

Valedictory for the Master of the Rolls, Sir Terence Etherton

17 December 2020

Good afternoon and welcome to this rather unorthodox valedictory to bid farewell to Sir Terence Etherton as Master of the Rolls. In more normal times we would be assembled in court 4 with everybody in their finery to pay tribute to his quite remarkable career as lawyer and judge. I shall say a few words by way of introduction and then hand over to Jonathan Seidler QC, head of Wilberforce Chambers. David Greene, President of the Law Society, will add a few words and then we give the floor to Sir Terence himself. We all regret not only our inability to provide a more normal send-off but also that none of the customary social celebrations to mark the retirement of a senior judge is currently possible. With luck that position will change before long. The system we are using does not allow me to see who is attending, but I want to welcome especially the Master of the Rolls' husband, Andrew Stone, his sister Gillian and brothers Derek and Richard.

The Keeper or Master of the Rolls and Records of the Chancery of England is an ancient office. It is dated, rather improbably in my view, to 2 September 1286 when John Langton is recorded as its first occupant. He, like many of the early Masters of the Rolls, went on to be Lord Chancellor. A fair number of them in mediaeval times progressed to being Archbishops of Canterbury, York or Dublin. The clearer judicial functions of the Master of the Rolls came a little later, in the first half of the 16th century. But one of the occupants of the office at that time, not renowned as a jurist but rather as an accomplished politician, was Thomas Cromwell. Later occupiers of the role include many who held the office

simultaneously with being speaker of the House of Commons, untroubled, it would seem, by drawing two very large salaries at the same time.

That munificence of course has gone and the role became purely judicial in the 18th and 19th century. The role of distinguished predecessors of Sir Terence Etherton is too long to enumerate - I wish I had time to tell you a little bit about Sir Julius Caesar - but he has lived up to the very high standards set by many of them, including all those who have held office during our collective professional lifetimes, a remarkable crop indeed.

Sir Terence teased me a little when I was sworn in by describing me as "Ian from Essex". I am a recent immigrant to Essex. What is less well known is that the Master of the Rolls was born in Essex and spent his early years there. So, if either of us feels an affinity for The Only Way is Essex, or TOWIE as it is known in the part of the county from which Sir Terence hails, it will be him. His family moved away from Essex and he pursued his education in London. He was an outstanding student and proceeded to Corpus Christi College, Cambridge where he read history and law. He was called to the bar by Gray's Inn in 1974, taking many prizes with him, and was in practice between 1975 and 2000 in what became Wilberforce Chambers. He carried all before him in his chosen field of property law and landlord and tenant law, but despite his excellence he did not expect to pursue a judicial career. I shall leave him, perhaps, to tell us why.

Sir Terence threw himself into voluntary work connected with the bar and also pursued a profound interest in mental health. He was a member of the Mental Health Review Tribunal between 1994 and 1999, Chairman of Broadmoor Hospital Authority between 1999 and 2001, and the West London Mental Health and NHS Trust between 2000 and 2001. He had

been a director of the Riverside Mental Health NHS Trust between 1992 and 1999. There was much else that he was doing to contribute to society, including supporting the young.

But in 2000 he was appointed a deputy High Court Judge and then became a judge of the Chancery Division of the High Court in 2001. He moved from the Chancery Division to the Court of Appeal in 2008, a promotion which straddled his time as Chairman of the Law Commission between 2006 and 2009. He became Chancellor of the High Court in 2013 and assumed his current office on the retirement of Lord Dyson in 2016.

In all the roles that Sir Terence has occupied he has been a force of nature. He piloted, as Chairman of the Law Commission, the new House of Lords procedure for uncontroversial Law Commission bills. Amongst his achievements as Chancellor of the High Court was the introduction of the financial list, a joint list between the Chancery Division and the Commercial Court for resolving disputes involving complex financial instruments; and also the installation in the Rolls Building of the first electronic filing and case management system in this country. As Master of the Rolls, Sir Terence has pressed reforms in the civil division of the Court of Appeal, most visibly live streaming, and he has been at the forefront of enthusiastic support and promotion within the judiciary, publicly and before the justice committee, of the reform and modernization programme. He is a tech visionary but intensely practical. As Chairman of the Civil Justice Council he has been a champion of access to justice and helping vulnerable people in the civil courts. His unfailing support during the last nine months of the pandemic has been inspirational.

It would be invidious for me to identify individual judgments of Sir Terence for special mention because, both as Master of the Rolls and also as Chancellor, he has covered the whole spectrum of law and made a remarkable contribution to clarifying difficult issues and developing the common law. I think if I tried to identify two or three I might get an email in the sidebar from Sir Terence telling me that I had got the wrong ones. Nonetheless, no valedictory would be complete without a mention of the two Miller judgments. The first Miller case led to the notorious unprecedented public attack on the court. It was very uncomfortable at the time for Lord Thomas, Sir Terence and Lord Justice Sales, but it had its light-hearted side. The press picked up not only that Sir Terence is gay, but also that he had been captain of Cambridge University fencing team as an undergraduate, a member of the Great Britain senior international fencing team, including at three World Championships. He won a gold medal as part of the Sabre team at the Commonwealth fencing championships in 1978 and was selected for the Olympics in Moscow in 1980 but, like others in the British Olympic team, did not attend because of the Russian invasion of Afghanistan. It is difficult to work out how in the context of Miller number one either the sexuality of the judges or facility with a Sabre could be relevant. Nonetheless, it made Sir Terence something of a folk hero. A Lego mini figure of him was constructed. I had hoped that I might be able to produce it as a visual aid – a new departure in a valedictory - but Sir Terence would have become suspicious if it had disappeared from his room. It has a judge in ceremonial red robes and full-bottomed wig holding an improbably long sword which owes much to the light sabre from Star Wars. Many people sought to acquire one. After the *enemies of the people* article a tweet from JK Rowling went viral. It said “if the worst they can say about you is you're

an openly gay excellent Olympic fencer top judge, you've basically won at life." Quite so.

Sir Terence has asked me to be brief and I must let others speak. But I will finish by paying tribute to his outstanding contribution to the governance of the judiciary through his membership of the Judicial Executive Board both as Chancellor and Master of the Rolls. Sir Terence has always applied himself with equal concern to matters for which he is directly responsible and also to those for which he is not. He could be relied upon to provide thoughtful insights into problems which had passed others by. We will miss his calm wisdom.

But more importantly, as we bid a professional farewell to a colleague and great Master of the Rolls we will miss his constant camaraderie and good humour.

Terry, thank you for all you have done.

The Lord Burnett of Maldon
Lord Chief Justice of England and Wales