



Constitution Committee

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

Wednesday 4 June 2025

10:30 am

Watch the meeting

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

Evidence Session No. 1

Heard in Public

Questions 1 - 11

Witnesses

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

Examination of witnesses

Lord Reed of Allermuir and Lord Hodge.

Q1 The Chair: Welcome to this annual public evidence session of the House of Lords Constitution Committee. Today we are hearing from Lord Reed of Allermuir, the President of the Supreme Court, and Lord Hodge, the Deputy President of the Supreme Court. Thank you both for coming today. We have some questions for you, but I think that you would like to make an initial statement about the work of the Court. We would very much like to hear from you, Lord Reed.

Lord Reed of Allermuir: Thank you very much, Lord Strathclyde. We are grateful to the committee for this opportunity to tell you about our work, and indeed to tell the wider public who are watching online, and to answer your questions.

I would like to begin by saying something about the Court's judicial work, which of course is our reason for existing and our primary responsibility. We have heard a wide range of cases since we saw you last year. The most important, from a commercial and business perspective, is what we call the car finance case, which we heard in April¹. The Court of Appeal decided that when a bank pays commission to a car dealership for arranging credit for the purchaser of a car, that is a bribe, which the purchaser can recover from the bank. The banks' liabilities, as a result of the decision, are said to be around £30 billion. The decision has wider implications for other purchases that are made on credit, where a commission is paid to the seller. We are hoping to give judgment in that case before the end of next month.

Other important cases in the Court over the last year have concerned the liability of water utilities for polluting watercourses with sewage², the use of injunctions to prevent the naming of doctors involved in controversial medical cases³, the correct method of assessing the environmental impact of developments⁴, the imposition of sanctions in connection with the war in Ukraine⁵, the liability of company directors for wrongs committed by their companies⁶, and the lawfulness of camping on

¹ [Hopcraft and another \(Respondents\) v Close Brothers Limited \(Appellant\); Johnson \(Respondent\) v FirstRand Bank Limited \(London Branch\) t/a MotoNovo Finance \(Appellant\) UKSC/2024/0158](#); [Wrench \(Respondent\) v FirstRand Bank Limited \(London Branch\) t/a MotoNovo Finance \(Appellant\)](#)

² [The Manchester Ship Canal Company Ltd \(Appellant\) v United Utilities Water Ltd \(Respondent\) No 2](#)

³ [Abbasi and another \(Respondents\) v Newcastle upon Tyne Hospitals NHS Foundation Trust \(Appellant\); Haastrup \(Respondent\) v King's College Hospital NHS Foundation Trust \(Appellant\)](#)

⁴ [R \(on the application of Finch on behalf of the Weald Action Group\) v Surrey County Council and others](#)

⁵ [Shvidler \(Appellant\) v Secretary of State for Foreign, Commonwealth and Development Affairs \(Respondent\); Dalston Projects Ltd and others \(Appellants\) v Secretary of State for Transport \(Respondent\); UniCredit Bank GmbH \(Respondent\) v RusChemAlliance LLC \(Appellant\)](#)

Dartmoor⁷. I could give many examples, but perhaps I can finish by mentioning a case concerned with the interpretation of references to sex in the Equality Act 2010⁸. In the Privy Council, we have had some very interesting and important cases, including one concerned with the pressuring of a High Court judge to resign⁹, and another concerned with the rescue of a national bank¹⁰.

In addition to our judicial decisions, the most important achievement of the last year was the completion of a three-year programme to update our IT by establishing new websites for the Supreme Court and the Privy Council, and a new case management portal, which allows parties to cases in the Court to make their applications to us, file and serve documents, correspond with the Court and monitor the progress of their cases online. It is a state-of-the-art system and the user feedback since it was opened in January has been very positive. That project was completed on time and within budget.

We marked our 15th anniversary last year with events in Belfast, Cardiff, Glasgow and London, including an event in Parliament. The year was also notable for the appointment of two Caribbean judges to sit on the Privy Council. One of them, Dame Janice Pereira, has now sat with us several times, and the other, Sir Anthony Smellie, will be sitting with us later in the year.

We have seen quite a marked increase in the level of international interest in the Court in the past year, with visits almost every week by delegations of Justice Ministers and judges from around the world, and our judges being invited to go overseas to address judges in other jurisdictions. To give just one example, two weeks ago I was the keynote speaker at a conference of Chief Justices from 23 countries in Europe and Central and South America. I was asked to speak about efficient, transparent and inclusive justice. Those are the subjects that most countries are interested in. It is apparent that the UK is widely seen as a model of how to go about maintaining trust in the courts.

Finally, I should mention that Lord Hodge will be retiring from the Court at the end of this year, so this session is the last occasion on which he will give evidence.

The Chair: Thank you very much indeed for that. Given what you have just said, does Lord Hodge wish to add anything to the opening statement?

⁶ [Lifestyle Equities C.V. and another \(Appellants\) v Ahmed and another \(Respondents\); Rukhadze and others \(Appellants\) v Recovery Partners GP Ltd and another \(Respondents\)](#)

⁷ [Darwall and another \(Appellants\) v Dartmoor National Park Authority \(Respondent\)](#)

⁸ [For Women Scotland Ltd \(Appellant\) v The Scottish Ministers \(Respondent\)](#)

⁹ [Marcia Ayers-Caesar \(Respondent\) v The Judicial and Legal Service Commission \(Appellant\) \(Trinidad and Tobago\)](#)

¹⁰ [National Bank of Anguilla \(Private Banking and Trust\) Ltd \(in Administration\) and another \(Appellants\) v Chief Minister of Anguilla and 3 others \(Respondents\) \(Anguilla\)](#)

Lord Hodge: Not at this stage, thank you.

Q2 The Chair: Okay. Thank you very much for pre-empting many of our questions and for laying out what the Supreme Court is doing and has done over the last year, and the wide variety of work that you have been able to carry out. The question I would like to ask follows from what you said. In the past you have said that the Supreme Court's role is "to give effect to the law enacted by Parliament". Do you think that law enacted by Parliament can contravene the rule of law? The context is the committee's inquiry on the rule of law, and I am interested in what you have to say.

Lord Reed of Allermuir: In principle, I think the answer is yes. The fact that something is permitted by legislation does not necessarily mean that it is compatible with the rule of law. For example, in Nazi Germany the persecution of the Jews was authorised by antisemitic legislation. If you think about life in Honecker's East Germany, they were punctilious about the law, but individuals had very few meaningful rights and were at the mercy of a despotic regime. If that counts as the rule of law, it is not worth bothering about.

In this country, the example that is given to law students of a statute that may have been in breach of the rule of law is the War Damage Act 1965. It is an interesting example. During the Second World War the Crown deliberately destroyed a lot of property of British individuals or businesses, to prevent its falling into the hands of the enemy. An example was the bombing by the RAF of oilfields in Burma that belonged to the Burmah Oil Company, a British company. Burmah then sued the Government for compensation and the case came to the appellate House of Lords, which held that there was a long-established right to compensation when your property is destroyed by the Crown in the public interest. It upheld Burmah's right to compensation. Parliament responded by passing the War Damage Act, which retrospectively deprived anyone who had a right to compensation of that right. I should add that the Government delayed giving effect to the individual right of application to the European Court of Human Rights until 1966, to prevent the making of an application to Strasbourg.

Clearly, retrospectively taking away a right that was vested in people is something that most people would regard as contrary to the rule of law. The Government proposed the legislation, and Parliament approved it, because at the time, in 1965, the country was facing an economic crisis. There was a balance of payments crisis. The potential liabilities of the Government for the war damage were colossal, so the view was taken that in the economic interest of the country the legislation had to be passed. That illustrates, I think, both that a statute may contravene the rule of law and that the rule of law is an important value, but that Parliament may assess that it has been outweighed by another important value.

The Chair: Thank you very much for that explanation. To take it a bit further, I think you are saying that if Parliament were to pass a law that

some felt contravened the rule of law, and it was brought to the Supreme Court, you could decide on examination of the case that it broke some of the fundamental principles established in the concept of the rule of law. Is that right?

Lord Reed of Allermuir: No, that is not quite what I am saying. Traditionally, the Court's duty is simply to apply an Act of Parliament. The only modification of that by the Human Rights Act is to enable the courts to make a declaration, if they think it appropriate, that the Act is incompatible with the convention rights. Nowadays, if something like the War Damage Act came in front of us, we would have to consider whether it was compatible with convention rights. If not, we could make a declaration to that effect, but we would still have to give effect to the Act of Parliament.

The Chair: Yes, I see. In that sort of hierarchy of things, parliamentary sovereignty is therefore the most important thing.

Lord Reed of Allermuir: Exactly.

The Chair: Thank you.

Q3 **Lord Beith:** Last year you told us you had met senior civil servants to discuss rule of law issues. Has that work continued? Was it done with policy civil servants or those drafting legislation, or both?

Lord Reed of Allermuir: Both, but mainly with policy civil servants. It takes a number of forms. One is that I invite speakers to come and address the Justices and engage in discussion with them on a regular basis. Those speakers, over the last year, have included the head of the parliamentary drafting department—that was a very interesting discussion—and Daniel Greenberg, who I think will be known to you. He is a former senior draftsman but now has other responsibilities in Parliament. We also had what was, I think, for my colleagues, a very illuminating session with the Permanent Secretary at the Ministry of Justice, who explained to us all the pressures that the department is under, and how decisions are taken about priorities. I think we all found that a very interesting discussion.

More generally, we engage regularly and closely with two departments in particular: the Foreign Office, or FCDO, and the Ministry of Justice. With the FCDO there is a range of engagements, one of which is arranging events together. For example, we are holding an event at the Court this evening, supported by the FCDO, about developments in international law. The FCDO supports our international work. It has a judicial diplomacy team now, and that supports us during some of our visits. The visit two weeks ago that I mentioned, when I addressed a range of jurisdictions, was in the Dominican Republic, so I met the ambassador before I did anything else, to be briefed on the situation there and learn what I needed to know. That is now quite common when we go overseas. We also get briefings when parties come to us from overseas. For

example, we recently had briefings on visits by delegations from Indonesia, Montenegro and Turkey.

The FCDO has provided funding support for some visits that we have undertaken. For example, Lord Hodge went recently to Brunei and that was funded by the Foreign Office. It is supporting us in hosting a visit by a delegation from the United States later in the year. It also funds agencies with which we work. For example, I have personally done quite a lot of work over the years in the Balkans, helping to build judicial capacity in Bosnia-Herzegovina and Croatia. Currently we are working with Montenegro. That work is co-ordinated by a charity called AIRE, which is funded mainly by the Foreign Office.

We hold sessions for Foreign Office officials at the Court—particularly to do with the Privy Council—to raise their awareness of what the JCPC does. For example, we have had sessions recently for desk officers who work on the jurisdictions for which we are the Court.

On the Ministry of Justice (MoJ), I will mention three things in particular. One is the appointment of the Caribbean judges to sit with us, which was the result of work with the MoJ. The department was supportive of what I wanted to do. Secondly, a concordat governs the relationships between the Lord Chancellor, me and our Chief Executive, in relation to the administration of the Supreme Court. It has to be renegotiated from time to time, which was done over the past year without any particular difficulties, because, I think, of the relationship that we have built up. Currently, an issue has arisen about the arrangements for obtaining visas for lawyers who appear in the JCPC—coming perhaps from Jamaica or Trinidad and Tobago. We are working with the MoJ on that matter. Those are some examples.

There is one other thing I should mention. We have had to work quite closely over the last year with Treasury officials over various spending reviews, and I was very pleased that they sent officials to spend time at the Court, watching what our people do and learning more about how the Court operates. That was very welcome.

Lord Beith: It is good to hear that you are getting good co-operation in many areas, including especially the outreach work, for which the Supreme Court should be commended as it seeks to spread the values on which it is based into countries where there is much more legal uncertainty.

If I can turn your attention in this context to the written statement that you gave us, I am intrigued to know whether this is an area in which you have had useful discussions. You say, in the context of the rule of law, that “laws should be publicly available to everyone who may be affected by them (this may seem obvious, but the requirement has not always been met in relation to delegated legislation)”. Would you like to amplify that? Have you had any useful discussion on the subject with those who draft what, in your description, would be defective instruments?

Lord Reed of Allermuir: I had in mind actually the report of the Delegated Legislation Committee on the delegated legislation that was promulgated to deal with Covid. There were occasions then when the legislation was brought into force before it had been published, which is an evident breach of rule of law principles. One appreciates, and the committee acknowledged, that people were working under exceptional pressures at the time. It is not a matter that we have pursued with the departmental lawyers who would have been drafting that legislation—I suppose in the Department of Health, with which we do not have any dealings.

The Chair: Lady Hamwee, I think you have a question.

Baroness Hamwee: Thank you for all of that. We are all aware of the value of the legal system in this country, and its use by overseas organisations. You sound like really good ambassadors, and I wondered whether you had any relationship with the Department for Business and Trade or its predecessors.

Lord Reed of Allermuir: I have had one dealing with the business department when the former Secretary of State asked to have a meeting with me, to inform herself about the work of the Court in relation to business and trade. I had such a meeting with her, and it was a useful exercise. We have not had further dealings with the department since then.

Q4 **Lord Anderson of Ipswich:** I declare an interest, as a member of the Bar of England and Wales. Thank you, Lord Reed, for your extraordinarily lucid submission on the rule of law, which I hope will closely inform this committee's deliberation on that subject. If the Chair permits, I have two questions on slightly knotty elements of that subject that are not expressly addressed in your submission.

The first is international law. This committee wrote, in 2023, "adherence to the rule of law includes compliance by the state with its international law obligations". We, or our predecessors, also wrote, "the responsibility of the Government to honour the state's international obligations requires it to refrain from inviting Parliament to legislate knowingly contrary to the UK's international obligations". Were we right or were we wrong?

Lord Reed of Allermuir: I do not think that there is a legally correct definition of the rule of law in the abstract, but as is probably clear from what I said in my evidence, I was thinking very much about the rule of law as a principle of the British constitution, which could be traced back historically quite a long way. I suppose it is probably in that sense that Parliament has used the expression in legislation, in the Constitutional Reform Act 2005.

If you are trying to give content to the expression, in the context of the UK constitution, the foremost principle of that constitution, as we mentioned earlier, is an exceptional degree of priority given to the democratic principle, expressed in the form of the doctrine of

parliamentary sovereignty. The more you build into the doctrine of the rule of law, the more scope there is for conflict between that principle and the principle of parliamentary sovereignty.

I do not, obviously, underrate the value of, for example, a rules-based international order, or of a Government's complying with the obligations that they have undertaken at the international level, or for that matter, adherence to fundamental human rights; but it is not necessary to pack all those values into the concept of the rule of law. The problem if you do is that you are much more likely to find that the rule of law conflicts with parliamentary sovereignty. The result will be, I think, to devalue the idea of the rule of law.

I have preferred to adopt a conception of the rule of law that reflects some human rights values and has a firm basis in our own constitutional history as essentially meaning the absence of arbitrary government: government according to law, with independent courts to which citizens have access, in order to ensure that government remains government according to law. Viewing the rule of law in that way, it can live very comfortably with parliamentary sovereignty. The last example that students are given of a conflict is 60 years ago—the example that I gave earlier.

Lord Anderson of Ipswich: If I may follow up on that, with specific reference to human rights, you say in paragraph 4 of your submission, "Put simply, the rule of law means the protection of everyone in our society against interferences with their rights without lawful authority. It means that no one can interfere with a person's home, their family, their property or their liberty without lawful authority".

Of course, the principle of the rule of law long predates our adherence to the European Convention on Human Rights. In cases where there is an interference with, for example, freedom of expression, private life, property, or any of the other fundamental rights, the European convention requires that the interference must be in accordance with the law or prescribed by law.

Do I correctly understand your position to be that such requirements, whether you derive them from the European convention or the common law, are requirements of the rule of law, along perhaps with some other elements of the convention, such as non-retrospectivity, which you have referred to, and access to court, which I am sure we will come on to; but although the requirement, which we know from the convention, that interferences be necessary and proportionate and so on in a democratic society may be the law, and may be very desirable things, you would not assert that they are themselves components of the rule of law?

Lord Reed of Allermuir: Yes, that is exactly right.

Lord Anderson of Ipswich: Thank you.

Q5 **Baroness Laing of Elderslie:** Carrying on the discussion of the point

about the twin pillars, it was very helpful to have your written evidence and to have that so well explained before this morning. As you mentioned, you said that the rule of law and parliamentary sovereignty should be understood as twin pillars of our constitution, rather than being in conflict with one another. We have discussed before the level of ignorance of the law and the principles of the constitution among parliamentarians, which might lead to some perceived conflict or possible conflict. Could you tell us something about the work that you have done since the last general election with new Members of Parliament? Lord Griffiths will be happy to note that the vast majority of new Members of Parliament are not lawyers.

Lord Griffiths of Burry Port: I thought you were going to say they were Welsh.

Baroness Laing of Elderslie: A few of them are Welsh, too. We have to appreciate that not everybody who becomes a parliamentarian has at their fingertips the sort of principles that we are talking about. I was very impressed to see the publication on Parliament and the UK justice system. Are you getting a good response from Members of Parliament and indeed Members of this House to your outreach work?

Lord Reed of Allermuir: Yes, there has been a positive response. Perhaps I might say a bit more about the outreach work that we have been doing, as not everyone is wholly aware of it. As you mentioned, the Court prepared a leaflet for new MPs about the legal system and the relationship between the courts and Parliament. We did that working very closely with the Speaker of the House of Commons, who was very supportive. The leaflet was included in the induction pack of every new MP. They were also all given a video, a short film that the Speaker, our Chief Executive and I made about the rule of law and the role of Parliament in protecting the rule of law.

The Chief Executive and I were invited by the Speaker to a reception that he held for all new MPs, to give us a chance to meet and talk to them and invite them to the Court. We wrote to every one of them inviting them to visit. We held an event in Parliament, in Portcullis House, as part of our 15th anniversary events, which was well attended by MPs and MPs' staff, where we gave a short presentation about the Court, and then spent most of the evening answering their questions. As you would expect, there were very varying levels of knowledge about the Court, but it was a useful exercise. You may remember that last year when we appeared before you the possibility was raised of us being invited to speak to groups of Peers. I received an invitation from Cross-Bench Peers, which I accepted, and I think some of you were at that meeting when I spoke about the work of the Court and answered Peers' questions.

In response to our invitation to MPs, we have had MPs visiting since January this year; the numbers have not been as high as I would have hoped, but there has been a steady trickle. We are going to welcome next week a group of about 20 MPs from all parties for a visit organised in collaboration with the Industry and Parliament Trust. We have hosted

the House of Commons Justice Committee three times, most recently just a few weeks ago, and each occasion has been a successful visit. The chair of the committee wrote to me last week that members found the conversations insightful and constructive and valued the opportunity to engage with the Justices. We recently had an event at which we welcomed the members of this committee at the Court.

We have tried to engage beyond Westminster. In November, Lord Stephens, our Northern Irish justice, and I went to Belfast, and we had meetings with members of the Justice Committee of the Northern Ireland Assembly and with the Speaker of the Assembly. That is what we have been doing by way of outreach. People tell us that it is helpful, and we certainly have the impression that these events are successful. I would like to get more MPs taking part, but we appreciate that they have other calls on their time. We find that we sometimes arrange events, and then there turns out to be a crucial vote and they have to cry off.

Baroness Hamwee: Chair, could I say that yesterday I met a group of students from my old school? They had been to the Court in the morning and were full of enthusiasm about what they had picked up.

Lord Reed of Allermuir: I am pleased to hear that.

The Chair: Very good. Can we turn to the question of court backlogs?

Q6 **Baroness Andrews:** Good morning. It is very good to see you again. Throughout our inquiry on the rule of law, there has been a recurring theme of backlogs and the impact that they have on people's lives. Lady Chief Justice Carr talked about the thousands of people stuck on remand, perhaps for years at a time. We have had people representing advocacy groups, professional groups of lawyers, and people from the CAB who are at the sharp end of people's real anxiety about how to get access to justice. There has been real anxiety about delays at all levels of the courts system. Does it impact directly on your work? What have you been trying to do indirectly or maybe directly to address it?

Lord Reed of Allermuir: Perhaps I could invite Lord Hodge to reply to this question.

Lord Hodge: Thank you. The Court itself does not have a backlog of cases, and did not have a backlog of cases because of the Covid pandemic. That was because, in advance of the first lockdown, our small IT department set up the remote hearing system for us to use. I had the pleasure of presiding over the first remote hearing the day after the then Prime Minister locked the country down on 23 March 2020. We have not had that problem.

Sometimes the hearing of a case may be delayed because of the unavailability of a counsel who has been dealing with the case for a long period, and on occasions we accommodate that to allow a party to be represented by someone very familiar with the subject matter. It is rarely delayed because we can never hear a case. We have heard cases urgently in the past when that was necessary: for example, the two

Brexit cases raised by Gina Miller¹¹, the business interruption insurance case arising out of the Covid claims¹², and more recently the Rwanda judgment¹³, which was handed down within a month of the hearing. We have the practice of trying to keep clear the final week of a court term to fit in urgent cases if they are needed. In fact, we are still free to hear a case in the last week of July should an emergency arise.

I am aware that the Court was criticised by the Banner review. Lord Banner recommended that the Court introduce target timescales for the determination of permission to appeal applications in judicial review cases concerning development consent orders for nationally significant infrastructure projects, NSIPs. With respect, that suggestion was misinformed; the review did not consult us and got the facts wrong. Lord Reed responded to the report, explaining our permission to appeal system and set out how we deal with applications that need expedition. He also corrected the record refuting the allegation of a long turnaround of permission to appeal applications in NSIP cases, showing that they were dealt with on average within 11 weeks. The report's recommendation was based on anecdotal evidence that, with respect, did not withstand scrutiny. We tend to process our permission to appeal applications on average within 12 weeks of receipt of the application.

For the Court itself, we do not have a backlog problem. We appreciate that there is a wider problem in the justice system. I do not think we have the resources to do much about that ourselves. All we can do is make sure that we deal with our cases in a prompt and efficient way. The reason we have not had a backlog, of course, is the filter by which applicants have to apply for permission to appeal to us and have to meet a strict criterion in order for the Court to give permission to appeal.

Baroness Andrews: Thank you very much. Can I pursue two questions on that? Given the levels of anxiety that have been made very clear to us as a committee, resource notwithstanding, do you have locus to be advocates in terms of the capacity of the courts system to actually be developed? Lady Carr talked about optimising the use of court space and court time and so on. That was one question that she would like to pursue.

On the other, if I might ask Lord Reed specifically, in your very helpful evidence you triage, in a way, the threats to the rule of law. The evidence we have had has made it consistently clear that people see access to justice, however described, as a fundamental and explicit part of their understanding of access. You describe a series of threats as potential

¹¹ [R \(on the application of Miller\) \(Appellant\) v The Prime Minister \(Respondent\); Cherry and others \(Respondents\) v Advocate General for Scotland \(Appellant\) \(Scotland\); R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\);](#)

¹² [Financial Conduct Authority \(Appellant\) v Arch Insurance \(UK\) Ltd and others \(Respondents\)](#)

¹³ [R \(on the application of AAA and others\) \(Respondents/Cross Appellants\) v Secretary of State for the Home Department \(Appellant/Cross Respondent\)](#)

threats. One is resourcing, which I can understand. The other is barriers to access to justice, including the cost of legal services. There is a case for saying that that is a real threat. Why is it in that bracket? They are two not entirely related questions.

Lord Reed of Allermuir: On the first issue, do I have a locus? I do not really. Obviously, I share everyone's concern about the deplorable delays not only in the criminal courts, which are the ones that tend to get the most attention, but in county courts where there are equally serious delays. You will appreciate that those matters lie within the responsibility, so far as judges are concerned, of the Lady Chief Justice. They are not my responsibility. It is not really for me to go complaining to Ministers or calling for more public expenditure. Of course, I am happy to add my voice to that of the Lady Chief Justice in saying what a serious problem there is. The difficulty is that when, for example, we have the Permanent Secretary from the MoJ coming to talk to us and she explains what the financial pressures are and what the state of the prisons is, Ministers are in a very difficult position in deciding what to prioritise, as I dare say Lord Bellamy will know better than I do. It is not really a matter for me to campaign about.

There is no doubt that not only the underresourcing of the lower courts but the sheer cost of access to the courts can be a barrier to access to justice. A lot has been done in different ways to address, effectively, the withdrawal of legal aid. The problem has been addressed to some extent by the alternative ways of funding litigation where, effectively, the lawyers are paid if they are successful. Then there are the very large claims that are brought as group claims. The car finance case is an example. You can hardly go on YouTube these days without someone offering to sign you up to make a claim. That is on the basis that a hedge fund or somebody of the kind will finance the bringing of a claim and there will then be a distribution at the end of the day among the people who have joined in the claim of whatever they recover.

There are alternative ways of resourcing litigation, but a lot of cases fall in the gaps, such as family law, because there is no commercial end result, and therefore alternative ways of funding do not apply. The courts find themselves with a large number of litigants in person who take much longer to deal with because they do not have professional knowledge or experience. There it is. It is a difficult problem.

Baroness Andrews: On the access to justice point, do you think there is an argument for placing that as an actual threat rather than a potential threat?

Lord Reed of Allermuir: I see what you mean.

Baroness Andrews: It is just the way it was presented in your argument.

Lord Reed of Allermuir: Yes, in some areas of practice, it is an actual threat. If you are a rape complainant and the trial is fixed for 2028, either

you have a terrible strain hanging over you for years or you decide that it is not worth it, and you just give up.

Lord Hodge: We are acutely aware of the access to justice issue. In our outreach work presenting the UK as a rule of law society, we are also aware that if the problem persists it weakens our sell of the UK as a successful rule of law society. In the commercial sphere, people get a very excellent service in the courts of England and Wales and more widely in the United Kingdom because there is the money to fund the litigation. The real problems are the claims where there is not the group funding of which Lord Reed speaks—family claims, housing claims and things like that. All we can do is speak out in our extrajudicial lectures to warn of the real threat to access to justice and its wider impact on the UK's reputation.

Baroness Andrews: Is it ever raised when you meet your international counterparts?

Lord Hodge: No.

Baroness Andrews: It is never raised as a reputational issue?

Lord Hodge: I have not had it.

Lord Reed of Allermuir: I had it raised two weeks ago. It was not being raised with me as a reputational issue, but it turned into one. I was being asked about how we do various things, and everybody was very impressed when I told them. Then they asked me, "How is criminal justice being dealt with in your courts?" I explained that there were problems with long backlogs, and people were very surprised to hear that. In fact, the President of the Constitutional Court said, "I'm very surprised to hear that because we regard the United Kingdom as a model".

Lord Hodge: There is a real danger to Britain's reputation internationally if these problems are not tackled. Neither Lord Reed nor I have any official locus beyond what we can say in lectures and things of that nature.

Baroness Andrews: Thank you very much.

The Chair: Lord Bellamy, you have a question.

Lord Bellamy: We have covered the point. I was going to suggest that the effect on the UK's reputation internationally has really been felt. We are now viewed in a less favourable light than perhaps we would have been a few years ago.

Lord Reed of Allermuir: Yes.

The Chair: I turn to Lord Murphy, who is going to speak about an old issue of judicial activism that affects us all.

Q7 **Lord Murphy of Torfaen:** Thank you very much indeed. You mentioned,

Lord Reed, at the beginning of this session the very impressive list of cases and judgments that you have dealt with over the last year, some of them occasionally entering public controversy, inevitably because of the nature of the cases you look at. However, last year when you visited this committee—I was not a member then—you also said that “some people have the impression that the Court is activist”. Do you think that is still the case? If so, how do you respond to that impression?

Lord Reed of Allermuir: We have heard a good deal less of that kind of criticism in the media at any rate and in politics over the last year. Attention has shifted. The lower courts and tribunals, particularly those dealing with asylum and immigration and criminal sentencing, have been the focus of criticism rather than us, on the whole.

I still encounter the suggestion of activism sometimes when I meet politicians; for example, a Peer discussed a case with me, and it became apparent that he did not realise that legislation is not the only form of law. He was concerned about a case to do with common law where the Court had developed the common law. So, now, as when I had the Justice Committee at the Court a few weeks ago, I begin any tour of the Court by showing them some law books so that they can see that, for every proposition, there are cases cited as authority. About half the library is collections of cases decided in the past—the judgments. When you look at them, you see that those judgments are themselves analyses of previous judgments. I show them a collection of cases from the reign of Elizabeth I so that they can see that judges have been doing this for at least 500 years. You have to get the message over that this is actually a legitimate part and, in fact, an important aspect of the role of our Court.

As you say, given the nature of the work we do, there is inevitably controversy about some of our decisions. We have to live with that. It is perfectly proper in a democracy. There will be different views, and people are free to express them. What we do to try to avoid accusations of activism in the first place is to write our judgments in a measured way rather than using emotive language. There was a very highly respected Australian Chief Justice whose mantra was essentially that boring is good. We write them in an unemotional way. We try to explain them as clearly as we can to the public.

In the case about the Equality Act, Lord Hodge, if I may say so, gave a very clear explanation of it to camera. We were assisted by our communications team to make that summary very clear. One of the pieces of advice that they have given us is to include a sentence that can be used in television news and on radio news. This will be familiar enough to any of you who are in politics, but it comes as news to judges that you need to have soundbites. We learn. The professional assistance that we get from our communications team is very useful, and we hope that we explain very clearly what we are doing. Lord Hodge in that summary said: “It is not the task of this Court to make policy ... Our role is to ascertain the meaning of the legislation which Parliament has enacted”. We try to get that message over as clearly as we can.

Lord Murphy of Torfaen: That is very useful. Thanks very much.

Lord Waldegrave of North Hill: I hope you do not think this a mischievous question. In his Reith lecture of 2019, Jonathan Sumption said that the kind of activism that he disliked was growing and was particularly common in human rights law. When he gave evidence to us the other day, he said that the situation had immeasurably improved. I wondered who deserved the credit for that and whether you think he is right.

Lord Reed of Allermuir: There may be a combination. The Strasbourg court went through what might be regarded as an activist period around about 2005. I sat there at the time in a number of cases. There was divergence of views within the court at the time about the appropriateness of how far it should be going. It was reflected in judgments; they were very narrowly decided cases. The case about electoral law in the UK and prisoners voting was a good example. That was a knife-edge decision in Strasbourg. At the end of the day, there was a change in President, with the leader of the more conservative party, a very distinguished French judge, becoming the President, and the court began to behave in a more restrained way.

At the same time, outside the court, national Governments were keen to promote an approach that paid more attention to subsidiarity, and that went through the Interlaken process, then the Brighton declaration and eventually a protocol to the convention. That court's practice has definitely become more restrained, as I say, partly for endogenous reasons and partly exogenous. On our Court, there have been changes in judicial personnel over the years. I do not think the prevailing view has changed very much, but there were judges on the Court in the past who took a more expansive view of the Court's constitutional function than is certainly the prevailing view at the moment.

Lord Waldegrave of North Hill: It means, of course—it is inevitable—that who is on the Court and who is appointed to the Court and what their views are matters.

Lord Reed of Allermuir: Yes. When we go through the appointments process, we always ask the Lord Chancellor if he or she wants to make any comments to guide the selection commission. The point that they virtually always make is that they are keen to see Justices appointed who have a good understanding of the constitutional relationships between the Court and Parliament and the Government, as well as relationships with the devolved Administrations.

Lord Anderson of Ipswich: You made the point that Parliament is not the only source of law in this country and that there are still huge areas of law that are, effectively, judge-made law or common law. Going back to the rule of law, you say, and many others have said, when speaking to Parliament and what it can do about the rule of law, that laws should normally be prospective rather than retrospective. I hope we, on the whole, try to do our best to honour that. Of course, the common law is

retrospective. The fiction at least is that it declares the law as it has always been, so there is a presumption of retrospectivity. We are all aware of cases in which courts—even senior courts—have sometimes interpreted the law retrospectively in ways that people find surprising, unusual and unexpected. Is there a tension between the operation of the common law and the rule of law? What do the judges do to try to resolve that tension?

Lord Reed of Allermuir: There is a potential tension. We try to address it in two ways. One is that we are very clear that the common law develops incrementally. Lord Bingham once said that the common law scores its runs in singles and does not hit sixes, which is quite a good way of putting it. We progress in small steps. There are occasionally judges who are more ambitious. Certainly, I try to maintain an incremental approach in the Supreme Court. If you do that, first, there will not be major changes, and, secondly, they are unlikely to come out of a clear blue sky. Usually, you can find academic criticism of the existing law, or there may have been criticism in earlier cases such as, “We are bound to follow this, but we do so with misgivings”, and that kind of comment.

The other constraint is the doctrine of precedent. Courts are bound to follow the guidance given to them by higher courts. The Supreme Court itself will rarely depart from its previous decisions. In deciding whether we will, we give very heavy weight to the effect on legal certainty. If insurance policies have been written or other contracts entered into in reliance on the existing law, we are unlikely to change it. We quite often say, “There’s much to be said for reform here, but this is not going to be for the courts. We should leave this to Parliament”. I am afraid we are called judges for a reason; we have to exercise judgment. We try to do it in a way that preserves legal certainty while still allowing the law to move on as society moves on.

Lord Griffiths of Burry Port: I want to thank you for giving us the opportunity to read your essay. I have to say that your use of the word “modest” as applying to you and the position you try to take is borne out by the judicious way that you have regaled us with your answers today. You talk at one stage in it about all the factors and the role of institutions other than simply the courts. You talk about the police, about organisations and about the role of the public. You do not add in there—and I missed it—the press. Certainly under “threats” you talk about what can go wrong with certain aspects of the press. The press, properly formed, should be playing a role.

Lord Reed of Allermuir: You are quite right; that was an omission of mine.

Lord Griffiths of Burry Port: Well, that gives me the courage to say—

Lord Reed of Allermuir: I certainly do not underestimate the importance of a free press to preserving the rule of law. It is vital.

Lord Griffiths of Burry Port: I am from a religious background. Once upon a time we used to have religious correspondents, and they knew about religion. We used to have legal correspondents. We had Joshua Rozenberg here last week reminding us of what once was the norm. Now we have people writing about legal things and about religious things who do not have a clue, and they distort while feeling that they have it right. It is not deliberate misinformation; it is simply people who do not have a clue. I read the essay. If I were in an old role of mine giving you a rating for it, you would get an A+, but because of the omission of the press thing you did not get the second "plus".

My discipline is literary criticism. Applying the criteria of literary criticism, I detected in the essay, for all its moderation, that there is a passionate man behind the words that he has put forward who feels very strongly about the case he is making, and indeed a touch angry about some of the things that could pervert and disturb the situation he is describing. We are not used to Scottish people showing their emotion on their sleeves. The Welsh have no such inhibitions, I should say. For all the successes that you have registered, for all the outreach that we have heard about, and for all the fact that you are not directly affected by backlogs and things like that, as courts in other places are, you have a feeling that our justice system and our criminal law system as a whole is a bit fragile and vulnerable right now.

Lord Reed of Allermuir: I would not go quite that far, but I do feel that we have something that is immensely precious and that has taken a very long time to develop. There are risks in the current environment, some of which are novel and need to be taken seriously. When one sees the sort of social media posts that resulted in rioting last summer in the Midlands and the north of England, one sees the power of misinformation, and it is very difficult for judges to do anything to combat that. It is very important that it should be combated, and that is one of the reasons why I am keen for the Court to do all it can to assist the media and politicians to understand what we have and how valuable it is, as they are much more influential than we can hope to be in affecting public opinion.

When I was at the conference a couple of weeks ago, I learnt that the Mexican judiciary were all about to be sacked. They have now all been sacked, and they all have to stand for election. The Bolivian Chief Justice was there. His country had gone through the same process in December, and he talked about the problems that they were now experiencing as a result of having an entirely elected judiciary. We see similar pressures on an independent judiciary in many countries in the world, including some long-established democracies. One cannot take for granted what we have. We are more than ever being seen as the gold standard by other countries, but people here do not often realise that we are exceptional, and we have something that is exceptionally precious. My colleagues, our staff and I are all dedicated to trying to preserve that as best we possibly can. I do not want to sound alarmist. We do not see in this country the threats to democracy that we are seeing in many other countries, but we cannot be complacent.

Lord Griffiths of Burry Port: I go to Strasbourg as part of the delegation from here, and I am aware of the varying pressures that are put on the court and the forming of policy within the parliamentary assembly by recent political developments. When I go in a couple of weeks' time, we will have to cope with the fact that Poland has had an election. In addition, yesterday we received a delegation from Georgia, where there are very tenuous things happening, and Romania. Let us not think that is the whole list. Within a policy-making body like that, which is so dependent on such a variety of electoral results and formation of political culture, it is quite easy to see how we have become the gold standard and how difficult it is to swallow, therefore, the allegations by some politicians here that it is a foreign court and that we see politicised positions established by our judges. We simply have to defend the citadel, do we not?

Lord Reed of Allermuir: I want to be quite clear that my concern is not about our politicians. My concern is, essentially, that we are seeing, particularly in social media, the abandonment of any commitment to accuracy. Fact checking is regarded as an infringement of freedom of speech. Young people nowadays tend not to read newspapers or watch the BBC news. They get their information from social media. If it is as wild and inaccurate as some of it is, there is a risk that public opinion can be distorted as a result.

Lord Griffiths of Burry Port: Thank you. I am sorry that I wandered from the path, Chair.

The Chair: That is absolutely fine.

Q8 **Lord Bellamy:** That discussion takes us on to the general problem—it is not specific to courts; it affects Parliament as well—as to how we convey to the general public an understanding of what you do. In some ways, with the decline of traditional media, who is there to explain your judgments? You do your best. We are very impressed by Lord Hodge's evidence on the soundbites and the way you handled the Equality Act case, but subsequent reporting and subsequent discussion on social media suggests there is still massive misunderstanding about that case. This committee is very preoccupied with the question—it is not for you to find the answer, but we would be interested in your views—of how we should tackle this misinformation, uninformed information, distorted information, incomplete information problem.

Lord Reed of Allermuir: I may be the wrong generation to answer the question.

Lord Bellamy: Likewise.

Lord Reed of Allermuir: I think of leading politicians as the people with the greatest ability to influence public debate, but I may be mistaken in that view.

Lord Bellamy: No one has so far come up with an answer. We need to accept that there is a very severe problem that is potentially a threat to

large parts of our system.

Lord Reed of Allermuir: Yes, absolutely.

The Chair: Lady Andrews, do you want to follow up on that?

Baroness Andrews: Very briefly. Lord Bellamy has put the question beautifully in context, apropos of the equality case, when Lady Hale said that it had been misinterpreted, and the degree of frustration, if I may presume, that you may feel, given the clarity with which you gave that judgment and the care that went into the choice of words. Is there any space at all for you to come back at any point in any forum and say, "Well, actually, the judgment said this. This is how we interpreted the law, which is what we were required to do"? Have you ever been able to do that on a case? Could you do that?

Lord Hodge: It would be quite difficult. We usually have to allow our judgments to speak for themselves. We have the judgment itself; we have the press summary, and we have the hand-down speech. I did the hand-down speech in the Equality Act case, and it was much longer than the normal hand-down speech. Normally, it is about five to eight minutes summarising a case. The press pointed out that I had taken 16 minutes to explain an 88-page judgment. It would be unwise for judges to come back into the fray once they have done those three things. We have to allow other people, including our communications department, to answer questions if the press raise questions with them. I do not follow what is said about the judgment on social media, but my children occasionally tell me about what they think are the more amusing portrayals of me on it.

The problem that Lord Reed has spoken about is a very acute problem. I have spent a lot of my time on the Court engaged in outreach work. Of course, we reach out to those who are willing to engage with us. The real problem is the people we cannot reach out to. It is a generational thing. We have to find a way of getting someone to make the young realise how inaccurate the debate on social media actually is. We need to find, societally, a respected verification process. BBC Verify is an excellent service, but, of course, you have to be looking at the BBC website to get it.

Baroness Andrews: You need to want to do it.

Lord Hodge: You have to want to find the facts. We need to find a way of encouraging young people not to rely on social media for their perception of reality.

Baroness Andrews: Could you do something with your communications department? Is there a case for a bigger, more robust communications department?

Lord Hodge: The Court has to be very careful not to enter what is seen as a political fray. I urge caution in the Court doing more than they do with the three steps—the judgment, the press release and the hand-down speech—otherwise we would be seen as advocating. We have said what

we needed to say in the judgment. Not many people are going to read 88 pages of quite tight legal reasoning, but the information is there in the press summary. It is there in the hand-down speech. If people want to find the answers, we have given it to them.

Lord Reed of Allermuir: It was a rather unusual situation when that decision was given. In most of our decisions, the implications are pretty clear. In the Prorogation case, Parliament was back sitting again. In the Rwanda case, the policy was unlawful. What we actually decided in the case about the Equality Act was quite a limited question, but there was a great deal of speculation about the wider implications of the decision. Those are matters that the EHRC is working on and will be publishing guidance on.

If we had tried to engage with the media in a more proactive way following the decision, they would have wanted to know what happens to sports clubs and what the position is in relation to toilets and so on. We would have to say, "We can't tell you because we haven't decided that, and we haven't been addressed on it". The answer is not immediately obvious from the decision. On the toilets issue, there is legislation that applies to employees which does not apply to non-employees, so the position is not necessarily the same for everybody. It is a complicated picture. We would not be able to give them the clarity that they were looking for because it would go beyond what we had actually been addressed on and decided.

Q9 Lord Burnett of Maldon: I declare an interest as a member of the supplementary panel of the Supreme Court. If we have time, I would like, in just a few minutes, to take you back to the developments that there have been in the Judicial Committee of the Privy Council.

Lord Reed, in your opening statement, you mentioned the appointment of two judges from the Caribbean to the Privy Council, something about which you spoke here in the past and publicly, and a process that took rather longer than you had both expected and hoped. It is striking that when one compares the Supreme Court composition with the Privy Council composition there are great efforts made to ensure that the Supreme Court has representatives from all parts of the United Kingdom. You mentioned Lord Stephens whose judicial career was in Northern Ireland. As Lord Griffiths pointed out, we have two Scottish judges before us today. That obviously is not the case with the Privy Council because the Privy Council is the final apex court for so many different jurisdictions. It might be thought that one of the things that particularly an apex court has to be sensitive to when deciding difficult questions that engage local conditions and social policy and so forth is that it has members who understand the differences between the different parts of the world.

First, how successful do you think the fresh appointments have been so far? You indicated that Dame Janice has been sitting, as I know, on a number of cases, and Sir Anthony will be soon. What are your plans for the future?

Lord Hodge: Dame Janice sat on three cases when she was in London. Since that visit in December 2024, she sat on a further four cases in March this year. She has taken part, when in London, in the educational work of the Court and things of that nature. My impression is that her appointment has been seen as a major success and was highly celebrated in the Caribbean. Sir Anthony Smellie was appointed in February this year, and we look forward to him sitting with us later in the year. It is a very good thing to be able to draw on people from the jurisdictions of the Privy Council. It is reverting to a practice that was the norm in the earlier part of the last century and in the 19th century.

As to the future, we want to be able to draw on, as appointees, distinguished retired judges where there are people who are interested and capable of helping us in that regard. We have drawn on a considerable number of Court of Appeal judges in England and Wales and Scottish judges to assist us with the Privy Council work. I am aware from having attended the Commonwealth Law Conference in Malta that one of the arguments against the Privy Council is its lack of understanding of regional, particularly Caribbean, social developments. As against that, there is an appreciation of the quality of the jurisprudence that is given and its wider international impact from the cases being decided in London.

I am very much in favour of the initiative. I hope with time that there will be further judges appointed from the countries that we represent. There are obviously economic constraints in the cost of flying people over to the United Kingdom, but we have been dealing with that with Dame Janice by her sitting remotely with the Court, and no doubt we can do that in the future. If there is to be a model, it will be having someone in London maybe for the first week and then helping us remotely thereafter.

The Chair: Time is getting short, and I would like to take two final questions.

Q10 **Baroness Laing of Elderslie:** Could I turn briefly to an aspect that, hopefully, is positive in the work that you do, namely the judicial and legal system of our country being a national economic asset? We know that a large proportion of international contracts include a prorogation of jurisdiction of English law, and this is sometimes described as an invisible export of our country and of great economic benefit. You said a few moments ago, Lord Reed, that what we have here is something that is precious, and indeed it is. Does the Supreme Court have a role in promoting this precious asset internationally?

Lord Hodge: Yes, we do. I suggest that there are four pillars to our work promoting the rule of law and promoting London's role in its maintenance. The pillars are: bilateral meetings with other apex courts; the involvement that the Court has in international networks; overseas international engagement both remotely and in person by Justices; and the hosting of visits and events here in London. I will deal very briefly with each in turn.

In the last year, we had a bilateral meeting with the Supreme Court of the Republic of Ireland in Dublin in October, and three Justices and the Chief Justices of the UK jurisdictions formed the delegation. In January this year, as Lord Reed mentioned, we had a meeting with the Swedish Supreme Court. That was an inward visit to London that four Justices took part in. In May this year, a delegation of four Justices, including Lord Reed and myself, went to the Supreme Court of Austria and the Hungarian Supreme Court, or Curia, where we discussed such things as judicial transparency, outreach, technology, access to justice, the working methods of the courts, and maintaining public confidence.

We are hosting a major United States delegation in October this year where there will be about 21 US delegates, including two serving Supreme Court Justices and two retired Supreme Court Justices. Given our limited budget, we have been dependent on, and are most grateful for, the assistance of the Foreign, Commonwealth and Development Office, the City of London and All Souls, Oxford for coming to our rescue to enable us to put together a package to interest that important United States delegation, which as well as having judges has a number of senior and significant legal figures coming over.

We have a bilateral with the Conseil d'État in Paris being set up for December and another with the Strasbourg court in London in February next year. We try to reach out to other jurisdictions to explain what we do and learn from them any good practices that we can adopt. We are involved in international networks. Lord Reed sits on the Network of the Presidents of the Supreme Judicial Courts. We are guest members of ACA-Europe, which is an association of supreme administrative jurisdictions in the EU. Both the United Kingdom and Switzerland are guests of that organisation. Lord Sales has worked for it for a number of years. Lord Hamblen is taking over responsibility for that work. Lord Lloyd-Jones attends the Bar European Group annual conference. As I mentioned, I went to the Commonwealth Lawyers Association and a Franco-British-Irish Judicial Cooperation Committee colloque in Edinburgh last June.

We have overseas engagement. Lord Reed was in Brazil in May last year at the J20 Summit of the Supreme and Constitutional Courts of the G20 countries. I spent five days in Brunei at the invitation of the Chief Justice in February this year, where interestingly I was asked to give lectures on the contribution of the rule of law to the United Kingdom's economic prosperity, the work of the Judicial Committee of the Privy Council on similar themes, and the development of the law of contract by the Supreme Court.

As well as having official meetings and some educational events, the choice of lectures that I was asked to give by our hosts in that case was interesting. Lord Reed went to Canada in April to celebrate the anniversary of the Canadian Supreme Court. I thought it was particularly significant that Lord Reed was invited to give the keynote speech at the

Ibero-American Judicial Summit, of which he has spoken, where he spoke on timely, accessible and inclusive justice.

We have depended very much on the support of government departments to fund these things, as they are how we try to promote the UK as a rule of law society and as a society that uses the rule of law to promote economic development. We host delegations, as Lord Reed said, of judges, lawyers and government officials from across the world to discuss questions relating to the law. We have had 34 inward international visits in the last year from a wide range of countries, such as the Dominican Republic, Indonesia, Brunei and Nepal, as well as from the ambassador of Vietnam, the judicial committee of the Ghanaian Parliament and the Montenegro Justice Minister.

We hosted an international public law conference in October last year, again in close co-operation with the Foreign Office. This very afternoon, we are hosting an event on the future of international law, which will have an audience of international law experts and members of the diplomatic communities, and will involve a conversation between Lord Reed, Lord Lloyd-Jones and Professor Dapo Akande, who is the United Kingdom's candidate for the International Court of Justice.

Our aim in all this is to strengthen the rule of law globally, to strengthen the United Kingdom's international reputation as a rule of law society and, of course, a dispute resolution centre, and to promote the United Kingdom's commercial legal interests, thereby supporting the UK economy.

Lord Reed of Allermuir: If there is time, can I add one very concrete example? When I went to Japan at its invitation to talk about how to improve the efficiency of its courts, our embassy there organised an event where it invited Ministers and officials from Japan's justice department, and I spoke to them about the role of lawyers in introducing innovation and how it might be helpful if they were more open to lawyers from innovative jurisdictions such as the UK being able to work there. My visit was then followed up by the President of the Law Society, who happened to be someone who had spent a lot of his career in Japan. He entered into discussions with the Japanese Justice Ministry, and the result was an agreement by the Japanese to relax the rules governing entry for UK lawyers wanting to practise in Japan. That was a concrete example of a commercial benefit to the UK.

The Chair: Thank you very much. Lady Hamwee, we have time for a very quick question on technology.

- Q11 **Baroness Hamwee:** Yes, advanced technology. You have mentioned case management and so on. I am not suggesting that the use of it in administration is unimportant, but could you say something about the impact you see AI having on the legal system? I have in mind unpicking how a public authority has taken a decision if it has used automated decision-making methods. I am sure you can do that in two minutes.

Lord Hodge: The example that you have given was recently the subject of a lecture by Lord Sales when he suggested that judicial review methodology may have to adapt when challenges are brought against the decisions of public bodies that have been made by or with the assistance of artificial intelligence. That is one of a number of areas where the law will for a long time be in catch-up mode. It is something that I have given lectures on in the last few years since a visit to China in 2017 when I was first asked to lecture on the subject.

AI throws up a number of problems for the law. If I could take intellectual property first, where a machine using AI creates useful devices or methods, we have to deal with the question of whether our Patents Act allows the owner of the machine to patent the device or method as an invention. That was the case of *Thaler v Comptroller-General of Patents, Designs and Trademarks* in 2023¹⁴, and we said the Patents Act does not. We have another case that we will hear in July this year, an appeal from the Court of Appeal, which decided that the statutory restriction on patenting a program for a computer as such extends to artificial neural networks, which are the backbone of modern AI systems; that is *Emotional Perception AI Ltd*¹⁵. These cases may be throwing up a need to review the Patents Act to see whether it should be adapted in future to give patent protection to devices and methods that machines are coming up with.

There have been cases in the courts of England and Wales and internationally on questions of copyright where claims are made that AI or the training of AI models have involved the breach of copyright, whether it is literature, songs, et cetera. There have been recent publicity campaigns in the United States by actors and singers about the use of their voices and images in AI. Intellectual property is one area.

Another area is the law of property itself. A Bill currently before the United Kingdom Parliament seeks to recognise digital assets as a species of property, although they are neither a chose in action nor a chose in possession, which are the current terms defining property in English law. While there is case law in England and Wales suggesting that these things are property, some academics have challenged that. It was following a report by the Law Commission that this legislation was introduced. It will, I hope, help to facilitate among other things the development of our financial technology industry. I have been involved in my spare time with chairing an expert reference group for the Scottish Government recommending that legislation be introduced to recognise digital assets as property in Scotland. The Scottish Government, happily, propose to introduce a Bill in the Parliament to achieve that result in the autumn.

Another area is contract and tort. Much of our law of contract and tort assumes that things are done by human beings, but if machines make

¹⁴ [Thaler \(Appellant\) v Comptroller-General of Patents, Designs and Trademarks \(Respondent\)](#)

¹⁵ [Emotional Perception AI Limited \(Appellant\) v Comptroller General of Patents \(Respondent\)](#)

decisions and they make contracts, how will those rules apply? Similarly, if self-determining machines cause physical damage or financial loss, who will be liable to compensate the victim of the harm that the machines cause?

I have already mentioned public law, which is the point you raised. So far as the courts are concerned, within the legal profession, technology has alleviated the burden of searching through documents for the purposes of disclosure, taking some grunt work away from young lawyers. It has also been found useful to summarise contractual documents. Some research, particularly in the United States, suggests that it is quite good at predicting the outcome of litigation, presumably using big data.

The Court has been very cautious about using AI in any of its work. We are watching how things develop. The problem is that in legal research there is the difficulty of confabulation where AI is used in legal pleadings. Several jurisdictions in North America have required litigants to declare if they have used it for that purpose. In a judgment in a recent English decision, *Ayinde v London Borough of Haringey* in the High Court this April, a judge said it would be negligent for a barrister to fail to check the text of his or her pleading if that barrister had used AI in its creation.

While things will get better in the quality of AI legal research, and it may have a role to play in future in the troubled question of access to justice, in relation to uneconomic small claims that cannot be lumped together in a group action, it might be a form of slightly rough and ready justice, but it might be able to give people a decision that they can choose to take. That is for the future. There are serious challenges to our substantive law that AI is generating, and the courts and the law will be spending quite a lot of time in catch-up mode.

Baroness Hamwee: I am interested in your point that we have to face up to the fact that new legislation may be needed to deal with all this, which I think is what you were saying.

Lord Hodge: Yes. I do not think it will just be the recognition of digital assets as property. Several of our common-law doctrines may have to be reviewed legislatively as this technology develops.

Baroness Hamwee: Thank you. You packed in a huge amount. I am deliberately not catching the Chair's eye. In Parliament, we are very well aware of that at the moment. My view of the ping-ponging of the copyright issue between the two Houses is that, actually, AI has the better of humans, because underlying all this I do not think anybody quite knows what to do about it.

The Chair: We have gone way over time, but it has been an utterly fascinating and enlightening morning, much appreciated by all of us. I thank you both on behalf of the committee for giving up your time and taking the trouble to come and talk to us this morning. I would particularly like to say to Lord Hodge that we wish him well in his retirement from the Court. We have much appreciated his attendance at

these annual evidence-taking sessions throughout his time as Deputy President and we wish him well in the future. I hope all his wisdom, knowledge and experience will not be entirely lost to Parliament and to the Supreme Court in the future. Thank you very much indeed.

Lord Hodge: Thank you very much. I am not going away.

The Chair: Thank you. That is the end of our public session.