SENIOR PRESIDENT OF TRIBUNALS

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Constitutional Norms and Modern Methods

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It is a paradigm of the judicial role in society that ethics informs and governs our own behaviour and practice. The ethical basis of decision making is key to the governance of professionals who make life changing decisions with individuals and that is of critical importance where the decision maker is charged by their professional obligations to be the arbiter between individuals, other decision makers and, significantly, the State[1].

The parallels with both the private and public sectors are inherent[2]: it has from time immemorial been a constant of professional ethics that the individual practitioner should safeguard, by themselves upholding and demonstrating, the highest professional and social values and standards. The purpose is to maintain respect for the profession and its privilege, in whole or in part, to regulate the activities of its members, i.e. not to bring the profession into disrepute. All the more so when the profession is comprised of those who make decisions on behalf of society and whose independence is a constitutional norm.[3] It has recently become good practice for bodies of judges to publish a statement of ethics or sometimes more narrowly a code of conduct by which, like most other professions and organisations, its members are expected to conform[4]. The principles which I would like to consider with you go beyond the familiar assertions in codes of conduct to those which I will suggest are necessary to safeguard the rule of law.

I will suggest that what marks out the leadership of the judiciary from other professions whose leadership training we share, for example, that provided by the medical Royal Colleges, the Royal Military Academy Sandhurst and the Defence Academy, the Police

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[1] The judicial oath is to "do right to all manner of people, after the laws and usages of this Realm, without fear or favour, affacetion or ill will".

[2] See for example, P. Tucker, 'Unelected Power: The Quest for Legitimacy in Central Banking and the Regulatory State', Princeton (2018)

[3] A point reinforced since 2007 for lawyers by s.1(1)(f) of the Legal Services Act 2007.

[4] The best example is the Scottish Judiciary's 'Statement of Principles of Judicial Ethics for the Scottish Judiciary' (December 2016) <https://www.scotland-judiciary.org.uk/Upload/Documents/StatementofPrinciplesofJudicialEthicsrevisedDecember2016.pdf The judiciary of England and Wales has a 'Guide to Judicial Conduct' (March 2018) <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>, as does the United Kingdom Supreme Court (see Guide of Judicial Conduct 2009 <https://www.supremecourt.uk/docs/guide-to-judicial_conduct.pdf>).

College and the former School of Government at Sunningdale, are the principles which are derived from:

- Constitutional norms (including the position of the judiciary as the third limb of the State and the constitutional duties placed upon them to provide open justice and effective access to justice),
- The principles of the rule of law[5], and
- Ethical standards.

Although sometimes unhelpfully referred to as a component of the 'mystery of the law', itself a relic of one genre of transcendental jurisprudential thinking, these principles have no one philosophical basis for investing them with validity and necessity. Or, to put it another way, it matters not what your personal jurisprudential philosophy may be, if judges are unable to describe and abide by the principles which are the basis for the continuing acceptance of their authority by society, they will eventually fail the 'observational justice' norms of trust and respect in their authority. They will cease to have the trust of those in society who need them and who expect them to demonstrate by the standards of fairness and good practice described in and by their judicial decisions the plural but common values that are held in society. They will fail to uphold and safeguard the rule of law which is the ultimate test of their effectiveness. And they will cease to be the glue that holds civil society together.

It matters not whether you hold office as the chief justice or head of jurisdiction responsible for hundreds and in some cases thousands of judicial office holders[6] or are a junior leadership judge responsible for a handful of colleagues, the principles which govern the administration of justice by each of us are the same. They are because, as was recently and rightly noted, principles of judicial ethics are, '*recognized as ensuring the independence, impartiality and integrity (the three big "I") of courts and judges, which have always been recognized as the core values in a democratic society, as reasonably expected from the judiciary*'.[7] They are so because they underpin both the quality of procedural justice and of substantive justice that we deliver. Furthermore, as leadership judges, we are also responsible for the quality of the processes and outcomes that we, the judiciary, set for the administration of justice, the standards which are inherent in the office and our relationship with both the individuals who are affected by our decisions and the other branches of the State with whom we work. If the judiciary do not deliver those standards and rigorously enforce the principles that underpin them through our leadership then we take the risk that not only will our independent professional judgments be emasculated by pragmatic or political constraints, which is the commonplace of the encroachment of the State into the functions of other liberal professions, but also that the ultimate consequence will be damage to or even the loss of the constitutional independence of the judiciary which secures the rule of law in civil society.

In recent years it has become fashionable in parts of the academy to characterise the leadership role of the judiciary as a function of a misguided liberal adventure into the formulation and enforcement of policy, in particular social policy, which is, of course, a function more appropriately exercised by the legislature and the executive. It is not my purpose in this lecture to debate the extent to which, if at all, the judiciary should have been given or have arrogated to themselves the power that this function describes. There are strong arguments either way. My purpose is to describe the entirely

[5] See Lord Bingham, *The Rule of Law*, Allen Lane (2010)

[6] The SPT is responsible for over 5,500 judges and panel members who hold office throughout the United Kingdom in the Unified Tribunals and the Employment Tribunals.

[7] M. Šimonis, *The Role of Judicial Ethics in Court Administration: From Setting the Objectives to Practical Implementation*, Baltic Journal of Law & Politics 10:1 (2017) 90 at 94 <https://www.degruyter.com/downloadpdf/j/bjlp.2017.10.issue-1/bjlp-2017-0004/bjlp-2017-0004.pdf>.

legitimate and, I would suggest, necessary leadership functions that the judiciary perform by reference to the constitutional norms and statutory duties and powers that inform them.

There are elements of a judge's leadership role that are tactical: the constitutional independence of the decision maker weighing the merits of the legal and factual elements of an individual decision, clinical: the incremental development and implementation of good practice to meet judicially set outcome measures, organisational: the deployment, training and development of that judiciary to meet changing needs and strategic: the planning for and provision of a world class, independent judiciary and the processes it uses to meet the needs of society. For each judicial leader the component parts will have a greater or lesser importance but it is the constitutional significance of what we do that binds us all together in our pursuit of a common purpose: safeguarding the rule of law.

Change is inherent in our human existence and in that often misunderstood circumstance which I have developed elsewhere[8], there is a need for judicial leaders to understand their role as leaders of change not only to safeguard the rule of law and maintain values and standards but also to develop and innovate practice in order to protect against institutional decline and promote the independence of the judiciary. The former is necessary to prevent the justice system being perceived to be out of touch with the needs and values that society wishes the justice system to satisfy and protect i.e. to maintain trust and respect and the latter is necessary to guard against adverse encroachment both from those who hold power (including other limbs of the State and their agencies) and from those with a disproportionately powerful voice (including self interested populist groups). I need go no further than to highlight Lord Hodge's excellent lecture on judicial independence for a detailed analysis of the issues most frequently engaged by the concept of judicial independence[9].

It is particularly important for the judiciary to have identifiably independent voices in the existing £1Bn courts and tribunals modernisation programme which is not only the largest programme of its kind across Western justice systems but is also the most ambitious reform programme in England and Wales since the judicature acts of the 1870s[10]. The programme involves an agreement about principle and funding between the judiciary and the Executive. The funding is scrutinised by Parliament, among others. The purpose of the programme is to to give the administration of justice a new operating model with a sustainable and affordable infrastructure that delivers better services at lower cost. That process must safeguard the rule of law by improving access to justice. The context is austerity: an approach to reform which if not identified and resolved runs the risk of the price rationing of justice which is the antithesis of equal access to justice, one of the principles of the rule of law that the judiciary must be astute to uphold. The problem to be solved is the comparative decline in the effectiveness of the justice system as an institution as social attitudes to the means of delivery and communication of justice change and austerity impacts on the ability of the justice

[8] Sir Ernest Ryder SPT, *What's happening in justice: the view from England and Wales*, (UCL Future of Justice Conference, May 2018) <https://www.judiciary.uk/wp-content/uploads/2018/05/speech-ryder-spt-ucl-may-2018.pdf>

[9] Lord Hodge, *Judicial Independence*, (7 November 2016) <https://www.supremecourt.uk/docs/speech-161107.pdf>.

[10] The Lord Chief Justice, the Lord Chancellor and the Senior President of Tribunals have published a joint vision for the programme, *Transforming our Justice System* (September 2016) https://www.judiciary.gov.uk/wp-content/uploads/2016/09/narrative.pdf and the judiciary have published their own plan: 'Judiciary Matters' (ibid)

system to deliver and respond. The effects include: lengthy delays that are inimical to justice, process and language that are unintelligible to all but the specialist user and a system that is so costly that the only solution so far has been the impairment of access to justice by the removal of funding for legal representation. The solution requires the involvement of the judiciary with the problem through their leadership judges to help find solutions which engage the principles which support the rule of law and that requires traditional judicial skills and experience but also leadership skills and abilities.

In this lecture I want to describe the model that we use by discussing some of the principles that apply to the administration of justice and decision making to illustrate that the leadership judiciary by its independence in individual case decision making and by the constitutional nature of its position in the State are not compromised for example by other superficially attractive leadership concepts such as accountability (which for us would have the danger of political and financial control), transparency (in the sense of a fashionable coveting of populist power without responsibility) or efficiency (in the sense of price rationing). Each of these concepts has its place elsewhere, and even in the judiciary in discrete but important aspects of our role such as in the provision and form of performance and quality assurance, the improvement of user experience and very importantly in the pursuit of open justice, but none in themselves are a substitute for the model of justice that we have. An attractive and powerful argument to this effect was made by Baroness Onora O'Neil, the leading academic ethicist, in her Reith Lectures in 2002[11].

In a common law tradition like ours where we do not have a codified constitution there are constitutional norms within which judges are permitted to make decisions which hold other decision makers to account. The public trust them to do this for them, with them and to them. Putting to one side the elaborate philosophical theories that underscore what we do, we use the principles of the rule of law to develop a structure that regulates itself and the decisions of other organs of the State despite having an obligation to respect the sovereignty of Parliament and the authority of Government; as indeed, they have an equal obligation to respect the judiciary and its role[12]. In addition, we should not forget the way in which this theoretical basis helps us resolve lesser tensions such as that between fairness and bias, providence and capriciousness.

The judiciary supports the human endeavour of re-constructing nature by domesticating, organizing and patterning in an ever changing environment, using the value of fairness which brings together into practice the so-called five virtues: goodness, propriety, knowledge, ritual and sagacity.[13] If it needs to be said let us say it, values of this kind, even that of fairness are not absolutes cast in stone, they are not dependent only on historic cultural norms but develop to reflect the changing norms of society and its different communities. For anyone who has not experienced it, a powerful example of the need for an understanding of values and the dangers of not being able to protect against powerful voices is given by German tutor judges to their new judges on appointment. The presenters quietly but with a strong emotional

[11] See O. O'Neil, Reith Lectures 2002, variously at:
http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020403_reith.pdf;
http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020410_reith.pdf;
http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020417_reith.pdf;
http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020427_reith.pdf;
http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020501_reith.pdf

[12] *R (Jackson & Ors) v Her Majesty's Attorney General* [2005] UKHL 56; [2006] 1 AC 262 at [125].

[13] See, M. Puett & C. Gross-Loh, The Path: What Chinese Philosophers Can Teach Us About the Good Life, (Simon & Schuster, 2016) at 131.

determination describe and illustrate the ethical collapse of the German judiciary during the third reich and comment upon the fact that the ECHR, drafted primarily by UK representatives, was in part a response to that.

All professionals are in the business of curating and developing knowledge and using it for the benefit of others ie in an ethical construct but unlike an employer or even at times a Government, the law depends upon the professions as experts in the received wisdom, good practice and required conduct in your specialist fields. So what is it that is different about the practice of the law itself? Ultimately it has to be the constitutional principle of the rule of law, the essence of which, as Lord Bingham put it, is that:

'*. . . all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.*'[14]

The judge's role puts her in a unique position.

It must be remembered that constitutions are but words. It is in the actions of those who interpret them that their true worth and the values of any state are to be found and that is the role of the leader – be you a President, a Prime Minister or a Chief Justice. The golden, ringing words of the United States Declaration of Independence, you will remember them, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed;"[15], and yet for nearly a century after that was formally declared and after the adoption of the United States Constitution there remained slavery under the law in much of that country. By contrast in England and Wales, throughout the same period, without the benefit of such bold rhetoric, one of our judges, Lord Mansfield, had long since declared that no man could be a slave in England.[16]

I mention this not to show how principled were the English – they made plenty of other mistakes – but rather merely to illustrate that it is the action of judges and lawyers which to a large degree gives effect to constitutions and the values of society and to borrow again from the Irishmen, the Lawyer, John Philpot Curran, and the philosopher Edmund Burke, the price of liberty is eternal vigilance and, all that is necessary for evil to triumph is for good men to do nothing.

Judges and lawyers are the first defences in this task. It is not always easy and it sometimes requires moral courage and the willingness to risk criticism and unpopularity in various quarters which can make life uncomfortable, but judges must hold to what they know is right and not be deflected. Judges in particular are required to have great personal fortitude[17] and it can be a lonely task. The integrity of our judges

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[14] Lord Bingham, *The Rule of Law*, at 8.
[15] US Congress, 4 July 1776 <https://www.archives.gov/founding-docs/declaration-transcript
[16] *Somerset v Stewart* (1772) 98 ER 499
[17] As Brooke LJ put it in *HM Attorney-General v Ebert* [2001] EWHC Admin 695, [2002] 2 All ER 789 at [28], '*It is also not in dispute that Mr Ebert made many serious accusations against Neuberger J in many of the letters he wrote to him. Judges have to have broad shoulders, and the relevance of this evidence goes to the contention that Mr Ebert is now so completely obsessed by this litigation that he does not cavil about making allegations of corruption, high treason and crimes against humanity against the judge who has been handling the case with remarkable patience and sensitivity.*' And see, Lord Burnett CJ, *Standing Stronger Together*, Brisbane, 10 September 2018, <https://www.judiciary.uk/wp-content/uploads/2018/09/lcj-speech-brisbane-lecture-20180910.pdf>.

must not be trimmed just to suit the times and we must not give away our umbrellas just because the sun is shining.

In the international arena, the principles to which I am alluding were codified in 2001/2 into a UN Declaration now known as the Bangalore Principles[18]. Those principles are independence, impartiality, integrity, propriety, equality of treatment before the law, competence and diligence. Again, as the late Lord Bingham in his well known treatise on the rule of law described, the following principles are fundamental to what we do:

"1 the law must be accessible and so far as possible intelligible, clear and predictable
2 questions of legal right should ordinarily be resolved by application of the law and not the exercise of discretion
3 the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation
4 Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably
5 the law must afford adequate protection of fundamental human rights
6 means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve
7 adjudication procedures provided buy the state should be fair
8 the rule of law requires compliance by the state with its obligations in international law as in national law"[19]

The international Commission of Jurists in 1955 made the following declaration on the rule of law:

1 "The state is subject to the law
2 Governments should respect the rights of individuals under the rule of law and provide effective means for their enforcement
3 Judges should be guided by the rule of law, protect and enforce it without fear of favour and resist any encroachment by governments or political parties in their independence as judges
4 Lawyers of the world should preserve the independence of their profession, assert the rights of an individual under the rule of law and insist that every accused is afforded a fair trial"[20]

There are four constitutional norms which, among others, are those most frequently to be addressed by the senior judiciary:

- The judiciary is the third limb of the State with a duty to work, so far as that is consistent with their independence, collaboratively with the legislature and the executive i.e. to have respect for and to be respected by the other two limbs
- The judiciary are independent
- There is a duty to ensure effective access to justice

[18] See The Bangalore Principles of Judicial Conduct (2002) <https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>.
[19] Lord Bingham, *The Rule of Law*, at 8.
[20] International Commission of Jurists, Act of Athens, 18 June 1955, in N. Marsh (ed), *The Rule of Law in a Free Society* (1955) at 2 <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>.

- There is a duty to deliver open justice
- The judiciary have a role as a civic, social institution i.e. we are not only a role model but the public's perception of what we do, how we do it and why we do it is important.

The judiciary's interdependence with other limbs of the State has been well described in the lectures of the former Lord Chief Justice which I can gratefully adopt as an ample justification for the constitutional position of the Lord Chief Justice and the Senior President of Tribunals in the post-2005 Constitutional Reform Act settlement[21]. As I have remarked before, the ten pillars of independence described by Lord Hodge in his 2016 Denning Society lecture are an equally persuasive job description for a judiciary that must remain independent in order to be able to safeguard the rule of law[22]. I have previously set out the judiciary's constitutional duties to ensure effective access to justice as an indivisible right and a key enabler for making other fundamental rights a reality[23] and to deliver open justice i.e. to ensure that the antiseptic effect of public scrutiny can be applied to what we do, providing as it does a form of accountability[24] and I have described my own perception as a head of jurisdiction which is that in order to retain authority by trust and respect the judiciary have an obligation which can be described as 'observational justice' to be a civic role model as a social institution[25].

How then do these component parts come to be delivered by the leadership judiciary?

The essence of the way the common law judiciary work is of course to safeguard protections that are necessary to the rule of law by applying them from first principle to new factual circumstances but in a coherent, consistent way derived out of settled law. Like all declarations of right, ethical codes are commitments of principle which are vision statements combining both prospective intent and retrospective justification. Their interpretation and use must accordingly be approached with caution by any judge who is a decision maker whether in an individual case or as a leadership judge (and for that reason there are those who criticise Lord Bingham's summaries as going too far). For those who are not Heads of Jurisdiction, members of judicial executive boards or sitting in the Supreme or Divisional Courts on issues of high principle, there is fortunately a clear and unarguable structure within which leadership decisions are to be made. A structure which helps preserve the separation of functions, supports the independence of the judiciary and provides not only a legal basis for decision making about the administration of justice but a defence to accusations of inappropriate i.e. non-judicial behaviour. For the rest of the senior leadership judiciary, the same structure applies to business as usual but there is a superimposed obligation to ensure that the exercise of our obligations and responsibilities is within a system whose governance conforms to first principles i.e. the leadership and administrative structures are appropriate.

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[21] Lord Thomas CJ, *The judiciary within the State – governance and cohesion*, (Lionel Cohen Lecture, May 2017) <https://www.judiciary.uk/wp-content/uploads/2017/05/lcj-lionel-cohen-lecture-20170515.pdf> and *The judiciary within the state – the relationship between the branches of the state*, (Ryle Lecture, 15 June 2017) at [15]ff <https://www.judiciary.uk/wp-content/uploads/2017/06/lcj-michael-ryle-memorial-lecture-20170616.pdf>.

[22] Lord Hodge ibid.

[23] Sir Ernest Ryder SPT, *Assisting Access to Justice*, (Keele University, March 2018) <https://www.judiciary.uk/wp-content/uploads/2018/03/speech-ryder-spt-keele-uni-march2018.pdf>.

[24] Sir Ernest Ryder SPT, *Securing Open Justice*, (MPI Luxembourg, February 2018) <https://www.judiciary.uk/wp-content/uploads/2018/02/ryder-spt-open-justice-luxembourg-feb-2018.pdf>.

[25] Sir Ernest Ryder SPT, *Assisting Access to Justice*, ibid.

The system has at its heart and at the level below broad constitutional principles a collection of statutory duties that are both bold and seminal. They now arise out of the constitutional settlement that gave rise to the Concordat in 2004 and the Constiutional Reform Act 2005. The Lord Chancellor must make arrangements for an effective and efficient system to support the carrying on of business in the courts and tribunals (by section 1 of the Courts Act 2003 and section 39(1) of the Tribunals Courts and Enforcement Act 2007). This includes the provision of staff, services and accommodation. For the Lord Chief Justice of England and Wales, section 7(2) of the Constitutional Reform Act 2005 vests responsibility in him for representing the views of his judiciary to Parliament and the Executive, for maintaining arrangements for welfare, training and guidance and for the deployment of his judiciary and the allocation of work within courts. Section 5 of that Act empowers him to make written representations to Parliament on matters of importance relating to the judiciary and the administration of justice. For the Senior President, the obligations in respect of my judiciary and the administration of justice are more interesting in that in addition to the duties placed on the Lord Chief (which are replicated for the Senior President in the 2007 Act) there are duties to have regard to accessibility, fairness, speed and efficiency, the expertise of the judiciary in respect of the subject matter of their decisions and the development of innovative dispute resolution which are described in section 2 of that Act. These duties are reflective of the user focussed managed service that has been a hallmark of the tribunals since their inception. In addition, there are very important powers and duties duties relating to diversity, discipline and appointments.

I need only ask the rhetorical question, how am I supposed to gauge what is efficient and deliver it in a way that is accessible, fair, speedy, expert and innovative, if I do not pray in aid the principles and jurisprudence relating to the separation of powers, the independence of the judiciary, access to justice and open justice and scrutinise any policy or proposal by reference to those concepts. As you would expect, there is a large online library of policies that have been derived in this way and which affect the way the judiciary conduct themselves. If I am to report matters to Parliament, and I do, surely I must do so by reference to the duties placed upon me if I am not to stray into an impermissible policy arena? Furthermore, the obligation on the senior judiciary to make 'appropriate arrangements...'[26] is an organisational function of leadership to provide effective and efficient governance that facilitates the delivery of justice in each jurisdiction through rules, practice directions and guidance. That is the unfinished business of the 2005 constitutional settlement. The senior judiciary will have to lead and manage our functional and formal separation of powers through its own process of reform if we are to be fit for the purpose of providing the governance of the judiciary during and after the courts and tribunals modernisation programme.

It is in that context that the administration of justice at the local level is governed by the imperatives that stem from the delegation of the statutory powers and duties to which I have referred and the Rules of Court and Practice Directions. Each jurisdiction has an overriding objective in Rules of Court or their equivalent in the tribunals. There are important differences that reflect procedural fairness in the particular jurisdiction and the impact, for example, of the justice in acquitting the innocent and convicting the guilty in crime, the proportionality of costs and sanctions for non compliance in civil and the prescription of informality and flexibility in the Tribunals where there is a duty to use the specialist expertise of the tribunal effectively. The civil and family procedure rules and the court of protection rules make provision for the court to allot resources to the individual case which take into account the need to allot resources to

[26] See for instance, Tribunals, Courts and Enforcement Act 2007, schedule 1, part 4, paras. 13 and 14; schedule 2, para.8 and schedule 3, para. 9; schedule 4, part 2.

other cases and the criminal procedure rules require that cases are dealt with in ways that take into account the needs of other cases. They all require that cases are dealt with expeditiously, fairly, and in ways that are proportionate to specified criteria. Proportionality is a concept that runs through the provisions.

Practice Directions and guidance build upon the powers and duties I have identified to set out how, and by reference to what, decisions are to be made. It is perhaps unsurprising that given the way in which the court's inherent power to regulate its process and decision making has been developed over time, the requirement of judges to make decisions by reference to proportionality which will implicitly involve considerations of resource allocation reflect the present constitutional arrangement where the Lord Chancellor shares responsibility with the Lord Chief and the Senior President under a Framework Agreement developed out of the new constitutional settlement. That necessitates the use of the rules and practice based framework that has been developed and which must inform the leadership judge as much as the judge in the individual case. That is not to say that the rules-based leadership process is well developed, it is arguably inconsistent as between jurisdictions where the rulers differ without explanation and superficial in its attention to detail but that is where the leadership training of judges comes to the fore bringing to life the very real decisions that they have to make about resources, allocation, priorities, guidance and HR /welfare questions, among others.

I have on another occasion[27] developed ten principles which underpin judicial leadership and which are derived from the constitutional and ethical principles I have described. They are intended to inform leadership training and development and help judicial leaders make decisions about policy and practice that are in accordance with principle. They are:

- Open justice
- Accountability
- Accessible justice
- Democratic participation and civic engagement
- Localism
- Proportionality, speed and efficiency
- Diversity and inclusivity
- Specialism and expertise
- Innovation that is evidence based and tested
- Coherent governance

It is perhaps worth stressing that the judiciary is a collegiate structure derived in part from the history of our association together as professionals bound by a firm constitutional rule that no judge interferes with or comments upon the decision of another judge or the published reasoning for the decision in a case unless s/he is sitting on appeal. That engenders a collective reputation and confidence, the corollary of which is trust. Among the leadership judiciary there is an overwhelming public service ethic which is a corporate imperative to do right by all manner of people in accordance with the law

It is also right to emphasise the role of the liberal profession of the law in supporting what the judiciary does. Almost all judges are lawyers by training and profession[28] and

[27] Sir Ernest Ryder SPT, *The Duty of Leadership*, Centre for Contemporary Coronial Law (October 2018)

[28] The SPT is entitled to appoint judges who are not lawyers and has done so: for example, there are surveyors who are entitled to conduct hearings without a legally qualified judge or as the chair of a

that informs our expectations as judges of the way represented parties will behave but the landscape in which we work is changing. Traditional adversarial litigation where parties are legally represented remains a strong component of our tradition but the significant increase in litigants in person, less formal quasi-inquisitorial or investigative processes where the judge is far more than a referee on a playing field and has to facilitate access to justice for those without any relevant skills or abilities and digital tools that are increasingly available to parties and the court, place the individual judge in increasingly complex situations. Those situations will cause a judge to dig deep into his or her skills and abilities and that includes experience as an advocate or litigator with the benefit of the ethics of the legal professions that have been honed over the centuries. With an increasingly diverse judiciary, some of whom will not have had the benefit of sitting in a particular jurisdiction or even at all before appointment, the collegiate support of colleagues and most particularly leadership judges is acutely important. They can help a judge to navigate problems so that they are solved without interference in the independence of the judge's decision making in the individual case, for example in the support they will give to colleagues in identifying and promoting good practice, that is the behaviours and rituals that are the practical observance of professional ethics and advanced skills that include the equality and diversity issues arising out of providing reasonable adjustments to process within hearings, guarding against unconscious bias and understanding heuristics. Frameworks of good practice exist within every jurisdiction to give effect to statutory protections, for example, in relation to children, the vulnerable and those who lack legal capacity or to promote active case management and proportionate dispute resolution in accordance with the overriding objective described in the Rules for each jurisdiction[29] and leadership judges can be expected to be experts in relation to both good practice and how it should be developed.

It is helpful to say a little more about lawyers. They are members of ancient professions. Lawyers have been working in the Royal Courts since the late 13th century, but it was about 650 years ago that barristers first came together in four learned societies for the learning, teaching and practice of the law. Ever since that time the "Inns of Court" have been training those who wished to learn the law and practise as advocates in the higher courts. The four Inns of Court still retain the right to admit students to the Bar and thereby to confer on them the right to present and argue cases in the higher courts. In more recent times solicitors with higher advocacy rights have joined them. Solicitors have an equally long tradition pre-dating both the Attorneys and Solicitors Act of 1728 and the incorporation of the Law Society in 1823. In Scotland the College of Justice and the Writers of the Signet hold an exclusive constitutional position derived from article 19 of the Treaty of Union 1706.

All of these bodies have governing members who are senior practitioners or judges providing a great deal of their time to the business of each learned society, particularly its role in the education and training of new lawyers, continuing education and the development and maintenance of standards not just for the collegiate body as a whole but most particularly for their members who are thereby entitled to practise as part of a modern day profession.

The expectation of the Court and of fellow professionals sets the tone and the benchmark by which we are all judged by the public and the public's perception of the rule of law is fundamental to its integrity. There can be all manner of pressures on

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panel: Tribunals, Courts and Enforcement Act 2002, s 4 & Sch 2 para 1(2)(d) and s5 & Sch 3 para 1(2)(d).

[29] As discussed in Sir Ernest Ryder, SPT The Role of the Justice System in Decision-Making For Children, (9 April 2018) at [28]ff <https://www.judiciary.uk/wp-content/uploads/2018/04/spt-ryder-bapscan-april2018.pdf>

judges to do what they see as the right thing, for the wrong reason, pressures which will seek to divert them from doing right according to the law. The opinion of others not involved with the case, their family and friends, colleagues, the press and public and government opinion. These must be resisted. It is worth remembering that in some places in the world government or administrations seek to interfere. We are fortunate that that is not a problem for us.

We ensure that the principles which underpin the rule of law are reflected in our individual cases and in the way in which we administer the justice system by articulating rules of fair procedure, consistency of practice by process, good practice by innovative change based on rational and empirical approaches to problem solving. Our process and behaviours should be empathetic to those who come voluntarily or otherwise to justice.

The rules and practices contain a recognition that an aspect, some would say, a fundamental or even dominant aspect of humankind is its potential to do violence. Our adversarial process with all its protections to try and ensure fairness in a stylised contest that is ultimately violent. The winner may well be harmed but not as much or in the same way that the loser wished him to be harmed. Our inquisitorial process is a reflection of the collective will of people to protect themselves, collectively and individually - it is a security blanket - balancing the difficult issues of protection in mental health, terrorism, the protection of children, asylum seekers, the elderly and those who are unwell i.e. those who are more vulnerable than the majority in society. Our administrative process seeks to provide equality of arms in unequal situations, where the state makes a decision that affects a citizen eg on taxation or benefits, where an employer makes a decision about an employee or a developer seeks to influence the property rights of the individual. Like our decision making in sensitive cases, it is an intuitive approach, the human empathy that must help resolve emotional, irrational, perverse, chaotic or complex problems but structured by governance and informed by the principles that tend to uphold the rule of law. Judges take risks in solving problems but do so in a context that is informed by much more than a code of conduct.

Judicial leadership is all about maintenance of the rule of law. The reliance on law as opposed to arbitrary power is the substitution of settlement by law for settlement by force - the law furthers the promotion of a civic society and the citizen's place within it. The rule of law is the sum total of the principles, rules, procedures and institutions that adds up to order and stability, equality, liberty and individual freedom. The judiciary have been given an unenviable role to be part of the leadership of society. Their role is in part dependent on the strength of other professions who jealously guard some or all of the same principles but ultimately it is our role to guard the guardians and protect our communities.

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