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SENIOR PRESIDENT
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**DRIVING IMPROVEMENTS: COLLABORATION AND PEER
LEARNING**

OMBUDSMAN ASSOCIATION CONFERENCE

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‘JUSTICE FOR ALL’

75 years ago to the day on 21 May 1944 a United States Judge of some notoriety, Justice Learned Hand, gave a speech in Central Park in New York in which he said “I often wonder whether we do not rest our hopes too much on constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women’ when it dies there, no constitution, no law, no court can even do much to help it”. Probably as a consequence of his activism he never got to the US Supreme Court. It was a reminder, too infrequently heeded, that our legitimacy is important.

As many of you know there are jurisdictions, both common law and civilian, that have pioneered administrative justice and made a real effort to reach out to their citizens and, of course, those who would like to be citizens, and offer better quality decision making.

In the United Kingdom courts and tribunals primarily make decisions in a merits-based context, i.e. we vindicate rights and entitlements. As a consequence, we are not perceived as being responsible for or interested in the wider context of administrative adjudication, facilitative decision making or problem solving. We should be.

The administrative justice system in the United Kingdom is not yet a coherent or organised system. The supervisory general jurisdictions of the High Court and Court of Session are vested in three separate territorial courts with Wales being subsumed into England and Wales. Statutory appeals and some specialist judicial reviews are also heard in the UK Tribunals, and a myriad of public and private decision making is the subject of your deliberations - the vast majority of which the judiciary never sees.

How is it that the public are going to know what we do and feel a part of that? Justice is dependent on trust, respect and confidence for its legitimacy. These are perceptions that inform behaviours, both of our decision makers and our users.

Trustworthiness is a quality or value that attaches to an individual and yet as a justice system we have insufficient ways to engender it, or that reach out to the individual's need for societal collaboration, protection or to the perception of being treated fairly. That is exacerbated by unintelligible process, and language and restrictions on accessibility arising for example out of cost.

It is not the same everywhere: 13 years ago in Canada, the then Chief Justice, Beverley McLachlin, said this: "A judicial officer deciding a case in accordance with the law, in a reasonable time, and in accordance with the processes mandated by the law, is only part of the judicial tasks. Justice must also be delivered in a responsive manner, one that takes account of the social context, and the different perceptions of those who seek it".

Canada was one of a number of jurisdictions that have engaged in programmes to change language and understanding to communicate and engage, but also to change decision making to reflect good practice.

The aim is to improve the public's involvement in, and perceptions of justice, so as to add more value to justice as a virtue. You might also add in the context of this morning's keynote address: to provide empathy.

My plea today is to be bold. I have been involved in two significant reform projects over the last 15 years and I have no doubt that the only way to get what is needed is to consistently communicate it clearly in the public domain, to justify it with powerful examples and, perhaps most importantly, to set out the financial case i.e. the benefits and savings of a more joined-up approach.

That was achieved in 2011 when we reformed the family justice system in England and Wales. It took two Acts of Parliament, various statutory instrument and rule changes, the creation of a new court (the Family Court), new case management principles and practice direction guidance, and the retraining of judges and professionals. It is still a work in progress, given the difficulties we face in responding to the continuing increase in applications and the lack of funding or representation for many in private family law. I am now involved in a £1Bn courts and tribunals project which I will return to in a moment. There are lessons to be learned from both.

Let me ask you what we could do and tell you what we are already doing in administrative law? A manifesto for change might include:

- (1) The ability of administrative courts and tribunals to refer matters that are prima facie maladministration to an ombudsman who can consider them using their own initiative powers. Courts used to do that in family law – they referred poor practice to the then social service inspectorates who reported back to the judge about it or published their own conclusions.
- (2) A corresponding power in an ombudsman to refer to the Administrative Appeals Chamber of the Upper Tribunal – which is a United Kingdom Superior Court of Record – any issues they believe require guidance by judicial review determination or individual redress beyond their powers. The power to issue binding guidance should not be underestimated.
- (3) A programme of interoperability – and what do I mean by that? Judges able to work as ombuds and vice-versa – not just collaboration and co-operation, but career paths - and that includes for our case workers and case officers. One of our case officers has become a judge and others will follow - they have materially identical skills and abilities frameworks in both our services.
- (4) A strong and single voice for change rooted in what our users want: they can and should be asked what do they want their justice space to be like.

Why do we need to do this? Let me give you three examples:

- (1) In the Employment Tribunals after the landmark ruling in the Unison case there has been a 102% increase in single employment claims if one compares quarter 2 of 2018 with quarter 2 of 2016. There are no extra sitting days to cope with that increase.
- (2) In the Social Security and Child Support Tribunal the average age of an appeal by the time a panel determination is made was 30 weeks in the last quarter of 2018 – a 5 week increase over the same period in 2017; and in the same quarter 73% of all appeals related to PIP (which is our primary workload) were allowed.
- (3) In the Special Educational Needs and Disability Tribunal in the academic year 2017/18: 89% of appeals were decided in favour of parents/young persons concerned.

It would surprise me if an examination of those published statistics by reference to case examples – including, for example, the quality of the decision making involved and the health care, social care and educational assessments relied upon - didn't conclude that something needs to be done – but that would be for you. If I was a parent who had lost their job and was in receipt of PIP bringing up an autistic child (which is not an unknown cluster of problems) – what do you think I would need to make me feel trust, confidence and respect for justice?

What have we done?The new Administrative Justice Council is now a year old. The voice of the ombudsman is both coherent and very strong. Your individual ombuds across the United Kingdom and your representative, Donal Galligan, are council members. They have helped us develop a panel of 20 impressive senior academics, a pro bono panel of law firms who give their time and expertise free and an advice sector panel that is not slow in coming forward to suggest change.

We therefore have a forum in which we can talk if you are interested. The Council is funded and is independent of Government and is administered by the charity JUSTICE – we would never have had it without Jodie Berg who is with us today – and we are very grateful to her.

We are developing joint training and liaison between ombuds and tribunals judges. I now have interoperability enshrined in the Wales Act for our devolved tribunal colleagues and I would like to have the same for Scotland. We have shared skills and abilities frameworks. It will not surprise you to know that we are looking for the same people when we recruit. We can learn a great deal from you about the quality of decision making and you could learn from us how to put in place guidance that helps develop and enforce good practice and safeguard the rule of law.

We can and should learn to communicate and engage better with the public in the ways our international colleagues do.

To return to the courts and tribunals reform programme – I am, with others, responsible for a £1Bn programme of change. That requires significant leadership skills which we are teaching and also buy-in from our judges, panel members, magistrates and from our users.

We are making plans for online justice, in ways that are not antagonistic to the interests and needs of our users. For example, many benefits claimants do not want the stress even of an informal hearing before a panel in a hearing centre outside their local town.

We are trialling:

- virtual video hearings – effectively professional skype with up to four participants on video at the same time in different locations.
- continuous online resolution – a form of asynchronous messaging to elicit documents and information sufficient to make a decision where the credibility of oral evidence is not an issue.
- new digital process that requires major decision makers e.g. the Home Office or the Department of Work and Pensions to file with

us everything that they have electronically at the beginning of an appeal, and to agree issues of fact and law that are to be decided and then to comply with the electronic process which is designed to help the user navigate what is happening.

- signposted assistance from contracted suppliers, voluntary organisations and, where appropriate, our trained case officers.

Judges will be working in new environments, in new ways, and with a diverse workforce of whom we are very proud. To get to this place we have been involved in very significant change leadership. That involved a problem known as ‘Judicial Ways of Working’. This was a year long programme of talking to judges and specialist panel members. I have more than 5500 people who sit across 14 Chambers in more than 100 jurisdictions. That was no small task in itself and it is ongoing. My change network is a constantly available and informed plenary.

What did they think about the future? Perhaps unsurprisingly they were as worried about access to justice as our users. For that reason among others they supported new processes, new language, better estates and IT, and they wanted to be engaged in new conversations with user groups and representatives through our projects.

One of their issues was knowing what the future will bring. What should the final picture look like? The question requires leadership and a new conversation with new ideas. Above all, we all want fairness and quality decision making based on sound established principle and good practice

If you want to be part of any of this I would be delighted. The offer to talk is there, and through the Administrative Justice Council we can develop our thoughts.

I want to begin a conversation about joint working, mutual co-operation and the creation of an administrative justice sector that our users value.

Thank you.