



Justice Committee

Oral evidence: [The Lord Chief Justice's report 2015](#),

HC 814

Tuesday 23 February 2016

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Members present: Robert Neill (Chair); Philip Davies; David Hanson; Victoria Prentis; and Marie Rimmer.

Questions 1 - 78

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

Q1 Chair: Good morning, Lord Thomas.

Lord Thomas of Cwmgiedd: Good morning.

Q2 Chair: Welcome. We are very grateful to have you here, Lord Chief Justice—as we do annually—to give evidence to us around your annual report. We are delighted to see you for the first time in the new Committee and the new Parliament.

Lord Thomas of Cwmgiedd: Indeed. It is a pleasure to be here and to see you all.

Chair: Thank you. We ought to declare our relevant interests, just in case. I am a member of the Bar but no longer practising.

Victoria Prentis: I am another member of the Bar, no longer practising. I was at the Treasury Solicitor's Department for a long time and did some judicial cases.

Q3 Chair: We are the only two lawyers you have to worry about. That is probably a record low for the meeting.

Lord Thomas, we will ask you broadly about one or two things that flow from the annual report, which we have seen and we have all read. First, I will ask something topical, although I am conscious that it may be something that is constrained. I read with considerable interest the judgment of the Supreme Court in the Jagee case, which I know you sat on, unusually. You may have seen the letter that I wrote to *The Times*, because it addressed two issues that the Select Committee raised in the last Parliament. Is there anything that you feel able to say about some of its implications or do you have any views about the reporting of the matter—or

not? I know that potentially you have to deal with matters that come before the Court of Appeal criminal division, so I will understand if you are constrained.

Lord Thomas of Cwmgiedd: We have a fairly strong convention that one should not speak of a case in which one has been involved—certainly a case in which one has given a judgment. That said, I think it is an illustration of the way in which the court should put the law right, if it goes wrong, which it did. Secondly, it gives some fairly clear guidance as to what the law is now. Thirdly, it sets out what will happen when people seek leave to come to the Court of Appeal. Beyond that, it is quite difficult for me to say anything, as I shall be responsible for the cases that come and will, no doubt, sit on some of them. I am sorry not to be more helpful, but the convention that we have is very important to us. We ought to speak in a judgment and say no more about it.

Q4 Chair: Not at all. As you will have gathered, on the two points that concern the Committee, we are probably *ad idem*. I just wanted you to have the opportunity to put that convention on the record, very helpfully. It is a useful reminder to everybody.

Can we turn to your annual report? I was interested both in the report and in the Lord Williams of Mostyn memorial lecture that you gave last November about the inherent problem of the tendency, as you perceived it, for the justice system to be treated as a provider of adjudication processes, which undermines its broader social benefit and, potentially, the rule of law. Obviously you had some concerns about that at the time. Do you still have those concerns?

Lord Thomas of Cwmgiedd: Across the world—even in Singapore, I was surprised to see the other day—judges have to remind people not only of the importance of the justice system to the proper functioning of a constitutional democracy but the importance of what it provides to businesses, in making the law clear. An illustration of that, of course, is the decision of HSBC to stay here, citing our strong legal system as one of the reasons. It is important to have a dispute resolution system so that people do not resort to self-help. I know that I need not say anything about the importance of justice to this Committee, but I am afraid that not everyone is as well informed as yourselves.

Q5 Chair: The layperson might ask what we mean when we talk about a mere provider of adjudication services.

Lord Thomas of Cwmgiedd: I would not characterise the justice system as merely a provider of adjudication. It is one of the things that we do. There are so many issues where people can need a fair trial. For example, if someone is accused of a crime, it is essential that we have a fair trial process. That also applies to resolving disputes that arise from family breakdowns, over the children. There is a chance that in your life, unfortunately, you will have a dispute with someone arising out of a contract you have entered into; you may be having an extension to your home or having repairs done. With all that, you have to have a system that provides access to adjudication that is, I hope, as low cost as one can make it but none the less provides justice. That is what I mean.

Q6 Chair: The logic is that there is a public interest in that, as well as the purely private interest of the claimant.

Lord Thomas of Cwmgiedd: Yes.

Q7 Chair: Do you think that is adequately recognised?

Lord Thomas of Cwmgiedd: No, I think it is not. That is why I make the pitch for justice whenever I get the chance. I was very surprised to see that in his annual account of how the courts are doing the Chief Justice of Singapore, where there is huge Government support for that, underlined why justice is so important. I spoke on the theme at the Commonwealth Magistrates' and Judges' Association conference in New Zealand. Everyone understands how important the health service is, because it is so obvious, but a justice system is very important, too.

Q8 Chair: You have also stressed the importance of openness and transparency.

Lord Thomas of Cwmgiedd: Yes.

Q9 Chair: What do you think are the main threats to openness? What are the pressures we should be alert to in that regard?

Lord Thomas of Cwmgiedd: There is always an inherent tension between having to keep certain parts of the process confidential or secret and open justice. It arises, first, in dealing with national security. It is recognised that a security service has to operate in secret. What is important—I think our system has achieved a fair balance—is that the courts scrutinise it, even if they do not allow parts of it to be put into the public domain, for obvious reasons. It is also important that in the case of children their anonymity is protected. Similarly, in the case of crimes involving sexual offences in particular, it is important that victims are protected.

I am very glad that the President of the Family Division has taken steps to open up the Court of Protection. My view is that there should be very few occasions on which it is necessary for a hearing of the Court of Protection to be in private. There may be restrictions on identifying people. As our population grows older, there is no better safeguard for the elderly or those who cannot look after their own affairs than the knowledge that the transactions will be the subject of public examination. If we restrict access to the press or the public, there must be a really good, first-rate reason for that. Fortunately, the cases are fairly few and far between. When one tells the press that they cannot go somewhere or cannot report something, inevitably they are unhappy, but it is a consequence of the necessity to protect national security.

Q10 Chair: I understand that. Equally, you have been an enthusiast for modernisation, where it is appropriate—online dispute resolution and digitisation of the courts. Are you satisfied that we can get the balance right, that we can do disputes online, while still in a way that is public and transparent?

Lord Thomas of Cwmgiedd: Yes. We have to do that. We cannot allow our justice system to be one that is not open to public scrutiny. The whole essence of doing justice in a system is to keep it open. To go back to the case you first asked me about—Jogee—the fact that the debate about the change in the law takes place in public, that people can argue, “It wasn’t right last time. Get it right this time,” and that the process is open, instils confidence.

Q11 Victoria Prentis: Moving on from modernisation to IT specifically, we got a lot of money in the autumn statement last year to invest in IT to improve the use of it by courts and

tribunals. To what extent is the judiciary being consulted and asked about how that should be done?

Lord Thomas of Cwmgiedd: Essentially, the Courts Service is set up as a joint venture between the Lord Chancellor and myself, representing the judiciary. As regards IT, we are very closely involved in everything. Lord Justice Fulford has set up four groups, representing the main jurisdictions, with judges on them. We look at everything and make certain that the system is being designed not merely to replicate what is in the past but to look at the modernisation of justice.

When I went to look at the way in which the digital case system is working, into which the judges have had significant input, I was very pleasantly surprised to see that it is working so well. To see barristers coming into court with a laptop, or possibly two, rather than a bundle of paper, and to see the judge on the bench, similarly, without a lot of paper, is a refreshing change. People never understand that filing papers is a skilled process. If you misfile something, you lose it, and it is very difficult to find it again. In the courts where we have made progress, we have everything online and the system is working. I was very happy to see it work. Last week I was in Southwark, where there is great satisfaction with the progress being made. The judiciary is at the centre of what is being done.

Q12 Victoria Prentis: That is very good to hear. You may not have a view on this, but there were projected large savings because of that investment. Do you think that those will take place?

Lord Thomas of Cwmgiedd: Yes. The savings will come from three places. First, moving paper is very expensive. You will have gone into a county court, where the paper is at its worst. I went into the Central London county court at the RCJ about a fortnight ago. The paper there is just unbelievable. It fills every spare space of the floor. Not having to move that around and not having to file things will make a huge difference. Secondly, we will be able to try to operate without people coming to court, which saves quite a lot of other public sector parts of the business quite a lot of money. Thirdly—I know you will come to this—it enables us to have much more access to justice, through being able to hear proceedings remotely, without the cost of so many buildings.

Victoria Prentis: Yes.

Lord Thomas of Cwmgiedd: I know you are coming to that.

Q13 Victoria Prentis: Coming straight on to buildings, I speak as the MP for Bicester, where the magistrates' court was earmarked as one of 91 courts to be closed, although last week it was announced that some of them will be merged. The principle of local justice for local people remains important, but in Bicester most of us were not unduly distressed when we were told that our court was used 11% of the time. Where we would want to push the future is on whether it would be possible to have a court in other places, possibly coming to us once a week or once a fortnight. You could hold it in a local civic building, hotel or pub. Is that something you are keen on?

Lord Thomas of Cwmgiedd: Yes. Yesterday I looked at the report and pictures of a judge who has an experiment doing family and civil cases. He was sitting behind trestle tables in a room to which the public had access. His account of it was that it went very well.

There are two problems. One is to make certain that wherever we sit there is access to IT, but that should not be difficult these days. The second is security. The security apparatus of the court is designed around three things: first, a secure dock; secondly, a contract with the prison escort providers to bring people to and fro; and, thirdly, a contract with private security, in most cases, which provides security in the court. We will have to have more flexibility. Although large-scale Government contracts have their benefits, they are not necessarily the right solution. I am afraid I do not know Bicester very well, but it would astonish me if there were not many former policemen still of reasonable age and agility who would probably be happy to have a part-time contract to provide security.

Q14 Victoria Prentis: Can I encourage you to look at the experience of the Parole Board in this? I have taken part in Parole Board hearings that, for reasons of security, were not held in court buildings, because it was deemed sensible to go off the page, as it were. We had a very useful series of hearings in hotels, for example.

Lord Thomas of Cwmgiedd: Civic buildings are not used to the full extent. We are looking actively at how we address security. We cannot expect and did not need the number of secure docks that we had. It was a mistake to go down that path, because it has made court buildings incredibly expensive. I am not surprised that the utilisation rate is so low, but there is no reason why you cannot have a court once a week. That is not a commitment—it is not in my power to make one—but I am very keen. With respect, Bicester is in an area where it is relatively easy to get around, but if you move to Wales, Cumbria or Cornwall you have to do this, otherwise you are expecting people to travel for very considerable times, particularly in areas where there is not good public transport.

Q15 Victoria Prentis: It also keeps the principle of local justice alive, which is important.

Lord Thomas of Cwmgiedd: It is absolutely vital. I would not go as far as people in the early part of the last century, who used to say, “The full majesty of the law traipsing down the street impresses people,” but having cases dealt with locally and people locally knowing what goes on is very important.

Q16 Chair: On the point about how we deal with it, when the President of the Family Division gave evidence to us recently, he expressed some concerns about the ability of the Ministry of Justice to produce an online divorce system. He may well have shared those misgivings with you on the Judicial Executive Board. Is it something you are conscious of? Do you share those misgivings? Are there things to be done about it? Is the MOJ the right body to procure this, for example?

Lord Thomas of Cwmgiedd: My own view is that IT has to be a collaborative effort. We have learned from the lessons of the past that you do not want to enter into a single contract with a large supplier, because then you are in hock to them. The way in which the digital case system has been devised, building it unit by unit, is the right way forward. If you are doing that, you need very good people who can supervise contracts and are extremely tough commercially—not necessarily someone who has a good policy background, but someone who is tough and can negotiate good contracts. Between us—the judges, HMCTS and the Ministry—we can do the right thing. We are beginning to see the real benefits of the approach that HMCTS has taken to looking at the whole area of procurement and strengthening the people who deal with it. The CPS has done the same.

We are on the right road, but the president was right to point to the terrible problems that have occurred in the past.

Q17 Chair: By analogy, perhaps the same applies to the court disposal and consolidation programme, where you are dealing with some quite substantial commercial property disposals and acquisitions.

Lord Thomas of Cwmgiedd: One finds that, unfortunately, in the past some rather ill-advised contracts were entered into. The most extraordinary that I saw was one at Caernarfon. If you look out of the court window at Caernarfon, you can see the Edwardian castle, yet someone entered into a 999-year lease for part of the building. If only they could have thought, “What am I doing?” We are remedying that sort of lack of commercial acumen.

In my own view, both the disposal and the acquisition of property have to be done by people with strong commercial acumen. We are doing everything to put that in place. You need to have someone who understands the market if you are going outside the civil service to obtain a commercial provider to maintain it. We all know from our own lives that you have to be pretty tough when dealing with private contractors. HMCTS has an excellent chief executive in Natalie Ceeney. I am impressed by the steps that they are taking to make certain that we have learned from the past and are going forward on a very tough commercial basis for the future.

Q18 Chair: That is very helpful. If members have no more questions on the IT and modernisation aspect of Lord Thomas’s report, perhaps we can move on to civil justice. We are trying to follow broadly the same chronology as the report, if that helps. Back in September you made quite an interesting speech, which I enjoyed reading, to the Legal Research Foundation. You said that the scale of court fees, plus the cost of legal assistance—putting the two together—creates a danger of driving justice out of reach. Does that remain your position?

Lord Thomas of Cwmgiedd: Absolutely. There is no doubt that at a level where for most people it is a great deal of money—£10,000, £15,000 or £25,000—the costs of a case can easily outstrip what is in issue. That is why the committee of the Civil Justice Council and now Lord Justice Briggs have come up with the idea of an online court. We are very optimistic that that can provide a solution. We shall need some legislation, because many of us feel that the current civil procedure rules are far too complicated. They are designed for lawyers, so we need to start again, essentially, for the online court. We think that can provide a real solution, to enable people to act either with minimal legal assistance or without lawyers. Sometimes you need some legal assistance, but at a cost that is proportionate to the sums in issue. We have to put our civil justice system right. At the moment, our system is designed for lawyers. It has to be redesigned so that people can do it themselves, or do it themselves with some legal assistance, or possibly an entirety of legal assistance. The online court is the solution.

Q19 Chair: Is it primary or secondary legislation?

Lord Thomas of Cwmgiedd: I have no doubt that we shall need primary legislation to enable us to design a set of rules that will underpin the operation of this court. I hate to recommend reading talks, but Lord Justice Richards gave a wonderful lecture at Gray’s

Inn in which he explained how the white book had grown from 2,000 to 3,000 pages in the course of about 10 years. He could not see any way of stopping that. His solution was that really we need to start again. He is completely right. We can leave the white book for more complex litigation, but for the online court we need to start again, with something short and simple. We must do it in such a way that we do not complicate it or have cases interpreting it—keep it simple.

Q20 Mr Hanson: In section 2 of your annual report, you said that you made “extensive submissions” on court fees. You have also said that you are “deeply concerned” about court fees. In the speech that the Chair mentioned, you said that court fees are “imperilling a core principle of Magna Carta.” Have you given up the battle on court fees per se?

Lord Thomas of Cwmgiedd: No.

Q21 Mr Hanson: What is the next step? There are solutions, but what is the next step on court fees?

Lord Thomas of Cwmgiedd: I gave a talk at Bangor University on the history of court fees. You may think that it is an extraordinarily boring subject, but actually it is quite interesting, because it shows the tension between what the public ought to pay and what the individual litigant ought to pay. Bentham took the view that you should have access to justice without any fees. To my mind, that is untenable these days. On the other hand, some people take the view that the justice system ought to pay for itself, but that is too extreme; you have to find something in the middle.

I have not given up trying to work out the best way forward. Recently, the Ministry of Justice put forward the idea that there should be a significant increase in probate fees. There is nothing new in that. Probate fees were a very strong part of the way in which the court system was financed for two centuries, probably. We went away from that. It is about the mixture. I am always happy to engage in debate about how much individual litigants ought to pay, how much the litigants in very big cases ought to pay and how much the public purse, in one way or another, ought to pay. It needs an informed debate.

Q22 Mr Hanson: Can we expect further submissions from you to the Ministry of Justice about solutions on the fee issue, in particular?

Lord Thomas of Cwmgiedd: Yes. Can I give you an illustration? The Lord Chancellor decided that he would abrogate the criminal courts charge. He set up a group, chaired by Mr Justice Jay, to look at the whole issue of the financial penalties imposed. What do you do with the criminal courts? Should they be paid for entirely by the state? Should you try to recoup some of the cost from those who come before them, and in what proportions? How much should you try to get out of people to compensate or make better provision for victims? There is no easy solution. Large sums of money are sometimes recovered. For example, in the first of the deferred prosecution agreements, a very significant sum—I think it was about \$16 million—was ordered to be paid. Where you put that money in the criminal justice system—or whether you just pay it to the Treasury—is something we need an informed debate about. I would be very happy to engage in that. It is something that we have to do.

There are different considerations in civil. In civil, the one thing you have to do is to understand the market. You have to research and to know which bits of the business will pay the right fee; I am sorry to sound so commercial. Then you have to persuade the Chancellor of the Exchequer that there is a public interest in good civil justice, so we should have a subvention from the Treasury. This is an informed debate that we have not really had for quite a long time.

Q23 Mr Hanson: You touched on the issue of having an online court for claims of less than £25,000. We have seen some kickback, if I can put it that way, from the Law Society, who indicated that they are worried about the very same issues of access to justice and legal representation. Is there anything that you can say to comfort them about their concerns?

Lord Thomas of Cwmgiedd: Lord Justice Briggs is now engaged in the second part of his report. There will be cases where some legal assistance is required. I would not like to express a view on how it is to be worked before he has had his consultation, but certainly there needs to be a dialogue. One has to appreciate that it is unlikely that the Exchequer will agree to return to the old days of legal aid. I do not see that happening. All parties agree that the legal aid budget had to be reduced.

Q24 Mr Hanson: The Law Society's key concern is that the first time many people come into contact with the legal system is when they are the victim of a crime or have some litigation issues. For some people, being online is a challenge, in addition to the challenge of the court system in the first place. The Law Society's argument is that there is a need for some guiding hand to help people through that system. I appreciate that this is all for consultation, but that issue will need to be addressed, so that we do not have digitally excluded and not legally engaged excluded.

Lord Thomas of Cwmgiedd: Absolutely. The digital exclusion problem is a very real one. Allowance has been made in the budget going to the online court for significant assistance to people who, for one reason or another, find access through a digital portal difficult. One also needs to see how the legal profession fits into it. These concerns are real. From discussing the matter with Lord Justice Briggs, I know it is something he will address.

Q25 Mr Hanson: When is his final report due?

Lord Thomas of Cwmgiedd: In July. He promised his first report by the end of the year, and I got it on Christmas Eve at an hour I will not name. He is extremely diligent and works extremely hard.

Q26 Mr Hanson: Another proposal is the suggestion in the interim report for case officers, rather than members of the judiciary, to determine cases. Do you have any initial views on that?

Lord Thomas of Cwmgiedd: We see the case officer as having two principal functions. One, in smaller cases, is to try to bring parties together. That seems to have worked in various areas. You do not necessarily have to be a lawyer to persuade people to try to settle promptly. The second is to do a lot of the case management and organisation. Where a matter is for determination, it will be by a judge. It has to be. He is going to consult further on that, but my initial view is that an awful lot is done by judges at the moment that need not be done by them. The work that the Courts Service has done, with very

limited funds, to use people who are not lawyers to talk to people, to see whether they can facilitate a settlement, has worked very well. A huge amount of case management, to get the thing ready for the judge, can be done by people who are not lawyers, but at the end of the day, if there is a dispute, it is a judicial determination.

Q27 Mr Hanson: This is all about costs, I am afraid; we are in that section of our discussion. What is your assessment of how fixed costs for small personal injury claims are working? We have had suggestions from Lord Justice Jackson that we could extend fixed costs so that they become the norm for civil claims up to around £250,000. Is that something you are attracted to?

Lord Thomas of Cwmgiedd: The fixed costs regime is something that we ought to expand. I would prefer to leave the way in which one should do that to those who spend more of their time doing it. The approach of the online court is to take a sum of £25,000, which is a lot of money. If that works, one can push it upwards. I suspect that the way to deal with fixed costs is to have an incremental rise, not just one big bang. People would find that uncomfortable. We need to monitor how it is working. Fixed costs work in other legal systems and there is a lot to be said for them. They concentrate people's minds on keeping costs proportionate.

Q28 Mr Hanson: Your report indicates that you are looking to increase the efficiency of the Court of Appeal. How?

Lord Thomas of Cwmgiedd: The Court of Appeal has had a huge increase in its volume of business, and we have had no more judges. We are looking at a number of things. The first, which we have implemented, is to employ more lawyers, because it is quite valuable for a judge to have the papers put in by a litigant in person put in some sort of order and a memorandum written about the facts. Sometimes a litigant in person will give you a box of papers. It is very important that someone has the time to sift through that. Secondly, we are examining greater use of two-judge courts. That is something we used to do. We have stopped doing it as much, and we need to go back and look at it. Thirdly, we will look again at whether we have the balance right between written applications for permission to appeal and written ones that you have the right to renew, if you fail. Fourthly, there are some cases that come to the Court of Appeal whose appellate level ought really to be the High Court.

Those are four of the ideas. We must make certain that we run the court with a very efficient administration. I have no doubt that in due course digitalisation will make that much easier. I am a very firm advocate of word-limited submissions. The Supreme Court of the United States says that you can have only a certain number of words. I am very keen on that. Most people, if they are asked to say something concisely, say it better. I am not very much in favour of page limits, because then you have to address margins and font size, and avoid people putting everything in minuscule footnotes.

Q29 Mr Hanson: In the interests of conciseness, could you tell the Committee how much you expect those efficiencies to save?

Lord Thomas of Cwmgiedd: There will be savings in the delays that are occurring. At the moment, the delays in an appellate case coming on are not acceptable. In terms of driving

down the cost, savings would be marginal, but we need to do appeal cases much more quickly than we are doing at the moment.

Q30 Philip Davies: I have a quick question about delays in the civil division. I was wondering about the times when the courts sit. The courts do not even sit for the whole of August and September. If the thing that is at the forefront of your mind is delays in cases, would it not be more helpful if the courts sat more often and there was not such a delay for people wanting their cases considered over those months?

Lord Thomas of Cwmgiedd: The Court of Appeal civil division sits throughout. It may not sit for a week over Christmas and for a few days over Easter, but we have divisions of the Court of Appeal that sit all the time. People do not sit as much in court as they used to. The move has been to do much more on paper. The more you have on paper, the more time you need out of court. I remember that when I practised you went into court and you had to read everything to the judge. Cases took a lot longer. If you save time in court and, therefore, save costs, you have to balance it elsewhere. Judges spend quite a lot of time over each vacation writing judgments. I would say that being a judge is quite hard work at the moment. You are welcome to come along and see it, if you do not accept it on first sight of me. Judges work very hard. Most members of the Court of Appeal work very long hours.

Q31 Philip Davies: Is it not a bit anachronistic to have the civil courts, for example, running on the same basis as academic terms? Is that not a bit old-fashioned in this day and age?

Lord Thomas of Cwmgiedd: No. The good Dr Beeching, if one remembers him, is well known for railways, but he also dealt with courts. He did a lot of calculations that showed that if you sit lots of courts together at the same time you can get through more work, because there is always a proportion of cases that settle. Sitting continuously with two or three divisions of the court is not sensible; it is much better to concentrate them. The vacations are necessary for people to catch up with judgments and keep up to date with the law. It is not efficient for them to sit all the time. It is much better to concentrate them.

If I may take the example of north Wales, one of the difficulties with an outlying court like Caernarfon is that you cannot sit more than one or two courts there. The risk that you always have is that in one of the cases someone will plead guilty or something will happen. The criminal court in Birmingham, for example, can be operated at a very high rate of efficiency, with no floating trials—basically, everything is given a fixed date—because you know that over a 15 or 16-court centre you will have enough settlements. The same applies to the Court of Appeal. Mathematically, it works. Sitting in concentrated blocks of time is much more efficient, I can assure you.

Q32 Chair: I get that. It is fair to say that Members of Parliament do not stop working when Parliament rises. There is a great deal to be done behind the scenes as well. I suspect that the same very much applies.

Lord Thomas of Cwmgiedd: Yes.

Q33 Marie Rimmer: You mentioned in your report that the President of the Family Division has issued guidance for the increasing number of public law children's cases involving radicalisation of children or a risk of their being taken to areas controlled by

Islamic State/Daesh. How is the family court approaching those sensitive and challenging cases?

Lord Thomas of Cwmgiedd: The court has approached them, as it always does in cases involving children, based on the paramount importance of the welfare of the child. It has had to take a new approach to deal with what is a very difficult problem in any system of justice: when you have information that the intelligence agencies have obtained, how do you gist what the concerns are, while keeping some of it secret to preserve the ability of the intelligence services to operate in other cases?

This was something we learned gradually to deal with in civil cases. There were some rules, and we have the system fairly well established now. The family courts are having to feel their way. They probably need rules, but from talking to the family judges and to the president, I think they are doing very well. It is proving effective, because this is a judicial determination. The judges will have a very clear view that they must test the evidence of the security services that is given to them. My own view is that it is working well.

If I may go back to civil, where I have much more direct experience, I have always felt that we managed to achieve a pretty good balance there. The problem is how you tell people that you have achieved a good balance when part of it is, in its nature, secret. When I have persuaded sceptical Ministers to come and sit in court, on the whole they have been very impressed. Don't take it from me; come and see it. If appropriate arrangements can be made with the security services, I think you will find it as fair as one can make it.

Q34 Marie Rimmer: As you know, legal aid for family mediation is still available. Do you think that more could be done to promote family mediation services to litigants in person facing family law disputes?

Lord Thomas of Cwmgiedd: Absolutely. One view that we share across the judicial system is that the model of an online court is probably applicable to private law family disputes—disputes relating to rights of access to children, custody disputes and financial disputes. We should build a mediation process into that. In some places it may be better to do the mediation privately, but sometimes it may be better within the court system. We think that that will also work for quite a lot of the cases that come before tribunals. More needs to be done. In family disputes, in particular, it is very important that you get away from an adversarial approach, wherever possible.

Q35 Marie Rimmer: We know that the Court of Protection Rules Committee has produced its first set of rules and directions, taking effect in July 2015. What are your reflections so far on the new approach that the court is piloting?

Lord Thomas of Cwmgiedd: I think that it is going well. It has a very energetic president, Mr Justice Charles. As I said earlier, it has become apparent that opening it up, wherever possible, is the way forward. It is working very well.

Q36 Chair: That deals with what had been a rumbling issue in the past.

Lord Thomas of Cwmgiedd: The press do a great service in stressing the need for openness. As I said earlier, sometimes they are not happy when they are denied access, but there is always a good reason for it.

Q37 Chair: I will move on to the criminal justice aspect of the report. You refer particularly to the pressure that is coming on to the criminal courts, for a raft of reasons. You say that there is an “urgent need” to improve the forward projections for court business, based on offences reported and so on. Do the criminal courts have the capacity to respond to the early warning of a bulge coming in a particular type of case, bearing in mind that some will fall by the wayside?

Lord Thomas of Cwmgiedd: The sooner you know about a problem, the easier it is to deal with it. There was not enough prediction of the move to the very high proportion of court time that is now taken to deal with sexual cases. That came as something of a surprise. There was a view that much of the problem was historic, but the evidence now tends to suggest that it is not. Quite a significant amount of sexual crime is being reported in relation to matters that one might describe as contemporaneous. That will flow through the system, and we need to be able to deal with it.

In these cases, the plea rate is obviously much lower, so one needs the earliest possible notification. For example, in the Crown court these days it is often quite difficult to list someone who is authorised to try sexual cases, because of the volume. We therefore need to make certain that everyone who is appointed a recorder or a full-time judge is trained and equipped to do that. The kind of person one appoints is governed by forward projections. Normally, for example, if you know that the police have a problem, you need to project that right forward. Where we have been able to do that, we have been able to deal with the issue much better than if we find out only at the point in time when cases come to court.

Q38 Chair: What more needs to be done to enable you to do that? Are there more tools that you need within the justice system as a whole to join that up?

Lord Thomas of Cwmgiedd: You need much better alignment of what is coming through the door of the police station and a proper statistical system that reflects that—using former experience, in part, but also using current figures. Too much of the work is done by projections from the past, rather than the changing nature of crime.

Q39 Chair: Is that something that should be owned by the Courts Service, essentially?

Lord Thomas of Cwmgiedd: Who should do it? I think that it is a matter for the Criminal Justice Board. I have discussed this with the Lord Chancellor, and I know that he is very keen that the Criminal Justice Board drive it forward. In any walk of life, you need to know what is coming in the future. We are not as good at that as we should be.

Q40 Chair: That is very interesting. Of course, we have also seen a quite substantial series of recommendations by Lord Justice Leveson, from his review. Do you think that we can achieve all of those over a realistic timeframe?

Lord Thomas of Cwmgiedd: For chapters 1 to 9, yes. I say that observably. The Criminal Procedure Rule Committee works very well and is in the process of implementing it. We are moving as fast we can on digitalisation. There are two areas of concern. The first is making certain that police computer systems integrate. There are 43 different police forces. Although they do not all have different computer systems, there are a number of

different systems. Secondly, we must build a system that can deal with the capacity. One area where there is great promise is the use of body-worn video cameras. If you can take the statement right away, it is extraordinarily powerful evidence, but because video uses up a lot of bandwidth, you need to make certain that you have built the system with sufficient capacity.

If we tackle those two areas, the first nine chapters of the report can be implemented in full. Chapter 10 is different. That depends on political decision. I hope that we can move forward in one or two areas; for example, we do not need an indictment any more. It is an historic anachronism. I hope that we can bring the magistrates courts and the Crown court much more closely together, so that we have unified leadership. There are other matters, but the rest are much more political. We have taken the view that it is for you to decide those matters, not the judges.

Q41 Chair: Absolutely. In the magistrates' courts, for example, you could have something not dissimilar to the unified family court, to some degree.

Lord Thomas of Cwmgiedd: Yes. There is a huge benefit, particularly as we consolidate the estate, in having a single chain of leadership. One step that we have taken in connection with modernisation is to recognise that we need local leadership. Across the country, we have established local leadership groups. They will prove very worthwhile.

Q42 Chair: I understand and totally accept the determination of the judicial end of the process to deal with this. Do you think that there is adequate resourcing and buy-in across the rest of the criminal justice system? I will give you a small, homely example. The other week I sat in the Court of Appeal criminal division with some colleagues. Nobody is produced now in the RCJ—it is all done through video link. On one occasion—I gather that it is not infrequent—the prisoner had not been moved to the appropriate prison where a video slot was available. That was not the fault of the court, but a delay was caused. Happily, it was sorted out eventually. Is that a common concern that you still have? Somebody in the Prison Service had not linked in what was happening.

Lord Thomas of Cwmgiedd: The current prison links depend on fixed lines. For obvious reasons, prison governors are extremely concerned about going to internet-based communication. I very much hope that we will move to that, as it will make the whole process much more flexible. The technology is almost there. Connection through internet-based systems works extremely well, and the quality is increasing exponentially. As soon as we can move to that, and the Prison Service can have access to such a system, without the worry of a computer going missing in prison, about which there are obvious, real security concerns—

Chair: I understand that there are real issues.

Lord Thomas of Cwmgiedd: I think we can solve those. This is much more a technical problem. The Prison Service is really trying; it sees the huge benefits to it of not moving prisoners.

Q43 Chair: I can certainly see that. I have a couple more short points. Leveson recommended the idea of compliance courts. Some people have suggested that, if you penalise the CPS on compliance, there may be a risk that you are robbing Peter to pay Paul,

to some degree. On the other hand, I understand that it drives behavioural change, because there is accountability. I imagine that it would require a particular mindset and adequate resourcing in the CPS. Is that factored into the delivery of that part of the Leveson recommendations?

Lord Thomas of Cwmgiedd: A lot of the problems of compliance will be solved when the digital case system is in existence. It is a question of balance. One thing that has proved successful is meetings between the judge and the local CPS or the local defence to sort out what the problems are, and if something has gone wrong, to find out why and prevent that for the future. Compliance courts can work as well. People do not like them. It is a question of finding out what is wrong and solving it, but sometimes it is also about being quite tough. Moving money from A to B within the public sector is not the most efficient way of doing things.

Q44 Chair: Absolutely. I was interested in the reference in the report to the three pilots on pre-recording cross-examination of vulnerable witnesses. I can see the attractions. The question that always struck me as a practitioner was how you cope with a situation where something comes up in the course of the trial and you need to put it to a witness, but the cross-examination has already been pre-recorded—for example, if another witness has said something that alters it. What is your experience so far of the pilots that have been set up?

Lord Thomas of Cwmgiedd: The experience so far is that that is not proving a problem.

Chair: Good.

Lord Thomas of Cwmgiedd: The great benefit of it is that, from the point of view of the complainant, the matter is dealt with and they do not have to worry. If we had had this in some of the really high-profile cases, we would not have had some of the tragedies that have occurred. Secondly, in the event that a retrial is necessary, you do not have to go through it all over again. I did an appeal the other day that was the third trial where the complainant had to give evidence. It was no one's fault, but that should not happen.

I went to watch one of the pilots, as it is always important to see how they are working. I was very impressed by the way in which the system was working. The judges at the three centres where we have done this are all tremendously enthusiastic. What may hold it up is the cost, but I go back to where I started. If we attack this on a modern commercial basis and not as we have done things in the past, with fixed and complicated contracts, I am pretty certain that we can do it at an expense that is realistic. If we try to use traditional forms of contracting, it will cost the earth and be very inefficient.

Q45 Chair: Do the judges at the pilots have a means of getting feedback from the profession—from the advocates, for example? You need buy-in from them as well.

Lord Thomas of Cwmgiedd: Yes. I think there is buy-in for this and people will think that it is a good system. My own view is that we will need to monitor it very carefully and to make certain that the way we cross-examine witnesses is kept in balance. We went from a cross-examination system that was very bad for complainants. We may have gone a bit far the other way, but that is something that inevitably happens. Possibly we need to be slightly tougher, but not much.

Chair: I get that.

Q46 Philip Davies: I have a couple of quick points on criminal justice. Recently, when I spent some time in court, the judge remonstrated with me about the huge growth in the use of intermediaries in court cases, which was causing delays in cases while an appropriate intermediary was found. He advised me that if I had any sense I would leave Parliament and become an intermediary, because it was such a huge racket these days. What is your view on the huge growth in the use of intermediaries? The opinion expressed to me was that a judge properly managing a case can make sure that the defendant, for example, is following the trial and that the questions are appropriate for them. Do you think that the Government need to do something to stop this problem?

Lord Thomas of Cwmgiedd: Dame Joyce Plotnikoff did a tremendous job of work in showing how important intermediaries are. In many cases they are very important, but, as with any new introduction, one has to be quite careful, particularly when commercial interests become involved. One severe issue that has arisen is the view that some firms take that the only contract or provision on which they are prepared to allow an intermediary to come is if the intermediary is there the entire time. To my mind, that is not a sensible use of public money.

We are in a process of adjustment. I issued a draft practice direction, which we need to discuss at the Criminal Procedure Rule Committee, to bring a sensible balance. I can well understand why the judge you spoke to expressed the views that he did. One must be careful not to go too far in saying that the whole thing is a terrible problem. It is not; it is a good thing, but we have to make certain that those who believe that these are areas where you can make a lot of money realise that the criminal justice system simply cannot afford it.

Q47 Philip Davies: Is that an issue that the courts can resolve themselves, or do the Government need to do something to assist?

Lord Thomas of Cwmgiedd: Just before Christmas, I issued a draft practice direction on this particular subject for comment. The Criminal Procedure Rule Committee, which represents all the interests, will consider it. If we think that we can resolve it by practice direction, we will. If we need the Government's assistance, I am absolutely persuaded that they will give it, because there is only a finite amount of money available for criminal justice, particularly through the legal aid system, and we have to make certain that it is spent properly.

Q48 Philip Davies: I have another question on criminal justice. Recently Michael Gove made a speech in which he made the point that prison governors get very little feedback on what happens to the people they have had in their prison—unless they see them come back to the same prison, of course, when they realise that what happened failed. Otherwise they get no feedback about their decision making and all the rest of it. Do you feel that in some way the same might apply to judges when they give out sentences? If a judge decides to give somebody a suspended sentence, for example, instead of a custodial sentence, do they get appropriate feedback on the success of the decisions that they have made? Clearly prison governors are not getting feedback on the success of the decisions that they are making.

Lord Thomas of Cwmgiedd: One issue that is being looked at in what are called problem-solving courts is the extent to which you ought to involve the judiciary and the magistracy in post-sentence supervision. One has to be quite careful that the judge does not become

anything other than a source to be reported to and checking that someone is complying. They must not get involved in the compliance work, because there lies great peril. It is an issue that we are examining.

Problem-solving courts are sometimes seen as dealing just with low-end crime, but a judge in St Albans, Judge Michael Baker, ran a trial of people who were serious criminals and might have faced a five or eight-year sentence. Provision was made to say, “Look, you are going down for five or eight years, but we have this opportunity. Take the benefit of it.” Reports back to him on that indicated that in many cases they were successful. There is huge room for looking at greater judicial involvement in reporting back, but I am very firm that we must not overstep the mark from being reported to and seeing what is going on to being involved in what the person does. That is the responsibility of probation and other services.

Q49 Philip Davies: You say that that is happening.

Lord Thomas of Cwmgiedd: No. It happens in some cases. The only bit where it actually happens is on drug testing orders. When I was at a Crown court the other day, we discussed whether judges ought to exercise their discretion to have reports back. There is a growing view that this is something that needs to be looked at very carefully. It has resource implications, because obviously it takes up a judge’s time, but in certain cases it is something we ought to look at, to see whether we can develop it. I would not want to commit myself without working out the cost-benefit analysis. It is not a free ride.

Chair: That is very helpful. Ms Prentis, can we move on to administrative law?

Q50 Victoria Prentis: For the first time in my legal lifetime, which is 20 years—obviously not as long as yours, but not insubstantial—we have seen a reduction in the backlog of judicial review cases. I know that the last time you came before our predecessor Committee you were reluctant to talk about judicial review reforms, because the Bill was going through Parliament at the time. I wonder whether now you feel able to comment on the substance of the reforms.

Lord Thomas of Cwmgiedd: The biggest reform we made was to move out asylum and immigration case judicial review, apart from restricted cases. That has freed up the administrative court and enables it to work much more efficiently. On the whole, the legal aid reforms have worked. As far as one can tell, they have not meant that people who have real cases have been deterred. Where there has been an effect, it has been to ensure much greater caution in intervention by what one might call public interest bodies.

Victoria Prentis: Third parties.

Lord Thomas of Cwmgiedd: At the moment, I am unsure whether that is a good or a bad thing. The written brief for a short oral submission in a case from those public-spirited bodies, where they often do it for nothing, is extremely helpful. However, they risk being landed with the costs, so people are much more cautious. That is an area where it might be desirable to look again.

Q51 Victoria Prentis: Would that be for oral presentations, as well as written briefs?

Lord Thomas of Cwmgiedd: Yes. Sometimes it is very valuable to have someone come in. In one or two cases that I have done recently, someone has come and made a brief oral submission pro bono, but organisations tell me they are very reluctant to do it because of the risk of their being landed with costs. That is one area I am concerned about. So far no evidence has been brought to my attention that the other changes made have affected matters adversely.

Q52 Victoria Prentis: That is very helpful. Your report talks about the increase in extradition cases and the pressures that is putting on the courts that are allowed to do those cases. Do you see a way forward for dealing with that?

Lord Thomas of Cwmgiedd: There is an exponential rise in extradition. We are doing three things. First, I am enormously grateful to the chief magistrate and the deputy chief magistrate, Howard Riddle and Emma Arbuthnot, for the work that they are doing to build bridges—particularly where we have the volume problem, which is the rest of Europe—to try to make certain that people understand our processes and we are no longer landed with cases that really ought not to be brought. Secondly, the operation of the Schengen II system is producing some more work, but I do not think that it is disproportionate. Thirdly, we have tried to assist judges—particularly in cases where issues have arisen in relation to article 8, on family or private life—so that their decision making is more structured.

They all work very hard—I praise them for that—but it is an inevitable consequence of what London is that you are bound to have much more extradition than we have ever had before. We just have to be very careful that the system operates well, that we respect the decisions in other countries as to where people will be tried or returned to prison and that the system works. A lot of effort is going in. I cannot praise Judge Riddle and Judge Arbuthnot enough for the huge amount of work that they have done. In the Court of Appeal, the volume of work has meant that we have had to assign judges to it. Lord Justice Aikens, who is now retired, used to do it; now Lord Justice Burnett is doing it. We are trying to make certain that we run it to provide as just a system as possible.

Q53 Victoria Prentis: You are confident that you can carry on meeting demand.

Lord Thomas of Cwmgiedd: If the volume increases, we will just have to put in more judge power. For example—going back to the use of courts in the vacation—we are going to use the vacation to blitz the backlog, by sitting a lot of extra courts in the royal courts of justice.

Q54 Victoria Prentis: I have a question about coroners' courts. Before Christmas, there was a debate about concerns about the poor standard of service in the West London coroner's court. I appreciate that you may not be entirely familiar with that, but I wonder whether you have heard about any particular difficulties that the Chief Coroner is having in trying to set national standards for coroners' courts.

Lord Thomas of Cwmgiedd: In the period in which the Chief Coroner has been in office—he retires this year because of his age—he has done a tremendous job. I do not wish to criticise anyone, but it is fair to say that the way in which the coroner system was reformed was not ideal. There are two things. First, it remained—no doubt for very good reasons—a locally financed service. Secondly, the appellate mechanism that was to be

provided was removed. We have therefore had to try to find ways of ensuring that the Chief Coroner not only has authority, under the limited powers that he has in the Act, but is seen to have it. He has done a tremendous job in improving standards and modernising the system. It would have been much better if we had made it a national organisation and he had had powers. One thing that we have done is to have him sit, as a deputy judge of the High Court, on all appeals from coroners, unless he has been personally involved. That gives him the kind of judicial status that another judge has over those cases, which has worked. He has worked tirelessly to promote the standards and has done a tremendous job. It has not been easy. I do not want to go into why it has not been easy, but he has done extraordinarily well.

I know that there are problems locally. Part of it arises from the way the system is financed. There is something to be said for having much greater flexibility of deployment than you have, where someone is appointed for a very long time to a particular area. It would have been much better to deal with it on a national basis.

Q55 Victoria Prentis: Do you think that there is hope for the future? After all, these are cases where somebody has died. Families find the whole procedure very difficult at the best of times. Some of these courts are just not providing the service they need.

Lord Thomas of Cwmgiedd: As with any local authority service, money is a serious problem. There is also the way in which the courts are structured. I hope that at some stage someone will get around to looking at whether we can move to a nationally based organisation and finance it nationally. I cannot see that that can make any difference. No doubt the money is provided centrally, through the Exchequer, to the courts, so it might be much better to run the service nationally. If there is a problem in a particular area, it is quite a good idea to move people. The Chief Coroner has done a tremendous job, within the limited powers he has, but things are plainly not right yet.

Victoria Prentis: No.

Lord Thomas of Cwmgiedd: I am hopeful, but I accept that there are problems. I do not want to comment on or identify any particular area. I cannot do that because, first, it would be wrong for me to say publicly what I thought, and, secondly, I have a disciplinary function in relation to coroners and therefore have to deal with specific cases.

Victoria Prentis: We will leave it there.

Q56 Chair: In essence, the issue is that there are structural problems.

Lord Thomas of Cwmgiedd: It is the structural problem. One could not have had a better Chief Coroner than the one we have.

Chair: Absolutely not.

Victoria Prentis: I agree. I had a lot of dealings with him over the military cadre when I was at the Treasury Solicitor's Department and I completely agree with what you have said. Possibly, it is something for us to look at.

Chair: Yes. There is something for us, perhaps.

Lord Thomas of Cwmgiedd: It is a long-term problem that needs dealing with.

Chair: That is very helpful. Moving through the report, you have shared statutory responsibility, with the Lord Chancellor, on judicial diversity and so on under the 2013 Act. Ms Rimmer will touch on that briefly.

Q57 Marie Rimmer: In section 5 of your report, and in your recent speech to the Temple Women's Forum, you described the efforts you have made to fulfil your statutory duty on judicial diversity. Sadly, as you acknowledged, the improvements with regard to BAME have been very limited. Is it just a matter of waiting patiently until your initiatives pay dividends, or are there more fundamental steps that should be taken?

Lord Thomas of Cwmgiedd: I am always very reluctant to say that one should wait to get things better. We took that attitude in relation to the gender balance of the bench, and it was wrong; we needed to do something. There we are on track. The BAME problem is a huge problem across the profession and across the judiciary. We need proactive steps.

It starts right back at school level. I am very pleased that we have persuaded the City of London to support the very ethnically diverse academies that surround the City and which the City supports. They now come to ceremonies at the royal courts of justice, because our nation does ceremonies quite well and you can enthuse people when they see how important it is to society. The Kalisher Trust does a huge amount of work going out to people. Marc Dight is the judge in charge both of the Central London county court and of the community and diversity relations judges. We have realised that this is a huge focus of the outreach work that we need to do. It is outreach work designed partly to ensure that we get people in and help them—I will come back to that in a minute—and to make people understand that our institutions of justice and our civic institutions are vital to our society.

In relation to the direct problem of recruitment, we have processes for appointing people. It is many people's experience that, with every new process you devise, you find someone who works out a way of promoting it. I remember some years ago, when we had psychometric tests, you could train yourself to do well in them. We now have a form-based system. Well, you can train yourself to do that right. No doubt we will think of better systems, but we need to help people who do not have the advantages that others have of being able to work the system. We are looking very much at mentoring and going out to help people. I am absolutely convinced that sitting back and saying, "It will all get better in time," will not work. We need an effort. I am very conscious that our biggest area of challenge—I suspect that it is across the entire senior public sector—is helping people from the ethnic minority or BAME community to progress as one would like. It is a huge task, but it has to be done.

Q58 Marie Rimmer: Do we perhaps need to set up a system for training a career judiciary, like the one that exists in France?

Lord Thomas of Cwmgiedd: No. I am sorry, but you will find me deeply conservative in that view. There is a huge advantage in having people become judges when they have had time doing a professional job as a lawyer. I find it quite interesting when I talk to continental lawyers. They say, "I have this really big dispute. Do I want a 25-year-old?" You need experience of life to be a judge. Our system is to require people to do something else and then come to the judiciary.

The only area where we can do more—we are doing this now and will do it more when we have greater flexibility of deployment—is enabling people, when they have joined the judiciary, to move up. I am a great believer in our having much more flexible entry to the judiciary. For example, if you become a tribunal judge, you ought to be able to move easily across the tribunals or between the tribunals and the courts, and vice versa. The broader the experience you can give someone, the better judge they are.

Q59 Marie Rimmer: I understand that at a lecture last night someone mentioned the introduction of targets.

Lord Thomas of Cwmgiedd: Targets?

Marie Rimmer: Yes.

Lord Thomas of Cwmgiedd: If you are driven to a target, you can make the terrible mistake that someone says, “They were appointed because they were the person who brought the target.” I have never yet met anyone who wants to be that person. One should have aspirations and measure oneself against getting there. We have done that on the gender balance. That is not over, but I would much rather have an aspiration on where to get to than be told, “You’ve got to get there.”

Q60 Marie Rimmer: In section 6 of your report, you mention the adverse impact on judges’ morale of increasing pressures of work, including pressures caused by the rising number of litigants in person. What steps are you and your colleagues able to take to relieve those pressures?

Lord Thomas of Cwmgiedd: Right across the public sector, there is an increasing problem of a very long period of pay restraint and a considerable increase in the volume of work. At some stage that will have to be addressed. It is matter that must concern every Minister responsible for public sector employees, but I know that it concerns the Lord Chancellor very greatly as regards the judiciary. It is a problem.

As regards what we are doing internally, I have no doubt that providing people with much more modern IT will help. If we can relieve the stress of litigants in person, through the means I described earlier, it will help. Ultimately, the issue will come down to an evaluation of the relative role of the public sector in our society as a whole. That is a very big topic of course.

Q61 Philip Davies: On the point about appointments and diversity, if I put it to you that really we should be completely gender blind and race blind when it comes to appointments, would you agree or disagree?

Lord Thomas of Cwmgiedd: When making the appointment, you ought to be blind, but you ought to give people the opportunities so that they compete on a level playing field. That has been the problem. If we go back to gender balance, when looking at your pool, you need to compensate for differences in the careers that people might have pursued and for someone’s comparative lack of experience, because we are looking at potential.

The thing that I have discussed a lot with the Judicial Appointments Commission is whether we have got our selection system right. One area where I am very concerned that we have not got it right is at first entry. Do the tests that we have favour people who might

be advocates, as against people who do not have as much experience? One is actually looking for potential. In this debate, I feel very strongly that we need to be sure that the way in which we assess people is gender and race blind, but that those who come have a test that is a level playing field and they are therefore able to compete on a basis that measures the true interest, which is potential.

Q62 Philip Davies: How many judges come from a white working-class background?

Lord Thomas of Cwmgiedd: I am afraid we do not keep statistics.

Q63 Philip Davies: That is part of the problem, isn't it? The obsession with diversity is about a somewhat simplistic diversity, if it looks at just gender and race.

Lord Thomas of Cwmgiedd: Of course.

Q64 Philip Davies: Replacing Rupert from Kensington and Chelsea with Jemima from Kensington and Chelsea does not do a great deal to enhance diversity, in my opinion. Have you ever thought about widening your view of diversity to take account of many white working-class people, who feel very discriminated against in the system and do not get the opportunities they think they deserve?

Lord Thomas of Cwmgiedd: I completely agree with you.

Q65 Philip Davies: But that is not mentioned anywhere in your report.

Lord Thomas of Cwmgiedd: Social mobility and giving people equal opportunity? To go back to the work I spoke about—what the Kalisher Trust, for example, does and what the City has been doing, which I hope to encourage other people to do—it is about getting to people who come from those academies. I apologise; it is an omission from my report. I will look at it, because social mobility is terribly important. I agree with you. Substituting people who come from the same social background is not addressing the diversity you have in mind. You are quite right.

Q66 Philip Davies: Can we expect a different report next year—an extra section, perhaps?

Lord Thomas of Cwmgiedd: I will deal with the point that you have raised. It is not easy, because we do not keep statistics. We have never done that. I will think of a way of ensuring that we are addressing the question of social mobility. That is terribly important to diversity.

Mr Hanson: It is more about aspiration. On the estate where I grew up, nobody said, "One day, son, you could be a judge."

Chair: That affects entry into the profession to begin with, doesn't it?

Q67 Mr Hanson: I take what Mr Davies said. There should be a way in which all careers, but particularly those in the senior civil service, the senior judiciary and, indeed, senior positions in Parliament, can be open to people at least to aspire to. I would be interested to hear how you can trickle down that aspiration.

Lord Thomas of Cwmgiedd: The way you do it is to go to schools—of all kinds. There is a benefit to the judiciary, in the career, but there is also a real benefit to society. One of the

problems we have is that people do not understand enough about the importance of the institutions. I am now trespassing into an area where it is probably dangerous for me to go, but it is terribly important that the young understand the importance of Parliament—that they vote. It is equally important that they understand the importance of the way the courts and the other institutions of our society operate. The only way to do that is to bring them into courts and to go out and meet them. That is why I hope that local authorities and councils will see what is being done.

I am sure they will not agree with me, but the City has the immense advantage of being reasonably comfortable in the resources they enjoy. They agreed to promote a prize of two kinds, one for people who are academic—an essay—and one for those whose talents lie in visual arts, geared to understanding justice. Next year they will come to one of the ceremonies and be given a placement in a City solicitor's office. That is the kind of thing we need to do.

Q68 Mr Hanson: It is a long way from north Wales.

Lord Thomas of Cwmgiedd: I know. We need to do the same there. That is the kind of thing we need to do. We run open days and we encourage judges to go as much as possible. The Bar and the solicitors' profession need to do that. We need to show those from 14 or 15 onwards that the institutions of our civic society are essential and should be open to all. I completely agree with you and with Mr Davies.

Q69 Philip Davies: Can we agree that, ultimately, appointments should always be made on merit?

Lord Thomas of Cwmgiedd: Yes, of course; absolutely. But you have to give people a level playing field to play, otherwise those who come from a background where they have a lot of help and so on have an advantage. I am not saying that it is an unfair advantage, but they have an advantage, which you need to counteract.

Q70 Chair: It is a fact of life. That is helpful. Even people from estates on the fringes of Essex and London can be persuaded, sometimes. I have a final question on this point. You referred to the question of morale and the adverse changes to pensions. When I was in practice, I always got the sense that it was almost accepted that very often people who went on to the High Court bench would take a financial sacrifice, effectively, for that post. Particularly with the circuit bench and the district bench, the pension arrangement was still an attraction for people. I suspect that is no longer the case—or not to the same degree.

Lord Thomas of Cwmgiedd: Those who have come to the bench recently would have regarded the pension as a very important part of the attraction to come. That also applies to the High Court bench. In the case of most people, there was a colossal diminution in income. The changes that have happened, partly as a result of an overall change but also because of the fiscal changes that occurred in last July's Budget, have had a very serious effect on those at the high end of the public sector. In the private sector, of course, it is very easy to do; you just pay someone more. I regard this issue as one of the most difficult and important that I have to face. We are in discussions—we discuss it a lot among ourselves and with Government—but there is a really serious problem.

Q71 Chair: What will be the impact of the changes on a High Court judge or a circuit judge, in broad terms?

Lord Thomas of Cwmgiedd: It is colossal in terms of the pension that someone will receive. It is probably fair to say that it is now clearly having an adverse effect on High Court recruitment.

Chair: That is quite important. Mr Hanson will now move us back to Wales.

Q72 Mr Hanson: A place you both know and love. You are currently the Lord Chief Justice of England and Wales. There are some who would have you or your successor be the Lord Chief Justice of England, with a separate jurisdiction in Wales. Do they have a point?

Lord Thomas of Cwmgiedd: Let me try to answer this question a little more fully than I have done in the past. The difficulty with the word “jurisdiction” is that, rightly, it is understood by people to mean different things, but when people talk about it they are not entirely clear about what phrase is being used.

There are two broadly differing areas. The first is jurisdiction in the sense of what power Parliament or the courts have over a certain matter. For example, the normal principle of jurisdiction is territorial. Essentially, the United Kingdom has a territorial jurisdiction. In France, it is the basic principle. The second view, which operates in some areas, is that you have jurisdiction over people. For example, if a British subject commits a murder overseas, he can be tried in this country. There are certain other offences where that applies. The third, more recondite area of this aspect of jurisdiction is jurisdiction over things. The Admiralty jurisdiction is one of the clearest examples of that.

That is one set of meanings of jurisdiction. You can refine them infinitely; I will give you an example in a moment. The other meaning of jurisdiction is the legal system. In that sense, you can have, as we have at the moment, judges in an England and Wales legal system, where the same people operate in England and in Wales. You could have a jurisdiction in the sense of judges being appointed to a court of England and to a court of Wales, even if they were the same people, and you could have a system where those appointed to the court of Wales were not also judges of England. Those are all different uses.

In trying to solve the issues that have arisen under the draft Wales Bill, there is sometimes not a clear understanding of what is meant by jurisdiction. It seems to me that you deal with the problem in the Wales Bill, first, by having those different meanings very clearly in mind, and secondly—I suggested this—by taking 10 or 15 examples, which makes it much easier to try to work out the best solution. I will give you two. For example, the Act that the Assembly has passed in relation to the law of landlord and tenant in Wales means that there will be a different law in Wales. That is an example of jurisdiction by reason of territory—it affects the houses in Wales. Then you have, for example, the provision that the Assembly has made in respect of organ donation. That applies to the territory of Wales, but, as I understand it, only to people who are ordinarily resident in Wales. You have two examples of the use of the word “jurisdiction” governing what legislative power is had.

One could go on. Another example is where you have a child in a border county who, for reasons of geography and facilities, crosses and goes to a school in England. Who is responsible for the regulation of that? It is very helpful if you have practical examples and then—I will not go any further than this—work out the best solution. If the debate is not related to things, people misunderstand the word “jurisdiction”.

The other misunderstanding that arises is in respect of the so-called unity of the common law. For example, I know that Australia, New Zealand, Canada, the United States and Singapore—you can go on replicating it across the world—are all common law countries. It does not make any difference that each of them has powers to alter the law of obligations, the law of contract or the law of crime. The decision is for Parliament. I will go no further than that.

Q73 Mr Hanson: The decision is for Parliament. In the draft Wales Bill, Parliament will be faced with an England and Wales jurisdiction model. The questions that you have raised in relation to all the examples that you have given are extremely valid for further discussion. How will that discussion take place? In the meantime, when there is a growing body of Welsh-based legislation versus England and Wales legislation, are the training and resources of the judiciary able to manage the transitional period, whatever the outcome may be in the long term?

Lord Thomas of Cwmgiedd: It is very important to have the terminology right. As regards the practical implications, as I have said before, there are two essential problems. One is training. A training session on the new social welfare Act—I am sorry that I do not have its precise title—which will come into effect very soon, is being organised for all the judges who deal with family work in Wales. We will do the same when the change to the law of landlord and tenant occurs. We have now solved that problem. We have a slight dispute as to who pays for it, but it is on the way to solution.

What we have not solved is the problem of ensuring that, where legislation is passed, all the necessary adjustments to the legal system are made as regards rules and forms—the kind of thing that the Ministry of Justice does in London for changes that are made by the Westminster Parliament. We need to work out a better solution for that in Wales. I have said that that is something we need to do. Progress is being made, but, apart from sorting out the issue of the meaning of jurisdiction, we need to solve this slightly more technical problem. I know that it sounds rather boring, but it is central to the operation of the Welsh system. We can make it work if people will be practical, concentrate on the matter and not worry about the illusion of the unity of the common law. These are problems that need practical solutions.

It is not for me to say what solution you could adopt. I would like merely to say what I have said as regards the options. I will give you any help that I can on the options, but the decision is yours.

Q74 Mr Hanson: We have another train coming down the track, which is the consultation on the changes to human rights legislation. It is very controversial; even within this Committee we have different views. Do you or do you not intend to submit a view on behalf of the judiciary to the Government’s consultation?

Lord Thomas of Cwmgiedd: At the moment I have taken the view, as have all my colleagues, that on the great issues relating to the European Community and the European convention on human rights it is essential that the judiciary stay out of what is essentially a political debate. If it is to be respected, a judiciary must remain absolutely impartial. If and when a consultation paper is published, we will look at it and see whether there are areas on which we should comment, but our paramount interest—I think I speak for the entire judiciary—is to leave those issues for decision here and not to express views on a political matter.

To drag the judiciary into this is highly undesirable. As far as one can see, no one is threatening to say, “We should not have any human rights legislation at all.” The issues are of a very different order. In my view, they are essentially political. It is of paramount importance to make certain that the judiciary stay neutral in that, as they do in relation to what you decide in relation to England and Wales.

Q75 Chair: If a constitutional long-stop is ever proposed, the judiciary will look at it when it happens.

Lord Thomas of Cwmgiedd: I am afraid that you will not draw me on that at all.

Chair: Absolutely not.

Lord Thomas of Cwmgiedd: I will tell you now that I am sorry.

Chair: Not at all. We quite understand and respect that.

Lord Thomas of Cwmgiedd: I believe that it is in the long-term interests of our society that judges should not get involved in politics.

Q76 Chair: I hope that generally we have managed to adhere to that through the course of the evidence session. Lord Thomas, the Committee and I are very grateful to you. It is very important for us to have the Lord Chief Justice come to give evidence to us.

Lord Thomas of Cwmgiedd: Apart from the point Mr Davies kindly raised about diversity, it would be very helpful to me if you could tell me whether this form of report is helpful to you and whether there are areas you would like us to deal with. This is not a question for you to answer now; you can come back to me through the Clerk.

Chair: By all means.

Lord Thomas of Cwmgiedd: We try to produce something that is not a glossy but is much more hard focused. If there are areas or points that you think we ought to deal with, would it be too much of an imposition to ask the Clerk to convey your views to my office?

Q77 Chair: It would be extremely helpful. We are very grateful to you for that. The sense that I get since we have had these annual reports is that they are a valuable means of bringing home to people—to the public at large, who are the stakeholders, in a sense—the complexity of the issues that the judiciary tackle. We are very happy to help you to try to perfect that.

Lord Thomas of Cwmgiedd: I am sorry to have asked you a question—I know that is not my job—but it was one that I did want to ask you. The other thing that I want to say is that I am extremely grateful to those of you who come on the scheme that the Industry and

Parliament Trust has operated. We will do our utmost to accommodate you, because the more we can help you with the judicial system, the better.

Q78 Chair: That is very kind. It is an excellent scheme. I am grateful for the assistance that you have given me and other members of the Committee in seeing the work of courts at first hand. Lord Thomas, we are very grateful to you for your time and for continuing the very frank dialogue that we are able to have with you and the judiciary. It is much appreciated.

Lord Thomas of Cwmgiedd: Thank you very much. I am sorry to duck some of the questions.

Chair: Not at all. Thank you very much.