



Constitution Committee

Corrected oral evidence: Annual evidence session with Lady Chief Justice

Wednesday 26 February 2025

10.20 am

Watch the meeting

Members present: Lord Strathclyde (Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Bellamy; Lord Burnett of Maldon; Lord Foulkes of Cumnock; Lord Griffiths of Burry Port; Baroness Hamwee; Baroness Laing of Elderslie; Lord Murphy of Torfaen; Lord Waldegrave of North Hill.

Annual evidence session

Heard in Public

Questions 1 - 20

Witness

[I](#): Baroness Carr of Walton-on-the-Hill, Lady Chief Justice.

Examination of witness

Baroness Carr of Walton-on-the-Hill.

Q1 The Chair: I will start by welcoming you all to this meeting of the House of Lords Constitution Committee. Today we are holding our annual evidence session with the Lady Chief Justice, Baroness Carr of Walton-on-the-Hill. You are very welcome. Thank you for coming along. We are all looking forward to the session. I think you have a few words that you might want to say right at the beginning before we start off on our evidence-taking session.

Baroness Carr of Walton-on-the-Hill: Good morning to everyone. Thank you for having me. It is a real pleasure to be here at last. I was in fact due to make my first appearance before this committee on 5 June, and then, just a few days before that, the election was announced, which was rather frustrating because I had been looking forward to it. I would like to say a few words. They are very brief, certainly under five minutes, but I hope to share a few thoughts on a point of really pressing importance.

Much constitutional water has passed under the bridge since last June, and I know that there is enormous constitutional expertise in this room. I therefore in that context wanted to say something about the constitutional context in which to examine the funding of the courts and tribunals. I really have three points.

First, it is important to recognise that the rule of law is not just about respecting constitutional boundaries. At its core lies a properly funded and so properly functioning justice system. You could put it another way. The rule of law is not free. HMCTS's 2025-26 budget—that is, the budget for the justice system—will be around 1% of the health and social care budget, 2% of education and 3% of defence spending. Public funding for justice in England and Wales declined by 22% in real per person- terms from 2009-10 to 2022-23. Over the same period, overall government spending increased by 10% in real per person- terms.

Can I emphasise at the outset that, in making the case for proper funding of the justice system, I am not in the business of simply asking for more money? The judiciary stands ready to play a full and active part in creating and supporting economic growth and modernisation. We have really exciting judge-led initiatives in all our jurisdictions: digitisation, including the Online Procedure Rule Committee; listing projects; AI working groups and projects; early resolution courts; automatic referrals to mediations for small-track civil claims; and the Crown Court Improvement Group. We stand ready to accept the policy changes in all jurisdictions, including of course crime, that reflect the will of Parliament, subject always to proper resourcing and planning.

Secondly, while justice is referred to in the fiscal context often as an unprotected department, in fact the courts and tribunals are protected. They are protected by law. Parliament imposed a statutory duty on the

Lord Chancellor no less than three times in five years, through the Courts Act 2003, the Constitutional Reform Act 2005 and the Tribunals, Courts and Enforcement Act 2007, to ensure that there is funding for the “efficient and effective” support of the courts and tribunals. I do not believe there has been much discussion about what “efficient and effective” means. What would the 21st-century public understand it to mean? Perhaps we may touch on this later.

This statutory duty was relied on heavily by Lord Falconer of Thoroton, a former member of this committee, when the Prison Service and Probation Service were being brought under the umbrella of the Ministry of Justice in 2007. When it was suggested that the justice budget might need to be ring-fenced to protect it against the tensions that might arise, the answer was no, since we have the statutory duty that I have just referred to. It is a really important duty.

Thirdly and finally, we all know the link between the rule of law and economic growth. It is well established. We cannot have economic growth without a stable and effective justice system.

We know that we have here the second largest legal sector in the world. Legal services revenue increased from around £30 billion in 2013 to £47 billion in 2023. Net exports of legal services rose by 80% in the past 10 years. We are talking about £7 billion to £8 billion now. In 2022, the legal sector employed just under 370,000 people here. On this rests our country’s reputation as a centre for justice and the rule of law, which is fundamental to our status as one of the world’s leading financial centres. We have the largest insurance sector in Europe here. Assets under management here are more than £9 trillion.

It is not just about big businesses, is it? There is huge economic advantage in resolving disputes quickly, efficiently and at proportionate cost for everyone. If family disputes are resolved quickly, the children will be happier. They will be healthier. They will be less likely to commit crime and more likely to get jobs. Their parents are likely to be working better and more productively at work. If employment and contract disputes are resolved quickly and at proportionate cost, businesses can function with confidence and certainty.

Crime often gets the headlines, but in fact, to the vast majority of people in England and Wales, it is the other aspects of the justice system that are much more relevant to them. They are going to be affected by probate delays, building and neighbour disputes, mortgage problems, insurance claims, problems with special educational need applications and enforcement problems.

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

Q2 The Chair: Thank you very much. You have laid it out extremely clearly. We will pick up some of those themes during the questions and answers that will arise in the next hour and a half or so. I am going to ask the first question, which is about the independence of the judiciary and the workings of the Constitutional Reform Act 2005. I particularly want to refer to what has been a recent controversy between you, the Prime Minister and the leader of the Opposition.

Without raising anything to do with the case itself, I was really wondering to what extent there is a constitutional issue here that needs to be resolved satisfactorily between you and them, and whether there is a feeling that it is not criticising judges but criticising decisions that have been taken, which of course are part of the momentum for changing an aspect of law? Why were you seemingly so tough on the Prime Minister and the leader of the Opposition? Can you just give us your thoughts on that whole episode?

Baroness Carr of Walton-on-the-Hill: These remarks were made at my press conference last week, following on from what I said to the media. Perhaps I can do little better than repeat the thrust of what I said to the media that then led to the questions. I would say at the outset that it is really important to understand that no one has ever suggested, and no one is saying, that there should not be healthy, robust, open debate, both in and outside Parliament, including criticism, if necessary, of judgments. That is fundamental, but the judicial process and judicial independence have to be respected at the same time. That is the fundamental point.

If judgments are wrong, you can appeal them. The judgment that was under discussion then is not the subject of appeal, but, if judgments are wrong, there are routes of appeal. If the law is wrong, it is Parliament's prerogative to change it. Appropriate public debate, inside and outside Parliament, based on fact, not misconception, is a sign of a healthy democracy. It is a really important part of open justice.

Anyone who knows me knows that my commitment to transparency and open justice within the judiciary is second to none. I embrace all of that. We must. It is the sign, as I say, of a healthy and open functioning democracy. However, criticism of a judgment, debating a judgment, is one thing. Inaccurate reporting and the abuse of judges who cannot speak out to defend themselves is another. The real trigger for my concern here, in the context of the need to respect the judicial process, is frankly the dangers that arise out of inaccurate reporting.

Without speaking about any individual cases in any detail, to imply, for example, that a Palestinian family was allowed to settle in this country under the Ukrainian family scheme is simply wholly wrong. As a result of that headline and the publicity, without going into details or individuals, there have been extraordinarily serious security threats. We are talking about judges being doxxed. We have a death threat to a judge. I am obviously not going to identify who that is. We have judges whose families live in fear, whose homes are targeted, who do not know

whether to engage with abuse that is going on on social media, because on the one hand they do not want to read it because it is so distressing; on the other hand, they want to be alive to whether somebody is saying that they are WhatsApping at the same time as standing next to that judge's child on a bus.

It is about understanding the rule of law and the balance to be struck between healthy, robust criticism of judicial decisions and respecting the judicial process, in a context of being acutely aware of the responsibility that everyone carries, both in and outside Parliament. I described it to the press as a shared responsibility. We have a shared responsibility. They are immensely powerful; they know that. I welcome reporting and criticism, but what I have always asked for from day one is fair, objective and accurate reporting.

That is my point in a nutshell. It is not about closing the debate down. The debate should be wide open, but it is for the courts to decide whether judgments are wrong. It is absolutely unacceptable, as I must protect my judges and defend them, that they are exposed to comments and reporting that shatter their lives. This has changed the way we now work on a day-to-day basis. We are taking steps, which I cannot divulge or share, on a daily basis in relation to where and how we do things.

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

Baroness Carr of Walton-on-the-Hill: I do not enjoy having to stick my head above the parapet on these issues, but it is my job, and I see it as my duty, to stand up for my judges and the rule of law. My relationships with the Lord Chancellor and the Prime Minister on these sorts of issues are extremely constructive, open and honest. When I have the opportunity, I am sure we can discuss these matters, but there is no tension as such.

You might think it would be more worrying if there was not tension from time to time, but these are matters that can all be addressed in the appropriate way. It is really important that nobody should think that I am here to cause trouble. It is simply what I consider to be my duty and the discharge of that duty.

Q3 **Lord Anderson of Ipswich:** Good morning. I declare an interest as a member of the Bar of England and Wales—rather an unsuccessful one, if I may say so, in your Ladyship's court, but that is by the bye.

Baroness Carr of Walton-on-the-Hill: I remember it well.

Lord Anderson of Ipswich: I was looking at this issue, in a sense, from the other side of the fence. I had a look at *Erskine May*, paragraph 21.23—that is our parliamentary rule or guide. That says that, "unless

the discussion is based upon a substantive motion ... reflections must not be cast in debate upon the conduct of ... judges of the superior courts of the United Kingdom". It has been ruled over the years that "Reflections against judges generally are ... out of order" and that this "applies equally to Members of either House of Parliament". Indeed, that is stated in 21.23.

Then Erskine May refers to a ruling of the Speaker, 4 December 1973, that "it can be argued that a judge has made a mistake, that he was wrong, and the reasons for those contentions can be given, within certain limits; but reflections on a judge's character or motives cannot be made except on a motion, nor can any charge of a personal nature be made except on a motion".

I had two questions. First, does that formulation more or less encapsulate what you are saying to us; is there something that you think needs to be added; or do you want to expand on the limits that apply?

Baroness Carr of Walton-on-the-Hill: Not for the first and not for the last time, you have gone into some helpful detail, Lord Anderson.

Lord Anderson of Ipswich: I hoped you had been notified of the rule.

Baroness Carr of Walton-on-the-Hill: I have not, but it does not matter. It sounds as if I am a little more liberal than that rule would suggest, but you capture what I am trying to say as a reference to attacks on judges' conduct. I am sitting on a pile of newspaper articles here about "outrageous judicial overreach", "lefty", "liberal", "outrageous" judges and "crazy" decisions. Those, without a shadow of a doubt, overstep the mark because they tread into the conduct. They are personal attacks on judges. I have absolutely no difficulty with that. I probably do broadly agree with what is there.

I am keen to emphasise that I would not be one to stifle debate that is well informed and appropriate, but when it descends to the personal, as you know, Lord Anderson, judges literally are without defence apart from Section 3 of the constitution Act and my presence here, for example.

Lord Anderson of Ipswich: I should apologise for ambushing you. An attempt was made to notify your office of the relevant rule. I am sorry that did not work out.

Baroness Carr of Walton-on-the-Hill: I am sure it was. I have been looking at the Bill of Rights and things like that, but I had not got on to Erskine. I will look at that carefully.

Lord Anderson of Ipswich: It sounds, if I may interrupt, as though you may agree with Sir Stephen Laws when he wrote in the *Daily Express* that "Ministers and other parliamentarians need to be able to criticise the law in order to justify modifying it—and when that law is encapsulated in judgments of the courts, that is bound to involve criticising judicial decisions".

Baroness Carr of Walton-on-the-Hill: I completely agree with that. There is no question but that there must be the right. I welcome that; that helps us all, but it is about respecting the process, which is that judgments stand until they are overturned. Fundamentally, as you can tell—I am now repeating myself, which is not helpful—it is the inaccuracy. We can all tolerate criticism. We do not necessarily agree with it, provided it is accurate. I am often asked what I hate most, and it is uninformed criticism. Informed criticism is absolutely fine, but uninformed criticism is not only unhelpful but, as I have been trying to emphasise, dangerous.

Q4 **Lord Beith:** In this context, you have stressed the importance of moral courage on the part of judges. That is perhaps a concept we have not heard in this particular context. What did you mean by it? Is it a greater problem than it has previously been, and what might you do about it as Lord Chief Justice?

Baroness Carr of Walton-on-the-Hill: It is a topic very close to my heart, so I would like to do it full justice, if you would just give me a moment to find my notes. Moral courage is fundamentally a function of judicial integrity. The question, Lord Beith, is what I am doing to foster it. Do I think there is a need to support it because it is dwindling? That is what underpins your question.

In terms of moral courage and it being a function of judicial integrity, we are fortified by objective evidence here as to the incorruptibility of the judiciary in England and Wales. A recent survey by the European Network of Councils for the Judiciary, covering 30 European nations, showed that the judiciaries of the UK are among the few that report a complete absence of corruption.

The most important thing in fostering it and talking about it is to lead by example. It is important to remember that I sit as a judge often and I hope that I show fearless independence in my own judgments. I do difficult cases that are potentially controversial. That is the first point.

The second point really is to show the judges that I have their back and am willing to step up to defend them and their work when necessary. Judges will continue to do their work without fear or favour, as you can imagine. Whatever I can do to boost their confidence and support them in that endeavour, I will do. It is perhaps now more important than ever that I do that.

Judges also need to feel supported by the Executive and the legislature, the other two branches of the state. After all, it is the judge's complete integrity that ensures justice for the citizen against the state and for the state itself in its dealings. You will understand that the reason why foreign parties are so willing to invest in business here and to litigate here is that they can be certain that they will be before a judiciary of absolute integrity that will protect their investment in the case of challenge either way.

Lord Beith: Let me just stop you for a second and say we have all taken that certainty for granted. Why is there now a problem and does it require some extra effort on your part?

Baroness Carr of Walton-on-the-Hill: Everything at the moment requires extra effort. That sounds wrong. Everything requires a lot of effort at the moment. I certainly think that a campaign of social media abuse against judges working in a particular tribunal—and you do not need to be the Lady Chief Justice to work this out—risks threatening judicial independence.

That is why it is, on top of everything else, a real threat. That is why the rule of law is there: to prevent this happening. I would not for a moment suggest that any judge here and now is doing anything any differently, because they are public servants committed to their oaths to deliver justice without fear or favour, but can I say it does not sometimes worry some of them? What impact might their decision have on their family, or what is going to be out on social media the next day? There is a campaign. That is recognised at the moment in some areas.

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

Q5 **Lord Bellamy:** My Lady, just picking up your earlier remarks about inaccurate reporting, which is your main problem, I have always understood that in the Netherlands, and perhaps in other places, there is something called the press judge, who is a judge whose job it is not to defend a decision, but simply to explain what the decision was, so that everything is done on the basis of accurate facts.

Would there be any scope, do you think, or perhaps now some need for the Judicial Office to have a press aspect, to make sure that the public understand what the case was, so as to counteract the inaccurate reporting?

Baroness Carr of Walton-on-the-Hill: Lord Bellamy, as ever, you make a very good point. We are ahead of the curve with things such as press summaries. We have a communications office. Nearly all judgments are put up on the National Archives. I want more money in order to be able to put up tribunal judgments and judgments of other courts that currently do not have them put up. Judges speak through their judgments, so putting the judgments out there is really important, but your point about simplifying it is spot on. I have the luxury of being able to provide a press summary for all judgments that I deliver, because I am not doing 10 cases a day, five days a week.

In the real world, without extra resources, the normal judge delivering a large number of decisions at high speed under enormous pressure is not going to have time to produce an accurate press summary. Sometimes, I

have found, writing the press summary is more difficult than writing the judgment. Sometimes, when you get to writing the press summary, you think, "I'm not sure my judgment is going in the right direction, because this isn't stacking up as I thought it would".

I totally understand. We do have press judges as such who can talk in neutral terms, who are trained to speak to the media about generic issues. "What does this mean? What does a life term mean?" On individual cases, it is tricky.

Let us be fair. I always want to be fair. Some of these cases are factually and legally very complex. In the immigration field, for example, you are often making an incredibly important, life-changing decision for a large number of people. You have a lot of evidence, a lot of detail, and a lot of law.

On your short point, I agree with press summaries to aid understanding. There are, of course, some areas where, however simple and clear you make it, it is still not going to be reported in that way, because there are other agendas. I welcome the question and totally agree with you that the more we can do within the resources we have to simplify and clarify what a decision actually means, the better.

Q6 Lord Burnett of Maldon: Just to come back to moral courage, would you agree, Lady Carr, that this is an issue that affects everybody in the judiciary from top to bottom? There might be an overfocus on the higher levels of the judiciary. At the levels where day-to-day decisions are being made, judges have to make often very difficult decisions, sometimes decisions that involve accepting risk, and often decisions that are going to be unpopular with some. Your focus has been, for reasons we understand, on the immigration tribunal, but one thinks of the mental health tribunal.

One thinks of the family courts, where hundreds of decisions a day are being made concerning children, which can be extremely difficult, and of the criminal courts, where judges sometimes have to impose sentences that might be seen as very lenient, but for very good reason. Would you agree that these are all examples where the judges have to be absolutely firm and have moral courage to do the right thing?

Baroness Carr of Walton-on-the-Hill: I could not agree more. It is a good example of how lucky I am, in being able to have fine time to write a press summary, compared to the judge sitting in a civil list. I have lists with me. Sometimes, in a civil list and, Lord Bellamy, you will know, in a family list, you will get 10 or 15 cases in a day. You are in a very small room and nearly every case is distressing, even if you are extending time for payment of mortgage arrears. It is a stressful environment. You do not have an usher or a clerk. You are making a decision that, as you say, with increasing transparency, carries real risks to yourself.

Moral courage has never been more important. I welcome, if I may, the stress on the importance of looking at where the vast bulk of justice is

administered, which is in fact in the magistrates' courts, in the civil and family justice courts and in the tribunals, particularly in mental health tribunals and not necessarily immigration at all.

You are absolutely right: we really need to concentrate and shine a spotlight on them. They will be less well supported often than others in different higher jurisdictions. They are the ones who really deserve the credit for what they do. It is not easy.

Q7 Baroness Hamwee: This is again on the independence of the judiciary. Let me first declare an interest as a solicitor, although it is a very long time since I have practised, and apologise, because I am going to have to leave very soon and it is nothing personal.

On the speedy hearings of the prosecutions of rioters following the Southport murders and whether they were fast-tracked at the instigation of the Government, you have spoken about that. There was a very clear political message coming from the Government. I wondered whether you would like to say more about how those speedy prosecutions came about, and to amplify and flesh out your comment about the independence of the judiciary in that situation.

Baroness Carr of Walton-on-the-Hill: You are right: I was quick to point out that these were independent decisions of judges being made entirely in accordance with their own duties for the administration of justice. I described the judiciary in this particular time, and what a stressful and dangerous time it was, as being entirely independent but connected. There was a lot of constitutionally appropriate working together to make sure that things happened efficiently, but the fundamental point is that, under the Sentencing Act 2020, deterrence is one of the fundamental principles or aims of sentencing.

I have given a judgment in which I said that the weight to be attached to the principle of deterrence can vary over time. It is a flexible concept and, when faced with potential national civil riot, breakdown, disorder, the principle of deterrence was particularly important for reasons that you will immediately understand. What the judges were able to do was to decide, in accordance with those principles, to prioritise those cases.

That did not mean that they were filling unused capacity. It meant that other work was pushed to one side, but that is an entirely appropriate judicial function of a listing process, deciding whether to prioritise certain cases in, frankly, what was a time of emergency. It was independent but connected in a sense.

Baroness Hamwee: I do not want to stray where I should not, but it is about that connection. Was it the judges deciding that completely independently, aware of the social context, or was there a discussion with Government as to whether this was appropriate?

Baroness Carr of Walton-on-the-Hill: No, there was no discussion with Government. What I meant by being connected is speaking with the CPS, the Bar and probation to make sure that we had all the information

and all the right people in the room at the same time to progress these cases. The vast majority were short and simple cases, because we had the CCTV and they were guilty pleas. These cases could be done very quickly.

What I meant is there was very much not discussions with Government, far from it. These were entirely independent judicial decisions, but we were joining up in the criminal justice system across the board to make sure that we could get these cases through. Everyone has appropriately recognised the extraordinary contribution of the judges who were involved, who, going back to one of the topics we started out on, may have had and continue to have very real-world difficulties as a result of their involvement in those cases.

Q8 Lord Foulkes of Cumnock: Can I first of all welcome the fact that the Chief Justice is a woman? That is a step in the right direction, but it is just one step towards equality and diversity in the judiciary. My concern is not about lefty lawyers. It is quite the reverse. My experience is that most judges and magistrates tend to be from a rather privileged background, and then men and women from the street feel that they are not getting a fair hearing.

What is being done to make sure that the judiciary is diverse? With no disrespect to you or me, to have Wycombe Abbey and Haberdashers' Aske's Boys' School represented on the judiciary is not the most diverse example.

Baroness Carr of Walton-on-the-Hill: No. Socioeconomic diversity is something I spoke about at length when I made my first appearance before the Justice Select Committee. It is a very, very important issue. We are making strides. If you want to hear me on the diversity stats on women, unfortunately that is not your question, but I am very happy to talk. We have more women judges in the tribunals than men now.

Lord Foulkes of Cumnock: What about black people and people from a poor background?

Baroness Carr of Walton-on-the-Hill: Let us talk about socioeconomic diversity. One of the real difficulties we have is tracking that and getting the statistical data available to show how we are doing. What I can say is that I am fully committed to this in all sections of the judiciary. We have diversity and community relation judges. We work tirelessly with schools and universities. We have a very good, targeted outreach programme running through the Judicial Diversity Forum and the Judicial Appointments Commission, reaching out to support people. We have mentoring schemes. We have "you be the judge" days. We cannot solve it overnight. It is not easy, but it does need to be done.

I could not agree with you more that the judiciary needs to be as representative as it possibly can be. We are not making progress with black judges, which you raise, in the way that I would like, for reasons that we are simply unable to work out. We are not seeing an increase,

particularly at the upper levels of the judiciary, but we are a pipeline profession. You may have noticed, for those of you who are enthusiasts, that there were no black Silks on the Silk list this year, for example. We have to work with the professions. I do not like talking about working from the bottom up, but we have to work across the board to work out what to do.

I am working with Lady Justice Whipple to set up a black judges network. We work with the National black Crown prosecutors association and the black solicitors network. We need to listen more to what the problems and hurdles may be. We will not give up, but it is a long-term project.

Lord Foulkes of Cumnock: Maybe you are the best and the right person to do it. Could you not start a new initiative to try to get more diversity?

Baroness Carr of Walton-on-the-Hill: If somebody can identify a new initiative that we have not thought of that will make a material impact and is deliverable, I will be the first to sign up for it. One of the actual challenges, I feel, is that the market is a bit too crowded. We need to make sure that we are streamlined in our approaches, that we do not overlap, that we do not duplicate, so we are consistent in our messaging.

Please do not think that there are not initiatives. There are, if not hundreds, certainly tens of initiatives working in this very area. We have the first black female chair of the Bar this year, Barbara Mills, who I am seeing very soon. She sees a lot of us. We are very excited to work with her to see what we can do.

The reason for the shortage in numbers is not obvious. If it was obvious, and if there was a clear solution, I promise you we would be adopting it.

Q9 Baroness Andrews: Good morning, Lady Carr, and thank you very much for the superb evidence so far. You began by talking very broadly and holistically about the nature of the resources that you needed, the lack of resources and the loss of resources. You have been talking about a range of things to do with the professional support of the judges, their ability to feel safe and respond, and now recruitment into the judiciary.

It is a broad question, but to what extent do you think that, if there had not been that loss of 22% or even if there had been a smaller loss, some of the issues that you now face could have been overcome, prevented and compensated for by better resources, differently used?

Baroness Carr of Walton-on-the-Hill: There are some experts in the room, I know, but the build-up to where we are with the prisons crisis and with sentencing is now well known. There have been successive reviews advocating radical changes, going back to the Auld review. Imagine if some of those recommendations had been implemented there and then, or if there had been investment in prisons.

I will not talk about policies or politics, but we are now a very long way down the road in terms of backlogs, and rowing back gets more difficult by the day. I have spoken recently in front of the Justice Select

Committee about the fact that deferring problems does not save money; it makes it more expensive.

Take the very simple example of the criminal case that cannot be heard and has to be adjourned because there is not funding for that sitting day. You put it off for two years, ignoring the social loss, ignoring the damage to the quality of justice because memories fade, ignoring the attrition rate; that is to say, complainants and parties falling out because they lose faith in the system. You have the additional expense of everybody working the case up again, the lawyers starting from scratch, et cetera. Pushing everything into the long grass is absolutely not the answer. With investment—consistent investment, proper investment over the previous decades—we would not have found ourselves in this position.

You mentioned problems with morale and recruitment, and we have not talked a lot about morale, at least not yet. The security problems that I have been raising are, of course, really relevant to recruitment, particularly, going back to Lord Burnett's point, at district Bench level, where we badly need judges, as well as circuit Bench level, particularly in London and the south-east, and in the employment tribunals. It all has a knock-on effect.

Q10 Baroness Laing of Elderslie: Turning, Lady Chief Justice, to the question of the relationship between the judiciary and Government, and the challenges of the most recent concordat process, which has been much commented on, can I take you to the Post Office (Horizon System) Offences Act 2024? You have stated that that created a situation where "constitutional boundaries were at risk of being crossed or blurred". I have to say—this is not really declaring an interest, Lord Chairman—that I was in position then as Deputy Speaker of the House of Commons, chairing that.

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

Baroness Laing of Elderslie: I sat there for many an hour listening to it, and I felt uncomfortable about the constitutional position that was being created. Perhaps that is declaring an interest, Lord Chairman. It would be very interesting to hear what you have to say in retrospect about that. I believe that the Government had the best intentions, but how does it affect the constitutional settlement?

Baroness Carr of Walton-on-the-Hill: I am sure we all felt desperate at the miscarriages of justice, and so everybody could always understand the spirit and the motion behind everything that happened, but Parliament accepted in its final debates with you in the chair that the Act did breach the rule of law. It was openly accepted that it was inconsistent with the rule of law, but the position taken was that these were exceptional circumstances that justified taking that exceptional step and that this should not set a precedent.

On the latter point, I heartily concur, but the lesson to be learned is a very short and a very simple one. There must be comprehensive

engagement with the serving judiciary at the earliest opportunity before there is any commitment to legislation of that nature. It is not for the judiciary to comment on policy, but we can comment on practical options and consequences.

The Bill was passed without anybody having any evidence or any full engagement with any understanding of what precisely the judiciary could have managed without legislation. I read comments from certain Members to the effect that there was some disinclination to rely on retired judges, for example. I have no idea where that came from. It was not accurate. We were dealing with appeal cases within days. I sat on an appeal in January 2023, and we disposed of the matter within a week.

Judges and courts, as many in this room will know, are very well experienced at dealing with a large number of high-volume cases. We had a good system for triaging. We had good connections with the defence barristers. We had good connections with the prosecutors. That is my answer to your question.

I welcome the question. That is the single takeaway, please. There must be full, early engagement with the serving judiciary before there is public commitment. There was a public commitment to legislation very, very quickly, certainly in January itself, and once that commitment was made—

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

Baroness Carr of Walton-on-the-Hill: You are completely right. By definition, without being over-lawyerly, it is a precedent. It is something that has gone before, full stop. There have been many brilliant articles written, a particularly good one, if I may say so, by Sir Ken Macdonald, former Director of Public Prosecutions, just explaining this.

This is what distinguishes democracies from others. Of course, here, everybody had the utmost sympathy with the sub-postmasters, but once it is for Parliament to decide who is a sympathetic group deserving of particular special treatment, or not, that is constitutionally very dangerous territory. It is a precedent and that is one aspect of it that I understand concerns this committee.

Q11 **Lord Waldegrave of North Hill:** I wholly agree with you, Lady Carr, on that matter. It was a very dangerous precedent, which has now been set. Now, out there, outside the Westminster bubble, there is quite a lot of talk about the conflict between judges and politicians. Are judges moving into territory that politicians should be legitimately in control of, and vice

versa? There was one the other way, where things were blurred.

I am interested in your thoughts on the modern habit, which like a lot of modern habits I deplore, of Parliament trying to bind its successor by putting policy issues, environmental targets, a whole range of things, into law. Now, they cannot constitutionally bind their successors, so they half try by saying, "This is a law".

This seems to me to have the danger, and I would be interested in your comment on this, of making a whole range of government policy justiciable in just the sort of way that will inevitably put the judges into the territory of having to make judgments about things that other people will say are quite justifiably political. Do you have any views about this?

Baroness Carr of Walton-on-the-Hill: You are absolutely right. Sometimes the subject matter before a judge will be politically controversial, but, to be very clear, judges do not deal in politics. They find the facts on the evidence before them, and then they apply the law as it stands to them, but the optics is what you are driving at.

This goes back to why judges need to be defended, and why there needs to be accurate reporting. They are not, in fact, being political. They are not, in fact, being controversial. They are applying the law as they see it to the best of their ability.

Lord Waldegrave of North Hill: It is a little more than optics. I am trying to get you to criticise the politicians.

Baroness Carr of Walton-on-the-Hill: You are not going to succeed in that.

Lord Waldegrave of North Hill: Many of us thought that was a bad precedent set over the infected blood victims. Making policy issues justiciable, deliberately, in order to try to bind your successor, seems to me to run the risk of putting judges into the territory where the optics are going to be horrible for them, whatever they do.

Baroness Carr of Walton-on-the-Hill: All I can say appropriately in response is that it is about promoting a better understanding of how the courts work and what judges are doing, and the fair and accurate reporting point, but you can see it every day at the moment. Judges are accused of being politically controversial, and they are just not. They are doing their jobs.

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

Baroness Carr of Walton-on-the-Hill: No, I have read some of that and it is not a distinction that I have thought about in any great depth, I have to say.

Q12 **Lord Griffiths of Burry Port:** It is a delight to listen to you, as somebody who for most of his life has not been a politician, and certainly not a lawyer, although I am active at the moment as a member of the delegation from this Parliament to the Council of Europe and I sit on its migration committee.

"Transparency", "the rule of law" and "immigration" are words that have appeared in the conversation thus far, and that gives me the courage to ask a question about it. It is simply that we had three Acts of Parliament in the last Parliament that related to immigration. All of them were contentious and fiercely debated on the Floor of the House.

Baroness Carr of Walton-on-the-Hill: Rwanda, you are talking about.

Lord Griffiths of Burry Port: Rwanda was the last one, illegal immigration and borders. There were three of them. I do not know how you can help someone such as me, who is none of the things that I have just said, to get his mind to engage with the processes that yield certain outcomes. When we debate migration in Strasbourg, we have always had on the migration committee a permanent presence of a member of the commission for human rights and for refugees, so we always get points of law as perceived from that angle before us as we debate the issues of the day.

I understand the convention that Governments take legal advice and are not obliged to disclose it, but that makes it difficult for me in this sense. In Strasbourg, I hear very clearly enunciated, for example, Article 31 of a certain law about countries of origin and the rest of it. I hear the Strasbourg view of it supported by very eminent members of the legal profession who sit on our benches, arguing that the rule of law is really being targeted and undermined at certain points. Then the Government sit behind the advice that they have received.

That is fair enough if that is the convention, but it would help me to know the processes that create that outcome to allow me to judge between what is being put forward as consistent with the rule of law in this context and a quite different point of view being argued in Strasbourg about what constitutes the rule of law. They are diametrically opposed.

You have spoken again and again about how the role of the judge is to put the facts out. If they are considered to be facts here, and considered to be facts here, what help can be given to the intelligent lay person—I exalt myself to that description—to make a judgment himself between the two opinions in respect to the way they play out against the expectations for us living in a country that is ruled by law?

Baroness Carr of Walton-on-the-Hill: May I start, my Lord, by saying you would make a very good lawyer? The short answer is that the

average judge sitting in the immigration tribunal will not have the time or resource to sit back and ask him or herself some of these questions.

When we get the legislation coming in, as you have identified, we have extensive training. All the tribunal judges were trained for the Rwanda legislation that is no longer going through. There will be explanatory notes, training materials and judgments from Strasbourg and domestic authorities that will illuminate the right approach to be taken, but I do not think that there is an easy answer as to how you educate the non-lawyer on the street as to how any tensions between the two opposing opinions are addressed.

We have our laws. We apply them. We have the standard of proof, the balance of probabilities. Findings will be made on the evidence. That is quite accessible. The more difficult area, where the questions come in and where there is, as ever, room for debate, is where to strike, for example, an Article 8 balance between the competing considerations. There is a balancing exercise to carry out.

The rule of law is often about law, not discretion. That was certainly one of Lord Bingham's eight principles, but there are, for example, in an Article 8 balancing exercise, judgments to be made as to where the right balance lies. It is not easy. I have a whole extra box in my head about what we need to make the rule of law more transparent, which does not answer your question in the European context that you are describing.

In fact, the chief justice of New South Wales just sent me a lecture this morning that he gave at the opening of the term yesterday, speaking to one of my themes: let us stop talking about the rule of law—let us try and explain what that means to the normal person. We all say it. It will provide and produce a different definition from each and every one of us around this room. A step towards explaining what we are talking about to non-lawyers, who really matter because we want people to understand what we do, is to move away from those four magic words, "the rule of law"—even if we know what they mean to us—and to make it more concrete and accessible.

That is something that, again, we have a shared responsibility to work on. The judiciary has a responsibility and Parliament does as well.

Lord Griffiths of Burry Port: If I felt certain that the kind of balancing exercise you have referred to had taken place and that, considering everything, what is before us is a responsible place to be, I would be content. I really do think that the political pressure to achieve a solution on this side of rather than that side of the argument needs to be challenged by the legal profession itself. That can easily be perceived as having been put at the mercy of people who, for reasons of politics, in terms of controlling immigration or whatever it is, have pushed for an outcome that is on one side of the case.

Inevitably, you are going to have those complicated situations, but, when a Government putting forward legislation of that kind say they are doing

it respecting the rule of law, I would want to be convinced that that is in fact the case. As it stood, I have to confess, I felt it was not the case again and again and again. I also felt that there were very properly trained lawyers putting the government point of view through those debates, one or two of whom resigned because they did not feel able to continue to put some of those cases. It is very complicated.

Baroness Carr of Walton-on-the-Hill: My sense, listening to your very eloquent remarks, is that these are probably problems that the judiciary cannot engage with. We just cannot get involved in the politics or the policies. Whether the advocates are putting a particular case forward for whatever reason may be a different thing, but we really do not think about what the political pressures may be. We try to just focus on what the legislation says.

Of course, there can be challenges to legislation. Legislation can be overturned by Parliament, but we focus on the here and now, and what the words of the statute say. We apply normal principles of statutory construction, not in a vacuum, but we really do not think about politics.

Lord Griffiths of Burry Port: I understand that and am grateful for having been allowed to make my maiden speech.

Baroness Carr of Walton-on-the-Hill: Congratulations. I was hoping to spend a bit of time on Wales, but I do not know if I am going to be allowed to.

The Chair: We are about to move to the question of One Judiciary.

Q13 **Lord Murphy of Torfaen:** I hope that the committee does not think Wales is dominating the last 10 or 15 minutes. Lady Carr, the last 25 years in Wales has produced a huge change in the use of and attitude towards the Welsh language, of course. I note that your own report recently was produced in Welsh.

There has always been some pressure with regard to court proceedings being held in Welsh, partly because people think that is a matter of principle. I do not necessarily share that view, but people believe that. More significantly, in the north and west of the country, where Welsh is the first language, people are more comfortable in speaking that language and, therefore, judicial proceedings would be more effective if they were held through the medium of Welsh.

There is a problem in getting Welsh-speaking judges. I note that, for example, there was an employment judge vacancy in Wales recently. There were 20 applicants, none of whom could speak Welsh. That is okay where I come from in south-east Wales, but it would not necessarily be the case in Anglesey. With an employment judge, you are dealing with people very often whose first language would be Welsh. I would be grateful for your comments on that.

More generally, though, there has been quite a significant pressure from certain quarters over the last 10 years or more for a Welsh judiciary.

Again, I do not necessarily share that view, but it is an issue. What I do believe is the case is that, now that the Senedd has primary lawmaking powers, and, indeed, before that, for secondary legislation, a body of Welsh devolved law has built up, which applies only in Wales. Does that mean, for example, there have to be special arrangements for certain proceedings to be held in Wales, or do we in fact move, as some would have it, more and more towards a separate Welsh judiciary? It is fairly uncontroversial.

Baroness Carr of Walton-on-the-Hill: That is totally uncontroversial. There is lots in that question. I will try to cover the ground, but I will say at the outset that I cannot possibly comment on policy issues surrounding devolution and the like.

I will then row back and say I have just come from Wales. I had a very, very constructive meeting with the First Minister, who very generously met with me for an hour or so, and the Counsel-General, who I have now seen on several occasions. I had a parliamentary reception with the clerks to the Senedd, and I had a very good meeting and a full hour with the Speaker of the Senedd, the Llywydd. I am learning Welsh. I am not doing as well as I might, but I am getting there.

I am going to answer your question, which can conveniently be split into two parts. The first is Welsh language, and then the second is Welsh judges and law. The Welsh language now has official and equal status with the English language in the courts and tribunals of England and Wales. The overriding objective—that is one of our primary Civil Procedure Rules now—explicitly draws attention to the official status of the language and imposes an obligation on all parties to assist the court when using it.

We have a dedicated Welsh language unit, as you know, in Wales, and we have a Welsh language scheme with a Welsh language committee, all of which are very active. If parties need to, or indeed want to, be heard and seen in Welsh, that will be facilitated in Wales. I am acutely aware, having now visited quite a large section of Wales, from Anglesey to Cardiff to Swansea to Newport to Haverfordwest to St Davids, and going up to Bangor in October this year, that there are areas where people do not speak English.

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

The importance of Welsh is very much in my mind. We have an awful lot of work going on. We have a Wales training committee. We have a

council of Wales, which is a sub-committee of the Judges' Council, where Lord Lloyd-Jones sits and all levels of judges within Wales are represented. I chair that committee regularly and my next meeting with them is next week.

Post devolution, there has been, particularly in education, planning, social services and residential tenancies, new legislation under the devolved powers. There is only one law of England and Wales, and I recognise there is often thought to be a paradox in an English court ruling on the legality or interpretation of a piece of Welsh law. I like to think, without getting involved in policy matters at all, that you should all be very reassured that the courts and tribunals in Wales are really well looked after.

We have judges sitting in both England and Wales. We have strong leadership through High Court judges who are presiders of Wales. Wales has, in many ways, the double benefit of having access to the entire English judiciary, as well as the wonderful entire Welsh judiciary, but also bespoke training. There is bespoke training on Welsh legislation. On all new legislation, there are discrete training courses within the Judicial College to make sure that everybody who hears cases that relate to that legislation is properly trained to do it. We have representatives from Wales and Welsh law on our procedure rule committees and on our civil and family justice councils. In fact, the Civil Justice Council, Lord Burnett will be pleased to hear, had its first meeting in Cardiff last October.

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

Lord Murphy of Torfaen: Thank you very much indeed, or should I say diolch?

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

Q14 **Lord Burnett of Maldon:** Could I widen the question to the topic of One Judiciary and declare an interest as having spent five years developing this policy with successive Lord Chancellors? This is a project to bring the judiciaries of the tribunals and the courts closer together. It has been a long road, but it has been uncontroversial politically, so far, and received the approbation of the last Government, which issued a consultation toward the end of their life. Like so much else, the general election has resulted in at least a delay.

First, I wonder if you could tell us in a few words what the One Judiciary project hopes to achieve. Secondly, what progress is being made towards the legislative change that is necessary to achieve it?

Baroness Carr of Walton-on-the-Hill: As you say, my Lord, One Judiciary has been long in the making. It predated your term. You took it over, and I am trying to continue the work of you and my predecessors before you. There are two aspects to One Judiciary, as I see it. One is the drive for greater efficiency and better working practices, and I will explain what I mean by that in a moment. The second is a cultural aspect, a holistic desire to bring all parts of the judiciary—magistrates, coroners, tribunal judges, court judges—all together.

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

A good example is the virtual regions. The tribunals have been running virtual regions where work that cannot be dealt with by a judge in a particular centre can be put up in the virtual region and another judge with capacity can pick it up. The courts have adopted that practice very successfully, and it is a very good example of how much we can learn from the tribunals.

It is also about cross-deployment—making better, more efficient use of judges so that they can sit in both courts and tribunals. If you are sitting in a property chamber, you may be very useful in a possession list. If you are sitting in a special educational needs tribunal, you may be very useful in a family case. There is lots of scope for cross-deployment. It is also good for judges to have the opportunity. It is good for morale. It is good for judicial progression to be able to work in different jurisdictions.

There is also something about achieving an alignment in terms and conditions. Particularly when it comes to the civil jurisdiction, there is an overreliance on fee-paid—that is to say, not full-time—judges. That is all part of the work.

That is the practical side of it at a canter. The cultural side of it is about making everybody feel involved. Outside the courtroom, I like to think we are all equal. Outside the tribunal hearing room, we are all equal. We work, by definition in our work, in a very hierarchical way, but round a committee room we all work together and can learn from each other. An inclusive culture that brings tribunals into the court for a cup of tea or to share lunch together, or brings magistrates in, can only be a good thing. In difficult times, sometimes dark times, that small step can make a big difference.

It is also about promoting diversity and inclusion in the courts. Diversity in the tribunals is significantly better than it is in the courts, in terms of not only female/male gender, but socioeconomic status and ethnicity. That is something we can benefit from.

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

We do understand. We the judges understand what we need in order to work better and deliver a service. You only have to read the newspapers this morning to see fresh legislation coming in, and the tribunals are front and centre of a lot of the new work coming in. For us to be asked for more and more without support, for example, for some uncontroversial legislation is disappointing.

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

The Chair: I would like to move on to backlogs.

Q15 **Baroness Andrews:** May I start by just saying llongyfarchiadau ar ddysgu Cymraeg? Congratulations on learning one of the world's most difficult languages.

Baroness Carr of Walton-on-the-Hill: It is. As a linguist, I can tell you, it is.

Baroness Andrews: That is in addition to your many other challenges. I will go back to yet another, and very much a sharp-end challenge, which you have already referred to, the backlog. If you asked most people what they knew about the judicial system and how they had experienced it, it would be about how the courts are not working on their behalf. Do you think there is a point where the failure of the system expressed through the backlog becomes a real threat to the constitutional principle of access to justice? Have we reached that point, do you think? Are we likely to reach that point? What will stop us getting to that point? What are the realistic options? What is the sequence of decisions, regarding resources or whatever, that is necessary? Given that the Leveson review is under

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

Baroness Carr of Walton-on-the-Hill: So nobody behind me panics, I am not going to predict what anybody is going to say in the Leveson review, or, indeed, the Gauke review, those two independent reviews that are going to report in the course of this year. I will be able, I hope, to answer most of your questions.

As for a tipping point, I do not think I could identify a particular point or trigger when you can say, "Here's the number. Here's the period of delay that means there is no longer access to justice in accordance with constitutional principle". This is a bit of an art, not a science, but justice delayed is justice denied; that is glib, but it is really apposite.

I will focus on crime, which I think is the focus of your question because you have mentioned the Leveson review, but I would not want to go and talk about crime before flagging the serious delays in all jurisdictions.

For employment tribunal cases, we have hearings being listed in 2027. Family public law cases in London and the south-east are taking 55 weeks against the statutory target of 26. We have small claims tracks in civil. Those very rarely go to trial, but when they do they are coming on about a year away from listing.

We can all make value judgments as to whether we think any of those periods are consistent with what we believe to be the constitutional principle of access to justice.

Let us turn to crime. We know that we now have criminal cases being listed as far away as 2028. The judiciary and Government do not disagree on the fact that radical change is needed in crime. As I say, it is not for me to predict what changes Parliament will wish to implement. I would repeat that we will be ready to implement, subject to proper modelling, planning and resources.

I have been at pains to emphasise that, while I cannot predict this, I can see what options there might be. I find it difficult to see any option in any sphere that comes at no cost. It is an invest-to-save situation. We are so down. The backlogs in crime will be well above 73,000 now in the Crown Court. We are at over 333,000 open caseload in the magistrates' court. Radical change will be needed and that is what the Lord Chancellor is looking at.

We are engaging, I should add, in terms of providing practical information and feedback to both David Gauke's review and Sir Brian Leveson's review. We have a judicial response group. We meet regularly. Of course, Sir Brian is also going out and about making his own inquiries, working out what options there might be.

In terms of what solutions there may be and what we are doing, Lord Burnett, in the Covid crisis something was set up called the Crown Court Improvement Group. That has been expanded to be the Criminal Courts

Improvement Group. We are now embracing the magistrates in the work that this multiagency cross-party group does. We have prosecutors, defence advocates, solicitors, the Bar and, of course, judges, all in one room, looking at initiatives to try to move forward and carry on working to reduce these backlogs pending radical change.

By way of example, we now have local problem-solving groups. We have case co-ordinators. We have a pilot going on with the CPS for case co-ordinators.

Lord Justice Edis, the former senior presiding judge, carried out a surge on rape cases over two years old so that they were all disposed of by the end of last summer. We also announced a massive and magnificent piece of work on listing by one of our Crown Court judges, His Honour Judge Martin Edmunds, King's Counsel, to achieve a more unified, consistent listing practice in the Crown Courts. He makes 48 sometimes quite far-reaching recommendations. We are doing on the ground everything we can pending radical change.

Of course, I do not have all the levers. The Crown Court judges have been working their socks off. When I go around and I visit the circuits, the lists that some of the judges are coping with are quite extraordinary. They are, frankly, like nothing I have ever seen in my time as a serving judge. You have Crown Court judges doing four sentences before the court day starts, running two trials side by side, doing three sentences after, while managing two juries and all the rest of it. It is staggering what they are doing. I am pressing, as you would imagine, for the ability to sit to maximum capacity in the Crown Courts. You might think that goes without saying.

It does feel that we are running up a down escalator, but every case matters. We cannot, even sitting to maximum capacity at the moment, diminish the backlogs, but we still have to do everything that we can. We must be able to sit to maximum capacity. We need to see what radical changes are being proposed during the course of the year, how and over what timeframe they can be implemented, and whether, as we would all like to do, we can start looking away from the fire brigading, forward to the town planning and what a future judiciary looks like in crime. Do we need more judges? Do we need more courts? Do we need more resources to get through this extraordinarily unprecedented level of backlogs?

Baroness Andrews: May I follow up on a very specific point? This question is nagging away at me. You talk about the absence of levers. Some of the things you have been telling us about have been initiatives by individual judges, local good practice, things happening on the ground that might be or might not be scalable.

First, can that be systemic improvement eventually? Secondly, for things such as the listing initiative, to whom would that recommendation be made and who could act on that? Would that be a systemic change? Thirdly, it is this business of what levers you have to create systemic change. Finally, if you were able to achieve maximum capacity, what

would it look like? What difference would it make?

Baroness Carr of Walton-on-the-Hill: Could some of these ideas be scaled up? Yes, certainly. One of the important things to understand, and there are experts in the room, but it is quite nuanced, is that there are regional variations. Sometimes they reflect better or worse practice, but sometimes they are simply the product of the areas and the support around it. It is not a one-size-fits-all solution, but there are ideas that we can scale up. Perhaps the case co-ordinator is a good example. That is a pilot that we could roll out nationwide.

On listing, how does this work and how would the recommendations go forward? Under the Constitutional Reform Act 2005, listing is a judicial function. Judge Edmunds's report was a report to me. What I am asking to happen is that it goes to the Criminal Courts Improvement Group; it will then go to the Criminal Procedure Rule Committee and it will then be for me to sign off. It is in my camp, so to speak.

In terms of what levers I have, I take every opportunity I can to see the Lord Chancellor, the Prime Minister from time to time, and other departments and agencies. I make the case that I can, I hope fairly and objectively. I understand the difficult fiscal environment, but I make the case that I can. I communicate and share information as and when I can. It is about being willing to engage.

It is nothing short of humbling when one goes and sees the judges with their lists still ready to go and produce a 90 or 120-page report on listing on top of everything else. They are still there for me and ready to engage and help in a truly remarkable way.

The final question was, if I could have it all, what I would do. I do not have a magic wand. If we opened all the courts up with hundreds more judges, what could we do? We do need to town plan, and we do need to model. We need to get through, frankly, what has been lurching from one crisis to another and get to a stable situation where we are allowed to sit to maximum capacity. Then we can settle down, armed with the outcomes of the reviews and their implementation, and see what the future might look like.

Q16 **Lord Bellamy:** Lady Carr, could I just take up your point about maximum capacity, in particular on the question of apparent restrictions on sitting days? Oversimplifying, one might think perhaps that the court system has fixed costs of buildings, of judges, of staff, of IT systems, and that an extra sitting day is in effect a marginal cost of some extra expenses. I am wondering whether you have had the opportunity or have been given a detailed cost analysis distinguishing, as it were, between fixed and marginal costs, and what justifications are put forward from a cost point of view on the restrictions on sitting days.

In relation to that, assuming that there may be—I do not know—some justifications in terms of marginal costs, do the calculations take into account the other side of the balance sheet that you have yourself

already mentioned, which are the external costs of the delays in terms of effects on victims and witnesses, wasted trial preparation, and the other factors that you mention? I wonder if you could just expand a little bit on this area.

Baroness Carr of Walton-on-the-Hill: I am not aware of any cost analysis that looks at the cost of having a court available, lights available, a jury available, staff available, alongside the £900 or £1,000 cost—I do not know what a recorder fee is—of an extra judge coming in that day. That would be very valuable information. How you measure the social attrition, the cost to justice and all the rest of it is a little more intangible, but there will be other things that could be done, and I welcome your question and indeed the thrust of your analysis.

It leads into another aspect that you may be nudging at, which is whether the concept of a sitting day is fit for purpose anymore. There has been debate about this. To allocate funds by reference to a court sitting day is a very blunt tool, and the Lord Chancellor and I agree that it is not one that really works.

There are a number of reasons for that. It is basically crude. It has been used for a long time but there are a number of problems with it. There is no single definition of what a sitting day is for HMCTS purposes. It has not been applied consistently across England and Wales. Fundamentally, and you may think astonishingly, it does not take account of judicial boxwork, which, as we try to keep more and more civil and family work out of the courts, is ever more important. It does not take account of discharge of other judicial responsibilities. Judges now train other judges. That is incredibly important to maintain quality and make sure there is judicial input. There are all sorts of leadership responsibilities that judges have. Judges assist the Judicial Appointments Commission to sit on panels selecting judges.

There is all sorts of extra work that is not factored into the sitting day metric; nor does the sitting day metric take account of when judges sit in other jurisdictions that are not their primary one. There are lots of problems with the sitting day metric and the Lord Chancellor and I agree that we need to look at that. The questions you ask are the right ones.

Lord Bellamy: It would appear from your answer that detailed scrutiny of the approach to restrictions on sitting days is somewhat overdue.

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

Q17 **The Chair:** Just before we wrap up, there is another question about the Transparency and Open Justice Board. You said that the greatest threat to open justice comes from careless, sometimes inadvertent, failures to protect its ideals. Can you just explain what you meant by this and can you give us some examples?

Baroness Carr of Walton-on-the-Hill: This is about threats to open justice, not threats to constitutional boundaries as such. What I was talking about were careless, inadvertent lapses—for example, publishing

a list that goes out to the media containing inaccurate or partial information. I am talking about slips in providing core documents that external parties are entitled to and failure to deal promptly with requests by the media.

What I was trying to explain was my fundamental ambition to bring the need for transparency into the heart of the justice system. It is not a bolt-on. If you are a very busy judge, you have a very complicated case and you get a late request from the media to do something, with a complicated reporting restriction in place, it is hard and it is seen as an addition.

I want it to move from being a bolt-on or an addition to being something that is front and centre of everything that judges do and for them to understand the importance of open justice. That is what the Transparency and Open Justice Board is driving at. We are about to pilot in the Court of Appeal Civil Division a new system for giving parties immediate access to core documents online.

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

Q18 Lord Anderson of Ipswich: You mentioned morale and you also mentioned the latest judicial attitude survey that was published on Monday. It is a quite remarkable survey, unique in the world and one with a response rate of more than 90%, but the survey makes a rather discouraging reading. It suggests that more than three-quarters of serving judges suffer from work-related stress symptoms, with higher figures for female and minority judges, and 30% say they are suffering from burnout. I wonder if those are pictures that you recognise and, if so, what you would most like to happen to improve the morale of the judiciary.

Baroness Carr of Walton-on-the-Hill: Can I first echo your recognition of the fact that these are ground-breaking, world-leading surveys? I am not aware of any other jurisdiction that carries out a survey of this depth, which now for the first time asks about stress and workloads, and for the first time includes coroners, which is a very welcome addition into the body of the report.

I would like to thank the judges. I do not think, again in terms of breaking ground, there is any other survey anybody in the room can think of where you have a more than 90% response rate. It matters because it is giving us reliable information.

In one sense, should we be surprised that judges are stressed? Perhaps not, no, because this job is a very stressful one. Being a judge is hard. The facts are sometimes difficult. The law is sometimes difficult. The job of making a decision in all our courts and in all our tribunals can be

complex and difficult. We are talking about people who are public servants. They are deeply committed. They are not people who shut the door and go home. They are people who care, and that adds to stress.

I will not spend time now going into the amount of work we are doing in the wellbeing area, which many would not recognise from many, many years ago. We provide not only critical incident support, ongoing support, police support, security support, but also mentoring judicial support. There is a lot going on, and a lot of information and tools are available.

The short answer would be that we need to get on top of the backlogs. The stress for judges, because of the backlogs, is just enormous. We need to do our best to deal with listing practices. I need to lead, to make sure that the judges know I have their backs and to help them through difficult times of threat.

We need more resources. We need to explore the opportunities of digitisation. We need to have paper-free courts. We need to have proper IT. The list goes on. I do not want everybody to feel negative about this. There is so much good work going on, but this survey tells us, if we needed to be told, that, given the workloads of judges, the system, in large parts, is running on judicial good will. That is not sustainable for the long-term future, and that is why I am pressing for long-term investment as well as short-term remediation. I would say the obvious, which is to allow the courts to sit to maximum capacity.

A lot of the stress is workload, but it is also incredibly demoralising to see the backlog figures. It is the judges who go into court to tell the defendant that the case has to be adjourned and will come back in two years' time. We are talking about rape cases.

I remember a judge coming to me in a Crown Court saying, "I've just had to tell a defendant in a criminal charge, where the complainant is the next-door neighbour, that the case is going off for two years, and the defendant is in tears because that means their life at home is on hold for another two years". They cannot go into the garden, which adjoins, and all this sort of thing.

It is the judges who take the brunt of the backlogs in that sense. Of course, it is the parties who matter most, but it is the judges who have to deal with the day-to-day stress of those real-life situations. The frustration is palpable, because the judges care. They care about the parties and about the administration of justice.

Q19 Baroness Laing of Elderslie: Taking you back, Lady Chief Justice, to your opening remarks to us this morning, you gave us a very valuable and wide overview of the funding of the justice system. You gave us a lot of statistics. I just wondered to what extent the fact that the courts in London deal with a lot of international disputes could be assessed as of monetary value. If an international contract of significant value has a prorogation of jurisdiction to England and Wales because of the faith in the quality and reliability of our justice system, would it be possible to

put a broad monetary figure on what one might describe as hidden exports?

Baroness Carr of Walton-on-the-Hill: I would love to see that figure. It is not a bespoke, discrete exercise that is being carried out, and I do not have the resources behind me or in the Judicial Office to carry out that particular piece of work. You are absolutely right that the international draw of the English and Welsh judiciary is second to none. Underlying the figures that I gave you will be that. In a way, the judiciary takes responsibility for this industry and these figures.

The international statistics are that over 60% of all Commercial Court cases are exclusively international and over 75% involve at least one international party. We have increasingly complex and high-profile international cases being litigated here. Of course, the courts support the arbitration service, so arbitrations are held here, and so on and so forth, but it is absolutely the button to press if I need to go to the international picture and the big money figures.

The international work of the judiciary outside the courts is something we have not touched on, but it is something that I am celebrating this year in May with a reception in the Royal Courts of Justice. I do not believe that the outside world knows how much engagement we have on a budget of £169,000 a year, engaging with countries across the Commonwealth, across Europe, many European institutions, and so on and so forth. There is a huge agenda and huge engagement, and that should be celebrated and publicised.

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

Q20 **Lord Foulkes of Cumnock:** You mentioned international contact. My colleague Lord Griffiths mentioned earlier the Council of Europe. Have you yet had an opportunity to go to the European Court of Human Rights in Strasbourg?

Baroness Carr of Walton-on-the-Hill: Yes, I was there. I cannot remember what month it was, but I am going to go for March 2023. I had a fantastic visit.

Lord Foulkes of Cumnock: Are the relations between the legal system in England and Wales and the European Court of Human Rights very good?

Baroness Carr of Walton-on-the-Hill: Yes, they are extremely good. We always send out a delegation to the opening of the legal year. I had an extremely enjoyable, quite intense—it was hard work—full day's engagement with presentations and discussion of legal topics in an entirely appropriate way.

Lord Foulkes of Cumnock: It is a very impressive court. I had the opportunity of visiting it.

Baroness Carr of Walton-on-the-Hill: It is beautiful. If you read my annual report, which I promise you is an excellent read—in Welsh—you will see a very nice picture of me in Strasbourg with the President and my good colleague the Lady Chief Justice of Northern Ireland.

The Chair: Lady Chief Justice, thank you very much indeed for taking the trouble to answer our questions. I am now going to draw the public session to a close.