



Select Committee on the Constitution

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

Wednesday 20 March 2019

10.30 am

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Members present: Baroness Taylor of Bolton (Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 1

Heard in Public

Questions 1 - 15

Witnesses

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

Examination of witnesses

Baroness Hale of Richmond and Lord Reed.

Q1 **The Chairman:** Good morning and welcome to you both. It is always interesting to have these sessions. We always learn something from them, even if the extra information is not what we anticipated. You are very welcome, and we appreciate you coming.

We will start off with a general question about financial pressures and their impact on the work that you have been doing. We know that lots of government departments are under financial pressures, as is a lot of the judicial system, but the Supreme Court is there at the pinnacle and we wondered what kinds of pressures you were observing or feeling.

Baroness Hale of Richmond: We face the same pressure to ensure the efficient use of our resources and value for money as any other publicly funded body. Most of our budget is spent on salaries and accommodation costs, such as rent, over which we have no control and which, in the case of salaries, rise from time to time. So there are limits to our room for manoeuvre. We have to make the best that we can of the other aspects of our budget.

Generally, though, and this is down to our staff—our chief executive and our small finance team of three people—we have managed to increase efficiency so that at the moment we can absorb the increases in costs. That has been a challenge. We repeatedly have to examine: contract costs for the people who work for us under contract; staffing; how we can do things more efficiently without sacrificing quality; and how we can attract more income, because we let out our premises to suitable events and try to raise a very small amount of money, but as much as we can, out of that.

The pressure continues to mount as costs rise. The recently announced spending review will give us the opportunity to share our medium-term financial plans with the Treasury.

The Chairman: Would you say that the things you are doing, such as restructuring and looking at external costs and income generation, are mitigating the pressures on you sufficiently so that the quality of the service that you provide is protected? Can that be sustained?

Baroness Hale of Richmond: So far, I think we would say—and Lord Reed will probably agree with me—that we have been able to maintain the quality of the service that we offer to the litigating public, if I may call them that, as well as everything that we do in an outreach way to educate and explain to as many people as possible what the Supreme Court is, what it is for, what it does and its place in the wider UK justice system. We do a lot of school visits and other interactions, but we will say more about that later. So far, we have managed to do that, which is a great credit to our staff.

Lord Reed: Obviously we have not been exempt from the conditions that apply across the public sector, but we have been able to spend more money on things that we want to. For example, as you probably know, we have made a habit of sitting outside London for the last few years, and there are costs involved in doing that. Also, over time we have devoted more resources to our presence on social media and to using IT, for example for virtual school visits, which I will be doing tomorrow morning; I will be speaking to schoolchildren using a video link to a school in Ayrshire. We can spend money on that kind of thing, but we also have to be careful in other areas in order to be able to afford it.

Q2 **Lord Wallace of Tankerness:** You just mentioned that you have sat outside London. I think you are due to sit in Wales later this year. What benefits have there been from your sittings in Scotland and Northern Ireland?

Baroness Hale of Richmond: We think they have been extremely beneficial. We were warmly welcomed in Edinburgh and Belfast. Part of it is about the benefit of doing Scottish cases in Scotland or Irish cases in Ireland but, more than that, there is the benefit of giving people the opportunity to come along, watch us and see what we do and how we do it. People can always watch us online, but that does not feel quite the same as being there in person.

Lord Reed: It is terribly important that we are seen to be a court for the whole of the UK, above all in Scotland, Northern Ireland and Wales. Going there and having quite a lot of publicity about the fact that we are there raises our profile in those parts of the UK, and they appreciate that we are not an entirely London-based organisation.

When we have gone, we have found that, although we were in quite large spaces, our courtroom has been filled to capacity to the extent that we have needed overflows for some of the cases that we have heard, if they have been high-profile—for example, the cake case in Belfast. We even notice a difference in the numbers of people who watch our proceedings on the internet; we normally have roughly 400 or 500 people watching a case live, but when we went to Edinburgh the number went up to 1,800-odd. There were obviously a lot of people whose interest had been provoked by the fact that we were there.

Lord Wallace of Tankerness: So you would plan to go back to Edinburgh or Belfast? What about other parts of England too? Is that something that you have contemplated?

Baroness Hale of Richmond: That is the problem. I would dearly love it if we could go to the north or the west of England, the places that are furthest away from London—especially the north of England, which generates a lot of cases—but that costs money. We have given priority to visiting the other parts of the UK so that they understand that we understand that we are the Supreme Court for the whole of the UK. I hope that the pattern of three-yearly trips to Edinburgh, Belfast and

Cardiff will be maintained. If we can find the money for anything else, no doubt we will look into it.

Lord Reed: It gives an occasion for us to engage with local organisations, particularly legal ones. The Law Society, the local Bar and the universities have quite a lot of functions when we are there, and some of those are question and answer sessions that are screened on the internet for their members. So we are able to participate in the civil society of Scotland, Wales and Northern Ireland.

Q3 **Baroness Corston:** Going back to the question asked by the Chair, my impression is that the justice system is creaking at the seams somewhat. There was a massive IT failure recently; I know it was not in the Supreme Court but it was in the justice system. To what degree are you able to assist your colleagues in pressing these issues on the Government?

Baroness Hale of Richmond: That is a very difficult question. We are not politicians or parliamentarians. We are a separate organisation. We are our own little—

Baroness Corston: Bubble?

Baroness Hale of Richmond: Bubble, yes. All we can do is express our sympathy and support for whatever efforts the Lord Chief Justice, the Lord President and the Lord Chief Justice of Northern Ireland are making in the direction of trying to improve matters. The Lord Chief Justice has been quite vocal recently about the problems, especially with the court estate in England and Wales. There is of course a big modernisation programme going on, but however good your software is a modernisation programme is no good if you do not have the proper wi-fi connections to make remote access work. We all have that problem.

Q4 **Lord Hunt of Wirral:** Lord Reed, you are described as one of the two Scottish Justices on the Supreme Court. Could you share with us your view of the development of Welsh law and the extent to which a distinct jurisdiction might be emerging there? Is there a case for ensuring a seat on the Supreme Court for a Justice with experience of Welsh case law?

Lord Reed: My own feeling is that that is not a peremptory requirement as matters presently stand. What is happening in Wales is a developing picture. At the moment, there is a body of Welsh legislation that is growing but is not really making its presence felt very much in our court. Over the 10 years the court has been running, as far as we can see we have had six cases from Wales in that time, so the average is 0.6 per annum. That compares with about 10 per year from Scotland and about five per year from Northern Ireland, so it is a far lower figure.

When we get a case from Wales that is to do with Welsh legislation, it is obviously important that we understand the background to it. We are given a lot of background information by counsel in those cases, but we also appreciate the fact that it is useful to have somebody on the court who actually knows Wales.

We are now in the happy position of having a judge on the court who knows Wales very well, and who was appointed on merit because he was an outstanding judge across the whole gamut of the work that we have to deal with. Before his appointment we were able to call on Lord Thomas, who was Lord Chief Justice at the time. But essentially because it is such a tiny proportion of our work, it would not in its own right merit somebody being appointed specifically for that purpose. Obviously if we have a Welsh judge who is also very strong on crime, commercial law, international law or whatever it may be, then fine.

Baroness Hale of Richmond: Lord Morgan asked me this very same question last year.

The Chairman: He sends his apologies.

Baroness Hale of Richmond: I am glad that Lord Hunt has asked it for him. It is a very good question, but my views have not changed from the answer I gave last year, which is essentially the same as the one that Lord Reed has given. Welsh law is legislation; we are all of us trained and equipped to interpret legislation. There is no separate Welsh common law, unlike the common law of Scotland, of course, which differs in some respects from that of England.

Clearly, as Lord Reed has said, sometimes the context in which a particular piece of legislation has been passed is important to understand. We had a reference about a particular piece of Welsh legislation in which the court was split 3:2, and Lord Thomas and I were in the two because I was impressed by Lord Thomas's understanding of the context in which that legislation had been passed.

But at the moment, other than the three references we have had about whether Welsh legislation was within scope, we have had very little about Welsh legislation. In fact, I cannot think of a case about Welsh legislation that we had except for one about mental health law, where the legislation was not different but the approach of the Welsh Ministers was different from that of the Secretary of State in England. It was quite extraordinary.

Q5 **Lord Judge:** I would like to move to a different topic. Recently, you reflected on the need for the judiciary—and you meant the whole of the judiciary—to have moral courage. That is a long-standing requirement. I think we would be helped if we could know whether either or both of you sense there has been a change. Has there been greater or less demand for that, or a demand for a different response and so on?

Baroness Hale of Richmond: As you know, I gave a talk about this in Worcester Cathedral just the other day, and the first thing I did was to quote you, Lord Judge, as one does. I was trying to explore in a bit more detail what it means to have the courage to do what you have to do. It basically means standing up in one way or another: standing up for Parliament against the Government, which is an awful lot of what we do; occasionally standing up to Parliament in declarations of incompatibility; or standing up to the media and doing what you have to do, no matter

what the media think of it. Sometimes it is standing up to one's colleagues.

We have to have healthy disagreement in order to get the right result in the end. I think the biggest thing is standing up to oneself so that you do not take the easy way out. There is often an easy way out—just going along with something—so the biggest thing is to challenge yourself to do things properly.

I do not know whether that has changed. The only one, or possibly two, of those things that might have changed is the media pressure. If we include social media—I think there is a question later about social media—that clearly puts a lot of pressure on some people. I do not think that the Justices of the Supreme Court actually engage in social media. Whether that is a self-defence mechanism, and whether it is a good or bad thing, I do not know, but on the whole we do not. But there is still media pressure—we get the cuttings, and we certainly understand what the views of the print media are. To the extent that public opinion is of any importance in what we do, we cannot ignore it but we still have to do what we have to do: uphold the law.

There are certain aspects of our job now that bring us more into controversies that might be regarded as having a political flavour. There is not only holding the Government to account and making sure that they act within their powers and things like that. Clearly, some human rights cases trespass into what might be regarded as social or economic issues that are for Parliament rather than the courts. Of course, we have no choice but to adjudicate on the arguments that we have in front of us, so in the Supreme Court that has probably increased the pressures somewhat.

Lord Reed: We judges in this country are immensely fortunate that we do not face the sort of pressures that judges face in so many other parts of the world. The issues that affect us have to be put into that perspective, as well as a historical perspective. Judges have a relatively easy time in Britain nowadays compared with some times in the past, because we live in a very settled society. It is probably true that there is more adverse, and perhaps shriller, comment about us in the media than there would have been 20 years ago. That partly reflects the general tone of public debate and the fact that the tasks we now have, such as the human rights issues that come before us, sometimes involve very controversial questions on which people have strong feelings.

Tomorrow I am going to Croatia for a conference with judges from the various Balkan countries. When they speak to you, some of them say: "Do your Government implement your decisions?". We sort of take it for granted that yes, they do. But that cannot be taken for granted not very many hundreds of miles away from here, so we are immensely fortunate.

Baroness Hale of Richmond: I think we are all aware of that.

The Chairman: There are still dangers from politicians and others who

like to express rather strong opinions on occasions, but we have to cope with that.

Q6 Lord Norton of Louth: I want to pick up the point you just touched upon, which is the role of social media and how you engage. Lord Reed, a few moments ago you said that social media is used, but that seems to be by the court institution, presumably for the dissemination of information and outreach.

Baroness Hale, you made the point some time ago that senior judges generally do not engage with social media or the media more generally, and that that may or may not be a good thing, so I invite you to tease out the "may or may not" part of it. I can see that there is a principle. You can argue that it is undesirable, but I wonder if it is unavoidable.

Baroness Hale of Richmond: I have certainly avoided it so far. That may be my loss. The little comment that I slipped into my "moral courage" lecture about not engaging in social media, which may or may not be a good thing, was because I did not want to appear to be completely unaware of social media and what it can do that is good as well as bad.

It is very important for the court to engage with social media as best it can, so we tweet and we have an Instagram account. People look at those accounts and follow them a lot. The tweets are informative, so on the whole they are news rather than comment. Instagram is rather more lively, because it contains pictures of what we all get up to and we are encouraged to supply pictures of our extracurricular activities.

The Chairman: Whoa.

Baroness Hale of Richmond: You know exactly what I mean. They show the lectures, talks and meetings that we go to, and this seems to go down very well. Obviously it is a good thing if it is used positively. On the other hand, if you engage as an individual you are aware how difficult, if not impossible, it is to control what you put out there. You have to be very careful not to put the wrong sort of information out there, because you never know where it may get to.

There is also the capacity for anonymous and extremely hurtful comments to come along from you know not where. One might say, "Well, you can shrug it off, can't you?" But in fact it is not that easy for people to do that. It is very important that we go about our jobs in accordance with our oaths without fear or favour, affection or ill will. Social media could distort that if we paid too much attention to it, so I am very cautious.

Lord Reed: I would be, too. When we were hearing the Gina Miller case, the media trawled through the social media accounts of our wives, children and grandchildren for anything they could use as a story, and obviously if they had had our own accounts that would have been so much more grist to their mill.

Equally, if you post on social media a photograph from a family wedding or something and you are standing with glass of champagne and a smile on your face, you know how that will be used to illustrate a story—this is the sort of thing that you will be familiar with—so we have to be careful. There is also a security aspect to this: the more information about yourself that you make available, the greater the risks you may run.

Lord Norton of Louth: Is there a case for linking the point about the institution and the individual judges? As you say, there is personal abuse and comment about what individual judges are doing, and there is a risk if they start to engage in responding. Is there a role for a more institutional intervention on behalf of judges, and do you use it?

Lord Reed: We do not use it in that way to respond to criticism. We use it simply to put out information about the court through Twitter and Instagram.

The Chairman: When you go into schools or on the outreach programmes that you have talked about, do you find that there is an appetite to find out more through social media rather than through lectures and things that might be sent out?

Baroness Hale of Richmond: I am not sure I know the answer to that question. I am sure they will be looking at such social media as we put out; youngsters are using them all the time. There is a huge appetite for face-to-face encounters with the justices. Whenever any of us go and give a talk somewhere, it is usually extremely popular and well-attended. There are lots of lively questions and the like, but they are virtually always completely within the bounds of the right things to ask. On our sessions with schools, we have “Meet a Justice” sessions, which are a half-hour question and answer with a school that is too far away to come and visit us. Those have proved very popular and I hope we do far more of them. At the moment we have only been doing one per justice per year, which is not very much. We need to do more of that, as they have been great.

Q7 **Lord Pannick:** If there is an article in the *Daily Planet* that simply misrepresents a judgment or the views of the court, do you use the institutional methods of response to deal with that or do you ignore it?

Baroness Hale of Richmond: We have a communications team. We do our best to tell people what we have decided and why we have decided it. As you know, we do not publish only long and boring judgments; we do that, of course, but we also publish the two-page summary. We call it a press summary, although it is not a press notice but a summary, and most people can absorb that.

We also do our YouTube oral presentation of every substantive judgment that we publish. That is meant to be a five-minute explanation for the general public of what the case was about, what the issues were, what we have decided and, briefly, why we decided it.

So we hope that we have put enough explanation out there, but if there were a gross misrepresentation of what we had decided we would discuss with the communications team whether it was worth taking it up. Sometimes that has happened.

Lord Reed: We certainly respond if there is simply inaccuracy. I remember a case where we handed down judgment and the BBC website's report on the case had a mistake in it. The communications team got on to the BBC about it, and it was corrected in time for the lunchtime news. If the team thinks that an intervention is going to be productive, it will respond.

Lord Beith: On the subject of YouTube, is that the responsibility of the judges?

Baroness Hale of Richmond: Yes. We do it. The author of the lead judgment does the piece to camera. We have very different styles; some of us are more dramatic than others. Some years ago we had a training session with the producer of the BBC Parliament channel who told us all sorts of things about what we should and should not do, but I think we had better have that repeated, because we have had some turnover of justices who have not had the benefit of the training that Lord Reed and I had. It is quite a challenge—five minutes to explain the cake case, for example—but it is worth doing. After all, if you cannot explain it in five minutes, maybe something is wrong.

The Chairman: You may be getting more viewers, as there will be some interest there.

Q8 **Lord MacGregor of Pulham Market:** Baroness Hale, you have suggested that the retirement age for the judiciary should go back to 75. There are a lot of people in this House who would have sympathy and understanding for that point of view. You have suggested it both because the current system results in a waste of talent and because it would help to solve the difficulty of recruiting to the High Court Bench. Where in your view does the balance lie between these points and the benefits of appointing younger and more diverse judges to the Bench?

Baroness Hale of Richmond: That is the problem, is it not? It is necessary to balance both those things. As I understand it, in the last three recruitment sessions for the High Court they have not been able to fill the vacancies. That rather suggests that the problem is not that there are not enough vacancies but that there are not enough judges, and obviously that would be helped if people could stay longer.

It could also encourage people to come on to the Bench in their 60s rather than the 50s. I think we can see age discrimination in both directions. While we do not want the Bench to be all old, it is not a bad idea if people who have possibly got past their major financial responsibilities in life might be tempted to come on to the Bench.

Equally, we could experiment with—actually, not experiment, because you could probably never go back—a halfway house and going to 72,

which would meet a lot of the concerns and probably not introduce some of the management problems there might be in going back up to 75.

One thing I am perfectly clear about is that, if there were a change, it would have to go the whole way through the system. You could not just have it at the top; if you did, that really would be bed-blocking, even if it were just the High Court, the Court of Appeal and the Supreme Court. Some of us want greater permeability between the different branches of the judiciary, and if those lower down the system were having to retire 70 whereas those higher up could stay till 72, that would be a detriment to that aspect of diversity. That is just a thought. I am not alone in this; Lord Neuberger has said the same thing.

The Chairman: Shall we move on to gender discrimination?

Q9 **Lord MacGregor of Pulham Market:** Baroness Hale, you have said that having women on the court improves the quality of decision-making. Do you think that a minimum number of female justices in the Supreme Court should sit in each case?

Baroness Hale of Richmond: The answer to the actual question is no. I am not in favour of quotas or any sort of positive discrimination and never have been, but I am not against targets and "thinking it would be a good thing if". I rather like the idea of a target of at least a 60:40 split either way; there could be 60% women and 40% men or 40% women and 60% men. That would be a good thing to aim for, but not at the expense of everything else that we need.

The point about having women on the court improving the quality of decision-making applies to every important dimension of diversity of background and experience. We are a collegiate court. We sit in at least five, sometimes seven or nine, and on one occasion 11. We do that to get a diversity of thinking addressing some of the most serious and difficult legal problems—although arguably by definition all our problems are important—and if they are approached from the same point of view by everyone on the court, that diminishes the quality of what is likely to emerge at the end.

There is a wonderful phrase that Benjamin Cardozo came out with in, I think, the 1920s: "out of the attrition of diverse minds there is beaten something" that is stronger than just the sum of the individual parts. That is the argument for diversity on many strands, especially on the Supreme Court, but there are other arguments elsewhere in the system too.

It is clear that women lead different lives from men. They do not necessarily choose to; they do so partly because of the way other people treat them. That is their experience. People from visible ethnic minorities lead different lives, for rather similar reasons. People of different professional backgrounds have different experiences of life from those who have spent most of their professional life at the independent Bar or as a judge.

When I was totting up the number of dimensions upon which I was different from most of my colleagues until really quite recently—things have changed quite a lot over the last three years—I realised that I was the only one who had been employed for the whole of my professional life. Everyone else had spent quite a long time self-employed, as a self-employed practitioner. That is a very different set of experiences from having been employed. I merely drop that into the mix. In my view, it makes for better decision-making if we have as many dimensions as we reasonably can.

The Chairman: But throughout the system there is still a long way to go, not just for women but for people of other backgrounds. While you can get your diversity of thinking, we still do not have the diversity of backgrounds that would be truly reflective.

Baroness Hale of Richmond: That is another argument that is not so much about the equality of decision-making; it is about the courts being the country's courts, the people's courts. We are a democracy and the people, the demos, should be able to look at the courts and say, "Yes, there are people there who look like me and are like me". That is very important.

The Chairman: There is some way to go.

Lord Pannick: Do these factors relating to diversity, with which I personally agree, mean that the Supreme Court now has a policy that every panel of five should include at least one woman?

Baroness Hale of Richmond: No, it does not. We have not done that.

Lord Pannick: Why not?

Baroness Hale of Richmond: Well, Lord Reed and I will have to go away and discuss that.

Lord Reed: Lady Hale and I are responsible for making up the panels. We make sure that they are mixed up all the time, from one case to the next. We do not have the same people sitting together. That is very much with a view to ensuring that a diversity of views is expressed.

Lord Pannick: It might be said that it was quite damaging to the image of the Supreme Court for people to come there and see it, or to be parties to it, being faced by just white men.

Lord Reed: I do not think it has yet crossed our minds to engage in that sort of quota system, but of course this meeting has put it into our minds. Whether we will do it is another matter. Normally, we have tried to look at the case and say, "What's it about? Who has the greatest expertise in that area?" However, we have also tried to have people who are not specialists in that area—I call them "police people"—who can come along and say to the experts, "You take that for granted, but explain to me why it's right". They bring a sort of general perspective on the law, which is more important than gender.

Lord Reed: In practice, now that we have three women on the court, most panels include at least one woman. In fact we have recently had a panel with three women on it. Certainly if the issue in the case were one where a woman's perspective would be especially important, we would make a particular point of ensuring that there were women on the court. But a lot of our work is highly technical law, and this question is perhaps less important in a case of that kind.

Q10 **Lord Beith:** Lady Hale, you were very much a part of the transition from this very room to across the road, from being part of the Legislature to being a genuinely separate Supreme Court. Has it turned out differently from what you expected?

Baroness Hale of Richmond: I am trying to think myself back to 10 years ago. I was always very much in favour of the move. I was hoping that we would have more suitable premises, a larger research staff and a library that was dedicated to our needs—mind you, the Library here is brilliant—so we would have facilities. We would have a building that was open, welcoming to the public and much easier to get into so that people could just pop in off the square without having to queue for ages, pop down into the cafe or pop into a courtroom, and they do.

I thought we should be televised, as we are; we have been filmed right from the start, because we were set up to do that. That started the greater transparency and the greater attempts to communicate with everyone about what we do and how we do it. We have talked about social media, our YouTube judgments and all that. I do not think I had foreseen quite how far that would go, but that was all set up right from the start and has all developed very much in the way I personally had hoped that it would.

Lovely though it is to be in this building and in the company of all the interesting people here, I think it is important constitutionally that we are not part of Parliament, although it is also important that we stay on very good terms with it and that we understand your perspective just as you understand ours. I think that has worked very well too. Lord Reed came along later in the day, so he may have a different perspective on it from mine.

Lord Beith: Perhaps, from Scotland's point of view, it has in any way worked out differently from the way you would have expected.

Lord Reed: What struck me when I first arrived at the court were the things that Lady Hale has already mentioned: the accessibility of the court, the effort that is made to welcome the public and to put on events for, and engage with, the public. The communications were an eye-opener for me.

Apart from that, the working methods have developed partly because we are in a different building. It is also partly to do with the use of IT being much more developed among judges now than it was 10 years ago. We work in a very collaborative way, and because we do not have to give

judgments in the form of speeches in the Chamber we are able to have joint judgments and often a single judgment for the case. We can very easily have meetings because we have ample space, which was a problem here. Our rooms are next to each other and there are rooms with lots of armchairs and so on so that people can come in and have a chat.

Like Lady Hale, I would emphasise how it is has made our function as a constitutional court much more acceptable than it otherwise would have been. In a case like *Gina Miller's*, where the court in effect has to adjudicate between Parliament and the Government as to where the limits of the Government's powers lie vis-à-vis Parliament's powers, it would have been very odd if that had been heard in this room.

Lord Beith: Well, you know what the headline would have been: "Lords block the will of the people".

Lord Reed: Equally, our devolution jurisdiction used to be dealt with at No. 9 Downing Street. It would be rather odd for a dispute between the British Government and the Scottish Government, for example, to be heard and decided in Downing Street. We are able to be seen and the court has really become a focal point, within the UK and externally, for British justice in a way that the House of Lords was probably unable to achieve because it formed part of an essentially political institution.

Lord Beith: Do you think that the independent status of the Judicial Committee of the Privy Council has been successfully maintained in jurisdictions where for it to be thought of as the United Kingdom's Supreme Court would not be right?

Lord Reed: We are very clear that the Privy Council is distinct from the Supreme Court. When we sit in Privy Council, we have for example a separate courtroom dedicated to that. We always fly the flag of whichever country or territory the case comes from. We now do quite a lot of our hearings by video link, if that is practical. We have a different approach to the Privy Council cases. If, for example, we are giving judgment and it is a newsworthy case, we will deliver the judgment at a time of day here when it can be carried by television in the country concerned. The symbolism is also different. The visual symbols that we use, effectively as a sort of branding, differ for the Privy Council from those of the Supreme Court.

Baroness Hale of Richmond: We even have a Privy Council rug, which covers the middle of our courtroom. Basically, where the table is in this room, there is a Supreme Court symbol in the middle of the carpet. But in the Privy Council courtroom we cover it up with a rug that has the Privy Council symbol on it. It is quite ironic, because the Privy Council symbol is a royal badge, whereas we do not use the royal badge as our symbol. It is amusing, because some of the countries that use the Privy Council are republics.

Lord Reed: During the time I have been on the court, we have been invited to two of the countries—Mauritius and the Bahamas—and on each occasion it was not just the leaders of society whom we met in official events but people in shops, for example, would say “Oh, you’re from the Privy Council”. So they know who we are—

Lord Beith: You do not get that in Cumnock, do you?

Lord Reed: No, quite. It does not happen to me over here, but they know who we are and that it is not the British court.

Baroness Hale of Richmond: It certainly was a concern when we co-located—that horrible word—into the same building, but we have done our best to keep the two institutions separate.

Q11 **Lord Norton of Louth:** Baroness Hale, you mentioned that when the Law Lords moved out of the Palace of Westminster it was none the less important that you maintained good relations with Parliament and that there was some sort of dialogue. Do you think that the arrangements in place, such as appearing before this Committee, are adequate, or does more need to be done to develop the relationship?

Baroness Hale of Richmond: An event such as this is essential. It is the minimum, is it not? But we have informal meetings with the chairs of the most important committees from the House of Lords, under the auspices of the Lord Speaker. That has been very helpful for us to understand what is going on here that is of interest, and I hope for us to explain what is going on in our institution that is of interest to you. We do not have such developed relations with the House of Commons, but in a similar way we have met members of the Justice Committee.

We also have regular meetings with the law officers. The Scottish Law Lords, so to speak, have regular meetings with the Scottish law officers, but we also have regular meetings with the other law officers, certainly the Attorney-General and the Advocate-General for Scotland. We have not actually developed that in relation to Northern Ireland, which maybe we should think about.

Lord Reed: But we have with the Counsel General for Wales.

Baroness Hale of Richmond: Yes, definitely for Wales. Those sorts of links are very important, because, again, we can learn a lot from them. Of course we also meet the Lord Chancellor from time to time. As I say, no doubt that is a minimum and more could be done.

One concern that some of the academic students of the constitution have voiced is that with the change in the role of the Lord Chancellor, who is no longer head of the justice system and no longer has such a pivotal role in judicial appointments, the interest in and understanding of the judiciary among parliamentarians may have reduced. I do not know whether that is right, but it is certainly a worry. It should be a worry for us, too, because we feel it is important that each branch of the constitution understands what the other is for, what it does and its

importance in the overall scheme of things. That is why there is a concern, and if more could properly be done I would welcome that.

Lord Norton of Louth: Picking up on that last point, could more be done in disseminating material to parliamentarians? When the Law Lords moved across the road, it was a short distance physically but in terms of perception it was probably quite a long move.

Baroness Hale of Richmond: It is quite a long way really, is it not? You are quite right. Of course any parliamentarian who wants to find out anything about us easily can; we are a very transparent organisation. Our website is undergoing revision because it is 10 years old and you need to keep up with the times, but we think it is very informative. So it is not difficult to find out much about us and any parliamentarian who wanted to visit would be very welcome. We should probably make that clear.

Lord Norton of Louth: I think the problem is that, with the people who visit the website, you are preaching to the converted because they are already interested. They are probably familiar with the court and understand it. It is the ones who do not access it that perhaps one needs to educate to get a better understanding of the role of the court.

Baroness Hale of Richmond: Perhaps we ought to have a little newssheet like *Red Benches* that we could disseminate. That idea is worth taking back and thinking about, because it is a concern and we should think about it.

The Chairman: You have mentioned in the past that people are not going over there in an easy way. There have been other things on people's minds in the Commons recently. Nevertheless, it is still not impinging. The court is there on the doorstep and we need to know more, so there may be a good idea in that.

Q12 **Baroness Corston:** Baroness Hale, given that your tenure of the post of President of the Supreme Court is regrettably drawing to a close, what lessons would you say you have learned from your time on the Bench and as our President?

Baroness Hale of Richmond: That is a really hard question, if I may say so, because I will probably know the answer in a year or two's time when I have reflected more.

At the moment, one is focused on the everyday concerns. I have learned so many things. I have been a judge for a very long time and have learned to admire enormously all the players in the UK justice system: my fellow justices on the Supreme Court, of course, but also judges at every level in the system from the lowliest tribunal judge to the Lord Chief Justice. Many of them have a much more difficult time than we do.

I am very glad, for example, to be involved with the United Kingdom Association of Women Judges, which incidentally has members who are men; all we ask of the men members is that they are interested in the

same things as we are and do not mind being outnumbered. I think we find that those are two rather rare qualities. The great thing about that organisation is that we have judges from every level of the system, so I can learn something about what is bothering the social chamber tribunal judges and what is bothering the Court of Appeal.

I greatly admire the advocates and litigators who appear before us, and I am not just saying that because Lord Pannick is in the room; other advocates are available. They do a tremendous job for their clients and many of them do a lot of work pro bono, which is increasingly necessary. That work is of the highest quality, so I admire them. I admire the court staff, who work very hard while those in other parts of the justice system are working against huge challenges, which they probably did not expect when they started working in the system. I admire every aspect of it.

Through all the outreach work that I do, by talking to a great many students and young people I have also learned how important visible diversity in the judiciary is to them. For them to see somebody who looks like them doing the job that I am doing is the greatest possible encouragement and inspiration. That is what I have learned the most out of my time as President, because the additional feature of being president seems to give even greater inspiration.

The final thing I have learned is that we cannot take any of this for granted.

Baroness Corston: I would like to add one thing on a personal note, as for a short time in my life I practised family law. On behalf of a lot of my former colleagues, I thank you for the way in which you have raised the profile of family law in this country. When I was practising, it struck me that a lot of those who were practising what they thought was real law looked down on family law, without realising that it was about dealing with people who were at their most desperate and unhappy in their lives, and that it was much more difficult. Thank you.

Baroness Hale of Richmond: Thank you very much. It is interesting that, apart from Lord Simon, I was for a long time the first family lawyer to be in this place and then in the Supreme Court. But there was a stage not so long ago when a third of the Supreme Court justices had begun their full-time judicial careers in the Family Division of the High Court. We still have them as a quarter of us; Lord Hughes was the fourth, and he has retired. That says something, does it not, about family law and family lawyers, which I hope is of some encouragement to the system.

Q13 Lord Hunt of Wirral: There is lots of reflect on, Baroness Hale, but you will probably be aware that we as a Committee are very concerned about the lack of candidates coming forward to hold judicial office in the way you did in 1994. There is an increasing number of talented younger solicitors and barristers who probably would not necessarily think of applying to become a judge, and in particular a High Court judge. What do you think we as a Committee should discuss to promote the prospect of a career among that range of people who at the moment are probably

not reached out to enough?

Baroness Hale of Richmond: Several things. There has been a traditional pattern of recruitment to the judiciary which you, Lord Hunt, will be completely familiar with. Top Silks get the High Court; other Silks, leading juniors and some solicitors get the circuit Bench. It is then mainly solicitors and some barristers who get the district Bench, although a much wider range of people sit in tribunals of all sorts. Those stereotypes are very enduring.

Quite a lot of the regret about recruitment to the High Court has been because the traditional candidates have been reluctant to put themselves forward. That is a regret, of course, but, equally, more has to be done to tease out, encourage and recognise merit and judicial quality in other places. I think the Judicial Appointments Commission is aware of that task, but it struggles to know how to deal with it.

Another problem is that a lot of talented people—especially women, but this applies to other people, too—move out of independent practice, either at the Bar or in the major firms of solicitors, because the pace of demand in those major firms on the middle-ranking people is relentless, given the round-the-clock necessity to be there. A lot of very sensible and talented lawyers go and do something else. They do not drop out, but they might go into the Government Legal Service or into local government; they might go into being magistrates' advisers or become in-house counsel in commerce, finance and industry. They do all those sorts of jobs, but those people tend not to be seen as suitable candidates for the judiciary, and I think we have to tackle that and get at them. The Government Legal Service in particular is full of really talented people, but it would also make life easier for that recruitment. Those are three things that we can think of, and you could think about—were you to agree—how best they might be tackled.

Things have improved dramatically over the last 10 to 12 years. I think everybody has realised that. They started from a very low base, so it does not look dramatic when we say that a quarter in the Supreme Court are women, and just about a quarter in the Court of Appeal if you leave off the heads of divisions. That does not sound too good, but when you think of how few there were 10 years ago it sounds a lot better.

The important thing is that people are realising that there are problems and they have to be tackled. That is about the biggest change I can think of since about 2002, when somehow the penny started to drop that we had to tackle these issues.

Q14 **Lord Wallace of Tankerness:** Reflecting on your period both in the House of Lords and in the Supreme Court, my perception—I have no statistics to back this up—is that there are far more cases today on administrative law, judicial review and constitutional human rights than there were 20 years ago.

I wonder what your perception has been over the years of how the workload has changed. In your crystal ball, do you see any new issues

emerging that might take up more time in the coming 10 or 20 years?

Baroness Hale of Richmond: You are absolutely right. The Human Rights Act has been with us only in this century. Turning the rights into rights in UK law has brought cases that could not have been brought before. It has also changed some of the ways in which we analyse the cases that would have been brought under ordinary judicial review procedures or whatever. So yes, that has changed.

There is a lot more public law about. That has been developing since the major House of Lords decisions in the 1960s, coupled with the change to introducing the judicial review procedure. Getting rid of the old prerogative writs—the lawyers will know what I am talking about—and replacing them with a one-stop shop, so to speak, for judicial review of administrative action, along with some prominent House of Lords decisions, led to a steady growth of judicial review of administrative actions.

We have looked at the figures and compared them with the 1950s. Obviously the major growth is in human rights, which were not there before. There was public law. Of course, in the 1950s there was no EU law, and we have a lot of EU law cases. Not all of them are public law cases; quite a lot of private law is governed by EU law. Those have been the major growth areas.

I think we no longer take a case just because it involves lots of money. It has to involve a point of law of general public importance. If it involved a one-off construction of a purpose-built commercial contract, normally we would not take it, although technically it involved a point of law, because it was not of general public importance—unless it had ramifications of general principle. So there has been a diminution in the number of private-law cases.

We have always had a lot of tax cases, and still do—that is why Lord Reed is looking so worried—but the balance has undoubtedly changed. We do far more that is of relevance to ordinary people. Again, from looking at the cases that happened in the 1950s, there was the odd personal injury case because personal injury litigation was the volume of litigation that might affect ordinary people, but there were very few.

I found only one civil liberties case in the 1950s. I know I am going back a long way, and if I looked more recently it would not be quite as dramatic, but there has indeed been a dramatic change since those times.

Q15 **Lord Pannick:** On Brexit, the elephant outside the room, I do not want to ask you about possible future cases that might arise, but do you have any general concerns about the implications of Brexit for the certainty of the law and the way in which the legal system is going to operate in future?

Baroness Hale of Richmond: I will ask Lord Reed to answer that while I think of my answer.

Lord Reed: Thank you for that. I think one of the principal challenges will arise simply from the complexity of what is involved. At the moment, we have EU law. In future, as far as I can see, we are going to have three different types of EU law, with different rules applying to each type. We are going to have something called “retained EU law”, created by the European Union (Withdrawal) Act. That is going to be a special type of domestic law with a higher status than other domestic law.

If we have a withdrawal agreement in something like the form of the current agreement, that creates another body of law—let us call it withdrawal agreement law—comprising the withdrawal agreement itself as well as various areas of EU law to which it gives continuing force. That withdrawal agreement law is presumably given effect by a withdrawal agreement Act. It is going to have to be given effectively the same effect as EU law has currently. In other words, it will have supremacy over ordinary UK law and over retained EU law. It will have different principles of interpretation from retained UK law because all the normal EU principles, such as the use of the charter of fundamental rights, will apply. Different remedies will be available, including Francovich damages, which would not be available for EU-retained law.

The duration for which it lasts will vary from one area of the law to another. For example, most of it will last only for the transition period, which would currently end at the end of next year, but the citizenship law would last for the lifetime of the people entitled to benefit from it.

Another aspect of it will be the ability to make preliminary references to Luxembourg; that will continue for withdrawal agreement law. According to the current withdrawal agreement, it will continue for at least eight years beyond the end of the transition period. Reference can be made in any case that begins at first instance up to eight years after the end of the transition period.

As I say, there will be retained law plus withdrawal agreement law, plus you will have ordinary EU law still sometimes applying as foreign law. For example, we might have a contract governed by an EU contract directive or a trademark that was an EU trademark. So you can envisage three different types of EU law in future, with different rules applying to each of them.

We should also take into account that the withdrawal Act has 227 pages and the withdrawal agreement has 599 pages. There will also be a withdrawal Act. We will have a colossal body of law for lawyers to get their teeth into, so it will be quite a challenging time for us all to get our heads around that.

Baroness Hale of Richmond: The thing that will make a big difference instantly is the loss of the ability to refer a doubtful question of EU law to Luxembourg, save to the extent that it is retained under the withdrawal arrangements. There is a strong likelihood that we will be making a reference next week.

The Chairman: Before Friday?

Baroness Hale of Richmond: Yes, we are currently in—

Lord Beith: You can do so with any case that was already started before Friday.

Baroness Hale of Richmond: We are waiting for the reply to quite a few references, so it will make a difference because there are lots of areas of EU law where the answer is not crystal-clear.

Lord Reed: Yes, and interpreting EU law is a different exercise from interpreting a UK statute. The regulations and directives are generally drafted rather more vaguely, and they depend more on an assessment of the policy that is intended to be achieved. So for a British lawyer it is much less of a black-letter exercise and more a matter of assessing what politically the objectives were. If there is an ambiguous phrase, for example, you often have to look at different language versions to work out what it might have been meant to achieve.

The ability to refer it to Luxembourg is useful, because it can determine what the policy was meant to be and it has all the linguistic skills required there. In future, we will be doing that ourselves, so it will take a bit of getting used to.

The Chairman: On that note of great optimism, if we see the final withdrawal Bill—in draft or in reality, or at all—we will have to bear all those points in mind. I think we already have some headings for our report from what you have been saying. Are there any other points that anybody wishes to offer?

In that case, I thank you both very much for coming and say to you, Baroness Hale, that since you are due to step down early next year and these have been annual meetings, this could be your last meeting. You are welcome at any time, but we place on record our appreciation for what you have done in communicating with this Committee and in being a fantastic role model in your capacity as President of the Supreme Court. We wish you well in the future and perhaps look forward to the reflections which might one day see the light of day. Thank you very much indeed.

Baroness Hale of Richmond: And thank you very much. It has been a great pleasure.