



Constitution Committee

Corrected oral evidence: Annual evidence session with the President and Deputy President of the Supreme Court

Tuesday 4 July 2023

10.10 am

Watch the meeting

Members present: Lord Hope of Craighead (In the Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Falconer of Thoroton; Lord Foulkes of Cumnock; Lord Mancroft; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 1

Heard in Public

Questions 1 - 21

Witnesses

I: The Rt Hon the Lord Reed of Allermuir, President of the Supreme Court; The Rt Hon Lord Hodge, Deputy President of the Supreme Court.

USE OF THE TRANSCRIPT

1. This a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Lord Reed of Allermuir and Lord Hodge.

Q1 **The Chair:** Good morning. This is our annual session for evidence to be provided to us by the President and Deputy President of the UK Supreme Court. Lord Reed, I think you would like to begin by making a statement, after which we can proceed to a series of questions.

Lord Reed of Allermuir: I thought it might be useful if I gave you a brief five-minute overview of the past year. As you know, we operate two courts: the UK Supreme Court and the Judicial Committee of the Privy Council, both of which have continued over the past year to decide cases of considerable importance to this country and internationally.

We have held successful sittings outside London. In March, the Supreme Court sat for a week in Manchester, and the Privy Council sat in the Cayman Islands last November—not, I hasten to add, at the expense of the British taxpayer; we were guests of the Cayman authorities.

International confidence in the UK judiciary has remained very high and is reflected in the volume of international disputes that we have been dealing with. I should like to give one example from each court.

A particularly striking case in the Supreme Court was Russia against Ukraine—a commercial dispute that came to us because Russia and Ukraine had agreed that their contract would be governed by English law and that the English courts would have exclusive jurisdiction to decide any disputes. It is quite a striking sign of the level of confidence in British justice. We decided the case even-handedly, despite the current circumstances of the two countries. A fairly typical case in the Privy Council involved a dispute between Japanese and Chinese commercial interests over the control of a large chain of supermarkets in China. We ended up deciding it because they choose to incorporate their joint venture in the Cayman Islands.

We have also decided important domestic cases. The one in the Supreme Court that perhaps gained the most headlines was the Scottish case about an independence referendum. The most significant case in the Privy Council, legally, was probably the fraudulent scheme set up by Bernard Madoff, the former head of the SEC in New York, that collapsed. Substantial litigation is now going on, essentially pitting the banks that invested in the scheme against the banks involved in managing the supposed investments, which proved to be non-existent when the balloon went up.

We have been doing a lot of work over the past year to improve the service that the Privy Council offers the jurisdictions it serves and to strengthen the relationship. One step was to offer virtual hearings, which have been taken up in lower-value cases and in, for example, criminal appeals, of which we get quite a few from Trinidad and Jamaica.

We have introduced flexibility in the timing of hearings during the day. We had a major case about a conflict between mainly Japanese commercial interests in South Pacific tuna fisheries and marine conservation interests. It came to us as an appeal from the Cook Islands. We sat at 7 pm to hear that appeal, because some of the lawyers were 11 hours ahead of us and others were 11 hours behind us. That was the best compromise.

I have appointed a justice to lead on JCPC relations and he undertook quite a thorough review. As a result, we have introduced new procedures for identifying hopeless cases at an earlier stage and weeding them out.

We established an online forum for meetings with judges in the jurisdictions that we serve. We also established a user group for court users in the Caribbean. As you know, I have made a proposal that we should be enabled to have judges from the jurisdictions sit with us. I think we shall come back to that later this morning.

Finally, with the world emerging from the pandemic, it has been a year with a great deal of international interest in our court, with a lot of visits to the court and invitations for us to take part in international events. Some countries are keen to learn from the way in which we do things; others, more widely, are keen to strengthen their relationship with the UK. There has been a particularly high volume of invitations and visits from countries in south-east Asia and the Pacific rim.

I think we shall come back to our international work later, but thank you for letting me give that overview.

Q2 The Chair: Thank you very much. I should like to begin by exploring your international work a little more. There are two aspects. First, can you expand with some examples on the visits that have taken place? The second is the interaction that they give rise to and your sense, from those interactions, of the reputation that our system of justice has and of our performance generally in maintaining the rule of law.

Lord Reed of Allermuir: I have delegated responsibility for our international relations to Lord Hodge, if I may. I am very much involved, but perhaps he may answer your question.

Lord Hodge: In the 10 years I have been on the court, the effort put into international relations has increased and this year has been very busy. The aim is, in part, to project the United Kingdom's reputation as a rule-of-law state and to promote the commercial interests that arise from that, which are by no means confined to the legal profession. Since we last gave evidence, we have had five bilateral engagements, which I shall describe in a minute, 25 international engagements and more than 20 responses to requests to share information and best practice with other organisations, courts and judicial networks. We do so on a modest budget.

We had a bilateral with the Republic of Ireland in June last year. We discussed court modernisation, constitutional boundaries and the

separation of powers, human rights and contemporary issues in the law of torts. In October, we had a bilateral in London with representatives of the European Court of Human Rights. When they came, we discussed the relationship between the Strasbourg court and national courts, climate change litigation and case law and political initiatives in relation to the controversial extraterritorial effect of the convention.

We had a remote computer bilateral with the High Court of Australia in December. We discussed our court structures and procedures and what it was like to operate as a final court of appeal in the political context. Then in March, the Supreme Court of Iceland visited us. We spoke about the influence of the convention on domestic jurisprudence.

We had one overseas visit, which was to the German Federal Constitutional Court in April. The topics of climate change litigation, assisted suicide, the use of IT in court processes and the relationship with the European Convention on Human Rights and the Strasbourg court were topics discussed.

This year, we plan to have remote bilaterals with the Supreme Court of Japan later this month, with the French Cour de Cassation in October and with the Supreme Court of the Netherlands in December. Those pieces of work require the most preparation and effort.

We have also had significant outside engagements—25 of them. Lord Reed went to the Federal Court of Canada to celebrate its 50th anniversary. He and Lord Sales went to the Yale Global Constitutionalism Seminar in, I think, September. I led a UK delegation last May with Lord Briggs and the Master of the Rolls to the Marshall forum on the rule of law at the United States Supreme Court, which was organised and generously funded by the Association of Marshall Scholars and the American College of Trial Lawyers. It was an eventful occurrence as we arrived in Washington on the day that the Mississippi judgment reversing *Roe v Wade* had been leaked to the press. None the less, we had a very constructive visit.

Delegations of judges, lawyers and government officials also come from all over the world to visit the court. To give you some idea, recently we have had visits from the Chief Justice of South Korea; the Chief Justice of Brunei; delegations of justices from the Supreme Court of Ukraine; and delegations from the superior courts of Bosnia-Herzegovina, and others from Indonesia and Taiwan. I also met a delegation of Ukrainian lawyers living in the United Kingdom.

As far as government representatives are concerned, we met: the ambassador for Vietnam; members of the Czech Senate's committee on constitutional and legal affairs; the Justice Minister of Quebec; and the Attorney-General of Bhutan. Lord Reed and I will meet the Lithuanian ambassador this afternoon, so a lot has been going on.

We have also maintained contact with various international fora, such as the Network of the Presidents of the Supreme Judicial Courts of the

European Union, to which Lord Reed is still invited. We are involved in the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union—a bit of a mouthful, but we call it the ACA. We are also involved in the Superior Courts Network of the European Court of Human Rights. We send representatives to those fora and continue to be consulted by European courts on an ad hoc basis.

For example, the Supreme Court of Estonia, the Supreme Court of the Czech Republic and the High Court of Cassation and Justice of Romania have asked us questions. The Supreme Court of the Czech Republic recently asked whether the President of our Supreme Court had a right to have flashing beacons on his official car—a question that we were able to answer very easily. The Supreme Court of Slovenia asked us about judicial remuneration.

All that involves the justices. At the same time, the court's staff—in particular, the chief executive—maintain good relations with our counterparts in other Supreme Courts. Our judicial assistants have been involved in international work answering queries from, for example, the Venice Commission. Two of our judicial assistants went to Strasbourg to give a paper on judicial independence and our communications strategy.

I am sorry that that was rather lengthy, but it describes our work over the last year.

The Chair: I have two questions, the first of which is on the budget, which you mentioned. Are you constrained by a lack of money in doing as much as you want?

Lord Hodge: We achieve a lot within our budget, but we have depended to some extent, particularly for the foreign visits, on the generosity of others. When people visit us, the arrangement is that they pay their travel costs and we pay their accommodation costs; the same is the norm when we have an overseas bilateral.

For events such as the Yale Global Constitutionalism Seminar and the rule of law forum in Washington, it was the generosity of our American hosts that enabled us to be there.

The Chair: Being able to do things virtually is a great improvement on how things were in the past.

Lord Hodge: Yes. For Australia and the east, it is really the only way in which, economically, we can maintain such contact.

The Chair: You paint, if you do not mind my saying so, a rather positive picture of these relationships. Do you detect any hint of unease or criticism about the way in which our system is run? Are there things you are learning about where you need to improve?

Lord Hodge: I have not picked that up from others. During troubled political times quite recently, one did get comments about their surprise at the state of British politics, but we have not had comments about our

system. There is great interest in the court's outreach work and our attempt to explain ourselves to the wider public.

The Chair: Apart from communicating with them, are you learning things that you can put into your system to improve it?

Lord Hodge: We are always interested to know what others are doing in using technology and IT for new purposes. That can be a useful exchange of views.

Q3 Lord Falconer of Thoroton: Lord Hodge, that was most interesting. You said that the two purposes of international connections were to promote the rule of law and to promote the commercial interests of the United Kingdom, because we have a very high reputation in relation to high-quality judgments, honesty and a lack of corruption.

Do you get some overarching coherence from the range of international things that you described? Are you doing it on the basis of promoting those two aims? If so, who are you getting help from, or do you judge which invitations to accept? I agree with Lord Reed that the Supreme Court is probably one of our greatest constitutional assets. It is internationally respected, which is of real value to the country.

Lord Hodge: We do not just do it randomly. The courts of justice of England and Wales created an international strategy, and I was involved in the discussions with them on that. We have framed our priorities to be aligned with that strategy, so we concentrate on certain countries that we consider to be strategically important to our relationships.

We get many other requests—I have given you the list—from countries that are strategically less important but which we try to accommodate, at least by having them for a half-day visit. We do not have the resources to offer them the education and training facilities which they often want. We refer them to the Royal Courts of Justice, which has much greater scope to give that service.

Lord Reed of Allermuir: We also liaise to some extent with the Foreign Office over these matters. If we receive a request from a jurisdiction but are not sure whether we ought to meet them, or what we might achieve, we get in touch with the Foreign Office to see what its reaction is. We might get a briefing. The Foreign Office can also provide practical assistance. When we had a delegation from Indonesia, for example, it provided us with an interpreter.

Q4 Baroness Andrews: This may be an obvious question. I am a non-lawyer, which is unusual on this committee, and perhaps being naive, but why do people come to see and hear the work of the Supreme Court? What are their expectations? What do they come to learn? Is there a pattern of requests or interest in processes, relationships or constitutional issues? Are you aware of something emerging for which we are under the microscope?

Lord Hodge: I think that there is a keenness in countries that are trying to reform their court processes and judicial systems to understand how the United Kingdom system operates. My impression is that our court system has a high reputation.

It is a matter not just of the judges but of the quality of the legal profession. London has a huge concentration of talented lawyers. There is a strength in the system that people are interested in. They often want to understand how we try to achieve fair justice through our processes. There is also a lot of interest in how we try to explain what we are doing to the public. In an age when people were more accepting of authority, there was not the same need for explanatory accountability that there now is. Many jurisdictions want to see how the court achieves that.

The one big difference between when the apex court was here in this corridor and what we are now doing is the effort we make to explain our decisions and give the public access to the judicial process in our court. People are very interested in that.

Baroness Andrews: What we are doing is relatively innovative. When people want education and training, is that the further, more in-depth understanding they are looking for in these areas?

Lord Hodge: It depends. Some advanced courts want to concentrate on that aspect of our work. Some legal systems have been toying with the idea of setting up a jury system to reform their criminal justice system. They come to London not so much to see the Supreme Court as to see how the High Court operates in that field.

For a number of years, Japan has been experimenting with a jury system for certain trials. It sends judges over to London to explore how things are done. As Lord Reed said, we have had a lot of interest in the past year from the east, and Japan in particular wants to know more about how we do things. It is not just the Supreme Court; it is the wider judicial system.

Lord Reed of Allermuir: What they are interested in rather depends on who they are. The new democracies of eastern Europe, for example, are interested in how we achieved the level of public trust in our courts. They are interested in our openness, transparency, outreach, contacts with schools—that kind of thing. They spend time not just with judges but with our communications and education teams.

For countries such as Japan, we are regarded as being ahead of most countries in our use of IT. They are much more interested in learning how we use it and what they might be able to borrow. Then Indonesia, for example, is surrounded by jurisdictions that effectively take their commercial work because there are more attractive courts to do it in—Singapore, Malaysia or Hong Kong. They want to learn how we do commercial law so well. What is the trick?

Most people want to know either about how you get trust or about our IT and commercial practice.

Lord Hodge: It ties into the point Lord Reed made earlier: why are so many international organisations using English law? The question they want to find out about is: what is the trick?

Q5 **Lord Foulkes of Cumnock:** It is nice to have two members of the Scottish Bar as President and Deputy President. You mentioned meeting judges from the European Court of Human Rights. I have an interest: I am a delegate from this Parliament to the Parliamentary Assembly. As you know, we ultimately elect the judges. What issues did you discuss? Did you come across any difficulties during the meeting?

Lord Reed of Allermuir: In fact, I was not at that meeting. I was on an international engagement elsewhere—I forget where.

Two issues were being discussed. Patrick was there and will be able to tell you more about it. One was climate change and human rights, on which the Strasbourg court has a number of cases before it. Having a habitable planet underlies, in a sense, all the human rights that are protected by the convention. The outcome of those cases could be quite important for us, so there was discussion on that.

The other issue was how to try to get better communications between their court and ours. You will remember that after our court refused permission to appeal against the refusal of an injunction in the Rwanda case, a rule 35 order was made by the Strasbourg court. We had not known that there were any proceedings in the Strasbourg court, but it would have been helpful for us to know that because we might have explained our reasoning with it in mind. We do that normally in dialogue between different courts, so we discussed how there could be better information sharing between our respective registries.

The Chair: We have a number of questions. We are still on the first question, so we should try to make some progress. We will cover this ground in later questions.

Q6 **Lord Thomas of Gresford:** I am interested in your reaction or feelings about your visit to Manchester, but may I give you some feedback from my son, who is head of Lincoln House Chambers in Manchester, which I think is the largest there? He says: "From a Manchester perspective, the Supreme Court visit was a big success. Their engagement programme was excellent and it was really impressive to see how much time they put into it. Their agenda was to make it clear that the Supreme Court is a court for the whole of the UK rather than just London. They did confess that they take a similar view of the work of the Privy Council and had selflessly visited places like the Cayman Islands and Mauritius in the winter". He sums it up in this way: "In my opinion, they seem to have a really good approach to promoting public understanding of their work which puts most other courts and institutions to shame".

The question that arises from that is whether, from your experience, the

Court of Appeal might sit in the regions and in Wales. In America, the appeal court is in 11 circuits.

Lord Reed of Allermuir: The Court of Appeal does sit outside London. We had to schedule our visit to avoid a clash with a Court of Appeal sitting which the Master of the Rolls was leading. He was going to use the same courtroom as us. That perhaps does not receive as much publicity as we do. I am delighted that that was your son's reaction. What you read out is effectively what I have written down as my notes.

Lord Thomas of Gresford: Lord Hodge, what was your view? I think that my son spoke to you about pollution cases.

Lord Hodge: Yes, I am sure that case will engender quite a lot of interest when we finally hand it down. My impression was that the visit was very well received. We were very busy, because, as your son said, it was not just sitting in court during the day; it was engagement with the profession—with youngsters and all sorts of people—in the rest of our time there. Lord Reed can describe that in more detail.

Lord Reed of Allermuir: Effectively, we engaged with local community leaders—the mayor and deputy mayor of Greater Manchester, local MPs, and so on—and with schools and universities. We had hundreds of students and schoolchildren involved in the various events that we ran. There was a lot of engagement with local lawyers and, of course, with the local judiciary, for whom I think it was a bit of a morale booster having us come to join them.

Lord Thomas of Gresford: Was it a one-off, or do you see the possibility of that happening regularly?

Lord Reed of Allermuir: No, we aim to repeat it. Before the pandemic, we sat outside London every year—in Edinburgh, Belfast and Cardiff. This was our first visit to an English city outside London, and we will aim to do the same again.

The Chair: We will move from Manchester to the Cayman Islands.

Q7 **Lord Anderson of Ipswich:** I was struck, Lord Reed, by the great emphasis that you placed in your introductory remarks on the work of the Judicial Committee of the Privy Council. I had a look at, I think, your last annual report, which came out last July and told me that in the year you were looking at you had heard 60 appeals as a Supreme Court and 51 appeals as the Privy Council. It is very impressive that you should be determining the ownership of Chinese supermarket chains and resolving disputes about Japanese tuna fisheries, but I wonder whether some people watching would be surprised at the amount of time and judicial resource that the Privy Council takes up.

You mentioned the use of virtual hearings in Privy Council cases and a committee whose objective is to root out hopeless cases. When you came before this committee last year, you suggested that judges from various countries should be part of the panel in Privy Council cases. It would be

interesting to know how that suggestion is going down.

My question is a general one. Are you content with the amount of time and judicial resource that, collectively, you devote to Privy Council work? Are any other mechanisms in place that might reduce the volume of that work? I should declare an interest as a member of the Court of Appeal of Guernsey, on which I know Lord Hodge served once upon a time. We have recently changed the law in Guernsey to make it impossible for appeals as of right to come to the Privy Council, and I would be interested to know whether that is happening in other jurisdictions.

Lord Reed of Allermuir: I am not looking to reduce the amount of work that we do in the Privy Council, and I am not concerned about the judicial resources that it takes up. It may strike you as surprising that we are deciding issues to do with Japanese tuna fisheries in the South Pacific or the ownership of Chinese supermarkets, but they are matters of enormous importance for the jurisdictions that we serve.

The Cayman Islands, for example, is a British Overseas Territory. Its economy is based on international legal and financial services. The prosperity and way of life of the people there depend on their success in attracting enterprises from Russia, China and all over the world to set up their businesses there. For that to be a feasible operation, they have to have high-quality courts to deal with disputes, because colossal amounts of money are being invested. In financial terms, the biggest cases that we deal with are mostly Privy Council cases rather than Supreme Court ones.

The Cayman Islands has very good first instance judges, some of them British and some local. Its Court of Appeal is manned by retired Court of Appeal judges, mostly with a commercial background. Its final Court of Appeal is of course with us. It is not a matter of choice for us to take the cases; it is a matter of statute. We are bound to take these cases. As long as the United Kingdom wants to support the British Overseas Territories, we have to provide this service.

It does not damage us, because in reality the cases that we get in the Privy Council are very often those that raise the most important questions of law. The Bernard Madoff Ponzi scheme case raises very important questions of law of general importance. One of them, to give you an example, is a question of whether contributory negligence is a defence in contract, something which has never gone beyond the High Court in England and Wales. It is the first time that it has been decided on appeal—whether there is a defence of contributory negligence to a contract claim. It also raises a variety of issues in the law of limitation. This is to do with the time limits for bringing claims, which will be just as relevant for England and Wales and, indeed, for other countries around the common-law world.

It is not a matter of simply devoting our time to dealing with disputes from a tiny jurisdiction in the Caribbean. We are deciding points that are

just as important worldwide as the ones that we decide in the Supreme Court, so I am unapologetic about it.

The Chair: Not all your cases come from British Overseas Territories.

Lord Reed of Allermuir: No.

The Chair: You have Mauritius and Trinidad and Tobago, even though they are republics.

Lord Reed of Allermuir: Yes.

The Chair: What would you like to say about the time and effort that you give to them?

Lord Reed of Allermuir: Again, it is not a matter of choice for us.

The Chair: It is in their constitutions, is it?

Lord Reed of Allermuir: Those are republics. Other Commonwealth countries are not republics but are still independent. All those countries have chosen to keep in their constitutions the Judicial Committee as their final Court of Appeal. So long as that is their wish, as I understand it, the Government's policy is that they are content that the Judicial Committee should continue to fulfil that role, and it is then our duty as judges to do the work. It is not a matter in which we have any choice.

Q8 **Baroness Andrews:** I think this question follows rather well from that. It is a slightly contextual question. Countries such as Barbados are making significant noises that they quite fancy being independent. What you just said about the Court of Appeal is really interesting. Would you expect to be consulted in any way or to be involved in any way with the jurisdiction if it were on the point of trying to separate its legal structures from ours? Has there been a case where there has been a precedent?

Lord Reed of Allermuir: There have been a number of cases; one is ongoing at the moment. Barbados left us some time ago. Antigua and Grenada held referendums recently and decided to remain with us. St Lucia has recently passed legislation that would pave the way for it to leave us, but it has to have either a referendum in the island or an agreement with the British Government, and it is currently in discussions with the Government over the terms of an agreement.

We are not involved. I would expect us to be informed, but we are not involved because we have no legitimate policy aim one way or the other. We can provide information. If local politicians are concerned that we are 3,000 miles away and difficult to access, we can say, "In fact, these hearings can be done over the internet with your solicitors sitting in their offices in the island". We can provide useful information, but we would not expect to be involved in any other way.

Baroness Andrews: But you might expect them to have a continuing relationship in the way that some places have.

Lord Reed of Allermuir: Yes.

Baroness Andrews: That would be entirely at their discretion. Would you have the right to say, “No, we would rather not because we are very busy, and we could do with less to do”?

Lord Reed of Allermuir: No, we cannot do that because our Parliament has given us that jurisdiction. It is an Act of Parliament passed in 1838 and it is still in force. It is frequently amended, in fact, and orders are made under it quite often, so it is still quite a live piece of legislation, notwithstanding its age.

Q9 **Lord Foulkes of Cumnock:** I will keep away from the desirability or otherwise of overseas territories as tax havens, but I have very strong views on that. I want to turn to Scotland. You mentioned the Scottish independence referendum, on which you made a decision—the right decision, I think, incidentally. Are you anticipating any others?

Lord Reed of Allermuir: Yes. We get a steady stream of appeals from Scotland. Curiously, in recent times they have mostly been tax appeals. I have meetings with the Lord Advocate, and I am told that a number of challenges to legislation passed by the Scottish Parliament may come our way. The one that has been in the news is the challenge to the order made by the UK Government in respect of the Gender Recognition Act. That is going to be heard, and those proceedings take the form of a judicial review of the UK Government’s order.

The proceedings are beginning in the Scottish courts. The judicial review is due to be heard by a first instance judge in the week of 19 September, and if there is an appeal it will have to be heard by the Inner House in Edinburgh. It is only if there is a further appeal that it would come to us, I would imagine, some time early next year. If that comes to us, obviously we decide it. I am told there are challenges brought by private individuals or companies to other legislation that has been passed.

Lord Foulkes of Cumnock: Do you anticipate the deposit return scheme being one of them?

Lord Reed of Allermuir: I think that was mentioned.

The Chair: Do you still get criminal devolution cases?

Lord Reed of Allermuir: We have not taken one in a while that I can think of. I think that you, Lord Hope, gave a judgment in a case that made it clear that we should deal only with points of principle rather than their application to the facts under the regime for compatibility issues, as they are called. We get applications for permission to come to us, but I do not think we have granted permission for a year or two.

Lord Anderson of Ipswich: Are there still jurisdictions where in any class of case there is an automatic right of appeal to the Privy Council? If so, do you have views on that, and any involvement in that issue?

Lord Reed of Allermuir: It is not as much of a problem as you might imagine, because even where there is a right of appeal we can nevertheless decline to take the case if it is wholly without merit. That was established some time ago. If it is a hopeless case, we can weed it out regardless.

Lord Hodge: I should add we have also recently introduced procedures for reviewing cases that are thought to be either of little merit or of very little value. We have a way of filtering out cases without having a hearing, should that be necessary, because we get some cases, as you say, that are of little value.

I am very glad that Guernsey has finally legislated to change the law. If I recall, I wrote a couple of judgments in the past encouraging that jurisdiction to introduce the same test as exists in Jersey. We are taking steps because the offer of remote hearings makes appeals to the Privy Council a lot cheaper. We had to take account of this fact and the danger that we get swamped by small-value appeals with little legal importance. We are putting in place procedures to filter out such appeals and, if appropriate, sit in smaller panels to deal with them.

Q10 **The Chair:** Last year, Lord Reed, you told us that you were trying to make some progress in the appointment of judges from those other jurisdictions to the Privy Council so that they could sit with you. Has there been any progress on that initiative?

Lord Reed of Allermuir: Some. There are two problems. Your Lordship will remember the days when judges from Jamaica sat on the Privy Council.

The Chair: Yes, and New Zealand in those days.

Lord Reed of Allermuir: Indeed, I sat with judges from New Zealand. The problem at the moment is that there are no judges in overseas jurisdictions who are members of the Privy Council. One thing that needs to be overcome is to get agreement to make some of the judges privy counsellors. That is not within my gift, obviously. The other is that if they are made privy counsellors, there nevertheless needs to be legislation to enable them to sit. The legislation takes the form of Orders in Council made under the 1838 Act—it may be an Act from later in the 19th century, but it does not matter. There needs to be an Order in Council to enable them to sit. There are four Orders in Council in place, but they cover only a small number of the relevant jurisdictions.

I have asked that we get Orders in Council made in respect of the other jurisdictions, and get agreement to the appointment of overseas judges as privy counsellors. I have made these proposals and raised these points with the Ministry of Justice, and it is taking them forward with the Foreign Office. That is where we stand at the moment. I have a meeting with the MoJ Permanent Secretary later this month and I will ask her about progress.

The Chair: Thank you very much. I would like to move to judicial

diversity with Baroness Andrews.

Q11 Baroness Andrews: Reading what you, Lord Reed, told the committee last year, I think that what you are doing is really impressive at so many different levels. You are really serious about this as part of your purpose. Are you content with the progress that you have made over the past year?

Lord Reed of Allermuir: We have made a great deal of progress over the past year. If you would like to hear about it in detail, I have asked Lord Hodge to prepare some ideas about it. In a nutshell, we have a strategy that looks at the short term, the medium term and the long term.

The short-term strategy focuses on getting a greater diversity of judges from the courts below us sitting with us to give them experience of the court, see what it is like and, we hope, encourage them to apply when vacancies arise. The medium-term strategy focuses on mid-term professionals from underrepresented groups and on encouraging them to consider a judicial career. It involves our working with groups whose *raison d'être* is to assist people in those categories. Our long-term strategy focuses on young lawyers and, again, involves working with groups that aim to help them, providing internships at the court and undertaking other measures, such as hosting events that aim to support people in their aspirations.

Baroness Andrews: May I suggest, Chair, that Lord Hodge puts something in writing to the committee in detail?

Lord Hodge: We can prepare something for you, yes.

Baroness Andrews: It would be interesting to have a couple of illustrations of the short and the long term, if you could give them.

Lord Hodge: We are very well aware that the absence of diversity in our court is perfectly apparent, and aware that we have a leadership role. That is why we have adopted this strategy. When you diagnose the problem, you realise that at least one of the causes is the structure of the legal profession and the way in which it is a conduit to the recruitment of judges.

Things are changing. Of the 37 individuals on the Court of Appeal, 26 are men, 11 are women and there is also minority-ethnic representation. I will not go through the detail—I can give you that in writing later—but, put simply, one of the important short-term initiatives has been inviting judges from the courts of appeal of the constituent parts of the United Kingdom, including female judges, to see what it is like to sit with us as a member of the Privy Council. That is our essential short-term strategy, as well as speaking to individuals to encourage them to think about applying to our court.

The medium-term strategy of which Lord Reed has spoken has involved holding webinars on career pathways to encourage people in the middle

of their professional career to think about aiming to end up in the Supreme Court, while the longer-term strategy has been engaging with youngsters. Again, I will give you the details later, but a very good example is our involvement in the Bridging the Bar initiative of the Bar Council. We hosted a group of interns for a week in the court, and it is certainly recognised from research that candidates in the 2022 academy had a significantly higher chance of retaining pupillages as a result of their engagement in that process. Rather than read the detail out to you, I will arrange for a document to be produced.

Baroness Andrews: That would be very helpful.

Lord Reed of Allermuir: May I add just two points? One is that the leadership has proved itself in practice. Our internship scheme for young lawyers from underrepresented groups has now been adopted by the Court of Appeal and the High Court.

I have also appointed one of the judges on the court, Lord Leggatt, as a lead justice on diversity and inclusion. He has been very active. He organised very useful training for us, targeted on what we actually need. When we are sitting in court, it is not really an issue; but when we go out and about, particularly to universities and schools, we meet a very diverse group of young people all the time. We talk to them and answer their questions, which are often about the problems that they might face. We had some training on that with consultants helping us with language to avoid using, and getting us to think about how to answer the questions that we might be asked so that we have answers in our head rather than trying to come up with them off the cuff.

George Leggatt has also got us involved with a variety of groups such as the Sikhs in Law Association. We hosted its launch event. There is a group called the Black Talent Charter, which Lord Anderson may know about because it is headed by a member of his chambers. Thanks to George, we are now involved with it as well, and we will be holding an event with it later in the year. It is not just us looking outwards; we are trying to do something internally as well.

Q12 **Baroness Andrews:** I have one final question. It is lovely to see the very diverse group you have behind you, with all the lovely women. I was struck by one thing in your notes: the difficulty of recruiting women from the Court of Appeal because they are concentrating on different areas of the law. Do you think that that is the real explanation, or are they perhaps a bit put off by other aspects of the Court of Appeal?

Lord Reed of Allermuir: We may have had a difficult time for the recruitment of women because of the demographics in the Court of Appeal. Although there are 11 women, they are mostly at the junior end, and it may be that some of them were understandably waiting until they had some more miles on the clock in the Court of Appeal before they applied to our court.

Baroness Andrews: I will finish, but I would very much like to pursue

the question of the legal curriculum and the curriculum in schools, which is very alien, in a way, to the concept of how you apply the law in practice, even if you do something like civics. How you address these things is a very big issue. Thank you very much.

Q13 Lord Falconer of Thoroton: I should have declared an interest, which is that I am a practising member of the English Bar and appear from time to time in the Supreme Court and the Judicial Committee of the Privy Council.

How worried are you both about the position in relation to the membership of the Supreme Court? I think it is 11:1. In 2003, it was 11:1 as far as men to women are concerned, so the gender balance has not changed over 20 years. Twenty years ago, people were saying, "Oh, it's all to do with what's in the pipeline". I think you are the least diverse court in the whole United Kingdom. What message does that send, and can you do anything about it?

Lord Hodge: As I said, we are acutely aware of the message that it portrays when you see us sitting as a court. We try to do things about it. I will give the details in writing, as we have described the three levels of our strategy. The immediate one is making contact with the Court of Appeal and encouraging its members to sit with us in the Privy Council to see how we work and who we are, and to come forward to apply. We cannot make people apply. We can encourage them to do so, and we are encouraging them.

Lord Falconer of Thoroton: Can a non-member of the Supreme Court sit in the Supreme Court?

Lord Reed of Allermuir: Yes, they can and do. Successive Presidents have been careful about who they invite, so as not to devalue the currency. I regularly invite the Lord Chief Justice, the Lord President and the Lord Chief Justice of Northern Ireland, who is a woman, to sit with us.

Lord Falconer of Thoroton: The Lord Chief Justice of England and Wales is shortly to be a woman.

Lord Reed of Allermuir: It happens that she is sitting with us next Monday in the Privy Council, but in due course she will sit with us in the Supreme Court.

Lord Falconer of Thoroton: The President of the Supreme Court is almost always one of the members of the commission that appoints new Supreme Court Justices. Having identified—Lord Hodge has done this in the questioning—the difficulties of women applicants from the Court of Appeal, why not go beyond the Court of Appeal? You have done it with men. Why not do it with women?

Lord Reed of Allermuir: We could perfectly well do it with women if a sufficiently strong candidate applies.

Lord Falconer of Thoroton: Would you need to informally invite people

to apply?

Lord Reed of Allermuir: We cannot invite people to apply. It is a statutory regime, and we have to decide from among people who have put themselves forward as candidates.

The Chair: You advertise the post, though, do you not? It is well known.

Lord Reed of Allermuir: Yes, we advertise it very widely. I speak to audiences about it and my colleagues encourage people to apply. I have in the past encouraged a woman who was not a judge, or at least not a full-time judge, to apply. We try to encourage a wide range of candidates to apply in a variety of ways.

Lord Hodge: Lord Reed obviously cannot encourage people now, sitting as he is on the panel, but I do. I say to people, "You should be thinking about a career in the Supreme Court. I see no reason why you shouldn't throw your hat in the ring". It is breaking no confidence to say that I spoke to the one woman who we have in our court and encouraged her to apply, and I was very pleased she did. She has been excellent.

Lord Foulkes of Cumnock: I am just a bit concerned that, from the exchange, it appears that only gender and ethnic diversity need to be taken into account. I am concerned about disadvantaged people and people who went to ordinary schools. Having gone to a private school myself, I have no quarrel with Glenalmond College, George Heriot's School, Fettes College or the Edinburgh Academy, but what are you doing to get poorer people pulled up and taking part in not just the Supreme Court but any court?

Lord Hodge: That is pretty much the longer-term strategy that we were discussing, and Bridging the Bar is a very good example of it. The academy candidates for Bridging the Bar are people from disadvantaged backgrounds who have not had an easy time in their lives and would otherwise see a career ending with a presence in the Supreme Court as unattainable. We are encouraging at the ground—people at the start of their legal career—to aspire to go all the way, if they can.

That is precisely what the Bridging the Bar initiative is about. It is looking to help the disadvantaged. Some of them will be from minority-ethnic backgrounds, but quite a few of them are not. They are disadvantaged people who a generation ago would not have dreamt of becoming lawyers, let alone ending up in the judiciary.

Lord Foulkes of Cumnock: Poor white people might find just as great a difficulty getting into the legal profession in the first place and then moving up.

Lord Hodge: I think they are.

Lord Reed of Allermuir: This is something that we realise. As well as Bridging the Bar, we also work with an organisation called the Kalisher

Trust, which is designed to help people from poorer backgrounds who want to pursue a career in the criminal Bar.

We mentioned earlier that we work with schools. We have a scheme, "Ask a Justice", whereby the first class of the day in a school can be a session with a member of our court. The children give us questions a couple of days before. When we have the session, it is rather like this one: the children will be sitting in their classroom and take turns to put their questions to us. As well as answering the question, we will have a bit of a chat about their plans and so on. For that scheme, we focus on the most deprived areas in the country. They are mostly schools in deprived areas. One of the ones I did recently was with Clydebanks High School and the children were absolutely terrific. We got very good feedback afterwards from the teacher, the head of the school and indeed the local authority.

Lord Foulkes of Cumnocks: Thank you, I am reassured.

Lord Hodge: Lord Reed mentioned the Kalisher Trust. That involved a visit to the court building, a guided tour and a question-and-answer session, and then the youngsters made oral submissions in the courtroom. It was familiarising them with the court building and the experience of legal presentation in the building. It is trying to break down barriers. That is the aim.

Q14 The Chair: Does the internship scheme that you mentioned have a part to play in what Lord Foulkes was asking about? If so, could you tell us what they do and distinguish them from the judicial assistants sitting behind you?

Lord Reed of Allermuir: Yes, they come to us for a week. They are paid and each of them is assigned to a judicial assistant and a justice. They are usually recent law graduates who are contemplating a career in the law, but generally they are struggling to get started by getting a traineeship in a legal firm or a pupillage in a barrister's chambers.

When they work with us for a week, they do some research for us. They sit in court and watch the hearing. We then have a discussion after court every day about what they have observed and the case. At the end of the week, they each give us a presentation. We have only had the results of the first year's intake. We have been doing this for two years; it will be our third year in the coming October.

In the first year's intake, all but one of them were then offered pupillages at leading barristers' sets. That is a huge opportunity for those young people. Some of them had multiple offers from leading sets of barristers' chambers. They are quite varied. One or two of them have come from very poor backgrounds but have followed a scholarship route and managed to get a scholarship to a good school, and into a good university. There are others: for example, a young woman was a carer for her mother, so she was not able to go away to university. She went to

the local university, which was not a very good one, but she got a top-class degree at it.

It is not the most impressive thing to have on their CV, but they can put on their CV that they were accepted for this scheme of ours, which is very competitive, and that seems to be helping them to get interviews, at any rate. They all say that the time they spent with us was a great boost to their self-confidence, so I hope that may feed through when they are interviewed.

The Chair: Judicial assistants are people who have already established themselves in chambers and so on. Can you describe the scheme, because I am not sure all members of the committee know exactly what it involves?

Lord Reed of Allermuir: We advertise every year for judicial assistants to come and work with the Justices from late September through to the end of July. At the moment, they have to be legally qualified, and they are usually people who are fairly recently qualified with a strong academic background, because they need those skills to do the work. They are quite often people in practice who have gone to a City firm for their traineeship, are then having second thoughts and are looking to switch to the Bar. It can be quite a useful interregnum while they make that transition. They spend a legal year working with us, and they are absolutely invaluable.

They mainly prepare the summaries that we use for all the applications for permission to appeal. Rather than having to read all the papers, we get a summary that then guides us to the important parts. They also prepare the summaries that are provided to the public. When you come to the court, at reception you will be given a summary of whatever case is going on that day. That will have been prepared by our judicial assistants. They do research for the justices and for the court. Each of them is assigned to a particular justice. They answer all the queries that we get, which you heard about, from courts around the world. One of them acts as the UK liaison for the Venice Commission, which you may have heard of. They also prepare our speeches. If we are giving lectures or speeches, most of us will use our JA to prepare a first draft. They are not involved in the drafting of our judgments, but when I have drafted a judgment, I will give it to my JA to read over and see what their comments are. They contribute through those main functions.

Lord Hodge: When we recruit JAs, we do not just advertise and do nothing. We had recruitment events over the past year in Edinburgh and Manchester where JAs went out to those cities and explained to their audience what is involved in being a judicial assistant. That encourages applications from outside the metropolis, which can be a good thing.

The Chair: Is the diversity that we can see behind you deliberate? Are you encouraging diversity, or is it simply that you take the best candidates?

Lord Reed of Allermuir: It is interesting, because the criterion is the same as for the appointment of justices. We appoint on merit. We are looking for the strongest people we can find to do the job, but because you are looking at a more diverse pool of candidates you end up with a more diverse intake.

The Chair: It is also an indication of the profile of the profession. These are people at an early stage. We expect, as they work up and with others working at their same level, we will see the diversity, which will be reflected later in judicial appointments. Is that a fair estimate?

Lord Reed of Allermuir: That is certainly what I would hope. I think there are signs that we can reasonably expect it.

- Q15 **The Chair:** I have just one final point. I would like to come back to something you said last year when talking about women. You said that there was a reluctance, particularly in the case of women, to come to the Supreme Court partly because of a lack of focus on the areas of law in which you deal and a concern about the volume of work. That causes some concern. Is it really that that is the problem?

Lord Reed of Allermuir: I was relaying what I had been told. It is a very complex issue. Lord Hodge mentioned the fact that there are 11 women in the Court of Appeal. They are of different ages, different lengths of service and different areas of expertise. If you have devoted your life to family law, for example, and that is what you want to do and find fulfilling, the Supreme Court is not for you because we have maybe one case a year to do with family law. The younger cohort of women are much more likely to have a background in commercial or commercial chancery work, and more likely to find the work that we do interesting and to be ambitious to get to the top court.

The Chair: Lord Wilson, who you may remember, was actually a family law judge.

Lord Reed of Allermuir: Yes, absolutely.

The Chair: He applied and was appointed. Baroness Hale had a practice in that and her presence in the court enlarged the kind of work done by the court. I hope that that kind of background is not a disincentive as far as you are concerned.

Lord Reed of Allermuir: It is certainly not.

The Chair: May we move on to the next topic, which is interaction with the Government?

- Q16 **Lord Strathclyde:** Good morning, and thank you very much for the way in which you have answered questions so far.

As Lord Hope described, this question is very much about the interaction between the Supreme Court, government and Parliament—particularly about whether, looking back over 17 years since its creation, there is an understanding between government, Parliament and the Supreme Court

that is as good as it was in the early years of this century. There was a sense that, although you physically moved only a couple of hundred yards across Parliament Square, in many respects it felt like the Atlantic Ocean, and that the very physical presence of the senior judiciary in this House meant that not only did the judges see what happens with the creation of legislation and the many compromises that are made but that parliamentarians could see the deliberations of the court. Is that right and has it changed? Is there a perception, or a fear perhaps, of judicial activism playing a greater role?

What can you do to try to educate Members of the House of Commons and indeed Peers? I think this is particularly acute in the House of Commons. I was not here last year, but I gather that you talked then about efforts being made to bring in groups of MPs to discuss your role and your position. Would you like to comment on that?

Lord Reed of Allermuir: Yes. There is no doubt that removing serving judges from the House of Lords means that our activities are less visible to Peers than they were formerly. That is a loss; on the other hand the gains, to my mind, outweigh that, particularly the freedom it has given us to engage in the activities you have been hearing about—outreach, education, our international activities and so on. Lord Hope is in a better position than I am to say, but my impression is that it is all on a completely different scale from what was possible when the Law Lords were sitting in Parliament. However, it means that we have to counter the downside of being outside Parliament and, I am afraid, the misunderstanding that because we are a Supreme Court we are analogous to the American institution.

As I explained last year, I have undertaken a lot of work to try to counter that, working mainly with the Speaker and the Lord Speaker and with the chair of the Justice Committee in the House of Commons. I should say that we are not within its formal remit, but it is the most obvious point of contact and one that the Speaker suggested that we focus on in the first instance. We invited it over to the court for the first time last year and, as it happens, we had it over for a repeat visit yesterday evening.

We had a very productive discussion about the legislative process and the problems of interpreting legislation, how far those problems are capable of being obviated or whether it is the extent to which it is inherent in the nature of what we are dealing with. We spoke about diversity. We had a long discussion of the JCPC, of our international work more generally, and of things such as ways of working. They were finding analogies between trying to arrive at a consensus on a committee report and the reasons why we would value being able to arrive at a consensus in our own discussions—the roles of expert advisers, our JAs and so on. They were able to relate, to some extent, their own experience to the court.

Sir Bob Neill and I share the view that this is very important. It is exactly addressing what Lord Strathclyde raised: the question of education in understanding the role of the court and the relationship between the two institutions. It is not all one way, by any means. We listened to them

talking about how things look from their perspective. That is one example.

I have also engaged with the Lord Speaker. He invited me to give a talk in the Robing Room last year, essentially, on how maintaining the rule of law is a joint responsibility of Parliament and the courts. I was able to give some historical examples of judges and parliamentarians pulling together on that and tried to get over the message that this is not a contest for power between the courts and Parliament; they have a shared commitment and should be supporting each other.

The Speaker has suggested that it might be possible for the court to be involved in the induction process of newly elected MPs. Our chief executive will meet an official of the House of Commons later in the month to discuss that. We are hoping we can take that forward.

In short, the answer to your question is that we recognise that there is a problem. We take it very seriously and are making serious efforts to address it.

Lord Strathclyde: Thank you very much for that. What you said at the beginning of your reply is very welcome. All the freedoms and educational issues that you deal with now are absolutely right.

I was concerned when you said that because of the court's name there is confusion with what happens on the other side of the Atlantic. Certainly, I am aware that during the most recent controversy over *Roe v Wade* many people said, "This is what the UK Supreme Court is going to do", without understanding the constitutional implications, so I welcome what you said about having a system of trying to educate new MPs. We are going to have an election over the next 12 to 18 months, so getting something in place for new MPs will be extremely useful, and possibly even Peers as well.

Lord Reed of Allermuir: You made the point about the fact that previously other Peers would have known the judges personally and what sort of people they were. We make it clear that any individual MP who wants to visit us will be very welcome; in fact, there are MPs who visit us. We always build in a social side to it as well. You are not sitting discussing serious issues all the time, but you can get to know each other, and they can form an assessment of what sort of people we are.

Lord Strathclyde: Do you think that, in that sense, the House of Lords should encourage, as a courtesy, Supreme Court Justices to use our dining facilities or even the Library?

Lord Reed of Allermuir: That would be very welcome. Without even going so far, I get an invitation to the Lord Speaker's lecture series, and it is an opportunity for me to mix with Peers. I dare say that some of my colleagues might be interested as well.

Lord Falconer of Thoroton: You do not want to come back completely to Parliament.

Lord Reed of Allermuir: No. As I said, the benefits of an independent existence outweigh the drawbacks.

Lord Falconer of Thoroton: You said last year, "There has been a definite change in the way we are operating in the Supreme Court in relation to government over the last couple of years, and it is to do with trying to co-operate with officials where we properly can. Also, in our judgments themselves, we are taking a lot more trouble to explain what we are doing in constitutionally sensitive cases and why we are doing it". Describe the definite change in dealing with officials, not the bit about the judgments.

Lord Reed of Allermuir: When I was Deputy President five years ago, our meetings with government and government officials were rare. There would be an annual meeting with the Lord Chancellor and probably an annual meeting with the Attorney-General. That would be about it. Obviously, the frequency of meetings depends on what there is to discuss. We had quite an active period on the Government's side in bringing forward legislation that was going to affect the courts. We had more regular meetings than had previously happened, and meetings at official level became more common. That has been maintained. It is useful for us to meet every so often to find out what is in each other's minds and raise any points that seem to be important.

I should say that it is not just government. I also have occasional meetings with Opposition spokesmen with justice responsibilities—the shadow Lord Chancellor, the shadow Attorney-General and the shadow Solicitor-General. It gives them an opportunity to ask questions about the court and to learn about it.

Lord Falconer of Thoroton: Regarding the second part of what you said last time, there is a line, obviously. Do you talk about the reasons for your judgments, or do you leave them to speak for themselves?

Lord Reed of Allermuir: I leave them to speak for themselves. This is a matter that came up in the last year's session with the committee. If we start trying to justify our judgments, a number of problems arise. It may seem obvious: "Why on earth don't you justify your judgments to the public?" There are a number of problems with it.

One is that it muddies the waters, because the judgment is an authoritative legal text that is going to be scrutinised subsequently, and it is meant to be applied by lower courts. If we start adding to it or qualifying it, inevitably people are going to look at what was said. They will cite that in court and will say, "Oh, well, he may have said this in this paragraph, but look at the explanation—the gloss—that was put on it by Lord Reed when he appeared in the Constitution Committee". We do not want to go down that road.

It is also not fair to the parties. They have given us a case for adjudication. They have had an adjudication that all five of us have

signed up to, and for that to be qualified or undermined by individual judges commenting on it would be unfair.

The judges do not explain the judgments, but we have a communications team who work with the media to help them to understand the judgments. When we hand down the judgment we give a simple explanation of it, a precis in non-technical language, which we also provide to journalists. They tend to use that in their reporting of the case, so I hope that reassures you.

Lord Falconer of Thoroton: I am very reassured. Thank you.

The Chair: I would like to move on to a rather different topic, which is the change programme. I am going to ask Lord Mancroft to develop this question. These are the improvements that you identified in the change programme and what progress you have been making.

Q17 **Lord Mancroft:** What changes and improvements to the Supreme Court have been identified by the change programme? What do you hope to achieve through this programme over the next year? Will you say a little bit about the data that has been or will be collected to inform that programme?

Earlier releases state that "The UK Supreme Court will undertake a holistic investigation into user needs through the delivery of at least 50 user research sessions". What does that actually mean?

Lord Reed of Allermuir: If I may, I will gratefully pass this question to Lord Hodge to answer.

Lord Hodge: You ask us what we are achieving over the next year. I should explain that it is a three-year programme. Ultimately, the two most significant elements that we wish to achieve are, first, the new case management system, which will be an IT system, and, secondly, new websites for the Supreme Court and the Privy Council. The programme is going to last for another two years.

Over the next year, we will be focusing principally on user research, which involves speaking to both professional and lay users to understand how they interact with the court and to focus, if we can, on their needs, whether that be a legal firm submitting a permission to appeal or a school engaging with the court. We want to consult these people to develop a new case management system that will be suitable. We will also start the design phase so that we have an understanding internally of how the new website and the case management system would work.

As well as speaking to users, we have conducted international inquiries. We have spoken in interviews to officials in Australia, Canada, New Zealand and the Cayman Islands. We are also looking, through desktop research, at the United States, Singapore, India, South Korea, the UAE, Mauritius and Israel.

We are doing quite a lot of research before we get into the details. We will be looking for areas where the new website can provide easier solutions for our users. We want it to be easier to research, more accessible to be read, and informative. With the case management system, we want people to be able to pay their fees online, to file papers through an online portal and, importantly, to track the progress of their case through it. That involves the development of new software, but it also involves us having to support and train our own registry staff in handling the new ways of working, and that takes time.

We are aware that you have taken evidence about how the much bigger change programme in the Courts & Tribunals Service of England and Wales is going. We are obviously a much smaller programme for a much smaller organisation, but we are acutely aware that these change programmes can go off the rails.

To keep us on track, we have a dedicated change board that meets monthly to scrutinise progress, deal with risks and identify how what is happening aligns with both our strategic and our spending objectives. We have three non-executive directors from outside the court, one of whom is assigned specifically to support the activities of the change programme.

You ask about the user research and what data we are collecting. It is about the current experiences and needs of the users of the court, and that includes professional users and litigants in person. They tend to exist only at the level of the permission to appeal, because if we were to give permission to appeal we do not usually have difficulty in finding a good lawyer who will act pro bono to present the case. We are also speaking to academics and visitors to the court.

We are doing a similar exercise for Privy Council users, including firms that manage the cases here in London and people who are working from the jurisdictions that appeal to our court. We are looking at the systems and processes which domestic courts and supreme courts have been using—I mentioned the inquiries we have been making internationally.

We will be gathering data at this stage to inform the design of what we do. We will continue to gather data throughout the process, with frequent user testing of the case management system and the website as they are developed, regular surveys within the organisation itself to see how staff are coping with it, and gathering such data as we can to test the extent to which what we are doing meets the benefits we are looking for.

It is an ongoing process. We are at a fairly early stage. We are in year one of three. Data gathering of this nature is being carried out.

Q18 Lord Mancroft: That is very helpful. May I ask about the litigants? I assume that most users will be lawyers. How many litigants approach you themselves? Would Mr and Mrs Average ring up the Supreme Court and say, "Can I come and see you?" That seems slightly obscure.

Lord Hodge: No, but litigants in person who have litigated in the courts below may want to appeal an adverse decision to us. They will sometimes

submit a permission to appeal, assisted by a friendly lawyer who has helped them frame the matter.

Lord Mancroft: Would that include people who have been rejected by the High Court, where it has said, "No, you cannot appeal to the Supreme Court"? Can they do that?

Lord Hodge: Yes. It is a norm for the Court of Appeal as a courtesy to decline to give permission to appeal and to allow the Supreme Court itself to assess the significance of the application in question. It is almost always the case that litigation will come to us with a refusal from the court below to appeal, but they have a right to make a fresh application to us. We assess permissions to appeal monthly. We have panels of three who meet and read the judgments of the courts below and the application, and form a view as to whether it is a suitable case for us to hear.

Lord Mancroft: Is that a large body of work? Do lots of people do that?

Lord Hodge: A large body of litigants in person, no. Most of our work comes from professional law firms.

Lord Reed of Allermuir: I have not yet seen a litigant in person in the Supreme Court in nearly 12 years. What happens in reality is that, if we have a litigant in person who has an arguable case, our registry is able to organise a lawyer to represent the person. It is a bit of a feather in a lawyer's cap to appear in the Supreme Court, so it is not difficult to find somebody suitable to represent the litigant in person.

Lord Thomas of Gresford: Is there a significant backlog of cases? You are changing the case management, but at the moment is everything timely?

Lord Hodge: We do not have a significant backlog of cases. We are able to hear cases in a reasonably tight timescale. I obviously know of the problems in the criminal courts; that is not replicated with us.

Q19 **Lord Anderson of Ipswich:** It seems to be generally accepted by people who understand these things that artificial intelligence has the potential to assist lawyers and judges in analysing vast quantities of information, identifying the issues that divide the parties, and even pointing the way towards the relevant law. The assumption seems to be that those capabilities will be most useful in very minor cases heard right at the bottom of the judicial hierarchy. Does that mean that the Supreme Court will be the last place to feel the effects of AI, or are you or your judicial assistants open to the possibility that it might be of assistance to you?

Lord Reed of Allermuir: We are certainly keeping an open mind and a close eye on developments, but we do not have any current plans to use AI. As you say, it has been suggested: the Master of the Rolls is something of an advocate of the view that AI could be used for deciding minor claims. The thinking is that, if you have a clearly established rule

and undisputed facts, a software program could tell you the answer, although even the Master of the Rolls wants there to be safeguards in the form of a right of appeal to a human judge.

The matter is discussed at the fora that I take part in internationally. I have to say there is a strong feeling that justice has a human element, which cannot be jettisoned in cases of any significance: for example, deciding who should have custody of a child or deciding the outcome of a criminal prosecution. It is thought that such cases could not be decided by computer software, or at any rate that it would be unethical for that to be the approach.

It is in the nature of our court that we do not deal with cases where the rules are clear. We are dealing with cases where the law is not clear and where there is often a creative element involved. It would have to be a very advanced robot that eventually replaced us.

What is being talked about more at the moment is the use of ChatGPT and similar bots, in two ways. The lawyers present will know what I mean by discovery. That is when lawyers are trying to identify relevant documents; there may be vast quantities of documentation and the lawyers need to find a way of identifying the documents that are relevant. That is the sort of task where AI is being looked at as a tool. It is not something that we as a court would be doing.

Of course, we do legal research, and the lawyers appearing before us also do legal research, but at the moment there are very serious problems about the reliability of the research done using those bots. There was recently a demonstration of ChatGPT at a leading City law firm. I was sent the results by the senior partner. The machine was asked about authorities on a point in law of contract, and it gave two authorities. One of them was a Supreme Court case and it quoted a paragraph of Lord Hodge's judgment.

Lord Hodge: Two paragraphs.

Lord Reed of Allermuir: Two paragraphs of a judgment. It turned out that neither case existed. The first case was the name of a real case, but instead of being a contract case in the 1920s, which was what the machine had told us, it was a case in the 1600s on a different topic entirely. The Supreme Court case did not exist, and Lord Hodge's judgment was wholly imaginary.

This apparently is a known problem called "confabulation". It has caused difficulties in real life. There has been a case in the courts in Manchester where a fictitious submission was made. A case also got into the newspapers in New York that involved a Montreal convention case—the carriage of goods by air—where the machine found no fewer than six authorities that supported the argument being put forward, none of which actually existed, and the lawyer in question was fined. A practice direction has just been issued in Canada to address this problem, and

people have to own up if they have used a bot to prepare their submissions.

Obviously, it is developing rapidly, and it may well become possible to make use of it for research in the future. That is why we are keeping a close eye on it. As I said, there are no current plans.

Lord Hodge: I should add that the change programme does not involve the use of AI. It is essentially making our systems digital by default, but there is no role for this developing technology as yet.

Baroness Andrews: Does Lord Hodge intend to sue?

Lord Hodge: I do not intend to sue. The two paragraphs were perfectly respectable pieces of legal reasoning, but I had not written them.

Q20 **The Chair:** In the interest of time, I skipped over two questions that were on your list. Perhaps we could come back to them very briefly. The first was a reference to the judicial attitude survey of 2022, which found that two-thirds of judges who experienced bullying, harassment or discrimination had not reported it. I do not think this question is suggesting that those things take place in your court, but do you have any observations to make about the way in which the judiciary in general is dealing with these problems of harassment and bullying within the judiciary itself?

Lord Hodge: We certainly tried to address it in our court. I do not think that there is a problem in the Supreme Court. I hasten to add that we were not part of that survey. We certainly have not had complaints, but of course that begs the question: people are not complaining.

We have a number of weapons to make such an occurrence of bullying and harassment unlikely. One is the *Guide to Judicial Conduct*, which I think that you, Lord Hope, had a hand in drafting in 2009, and which requires justices to be courteous, patient, tolerant and to treat people with dignity. I know that is not aimed at colleagues, but the behaviour that is required obviously is totally appropriate in dealing with our colleagues.

We are a very small body of 12 Justices. We know each other pretty well. A number of years ago, Lord Neuberger introduced a practice—one that I, as a junior member of the court, found very comforting—of popping into each justice's room every now and then to find out how things were. There were asked about workload and health, and whether there was anything that they wished to raise. Lord Reed and I continue that practice of dropping in on our colleagues and giving them the opportunity to express a view.

Further, we have made it clear it to our colleagues that we have an open door at all times, should they require it, and we have an induction system for new Justices that involves informal peer support. An existing Justice is appointed to be the point of contact if the newcomer has any concerns.

My impression is that we are all aware of the need for collegiality to make the court work, and of expressing any disagreement that we may have about the legal reasoning of our colleagues in temperate and measured terms. We have a formal anti-harassment and bullying policy that applies to the Justices as well as the staff, but I am not aware of any occasion on which an issue has been raised with a Justice. Of course, as you will know, we have the formal judicial complaints procedure.

The lower courts will have many of those more formal arrangements, but I do not think I can express a clear view on how effective they are. I do not have that knowledge. Certainly, as far as our court is concerned, I am satisfied that there are systems in place which would make such occurrences unlikely.

The Chair: In the old days, I think harassment of counsel was not uncommon in this building. I am going back a long time. Do you have any system for counsel who feel that they are not being fairly treated by Justices?

Lord Hodge: I am not aware of a formal system. I find that counsel are usually able to stand up for themselves. I remember one occasion when I was a very junior judge and a respondent got up at about 3.30 pm to open their case and was bombarded with questions. They had hardly opened the submission by 4 pm. The next morning, he introduced his submission, saying that he hoped he would not be subjected to the same carpet-bombing as he had received the evening before. That certainly brought it home to my colleagues that they had been too interventionist too soon.

I imagine that if someone felt that they had been really badly treated, they would let either Lord Reed or me know about that. My impression is that the court can ask questions firmly and push for an answer, but I do not think there is the harassment that I remember seeing as a junior counsel back in the 1980s.

Q21 **The Chair:** The last question goes back to appointments to the court. There is a vacancy, as we know. I would like you to explain the process of advertisement. Obviously, it will sort itself out in the usual process, but how do people know, and what is the avenue by which they could apply, bearing in mind that those who can apply are not restricted to serving judges? Other people might feel that they would like to take an interest in the work of the court and become members of the court.

Lord Reed of Allermuir: Yes, of course. The advertisement process is that we put an announcement on our website, on social media channels such as LinkedIn and in the traditional media online, so as to get a wide audience. We have a web page on the website called "judicial vacancy 2023" that explains the application process and how to apply. It includes a range of material to help people, such as videos and podcast interviews with previously appointed Justices talking about the process.

The Chair: Is anything said about the criteria for appointment and the

qualifications?

Lord Reed of Allermuir: Yes. That information, I should say, makes it clear that we welcome applications from the widest range of applicants, including those who are not currently full-time judges, and particularly encourage applications from those who would increase the diversity of the court. All that is put on these various sources.

The Chair: Good. Unless any other members of the committee have questions to ask, we can bring this session to a close. You have given us a huge amount of information that has been extremely valuable and very interesting to us. I must confess that I am wondering how you find time to hear cases and prepare judgments, in view of the amount of work that you two do. I am sure the court owes a great deal to you two for running it in the way you are doing, and that needs to be recognised. Thank you both very much indeed.