

THE BAR COUNCIL'S EMPLOYED BAR

DINNER AND AWARDS 2024

GRAY'S INN

10 OCTOBER 2024

1. I am delighted to have this opportunity to speak to you at such a splendid dinner and to be able to congratulate in person the worthy recipients of the Bar Council's Employed Bar awards.
2. This annual dinner is always a great occasion. It is a lovely chance for to meet old friends and to hear about the exciting ways in which people are using their legal skills. It also is a mark of the respect and appreciation that Gray's Inn – and indeed the wider Bar – now rightly accords to those of us who choose to spend our careers at the employed Bar.
3. With that in mind, I want to use my few minutes for some proselytising and to encourage more of you to think about the judiciary as a possible goal towards the end of your careers. When I left private practice in Chambers in 1995 to work in the Government Legal Service my one regret was that I thought it meant that I would never become a judge. The creation of the Judicial Appointments Commission in 2003 put the whole process of recruiting judges on a more transparent and fairer footing. It also opened up the judiciary for a much broader range of lawyers. It was a long overdue recognition that the previous idea that the qualities needed for joining the judiciary were to be found exclusively in the senior ranks of those in private practice was not true. Of course, many great barristers go on to be very good judges. But I think it is now clear that the skills involved and the experience gained from being a good court advocate are neither necessary nor sufficient for being a good judge.
4. Since joining the judiciary, I have found that my many years of working in the Government Legal Service provided a very good basis for my judicial career in a number of ways.
5. First, the work of many employed barristers calls on them to consider and analyse a very varied range of legal topics. My different postings in HM Treasury, the Ministry of Defence, and the House of Commons legal teams gave me the confidence as a judge to tackle areas of law that were unfamiliar to me. In my work as a Justice of the Supreme Court and member of the Judicial Committee of the Privy Council, almost every case I sit on involves getting to grips with a new area of law. I have sat on cases dealing with international tuna fishing rights in the South Pacific Ocean, the protection of the public's right to use a recreation ground in Shropshire, as well as forays into employment law, commercial shipping and insurance, human rights, tax and the growing number of environmental law cases.
6. Secondly, the judicial workload increasingly includes an element of management responsibility, team leadership, and involvement in various committees and projects. As a Senior Civil Servant, I gained experience in managing teams which stood me in good

stead when I was appointed to be President of the Tax and Chancery Chamber. The statutory instrument drafting skills I learned in the Treasury have been put to particularly good use this year as I have been helping with the revision of the Supreme Court's Rules and Practice Directions. Our Rules have not been revised fully since they were first adopted in 2009. They have got rather out of line with the largely electronic way we now do business. Our ways of working are going to change dramatically in December when the Supreme Court introduces the new online portal. The portal will enable the parties to an appeal and their legal representatives to file applications, appeals and other documents with the Registry, to serve those documents on other parties involved in the appeal and to communicate with the Registry and with each other without having to email documents to each other multiple times. New Rules have recently been laid before Parliament to accommodate those changes.

7. Thirdly the work of an employed barrister is often more forward-looking. Rather than applying legal principles to events that have already taken place and so are fixed in nature, much of our work particularly when working on a bill team helping to draft legislation or drafting statutory instruments was aimed at working out what we want to happen in the future. Similarly, a judge's role is not just to think about the result of the particular case on the particular facts but to think more widely about the application of the law to future scenarios.
8. There would be great benefits both to individual lawyers and to the judicial system as a whole if more people with this variety of legal skills put themselves forward for appointment. So what is holding people back? One of the hurdles to more people from the employed Bar joining the judiciary is the attitude of employers to people taking up part-time judicial posts. As many of you know, every level of salaried full-time judges, whether first tier or upper tribunals, the district bench, the circuit bench or the High Court is supplemented by a group of fee-paid, part-time judges. They are appointed to those posts and then sit for about six weeks across the year usually a couple of weeks at one stretch. This system of part-time judges has a triple advantage. It allows lawyers to dip their toes in the water to see if they enjoy judging and are any good at it. It allows the judicial leadership in the courts where they work to assess whether they have the potential to be a good full-time judge. And it provides some flexibility to the court's listing office to match the workload by calling upon part-time judges to sit as and when there are a lot of cases to be heard.
9. Sets of Chambers have traditionally regarded it as a feather in their collective cap if one of the silks gets an appointment, say, as a Deputy High Court judge. Yes, it may cause some inconvenience to their clients in a long-running case if they are effectively out of the office for a couple of weeks. But clients don't seem to mind – they seem to like the idea that their representative has got that kudos. It is regarded as a positive thing and every new silk knows that they will be supported by their chambers if they want to take time out for this reason.
10. Contrast the experience of senior barristers who are now working in a firm of solicitors or in a corporate legal role. It is quite rare for such an organisation to have a published

policy which sets out whether people can take additional time off to sit as a part-time judge. Sometimes lawyers feel that if they raise the possibility of applying for a judicial role with the head of the legal department, they will be regarded as not fully committed to their present role or as not seeing their future with that firm or company.

11. I am not sure why there is this difference in attitude. The answer I often get when I raise this is that barristers in private practice are self-employed. If they are willing to accept the loss of fee income from taking six weeks out of their busy practice to sit in court, that is their own business but the same is not true in a legal firm or company. That seems to me an unconvincing argument now that sets of chambers have become more corporate. The contribution that the leading silks make to Chambers' expenses from their fees is vital for the operation of the set. The other side of the coin is that many of the big legal firms and companies have adopted policies to facilitate their lawyers to undertake pro bono work in advice centres and for all sorts of access to justice charities. If judicial work could be regarded in the same positive light, I think that would be a huge step forward.
12. So, I hope this evening not just to plant the seed of judicial ambition in the hearts of at least some of you at this wonderful event. I also want to suggest that those of you who are now or in the future in a position to nurture that ambition in others should do just that. Think about whether you could introduce a clear policy in your workplace to support and encourage people to sit as part-time judges.
13. I hope in future there will be many more justices of the Supreme Court who have benefited from the same varied and fascinating legal career as I have had.