



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD BURNETT OF MALDON

ASSOCIATION OF DISTRICT JUDGES ANNUAL CONFERENCE

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It is a pleasure to be here today. Thank you for the invitation. This is my first visit to your annual conference with an opportunity to say a few words to a gathering which includes most of the civil and family district judges in England and Wales. I know many of you, and in my travels, have managed to meet many more. By the end of the summer I will have reached most parts of the country and that will provide further opportunities to hear what you think and explore your concerns. I am grateful for the frank discussions I had over the last few months with many district judges. Those discussions have exposed common themes of what is wrong with our system, causing understandable and justified concerns; but also the privilege that most of us feel in being judges, providing a public service and taking great professional and personal enjoyment in what we do

District judges are the backbone of our civil and family justice systems. You do an important and difficult job superbly. The backbone of my practice at the bar was common law civil work. There were few county courts that I didn't visit and before whose district judges I did not appear, often hurtling between two far flung courts to do one case in the morning and one in the afternoon. That was before the advent of telephone hearings. And as a presiding judge I came to understand and value the work of the district bench including observing hearings to get a real sense of the nature of the workload and, sitting in the county court hearing appeals from district judges. Watching district judges in action made me appreciate that whilst you are lawyers and judges, you also provide care and support, almost social work, to the vulnerable who disproportionately people your courts. And hearing appeals was an eye opener because it highlighted the enormous range of difficult work you are expected to do in busy lists, covering a wide range of legal subject matter, increasingly without much help. I have often observed that in some ways your job is more difficult than that of the so-called senior judiciary, and I mean it.

For the vast majority of the public you, and the important work you do, is the justice they see in our country. You, and the fee-paid deputies, deal with the majority of civil work, including road traffic accident claims, personal injury claims, consumer disputes, difficult housing matters, or testing sets of family proceedings. It is your expertise and sound judgment that ensures that justice is done and is seen to be done. We may not say it too often – I fear that in the past we have not said it often enough – but our justice system is truly indebted to you. Thank you.

Acknowledging the problems

I want in a minute to say just a little about reform. But first, let me acknowledge the very real difficulties I know you face.

Your workload continues to grow and grow. Family law cases for example have seen double digit percentage increases year after year. The number of judges has not. And nor of course has pay.

As your workload has grown, the number of staff supporting you has shrunk. They and you are grappling with outdated paper based systems.

We know that many of our buildings are in a poor state. There has been over a decade of under-investment in maintenance, amounting to neglect. I have seen for myself the leaking roofs, broken lifts, faltering or broken heating systems, overflowing lavatories and much more.

Improving morale

All this makes it harder for us to do our jobs well – to do what we care about, administering justice to the highest standards. And it makes it all the more remarkable that you continue to meet those high standards.

This speaks to me of an astonishing commitment to justice; one that is borne out as I visit courts around the country. What we do as judges remains essential to the maintenance of the rule of law, which is one of the foundations of a civil society. The continuing commitment of the judiciary as the environment in which we work has been degraded at the same time as the volume of work has increased, evidences a real dedication to the interests of the public.

I do not take that dedication for granted, and know that we need to tackle the problems. At the heart of many of the things that have led to an attrition of judicial morale are questions of resources. For many things – pay and pensions, investment in the estate – we depend on government, and on those I shall continue to press our cause.

At the same time, I am determined to take action where it is within our gift to make things better. We have made a start.

At the end of last year every salaried judge in Wales had a career discussion with a leadership judge to talk about balance of work, sitting arrangements, hopes for the future and any concerns. These were widely welcomed and seen as valuable by both participants. Over the coming months the other circuits will be following suit, providing all of you with an opportunity to discuss your professional interest and concerns and aspirations.

Equally, we are looking to devise better means for you to work across jurisdictions. Greater variety of work, greater opportunities to train, learn and develop your skills and – for those who want to seek further appointments – a stronger basis from which to do so.

We are also starting to replenish the number of fee-paid judges. There has been a slow-down in recruitment of fee paid judges, including deputy district judges, for many years. As a result it has become more difficult to find suitably qualified candidates for salaried appointment and, more prosaically, to secure judges to sit in our courts when cases are listed. Much needed recruitment is now underway, with the JAC seeking 303 deputy district judges, and there will be another competition for salaried district judges soon. That need has been made all the more acute by the success of so many of your colleagues in the recent circuit judge competition.

Reform

So let me now come to reform I prefer to talk about modernisation, as much of what we are doing is putting in place up to date processes and technology which, had money been available, would have been with us years ago. At its heart, I want our approach to this modernisation to start from that same commitment and dedication we share as judges to improving the administration of justice. I want to ensure that, as far as possible, it provides a more lasting solution to past under-investment, and outdated practices. And I know that we need to be realistic about the constraints: money will remain tight, and we cannot wish ourselves back into some mythical bygone era of plenty.

So when I think about reform I look at three things: improving the efficiency of the administration of justice; improving access to justice; and improving the conditions for those who use and work in our courts.

You will be glad to hear that I am not going to give you a detailed exposition of the reform programme. But I will say a little about what is happening now and briefly illustrate how it can meet those three aims.

Efficiency of the administration of justice

So first, improving the efficiency of the administration of justice. Who now obtains insurance by filling in a proposal form and sending it by post? Who does other than book an airline ticket on-line? Not reform, just taking advantage of modern technology. Now most of you don't yet enjoy the digital processes in place in crown courts that have already removed the need to print approaching 40 million pages of paper. That saves trees of course, but also removes reams of paper files from cluttered court rooms and corridors and minimises the time taken by judges, staff and practitioners in printing them off, putting them in files and so on. At the other end of the spectrum, the Supreme Court can provide all the papers, including authorities, on a stick to its justices. Reform or just the overdue use of available technology.

Similar systems are being developed for civil and family justice. We can already see the benefits of the shift to digital working in the civil courts through, for instance, the introduction of e-filing in the Business and Property Courts. That started in London and is being rolled out across the country. Ease of filing and ultimately ease of digital case management for all civil and family work will make the administration of justice more efficient and reduce work-loads.

The various digital pilot schemes are beginning to show further benefits for judges and litigants. Since the online divorce pilot started in July last year roughly 1500 people have requested links to it. In the paper-based world, an uncontested divorce required an applicant to fill out a form and file it with the court and, in some cases, to be checked by a judge. 40% of those forms were rejected because they had not been completed properly. The new online process takes applicants 25 minutes to complete, compared to an hour for the paper forms. And because the online form is well designed, all but eliminating the scope for errors, the rejection rate has fallen to 0.5%. This has the potential to save significant amounts of HMCTS staff and judicial time. And checking forms is not very exciting work, and certainly not work which should take the time of a highly qualified judge. A very recent example of improved efficiency involves the on-line civil money claims project, which became available for use by

all in the week before Easter. It was used 700 times in the first week and on Maundy Thursday a claim was lodged on-line at 14.02 and had been paid by 16.00. That is the sort of service we should be providing to the public.

Another aspect of reform that can increase efficiency is the development of a consistent approach to the use of case officers. They are already used in some civil proceedings. Legal advisers who under judicial supervision undertake what would otherwise be known as 'box work'. Such authorisation is widespread in the Administrative Court, for example. Acting under statutory authorisation, sometimes wrongly described as delegation, they are exercising relatively routine, straightforward, judicial functions. We are looking to expand the scope of work that can be done under such authorisation. Importantly, although legislation is needed to achieve that end, authorisation is a judicial matter, ultimately under rules of court or practice directions over which the judiciary will have control. It is true that this proposal should save money by ensuring that work is done at an appropriate level but, critically, it will enable you to have additional time to deal with the more satisfying judicial work, with work that properly needs your skills and experience. And the ability to conduct hearings via video link, if the judge considers it appropriate in the interests of justice is an obvious improvement.

Access to justice

Second, access to justice. You will continue to read reports that reform threatens access to justice, quite often written by people who risk losing business as a result of changes in the pipeline. There are legitimate concerns about access for vulnerable people and about access to proper legal advice where that is needed.

But in terms of what is happening now and is planned for the near future, it is clear that reform is improving access to justice.

The criminal reform programme is the most advanced. Significant progress has been made on the digital case management system. We have and are continuing to make the criminal justice process easier to access for all those involved in it.

I have already mentioned the civil money claims pilot. This system has become available more widely and I gave an example of one of its rather striking early successes. For individuals and small businesses who have money claims, simplifying the processes leading to recovery, including using on-line processes that are long overdue increases both efficiency and access to

justice. The same is true in the ability of the public to file for divorce on-line. There are other examples the most striking of which is enabling probate to be obtained on-line

Digitisation will not only reduce your and HMCTS's workload, freeing you from the tyranny of paper, but it will enable claims to be progressed more easily, cheaply and speedily, ensuring better access to high quality justice.

Conditions for people who use and work in the buildings

The agreement reached in 2015 between the MoJ, HMCTS and the Government to secure the cast iron commitment for the money to achieve the modernisation programme included an understanding that there would be fewer but better court buildings. The plan envisages that our court buildings will be in a decent condition – something that cannot be said of many at the moment.

So some court closures were understood to be a necessary part of the programme in order to enable significant investment in those that remain. And the fact is that many of our buildings are currently underused. There is scope for rationalisation and for putting additional courts into existing buildings. Work done in the Birmingham and Bristol Civil Courts and the Oxford Combined Court Centre provide examples of what is in contemplation. As you know, the Government's consultation on the principles that should underlie future court closures has just closed and the Ministry of Justice will be considering its position, before returning to me and the Senior President of Tribunals for our views. So that is work in progress.

I am working very hard to ensure that there will be real improvements to the buildings we keep.

I secured a pot of money to tackle some of the small bits of building maintenance that need doing. It struck me that in many of our buildings there was shocking shabbiness and distress which could be cured by relatively small-scale work – paint peeling on walls, carpets so filthy to be an embarrassment, broken chairs, and so on. All courts were able to bid for a share of the money – it won't surprise you to know that the bids amounted to many multiples of the money available. The work was to be done by the end of the financial year and I think, certainly hope, that it has helped to deal with small scale problems that were creating disproportionate aggravation and which were letting down the public. This is clearly not on its own a remedy for decades of under-investment. But I hope it will make a small difference.

Key decisions taken by judges

There has been some public debate about the extent to which judges should be shaping reform. I understand the concern that judges need fiercely to guard their independence from government.

For me, however, that means that we must be actively involved in shaping reform. Not only because we are best placed to know what in practice will result in improvements to the administration of justice. But also because only we should be taking decisions on how judicial functions are carried out.

It also means we can use the reform programme to bring about other improvements. For example, we are looking to provide better opportunities for judges to work across jurisdictions. Pilot schemes have already been run enabling Employment Judges to sit in the County Court. The Civil Justice Council is also considering how best to enable District Judges with housing expertise to sit in the First-tier Tribunal's Property Chamber and its judges to sit in the County Court.

Communicating reform to the judiciary

I recognise though that this probably isn't how judicial involvement in the reform programme feels to you. I often hear judges say reform is being "done to" them, not with them and for them. That was my own perception before I became Chief Justice.

I have said from the outset that I want to change the way reform is communicated. Towards the end of last year the Judicial Executive Board and I asked *Accenture* to help with this. Judges are good at many things, but perhaps not communication of a major reform programme.

Accenture has helped us develop a document called *Judicial Ways of Working – 2022* – which is currently being finalised, and which will be circulated in late April. It will not be circulated as an ex cathedra statement. It is not another document telling you what is to be done to you. It is very much a document aimed at explaining and seeking your views and comment.

The discussion we need is one in which you play a central part because the changes that are to come, when they take their final form, will directly affect you and the way in which you work.

It is of fundamental importance that together we get the reforms right. And it is equally important that we do so for the public so that they can secure effective, speedy and economical access to justice.

I very much encourage you, when the *Judicial Ways of Working* document is circulated, to consider it, discuss it and – most importantly – let us know what you think. Where might we be going wrong? What might we have overlooked? What are we getting right? What might be done to improve the ideas it sets out?

How can we better ensure reform not only provides modern technology but also tackles workload problems, allowing judges to do the work that requires their expertise? How can we ensure you are properly supported? How can we create the right opportunities for you to broaden your experience?

Of course, there will be different and conflicting views. But I am determined that as reform takes place we take account of the views of all sections of the judiciary.

We don't just welcome your views. We need them if we are to get it right.

So, I look forward to hearing from you today and hearing from you when you respond to the *Judicial Ways of Working* document.

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