

**PRESS CONFERENCE**

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES  
(The Rt Hon The Lord Burnett of Maldon)

on

Friday, 28 February 2020

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**THE LORD CHIEF JUSTICE:** When I met many of you at my first press conference, I said that one of my aims in office was to work with you to increase understanding of the courts and the justice system. I am glad to be able to report progress. We already allow filming by broadcasters in the Court of Appeal. We now live stream hundreds of Civil Cases directly and keep them on our website as an archive. This year we have put all the steps in place for high-profile Crown Court sentencing to be filmed once Parliament gives its approval.

I have taken steps to increase the public understanding of the judiciary - I've visited schools, and so have many of my colleague judges and magistrates. We now have around 130 Diversity and Community Relations Judges who visit schools and communities regularly to increase understanding about the judiciary; and schools visit our courts. We have made online resources available to schools. And then, just this month, we launched a free online course with Kings College London which provides insight into who the judiciary are and what we do. I am pleased there is an interest we are able to satisfy - more than 2,000 people have signed up and are working their way through it.

I have also highlighted the role the judiciary plays in constantly improving the justice system. I would like to draw particular attention to the review Sir Andrew McFarlane has put in train across every aspect of public and private family law processes to help all the people in them to work as effectively, openly and efficiently as possible.

That continued innovation is critical to the success of the Commercial Court, which next week celebrates its 125th birthday. The Commercial Court plays a vital part in attracting business to London. Three-quarters of the cases it hears involve at least one party from outside the UK. Our judges and courts are and will remain as good as any in the world, and the trust they inspire in the rule of law helps bring billions of pounds to the UK's economy.

It won't have escaped your notice that constitutional issues are in the spotlight, with questions under debate involving all three branches of the constitution – the Government, Parliament and the judges.

Commentators enjoy speaking of conflict when they talk of the constitutional commission foreshadowed in the Government's manifesto before the general election in December. There would be little mileage in stories suggesting that a period of calm reflection on various aspects of the constitutional arrangements in the United Kingdom is called for. The impact of the Human Rights Act and developments in judicial review are but one part of that. But calm reflection is what we hope to see. Many will play their part, but I fear collectively we will disappoint if what commentators are expecting is a display of endless fireworks. Thank you.

**CHAIR (STEPHEN WARD, HEAD OF NEWS, JUDICIAL OFFICE):** So, first, Jonathan.

**JONATHAN AMES (THE TIMES):** Jonathan Ames representing the Times.

**LORD CHIEF JUSTICE:** Yes.

**JONATHAN AMES (THE TIMES):** The Government is committed to recruiting a significant number of new policeman, and the CPS has already launched a recruitment drive to recruit up to 500 new prosecutors. But the courts are fewer, physically, and the number of sitting days in the court has been reduced. Do you anticipate that more police and more prosecutors will create bigger backlogs?

**LORD CHIEF JUSTICE:** Well, your question throws us straight into the issue of sitting days in the Crown Courts. I should say that there is no shortage of Crown Court hearing rooms; it is a mistake to think that anything that has happened in the Crown Courts in a physical sense has caused any difficulty. But sitting days are the curious currency of the courts in all jurisdictions.

Over the last six or seven years, the number of sitting days provided in the Crown Court has come down year on year. That is because the number of cases entering the court system has been in steady, some would say, steep decline over the last six or seven years at least. It is now a topic of constant debate in the media and politically. The basic question, not for me but for others, is why is it when crime does not appear to be diminishing that the number of cases coming into our courts has diminished? Now, each year analysts in the MoJ, Ministry of Justice, and also in the court service and indeed in this building, try to predict what the volume of work will be coming into the Crown Court. The government has hitherto determined its offer of sitting days on the assumption that they should be sufficient to cover the work coming into the Crown Court but keep the backlog stable.

Now, as it happens, ever since the reductions started to come into play, as a result of increased efficiency in the courts for which the judges and the legal profession principally were responsible, the backlog nonetheless continues to fall. For the last financial year, for the first time, the analysts' predictions were not accurate and so the number of cases that came into the Crown Court and continue to come into the Crown Court since last April, has not diminished as was expected. The result is that large numbers of cases involving defendants who are not in custody are being listed further into the future than hitherto has been the case. I should recognise that this position became apparent in the summer and the Lord Chancellor reacted after discussions between him and me and our respective officials by providing some additional sitting days, 850 extra sitting days, to use this financial year. I am expecting any minute an offer from the Lord Chancellor in respect of Crown Court sitting days for next year. He has already publicly indicated that the figure will not be less than 87,000, which is an increase of 4,700 on the original allocation for this financial year. I am confident that the offer will be higher. But one of the questions will be whether the offer is designed to maintain the backlog at the level it is now at or to reverse it to the level it was at a year ago, and can I say something about backlog? It is inevitable that there will be a backlog in any court because it takes time for the parties to be ready for a case to be heard. But the judiciary would like to see cases tried in all jurisdictions as soon as reasonably practicable after the parties in them are ready to start and so any backlog beyond that level is not a matter of judicial decision, it is a matter which the Executive decides for its own reasons. Forgive me, Jonathan, that was rather a long answer to a short question.

**CHARLES HYMAS (DAILY TELEGRAPH):** What for you would be a sustainable backlog? What're the figures on that.

**LORD CHIEF JUSTICE:** I cannot give you the figures—

**CHARLES HYMAS (DAILY TELEGRAPH):** Charles Hymas, Daily Telegraph.

**LORD CHIEF JUSTICE:** Yes, forgive me. I cannot give you a crude figure, because there are three quite different components of Crown Court backlog. Large numbers of cases go into the Crown Court and result in guilty pleas, some of them very early on, and those tend to be dealt with very quickly. The second component in the Crown Court are those cases where the defendants are remanded in custody. Parliament has specified that there are time limits for remanding people in custody before their trials must be heard and those time limits can only be extended in very limited circumstances, now is not the

time to give a legal lecture on that. So, custody cases, as we call them, tend to be tried relatively quickly because they have to be tried within the custody time limit specified by parliament. So the cases that we have seen being listed further into the future than is ideal are those where the defendants are not in custody, and that is a very large component of the work in the Crown Court, in other words, defendants who are on bail, often subject to conditions, pending the trial of the case.

**CHARLES HYMAS (DAILY TELEGRAPH):** Are they unacceptable delays?

**LORD CHIEF JUSTICE:** In my view, the delays should be shorter.

**CHARLES HYMAS (DAILY TELEGRAPH):** Are they unacceptable?

**LORD CHIEF JUSTICE:** Well, I would be much happier were the backlog of those types of case to continue to fall.

**JONATHAN AMES (THE TIMES):** Just to be clear, that third category, that's the majority, is it?

**LORD CHIEF JUSTICE:** I do not, Jonathan, carry around in my head I am afraid the figures, I think it is the majority, but I would be grateful if somebody could check that for me.

**CHAIR:** Clive and then Owen?

**THE LORD CHIEF JUSTICE:** Yes?

**CLIVE COLEMAN (BBC):** In addition to the issue of sitting days, if you talk to professionals in the legal system they talk about a crisis in the system, for instance, the retention of senior solicitors on duty solicitor schemes, and some of those are fraying at the edges. They will talk about the difficulties created by the court closures and travelling great distances to get to court plus the court estate itself is falling apart. Do you regard the criminal justice system as being in crisis and do you think that crisis could be fixed before we have what will inevitably be a very lengthy Royal Commission into criminal justice?

**THE LORD CHIEF JUSTICE:** Well, within your question, Clive, there are quite a few components. I try to avoid using hyperbole in any of my public statements, and so I would not adopt the word "crisis", because the problems in that part of the criminal justice system with which I am concerned, are multi-faceted and are not necessarily the same in all areas. But just to deal with some of the topics you raise, the vitality of the criminal legal profession was underlying one part of your question. To my mind, it is vital for the administration of justice and the rule of law that there is a vibrant criminal legal community, that means legal executives, that means solicitors and that means barristers. The information available, which was published first by the Law Society about two years ago on the geographic spread of criminal solicitors and the demographic, that is to say, the average age of criminal solicitors, is something that concerns me, because there needs to be a sufficient number of and a vibrant and effective corpus of criminal solicitors to support the system. So too criminal barristers.

Court closures is a very difficult issue, and in the end, as I think you all understand, court closures are for the executive, not for the judges. If there are court closures they follow extensive consultation. There is always a balance, because whilst it would be desirable for courts for purposes of convenience to be

everywhere if there are small courts, particularly small courts in inappropriate buildings and small courts that are underused. Obviously there are balances that have to be struck. The problem with court closures is not one that affects the Crown Court. There is a big crown court closure in London, but there is plenty of capacity to deal with its cases elsewhere, and also there are plans to build another crown court in London in the near future.

So those are aspects which I think one has to bear in mind. The state of the court buildings is something I have spoken of repeatedly in the two and a half years that I have been Lord Chief Justice. It is no secret that the court estate generally is in a poor condition. It is true that we have some relatively new, terrific buildings, but there has been underspending in any objective sense, on court maintenance for many years now, and I hope that as we go forward additional money will be found by the Treasury and the MoJ to make good some of the degradations that the court structures have suffered over recent years.

**CHARLES HYMAS (DAILY TELEGRAPH):** Did you say degradation?

**THE LORD CHIEF JUSTICE:** Degradations. Did I pick up all aspects of your question, Clive, or did I leave anything out?

**CLIVE COLEMAN (BBC):** Can you give us an indication of what you think a Royal Commission can achieve and whether the issues you have been discussing so far will be addressed?

**THE LORD CHIEF JUSTICE:** Yes. The Royal Commission, as foreshadowed in the manifesto, is a Royal Commission into the criminal process, so it is not a general Royal Commission into the criminal justice system, as I understand it, that the government has in mind. But that is a matter for the Lord Chancellor and his colleagues, rather than for me. The issues that a Royal Commission might look at could, at least in theory, extend from the date upon which a crime is allegedly committed, so how is it recorded, how is it investigated, what is it that leads to some cases being investigated in one way and other cases not? What is it that leads to cases being referred to the Crown Prosecution and not? What is it that, in short, has resulted in such a steep decline in the number of cases coming into the court's part of the criminal justice system when all the crime surveys suggest that crime hasn't been falling? But part of its remit may well be... I know not, may well be the processes or some of them that operate in the criminal courts. But that is a matter which, as I understand it, is far from having been determined by the government, and we shall just have to wait and see.

**CHAIR:** Owen?

**OWEN BOWCOTT (THE GUARDIAN):** You spoke earlier about how pleased you are to have more transparency in the courts to increase understanding. Your former colleague Sir James Munby produced a very critical speech on the family courts, describing them as a black hole in terms of transparency, partially talking about some of the judge's decisions. Are you worried about the family courts and do you think they should be more open?

**THE LORD CHIEF JUSTICE:** I think most people have rather misunderstood Sir James' paper, which was, if I remember correctly, designed to be given as a speech in Edinburgh but he was not able to get there. Sir James was really identifying problems that other people had articulated and was trying to pull them together, but that is something you must ask him about. So far as transparency is concerned, Sir James himself, when President of the Family Division, took steps to increase transparency in the family courts, and his successor has continued along those paths, I should say with my complete support and encouragement. Again, now is not a time for technical legal answers to questions, but there is a

statutory problem at the heart of openness in the family courts, and Sir James has, in the time since he ceased to be President of the Family Division come to the conclusion that there should be statutory change.

It wouldn't be appropriate for me to make a comment on that, but what I can say is that one of the things that Sir Andrew McFarlane as President has done is to establish a small working group to look at openness and transparency in the family courts across all the different aspects of work that the family courts do. It is calling for evidence, calling for input from people who have a particular interest in it, to help inform him and, in due course, me and possibly, if statutory change is necessary, government about decisions that can be made.

My own position on transparency I think is very well known. Having the work of our courts open to scrutiny is an extremely important matter, both for the purposes of maintaining standards and also for the purpose of transparency and enhancing public confidence. Now, clearly, in the family courts there are particular issues, particular factors that have to be borne in mind. The family courts are often dealing with matters which, on any view are intensely private and often dealing with the interests of children and so all of that has to be very much in mind when one tries to establish an appropriate balance between openness and privacy. And I use the word "privacy", one of the things that can be quite irritating for anyone involved in the court system is the misunderstanding of the difference between the words "privacy" and "secrecy". They are completely different concepts, and I would imagine that if you were to look in a thesaurus you could not find one the analogue of another, but that is just a minor gripe from me, forgive me.

**CHAIR:** Catherine?

**THE LORD CHIEF JUSTICE:** Catherine.

**CATHERINE BAKSI (FREELANCE):** Do you know personally or anecdotally of instances of judicial bullying by judges, particularly senior judges. Linked to that but very specifically not about her tribunal case, how big a debt of gratitude does the judiciary owe to Clare Gilham who won whistleblowing rights for all judges, in the Supreme Court. And is it right it was left to one individual judge to finance that case? Do you regret that the judiciary did not support her?

**THE LORD CHIEF JUSTICE:** I do not know the details of how that case came about or went through the courts. I have read, as others have, the judgment of the Supreme Court, so I am simply not in a position to answer much of the different parts of your question.

So far as the beginning of your question is concerned, do I know of examples of judicial bullying, have I had direct experience or knowledge of it? The answer to that is no, and I do have oversight of matters relating to judicial conduct, and it is not a feature within that system of any significance. Indeed, I can't remember a case. "Bullying" is a term which I think one has to be quite careful with, and my strong sense is that in society, in general, it is being used nowadays to describe conduct which, in the past it simply could not have been used to describe. But what I can say is that to the extent that there are cases of judges bullying other judges if they come to the attention of the leadership judges, and through the leadership judges up the system to me, we would take appropriate action to try to deal with it. It is obviously completely unacceptable.

**CHAIR:** Gaetan?

**GATEN PORTAL (BBC):** Gaetan Portal, BBC. Can I ask about disclosure? Do you think the current rules on disclosure are fit for purpose, and will you be encouraging [inaudible 00:29:17]?

**THE LORD CHIEF JUSTICE:** I assume you are referring to disclosure in the criminal courts rather than more broadly?

**GATEN PORTAL (BBC):** Yes, absolutely.

**THE LORD CHIEF JUSTICE:** Yes. Disclosure is a topic that has been causing concern, anxiety, difficulty since the day I was called to the bar and no doubt for decades, if not longer, before. The Attorney General, Sir Geoffrey Cox, when Attorney General, established a pretty fundamental review of disclosure in the criminal courts, to which judges contributed. The product of that review is itself under consideration at the moment. It is something which the Royal Commission might look at, because it is a process matter, but as I emphasise, that is something which you will have to ask the Lord Chancellor about, rather than ask me.

Proper disclosure in criminal cases is absolutely fundamental to the integrity and fairness of the criminal justice system. Nobody disagrees with that. There are, inevitably, enormous practical difficulties created by the proliferation of electronic communication and social media. Those are things which are being looked at, not only in the legal context but also in the scientific and practical context. It is inevitable, as it seems to me, that in a world where the content of electronic devices is likely to be material to a criminal investigation, that the technology has got to be developed which enables that information to be accessed, analysed, explored, relatively quickly. Now, in a different sphere, that is to say disclosure in big, complex civil actions, an enormous amount of work has already been done, but largely by the big legal firms who operate in that environment, to devise appropriate electronic searching. Now, that's something which I think is going to have to come in the criminal process, but these are really complicated questions and it heartens me that so much thought is going into it from so many quarters.

**CHAIR:** Steve?

**THE LORD CHIEF JUSTICE:** Yes.

**STEVE DOUGHTY (DAILY MAIL):** When the case comes up, as it inevitably will in which trans rights [indistinct] challenge safe spaces for women, how you going to explain how [indistinct] jumped the gun on the issue of unisex loos?

**THE LORD CHIEF JUSTICE:** I'm sorry, I didn't hear that, Steve.

**STEVE DOUGHTY (DAILY MAIL):** Why this court building has jumped the gun on an issue [indistinct] unisex loos.

**THE LORD CHIEF JUSTICE:** Unisex loos?

**STEVE DOUGHTY (DAILY MAIL):** Yes.

**THE LORD CHIEF JUSTICE:** Yes. I have to say I am not sure that unisex loos and transgender necessarily go together.

**STEVE DOUGHTY (DAILY MAIL):** [indistinct] think they do.

**THE LORD CHIEF JUSTICE:** Well have you travelled much in Europe, for example? I mean, unisex loos in France have been my experience ever since I was a small boy, so I do not think there is any jumping of the gun. There are many things about the world of the courts that I know quite a lot about but the details of the lavatorial arrangements in our court buildings, I have to confess are something that I have never encountered and never given a moment's thought to, nor have I been involved in, forgive me.

**SIAN HARRISON (PA):** In your address, you have touched on some of the challenges facing the judiciary. I imagine these have [indistinct] since you took office; improving diversity and the ongoing discussion about the constitution and you mentioned the work that has been going on in schools. To what extent do you think education is important for establishing the importance of the rule of law in society?

**THE LORD CHIEF JUSTICE:** Well it is one of the reasons why when I took office, I established a goal of trying to improve understanding of the rule of law and what the judiciary contributes to that. It has always struck me as slightly odd that those in schools are not routinely given a basic grounding in the arrangements, the constitution of arrangements of the United Kingdom, the political arrangements and thus the three pillars of the constitution; the executive, parliament and the judiciary. My concern is that particularly as regards the judiciary, there are likely to be enormous misconceptions about what the judiciary does. That starts with who are the judiciary? I suspect if you ask most 15 or 16 year olds, they would tell you that the judiciary are people who wear long wigs, they use gavels, they dress in red and they send people to prison. Well that is what a tiny proportion of the judiciary does, but when one looks at the judiciary as a whole, 14-odd thousand magistrates, 1,500 salaried court judges roughly, 400/500 salaried tribunal judges, thousands of part-time fee judges operating across the whole range of judicial activity, it is a very different picture.

I also have long thought that the rule of law is something which is taken for granted, but people do not really understand how vital it is to underpinning the success and prosperity of any society. One has only got to look all over the world at countries where the rule of law does not have deep roots and one sees a lack of success in all sorts of other areas that follow from it.

So we are trying to improve that understanding, but also importantly, and this chimes with your mentioning diversity, one of the problems that I think has beset the legal profession – and after all, the judges all come from the legal profession – is that too many bright kids do not think that the law is for them. It depresses me and I have heard it, "Oh, well the law is not for the likes of us," well that is just not so, and we want to encourage, and by we, I mean not only the judiciary but all branches of the legal profession. We want to encourage bright kids to consider becoming lawyers, and that, if successful, and it is justice week at the moment and the professions are busy championing exactly the same message, if that succeeds, we will broaden, in all senses, the diversity of the legal profession and that, in time – and it is already feeding through – but that in time will help broaden diversity in the judiciary.

**JONATHAN AMES (THE TIMES):** Sorry, just on that point if I may—

**THE LORD CHIEF JUSTICE:** Yes, of course.

**JONATHAN AMES (THE TIMES):** —there is no shortage of students queuing up to get into law school [indistinct], are you saying there is a shortage of them, a certain sector of society?



**THE LORD CHIEF JUSTICE:** Well look, Jonathan, there is a concern that in part because of the considerable expense involved in qualifying as a lawyer, that the social diversity of the legal profession is not what it should be. There are those who say it is not what it was. Now, whether that can be proved empirically, I simply do not know, because one then falls into the realm of anecdote, but that I think is the concern.

**CHAIR:** I think one or two more.

**JONATHAN AMES (THE TIMES):** Is there a contingency plan for the courts for coronavirus? Are you talking to the Department for Health and the Lord Chancellor?

**THE LORD CHIEF JUSTICE:** Yes, the answer to your question is yes.

**JONATHAN AMES (THE TIMES):** Can you tell us what you are doing?

**THE LORD CHIEF JUSTICE:** Well, first of all, there is a flu pandemic continuity plan. Also, there is a lot of thinking going on about it because we interact with other groups, so for example, for the criminal courts, we have to be very alive to what might be going on in prisons for example, and so on, but the answer is yes, and we are assiduously keeping abreast of the advice being given by Public Health England, and we will follow it.

**OWEN BOWCOTT (THE GUARDIAN):** I appreciate this runs along the frontier between politics and judiciary, but obviously there is a commission coming that will look at relations with the judiciary. Will the judiciary be making representations to it and can you indicate what your concerns will be, and will the independence of the judiciary be one of the guiding spirits for what you say?

**THE LORD CHIEF JUSTICE:** Once more, the precise architecture of whatever may come along to look at these constitutional problems is not, as I understand it, yet determined. To the extent that any body – that is body or committee, or commission, whatever it is called – comes along to look at the parameters of judicial review, I think there are some quite important founding principles. Of course, the rule of law and the independence of the judiciary underpin everything, but judicial review is something which is an entirely common law construct. So again, no law lectures but in the mid-60s, long before my time I hasten to add, people did not really think that we had a system of administrative law in this country.

Then there was a handful of decisions in the mid-60s and the 70s and the very early 80s which established the overall scheme of judicial review and thereafter, it has evolved and developed as a result of judicial decision making, and in that, it is no different from the early development of commercial and insurance law in the 18th Century of criminal law before and after the 18th Century and things like negligence and nuisance and so on.

Now as it happens, parliament has never yet legislated on any substantive issue of public law, of judicial review. It has intervened occasionally in procedural matters, and so I think, this is why I talk about calm interaction, one has to understand that in a parliamentary democracy where parliament is sovereign, it is entitled to and it is, from time to time, entirely appropriate that Parliament should look at these issues, and so I do not think it is something that people should get hysterical about to be quite honest. Will we play our part in it if asked? Yes.

**CHAIR:** Have you got any more time? We can take one—

**THE LORD CHIEF JUSTICE:** I see Catherine was very anxious to ask a question as well, so if we do Clive and then—

**CHAIR:** Clive and Catherine and—

**THE LORD CHIEF JUSTICE:** Catherine and then maybe at your discretion one more but then I do have to be somewhere else at ten o'clock.

**CHAIR:** I appreciate that.

**CLIVE COLEMAN (BBC):** Can I invite you to give a one-word answer in relation to this question? Do you regard judicial review as a critical, democratic check on the abuse of power by public bodies generally [indistinct] as the state of affairs currently stands.

**THE LORD CHIEF JUSTICE:** Nobody would disagree that it is necessary for there to be some judicial control of the legality of executive action, and Lord Bingham in his marvellous short book on the rule of law, I think observed something to the effect that not many of us would wish to live in a society where the government was never challenged in its courts. There are perfectly legitimate arguments and discussions and they have taken place in the courts as well about where the boundaries of that review should lie, and after all, as you will know, Clive, in almost all of the cases where it is suggested that the boundaries of judicial review moved, they were appellate cases and rarely were they unanimous. So these debates have been going on—

**THE LORD CHIEF JUSTICE:** I am sorry. Yes.

**CHAIR:** So very quickly, Catherine.

**CATHERINE BAKSI (FREELANCE):** Is it time for gender-neutral judges? For example, Lord Justice this and Lady Justice that. What if a judge is not a Lord or Lady [indistinct]

**THE LORD CHIEF JUSTICE:** I have not given it a moment's thought I am afraid, and so I am not going to be bounced into an answer.

**CHAIR:** Very quickly then, Charles, and that is the last one.

**CHARLES HYMAS (DAILY TELEGRAPH):** You alluded to the fact that cases aren't coming to court because of something that is happening in policing and so on. One of the reasons is obviously the decline in charging rates and the cuts in the number of police officers that have led to that. How far do you think public confidence in the administration of that aspect of the criminal justice system has collapsed?

**THE LORD CHIEF JUSTICE:** I really do not know how far public confidence has diminished in that area. What I think I can comment is that I am quite heartened that over the last six months in particular, the public debate around these issues has become fairly intense. Now, I suspect it is because there is space now for what might be regarded as more ordinary political issues to be discussed when for reasons we all understand, a lot of these issues were crowded out. But I think it is really important discussion and I hope it is something that whatever comes of the Royal Commission, it looks at.

**CHAIR:** Right, well thank you everybody. Thank-you Lord Chief. We have got copies of the opening statement which we will hand out and get the door open for you.

**THE LORD CHIEF JUSTICE:** Thanks for coming, it is very good to see you all.

[Ends]