

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.



HOUSE OF LORDS,
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CONFIDENTIAL

Prime Minister

Forward Look

INTRODUCTION

1. This is my response to your letter of 16th September. It is a trifle late because I have decided to write some of it myself. This is perhaps not surprising, because, apart from the Prime Minister and the Law Officers, the Lord Chancellor's position differs from all other Ministerial Offices in being sui generis and intensely personal.

2. You will be glad to hear that neither of the two first categories figure in this minute at all. We have no unhonoured manifesto cheques, and, apart from certain law reform projects which are best dealt with under another head, we own to no unfinished business.

3. The first question which each Lord Chancellor has to ask himself about his ancient office which is unique in the world is why he is there at all. He is a Minister of Justice (but unlike most others without responsibility for prosecutions or penal treatment). He is guardian of the Public Records (but without the funds or officials to carry out all the duties imposed upon him). He is head of the Land Registry (whose failure to complete the task imposed on it in 1925 is a recurring public scandal). He is responsible personally for the Court of Protection (which deals with the properties of those of unsound mind). He is responsible for the law of divorce, but not that of marriage. ! He is responsible for the civil, but not criminal, procedure (which belongs to the Home Office). He is responsible for the

administration of the courts (but not magistrates' courts). He appoints all magistrates in England and Wales (but not in the Duchy of Lancaster). He is responsible for law reform (but not in commercial or criminal law). He is also automatically President of the highest Courts of Appeal in the UK and in the Commonwealth, and sits as such when other duties permit. But he does not sit as a member of the Court of Appeal or the High Court (where he is also entitled to preside, at least in the Chancery Division). His work has increased enormously since my father held the office, and, in the main, ^{the changes have been} for the better. He is also Speaker of the House of Lords (but without the powers of every other Speaker in the world).

4. The answer is that his office is a pearl of great price to be retained at all costs. The maintenance of the integrity and impartiality of our system of justice in two of the three parts of the United Kingdom (and perhaps to some degree even in Scotland) is his *raison d'être*. A country like ours without a written constitution and with a Parliament possessing the unlimited powers of our own, and an executive normally (and desirably) depending on a majority of a single party, needs a man to protect the judiciary. That man must be a lawyer of sufficient ability to preside as a judge and command the professional respect of bench, bar and solicitors, a Parliamentarian of sufficient experience to occupy the Woolsack, and a politician of sufficient rank to sit effectively in Cabinet. If he succeeds, it is because under him the reputation of justice does not diminish. If it does, he fails, whatever other achievements he may boast. Whether the exact boundaries of his post are ideal or too wide or too narrow (and in some respects I think them both) is a matter for the Prime Minister not the Lord Chancellor's Department.

II POSITIVE SUGGESTIONS

5. It is with these thoughts in mind that I have considered your directive. I am considering my various responsibilities under separate heads.

A. LAW REFORM

6. First, law reform. It is one of the functions of Government to keep the law in good repair. Over the past two years in particular there has been a build up of Reports, from the Law Commission and other agencies of law reform, which make recommendations for revision, improvement and clarification of the general law. These recommendations are not usually controversial, at least not in party political terms, but unless Government time can be spared for them, or some special legislative procedure can be devised, there is a danger that valuable law reforms will be lost. I hope that the next Conservative Government will show a determination to tackle these problems and will commit itself, in advance, to the task.

B. THE JURISDICTION OF THE COURTS

7. Secondly, there is the possibility of merging the High Court and the County Court. Although I am not able to quantify this, it seems likely that a merger of the two separate jurisdictions of the High Court and the County Court could afford some resource savings, as well as simplifying civil court procedures. A number of technical and other problems would need to be resolved, and I am not yet satisfied that to bring forward such a change would justify the legislative and other effort that would be needed to achieve it. Nevertheless I have in mind a consultation paper which would raise the possibility of a merger of the two jurisdictions, and which would provide the Government with the opportunity to assess the support that there would be for such a change.

8. Thirdly, and in parallel with the above, there is the proposal for Family Courts. I hope shortly to issue a consultation paper canvassing proposals for rationalising the family jurisdiction of the High Court and the County Courts. The more radical of the alternative proposals, which I personally tend to favour, is that the jurisdiction of the High Court and the County Courts should be transferred to a new court (to be called a Family Court) manned by High Court Judges, Circuit Judges and Registrars on the analogy of the Crown Court, and that the Family

Division of the High Court as such should be abolished. Such a court would be rather different from that proposed by the Finer Committee in 1974 because it would not take over the domestic jurisdiction of Magistrates' Courts (which would be outside the province of the Lord Chancellor), but it would be a significant step towards the Finer Committee proposals if they were otherwise thought desirable. My proposal would be more convenient for all concerned and might yield some small savings, for example in ensuring that cases are not dealt with at too high a judicial level. If the results of consultation prove favourable, it should be possible to be ready to legislate in the 1983/84 Session.

9. Every Lord Chancellor that I have known has favoured the transfer to the Lord Chancellor's Department of Criminal Procedure (as distinct from substantive law) and at least the administration of the Magistrates' Courts. These are for consideration (the Magistrates' Courts' option was openly canvassed in his presidential address by the present President of the Law Society), but could not be floated without the agreement of the Home Office and other bodies including the magistrates themselves. Responsibility is at present shared between the Home Office, Local Authorities, the Magistrates' Courts Committees and the Lord Chancellor's Department. My own view is that, whoever is ultimately responsible, the administration of these courts certainly needs examination. They are imperfectly located. There is no career structure for the staff. Listing arrangements and jurisdiction as regards listing are unsatisfactory and as regards jurisdiction illogical. But to transfer them to Central Government at all would not be universally popular in the country. They are mainly locally administered by Magistrates' Courts Committees, and, though rather inefficient administratively, give comparatively little trouble.

C. AN ESTATE MANAGEMENT OFFICE?

10. I have long been troubled by the fact that a number of units within the Lord Chancellor's Department do similar work and are separately based. In my mind are the Public Trustee, the Court of Protection, the Court Funds Office, and part of the Office of the Official Solicitor. They all look after other people's money, and they might well benefit from central

organisation. They tend to be financially self-supporting, but only on the basis that the larger properties in fact subsidise the smaller. There may be some scope for privatisation and saving in numbers here, but I would not like to do this if we were left in Central Government with a number of loss-bearing estates. There is however scope for rationalisation and I may well wish to bring forward proposals for legislation to rationalise the different offices within my Department which are concerned with the management of privately-owned assets and estates (the Public Trustee, the Court of Protection, the Court Funds Office and part of the Official Solicitor's office). I see attraction in establishing an Estate Management Office which would look after the administrative (as opposed to judicial) side of all this work. This could produce some resource savings and enable a better service to be offered to the public at lower cost.

D. LAND REGISTRATION

11. It is something of a scandal that one fifth of England and Wales is still outside the compulsory registry. Of course there would be some increase in numbers, but as the service is a money spinner (it makes a profit) I would hope we can make some progress here.

E. THE PUBLIC RECORD OFFICE

12. I was personally rather disappointed with the report of the Wilson Committee. It did not seem to realise that the Lord Chancellor and his staff are really saddled with responsibilities which they are not equipped conscientiously to perform, and they made a number of proposals which in the event (in my view rightly) were not acceptable to the Government. The enthusiasm of some of its members also failed to appreciate that the problem largely consists in the enormous amount of paper retained (although 99% is destroyed) and not in excessive destruction. They also failed to understand that advisory groups or panels cannot perform their function if they are going simultaneously to operate as pressure groups.

F. LEGAL AID AND ADVICE

13. Litigation is now largely paid for by the public. In the nature of things this is so in prosecutions, and litigation by the Revenue, or Customs, or other public offices. Most contract and tort litigation has a hidden subsidy in tax relief. It is also true of the spectacularly rising costs of the three legal aid schemes (Criminal, Civil and "Green form") under the auspices of the Lord Chancellor's Department itself. There is growing pressure for Central Government expenditure on "Law Centres", conciliation schemes and other politically attractive prospects, for which the Lord Chancellor's Department is not, at present, though it is popularly supposed to be, responsible. The Lord Chancellor's Department will have to do its best to contain the worrying rise in existing schemes and contain the element of sheer adventurism in new proposals. It is not going to be easy. I foresee a long period in which we shall have to negotiate with the professions. We must retain their good will. It is vital that we preserve ^{their} ~~the~~ independence and integrity. We need to continue to recruit the best brains and the most upright people. We cannot disclaim total responsibility because the structure of remuneration for legal aid has grown out of, and is bound up with, the pre-existing structures of privately funded litigation. This is emphatically not the stuff of which manifestoes are made. But all high ranking Cabinet Ministers and party officials should be aware of the problems and thinking about them.

G. THE PROSECUTION PROCESS

16. Finally, I hope that we can consider prosecution arrangements as part of this exercise. The lead on this matter rests with the Home Secretary, but I have a strong interest also, because of my responsibility for criminal legal aid and costs. Whatever new system is devised, it is most important that it should be as efficient as possible and should avoid the considerable waste of public funds that exists at present.

17. I am copying this minute to other members of the Cabinet,
the Law Officers and to Sir Robert Armstrong.

H: of S: M.
22 Dec 82