HOUSE OF COMMONS

Justice Committee

Oral evidence: Work of the Lady Chief Justice, HC 466

Tuesday 16 January 2024

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Watch the meeting

Members present: Sir Robert Neill (Chair); Tahir Ali; James Daly; Rachel Hopkins; Edward Timpson.

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Witness

I: Right Hon Baroness Carr of Walton-on-the-Hill, Lady Chief Justice of England and Wales.

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Examination of witness

Witness: Baroness Carr of Walton-on-the-Hill.

Q1 **Chair:** Welcome to this session of the Justice Committee, and a particular welcome to our witness, the Lady Chief Justice, Baroness Carr of Walton-on-the-Hill. I am delighted to see you, Baroness Carr. Thank you for coming.

Baroness Carr of Walton-on-the-Hill: Good afternoon, I am very pleased to be here.

Q2 **Chair:** We have to start with a formal declaration of interest, which we do every time. I am a non-practising barrister and former consultant to a law firm.

Edward Timpson: I am a barrister with a current practising certificate but not undertaking any court work. I am a former solicitor general, former chair of the national Child Safeguarding Practice Review Panel, former chair of CAFCASS, and my brother is chair of the Prison Reform Trust.

James Daly: I am a practising solicitor and partner in a firm of solicitors.

Rachel Hopkins: My declaration of interest shows I am a member of the PCS trade union.

Q3 **Chair:** Thank you very much, everybody. Baroness Carr, it is historic, because you are the first Lady Chief Justice of England and Wales; many congratulations on that.

Baroness Carr of Walton-on-the-Hill: Thank you, it is very good to be sitting here.

Q4 **Chair:** We have always had a very good and constructive relationship with your predecessors, and we very much look forward to working with you in the years ahead. When dealing with any member of the judiciary, we have to be careful with what we can and cannot ask. The Committee are very alert to the constitutional conventions that we do not ask the judiciary to come into the realms of politics or ask questions or comment upon any matters of potential political controversy or emerging Government policy. Rest assured we will stick to that, as we always did with your predecessors.

Within those parameters, there are a couple of things I thought we might usefully touch on. The first relates to the Government's expressed intention to bring in legislation to quash convictions in relation to the Post Office Horizon case, a matter which raises a number of constitutional issues that I will not ask us to ventilate here. There was a comment in the media suggesting there had been some consultation and/or agreement with the senior judiciary. My understanding is that that is not

the case.

There is always regular dialogue between the judiciary and Ministers, but there is a long-standing convention set out in the Cabinet manual that members of the judiciary do not comment on legislation or Government policy and we want to make it clear we stick by that. I hope, and it is my understanding, that any reporting of any kind that suggests otherwise is inaccurate.

Baroness Carr of Walton-on-the-Hill: Any miscarriage of justice is deeply troubling. Everyone who knows about the Horizon cases is concerned; I share that concern, as of course does the judiciary. It is not news for the judiciary because, after two years of robust and fearless case management, the High Court delivered the judgment in 2019 that forms the foundation of the ability to overturn these convictions.

The first appeals and references came into the criminal courts around the summer of 2020. Since then, the Court of Appeal and the Crown court have progressed those cases efficiently, effectively and robustly. A bespoke constitution in the Court of Appeal has been set up for this purpose, chaired by the Vice-President of the Court of Appeal (Criminal Division); there are very efficient systems in place. There is a narrative suggesting the courts have been unable to cope with these cases, or, in the future, would be unable to deal with them in large volumes; that is simply not factually correct.

As you rightly say, Chair, it is not and never has been for the judiciary to comment on the wisdom of proposed legislation. That is well established and is something neither the judiciary nor I have ever done. You are quite right to say I have not expressed any view on the proposed legislation in any discussions with the Lord Chancellor. At the Lord Chancellor's urgent request, last Monday I had two short conversations with him remotely; that is the extent of the consultation. I am very grateful for the opportunity to make it absolutely clear that any suggestion the judiciary has given the proposed legislation the green light is simply not true.

Chair: That is fine. Unless there is anything else you felt properly able to say we will leave it at that.

Baroness Carr of Walton-on-the-Hill: No, thank you.

Q5 **Chair:** The other matter invokes the exception to the convention and relates simply to the operational impact of any potential actions on the courts. You will have seen headlines in the newspapers today suggesting that the Prime Minister will "fast-track migrant appeals against deportation to Rwanda by drafting in 150 judges and freeing up courtrooms". Is your constitution able to say anything about the practical implication of that?

Baroness Carr of Walton-on-the-Hill: Yes. This headline draws matters of judicial responsibility into the political arena. Parliament has legislated; we, the judiciary, have acted in preparation for that legislation but, to be absolutely clear, matters of deployment of judges, the allocation of work for judges, and the use of courtrooms, are exclusively matters for the judiciary, and, more specifically, matters for myself and the Senior President of Tribunals. It is really important for people to understand that clear division.

Q6 **Chair:** We understand that; let us hope others do, too. You have made that very clear, and I am sure that will be picked up.

Perhaps we can move on to the broader picture that comes to you as a new Chief Justice. I would be interested to know what your priorities are for your time in office, how you see the role, and what the principal challenges are for the judiciary, the courts and the system.

Baroness Carr of Walton-on-the-Hill: My ambitions lay in three key areas. The first area is to recognise and promote judicial strength. Under that heading, I would include effectively communicating the vital role in supporting democracy, society, and the economy as a whole, safeguarding judicial independence, and continuing to increase transparency. The second area is to build judicial unity. That involves One Judiciary but also includes the fostering of a truly inclusive, respectful and welcoming culture that is supportive across the board, and strengthening diversity. The third area is the reduction of backlogs, the improvement of timeliness, and the maintenance of quality.

I want to emphasise the importance of a well-functioning society and a well-functioning justice system. They are essential not only to economic growth but to society as a whole. I am talking about individuals and families being able to move on and work productively, children being settled for the future and having the best chance in life, a criminal justice system that deters people from committing crime, and businesses being able to move forward with certainty and stability, free from dispute

On a more general economic level, the UK legal services sector is the second largest legal services sector in the world. Members of this Committee will know the numbers. It brings tens of billions of pounds into the UK economy. It is a world-class international institution, bringing in large volumes of international work, particularly business and property courts, and invisible exports and imports are involved. That is all really important to me and underpins much of my vision.

You asked me about the challenges. There are many obvious challenges; backlogs and timeliness are at the forefront. I also think the challenges will probably lie in the unexpected, in things I cannot see coming round the corner, and the fact that, when I have to deal with those challenges, I probably, and inevitably, will not be holding all the levers needed to solve the problems.

My biggest asset is my judges; the judges of England and Wales in the courts and tribunals work tirelessly and fearlessly with a single purpose, which is to serve the public and the rule of law, and that gives me both optimism and confidence.

Q7 **Chair:** That is very promising and optimistic in a realistic way. Do you think we do enough to promote the values of our system as a society and as a country? You make a very fair point about the strength of English law; do you think it is sometimes underappreciated?

Baroness Carr of Walton-on-the-Hill: The key is communication and understanding; the better we communicate and the more the public understands what we do, the stronger the message will be. We do a lot in the commercial sector with the City and UK plc to promote our international work. The Treasury is hopefully fully aware of the literal value of the work we do.

This Committee has done a lot of work in the criminal sentencing arena. Does the public understand enough of how valuable we are, not just in monetary terms but in societal terms across the board, and how this unravels across to the health sector, the education sector, and the housing sector? We do not live and work in a silo, and I would like to work on improving the understanding as to how we intermesh with all parts of life.

Q8 **Chair:** You came to the role with a reputation as a communicator—several commentators mentioned that on your appointment—so are there any specific initiatives you are looking to bring forward to increase the effectiveness and intensity of communication?

Baroness Carr of Walton-on-the-Hill: I am anxious not to move too fast but with baby steps. Transparency is an obvious target, and I have set up a transparency committee, which is going to be chaired by a specialist judge. It is not fully populated yet, but its terms of reference will be roughly to promote access to justice. I will not be looking just at broadcasting but at access to documents and information. Many members of the public gain their knowledge from what they read and see in the media; I will be a happy person if I can get high-quality reporting across the board and make that as easy as possible.

Chair: Let us move on to those other topics and challenges you have referred to. Ms Hopkins?

Q9 **Rachel Hopkins:** You are the first Lady Chief Justice, and we should celebrate that; it is a real milestone. What are some barriers to the judiciary being more diverse and inclusive, particularly among those senior roles?

Baroness Carr of Walton-on-the-Hill: It is not about me, but I would like to join you in celebrating the fact that we do have a first female Lady Chief Justice, and to celebrate the appointment of Lady Simler to the Supreme Court, and the promotion of Lady Justice Whipple, who has

taken over the exciting role of diversity, inclusivity, and leadership. There is a lot to celebrate, but far from complacency, there are real barriers.

One of the barriers for the judiciary is we are almost, by definition, a second career; we are dependent on the available pool. I am sure you are very familiar with the work of the Judicial Diversity Forum, which I feel passionately about. It is about working from the bottom up and working with the professions, schools, and universities right from the beginning to make sure we are getting the most able and diverse cohort of people from which to select our judges.

The biggest barrier is making sure we get the right people in that pool from which to select the brightest and the best. The statutory minimum is approximately five to seven years before applying to become a full-time judge; in practice, the years are much longer than that. I was in practice for 25 years before I applied for the High Court, and the average is 15 to 20 years before you dip your toe in the water. Those are the dynamics. People do not necessarily retire very fast, so the numbers depend on people moving on, which we also are not in control of.

How to overcome those challenges? Well, no spoiler alert, the Judicial Diversity Forum is front and centre, working together with combined annual statistics. Last week, we sent out a refresher as to what action the Judicial Diversity Forum is going to be taking this year. Diversity is the day job for me; it is always there.

Our judges are involved in so many schemes I could not even write them down on a piece of paper. There is reverse mentoring, targeted outreach, shadowing and mentoring. I am sure there are more things we can do, but we are busting a gut to do whatever we can. We now have our five-year diversity strategy, and we have published our particular priorities for this year; our two priorities are, first, to look at the profile of black judges— to deep-dive as far as we can into the reasons why we do not have more black judges—and the second area is to look at accommodation for disabled people.

We must look at diversity in all its forms. It is not just race and gender; it is socioeconomic, across the board, it is solicitors and legal executives. I want to look at it in as broad a way as possible while focusing on those areas with particular and most pressing needs. It is an exciting area to be in. For example, reverse mentoring, which you have heard about. It is a two-way street because we get so much out of these brilliant young people who come and tell us about their lives and experiences, and they in turn walk away saying, "Well, the judge was quite normal, almost quite nice," and maybe that is the best communication strategy. Those sorts of schemes do not just involve district judges or magistrates; we have members of the Court of Appeal fully signed up, so it is non-hierarchical, which is something I am also very keen on.

Q10 **Rachel Hopkins:** I am pleased to hear you reference socioeconomic and class diversity as much as those others you have talked about. There was

a Bar Council survey in which 53% of the respondents reported that they had experienced or observed bullying at work from a judge. In response, the Bar Council has described bullying as a systemic issue. Do you agree?

Baroness Carr of Walton-on-the-Hill: I have been in very close contact with the Bar Council on this, and I welcome any of this type of work. The more information and insight we can get, the better, so I was very troubled to see this. I could not be clearer that bullying is not to be tolerated; it is something we are constantly looking at.

We have issued a Statement of Expected Behaviour; I am sure you have been told about that. I was involved in the redrafting of the Guide to Judicial Conduct, which has made the Statement of Expected Behaviour part of the Guide. It is an annexe to the guide and is front and centre. You may be sitting there thinking, "Well, a statement is a statement; it has to be put into action." We have to encourage people with legitimate complaints to come forward and make the routes for complaint clear so we can stamp on it.

I believe, among other things, that leading by example is really important: recognise the problem, stamp on it, and deal with it robustly when it occurs, but also to try to lead by example. In an interview a few weeks ago I said to the Chancery Bar Association that not only do we want everybody to be treated fairly and respectfully as a bare minimum, but also to get the best out of them and to get the best points out for argument. The best way of doing that is to make people feel comfortable so they can come forward and present their arguments, and we will get the right result, so it is important on several levels. It is an important report; the issue is very much in my sights. I hope we are making our approach and position as clear as we can.

The second strand of my themes—judicial unity—is part of this: it is inclusivity, and making people understand how their behaviour can impact others, how to avoid it, how to spot it, and how to report it if necessary. Forgive me if I am repeating what Lord Burnett said, inclusion training that covers all forms of bias and behaviour has been rolled out to the entire judiciary. All the leadership judiciary has been trained. I participated—it was excellent. Sometimes people do not realise they are not behaving appropriately, or they do not realise or appreciate the impact they are having so helping people to understand that is very promising. There is a lot of work, but it has to be embedded and words have to be put into action. I am confident we will get there, and I hope to lead by example.

Q11 **Rachel Hopkins:** Hopefully, when we talk to you again in a year or two, we will be able to see evidence of poor behaviour that has been tackled and dealt with, and improving behaviours.

Baroness Carr of Walton-on-the-Hill: Yes. There is a very robust complaint system; you know that. I do not know the precise numbers for complaints coming in, but the annual tally of complaints upheld is only

about 30 to 50 a year on average—not a lot. I do not know what the phrase "systemic issue" means. I do not want to get carried away with it, but highlighting the issue is important. It is not just in court; it is everywhere, and that is another important message: it is not just how you behave with advocates in court but across the board.

Q12 **Rachel Hopkins:** Another survey of 373 legal professionals carried out by the University of Manchester in 2022 showed 56% of respondents had witnessed at least one judge acting in a racially biased way towards a defendant. Can you elaborate on your response to this and the other findings from the University of Manchester report on racial bias and the judiciary?

Baroness Carr of Walton-on-the-Hill: That is a high-profile report; a lot has been written about it. My response would be equally positive in the sense that I welcome it. We need this information; we need to have the input. I repeat what I said about the Statement of Expected Behaviour and the training. Forgive me if you know this, we are making yet another refresh of the Equal Treatment Bench Book, which is coming out in a couple of months. Chapter 8 deals with racial bias; it is tighter, shorter, and full of practical guidance, so I hope the refreshed guide is going to be a really useful tool to go alongside the Statement of Expected Behaviour.

Racial bias is a matter of real concern and an issue that needs to be addressed. We need to look at it, but we also need to contextualise it; that it is part of a bigger picture of diversity in the round.

Q13 **Edward Timpson:** I very much welcome your appointment as the first Lady Chief Justice; it is fantastic to see.

In your opening, you mentioned the three key areas you want to concentrate on, one of which was increasing judicial unity. There was a passing reference to the One Judiciary reforms, which aim to try to bring courts and tribunals closer together, as well as greater opportunities for judges for cross-deployment, career development, progression, and so on. You have had previous involvement in these reforms; I know it is early days, but could you give us a sense of where those reforms have got to and what One Judiciary looks like for a judge as we sit here?

Baroness Carr of Walton-on-the-Hill: One Judiciary is one of the main items of progress I could see through in my time as Lady Chief Justice, so I have given it a lot of attention and worked very closely with the Senior President of Tribunals, who has lived with this for a lot longer than I. Last summer, the Government consulted on the proposals, and I gather they are about to publish their response to the consultation process in relation to One Judiciary.

We really need a legislative slot, please. I have been asking for one for a long time, and I will continue asking for one, but, to get the structural change we want to bring in on the courts and tribunal side, we need legislation. Depending on the Government's response, it should be non-

political and non-controversial. There are a number of other nuts-and-bolts issues that I would also like to get through.

In the narrow sense of cross-deployment, we are seeing successes in One Judiciary. For example, we have many court judges who sit in mental health tribunals, senior circuit judges who sit in employment appeal tribunals, district judges from the magistrates courts sitting in the Crown court, and we have recently trained 20 or so tribunal judges to sit in the civil and family courts. We need to make sure the necessary training and induction procedures are in place so there is no threat to quality in the sense of experience and training; that is very important, but it is good for the system, morale, and career progression.

We talked a little about hierarchy and how I am very keen to make the judiciary more inclusive outside the court and tribunal hearing rooms, because, by definition, we work in a very hierarchical world with right routes of appeal, but we are all equal outside the court. It does not mean we do not need leadership, but sometimes the voice of the most experienced magistrate may be much more relevant and powerful than the voice of a senior High Court judge, for example. One Judiciary goes beyond the nuts and bolts and the structural and cross-deployment aspects; it is a culture, as well. As we improve cross-deployment—as I hope we will—we will hopefully be fostering this inclusive sense of a judicial family where everybody feels welcome.

Q14 **Edward Timpson:** How much of the legislative vehicle you spoke of—which is currently caught up somewhere in Whitehall, we do not know where—will practically set back the progress you want to see as opposed to what can be done with it still sitting somewhere on a shelf?

Baroness Carr of Walton-on-the-Hill: I need it; I cannot restructure the senior judiciary without it, and there are other aspects of reform I would like to bring in that will affect recruitment and performance as a result.

You may ask me later why we have not been able to recruit more district judges in the south-east, where there is a shortage at the moment. My predecessor spoke about this; we need to look again at the balance between terms and conditions for salaried judges and fee-paid judges. Should we be improving conditions for salaried judges and making the full-time judicial post more attractive, hence improving recruitment? I need legislation for that, so the answer to your question is, without a legislative slot, I am materially hindered.

Q15 **Chair:** Can you spell out more precisely what we need a legislative slot to do? We probably know, but the public at large might not.

Baroness Carr of Walton-on-the-Hill: This sounds very megalomaniac but it is not meant to: we need to rejig the tribunal system so that I become the judge in charge of the tribunals as well as the courts, and the Senior President of Tribunals becomes a head of division. So there is a

more unified structure; the tribunals come closer together with the courts, and we work more as one cohesive system together.

Q16 **Chair:** And it enables one system of deployment?

Baroness Carr of Walton-on-the-Hill: Correct. This would never be to lose the beauty of the differences between courts and tribunals; that will all be preserved, but making us more of a cohesive whole.

Q17 **Edward Timpson:** These reforms may also have an impact on neighbouring jurisdictions, particularly around the arrangements for reserve tribunals and how that relates to both Scotland and Northern Ireland. Have you had an opportunity to have any discussions with the Lord President in Scotland or the Lady Chief Justice in Northern Ireland on this matter?

Baroness Carr of Walton-on-the-Hill: I am not sure whether I have had the opportunity. I have spoken to them, but I have left that to the Senior President of Tribunals, who has been in close contact with them, and my understanding is that they are content with what is being proposed.

Q18 **Edward Timpson:** I am going to turn to where you were anticipating there may be some questions: the recruitment of judges. A key component we saw through covid was the need to maximise the days and sittings for criminal courts, in particular the Crown court. You mentioned the difference between a fee-paid judge and a salaried judge; could you explain the difference for the benefit of those who may not know?

Baroness Carr of Walton-on-the-Hill: Yes, thank you for giving me the chance. Fee-paid is a part-time judge who can practise as a solicitor or a barrister at the same time and will sit perhaps four weeks a year as a judge. The fee-paid judiciary is important to fill business need and is also very important for career progression because it allows people to find out whether they like being a judge, and whether they would like to be a full-time judge in due course. The salary judiciary is full-time judiciary who decide they are prepared to give up practice forever to become a judge in one of our courts or tribunals.

Q19 **Edward Timpson:** How is the recruitment within the criminal courts for the necessary judicial capacity faring and, in your view, is there an over-reliance on fee-paid judges? How can we ensure we get that balance right in the future?

Baroness Carr of Walton-on-the-Hill: I understand why you ask the question, given the historical difficulties in recruiting at Crown court level. I am pleased to say there has been a substantial improvement, particularly in the last competition round. Since 2020, we have appointed 116 circuit judges and 210 Crown court recorders. In November, we hit an all-time high of sitting 10,000 days in crime. That is not isolated; we are going flat-out in the Crown court, which is a significant improvement and very good news.

We currently have a competition under way for 40 Crown court judges, and I am quietly confident we will be able to meet that, in which case we will be at full complement, which is a success story and very welcome news. We have also appointed 46 district judges in the magistrates court.

We are reliant on fee-paid judges. My ambition would be for the split to be roughly 80:20—so 80% salaried, 20% fee-paid. We are moving in the right direction; we are not there yet. I do not know the precise figure, but I am very happy to give you it after this meeting.

There is an independent justification for using fee-paid judges; not just for business need, but for the reason I identified. I would like to see us at the optimal 80:20 split; that would be a good place. At the moment, there are courts that still badly need fee-paid support—for example, Canterbury Crown court—but I can provide you with a degree of reassurance; there has been a marked improvement.

Q20 **Edward Timpson:** Does your 80:20 rule relate just to criminal courts or are you talking more widely across the court system?

Baroness Carr of Walton-on-the-Hill: At the moment, just criminal. I am not sure precisely where we have put our feet down in civil and family. I would not be surprised if it was quite similar, and it may be the same; again, I can come back to you on that.

Q21 **Edward Timpson:** Looking at the civil courts and district judge selection and the challenges in the south-east in particular. in the exercise conducted in June last year, out of the 100 vacancies there were 237 applications, but only 49 candidates were recommended for appointment. What is your understanding as to why that may be the case? As the former Vice Chair of the Judicial Appointments Commission, do you think we need to look at the recruitment process and whether it is hitting the right notes?

Baroness Carr of Walton-on-the-Hill: The only logical conclusion from that exercise would be there were not enough sufficiently good candidates. The test is merit and that test must be applied; if people do not meet the standard, I am sure nobody would want that person to be appointed.

There has been a massive effort involving a huge outreach exercise for the current round to encourage numbers, and the Senior Presiding Judge has been very clear there is more scope for flexibility about deployment. One of the big perceived disincentives is you may end up being sent to a court in Liverpool when you live in Cornwall; that has put people off applying, and the Senior Presiding Judge has been very alive to that. There used to be something called a five-year rule, where you could not move from your first court until you had been there for five years; that has been effectively waived, and reassurance is given that you will be put as close to home as possible.

I know the numbers for the current exercise are much greater than last time, no doubt because of this. I do not know whether the extensive outreach exercise will produce enough numbers to fill all the spaces, but it goes back to looking at terms and conditions for salaried versus fee-paid judges. If you are being very well looked after as a fee-paid judge, why would you apply to be a full-time district judge? That is part of the exercise. Things are improving, perhaps not as fast as in crime, but they are beginning to move in the right direction there; we are doing what we can.

Q22 **Edward Timpson:** Having taken some soundings from the salaried judges, one of their reasons for feeling a little miffed about the imbalance between their workload and that of fee-paid judges is the out-of-court administration they have to do on top of the court work, as well as the conditions of some courts. In your position, can you do anything about that and, if not, what would you recommend the Committee should be pushing for?

Baroness Carr of Walton-on-the-Hill: I would be looking at giving me a legislative slot to look again at making terms and conditions for salaried judges as attractive as possible. You touch on a very good point: why we need salaried judges, not just fee-paid judges. Not only can salaried judges, by definition, do longer cases because they are there the whole time, but there is more continuity for a case. They can also take on leadership roles, HR roles, diversity outreach, and community roles that fee-paid judges cannot, and they can also do the boxwork, so the day is longer. At the moment, I cannot see any obvious solution. Fee-paid judges also do boxwork, but I suspect the salaried judges feel they end up being there all the time and therefore doing more.

I have spent a fair amount of time already with the Association of District Judges, and I will be spending as much time as I can with the district judges and magistrates this year. I hear you and share your view. District judges are the engine room of civil justice and family justice; they are incredibly important, and they deal with the most difficult, complex, and sometimes distressing cases. They need to be looked after, and I am very keen to listen and do what I can to improve their lot and to make the job as attractive as possible so we are up to complement and attract the right sort of applicants.

Q23 **James Daly:** In answering a question from Mr Timpson about the recruitment process, you used the phrase, "The test is merit". Could you explain what that means?

Baroness Carr of Walton-on-the-Hill: The $5 million question. Merit is gauged by skills and competencies. We are currently looking at that framework.

Q24 **James Daly:** I do not want to dwell on this, but I think it is important. Could you give us examples of the competencies the process requires?

Baroness Carr of Walton-on-the-Hill: They are different for different competitions, but categories such as outstanding intellectual ability, communication skills, leadership, and diversity.

Q25 **James Daly:** As members of this Committee will know, I have a solicitor's chip on my shoulder about various things. I was in the criminal courts for two decades and, in my experience, it is not as easy for solicitors to make their way onto the bench, and the Bar has generally wanted to preserve the judicial role for itself.

Baroness Carr of Walton-on-the-Hill: I could not be more enthusiastic about getting solicitors on board. At my request, we have a solicitor—a Lady Justice—heading up the review of the Judicial Skills and Abilities Framework for this very reason. We are really beginning to make progress with solicitor appointments, including at the senior judicial level, but I understand the concern of the solicitors profession as a whole that somehow it is geared against them.

Q26 **James Daly:** I fear the system does not respect or respond to lived experience of people within the court system. For example, take a solicitor who is fabulous at the job and they have defended a certain level of cases, they have the empathy and they know how the court system works, but they have stayed in magistrates courts their whole career and perhaps they do not otherwise meet the academic criteria. I think the system requires tests that are not necessary. We may disagree on this, but I think a robust intelligence is enough to be a district judge; I do not think you need to be an intellectual giant.

Baroness Carr of Walton-on-the-Hill: I cannot tell you off the top of my head what the test is for district judges: whether it is outstanding intellectual ability or what the test is. I do not need to tell you, but I need to say for the record that this is all for the Judicial Appointments Commission, which is entirely independent. That is the first point to make. I absolutely can assure you that the JDF—the Judicial Diversity Forum—is on this. It is a major topic of conversation, and is reflected in the latest overarching methodology that I would encourage you to look at on the JDF website. Its aspiration is that your background should not be a determinant of your likely success in the recruitment process.

Q27 **James Daly:** When I was practising, everybody had one eye on potentially being a judge because that was the career progression. At this moment in time, there appears to be a dearth of applications. Mr Timpson made reference to 237 applications for 100 vacancies. We do not know why only 49 candidates were recommended, but the lack of people applying for this is incredibly concerning.

Baroness Carr of Walton-on-the-Hill: Two hundred and thirty seven should be enough. If we had 237 people who met the standards, as it would appear, that would be enough.

Q28 **James Daly:** I think there is a crisis in terms of the number of people applying, and you have touched on that. I am musing rather than

anything else, because I cannot understand it; I know how much criminal defence solicitors earn, and if you compare that with what a district judge earns, it is chalk and cheese, so it is not terms and conditions, certainly for the practitioners I worked with.

Baroness Carr of Walton-on-the-Hill: I would not agree there is a crisis. I absolutely agree that there is work to be done in terms of promoting solicitors, and there are some really good news stories there. After the meeting, I will give you some figures. I might be missing a point here, but the statistics for solicitor entry at DDJ and DJ level may be extremely high. The concern used to be, "Ah, but there are no High Court judges who are solicitors and there are no solicitors in the Court of Appeal." That is significantly improving and it is really exciting. Let me get back to you with some statistics and next year, ask me the same questions.

Q29 **James Daly:** I have no doubt: I think you are a fantastic appointment and will get to the heart of these issues, but it is fair to point out there is an issue that requires investigation.

Baroness Carr of Walton-on-the-Hill: I do mentor quite a few solicitors and it is a second career; it is there for everybody.

Q30 **James Daly:** My last point is picking up on something Ms Hopkins said, which I think is incredibly important. When we talk about behaviours in court, it might just be my own experience, but I have never noticed a judge acting in an inappropriate way against somebody based on their background or anything else. I may have missed that, but I have seen on a regular basis, behaviour and the way advocates are spoken to, which, if it was in a normal workplace, would simply not be acceptable. I wonder how you feel that type of behaviour affects how confident, in particular, junior barristers or junior solicitors can be in the complaints process and not to feel that, if they do complain, it is going to be held against them in their career progression?

Baroness Carr of Walton-on-the-Hill: There is lots in there, and it is very fertile territory. I would encourage anybody with a legitimate complaint to use whatever procedure is appropriate, whether it is informal mediation, or a more formal complaints procedure. Nobody should ever feel that it will be held against them. We have a clear whistleblowing policy, but to answer the first part of your question, there is inevitably a degree of formality in court, is there not? There are titles to use, and it is not going to be like having a conversation over a kitchen table, nor, I venture to suggest, should it be.

I think your point is we need to recognise the impact of how we come across and the impact that can have on the people who come before us: the litigants in person, the disadvantaged, the vulnerable—of course many people are disadvantaged and vulnerable, and we need to have that awareness. That is training, it is understanding, it is the senior judiciary setting the bar high, I hope, and getting the message across. At

the end of the day, it is about everybody feeling, whether they have won or they have lost, that they have had a fair hearing and everybody feeling they have had the opportunity to say what they wanted to. That is what brings about a just result, because what the judge should want is the best points, most clearly expressed, so the right result is reached. It is therefore in everybody's interest.

I am sure there are improvements that can be made. It is a modern judiciary; judges work very hard, everybody's stressed quite a lot of the time, so it can be a challenging environment to put it mildly, but these are really important points.

Slightly off the point, but nevertheless there is an exciting new initiative we have introduced, which is to indicate that wherever a silk is leading a junior barrister, in any case of any complexity, and the junior barrister has done a lot of the groundwork, the court will expect the junior barrister to have an advocacy opportunity. That is diversity, because we know that the stats show there are many more women who are juniors than there are men, but it is also career progression, and I think it could bring about a slightly different atmosphere: more inclusive and recognising the challenges facing advocates, and for judges to calibrate as well to promote young people. That is an important initiative for diversity reasons, but it may also help with the behavioural issues you are raising.

Q31 **Chair:** I think I had one or two silks in my career who gave me advocacy opportunities without much advance notice.

Baroness Carr of Walton-on-the-Hill: Yes, turning round "You take the next witness."

Q32 **Chair:** Exactly, yes, but I think that is a really interesting initiative. The other thing is we mentioned magistrates in passing and I wonder if that says it all.

Baroness Carr of Walton-on-the-Hill: No. I am told that last term I had 318 engagements, 27 speeches and 11 ceremonials, and of all that list the highlight was the Magistrates Appreciation that the Lord Chancellor hosted at the Old Bailey. Magistrates, as you will know, carry out more than 95% of criminal work in England and Wales. They are largely volunteers; they do an exceptional job and I really focused on them last term and will continue to do so as I visit the courts around the country this coming year. To see their justified pleasure in their very well-deserved recognition was a special moment. They really do extraordinary work in sometimes very difficult circumstances, and they have had to deal with a lot of reform, a lot of IT challenges. They are really special.

Q33 **Chair:** As far as you are concerned, you want to make sure they are part of our One Judiciary?

Baroness Carr of Walton-on-the-Hill: Absolutely. Wherever I go, if I find there are civil and family courts, and the judges are on the second and third floors and the magistrates are on, say, the ground floor and there is no dining room because often there is nowhere to eat, I encourage the civil and family judges to invite the magistrates in to make sure they are talking to each other and socialising together when time permits so they all feel unified and working together in a common cause.

Q34 **Tahir Ali:** As Lady Chief Justice, you have statutory responsibility to maintain the appropriate arrangements for the welfare of the judiciary. How do you plan to fulfil this role?

Baroness Carr of Walton-on-the-Hill: New to the role, I have checked up carefully on my obligations and I have to maintain welfare arrangements within the resources the Lord Chancellor provides, so I am constrained by that. I was a welfare judge—a leadership judge—for a number of years and have been involved in many of the HR tools that have gone up on the judicial website: videos and links to all the support available. It is extremely important—and of course I come in at a time when we now have a judicial health and wellbeing strategy up and running. It forms part of my second area, the judicial unity, the inclusivity theme, and it is really making sure we keep available the tools we have for judges to use and that we look hard at what more can be done to support them. It is making sure, for example, that leadership judges have enough protected time to carry out the work they are asked to do, and that they feel supported by their own leadership judges to raise any concerns.

There is a lot of support out there; we have a very good HR support team with access, and the website is bristling with links and information, but like anybody else in the 21st century working at speed and under pressure, judges do get stressed and they do get anxious. They get anxious about workload, they get anxious about security—particularly, our civil and family judges are sometimes working in very small rooms in close proximity to people who are losing their homes or their children or being made bankrupt. Those are stressful situations, and we are all human. I am very aware of this obligation that you rightly refer to, and I am going to make sure that the judicial HR committee is up and running, and we meet our strategy objectives as far as we possibly can.

Q35 **Tahir Ali:** You mentioned security, and you say often the courts are pretty small. There was a recent event at Milton Keynes county court where the judge was attacked, and HMCTS called it, "Shocking", but "extremely rare." However, the court staff say this was not an isolated incident. How should the judiciary and HMCTS respond to the growing concerns around security?

Baroness Carr of Walton-on-the-Hill: My response would not have been that these incidents are isolated. Actually, such a serious attack as the one that took place is rare, but that is not really the point, is it? You will understand, in relation to that incident, criminal proceedings are

ongoing so I cannot say too much, but I have been to visit Milton Keynes, I have met the judge, and I visited the site.

I am happy to talk about the incident in broad terms. It was extremely serious. The Senior Presiding Judge was there the next day, the President of the Family Division was there the next day. I visited on 4 January. It does mark a real issue of concern. As I have said, I take my hat off to the civil and family judges up and down the country who do this incredibly challenging and demanding work in circumstances where sometimes they are entitled not to feel very safe.

What this incident has sparked, as you would imagine, is a serious incident review that is being carried out, led by the Senior Presiding Judge among others, as well as an internal review. It has also, and perhaps this is a silver lining to an otherwise dark cloud, led us to review our security protocols to make sure they are up to speed and more than anything else to make sure our judges are all aware of what protection they have available to them: what the protocol entitles them to, when they are entitled to call for police protection, when they are entitled to say, "I need to be in a Crown court for this hearing" and to make sure we identify potentially violent people in advance of hearings so that everything can be set up in good time. Ultimately I have told the judges in no uncertain terms that if they do not feel it is safe for them to conduct that hearing in those circumstances, they should not proceed.

Thank you for raising it. It has been treated as an incident of the utmost gravity. HMCTS is, of course, responsible for security in courts and tribunals but I am there to make sure that it is acted on in an appropriate way at all levels. There is support there, but I think the incident has highlighted a number of aspects that can be improved.

Q36 **James Daly:** It is undeniable that the court estate, like anything else, has its issues and different courts have different issues. In general, how do you think the poor condition of the court estate impacts the justice system and its users?

Baroness Carr of Walton-on-the-Hill: When I have been going round the courts, estates is the issue that comes up time and time again. It comes up with the judges, and it comes up with the staff. We face something like 100 unplanned courtroom closures every week—it is a very high number— and about 200 near closures every month, affecting about 20 court buildings. As I say, when I go out and about, these estate issues are very real. When I visited a London Crown court, I was told there was no drinking water. When I arrived at Snaresbrook, I bumped into a judge who was going down to the cells to sentence somebody because the panic alarms in court had broken down.

These are very serious problems, and they impact on performance by definition: you cannot use the court, you cannot list the case, you cannot be efficient. Beyond that, there is the knock-on effect on security and, frankly, on morale. It does not make you feel great if you are doing a

difficult case, and you have a bucket next to you because the roof is leaking.

Q37 **James Daly:** What do you see as the role of the Lady Chief Justice in influencing these issues in hopefully a positive manner?

Baroness Carr of Walton-on-the-Hill: The long-term ambition would be to have a separate funding stream for what is an endemic, ingrained problem across the estates of the courts and tribunals in England and Wales. That may be a pipe dream, if I am not mixing my metaphors, but to treat it outside the annual concordat system. The Lord Chancellor is well aware of these problems and did a fantastic job in securing, as you know, for the first time, a two-year settlement of £200 million, which is a significant improvement on one-year and we are very grateful to him for that. In the long term, the problems are so embedded that I—

Q38 **James Daly:** What I am interested in is the nature of your role in relation to the court estate, and I am not necessarily asking for your opinion in respect of that. I do not think you are a surveyor—I may be wrong about that—but is it part of the role that you produce a list? Your judges say, "My Crown court has got this, that, and the other problems" and you feed that into the centre. Is that how it works?

Baroness Carr of Walton-on-the-Hill: This is all for HMCTS: it is responsible for the running of the estates, but it gets money from the Treasury through the MoJ and all the rest of it. In answer to your question, it is my job to make sure that HMCTS is aware of all the problems, as it is; if it needs a list, we can provide it with one. It is impressing the importance and the consequences of a poor estate on all those involved, "At a very basic level, you have to keep us safe. If you cannot do that, then the courts will not open. If we are safe, then is it acceptable? Is it freezing cold? Is it boiling hot?" My job is to make sure HMCTS, in particular, is aware of all the problems and to make the best case I can in my regular discussions with the Lord Chancellor, but he is definitely aware of these problems.

Q39 **James Daly:** What are judges or other professionals telling you at the moment about work that is currently being undertaken on courts—assuming it is—and how that is impacting sitting days, physical capacity, and so on?

Baroness Carr of Walton-on-the-Hill: If it is planned work, then we can work with different courts to move around it and the impact will be as negligible as possible. It is the unplanned closures that inevitably have the most impact because they are much more difficult to accommodate, by definition; it is hand-to-mouth, scrabbling around, trying to find solutions.

Q40 **James Daly:** The other question I wanted to raise, which colleagues may touch on as well, is this issue regarding court use and court capacity. I do not know whether you have the figures, but I could go to, say, Manchester Magistrates Court and there would be a significant number of

courts there on every single day that are not being used. There might be a number of different reasons for that, and I suspect that for various reasons, in different courts, there are courtrooms that are perfectly accessible and could be used, but are not being so, which I believe is playing its part in the backlog and the difficulties.

First, do you think there is some truth in what I am saying in that respect? Secondly, how do we get those courtrooms up and running at the earliest opportunity to tackle the backlog?

Baroness Carr of Walton-on-the-Hill: In the Crown court, we are sitting to maximum capacity. If there are empty courtrooms that are not being used, the reason will be a lack of staff, lack of staff support, of administrative support, of security support, and/or lack of judicial resource. It will be one of those reasons. I know it must feel slightly disconcerting when you go around the courts and see rooms that are not being used, but sometimes there is a good reason for it. If we are sitting to capacity, we simply cannot sit any more ,but if we are sitting under-capacity and there is an available room then it will be staff shortages and the like that are to blame.

Q41 **James Daly:** Just to be clear, from your perspective and from what has been passed on to you, we are at, essentially, maximum capacity in the Crown court? Do you have anything for magistrates courts or the low courts?

Baroness Carr of Walton-on-the-Hill: I do not have a capacity figure for you; I do not have a sense on the magistrates' front.

Q42 **Chair:** On the topic of Crown court, there was an interesting piece of work done by the Institute for Government, which talked in terms of a productivity crisis, which perhaps links to discussions we have had about backlog, judicial capacity and so on. What is your assessment as to whether that is an accurate reflection, Baroness Carr, and if it is partially accurate at any rate, what is needed to try to overcome that?

Baroness Carr of Walton-on-the-Hill: I think "productivity crisis" needs to be set in the context that, as I have said, the Crown courts are actually functioning extremely well at full capacity. That said, the backlogs are at an all-time high. We all know that what matters is not necessarily the number of backlogs but timeliness. Looking at timeliness, I would agree with the Institute for Government that it is a multifactorial position. That is for sure.

In no particular order, and perhaps non-exclusively, my top list would be a combination of the following: the first factor is there is a very high volume of work. Sometimes that is the product of political wind; if there is a decision to prosecute a certain type of case in a certain area, that will lead to a lot more work, but the fact of the matter is we know receipts are going up. By receipts, I mean number of cases coming in.

The second factor is that fewer people are pleading guilty. That may be a vicious circle. It might be because of delays, so people decide they are going to plead not guilty and see what happens down the line.

The third factor is that there are more sexual offence cases and we know they are the most complex, they take the longest, and they are the least likely to produce a guilty plea.

The fourth factor is overcrowding of prisons, which among other things leads to late deliveries, which has a very significant impact on disposal and timeliness. If somebody arrives even half an hour late to court, that means arrival at 11 am, you do not see your barrister until 11.15 am, court does not start until 11.45 am, you can see on a small sheet the sort of impacts there.

The fifth factor is the estate problems that we have been talking about: losing days through courts that are not functioning or cells that are not functioning, so trials cannot proceed.

Finally, the sixth factor is, of course, the Bar. I am not talking about the strikes any more, I am talking about the fact that, as you may have read, when Max Hill KC retired, he was saying he could not find barristers to prosecute his cases. A lack of advocates is, at the moment, a real problem in efficiency.

The Crown courts are actually performing very well but yes, absolutely we have a backlog/timeliness problem and the answer is multifactorial. What can we do about it, I think was the second part of your question. Well the best prospect for immediate improvement is the Crown Court Improvement Group which I am sure you have heard about, chaired by Lord Justice Edis, the Senior Presiding Judge. I made it a priority to attend one of its meetings in my first month and it is extremely impressive. The beauty of that group is it brings together probation, prosecutors, ushers, transcribers, everybody involved in the system, so they can understand how everybody works together and what the knock-on effects are. So you have prisons, deliveries, probation, judges, looking at the best ways of achieving best performance and minimising delays.

There was a refresh, as you know, of better case management through that group. That means really focusing, and this is the second part of my answer to the second part of your question: it is all about the first four to five weeks of a criminal case's life. If we can really focus on those early days so that where there should be a guilty plea, a guilty plea is entered and where there should be a trial, we can get that trial on the track. That is where the focus should be. That is my best offer for improving timeliness. That means front-loading, so defendants get access to as much disclosure as early as possible, with the best legal advice possible, to make the right decisions as early as possible, so those cases that are not actually going to go to trial are disposed of as quickly as possible and are out of the system.

I do not have a silver bullet, but I think working together through the CCIG is key, and the focus has to be on those first four to five weeks. I mentioned getting the best legal advice as early as possible; that spills into a discussion perhaps for another day about criminal legal aid and perhaps legal aid across the board. My personal view is that front-loading in all jurisdictions is, if not mandatory, then desirable. Legal aid and the legal aid provisions in crime would have a role to play here. So no silver bullet, but those would be my offerings as matters currently stand.

There are obviously some bigger issues out there: lifting the pause on magistrates' sentencing powers would be an example of reducing the pressures on the Crown court. There are, as has been mentioned in the past, more radical solutions going back to the Auld review and the Leveson review. I know Lord Burnett has spoken about intermediate courts and things of that ilk.

Q43 **Chair:** As far as you are concerned, you are open-minded about issues of that kind?

Baroness Carr of Walton-on-the-Hill: Absolutely, I certainly take the view that the tools that the judges have at their disposal at the moment can hopefully improve situations, but they are not, to repeat the phrase, a silver bullet. They are not going to bring about overnight or significant improvement in the near future, is my assessment.

Q44 **Chair:** The Government have a stated aim to reduce the number of outstanding Crown court cases to 53,000 by March 2025. I might say not all the tools are in the Government's hands anyway; some things are matters for the judiciary to list. Is that realistic as far as you can observe and is it capable of being achieved?

Baroness Carr of Walton-on-the-Hill: It would be capable of being achieved with radical reform, but as the system currently stands, my own assessment is that that is not achievable.

Q45 **Chair:** Is the radical reform the sort of thing we talked about just now?

Baroness Carr of Walton-on-the-Hill: I am sure there are lots of potential options: recalibrating offences, fewer triable either-way offences—I have already mentioned intermediate courts, but those are major reforms.

Q46 **Chair:** Much of it would have to be in Parliament's hands because legislation is required.

Baroness Carr of Walton-on-the-Hill: Exactly.

Q47 **Chair:** Getting to where we are at the moment—and having said that it is not achievable to get to 53,000—maintaining the current position on the basis of sitting full-out, as you put it, Baroness Carr, has been assisted by lifting the cap on sitting days, has it not?

Baroness Carr of Walton-on-the-Hill: Absolutely. We are very grateful for that. It has been a massive help.

Q48 **Chair:** Do I get the sense that to at least maintain the position, ensuring there is adequate funding, it is critical that there is not a cap on sitting days going forward?

Baroness Carr of Walton-on-the-Hill: Absolutely, critical.

Q49 **Chair:** So if you cannot have the money to carry on at the top whack of sitting days, the position goes in what direction?

Baroness Carr of Walton-on-the-Hill: It only goes one way and that is the long way.

Chair: Exactly. That is very helpful, thank you.

Q50 **Edward Timpson:** Can we turn our focus to county courts and looking at the pressures and workloads it is currently facing? We have some recently published statistics looking at the average time taken from claim to hearing in small, multi and fast-track claims. The mean time to trial for small claims is, I think, now 55.6 weeks and multi and fast-track is 76.4 weeks, about 17 weeks longer than in 2019—a trend that none of us really want to see as well as an increased workload, particularly in money claims and damages claims. Are those statistics providing a fair reflection of how well the county court system is functioning?

Baroness Carr of Walton-on-the-Hill: No, and the reason is a very simple one, which is that the overwhelming number of civil cases in the county court do not reach trial, they settle; that is a good thing for everybody. The timeliness statistics that you are getting only measure those cases that go from issue to resolution at trial. To get a fuller picture, what matters is to see what is happening to all these cases along the way, which will present a very different picture. There is also significant regional variation in timelines. That is less relevant to you, but the fundamental point is that, particularly in civil, looking from end-to-end does not work if you are trying to get a sense of how well the system is functioning. Timeliness is obviously an issue, and this is where digitisation really comes in, in terms of performance, because there are some really important new systems in place that are going to make very positive improvements where timeliness is concerned.

Q51 **Edward Timpson:** Could you give us a little more flesh on that bone and any other initiatives that are currently in train or being considered to try to reduce those outstanding caseloads and improve timeliness in the county court?

Baroness Carr of Walton-on-the-Hill: Yes. Before answering your question, there are all sorts of projects in place at the moment about improving listing practices and sharing best listing practices to make sitting days and working practices more efficient, but the real excitement is digitisation. I know you are going to be hearing from the Master of the

Rolls, I think later this year, but we have two systems that are of particular relevance: the first is the online civil money claims service—480,000 claims issued there—and we can see on the stats, real reductions in delay. For example, cases receive directions on average nine weeks into their lives as opposed to 34 weeks, which is a fantastic improvement.

In the damages claims service, more than 111,000 claims had been issued, and again, there have been real improvements on timeliness. In that context, to elaborate, we now have the Online Procedure Rule Committee, which was launched very successfully towards the end of last year, and I know the Lord Chancellor is a great enthusiast as well. Bringing together a committee to deliver consistency across the justice system where digitisation is concerned—so that we can look at bringing end-to-end products and systems where people can be digital from beginning to the end—is a really exciting prospect. I think this will be a really good news story when I come back here next year to see how much further progress has been made. Paper-based progress is still difficult—we have had some hitches with mergers of centres—but again we are bringing in procedures to improve that.

Another area I have mentioned and am sure you know about, is mediation. Not only has the Court of Appeal recently confirmed that the Court has a power to order parties to mediate, but automatic referrals for mediation in small claims are already up and running. Again, this is all part of early resolution where it is appropriate and where the parties want to settle early, which is all good news. I think digitisation is the name of the game here, and you have nobody better to be in charge of it than the Master of the Rolls.

Q52 **Edward Timpson:** Yes, he did give evidence to this Committee not that long ago, and that was very much his opening, middle, and final gambit throughout—and very forceful it was too. On the point of mediation, the announcement, I think it was last July, by the Government about integrated mediation in small claims up to £10,000: is that what you are referring to? That is happening, is it?

Baroness Carr of Walton-on-the-Hill: Yes, that is happening.

Q53 **Edward Timpson:** Okay, thank you. Could I now turn to my own area of practice—when I was allowed to—the family courts, and just two questions, one on public and one on private.

In relation to public law, I had the privilege of being the Minister who brought in the 26-week time limit to public law cases in the Children and Families Act 2014, and off the back of that we saw some really impressive reductions, while maintaining the quality of decision making, evidence-gathering, and everything else in relation to those cases. Unfortunately, more recently we have seen an elongation back out to, I think, now an average of around 49 weeks. Again, there will be regional variations within that figure, but on the back of that, are there any steps

that are currently being taken to help bring about completion of public law cases involving children within the statutory 26 weeks?

Baroness Carr of Walton-on-the-Hill: Yes. I know you are deeply ingrained in this area and the 26-week statutory time limit is something we are all acutely conscious of, as we are conscious of the fact that it is not being met. There has been a massive effort to relaunch something called the Public Law Outline and that happened in January last year. What it does is provide a template for case management. The idea is to make cases smaller, so you limit the number of hearings per case. It is still early days—we are just coming up to the first anniversary—but there are definitely green shoots and really positive signs that this is going to make a difference.

We can already see the number of hearings per case is coming down significantly. I cannot give you chapter and verse, but I can say that there is a huge effort going on to reduce the times involved. I think you are seeing the President of the Family Division later this year, and he may then be in a position to have some better data. I do not have anything concrete for you yet, but I am hearing lots of positive noises. It is really important and that is what is happening at the moment in this area.

Q54 **Edward Timpson:** Turning to private law proceedings, some other positive noises we already know about are the Pathfinder courts in Dorset and north Wales—on my own doorstep—where they are trialling an improved way of resolving private law children cases, particularly where there is domestic violence and abuse.

Baroness Carr of Walton-on-the-Hill: With your CAFCASS background, this will be very close to your heart.

Edward Timpson: Absolutely. We are seeing, not just early signs, but after some considerable time, significant improvements in timeliness, effectiveness, efficiency and so on.

Baroness Carr of Walton-on-the-Hill: And improvement in the experience, which is part of what we have been talking about; it is not all necessarily about outcome and money. Every case involves a child or more, and for the children to feel that they are at the centre of what goes on right at the beginning is so important and the children feel much happier.

Q55 **Edward Timpson:** Which moves me on to the question of the capacity within the family court system and thinking about it from a judicial capacity in particular, to see these trials rolled out—which I think is the ambition of Government—more widely across family courts at a pace that is manageable, but which will also bring about the best outcomes for children. What is your take on the ability and capacity within the family courts to do that and what impact do you think it could have? XXX

Baroness Carr of Walton-on-the-Hill: Just to rewind so that the public understand, and I will be corrected if I am not quite right about this, but essentially this is about front-loading the private law experience to have CAFCASS involved right at the beginning, not halfway or two thirds of the way through a family case. CAFCASS needs the resources to be able to provide a report very early on, on the impact on the child of the parents' dispute, and for the parents to listen to the child and see if they can bring about an early resolution, bearing in mind the child's wishes, the impact on the child and so on and so forth. It is a very good thing, and it has been incredibly well received, as you have said.

It is due to be rolled out in Birmingham and Cardiff in spring of this year, and my understanding is that that is going to happen. It is going to require some short-term additional resource because of the CAFCASS involvement at this early stage. To roll it out beyond that—obviously we the judiciary would love to roll it out to every family court in the country—will require resources, and it will require the Government to put the money in to fund it. If we go back to where we almost started and look at everything in the round, the spin-off benefit of having a parental dispute resolved at the earliest possible stage is the benefit for the child, yes, and the benefit for the parents who can go back to work, who are happy, who are healthy and who are not perhaps as likely to get involved in behaviour that is disturbing or difficult. The spin-off, beyond the immediate, is really important if you are looking at the value of the initial investment. There are savings to be made all the way down the line.

Q56 **Chair:** We talked about the reform programme that HMCTS has been rolling out; it is due to arrive in March this year, three years on. Are you confident that March does mean March?

Baroness Carr of Walton-on-the-Hill: No. Public knowledge of the crime reform programme is going to be extended to 2025, and the position on other aspects of the programme is with Ministers as we speak.

Standing back and giving evidence to the Committee, I would say that I have never seen reform as a single project. I see it as an ongoing process of modernisation, and I made it clear from the outset of my time that I do not see it as something that has an end point, as it were—it is more of a rolling programme. It is not just an IT system—it is a question of continuous improvement, and that is something I know everybody is committed to.

Common Platform is live in all criminal courts, 77 Crown courts and 149 magistrates courts. It has immediate benefits to users and it is going to be an ongoing project in many ways, but it is fundamental. Digitisation and reform have to be front and centre, and it has to be funded if we are going to improve performance as I know this Committee wishes us to do.

Q57 **Chair:** The funding is there. Are there any particular areas we should be looking at moving to beyond that which is currently under way?

Baroness Carr of Walton-on-the-Hill: Yes. There are areas in civil that are out of scope at the moment: Part 8 claims, which are claims for declarations, possession claims, and enforcement. Enforcement is terribly important actually. It is not necessarily the glamorous end, but it may be the most important end because a judgment on paper does not mean much if you cannot enforce it. Obviously, I would like to see everything within scope and delivered.

Q58 **Chair:** I understand that. You want it rolled out much more where we can?

Baroness Carr of Walton-on-the-Hill: Yes.

Q59 **Chair:** You made a speech to the Civil Justice Council's national forum in November about the pertinence of data, and getting data right going forward, which is something that has come out of this Committee.

Baroness Carr of Walton-on-the-Hill: Yes.

Q60 **Chair:** It has been raised on a number of occasions; do we make the best use of data? Possibly not.

Baroness Carr of Walton-on-the-Hill: Not yet. I think we are getting used to having this new tool at our disposal. It is a very exciting prospect. It will enable us to get a better understanding of how we can improve performance, and that has to be the key to it. We need to work out how to use it best, and that is still a work in progress: to make the most of it, and also how to handle it. There are potentially constitutional issues in play: who owns it and how is it going to be used? It is always important for the judiciary to be in charge of its own assessments in certain areas.

Q61 **Chair:** There is discussion about where AI takes us going forward, and perhaps a little controversy. One judge, I think, owned up to using AI as part of their judgment. Is it a threat, is it a tool?

Baroness Carr of Walton-on-the-Hill: I do not think it is a threat; it is part of our everyday lives. We issued guidance at the end of last year cautioning judges against using AI, among other things. Of course, it is an open system so anything you put out there is at risk and ultimately, judges are personally responsible for every word of their own judgments—so caution, I think. Fake material or hallucinations, whatever you want to call it, are not necessarily news to the judiciary. We are used to identifying what is true and what is not in that sense. I think we have to embrace it, as it is here to stay.

This is an area that we will develop and work on, but we do need to be very cautious, particularly in terms of security and confidential information. However, we cannot close our minds to it, and I am sure there will be useful things that we can get out of it, particularly in data. In Wales, I mentioned the possibility of using AI to translate from English

to Welsh and Welsh to English—which might be an uncontroversial way of using AI, I do not know—but I think it is definitely a space to watch.

Q62 **Chair:** That is helpful. Can I move on to something different but salient: section 28 and RASSO matters? When your predecessor gave evidence to us, the roll-out of pre-recorded cross-examination in sexual cases was being developed and he voiced his concerns over practical difficulties and fears about how effective it would be. What is your assessment of that, Baroness Carr?

Baroness Carr of Walton-on-the-Hill: It is a really important area, and I am delighted that you are looking into it. I think you are currently engaged in a report.

Chair: Yes.

Baroness Carr of Walton-on-the-Hill: I could not be more delighted that you are doing that. The judiciary, as such, has never had any concerns, in reality, about the use of section 28 for children. We can see all the benefits of it. A child's evidence is usually very short, and it is clearly an appropriate way of going forward. However, there are real practical concerns beyond those you have mentioned about outcome. The practical concerns have come to pass.

If section 28 is used for adult intimidated witnesses, whose evidence may be very long, that takes a long time both to record and to replay it in court. It is often very difficult to accommodate the hearings in a busy court list; difficult for the court, but also for advocates, who find it difficult to commit to take on the case in question and, in turn, end up not wanting to do it at all. There is a lack of advocates prepared to take on the work. You also have problems with equipment and so on. Therefore, using section 28 for adult intimidated witnesses has been very problematic.

In terms of outcome, what the judiciary said at the outset is that we have concerns because there is no data, there is no research that tells us what impact, if any, using section 28 in adult cases would have on guilty verdicts. I understand that Professor Cheryl Thomas has submitted some research to you which, if I have understood correctly, shows very clearly that there is a significant impact on guilty verdicts.

There is a narrative out there which says that juries do not convict in, for example, rape trials. That is a false narrative. Actually, in rape cases that reach a trial before a jury, defendants are more likely to be convicted than not, and the conviction rate is higher than it is for other sorts of offences. It is when you look at the overall process that the stats go wrong because, quite understandably, sometimes complainants feel they cannot go through with it for whatever reason. Therefore, there is myth busting to be done there.

These are cases where one has to be—and is—incredibly sensitive as to the position of complainants. One wants to minimise distress as far as possible—although distress, I fear, will always be inevitable in these sorts of cases. I do wonder whether complainants who were offered the section 28 option understood the impact it might have on a jury's reaction and if they would always make that choice—I do not know. If there is research out there which suggests that the use of section 28 for adult intimidated witnesses has a material impact, and a negative one, I think it should be a matter of serious concern.

Q63 **Chair:** I sense it is generally accepted that Professor Thomas is regarded as authoritative a person as one can be around jury research within the limits as to what can be done.

Baroness Carr of Walton-on-the-Hill: I am not sure what other research there is out there.

Q64 **Chair:** Very little, but it certainly gives the impression that the concerns your predecessor, and a lot of practitioners, raised, to a degree, are supported by it. Is it something that can be changed by means of the approach of prosecutors and judges? Is there a better information base?

Baroness Carr of Walton-on-the-Hill: No. I do not think the judges can really impact it. I think anecdotal evidence is very dangerous by definition. Judges cannot comment on the individual cases and experiences they have had.

Q65 **Chair:** Is there a problem with the statutory scheme?

Baroness Carr of Walton-on-the-Hill: Yes. I think we should pause the rollout.

Q66 **Chair:** And take stock?

Baroness Carr of Walton-on-the-Hill: And take stock.

Q67 **Chair:** That is clear. On a separate point related to RASSO cases, we recommended the Government establish specialist rape courts, and they started a pilot of three such courts in 2022. We have to be careful about the definition of what a specialist rape court is.

Baroness Carr of Walton-on-the-Hill: Yes, I know. We do not like that phrase.

Q68 **Chair:** Indeed. In terms of the pilots in those three courts, do you have a sense of how it is operated?

Baroness Carr of Walton-on-the-Hill: These are not specialist rape courts; this is about providing better wraparound support for complainants in sex cases. I do not have any hard evidence to provide, it is merely anecdotal, but inevitably the news is positive, so thank you. It provides better support for complainants at court, better access to appropriately trained staff, case co-ordinators and the like. It is a better experience for complainants, which must be a good thing. I wish we could

have them everywhere. It is Leeds, Newcastle, and Snaresbrook at the moment, is it not?

Q69 **Chair:** That is right, yes. But of course it comes down to funding again, does it not?

Baroness Carr of Walton-on-the-Hill: Yes.

Q70 **Chair:** Is there a sense yet as to the cost of operating in this way per quarter?

Baroness Carr of Walton-on-the-Hill: No, I do not know. I do not have a sense of it.

Q71 **Chair:** I assume MoJ might have it.

Baroness Carr of Walton-on-the-Hill: Yes, or HMCTS.

Q72 **Chair:** Yes. The Criminal Bar Association has been very concerned about the impact of some of these practical measures on the supply of advocates.

Baroness Carr of Walton-on-the-Hill: On section 28?

Chair: Yes, section 28 and the knock-on effects on listing.

Baroness Carr of Walton-on-the-Hill: Yes, you have read the Criminal Bar Association newsletters and the rest of it?

Q73 **Chair:** Yes. Does that chime with the judiciary's experience?

Baroness Carr of Walton-on-the-Hill: Yes. Our direct concern is that we cannot list section 28 cases, or they are adjourned as we may not find an advocate or one may not turn up to deal with it.

Chair: That is helpful, thank you. Mr Timpson.

Edward Timpson: I think you were going to look at broadcasting.

Chair: Yes, I am, sorry. I have turned over two pages.

Baroness Carr of Walton-on-the-Hill: In fact, we touched on the transparency committee.

Q74 **Chair:** Yes. I think we have dealt a great deal with transparency already. Is there anything else you want to add?

Baroness Carr of Walton-on-the-Hill: No. The broadcasting of sentencing has been a tremendous success. It is part of education, it is part of communication and, as I have said, I am particularly keen to promote this sort of open justice and access to justice. We have had 35 sentencing hearings broadcast in the last year.

Q75 **Chair:** I was struck by one of the observations of your predecessor, I think. As well as the transparency itself, it has been advantageous in terms of portraying the nature of the judiciary themselves.

Baroness Carr of Walton-on-the-Hill: Yes.

Chair: The sort of people who are judges rather than the preconceptions.

Baroness Carr of Walton-on-the-Hill: They are real people doing a difficult job extremely well. I am always very proud, if that does not sound unwarranted, when I watch these brilliant judges do these difficult jobs. As I have said before, the more people can understand how we sentence, what the process is, and why judges reach the decisions they do, the better.

Q76 **Chair:** Given that it has worked pretty well for sentencing, is there scope in extending broadcasting to other types of hearings?

Baroness Carr of Walton-on-the-Hill: One reason why it has worked so well is because it was handled so carefully and, dare I say it, cautiously when it started up. Everything was thought through and I would not want to change that approach.

At the forefront always has to be the administration of justice and the need not to interfere with that. I certainly would expect the transparency committee to look at the possibility of extending broadcasting, and it need not necessarily be in crime; it may be that there should be more filming in the administrative courts, or in the commercial courts. Everything is on the table as far as I am concerned, but I would advise not to get too excited, in the sense that we still need to have a cautious, incremental approach. So far so very good, but we need to proceed carefully.

Chair: Understood. Mr Timpson.

Q77 **Edward Timpson:** Thank you, Chair. Interestingly, when the Committee visited Finland and the Netherlands as part of our inquiry into the understanding of the public of sentencing, they have what they term media judges. I do not know if it is something you have come across and if this could form part of your transparency drive; seeing you on the breakfast sofa telling us all about what judges get up to?

Baroness Carr of Walton-on-the-Hill: That is a step too far. I have read your report with interest, which the Sentencing Council is going to be responding to quite soon. We have a principle, do we not, that judges do not comment on one another's cases. I certainly think there is scope in looking at the possibility of a media judge who could explain how something works completely independently of a specific case. I think we can communicate better, and there is always scope for improvement.

Q78 **Edward Timpson:** When we consider transparency, one area of the court system that we have to be particularly careful and sensitive about is cases involving children. As you will be aware, there has been a raft of work undertaken in recent years to try to address this in the right way, most recently by the proposals from the President of the Family Division around transparency in the trial courts in Cardiff, Leeds and Carlisle, by

looking at transparency orders in terms of what can and cannot be reported by the media.

In an earlier answer, you mentioned looking at other ways that transparency could operate. Have you thought how you might build on the plans that have come out of the work in the family division so far to try to improve transparency while being cognisant of the potential impact that it could have on children?

Baroness Carr of Walton-on-the-Hill: The President of the Family Division deserves enormous credit: it has taken him two years to work on this review, and it has been a resounding success. It is a magnificent achievement to have opened up the family courts in a way that, I suspect, nobody thought possible 10 or 20 years ago. So far, again, so very good. There have been no glitches, and I am sure that it is because things have been done incredibly carefully and slowly. However, I do, and am going to, piggyback on this exceptional work and will seek to bring it, and learn from it, into the transparency committee, which I want to be cross-jurisdictional.

I anticipate the work that is going on in the family courts—the lessons, and the best practices learned there—will be used to extend the discussion into what we can do in civil courts and other jurisdictions. I do want to pay credit, and I do not know what the Committee thinks, because it is a remarkable achievement. It has gone really well, and it is consistent with my sense that the more the public and people understand what we are about, the better it is for the justice system and for society as a whole because we need trust and confidence in what we do. There are funding problems but, at the end of the day, we have a first-class judiciary with first-class judges doing really good work, and I am keen for that to come across.

Q79 **Chair:** We started this session by talking about the constitutional proprieties and we are very grateful to you for coming along and having this discussion with us today. Going forward, I know you met Mr Speaker.

Baroness Carr of Walton-on-the-Hill: I did.

The Chair: He found it very, very helpful.

Baroness Carr of Walton-on-the-Hill: It was an extremely enjoyable and productive occasion.

Q80 **Chair:** Are there other things, within the limits of the separation of powers which always has to come first, that you could do, or you would seek to do as head of the judiciary to engage with parliamentarians?

Baroness Carr of Walton-on-the-Hill: Parliamentary engagement is really important; it goes back to this whole theme of better understanding and communication while always respecting the constitutional boundaries. I am keen to look at this cautiously but in a progressive way.

On a very small point, we recently had the clerks of the committees around to the Royal Courts of Justice which was very good. We love talking about the rule of law and we were able to talk about it for hours. It was excellent, and it was a very enjoyable occasion to get to know them and for me to meet with the Speaker of the House and talk about ways of promoting engagement.

Following the next election there will be new MPs and new opportunities with induction packs. We have achieved a slot in which we can have a section which educates about the rule of law, where we are, and what we do. I would love to see local MPs visiting their courts when time permits and, again, respecting the relevant boundaries.

I am excited about all that because I see it as an opportunity. Many things we have been discussing today are opportunities and not problems. I see parliamentary engagement as a real opportunity to communicate with the public, through MPs, but also to speak to Parliament to inform the debates and improve the quality of the debates that the House has about justice, funding, and matters of that nature. So parliamentary engagement is going to be very important in my time, and I am very much looking forward to it. I know, Chair, that you are visiting your local court at some stage, and I think you are all off to Kingston, am I right about that? Some of you are.

Chair: We are going to see my old Chambers colleague, who is a resident, yes.

Baroness Carr of Walton-on-the-Hill: One thing that has occurred to me, I suspect you are all far too busy, but it would be my absolute pleasure if anybody ever wanted to come to the Royal Courts for a cup of tea, to be shown around and meet some of my colleagues. They would be delighted to meet you. The offer is very open. I know you are incredibly busy, and it may be too much, but it may be the right time for me to say how much I have enjoyed coming here, getting to know your work better and reading your reports. As we have already discussed this afternoon, some areas you are touching on are really important to my life and the workings of the justice system and what I am, and am not, able to achieve in the years to come. Thank you for having me, and please do come and visit me and my colleagues at a convenient moment if you have time in your extremely busy diaries.

Q81 **Chair:** I am sure we will work hard to try to take that up, and it is very much appreciated, Baroness Carr. I am very grateful to you for that. Thank you for the very wide-ranging discussion that we have had today. I hope it has been helpful. We very much look forward, as I said at the beginning, to working with you and we wish you every success in your tenure of office, which may well outstrip that of many of us. In a sense, we sincerely hope it does.

Baroness Carr of Walton-on-the-Hill: Who knows? Thank you very much, Chair.

Chair: That is in everyone's interest, but we are really grateful to you, and we look forward to hearing from you at appropriate times in the future.

Baroness Carr of Walton-on-the-Hill: Thank you very much.

Chair: The session is concluded.