HOUSE OF LORDS

Constitution Committee

Corrected oral evidence: Annual evidence session with the President and Deputy President of the Supreme Court

Wednesday 17 March 2021

10.15 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Corston; Baroness Doocey; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Lord Wallace of Tankerness.

Evidence Session No. 1 Virtual Proceeding Questions 1 - 11

Witnesses

I: Lord Reed of Allermuir, President of the Supreme Court; Lord Hodge, Deputy President of the Supreme Court.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Lord Reed of Allermuir and Lord Hodge.

Q1 **The Chair:** Good morning. This is the House of Lords Select Committee on the Constitution. We are taking evidence today from the President and the Deputy President of the Supreme Court, in our annual evidence session with them. Welcome, Lord Reed and Lord Hodge.

I think you would like to start by making a brief statement about the world as you see it at the moment, Lord Reed.

Lord Reed of Allermuir: Thank you. I hope this may help the committee. When we appeared before you last year, we did not know that a public health emergency of the utmost seriousness was only a few weeks away, one that would cause the greatest loss of life and the greatest economic disruption since the Second World War. The last year has presented us with major challenges, but we have been able to continue to ensure access to justice, hearing the appeals that we had planned to hear, in a way that has also maintained public access to our hearings.

As always, we have heard a very wide variety of appeals. To give you some examples, we heard a case concerned with the worldwide licensing of patents, where our decision placed this country at the forefront of developments in intellectual property law; a case concerned with international arbitrations arising from the Deep Water Horizon oil spill in the Gulf of Mexico, where our decision strengthened the position of London as a global arbitration centre; and cases concerned with insurance coverage for Covid-related business interruption, with the employment status of Uber drivers and with tax disputes involving colossal sums of money.

We have also continued to hear many cases with important international implications, brought before us by foreign Governments and corporations that choose to litigate in this country or in Commonwealth countries, for which the JCPC, the Judicial Committee of the Privy Council, is the final court of appeal. For example, cases that we are currently considering in the Supreme Court include a dispute between Russia and Ukraine as to the enforceability of a $3 billion debt, and a dispute as to who is the President of Venezuela and, therefore, entitled to control $2 billion in gold reserves held at the Bank of England.

Many of these cases come to us because of the high level of international confidence in our legal system and in the independence of our judiciary. The Supreme Court, in particular, is seen as an international centre of legal excellence and a global champion of the rule of law. As I made clear to you last year, my highest priority is to maintain and strengthen that reputation. As I see it, that is important not only for the court but because, as a country, we have to focus on the economic recovery required after the pandemic and on the new international role that we have to adopt outside the EU.

The Supreme Court and the legal services sector more broadly have an important role to play in the economic recovery and in the realisation of that new international role. As part of that, we have continued to build strong relationships with courts around the world, particularly, in the last year, the Supreme Court of India and the Supreme Court of Japan. We have also strengthened our relationship with the Supreme Court of Ireland.

Domestically, in a time of change and uncertainty, confidence in the rule of law is especially important. At the moment, we need to challenge the idea that this involves a struggle for power between the courts and the Government or between the courts and Parliament. As I see it, our function of interpreting and applying the law does not set us in opposition to government. Our decisions support effective government within the limits of the powers conferred by Parliament. Nor do I see our function as trespassing on the domain of Parliament. On the contrary, it is an essential component of our democracy that the courts ensure that public bodies comply with the legislation that Parliament enacts.

My priorities remain as I outlined them to you last year. While the pandemic has, unavoidably, placed some constraints on what we have been able to do, the court has made a good start on the priorities I described then. We will be coming back to them later this morning. Our intention now is to emerge from the pandemic stronger than before, in order that we can realise those priorities and contribute to our national recovery.

The Chair: Thank you, Lord Reed. Lord Hodge, do you want to add anything?

Lord Hodge: Not at this stage, thank you, Chair.

The Chair: Can I follow up on what you have been saying, Lord Reed? We will want to go on to quite a few aspects of your opening comments.

You mentioned constraints in the past year. Could you tell us a little more about those constraints? Could you also tell us whether anything that you have done in the past year, any of the adaptations that you have had to make in how you work, will be maintained once physical hearings become possible? Will you just go back to working the way you did, or will you incorporate some of the changes that have taken place in the last 12 months?

Lord Reed of Allermuir: To answer the first question, the constraints that I had in mind are when, for example, we come on to talk about the efforts I want to make to strengthen relationships between the court and Parliament, particularly the House of Commons, the inability to have physical encounters has been a problem. Everything has had to be done online, so we have not achieved as much as I had wanted to in that direction. We will go into that in more detail, I expect, later on.

Generally speaking, we have been able to function effectively. We will retain some of the practices introduced. For example, as we have had to do everything electronically, we have had to move to paperless working, a major task, because a typical case in front of us involves perhaps 5,000 pages of documents. Everything has had to be filed electronically. The justices have all had to become used to working from electronic bundles of papers. That is something we are keen to carry on. It had been a longer-term objective, which we were moving towards gradually. Progress has been enormously accelerated. Equally, our library has had to operate electronically as well; for example, it has entered into agreements with legal publishers so that we have, in effect, an electronic law library now. That is immensely useful.

We have found benefits in holding many of our meetings and some of our events remotely, particularly when the other people involved are based outside London. For example, our meeting with the Japanese Supreme Court was facilitated by the fact that we had to do it remotely rather than undertaking long-haul travel. Once you realised you could do that, it was an obvious thing to do, whereas we had never had a meeting with them before because the physical distance was so off-putting. Equally, our public education and outreach functions have become, in some ways, more effective by going online; for student debate days, mooting competitions and tours, we have been able to reach a wider audience than before by doing them online.

We are planning to carry on offering remote hearings for appeals to the JCPC where the time zone allows. For example, if you have an appeal coming from the Bahamas, you do not have to cross the Atlantic to present it. On the other hand, we want to revert to physical hearings in the Supreme Court as soon as we can because they work better. Counsel find they work better and so do we; the whole experience is much more spontaneous and interactive than it becomes online. We have learned a number of advantages from things that we can do electronically and we will retain those. As I said, the core hearings will revert to being in Parliament Square as soon as we can manage that.

The Chair: When you say that hearings work better physically because people feel that they are more part of the experience, you are not suggesting that that alters the outcome of any case.

Lord Reed of Allermuir: No, not at all. For example, we have to allow adjournments because people get tired staring at screens for an entire day. We have to allow adjournments for people to consult their instructing solicitors, if they need to, or the junior counsel assisting them. We find as justices that asking questions during sessions and, indeed, when we come to discuss the hearings ourselves, doing it in the way I am speaking to you at the moment, imposes a degree of formality. There has to be a more structured format to the discussion. You lose the spontaneity that you have if you are sitting around a table or sitting on a bench a few feet away from counsel addressing you.

The Chair: Lord Hodge, is there anything you want to add?

Lord Hodge: I agree with what Lord Reed has said. The court staff and the IT staff have done a wonderful job for us because a very effective system has been operated. The week before the Prime Minister announced the lockdown on 23 March, we were sitting in our courtroom in Parliament Square. I had the privilege of presiding over the first remote hearing of the court on 24 March, the day after, using the Webex videoconferencing platform, which has proved very successful. Throughout, we have managed to livestream our hearings. Our broadcasting team has achieved that. We have produced within a day recordings of our hearings on our website for the public to see. No case during this period was adjourned because the court was unable to provide a hearing. We lost seven cases to adjournment, largely because the people in the local jurisdictions of the JCPC were not able to get access to their offices because of lockdowns. In one case, with their agreement, we determined the appeal on paper. In the other cases, we fixed adjourned hearings for them.

The court adapted very quickly. We had huge advantages in the sense that we are an appellate court so we did not have witnesses giving evidence and, unlike the criminal courts, large numbers of people were not required to be in the building to form juries. It has been a very successful exercise. The IT team and the broadcasting team deserve huge credit.

Professor Richard Susskind produced an article in July for the Harvard Law School comparing the performance of different jurisdictions. He said that "the UK Supreme Court has responded more emphatically and successfully than any of its equivalents internationally. Thanks to the technology, perseverance and judicial adaptability, access to the highest court in the United Kingdom has been maintained during the crisis". The challenge will now be to maintain the good bits for the future and get rid of the more awkward bits, which Lord Reed described.

We have maintained, as Lord Reed said, our public education role, which is a significant part of our job. We have made our facilities available online. If you go to our website and click on "Education", you will see the materials that are available, including interactive tours. We have maintained our contact with sixth-form schoolchildren through the Ask a Justice sessions. We have been carrying out moots online for universities as well.

Q2 **Baroness Corston:** Lord Reed, when you appeared before us last year you mentioned that one of your priorities was to strengthen the relationship between the Supreme Court and the courts below it. What progress has been made to date?

Lord Reed of Allermuir: A number of steps have been taken. First of all, I have invited senior judges from the Court of Appeal and its equivalents in Scotland and Northern Ireland to sit with us as visiting judges on the Supreme Court and on the JCPC. Since the beginning of this year, eight senior judges have sat with us on 10 of our appeals: four judges from the English Court of Appeal, two from the Scottish Inner

House and two from the Northern Irish Court of Appeal. That has worked very well, and I intend to continue inviting more judges from outside our court to sit with us between now and the end of the year. In fact, between now and July there will be another four sitting with us.

A second step has been to introduce regular meetings between myself and the heads of the lower courts. I now have a meeting every two weeks with the Lord Chief Justice of England and Wales, every four weeks with the Lord President in Scotland and the Lord Chief Justice in Northern Ireland, and a meeting every term with the Master of the Rolls. At these meetings, we see what co-operation we can usefully enter into in relation to issues that affect us in common. For example, in relation to improving judicial diversity on our court, I found it very helpful to engage the support of the Master of the Rolls in England and Wales. I might say more about that later.

A third step has been to encourage our justices, when writing judgments, to engage fully with what was decided by the courts below and to acknowledge the contribution that the judges made, because previously there had been a tendency on the part of some justices to write as if they were dealing with a blank sheet of paper, ignoring what had been said by the courts below. That had not been a very well-received practice.

Those are three steps that have been taken, which are innovations. We continue to have engagement with the lower courts in other ways—for example, through our justices sitting on committees dealing with judicial pensions or international judicial relations, and through involving the judges of other courts with us in our meetings with overseas courts. For example, the Lord Chief Justice and one of his colleagues took part with us in the meeting with the Japanese Supreme Court.

We have not been able to do what had been my first idea, which was to physically get us together to have a discussion and get to know each other better—obviously, that was not possible because of the pandemic—but the steps that I have taken have been well received. I hope that they are helping to break down the barriers that had been perceived to exist.

The Chair: Lord Dunlop, do you want to open up another area?

Q3 **Lord Dunlop:** Yes, thank you. The relationship between the UK Government and the devolved Governments has been very much in the news. Since 1998, the devolution settlements have become more complex, with greater areas of potential overlap between the powers of the UK Government and the devolved Governments. The Supreme Court clearly has responsibility for policing the boundaries of devolution. Has the task become more demanding? How does the court approach it and what constitutional principles guide you in the task?

Lord Reed of Allermuir: Perhaps I could begin at a general level and then ask Lord Hodge to go into more specifics. At the most general level, we have to deal with issues about devolved legislation in two different sorts of context. One is where we simply have an ordinary appeal that

happens to come from Scotland, Wales or Northern Ireland and raises an issue of the interpretation of devolved legislation. It might be an appeal from Scotland, for example. In that kind of case, all we are doing is interpreting and applying legislation in exactly the same way as we would if the case concerned UK legislation. The same principles of statutory interpretation apply.

A second type of case is where we have challenges to the validity of devolved legislation. Occasionally, those are brought by government. More commonly, they are brought by private parties. For example, it might be the Scotch Whisky Association challenging minimum alcohol pricing. In that type of case, we approach it on the basis set down in a decision of ours 10 years ago, called AXA, which proceeded on the basis that, because the devolved legislation established democratic legislatures with very wide powers, the courts have to treat their political judgments with great respect. We do not subject them to judicial review of the ordinary kind for that reason.

On the other hand, there are statutory limits to the powers of the devolved legislatures in terms of subject matter—some matters, of course, are reserved to Westminster—and in terms of compliance with human rights law and with retained EU law. In dealing with that kind of issue, where there is a challenge to validity on one of those grounds, we have approached the matter on the basis that we interpret the Scotland Act, the Northern Ireland Act and the Government of Wales Act in the same way as we would interpret any other statute.

We have regard to the aim to achieve a constitutional settlement. We recognise the importance of giving those enactments a predictable and consistent interpretation so that the devolved legislatures are operating within a stable, workable system. We aim to achieve that by simply interpreting the rules in the statutes according to the ordinary meaning of the words used.

That may seem obvious, but there was quite an argument as to whether we should, instead, interpret the Acts in the way we would interpret the constitution of an independent country—for example, if we had a JCPC appeal from Jamaica and we had to interpret the constitution of Jamaica. There, you have to allow for the evolving interpretation of language in the light of changing social conditions because a constitution is a once and for all thing that is there for all time and it cannot be fossilised. We have not adopted that approach. In order to provide greater certainty, we have said that we will simply interpret these as ordinary Acts of Parliament. They are not constitutions. They have been subject to quite a lot of amendment, so there is not the problem that you have with a constitution.

We have declined to adopt any presumption that devolved legislation is valid. We have simply said that we will treat it on its merits, applying the rules contained in the relevant devolution legislation. Putting it shortly and using a cricketing metaphor, we aim to play a straight bat, and keep it simple and predictable.

Lord Dunlop: I want to press you on the constitutional role. In 2016, Lord Neuberger said that the Supreme Court plays an "ever-increasing constitutional role" in respect of devolution. You said you have eschewed adopting that. Could you comment on his comment, if I can put it in that way? In that constitutional context, has the court's role expanded? Given the point about increasing complexity and the demanding nature of the job before you, do you see it developing further in the coming years?

Lord Hodge: Perhaps I could come in at this point, if I may. Lord Neuberger made that prediction, but our experience in the past five years has not borne it out. It may be a tribute to those advising the devolved institutions on questions of jurisdiction that we have not had the number of challenges that were predicted.

There are three basic mechanisms by which devolved constitutional issues come before the Supreme Court. The first is legislative references by Law Officers on the validity of Bills before they come into force under section 33 of the Scotland Act, section 112 of the Government of Wales Act and section 11 of the Northern Ireland Act. We had one reference from Scotland of that nature, in 2018, three references from Wales, in 2012, 2014 and 2015, and none from Northern Ireland.

The second avenue of constitutional adjudication is in the form of devolution issues that are challenges to the legislative competence of devolved legislation, or challenges that the acts of devolved institutions are not within devolved competence, including their compatibility with Convention rights and, in the past, EU law.

The third area is the question of compatibility issues, which were created by the Scotland Act 2012 and were separated from devolution issues. They relate to criminal proceedings in Scotland. The question they raise is whether a public authority has acted in a way that is unlawful by reference to section 6 of the Human Rights Act 1998, and in the past through incompatibility with EU law.

There were a number of devolution issues and then compatibility issues in the early years of the devolution settlement, but I have the distinct impression that they have tailed away markedly as the criminal procedure in Scotland has adapted to the demands of the human rights legislation. Over the last six years, in 2015 we had two cases that were devolved constitutional cases. One was a compatibility issue in Scottish criminal proceedings and one was a legislative reference from Wales, concerning the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill. In 2016, there was one challenge to the validity of Scottish legislation that was related to the named persons scheme in the Children and Young People (Scotland) Act.

In 2017, there were five challenges. One was the judicial review that Lord Reed has mentioned, which was a challenge by the Scotch Whisky Association and others to minimum alcohol pricing. There was a compatibility issue in criminal proceedings from Scotland. There was an appeal from Scotland on the determination of a devolution issue relating

to extradition, and there were two references from Northern Ireland, which were heard in the same hearing as Mrs Miller's Article 50 challenge.

In 2018, there were three challenges in total: the one and only legislative reference from Scotland concerning the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, as well as two references from Northern Ireland of a devolution issue. One was Lee v Ashers, the cake case concerning the support of gay marriage, and the other was the law in relation to abortion in Northern Ireland. In 2019, there was one judgment adjourning a reference from Northern Ireland to enable an issue to be determined inter partes.

Last year, there were three in total. There was an appeal against a determination of a devolution issue from Scotland concerning representation or appearance at children's hearings; one appeal on a compatibility issue in Scottish criminal proceedings; and the court refused to accept a reference from Northern Ireland that related to the publication of postcode lists in relation to the establishment of universal credit.

There has not been a burgeoning constitutional jurisprudence. As I say, I think that those advising the devolved institutions appear to have done a good job.

The Chair: I think Lord Hennessy wants to come in at this stage. We cannot hear you, Lord Hennessy, so we had better move on. Maybe you could make your point later. Let us move on to Lord Howarth.

Q4 **Lord Howarth of Newport:** As a committee, we have been doing some work on wider issues of access to justice. We are in no doubt at all that our justice system is cherished by our fellow countrymen, so I was dismayed to read in the most recent judicial attitudes survey that over two-thirds of judges in England and Wales feel that members of the judiciary are respected less by society at large than they were five years ago. Only 9% of judges feel valued by the Government. Only 12% of judges feel valued or respected by the media, and no judges feel greatly valued by either. Why is it that our judges are feeling underappreciated? Do you share those concerns? What is the problem and what can be done about it?

Lord Hodge: I am very aware of the judicial attitudes survey and its concerning results. As to why that has come about, I do not have a clear answer. It may be that memories of the criticism by the press and politicians of the Divisional Court's judgment in November 2016 have affected judges' perceptions on these matters. Objectively, a recent Ipsos MORI veracity index suggests that judges remain a highly trusted profession in the eyes of the public. We had a trust score of 84%, which was not as good as health professionals, perhaps unsurprisingly in these times, but it was still a very healthy suggestion that the public have confidence in the administration of justice as both independent and impartial.

We fully accept that our decisions are not and should not be immune from media criticism. Cases that reach our court do so because they are genuinely difficult. Some cases involve the courts reviewing decisions that are politically controversial, but we all decide cases on questions of law, and we leave political questions to be resolved in the political arena by democratically accountable representatives.

As I said last year, judges must and do leave their personal political views outside the door of the court. As Lord Reed has described, we are working to encourage public confidence in the rule of law. We wish to strengthen public understanding of the work that we do. Principally, we do so by trying to be open in the way we work. I can describe that in more detail if you wish. There is a lot at stake, because the reputation of London and the UK legal systems are very important economic assets for this country in the years ahead.

Lord Howarth of Newport: Why is there disparity? On the one hand, we have the Ipsos MORI survey showing that judges are highly trusted, yet on the other hand we have the judicial attitudes survey showing that judges are feeling rather depressed and unloved. What is going on? What is the origin?

The Chair: Lord Reed, you were nodding. I am not quite sure who you were agreeing with. Do you want to come in?

Lord Reed of Allermuir: I have been a senior judge for more than 20 years. I do not think that judges have ever felt terribly loved by government or media. It should be said, first of all, that the survey did not include the Supreme Court. The vast bulk of the judges who contributed to it were judges who had been sitting at first instance, doing trials or tribunal hearings. I well remember when I was in that position myself.

If I was in a criminal trial, there would always be a number of journalists sitting in court who were there to report on what happened, but you had the feeling that you perpetually had to be on your guard in case an unguarded comment landed you in deep trouble in the next day's headlines. You also realised that if, for example, you had, in accordance with the sentencing guidelines, sentenced somebody who had pleaded guilty—no evidence is led if they plead guilty, but you are given a narrative of events that has been agreed between both sides—what was then liable to happen was that the newspaper would go to the victim, get his or her account of events, which would be far worse than the narrative that you were presented within a plea to a reduced charge, and report it in a way that made your decision seem ludicrously out of touch.

After a while, if you are a judge to whom that happens, it is not surprising that you begin to develop a feeling of slight persecution. I am dealing with it humorously, but it may have something to do with judicial attitudes towards the media. Obviously, their scrutiny is essential and important but, because it is inevitably going to be critical, it is not always welcomed by the individual judges concerned.

As for the Government, judges have had grievances over various issues over the years—for example, in relation to judicial pensions. If there has been a change over the last five years, it might reflect rather negative attitudes towards the courts that have been evinced not so much by Ministers themselves as sometimes in briefings by their advisers. That can be unfortunate. I cannot think of anything else that has changed. Perhaps the judges need to be told that they are in the top five most trusted professions in the country. Perhaps their leaders need to motivate them a bit more by explaining that to them.

The Chair: Lord Hennessy, do you want to come in now? I think your microphone is off. We cannot hear you at the moment. We will bring you in towards the end. Let us go on to Lord Hope and talk about some rather significant issues.

Q5 **Lord Hope of Craighead:** I have a question for Lord Reed, which is quite closely related to the points you made at the beginning about the message that you want to put across that the court is not engaged in a struggle with either the Executive or Parliament. That brings us to the question that you pointed to last year when you described the court's ties with Members of the House of Commons as "extremely limited" and said that you intended to work with the Speaker's Office to bring Members of Parliament into greater contact with judges of your court. Bearing in mind the problems of the pandemic, what steps have you been able to take so far, and do you think anything has been achieved so far?

Lord Reed of Allermuir: The way I took that forward was by speaking, first, to the Deputy Speaker, Eleanor Laing, and then having quite a lengthy meeting online with the Speaker. We had a very productive discussion, and it was very evident to me that he is very supportive of the idea. He wants us from now on to have quarterly meetings to discuss and take forward this matter, and some other matters. He had a range of issues that he wanted to discuss—for example, relating to the use of parliamentary material in court hearings and the extent to which parliamentary privilege might be engaged with that.

Following my meeting with him, my officials and parliamentary officials have been working together to develop a programme of engagement, which, so far, has involved meetings with the Clerk of the House of Commons, the Clerk of the Parliaments, the Clerk Assistant of the House of Commons, the Clerk of the Journals, Speaker's Counsel, Black Rod and the chief executive of the Industry and Parliament Trust. The meetings have been constructive, and they have resulted in planning for a series of seminars to start in the early summer, which will involve the people I mentioned and the court. Parliamentary counsel will also be involved. We will have a series of seminars, starting in the summer, for Parliament and the court with a view to improving understanding.

Over the longer term I want, physically, to be able to invite MPs to the court and engage them in discussion and some hospitality. I am being guided by advice from the Speaker as to the best way of taking that forward, but I think the basic approach will be one of being neighbours

round the square and trying to engage particularly with newly elected MPs, to introduce them to the court, try to explain to them what we do, answer their questions and, I hope, dispel misunderstandings.

Lord Hope of Craighead: One of the things that struck me is how extraordinary it is that, although the distance physically between Parliament and the Supreme Court is very short, the extent to which they engage with each other physically is very limited from the days when members of your court were Members of the House of Lords. The number of times they came to the Chamber in the House of Lords were very few indeed.

Lord Reed of Allermuir: Yes.

Lord Hope of Craighead: I would have thought that anything you can do to increase physical contact and bring people into your building would be beneficial.

Lord Reed of Allermuir: I am influenced by the example of what has been done at Westminster Abbey. The Westminster Abbey Institute, under Claire Foster-Gilbert's leadership, has a well-established series of seminars to which they invite people from the court, from Parliament and Whitehall. It gets those people together in a way that nothing else does. They do it particularly from a spiritual standpoint. They are interested in talking about ethical values, the problems and dilemmas that we face and how we resolve them. As a court, we would have a different focus, but we could very well organise similar events and, as you say, get people into the building, talking together and discovering that they may have a great deal more in common than they ever imagined.

Lord Hope of Craighead: Thank you very much.

The Chair: There has been quite a turnover in Members of Parliament in the last few years. There are a considerable number of relatively new MPs who will have had very little contact with or little information about the Supreme Court previously.

Baroness Fookes: I have a suggestion that may or may not be practicable. When you are able to bring parties of schoolchildren into the building, would it not be a good idea to ask MPs whose constituencies the children come from to come with them? It would be a very different approach, but it might just work because you would be primarily looking at the children, but the MPs would be seeing it in a totally different light.

Lord Reed of Allermuir: If I may say so, that is a very good suggestion, which I will take forward. When we have visits from universities, they often organise a dual visit to the court and to Parliament. They see us and they also visit their MP across the square. We could certainly try to join those up more effectively and, as you say, with schools too.

The Chair: That could work. Lord Hennessy, shall we try again? Sorry, we are still having problems. I will call Lord Howell.

Lord Howell of Guildford: Can I say, first of all, how enormously encouraged I am by the role and links of the court internationally? It is very exciting to hear what Lord Reed told us. Of course, it is a huge addition to the soft power and influence of the United Kingdom right across the entire planet. That is really good news.

Coming to the closer ties with the House of Commons, which we have been discussing, and which Lord Reed mentioned at the beginning, I realise the problems, and particularly at times the problems of divining what the will of Parliament or the House of Commons may be on a particular issue on which the Supreme Court has to rule. There has been at least one case where eyebrows were raised about the apparent conflict. I refer, in particular, to a case last year, namely, Regina v Adams, the Gerry Adams case, where the late Lord Kerr made a ruling. I was personally involved in the handling of the original legislation to do with the detention of terrorists Act in 1972, when we wrote into the order, the Attorney-General confirmed in Parliament, and it was unanimously approved by Parliament, that interim custody orders could be signed by junior Ministers, as well as the Secretary of State, Minister of State and Parliamentary Under-Secretaries.

The Supreme Court went completely in the opposite direction and ruled that that was not so, although it was there in black and white. As a result, they reached a ruling in favour of Gerry Adams. That is a rather odd particular case but one that illustrates the need to try to find out, very accurately, what the will of Parliament is. Do you have a comment on that? Do you think there is a problem?

Lord Reed of Allermuir: I cannot say very much about the particular case because I did not sit on it myself. Lord Kerr wrote the judgment. The Lord Chief Justice and some other justices were sitting with him. I am well aware that it is a controversial judgment. I would not want to commit myself to a view about it.

On the point you raise, it is not possible for the court to hear evidence from Ministers as to what they might have intended or what their understanding was. We have to ascertain the effect of legislation from what Parliament said, essentially. It is the words of the statute construed against the background that is the mischief that Parliament was trying to address. I am afraid there is no consultative possibility. Once Parliament has spoken in writing, we just have the words of the statute to deal with. It rather sounds as though your concern is about a particular case that may or may not have been correctly decided.

Lord Howell of Guildford: I am sorry if it is too specific. It was an example of something being written down in an order in clear language, with your court, the Supreme Court, taking an opposite view. I wondered to what extent one could avoid that apparent clash in the future. Are there better ways of conveying what Parliament really has decided and is written down in the statutes and orders than in the past?

Lord Reed of Allermuir: The answer is that I do not think so. I really cannot remember the details of the case. From what you say, it sounds like a wayward judgment, in which case it will be put right in another case. Without studying it myself, I could not say.

Lord Howell of Guildford: I apologise if it is too specific. There was a lot of comment on it at the time.

Lord Reed of Allermuir: Yes, I recollect the comments. The whole difficulty was that it departed from the ordinary Carltona principle.

Lord Howell of Guildford: That is right. It did.

Lord Reed of Allermuir: As I understand it, the view that was taken was that the gravity of the issue being decided was such that in looking at previous cases one would expect the decision to be taken by the Secretary of State in person rather than delegated to an official or, maybe, a junior Minister. I remember what the argument was about but I cannot comment on the outcome.

Lord Howell of Guildford: I feel embarrassed. Let us not pursue it. There was a conflict. There were obvious conditions in Northern Ireland where Carltona had to be modified. Thank you very much.

The Chair: Lord Hennessy, can you come in now? No. I am afraid the technology is not working for you today, Lord Hennessy. Let us go to Lord Sherbourne.

Q6 **Lord Sherbourne of Didsbury:** I want to raise a completely different area, if I may. We know that the Government are looking at possible options for reforming both judicial review and the Human Rights Act 1998. I do not know whether the Supreme Court has made or is planning to make representations to the Government on those two areas. Would you like to share with us your thoughts on those two particular areas?

Lord Reed of Allermuir: Certainly. I have responded to both reviews on the court's behalf. The court will be publishing the response to the first review on our website as soon as the first report is published. In the case of the second report, I know they are planning to put our response on their own website, and we will do the same simultaneously.

In relation to the first review, the review of administrative law, I made three key points in my response. The first was that the principle of the rule of law, which is recognised by statute now, requires that all public bodies must comply with the law and that recourse to the courts must be possible when they do not. That is a pretty basic point.

Secondly, I said that the court's performance of that function does not set us in opposition to the Government. This is a point I made earlier this morning. I said that all three branches of the state—the Government, the legislature and the courts—share a common commitment to the maintenance of the rule of law. I made it clear that this did not involve our trespassing on the domain of Parliament; on the contrary, this

function of the courts is essential to democracy because it is how our society ensures that public bodies comply with the legislation that Parliament enacts.

The third point I made was that, because judicial review proceedings are challenges to the lawfulness of the exercise of power by public bodies, they inevitably require the courts sometimes to review decisions that are politically controversial, but that the judges endeavour to focus on a legal question and decide it in good faith as best they can.

In response to the Human Rights Act review, I made six main points. The first was that the relationship between domestic courts and the European Court of Human Rights has developed in the way that Parliament intended when it enacted the Human Rights Act. It was designed to provide a means for violations of Convention rights to be remedied within our domestic legal system. That has certainly happened. Since the Act came into force, the number of cases going to the Strasbourg court from the UK has fallen dramatically. It is now the lowest by population of any of the 47 contracting states. Cases in which the UK is held to have violated the Convention have now become rare.

The second point was that there is, I think, an appropriate and effective degree of dialogue between the domestic courts and the Strasbourg court. The jurisprudence of the Strasbourg court has been increasingly influenced by domestic decisions, especially by decisions of the Supreme Court.

The third point was that, inevitably, the Human Rights Act has had an effect on the relationship between the judiciary, the Executive and the legislature because it requires us to give legal rulings on the impact of Convention rights on legislation and on government decisions. We have to decide whether measures adopted by public bodies comply with the legal standards laid down in the Human Rights Act. That, to a substantial degree, involves our deciding whether legislative or executive measures are a proportionate means of achieving a legitimate aim. That is the basic test in the Convention law. I have made it clear in my judgments that a key element of that assessment is the exercise of appropriate restraint by the courts, based on recognition of the constitutional role of the judiciary, on the one hand, and of the democratically accountable branches of government, on the other.

The fourth point was that domestic courts have generally considered that they should not press the application of Convention rights further than the Strasbourg court would go, but there are cases in which domestic judges have applied the Convention rights in a more expansive way than Strasbourg would do where the contracting states enjoy a margin of appreciation. I pointed that out as something the review can consider.

The fifth point related to the change in statutory interpretation required of the courts by section 3 of the Human Rights Act. The way in which that section was interpreted by the House of Lords about 20 years ago has given it a particularly strong effect, but I pointed out that, if one were to

weaken that obligation, it would be liable to result in an increase in the number of declarations of incompatibility that are made under section 4 of the Act, and an increase in the number of cases that went to Strasbourg.

The sixth and last point was that, if the Act were to be amended in a way that reduced the ability of domestic courts to apply Convention rights in the way required by the Strasbourg case law, it would be liable to result in an increase in the flow of cases from the UK to Strasbourg and an increase in the number of complaints upheld there.

The Chair: Thank you. That was quite a comprehensive answer, so I think Lord Sherbourne does not need to come in now. Lord Wallace.

Q7 **Lord Wallace of Tankerness:** There have been some reports, whether well sourced or not is not for me to say, which suggest that the Government are possibly considering proposals to reform both the structure and composition of the Supreme Court as well as its name. Suggestions have been made about having fewer permanent justices, bringing in jurists with specific expertise in particular cases and, as I said, changing the name of the Supreme Court, with perhaps unfortunate parallels drawn between the US Supreme Court and the UK Supreme Court. Can you identify any benefits that might flow from these reported changes?

Lord Reed of Allermuir: No.

Lord Wallace of Tankerness: Thank you.

Lord Reed of Allermuir: On the contrary, what is being talked about is a quite deliberate downgrading and undermining of the most prestigious common law court in the world. That would be an act of national self-harm, which could only reduce respect for this country as a bastion of the rule of law and weaken the UK as an international centre for legal services.

If I can deal, first, with the question of name, there would be no benefits to renaming the Supreme Court. I think it would be widely perceived as an act of spite. It would not change the law or the attitude of the judges. The idea that seems to lie behind the proposal, that calling a court a supreme court results in its behaving like the American one, is simply idiotic. The reason for the politicisation of the US Supreme Court is that its members are appointed politically. The judges of the UK Supreme Court are not. The 2005 Act made sure of that by providing for appointment on the recommendation of an independent selection committee instead of selection by a government Minister, as previously. There is nothing that the Supreme Court has decided that the old Appellate Committee of the House of Lords would not have decided. In fact, one of the points I made in response to the Human Rights Act review is that the most important decisions expanding the scope of the effect of the Act beyond what Parliament might have had in mind were all made by the House of Lords, not by our court.

I emphasise that there is nothing new in the UK about the title "Supreme Court". Before 2009, the Supreme Court of England and Wales was the title of the Court of Appeal, the High Court and the Crown Court, constituted under what was then titled the Supreme Court Act 1981. "Supreme Court" is still the term used in Scotland to describe the Court of Session and the High Court of Justiciary. It is a name that simply recognises our position as the country's highest court, just as many other countries use the same term for their final appeal courts. I have already mentioned our meetings recently with the Supreme Court of India, the Supreme Court of Japan and the Supreme Court of Ireland.

As to the second idea that, effectively, we have ad hoc assemblages of judges rather than a permanent body of 12 justices, this would also be an own goal. As you may have gathered from what I was saying earlier, there is, at present, no legal limit to the number of judges who can sit on the Supreme Court. There are 12 permanent justices, but the president can invite as many other senior judges to sit on the court as he likes. I have been exercising that power with some regularity over the last few months, but it is peripheral to the working of the court. I only have one visiting judge at a time, and only in a proportion of the cases we hear. That is not because we need their expertise—we are not short of expertise—but rather to give them experience of the court from the inside, to break down barriers and, perhaps, to encourage people to think about applying to us.

The Chair: Thank you. You have set out very clearly exactly where you are coming from. I do not think we are in any doubt whatever. I think Lord Hope might want to follow up on some aspects.

Lord Hope of Craighead: Yes. I want to come in on the name. As you know, I was closely involved in the whole change from the House of Lords and, indeed, with the legislation that gave rise to the change. One of the significant points was that the words "Supreme Court" were being used long before the change was introduced by Lord Bingham and Lord Steyn, particularly, who was arguing for the change as a convenient label. They were not in any way encouraging a struggle for power.

Could you link your arguments to the point Lord Howell was making earlier about the soft power element—indeed, I think you touched on it yourself—because the name carries with it the reputation? Our concern in the early days of the Supreme Court was to find a way of building up the court's reputation. I must say, you have been doing that very effectively. To change the name would ditch the good will that goes with it and that, surely, would be a great disadvantage.

Lord Reed of Allermuir: I can give two illustrations. About a year ago, I took part in a world conference of supreme courts, which was hosted by the Indian Supreme Court. We were the guests of honour, effectively. I was treated as the guest of honour. I was the only one invited to sit on their Supreme Court at a sitting. The level of respect for our Supreme Court could not have been higher.

Within Europe, there is a judicial network of European Supreme Courts. We are a member of that. There is nothing unusual about the title at all. It is just an easy way of identifying the top court. I saw that somebody wanted to call us the Upper Court of Appeal, which would not go down very well in Scotland, for a start. Internationally, if that change were made, people would think, "What on earth is Britain playing at by downgrading its top court?" It would not be good for our international reputation.

The Chair: Thank you. I think we know where you stand on that now. Let us move on to judicial appointments. We are running out of time, but I think you can stay a little longer than perhaps we first thought.

Q8 **Baroness Doocey:** The way that judicial appointments are made has attracted criticism because there is a perception that existing judges have too much influence over new appointments. Do you accept that that is the case? If you do, do you have any suggestions that would address the perception of excessive influence? Would you welcome increased involvement by Ministers in the selection of senior judges?

Lord Hodge: Perhaps I could relieve Lord Reed by giving the first answer on this matter.

Baroness Doocey: By all means.

Lord Hodge: Thank you. The answer is that I do not think the criticism is well founded. The selection procedure was prescribed by Parliament in the Constitutional Reform Act and gives senior judges an appropriate role. The involvement of senior judges, I would suggest, is essential to ensure that the necessary legal skills and ability are there. On the appointment panels, lay members are in the majority on the selection commission to our court. That provides an appropriate balance.

In the most recent competition, for a successor to Lady Black, the selection commission comprised Lord Reed, the Lord Chief Justice of England and Wales, Mrs Nicola Gordon, who is the chair of the Scottish Judicial Appointments Board, Lord Kakkar, the chair of the Judicial Appointments Commission, and Mr Lindsay Todd, a member of the Northern Ireland Judicial Appointments Commission.

It would be wrong to think that the Lord Chancellor does not have a significant role in the appointment process. When a vacancy arises, it is the Lord Chancellor who convenes the selection commission, and he provides the guidance on the selection criteria. After the candidates have been interviewed, a report is sent to the Lord Chancellor for his consideration and he then carries out his own consultation, with senior politicians and judges, all as laid down in the Constitutional Reform Act. He can choose to accept a recommendation, he can reject it or he can ask the commission to reconsider. He has an active role. If he is content with the recommendation, the candidate's name goes forward to the Prime Minister, who, in turn, makes the recommendation to Her Majesty the Queen, who makes the formal appointment.

It is very important, I would suggest, that judicial independence must be real, but must also be seen to be real. If the Lord Chancellor were to be given an enhanced role, any arrangement would have to preserve that perception of independence. I can expand on that matter, if you wish.

Baroness Doocey: I accept what you say. I do not have a problem at all. I am a great fan of the courts and the entire system. Nevertheless, life is seldom about reality. It tends, particularly in the days of instant social media, to be about perception. I have absolutely no doubt that there is, whether justified or not, a perception that judges have too much influence over appointments. Could I ask you again? Do you have any suggestions that would address the perception, because I have no doubt that that perception, however unfairly, exists?

Lord Reed of Allermuir: Perhaps I could say a word about it. Inevitably, there has to be high-level judicial involvement in appointments generally, but particularly to the Supreme Court; that cannot be avoided. You need somebody who is qualified to assess the suitability of the candidates in terms of their legal skills and legal ability. That is why on the selection commission for the Supreme Court, of the five members, two are judges. I have only been doing this job for a year or so, but one of the things I have realised is that, whenever it is an England and Wales appointment, it has become the custom—nine of the 12 posts are from England and Wales—that it is always the Lord Chief Justice who is invited to sit. The invitation comes from me. I preside over it ex officio, and I have to invite one other senior judge. It has just become the custom.

I have come to realise that that is probably unfortunate, and it would be better to offer other judges the chance to sit on the commission as well, most obviously the Master of the Rolls, but there are a number of senior English judges who would be suitable. That might help to diminish the perception that the Lord Chief Justice and I sew it up between us. I have to say that people such as Lord Kakkar would find it very insulting if that suggestion were made to them. It is a joint decision that is made in which the lay members play an important part. I appreciate the point you make; getting that message understood by the general public is very difficult.

Q9 **The Chair:** Can I follow that up in relation to diversity, because you have told us in the past that that was one of your priorities? Baroness Hale broke through the glass ceiling, and people thought there would be some progress, but we are still incredibly short of women or people from ethnic minorities. You have said it is a priority to make headway there.

Lord Reed of Allermuir: It is.

The Chair: Can you update us and tell us how you think you can make progress in the future?

Lord Reed of Allermuir: Yes. I have taken a number of steps. The problem has to be tackled at a number of levels. We can do what we can at the level of appointments to us, but that is at the end of a very long

pipeline. In reality, the number of people who are possible, well-qualified candidates for appointment to the Supreme Court is very small. The number of women and the number of BAME people in that pool is very limited, and we have to encourage them to put their names forward. I will explain in a moment what I am doing about that.

We also have to tackle the problem at the other end of the pipeline when people are at the early stages of their career, even as law students, and try to encourage them to come into the profession and then, when they are in the profession, to think about judicial appointment as a way forward.

I will give you a few ideas about what we are doing. We recruit judicial assistants as well as judges. Our judicial assistants are usually among the cream of the young barristers. As part of our recruitment exercise for that, which we have just begun, we work with representative organisations, including the Black Barristers' Network and an organisation called Bridging the Bar, whose mission is to enable underrepresented groups to enter the profession and prosper in it. We are working with them on that recruitment exercise. We are also piloting work experience with Bridging the Bar, so as to bring people at the start of their legal career into the court who otherwise would never enter it.

At the other end of the pipeline, as I mentioned earlier, I have been inviting senior judges from the different jurisdictions to sit with us on the Supreme Court and the Privy Council. My purpose in doing that is not simply to build a stronger relationship. It is also to encourage people, not least the women among them, whom I have made a point of inviting as part of this exercise, and enabling them to find out what the court is actually like to work in from the inside and to dispel the myths about the court that, I am afraid to say, circulate in the legal world. It is thought to be a more forbidding and difficult place to work than it actually is. These people come in, see the court, take the experience back with them and, I hope, share it with their colleagues.

We have undertaken another step. One of the factors that can be off-putting for some judges, not least women, is that ours is a very varied diet of work. You have to be sufficiently adaptable to be able to deal with a wide range of legal problems. For most judges, that is not an issue, but there are some who have had a very narrow experience. The largest number of those are family law judges, who tend to spend their entire career doing family law, and are disproportionately women. I discussed this matter with the Master of the Rolls, who allocates judges to cases in the Court of Appeal, so as to encourage him to give people in the Court of Appeal a wide range of experience, which will prepare them for what they would have to deal with if they were to come to the Supreme Court. He has been very receptive to that idea and supportive of it. That is the second step at our end of the pipeline.

Another one is an innovation we introduced for our last recruitment exercise, to replace Lady Black, which was to produce podcasts that were interviews with serving justices from a variety of different backgrounds.

They talked about their career path, how they had found the application process and how they had found adapting to life on the court. The purpose of that was to demystify the process and encourage people to apply, including people from a wide range of backgrounds. For example, we used Lord Burrows, who was an academic until he was appointed to the court. That process has been successful.

The person selected, Lady Justice Rose, who will be taking up her appointment in April, spent a large part of her career not at the Bar but working in government as a lawyer at the Treasury and as a lawyer in the Ministry of Defence, and in Parliament as Speaker's Counsel. First of all, she will add significantly to the diversity of experience in our court, but I have also made the point, as I emphasised last week at a meeting with the head of the Government Legal Department, that she is a trailblazer for people working in the Government legal service, which is a pool of largely untapped talent for judicial appointments, and one where there is a large number of people with caring responsibilities that have effectively ruled out a career at the Bar for them because of the demands that that career makes on your time. I hope that may encourage particularly able women in the Government legal service to think about a judicial career, because it should inspire them.

Another matter, which is slightly different but not irrelevant, is that while we have no likelihood of having a judge from an African-Caribbean background appointed in the near future, as far as I am aware, in the JCPC, we hear appeals constantly from Jamaica, Trinidad, the Bahamas, Bermuda and so on. Once upon a time, judges from countries such as India and Sri Lanka, when we were their final court of appeal, sat on the Privy Council. I want to be able to invite judges now from perhaps the Caribbean to sit on the Privy Council. It is impossible at the moment, but I have raised it with the Ministry of Justice and we are exploring the possibility. It would need primary legislation, but if it were to happen it would certainly add to the diversity of the appearance of our court.

The Chair: That is very interesting. We look forward in future years, when you come back to this committee to give evidence, to see what progress has been made. Clearly, there are some novel ways to try to improve the situation.

Lord Hennessy, I think you are with us and unmuted and, hopefully, with microphone on. No. You really are jinxed today. I am very sorry. We will go to Lord Howarth for a change of direction.

Q10 **Lord Howarth of Newport:** I am sorry that you have to fall back on me again. Lord Reed, last year you said to us, understandably, that it was too early to say what the transition away from EU membership would involve in practical terms for the court. Can you now tell us what challenges you expect the court to face in this regard in the forthcoming period?

Lord Reed of Allermuir: I know that we are going to be asked to resolve questions about the interpretation and application of the new

body of retained EU law, and we are going to be asked to exercise our new power to depart from the case law of the Court of Justice. The first appeal raising these points will be heard by us in the middle of May, so that is imminent.

It is inevitable that there will be more cases of that kind. In co-operation with the Courts of Appeal in the three jurisdictions and the Ministry of Justice, we have been setting up systems to enable us to keep track of these cases, so that we know what is going on in the different courts and we do not end up inadvertently contradicting ourselves. Because the implementation period only ended on 31 December, I am afraid it is still too early to know what the full extent of our additional workload may be.

Lord Howarth of Newport: Are you able, therefore, to tell us whether you anticipate that you will have the resources you need to cope with the prospective workload?

Lord Reid of Allermuir: We have benefited over the last three years from additional funds provided by the Treasury to assist with the increased workload that was to be generated by our departure from the EU. That has been helpful, but from the end of this month that funding will no longer be available. As part of the recent spending review, all Brexit-related budgets were removed and we have been treated in the same way as everybody else. If there is a large quantity of additional work, we will find ourselves under some pressure, but I am afraid it is too early to predict whether or when that might happen.

The Chair: Thank you. Lord Wallace and Lord Faulks want to ask about Hong Kong.

Q11 **Lord Wallace of Tankerness:** Thank you. We are all aware of the situation and recent developments in Hong Kong. Last July, Lord Reed, you said in a statement: "Whether judges of the Supreme Court can continue to serve as judges in Hong Kong will depend on whether such service remains compatible with judicial independence and the rule of law". In the light of recent reform to national security and electoral law in Hong Kong, do you still consider your continued service as judges on the Hong Kong Court of Final Appeal compatible with judicial independence and the rule of law? Perhaps you could help me on this: when we talk about the rule of law, which law? Is it the Basic Law of Hong Kong or is it law emanating from the national security law that has been recently promulgated?

Lord Reed of Allermuir: In relation to the latter question, the rule of law is a more abstract concept than that. The idea is that you live in a system where accessible and predictable law governs your activities. You can have a law that does not itself respect the rule of law.

The position at the moment is that there are two aspects to the operation of the agreement entered into as part of the handover, under which Supreme Court judges sit on the Court of Final Appeal in Hong Kong. It is a matter of importance for the UK's foreign policy. It is also a matter of

importance to the Supreme Court, obviously, that judges are sitting there.

I have been monitoring developments in Hong Kong closely since the national security law was passed in June last year. I have also been in close contact with the Foreign Secretary and the Lord Chancellor for some time. Together with them, I regularly review the operation of the 1997 agreement in the light of the developments that are taking place. I expect our next meeting to be held shortly. You can be assured that I will not allow the Supreme Court's reputation to be put at risk. I do not want to add very much to that.

The Chair: Lord Faulks, do you want to follow up?

Lord Faulks: I think the answer is given. I do not want to press Lord Reed further. He said that he is considering it. Clearly, the situation is potentially quite volatile in Hong Kong. I take it from your answer, Lord Reed, that there may be circumstances where you might have to reconsider the position.

Lord Reed of Allermuir: Certainly. If there was any undermining of the independence of the Hong Kong judiciary, or if it was expected to act contrary to the rule of law, or simply if the situation in Hong Kong became one where we could no longer in good conscience serve there, I would no longer be prepared to serve or to nominate other judges of the court to serve there.

Lord Howell of Guildford: Could the withdrawal of our judges from the Hong Kong judiciary be something that had leverage in it? It would be quite a smart blow to the attempts by Beijing and the Chinese to say that they are on the side of embracing law and order, upholding world peace and so on. It would be a very definite and damaging move for China, whatever they may say. Given the existence of that leverage, is there some way of getting some dialogue going with political authorities and judicial authorities in Beijing to establish just what they have in mind, and whether they realise the damage there would be to their world reputation if our Supreme Court withdrew altogether? Has any kind of dialogue been suggested?

Lord Reed of Allermuir: That dimension of the problem is a consideration for the Foreign Secretary. As you would imagine, he has sources and means of discussion with the Beijing authorities that I am not involved in at all. My focus has been on the role our judges have in supporting the independent judiciary in Hong Kong and upholding the rule of law there. You know, I expect, that lawyers in Hong Kong, the Hong Kong Bar Association and the Hong Kong Law Society support our continued involvement there, and so, on the whole, do the pro-democracy spokesmen.

I feel that we have a responsibility to the people of Hong Kong, who, I must say, have shown me nothing but kindness when I have been there. It is a matter that requires great care in deciding whether the situation

has reached a point at which continued service is no longer possible. It is a very serious step to take. Our role there is prestigious in Hong Kong itself. It gives us considerable influence in some ways in Hong Kong that we might not otherwise have. I suppose that is the point you were making, but the diplomatic implications of that are for the Foreign Secretary and not for me.

Lord Hodge: I wholly agree with what Lord Reed said. As a recent appointee to that court, there is conflict between our duty to do what we can for the people of Hong Kong in very difficult circumstances and to assist the independent judiciary of Hong Kong, who live day in, day out in those difficult circumstances, on the one hand, and on the other to protect the reputation and standing of our court here in the UK.

The Chair: Thank you very much for making that clear. Lord Hennessy is still having technical problems. He had a question earlier. As the technical problems are still there, I will speak on his behalf. The question was about how the court would handle legislation that it felt breached international law. Lord Hennessy was thinking of the United Kingdom Internal Market Act, as it became. Lord Reed, do you have any comments on that?

Lord Reed of Allermuir: Yes. I am happy to answer that. If we are talking about unincorporated international law, international law to which Parliament has not given effect in a domestic statute, we have no remit or right to enforce international law of that character because it is not part of the law of the land. It is only because it has no legal effect that the Government are allowed to enter into treaties without Parliament having to authorise them. It follows from the sovereignty of Parliament. The fact that the Government may propose legislation, and Parliament may enact legislation, that is in breach of international law is of no significance to our role in applying the Act of Parliament. We apply it regardless.

The Chair: Breaches of the Northern Ireland protocol could not be challenged.

Lord Reed of Allermuir: They could not be challenged on that basis. The Northern Ireland protocol is in a slightly different position in that it was given legal effect by the Withdrawal Act. You are talking about an international treaty to which Parliament has given legal effect in one statute, and then in a later statute it is qualifying that effect. In that situation, the constitutional rule is that the later statute prevails over the earlier one, so we would not be able to give effect to the Northern Ireland protocol in breach of a statute that deprived it of effect.

The Chair: Lord Hennessy is acknowledging your reply, even though he cannot comment himself.

Lord Reed and Lord Hodge, thank you very much for your contributions this morning. We have gone slightly over time, but given the breadth of issues that we had to cover, that became inevitable. Thank you very

much indeed for joining us this morning.