

Justice Committee

Oral evidence: [The Lord Chief Justice's Annual Report 2016](#), HC 801

Tuesday 22 November 2016

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Members present: Robert Neill (Chair); Alex Chalk; Alberto Costa; Kate Green; Mr David Hanson; John Howell; Victoria Prentis; Marie Rimmer

Questions 1 - 71

Witness

Rt Hon Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales



Examination of witness

Witness: Rt Hon Lord Thomas of Cwmgiedd

Q1 **Chair:** Good morning, Lord Thomas, and welcome.

Lord Thomas: Good morning.

Q2 **Chair:** Thank you very much for coming to see us again to talk about the annual report that you have issued and the work of the Judicial Office. We are grateful to you for making the time; we appreciate there is quite a lot on. We will adjust the sittings as necessary.

Having looked at the report, you set out very clearly some of the issues that the judiciary and the Judicial Office have dealt with. Before going any further, I am rightly reminded that we ought to declare some interests.

As you know, I am a non-practising barrister and consultant to a law firm.

Victoria Prentis: I am a non-practising barrister who has worked in the Treasury Solicitor's Department for many years.

Alex Chalk: I am a practising barrister.

Kate Green: I am a life member of the Magistrates Association.

Alberto Costa: I am a practising English and Welsh solicitor and non-practising Scottish solicitor.

Q3 **Chair:** I hope that has covered everything.

Lord Thomas: Yes, I think so.

Q4 **Chair:** It struck me, reading the report, that the judiciary is a great strength to this country. That becomes very clear and is very much accepted by everyone in this room.

Lord Thomas: I am very grateful for your expressions of that sentiment; thank you very much indeed.

Q5 **Chair:** It is strongly felt. The judiciary also clearly faces both opportunities in the years going forward and challenges. How would you characterise the principal challenges and opportunities that you and your colleagues face?

Lord Thomas: The principal issues I would say are, first, judicial morale; secondly, making certain that there is access to justice across the board; and, thirdly, trying to make certain that we diversify both the bench and the legal profession.

The opportunities are, first, the reform programme, which has a huge effect, and, secondly, the positioning that we have put ourselves in to take advantage of London's centre as a worldwide centre of the financial and insurance industries, and other industries. We are very well aware of



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the competition, but we regard ourselves as having placed ourselves as well as we can.

Q6 Chair: That is helpful. We are going to return to all those topics. Can I continue with the issue of morale? I think I am right in saying that the second Judicial Attitude Survey has been completed. Are you able to share with us any sense as to its findings?

Lord Thomas: I think I can say it broadly reflects serious concerns about morale. There are a number of different factors. The first, which affects everyone in the public sector, is pay and pensions.

Secondly, going through a major reform programme is quite difficult. It means changing from what you have done in the past to what you are going to have to do in the future.

Thirdly, there is constant pressure on the staff. We are very lucky in having an excellent staff, but there is strong competition, particularly in towns such as Bristol and Reading—and London, obviously.

Then there is the estate, where urgent decisions need to be taken as to what parts of it we are going to concentrate on, so that money can be spent stopping leaking roofs, making certain the elevators are fixed and the like.

Finally, there is IT. As we modernise part of the system, we have the problem that we are stuck with the old system. Many of you have no doubt spoken to district judges in particular, who have the new, modern eJudiciary, which works off the cloud, and it is very efficient, but we also have the very old, pre-2003 system, and quite often they find it easier to run two computers—one for the new and one for the old. I know the Ministry is determined to fix that as rapidly as possible, which again will help.

All these things contribute to it, but all the judiciary, with possibly a few exceptions, which would be a very tiny percentage, think that they are doing a very valuable job for society. That is what sustains us in what is quite a difficult time. No doubt you will bring me back to this when dealing with governance, but we are very determined that this is not a reform that is done to the judiciary but one in which the judiciary acts with the Government and the Courts Service as people who are jointly in it. We think we have the governance both at a central and local level right, because we want to make certain that everyone feels that decisions that are made—and some will be difficult—are decisions that they can all go along with. That is always a very big problem in a large organisation.

Q7 Chair: One area linked to morale, which you highlight in the report, has been the issue of recruitment, particularly to the High Court bench. Have there been any steps that have happened recently that might change the position there?



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Lord Thomas: I have no doubt now that everyone is aware of the problem and of the fact that we did not recruit sufficient people. We have a huge recruitment problem. As is apparent from the demographics of the senior judiciary, a lot of people are retiring over the next five years in the ordinary course of events. I do not think the solution is to raise the retirement age, certainly at this stage, because most people I talk to who are retiring are either going a month or a year or so early, and some a bit earlier, but many feel they have worked very hard for a long period of time. So we do have to recruit a lot.

By far the most important of the questions of morale that I have just discussed is to sort out particularly the problems that have been caused by the way in which the approach to pensions has been adjusted fiscally. In an ordinary private enterprise, you would just pay someone more to compensate them for what has happened. That is taking a little time with Government, although Government appreciate there is a problem and I am hopeful that they will do something about it in the near future.

Q8 **Chair:** I appreciate there is some ongoing litigation around it, but to what extent do you regard that as one of the disincentives to recruit?

Lord Thomas: It is key. Everyone takes a huge salary cut if they are really good, but there have been changes in the time at which people have children and go to university, and the costs of university, and they need to safeguard themselves for what is likely to be a much longer old age than was the case in the past. They are paid what I know is a great deal of money for ordinary people—I am under no illusions about that—but it should be at a level whereby they at least feel valued and it is commensurate with the expenses they have had, bearing in mind that what they are taking in the case of most is quite a significant salary cut, and in the case of a few an enormous salary cut.

Q9 **Chair:** Can you help us as to the degree of shortfall we have in the High Court, for example, in ballpark terms?

Lord Thomas: Currently, we reckon we will be six short soon. You can work out the number we need to recruit by looking at the ages people reach, but we reckon that we will need to recruit somewhere in the region of 30 to 40 over the next few years, which is quite a big recruitment exercise.

Q10 **Chair:** That is a major task. Do you have any idea of the position with the circuit bench?

Lord Thomas: As to the circuit bench, last year we had just enough or maybe one under. I am always reluctant—and I have found in dealing with the SSRB that they were reluctant—to say that just one bad year means a problem. There probably is a problem, and I am told by the circuit bench that they feel there is a problem. I have asked for what the SSRB asked for, which is evidence. In the High Court we are able to get as good evidence as we can, and I am pretty certain the circuit bench will



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come up with evidence to show there is an emerging problem there that must be tackled before it becomes serious.

Chair: That is very helpful. Mr Chalk, did you want to come in?

Alex Chalk: I was going to ask about the difference in the High Court pension and the circuit bench pension—

Q11 **Chair:** Hopefully, we have covered that. That then links on to the commitment, which is very clear from your report, which I know is a personal commitment of yours, to increasing diversity as well. You emphasise the commitment there, and you particularly talk about first appointments, which are usually fee-paying recorders, the deputies and so on, I take it, or tribunal judges, and getting that from the widest possible pool. Can you help us as to what has been done in practice to try to achieve that?

Lord Thomas: First, we are very keen on making certain that our mentoring scheme works. We are keen on attracting people to come in and see how we work. That is the first point. Therefore, it is encouraging people. Secondly, it is equally important to make certain that the way in which people are appointed produces a level playing field. This is a very difficult task. One view is that, if we are going to appoint people as recorders to sit in the Crown court, we need people who understand criminal law; therefore, we recruit from that background.

I personally take the view, and certainly it is the legal advice we have always consistently received, that the difficulty with doing that is that it is not really possible to have someone who is a CPS full-time employee sitting as a judge. There is obviously a perception question and a bias question, and at the moment the legal advice we have had is very strong that it cannot be dealt with. I mention the CPS, because we need to recruit into the criminal bench as widely as possible and train them, and to enable the CPS to sit in the tribunals. Therefore, we are trying across the piece to devise a system that goes for the best; we look for potential, and we do not look, as we have traditionally done, at the practising background. This is not easy.

The JAC, if I may say, has been wonderful in looking at all of this, and in the recorder competition that will be launched in March we will go, as the Lord Chancellor said the other day—and I completely agree with her on this point—for those with the best potential. We are working hard at the moment, with the advice of educationalists and others, to put in place the fairest system possible. It is not easy, but if you don't try you won't succeed.

Q12 **Chair:** The point about the CPS—correct me if I am wrong—is that the growth of in-house advocates means that a lot of the people who might have been in private practice whom you could have approached are now working within the CPS.



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Lord Thomas: Yes; some go to the CPS. The CPS is a good organisation. I want to see them recruited into the judiciary, but there is a home for them away. So, to balance the playing field and to achieve equality, we must do it across the board.

- Q13 **Chair:** I understand that. The final point to touch upon before other colleagues come in relates to recruitment in relation to the magistracy. Our Committee published a report on the role of the magistracy. Some of our recommendations included workforce planning, steps to increase diversity and the idea, for example, of some sort of kitemark to encourage employers to release their members of staff to sit as magistrates as a corporate social responsibility, I suppose. Are these the sorts of ideas that would chime with the senior judiciary's approach to these things?

Lord Thomas: To answer in one word, yes. I do not underestimate the difficulties. I grew up in a small village in south Wales, and there the magistracy was very largely drawn from the mines and the teaching profession. I am afraid the mines have gone, but industry generally is not so easy, and the medical and teaching professions find it much more difficult to release people these days for their own reasons. When I used to sit as a presiding judge we tried it a lot; some employers are very good and some are not so good. It is likely, because of the way in which the caseload is falling, that we may not need quite as many magistrates as we had in the past, but we still need well in excess of 10,000 or 12,000—maybe 15,000 or 17,000; I do not know—but we need to recruit better, and we need to make certain again that we try to bring the age down. I am sorry for an old man to say that, but I do believe that the age needs to come down.

- Q14 **Kate Green:** May I pursue the issue of diversity a little, because the judiciary has done well in some areas, improving particularly gender diversity, but perhaps less so ethnic diversity?

Lord Thomas: I agree.

- Q15 **Kate Green:** Especially perhaps in the magistracy, where it has improved, but the population as a whole has become more diverse; so there is still a lack. Have you views on what particularly could be done to improve ethnic diversity at every level?

Lord Thomas: What is very important with magistrates is spending time in the communities from which sufficient magistrates did not come. For example, in the area covered by the north Liverpool criminal justice centre and the experiments with neighbourhood justice, which covered 80,000 people, there was not a single person who was a magistrate from that area of Liverpool. We have to do more to identify where people live, what their backgrounds are and target; we have to do something about it. It is good for the communities. I think the strength of the magistracy is its reflection of the local communities, but in many areas it does not reflect it. I completely agree with you.



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Q16 Kate Green: Do you think the advisory committee process is supportive or potentially supportive of what you were describing as a good way of moving forward?

Lord Thomas: It always needs improvement. There were one or two issues. One difficulty they had was saying that they will operate on a first-come-first-served basis. That is not very sensible, in my view. You get all the applicants in and you go through them. It may mean more work, but it is something I believe all the advisory committees have now cured. They need better information about the people coming and they need to realise that with lay magistrates it must be very reflective of society.

Q17 Kate Green: Do you think that should be an explicit criterion that advisory committees take into account?

Lord Thomas: I think so. I cannot remember until when, but certainly until about 30 or 40 years ago you used to have quite a strong representation of local councillors as magistrates. The aldermen were always magistrates, if I remember correctly, and that in itself also provided a change and a greater diversity. I am not suggesting we go back to aldermen, but I think you need consciously to reflect the communities from which you come.

Q18 Chair: It gave me amusement on one occasion, Lord Thomas, as the chief whip of the majority party on the council appearing in front of my own leader when he was sitting as chairman of the bench, but the fact is that those people were very rooted in the community and it is an issue.

Kate Green: I was a magistrate on the City of London bench where the aldermen were and may still be automatic members of the bench; that did not greatly contribute to diversity.

Lord Thomas: The City is a unique institution.

Chair: The issue around the magistracy is well taken. We are going to move back to the reform agenda and modernisation, if we may, Lord Thomas.

Q19 John Howell: Having heard those comments about aldermen being magistrates, I think the modernisation programme is sorely needed. I do not want to go into the details of it, but I want to touch on its management because it is a very diverse programme. What have you done to make sure that the management is fit for purpose?

Lord Thomas: First, we have a very good board. We are very lucky in having Bob Ayling as its chairman with his enormous experience, including experience of running Welsh Water. We have an excellent independent chairman, who happens to be a lawyer, which is useful. We then have a board that has now some very good outside directors, and we have three judicial directors and a number of executives.



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The executive team is strong. The new chief executive took up post yesterday—Susan Acland-Hood. Having met her on several occasions and spoken to her a lot, I think she will be excellent. So we have a very good senior management team.

The Lord Chancellor and I—and this happened under the last Lord Chancellor, Michael Gove—decided we would meet regularly and have regular reports but do it jointly. It is a joint venture; therefore, we should meet jointly, and we do. We question and we know what each other thinks. So you have what I would call the supervisory role, if I may be presumed to say that, at the top; you then have the board with its executives on it.

A big change we have made is to establish local leadership groups. It seemed to me that you had to have decisions that are made locally, made by the judiciary and the court service staff acting together. We have established those across the country now. They are coming into their own, and I hope they will be successful.

Finally, to make certain that all levels of each jurisdiction, say, family or civil, are represented on the planning of what cannot be local, which is the computer systems, we have judicial advisory groups, which are jurisdictional. They will have all levels of family judge and all levels of civil judge, and we have recently included the professions in those. It has a complex structure. Then, of course, we have the supervisory role of the Major Projects Authority and the Treasury, which keep an eye on ensuring that their money is well spent.

Q20 John Howell: The Government have confirmed that they are going to introduce an online court. Does that fit in very well with the modernisation programme, and how is that specifically managed?

Lord Thomas: There is this problem. Across the courts and tribunal system, we have courts that have come into existence over a period of time, each with their own rules and procedures. We have done some proper systems analysis of the processes across the piece, and we are pretty convinced that virtually every court case has the same basic procedure. You have something that is done even in criminal cases; I can leave crime out of it. You start it; you have an answer; you have a directions hearing; you have some form of dispute resolution, whether it is oral or what, and then you have enforcement. This is common to everything.

We think that the only way to build a system for the future is to build one IT system with various components, permitting variation where variation is necessary. The online court is absolutely at the centre of this. For lower-value disputes it will come in, but, hopefully, if the IT is developed properly, we should be able to use the same IT system right across the whole of civil, family and the tribunal system. To make sure that that works, we are in agreement that we have a single set of basic procedural rules that are common across the system.



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In the RCJ, prior to the reforms, we had 17 different IT systems to reflect the different areas, but when you examined them all it was completely unnecessary to have 17 different systems, and, in trying to keep in pace with modernisation, it was impossible. That is our thinking. So far, we think we are right. We have, for example, a pilot in relation to divorce and social security, and we shall do one for money claims, operating our views but looking towards making certain that we are right in our theory before we adopt them in practice.

Q21 John Howell: I am very enthusiastic for the online court, but I am concerned about the people who do not have access digitally to computer equipment, for example, or who do not know how to use it. What are you going to do to bring them into this?

Lord Thomas: HMCTS at the moment is carrying out a study of the depth of the issue. It does not call it a problem; it is an issue. People who do not use IT are not a problem; it is a fact of life. In some countries—for example, if you go into a court office in Singapore or Taiwan, which I certainly did—there are quite a lot of people there who will help you. It is either help there or a phone line, but we absolutely have to provide that: it is people's right.

Q22 Mr Hanson: Following on from where we have been to date on both courts and the modernisation programme, you have made specific reference in the annual report to the concerns you have about potential court closures and the impact in Wales. I am wondering whether you could give some flesh to that concern and whether you think it transfers across to rural areas in England as well.

Lord Thomas: I think so. I now know I am treading on dangerous ground, but there are, I think, areas of England and Wales, such as Devon and Cornwall, Cumbria, parts of Lincolnshire and East Anglia, in particular, where roads are not as good and mountains get in the way. You need to be sure you provide something local.

There are probably two principal ways of doing this. One is to provide, in a convenient location, some kind of video link to a court centre. If I go to Wales for a moment, if you live in Dolgellau, why would you have to travel all the way up to Caernarfon? Why can you not just go into a booth in a local town and give your evidence over a video link in that way? That is one way of doing it. The alternative is to say that there is a town hall or a suitable place in the city. There will be an occasional court there. I think both are feasible, and certainly there are an awful lot of very elegant buildings that can be used. Providing they have two exits, because it is really important that the judge is not in a room with only one door, and we can take reasonable steps for security, modern communications mean that you do not have to carry paper with you. So it is feasible. Both of these are being looked at. We are looking at one in Kendal, for example, if I go outside Wales. We have got to solve the problem of dealing with Carmarthen in south Wales. I can go into specifics, but this is very much on our planning minds.



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Q23 Mr Hanson: It helpfully coincides with recommendations that we made in a report during the summer. You have recognised it; we have recognised it; the Government have a closure programme. I suppose the question is: who is going to take ownership of making sure that that service is delivered, because the issues of magistrate recruitment are just as important as customer-facing activity by potential offenders or people seeking justice?

Lord Thomas: My own view is that this is a responsibility that the Lord Chancellor and I jointly should have. It is more the Lord Chancellor's responsibility than mine, because, in the way the legislation is drafted, the closure is the Lord Chancellor's responsibility. It is down to us jointly and it is down to us providing the right technology. Until recently, you had to rely on video cameras, but now the commercial laptop applications are excellent. I could not go up to the meeting of the magistrates or the bench chairmen's forum in Loughborough the other day, so I spoke to them over a video link. The great virtue of it is that you can see how they react, and if I am sending them all to sleep I can see it, or not, as the case may be. I think that modern technology enables us to use buildings that we would never have contemplated using in the past. I would accept the responsibility, even though I would say under the statute it is primarily the Lord Chancellor, but we cannot shy away from this.

Q24 Mr Hanson: She has rather a lot on her plate at the moment.

Lord Thomas: We are at one on this. She is very keen on it; I am very keen on it. We are not talking about a lot of money. I see that virtually every one of you has a laptop that actually operates.

Q25 Mr Hanson: As I am the Welsh MP on the Committee and as we are on Wales, I want to raise one other question, which is the issue of the codification of Welsh legislation, which I know you have focused on, but also the increasing divergence of what is happening with the Assembly legislating, UK Parliament legislating, and indeed judges having to interpret this. Apart from the Law Commission's codification project, which is welcomed, what else needs to be looked at as part of the ongoing development of primary legislation in both the Assembly and Parliament?

Lord Thomas: When the Assembly was given primary legislative powers no one realised—no one thought through—that you have to have a Ministry of Justice function—that is, a body that makes any rule changes, drafts any reforms or initiates and organises that. We have done that. I call it very much a nuts-and-bolts job. It is not policy; it is just making certain that legislation is translated into rules and forms and that judges are provided with training. We did that ourselves at the Judicial Office. Recently, I am very glad that the MoJ, the Judicial Office and the Welsh Office—and I hope also the Assembly—will agree to use the Justice in Wales Working Group, which will produce that.



There is a much wider question of the longer term, which is more a political question. I was concerned about the nuts and bolts of making it work. We will have the proof of the pudding in the coming year when the legislation relating to landlord and tenant comes into effect. We know that Scotland is different because it always has been, but we are slightly worried about whether people in a court in one of the English cities will realise that, if you have a dispute about a rented property in Wales, the law will not be what is English law—it will be Welsh law. That is a problem we have not yet worked out how to deal with.

Q26 Mr Hanson: Do you have any further or final thoughts on the separate jurisdiction argument? I know we have touched on this before and it is still live in some quarters—not mine.

Lord Thomas: I went to look at this the other day. The history of Wales over the centuries has an illustration of every conceivable combination. You can have a single judiciary and different jurisdictions; you can have different judiciaries and separate laws; or you can have a combination of any of them. My own view at the moment is that this is a political issue. I think we can make the current system work. What will be the position if the laws diverge even further is a matter for the future. At the moment we have in place a system that will work but it needs keeping very firmly under review.

Chair: We are not typecasting anybody, but Mr Chalk is now going to ask you about the criminal justice system.

Q27 Alex Chalk: In March of this year, there was a report by the NAO that said that, notwithstanding the reduction in the overall number of cases coming before the criminal courts, the backlog had increased. The digital infrastructure has been hailed as this great innovation that is going to streamline, improve things, reduce backlogs, and so on. Is it working?

Lord Thomas: There are three things to say. First, the digital case system is pretty much working. I do not know if you have been into a Crown court recently, but those of you who have will see the place transformed. I took an overseas visitor to a court the other day and she was amazed at the fact that the only files in the listing office were three or small green files for appeals from magistrates courts. That has worked, and it means that the court runs better and the judge has more control. Secondly, we have reduced the number of pre-trial hearings. That seems to be working quite well. Thirdly, it is the mix of the business that is coming in. This is the bit that I am most concerned about.

I want to assure you that the backlog is reducing. We still have an unacceptably high number of cases, particularly bail cases, where people have been waiting for a trial for more than 36 weeks, but they are generally bail cases because of the custody time limits. They also get pushed to the back of the queue. What we do not properly have—and I think this is now accepted across government—is a proper system of working out what is coming. One problem is that, if you have a police



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inquiry into, say, a children's home or something of that kind in one area of the country, that area of the country will within a period of time of it concluding be inundated with work, whereas in other parts of the country it will not be and the work level is falling. We need better co-ordination between the police, the CPS, the courts and the MoJ to make certain that we have a much better handle on things. There are certain courts where, say, fraud trials take place that are just selected and it does not necessarily have anything to do with the locality. We would like to be able to move those to areas where you do not have a big lump of old historical sex abuse coming. So we need much better planning.

Q28 Alex Chalk: Is there a lesson for the Alexis Jay inquiry? We are embarking on the largest and most extensive one in history, which could throw up all sorts of prosecutions. Is there a lesson there?

Lord Thomas: I would have thought it would come through the police, who will then have to investigate and decide. What we have seen of late is that historical trends in many areas do not give you an accurate indication of the future. This is accepted, I think, across the board now. We just need to put the machinery in place.

Q29 Alex Chalk: Can I move on, please, to the proposal that was made in September 2016—the joint statement between you, the Lord Chancellor and senior president—about unifying the criminal courts, which is a very radical suggestion? You did not refer to it in your November report. How do you see it working in practice, given the long-established legal and cultural differences between the Crown court and the magistrates court?

Lord Thomas: If we were to merge the courts completely like the family court and create a unified court, that would be an extremely complicated process because of the number of different bits of legislation. We do not envisage doing that or that would be a long-term project. What we need to do is the following.

First, it is important to make certain that, structurally, the magistrates courts and the Crown courts are aligned and we have flexibility. We had the old local justice areas. I am sorry to go back to Wales, but it is one I know in particular. We had a problem with committals. For example, Caerphilly, which is about six or seven miles north of Cardiff, is in Gwent, and if we closed the court in Caerphilly and had stuck to local justice areas you had to send all the cases to Newport, but if you wanted to go by train from Caerphilly to Newport you had to go through Cardiff, and it did not make a lot of sense. So we need to align areas. That is point 1.

Point 2, which touches on a question you may ask me in a moment and I am sorry to anticipate it, is that, if you are looking at extending magistrates' sentencing powers, the worry always is whether this will create a bulge in the prison population. That is the real worry. I was party to looking at this 10 or 12 years ago, and one thing that became evident then was that there was not enough feedback between the Crown court and the magistrates court. Aligning them will produce the feedback.



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If you are giving someone more powers, you need to explain to them, "Look, this is a kind of case you have not dealt with before. You need a bit of help," and people talk more. That is the second area of alignment.

The third is that, when a case is sent to the Crown court, when it looks as if it might be rather a difficult one and subsequent investigation shows it is not, we need to be able to pass it back. I look on this as pragmatic, leaving the courts as they are but aligning them completely and providing the leadership from the Crown court judges.

- Q30 **Alex Chalk:** Can I move back to this issue of digital courts but in the context of the criminal jurisdiction? The backdrop is that ordinarily, in criminal matters, conviction, punishment and disgrace should happen in the full glare of publicity, and so on. Do you have any concerns about an automated system that might allow certain defendants, albeit in less serious offences—say, for the sake of argument, driving without insurance—to have an online conviction and punishment system that would obviate the need to come before the glare of a public court?

Lord Thomas: You have a balance here. One thing that is absolutely certain is you cannot have a system where someone can plead guilty and it is all quiet and not published. We would have to publish it. I have absolutely no doubt that we have to make all this public. In, say, speeding or driving without insurance, whether you required someone to come to court, when what is happening is that they are going to plead guilty and the fine is pretty much automatically calculable by the speed and income—whether you require that process—I am not sure these days. There are not as many local court reporters as there once were. I am sure those behind you would tell you that. You go to a local court now and there is virtually no one there. I remember as a child reading all these things in the local paper. It happened.

We have to publish it so that, if some very well-known person was driving at very high speed down a motorway, that would be public because we would be publishing, first, the conviction, and, secondly, the fine.

- Q31 **Alex Chalk:** But just to press it, is there not a danger that you inadvertently downgrade the seriousness of what is a serious matter? With driving without insurance, for example, is there not a danger that this effectively gets swept under the carpet? I take your point about things being published, but it is not quite the same as saying, "Stand up, please. You have been convicted of a serious matter and you will take the following penalty of the court."

Lord Thomas: I see the argument but I am not convinced. What matters much more is the effectiveness, first, of the fine, secondly, its collection, and, thirdly, the penalty points you impose—and if you disqualify someone. I notice quite a lot in the criminal division the number of people who, although disqualified, still carry on happily driving, and no doubt that is your experience as well.



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Q32 **Marie Rimmer:** Good morning, Lord Thomas. I spent a day in St Helens courthouse just a couple of weeks ago and I found the experience very enlightening. It is quite different to be sat in court listening, and quite humbling, too, to see the care that the judges take when exercising their judgment if there were visitation rights and court of protection orders. It was very worth while.

Lord Thomas: Thank you very much.

Q33 **Marie Rimmer:** I experienced a video link. Can I say how impressed I was? It was much more efficient. It is safer and efficient, and just as effective, I think, as someone coming and being in the court. To see the video link work was superb.

Lord Thomas: If I may add, we bring very few prisoners now on appeals, only where they are going to give evidence. The quality of the video is so good that you can see every facial expression, the sweat on their brow and everything.

Q34 **Marie Rimmer:** Absolutely; it is just as effective. We know that problem-solving courts are currently being explored. When you came to see us earlier, in February, I think, you expressed some concerns about judicial office holders getting overinvolved in the post-sentencing stages. Are you able to enlighten us on any discussions that have taken place?

Lord Thomas: There are two problem-solving courts—family and criminal. I will deal with the criminal ones first and the family ones second. There has been a pause in the Government's thinking. I very much hope that we can go forward. I notice that this is reflected in one of your reports. There is an awful lot we can do to avoid sending certain people to prison, providing, first, that the orders are properly carried out by the probation and community rehabilitation companies, and, secondly, I think there is something to be said for coming back to a judge. The drug and alcohol orders have worked. The fact that you have to respond to someone is a good thing.

There was a lot more that we should be doing first and immediately to explore non-custodial options more. The prison population is very, very high at the moment. Whether it will continue to rise is always difficult to tell, but there are worries that it will. I am not sure that at the end of the day we can't dispose of more by really tough—and I do mean tough—community penalties. So, in that area, I would like to see that done first and then see to what extent we can extend it into other areas.

The cost and the difficulty is tying in the health authorities to this. I know a lot of very good work is being done by bodies such as the Centre for Justice Innovation and others. I think we have made some progress there.

On the family side, where you have the family courts looking at using a similar technique, the president of the family division, James Munby, is very keen on this, but we have not worked out how effectively this can be



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funded. Who is to pay for it? Is it the local authorities, who are obviously very hard-pressed? Is it the court budget? Someone has to work out who will pay for it. I agree with the views of James Munby that in the case of many care cases an awful lot could be done by much earlier intervention, but we have to work out a means of paying for it.

Q35 **Marie Rimmer:** Do you have any talks lined up in the near future?

Lord Thomas: I have left the family side to James Munby. As you know, he is quite effective. On the criminal side, I discuss it from time to time with the Lord Chancellor. I know, as you said a moment ago, that she has a number of quite difficult issues, particularly the reform of prisons. I know from recent discussions with her that looking at these non-community options is very high on her thinking.

Q36 **Chair:** You anticipated a question about magistrates' powers, Lord Thomas. When we looked at it as a Committee, our report concluded that we could not see any evidence to support the assertion that there would be a bulge in the prison population. Have you seen any hard evidence to support that assertion?

Lord Thomas: It is very difficult. I remember distinctly—it must have been 2004 or 2005, when I was the senior presiding judge—having a discussion about this very problem. It was the same answer at that time: we cannot afford to have more short-term prisoners. My own view is that the only way to test it is to do it in one or two areas and see what happens, and if you have made a mistake you can roll it back; if not, carry on with it.

But, in answer to what I said to Mr Chalk, I think the courts should be more integrated. Magistrates will tell you that something looks as if it is a very serious offence, but in the scale of offending, because you do not see the top end of the scale, it is not that serious and does not need that long a sentence. As long as there is that dialogue, and I would hope it would happen much more frequently, I think it is a controlled experiment that we ought to embark on.

Chair: That is very helpful. We are going to move on to the civil jurisdiction.

Q37 **John Howell:** Lord Thomas, you may recall that I am the chairman of the All-Party Parliamentary Group on Alternative Dispute Resolution. When I came to visit the commercial courts, I found them bending over backwards to ensure that there was some measure of alternative dispute resolution within the case and, indeed, sending people away to think about that. I am interested in your comment that you believe that that approach will retard the development of a common goal.

Lord Thomas: When I sat in the commercial court I always tried to persuade people to settle the case. Sometimes you tell them they ought to settle it; sometimes they need someone to help them settle it. Therefore, ADR ought always to be applied if you can settle a case. I was



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more concerned about the divergence of the amount of cases that go into arbitration and the number of cases that are going to court.

My own view is that what is essential for the dynamic development of the law is that we need decisions. Every litigant wishes to avoid going to court, but some cases are unavoidable. Although we have not yet had a test case in the financial list in the sense that a problem has been brought to the court that does not have a real dispute, we have found that the financial list is producing a lot of useful authority and guidance for the market. I do think that in other areas we need to ensure that that can happen. There are two ways it can happen. One is by persuading people that a court process is more efficient; if you cannot settle things, you ought to come to court. The alternative, which from time to time the arbitral institutions look at, is publishing arbitration awards. The difficulty with publishing arbitration awards is twofold: first, there is no clear hierarchy of precedent; secondly, one of the great attractions of arbitration is the ability to do it in private, and it is extraordinarily difficult, if you are in an industry, to redact something so that the whole dispute is in public. You might almost say that in some industries—certainly this is true of the insurance industry—nothing is ever private, but it may be true. I think ADR is a very good thing. If people do not need a mediator it is even better still, but settling a case is always better than fighting it.

Q38 **John Howell:** Of course, a large number of ADR cases have to come back to the court to have their awards implemented.

Lord Thomas: Yes.

Q39 **John Howell:** That presumably will address some of the problems that you highlight.

Lord Thomas: In a sense not, because they just come back and you enforce it as an award rather than as a judgment where you have decided what the law is.

Q40 **John Howell:** The other observation that I made when I went round the commercial courts was how successful they were and particularly how well they were operating from an IT point of view. That clearly puts us in a very good position in competing against other jurisdictions. What steps do you think need to be taken to reinforce that position, particularly in view of the decision for a Brexit?

Lord Thomas: There are two things. First, we have taken the initiative of holding in London on 4 and 5 May 2017, I think it is, the first meeting of the standing forum of international commercial courts. We have probably got about 20 or 25 countries coming that have commercial courts. We think there is an awful lot to be gained by courts co-operating with one another, particularly regarding the enforcement of judgments, and, secondly, to learn from each other. We believe that we have a huge advantage in many respects over all the others.



Therefore, in a world with or without Brexit, in the end, with regard to our legal industry—and I do like to call it an industry because it is an industry—we have huge advantages. We recruit excellent people into the profession; we recruit excellent judges—I hope we will be able to continue to do that; and we are highly innovative. I think we are well placed to deal with the competition.

As regards the issues that I gather your Committee is going to look into of how it affects, essentially, enforcement and jurisdiction, these are areas where it is important to make very clear that we believe—and I certainly believe—that there are solutions that can be arrived at that will make our position very clear.

Q41 Alberto Costa: I declare an interest in that I am a former member of the Chartered Institute of Arbitrators. I would like to go back to arbitration for a moment. You mentioned that we need decisions, but would you agree that it is not the parties to a dispute or their representatives who should consider whether the legal system needs cases brought before state litigation? It has been the case since the late 1990s and early 2000s that Governments, and legal professionals and the judiciary, have welcomed arbitration under the form of ADR as taking some of the pressure off the state litigation system.

I am a little concerned about the comment made in March of this year where you stated “widespread arbitration clauses in contracts have created an impediment to the development of the common law.” I confess I am one of those solicitors who has drafted many arbitration clauses but I have done so to assist parties, and surely the whole point of the justice system is to allow parties in a dispute to come to some form of settlement.

Lord Thomas: Can I just concentrate on arbitration and courts? I think it is easier to do it that way. When I was at the Bar, I drafted a standard form of arbitration clause for the reinsurance industry. There were some good reasons for doing that because the quality of the traditional arbitration clauses was very poor and did not work well. Years later they take effect, because it takes about 10 to 15 years for an industry to adopt an arbitration clause and for them to have an effect. The difficulty is that you are always behind the curve. Some years ago the courts were not very good and they had not reformed themselves.

I would try to do two things. One is to show people these days that, if you have a really serious commercial dispute, you are better off in a court. That is us making our procedures better, more efficient and cheaper. By and large, I think we do that.

Secondly, if you take the banking industry, or any industry, it needs precedent. If I can go back to the Iran-Iraq war, there were a number of ships that were stuck in the Shatt al-Arab, which involved quite large sums of money. The only way we could devise for insurance and reinsurance purposes a mechanism to get the matter decided was to



have a judicial arbitration, because we needed a public decision. There are instances where you need public decisions to develop the law. Our task is to persuade people that doing it through a court benefits them because we give them better procedure, and, secondly, it benefits their industry because they get certainty. Therefore, I regard the onus as being on us to show that we provide a very good service that has a collateral benefit.

- Q42 **Alberto Costa:** No doubt that is the case; of course you do. But, in fact, arbitration, as I see it, is complementary to the English state litigation process. The first reason that you gave is that you provide better decisions. But, with respect, I am a former shipping lawyer, and, as you well know, London is one of the centres of international shipping law disputes with arbitration. We have some of the most eminent arbitrators in this field, some of whom are barristers, but many of them bring their expertise in particular areas, which state judges do not have. So I am not sure that the state litigation system necessarily produces the best results in these very complex commercial disputes.

Lord Thomas: I am a shipping lawyer myself, and many of my colleagues in the Court of Appeal and a number in the commercial court were also shipping lawyers; so we do have that expertise. If you look at one of the standard works on shipping, the standard book on charter parties, what is so important to it are court decisions that clarify, say, the meaning of the NYPEB—the New York projects exchange board. The difficulty we have is that you cannot tell when you enter into a charter party what kind of dispute you are going to have. You may have a dispute about bunkers, laytime or speed, although I gather you get many fewer of those now because of sat nav, but that may be better dealt with by arbitration. You may get a really important point—and they do arise from time to time—which is better dealt with in court. All I am saying is that people ought to realise that the great benefit of the court is that it helps the industry for the future.

- Q43 **Chair:** Apart from having defended someone charged with hazarding another vessel by wanton and reckless navigation, I am not going to get into shipping law, Lord Thomas.

Coming back to the report, you referenced Lord Justice Briggs's report and a number of recommendations that are under consideration. Can you help us as to the progress of the consideration of any of those or a timeframe for when we might see some of that?

Lord Thomas: We take the view that with regard to any report produced by someone—and I am sure this is not true of your reports—you need to go through them to see what you want to adopt. You may or may not want to adopt everything, but you have to give it consideration. It is being looked at very carefully at the moment. An awful lot of work on the online court is going ahead. The one area that is primarily for the Government is enforcement, and it is for them to decide what they are going to do. But, by and large, there is agreement that we ought to



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implement most of it. The only slight deviation will be that it concentrated on civil. We believe that much of what can be done by the online court is across jurisdiction and we ought to move forward on all these different fronts at once because we do not really have an affordable option otherwise. It is under active consideration. Lord Justice Briggs did a wonderful job. He worked incredibly hard, and it shows how quickly you can do something if you set your mind to it.

- Q44 **Chair:** It is an enormously thorough piece of work. Lord Justice Briggs referred to the public legal education issue, or the lack of it, that we have within the UK. Is there a role for the judiciary in driving that? How might that be? A number of my colleagues are interested.

Lord Thomas: Yes. One thing that judges do, and the magistracy does this extremely well, is to get people to come to court, not because they are being brought there by the police or summons but to come and see it. Our open days are very good. The diversity and community relations judges are going out to talk to people about the work of the courts, and the City, which I mentioned, is doing its bit. I am very keen to encourage as much judicial involvement in this as possible, with the aim of realising that justice matters; that they understand how our society works; and that they understand there is value in our institutions. All of these are critical. I am not going to get into the subject of what should be in the national curriculum; it is not a matter for me. But we will work round and help in any way we can. I think it is terribly, terribly important.

- Q45 **Chair:** Talking of the topic of reports, one of our reports was related to the impact of court fee increases on access to justice. It is an issue that you specifically refer to in your report and make clear that the judiciary remain very concerned about the implications for access to justice. I think it was broadly our conclusion as well, influenced by some of the evidence we have from the senior judiciary.

Lord Thomas: I noticed in the Government's response to your report that they said the legal system costs the taxpayer £1.2 billion. It seems to me that, first, the criminal justice system is an integral part of society, which cannot be funded by other litigants, and so the cross-subsidy argument to my mind cannot be right. Secondly, if you look at the family courts, particularly public law family, again the state has an enormous interest in that. Thirdly, the state has an enormous interest in the development of the law.

True litigants should contribute something. I would not go back to the Benthamite view that fees are a tax, but no one has really inquired in enough detail into the balance. It is an argument between the Treasury, which rightly takes the view that it should not contribute too much but it must contribute something, and the other interests.

This is a subject on which I gave a lecture in Bangor in 2005 where I went through the history of the thing, and it is remarkably interesting how all Governments, after Bentham, have always had the end view of



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making the litigant pay more. You find means of cross-subsidy from time to time. Probate fees have been a big cross-subsidy for a long time. Whether you do that, it seems to me that all a judge can say is, "I accept that the litigant has to pay something, but the balance is a matter really for you as parliamentarians and the Treasury as custodians of the taxpayers' money." That is what I would say and we must not make fees a barrier to justice.

Q46 **Chair:** Is there a risk, if one pushes too far, that that is exactly what you achieve?

Lord Thomas: Yes.

Q47 **Chair:** Some of us might say we are pretty close to that. Finally, on that, you also referred to the greater number of litigants in person. Can we assume there is a linkage between the two?

Lord Thomas: Yes, you can, but one also has to bear in mind the cost of lawyers. You get the occasional litigant in person who is doing it for his or her own reasons, but they are either related to the cost of the fees or the fees plus lawyers' fees.

Q48 **Chair:** Having spoken to my own judges locally and elsewhere, is it possible to get any quantification of the cost to the court system of the fact that a litigant in person very often is going to be slower? The case is going to be slower to deal with if you have a litigant in person, for reasons we all know. There must be costs there.

Lord Thomas: One thing that within recent weeks has begun to cause us concern is the rise in private law cases. After legal aid was taken away from private law cases, that is, largely dealing with children and not so much money, there was a huge fall in the number of private law cases, but we have recently seen a steady rise. No one has yet done a proper study of this, but I have asked people why they think this is happening. Partly, it is because, without the help of lawyers, mediation does not seem to be effective because there is no lawyer to say, "The mediators told you that. Do it, because the judge will do the same." Secondly, you need someone independent to tell people when they are dealing with something that is very personal, such as the hours you have contact with your children, "Look, you really ought to think carefully about what the judge is doing." There is no external advice.

One of the very interesting inquiries that need to be made is whether what is happening with the growth of private law work is the result of the withdrawal of legal aid. One question that certainly people put to me is that, okay, they have tried to resolve it themselves. In the process of resolving it over two to three years it has become more bitter and therefore it is more intractable. Whether this is right or not I cannot tell you, first, because I am not a family lawyer, but, secondly, I do not believe anyone has properly studied the evidence of this, but I think that if you were to look at the impact of the withdrawal of legal aid it is probably the most important area.



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Chair: That is very helpful and neatly segues into the questions that Ms Green is going to ask around that.

Q49 **Kate Green:** Pursuing the concerns you were raising and the need for investigation, and the role of lawyers particularly in private law cases, whether or not mediation was present, how do you think that role for family law solicitors might be extended? Also, with the change in the caseload and the move towards litigants in person, do you think the lack of legal intervention in some of these cases is serving the best interests of the child adequately?

Lord Thomas: I can only answer your question so far. A few years ago, we looked at the system they had in California of providing a state-funded lawyer in court who would provide advice in cases such as this. That is one solution. The second is persuading solicitors and making the public appreciate that you can produce unbundled services—that is, you can come to the solicitor for a bit of advice to see if what the mediator suggested is right. However, this is an area where I am very reluctant to express a firm view without evidence. From the Government's point of view and the Treasury's point of view, I can see why they are worried about the costs of it; from the solicitors' point of view, I can see why they are worried about what is being taken away. But this is an area that is ripe for consideration. It is something that has come on to people's consciousness in the last few months, or maybe even less than that, and is something that really needs looking at, because it would give you an illustration of whether it is the withdrawal of legal aid that is the problem or it is something else. I can say what I am told by certain people I happen to talk to, but it is no more than anecdotal. It needs a proper investigation.

Q50 **Kate Green:** The discussion we were having earlier in relation to problem-solving courts was in the criminal context, but you touched on their role in the family context, and the family drug and alcohol court too. Do you think that model in civil cases has the potential to be extended to more public law family cases?

Lord Thomas: I think so, yes. I am told, and it is not an area I personally do, that many of the problems that arise are typical. I was doing a tragic criminal case recently where it was plain that the real problem was inadequate parenting. It was nothing to do with sexual abuse. I gather that inadequate parenting—people who simply cannot cope for various reasons—is a very serious problem, probably more serious than sexual abuse, and, if that is the case, then intervention to help is much better than perennial cases of more children being born and coming into the same problem either in that family or in a family with similar problems.

Q51 **Kate Green:** What would be the expertise of those in the legal system to offer that earlier solution and intervention?



Lord Thomas: I think it is the identification early on that there is a problem and a reference to a group that will underpin the solution. If I can go back to crime, because the two are not unrelated, if you are to act in that way, you must realise it involves resource commitments. To give you a third illustration, one area of great concern is that, when Mr Grayling rightly decided to give people some supervision after a short sentence, it is critical that supervision is good, because if it is not good the person is put at risk of going back to prison. These things are not cheap; they are not a cheap solution.

Q52 **Kate Green:** You mentioned that earlier when you were talking about the problem-solving courts and whose responsibility it would be to pay for such provision. There is not an obvious answer to that, but how do you see that conversation advancing?

Lord Thomas: My own view is that it really is for a body such as the Treasury, which ultimately has to decide where it is going to put the money, but informed by relative costings, properly worked out with some objective evidence, and what is best for society. It seems to me that, certainly in areas of public family law, taking children into the state's care, it may well be better to spend the money in tackling the problem at source rather than on the very expensive care proceedings that you have thereafter.

Q53 **Chair:** The president of the family division talked about a real and imminent crisis in terms of the pressures, before the spike in the private cases we were talking of.

Lord Thomas: Yes. There is, I think, a 25% increase in public law cases and a 16% increase in private law cases. It is a great concern.

Chair: We will move on to administrative justice.

Q54 **Victoria Prentis:** This is chapter 7 of your report. First, could I ask how efficiency measures are going in the admin court? In my experience, it has always been a fairly efficient, paper-light and streamlined machine, but when you talked to us earlier in the year you told us about a few ideas, and in your report you mention them.

Lord Thomas: We are getting on quite well. I am very glad Sir Ross Cranston, who is the judge running it at the moment, is very innovative, with lots of very good ideas. Like any court in London, attracting staff is never easy, for obvious reasons. If we had the administrative court based in some less prosperous part of the country, I am sure we would fill it with staff very easily, but it has to be here. I think the guide is proving useful and putting a greater concentration on the parties to make certain their papers are in order, and progressively giving the lawyers more power to do things early on so that they can make orders, to save it coming to the judge. The admin court at the moment is working pretty well. The greatest change has been the move of asylum and immigration, which is the real problem in the tribunal system and for the Court of



Appeal. The two problems we face are asylum and immigration and family law.

- Q55 **Victoria Prentis:** Judges in the admin court, because of the political nature of what is being discussed, obviously come in for more flack than other judges from the press and from some politicians. Is morale holding up?

Lord Thomas: They work very hard. There is a constant volume of work. They cover extradition. Fortunately, for some reason that no one can explain, the volume of that work is falling at the moment. Why I do not know and no one knows. But the volume of admin law work is constant; it is high. The waiting times have come down significantly since we moved the asylum and immigration work. As to morale, people enjoy it, and in our recruitment with new judges we quite often get them to sit in the admin court because they see much more what we think.

- Q56 **Victoria Prentis:** When you spoke to us in February, you had some doubts about the new cost rules relating to interveners. Have the intervening months changed your view?

Lord Thomas: Unfortunately, it is always very difficult to know why people do not intervene. Justice produced some figures the other day that showed there had been a very substantial fall because people are worried about costs orders against them. We do now get more applications for cost- capping, which means that if you intervene you are liable only up to a certain amount, but normally that is tied to the fact you can only recover a certain amount. There is a fair degree of intervention on paper that does not really expose you to any risk at all. I tried to inquire into whether we have any more robust figures to be able to answer your question, and I am afraid I drew a blank.

- Q57 **Victoria Prentis:** Possibly that is something that we need to take forward.

Lord Thomas: There is a group of organisations that intervene professionally. Justice is one; the Anti-Slavery Society is another. There are a whole lot of well-known ones.

- Q58 **Victoria Prentis:** That is very helpful. Another thing not directly commented on in this report but on which I am sure you have views is the impact of the new test for granting permission in JR that was added, making it necessary for the judge to decide whether it is highly likely that the outcome for the applicant would not have been substantially different. Some commentators have been quite critical of this test. Do you have a personal view?

Lord Thomas: No, I do not have a personal view. It has been applied in some cases. I read one the other day about a weir on the River Thames where the local authority in question had failed to do what was required by the statute regarding the discharge of its duty towards heritage. The



judge concluded that, had they carried out their duty, they would still have come to the same decision.

Q59 **Victoria Prentis:** So he did not grant permission.

Lord Thomas: No, he granted permission and it went to a trial, but he did not set the decision aside for that reason. As to the impact on the granting of permission I am afraid we do not have any figures, but I can try to see if we can obtain some. We do not readily collect that information. The provision is certainly not causing any difficulty, and, as it was Parliament that decided it, it would not be for me to comment on the wisdom of its decision. All I can say is that it works.

Q60 **Victoria Prentis:** Finally, can I turn to the coroner service? You have expressed an interest before in whether there should be a national coroner service. Is that something you are actively pressing for or do you have to convince her when you talk to the Lord Chancellor?

Lord Thomas: The Lord Chancellor is immensely capable. She has an awful lot of issues on her plate at the moment, and I think a national coroner service probably is a step too far. However, the last chief coroner, and I cannot praise too highly the job he did, brought together a whole diverse group of people who had never really had a boss before and he did a huge amount for the coroner service. I hope it is much better. If it was organised nationally it would be easier. I suspect a lot of it, which would go to who would pay for it—was it a charge to the Ministry of Justice, and, if so, do you reduce the grants to local authorities accordingly?—would be quite political, but a great deal has been done and a lot of guidance is given to coroners that I hope is making their approach more uniform across the jurisdictions.

Q61 **Marie Rimmer:** The joint statement of the Lord Chancellor, the Lord Chief Justice and the senior president of tribunals states that tribunals would be digital by default. Online dispute resolution would be tested within the next 18 months in social security and child support hearings, with people making their appeal and receiving their responses online. Tribunal judges would provide dispute resolution through continuous online hearings. Do you think that this pace is suitable for these parties? Is the timescale of 18 months not over-ambitious?

Lord Thomas: No. Sir Ernest Ryder is very wrapped into doing this and achieving it. He is doing a very important and worthwhile task in pressing ahead with it. At the moment, the president of that tribunal is very keen to see how this will work, and as I am reasonably confident we have the technical capabilities to do it I think we can achieve it within an 18-month period. We are looking there at family and civil work together, to see what we can do, trying to develop them in parallel, realising we may make mistakes, and therefore doing it on a pilot-type basis. I am reasonably confident, knowing the chairmen of the tribunal, that it will work. Certainly, when I have asked independently of them what other



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people think of the work that is being done, I have had very favourable reports back.

Q62 **Marie Rimmer:** I do not question the technicalities, but I express concern that these people are very often vulnerable; they do not have the capacity and are under tremendous strains and stresses. It is about their capacity to see something through to the end.

Lord Thomas: I see the way these tribunals work only from reading complaints. The complaints are on a minuscule number of cases, and an even more minuscule number are upheld, but I think the judges of that tribunal do a very good and careful job in what are difficult circumstances.

To answer an earlier question on how we make all this accessible to people, we cannot go down a digital route dealing with someone's application where that person is incapable of doing it without assistance. If we can provide the assistance, then I think we can do it better. However, I am concerned to make the decisions more quickly, because nothing is worse for someone who is before such a tribunal than a long-drawn-out set of proceedings. They want an answer and they want it quick.

Q63 **Marie Rimmer:** Will there be good evaluation and monitoring of this?

Lord Thomas: Absolutely. The quality of justice must be enhanced by reform and not diminished. If it is diminishing, then we have gone wrong. If there is a feeling among any of your Committee members that digitalisation is diminishing the quality of justice, I would welcome being told and will deal with the matter.

Q64 **Alberto Costa:** Lord Chief Justice, we are at the final topic, you will be pleased to know, for this morning's Committee hearing. It is to do with legal services regulation. The question I have for you refers to your concerns about the risk of a new regulatory framework undermining legal professional standards. Could I quote from your report? You have stated that "there is much debate about the legal professions and the regulation of legal services. It is absolutely essential that, if there are any changes made to the current framework, high professional standards and the overriding duty practitioners owe to the court are preserved", and then you add, "and that the judiciary is represented on the boards of regulatory bodies..." How many regulatory bodies are there?

Lord Thomas: There are an awful lot of regulatory bodies, but I am only concerned essentially with litigation on this aspect. The ones that are primarily concerned with litigation at the moment are the Chartered Institute of Legal Executives, the Solicitors Regulation Authority and the Bar Standards Board. The patents agency does some litigation, and the Institute of Chartered Accountants, or the various bodies of chartered accountants, have applications that are pending, so I do not want to say anything about those. But with the three main ones it has always seemed to us that, of all the interests represented, it is very odd that the judiciary



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is not represented; it cannot put its point of view. I note from the latest suggestions from the regulator that they suggest that we should be much more broadly consulted on the appointments to these boards, but I still think it would be useful, in certain areas, to have a judge who could express the judiciary's point of view on the absolute importance of lawyers in front of the court having very tough standards of ethical behaviour and competence.

My personal experience is that in an area where we had to take independent action, which was with lawyers who were representing people who were making judicial review in respect of being deported for immigration or asylum reasons, there was insufficient attention to the standards that people had to apply; it was terrible for the court but even worse for litigants because they would go to a highly reputable person, who would say, "Look, there is nothing more that can be done." They would go to someone else, who would take quite a lot of money off them, and they would come and make a completely hopeless application to the court to no benefit. So, I think we have an absolute interest in standards of integrity and standards of competence. I always make that point when I am asked about my views on rights of audience, but I think it is very important that we have effective discipline of litigators.

Q65 **Alberto Costa:** In your example you cited lawyers. Can you be a bit more specific? Which professional branch are you referring to?

Lord Thomas: Both of those who have rights of audience in the High Court, not the chartered institute. We have dealt with both barristers and solicitors in those cases. One thing that would seem to me to be an abuse was that certain firms were giving people training contracts, paying them very little and then handing them responsibility for dealing with such cases. That is just wrong.

Q66 **Alberto Costa:** Is there anything new in that, Lord Chief Justice?

Lord Thomas: I think there is. If you take someone on as a trainee, you owe them, first, a duty to pay them properly and, secondly, an absolute duty to supervise them. It was the supervision that was lacking. That is something that I hope is new, but I accept that that may be the view of someone who is old, seeing his youth through rose-tinted spectacles.

Q67 **Alberto Costa:** Far be it for me to affirm that, Lord Chief Justice. What is your view, if you have one, on the number of approved regulators? There has been some discussion over the course of the last 12 months of reducing the number of regulators, perhaps having one regulator that deals certainly with those who have rights of audience. Do you have any view on that?

Lord Thomas: It would be wrong for me to express one. There is an argument for having one regulator with lots of committees under it. There is an argument for regulating by function so that all advocates are regulated by the same regulator. There is an argument for regulation by profession. I do not think there has been enough objective study of which



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is the right solution, but the two important things are that it is effective and it is not too expensive. The profession is right to be concerned about the cost of regulation, but, on the other hand, you have to make certain it is effective, and that is why independence is necessary but not independence for its own sake.

Q68 Chair: To wrap up, Lord Chief Justice, at the beginning of your report, and perhaps towards the end as well, you emphasise the centrality of the reputation of the judiciary, the common law and the legal profession as part of the international reputation of this country, but also as a valuable economic asset as well.

Lord Thomas: Yes.

Q69 Chair: You refer to the work being done with organisations like TheCityUK. I have certainly come across them; I saw their recent report about the “new narrative,” which seems to be the popular phrase now for the legal profession. Can you help as to how you think the judiciary can continue to work with organisations like that? What are the key things we need to achieve to make sure we maintain the position of England and Wales as a jurisdiction of choice?

Lord Thomas: As I said earlier, first, we need to make certain we have an excellent judiciary. Secondly, we need to make sure, to go back to another thing I said earlier, that English law is developed, because what is more important than litigation is having contracts governed by English law. Thirdly, it is understanding its importance, as everyone, I think—or everyone here—knows and certainly appreciates the importance to society and to the constitution, but I am not certain that enough people understand how valuable a resource it is to the economy of the UK as a whole. You need to examine much more carefully the interdependence of the various banking and financial institutions, insurance and the rest, and the legal profession. They do go closely hand in hand.

As to the judiciary’s work, we do work with TheCityUK because we have a common interest in making certain that the services that the courts provide are second to none. I have one ambition—that we must remain No. 1. As it was put to me in another jurisdiction, we want to be No. 1 in everything, and I said, no, we will be No. 1 in what we offer through the courts and through our legal profession. That is what we have to maintain, and Government in every aspect has to understand how central that is to the economy.

Q70 Chair: In supporting that, the Government are supporting it in the national interest very clearly.

Lord Thomas: Absolutely.

Q71 Chair: Lord Chief Justice, we are grateful to you as always for your time and your evidence. It is very much appreciated. We genuinely always appreciate your frankness with us and your openness to us as a Committee, not just now but on other occasions.



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Lord Thomas: The essence of justice is that it should be open and I should be open with you as to what the issues are. Thank you all very much and for your questions.

Chair: You have always done that, as have your colleagues. Many thanks.