

Justice Committee

Oral evidence: [Lord Chief Justice's Report for 2017](#),
HC 325

Thursday 14 September 2017

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Members present: Robert Neill (Chair); Alex Chalk; Bambos Charalambous, Victoria Prentis; and David Hanson.

Questions 1 - 49

Witness

[I](#): Rt Hon Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales

Examination of witness

Witness: Rt Hon Lord Thomas of Cwmgiedd.

Chair: Good morning, Lord Chief Justice. Welcome. Before we start, can I ask my colleagues as usual to go through the formality of the declarations? As you know, I am a non-practising barrister and a consultant to a law firm.

David Hanson: I have nothing to declare.

Victoria Prentis: I am a non-practising barrister, married to a practising barrister who also sits as a part-time judge.

Alex Chalk: I am a practising barrister, married to a practising barrister.

Bambos Charalambous: I am a solicitor of England and Wales.

Q1 **Chair:** Lord Thomas, welcome. You have come to us on a number of occasions to give evidence. We know that this is the last occasion, but perhaps more of that later. You are going to present your annual report to us. Do you want to start with any preliminary observations before we move to questions?

Lord Thomas of Cwmgiedd: Can I make a preliminary observation that I will probably want to come back to? One of the most valuable changes that has occurred is the appearance of the Lord Chief Justice on a now regular basis with, I hope, an annual report that shows what we have been doing. Making the various branches or powers of the state work together is something that is becoming more and more important. It is a great pleasure to come and visit you today.

Q2 **Chair:** Thank you very much. Yours has been a term of office in which there has been great modernisation and change within the judiciary. Towards the latter part of it, there has been some politico-legal turmoil as well. As part of that, there have been comments about the independence of the judiciary that many of us find objectionable. You have been on the record about that—in particular, your concern that the previous Lord Chancellor did not fulfil her statutory duties to defend the independence of the judiciary. Why do you feel that there is sometimes a reluctance on the part of politicians to stand up for the independence of the judiciary in these circumstances? What lessons should we learn constructively for the future from that episode?

Lord Thomas of Cwmgiedd: I would prefer to deal with the future and where we are. I do not want to go back to the past. It is important that we work together to make certain that people understand the way in which our modern constitution works. The independence of the judiciary is critical, but there is now a much wider view that there is something called interdependence of the branches of the state. It is an old concept. I borrowed the word from a US Supreme Court judge, and you cannot think of a more independent court than that.



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We have to work together. Therefore, it is important that people understand the respective functions of the state. It is right to say that judges do not have as good an understanding of Parliament as they should. I suspect that there are also a number of members of the Executive who do not have a good enough understanding of Parliament. There are Members of both Houses who do not understand the judiciary and the Government. We need to do an awful lot more work together.

When people understand that you can be independent and express views that may be difficult, but that that is the duty of a particular branch of the state, it becomes easier to see that it is nothing personal. The issue is the interplay. I do not think that we have paid enough attention recently to the way in which the powers of the branches of the state have moved and changed—particularly with the loss of the Lord Chancellor, as regards the judiciary, and with the way in which Parliament now operates. We need to understand that we may have disagreements, but each of us has to defend the other. If we do not, people will lose respect for the institutions of the state, which is a disaster for democracy.

Q3 Chair: Lord Neuberger gave a speech at a conference of the Australian Bar Association in London about the risk that, in mature democracies, the rule of law can be “taken for granted.”

Lord Thomas of Cwmgiedd: Kenya is quite a good example. The Chief Justice of Kenya is now pursuing a very large-scale reform of the court system—and, of course, he took what must be an immensely courageous decision to set aside the election. That seems to have been understood, at least for the present. You see there the important principles here.

Take the example of Poland. The judiciary here and elsewhere has expressed great concern—as have various other bodies—about what is being done to the judiciary in Poland. In mature democracies, we have to keep a very clear eye on how important it is that we exercise our functions independently. If we do something you may not be happy with, that is life, but you must respect people for doing it. That is a very difficult thing to get over to people.

Q4 Chair: To be honest, it seems to be something that the media do not get, either, is it not?

Lord Thomas of Cwmgiedd: At times.

Q5 Chair: In that context, Sir Alan Moses and Mr Joshua Rozenberg have both suggested that, given the new nature of the state—the interdependent state—the judiciary may need to be more publicly outspoken, to explain its role and to assert those values. Do you have sympathy with those suggestions?

Lord Thomas of Cwmgiedd: I certainly have sympathy with explaining the role. We do that, I hope, quite a lot, but that is a much longer term matter.



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You have to be much more cautious about answering criticism in respect of individual cases. If, for example, I gave a decision and some newspaper wrote an editorial saying that it was terrible, it would diminish the judiciary for me to go back and say, "I think that they are terrible for saying that I am terrible." We simply cannot do that. We have a salutary rule that judges should not discuss their own decisions. It sometimes annoys academics, but it is a very salutary rule.

- Q6 **Victoria Prentis:** Could you tell us a bit more about the practical steps that can be taken to increase understanding of the role of the judiciary in Parliament? When I was a young lawyer, there were many heavyweight lawyers in the Cabinet as a matter of course. We now have a more disparate group of MPs, and that has filtered through to the Cabinet. That is a good thing, of course, but it may mean that understanding of the judiciary is not what it once was. Could you talk a little about your relationship with the new Lord Chancellor and how we can all work on that together?

Lord Thomas of Cwmgiedd: He had the advantage of doing his PhD in the Court of Exchequer in the first half of the Elizabethan age—possibly not the best period of judicial independence, but at least one when the institutions of state were in place. My view of him, and of the majority of Ministers, is that they understand that you can have a perfectly civilised working relationship with someone, but that when you ask a judge or allow a Minister to decide something we may come to different views. You must respect and defend the ability of each institution to make decisions within its respective functions. Therefore, it is understanding the respective functions that is so important.

About 30 years ago, the Government—I think that it was the TSol—produced a document, which I went back to the other day, called "The Judge Over Your Shoulder." It was to introduce people to judicial review. I am very grateful to various bodies. The Institute for Government has played a vital role. You have played a vital role. The Constitution Committee has played a vital role, as has the Industry and Parliament Trust. We simply have to get together to talk. In the old days, people rubbed shoulders much more. We live in silos now, so we need to get together to discuss things and realise that, although we may have different views and different functions, we are all interested in the same idea—the sustenance or props of democracy. We just need to work on it and not to assume that it is a given. It is hard work.

- Q7 **David Hanson:** There have been five Lord Chancellors in seven years.

Lord Thomas of Cwmgiedd: I cannot comment on that. That is a political decision.

- Q8 **Alex Chalk:** Can I switch topic completely and talk about the interpretation of retained EU law post Brexit? The context is that on page 21 of your report on the impact of Brexit you indicated that you thought that clarity was needed from the Government on "issues relating to



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proper law clauses, jurisdiction clauses and the recognition and enforcement of judgments.” Lord Neuberger has said something similar.

I would be interested to hear your views on current clause 6 of the European Union (Withdrawal) Bill. To put it in context, it says, “A court or tribunal ... is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court.” It goes on to say, “A court or tribunal need not have regard to anything done on or after exit day by the European Court, another EU entity or the EU but may do so if it considers it appropriate to do so.” Is that a problem? If so, why?

Lord Thomas of Cwmgiedd: There are two separate problems, which are not carefully enough distinguished, on the question of interpretation. There is a separate problem in relation to the enforcement of judgments, which I can leave aside.

The first of the two problems is what you do with regard to Court of Justice of the European Union decisions. In that respect, it is important that slightly fuller guidance is given, and “the why” is very important to understand the second problem. EU law has developed in a way that is somewhat different from our own. Normally speaking, for example, Parliament does not like to leave things that are difficult to judges. You normally hammer it out and tie us down with quite strict clauses. That is not necessarily the EU way. I have been in a room where we were debating something and the representatives of the various Governments said, “Look, we cannot agree. We will leave it to the Court.” There is a much more fluid way of looking at EU law.

Secondly, much of EU law is designed to support ever-closer union.

Thirdly, it is underpinned by the charter of fundamental rights and freedoms. One thing that may not be quite so obvious to people is that over the past two to three years the jurisprudence of the CJEU has concentrated much more on the charter of fundamental rights and freedoms. My impression from listening to people in Europe is that that is something that will go on. I think that it would be very helpful for Parliament to say how the judges should set about looking at the jurisprudence of the Court and interpreting EU instruments where there is no decision of the Court. It would not be controversial for me to say that the CJEU has produced a degree of opprobrium in certain places. The last thing that we want to do is to transfer that opprobrium to the judiciary.

Q9 **Alex Chalk:** That is precisely what I wanted to dwell on. It builds on your own remarks. Some might say that there is a concern that people could rebuke the judges for effectively keeping the United Kingdom under the yoke of the ECJ by simply being its spokespeople—as it might be put in the tabloid media—and by following all its judgments. Do you see that as a real risk?

Lord Thomas of Cwmgiedd: Yes—to give a one-word answer. I see it as a very substantial risk. It depends on what view you take on the role of the judge. I take a more conservative view. I really think that it should



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be for Parliament to say where it wants to go and what it should do. This needs debating. I know that that will make working this out now more difficult, but, with regard to putting that off and leaving it to the judges, there are fairly strong views among most of us that we do not want to be landed with making policy decisions of the kind that the Court makes and to be seen as continuing EU law, rather than, to the extent that Parliament wants it to be different, making it different.

- Q10 **Alex Chalk:** To play devil's advocate for a second, advocates are perennially citing authorities from the High Court of Australia and goodness knows where as persuasive authorities. Has not the High Court, and beyond, shown itself well able over the years to make decisions as to the appropriate weight to be applied to that? This ought not to be any different. Why do you say that this ought be so different?

Lord Thomas of Cwmgiedd: Because I do not think that people have fully understood what the CJEU does. It has been a strong instrument in the development of an ever-closer union, based on charters and looking at the code of European law. Whereas the Supreme Courts in Australia, the United States and elsewhere are looking at their own laws, and we look at the much more general principle, what we will have is a whole corpus of European law that is dropped straight into our laps and that the CJEU will interpret against what it sees as the ultimate policy objectives of the European Union. However, Parliament may take a different view. I would just like to know what it is, so that proper guidance can be given. I appreciate that this is difficult for the Government and is not easy for Parliament, but I think that it is better that decisions on these issues are made here, rather than in the courts.

- Q11 **Chair:** I was at your Scarman lecture not long ago. You referred there to the interesting proposition that the Law Commission might have an important role as a kind of technical honest broker with regard to some of the legislative implications of repatriating the *acquis communautaire*. Have you had much response to that proposition, either from the Law Commission itself or from the Government?

Lord Thomas of Cwmgiedd: The Law Commission is quite keen on it. There are two problems. One is speed. The Law Commission can act quickly. The second, which is a problem that I understand, is that in a negotiation you have to be relatively careful about how much of your hand you want to show. However, some of these areas are very difficult. Having someone outside who is expert and able to help is a resource that we could very much use. As I understand it, there has been no real progress on this suggestion, but I understand why a view different from mine might be taken. It is for the Government and Parliament to choose.

- Q12 **Chair:** The ball is in the politicians' court, essentially, as far as that is concerned.

There is another point I want to touch on, before we move on to other points in the report. Our Select Committee did a report on legal



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implications of Brexit, both for the system and for legal services. One of our concerns was about maintaining the status of London as a dispute resolution centre post Brexit. I know that that is something you have referred to publicly in firm and trenchant terms. You maintain that there is absolutely no reason why that should be undermined, but you also say that there are rumours and lies abroad about potential uncertainty. Those are pretty strong terms to use. Whence do you think the rumours and lies come?

Lord Thomas of Cwmgiedd: Law is now a highly competitive business. One must not ignore that fact. If you can make your principal city a major dispute resolution centre, it brings income and all the other associated economic benefits with it. It has always been the case, for example, that people will say about the law of state A, "That is not very commercial. The judges do not understand things," whereas others will say, "No, of course they do." One of the issues in Brexit—this is why it has been so unfair—is that it is thought to affect the stability of English law. It does not, because English commercial law has developed on its own, but all is fair in love and war—or, I might say, legal competition. People spin yarns and rumours. We have had to put it to rest. I have had it from so many sources. That is why I have commented on it publicly.

Q13 **Chair:** That is helpful. You also made some comment about the risk of what is sometimes the fashionable move towards mediation, as opposed to court resolution, in terms of development of the law. Is that an ongoing issue that you think your successor needs to look at?

Lord Thomas of Cwmgiedd: Yes, I think it is. It is being tackled in this overall context. We are having constructive discussions about it.

Q14 **Bambos Charalambous:** I move on to the court modernisation programme. Lord Thomas, in your annual report, you say that the £1 billion court modernisation programme "continues apace and well on track." However, the previous Justice Committee reported that £204 million of capital expenditure was returned to the MoJ. In your opinion, does that mean that modernisation is not proceeding as quickly as it should?

Lord Thomas of Cwmgiedd: There are two things that I could explain. The first, which is one of the most important things, is that every programme has to be looked at and that consideration has to be given to the speed at which it is appropriate to move it. It may have been thought that the four-year period that was originally envisaged was a bit tight, so it was expanded to six years.

Secondly, the one thing that you never want to do on a programme is to spend money within government years, if you can move money to a later year where you think that it will be better used. I regard the modernisation programme as a building project. There are complicated flowcharts that show whether it is on track. I was told by many people that one critical thing is to make certain that, instead of following what I



might describe as the tradition in some Departments of writing memos that say, "It is all wonderful," and hiding the problems, you have tight, graphical illustrations of how it is progressing, to see that each of the critical paths is in place. On that basis, yes, it is progressing. You will always get a milestone being missed, but it is identified, we find out why and we move on. This is subject to very ruthless checking. Because I have seen things go so badly wrong before, I was determined that we should not have that. I do look at it. I look at a flowchart—a complicated one. It is as complicated as building a ship or a large house.

Q15 Bambos Charalambous: If these progress reports exist, do you think that they should be published by HMCTS so that they can be scrutinised?

Lord Thomas of Cwmgiedd: My view is that with these sorts of things—how you are progressing—you must have two things in mind. First, it is inevitable that things will go more quickly in some areas and more slowly in others. Secondly, the programme involves a lot of commercial input. It is a balance between being open with you, in particular, as Parliament, and protecting commercial confidentiality. Annual reports are a good thing. Private interim reports to assure you of what is happening are probably the way around it.

Q16 Bambos Charalambous: I move on to the digitisation of the Courts Service. A number of groups—the Child Poverty Action Group, Disability Rights UK and others—have expressed concerns about how vulnerable court users will be able to access the services of social security tribunals, in particular. Do you share those concerns? Do you have any idea how they can be addressed?

Lord Thomas of Cwmgiedd: Yes. We face a terrible dilemma. What we need to do is to move to a much more efficient, 21st-century back-up of court decisions, using the benefits of digitisation. Secondly, there is a problem with the provision of legal advice and the amount of money that the Government are prepared to spend on it. Thirdly, there is a digital solution. We had a hackathon, organised by Professor Richard Susskind, HMCTS and Legal Geek, in the City. The idea was to try to persuade people to use artificial intelligence—to devise guides to people. You would put in what your claim was about, be given a drop-down box, from which you would select, and be helped in everyday language. An awful lot of the progress that we can make is to use that and to help bodies such as those that you have mentioned to be in a position to do it.

We are trying to produce an online court. Some people have referred to it as the online court for civil. It is not—it is an online court for everything. We have taken the view that you need a single process—for three reasons. First, the history of having different processes in different parts of our system—family, tribunals and civil—is a product of historical accident. Herbert Smith Freehills did some detailed systems analysis. Unsurprisingly, it showed that the process in virtually every claim is the same, whether you are in a tribunal, having a divorce or a civil dispute. At the moment, we are building a system where we are trying to ensure



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that the common processes—they are common processes across the board—will be the same. We will then develop, which I think is terribly important, guides on how to use the system for the litigant who does not have the benefit of a lawyer. That part—producing online help—is really important. Having seen the results of what was done in 24 hours, overnight, by people on Red Bull and coffee, I was pretty impressed that it can be done.

- Q17 **Bambos Charalambous:** As somebody who has used Possession Claim Online, which was a revolution 10 years ago, being able to issue claims online would be a great way of moving forward. I hope that we will see trial bundles online as well.

Lord Thomas of Cwmgiedd: We will. One of the great achievements of the past year and a half has been the fact that, if you go into a criminal court now, you do not see much paper because it has gone paperless. We will get there. However, it requires radical thinking. I am grateful to my colleagues, HMCTS and the Ministry for that. You do not need divorce petitions or different kinds of words—the processes are all the same. We can get there.

- Q18 **Bambos Charalambous:** Could you expand on the role of the 36 judge-led local leadership groups and the decisions that they are taking on the court modernisation programme?

Lord Thomas of Cwmgiedd: This is partly history and partly where we need to go. I am a very firm believer in decisions being made locally, as much as possible. If you look at the history of our justice system, we used to have everything done locally. We then moved forward to more being done centrally. Before Dr Beeching came along, our system of justice was essentially a locally driven system. However, between the Beeching report and, more seriously, the abolition of the magistrates courts committees in 2003, there was a tendency to make central decisions. That is beloved of many, but I am a firm opponent of it. I believe that as much decision making as is consistent with making a national policy ought to be left local. The local leadership groups are intended to restore what Beeching and the abolition of the MCCs took away—to return as much decision making to local decision making as possible, within a national framework. It is vital to keep up the morale of the judiciary.

- Q19 **Bambos Charalambous:** Could you say something about the significant issues that the judicial ways of working group has identified with regard to the implications of court modernisation for the judiciary?

Lord Thomas of Cwmgiedd: If you look at court modernisation, there are a number of complicated issues. The first issue is, where do you put the courts? Secondly, what should the courts be? Thirdly, how should the work be done within the courts? We are in the process of trying to see whether we can have a courtroom for civil, family and tribunals, and for the magistracy, that is much more standard, so that you can use the



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resources more efficiently. Crown court cases, with a jury, are obviously different, because you need a jury box.

You have a debate about the extent to which, as with Possession Claim Online, you can have a central organisation and put people there—I think that we are going to call them national justice centres—and the extent to which you need people locally, for issues such as listing, clerking and so on. The judicial ways of working group is designed to tackle the nuts and bolts, so that you get as much input and reflection as possible and take people with you. If you do not take people with you, this will not work.

- Q20 **Bambos Charalambous:** On previous occasions when you have given evidence, you have discussed the impact of the court closure programme on public access to the courts in England and Wales. In your annual report, you say that there will inevitably be further closures, because of surplus in the courts estate. Are you able to put any figures on the reductions that you still think need to be made?

Lord Thomas of Cwmgiedd: There are two separate problems. First, there is the problem of having multiple court or tribunal buildings in one town or city. That is an easy problem to solve, provided that you can get the standard courtroom right and bring people together. That is not politically controversial, because you still have every facility.

The much more difficult problem, when you work out the resources available, is to what extent you can have what I would call occasional courts—pop-up courts—in places, the extent to which you have a full-service centre and the extent to which you have something smaller. Inevitably, there are certain areas, I suspect, where there will be a need for further court closures. I can understand that that is politically controversial. Someone said to me once, “I have lost my local hospital. I am not losing my local court.” In the end, it is a question of how radical we are prepared to be in providing a much better service, or whether we spend the money on maintaining buildings that are underutilised.

- Q21 **Bambos Charalambous:** There is also an issue in relation to the hours that are lost when a case is not listed. For example, if they are all floating in a particular court that has dozens of cases listed for the same time period, there is lost time in witnesses and in solicitors and barristers attending court only not to be heard. That may be as a direct result of court closures.

Lord Thomas of Cwmgiedd: In fact, it is a paradox. The opposite is the case: the bigger the centre, the more cases you can be certain of hearing every day. For example, Birmingham’s criminal courts have very few floating cases that they do not dispose of on the day. If you look at it from a statistical point of view, the bigger the court centre, the more work you can put before it, because the risks you can take are bigger. A judge at a one-court or a two-court centre is in a terrible dilemma.



Let us take a court at the end of the line. I hope that Caernarfon will not think that, but it is at the end of the line. If you take the risk of putting two trials there and only one judge is present, you can have people come a very long distance only for nothing to happen. However, if you are in Birmingham, where you have about 20 courts, you can take risks and, therefore, get cases on. It is a question of balance, really. In Caernarfon, it can be very nice. You go, the only case there settles and you do some work on something else. In Birmingham, by taking two completely different courts, you can use the court facilities much more efficiently. That is part of the balancing exercise.

Q22 Bambos Charalambous: On the flipside of that, there has been criticism from solicitors, and lawyers generally, about the flexible hours court pilot. Obviously, if people are sitting later into the night, that has an impact on family life. It may have a particularly adverse impact on women in the profession.

Lord Thomas of Cwmgiedd: There again, it is a question of balance. At the moment, the courts will start early sometimes. Take, for example, one of the things that we are doing—the pre-trial cross-examination of children. The court often does that at half-past 9 or 10, normally at the request of the advocate concerned. The advocate will say, “Look, this is going to take half an hour or so. If I can do it before court starts, I can then go off and do my case elsewhere, so I keep my earnings up.” If we were to say, “No. I am very sorry, but you can’t do that until 10.30,” he or she will have half an hour. What will he or she do for the rest of the day? Similarly, you may have cases where it is imperative to finish.

There is a third problem—the utilisation of plant. From time immemorial, the Treasury has always looked at court utilisation figures. It looks at a court as a plant, and wonders why the plant is not being used enough.

On the other hand, you want to be sure that you can give people a degree of certainty, which is the key to enabling them to make the arrangements to prepare cases properly and to have requisite cover at home. It is a question of balance. The whole point of the pilots is to see what can be done to achieve that balance. They are pilots. The result may be that nothing can be done, but people may have good ideas. It is worth experimenting. That is why I think that we should go ahead with it. We have an awful lot of flexibility at the moment, to the advantage of both the advocates and the system.

Q23 Bambos Charalambous: Could you say a little more about the steps that have been taken to implement the recommendations of the Civil Courts Structure Review by Lord Justice Briggs that do not concern online courts?

Lord Thomas of Cwmgiedd: One of the most important things that have been done has been to create the business and property courts. I hope that that will strengthen the delivery of justice out of London. There is a lot of ongoing work to deal with one of the most difficult areas of our



procedural system—the operation of disclosure. We are constantly reviewing areas such as the limits—what can be done before a county court and what can be done in the High Court. A lot of progress is being made. We have learned from the past that it is quite a good idea to have an implementation group, which is getting on well with implementing most of it. Lord Justice Briggs's recommendations are pretty much accepted.

- Q24 **Chair:** The concern that has been expressed to me about flexible-hours courts by constituents who are lawyers is that, in government circles, a pilot tends to be a bit of a one-way street. As I understand it, you are saying that it need not be, if it does not work. There is also the thought that there will be pressure on practitioners to take briefs or instructions on both the morning and the evening lists, simply because the clerk will say, "That is the sensible thing to do. It gets me one barrister in two courts." That is pretty hard for a working mother, for example. Where does it leave her with childcare?

Lord Thomas of Cwmgiedd: I agree completely. One of the big problems that the legal profession and the judiciary face is the loss of working mothers. However, much of that depends on certainty. In the medical profession, where there are now probably more women coming in, the whole balance has not changed. What is imperative is certainty. Everyone wants to find a means of being able to say to someone, "Yes, you may have a case in three or four weeks' time, but we will be sure that it will be in the morning or the evening." That requires a great deal of constructive effort on both sides. A rigid solution would be very unattractive to everyone.

- Q25 **Chair:** That is helpful. Can I move on to the question of recruitment, morale generally, retention and diversity, which you touch on in two of the chapters of your report? One has had a sense for a number of years that there is an issue now with recruitment to most elements of the judiciary—certainly to the senior elements of the bench. You have referred to the need to ensure that there is a solution, through the SSRB, to the whole question of making sure that there is proper remuneration. We have seen the latest judicial attitude survey. How serious is the decline in morale? How do you currently assess the situation with recruitment difficulties, particularly in the senior judiciary, and maybe through to the circuit bench? How hopeful are you of a solution to that from the SSRB?

Lord Thomas of Cwmgiedd: There is the process of recruitment, which I would like to come back to. However, if one is looking at the problems, there are three things that go towards proper attraction to the bench. One is making certain that the volume and variety of work is kept up, as the volume and kind of work that he or she does is central to a judge.

Secondly, there are the working conditions. Do you have IT that works? Does the ceiling leak? These are problems common to many different parts of our state. We have gone a long way towards solving the IT



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problem, and there are plans in hand. A lot of work needs to be done on making buildings better.

The third area is what I would call terms and conditions—pensions and pay. There is no doubt that there is a problem. The SSRB is now conducting a fundamental review. I have every confidence that it will do a very thorough job. It is setting about it in a very methodical way. The problems are understood. I know that the SSRB, like any highly experienced independent body, wants evidence. It will have plenty of evidence as to the problems. As to how it will address them, it is independent and one would respect its judgment. I hope that my successors will agree with it. An awful lot of work is being done. I am confident that the SSRB will do a good job.

Obviously, there may be a difficult issue of implementation. I mention that simply because the 2011 report was never implemented, because of the pay cap. I do not wish to speculate on what a Government may do when the report is delivered in the summer of next year. That is a political matter. I do not think that it would be wise for me to say anything.

Q26 Chair: To what degree would you characterise it as being a risk to the quality of the judiciary if there is not action on it?

Lord Thomas of Cwmgiedd: There is a really serious risk. We are short of High Court judges. Someone put a query in relation to the work of the administrative court. It is clear that the administrative court is being slightly affected by a shortage of High Court judges. I cannot comment on the circuit bench position at the moment because there is a competition, the results of which will come through very soon, but on the High Court bench we still have a serious recruitment problem. As was explained to you, the JAC took the view, with which I wholeheartedly agree, that one thing we cannot do is compromise on quality. I am pretty certain that the SSRB fully understands the problem. I hope that it will be able to find a solution to address it. There is a serious problem at the level of the High Court.

Q27 Chair: And solutions have to be implemented.

Lord Thomas of Cwmgiedd: Yes.

Q28 Chair: That is the point that you made. You also wanted to touch on the new appointments process.

Lord Thomas of Cwmgiedd: It touches on what the Justice Committee said. There is one thing that people forget as to how we are where we are. In the old days, when the Lord Chancellor's Department ran things, there was a single system of recruitment, for which the Lord Chancellor was responsible. He used to send someone out to take soundings. I am in no way saying that we should go back to that, but there was a good recruitment position in place. You would then pick up on the difficulties with appointments. To an extent, there was a career development.



If one looks at what used to happen, there was a degree of that. I am probably the only serving judge left, apart from Lord Justice Leveson, who used to sit around the table when decisions were made as to what you did. The Lord Chancellor would say, "No, not this year, but next year," or, "We should be doing this or that." What we have forgotten is that, essentially, there is a recruitment process, an appointment process, a career development process and a succession planning process. In setting up the institutions, we eroded those four functions somewhat.

I can give you an illustration. We are now doing a huge amount of good recruitment work, but we have not got right the use that we make and the design of information that we collate when people apply for appointment. The forms are geared to the appointment, not to ascertaining information to see where your recruitment has gone wrong. We are very keen on appraisal. Lord Justice Leveson ran a pilot for appraisal in 2004. We would love to go back to it, but it needs money. Succession planning is something that we have now put in hand, but it is not necessarily that easy to operate because we do not have enough continuity. This is an area where an awful lot of work is in hand, but I wanted to explain historically where we have got to, how it has happened and how, now that the problems have been identified, they are being addressed, subject to money.

Q29 Chair: That is helpful. I am sure that you have seen the report that Justice's working group brought out on diversity in the profession. I met the group's chair yesterday, as it happens. It makes a number of specific points. Do you have any initial reactions to them?

Lord Thomas of Cwmgiedd: I encouraged Justice to do this and launched the report. However, as it was at the beginning of the election cycle, I took the position that it would not be politic for me to say anything, because I would be touching on matters political.

There are some things in it that I strongly welcome. Can I give you one illustration? One of the difficulties that we have at the moment is that our system will depend in the future on having judges who sit for 10, 15 or 20 days a year—recorders, or something of that kind. We used to operate a system where you would have that job for five, six or—maybe—10 years; then it would come to an end. What happens now is that, once you are appointed, you stay there until you are 70. For resource reasons, you cannot have people carry on for a very long time. One of the report's recommendations is that there should be a finite period. That is essential, because we need to have more young people. I think the statistics are that about half of the recorders are over 60. There is nothing wrong with being over 60, but if you are using this system as a means of selecting the future talent, training people and seeing whether they would be good judges, you cannot afford to have that tail.

We tried hard to persuade the Ministry of Justice to do this, but it funk'd it—I use a fairly strong term—because it realised that it would cause an awful lot of upset with people who were recorders. It needs to be



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grappled with. A whole lot of nonsense is spoken about how this would contravene rights and so on. It is all nonsense. It needs to be dealt with, because we simply cannot afford not to have a system where you get a huge intake of new people year on year. People may decide that they do not like judicial appointment, but what we cannot have is people hanging on to these jobs. It is terribly attractive at the age of 65 to have a part-time appointment—it is a bit like the beginnings of a portfolio career—but it is not what the system needs.

I agree with that area of the report. As you will have heard from my earlier remarks, I think that there is something to be said for much more strategic succession planning. They are all very good ideas, and quite a lot of stuff is being done. There is one area where I do not agree. I do not agree with having targets with teeth, and I think that you have to be very careful about how you define merit. However, there is an awful lot of good in the report. Naturally, it has some things with which I disagree. I have not expressed any public views about it before. The central point is that people put ideas into the domain of Parliament and the Government, so that they can think about them, and that we look at what is essential—the democratic way forward in how we select and improve our judiciary for the future. You are bound to get things in a report, if it is a good report, that find opposition. There are some things that I would oppose, but there is an awful lot I agree with.

Q30 Chair: That is very helpful. Finally, I want to ask you about the large body of people we sometimes do not talk about enough—the magistracy. In the last Parliament, our Committee issued a report on the magistracy. In it, we suggested a number of things concerning, for example, the issue of workforce planning within the magistracy—succession planning and career development for magistrates. We also noted the difficulty sometimes of persuading employers to make it possible for people to sit as magistrates, who are a part-time and unsalaried body. We suggested the idea of a kitemark, or something like that. Is there more that the judiciary or the Government can do to ease the path for people to become magistrates and to make it attractive and worth while, so that we can retain good people?

Lord Thomas of Cwmgiedd: I grew up in a mining community in south Wales. It had the advantage that at that time the National Coal Board was very generous about allowing people to be magistrates, so you had a very diverse selection of people. The teaching profession was pretty good at it, too. However, in the former case, the body has disappeared; in the latter, budgets are very tight. Public bodies of that sort are no longer prepared to do it.

We could do an awful lot more to persuade corporations to regard a contribution to the justice system in this way as part of what they put into their annual reports regarding what they are doing as a matter of corporate responsibility. At the end of the day, it is about persuading people that the bottom line of their accounts in releasing people—



because it is obviously costly—has a social purpose. Therefore, we should do more to trumpet that social purpose.

It goes back to the answers that I gave to Ms Prentis and Mr Chalk. It is part of getting over to people that justice matters and is important. It is quite a job of work. When I was in Lancashire a few years ago, I met someone who worked for the Virgin franchise. He found that Virgin was quite encouraging. I do not know whether that is still the position, but that is where we have to persuade employers. If we do not, we will end up with a number of magistrates whose average age is higher than it should be.

- Q31 **David Hanson:** Good morning, Lord Thomas. I read chapter 4, on criminal justice, with great interest. In a Lord Chief Justice sort of way, it is quite strong stuff. You comment that “much needs to be done to improve the effectiveness of the Community Rehabilitation Companies.” You say that “the Chief Inspector of Prisons provided ample evidence of the serious issues that are faced” and that extended sentences are now causing pressure. You also say, “The state of the custodial conditions under which young persons are detained is in real need of reform.” That is quite strong stuff. Would you like to expand on it for the Committee?

Lord Thomas of Cwmgiedd: It is quite important to understand what is happening, because the statistics that are generally available do not give rise to the proper picture. First, some years ago, it was thought that the short prison sentence was the problem. That is not producing pressures in prison. Obviously, it creates other pressures of a revolving door. What has happened is that there has been a steady and continued growth in the number of longer term prisoners. You can see it quite clearly. That is a matter of concern, because it builds up a harder core of prisoners who are there for more than four years.

Secondly, on extended sentences, a decision was made that, at a certain degree of severity, you would spend two thirds of your time in prison, rather than half, before you were released. Again, that is causing a pressure. You only need to go to a prison to see the very substantial pressures governors are under. There is nothing worse than being in a prison where people are locked up for a long time. In young offenders institutions, there are very serious staffing problems. I need not elaborate on the chief inspector’s report on this. There are deep-seated problems. Mr Gove saw that there was a problem, the last Secretary of State saw that there was a problem and certainly this Secretary of State sees that there is a problem, but it is not an easy problem to grapple with. Without doubt, there is a serious problem.

Part of the difficulty with community rehabilitation arises out of the way in which it was introduced. Part of it arises out of the inevitable nature of a contract, in that you need a very flexible contract so that you can make certain that, as policy changes, you can change the contract, which is very difficult to do. Part of it relates to the proper interrelationship between prisons and community rehabilitation—that is to say, when you



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discharge someone into the community, what are the community rehabilitation companies to do? Part of it also relates to incentives. If you pay people by incentives or do anything where you reward by incentives, you often target the way in which people react on achieving those incentives. Therefore, I have the utmost sympathy for the present Secretary of State and his two immediate predecessors. They have been dealt a pretty difficult hand with a combination of things.

On top of that, you have the IPP problem. Although the chairman of the Parole Board, Nick Hardwick, is addressing that as successfully as he can, there is a serious problem. This is not the place to debate this, and I do not think that any useful purpose is served by debating whether this was a good sentence or why it produced the results that it did. We are stuck with a significant number of people and there is nothing that the courts can do, save in fairly limited circumstances, but a solution needs to be found. I am afraid that it is a statutory solution. I have no doubt that the chief inspector will get to a position where he has reduced the number, but he will come to a hard core. There is a lot of evidence to support the view that keeping people in prison with uncertainty as to when they will be released makes them give up hope and, therefore, become riskier.

Secondly, there are the licence conditions, where you are liable to recall. As a prisoner put it in one of the reports, she felt like a puppet on a string—that she might be pulled back. Although I have nothing but admiration for what Nick Hardwick is doing and for the very real thought that has been given to this matter by the Lord Chancellor and his predecessors—both Liz Truss and Michael Gove—there is a very difficult problem that needs to be grappled with.

Q32 David Hanson: What do you think is the solution to that problem?

Lord Thomas of Cwmgiedd: I have no doubt that we need to find a statutory mechanism to unwind the current position. If you look at the solutions, they are very difficult. You cannot say, "Everyone who has reached their tariff term ought to be released," because in many cases we are way beyond it. In cases where we found that an error had been made—where someone had been given an IPP when they should not have been—and had to order their immediate release, the one thing that we were very careful to do as judges was to make certain that there was a mechanism to underpin that release. If you just release someone who has been institutionalised for five years, without any underpinning, you are causing a major problem. Just converting all the IPPs into tariff and saying, "You can go," is not an answer.

One thing that you can do is reverse the burden of proof, although I am not a great believer that the burden of proof solves anything. Alternatively, you have to say that you will look at all of these cases and resentence them. I presided in a case where there were 13 appeals. We looked at all the original sentencing and found that there was absolutely nothing wrong with it. You cannot say to judges, "That was a bad sentencing regime. Start again"—you must have a statutory basis. There



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have been one or two cases in respect of arson and other offences where an error was made in the assessment of whether someone wanted an IPP or a hospital order. We have put those right, but there are very few cases that are susceptible to being dealt with in that way.

That is why you need a statutory solution. Reversing the burden of proof would be the first step. That can be done under legislation. The second step would be to look at a mechanism for resentencing. You will get to a time where, I suspect, using the current regime, you will reach a hard core, and the chairman of the Parole Board and his colleagues will run out of being able to release people.

Q33 David Hanson: I agree with all of that. The statutory solution is one of the issues we will have to look at during this Parliament.

Lord Thomas of Cwmgiedd: I cannot go beyond that. The figure is still roughly 3,000, and the sentence has not been in operation since 2012. I do not believe that we will ever have this problem again, because much more care is taken now to consult widely before you introduce such sentences. One interesting fact is that the number of life sentences has remained the same; there has been no increase. Where there has been a significant increase is in the extended sentence, which has taken the place of the IPP. At least there the sentence is finite. You have the problem of whether you should keep them in for two thirds of the time, but that is a political question for you.

Q34 David Hanson: In the criminal justice section, you touch on the heavy volume of sexual offences and the changes that have taken place. You indicate that there is a "lack of data in relation to case length, which the current technology cannot provide," which makes it "impossible to gauge accurately the effect of the reduction of case numbers on the workload of the courts." We have had an awful lot of representations about how court cases on sexual offences have been dealt with and what the outcomes are. Generically, is there any issue that you think is central to the way in which the courts are dealing with historical sexual offence cases, in particular, as well as generic ones?

Lord Thomas of Cwmgiedd: There are two things that need to be done as regards predicting future volumes. One—which the Ministry is doing, with others—is forward planning. I praise it for that. Take any of your constituencies in which there was a home. If the police start an investigation and it appears that there is something, the sooner that fact is communicated to the Prosecution Service and to the courts, the sooner they can plan this, because it tends to arise out of operations of that kind. That is now much better; it used not to happen.

Secondly, when it comes to predicting the problem for the future, the existing databases are very poor. Modern databases, when they come in,



will be much better, so we will have a much better handle on volume from both of those areas.

As regards the fairness of these cases, we have tried to adapt the procedure as much as possible. One can see it both ways. You only have to read victims' personal statements to see what devastating effect victims say this has had on them. One only has to read the appeal submissions, particularly when they are done by litigants in person, to see why they think that the whole system is unfair. It is a dilemma of our society if you let something that happened 40 years ago go uninvestigated—which you cannot do. Any system is bound to throw up a feeling in people who have been convicted in those circumstances that it is their word against his or hers and that the system was not fair. However, I think that we have done as much as we can. If someone has better ideas, I am sure that we would look at them. I can see why people feel very strongly about this—both ways.

Q35 David Hanson: On an adjacent and related matter, over the past year you have had a pilot about evidence given by children in courts. I noticed that there had been some criticism and that you had had some discussions about that with the Lord Chancellor publicly during the past year. Critically, in your report, you say, "This is already proving to be a much more complex task than provision of cross-examination of children." Could you expand on that?

Lord Thomas of Cwmgiedd: I do not know whether any of you have had the opportunity to go and see how this is happening. It is a major change in our system. It was recommended a very long time ago, and it has come about now. When I have sat there, the cross-examination of children has been relatively short. The figures show that. Those of you who are practising advocates will know that cross-examining a child for a very long time tends not to get anywhere. The ground rules hearings and the huge progress that has been made by judges, led by judges such as Judge Rook, have been tremendously valuable.

The cross-examination of an adult complainant is a very different business. There are two things one must think about. We have been able to accommodate most children's cross-examination in the slot prior to court. We doubt whether we can do that for adults, because the cross-examination is of necessity longer. We must therefore work out how to do this without causing disruption to people's lives as advocates and to the work of the courts. For example, if you have a two-hour cross-examination of a complainant, you cannot do that before court starts. You must therefore find a slot that will fit the barrister and make certain that that barrister or solicitor is able to do the hearing. Working this out is much more complicated than it is for children. It is just a different logistical exercise.

We are experimenting in Liverpool, Leeds and Kingston with doing this and how best it can be done. We want to run the system efficiently and



to ensure that advocates are properly remunerated and that their time is properly taken, but it is a much more complicated task.

Q36 **David Hanson:** When do you think you will have assessed Leeds, Liverpool and Kingston fully?

Lord Thomas of Cwmgiedd: I think that it will be into next year. One must bear in mind that Liverpool and Leeds have the advantage of having quite compact local Bars. It is much more complicated in London. Because of the way in which the north-west and north-east work, the courts are quite near to one another. If you are doing a case in Leeds, it is likely to be either Leeds or Bradford. If you are doing a case in London, on one day you may be in inner London, but on another day the case that you were meant to be doing may be in Reading. The time travelling between places is more difficult. I think that we can deal with out of London more quickly than London. This is merely making certain that we experiment and find the best way forward. It is very important that we find the way forward, largely because there is nothing worse for a victim of crime than having the work hanging over them.

Q37 **Bambos Charalambous:** I turn to chapters 5 to 7 of your report. I will start by looking at civil and family legal aid, which has been withdrawn. That has "resulted in many people being faced with the unedifying choice of being driven from the courts or having to represent themselves." In family court situations, in particular, where you may have two people who are representing themselves and are unable to collate the documentation, a judge may have to make decisions based on whatever they are able to glean from them. Do you have any concerns about that?

Lord Thomas of Cwmgiedd: The number of private law cases is rising again, and it is deeply worrying. Our system being basically adversarial, if two people have fallen out over children or money, expecting them to deal with it in person is not always easy. If they do it personally, you can make the dispute worse; you renew the confrontation over the issue that caused the split in the first place, whereas if you have a lawyer he would say, "Look, let's have some mediation, and, when the mediator says something, you'd better agree to that because that is what the judge would do." If you do not have a lawyer, it is much more difficult for someone to accept that what the mediator suggests is what a judge would do. Therefore, people are keener on going to the judge. So, you have these twin problems.

There are two or three possible solutions. One of them is to go back to the old legal aid system; another is to do what has been done in California, which is to provide a lawyer in court who can advise on an employed basis rather than our traditional basis; and the third one, which may be more difficult, is to use organisations such as the CAB to do it. There are solutions and the judiciary is adapting, but there is a limit to which it can solve the problem without more work coming back, which is not what is wanted. Therefore, this is a matter where some work by you,



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I think, would be very helpful in exploring the best solution to a highly difficult problem.

Q38 Bambos Charalambous: In your report you mention steps to improve the efficiency of the administrative court. Are these measures proving effective in your opinion?

Lord Thomas of Cwmgiedd: Yes. What is important in the administrative court is getting decisions quickly and right, obviously. One of the areas that has traditionally caused concern is extradition cases. Fortunately, the number of such cases is falling for a reason no one is quite sure of. We are more concerned about planning. We improved the position radically. We are slightly worried about the number of High Court judges—this is more a question of judge power than anything else—and whether we have enough judges to do the work. But, on the whole, the use of authorisations to allow staff to do more—they are all trained lawyers so there is not a problem—hard work by the judges, and, above all, moving a lot of the immigration work to the upper tribunal has made the position much better.

We are constantly reforming it. Mr Justice Cranston was a great reformer before he retired, and Mr Justice Supperstone, who now runs it, is continuing that tradition. They are both superb administrative law lawyers. I am moderately optimistic, providing we have the right judicial manpower, that we will keep the very good figures, because the one thing you cannot have is the administrative court used to delay decision making; it is bad for everyone. Therefore, keeping the speed up there is very important.

Q39 Bambos Charalambous: The previous Justice Committee was concerned about the abolition of the Administrative Justice and Tribunals Council. The successor body to the AJTC, the Administrative Justice Forum, has also been discontinued. Are you confident that you and the Ministry of Justice have mechanisms to obtain reliable advice and information about the operation of administrative justice for the formulation of policy on that matter?

Lord Thomas of Cwmgiedd: We have to remember that administrative justice falls, by the process of historical accident, into two different areas. One is the tribunals and the other is the administrative court. How tribunals and administrative courts came about is a pure historical accident. In the long term, it is obvious that you want to bring the administrative court and the tribunals together, because by and large they are both dealing with the same problem, which is the relationship between the citizen and the state, save for employment tribunals, which may fit much more closely with civil litigation, but these sorts of large structural changes, although logical, may take us a century or more to achieve. We are not very good at being logical in the structure of the courts, but a body that feeds into both areas would be sensible.



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I think a council is good. Any court area has to have a body where practitioners, academics and others can come and give input. As to how you achieve it, in criminal justice the Criminal Justice Council is not as active as it once was, but the huge reforms that have taken place in criminal justice have been procedural. The Criminal Procedure Rules Committee is highly representative; similarly, the Sentencing Council. Therefore, there is a variety of mechanisms, but you must have one that produces the best and most committed people to make the judges, legislatures and Ministers think about the problems.

- Q40 **Bambos Charalambous:** Changes to the procedure governing judicial review were introduced by part 4 of the Criminal Justice and Courts Act 2015. That included new tests for granting permission for judicial review applications; that is, whether it is “highly likely that the outcome for the applicant would not have been substantially different.” Some people would say that this test forces the admin court to look behind the decision and motives of the decision maker. Do you have a view on this?

Lord Thomas of Cwmgiedd: As far as we can tell—we have not yet been able to do any full research—it is a provision that we did not think would make a lot of difference, and we do not think it has. That is a short answer to a longer question. Normally, at the permission stage, there is not enough information to be able to determine that issue for certain. Obviously, if it is a technical point it may not make a difference or it may make a difference, but at the moment our general view is that it is not a provision that has had any material effect. It was probably something that caused more of a storm than it deserved, but these things happen.

- Q41 **Bambos Charalambous:** In the report, you refer to the crisis in the family court arising from the increased number of public law cases. Are you able to hazard a view as to the reason for that increase?

Lord Thomas of Cwmgiedd: The Cabinet Office is looking at what has caused this problem. Its findings have not yet been made public and I do not think I should, but we cannot have a continued rise in this sort of work, largely because you will run out of judges who are capable of doing it. The president of the family division, Sir James Munby, is very keen on and sees the huge value in problem-solving courts. I think that so much more could be done to identify the problems early on before they reach the stage where children need to be taken into care. One illustration that is always given is, “If child a is taken into care, what about children b, c and d? Ought you not to be getting at them, finding out what the problem is and using a problem-solving solution with the involvement of the courts before you have another three cases?” That is one issue.

The second issue is that in relation to the way in which the prosecuting authority works we are very fortunate in having a single authority. Individual police forces differ in policies. The National Police Chiefs Council is pretty good. There are only 43 of them. I say “only,” but some think there should be fewer, but local authorities are very different. One of the areas that probably needs looking at is whether we can achieve



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more consistency of policy taking into account the role of the courts than there is at present.

- Q42 **Bambos Charalambous:** You mentioned the workload arising from public law, but in your 2016 report you said you had concerns about the workload arising from private law cases. You have not made any reference to that workload in the 2017 report. In relation to such cases has the situation stabilised, and are there any reasons for that?

Lord Thomas of Cwmgiedd: Private law cases have risen in the order of 10% this year. That is quite a significant rise. Public law cases were rising consistently and have plateaued. Whether that plateau goes down or up we have no idea of knowing, but the number of days devoted to family work is increasing all the time. A concern that I have, and I know some civil judges have, is that the demands of the family work are having an impact on civil justice as more judicial resource has to be devoted to that. One of the things I do from time to time—it makes me uneasy—is authorise more and more people who are brought out of retirement to do work in civil cases, releasing full-time active judges to do family cases. I do not think that is right, but there is not a solution until we can grapple with bringing family work under better control.

- Q43 **Bambos Charalambous:** In your report, you welcome the Government's intention to legislate to end the right of an alleged abuser to cross-examine an alleged victim in the family courts. Were you content with the drafting of section 47 of the Prisons and Courts Bill over the past Session, which would have effected that change?

Lord Thomas of Cwmgiedd: I think the president has been in detailed discussions with the Department and parliamentary counsel about it. There is one particular provision with which he is not entirely happy. Sometimes we find that the difficulties that are said to arise in relation to drafting legislation can be tackled if there is a greater understanding of the problem. I have never found that you cannot draft a solution. If a draftsman cannot draft a solution, that should not be an answer for not doing it. Therefore, I would very much hope that parliamentary counsel and the president will discuss further the difficulties that remain in relation to this provision.

- Q44 **Bambos Charalambous:** Some charities, one of them Women's Aid, have concerns about the safety of alleged victims in the family courts. They have suggested that a significant number of women are attacked on the family court estate by the alleged abuser, or the family of the abuser. Is there anything that can be done to try to ameliorate this problem?

Lord Thomas of Cwmgiedd: The chief executive of HMCTS, who has done a fantastic job in driving the reform programme, has also taken steps to improve security. We found serious deficiencies in security that affected litigants and judges. It is family law that tends to raise the emotions. There are people who can attack court staff and witnesses. We had one terrible case where a judge had at least one really serious



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problem, and I know that this is a difficult issue. The police now understand the problem and are addressing it, but this is an area where it is very important to be vigilant. Some of the most serious security incidents have occurred in family cases.

- Q45 **Bambos Charalambous:** Linked to that, there seems to be some sort of lack of connectivity between the criminal courts and family courts. Sometimes a conviction in a criminal court does not seem to be picked up in the way a case is dealt with in the family court. Is that something that you think can be improved?

Lord Thomas of Cwmgiedd: I cannot comment further than to say that knowing the background of who is coming to court that day is very important. When I hear appeals in very sensitive cases and it is known that the families of the victim and defendant are coming to court, there is an obvious risk of tension and steps are taken to deal with it. Whether that ought to be done more in the family courts I will take back and ask about, but I do not know the answer to your question. I know it happens in crime because it is an obvious risk.

- Q46 **Bambos Charalambous:** Maybe the issue here is the layout or procedures of the court. I do not know; I am just speculating.

Lord Thomas of Cwmgiedd: An awful lot has been done to improve the security of courts, but the dilemma is that, if you put the judge halfway up the wall and lay it out as a traditional criminal court, people think that is more intimidating to someone coming to deal with a civil matter. You certainly have that problem in the youth courts.

My own view is that it is a question of balance: having security on hand, the police reacting very fast and prosecuting people. I do not think there is any doubt that for two reasons the judiciary would impose very severe sentences on people who disrupt courts: first, there has to be deterrence, but, secondly, it is an affront to justice. If we get into a position where people feel they can obtain an advantage by being violent, it undermines the fundamental process of the law, which is to resolve cases peacefully.

- Q47 **Bambos Charalambous:** I have one final question, moving away from family courts and turning to coroners' courts. In evidence you gave to the previous Committee you raised the possibility of establishing a national coroner service. Is that something you still feel is worth pursuing?

Lord Thomas of Cwmgiedd: Yes. Can I explain why? First, like everything that happens, it is somewhat historical. When it was decided that we would have a chief coroner, the decision was made that you would put that individual in place and provide him with some appellate authority, but you would leave the provision of facilities for coroners locally. The first chief coroner, Sir Peter Thornton, did a tremendous amount to try to standardise things in times when, in terms of local authority finance, my impression is that it gets more difficult; the pressures are enormous. Therefore, a national coroner service may help towards that.



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Secondly, having a service where the coroner is provided with staff locally but does not have authority over them is not entirely satisfactory, and inevitably you get tensions. The system is not designed easily to deal with such tensions. For example, if in a court a judge and an executive from the Courts Service do not get on, there are plenty of mechanisms to put that right because they are both national institutions. It is much more difficult in the coroner service.

Chair: Perhaps there is some further work for us to do.

Lord Thomas of Cwmgiedd: I hope I have not given you too much to do.

Q48 **Chair:** Suggestions are always gratefully received. You have already referred to the pressures on judicial recruitment, in particular the shortfall in getting people on to the High Court bench. In addition to your own retirement, there will be quite a turnover in other senior members of the judiciary over the next couple of years. Is it the time for Parliament to look again at the judicial retirement age?

Lord Thomas of Cwmgiedd: It is quite difficult at the moment. There are a number of complicated problems.

Chair: I appreciate it is not easy or simple.

Lord Thomas of Cwmgiedd: It is quite good to attract younger people, but if economic circumstances are such that people will come to be judges only when they are 60 and they look forward to a much longer age, allowing them to stay until 75 might be a very good thing. One has to be very careful that one does not end up in a position where, for example, if one appoints five people to the High Court, the Supreme Court and the Court of Appeal where the retirement age is 75, people who do not get to the Court of Appeal or Supreme Court go and people there stay, which causes a bed-blocking problem. There is also the very invidious problem of what to do with someone who may not have their faculties. There is nothing worse than sitting with someone who is failing, and I am conscious that the risk of failure rises with age. It is something that needs to be debated. I think the problem is quite a complicated one.

Q49 **Chair:** Are there any final observations for us on your tenure as Lord Chief Justice, which has been a busy and distinguished one, and perhaps the issues that will confront Sir Ian Burnett when he takes over as your successor?

Lord Thomas of Cwmgiedd: I think his biggest issue will be succeeding in the reform programme. I am confident that it should succeed, providing there is no catastrophe external to the courts. If it does not succeed, the only alternative is to go back to where we were, and that is not sustainable; so, in effect, there is not really an alternative.

As to Brexit, there are the problems we have been discussing earlier but also the equally important issue of making certain our justice system



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remains attractive to others. We have touched on a lot of the issues in each jurisdiction. Those will go on. We have talked about recruitment, retention and diversity.

There are two things I would like to stress. First, a vital joint effort is to make people understand that justice is central to our society; we cannot be complacent. That is a joint endeavour. One of the privileges I have had is to be able to work with you and others in achieving that.

Secondly, a huge amount can be gained from working with people. For example, it has been a great privilege to work with the Institute for Government, IT people such as Professor Richard Susskind, and to have someone like Bob Ayling, who has come in and run HMCTS so successfully. Less publicity has probably been given to the work we have been doing with scientists—the Royal Society and the Leverhulme Institute at the University of Dundee—to make certain that we apply science to the law.

To my mind, the very important thing is to continue the work of being independent, yet interdependent, and to say what a pleasure it has been to work with you and the Constitution Committee in the other place in trying to see justice as a joint endeavour and to have your support, which has been utterly invaluable, realising that we might have different views about things but we are able to accommodate those views with respect for our respective positions.

A final observation, if I can say it in English and Welsh, is: thank you very much, or diolch yn fawr iawn.

Chair: Lord Thomas, thank you very much. Your candour has always been very much valued by us. Personally and on behalf of all my colleagues, I wish you, Lady Thomas and all your family a very happy and, I suspect, pretty active retirement.