



Select Committee on the Constitution

Corrected oral evidence: President and Deputy President of the Supreme Court

Wednesday 21 March 2018

9.55 am

[Watch the meeting](#)

Members present: Baroness Taylor of Bolton (The Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord Morgan; Lord Norton of Louth; Lord Pannick.

Evidence Session No. 1

Heard in Public

Questions 1 - 13

Witnesses

I: Baroness Hale of Richmond, President of the Supreme Court; Lord Mance, Deputy President of the Supreme Court.

Examination of witnesses

Baroness Hale of Richmond and Lord Mance.

Q1 **The Chairman:** Good morning and welcome. Thank you for coming to the Committee this morning and thank you for changing the time. As you know, we are consumed in this House with the European Union (Withdrawal) Bill, and that is why we have had to change the timings.

That is where we would like to start the questioning, if we may. We know that a great deal has been said about the role of the courts and about how Brexit may impact. We have had discussions on this in the past. There is the question of legal certainty, and there is a need for clarity so that people know where they are. We would welcome any views that you wish to express on that.

At the start, however, I wish to ask: what discussions have you had with the Government about your concerns in this area? Are the Government keeping in touch with you and your colleagues in the Supreme Court in relation to the concerns that have already been spoken of?

Baroness Hale of Richmond: There are two things. One is that the Ministry of Justice has asked us, as a court, what we foresee and how we foresee Brexit affecting the business of the courts. We have foreseen five different sorts of case that might come before the courts. There might be further challenges to the constitutional process—similar to the Miller one but a different one, no doubt. There might be judicial review challenges to the use of the Henry VIII powers. There might be challenges to or from the devolved legislatures and Governments relating to the location of powers. That is looking more likely as we speak. Those are all relatively short-term things that, if they crop up at all, are likely to crop up in the relatively near future.

Over the long term, there are likely to be challenges to the interpretation of the EU-derived law that remains part of UK law, including claims that we should depart from existing jurisprudence and claims that we should make our own jurisprudence in relation to matters that come up later where there is none at the moment. That could involve a very large number of cases, but we do not know. It could go on indefinitely.

There could be issues arising from Brexit that have nothing to do with EU law but that arise as a result of Brexit.

We have five different categories of case. The concern that my predecessor and I, and others, have voiced, in relation to post-Brexit Luxembourg jurisprudence, is: what are we supposed to do with it? That comes under Clause 6(2), about which you all know everything. We find the current draft very unhelpful. In the first place, it says that we do not have to take account of Luxembourg jurisprudence. Then it says that we “may do so” if we think it “appropriate”. We do not think that “appropriate” is the right sort of word to address to judges. We do not do things because they are appropriate; we look at things because they are relevant and helpful. We do not want to be put in the position of

appearing to make a political decision about what is and is not appropriate. That is the concern that has been voiced.

I should mention, as I think Lord Neuberger mentioned, that a small group of senior members of the judiciary is working on technical issues with both the Ministry of Justice and the Department for Exiting the European Union to raise concerns of that nature. Lord Mance is part of that group, so he may wish to add something to what I have said.

Lord Mance: We have had a series of what I think and hope have been productive and useful meetings. We are not concerned with approving drafts or drafting, but, as Lady Hale has said, we are concerned about technical issues and problem areas that we see arising out of existing proposals. One of the focuses has been on Clause 6(2). We welcome the attention that is being given to it because, although it is probably only an ultimate backstop, it is quite an important one. I say it is an “ultimate backstop”, because there are a number of interim possibilities that will certainly operate. For example, ECJ decisions will bind in respect of references made prior to the end of the transition period.

Similarly, it now appears, from reading the draft that came out a couple of days ago, that references may be made after the end of the transition period in respect of prior facts—facts occurring before the end of the transition period. In either of those two cases, the ECJ decision will bind, so there is no problem, although there is an interesting question as to what the force of the word “may” is. If you are not obliged to make a reference, can you decline because you are confident of the answer or because you do not like the answer that you think you might get? I suspect that is not the intention, and I think some guidance might be helpful in that sort of area.

Presumably that sort of decision on prior references and prior facts would only bind inter partes because of the general provisions of Clause 6, which say that, as regards other people who are not parties to the particular litigation, ECJ decisions are not binding as such. That is an interesting question. All these sorts of problems have been usefully raised in a series of meetings, which are continuing.

There is another area, that of citizens’ rights, where we know that the ECJ will have jurisdiction for a substantial period of years, and that will not create a problem.

One comes back to Clause 6(2) as the back-up if there is nothing else there. We know that EU law will be retained as far as possible as at the end of the transition period now. The question is: what is the force of Clause 6(2)? I think that needs to be looked at a little more widely in the context of Clause 6(3), because, on the face of it, Clause 6(3) says that you are fixed or frozen as at the end of the transition period, and you decide the law according to what you think the European court would have said then.

Does Clause 6(2) allow you to override that, or is Clause 6(2) simply explicative? Is it there to help you decide what the law was at the end of the transition period, or, if the European court has clearly changed its jurisprudence, as it sometimes does—expanded it or changed the concepts a little—are you entitled under Clause 6(2) to use that despite Clause 6(3)? The interrelationship of the two is simply not explained. Neither is said to be subject to the other.

The Chairman: We have quite a few people wishing to follow that up.

Baroness Corston: When you appeared before the Committee a year ago, Lady Hale, you were asked about “references to the Luxembourg court”. You referred to the fact that a reference could be made before Brexit, and you said that the answer would come back “afterwards”. You said: “It would be good if we knew what the situation will be if the answer comes back afterwards, given that the litigation started while we were still a member”.

In discussions that you have had with Ministers, or in looking at the Bill, do you feel any clearer on this issue?

Baroness Hale of Richmond: We think we have an answer: that we will be bound by the answers that come back. I was also very concerned about questions arising out of facts that arose before Brexit or indeed before the end of the transition period, because it would be retrospectively changing the law if we were not able to refer those questions and we were not bound by the answers. That does not seem correct. However, I think that all seems to be being sorted out now.

Lord Hunt of Wirral: Lady Hale, I remember last time I was a little troubled when you and David Neuberger said that you sometimes found the decisions of the Luxembourg court “somewhat impenetrable”. However, although you said that it was “more difficult to engage with Luxembourg than Strasbourg”, we were reassured when you said that you thought that the visits by the CJEU—it comes to see us from time to time, and we visit Luxembourg—will continue as we no doubt seek to resolve matters. What is the latest?

Baroness Hale of Richmond: What is the latest? We are hoping to have an exchange and a discussion with the members of the Luxembourg court later this year.

On matters of substantive interest, we obviously cannot engage with them on matters that are directly related to withdrawal, because that would not be appropriate, but there are many areas of EU law that will continue to be of mutual interest, and we would like to be able to continue those friendly relations.

The disconcerting thing was that, on occasions, it is not always easy to interpret what they mean in their judgments. That is the problem. It is partly a result of the fact that their judgments are unanimous, so they have to be the product of a great deal of negotiation to produce wording

with which every member of the court who is sitting is comfortable. That is a bit like a trade union negotiation in some respects: people try to find a wording that suits. Then, the poor national court has to apply it. That is what we were getting at in relation to the Luxembourg court. That is not always the case, however.

The Chairman: Whereas if you have a majority verdict, the majority case is put, and the minority one is also explained, so that gives you extra clarity.

Baroness Hale of Richmond: Yes, that is right. They allow dissent in Strasbourg, which is why it is easier to engage with the Strasbourg jurisprudence on occasions. I am not saying that is a universal problem.

Lord Hunt of Wirral: I was fascinated last time when it was explained that, due to the unanimity required, there would often be some judges who were signing up to a judgment who fundamentally disagreed with it.

Lord Mance: I was in Luxembourg last week as a deputy for Lady Hale at the meeting of presidents of European supreme courts. So long as we continue to look at retained EU law and so long as it is relevant to continue in any way to look at European court decisions, continued good relations will exist and are important. There is certainly no lack of friendliness on a personal level.

The Chairman: That is good.

Lord Pannick: I wish to return to the inadequacies of Clause 6(2). I wish to ask you two questions. First, did I understand Baroness Hale to say that the court has not put to the Government a revised wording that the court would be happy with? Could I suggest that it might advance matters if the court were able to do that?

Secondly, do you think that it would be better to have no provision, rather than the provision that is currently in Clause 6(2)?

Baroness Hale of Richmond: As to the first of those, we do not see it as our job to tell government what we would like to see specifically in wording in a piece of proposed legislation. We think that is inappropriate from a separation of powers point of view. The last thing we want is for anybody to be telling Parliament, "Well, we have consulted the Supreme Court, and they say this wording is fine". Then, of course, we have a case and we find that it is not fine. That is not our job. What we can do is point out the problems with any existing draft. I think that is what has been happening.

As far as the second question is concerned, I will ask Lord Mance what he thinks about that.

Lord Mance: I think the answer is that it would definitely not be a good idea to have no Clause 6(2), if only because it would then accentuate the importance of 6(3), which would stand by itself, and I do not think that is the intention, whatever the precise intention in 6(2) may be. Some

guidance in the fallback position where there is no other regulation would be desirable.

Lord Pannick: Are you expecting the Government to come back to you to put to the court their conclusion for further comments by the court before Report stage?

Baroness Hale of Richmond: It is not the court; it is a working group, which Lord Mance is part of, as are another of the justices and some Court of Appeal judges, with some Scottish representation as well. It is not the court. However, they are likely to come back with further drafts.

The Chairman: Lord Judge, you have spent quite some time on this.

Lord Judge: My question is whether we need anything at all in the proposed legislation, as opposed to, for example, taking out Clause 6(2) and leaving 6(3). Do we actually need anything in the legislation? Judges know what they should be doing, do they not?

Lord Mance: I repeat that Clause 6(3) would then become the dominant provision.

The Chairman: But if you took that out as well—

Lord Judge: If you took it all out, so there is no guidance, you can carry on and make your decisions.

Lord Mance: That might be a possibility, I have to say.

The Chairman: Food for further thought.

Q2 **Lord Beith:** I wish to ask you about paragraph 1 of Schedule 1, which precludes judicial review as to whether any retained EU law was, before exit day, invalid. It is a curious provision, because it is followed by a provision that the Minister can make regulations allowing such challenges. It is not clear to me whether Ministers do in fact intend to make such regulations, what they would be about or when we would know whether there was going to be some possibility of legal challenge to the status of EU law as it existed before exit day. Have they consulted you about this at all or told you anything about it?

Baroness Hale of Richmond: I would have to ask Lord Mance whether they have done so.

Lord Mance: We certainly noticed it. We asked what the interrelationship was with Clause 6(3), which refers, again, to questions of validity of any retained EU law. I think the explanation in relation to Schedule 1 was that that clause reflects the existing domestic position. Of course, it does not reflect the existing European position, because you could challenge it before the court. In that respect, on the face of it, it is a change.

The Chairman: Shall we move on to judicial careers and diversity?

Q3 **Lord Judge:** Our report on judicial appointments reflected concerns,

which I think are fairly broad, about damaged morale within the judiciary and a reduction in the attractions of judicial office. What I think we would really like to hear from you are your views on those subjects.

Baroness Hale of Richmond: We share everybody's concern that it has not proved possible to fill all the vacancies in the High Court for two competitions running. It is a particular problem in Northern Ireland, where they have 10 judges and three vacancies. That is almost a third of the court that is missing. That is obviously not sustainable for very much longer. The Lord Chief Justice is relying on the good will of retired justices. It is equally going to be a problem in England and Wales. Scotland apparently does not have quite the same problem, but there are concerns there, too.

The Judicial Appointments Commission has been very clear that it is not going to drop the quality. It will not lower standards in order to fill the vacancies. Of course we have to be concerned about it. That will not affect the Supreme Court for some considerable time, but, one of these days, it might do.

We are concerned for the system as a whole, and we share the general diagnoses that are around, which were in your report—for which many thanks, incidentally; it is a very helpful report. Pay is one thing, but it is not as important as the change to the pension scheme. Part of the problem with the change to the pension scheme is that it not only affected new recruits, which is one thing; it changed the pension arrangements for a large number of people who had become judges and accepted their appointment on the basis of the previous pension scheme. That undermined trust and confidence, shall we say. It undermined morale. If things can be changed after you have given up a lucrative career for public service, that is not much of an incentive. That is a concern that we have, and we have expressed that concern in evidence to the Senior Salaries Review Body, which is reviewing judicial salaries at the moment.

There are other things. They are in your report—you know all about them, and you probably know more about them than we do, because we live in our ivory tower across the road.

Lord Judge: We will see how far the ivory tower has been penetrated.

What I think you are effectively saying—it is very clear—is that we have just about got this right in our report, from your point of view.

Lord Mance: Yes. I have read the material that is being put before the SSRB—not just from us—and there is some powerful statistical evidence, which confirms one's own anecdotal view that morale is low, people are retiring early and you are not getting recruits. There has been a cultural change, unfortunately, as a result of a combination of factors. It is no longer the ultimate ambition of many members of the Bar, is my impression, and I think that will be deleterious and perhaps difficult to reverse. There is no doubt that it has occurred.

The Chairman: Baroness Hale, when you say that the situation is not quite as bad in Scotland, is that because they are doing something else? Is there a factor there, or is it just one of those things that happens from time to time, with different approaches?

Baroness Hale of Richmond: They seem to be managing to fill the vacancies at the moment.

The Chairman: Is there anything they are doing that we should learn from?

Baroness Hale of Richmond: I do not know the answer to that. If I were to speculate, it would be pure speculation, and I would not want to do that. I just know that the figures indicate that.

Lord Pannick: How significant a factor is abuse of the judiciary? I do not mean criticism; I mean "enemies of the people"-type abuse. How significant is the general perception of a lack of support from the Ministry of Justice in relation to such matters?

Baroness Hale of Richmond: I almost want to say to Lord Pannick that he is likely to know the answer to both those questions better than we do. We are serving judges. We are not being deterred, because we are serving judges, whereas Lord Pannick, as a practising barrister, is in contact with many people from whom he could ask that information.

Lord Pannick: I thought I would ask.

The Chairman: But it certainly was a significant step when that level of criticism was raised in the way that it was.

Baroness Hale of Richmond: Yes. Of course, we were all very concerned about that. However, that concern was sufficiently voiced, I think, to have got home. Things seem to have been very different.

The Chairman: But not voiced quickly by all Ministers.

Baroness Hale of Richmond: We found that the reaction to the Supreme Court decision in the Miller case was perfectly acceptable.

The Chairman: I think we will move on.

Q4

Lord Beith: I think you are now recruiting for a new deputy president and two, or possibly three, Supreme Court judges. Are there any particular steps that you are taking to try to attract a diverse range of candidates for these posts?

Baroness Hale of Richmond: We have done this time round what we did last time, which was to advertise the posts widely, draw the attention of a range of bodies to the existence of the posts and offer outreach visits to the court. I have not been involved in those activities because I am chairing the commission that makes the appointments, so I cannot tell you how many people took it up, and of course I cannot give you any

figures about applications or the diversity of candidates, because that would not be appropriate at this stage.

Lord Beith: Has Lord Mance noticed whether visitors are on the premises for the kind of recruitment process described?

Lord Mance: Yes, but I do not think that I should say more.

Q5 **Lord Beith:** Right.

There has been the recent appointment of Lady Black to the court. What steps are being taken to ensure that more women applicants consider taking up posts in the higher echelons of the judiciary, including the Supreme Court itself?

Baroness Hale of Richmond: There are a number of initiatives. Again, you mention them in your report about judicial recruitment. They are aimed at making people feel that they can put themselves forward and that it will be welcomed if they do put themselves forward. Lady Justice Hallett's group offers support and mentoring to people—all sorts of diverse candidates who might not otherwise think of putting themselves forward.

There is a real problem, which you slightly hint at in your report: it does not apply so much to women who come from conventional legal backgrounds, but there are of course a lot of able people who come from different career paths who could make excellent judges. The difficulty that the appointing commission has is to do with how we assess merit and potential in people who have not come through the traditional career path.

Lord Beith: You did not come through the traditional career path in that sense.

Baroness Hale of Richmond: Yes. I do not know how they took the risk.

Q6 **Lord Morgan:** We seem to have particular problems in this country—as you pointed out in one of your lectures, Lady Hale—compared with France, for example, where Lord Judge has recently been speaking. There, the judiciary has almost been feminised, it is said. In addition, as you well know, they have a quite separate way of judges emerging. It is a separate career structure. Do you think those two things are related?

Baroness Hale of Richmond: Undoubtedly. That is not only in France. It is also the case in Italy, Spain and Germany. They have a large number of women judges, although they tend to be concentrated in the lower ranks, which is also the case here. The explanation tends to be that they have a judicial career. You do your law degree, and you then decide whether you are going to be a practitioner, an academic or a judge. If you want to be a judge, you go and do the judging exams. At that stage, these young women law graduates are rather good at the judging exams, so they get in.

Whether they then get promoted to the more senior positions is often a difficulty that they face as much as we do. For a start, they may have to be mobile, and mobility is always a problem in dual-career families. Most professional women are partnered with professional men, and mobility is a problem for both of them. I think that is a large part of the explanation for that. That is not a path down which we think we should be going, because we like the fact that our judiciary have done something else with their lives before they become judges.

Lord Mance: Another factor is our oral tradition: the fact that we spend a lot of time in court makes it more difficult for some women. One of the attractions of a judicial post in Germany, for example, is that you can do a lot of work at home. It is easier to fit with your family life.

Lord Morgan: That applies to other professions in this country. I can think of a large number of professions where women are likely to be at work for long hours, but they nevertheless seem to emerge. Why is the judiciary here slower than others?

Lord Mance: I think the judiciary, at its lower level, has done much better in recent years.

Lord Morgan: Good.

Lord Mance: Lady Hale came up through the ranks, if one can put it like that. I do not want to subscribe too forcefully to the view of trickle-up, but we have made slight progress recently, and I am sure we will make further progress.

Baroness Hale of Richmond: Actually, there has been very considerable progress. I think the figure for the tribunal judiciary is now something like 48%. It is really quite high. It is 38% for the district bench. I think it is roughly a quarter of the circuit bench. It is under a quarter of the High Court bench, but it is a quarter for the Court of Appeal, albeit not heads of division. We doubled the number of women in the Supreme Court from one to two last year.

Baroness Corston: Given your own background, Lady Hale, are you telling us that particular efforts are made to contact and encourage women who are currently academic lawyers?

Baroness Hale of Richmond: Attempts have certainly been made—they were made last year. As I say, I have tried to stay back from those active outreach attempts, because I am currently engaged in the selection process.

Baroness Corston: Yes, of course.

Baroness Hale of Richmond: We have to keep that under wraps.

We go back to the question of how you compare the merits of somebody who is currently an academic lawyer who also fulfils the professional

qualification that is required against those of somebody who is currently in the Court of Appeal. That is not an easy thing to do.

The Chairman: Should there always be a presumption that somebody who has that other experience will be more appropriate as an appointment?

Baroness Hale of Richmond: I would not say that; I would say that, in a collegiate court that is wholly engaged in points of law of general public importance, having a range of professional and other backgrounds is a benefit. That is what I would say, but others may take the view that substantial judicial experience is rather important in judging at the highest level.

The Chairman: Did you want to expand on that, Baroness Drake?

Q7 **Baroness Drake:** Yes, taking that last point, and then moving to another question, some of that struggling with how to assess the relative merits between candidates flows from the assumption of what a good candidate looks like or of what the qualifications of a good candidate look like. How can you overcome those misconceptions? They are deep-rooted, are they not? How does one begin to change views and attitudes?

Baroness Hale of Richmond: You probably begin by making a few appointments of people from different career paths and backgrounds. There have been some recent appointments to the High Court bench from the Upper Tribunal, for example. That has improved the number of solicitors who have become High Court judges. There are also people from the Government Legal Service, or indeed from among the parliamentary clerks. There is a High Court judge who was a parliamentary clerk.

Baroness Drake: There you are—aspirations.

Baroness Hale of Richmond: The more we have of that, the more it can encourage people that it is all right, and it can work. Example is the best thing.

Baroness Drake: So, role models and breakthroughs.

Baroness Hale of Richmond: Yes.

Q8 **Baroness Drake:** When it comes to having a judiciary that is more reflective of the population that it serves, which is something that you have commented on recently, Lady Hale, women are one dimension of that diverse population, but there are obviously other characteristics and other people. What assessment would you make of the steps that are being taken to deliver or attract non-traditional candidates to apply for these posts from across that greater, more diverse world?

Baroness Hale of Richmond: I have not looked into what the Judicial Appointments Commission is doing in an intense way, but I know that it is doing things to attract other candidates. What I find concerning is that, although it is getting a lot more diverse candidates, the success rate of

those more diverse candidates in being appointed is less than that of the more traditional candidates. That does not really apply to the women; it applies more to people with different backgrounds.

That goes back to what I was saying earlier. Is that because they are not so good—they are being encouraged to apply but they are not actually good enough—or is it because the assessment processes are not good at capturing the real talent that is there, which is harder to assess? It is probably a bit of both.

The Chairman: To what extent are those who are not successful given advice or a steer on what they need to do should they wish to come back?

Baroness Hale of Richmond: We in the Supreme Court selection process offer feedback. As I understand it, feedback is offered by the Judicial Appointments Commission, but I could not possibly comment on quite what form that takes and quite how useful it is, because I do not know.

The Chairman: Do you wish to add anything on this topic, Lord Mance?

Lord Mance: No, I do not think so.

The Chairman: In that case, let us move on to devolution.

Q9 **Lord Morgan:** I have been asking about this throughout the recorded memory of man, I think. I would be very interested in this now. The Welsh Assembly is producing more and more legislation, with the new powers that it has, so the corpus of Welsh law is quite considerable. There is of course a Scottish judge on the Supreme Court—it was latterly Lord Hope. Would it be appropriate to have a Supreme Court justice who had a specific knowledge of Welsh law?

Baroness Hale of Richmond: We are of course aware that the Welsh Assembly is legislating with great enthusiasm, so there is a developing body of Welsh law and, in some respects, we are—at least those of us who have been members of the Law Commission—very pleased that the Welsh Assembly has legislated for Law Commission proposals, which the UK Parliament has not done for England. We look with interest at what is going on in Wales.

As far as I know, there is not yet much case law interpreting the Welsh legislation. Welsh law is of course all legislation; there is not a Welsh common law. We are fortunate in the Supreme Court that, among the three recent appointments there is a Welshman—and he is sufficiently Welsh to have taken his oath in both Welsh and English.

Lord Morgan: I noticed that.

Baroness Hale of Richmond: He is thoroughly familiar with the developments that are going on in Wales. If and when cases come up to the court on the interpretation of Welsh legislation, I am sure that he will

be sitting on the panel that deals with them, and his views will be very influential.

We can all interpret legislation. That is one of our supposed skills. There is a view that says, "Well, it is Welsh legislation, but that is all right: it is legislation, and we can interpret it". Sometimes, knowledge of the context and purpose is important in interpretation. That is where having a Welsh justice will be particularly beneficial.

That was not because of any sort of quota of having to have a Welsh justice; it just happened that he was the best man for the job.

Q10 **Lord Morgan:** It so happened, but do you think it is a precedent that ought to become the norm, perhaps?

Baroness Hale of Richmond: Possibly—we will see what the experience is: how many cases we get and whether they are the sorts of cases where that perspective would be useful. Of course, we can always ask a member of the Court of Appeal to join us if we do not have a Welsh justice, and we did that when Lord Thomas was Lord Chief Justice. He, too, is a real Welshman. Whenever we had a Welsh case—I think it was whenever—we asked him to join us. I remember being in a minority with him in one case involving a question whether it was in the powers of the Welsh Assembly to pass a particular piece of legislation. We can always do that.

There is one problem with having a quota. We always have two Scots. That is because Scottish private law is in several respects different from English private law. If you have two Scots and they both think it is the same, the English are unlikely to disagree with them. If they disagree with one another, the English will feel freer to choose between them. We also have a judge from Northern Ireland. If we then had a judge from Wales, that would be a third of the court that had a sort of ethnic quota. One has to be just a little bit concerned about what the implications of that would be for the other dimensions of diversity.

Lord Morgan: If the calls for Welsh jurisprudence were accepted, would that make the case stronger for having a Welsh member of the Supreme Court as a permanent feature?

Lord Mance: It depends on future developments and on the volume of the work. If there were a significant volume of Welsh work, as there is of Scottish work, the case would clearly be stronger, but I share Lady Hale's view about quotas. One could fill up the court with quotas, which would in no way reflect the balance of work that we undertake or indeed reflect other divisions that one could make within society. I think that, at the moment, the present situation is a suitable balance.

Q11 **Lord Dunlop:** I wonder if I could ask you a general question about devolution, Lady Hale, in particular about the Sewel convention, which obviously arose in the Miller case. I think you spoke about it in your Cambridge lecture last July. You drew attention to the fact that Sewel is a political commitment, not a legal one, and it is therefore not justiciable.

You highlighted the importance of that simple word “normal”. If you remove the word “normal” in statute, does that become a justiciable matter? If it does, how significant a constitutional change would that be?

Baroness Hale of Richmond: Oh dear—that is a very difficult question, because it is the sort of question that might come up before us were that ever to happen. We would then have to look at the arguments and see whether that word had made all the difference to the unanimous view that we took of the current provisions enshrining that convention in statute.

The problem that a word such as “normal” presents is obvious. How is a court to judge what is normal and what is not normal in what, by definition, is a pretty abnormal situation? It is a bit like “appropriate”—it is not a good word.

However, there might be other arguments to say that, in any event, that was simply putting on the statute book something that was a parliamentary convention, rather than a binding rule of law. We would have to look at the arguments in that situation.

The Chairman: Before we leave that point, I think that Lord Norton was bristling at the word “convention”.

Lord Norton of Louth: I do not want to digress. You made the point that the insertion of the word “normal” means that it is non-justiciable, but the insertion of the word “normal” means that it is not a convention, because a convention is an invariable practice, and this is giving the option to depart from it, so there is even a problem with it as a convention. It is a practice, and that is different.

Baroness Hale of Richmond: Well, you are the expert, Lord Norton.

The Chairman: That is why I let him say that at this time. I thought it was appropriate, but let us move on and not play with words.

Q12 **Lord Dunlop:** Perhaps on a less tricky note, it is obviously very good news that the Supreme Court is going to sit in Belfast in April. I think that will help to raise the court’s profile and to promote an understanding of what the Supreme Court does outside London. Is this going to become an established feature of the Supreme Court—that you would sit elsewhere in the UK?

Perhaps you could say a little bit about your commitment more generally to making the court more open and accessible.

Baroness Hale of Richmond: As far as sitting outside London is concerned, we went to Scotland last year, and that seemed to be very well received. We are going to Belfast soon. All the indications are that that, too, will be well received—at least while we are there. It may depend on the results of the cases as to whether it is quite as well received once we have done it.

I am tolerably confident that we will go to Wales next year. It will be wonderful if we could go to the north of England or to the south-west—to places that are far flung—but that might not be practicable. We have to take a lot of people and a lot of gear with us because, leading on to your second point, we broadcast our proceedings. Anybody who has access to a computer can watch our hearings. We are already much more open and transparent than the other courts in the United Kingdom. It is amazing how many people watch.

Lord Dunlop: I was going to ask.

Baroness Hale of Richmond: I do not have the figures with me—I should have brought them—but a lot of people watched all four days of the Miller case. I know that was partly because of Lord Pannick's starring role, but it was quite surprising. That was part of getting the knowledge of what we were doing over to the general public. That is the most important thing that we do.

We also have a lot of visits and outreach to schools. We will shortly be piloting "Skype a justice", so that schools a long way out of London that will find it difficult to visit the court can dial up and have a half-hour session asking questions of a justice. That is an experiment, and we are only about to try it, but it sounds like a good idea to us.

We welcome visitors of all kinds. People can just walk in off the square. It is rather easier to get into our building than it is to get into this one, so we find that we have more casual visitors, which we like.

We are doing as much as we possibly can to encourage people to find out about us and to reach out to people. We all go out and about a great deal, talking to different groups. We go to universities quite a lot, but we also visit other types of groups. We probably give far too many lectures.

The Chairman: You say that the possibility of going to the north of England is somewhat difficult. If you were to go about the country a little more, particularly to the north of England, that might help with recruitment throughout, and with changing the image of the London-based and very specific type of person who makes progress in the judiciary.

Baroness Hale of Richmond: Of course I would agree with you, would I not, being a Yorkshirewoman myself?

The Chairman: Indeed.

Baroness Hale of Richmond: Indeed, the second woman is also a Yorkshirewoman.

The Chairman: You will need to get to Lancashire, then.

Baroness Hale of Richmond: We have increased the northern representation on the court as well. Yes, it would be wonderful if we could manage to do that, but, as I say, there are logistical problems. It takes a

lot of planning, and it is not inexpensive, so we can only do it as much as we can do it.

- Q13 **Lord Norton of Louth:** You have mentioned location. The Supreme Court will soon be coming up to its 10th birthday. You both served as Law Lords, so you know the difference of being and having the highest court within Westminster and then moving across. That is not just physical. There is also the relationship of the court to Parliament. How have you seen that developing, not least with respect to accountability? You may recall that we raised the matter of that relationship in the previous session. Are you developing what Alison Young has referred to as the “democratic dialogue”? If so, how can the relationship be strengthened while at the same time maintaining the independence of the court?

Baroness Hale of Richmond: Occasions such as this are a very important part of that. We welcome the opportunity that we have to come and answer your questions to the best of our ability. We hope that that enables you to understand our perspective, just as we understand yours.

We have not engaged with the House of Commons Justice Committee so frequently, but we would be very open to doing so.

Of course, we cannot discuss individual decisions, because they speak for themselves, and it would be inappropriate for you to be challenging us about the decisions, just as it would be inappropriate for us to seek to defend them. It is just not right.

We are conscious that we are accountable generally. We have to explain our decisions. We have to explain them as clearly as we possibly can, and we have to make it clear that we have reached those decisions by a process of judicial reasoning, which is not just plucking them out of the air and doing what we fancy. It starts with the legal materials that we have, going on to the legal principles that can be deduced from those legal materials and then asking how that fits with the situation that we have. That sometimes involves incremental developments of the law to fit new situations and new social circumstances as they come up, but it does not involve a revolution.

Our judgments are our main focus of accountability. It is difficult, however. We are no longer in Parliament. That is a good thing to my mind, I am afraid—much as I enjoyed being here. However, we are doing a different job and we should be seen to be doing a different job. We can do things with the transparency and so on that we could not do here. We are in many ways more transparent now than we were when we were in this room. That is a good thing.

It would be wonderful if parliamentarians acquainted themselves rather more thoroughly with what we do.

Lord Norton of Louth: Yes—that is what I was thinking. Moving across the road, you have had to focus on thinking about the relationship with Parliament. As to whether there is more that we could do other than

regular hearings—which we find very useful, as we also hear from the Lord Chief Justice, and there are opportunities to raise broad issues to do with administration or recruitment—do you think there is anything that should complement meetings such as this?

Baroness Hale of Richmond: We would always be happy to welcome parties of parliamentarians over the square to show people round, to observe a bit of a hearing and to have a bit of a dialogue with justices. We would be very happy to do that. In a way, the ball is in your court.

Lord Norton of Louth: Do you think there is anything more you could do if you wanted to raise an issue with us, rather than waiting until a regular meeting?

Baroness Hale of Richmond: I am fairly sure we could do that. I am struggling to think what the issue would be, but there might be something.

We also meet the parliamentary clerks in an informal way so that, again, we can toss about things that might crop up. They are great guardians of parliamentary privilege, which we are very conscious of.

Lord Norton of Louth: Indeed.

The Chairman: Perhaps we could draw your comment about parliamentarians going across there to the Speakers of both Houses. They might then consider how they might be able to promote that a little more in the future.

Lord Beith: In my time on the Justice Committee, the Supreme Court justices were very helpful in coming before the Committee and developing a discussion that was of the appropriate kind for their position—using that awful word “appropriate”—and in facilitating visits across to your premises.

Baroness Hale of Richmond: That is right, yes.

The Chairman: The difficulty is that, although you come and give evidence to people who are interested, and people who are interested ask you questions, those who do not know as much about it do not participate, so they do not get within the loop. That is where we perhaps need to make an effort to widen the levels of interest among other people.

Baroness Hale of Richmond: That would be welcome.

The Chairman: Lord Mance, Baroness Hale, is there anything else that you would like to focus on?

Baroness Hale of Richmond: No.

The Chairman: In that case, I thank you. Lord Mance, I understand that you are retiring shortly.

Lord Mance: That is right. I am one of those who are fortunate enough, perhaps, to be able to come back here.

The Chairman: We wish you well in your retirement, whatever form that may take.

Baroness Hale of Richmond: I feel fairly sure that Lord Mance will be back among you, playing an active part.

Lord Beith: Get ready for long hours.

The Chairman: Indeed. Thank you both very much.