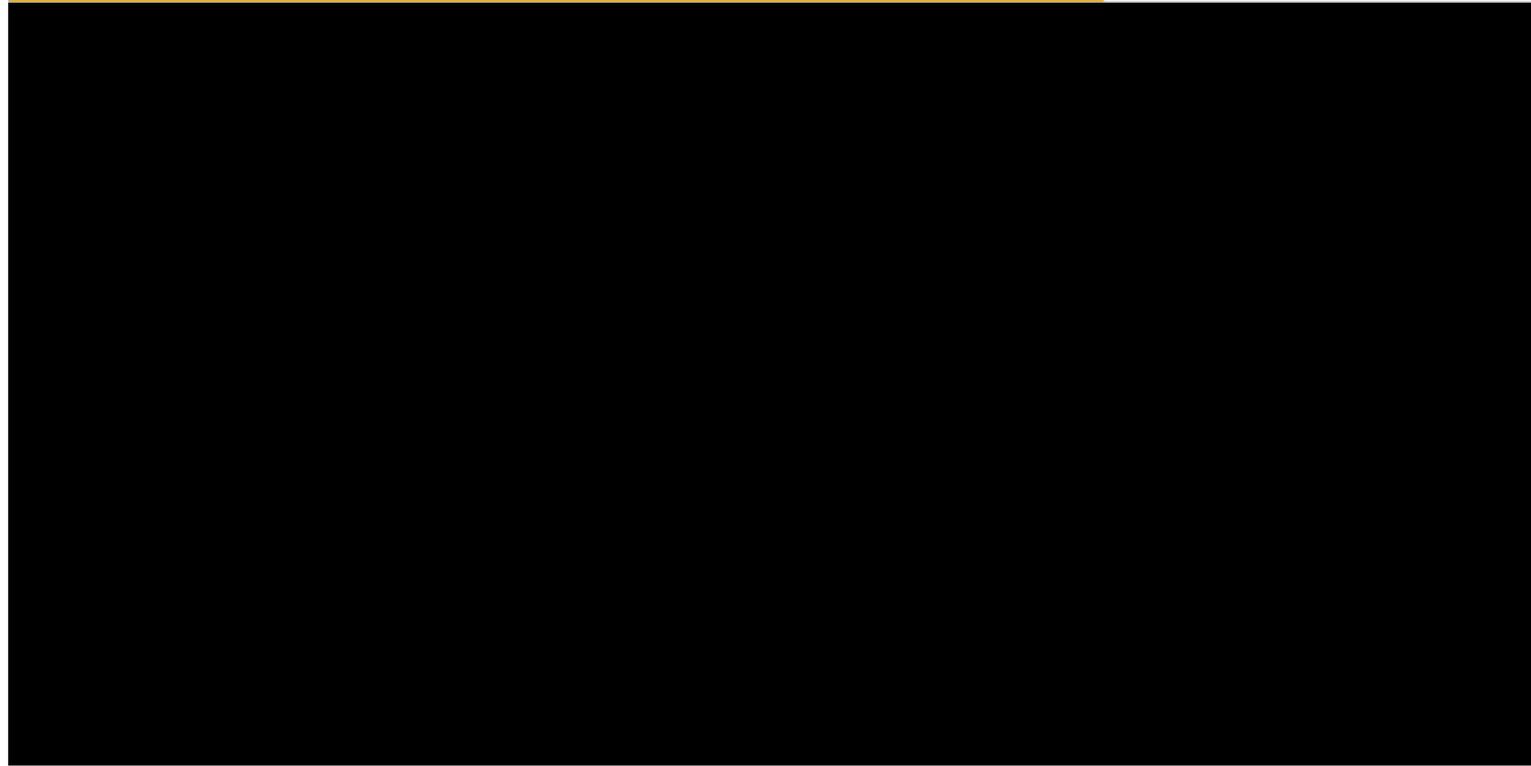


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Author: [Dominic Carman](#) | 03 Nov 2005 | 00:00 |

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"I think they have appointed another uninspiring technocrat with no imagination - someone who is simply going to crunch things through."

Such sentiments about newly appointed judges are not unusual, particularly among disillusioned barristers over a bottle or two of El Vino's claret. But in this case, the comment comes from a sober, well-respected silk. And the judge in question? None other than the new Lord Chief Justice (LCJ) of England and Wales, Lord Phillips of Worth Matravers, heir to Lord Chief Justice Woolf, who retired on 30 September.

Phillips was educated at Bryanston School and King's College, Cambridge. He was called to the Bar in 1962 and practised mainly in shipping. After five years serving as counsel to the Ministry of Defence and the Treasury on Admiralty matters, he was made a QC in 1978 and sat as a recorder from 1982 to 1987. Becoming a High Court judge in 1987, he later presided over the complex fraud trials involving the Maxwell brothers, Kevin and Ian, sons of the disgraced tycoon Robert, and investment company Barlow Clowes. He was appointed as a Law Lord in January 1999, and two months later sat on one of General Augusto Pinochet's appeals. Lord Phillips ruled that the former Chilean dictator had no immunity for extraditable crimes. In June 2000, he was appointed Master of the Rolls - putting him in charge of the civil division of the Court of Appeal.

From 1998 to 2000, he chaired the two-year and nine-month inquiry into the infamous BSE crisis. His report concluded that earlier action by the Government might have prevented the spread of the disease. David Body, solicitor for families of variant CJD victims, praised the "thorough and proper job" done by the inquiry.

In terms of his views on the judiciary's structure and composition, Phillips has called for the High Court and county courts to be replaced by a single, unified civil court. He also opposes wigs and robes for judges, preferring the simple European-style black robe fastened with Velcro. He is well known for keeping fit by swimming outdoors all year in Hampstead ponds and for using a bicycle - crowned by a colourful crash helmet - to get to and from court. A fluent French-speaker, he has a French wife, Christylle, a holiday home near Bordeaux and lists "sea, mountains and Mauzac" as his recreations in Who's Who. It is unclear whether Mauzac refers to the grape or the village in the Dordogne.

At his swearing-in ceremony on 1 October, Phillips was nearly 68 - providing some hope for the Ken Clarke generation. "He is quite a vigorous fellow - very good for his age," comments one admirer.

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Described variously as austere, shy and clinical, Phillips "finds it quite difficult to have a public persona", according to one judge who knows him well.

He becomes the oldest appointee in the job since Rayner Goddard, the controversial LCJ from 1946 to 1958, who fiercely championed the deterrent value of capital punishment and long prison sentences.

In keeping with the times, the new LCJ is more likely to pursue the liberal sentencing policy agenda set out in the last decade by Lord Bingham, LCJ from 1996 to 2000, and in particular, by Lord Woolf, Bingham's successor. Phillips is generally regarded as a penal reformer in the Woolf mould unlike the other candidate who had been tipped for the post, the current deputy chief justice Lord Justice Judge, who is considered more conservative.

But, according to former commercial Bar colleagues, there is much more to the new, Francophile LCJ than a safe pair of hands and a keen sense of organisation. Jonathan Sumption QC enthuses about his former Brick Court Chambers pupil master. "At the Bar and on the bench he has been a fantastic legal analyst with the ability to communicate complex thoughts in terms of absolute linguistic clarity. I do not think I have ever heard anyone as good at making a point as incredibly briefly and incredibly lucidly," he says.

Other leading commercial silks echo the point. Lord Grabiner QC is typical: "Phillips is absolutely first class - very good indeed. He is sensible and thoughtful. Perhaps I would say that, as a commercial lawyer. I have appeared in front of him several times and as a judge he is very clever and thorough - and he has all sorts of interesting views on legal issues such as professional privilege. He is a good administrator too."

An older generation of barristers might claim some natural historic assumption that the Master of the Rolls would invariably have had a civil background, while the LCJ would come from the criminal side. Closer examination shows this has not often been true.

Since Goddard, only two LCJs have had predominantly criminal practice backgrounds. Both held office during the Thatcher and Major years - Lords Lane (1980 to 1992) and Taylor (1992 to 1996). Indeed, Lord Parker, who succeeded Goddard as LCJ from 1958 to 1971, claimed the first summing up that he gave as a High Court judge in a criminal trial was the first he had ever heard.

So what does the criminal Bar think of Phillips? From the establishment end of the spectrum, the praise is equally gushing. Roy Amlot QC, former chairman of the Bar and head of the Criminal Bar Association, says: "There were other candidates with criminal experience, such as Sir Igor Judge. But obviously they go for intellectual ability. On merit, Phillips is certainly the best candidate - head and shoulders above the rest. He has plenty of criminal experience, having done so well in the Maxwell and Barlow Clowes cases."

Pre-eminent criminal practitioner Clare Montgomery QC, who appeared in front of Phillips during the Maxwell and Pinochet cases, develops the theme. She says: "I thought he was the best judge I have ever appeared in front of in terms of his trial management, legal skills and handling of the jury. But as an appeal judge, he has not delivered the great seminal judgments that we expect from our appeal judges - that may be a reflection of the type of work he has been doing and the sheer volume of it."

Montgomery clearly identifies what the appointment means for many at the lean end of the profession: "I think it is dispiriting to the criminal Bar because they often feel - wrongly - that they are marginalised or excluded. A lot of criminal practitioners think they are regarded as the 'thickos' of the Bar - under-paid and undervalued. Everyone thinks we are thick. Unfortunately, the Phillips appointment is perhaps a more general signal from the Government about how they see the value of criminal work."

She offers some advice: "I think it is the LCJ's duty to sit wherever possible. The administrative side of the job - encouraged so much by Woolf - is not what he should be doing. He has to have a deep interest in criminal justice policy - it is not a black-letter law job. Criminal legislation is often so badly drafted and case law so nuanced there is simply never a single correct answer.

"The LCJ has to have some underlying principles and views which will guide the direction of the criminal justice system. He must also be able to speak at a human level and to be an effective team leader. He needs to have the Taylor touch."

A remarkably waspish comment is offered by another prominent criminal silk: "He has always struck me as a cold, hard man. I am not sure that is the first quality I would look for in an LCJ, unless you wanted to hang a lot of innocent people."

In comparing Phillips with his predecessors, Amlot does not agree. He says: "Bingham as Lord Chief and as the senior Law Lord has been wonderful because he has such quick, incisive, clear judgement on things. Woolf may not have been the favourite for The Sun newspaper because he does not lock everybody up forever, but he is wonderfully courteous and humane. In terms of ability, Bingham was so quick and able - a step or two ahead of Woolf. Phillips is a delight to appear in front of - he never misses a point or a trick; he is absolutely on top of each case. Perhaps Phillips, more than the other two, has a common touch."

Elsewhere at the criminal Bar, disaffection with the Phillips appointment has deeper causes, as Labour peer Lord Grabiner explains. He says: "There is not one Bar. There are two. The commercial Bar is very healthy, thriving and is strongly supported by the big commercial firms of solicitors. The same is true of the specialist areas such as tax, patents and planning, and of other pockets like judicial review and human rights related work - all of which are strong.



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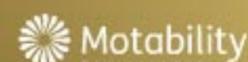


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"The criminal side, however, is very depressing because there is not enough public money available to finance it and I think that there are criminal barristers who have a very tough time making ends meet. The availability of legal aid is hugely reduced. There is little or no legal aid available for civil work and it is very

tight in criminal cases. The fact is you do need to pay people proper money to get them to perform what is extremely important work. In the end, it is an extension of the social services.

"You go to Waterloo Station and see barristers going to Brighton to argue cases, or see them at King's Cross going north, and if they are being so badly paid they cannot cover their expenses, they will just go and do something else. A significant proportion of the barristers at the criminal Bar simply cannot make ends meet. It may well mean that it is an overmanned profession. I am simply amazed people continue to go into the profession on that basis. I have never been involved in a debate on this with, for example, the Lord Chancellor. Maybe I ought to be."

It is significant that three of the four LCJs between 1946 and 1992 - Goddard, Parker and Lane - each served 12 years in the position. The other, Lord Widgery, occupied the post for nine years - from 1971 to 1980. For the last 18 months he held office, his ill health became a suppressed scandal. Unable to control his administrative work and legal pronouncements, it was recognised too late that he was suffering from dementia. By contrast, the last three LCJs - Taylor, Bingham and Woolf - have held office for four, four and five years respectively. This shift to a shorter term probably reflects the perceived burden of office, increased level of responsibility and the scale of administration.

As Sumption concludes: "Being LCJ is largely an administrative role. Phillips is really very good at it and not all LCJs are."

Given the current state of flux, it would appear that the new Lord Chief Justice will be testing those skills to the full. Perhaps that colourful crash helmet may come in very handy.

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