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LORD DYSON, MASTER OF THE ROLLS

DELAY TOO OFTEN DEFEATS JUSTICE

THE LAW SOCIETY, MAGNA CARTA EVENT

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(1) Introduction

1. It is a real pleasure to have been invited to celebrate the 800th anniversary of the sealing of Magna Carta with you this evening. As you may know, I am chairman of the Magna Carta Trust, a position held by all Masters of the Rolls since the Trust was established in 1956. As you can imagine my term of office has been a little busier than that of my illustrious predecessors.¹
2. One of the aims of the Trust is to '*perpetuate the principles of Magna Carta*'². Magna Carta is a curious hotch-potch of a document. Many of its provisions cannot by any stretch of the imagination be described as principles. They include detailed measures of an intensely practical nature which reflect the economic and social conditions of the early 13th century. Some of them were aimed at resolving grievances that King

¹ I wish to thank John Sorabji for all his help in preparing this lecture.

² See <<http://magnacarta800th.com/magna-carta-today/the-magna-carta-trust/>>

John's barons had at the time; grievances that were not only directed at him, but were a reaction to the rule of the Angevins more generally.

3. But it is undeniable that Magna Carta does contain a numbers of chapters which we would recognise as setting out important principles and which have real relevance today. They are the reason why it has been grandiloquently claimed that Magna Carta is the inspiration for democracy; and why thousands of people from all over the World are planning to congregate on a field at Runnymede on 15th June to commemorate the 800th anniversary of the sealing of the Charter. I have in mind in particular the famous chapter 40 "To none will we sell, to none will we deny, or delay, the right of justice". Inspiring words. And chapter 20: "A freeman shall not be amerced for a small fault but after the manner of the fault; and for a great crime according to the heinousness of it" (an early assertion of the principle of proportionality). I also have in mind other provisions concerning access to justice and due process of law and the right to fair trial as well as the requirement that justice should be dispensed from a fixed place³, that it should be local⁴; and that judges should know the law, which often meant local law⁵ - an early instance of subsidiarity, perhaps. And that only judges should sit in judgment⁶. The Charter was not, however, the source of trial by jury or the great writ of habeas corpus.

4. There are those who seek to debunk Magna Carta, at least to the extent of insisting that it be examined in its true historical context. I am sure that King John and the barons would have been astonished if they had been told that the sealing of Magna Carta would be commemorated 800 years later in an explosion of events both in

³ Magna Carta 1215 chapter 17.

⁴ Magna Carta 1215 chapter 19.

⁵ J. C. Holt *ibid.* 63.

⁶ Magna Carta 1215 chapters 24 and 45.

England and abroad; that thousands of people would be coming to Runnymede from all over the world on 15 June 2015 to mark the 800th anniversary; and that it would be regarded one of the most important constitutional documents of all time. It is remarkable that a treaty extracted from a feudal king by the barons “at the point of the sword” would have such a powerful and enduring influence on constitutional development in England, the United States and the common law world and beyond. It is true that Magna Carta had a somewhat bumpy ride during the Medieval Period. It was annulled only two months after it was sealed. In the next two centuries, it was issued, withdrawn, reissued and confirmed. It expresses an idea that retain its vitality and relevance in the 21st century. This idea, as described by Sir Winston Churchill, is the “sovereignty of the law” as protection against attempts by governments “to ride roughshod over the rights or liberties” of the governed.

(2) Magna Carta – to no one will we deny or delay right or justice

5. In this evening’s address I want to focus on one particular principle of justice which is articulated in Magna Carta: the right to timely justice. The principle finds expression in two places in the Charter. It underpins the provision in chapter 17 that “Common pleas shall not follow our court, but shall be holden in some place certain.”⁷ The consequence of this was the re-establishment of the court sessions at Westminster. I need to explain how this impacted on the time taken to resolve disputes.
6. Prior to 1209 an informal arrangement had existed by which common pleas sat in two divisions. One followed the King. The other held its sessions in Westminster Hall. In 1209 John stopped the Westminster sessions, although from 1212 a limited

⁷ Magna Carta 1215 chapters, 17.

number of sessions continued to be held there.⁸ The elimination in practice of the fixed court in Westminster placed an increased cost burden on litigants because they had to travel round the country with the King's court in order to prosecute their claims. This caused delay. Westminster sessions tended to be longer and occurred more frequently than those in the King's court. The aim of chapter 17 was to reduce delay and cost, by requiring John to turn the clock back to the start of his reign and provide for common pleas to sit once more in Westminster on a permanent basis.

7. Chapter 17 simply called for the court to sit in a "place certain". It is easy to assume that this was a reference to what was to become the Court of Common Pleas. But its meaning in 1215 was not so clear. The reference to "our court" was a reference to the King's court, i.e. *'the whole body of counsellors, ministers, knights, clerks and domestic servants who (accompanied the King).'*⁹ Where was the 'fixed place'? There is nothing to indicate that it had to be in Westminster Hall, still less, as Sir Orland Bridgman, Chief Justice of the Court of Common Pleas in the 17th Century is said to have believed, that the court was to be held in a specific part of Westminster Hall. Bridgman is said to have refused to move the court a few metres away from where it habitually sat in the Hall – in front of a door that let in a nasty draught of air. The reason he gave was that to move the court in that way was prohibited by Magna Carta. In fact, it did no such thing. Clarification of the meaning of chapter 17 was to come in the 1217 re-issue of the Charter. This made it clear that common pleas were to be heard by 'Justices of the Bench'. What was implicit in 1215 was now

⁸ J.C. Holt *ibi* at 323 – 324.

⁹ D. Carpenter, *Magna Carta*, (Penguin) (2015) at 157.

made explicit: the court meant the judges, and particularly the judges who sat in Westminster Hall.

8. Securing a fixed place for the court to sit and hear claims is not, however, the most famous of the chapters that deal with delay and administrative inefficiency. That honour goes to chapter 40 which, as I have said, proclaims in ringing terms:

*'To none will we sell, to none will we deny or delay right or justice.'*¹⁰

9. What mischief did this provision seek to address? McKechnie in his magisterial account of Magna Carta gives a flavour of the answer. In the years leading up to 1215, John used the machinery of justice as *'ministers to his lust and greed'*.¹¹ What for others would be instruments of government and justice were, for John, *'instruments of extortion and outrage'*.¹² To fill the coffers of the exchequer, litigants were expected to pay sums of money to ease their path to a favourable decision. Judgments went to the highest bidder.
10. For example, Gilbert de Gant paid 100 marks for judgment. William de Mowbray paid 2000 marks in respect of an action brought against him. His opponent had already paid a similar amount. Speculative investment in claims was also commonplace. Barons provided the funds for others to pursue claims in the expectation of profiting from a favourable decision. Champerty and maintenance was a thriving business. Money was not only paid to secure favourable decisions. It was also paid to halt justice in its tracks. Gerard de Furnivall paid 1000 marks to ensure

¹⁰ Magna Carta 1215, chapter 40.

¹¹ Cited in J.C. Holt *ibid* at 179.

¹² Cited in J.C. Holt *ibid* at 179.

that an action brought against him was simply stopped. And, in order to secure support for war efforts, in 1206 John offered an incentive to his knights. If they joined the army, claims against them would be stayed.¹³

11. The aim of chapter 40 was therefore to ensure that the King did not use the justice system as an instrument of financial policy. To a large degree it succeeded. While some future kings did sell and delay justice for their own ends, none did so in the same way or to the same extent as John.¹⁴ But it did not, and was not intended to, bring about an end to delays in the administration of justice generally.

(3) Delay – a means to defeat justice

12. The real focus of chapter 40 was on the need to stop abuses of the justice system by the monarch. It was aimed at ensuring that improper interference with due process of law came to an end. The nurturing and sustaining of this aspiration is a central aspect of what we now refer to as “the rule of law” and which we take for granted as a fundamental tenet of a liberal democratic society. It underpins a commitment to judicial independence, which John sought to undermine by requiring the court to attend on him rather than sit at a distance from him in Westminster Hall. It underpins the rules against bias. Most fundamentally, it underpins the court’s constitutional role as the means by which rights are determined, vindicated and – importantly in our common law jurisdiction – developed. The latter role is, of course, subject to Parliament’s legislative sovereignty. None of these ideas would have been apparent to the barons or to John at the time. The former no doubt were firmly focused on ensuring that John did not use the justice system to exploit them to

¹³ J.C. Holt *ibid* at 84.

¹⁴ J.C. Holt *ibid* at 327

his advantage. But it is still possible to see these wider principles of justice being illuminated by the barons' immediate concerns, albeit that these concerns were actuated by self-interest and not high-minded ideals.

13. The main focus of attention on chapter 40 has tended to be on the prohibition of the sale of justice. That is understandable. The idea that a judge will decide a case in favour of the highest bidder is deeply shocking to us, although corruption of this kind is still endemic in many parts of the world. Confidence in the independence of the judiciary is essential to the maintaining of the rule of law. Less attention has been paid to the prohibition on delayed justice. That may be because delayed justice is rarely as clear-cut, stark and shocking as the sale of justice. Cases of delayed justice as extreme as *Jarndyce v Jarndyce* in Dickens' *Bleak House* were unusual even in 19th century England. But delay can unquestionably frustrate the achievement of justice. Sir Edward Coke CJ's commentaries on Magna Carta (or should I say reinterpretation of Magna Carta) drew this out. He said that Justice has three qualities:

*'Justice . . . must be Libera, Free; for nothing is more odious than justice let for sale; Plena, Full, for justice ought not to limp, or be granted piece-meal; and Celeris, Speedy . . . Because delay is a kind of denial.'*¹⁵

14. Coke CJ was not the first person to equate delayed justice with the denial of justice, nor would he be the last. Complaints about the delays of justice have echoed through the centuries, culminating in the great complaints in the 19th century about the courts' delays. These problems no doubt inspired the famous phrase (attributed to Gladstone) that '*justice delayed is justice denied.*'¹⁶ They clearly inspired Bentham in

¹⁵ Cited in W. Martin, *Because delay is a kind of denial*, (Australian Centre for Justice Innovation) (17 May 2014) at 3 <<http://www.civiljustice.info/cgi/viewcontent.cgi?article=1015&context=timeliness>>.

¹⁶ See in *Gohman v City of St. Bernard* 111 Ohio St. 726 (1924) at 737.

his detailed attacks upon the justice system and his claim that unnecessary delay and unnecessary expense were inimical to the achievement of justice.

15. He said that the justice system should produce correct decisions with minimal delay and at minimal expense.¹⁷ For Bentham ‘*every moment beyond what was necessary [to achieve a correct decision] was detrimental [to its achievement].*’¹⁸ The reason for this was that delay could cause justice to be delivered too late to benefit the claimant. An example given by Bentham was that the claimant might die before judgment was given. But a claimant does not have to die to be denied the fruits of successful litigation by delay. The effect of a delayed judgment may be that effective execution or enforcement becomes impossible. The defendant may have become insolvent or have spirited away his assets so that they are beyond the reach of the successful claimant. Even a freezing injunction is of no use if it is granted after the defendant has removed his money from the jurisdiction. Bentham’s other examples are perhaps less stark. He pointed out that delay could lead to the destruction of evidence and the fading of memories. It not only tended to reduce, if not altogether eliminate, the practical value of a judgment, but it also reduced the likelihood that the judge would reach the right decision.¹⁹

16. Systemic delay has been as significant a barrier to the effective operation of the justice system as excessive costs and procedural complexity. Complexity, expense and delay are three inter-related problems which Professor Andrews has described as the

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¹⁸ J. Bentham, *Rationale of Judicial Evidence*, in *The Works of Jeremy Bentham* (ed. Bowring) (1843) (William Tait, Edinburgh) Vol. 6 at 212 – 213.

¹⁹ J. Bentham, *Principles of Judicial Procedure, with the outlines of a Procedure Code (PJP)*, in *The Works of Jeremy Bentham* (ed. Bowring) (1843) (William Tait, Edinburgh) Vol. 2 at 17ff.

“unholy trinity” of civil procedure.²⁰ Complexity breeds both unnecessary expense and delay. Delay in turn leads to complexity. There are many examples of this, such as applications to strike out claims for want of prosecution; applications for extensions of time; and applications for relief from sanction. Over the years, a large body of case-law has been built up in which the courts have developed the principles by which applications of this kind are determined. They are not clear-cut and have proved to be a fruitful source of litigation. Complex procedural battles of this kind are a delight to the lawyers, but they add to the delay and cost of litigation. On that account they cause dismay to litigants and do not serve the interests of justice.

17. Complexity, excessive cost and delay undermine the individual litigant’s interest in having effective access to justice. They are also damaging to the wider public interest. They undermine the rule of law. Protection of the rule of law is vitally important to the health of a fair liberal democratic society. Excessive cost, delay and complexity tend to impair the ability of litigants to use the justice system effectively. In extreme cases, they may lead a denial of justice altogether. An essential aspect of the rule of law is that citizens should be able to vindicate their rights and to have their claims determined by independent judges in accordance with the law. If they cannot do this, there is a danger that, in some cases, they will resort to self-help. This may pose a real threat to law and order. Thus it is that the private interests of litigants march hand in hand with the wider public interest. Both interests require that complexity, excessive cost and delay are reduced so as to ensure effective access to justice.

²⁰ N. Andrews, *A new civil procedural code for England: party-control “going, going, gone”*, CJK 2000, 19(JAN), 19 at 20.

18. But the two interests do not always run together. In any system where there are limited resources and demand outstrips supply, a degree of rationing is necessary. Any fair and efficient justice system should be managed for the benefit of all litigants. We cannot afford a system which serves the interests of each individual litigant at the expense of the interests of the litigant population as a whole. A litigant's private interest in having effective access to justice must be looked at in the wider context of the public interest in an effective and affordable administration of justice in the interests of all litigants.

19. So what steps should we be taking in the 21st century to promote the private and the public interest in reducing delay? It is unthinkable that we, unlike King John, would use delay as a deliberate policy tool to deny litigants access to justice. We may not sell, delay or deny justice. But how do we ensure, as far as possible, that delay does not defeat justice?

(4) Dealing with Delay today

20. If we are to deal with delay effectively we must bear two things in mind. The first rests on fundamental principle. The second is financial.

21. The issue of principle was recently examined in a paper given by Wayne Martin AC, the Chief Justice of Western Australia in which he discusses the issue of delay in litigation and the consequent denial of justice. As regards the aim of reducing delays, he says:

' . . . reforms undertaken in order to improve timeliness should not view expedition as an end in itself, but must view timeliness in the context of the broader objectives of the civil justice system including most particularly of all, the provision of qualitatively just

*outcomes . . . The challenge . . . is improving timeliness without detracting from the achievement of the fundamental objectives of the civil justice system . . .*²¹

These objectives are, as I have already mentioned, the promotion of the rule of law by satisfying the private and public interests in the fair and effective determination of disputes by independent judges and the vindication of rights of individuals.

22. The point Chief Justice Martin makes is in my view one of fundamental importance. Just as excessive delay can reduce the quality of evidence and the quality of a judicial adjudication, so too can excessive speed. In our pursuit of efficiency, there is a danger that we overlook this. If litigants are not given reasonable time to obtain evidence and prepare for trial, the court may not be able to determine their claims effectively and correctly. The ability of the court to reach the right result may be severely compromised. A rush to justice can be just as dangerous as a leisurely amble. Tortoises and hares come to mind, although I would certainly not wish to be understood as espousing a tortoise-like approach to litigation. Reforms that purport to promote administrative efficiency should only be adopted in so far as they are consistent with and promote the private and public interest in the delivery of good quality justice in accordance with the law. Speed for speed's sake is not desirable in a fair and effective justice system. Speed that sacrifices justice undermines the public interest in the rule of law. Chief Justice Martin put the point very well:

' . . . when one is endeavouring to construct a system for the administration of justice which strikes the right balance between the fairness and justice of the process and the time which it takes, it must always be remembered that the interests served by the courts extend beyond the interests of the parties to any particular dispute and includes the broader public interest which includes the affirmation of the rule of law and the delivery of

²¹ W. Martin *ibid* at 20.

*outcomes which can be qualitatively assessed as just, as compared to dispositions quantitatively assessed as timely.*²²

23. As with so much in the law, ultimately the issue is one of balance. On the one hand, if the litigation process is conducted at breakneck speed, there is a real risk that parties will be unable to present their cases effectively and judges may not have sufficient time to produce decisions which are sufficiently researched and carefully considered. Where this occurs, there may be a denial of justice. The losing party may have a real cause for a sense of grievance. In the real world of democratic societies, problems of this kind are unlikely to happen at least in an extreme form. The court resources to enable a dash for justice of this kind to take place are unlikely to be available. It is not unknown in this country, however, for parties to say that they will not be ready to meet a trial date that is offered to them by the court. On the other hand, if the litigation process is conducted at a snail's pace, there is a real risk that there will be a denial of justice for the kinds of reason given by Jeremy Bentham and others to which I have earlier referred. In 21st century England, a sensible balance is usually struck by courts between the two extremes of breakneck speed and the pace of a snail. In practice, therefore, the injustice generated by the extremes is usually avoided.

24. There is also a financial consideration to be borne in mind. Efficiency should be pursued in order to reduce the financial burden of litigation on individuals. Cost reduction is an effective way of promoting access to justice, thereby enhancing the ability of the courts to perform their constitutional role. Efficiency can also reduce the waste of scarce public resources. At a time of austerity when the financial pressure on the court system is so acute, this is a particularly important consideration.

²² W. Martin, *ibid* at 20.

Unnecessary court hearings should be eliminated and the length of those court hearings that are necessary should be reduced so far as is possible, consistently with the courts continuing to perform their essential constitutional role. Precious public resources should be used to serve the private and public interests to which I have referred. We cannot afford to waste these resources. The reduction of delay in litigation has a part to play in this.

25. It should be apparent therefore that the pursuit of efficiency serves the valuable purpose of enabling the justice system to act as an effective branch of the State. What more should we do to further this objective? I want to focus on three things: proper use of technology; effective procedural reform; and effective case management.

The Proper Use of Technology

26. A constant feature of procedural reforms since at least the time of Lord Woolf's Access to Justice reforms has been the call for proper investment in and use of technology. In the 19th and 20th centuries, civil procedure was based on paper processes. The arrival of the photocopier added hugely to the volume of paper that was generated. In the late 20th century, telephone conferences were introduced. This was regarded as a revolutionary step which many predicted would not work. The use of the internet and communication by email is now almost universal as between parties to litigation. The courts have been very slow to catch up. This is not because there is reluctance on the part of the judges to come into the 21st century. It is because there has not been the funding necessary to make the requisite IT investment.

27. I expect that many of you are aware of the Civil Justice Council working party ODR report on the development of an Online Court.²³ I believe that it convincingly demonstrates one of the ways in which we should develop the justice system to make it more accessible and more efficient, speedy and affordable than it now is. I am confident that this will pave the way for a major shift in the way in which we conduct civil litigation in this country. Quite apart from the advent of an Online Court, I have little doubt that it will not be long before all claims are filed online, when paper bundles and authorities are past history; and when the court file is an online file. I can see no reason, in principle, why case and costs management should not be facilitated through the proper use of technology. The potential savings in terms of costs and time to all involved are obvious.

28. The system in France encourages more than simply greater efficiency. It allows innovation. One form of innovation has been the creation of a website that provides an e-filing service for litigants-in-person.²⁴ Individuals are able to attempt to resolve their disputes through an ODR mechanism. If that does not succeed, the website enables the creation of and files electronically the necessary court documents to commence a claim. It is primarily aimed at small – as the website puts it ‘everyday’-- claims.

29. Such services open up justice. That the starting point for the French website is an informal means of ADR cannot but be a good thing. It is right that it is backed-up with access to the court if ADR does not lead to a resolution of the dispute. I hope that something similar will emerge from our own ODR project. We should be

²³ Civil Justice Council, *Online Dispute Resolution*, (February 2015) <<https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version.pdf>>.

²⁴ <<https://www.demandjustice.com>>

looking at similar innovations, to both secure more efficient and cost-effective ADR and formal adjudication.

30. In developing such ideas, however, we need to keep in mind the public interest in open justice. Open justice is rightly prized as an essential element of our system of justice. Justice must not only be done, but must be seen to be done. There is an obvious tension between the preservation of this fundamental principle and the promotion of virtual, internet-based, systems and processes that enhance efficiency and cost-savings. It is one thing to conduct mediations out of the public gaze. This is already done and there can be no objection to it. But we should not allow advances in technology to lead to secret court determination of disputes. It will be a technical challenge to find a solution to this problem. Technology must be the servant of justice, not its master.

Effective Procedural Reform and Case Management

31. Finally, I want to turn to effective procedural reform and case management. If we are to achieve fair and efficient justice, we must ensure that both the pre-trial process and the trial itself are conducted effectively. There are two aspects to this: first, the rules themselves should not be too complicated; and secondly, they should be applied in a fair and efficient manner.

32. The quest for simple rules has been going on for a very long time. One of the declared aims of the major procedural reforms that have taken place in recent times has been the simplification of the rules. “Simplify the rules” is a cry commonly heard. And yet it does not happen. Instead, the number of pages of the White Book increases inexorably edition by edition. The publishers attempt to keep the size and

weight of the volumes down by making the paper thinner and thinner. But this fools nobody. It is a common complaint that the CPR have grown like topsy, with its collation of rules, practice directions, protocols, guides and practice statements. There must be room for rationalisation. To give one example, there is a considerable amount of overlap between CPR rules, 76, 79 and 80, which deal with three types of terrorism-related procedures. There is a good case for consolidating these rules. But there is scope for much more. In Scotland such a process has begun. The Scottish Civil Justice Council, which performs the role of our Civil Justice Council and our Civil Procedure Rule Committee, has embarked on a project of rule simplification. With proper resources there seems to me no reason why a joint sub-committee of our Civil Justice Council and Civil Procedure Rule Committee could not embark on a similar exercise. If we are genuinely concerned to reduce the complexity of our rules and the cost and delay which are its inevitable consequence, we must do something about it. The cost and effort of doing this is surely a price worth paying. I know that there are those who say that, if the rules are made too simple, there will be interstices which the court will have to fill and this will simply encourage a great deal of procedural litigation. There may be some force in this argument. It is a striking fact that the number of procedural appeals to the Court of Appeal is relatively small these days. But I am not persuaded that we should not be trying to simplify the rules. We should not overlook the fact that a high proportion of litigants who use our civil courts are self-represented. To say that for the majority of them the CPR are daunting must be an under-statement.

33. Procedural reform should not be limited to making the rules as simple as possible. We should also be prepared to change our way of conducting litigation in other ways so as to make it more effective and reduce cost and delay. Much has already been

achieved. We can learn from what goes on in other jurisdictions. For example, in December 2014 a new civil procedure code was approved in Brazil. It will come into force in December this year.²⁵ Article 191 of the code introduces a provision which allows parties to agree to modify the procedure as it applies to their claim. It is worth thinking about whether we should adopt such a provision here so as to permit parties, with the court's consent, to agree to opt out of certain aspects of procedure to enable their claim to be dealt with more speedily. The requirement of court consent is essential if we are to avoid surrendering control of litigation to the parties and going back to the chaos which Woolf and Jackson did so much to eliminate. But provided that agreements between parties are generally speaking subject to court consent, I see no objection to allowing the parties some freedom to manage litigation.

34. That is for the future. The issue of costs management is one for here and now. There are complaints in some quarters that costs management hearings are taking up a considerable amount of court time and that they are not taking place until months after the issue of proceedings. Any new procedure carries with it the potential for delay while the users and judges learn how to apply it. I have little doubt that the teething problems will subside in time as everybody becomes more familiar with costs management. It is easy to forget that there were delays and difficulties in the early days of case management hearings. But gradually, we all adapted to them. Routine case management hearings take less time now than they did in the pioneering days in the immediate post-Woolf era. There is no reason in principle why the same should not happen in relation to cost management hearings.

²⁵ See <http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205404244_text>; <http://www.planalto.gov.br/ccivil_03/Leis/L5869compilada.htm>.

35. It is undeniable that the preparation for and conduct of cost management hearings are additional steps in litigation which entail the expenditure of additional time and money. But the benefits that accrue from cost management will usually outweigh the cost. The responsibility of the costs management judge is, with the assistance of the parties, to plan and budget a claim; prescribe an efficient process so as to ensure that the proceedings are conducted in a manner and at a cost which is proportionate to what is at stake; and generally take steps to control the litigation in such a way as will eliminate unnecessary work (work that would generate unnecessary cost and delay). The value of effective cost management and budgeting should be noticed over the entire course of the proceedings. It is obviously of benefit to the immediate parties. It is also of benefit to other court users. This is because it furthers the aim of ensuring that there is allocated to each claim no more than a proportionate amount of the courts' entire resources. This facilitates the wider public interest in promoting access to justice for all court users.

36. The final point I want to make on the subject of efficient case management relates to *Mitchell* and *Denton*. These two authorities (which need no introduction to an audience like this) sought to enhance procedural efficiency. Their aim was to eliminate, as far as possible, a laissez-faire approach by the courts and litigants to rule-compliance. It was not to punish recalcitrant litigants. Nor was it to trap ignorant or lazy litigants. The aim was simply to ensure that claims are efficiently prosecuted at a cost which is proportionate to the parties and the court system. This is an aim which focuses both on the private and public interest I identified earlier.

37. This approach may appear to produce unfair results in some individual cases. For example, if a claim is struck out for non-compliance it might be said that this is the very epitome of a denial of justice, particularly if the innocent party is not prejudiced by the non-compliance. But an effective justice system is not only concerned with delivering justice in the individual case. Justice requires the court to be able to promote the public interest in the rule of law. The courts can only do that if they are able to ensure that no more than a proportionate amount of court time and resources is expended on single claims. Judges must look beyond the individual cases that they are managing and consider the effect of their case management decisions on the system as a whole. Only by means of proportionate case management can the courts hope to meet the aspiration that all claims that require court adjudication are determined efficiently and proportionately. As Carr J put it recently in *Su-Ling v Goldman Sachs International* when setting out the principles to be derived from, amongst others, *Mitchell*

‘The achievement of justice means something different now. Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so.’²⁶

(5) Conclusion

38. I started this address by noting that one of the aims of the Magna Carta Trust is to perpetuate the principles of Magna Carta. Eight hundred years ago the barons were concerned at the King’s deliberate abuse of the justice system. John pursued delay as a matter of policy. One of the aims of Magna Carta was to put a stop to that and ensure that the courts were properly able to fulfil their role.

²⁶ [2015] EWHC 759 (Comm) at [38].

39. Our concern today is different. Delay is not now a product for sale. But the principle enshrined in chapter 40 is as important today as it was in 1215. We must do our best to ensure that the justice system delivers timely justice for all who need to call upon the State to fulfil its constitutional duty of resolving disputes in accordance with the law. The justice system must operate in the public interest. Reforms aimed at reducing delay and litigation cost must be carried out consistently with that public interest. Delay may defeat justice. Like the barons, we can and must defeat delay and its causes.

40. Thank you.

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