largely overcome them and it seems a stable and reliable platform for the hearing of video hearings.

Judge Melanie Plimmer: I have nothing to add.

Mr Justice Ian Dove: I have nothing to add. It has not been rolled out to us as yet but we await it.

Q66 Edward Timpson: With bated breath?

Mr Justice Ian Dove: Yes, as always.

Q67 Tahir Ali: Reports on the reform programme note that an increasing number of appeals are being withdrawn by the Home Office. To what extent is that due to poor decision making in the first instance or new information subsequently being made available?

Sir Keith Lindblom: As has been said in the earlier session, there has been a multiplicity of factors. A withdrawn case is not necessarily a bad thing provided it is withdrawn in a timely way, because when it is withdrawn in a timely way it makes space for a case that needs to be brought all the way to a hearing before the tribunal. What we are about here is to ensure that withdrawals are timely, early withdrawals.

I will not comment on the quality of decision making by the Home Office. Ultimately, the decision at first instance is upheld or it is rejected. I think it is to be expected in the way things are set up that there will be a relatively significant number of appeals allowed, because the tribunal hearing is the first real testing of the case by a judge. Therefore, if you do have roughly a 50:50 outcome in terms of appeals won and appeals lost that is not necessarily surprising.

The quality of reform here, as we have said, is that if it is working properly it focuses minds early; it gets the parties to focus on the true



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strengths and weaknesses of their cases. That applies to both sides, not just the Home Office but appellants.

When the system and all the synergies we have spoken of are working, and in particular when the role of the legal officer is properly used, I believe we will get early withdrawals in greater numbers, that the backlog can be reduced by that means, as well as others, and that the system will work even more efficiently and effectively than it is.

That is the objective. I think we are making reasonable progress towards it, but I make no apology for stressing that it depends on our having legal officers properly trained in sufficient numbers to manage the cases from start to finish.

Q68 Tahir Ali: To what extent are contested hearings higher than they should be?

Sir Keith Lindblom: In a sense, the answer I have just given probably applies largely to this question, too.

What is necessary is to focus not merely on what is a good or bad decision but on the issues that are truly worthy of consideration by the tribunal. It is to get a focus on that that I think the system needs now to concentrate upon. I would very interested to hear what Judge Plimmer has to say on this question from the first tier's perspective.

Judge Melanie Plimmer: It is important to recall that under reform the Home Office in effect has a second opportunity to reconsider its decision. Whatever the weaknesses might be in the initial decision, at the review stage it has that early opportunity pre-hearing within the process to look at the matter again.

That requires a number of things. First, it requires the Home Office proactively to look at the detail rather than say at the review stage, "See initial decision."

Secondly, it requires the Home Office, where it does not do that, to be held to account by legal officers, who return to it and say, "This is not a review; you are simply relying upon the initial decision. You have not complied with directions at all; you must comply."

If those two are in place, we are likely to see significant increased efficiencies either through withdrawals or the narrowing of issues so that then you have shorter hearings.

Q69 Tahir Ali: Is there a case that the Home Office might sometimes see the tribunal as a way of offloading its responsibility for decisions on to the judiciary—for example, to release foreign criminals from detention?

Sir Keith Lindblom: I do not think we would seek to go behind the Home Office decision making to look at motive. I do not think that is the business of the tribunals, and I would resist being drawn towards that.



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The tribunal would look at the case on its merits. That is its duty and its role. Whether the case is a difficult one or leads to difficult consequences, even draconian ones, potentially for an appellant, what the tribunal will always do is look at the legal merit of the case and justice of the case rather than the motivation of the parties.

Q70 Tahir Ali: Are presenting officers adequately prepared and well trained for hearings, because the chief inspector of borders and immigration reported that, "Presenting officers feel disincentivised to withdraw cases as they will then have to prepare a case from the 'float list' on the day of the appeal hearing, which one PO described as 'hurting yourself', 'it is much easier to prepare [the case], perform it and lose it than to withdraw it.'" Is that something that you recognise?

Sir Keith Lindblom: We do recognise, perhaps on a significant number of occasions, the problem of presenting officers not having had the opportunity, or perhaps of taking the opportunity, to prepare themselves fully for a hearing. I make no comment on individual cases, but it is essential to the efficient and effective operation of the tribunal process for presenting officers to be on top of the case, to be able to present the case effectively but, realistically and importantly, to have enough confidence and be given responsibility for making appropriate concessions on the day, if that is appropriate in the light of the evidence given.

I think there is much ground to be made up on these considerations. Presenting officers are really at the front end of the Home Office presentation of its case. If they are not ready and on top of the material and are not making appropriate concessions, the system is not working effectively.

Judge Melanie Plimmer: I have nothing to add.

Q71 Tahir Ali: ILPA has drawn attention to delays in the Home Secretary engaging with the process under the reform programme. To what extent is that a problem?

Sir Keith Lindblom: Again, in a sense I think the answer I gave to the previous question largely covers this one. The way in which we are doing things now obliges the Home Office to look with care and appropriate scrutiny at the grounds on which it is seeking to maintain its decision. The system is set up to hold up to the Home Office the other side, usually with legal representation now on board, so that the best of either side's case is apparent long before the matter has to come before a tribunal hearing. It is incumbent on the parties, not just the Home Secretary but the claimant or appellant, to focus realistically on the true merits of the case and to do so early. That is absolutely essential; it is really the *raison d'être* of the new system under the reformed procedure.

Q72 Tahir Ali: ILPA has called on the tribunal to take steps to ensure that the Home Secretary complies with relevant timeframes, including more use of



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wasted or unreasonable cost orders. Is that something you are prepared to consider?

Sir Keith Lindblom: There is a cost regime in the tribunals that is set at a pretty high level. I am not sure we are in a situation at this stage where we would wish to change that. We have to have in mind the whole consideration of access to justice and the style and culture, as I have called it, of tribunals justice.

We seek, however, to ensure that directions are complied with. It is our responsibility and that of the tribunals to ensure that the parties understand what the directions require of them and to follow up if there is dilatory behaviour or lack of compliance. The powers exist to do that without imposing a more difficult costs regime than currently exists and the parties have to work within.

Q73 Tahir Ali: ILPA also draws attention to delays by the Home Office in making a decision following withdrawal of a case. It argues that the appellant may have been better served, in achieving a quicker outcome, if the appeal had been granted following a substantive hearing. With the number of withdrawn cases increasing, does that concern you?

Sir Keith Lindblom: Again, in a sense I think the question touches the considerations I have covered. I do not know whether Judge Plimmer wishes to add to anything I have said. I am not sure I can usefully add to the responses I have given.

Judge Melanie Plimmer: It is a matter for the Home Office.

Q74 Tahir Ali: Is there regular feedback from the tribunal to the Home Office where concerns have been identified? Is there a process in place?

Sir Keith Lindblom: I do not think there is a formal process in place, although the decision making itself conveys ultimately the tribunal's view of the merits of the case. One would hope that lessons are learned, certainly by the Home Office, in absorbing the outcome of appeals. That is simply what one would expect. I do not think, however, that there is any kind of formal channel by which that is conveyed in a different way.

Judge Melanie Plimmer: Each of the hearing centres has regular user group meetings where members of the Home Office and practitioners attend. At each of those meetings the importance of procedural rigour is emphasised and we try to find solutions together. I want to take that to a more strategic level, and we are at the early stages of developing a user working group where senior members of the Home Office presenting world, as well as bodies such as ILPA, together with the first-tier tribunal and upper tribunal, sit down together to try to find solutions so that there is greater compliance with directions and more procedural rigour. We are doing so with a view to providing a user guide that sets out standards in a user-friendly way for both parties as well as appellants in person. That is an ambition and we are at the very early stages.



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Mr Justice Ian Dove: In so far as your question touches on the merits of decisions, it is important to recognise that the Home Office is just one party before the tribunal. It would be quite inappropriate for us to have a particular feedback session with one party or another as to how the merits of the appeal have turned out. How the merits of an appeal have turned out and been determined will be set out in the impartial judgment of the tribunal in reaching its conclusions.

Chair: The decision speaks for itself, or it should do.

Q75 **Maria Eagle:** We have had some anecdotal evidence that some legal professionals use litigation and very late engagement with the process as a strategy to delay and deter removal proceedings, or something really bad for their clients. Is that something that you recognise? What can you do about it where you come across it?

Sir Keith Lindblom: I would echo what Mr Justice Dove has just said, albeit in a slightly different context. The tribunal is there to do justice between the parties on the merits of the case; it is not concerned with the motivation of legal representatives or of the parties themselves, beyond a true and proper consideration of the merits of the case.

I would like to add that legal representatives have a duty not only to their clients but to the court or tribunal. We expect that duty to be rigorously observed. I would not wish the Committee to think that the tribunal takes the view that legal representatives, who appear before the tribunal in this or indeed any other jurisdiction, regularly flout their professional duties. That is not the impression I would wish to leave with the Committee.

Q76 **Maria Eagle:** Certainly, there are powers that are there to make sure that that behaviour can be dealt with.

Sir Keith Lindblom: As the Committee has been told.

Mr Justice Ian Dove: From the upper tribunal's perspective, you heard earlier about the Hamid jurisdiction for those who it is believed have behaved well below the professional standards required by their regulator. There is the opportunity, which is taken up, to refer any practitioner who falls below those important professional standards to their regulator. I have a lead judge who undertakes that supervisory work. We have a strong relationship with the Bar Council, Law Society and OISC, the other regulator of immigration services. If necessary, referrals are made, but it is a vanishingly small amount of the work that comes through our door.

Q77 **Chair:** Publicity always greatly exceeds the numbers generated, does it not?

Sir Keith Lindblom: It can do.

Q78 **Tahir Ali:** I ask the question that I put in the first session. What impact would the Nationality and Borders Act have on the work of the tribunal, if



implemented in full?

Sir Keith Lindblom: It will have an impact. Its impact remains uncertain because that event is yet to occur, but it is fair to say that a significant amount of additional work will come in the direction of the tribunal. It will be additional rather than as a replacement of other work already there. That seems a reasonable supposition.

I am afraid we will have to wait and see the precise effects; we cannot predict those with any great certainty, but, as I said in a different context in giving this evidence, the tribunal is always adaptable, flexible and stands ready to do its best to deliver justice and ensure access to justice with the resources it has available to it. That applies just as much to the Nationality and Borders Act as it does to any other legislation that comes on to the statute book.

Q79 **Tahir Ali:** Do you have the resources to process cases relating to priority removal notices, and would you be able to meet the timetable for accelerated detained appeals?

Sir Keith Lindblom: The tribunal will always strive to meet any statutory or procedural timetable that is relevant to the work it does. Beyond that, I do not think I can add to the previous answer. The tribunal will do its best, as always, to comply with the legislative framework within which it operates to the best of its ability with the resources it has.

Mr Justice Ian Dove: From the upper tribunal perspective, a priority removal notice—the new type of case that will come; I leave Judge Plimmer to deal with the accelerated detained appeals-type cases—requires an understanding of the volume of the work that it is thought it would give rise to. We are not equipped to make any speculation, or even an informed judgment, about what the modelling will produce as to the number of those decisions, but plainly there are resource implications that would need to be addressed.

As the senior president has already said, we stand ready, willing and able to administer the rule of law in that connection, but it may involve making choices between different types of cases where you have a matter that has to be determined within a specific timeframe.

Other questions arise under the Nationality and Borders Act that we are about to engage with—for instance, the redefinition of how one proves one is a refugee, which the tribunals will be working their way through in interpreting that and other aspects of the legislation, quite apart from the case types that it creates.

Judge Melanie Plimmer: From the first-tier tribunal's perspective on the last point, only in the past two weeks are we starting to see what we call different NABA credibility cases coming through. It is a slightly different approach to credibility by which NABA tells us we must approach the case, and that is what we are starting to see.



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We have already had training on that area. That training took place together with the training on accelerated detained appeals. We consider ourselves match-fit as far as NABA is concerned, but, as both the senior president and Mr Justice Dove have emphasised, our match fitness in large measure turns on the other resources that we have to rely upon.

Q80 Chair: One of the key resources is judicial resource. Are there sufficient judges? Is there still a challenge in recruiting sufficient judges for the tribunals, not purely in asylum and immigration?

Sir Keith Lindblom: We are never complacent about recruitment. As the Committee will be aware, there are regular recruitment exercises. Two are coming up in the next 12 to 18 months that will, we hope, yield a very significant increase in judicial resource for both the first-tier and the upper tribunal.

The processes are not instantaneous; they require rigour and care and take time. We work in close co-operation with the JAC to ensure that the process is run smoothly. That requires the judiciary to give of its own time and energy, and we gladly do that.

I am glad to say that the quality of recruitment is, as one would expect, consistently high. It is gratifying to see how many people wish to come from their first careers to make a career in the judiciary. That continues to be a strong influx of new talent to the tribunals as well as the courts. That said, we are never complacent.

Q81 Chair: In other jurisdictions, I know there has been a shortfall in recruitment processes. Is that true of the tribunals as well?

Sir Keith Lindblom: Not generally. There are certain areas in which we need to revisit recruitment because particular exercises have not yielded the full complement on the vacancy request, but generally it is not a problem.

Q82 Chair: I am very conscious that the work of tribunal judges is demanding and potentially is growing, for all the reasons we heard about earlier this afternoon. It is somewhat unsung compared with other jurisdictions. Do you think any more can be done to improve the awareness and recognition of tribunal work, and how is morale among your tribunal colleagues now?

Sir Keith Lindblom: There are three points. First, I like to say that the tribunals make the justice system in this country complete. Without them, there would not be a fully comprehensive justice system. The tribunals provide access to justice that the courts do not provide in myriad jurisdictions, as the Committee will be well aware.

The second point is to emphasise the work of the One Judiciary project to create a truly comprehensive, cohesive judicial community and family. I believe strongly in that project and, together with the Lord Chief Justice and certainly the previous Lord Chancellor, I very much hope it will



continue. That has a strong strategic push at the most senior level. I think that is an absolutely fundamental strategic objective.

On the third point, coming to the specific question you have raised, morale is good. Tribunal judges believe in the worth of what they do; they are strongly committed to their job; and they are extremely good at their job across myriad jurisdictions to which I have referred. I am deeply proud of the work they do.

Judge Melanie Plimmer: The senior president set up a diversity taskforce led by tribunals in February of 2021. There have been a number of initiatives, one of which has included trying to enable a better understanding of what tribunals and tribunal judges do with the various stakeholders we work with. That includes the Judicial Appointments Commission and the high sheriff network. That is really important because tribunal judges, like all judges, have career aspirations, and it is important that others we work with understand the type of work we do, how important it is and how hard we work at it.

The diversity taskforce has implemented many other initiatives to support the career progression of tribunal judges from a wide variety of backgrounds. I am very pleased that tomorrow I will welcome 30 new fee-paid judges to the first-tier tribunal. They have all penned self-portraits, and the diversity of the judges who are joining the FTT is very wide indeed across all measures.

Q83 Chair: Perhaps we need to raise awareness of the work among Members of Parliament as well as high sheriffs and others.

Mr Justice Ian Dove: In raising awareness, it is important for the Committee to recognise that the judges I lead, for instance, are put on a specific salary point higher than a circuit judge because of the importance of the work they do. That is why One Judiciary is such a welcome strategic approach to creating, as the senior president has said, a judicial family in which all members are recognised for the important contribution they make.

Chair: Nobody told me that 30 years ago. That is good to know. This has been a lengthy session, and I am grateful to you for your time. I am sorry for the interruptions with the parliamentary process from time to time, but I am very grateful for your frankness, your time and the evidence you have given.

Sir Keith Lindblom: We are very grateful for the opportunity to give our evidence to the Committee.