



.....

SENIOR PRESIDENT
OF TRIBUNALS

Annual Bar and Young Bar Conference 2016

**Keynote Address: The Rt. Hon. Sir Ernest Ryder, Senior President of
Tribunals**

**Raising the Bar: Innovation and global opportunity for a forward
thinking profession**

Thank you and good morning to you all.

The theme of this year's conference is innovation and opportunity: the life blood of a liberal profession. Come back with me, if you will, to the year 1873. Levi Strauss patented his copper riveted overalls – jeans to you and me, Girton College opened for business as the first women-only college in Cambridge, Gladstone was Prime Minister and nearly 40 years into the Victorian era, the first of the Judicature Acts was passed which reformed the judiciary and the structure of our courts.

Innovation, diversity and access to justice were three of the issues that benefited from the focus given to them by the great minds of their day. 1873 was a year with interesting parallels to 2016. Not everything went well. In Chipping Norton, rioters attempted to free sixteen women who had been imprisoned for attempting to dissuade a strike-breaker; John Stuart Mill died; and Alexandra Palace burnt down just two weeks after being built.

However, I have a thread, to which I had better return.

Let me fast-forward to 2016 and the future. The next six years mark out the most ambitious period of change since the Judicature Acts of the 1870s. That is not an overstatement – and the profession will play a central role in helping this work to succeed. The aim that the Lord Chief Justice and I have agreed with the Lord Chancellor is, quite simply, to strengthen the rule of law. The court and tribunal reform programme that was announced this last month is a breathtaking £1bn investment project. It is the most ambitious court and tribunal modernisation programme anywhere in the world.

The program's genesis is, of course, a response to the realities of our age. 'Austerity', perhaps a phrase that defines better than any other our current public policy zeitgeist, is not the driver of reform. That approach runs the risk of price rationing, which is the antithesis of equal or fair access to justice. What austerity has forced us to do, however, is face up to the system's limitations and be clear about what is necessary to prevent decline. We must address lengthy delays that are inimical to justice and to welfare, processes and language that are unintelligible to all but the specialist user and a system that is at times so costly that the only solution so far has been to impair access to justice by removing legal representation. It ill behoves the judiciary to accept that unless they are prepared to do something about it. My colleagues and I will.

I put the issues in this way because a reform project that is not honest about what it seeks to achieve, about what needs to be done, and why, will not succeed.

Do not get me wrong. I do not accept that the sooth sayers, the harbingers of doom or the commentators with interests to protect are right when they doubt that we have and will continue to have the best justice system in the world. Our aim is to take the best of our existing system and transform it into something that will stand the test of time.

Our intention is to reform our process to make it clearer than it has ever been, to make it fit for the 21st Century – an environment where paper-based processes are to digital processes and cloud-based systems what the horse drawn carriage is to space travel. New process will inevitably lead to new rules and practices which need to be designed before we digitise them. We must strive to make those processes as intelligible to the user as possible.

In the tribunals, the jurisdiction which I lead, we have a ground breaking project to create end to end on-line hearings for benefits appeals where we will replace case management hearings with continuous messaging and determinations with an appropriate mix of online questioning and virtual hearings. The process of on-line dispute resolution will become the norm for much of the less complex work in civil, family and tribunals jurisdictions.

In order for on-line dispute resolution to work, we will need sophisticated document and case management systems in which judges, lawyers, and the parties will be assisted by trained registrars and case officers to prepare materials for the on-line environment. Preparation and presentation of materials for face to face hearings on tablets and screens has already begun in the Crown Court. The quality of the common platform and case management systems there can already be seen. Police forces can serve evidence collected electronically at the scene, the CPS can advise on the same and the judge, jury and advocates have an electronic case file that does not need to be printed but can be used in any way that paper, the pen and the human desire to analyse might wish. It is plain that effective solutions such as this will be capable of being used in our more complex public law and commercial cases.

We are only too aware that in every jurisdiction there will be some who have neither the ability nor the will to take part in a digital dispute resolution system. They may well be some of our most vulnerable citizens. We must not damage or restrict their access to justice. One of the fundamental principles of our reform programme is that we will improve access to justice. The design of our digital systems will be fully compliant with our longstanding commitment to the principles of procedural justice.

For some, digital access will itself be an improvement. It will make the justice system something that is more closely associated with the way they already live. It will remove the barrier that unfamiliarity and fear of formal process can pose for some. For others, we are designing a whole programme of assisted digital access. Specialist providers whose expertise can be made available to assist litigants in person, those with disabilities, special needs and vulnerabilities, will be commissioned to provide a coherent service that most of us know is presently a pipe dream. We intend to make that dream a reality.

The challenge for us is to design new process which strengthens rather than dilutes the rule of law and which enhances the citizen's access to justice. We intend to meet that challenge, just as I am sure that as a profession you will. In the finest traditions of the Bar where innovation is second nature because it is fundamental to the practice of the common law, you will find and develop your own opportunities to provide digital access, both to advice but also to representation before online courts and tribunals.

In the more complex proceedings with which many of you will be more concerned, it is essential that we adopt and develop the most attractive procedural and substantive environment for the resolution of the most serious domestic and international disputes. The opportunity to influence 'what works', to propose change where it is needed, to re-write your favourite part of the White Book so that the decision tree i.e. the critical path to decision making and the sophisticated protections we have developed over many years in your specialism are not lost, is surely an invitation you will want to accept. We may start with self-evident digital improvements to bright line paper processes, but the greatest challenge is to continue to provide a first class service for all forms of litigation, simple or complex. The professional engagement groups that we have created are already influencing our task. The Bar has a critical role to play as an independent liberal profession whose ethics and professionalism are the essence of their survival, to advise and advocate for change in such a way that we find the best solution to each problem.

From the judiciary's perspective, we can sometimes achieve change by the simplest device e.g. the flexible deployment of judges so that they can sit in any court or tribunal jurisdiction including at the same time. The one-stop-shop being piloted by tribunal judges is an example of the future. In the property tribunal we are trialling the concurrent hearing of tribunal and court proceedings relating to property before one specialist panel so that the litigant can avoid going to separate places to get a complete solution to their property problems. What are concurrent jurisdiction hearings today, may well be a single hearing before a single specialist judicial forum tomorrow. There need be no distinction in the future between a specialist tribunal judge and a specialist courts judge. We must look forward to developing systems out of the best practice that we already have and where we propose change should be insistent that we follow empirically tested good practice. If William of Ockham teaches us anything about problem solving, it is that entities should not be multiplied without good reason. A future based on digital processes may well call for us to reconsider Occam's wise counsel.

If a dispute is justiciable in a court or tribunal, an adequate opportunity should exist for early, consensual dispute resolution. The proper delivery of justice should not be conceived in a narrow sense. Justice is not exhausted by adjudication; it has many facets, not least the impact on the citizen of the time, expense and stress of conflict. We will continue to introduce opportunities encouraging consensual resolution during case management, whether by early neutral evaluation, settlement conferences, family group conferences, mediation, conciliation or arbitration. Recent advances in each of these fields are notable and they have the strong support of the judiciary. We will also develop problem solving methods and, where appropriate, inquisitorial solutions.

Each of these reforms is designed to concentrate our scarcest resources: judges, lawyers and other experts, on the cases that need them. The ways in which we work will change and change for the better with the consequence that disputes will be solved faster and in a more proportionate way.

I also hope that the places where we work will, as a consequence, be of a higher quality and more appropriate to the needs of the user. The court and tribunal estate is likely to be further reduced to concentrate better quality buildings in places where we need them to provide access to new ways of working. We will use alternative buildings to provide local access where that is needed: in the tribunals we have a long standing tradition of taking the judge to the user in an appropriate case. We can provide justice at the end of the street, if that is what is efficient, fair and just. Justice should still be local and it should form a part of the community rather than being separate from it.

It is my firm belief that we can achieve the transformation that the Lord Chancellor, the Lord Chief Justice and I set out in the vision statement published last month. I also believe that

we have an obligation as members of a liberal profession with ethical obligations to each other and to the public to address the inevitable decline that will be experienced in the justice system if we do not act. We have an obligation in upholding the rule of law to work together to promote effective access to justice for all those who need it.

As a profession, you have a central part to play. As individuals, you have an interest in the outcome. Collectively, you have an ethical role that is as old as our profession.

In July, we welcomed a new Lord Chancellor into that historic office. She has a burgeoning ministerial red box, and some very obvious challenges inside it. As she reaches for the key to unlock that box, she undeniably has (and indeed recognises that she has) some valuable assets to call upon.

One such asset is the contribution made – which will surely continue to be made – by the legal profession to the life of this country. That is acutely relevant in a country embarking upon a journey out of the European Union (a topic around which I should tread carefully, given the proceedings currently before the Lord Chief Justice, the Master of the Rolls and Sales LJ in the Divisional Court). Brexit cannot, however, be airbrushed from sight. For you as a profession, uncertainty brings opportunity. The innovation, integrity and proficiency of the Bar, and the value of the legal services sector to 'UK Plc' in an era of globalisation, will help to ensure and secure the nation's future.

The legal professions will undoubtedly come together to show what they have to offer to the various debates and changing circumstances that are prevalent. How can you help to improve the accessibility, efficiency and intelligibility of the justice system? How can you help ensure that justice is delivered in a timely manner and at a proportionate cost? How can you thrive in an ever-increasing global market? I have no doubt you will be able to find the right answer to such questions, and find the right practices and structures to take advantage of all the opportunities that both innovation and the global market provide. A digital world may be more effective and efficient, it may even be more accessible and proportionate, it will hopefully be swifter and more intelligible, but it does not provide a substitute for the sophisticated skills of the advocate and the litigator.

Ladies and gentlemen, we are on the cusp of major reform, to try and improve the rule of law by making it more accessible to the public. I hope you will agree that is a worthwhile endeavour. I look forward to your contribution to it.

Ends.

Please note that speeches published on this website reflect the individual judicial office-holder's personal views, unless otherwise stated. If you have any queries please contact the Judicial Office Communications Team.
