



JUDICIARY OF  
ENGLAND AND WALES

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**Providing Sufficient Resources for the Courts and Judiciary as a  
Fundamental Constitutional Obligation**

**Commonwealth Magistrates' and Judges' Association Conference**

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**Introduction<sup>1</sup>**

1. It is a pleasure to return to Guyana in the 50<sup>th</sup> anniversary of its independence. I join others in thanking our hosts for the warmth and generosity of their welcome. I was first here over 10 years ago with the current Lord Chief Justice (“LCJ”) and then had the pleasure of meeting the Chancellor of the Judiciary, the Hon. Justice Carl Singh – who I am delighted to see here again. I do hope that we will not let another decade elapse before we next catch up.
2. It is a particular privilege to express my support for the Commonwealth Magistrates’ and Judges’ Association. As a body it has since 1970 been one of the strongest proponents of respect for judicial independence, judicial integrity, the proper administration of justice and the rule of law. As exemplified by its first aim and objective, the CMJA seeks to “advance the administration of the law by promoting the independence of the judiciary”. This is truly important work. More broadly, the CMJA is a facet of the Commonwealth. In an uncertain and troubled world, the Commonwealth, an association of nations with shared values and traditions, notably the common law, is all the more important.

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<sup>1</sup> I am grateful to John Sorabji, DJ Michael Walker and Ruth Thompson for their assistance with the preparation of this paper.

3. It is axiomatic that the two primary functions of the State are Defence of the Realm and the provision of law and justice. If the State succumbs to its external enemies, all is lost. If it does not uphold law and justice, no other rights can be enforced or entitlements enjoyed. Against this background, it is impossible to overestimate the importance of the rule of law and an independent judiciary to our society. Consider for a moment living or doing business in a society where the rule of law does not function. As often said and as is the title of this Conference, the Judiciary is the guarantor of the Rule of Law and, as such, its role is crucial. As the independent third branch of the State, it serves to define the society we are.
4. To uphold law and justice, a State must secure necessary institutional structures and resources. It is one thing to make a commitment to separation of powers and the rule of law within written constitutions or – as in the United Kingdom – within an uncodified constitution, it is another to render that commitment real. Without the provision of an independent judiciary, properly appointed, well-versed in the law, and with security of tenure and salary, there can be no real commitment to either.
5. A properly independent judiciary is however a necessary but not sufficient condition for a robust commitment to the rule of law. It must be complemented by a properly resourced and accessible infrastructure. That infrastructure must be capable of delivering the proper administration of justice: courts, court buildings, court staff with the relevant expertise and so on. It also requires the provision of sufficient resources for innovation, given the pace of technological and societal change. All this is the topic addressed by the CMJA's important 2015 Resolution.
6. In England and Wales this aspect of the State's primary duty is, by statute, placed on the Lord Chancellor – who is under a duty to “ensure that there is an efficient and effective

system to support the carrying on of the business of the Courts and that appropriate services are provided for those courts”.<sup>2</sup> Parliament has thus determined that it is the executive’s responsibility to discharge this duty. The Lord Chancellor, and all government Ministers, are also placed under a statutory duty to uphold the continued independence of the judiciary; the former being under a specific duty in respect of the constitutional principle of the rule of law.<sup>3</sup> As further provided by statute<sup>4</sup>, the Lord Chancellor must “have regard to ....the need for the judiciary to have the support necessary to enable them to exercise their functions”. All these matters are brought together in the Lord Chancellor’s oath, whereby he/she swears to:

“ ...respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible...”<sup>5</sup>

7. Now, an obligation to provide resources is one thing, though an indispensable and principled starting point. Performance of that obligation, at a time of financial stringency from which the justice system despite its fundamental importance cannot be wholly immune, is another. In terms of the practical provision of resources to the justice system, in England and Wales, there is (to put it colloquially) only “one game in town”: HMCTS<sup>6</sup> Reform. The Reform Programme is our answer, in England and Wales, to the title of this Paper.

8. To begin with, some context:

(i) As Senior Presiding Judge (“SPJ”) over the period 2013 – 2015, I had the privilege of the closest involvement in the decision to embark on HMCTS Reform and its introductory phases. Subject of course to the Lord Chief Justice (“LCJ”) and the

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<sup>2</sup> Courts Act 2003, s.1

<sup>3</sup> Constitutional Reform Act 2005, ss.1 and 3.

<sup>4</sup> Constitutional Reform Act 2005, s. 3(6)(b)

<sup>5</sup> Constitutional Reform Act 2005, s.17(2)

<sup>6</sup> I.e., Her Majesty’s Courts and Tribunals Service

Judicial Executive Board (“JEB”) – the LCJ’s “cabinet” – the SPJ is the judicial lead on HMCTS Reform. My Deputy (Fulford LJ) led on IT and is now, as the current SPJ, the judicial lead on the reform of HMCTS, together with the Senior President of Tribunals (“SPT”), whose role has also been pivotal.

(ii) Secondly, a word as to HMCTS. One of the consequences of the constitutional developments since 2003 has been the formation of what is now HMCTS. This is the body that administers the courts and tribunals. HMCTS is unique because it is a partnership between the Lord Chancellor (“LC”) and the LCJ and SPT – thus a partnership between the Executive and the Judiciary. HMCTS officials have dual duties to the LC and the LCJ.<sup>7</sup>

(iii) Thirdly, the reduction in resources available to the justice system is striking. In terms of funding for the courts, there has been a 25% cut between 2010 – 2015. As to buildings, 636 buildings in 2011 have reduced to 471 by March 2015. Finally, HMCTS staff numbers have reduced from 22,000 in 2009/10 to 17,000 in 2014/15. It is simplistic to regard all reductions as “bad” – some are inevitable and some are “good” as I shall suggest – but (to use one example) there has been a painful loss of institutional knowledge flowing from the departure of some very experienced managers and the downgrading of some posts.

9. Against this background of years of salami sliced reductions in resources, it has been apparent from late 2012 (if not before) that strategic reform was an imperative. The only alternative was decline. Reform has proved as daunting as it is exciting – truly a once in a generation opportunity to provide an improved justice system.

10. HMCTS Reform involves an integrated programme with three strands: (1) transforming our IT; (2) modernising our estate; (3) changes to our working practices. To emphasise: this is a transformational programme (truly so called) and an integrated programme; the three strands stand or fall together. With the support and agreement of both the

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<sup>7</sup> Framework Document (“FD”), para. 2.4. It may be noted that references in the FD to the LCJ are deemed also to include the SPT (FD, para. 1.4).

Treasury (“HMT”) and the Ministry of Justice (“MoJ”) and of successive Lord Chancellors,<sup>8</sup> funding of some £700 million plus has been agreed<sup>9</sup>. Moreover, HMT has agreed various flexibilities and the “ring fencing” of the proceeds of asset sales<sup>10</sup>, so that these can be reinvested in the Programme.

11. Three matters need to be emphasised at the outset. First (as the LCJ has put it), this is not “reform done to” the Judiciary; quite the contrary. HMCTS Reform can only be successfully accomplished with judicial participation, nationally, at Circuit level and locally – hence the establishment of Local Leadership Groups, now coming into their own. By its nature, much of the programme must be judicially led. Because of the need for engagement by the judiciary across the country, much judicial leadership time has been invested in road shows; my then Deputy and I undertook more than 30 in 2015 and found them, without exception, valuable and stimulating. Communication between the SPJ and judges across the country is an essential part of the process and a matter to which my successor has devoted much attention. Judicial involvement and leadership must also be jurisdictionally based; proposals for reform must satisfy those with practical experience of the jurisdictions in question. For this reason, Judicial Engagement Groups (JEGs) were established<sup>11</sup>, as the *fora* for testing innovative ideas against the wisdom of practical experience - and have already repeatedly proved their worth.

12. Secondly, the Reform Programme is not a cost cutting programme. Its objective is a modernised and improved justice system. It will deliver savings – but it will do so through efficiencies. It is right that it does so; HMT like any other investor expects a

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<sup>8</sup> The Rt Hon. Chris Grayling MP, the Rt Hon. Michael Gove MP and, more recently, the Rt Hon. Elizabeth Truss MP, who said at her swearing in: “I am a great supporter of reform and modernisation throughout the courts and tribunals system; and that urgent task will be high on my agenda in the months ahead, as I know it is for senior members of the judiciary.”

<sup>9</sup> The figure rises to £1 billion plus if various other criminal justice reform moneys are aggregated as well.

<sup>10</sup> Themselves an important part of the Reform Programme.

<sup>11</sup> Civil (CJEG), Tribunals (TJEG), Family, Magistrates and Crime and, more recently still, a “Delegated Case Officer JEG”.

return on its investment. The savings, however, come as part of a strategy for the future; not as a slash and burn exercise.

13. Thirdly, in designing the justice system for the future, we are anxious to put court users at the centre of our considerations. Hitherto, we have been more producer/supplier oriented. We really do need to grapple more with that which is in the best interests of those who use the courts.
  
14. Elaborating on the three strands, the first concerns IT transformation. In one sense, there is nothing remarkable about this – in an age when so many people do so much online: think about Amazon, grocery deliveries and flight bookings. For the Courts, though, this will be a major change – from a paper based system to one which is digital by default. In terms of HMCTS staffing, there is no gainsaying that a good number of jobs will be lost: if there is no paper to shift, you do not need employees to shift it. But, importantly, there will also be a need for higher grade staff. If we are to be digital by default, it is essential that the IT works and can be rapidly repaired when, inevitably, there are breakdowns. No airline could function if its ticketing operations at a major airport went down for an extended period; nor will the Courts system. Moreover, there will be a need for higher grade staff to assist those members of the public who struggle with IT or lack access to it. We cannot exclude anyone, let alone some of the most vulnerable in society, from the Justice System. An essentially digital system will free acres of space, so bringing me to the second strand – estate rationalisation.
  
15. The blunt truth is that we have had too many buildings and certainly far more than we can afford to maintain. I am familiar with cities with a number of courts and tribunals buildings, in close proximity to one another, none of them satisfactory. Furthermore, Courts must command respect; from my own experience, by no means all have been maintained in a condition to do so. We need a smaller estate – but an improved estate.

We must maintain what we retain. This is not an exercise in squashing Judges into less space; we will have to invest in an upgraded estate, fit for purpose in a digital age. We can use the space freed up by losing mountains of paper. We can also improve courtroom utilisation – not by suggesting that individual Judges work longer hours but by improving our listing practices and recognising that, for some users, courts and tribunals, early morning or evening sittings may be preferable to the customary 10.00 – 16.30 or thereabouts. One particular matter requires emphasis. Local justice is and will continue to be an imperative. There cannot be a justice postcode lottery, excluding remote rural areas<sup>12</sup>. Local justice is therefore a given; what is not a given is how best to deliver local justice. It is anything but self-evident that the right course is to spend significant sums on keeping small, under-utilised, poorly maintained courts in service. Instead, we are right to explore alternative options: public buildings which we can use from time to time (so-called “pop-up courts”) together with increased use of technology, permitting evidence to be given by way of remote links, saving much unnecessary travel but preserving (and, hopefully, improving) access to justice.

16. Finally, changed working practices. Our default position has hitherto involved a presumption in favour of face to face hearings. That is not, necessarily, beneficial either to legal professionals or other court users. For many a professional, the ability to conduct pre-trial hearings from the office or chambers improves productivity. Court users cannot be assumed to relish a visit to a court, where there are suitable online or remote alternatives. The upshot is that in a digital system we should anticipate less face to face hearings, more work being done on screen and more use made of technology. Naturally, we will need in all this to safeguard the needs of open justice but that is perfectly feasible. A striking innovation is the recommendation for an “Online Court”, one of the fruits of the *Civil Courts Structure Review*, conducted by Briggs LJ.<sup>13</sup> In a nutshell, this “...offers

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<sup>12</sup> Such as much of Wales, Cumbria, East Anglia, Devon and Cornwall.

<sup>13</sup> Interim Report, dated December 2015 and Final Report, dated July 2016 (“Briggs”).

a radically new and different procedural and cultural approach to the resolution of civil disputes .....to resolve money claims up to £25,000 subject to substantial exclusions.”<sup>14</sup>

17. Even this brief outline of the Reform programme serves to illustrate the sheer scale of the judicial leadership task, perhaps best exemplified (if I may say so) by the tireless commitment, drive and energy displayed by the LCJ personally to ensure its progress. That said, judicial leadership is a necessary but not sufficient condition for success. HMCTS Reform could not be accomplished without the closest cooperation between the Judiciary and HMCTS – joint working at its best - involving the complete commitment of the HMCTS senior management team<sup>15</sup>, together with support and guidance from the HMCTS Board, under its universally respected and independent Chairman.<sup>16</sup> Importantly, this is an HMCTS programme, as reflected by the governance arrangements under the overall aegis of the HMCTS Board, always subject of course to the Board needing to report to its principals: the Lord Chancellor and the Lord Chief Justice, together with the SPT.

18. Significant progress has already been made; the Reform Programme is real – it is not aspirational or theoretical. By way of examples only, our criminal courts are now largely equipped to work digitally, a notable development being the Digital Case File. For certain traffic offences, there is the facility for online pleas. The first automated rotas for magistrates have been introduced. The Divorce Online project has commenced. The crime Wi-Fi solution will in due course be extended to Civil Family and Tribunal (CFT) hearing venues. The rationalisation of the estate has begun, with the close and continuous involvement of the Judiciary, both nationally and locally<sup>17</sup>. This is exciting; it is also – as I have already said – daunting. We need to get it right. If we do, it will be a

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<sup>14</sup> *Briggs*, at para. 12.6

<sup>15</sup> Under its Chief Executives, Peter Handcock, Natalie Ceeney and, *pro tem*, Kevin Sadler.

<sup>16</sup> Mr Robert Ayling, another to whom I owe a great debt.

<sup>17</sup> See the very interesting recent Report by JUSTICE, *What is a Court?* (Alexandra Marks *et al*, 2016)



legacy for the future. The foundations are sound; we need to press on, “full ahead” to implement the programme as a whole.

19. Only last week all these propositions were reiterated and reinforced in the Joint Statement of the LC, the LCJ and SPT, *Transforming Our Justice System* (September 2016), highlighting the three core principles forming the basis of the Reform Programme, namely, *just, proportionate and accessible*. Reform is to be achieved by combining our “respected traditions” – and established strengths – with the “enabling power of technology”. As the Joint Statement concluded:

“ These reforms build on what we already have – a justice system that is revered around the world for its excellence. But they also recognise something important in that system’s unique history. It has always evolved. .... Our times – with the advent of the internet and an explosion in new technology – provide the opportunity for radical change.....”

20. Pulling the threads together: we have had to make do with less resources, a matter of grave concern given the vital importance of the justice system. The Reform Programme is a necessary response to this financial stringency, the alternative being decline by many salami slices. But, more importantly, the Reform Programme is something we should be doing anyway: using the resources available to us, strategically and imaginatively, with a view to devising a user-oriented, modernised and improved justice system, while preserving the brand of trust, confidence, integrity and expertise it has historically enjoyed and continues to enjoy. The stakes are high. There is no Plan B.

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