



Justice Committee

Oral evidence: [The work of the Lord Chief Justice](#), HC 1134

Wednesday 2 April 2014

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Members present: **Sir Alan Beith (Chair); Steve Brine; Rehman Chishti; Mr Christopher Chope; Jeremy Corbyn; John Cryer; Nick de Bois; Mr Elfyn Llwyd; Andy McDonald; and Yasmin Qureshi.**

Questions 1–52

Witness: **Rt Hon Lord Thomas of Cwmgiedd**, Lord Chief Justice of England and Wales gave evidence.

Q1 Chair: Welcome, Lord Chief Justice. We are glad to see you again. May I thank you for the arrangements that you are making for members of the Committee to sit in on court proceedings? I did it myself yesterday and found it very beneficial, and some of my colleagues are doing it tomorrow. I am sure that other visits will be arranged at different levels in the court system. We are very glad to have that facility.

Lord Thomas: We are glad that, with your busy schedules, you are able to take it up. As we have said, whether it is in London or out of London, we are happy to do what we can to fit in. We can be pretty flexible with as many of your timetables as is possible.

Chair: Thank you. I have to ask whether any interests need to be declared by Committee members.

Mr Llwyd: I have practised both as a solicitor and at the Bar in family law and crime, mostly defending and prosecuting, and some of it was publicly funded defence work. I intend to return as soon as I shake off the parliamentary shackles.

Chair: As far as I am aware, none of our other lawyer members are practising currently, or have immediate plans to do so. That completes the declarations of interest, so I ask Mr Brine to start.

Q2 Steve Brine: Good afternoon, Lord Thomas, and thank you for coming. If Lord Chief Justices have such things, because everyone seemingly these days has a mission statement, an action plan and a long-term strategic plan, and even a long-term economic plan, what are your action plans and priorities for your period in office?

Lord Thomas: They change. They change because of money. As of today, the first thing to do is to make certain that the system of justice works well and is improved, and that we

can take up on the significant investment that is now being made available. I regard getting that done as an immediate priority.

Secondly, I am concerned at getting the reflective nature of the judiciary right. We have to deliver on diversity. I am quite interested in making certain that we have a proper relationship with the other branches of the state. Finally, there is an obvious need in these times to make certain that the internal welfare and training of judges is properly taken care of.

Q3 Steve Brine: You mentioned the reflective nature and that we have to get it right on diversity. Could you expand that for us?

Lord Thomas: Yes. One of my predecessors, Lord Taylor, said in about 1990 that the ethnic and gender balance of the judiciary would cure itself within a few years, but it has not. It is much better as regards the gender balance, but there is a long way to go on the BME balance. There is not a lot of progress, so delivering change and making change happen is, I regard, an important priority.

Q4 Steve Brine: How do you do that? In political parties, we talk about the reflective nature of political parties, but ultimately, the crunch is whether you have all-women shortlists or, controversially, A lists. How do you do it in the judiciary? Are you saying that the Bench at the moment is of good quality? Presumably you are.

Lord Thomas: It is of excellent quality.

Q5 Steve Brine: To maintain that quality, you want the best people appointed on merit to the Bench.

Lord Thomas: Yes.

Q6 Steve Brine: How do you do that and make sure that you have that reflective nature?

Lord Thomas: I think there are three ways. First, we have to encourage those in the senior part of the profession to make certain that they allow people conditions of work that enable them to achieve a status within a firm that means they reach the top. Secondly, and this is probably the most difficult, we have to help people who do not have the advantages that some have. It is very easy for the legal profession to relapse into being an entirely middle-class profession. Thirdly, I am quite interested in seeing what we can do to encourage those parts of the judiciary and the HMCTS where lawyers are employed to give them much more opportunity for moving upwards. For example, if you take the HMCTS legal service, a large number of lawyers work for it; the career options are now much more limited because instead of over 100 justices clerkships there are now about 12. Therefore, the avenues for promotion are much smaller.

There has been an interesting experiment in some of the tribunals with using legal advisers to help in doing case management directions; they are doing some of that in the magistrates' court, and they are now doing it in the family court. We really ought to be looking at much better opportunities, and enabling those who work there—they start work in the courts almost as soon as they are out of their qualifications, or they qualify there—to come up through. There, I think, is another opportunity.

We actively have to promote each of these three areas. I am not going to pretend that it is easy. It is hard work, but it is no use saying that things will happen of their own accord. Things have got a lot better, but they are not going to change any more unless we are much more proactive.

Q7 Steve Brine: Are you prepared to see a quota?

Lord Thomas: No. For two reasons, a quota would be a bad idea. First, it is important that we give people the opportunity, and we get judges of quality. Secondly, if I was part of a quota, I would be perceived to have got there because I was part of the quota and not on merit, and I do not think many people like that. People do not like to feel that they occupy an important post simply because they are part of a quota.

Q8 Steve Brine: While motivating people who are not part of the reflective nature of the judiciary, people still have to be motivated to want successful careers and to rise to the top, which we can see is important.

Lord Thomas: Yes.

Steve Brine: Is the balance right in the role to which you have been appointed, between your administrative and your disciplinary roles—between your financial responsibilities and your “day job” of sitting in court?

Lord Thomas: I regard doing the day job as very important. Ultimately, it is a judge’s job to decide cases—important cases or routine cases—so that one knows what is going on, and also to guide the law in the areas in which I sit. However, I have quite a supportive office, although it is very small in comparison with most parts of Government, and I delegate quite a lot. It is a constant struggle to get the balance right, but I am trying.

Q9 Steve Brine: The traditional office provides the right support for you, as it is at the moment, and you are content with it.

Lord Thomas: Yes, and I delegate a lot.

Q10 Steve Brine: The traditional office has evolved quite a lot, has it not, in the last few years?

Lord Thomas: Yes.

Q11 Steve Brine: Do you plan any changes to it?

Lord Thomas: It would be difficult to plan changes, because no one would give me any money.

We are always trying to make certain that the structure is right, in particular our ability to attract—and we do attract—extremely able people, and then to make certain that afterwards they go on to have another bit of a career. That is what one can do in the current circumstances. What applies to an extent, otherwise, is to give them an opportunity for good, interesting work, and then make certain that they go on, because the quality of the people we have is absolutely paramount.

Q12 Steve Brine: In closing, if you had to pick one of the three priorities that you identified, would it be to get right the balance?

Lord Thomas: You asked me how I divided my time, and I have to regard each of the three as a priority. If I did not sit in court, that would be terrible. I regard getting the balance right as important, but I also regard it as quite important that we have good relations. We will disagree. We may interpret laws in a way that you don’t think you intended, and we may say things about the action of the Executive that they do not approve of, but on the other hand we need good relations, and I regard that as important.

Steve Brine: Excellent.

Q13 Chair: If you think that you are not being given enough money to manage properly the essential functions of the judiciary, there is a special procedure to be followed. If you write a letter to the Ministry of Justice complaining that there is not enough money, they have to show that letter to the Treasury. Have you had to invoke that procedure?

Lord Thomas: No. We have to be realistic. I could not say that we are a special category, any more than any other responsible part of Government can say that. I hope that things will get better, and I hope, within the limits that I have discussed, that we can use our office more efficiently and continue to attract able people.

Q14 Chair: The mechanism that I just described was part of the framework that was set up following extensive discussion and concerns, lest the independence of the judiciary should in any way be compromised by the structures that were set up with the widening of your responsibilities, the creation of the Ministry of Justice and a whole series of other changes. Are you satisfied that that system so far is preserving the independence of the judiciary?

Lord Thomas: On the whole, yes, but I will qualify it in two ways. First, we have a good dialogue with the Ministry about the allocation of resources. They are not as plentiful as one would like, but I am sure that everyone else who comes to talk to you from other walks of life will say exactly the same. It is a political matter as to how much will be accorded to the Justice budget and the judiciary.

Secondly, I regard it as important that the agency, HMCTS, be seen as a unique constitutional innovation, which it is; that we have equal input into it with the Lord Chancellor; that we can use it in a way that makes certain that the arms of justice are properly protected; and that it operates at the utmost efficiency. There are areas of difficulty in making certain that it operates at the utmost efficiency.

Q15 Chair: Do you find that you can make representations directly to the Lord Chancellor as easily and as often as you wish to, or do you in fact think that a degree of distance is required between the two positions?

Lord Thomas: No. I find it easy to make representations to him. There are obvious areas where he will think one thing—for example, if I take an obvious one, he has views about Europe; I do not. He might have views about this or that and I have a different view, but we do not normally allow that to get in the way of the relationship, and it has not happened so far. We have had some very difficult things to deal with, and so far we have managed to reach an agreement on them.

Q16 Chair: If you felt that the independence of the judiciary was under threat, you would be confident that the position of the Lord Chief Justice enables or even requires you to say what has to be said.

Lord Thomas: I will say what I think. I hope that that will be acceptable. There is a problem. I think we made a mistake in 2004-05, with the Constitutional Reform Act, in removing the right of the Lord Chief Justice to be able actually to speak in the House if there was something serious. I take a different view from my predecessors in relation to the ability to make representations. I do not regard it as a nuclear option. If there was something that needed to be said, I think it would be my duty to say so; but I would not think that I was pressing the nuclear button, as I would expect our democratic process to

take into account an issue that arose. But we have not quite got right the mechanism for doing that. Obviously, your Committee is one of the mechanisms.

Q17 Chair: I was going to say that, should you wish at any time to raise something of fundamental importance to the elected House, you have only to pick up the phone.

Lord Thomas: I will take up that invitation very kindly.

Q18 Yasmin Qureshi: Lord Thomas, I want to explore with you some questions regarding the independence and accountability of the judiciary, and its relationship with Parliament. We just touched on the Constitutional Reform Act 2005. As you know, under section 5 the Lord Chief Justice can lay before Parliament any representations on issues of concern to them. So far, the practice seems to have been that annual reports are laid before Parliament that review the administration of justice. Do you think that those are sufficient and appropriate to demonstrate the judiciary's accountability to Parliament and the public?

Lord Thomas: We have to look at two forms of accountability. The first form of accountability is for the decisions that we make, and, ultimately, the accountability for that has to be completely independent. Ultimately, the Supreme Court says something, subject obviously to the Human Rights Act and other constraints. Parliament can always alter it, but I do not foresee coming to you and you asking me why we made this or that decision. Your privilege is to say, "That is what the judges say. We'll change it."

On the other area, I feel that we owe a duty to tell you how we are administering the system and how people are being appointed—the kind of questions that I was asked by Mr Brine a moment ago. What we have not got quite right yet, in phase with you, is the timing of the annual report—when we should do it—and what things you might think helpful beyond what we already indicate, but I would quite like to do that in open discussion with you, not necessarily today. If you think that there is an area relating to our non-judicial work that you would like us to expand on in a report, and the timing of that, I would be quite interested in it.

It is so easy these days for institutions to spend a lot of money writing reports—I am sure your office is full of them—but I am not certain how many of them are actually read. I would like to reach an accommodation with you on how best to do that. What are you interested in? What is the point of writing reports unless we have a readership and are dealing with subjects that you find interesting?

Q19 Yasmin Qureshi: Talking about giving views, as you know, on a number of occasions members of the judiciary come before different Committees and give expert evidence, with all the safeguards about not commenting on individual cases. That is a good thing. What are the advantages, and are there any pitfalls in judges giving oral and written evidence to parliamentary Committees?

Lord Thomas: We have to be quite careful in distinguishing the Committees to which we come and the purpose for which we come. My understanding is that, when a piece of legislation comes to a Bill Committee, it is much more difficult for us for two reasons. First, we would be commenting publicly on either the policy behind or the technical nature of an amendment. Secondly, it is then in a defined political process.

If one then moves to the other position, which is a Committee like this or a Committee that is looking at an area outside a Bill, I would quite like to know in what respect you would like

help. Sometimes we can give you a report, and sometimes we can write something for you, which may be more helpful.

The third thing is Committees on draft legislation. Again, I would look on those as very much like the second type of Committee I referred to, namely, one inquiring into a matter. There we would like to explore what help you need. Can we do it in writing? Can we do it informally or do you actually want to question someone? I am also conscious, particularly in times when judges are under quite a lot of pressure, that you allow them to do their day job. If we can accommodate you, I would be more than delighted. The thing that I have a real reservation about is Bill Committees.

Q20 Yasmin Qureshi: My final question is about any concerns that you have about the wider relationship between Parliament and the judiciary. Do you think that each side has appropriate understanding and respect for the other?

Lord Thomas: I hope that we have respect for each other. I certainly do not regard that as a problem. The difficulty, which has evolved over time, is that we have much less understanding of the parliamentary process. The only reason that I have any familiarity with it is that I spent about 20 days before one Committee and about 10 with another on a controversial parliamentary Bill. However, those private Members' Bills are not that common, and then only if you come from a small segment of the Bar. Secondly, only one of my colleagues, Ross Cranston, has any parliamentary experience. There are many fewer Members of both Houses who have spent all their lives, and are still spending their lives, in active practice.

That is why we are so keen on asking you, if you can, to come and see how we work and see the judicial process in action. We think that is very important, and, if we can talk to you and discuss what you would like from us, I am more than happy to do so. If we do not understand each other, the whole structure of Government does not work. We are trying to do the same thing with the Executive branch of Government, but again there is not the crossover that there should be. There are certain Ministries with whom we now see a lot of litigation, who probably do not really understand the court process very well, save through their legal advisers.

Q21 Yasmin Qureshi: I said that the last question was my final one, but I have a slight further question. I do not mean to put you in an awkward position, but I find it quite frustrating when politicians sometimes criticise judicial decision making, maybe because I am a former barrister; I was a practising barrister, and I have a lot of sympathy with the judiciary. I do not know if you are able to comment on this. Do you think that you and some of your brother judges feel that perhaps you are being unfairly criticised, or that there is too much comment on judicial decisions?

Lord Thomas: I think things are better than they were—much better. The worst time I can recall was after the passage of the Criminal Justice Act 2003, when the new sentences came in. There were terrible criticisms of the way judges were sentencing under the new regime. Things are definitely better. There is still some comment that is inappropriate, but if there is, certainly from the Government side, I have taken it up with the Lord Chancellor. As regards people in Parliament, sometimes it is unfortunate that they didn't ask before they criticised, because normally we would try to supply the information where there is a feeling that things are not right.

Q22 Mr Chope: May I follow up on what you said about public Bill Committees? At about this time last year, I was chairing the Children and Families Bill Committee, and James Munby came along to give evidence. The Committee was looking at the substance of quite a complicated Bill; there was not much party politics in it, and I think that everybody would agree that his contribution was significant and worth while. Are you saying that now, on your watch, he would not be allowed to come along in similar circumstances?

Lord Thomas: No. I was just trying to draw a distinction. That Bill was not controversial. My information was that his evidence had been very helpful. That is why I say you should tell us what you want. For the judiciary, what would be disastrous—I use that word deliberately—is to get embroiled in a party political discussion in a Bill. It really would not be good, because we have to interpret it afterwards. That is where I am coming from.

I understand that that appearance before you was extremely helpful. I gather that he changed one or two views on things. The last thing I would want to do is to stop anyone doing that. But that is my concern, and that is why I tried to express in that way.

Q23 Chair: Isn't there a further problem? If you ask a judge to anticipate how judges in future will interpret a piece of law that is being drafted at that time, would you also be laying something of a trap?

Lord Thomas: I hope that a judge would never tell you how someone else might interpret it. That would be a complete hostage. Government Ministers or you can have that privilege, but a judge could not say, "Look, if you use these words it will come up. That is what they mean." It would be inadmissible hereafter and very embarrassing, and that we should guard against.

Q24 Nick de Bois: I want to return, if I may, to comments by Back-Bench MPs or whoever—not Government Ministers—on sentencing. Although you say that things have improved, you sound still a little concerned that some of them may be troubling. I am one of those Back Benchers, and I wonder whether your colleagues nevertheless understand that, while they will naturally be immersed in the case and in the sentencing guidelines, by the very job that we do—talking to our public on a regular basis—when there is a perception or understanding of something that seems wholly disproportionate in sentencing, wholly removed from satisfying not a public appetite but a public expectation of what is fair, we should be free, without fear of contradicting or upsetting anyone, to reflect those views. Is that understood, as much as we need to understand that there is more to sentencing than what we read in the tabloid headlines?

Lord Thomas: There are two things to say. First, in many of the more serious cases, the Attorney always has the option, if the sentence is lenient, of coming to the court, and he does on quite a number of cases—he and the Solicitor. If it is too severe a sentence—I do not think that you often get much public criticism there, but you do from time to time—there is obviously the right of appeal. We do correct a number of sentences, but the range of unduly lenient sentence appeals is not that great, and you are entitled to comment. The only thing that I always hope you would do is to make certain that what has been said is correct. If a judge says something that is incorrect and wrong, how can it be anything other than right to say that you do not agree and that you think it wrong?

The difficulty quite often is making certain that what is actually said is accurately relayed. One of the advantages that we now have is that all Crown court sentences are recorded on a much more accurate transcription system, so it should be much easier to get a transcript of

what was said. Most judges feel that, when they are criticised, they are criticised from a standpoint that what they said in full has not been read.

Nick de Bois: I was thinking more of sentences, but your point is well made about comments.

Q25 Rehman Chishti: I turn to the point about judicial discretion, as somebody who also practised at the Bar before coming to this place. Would I be right in saying that judicial discretion throughout the country predominantly works exceptionally well, and that it is only in a few cases that you see the tabloids picking up issues that have been raised? In general, judicial discretion works exceptionally well throughout the country in the thousands of cases that judges hear year in, year out.

Lord Thomas: You are bound to get cases where people will not agree, and you are bound to get a very minute proportion where something will have gone wrong, but by and large the advent of the Sentencing Council and guidelines over the last 10 years has brought about a much greater degree of consistency. Some of you may remember judges saying, “Stand up, Bloggins. The least possible sentence I can pass is x. Take him down.” That form of sentencing remark is something of the past; judges are now required to explain much more why. I hope that, when explained and properly understood, their decisions are reasonable. Certainly it is my experience when sitting on appeals that, in cases where things have gone wrong, it is that a judge has not explained what he is doing, and if he had explained it he might well not have made the decision that he did. That is certainly my experience of dealing with most unduly lenient sentence appeals.

Q26 Chair: Turning back to organisational matters, on Friday, you, jointly with the Lord Chancellor and the Senior President of Tribunals, announced agreement on a reform programme for Her Majesty’s Courts Service, with Treasury funding, with anticipated savings of about £100 million a year or more. What generates the savings, and what will the system look like when the reform programme is completed?

Lord Thomas: The difficulty that we face is with the IT systems. There are two problems. May I deal with them separately? The first is the IT systems. When you go to the courts, you will see that there are some systems that operate without a mouse. That is not because they are modern but because they were in place before the mouse came along. Secondly, we do not have proper document storage or document filing facilities, so we have a huge problem.

I was asked about it when I spoke to the District Judges Association: “We’ve got a problem. Papers come in but they do not reach us in time.” Anyone who has worked as a lawyer knows how important filing is and how difficult it is. If you misfile something in a lawyer’s office, you have lost it for ever. We therefore need to look at how cases come in and how we store the paper. There is no doubt that if we can have a system that works—I’ll come back to that in a moment—there can be enormous savings in making the process work much more efficiently. That is head one.

Head two is the estate. I take the example of Newport in south Wales. There, there is an immigration tribunal building, a county court building, a magistrates building and a Crown court building. I have taken Wales as an example because it is rather like, “This is my chapel. That is your chapel.” Everyone looks after their own bit of the estate, so there is huge room for consolidation, but there is also room for looking into how we deliver justice locally, in smaller communities. We have the opportunity now, with technology, of being able to deliver justice much more in the way that we might have done 40 or 50 years ago, which is in smaller

non-purpose-built buildings, but linked with modern technology. For example, I used to sit as a recorder in Swansea in the council chamber itself. It was a perfectly adequate room. The jury had very comfortable seats, and, as long as you did not have a violent offender, you could try him just with someone sitting alongside him. There was plenty of room. There are many places where we can deliver justice locally without the need to build expensive buildings. I foresee us having a rural programme and a consolidation in the cities. That is the second head of saving.

The third head of saving will come from trying to make certain that we have greater flexibility in judicial deployment. If, for example, an area of judicial work declines, we can use the judiciary, both the tribunals judiciary and the court judiciary, more flexibly.

Those are the three areas where I see considerable opportunities for savings. I would not have signed the letter had I not been satisfied, as one should be, that there were reasonable grounds for my belief.

Q27 Chair: Is it your hope that the justice system, at least at magistrates level, might get back into areas that it has left?

Lord Thomas: I think that we should be looking at that. Our problem is that what we have done is invest in very expensive facilities. I go back to Newport, which I chose deliberately. In November, I opened a new magistrates' court. They had been wanting the court in Newport since probably the 1940s. It got to the top of the list and a decision was made to build it. Someone then said, "Why don't we bring some of the other courts in?" The response was, "If you do that, you go down to the bottom of the list," so you have a new court without proper consolidation. That sort of wasteful planning is one of the things that hangs round our necks.

Secondly, we have built buildings that are too elaborate in certain areas, which therefore necessitates using them a great deal and therefore we shut courts to justify the return on capital. It has not been a properly thought-through system. We have never had a proper overall strategy for court building in England and Wales.

Q28 Jeremy Corbyn: In the Newport example, why on earth didn't somebody intervene at that point and just say, "This is daft"?

Lord Thomas: That is why I say that the way in which these decisions are made—it is particularly important as regards IT—is to be brought back and dealt with coherently through HMCTS. You will see in the paragraphing that there are some important words about how HMCTS is to lead this, and to do it exclusively. I want to make certain for the whole thing that there is a responsibility for myself and the Lord Chancellor to run a tight ship, internally controlled, to eliminate this kind of problem. We must have a proper strategy, and we must consult the public properly before it is implemented.

Q29 Mr Llwyd: From the perspective of the judiciary, what has been the main effect on the administration of justice of the Jackson reforms, and the Legal Aid, Sentencing and Punishment of Offenders Act generally?

Lord Thomas: First, there has undoubtedly been a significant increase in litigants in person. I do not think we have proper figures yet, but undoubtedly in family and small claims work there has been a significant increase. I find that out when I go to talk to district judges. It is having an effect—there is no doubt about that—on what I would call the bottom rung of the civil work. It is particularly acute in family cases, because, if two people who have had a breakdown in their relationship are required to be adversarial

parties, our system does not work very well. Most district judges are now moving to swearing the parties in, and conducting it in a more inquisitorial manner when there is a dispute over children or custody, or perhaps financial matters. That is one aspect of it.

On the large area of the civil law, the changes in the Jackson reforms are still bedding in. It would be right to say that cost budgeting has not been regarded as the No. 1 flavour of the month among the legal profession, and it is too early to tell whether that will work. The decision made by the Court of Appeal, in imposing strict time limits and making people adhere to orders, will, I hope, produce a much needed change.

Thirdly, although I am not sufficiently expert in this, I understand that one of the things that does not work very well are damages-based agreements. They need to be looked at again. There is an undoubted effect with the curtailment of legal aid, which we can see. On the main Jackson reforms, there are obvious issues that are being resolved. The Master of the Rolls held a conference a week last Friday, which discussed many of these, and they will be addressed. They are being actively considered.

Q30 Mr Llwyd: May I take you back to the issue of litigants in person? The President of the Family Division, Sir Nicholas Wall, gave evidence to us when we were conducting some pre-legislative scrutiny. He was quite adamant that there would be a huge increase in litigants in person in the Family Division. I spoke at a conference in Cardiff in September, which you attended, and a senior district judge with a family ticket told me that, in his court, it was up by 35% from April to September. In some courts, I understand that it is now up to between 55% and 60%. You have already referred—I have read the speech—to the inquisitorial element. Does that not require further training for judges?

Lord Thomas: What has been encouraging is that it seems to be working. I was glad to see that in the magistrates' courts—because the use of magistrates is another issue which is important—in some parts of the country they are doing quite well with this inquisitorial family work. It has been very encouraging. As a trained lawyer, although you need to be cautious, being inquisitorial is something that you should be able to do quite easily. Judges have often had to help; they now have to help a great deal more. I am not going to comment on whether taking legal aid away is a good or a bad move—that was a political decision—but we are addressing the effects.

Another thing that I ought to say is that, in many of the large centres, we now have personal support units; they do not advise, but they at least take on what I would describe as the feeling of being strange and not understanding the process. They have made a big difference. In some of the courts in London—it is probably only in London, but there are possibly also Manchester and Birmingham-based solutions—we have been successful in persuading young lawyers who do not yet have much court experience and who work in the commercial world to come and give free services. On the two occasions when people have done this in front of me, I found them extremely helpful. It is good for them, as any young lawyer will remember, and it is certainly good for us.

Q31 Mr Llwyd: Yes. But is it not inevitable, Lord Thomas, that there will be delays in the system, even with the best will in the world? I speak from experience: the last fully contested family case that I did was down for three days, but the opposition came along unrepresented and it took seven. The judge intervened as often as he could, but it still took twice as long.

Lord Thomas: It is going to—as with all my colleagues who do cases with litigants in person; in my own experience I did one long commercial case with litigants in person, and it significantly added to the time. The saving that you get by not having lawyers has to be counterbalanced by the increase in court time.

Q32 Mr Llwyd: Can I move swiftly on to another question? Your predecessor, Lord Judge, in his annual report of 2013, referred to unmeritorious immigration and asylum cases, which he heavily criticised. Has there been a continued reduction in those numbers?

Lord Thomas: Two things have happened in immigration. The first is that we have transferred the work to the tribunal. This, with the amendment passed in Parliament and working with the Ministries concerned, has significantly alleviated the problems in the administrative court. The tribunal is doing very well with it. We still have a problem—but it is much better, I am told—of people pursuing unmeritorious claims. I have sat in a number of cases where we were tough, and sent to the regulatory authorities lawyers who were not behaving properly. I believe that that situation is now much better.

Q33 Andy McDonald: Was it your view—did you express it in this way—on the changes brought about by the Jackson reforms, and embodied in LASPO, on costs and funding that it was too early to judge whether they had been successful? Is that your view?

Lord Thomas: On the civil side, they have only been in force for just over a year. It is too early to tell whether the cost budgeting will work, whether the damages-based agreements will work, and whether there are much stricter time limits. All the signs are good, but I could not say they have been brilliant. It is too early. Reforms to a legal system normally take longer. They seem to be working very well, but for me to say, “Oh yes, they have reduced the cost of litigation, and they have given people much greater access to justice”—it is too early to tell.

Q34 Jeremy Corbyn: On the question of the efficiency of the courts, and the numbers of cracked and ineffective cases, I know that you are concerned about it, and there is clearly an enormous waste of court time as a result. Have you made any progress on improving the efficiency of the courts?

Lord Thomas: To make a system run better is a constant struggle. Things had got a lot better, until there were very significant cutbacks in the funding for the police and the CPS. When the CPS and the police had to adjust to a lower level of funding, the systems that had been put in place did not work as well. We therefore have to adjust them.

On the whole, there is still an unacceptable amount of time in some magistrates’ courts in cases coming to trial. I am concerned, in the Crown court, that bail cases are being delayed. Obviously, if you are in custody, priority is given, but bail cases are probably my biggest worry at the moment; the time is going out. We are doing a lot of work on this, and I have said that I want to look at how each of the areas is performing. Have we got down the number of cracked and ineffective trials? Are we trying to stop an increase in the length of certain kinds of trials? Are we using the judicial day efficiently? I believe that it is the job of judges, the resident judges in charge of each particular court, the presiding judges, and ultimately me, to make certain that we operate our courts efficiently.

Q35 Jeremy Corbyn: How do you monitor the efficiency or otherwise of particular courts? There must be some where there are a surprisingly large number of ineffective or

cracked cases, and a lot of court time wasted when no other case can be heard that should be heard.

Lord Thomas: We have monthly statistics, but you cannot look at only one of them. I remember going many years ago to a magistrates' court, and its ineffective trial rate was about 1%. It looked wonderful, but it was achieved by the court clerk removing everything from the list that might not go ahead, so the time that cases took to come to trial just went out. Because she took cases out, there were few ineffective trials, but the delays were terrible. It is easy if you take one marker always to achieve that marker; you have to look at a balance between them.

What I regard as probably the most important thing is to see how long a case takes from the time that the person is either summonsed or charged until the time that he is tried. Those are two things that you cannot manipulate, because each has a fixed point in time. Making certain that that time is right is probably the best indicator, but you need to look at them all. We do look at them, and one of the things that senior judges do once a month is to look at the statistics, and we are beginning to look at how to make certain that we look at how courts perform.

Q36 Jeremy Corbyn: But there is very little that you can do, for example, about a last-minute conversion to a guilty plea.

Lord Thomas: There is nothing that you can do. Rationally, of course, everyone ought to be attracted by the 30% discount; they ought to put their hand up, but there are loads of cases where people will hope that if it goes on long enough people will not come or that a particular witness will not turn up. We probably get most late pleas in cases of sexual crimes, where people always hope that the witness will not turn up.

You have to accept a certain minimum of cracked trials. It would be unreal to work on any other basis. We ought to be able to get rid of ineffective trials. We have a small percentage, but we ought to manage things so that we are free of them.

Q37 Rehman Chishti: On that very point, it is often said about trials that do not go ahead on the day that they are listed that it is because the Crown Prosecution Service has not complied with disclosure and that cases therefore have to be put off to another day. How much of a problem is that?

Lord Thomas: We have statistics that break it down, but I am sorry, I do not have them in my head; it would be very wrong of me to give a false number. It could be used to criticise people, and I would not want to do so unfairly. I can write to you.

Q38 Rehman Chishti: On a slightly different point, in terms of court efficiency it is often said that the virtual court scheme, which has been running around the country, is working well. From your experience and from what you hear, is the virtual court system working well?

Lord Thomas: There are two or three things that we need to do. First, we need to update the technology. One of the things that Brian Leveson is going to look at is using internet-based technology to get away from these closed systems. We do not need them. Secondly, we need to be sure that if you have visual links you can also have proper exchange of data electronically, but that is not up to speed yet. Thirdly, there is a problem in persuading people that doing things virtually, with people not coming to court, is a perfectly good way of doing justice. Some research is being done on that at the moment. My experience is that

modern technology video-links work well, and that you can get a real feel for the person, but it takes time to persuade people to that viewpoint.

Q39 Andy McDonald: May I turn to sentencing? We have just concluded our inquiry into crime reduction measures. I wonder whether you think that magistrates and judges have sufficient information on the effectiveness of different sentences to inform their sentencing practices.

Lord Thomas: Things have changed a great deal, in that the Sentencing Council now has a lot more information than any individual judge could have. I therefore have a reasonably high degree of confidence in their information as to the right bands of sentencing. On whether individual judges get the right information about the particular offender, the answer is broadly yes. On the whole, the reports prepared by the probation service are of high quality, and they normally review the person's background very well, but if you are asking whether a sentence of x number of years for this particular offence proves effective in making certain that that kind of offence drops or that people do not commit it again, that is something on which our general research is not that good.

Q40 Andy McDonald: You touched upon probation, and we are obviously going to see big changes in the way that is delivered. What are your thoughts on the terms of engagement between the judiciary and private probation providers when judges are deciding on sentences? Are they going to need to know much more about what is on offer?

Lord Thomas: As I understand it, the way in which the new probation system is to work is that there will be a national probation service which will be interfaced between the courts and the private providers. What I hope will happen in the new areas is that the national probation service responsible for the area will make certain that the judges in the area know the programmes that are going to be provided. It is critical that the judges know what is available and what is going to be done. I have always said that, if judges and magistrates do not have confidence, they will not use it. The real risk has always been that, if you do not have confidence, you will not use it and that more people will therefore go to prison.

Given what is to be done, assuming that it all works, the national probation service will be the key to making certain that the court is informed. I hope that, in the various private contracts that are made, there are strong controls to make certain that what is promised is delivered, but, again, that is not a matter on which I can comment. I know what is needed, but whether it is achieved is not a matter for me to comment on.

Q41 Andy McDonald: You spoke earlier this year about the need for innovative thinking in terms of problem-solving courts. Last year, we as a Committee went across to Texas—it was a bit warmer than this Committee Room—and saw some interesting programmes with a drug rehabilitation court, where the judge was engaged with the same cohort of convicted felons week in, week out. She was almost case-managing particular defendants, notwithstanding the fact that she was, I think, making reparations for her time as a prosecutor seeking capital punishment. What is your view on the balance to be struck in introducing new innovative court processes?

Lord Thomas: I am keen. I spent a lot of time when I was Senior Presiding Judge going to see what happened in the north Liverpool community court, where Judge Fletcher made a lot of progress. There is a role—it was shown in one of the west London courts—for a

judge or magistrate to have some part in making certain that someone sticks to his promise. The judge in west London, for example, used to have people back and check, as many judges do—“Are you doing what you promised?”—giving them a sense of accountability. It is somewhat like me: am I doing what I promised you? It is a sort of accountability.

There is a great deal to be said for some engagement in that, but the difficulty that arises is twofold. First, it is an added cost; you cannot get around that because it has to be a process where someone comes to a public place. It cannot be done in private; that would not be satisfactory. Secondly, if things are not going right, you must have a mechanism for dealing with it. If one goes back to the mid-2000s, there was a belief that, if someone was not adhering strictly to his order, you immediately brought them back to court, and they understood that if they did not do it things would be tough for them. Then, of course, you have to add in the cost, if you are going to punish someone further, of legal representation for them on those occasions. It needs careful thinking through.

Yes, I am very keen on it, but it has to be carefully thought through. There are probably a number of issues that have to be resolved; it is not just an idea. It can be expensive if it is not done properly, but we should certainly look at it and we should certainly be innovative.

Q42 Andy McDonald: Presumably there are considerable savings to be had if we get it right.

Lord Thomas: There are savings to be had, but probably not in the budget of the person concerned. One of the problems of Government is that I can save someone else money but I have to find the cash to do it.

Q43 Andy McDonald: At a recent Justice event, you called for work to be done to overcome problems encountered in fraud trials. Would you explain your thinking on that subject?

Lord Thomas: There are two major problems that we have. The first is disclosure. You all know how many e-mails you get per day. The days when people had to pen letters to you are probably something you look back on with rose-tinted spectacles. Everything now is copied, so disclosure is becoming a major problem in fraud trials, because there is so much more documentation. It is a problem for the Government in disclosing their duty of candour, and in commercial cases and Chancery cases you have the same problem. Disclosure is a major issue that we need to look at. Should we have the kind of system that we have? Should we modify it? That is one area.

The second area is this. If you have the time to look at what Lord Roskill said about the conduct of fraud trials in the mid-1980s, it is a bit depressing to see that many of the things that he said are true today. We have not got right the way in which we handle fraud trials. Part of the problem is discovery, part of the problem is that they are very difficult cases to manage, and part of the problem is that we probably do not have the prosecution and defence of them right either. We need to look at this area; it is not satisfactory. I take the view that the financial health of London depends upon being able to punish people if they transgress. I am not someone who believes that a regulatory ticking off or a large fine is enough.

Q44 Rehman Chishti: There has been some discussion about whether there should be jury trials for long, complex fraud cases. What is your view on that?

Lord Thomas: I would like to see what people think, having reviewed the matter again. My views have changed. In 1984, my view was that jury trials were the right thing. Having looked at it again about 10 years ago, I wondered whether that was right. I do not think that trial by judge alone is right, but whether we should have a smaller jury, a more specialised jury—these are things that need to be looked at. I do not have a view at the moment. All I have a very strong view about is that we ought to realise there is a problem and we need to look at it. Ultimately, it will be for you to decide, but this is something that we need to look at seriously. If you were prepared to inquire into it, that would be wonderful.

Q45 Rehman Chishti: Good idea. I move on to another category—the role of the magistracy. There is much discussion at the current time about the role of the magistracy. Do you have any observations on how that role could be developed and improved further?

Lord Thomas: Yes. The difficulty that has arisen is that the amount of work in the magistrates' courts has significantly declined in crime. It has been quite remarkable. We therefore have a magistracy that is too large for the amount of work that it can do in crime. The result of that has been that we have not recruited enough, and the result of that is that the average age of the magistracy keeps on rising. It is therefore very difficult to recruit into it younger people. That is one of the problems. Secondly, employers are now much more reluctant in some industries to let people go. In the days of the nationalised industries and more generous budgets in schools, a lot of people came in, but it is more difficult now.

Thirdly, we need to find two things. There is a very interesting idea that you give magistrates a fixed-term appointment. What the right time should be, I do not know, but it needs looking at; one wants a turnover. There are things that they certainly can do. The initiative taken by the Magistrates Association to look at the way cautioning operates is a good thing. But we have to be careful that we do not set up an alternative court structure. What I am not keen on is that we have magistrates' courts, which are meant to be community courts, and then we have a separate set of community panels, which are—I am not sure what. We need to make certain that we progress down one route.

The two or three reports that have been written recently have some very good ideas, but I must add that they have some not quite such good ideas in them. This needs to be looked at, because the magistracy is important and we need to use it, but we need to make certain—coming back to a point that I made much earlier—that it is reflective of society, because if it is not reflective of society it has a much less powerful function.

Q46 Rehman Chishti: On that very point about it being reflective of society, if there were magistrates who were competent, like judges, but past the age of 70, would you say that there is still room for them to continue in the judiciary whether as magistrates or on the Bench?

Lord Thomas: The age of 70 is a salutary retirement age. There is plenty more that people can do at the age of 70, which seems self-evident from what one observes here—I did not mean this place, but perhaps the other place.

There is plenty that people can do. If we were to impose now an extended retirement age, it would have a serious effect, bearing in mind the decline in work on the composition of the magistracy. I would stick to it. There is plenty more that people can do. One person asked me the other day whether he could be used, and I said, “Yes, there's loads of work you can do in

the community. You don't necessarily have to do it as a magistrate. Use your experience as a magistrate."

Q47 Rehman Chishti: I am grateful to hear that. I get questions from the judiciary when I speak to them, and magistrates who want to continue, so it is nice to hear from you on that very point.

At a recent Justice event, you called for radical thinking to reshape the justice system in the age of austerity, and said that one way would be to consider the creation of an intermediate level of court, between the magistrates' court and the Crown court. What did you have in mind when you suggested that?

Lord Thomas: What happened was that in 2001 Lord Justice Auld did a review of the system. He concluded that there was a body of work in the Crown court that could fairly and properly be tried at an intermediate level, and he suggested a district judge and two magistrates. In effect, you would be dealing with a lower level of crime. The advantage of doing this would be that, from the point of view of the way in which the Crown court operates, it would deal only with the more serious cases.

Increasing magistrates' or district judges' sentencing powers and allowing them to sit alone would not be satisfactory. Most other countries do not let judges impose significant penal sentences—certainly a sentence of 12 months is a significant sentence—if they sit on their own. My personal experience of a judge sitting with two lay people, when I used to do it in the commercial world, was extremely satisfactory, because the professional judge could keep the process going but with the important counterbalance of people with views of life that were much different from a judge's.

Obviously it will affect the right of trial by jury, and I know that that is a difficult thing. That is why it is a difficult issue, but it ought to be examined. It was not taken forward in 2001 for a number of reasons, one of which, it would be true to say, is that the relationship between the district bench and the magistracy was not that good then. It is now very good.

My concern is that if the money is curtailed—I think that all parties take the view that there is unlikely to be much more money for justice—we have actually to look at these systems to ensure that we do trials in a prompt amount of time and that we try people fairly. One cannot run the system on less money—certainly not on 35% less money, which is what is thought to be the case—without looking at alternatives. I am not going to say, "You must do this." It is ultimately your decision. It is a political decision, but I think it is to be looked at.

Q48 Rehman Chishti: On low-level crime, would you say that it is the right way to go to decriminalise not having a TV licence? Certain matters clog up the magistrates courts. Would you say that is the right way to go?

Lord Thomas: I have always said that is a political decision, and I am not going into that. Whether something is a criminal offence or not a criminal offence is for you to decide. It is not a matter on which I should express a view. Sorry.

Chair: I call Mr Llwyd on a supplementary point, and then quickly to Mr McDonald for a final point.

Q49 Mr Llwyd: On the magistracy, there is a bit of a crisis because they have gone down in numbers from 33,000 to under 26,000. My constituency is a microcosm of the

problem. It is 100 miles from north to south and 100 miles across, and there is one court. Good people do not put their names forward as magistrates because they do not want to drive for an hour and a half each day to court and an hour and a half back. That, I might say, is not a community court, because it normally sits somewhere they know nothing about.

Lord Thomas: I have been to various courts in your constituency. My personal view is that if you want a palais de justice—if I can I lapse into French rather than Welsh—we cannot afford it, but I do not see why we cannot have courts. If people are prepared to sit in what I used to see when I was much younger, which was something much simpler, and deal with the really dangerous offenders in a central place—most offenders in the magistrates court are not in that category—with proper use of local buildings such as town halls, community centres, and being able to get the papers by plugging into the internet, there is no reason why we cannot do more locally. I hope that the initiative will enable us, if we are sensible and do not build large, expensive buildings, to restore a lot of local justice.

Q50 Andy McDonald: Lord Thomas, may I take you back to where we started with Mr Brine, and touch again upon the issue of judicial diversity? I do not want to go over ground that you have already covered, but the Crime and Courts Act imposes a statutory duty upon you to encourage judicial diversity. I wonder what steps you plan to take to discharge that duty, and what discussions you have had with the Lord Chancellor to progress those matters.

Lord Thomas: First, with Lady Justice Hallett, we have set up a proper diversity committee, restricted to the judiciary alone. Secondly, we are looking at three particular areas. The first is making certain that we have a proper work shadowing scheme. We have been attracting people, but we have not concentrated it; we have had too many people at too young an age. We probably need to move the qualification to someone who has been in practice for four or five years rather than the current two. Secondly, we want to do more mentoring.

Thirdly, and I think this is the most difficult area, we want to persuade those who are in law firms and judges that you need to help certain people in their applications. An application for a judicial appointment now, as I know myself, is quite a hard job. You have to prepare the form, you have to make the statement and you have to be interviewed. There is a social issue; to encourage social mobility, you have to be prepared to help people in that process. It is no use just saying, “You just do it.” I therefore look to those three things.

When I spoke at the City of London Solicitors Company dinner on Monday night, I said that I really wanted their help in making certain that their firms reflect society more than they do. Therefore, we can properly benefit from that, and they are much better at sending us people. I look on those as active programmes.

We are also using the diversity and community relations judges much more. We are having outreach events, and I am working quite closely with Chris Stephens at the Judicial Appointments Commission on this, and with the Ministry.

One thing that we have tried at the High Court level is salaried part-time working. We put it into the current competition; I do not think that anyone will take it up on this occasion, but it is there. I want to make certain that salaried part-time working is geared to what you wanted, which is a more diverse judiciary, because we can accommodate only a certain number of part-time-working people at certain levels of the judiciary. If we were all part time, you would need a lot more judges, and you’re not going to pay for those.

Q51 Andy McDonald: I was going to ask you about the Judicial Appointments Commission, but you have covered that point. I wish finally to deal with two trivial matters—money and happiness.

Lord Thomas: I would not regard those as trivial.

Andy McDonald: I wonder whether you share your predecessor's concern, expressed in the introduction to his report in 2013, about reduced morale in the judiciary arising from less attractive terms and conditions, and pension arrangements.

Lord Thomas: Undoubtedly so, but this is a public sector problem, although it is probably more vivid in lawyers. If one looks at the prosperity of lawyers in certain areas, particularly in the City, one sees that their position has gone up and that the judges' position has come down. There is a much greater gap. For your friends and colleagues—this is true of all the big conurbations—practice in the law has been a profitable way of life for most, obviously excepting for publicly funded people. That is one contrast.

Secondly, there is a big problem coming. If you have had a period of no increases at all—I am talking about pay—for some years, and then you have 1% increases, at some point in the future the differentials are going to be very significant. That is the biggest long-term problem we face. That saps morale; it undoubtedly does. If you then add to the mixture asking judges to do a lot more, which litigants in person inevitably entails, there is that factor as well.

Q52 Chair: On that note, Lord Thomas, thank you very much indeed for spending time with us this afternoon.

Lord Thomas: Thank you for your courtesy. If I might, I will say one thing in conclusion. I would very much like to work with your office to see what would be a convenient time for us to let you have a report—and what you would like in it; I would hope to provide something that did not just add to the pile.

Chair: We will give proper consideration to that. Thank you.