

MR JUSTICE MILES, MR JUSTICE MEADE, MRS JUSTICE BACON, MR JUSTICE ADAM JOHNSON AND MR JUSTICE GREEN

WELCOME SPEECHES FROM THE CHANCERY BAR ASSOCIATION

WEDNESDAY 15TH DECEMBER 2020, COURT 30, ROLLS BUILDING

MRS AMANDA HARDY QC (Chair, Chancery Bar Association), MR ANDREW TWIGGER QC (Vice Chair, Chancery Bar Association)

Amanda Hardy QC: Introduction

May it please your lordships and your ladyship, it is my great pleasure this morning to be instructed on behalf of the Chancery Bar Association with my learned friend Mr Twigger, Queen's Counsel, to welcome your lordships and your ladyship to the Chancery Bench, and of course to congratulate you all on your appointment as Judges of this division.

It would be remiss of me not to mention that the circumstances are, to put it mildly, unusual, and we have never had the pleasure of welcoming two judges, let alone five, at the same time.

However, part of the format remains reassuringly traditional, in that my learned friend and I have kept to the usual brief on this occasion to keep the speeches short, identify success and to tell a story.

The innovation today is that we will be taking it in turns and my learned friend is to start with Mr Justice Miles.

Andrew Twigger QC: Mr Justice Miles

Good morning to everyone and welcome to our double act. Given that one member of this double act is a Hardy, I guess I have to be Laurel.

Seeing a row of 5 judges in front of me made me nervous that I had ended up in the Supreme Court by mistake. However, since I didn't see that little gift shop on the way in, selling baseball caps and teddy bears tastefully adorned with the Supreme Court logo, I am sure I must be in the Chancery Division.

On behalf of the Chancery Bar, I am delighted to be able to welcome Mr Justice Miles to the

Chancery Division.

I am also pleased to do so on a personal level because I was, rather a long time ago, one of your Lordship's pupils. My memory of that time is somewhat faded, but I think I remember your Lordship being able to multi-task most impressively. This involved analysing any number of difficult legal problems whilst simultaneously listening to Wagner's Ring cycle blasting out on the CD player. I'm sure this was psychological preparation for the case. After forging your legal sword you would then venture forth, never knowing any fear, to kill dragons and Nibelungs in the Chancery Division.

Going back in the story, before you became Siegfried, your lordship read Politics, Philosophy and Economics at Christ Church, Oxford. You swiftly realised your mistake, however, and took the law conversion course at City University. Not content with that, you then returned to Oxford to take the BCL.

Your lordship was called to the bar in 1987 and thereafter practiced from 4 Stone Buildings. I am told that your pupil master (Mr John Brisby Q.C.) was so impressed with your legal ability that decided that he would make the coffee for his pupil, rather than the other way around. Since then, your reputation for your formidable intellect has spread far and wide. I would say that your lordship will be the next Lord Sumption, but I'm afraid you will need to work on the hair.

Your lordship took silk in 2002 and was appointed a deputy High Court judge in 2006. Not satisfied with being recognised as a specialist in one area, you were ranked silk of year at the Chambers Bar Awards three times, in three different categories: Insolvency/Restructuring for 2011, Chancery for 2014 and Banking for 2016.

In addition, you were appointed in 2012 as Attorney General of the Duchy of Lancaster. Appointment to that post is as reliable a prediction of the future as the three Norns weaving the rope of destiny. So far as I can see from the list on Wikipedia, each of the last 13 previous holders of that position have become High Court judges, including of course your immediate predecessor Mr Justice Hildyard.

During your career at the bar you were involved in some of the most high-profile cases in the Chancery Division.

These included the well-known case of Constantin v Ecclestone relating to allegations of bribery in connection with Formula One. Your lordship's submissions in that case were, unfortunately, upstaged by your own client's creative approach to the revolving door at the entrance of the Rolls Building. Having turned a full 360 degrees he re-emerged at the same point he had entered, rather setting the tone for some of the evidence which was to follow.

I've always wondered whether this was, in reality, a clever tactical move by your lordship to distract the press from reporting the facts? What is certain is that, despite the door incident, your lordship went on to win the case.

Then, of course, there was the Lehmans case. When it started in 2010 it was an example of your lordship's expertise in the insolvency field. By 2017, when your lordship appeared in the Supreme Court again, it had become a battle to come up with the most ingenious legal reason why each of the rival financial institutions was entitled to the biggest slice of the £5 billion surplus.

More recently, of course, your lordship was involved in the Autonomy case. That was another "5 billion claim", although only dollars not pounds, which was the amount by which the claimants alleged they had overpaid for Autonomy. This was said to be the largest claim ever brought in the UK against a British citizen. It was certainly one of the longest, running to no less than 94 days. I know that your lordship enjoyed every single minute of it and was devastated when it ended.

So, what is a successful lawyer to do when he has just finished one of the biggest and longest cases ever, and doesn't want to have to read the no doubt very lengthy and very learned judgment? The answer is, of course, that it is time to go on the bench.

What your lordship could not have anticipated when you accepted the appointment, was that by the time you began your judicial career on 21 April 2020, the job would have transformed into that of a video-conference administrator.

Nothing deterred, of course, your lordship has already been dispensing justice for 7 months and, entirely as expected, the Court of Appeal has not dared reverse you yet. Indeed, they will probably be making the coffee for you soon.

This means that it is exceptionally late for me to be welcoming your lordship, but I do seek relief

from sanctions, since the default, although serious and significant, was caused by circumstances entirely outside our control.

On behalf of the Chancery Bar, may I wish your lordship every success in your future judicial career.

Amanda Hardy QC: Mr Justice Meade

With my brief in mind, your lordship has had many highlights in your career both at the Bar and judicially and I am spoilt for choice and must be selective.

You attended a state secondary school and read law at University College Oxford, graduating in 1988. After university your lordship worked at Anderson Consulting on IT projects but the bar called and in 1991 you were awarded the Scarman Scholarship for coming first in the Bar Vocational Course. A sign of things to come.

Your lordship undertook pupillage at 8 New Square, the specialist intellectual property set, where one of your pupil masters was David, now Lord, Kitchen. You quickly developed a speciality in pharmaceuticals and telecoms patents and also acted in a number of leading music contract cases.

It is a testament to your lordship that I understand that you are one of a very few number of IP specialist silks who does not have a science degree.

I have been assured that the patent community recognize you as one of the leading IP practitioners. One of your colleagues described you as “by far the most successful IP barrister with a fierce intellect” and it is said that the IP profession could not have asked for a better candidate to fly the flag of IP litigation in this jurisdiction, especially in these uncertain times of Covid and Brexit.

I am also informed that the remaining IP silks breathed a collective sigh of relief when they realized your lordship would never be an opponent again until they reminded themselves that they would now have to appear in front of you!

Your judicial career has been equally eminent as you were appointed a recorder in 2009 after, I understand Lord Justice Arnold encouraged IP specialists to apply and you were appointed a Deputy High Court Judge in 2011, sitting as a Deputy in both the Chancery Division and the Patents Court.

Your lordship has sat on a number of general chancery cases as well as obviously being earmarked for IP cases. Your lordship is described by those who have appeared in front of you as “technically brilliant” and “an overall calming influence” a reassuring double act for a High Court Judge.

Indeed, in the first days of the first lockdown your lordship presided over one of the first cases that used a video conference platform, a pharmaceutical case between Merck Sharp and Dohme against Wyeth. The patent community publicly praised your ability and willingness to adapt to a new way of jurisprudence in such unprecedented times.

Again, in common with your fellow new Judges, I know you owe an enormous debt of gratitude to your wife Sarah and to your children, Esther, William and Anna whom you consider a great pleasure.

I finish, your lordship with not one but two very brief stories. First, I know you are an avid chess player and you gave me some helpful judicial guidance on the reliability of the Queen’s Gambit. I understand that whilst at the bar you could often be spotted via your corner room in Lincoln’s Inn playing during a break for intellectual stimulation and you wondered if passers by thought you got on with any work at all. My researches and the comments I have already made should reassure your lordship that we are well aware that your work output was and remains significant.

My second story is that you are a retired poker champion, winning a competition in London in 1996 and travelling most years to Las Vegas for the world series. It is, of course, well known that poker, like chess is a game of intellectual ability and I understand that you are retired as it became impossible to meet the time commitment as you progressed through competitions. I note that your lordship has, therefore, replaced poker with table tennis in your Who’s Who entry, which for my own part, I consider marginally less exciting.

We regard ourselves as extremely fortunate that your lordship has been appointed as one of the new judges in this division, particularly with your longstanding IP experience as both a practitioner and a Judge and we wish your lordship well in the next stage of your already eminent career. My lord, welcome.

Andrew Twigger QC: Mrs Justice Bacon

It is a huge pleasure to be able to welcome Mrs Justice Bacon to the Chancery Division on behalf

of the Chancery Bar.

It would, of course, be bad manners to mention age, but may I say that your ladyship's journey to the bench has been meteoric, marked out by many distinctions along the way.

I was not, of course, your ladyship's pupil, but I have my sources. The expression "Bacon red pen" has been mentioned to me, along with the "Bacon skeleton template". It sounds as though the Chancery Bar needs to get hold of a copy of the latter, if we want to avoid the former.

Your ladyship attended Frome College, a state school in Somerset, and then went up to Merton College, Oxford as recently as 1992.

You obtained a first-class degree with the catchy title of "law with law studies in Europe". Your ladyship explained to me that that course was popularly known as "law with holidays."

In your ladyship's case, the holiday was at Konstanz University in southern Germany. As I understand it, that was where your ladyship became fluent in German, to add to the French in which you were already fluent.

Not content with two languages, your ladyship then obtained a masters degree in European Law from the European University Institute in Florence, which involved learning Italian. Your ladyship told me that over the years you have also dabbled in Spanish and, more exotically, Icelandic and Nepalese. I'm sure that once your ladyship has heard a few trials in this division you will also be fluent in Russian.

You joined Brick Court Chambers in 1998. I am told that the Brick Court annex was entirely populated by juniors until your ladyship took pity on them and moved in, at which point the annex was christened "Bacon Chambers". The advantages of being a tenant of Bacon Chambers included birthday lunches for all members and, most importantly, I am told, occasional cake afternoons, at which your ladyship's formidable baking skills have been enjoyed immensely.

Alongside these accomplishments, your legal career has progressed at a dizzying pace. You took silk in 2014, became a bencher of Inner Temple in 2015 and a deputy High Court Judge in 2017.

Your ladyship has become a leading specialist in EU and competition law. In particular, you wrote

a textbook (in fact, I think THE textbook) on the European Union Law of State Aid which was first published in 2009. I understand that you wrote it whilst on maternity leave, an incredible example of your ladyship's multi-tasking ability.

Indeed, your ladyship's legal career is all the more remarkable for having been achieved whilst bringing up your two children. I understand that your ladyship somehow found time to begin learning the cello a few years ago and that, with Lily and Zachary both playing violin, you have been trying to persuade your husband (Peter) to learn the viola in order to have a family string quartet. We look forward to booking the Bacon Quartet for future concerts in the Rolls Building. Hopefully there will also be cake afterwards.

Meanwhile, you have appeared in many high-profile competition cases, and cases involving the pharmaceutical industry.

Your ladyship's cases include, I think, three appearances as leading counsel in the Supreme Court. The last of those appearances was in Secretary of State for Health v Servier, a case about alleged anti-competitive practices in relation to the drug Perindopril. The issue related to the European principle of "*res judicata erga omnes*": so we can add Latin to your ladyship's list of language skills.

I am told that your ladyship's courtroom style includes a good sense of humour. At about the time when the press was full of talk about the possibility of a second Brexit referendum, you sought to persuade Mr Justice Roth to change his mind about a decision he had made some time previously, by making increasingly obvious, indirect references to the need to reconsider momentous decisions when circumstances changed. I am informed that your ladyship was thoroughly disappointed that the learned judge entirely failed to react; until the moment when he gave an extempore judgment, cracking exactly the same joke whilst he decided against you.

Now, the fly in the ointment is that, as we know, the opportunities to apply European Law in England and Wales are going to diminish at the end of this year, and the notion that we might continue to apply the European Law of State Aid, in particular, seems rather unlikely.

So what is a successful lawyer to do when the government of the day abolishes her chosen specialised subject? The answer is, of course, that it's time to go on the bench.

Your ladyship was appointed 1 October 2020 and we are very fortunate to have the benefit of your ladyship's EU, competition and intellectual property experience, as well as your personal charm and good humour.

On behalf of everyone at the Chancery Bar, we wish your ladyship every happiness and success in your new role.

Amanda Hardy QC: Mr Justice Adam Johnson

As I have noted my brief on these occasions remains to keep the speech short, identify success and tell a story.

As for brevity, your lordship has also done so much at Herbert Smith, as Queen's Counsel and as a Deputy High Court Judge, particularly in relation to international cross border disputes and arbitration, so I will stick to what I hope are my best points.

Your education began in Sheffield where you attended the local comprehensive. Your legal career started at Churchill College Cambridge and you were the first person in your family to attend university.

After the solicitors' final exams your lordship joined Herbert Smith as an articled clerk in 1988 and qualified in 1990 into the litigation department being made a partner in 1997.

I know your lordship had a particular interest in the conflict of laws and international cross-border disputes dating back to your lordship's university days as a pupil of the distinguished legal academic, John Collier.

At Herbert Smith, you worked closely with Lawrence (now Lord) Collins, then a partner in the firm and Campbell MacLachlan, now Professor of International Law at Victoria University in New Zealand.

Your career started on a "steady diet of litigation" in a wide range of areas, but with international litigation always as your lordship's key interest.

Your lordship was attracted to a career at Herbert Smith partly because of the opportunity for

international travel and you worked in Europe, New York, the Republic of Moldova and Tanzania, representing the National Bank of Commerce in Tanzania.

In 2007, your lordship moved to the firm's pioneering advocacy unit – still a fairly rare entity for a City law firm – to spend more time working as an advocate alongside Murray Rosen QC and Ian Gatt QC who had joined the firm.

Your lordship acted in the litigation arising out of RBS's 2008 rights issue amongst other important litigation and international arbitration including the *AWG v Morrison* case where you instructed eminent Queen's Counsel, including, I understand, the Chancellor.

Your Lordship was appointed Queen's Counsel in 2017 and a Deputy High Court Judge in 2018 and it was after sitting as a Deputy that you decided to embark on a fresh challenge where your skills built up over a 32 year career could be deployed to benefit society and the system more widely.

The Chancery Bar is grateful that you decided to take the plunge, as your unique background as a commercial solicitor, QC and Deputy High Court Judge certainly bring a fresh perspective to the Chancery bench.

I have seen this personally working with you on the committee established by the Chancellor on business litigation and preliminary issues and The Lord Chancellor has also appointed you Chairman of the Competition Appeal Tribunal, a role I know you are approaching with relish.

Whilst at Herbert Smith your Lordship was vice-chair of the Herbert Smith Freehills Pro Bono and Citizenship Council for several years, and you are a trustee of Pro Bono Community, a charity that provides legal training to law centre volunteers. In addition, you were a trustee of the British Institute of International and Comparative Law for 6 years and are still involved in their financial committee, continuing a long association with Herbert Smith Freehills that goes back to the Institute's establishment.

Finally, my story, or maybe better termed an admission, if your lordship will permit me. As your lordship has acknowledged, the exciting early years of international travel did lose some of its initial gloss once you and your wife Jennifer, had your three children, Laura, Imogen and Billy, of

whom you are very proud. Your wife Jennifer, who I understand qualified as a barrister and undertook pupillage, remains (and here comes the admission I'm afraid my lord) the best cross examiner in your household, unfortunately particularly of both you and the children.

Your lordship expressed to me what a supportive, collegiate and stimulating environment you have found the Chancery Division so far. We regard ourselves as extremely fortunate that your lordship has been appointed as one of the new judges in this division, particularly with your longstanding experience as a partner of a city solicitors firm as well as Queen's Counsel, and with your international cross border experience and we wish your lordship well in the next stage of your already eminent career. My lord, welcome.

Amanda Hardy QC: Mr Justice Green

Again your lordship has had many highlights in your career and my cup continues to runneth over.

Your lordship attended University College School in Hampstead and read law at Jesus College Cambridge following in your father's footsteps, as he was the founding partner at Jeffrey Green and Russell solicitors.

After the bar exams your lordship undertook pupillage at what was then 7 Stone Buildings and where your pupil masters were Nigel (now Lord Justice) Davies and Alastair Walton. Your lordship became a tenant in 1988 and then, in 1998 you moved to Fountain Court chambers as your practice was increasingly involving more commercially centred disputes.

Between 1997 and 2008 your lordship was one of the Junior Counsel to the Crown (A Panel) and your lordship acted for and advised many of the Government departments including HMRC, DBIS, the Home Office and the Department of Health. You took silk in 2009 and were appointed a Deputy High Court Judge in 2018.

Your Lordship's practice encompassed a wide range of commercial areas, with your areas of expertise including company law, financial services, civil fraud, international arbitration, restructuring/insolvency, offshore work and, close to my own heart, tax.

And it is in the offshore international tax arena that our paths first crossed as we were both instructed by different international oil companies in their separate disputes with the Ugandan

Revenue Authority, appearing on a number of occasions in the Courts in Kampala.

That made for excellent Chancery Bar conferences in the Channel Islands and elsewhere where we compared notes on our experiences appearing in the Ugandan Courts.

I remember, with my Chancery Bar Association hat on earmarking you in my mind as a future Chair of the Association and although you did indeed become both Chair of the International Sub Committee and Honorary Secretary of the association, roles you fulfilled excellently, alas it was not to be as you were elevated instead to the bench, although your appointment is, of course, of wide benefit to the members of the association in a very different way.

I should mention that as Chair of the International Sub Committee of the Chancery Bar Association you organized several international trips promoting the good work of the Chancery Bar abroad and fostering excellent international relations in well trodden jurisdictions such as the Cayman Islands and the Channel Islands and also in innovative trips to Shanghai, Hong Kong and Gibraltar which were all a great success.

Indeed, as your lordship has mentioned to me, it was the first Chancery Bar Association conference in the Cayman Islands in 2012 that led to your lordship's shift in practice to a more international one.

Your lordship's practice has taken you to many other international jurisdictions and your lordship was admitted to the Bars of the BVI, Cayman Islands, Trinidad and Tobago and Uganda.

The international nature of your practice is well illustrated by your conduct of a two month trial in the Cayman Islands concerned with the validity of an Extraordinary General Meeting held 10 years previously and which involved expert Samoan and Taiwanese law evidence.

I know that your lordship was very pleased when the newspaper you are most proud of, the Samoan Observer, ran a feature on your appointment to the UK High Court Bench, detailing the "great leap forward and development in Samoan law" in the case that you were involved in and with a specific mention of your role as Honorary Secretary of the Chancery Bar Association, showing the wide reach of the Association.

Your lordship's domestic practice included acting on behalf of the executive directors in the high-

profile disqualification case brought by the Secretary of State in relation to the Farepak Christmas savings business where cross examination of the Secretary of State's witnesses directly led to the collapse of the case and which continues to be mentioned by your peers and the judiciary.

But I know it was your lordship's appointment in January 2019 to act as a High Court Judge of the Eastern Caribbean Supreme Court where you were assigned to the Commercial Division of the High Court in the British Virgin Islands, in addition to your simultaneous appointment as a Deputy High Court Judge of the Chancery Division, that really cemented your wish to be appointed full time to the High Court.

The experience you gained in the high value commercial cases in the BVI was an excellent foundation although I understand that the Judicial house overlooking the beach and the police escort to Court each day were a little different to your UK appointments.

Your lordship also sat for four years on the Independent Monitoring Board of Wormwood Scrubs where each month you would meet with prisoners and then with the Governor to raise and solve issues that were arising, which you consider invaluable experience.

I know your lordship has been supported consistently throughout your career by your wife, Giselle and your three children, Francesca, Freddie and Phoebe of whom you are very proud.

Your lordship, I have enjoyed working with you enormously and on behalf of the Chancery Bar we regard ourselves as extremely fortunate that your lordship has been appointed as one of the new judges in this division, particularly with your broad international experience as both a practitioner and a Judge and we wish your Lordship well in the next stage of your already eminent career. My lord, welcome.

Amanda Hardy QC: Conclusion

It remains only for me to thank specifically the Chancellor, Andrea Dowsett, the Chancellor's private secretary and all the court staff for facilitating this welcome and for the over 180 members of the Chancery Bar Association and your Lordships and your Ladyship's families who have joined us remotely as well as the Judges who came in person. Welcome my lords and my lady to

the Chancery bench, we look forward to appearing in front of you.