



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

## THE LORD BURNETT OF MALDON, LORD CHIEF JUSTICE

INAUGURATION OF DAVID GREEN, LAW SOCIETY PRESIDENT

14<sup>TH</sup> OCTOBER 2020

1. I am delighted to have been asked to contribute a video clip for the remote inauguration of David Greene as the 176<sup>th</sup> President of the Law Society. He assumes office at a time when the legal profession and the nation are under severe strain as a result of the COVID-19 pandemic and also as the United Kingdom forges a new place in the world as its relationship with the European Union changes.
2. May I first congratulate David on his appointment and wish him well during his term of office. May I also pay tribute to the work of his predecessor, Simon Davis, who was an outstanding President during increasingly difficult times. A close relationship between the solicitors' profession and the judiciary is an important underpinning feature of the administration of justice in England and Wales and I look forward to forging a strong and productive working relationship with your new President, as I did with his predecessor.
3. The website of the Solicitors Regulation Authority suggests that there are not far short of 150,000 solicitors practising in England and Wales. Those solicitors range from sole practitioners to the vast commercial firms with hundreds of fee earners, if not more. All share a common aim to provide legal advice and support to their clients and all play a vital part in sustaining the administration of justice and upholding the rule of law. The range of



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

work is enormous. Most involves providing advice to individuals and companies alike in non-contentious or transactional work.

4. The aspect which attracts more public attention is the work which concerns the courts and tribunals and litigation of all sorts. I have, on a number of occasions, commented upon the vitality and independence of the legal profession as well as the independence of the judiciary. For all sorts of reasons lawyers are not always popular, at least until someone is in difficulty. Lawyers have a duty to act fearlessly for their clients, subject always to their overriding professional obligations and duties to the courts, and should not be subject to criticism for doing so. As the Lord Chancellor put it only two weeks ago, “it is right and proper for practitioners to make the strongest cases possible and do their utmost for their clients within the confines of the law. Sometimes a lawyer will find the argument they advance to be at odds with the Government of the day – but it frankly it is a strength of our mature democracy underpinned by the Rule of Law that such debates can occur.”<sup>1</sup>
5. Whether acting for a client in the social entitlement chamber in a dispute with the Department of Work and Pensions or in a vast commercial claim in which an emanation of the state is a party, our legal profession acts in the best interests of its clients. If the arguments and evidence are sound the case will succeed, if not it will fail. It is one of the

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<sup>1</sup> Speech delivered by the Lord Chancellor at Temple Church for the Opening of the Legal Year Service on 1 October 2020 <https://www.gov.uk/government/speeches/lord-chancellors-speech-opening-of-the-legal-year-service>



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

signal characteristics of our legal system that the Government enjoys no “home advantage” before our courts and tribunals. Long may that continue.

6. For the moment, however, physical appearances before our courts and tribunals present what all hope will be temporary difficulties. Even before lockdown was announced by the Prime Minister on 23<sup>rd</sup> March this year, I had encouraged all judges to use technology to hear as many applications and cases as was compatible with the interests of justice.
7. We soon discovered that those courts and jurisdictions that had benefited from digitisation as part of the reform programme were in a much better position to weather the storm that the COVID-19 pandemic brought.
8. In all our jurisdictions work continued but it was necessary to suspend trials in both the Magistrates’ Courts and Crown Court temporarily. Trials in the Magistrates’ Courts restarted after only a few weeks and I am happy to say that the volumes of trials there have more or less returned to pre-COVID levels. There is optimism that the increased backlog of work will be cleared within a few months in that court.
9. The position in the Crown Court was more difficult. Within three weeks of lockdown I had established a working group to develop plans to restart jury trials in a way which was consistent with advice from Public Health England and Public Health Wales. Remarkably, as it seems to me, jury trials recommenced in a number of courts on 18<sup>th</sup> May and the volumes of trials have steadily increased. HMCTS is confident that by the end of this month



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

250 courtrooms will be capable of hearing simultaneous Crown Court trials. Plans continue to be developed to enhance that number within the existing estate, to create a number of so-called Nightingale Courts to hear non-custody Crown Court cases and also to expand the use of COVID operating hours which have different judges and lawyers dealing with two cases in a day, one starting earlier than normal and one following on and sitting later.

10. The work of the High Court and Court of Appeal has continued, if not as normal, certainly approaching normal levels of activity. There have been particular pressures on the Family and County Courts. Urgent family work had to be prioritised. As all family practitioners well know, the volumes of both public and private law family work have been growing relentlessly in recent years. COVID has added to those difficulties but the disposal rate is almost back to normal. The County Court it is not digitised. There have been difficulties in dealing with some of its work, but steps continue to be taken to increase volumes with a view to containing backlogs.
11. What is clear is that to recover the position the court estate and judicial resources, especially fee-paid, must be used to the greatest extent possible, without artificial constraints being imposed by restricting sitting days.
12. In March the availability of technology in most of our courts was very limited. It is astonishing to reflect that most judges were not even equipped with phones capable of handling conference calls. That was soon remedied. All courts were then quickly equipped to be able to conduct hearings either remotely or as hybrid hearings using the commercially



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

available online platforms. More recently, the Cloud Video Platform has been rolled out across all jurisdictions. It is an improvement on what came before but only a step on the way towards the video system planned for the future.

13. At all levels, judges and practitioners alike at times have struggled when the technology has been stretched. The universal experience is that the systems we operate are only as good as the broadband of the weakest link. Particularly in the early days, many of those involved in court hearings were working in cramped and difficult conditions at home. That position improved, at least for the judges, as more were able to return to their courts.

14. Despite the difficulties, it has become reasonably clear that some types of hearings in all jurisdictions can benefit from the use of technology, not least in significantly increased convenience for litigants and lawyers alike.

15. I have observed before that I think the days are over when a lawyer will travel perhaps for an hour or more to attend court, wait around and then deal with an application before travelling back. We have taken three steps forward as part of the biggest unheralded pilot project in the history of our courts. Once COVID is over we are likely to take one step back. But it is important that we bake in the advantages that the use of technology can bring, conscious that the interests of justice are not the same as the interests of judges or of lawyers.

16. But we must also be alive to those parts of the court process that do not lend themselves well to remote attendance.



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

17. I am very conscious that during this COVID emergency many firms of solicitors have been placed in acute difficulty, and those difficulties are not behind us yet. I would like to pay tribute to the remarkable way in which the legal profession has adapted, and put itself out, to sustain the administration of justice over the last seven months.

18. Almost certainly, there is a long road ahead which will not be free from difficulty. We in the judiciary recognise the need for discussion, for consultation and for the involvement of the legal profession in plans to develop and enhance the capacity of the courts during these testing times. I look forward to working personally with your new President in a joint endeavour with others closely concerned, to sustain the administration of justice, of which a healthy legal profession is a vital part.

19. Thank you.