

**Judicial Independence & Accountability: A View from the Supreme Court**

When I was Lord Chief Justice I must have sworn in at least a hundred judges. Each one took an oath to administer justice “according to law without fear or favour affection or ill will” in order to perform that task a judge must be impartial. In order to be impartial a judge must be independent; personally independent, that is free of personal pressures and institutionally independent, that is free of pressure from the State.

In December 2003 there was a Commonwealth Heads of Government meeting in Abuja, Nigeria, at which they endorsed the so called Latimer House Guidelines on the relationship between the three branches of State. These identified the requirements for judicial independence. There have been many other formulations both before and since but I think the Latimer House Guidelines are as good as any. The heads of government identified certain fundamental values in the following terms..

“We believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief; and in the individual’s inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives.”

These values can only be secured by a rigorous application of the rule of law. The rule of law is the bedrock of a democratic society. It is the only basis upon which individuals, private corporations, public bodies and the executive can order their lives and activities. If the rule of law is to be upheld it is essential that there should be an independent judiciary. The rule of law requires that the courts have jurisdiction to scrutinise the actions of government to ensure that they are lawful. In modern society the individual citizen is subject to controls

imposed by the executive in respect of almost every aspect of life. The authority to impose most of those controls comes, directly or indirectly, from the legislature. The citizen must be able to challenge the legitimacy of executive action before an independent judiciary. Because it is the executive that exercises the power of the State and because it is the executive, in one form or another, that is the most frequent litigator in the courts, it is from executive pressure or influence that judges require particularly to be protected.

And so in this talk I am going to concentrate on the institutional independence of the judiciary. I intend to deal with some issues which I think are of particular importance and not always susceptible to easy answers. This is not to gainsay personal independence. In many parts of the world corruption is unhappily endemic. Bribery of court officials and of judges is commonplace. In this country we have the good fortune to have been born into a society which is free of such corruption.

It is simply inconceivable that anyone should try to bribe a judge. When I tell this to my colleagues in some parts of the world it is clear that they simply do not believe me.

### **Appointments**

A good place to start on institutional independence is the appointment of judges. The Latimer House Guidelines require an “appropriate, independent process for judicial appointments” that will:

“Guarantee the quality and independence of mind of those appointed...Appointments at all levels should be made on merit, with appropriate provisions for the progressive removal of gender imbalance and other historic factors of discrimination”.

We are not told what those appropriate provisions are, which is a pity, because this goal is not easily achieved.

Before the Constitutional Reform Act of 2005 we did not have an appropriate independent process for judicial appointments, which does not mean that those appointments were flawed. They were made on the recommendation of the Lord Chancellor who was a government minister. The Lord Chancellor's Department made its own enquiries as to the most eligible candidates. Often these had not even applied to go on the bench, in which case the Lord Chancellor did his best to persuade them to do so.

Nevertheless, in my time in the law there was no question of the Lord Chancellor being influenced by political considerations in his appointments. He set out quite simply to appoint those who would make the best judges. Appointments to the judiciary were largely based on consultation with that judiciary. They were based on the views that the judges had formed of the abilities of those who appeared before them.

These appointments were open to the criticism that they depended upon the views of a judiciary which was white, predominately male and drawn from the upper social class. The accusation was that judges recommended their own kind for appointment.

The system was also open to the criticism that, if appointments were in fact not subject to political influence, this was not apparent as they were made by a Minister under a process that was not transparent.

The Constitutional Reform Act removed almost all the Lord Chancellor's involvement in relation to judicial appointments and set up a Judicial Appointments Commission for England and Wales. Similar bodies were set up in Scotland and Northern Ireland. Judges are well represented on the Commission, but do not provide a majority and the Commission has to have a lay Chair. The Commission recommends candidates to the Lord Chancellor, who has a very limited power of veto. The Act gives the Commission a specific statutory duty to "encourage diversity in the range of persons available for selection for appointments". This is easier said than done and so far the Commission has only had limited success, particularly in relation to the senior judiciary. Although the situation is improving, the

limited diversity in the senior ranks of the judiciary in its turn impacts on applications for appointment to the Supreme Court. It is not satisfactory that our twelve members include only one woman and that most of us have very similar backgrounds. We take decisions that are not bound by the precedents of the lower courts and which often raise questions of social values.

It is plainly desirable that we should have a more even gender balance and better reflect the ethnic mix of our diverse population. But appointments have to be made from those who apply, and the Constitutional Reform Act requires that appointments must be made “on merit”.

To qualify for appointment to the Supreme Court you have to have held high judicial office or be a qualified legal practitioner. Selection to the Supreme Court is made by an ad hoc Commission made up of the President of the Court, the Deputy President and one member from each of the judicial appointments bodies in England and Wales, Scotland and Northern Ireland. At least one member of the Commission must be a non-lawyer. The appointment process includes an elaborate – I believe over elaborate - two stage process of consultation, which involves the Lord Chancellor. He has a very limited power of veto. I am at present involved in the process of selection to fill two vacancies on the Court. This is what we informed applicants about the qualities that we were seeking.

“Successful candidates will have to demonstrate independence of mind and integrity and that they meet the criteria listed below to AN EXCEPTIONAL DEGREE.

- Knowledge and experience of the law.
- Intellectual ability and interest in the law, with a significant capacity for analysing and exploring legal problems creatively and flexibly.
- Clarity of thought and expression, reflected particularly in written work.
- An ability to work under pressure and to produce work with reasonable expedition.

The successful candidates will also need to demonstrate the following qualities:

- Social awareness and understanding of the contemporary world.
- An ability to work with colleagues, respecting their views, but also being able to challenge and debate in a constructive way.
- A willingness to participate in the wider representational role of a Supreme Court Justice, for example, delivering lectures, participating in conferences, and talking to students and other groups.
- Vision coupled with an appreciation of the role of the Court in contributing to the development of the law.”

The limited involvement of the Government, in the form of the Lord Chancellor’s veto, is controversial. This amounts, in effect, to the power to ask the Commission to think again if he considers that the candidate that they have recommended is not appropriate. I believe that this is justified. It would be undesirable for the Commission to be able to appoint at the highest level a judge in whom the Government had no confidence, at least without considering very carefully before doing so. All in all I believe that the revised appointments process has played a significant part in guaranteeing institutional independence.

### **Terms of Service**

The changes introduced by the Constitutional Reform Act mean that there can no longer be any concern that appointment of judges in the United Kingdom is subject to undesirable political influence. But the terms of service of a judge must also ensure that he is not subject to institutional pressure. The Latimer House Guidelines provide..

“As a matter of principle, judiciary salaries and benefits should be set by an independent body and their value should be maintained”.

Judges should never feel that if they do not please the government their salaries may be at risk. When fixing judicial salaries the Government follows the recommendations of the independent Senior Salaries Review Body, albeit that the implication of these is sometimes delayed, or staged.

These salaries are paid directly out of the Consolidated Fund. Security of tenure is an important safeguard of judicial independence.

In the United Kingdom it requires a resolution of both Houses of Parliament to remove a High Court judge and judges at the lower levels can only be removed after disciplinary proceedings. I shall say a word about discipline when I come to deal with judicial accountability. Before doing that I want to take a little time talking about the independence of the Supreme Court.

### **The Supreme Court**

I wasn't personally involved in the negotiations with the government about setting up a new Supreme Court. The initiative had come from the Government. The object was to provide the United Kingdom with a final court of appeal that was transparently independent. I was one of those who were strongly in favour of the proposal. Lord Falconer, who promoted the Constitutional Reform Bill through the House of Lords, was totally committed to this aim. This is what he said to the House...

“the time has come for the UK's highest court to move out from under the shadow of the legislature.. the key objective is to achieve a full and transparent separation between the judiciary and the legislature...the Supreme Court will be administered as a distinct constitutional entity. Special arrangements will apply to its budgetary and financial arrangements in order to reflect its unique status.”

There were two aspects of the independence he hoped to achieve – financial independence and administrative independence. Events were to show that these were challenging goals.

Some provisions of the original Bill came in for severe criticism by the Select Committee set up to consider it on the ground that they did not guarantee the Court's independence.

In putting forward revised proposals to the House of Lords on 14 December 2004 Lord Falconer explained how he expected these to achieve the desired objects. I am going to quote him at some length because of the importance of what he said.

“The Supreme Court will be an independent statutory body responsible for appointing staff for its own administrative service. That service will be headed by a chief executive – a civil servant appointed by a process involving an *ad hoc* commission and designed to exclude political interference.

The staff of the court will also be civil servants, accountable to the chief executive and not to the Minister.

The chief executive himself will be principally answerable to, and operate under the day-to-day guidance of, the President of the Supreme Court and will be accountable directly as accounting officer for the court rather than under the DCA Permanent Secretary.

The President of the Supreme Court and the chief executive will determine the bid for resources for the court in line with governmental spending review timescales, and they will pass it to the Minister, who will include it as a separate line in the overall DCA bid submitted to the Treasury. The Treasury will scrutinise the overall bid and approve the overall financial expenditure before putting the bid before the House of

Commons as part of the overall Estimates. The House of Commons will approve the overall Estimates and transfer resources accordingly. Because the Supreme Court will have its own Estimate, the funds approved will be transferred to the court direct from the Consolidated Fund and not via the DCA. That assures the Supreme Court a high level of independence in securing and expending resources and in the day-to-day administration of the court.

In this revised model, the Minister will simply be a conduit for the Supreme Court bid and will not be able to alter it before passing it on to the Treasury. Once the Treasury has scrutinised the bid and it has been voted on by Parliament, the funds will go directly to the Supreme Court from the Consolidated Fund rather than via the DCA.

That ring-fences the Supreme Court budget and ensures that it cannot be touched by Ministers. The chief executive will be able to allocate resources as he considers appropriate to ensure an effective and efficient system to support the court in carrying out its business.

In other words, the chief executive will be solely responsible for the administration of the court, in accordance with directions from the President and will be free from ministerial control.

Your Lordships will note, that this model retains some ministerial involvement.

That remains absolutely necessary as it is a key constitutional principle that a Minister must remain ultimately responsible for securing funding from the Treasury and be answerable to Parliament for its overall operation.”

Subsequently in answer to questions from Lord Kingsland Lord Falconer added this...

“I have made it clear in all I have said that the intention is that the money, once granted by the Commons in its Estimates, is passed not from the DCA but directly from the Consolidated Fund to the chief executive who, working to the direction of the President and the other members of the Supreme Court, decides how it should be spent. It is hard to imagine more financial independence than that.”

I don't know how that sounds to you, but it sounds pretty good to me. So far as funding was concerned the arrangement would be as follows.

The chief executive and I would decide how much we needed, obviously taking into account the overall financial situation. . We would give our bid to the Lord Chancellor who would pass it on to the Treasury. The Treasury would get Parliament's blessing to give us what we needed which would be paid to us straight out of the Consolidated Funds. Thereafter the normal regime of accountability would apply through audit by the National Audit Office, publication of accounts, and scrutiny by the Public Accounts Committee if necessary.

Now let us see what the Act in its final form had to say about our funding.

“(1) The Lord Chancellor must ensure that the Supreme Court is provided with the following- (a) such court houses, offices and other accommodation as the Lord Chancellor thinks are appropriate for the court to carry on its business; (b) such other

resources as the Lord Chancellor thinks are appropriate for the court to carry on its business.”

I cannot recognise in those provisions the scheme that Lord Falconer had described to the House of Lords. Particularly startling is the contrast between the statement that the Minister would simply be a conduit for the Supreme Court bid and the provision that the resources provided to the court would depend upon the Lord Chancellor’s decision as to what he thought was appropriate for the court to carry on its business.

The Lord Chancellor made sure that we were provided with a most satisfactory court house as I believe anyone who has visited us at the converted Middlesex Guildhall would agree. This was however funded on a kind of sale and lease back arrangement so that we have to pay off the costs of the development year by year. Lord Falconer’s negotiations with the Treasury about funding were not, as I understand it, straightforward. Although the Select Committee had indicated that the revised arrangements must guarantee that the Court would be “institutionally free of administrative pressures; and that the Court must be independent of Parliament; it must be economically viable; and it must be administratively viable”, the Treasury would simply not agree to the Court becoming a completely free standing body which dealt direct with the Treasury. I wonder why not – after all bodies like the National Audit Office do exactly that. This, however, meant that the Court had, in their view, to be included for the purpose of resource allocation and spending review within the envelope of one of the spending departments. (It also meant that a Minister would have to answer legitimate questions raised in Parliament about the Court’s financing or administration, something with which I have no difficulty.)

I also understand that Lord Falconer was unable to persuade the Treasury that sufficient central funding should be made available directly for the Supreme Court. Instead, the

Treasury's initial proposal was that the total cost of the Supreme Court's business should be recovered through court fees.

It would clearly have been wholly impractical, not to say a denial of access to justice, if the Supreme Court had found itself in the position of having to charge fees to cover the full costs of running the Court. After a great deal of consideration, discussion and consultation it was agreed that the costs of Supreme Court civil business could be spread across the costs of civil business as a whole. There thus came about the current rather complex arrangements, whereby a proportion of the running costs are required to be met by contributions taken from civil court fees in England and Wales, with corresponding contributions also from Scotland and Northern Ireland. There was also to be a small income from "wider market initiatives" such as income from the sale of souvenirs and hiring out certain parts of our premises for social events. The remainder of our budget was to be provided by the Treasury.

In the event, this arrangement has not worked as intended. A major contribution has been due in each of the two financial years of our existence so far from the civil courts of England and Wales, based on their assumed fee income. This has not been achieved in either 2009/10 or the current financial year: the Court Service of England and Wales has not been able to provide us with their contribution and we had to call upon the Lord Chancellor to make up the difference, which he did. This arrangement clearly does not provide the security of funding which had been envisaged by Parliament and risks the Court being subject to the kind of annual negotiations the arrangements were intended to avoid.

We had at least been able to agree with the Lord Chancellor a satisfactory budget for our first year. Most of our costs were fixed costs and these had been capable of fairly precise calculation.

Negotiation of our budget for our second year was very different. We were in the midst of an economic crisis. The Government had decided that the public sector would have to make savings of between 25 and 40 per cent over the spending review period, calling for significant savings in 2010/11. In the course of negotiating these I received a letter from the Lord Chancellor indicating the scale of the economies that he expected the Supreme Court to make in terms that I can only describe as peremptory.

It was also suggested that to save money our administration could be amalgamated with the Courts Service of England and Wales, a suggestion that was totally unacceptable.

We recognised that we couldn't hope to be insulated from the need to cut costs. Tripartite discussions then took place between Jenny Rowe, our chief executive, the Ministry of Justice and the Treasury. The process was not clear cut. Eventually agreement was reached involving a significant reduction in our budget. I approved this on being assured by Jenny Rowe that she believed it would be possible to make economies that will not adversely affect our core functions.

My conclusion is that our present funding arrangements do not satisfactorily guarantee our institutional independence. We are, in reality, dependant each year upon what we can persuade the Ministry of Justice of England and Wales to give us by way of "contribution". This is not a satisfactory situation for the Supreme Court of the United Kingdom. It is already leading to a tendency on the part of the Ministry of Justice to try to gain the Supreme Court as an outlying part of its empire.

I would now like to say something about the administration of our court.

Section 48 of the Constitutional Reform Act, only inserted at the Committee stage to rescue the Bill, provides that the Supreme Court is to have a chief executive appointed by the Lord Chancellor after consulting the President of the court. I believe that the Act has got this the wrong way round. The Act makes provision for the President to delegate to the chief executive the appointment of officers and staff of the court. The chief executive has to determine the number of these with the agreement of the Lord Chancellor. The Act provides that the chief executive must ensure that the courts resources are used to provide an efficient and effective system to support the court in carrying on its business. Perhaps the most important provision is that the chief executive must carry out her functions in accordance with any directions given by the President of the court. You will remember what Lord Falconer said about these arrangements. That staff of the court would be civil servants accountable to the chief executive and not to the Minister and that the chief executive would be principally answerable to the President of the Supreme Court. I consider that it is critical to our independence that the chief executive owes her primary loyalty to me and not to the Minister.

I know that Jenny Rowe shares my view. My impression is that there are those within the Ministry who do not appreciate this. They treat it as axiomatic that civil servants' duties are owed to Ministers.

Jenny Rowe has done an outstanding job as our chief executive. The move from the House of Lords to the Supreme Court was seamless. The operation of the court has been flawlessly efficient.

We are able to carry out our judicial duties with every confidence in Jenny and her staff. The loyalty that they show to the court is critical to its independence.

One way in which we might reduce our expenditure in order to accommodate current financial restraints would be by reducing our numbers. Although judicial salaries are a direct

charge on the Consolidated Fund these are nonetheless included as items of expenditure when our budget is calculated. For many years the Law Lords and now the Supreme Court have operated with an effective strength of only 11 members rather than the statutory 12. This was because of the absence of Lord Saville at the Bloody Sunday enquiry. Lord Saville has now retired and we deliberately postponed selecting his replacement in order to combine this with selecting a replacement for Lord Collins who will reach the statutory retirement age in May. Because we have managed with 11 in the past I would not object to a change in the law which permitted our number to drop below 12 with the agreement of the President. At present however the court is working at full stretch. It is important that the court should have time give due consideration to the important issues that it has to resolve. It would be regrettable if we were to come under pressure to reduce our number below that needed to cater properly with our work load in order to accommodate budgetary constraints.

### **Judicial Review**

Over 50 per cent of that workload now consists of public law cases. This makes it even more important that the Supreme Court really is independent of Her Majesty's Government. These cases involve challenges to the legality of executive action. In my time in the law this has been a growth area. When I started claims for judicial review were comparatively rare. The courts were reluctant to interfere with executive action. They applied what is known as the Wednesbury test under which an administrative decision will not be set aside unless no reasonable decision maker could have made it. This approach changed with the Human Rights Act. That act requires Judges to consider whether the conduct of officials complies with the requirements of the Human Rights Convention. This requires the judge to apply a test of proportionality rather than the Wednesbury test. The Human Rights Act has increased the number of public law cases that come before the court. But this is not the only, or even the major, cause of the increase. I believe that there are two causes. The first is the

increased complexity of modern society which brings with it an increasing amount of executive control over the activities of the citizen. This has been coupled with a growing recognition by the citizen and by public interest bodies of the possibilities of challenging such action.

Perhaps the most important and most difficult role of the Supreme Court is to maintain a proper balance between executive and judicial decision making.

The Strasbourg court allows States a degree of discretion in the manner in which they comply with their obligations under the Human Rights Convention. This is described as a margin of appreciation. It is important that the courts also recognise that the executive must be allowed a proper latitude in the exercise of discretionary powers. If there is a danger to judicial independence, and here I am speaking generally and not just in relation to the Supreme Court, it is that the courts will be seen by Government and the public to be overstepping their role and that Parliament may be tempted to attempt to restrict the powers of judicial review.

Ministers have in the past publicly expressed their concern at the way judges perform this role. In the Belmarsh case the House of Lords ruled that locking up alien terrorist suspects without trial was contrary to the Human Rights Convention. The Home Secretary, Charles Clarke, wanted to have a discussion with the Law Lords as to how he could lawfully deal with the terrorist problem. Lord Bingham declined his invitation. Such a conversation would have been inappropriate and infringed the principle of the separation of powers. Charles Clarke did not appreciate this. He stated publicly..

[The operation of the Human Rights Act] “sometimes appears to place the human rights of a suspected criminal ahead of the rights of those threatened by that criminality, the wider needs of society or the consequences for society of any particular decision.

The judiciary bears not the slightest responsibility for protecting the public and sometimes seems utterly unaware of the implications of their decisions for our society”.

Very recently Lord Howard, the former Tory leader, stated in a Radio 4 programme..

“The power of the judges, as opposed to the power of elected politicians, has increased, is increasing and ought to be diminished.

More and more decisions are being made by unelected, unaccountable judges, instead of accountable, elected Members of Parliament who have to answer to the electorate for what has happened”.

These statements evidence a failure to understand the role of the judiciary. When we review administrative action we do not substitute our decisions for those of the executive. We check that the executive has acted in accordance with the law, as laid down by Parliament.

Comments such as these underline the importance of these provisions in section 3 of the Constitutional Reform Act.

- (1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of Justice must uphold the continued independence of the judiciary.
- (4) The following particular duties are imposed for the purpose of upholding that independence.
- (5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.

- (6) The Lord Chancellor must have regards to –
- (a) the need to defend that independence;
  - (b) the need for the judiciary to have the support necessary to enable them to exercise their functions.

Section 17 of that Act requires the Lord Chancellor, on taking office, to take the following oath..

“I, ....., do swear that in the office of Lord High Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God.”

We have had three Lord Chancellors since the Act came into force. Each of them has been true to that oath. Last month the present Lord Chancellor, Ken Clarke, gave evidence to the House of Lords Select Committee on the Constitution. He started with the following statement..

“I am very committed to the independence of the judiciary from the Executive. The reform of the post of Lord Chancellor reflected all that and put this country in theory totally in line with the separation of the judiciary from the Executive. In practice we always were, because of the way everybody behaved in this country, but having made all the constitutional changes I think the reality of judicial independence from the Executive should be maintained.”

Later he said this about judicial review

“The basic underlying position with the judiciary remains good, I think. The one thing that has changed in my time, if you want to start reminiscing in this august setting with my old colleagues, is that the growth of judicial review is quite remarkable. I have always supported it, ever since Lord Woolf got it under way. The modern Executive was at last to be made properly subject to review, to prevent arbitrary and unfair action at the expense of the individual. Even I, who have always been a firm enthusiast of it, am astonished at the way that judicial review sits over every decision that anybody in government and the administration makes.

I’m beginning to find myself thinking, “Why on earth have they given leave for judicial review of such an obscure and tiny issue?” It’s an industry and it takes up a very high proportion of the time of the administrative courts. That has nothing to do with me.

It is where the judiciary wishes to take it and it would be very dangerous to try and reverse it, because anybody in any position in the Government or administration should be subject to the law of judicial review, but that has changed the relationship. It has changed it more than the European Convention on Human Rights has, in my view, which everybody gets very excited about. Judicial review lies behind half the discussions I find myself having across government or inside my department about how we are going to handle a particular case.”

We have been and we continue to be well served by our Lord Chancellors; but how about the call for more judicial accountability?

### **Accountability**

There is a conflict between what most people mean when they call for accountability and judicial independence.

So far as our judicial decisions are concerned, the appellate system provides accountability. Decisions of the Supreme Court are not subject to appeal. The buck stops with us, although The Strasbourg Court will sometimes say that we have got a point of Human Rights law wrong. It is, of course, always open to Parliament to legislate if they do not like the law as we have found it to be, and they sometimes do.

A classic case was Parliament's reversal of the decision that those who had exposed a worker to asbestos were only liable to a worker who developed mesothelioma in proportion to the exposure for which they were responsible.

What about the judge who misconducts himself, whether in court or outside it. It must be right that he should be called to account. Judges are rightly expected to conduct court proceedings with courtesy and to do nothing that throws doubt on their impartiality. Out of court they must be careful to do nothing that would bring the judiciary into disrepute. So far as misconduct is concerned, it is clearly desirable that the judiciary should be subject to disciplinary review. This used to be a matter for the Lord Chancellor.

The Constitutional Reform Act sets up a very complex statutory disciplinary scheme for the judiciary of England and Wales, in which the Lord Chancellor has a significant role. At the end of the day, however, no disciplinary sanction can be imposed unless the Lord Chief Justice and the Lord Chancellor agree on this. I believe that this is a good system. The judges cannot be accused of looking after their own, and yet judicial independence is preserved.

But some make the point, and Lord Howard was one of them, that judges are unelected and yet take it upon themselves to overrule the elected government. There are those who call for some form of confirmatory hearings of judicial appointments under which candidates for the Bench would be submitted to some form of Parliamentary scrutiny.

The Supreme Court of the United States are subject to such a system and I do not believe that this provides a model that we should emulate. It tends to lead to the politicisation of judicial

appointments and to the Court being seen to divide on some issues on political lines. I believe that the involvement of lay members of the judicial appointments bodies is a preferable method of securing a democratic method of judicial appointment.

The media is not slow to attack the judiciary, but I am not aware that it has ever accused a judge of political bias, and I am not even aware of the politics of my colleagues on the Court.

One of the objects of the creation of the Supreme Court is to ensure that the public are better informed about the final court of appeal of the United Kingdom. To this end we film all our proceedings in court and make footage available to broadcasters.

And we have permitted two films to be made about the court and its Justices, in the hope that this will inform members of the public, get across the message that our role is to give effect to the wishes of a democratically elected Parliament and enable them to see that we are not remote from the people on whose behalf we uphold the rule of law. The first of these was broadcast on the 27 January and the second will be broadcast on More 4 at ten this evening.

And we regard it as part of our role to accept invitations such as that to which I have responded this evening in an attempt to see that the public is properly informed about the Supreme Court. I hope that in that I have succeeded.

## **Conclusion**

Institutional independence of the judiciary is not always easy to achieve, particularly as it needs to be combined with a proper degree of accountability. Constant vigilance is required on the part of both judges and ministers. A well thought through statutory framework can achieve much but not everything.

The setting up of a Supreme Court was intended to enable all to see that the final court of appeal of the United Kingdom is wholly independent of the legislature and the executive and

to increase accountability through greater openness and transparency and easier access. Much of this has been achieved, notwithstanding the reservations I have expressed about the fact that we do not have full financial independence and that not all may appreciate the fact that our administration is independent of the Ministry of Justice. I hope that the research projects on judicial independence will be able to look at these and related issues in some detail.

**ends**