



HOUSE OF COMMONS

Justice Committee

Oral evidence: [The Lord Chief Justice's Report for 2018](#), HC 1651

Tuesday 20 November 2018

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Members present: Robert Neill (Chair); Bambos Charalambous; Janet Daby; Mr David Hanson; John Howell; Victoria Prentis; Ellie Reeves; Mrs Marie Rimmer.

Questions 1 - 68

Witness

I: The Rt Hon. The Lord Burnett of Maldon, Lord Chief Justice of England and Wales.



Examination of witness

Q1 **Chair:** Welcome, Lord Burnett, to our evidence session. First, congratulations; it is the first time you have been to meet us since your appointment as Lord Chief Justice. We are delighted to see you.

Lord Burnett of Maldon: That is very kind of you and I am very pleased to be here.

Chair: There are some declarations of interest. I am a non-practising barrister and consultant to a law firm. Of course, we are both Benchers of the Middle Temple.

Victoria Prentis: I am a non-practising barrister. Lord Burnett was my pupil master quite a long time ago. My husband sits currently part time as a judge.

Chair: Neither of you lost by the experience, by the look of it.

Bambos Charalambous: I am a non-practising solicitor.

Q2 **Chair:** Lord Burnett, thank you very much for coming. You take over after a distinguished predecessor in Lord Thomas, who had a very close relationship with us, but there is a set of challenges that are perhaps new and different now. What do you see as the principal challenges for the judicial system, the way we deal with the rule of law and, in particular, your priorities going forward?

Lord Burnett of Maldon: We have a number of quite significant challenges at the moment. Not necessarily in order of importance, I would mention three in particular.

The first is the recruitment and retention of new judges, particularly at the more senior levels. The second is the undoubted low morale of the judiciary as a whole and all of the reasons that feed into that. The third is the need to modernise our court system to make good the deficiencies, as I see it, of many decades to bring us into the 21st century.

Q3 **Chair:** We are going to touch on all of those, and I am grateful to you for flagging them up, in particular, with regard to the court system. I used to practise, as you know, at the criminal Bar. I went back to Snaresbrook when Judge Radford retired. Behind the scenes, it is pretty appalling, is it not, and it is not unique?

Lord Burnett of Maldon: It is, and it is not unique. If you were last there when Judge Radford retired, that is a few years ago. The position at Snaresbrook has not improved by any means.

Q4 **Chair:** It has got worse.

Lord Burnett of Maldon: The issue you touch upon, Chair, is the dilapidated state of the court buildings. It is fair to say that we have some excellent buildings, some of which are relatively new, enormously



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comfortable and good places to work in and for the public to visit. We have a lot of very poor buildings indeed.

The condition of the estate feeds into difficulties at every level. First, and importantly, it seems to me completely unreasonable to expect members of the public who have to visit courts for all sorts of reasons to have to put up with dilapidated and uncomfortable buildings, and buildings that are, frankly, an embarrassment, as I have put it before.

Secondly, it is not reasonable to expect the staff of HMCTS and other public servants who have to work in the courts to endure those conditions. Neither is it reasonable to expect the judges to do so.

As I see it, there has been a long history of underfunding of the courts estate. As you know, there were years when the funds that were made available for maintenance and renewal were not even spent. Happily, that is behind us. But the problems are so deep-seated that, as I see it, they require a substantial injection of funds in the coming years to make good what is essentially a decade of neglect.

Q5 Chair: It is essentially done by HMCTS, but do you have a ballpark sense as to the sort of level of injection that might be needed?

Lord Burnett of Maldon: I am aware that HMCTS has been working hard lately to try to evaluate in both repair and financial terms the amounts that need to be spent to make good these deficiencies. I am not aware of the precise figure, but it is not just a few millions or a few tens of millions—it is hundreds of millions. It is largely the result of an enormous number of problems coming together at the same time.

There are buildings all over the country that were put up in the '70s and '80s in particular, and you will remember them, Chair, from your days in practice. Perhaps when you and I visited them in the '80s they seemed pretty brand spanking new, but, unfortunately, the reality is that their roofs are leaking as often as not; their lifts are broken; their air-conditioning and heating systems work intermittently. So, there is a very substantial amount of money that needs to be spent.

I very much hope that, as Government move into the next spending review, the Treasury, with no doubt a lot of pushing from the Ministry of Justice, and in the background pushing from the judiciary and the professions, will recognise that we have got to the stage where there needs to be a proper investment rather than sticking plaster.

Q6 Chair: You have a particular role as head of the judiciary both to preserve their independence but also to make the case to Government on some occasions via the Lord Chancellor.

Lord Burnett of Maldon: Yes.

Q7 Chair: How do you deal with that?



Lord Burnett of Maldon: I make the case very strongly with the Lord Chancellor and with officials to put in absolute context the difficulties that we face. Of course, HMCTS officials are very well aware of it, and they must operate within the financial envelope provided to them.

We have had a couple of relatively small bits of good news on that front recently. In the last financial year, the MOJ made available a small amount of money—£7 million, which is a small amount of money in the context—to deal with some urgent things that just had to be done. You will have noticed in the Budget that there was, I think, £15 million provided for HMCTS; £3 million of that is for security work and £12 million is for repairs and maintenance. I hope that that is new money and there is no question of it being recouped, as it were, against next year's allocation.

Q8 **Chair:** You do not have that assurance at the moment then.

Lord Burnett of Maldon: No.

Q9 **Chair:** It has been suggested to us that a lot of savings will be made by digitisation and this can all be recycled into it. How confident are you about the ability to make savings out of digitisation?

Lord Burnett of Maldon: In general terms, there will be significant savings made in the costs of running the courts through digitalisation. I give one very straightforward and striking example. As members of the Committee will know, something called Digital Case System was introduced into the Crown court just over two years ago now. It is fair to say that both the professions and one or two judges were a bit sceptical about it, but everywhere I go now I get nothing but praise for what it has achieved. The straightforward thing that it has achieved is avoiding the need to print 68 million sheets of paper, which was the latest figure I had. The cost is not in the paper or trees saved, but in the time taken by staff to print it, to put it into files and to shift it all over the building. That is a very tangible benefit.

We are moving, as you know, to do something similar in the civil courts. It has started already in the Rolls Building with the business and property courts. There are plans to roll out a paperless environment over the course of the next year in the civil and family courts. It will take longer, inevitably, but that is just a tangible example of how time and money are saved.

Q10 **Chair:** We would all say that is welcome and obvious, but you remember Sir Henry Brooke's inaugural lecture that you gave in June.

Lord Burnett of Maldon: Yes.

Q11 **Chair:** There was an issue about how you overcome those elements of the population who do not have ready access. You were pretty optimistic about that at the time. Can you update us as to why you were optimistic about that and where we are going?



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Lord Burnett of Maldon: As I understand it, the question you ask concerns the ability of members of the public to use digital process to start proceedings, to make appeals in the tribunals and so forth.

Chair: That is right.

Lord Burnett of Maldon: The Office for National Statistics only last year produced figures that suggested, from memory, that 87% or 88% of the adult population have access to the internet and use it. Of course, the demographics of that will be different, or one might think it will be different. However, the ability to file documents using your computer at home will improve access to justice, and it will make the life of those who need to do it very much easier.

There is, undoubtedly, a very small percentage of people who, with the best will in the world, will be unable to use computers, but one has to look at it in the context, first, of those people having family and friends who can assist them, and the reality that HMCTS has already put in place a contract with an organisation to provide assistance.

We are not in the vanguard of this around the world. There are many jurisdictions that have introduced a digital process. It is an ugly phrase, but we all know what it means. The problem of digital exclusion, if I can call it that, has just not materialised.

A very interesting project has been going on in Canada now for some years, which started with a limited property court and has now expanded into small claims generally. The judge who has been looking after that will be in London in a couple of weeks' time to talk to us about it. There, digital exclusion has not been a problem. I am optimistic that it will be a very small problem and that it can be dealt with.

One has also to bear in mind that there will be a very small percentage of people who would like to bring a claim or resist a claim who just cannot do it online. No doubt, there are some who cannot make a passport application online, renew a driving licence online, do insurance online or book a holiday online. You are probably looking at a cohort who would find it quite difficult to fill out complex forms and send them in to the court. That is why I am relatively optimistic.

I am particularly optimistic about the scope for improving access to justice. As you know, there is an online money claims project that has been running now for the thick end of a year. The take-up on that has been much greater than anybody ever imagined. I think it is likely to be quite exciting from an access to justice perspective particularly in assisting small and medium-sized businesses. The reality nowadays is that, if any of us were potentially in dispute over a few hundred pounds or a few thousand pounds, we would think long and hard before launching proceedings because it is so time-consuming and so complex, and it can be so expensive. Enabling people to do this online and developing, as we hope we will, a very efficient system for dealing with



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these cases, will encourage small businesses, in particular, to vindicate their rights, where at the moment they may well be shrugging their shoulders and just moving on.

Q12 **Chair:** The changes that have been made to the small claims limit and arrangements for whiplash and so on suggest an increase in litigants in person potentially.

Lord Burnett of Maldon: Yes.

Q13 **Chair:** What is your assessment generally of the way cases have been made to us by various people that the growth in litigants in person places extra burdens on the judiciary?

Lord Burnett of Maldon: It is undoubtedly true that the growth in litigants in person places a burden on the judiciary. Where it has been most apparent is in the family courts. As you will appreciate, for private family law cases, legal aid has pretty well been removed.

In saying that litigants in person place a burden on the judges, I am not for a moment suggesting that they are a nuisance or anything of that sort. The reality about having professional advice of any sort is that most people tend to take it, and having it particularly in the context of family disputes, which are highly charged emotionally, can result in cases either not being brought or cases being resolved consensually, sensibly, in a way that does not seem to happen quite so readily when you have litigants in person in that environment.

It is also true generally, and we see it even in the Court of Appeal and certainly in the High Court, that litigants in person, with the best will in the world, are unlikely to be able to focus on the real issues quite so well as lawyers. One would hope that that was the case, otherwise lawyers would not be adding value. There is a tendency to get lost in the byways and alleyways of issues that are very important for the litigants but are not of great legal significance.

Bringing that all together, it is a problem across all the jurisdictions, but it is in the family world that I hear that the greatest difficulties are encountered.

Q14 **Chair:** The essence of that is that it takes longer for all those reasons.

Lord Burnett of Maldon: It very well can do.

Q15 **Chair:** More court time is consumed, and I understand that.

Lord Burnett of Maldon: Yes.

Q16 **Chair:** Are you able to quantify at all—I do not know if the Judicial Office or HMCTS do it—the growth in litigants in person? I imagine it is noted on each occasion whether or not a party is represented. Do you have those figures?



Lord Burnett of Maldon: I am afraid I do not have those figures, if they exist, either to hand or in my mind, but I can certainly ask that that be explored, and we can let you know if there is anything that is tangible rather than anecdotal.

Chair: That would be very helpful; thank you very much.

Q17 **Victoria Prentis:** One of the casualties of the general election last year was the Prisons and Courts Bill. To what extent does the loss of that legislative time cause difficulty for the court reform programme?

Lord Burnett of Maldon: Undoubtedly, the failure of the legislation or all of it to return will have an impact on some aspects of the reform and modernisation programme. As you know, a very small Bill came from the House of Lords to the House of Commons in the last few days dealing with the scope and powers for court officers. That is one aspect of it that is coming along.

There is another aspect, which I very much hope we will see come along before too long, which is that which deals with the online rules committee. One of the aims of the modernisation programme is to have common rules covering all online processes. To achieve that efficiently, we need an online rules committee. Work is being done in the background to think around the sorts of rules we would need. We have three different rules committees—civil, family and tribunals—all of them, of course, fiercely independent, as they must be. Inevitably, getting the same result from three different rules committees will be much more difficult than having just one rules committee. That is one aspect of it that I very much hope the business managers—subject to all the pressures that we all know Parliament is under at the moment—and we will see come back.

One or two of the aspects of the Bill that fell dealing with crime, in particular, were designed to sweep away some pretty archaic rules and processes required by primary legislation. Again, it would be very useful to have those back.

However, in HMCTS and the MOJ, a great deal of work has gone into what are called work-arounds. The expectation is that the overwhelming majority of the benefits of the programme can be delivered even if that legislation is lost or delayed. From my perspective, I would like to have it back as soon as possible.

Q18 **Chair:** Would it be helpful to have the legislation for a sentencing code?

Lord Burnett of Maldon: Yes, it would. Sentencing, as you will all appreciate, has become a little bit of a minefield, because the relevant law is spread across such an enormous range of legislation. The complexities of it are such that in busy courts, both magistrates courts and the Crown Court, mistakes are made because both the advocates and the judge temporarily lost sight of a statutory provision. It is rather



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disturbing that the Court of Appeal, Criminal Division, has to put right so many purely technical mistakes.

In saying that, I am not being critical of those who make the mistakes, because the burdens of those doing busy sentencing lists—you may well have seen them recently—are very great indeed. But it would be much better if the work of the Law Commission in trying to codify sentencing came to an end and then Parliament found time to deal with it.

Q19 Chair: At the moment you have a whole range of diverse statutes. You cannot really go to one place to understand where you are.

Lord Burnett of Maldon: That is right.

Chair: That would be helpful.

Q20 Victoria Prentis: Turning to another matter, I am sure we will talk later about why it is proving difficult to recruit judges, but can you tell us on a practical level how the lack of judges is being managed across the court system?

Lord Burnett of Maldon: The first thing that I need to emphasise is that in those jurisdictions where we have gaps—and the gaps in some jurisdictions are also made more difficult to manage because of a shortage of fee-paid judges—the reality is that our judges are working harder. There is a limit to how much any individual can do in the course of a day. That is again a concern that flows into the morale questions that I touched on at the outset.

What we are trying to do is to deploy the judges we have to the right cases. If we think about the High Court where, as you know, we are running light, despite the appointments that have come through from the last recruitment process, we have to ensure that cases that really need High Court judges are dealt with by them. We have an excellent pool of deputy High Court judges, both practitioners and circuit judges, who sit as deputy High Court judges. So, we are managing the work.

Similarly, in the other courts, there has been a particular problem in the civil and family courts, where, as you may know, over the last couple of years we have been unable to sit the days that have been allocated. There is the curious currency of the Court Service called the sitting day. We all understand what it means. I am not sure that economists would necessarily fathom it. We have simply not been able to sit the family and civil days in the last year because we do not have the judges to sit in the chairs to do the judging.

What are we doing about that? We are replenishing the pools of fee-paid, part-time judges. Last year, there was a big recorder competition, which was very successful, and, by and large, those recorders have now been through their training and are beginning to sit.



There is a very large deputy district judge competition just about to come to its conclusion, I am expecting, within the next few weeks.

Q21 **Victoria Prentis:** Has uptake been good?

Lord Burnett of Maldon: I shall have to wait to see what the JAC sends me in the next few weeks, but the expectation is that we will have a substantial number. But, again, there is always a time lag between identifying the need, having the recruitment process, appointing the successful candidates and training them—training is very important—for the tasks that they are going to perform.

Q22 **Victoria Prentis:** Are you happy with the recruitment process? Do you think it simply takes too long?

Lord Burnett of Maldon: I am happy with it and I do not think it takes too long, because it would be disastrous to rush it, but there is inevitably a time lag between identifying a need and filling that need.

With the Judicial Office and others, the JAC is now forward planning. It has made an enormous difference. Given that we know we are going to need to make a big call for new fee-paid and salaried judges, we have put in place for the next couple of years all the competitions long in advance. Practitioners know when they are coming along, and everybody can organise themselves appropriately.

Q23 **Victoria Prentis:** Would it be fair to say from what you have said that people may have to wait longer for their hearing but that the quality of the justice being dispensed has not been affected?

Lord Burnett of Maldon: I am confident that the quality of the justice being dispensed has not been affected. There are some delays building in to the civil and family environment, which we regret. It is not only a lack of judges. This morning may not be the time to talk in detail about what is happening in family law, but you will be aware that there has been a very substantial increase in public law family cases. Nobody is entirely sure why. The increases are not uniform across the country. It is very difficult to see why in one area right next door to another, which has broadly the same demographics, it has increased a lot and in the other it has not. That has caused delay, and we are working hard to try to bring it down.

Q24 **Chair:** Is that partly the attitude adopted by differing local authorities, for example, to care proceedings and so on?

Lord Burnett of Maldon: That must be part of it. The President of the Family Division and others are looking really hard to try to understand why the increase has occurred and why the increase is not uniform across the country, and not even uniform as between different local authority areas that appear to have broadly the same sort of demographics. Nobody has quite been able to work it out yet.

Chair: That is very interesting.



Q25 **Ellie Reeves:** In terms of judicial diversity, we know that the Judicial Diversity Committee, the Judicial Diversity Forum, and diversity and community relations judges are all doing work in relation to judicial education, outreach engagement, et cetera. What is your assessment of the effectiveness of those programmes?

Lord Burnett of Maldon: As you know, there are statutory duties imposed on me, the Lord Chancellor and the Judicial Appointments Commission with respect to diversity in the judiciary. The statistics that are available—I am not going to blind you with them, I hasten to add; they are available, and you have seen them from both the Judicial Office and the JAC—suggest that the position has improved significantly over the last few years, both as regards gender and ethnicity, both in the courts judiciary and in the tribunals judiciary.

We, in the judiciary, have been at the absolute forefront of trying to devise schemes to encourage those from under-represented groups in the judiciary to apply to become judges, and you mentioned some of them. I am not going to list them all as it would take too long. It involves carefully focused engagement with groups and individuals to try to prepare them for an application for judicial appointment.

It has undoubtedly flowed through to some success. Quantifying it is very difficult, but perhaps I can give the example of the section 9(4) judges. In 2016, a new competition for deputy High Court judges was devised, which was time-limited—in other words, the successful applicants were to be appointed for a period of four years. It was worked on the basis that the individuals concerned were expressing an interest but not a commitment to a salaried judicial career. We have had those competitions in 2016, 2017 and 2018. Those pools have provided a significant number of the High Court judges appointed last year and those recommended for appointment this year.

There is a mentoring scheme in place, under the supervision of Lady Justice Hallett's Diversity Committee, to assist those who are inclined to think that they would like to apply. It is an extraordinarily active group, with representatives from the whole range of the judiciary. I attend it as well. It is something we are absolutely committed to.

We are also working through the Diversity Forum. As you will appreciate, the new initiative through that forum, which is an initiative of the Lord Chancellor, the JAC and the judiciary, and is called PAJE—pre-application judicial engagement—is a very focused scheme to try to encourage individuals from groups that are under-represented in the judiciary to consider judicial careers and apply.

Q26 **Ellie Reeves:** That is very useful. JUSTICE's 2017 report into judicial diversity recommended "targets with teeth," the teeth being an obligation to explain any failure to achieve targets in relation to diversity. Lord Thomas, your predecessor, suggested that he did not agree with those targets with teeth. What is your view on that?



Lord Burnett of Maldon: The question is always asked following the JUSTICE report about targets with teeth, because that is the most controversial part of its report. It also made all sorts of other recommendations that are already part and parcel of the appointments process or have become so.

Targets with teeth is a very arresting phrase, but I share my predecessor's lack of enthusiasm for it. I am nervous about targets in the context of judicial appointments because targets are at least capable of distorting activity and the way people behave. The statutory requirement for the JAC is to recommend for appointment judges on merit. There is a provision that enables the JAC to tip in favour of someone from an under-represented group if they have two candidates of equal merit—the equal merit provision.

My concern is that, if one were to have targets with or without teeth, it would very possibly distort the way in which those who were sitting on selection panels considered the applications before them. We all know across a whole range of activity where targets are suggested to have influenced activity and not necessarily in an altogether good way. So, I am pretty much aligned with Lord Thomas on that one.

Q27 **Ellie Reeves:** One of the things that Lord Thomas seemed supportive of was recorders and deputy High Court judges having a reasonable fixed-term period so that they did not remain in post forever more. Is that something that you support, and has there been resistance from the MOJ in relation to that?

Lord Burnett of Maldon: As I mentioned a moment or two ago, the deputy High Court judges appointed under section 9(4) have been appointed for four years. We are looking at the moment to see whether that is too short a period, because it puts them under quite a lot of pressure to contemplate making an application for a salaried post within four years of becoming a deputy. I think that has been a success. It has not yet been extended to recorders or deputy district judges. I would be a bit nervous about that at the moment, simply because we are replenishing pools of deputy judges that, frankly, became rather dry in the past, because such competitions did not occur very often and because they were fished out to become district judges and circuit judges. However, for the deputy High Court judges it is there and I think it is an extremely useful tool.

Q28 **Janet Daby:** You touched on some of the issues that I raise in this question, which is about the Lammy review that black and ethnic minority lawyers, when they apply to become judges, do not get through the application process. First, are you aware of that, and, secondly, do you consider that there is further scope for the Judicial Appointments Commission in making any changes to its processes?

Lord Burnett of Maldon: Yes. It is something of which I am very aware because I was vice-chairman of the Judicial Appointments Commission



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when David Lammy started his work and his review. I sat down with him, as it happens, and we talked through this and various other issues.

That must have been two and a half years ago now, I should imagine. I do not have the precise date in my mind. At that time, within the Judicial Appointments Commission, which has officials dedicated to questions of diversity, an enormous amount of work was done to see whether there was anything in the processes that might explain the phenomenon to which you have referred. External as well as internal help was sought for that, and nothing could be found.

I am aware that the JAC has more recently been doing more to look at its processes to see whether there is anything in them that might be an explanation for what David Lammy is concerned about and the issue that you raise. My understanding from fairly recent discussions is that, again, they have not found anything. They have been using outsiders to look at this. All the processes are road-tested and validated by professionals and outside experts to try to ensure that there is nothing in them that inadvertently disadvantages one group as opposed to another.

I applaud the work that the JAC has been doing, and I do not doubt that it will continue to subject all its processes to the most rigorous scrutiny, but there is nothing so far that anybody has found, and there is certainly nothing that I can think of, that is an obvious explanation.

Q29 David Hanson: I was struck that you gave the figure in your annual report, which echoes what Lord Thomas said previously, that only 2% of respondents to the Judicial Attitudes Survey felt valued by Government, and a worrying proportion felt disconnected from the senior judiciary. That is an appalling level of figures, but I am interested in what you think you can do about that in your contribution.

Lord Burnett of Maldon: I was very struck by both figures. The reasons why the judiciary do not have a great deal of faith in the proposition that Government values them flow from a long history of events, particularly over the last six or seven years, some of which we have touched on—the estate and so forth—but, also, undoubtedly, the whole question of remuneration, which is a matter now under consideration following the SSRB report.

The indication that a large minority of the judiciary felt disconnected from the senior judiciary also struck me before I became Chief Justice as a very worrying phenomenon. I was determined on being appointed to try to think about why that was so and to do what I could, along with the senior judiciary within our sphere of responsibility, to try to improve things. Obviously, an important amount of that flows from general morale questions.

The first thing that I have sought to do in my first year in office is to travel extensively around the country and meet hundreds of judges. The other senior members of the judiciary have been doing the same. There



is no substitute for meeting people, talking to them and engaging with them about the issues that cause them concern, to let them see the reality, which is that we do care deeply about what is going on in all our courts across the country.

There were particular problems that needed to be looked at again. The estate is one thing that we have talked about, and I think it is fair to say that the judiciary as a whole appreciates that I, the senior President of Tribunals and a senior presiding judge spend a good deal of our time keeping HMCTS's feet to the fire, if I can put it that way, to deal with problems expeditiously when they are drawn to our attention. We have been very busy in that regard.

It is also well known among the judiciary that I and other senior members have been deeply involved in the SSRB process and discussions with Government about what should come from that. There is a recognition, I think, that we are concerned to do our best for the judiciary.

Q30 David Hanson: Is there something systemically wrong when people reach a peak in a legal career that does not involve them feeling pride, a sense of ambition, a sense of achievement, a sense of belonging, a sense of service in the community? That seems to be missing when we have 2% saying they do not feel valued.

Lord Burnett of Maldon: Two per cent. said they felt valued by Government; 98% felt they were not valued by Government. In view of some of the events that have occurred over the last few years, it may not be altogether surprising. But the issues you raise there are at the heart of what motivates most judges. It is a quite extraordinary phenomenon when one talks to judges at whatever level. If one talks about terms and conditions, the estate, or the money that has come out of the system over the last few years, you get a degree of gloom and doom.

Start talking to judges about what motivated them to apply to become a judge. Start talking to judges about what they do on a daily basis in the public interest, serving the public, resolving disputes, and almost all of them brighten up and become enthusiastic. It is an observation that not only I have made, but, to give an example, on Friday evening, the President of the Council of Circuit Judges speaking to a large group of circuit judges made exactly the same point. When you start talking to judges about what they do and why they do it, they become enthusiastic.

There are lots of small things that we are trying to do to improve the connection. We are improving all the welfare support that judges get, which is very important in an age when quite a lot of judges, particularly those in the Crown court and the family courts, have a daily diet of very grim stuff, to be honest.

In the last year, we have also introduced a new process that enables every judge in due course—it is not everywhere yet—to have a discussion



with his or her leadership judge, not just about prospects for promotion and things of that sort, but more generally about how things are going, the work they are doing, what they would like to do and so forth. This is a new development that may be quite surprising for those who have worked in an ordinary private or public sector environment. Things are changing very fast, even compared with when I became a judge just over 10 years ago, when, in truth, one was appointed, provided with a room and left to get on with it. We have moved on.

Q31 David Hanson: Given the concerns that have been expressed and discussed in this Committee so far today, and given the Ministry of Justice's limited resources, what would your recommendations be to the Ministry of Justice to target improvements that would lead to that figure of 2% rising?

Lord Burnett of Maldon: Undoubtedly, the first thing will be to respond positively to the SSRB report. The ministerial statement that the Lord Chancellor made, three weeks ago, I think, indicated that the Government would be looking at the SSRB report in the context of remuneration problems generally. You will have seen the report and the written ministerial statement. Again, without going into the technical details because they are very technical, it is changes to the judicial pension scheme, which were unique, that have been at the root of many of the problems.

Q32 David Hanson: For the record, it is proposed there should be a 32% rise for High Court judges and a 22% per cent rise for circuit judges, which would improve the morale of everybody, I would think, to receive that type of pay rise.

Lord Burnett of Maldon: Yes, although the SSRB made those recommendations for judges in one pension scheme but not another. It is a broader solution that the judiciary hopes the MOJ and the Treasury will be able to deliver, but I think that is very much at the top of it.

The second thing is that we are all conscious of the way in which money has been sucked out of the system. The MOJ, unprotected, generally, has had a very substantial cut over the last few years, and that has fed through into all the spheres of activity for which it is responsible.

Sorting out the estate, for example, Mr Hanson, will be one of those things that would make a big difference to the way in which judges feel.

Q33 David Hanson: We had the chief financial officer of the MOJ before us at some point last month, and he confirmed that a figure of £300 million was being lost in cash terms from the total MOJ budget next year from April and that departments such as prisons, HMPPS, have not yet got their budget for next year. In the pecking order, where we already have a large chunk of additional funding from the MOJ potentially, if they agree, going to the senior judges' salaries, what is going to happen next year and the year after? It is good to talk about these matters, but I am



interested in what your assessment is of what the cash on the table is to improve the morale.

Lord Burnett of Maldon: There is some statutory protection for the funding that goes to the courts. There is a statutory duty to fund the courts adequately. It may not be the strongest of statutory duties, but it is there. I am confident not only that MOJ officials but also Treasury officials appreciate that there is a statutory duty owed to the court system that is different from their obligations in other respects.

Q34 **David Hanson:** Are you expecting a rise next year in the resource to the judiciary's estate programme? Are you expecting a freeze or a reduction? What is your knowledge now?

Lord Burnett of Maldon: At this stage, it would not be right for me to say that I am expecting anything in particular, because we are a long way from beginning the discussions that will lead to a settlement. One of the rather unsatisfactory features of this financial year's settlement is that it was not achieved until the end of June or even the beginning of July. I do not have the precise date in my mind. I have emphasised not only to the permanent secretary but to the Lord Chancellor that we really cannot have that again. We ought to be beginning our discussions about the finances to be made available to the Court Service at the end of this year so that we can resolve difficulties and issues in a timely and measured way in the early months of next year before the new financial year starts. We spent the first three months of this financial year without knowing what we were going to have.

Coming back to your question, I am very well aware that the talk is that the MOJ generally will have another very difficult year next year, quite apart from what may follow if there is another spending review. But I will do everything I can to ensure that the Court Service is properly funded.

What I am not expecting in the real world is for the Treasury suddenly to say, "Here's a few hundred million to sort your courts out." If that is going to happen, it is going to be a project over quite a few years into the future.

Q35 **David Hanson:** The salary review, which, incidentally, this Committee has supported—

Lord Burnett of Maldon: I have seen the Chair's letter and I am grateful for that.

Q36 **David Hanson:** It also raises the continued issue of the ban on returning to practice. For the record, it would be helpful if you could assert your view as to why that is important.

Lord Burnett of Maldon: The return to practice of salaried judges is currently covered in the terms and conditions set out in the letter of appointment. There is an expectation that those appointed to salaried judicial office do not return to practice after they have retired as judges.



There has been a bit of interest in it lately because some think it may be a reason why some do not apply to become judges in the first place. I am really not aware of any good evidence of that at all. I think the reason for it, and it stretches back for centuries certainly, is that it is part and parcel of ensuring, and always has been, that the standing of our judiciary is very high indeed. In other words, the aim has always been to take from the professions successful professionals who have done well as solicitors and barristers, and then move on to a judicial career. It has never been seen as appropriate to have salaried, full-time judicial employment on a temporary basis, as it were, to burnish the CV, so that, having done it for a few years, you can return to private practice and hope to enhance your earning capacity.

There are also real questions about independence that arise from this. If any High Court judge were sitting in a series of cases in the commercial court or the chancery division, and everyone knew that he or she was thinking of doing it for four or five years and then looking for a lucrative billet somewhere, there would be, I think, a perception—or at least a danger of a perception—of lack of independence.

Q37 **David Hanson:** What about fee-paid judges?

Lord Burnett of Maldon: Fee-paid judges are very different, because they overwhelmingly start doing it because they think they might want to be salaried judges or do it for interest. It is not a question of them looking for a job somewhere else. That is the critical thing. If you become a salaried judge, you cannot practise while you are a salaried judge. That is the statutory position.

Could I ask you to imagine this? Particularly with the more senior judges in the High Court or the Crown court, if it were the general expectation that any of them might be looking for a job in a year or two, how would that impact on the reputation of the judiciary, given that those who appear in front of them are the very people from whom they might be seeking employment?

It is something I am very cautious about. I appreciate the questions that have been asked, and the Government, I recollect, indicated that it would consult widely, including among the professions, to see what the general view is. I am not sure where that consultation process has got to.

Q38 **Chair:** Is it also fuelled by the fact that the judicial retirement age is, many might argue, much lower than you would expect in other professions in this day and age?

Lord Burnett of Maldon: Yes. The judicial retirement age is a very tricky subject. You could have sitting in front of you five different judges, all of whom would have different views about it, because it is not something about which everybody agrees. My personal view, and I emphasise that it is my personal view, is that we are losing too many superb judges at 70 whom we should be encouraging to continue to sit.



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Because of the shortage of salaried judges at the moment, we can arrange it so that almost anybody retiring at 70 who wishes to continue to sit can do so.

Q39 **Chair:** As a deputy.

Lord Burnett of Maldon: As a deputy. That is one of the ways, coming back to Ms Prentis's question, in which we are making good the deficit. When one looks at some of those who have retired from the Supreme Court, the Court of Appeal, and indeed the High Court recently, at the absolute height of their powers, I can see a case for increasing the retirement age. That said, as you appreciate, one of the principal arguments put against it is that it could be a drag on changing the diversity of the judiciary. So, again, there is a balance there and there is no easy answer to any of that.

Q40 **Victoria Prentis:** There are no easy answers, but would one solution be to enable you to continue to sit at the level at which you are sitting rather than change your status, as it were, to work on a part-time basis and work down?

Lord Burnett of Maldon: That is possible already. There is a statutory anomaly, it might be thought, in that it is possible to extend in office those at circuit judge and district judge level, and the equivalence in the tribunals, beyond 70 on a year-by-year basis. But you cannot do that for High Court judges or above. Again, that is happening quite a lot now.

Chair: That is bizarre, is it not? I will bring in Mr Charalambous now.

Q41 **Bambos Charalambous:** On the issue of judges' morale, in your report at chapter 3, you talk about the threats, verbal abuse and physical attacks experienced by some members of the judiciary and their families. In addition to providing judges with welfare support and resilience training, what more do you think could be done to prevent the threats and attacks from happening in the first place?

Lord Burnett of Maldon: There are two separate issues here. The first is threats to or physical attacks on judges, and sometimes on members of staff as well, within the court buildings. The second is behaviour outside the court buildings. A lot of work has been done to improve the physical security of judges in our court buildings, and, indeed, as I mentioned a moment or two ago, of the £15 million identified in the Budget, £3 million of that is for security issues. Some of those are really quite simple and straightforward things. We have done a lot of work on that with HMCTS, and there is also clearly important work to ensure that people do not take into courts things that can be used as weapons.

I wish to put on record not only the enormous work being done by judges through our security committee, but by HMCTS, to try to minimise the risk in courts. We cannot get rid of it altogether. It is something you will all be very conscious of in your work generally. I am afraid that people



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are not behaving as well when they get wound up and overwrought as, perhaps, they used to. That is one aspect of what is being done.

There are, happily, relatively rare cases where it is known that an individual judge is the subject of a threat that needs to be taken very seriously. There are then mechanisms in place with police forces to provide appropriate support and protection.

The third thing that is happening is that I have had a concern, as have one or two of my senior colleagues, that there have been incidents in the past involving a judge outside court related to the judge's work inside court that have not been prosecuted as they should have been. A new protocol has now been agreed with the senior police to ensure that, if something happens that can be related to the judge's activities as a judge, it is dealt with, with appropriate seriousness, as it should be.

Q42 Bambos Charalambous: On the point about the courts estate and safety, sometimes there are women who are in dispute with an ex-partner. The courts treat them differently, so they might get more protection in the magistrates court than, say, in a family court, because there might be better protection or there might be a room that they could go to. Is that something that also can be taken on board in considering the safety of victims of domestic violence?

Lord Burnett of Maldon: Yes, and it is, within the constraints of the buildings that we have. One often hears a suggestion that there should be separate entrances, for example, for different categories of people going to courts. It is a very good idea if there are separate entrances, but in today's environment HMCTS realistically cannot build new ones. But steps are taken within courts to try to keep people apart who might otherwise become emotional and, frankly, kick off, which does occasionally happen.

Q43 Bambos Charalambous: I have one more question about the general perception of judges. There are some outdated media stereotypes of the judiciary that form a very misguided public opinion about the work that they do. Can you tell me what steps you and your colleagues are taking to overcome these public misconceptions and with what results?

Lord Burnett of Maldon: We are getting out and about much more from top to bottom. I have been trying to explain publicly a little more of what we do and to emphasise that the stereotype of the judge in the full-bottomed wig, which the press always want to use even though we only put them on for ceremonial occasions—

Chair: And the gavel that we never use.

Lord Burnett of Maldon: Yes, indeed. It is so different from the reality of the thousands of judges, fee paid and salaried, dispensing justice in the tribunals, magistrates courts, county and family courts. So, it really is not as people seem to think. I am doing what I can, but, importantly, we have a dedicated programme that is educational at its base, which



involves making materials available to schools; it involves judges and magistrates going into schools; it involves getting kids to our courts so that they can see what actually happens.

As it happens, today there is a new page going on our website. I promise it is a coincidence that it is happening today and I am before you today. It just got finished yesterday. It is very much designed to enable schools simply to go on to the website and then they can get links to all sorts of useful materials that explain about the rule of law, what judges do and emphasise the importance of it. There is a really quite elaborate programme going on, and a lot of my colleagues, particularly the diversity and community relations judges, are out and about all the time. They all do it in their own time—so much so with judges. They are all doing this in their own time, but they recognise the value of it.

Q44 Chair: Do you think that the press has a responsibility for some of the attitudes towards the judiciary, with headlines of a kind that most people find offensive, frankly? You cannot answer sometimes as judges, but should we as politicians be doing more to call out that sort of behaviour?

Lord Burnett of Maldon: Overwhelmingly, the press reports accurately what goes on in our courts. Occasionally, some parts of the press do not, but I guess that that is life and there is not much that one can realistically do about it.

Q45 Chair: That is very restrained and measured of you, more than some of the press sometimes are. Before we move on, of course, an awful lot of the work is done by magistrates, by lay people, as part of the judiciary. Mr Hanson was talking about the sense of morale and involvement. When we did an inquiry into the role of the magistracy, there was a sense that they very often felt that things were done to them rather than with them and they were at the tail end of a chain. What are you doing to address that?

Lord Burnett of Maldon: I hope that that is no longer so. There has been a reorganisation of the leadership structures for the magistracy, which has been quite successful in aligning the way the magistrates are led with the way other parts of the judiciary are led. We engage with the magistracy all the time, and particularly the senior presiding judge has a great deal to do with the magistracy, as do the presiding judges around the country and the resident judges in all the Crown courts.

The magistracy, like the rest of the judiciary, has been subject to a lot of change lately. That can be quite unsettling. Both the magistrates and the judiciary are working closely with HMCTS to ensure that change happens in a way that delivers improved justice. Most magistrates are very enthusiastic about that.

There has been a particular concern, I know, among many magistrates that the reduction in their numbers over recent years has gone too far. There is a recruitment exercise under way at the moment. As you may



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know, we have introduced a new system to recruit magistrates to sit in family courts exclusively, if that is what they want to do, because there is an increasing need for them to sit in family courts. But we are also recruiting new magistrates to sit in criminal magistrates courts and to sit in the youth courts. I hope things are improving.

Q46 Ms Marie Rimmer: You have just mentioned the reduction in the number of magistrates over recent years. Do you think the current number of court magistrates needs to be maintained to future-proof the functioning of the courts?

Lord Burnett of Maldon: The reduction has gone as far as it should go and needs to go. The recruitment process that is under way at the moment is designed to stabilise the number of magistrates.

As far as I am aware, there are sufficient magistrates to discharge the business, but, as I said, we are looking to increase the use of magistrates in the family courts. That has happened over the last three or four years since the creation of the unified family court, and they play an absolutely crucial and vital role in the family justice system.

Q47 Ms Marie Rimmer: You are hopeful of keeping pace.

Lord Burnett of Maldon: I hope so, yes.

Q48 Ms Marie Rimmer: Your report refers to the well-publicised problems affecting disclosure in the Crown court and limited resources for forensic services. To what extent do these problems affect the operation of the court, and what practical steps do you think could be taken to address them?

Lord Burnett of Maldon: Starting with disclosure, I am conscious that this Committee has looked at that question in some detail relatively recently. Disclosure is something that bubbled up into the public consciousness earlier this year as a result of some well-publicised problems. That caused both the CPS and the police to look very carefully at their practices relating to disclosure. It also resulted in the then Attorney General setting up a review. The new Attorney General published the results of his review only last week. It is clear that a good deal is being done to try to ensure that the sorts of problems we all read about earlier in the year are contained.

I am aware, because I have talked to them about it, that the police have taken a lot of time and trouble to train officers in the importance of dealing with disclosure actively, not just seeing it as a bolt-on and a nuisance at the end of the process. I am not suggesting that that was the general view, but it was certainly reported as such. Similarly, the CPS has been looking very closely at it.

From the point of view of the magistrates courts and the Crown court, we are in the business of ensuring a fair trial. In many cases, disclosure is at the heart of whether there is or will be a fair trial. The statutory scheme,



which I recollect your Committee thought did not need changing, and that is certainly the view of the judiciary, is such that disclosure obligations rest on the prosecution. Judges can become involved in it when there is a dispute. It is so important—it is vital—for the integrity of the criminal justice system that disclosure is done properly.

So far as forensic science is concerned, we move into another environment where it has been suggested by witnesses who have been before you that the essential problems are ones of funding. It would be lovely to think that in every case all the forensic investigations that everybody can think of would be done. There is an awful new word. To “forensicate” is what it is called. But that is not realistic because it has to be proportionate. Again, it is critical to the integrity of the criminal justice system that forensic investigations are conducted when they are reasonably needed. There is a concern that simply because of the constraint on resources there are cases that should have more by way of forensic investigation that do not. That can cut both ways. It may well mean that individuals who should be convicted are not convicted. Of course, more worryingly, people may be convicted who should not be convicted. This is part and parcel of what all objective commentators seem to suggest is a lack of resources across the whole system.

Q49 **Chair:** I suppose, ultimately, the judge is the guardian of the integrity of the process in a criminal trial.

Lord Burnett of Maldon: Yes.

Q50 **Chair:** There is a risk, if disclosure is not got right, that more judicial time and effort have to be spent in policing the system, with more case management and more intervention by the judge, which eats up judicial resources.

Lord Burnett of Maldon: There can certainly be additional time spent dealing with disputes over disclosure. The more common experience is that disclosure comes very late. If that happens, it can interrupt the flow of a case. It can result in a case that is listed to be heard being put off. It can result, as we have all experienced with disclosure in the middle of a case, in everybody having to spend a day going through the files that have been disclosed. So, it does have an impact in that way, for sure.

Q51 **Ms Marie Rimmer:** This Committee has long been interested in the availability and adequacy of alternatives to custody. The quality of these alternatives might reasonably be expected to have an effect on the confidence with which judicial office holders might impose a non-custodial sentence. The setting of policy is for Government, and it is for Parliament to make the law, which judges then apply and interpret. Have you any observations to make on the confidence that judicial office holders might have in these alternatives and how that might affect their sentencing choices?

Lord Burnett of Maldon: It is very well known that there were big problems with the contracts that the MOJ had for monitoring and



supervising community sentences. Again, this is something that I know this Committee has looked at.

You heard evidence last year, or maybe earlier this year, from Lord Justice Treacy, who was then chairman of the Sentencing Council. I know he explained to you in some detail the perception of the judiciary about how a lack of confidence in the administration of community sentences fed into sentencing. I do not think I can add anything useful to what he said.

There is a need for there to be confidence in community sentences, and judicial confidence is only a small part of that, to be perfectly frank. The public need to have confidence in community sentences—that they both punish as appropriate and rehabilitate appropriately. The public need to have confidence that, if people are not performing the tasks that they were set in their community sentences, they are brought back to court. Similarly, it seems to me that those who might be the subject of community sentences need to appreciate that they have a rigour to them. As Lord Justice Treacy, I think, told you when he came here, there were endless examples of people breaching community sentences and not being brought back before the court, which frankly undermines the system completely.

The Government are consulting on this whole area at the moment. My understanding is that the MOJ is determined to make community sentences work and to have in place processes, procedures and contracts that mean that the same sorts of problems will not develop again. I very much hope that that is the case.

Chair: Out of order, Mr Hanson will now ask you some questions about your role as Chief Justice of England and Wales.

Q52 **David Hanson:** As a Welshman, I am very interested in the fact that the Welsh Assembly, for example, now has legislative powers and there is an increasing number of divergent pieces of legislation across England and Wales. From your own perspective, what are the impacts on your colleagues, and what preparations are being made accordingly?

Lord Burnett of Maldon: As you say, the Welsh Assembly has been legislating for quite some years now. It has also been producing not only primary legislation but secondary legislation. There are areas of Welsh law that are developing quite differently from English law. Examples are in landlord and tenant, and housing, but those are not the only areas.

As part of the Judicial College, we have a separate Welsh committee that has within its remit the need to provide information and training for judges who sit in Wales in Welsh law. That is what they are doing, including producing a newsletter—an e-letter—three or four times a year, notifying judges who sit in Wales of the principal developments in Welsh law that affect the jurisdictions in which they sit.



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That seems to me to be a really valuable exercise for two reasons. First, as far as I am aware, there is not yet a textbook on Welsh law. Maybe it will not be long in coming.

Q53 **Chair:** Perhaps your predecessor could write one.

Lord Burnett of Maldon: He could probably find time despite everything he is doing. Secondly, there has been and continues to be a real problem with accessibility to Welsh law. It is something that in my first couple of months of office I discussed with the Welsh Government. By accessibility, I mean something as simple as this. It is not yet possible to go online and find all Welsh statutory instruments. There is a plan that the Welsh Government have, for which I am very grateful, to ensure that before too long that will be possible. We have found in Wales that, occasionally the lawyers who turn up for cases, many of whom will not be from Wales, are not aware that the case they are dealing with has a distinct Welsh law aspect. From my perspective, making all Welsh law readily accessible to the public and to the legal profession should be a priority. The judges can take it in their stride because they are aware of it, and we provide the underlying materials to keep them up to date in developments in Welsh law.

Q54 **David Hanson:** Your predecessor is currently leading a review of devolution in Wales and whether we should have a separate jurisdiction. Have you had any opportunity to feed in comments to him?

Lord Burnett of Maldon: Not on that particular topic.

Q55 **Chair:** Do you think it is viable to keep a Wales and Chester circuit?

Lord Burnett of Maldon: Wales is a separate circuit. I am probably now going to make a terrible faux pas, but I think Chester was repatriated to the northern circuit.

Q56 **Chair:** It has been repatriated, has it? Mr Hanson is on the money more than I am on that. It is cutting edge, is it not? But there is a recognition that it is separate, isn't there?

Lord Burnett of Maldon: There is a very distinct Welsh legal community, as you will know. Every October, there is a whole weekend that is occupied with Welsh legal matters that I attend. It is an academic conference of judges. There is an enormous amount of vigour in the Welsh legal community.

Q57 **Chair:** It is a community rather than a jurisdiction.

Lord Burnett of Maldon: At the moment.

Q58 **John Howell:** Turning to the family courts, I am trying to get an understanding of why there is such a backlog in those courts, both in public and private law. Is it because there is a shortage of judges, or is it because cases are being brought to the family courts that should not be brought to them?



Lord Burnett of Maldon: I think there are three interlocking reasons why there is a growing backlog of cases in the family courts.

As we were discussing a little while ago, the first is the increase in volume of public law cases. That, undoubtedly, is causing difficulty, because the increase has been very substantial indeed. The public law cases coming through the family courts are running at roughly double the level they were 10 years ago. That gives you a sense of how difficult the problem has become.

In the private law family sphere, when legal aid was withdrawn, my understanding is that, to begin with, the number of cases went down, but then it has come right back up, and we come back to the problem that many of those cases should not be in front of the courts at all. They should be resolved elsewhere or not brought. That is the second feature of the family courts that is causing difficulty and increasing the backlog.

The third is simply the shortage of judges to do the cases. Given that we have the sitting days but cannot use them all at the moment, that is a very worrying feature of the current position. With luck, that will change. The new recorders who are going to sit in family are coming through. I have mentioned the very large throughput of new deputy district judges we are hoping to have in the early part of next year. There will be new appointments to the district bench and the circuit bench. That is part of it that I hope is being sorted.

Q59 **John Howell:** If we look at the Court of Appeal, you seem to have struck a good balance there between cases becoming more complex and yet the number of concluded appeals outstripping applications, and the average time from application to disposal has gone down. How has that been achieved, and is it applicable elsewhere?

Lord Burnett of Maldon: There is a series of interlocking changes that were made that have improved the position in the Court of Appeal, Civil Division. One is that in 2016 some cases that had an appeal route to the Court of Appeal were diverted to the High Court. The number of cases remained the same, but they went to the High Court rather than the Court of Appeal.

The second is that, because of the very substantial number of applications for permission to appeal coming through the doors, we set to work a small group of retired High Court judges, who are statutorily able to deal with the permission to appeal applications, to work their way through some of the backlog. That was a great success.

The third is that the number of applications for permission to appeal in immigration cases significantly reduced. That, in itself, was for a number of reasons. One, undoubtedly, was that there were some areas of law that had become a little unclear, and so there were a lot of applications coming in on the back of cases that were due to be heard in the Court of



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Appeal. There has been some clarity in areas that had become unclear, and that has reduced the numbers.

The other point in the immigration field is that the very fact that applications for permission to appeal are being dealt with much more quickly appears to discourage some applications in the first place, because it is not unreasonable to recognise that most of those cases in the end will involve the status of somebody in the United Kingdom, and delay is a feature that can encourage applications.

Those interlocking reasons, we think, have been the causes of the improvement in the Court of Appeal. It is not obvious that they can be read over into other areas of appeal, to be quite honest. However, I hope it is an example of how we keep a very close eye on what is going on in all aspects of the court system and that we are always trying to look at how we can improve timeliness and the systems to get rid of delay.

Q60 **Chair:** Are we too London-centric?

Lord Burnett of Maldon: We are less London-centric than we were. So far as the High Court is concerned, it has always sat all over the country. As you know, in recent years, the administrative court sits all the time in the major regional centres. The business and property courts have been established in many big regional centres to encourage very large commercial and property claims to be dealt with somewhere other than London. We also now take the Court of Appeal out of London, so I shall be sitting in Swansea in two or three weeks' time. The Master of the Rolls has recently been with the Civil Division in Birmingham. I was in Cardiff. We are trying to emphasise that London is not the be-all and end-all of the legal world.

Q61 **John Howell:** Can I change the subject slightly here? I run the all-party parliamentary group on ADR. If we look at the world post Brexit, do we have the ability here in the UK to continue first-class international dispute resolution?

Lord Burnett of Maldon: Yes is the answer to that, but there is a significant caveat that I would like to enter. As you will appreciate through the work that you do, London is the premier international dispute resolution location because we have a very well-developed arbitration system in London and we also have a business and commercial court that is the envy of the world. There is no doubt that the standing of the commercial court and the business and property courts worldwide is exceptionally high.

We come back to the difficulty in recruiting judges, because, if we cannot fill those courts with individuals who command the respect of not only the legal profession in London but the commercial legal professions around the world, they will not bring their cases here.

It is striking that so much of the work that comes into those courts in London comes here not because it has to, but because the people



concerned have chosen to come here. It generates billions of pounds for the economy. It generates money well beyond the cases concerned. English jurisdiction clauses put in contracts all round the world mean, potentially, a lot of work for UK-based lawyers. English law clauses in contracts mean work for British legal firms all over the world. So, when it comes to looking at the judiciary and particularly the High Court, being able to continue to say that in our commercial court and our business and property courts, quite apart from elsewhere, we have people who are respected as being the very best available is critical.

Q62 **Chair:** They have to be top of the tree internationally, in effect.

Lord Burnett of Maldon: Yes.

Q63 **Chair:** That income, of course, generates tax revenue as well for public services. Has the judiciary picked up any tendency not to insert English law clauses in some European clauses post Brexit and in effect *acquis communautaire* European law clauses are going in?

Lord Burnett of Maldon: We have heard that that is happening. In Europe, people are saying, "We are not quite sure what is going to be happening in London in a month, let alone in a year or two when we might be litigating, so let's just hold off for the moment." You will know that there are three English-speaking commercial courts that have just been set up in Europe—in Frankfurt, Paris and Amsterdam. You will know that New York is a very popular destination for this type of work. Singapore has established a commercial court that seeks to offer the sort of service that London would. So, too, has Dubai.

We need to nourish this and we need to recognise that, if we let that slip, it could have very profound implications, not just for the judiciary but for the wider legal profession and all the support services that work in that environment, and more generally for the British economy.

Q64 **Janet Daby:** I have a question on the same lines. In your report, you say that work is in progress in considering the direct impact of Brexit on the courts and tribunals so that the judiciary is prepared. Could you just say a bit more about this work that you are doing?

Lord Burnett of Maldon: Given everything that is going on at the moment in this place, it would be a very unwise Lord Chief Justice to make any predictions about what is going to happen. There are obviously potential impacts on the courts whatever happens over Brexit. For example, the need possibly to introduce hundreds of statutory instruments, which is being canvassed at the moment, may lead to increased work in the administrative court. That is something that we are aware of and for which we are gently making contingency plans.

The same is true across all sorts of areas of legal endeavour depending on what happens. One can see that, if things happen in a disorderly way, that could generate a lot of applications to the civil courts to sort out all sorts of implications. That much is inevitably so.



What we have been doing, with the help of the MOJ, is to look across all the areas of work that we currently undertake, both in the tribunals and in the courts, and ask ourselves, "What if?" We cannot make firm contingency plans because we do not know what contingency we are planning against at the moment, but we are aware of potential difficulties and we are quietly trying to put ourselves in a position to deal with them.

Q65 Janet Daby: With the consideration of this, what is your view on how this would, could or might affect workloads?

Lord Burnett of Maldon: There is the real risk of a spike in workload in quite a number of different areas, and if that happens, we will have to try to bring in deputies to assist in dealing with it. Quite a lot of it would need to be dealt with quickly if it comes to pass.

Q66 Chair: That is a cheering thought. Finally, you and the Lord Chancellor have a particular role under the Constitutional Reform Act, and there is a unique balance between your role as head of the judiciary and that of the Lord Chancellor. Are you satisfied that you have the constitutional tools and the practical means to exercise your role effectively, and do you get the collaboration that you need from Government around this?

Lord Burnett of Maldon: Underlying your question is a very big question about the nature of the constitutional settlement that was arrived at 12 years ago or so now. It is not that I think you are really asking me, but more the day-to-day relationship question. I am happy to say that both at a personal and professional level I have an excellent relationship with the Lord Chancellor, as I did with his predecessor, who was, as it were, my Lord Chancellor for only a relatively short time. We work very closely together. We see each other very frequently. We discuss matters in detail, and I have no doubt at all that both he and his senior officials are fully aware of the constitutional niceties and are very solicitous about them indeed.

Q67 Chair: Of course, as the youngest Chief Justice for nigh on a century, you have potentially a long term of office in front of you. You are going to see out this Committee, I suspect. What would you say is the principal ambition for your tenure?

Lord Burnett of Maldon: In the short term, I have two really big ambitions. The first is to see tangible improvements in judicial morale. I regard it as my primary function to lead the judiciary in a way that improves the morale of the judiciary. Secondly, I see it as my fundamental role to ensure, so far as we are able to do so, that the modernisation programme gets home in a way that improves the way we administer justice in this country.

To that end, I have made some really quite profound changes in the engagement of the judiciary with the reform programme during the course of the last year. We are deeply involved in providing to HMCTS the experience and expertise of judges in each of the different jurisdictions so that any proposal, any thought, about something that might be a good



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idea is tested heavily against the knowledge and experience of people who spend their days, all day, every day, in courts. I am pretty confident that the engagement that we have and the enormous hard work that is being done by a very large number of judges has resulted in a programme that is going to be a good deal better than it would have been without it. The judges are enthusiastic for modernisation that will improve the administration of justice and improve access to justice, and that is what we are working for.

Q68 **Chair:** Lord Burnett, thank you very much. We have dealt with a range of topics and we are grateful for your frankness and your time.

Lord Burnett of Maldon: Thank you very much indeed for your time.

Chair: Thank you for your evidence and I am sure we will look forward to working together in the future. Many thanks.