

CONFIDENTIAL FILING

INCREASE IN THE NUMBER OF
LORDS JUSTICES OF APPEAL

LEGAL PROCEDURE

OCTOBER 1987

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file



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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

22 October 1987

The Prime Minister has seen the Attorney General's recent minute in which he wrote on behalf of the Lord Chancellor seeking her agreement to an increase in the number of Lords Justices of Appeal. The Prime Minister is content with the proposals therein.

I am copying this letter to Michael Saunders (Law Officers' Department) and to Jonathan Taylor (HM Treasury).

P. A. Bearpark

Paul Stockton, Esq.,
Lord Chancellor's Office.

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CF
Prime Minister.

The Tsy do not have
any objection to this.

Content ?

Yes not

2/10

Prime Minister

NUMBER OF LORDS JUSTICES OF APPEAL

I am writing on behalf of the Lord Chancellor to seek your agreement to an increase in the number of Lords Justices of Appeal.

Since 1983, when the maximum number of Lords Justices was last raised (to 23), the workload of the Civil Division of the Court of Appeal has continued to increase. Waiting times in that Division may now be as long as 18 months for an appeal against a final judgment of the High Court. The workload of the Criminal Division increased by 15% between 1982 and 1986, and the number of appeals registered in the first quarter of 1987 was some 12% higher than in the corresponding period of 1986. These increases reflected the surge in workload of the Crown Court. With work in the courts of first instance continuing to grow, there is obviously no likelihood that the growth in business before the Court of Appeal will slacken.

In order to cope with the increasing pressures, a minimum of 13 courts are now generally sitting in the two Divisions of the Court of Appeal and in the Queen's Bench Divisional Court, producing a need for a minimum of 24 or 25 Lords Justices. This requirement is further increased when the President of the Family Division or the Vice-Chancellor sits in the Civil Division of the Court of Appeal, thereby enabling another court to function there.

The Lord Chancellor is also anxious that Lord Justice Mustill should be free to give more time to his work as Chairman of the



Judicial Studies Board. This is an increasingly sensitive and important area and Mustill LJ has proved to be an outstandingly successful Chairman, who is imaginative, enthusiastic and hard-working. He does, however, find it very difficult to give the time he needs to the Board because of his commitments to his colleagues in the Court of Appeal. He must be given more time for this, but that can of course only be achieved if we make good the resultant loss of time to the court.

The shortage in the number of Lords Justices is at present being made good to a large extent by the use of retired Lords Justices, who are effectively sitting as additional judges of the Court of Appeal. While there is provision in the Supreme Court Act 1981 for retired judges to sit in this way it is plainly far from an ideal arrangement, and it leads to a good deal of criticism. In any one week during the first half of 1987 up to four retired judges sat in the Civil Division of the Court of Appeal, and this is much more than the Lord Chancellor would like. Whether the increase in numbers now proposed will overcome this difficulty is doubtful. Indeed, the Master of the Rolls has pointed out that, unless he continues to rely on part-timers, any addition in the whole-time strength will not lead to any net gain. The Lord Chancellor accepts this, but it does not affect his view about our need for more whole-timers anyway.

The Lord Chancellor has accordingly obtained the agreement of the Treasury to an increase of five (from 23 to 28) in the statutory maximum of Lords Justices, and to three of these places being filled immediately. He intends that the remaining two should be kept in reserve for the time being. This increase will require an Order in Council subject to affirmative resolutions in both Houses. Since appointments to the Court of Appeal are made on your advice and carry Privy Counsellorships, I seek your agreement to these proposals on the Lord Chancellor's behalf.

A.M.



If you are content with what is proposed, the Lord Chancellor will submit his recommendations for the names to be considered once the necessary Parliamentary resolutions have been obtained.

There is also much pressure on the High Court Bench and the Lord Chancellor has obtained Treasury approval to an increase in the statutory maximum from 80 to 85. It is his intention that two additional appointments should be made as soon as the approval of Parliament has been obtained. This will increase the number in post from 79 to 81.

I am sending a copy of this minute to the Chancellor of the Exchequer.

Completed PM

LEGAL PROC: Increase in number of

Lord Justices of appeal

Oct '87

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