LORD CHIEF JUSTICE
OF ENGLAND AND WALES

Closing Speech by Sir Ernest Ryder
Senior President of Tribunals, United Kingdom as Rapporteur to The First International Forum on Online Courts

London, 4 December 2018

May I, on behalf of all of us, thank our tour guides – Susan Acland-Hood and Richard Susskind for an amazing itinerary visiting more than 20 countries and delving into anthropological questions that are just as interesting as the scale of our online court ambitions.

We now know that you can fit the United Kingdom three times over into New South Wales and that the Netherlands would like to resemble Happy Guy in a Nissan Leaf (but with ambitions to drive a Lamborghini). Singapore has a New States Courts Tower that aside from its architectural merit is next door to a Michelin star pop-up restaurant and India has succeeded in fitting 28m claims on to a smartphone app. The United States memorably likened some court users to Christians dragged to the lions. We have seen the world of online courts and I hope you will agree that our appetite for change has been engaged.

In closing this conference I would like to go back to first principles. In doing so I strongly agree with Susan; the principles are vital but our processes do not need to be as old as our principles. As Richard observed, more than half the world is online but only 43% of the global population has access to the protection of the law. That thought crystallises SOME of our challenges – access to justice in a time of austerity, increasing complexity and social isolation. As Shannon Salter explained in the 1st Sir Brian Neill lecture last night what we are really talking about is communication and engagement

with people and, dare I say it, recognition of and respect for a wide variety of traditions, languages and social conventions as well as our commonly held values. Our rules and processes have to be intelligible and usable if they are not to be the exclusive playground of the rich.

It has been said that the fourth industrial or digital revolution will involve just as much disruption and change as its predecessors. It will be selective in its benefits and, as a consequence, antagonistic to some of our users. If we are to harness the means of that change for the benefit of the majority and preferably, and in principle, the minority who most need the protection of the law because of their exclusion and vulnerability, we must identify those benefits and apply them in accordance with fundamental principles which safeguard the rule of law.

Shannon Salter's description of the human side of the Civil Dispute Resolution Tribunal in British Columbia encapsulates that goal. It answers the questions raised by the Chairman of the Bar of England and Wales this morning. The principles are easy to state but less easy to apply. By way of an example let me use the principles that bind me in the United Kingdom Tribunals – you will each have your own similar safeguards that protect the rule of law.

I have constitutional duties to provide effective access to justice and justice that is open to public scrutiny i.e. a system that is transparent. I provide a judiciary that is independent of the Executive and the Legislature and we jealously guard that independence alongside the other Bangalore Principles of integrity, impartiality, competence, equality of access and diligence. There is no chance of the State telling my judges what to do, whether in a digital or analogue system.

The principles of the rule of law arguably include the obligation to provide intelligibility, clear and predictable outcomes and justifications for objective differences in the reasonable adjustments we make to our process in Tribunals to accommodate the needs of our users. My statutory duties include efficiency, speed,

the provision of judiciary that is specialist i.e. expert and innovative in its process and that process should be informal and flexible as well as proportionate. Our governance involves very clear financial guarantees from HM Treasury and the Ministry of Justice.

The presentations we listened to yesterday exemplified how many of us are trialling and succeeding in protecting our users while at the same time using technology and new process to significantly improve user experience, speed of response, and in some cases cost effectiveness – both from the perspective of the user and the State. There were also significant examples of opportunities to improve substantive outcomes. As Professor Einy said this morning we can improve the quality of justice. That is surely a worthwhile objective.

It was interesting just how close the comparisons are between different jurisdictions both as to our successes and our challenges. Many of us are improving our effectiveness by removing paper (save where that is necessary for the user), dramatically improving process by intuitive application questions that are user friendly to replace forms, e-filing and disclosure, portals that access cloud based casefiles and court bundles, online case management and online reporting of decisions.

We were also able to identify opportunities for the embedding of data to compare processes, to track user experience and performance by reference to measures agreed with the judiciary and to provide feedback loops for the quality of decision making and process. From the Caribbean to India to Europe and the Americas, these opportunities were patent.

What was also notable in what we heard were synergies we heard of about what works in substantive outcomes (almost always derived from experience of what does not work) for example:

- the need to simplify language

- the need to streamline and expedite process – removing unnecessary complexity, duplication, error and waste, and
- to put the user in the driving seat.

As the Lord Chancellor explained complexity is a secret garden that inhibits those who need to vindicate their rights.

Yesterday we heard with some force about the benefits of embedding judges in design to help protect fundamental principles and provide the legitimacy that engenders trust and respect but just as importantly we heard strong arguments that it is more important to involve users from the word go to design end to end processes that are attractive to them. If we do not do that our use of language and the appropriateness of our process will not be questioned and the opportunity to improve substantive outcomes may not arise.

Engagement with users may lead to conclusions rather different from that which lawyers expect. The best examples of online change are those which provide new and better routes to justice, better solutions to problems.

Likewise we heard of the essential process of trial in a protected design environment and then empirically validated pilots to prove concepts before they are used with the public. We must acknowledge existing research and also make available our data for research to enhance our understanding of behavioural issues about process, questioning unconscious bias and issues we do not yet adequately know about our existing process, let alone new process. It is no use criticising our lack of knowledge of the future when we have such little knowledge of the present. Measuring access to justice is a real issue and we must develop that in tandem with our modernisation proposals.

We heard important perspectives on the three stages of problem solving that will help our users:

- dispute avoidance
- dispute containment, and
- dispute resolution.

If we build these into our processes we will help to humanise justice but we must also acknowledge how we solve problems – when and where; our users with hard working lives and, in particular, vulnerabilities, do not find our 10-4 existence in court buildings anything other than foreboding if not threatening and grossly inconvenient.

Let me give you my vision for the future of the United Kingdom Tribunals. As its head of jurisdiction I lead nearly 6000 judges and specialist members across the three jurisdictions of the United Kingdom – Scotland, Northern Ireland and England and Wales with whom we co-operate closely. We are a managed service so we appraise our performance and regularly analyse our data to try and secure outcomes that are relevant to people: benefits appeals and in particular asylum support must be payable in a timescale that prevents unnecessary harm and destitution; mental health orders must be timely and reflect the rapidly changing needs of patients, legitimate tax revenues should be collected, asylum protection granted, employment rights vindicated and land, property and information rights simply and speedily determined.

We literally have hundreds of thousands of appeals each year to determine and there is no sign of the volume reducing. We are acutely aware that our users include some of the most vulnerable in society, the majority of whom are not eligible for legal aid and do not have the assistance of lawyers save from our excellent pro bono communities, advice sector groups and free representative units.

We are embracing change because it is a statutory obligation: to provide swift, specialist, innovative justice that is informal and flexible is a serious and important obligation. We cannot provide effective justice if we descend into price rationing or if

we do not follow our civic obligation as judges to communicate and engage with our users.

You heard from one of my 14 Chamber Presidents, John Aitken, this morning. He described one of three ground breaking new processes that we will trial and pilot in the way I have described as online tribunals. The first is continuous online resolution – asynchronous conversations using technology similar to the Traffic Penalty Tribunal, which sadly is not one of my tribunals, to identify issues, signpost agreements and settlement opportunities and wherever possible to have online decisions made for disabled users without them having to travel to a court building. Face to face hearings with panels will still take place and we will introduce for the first time in Tribunals online recording of process and hearings to improve transparency – something all tribunals will have over the next year. We are very interested in the behavioural aspects of online questioning; we must test what we do.

The second is a new online asylum process which like continuous online resolution will need new Rules and Practice Directions to govern the process. The new process will have all the evidence at the beginning. Case officers will instruct parties to identify issues, upload evidence and prepare document bundles in a way that is similar to the US concept of case supervisors. That is how we will help disenfranchised users put their best case forward. The process will include the ability of asylum seekers to take part from out of country and a significantly simplified and streamlined procedure. When a judge gets a case it will be ready for a decision. The lawyers' role will be enhanced, front loaded and therefore potentially paid for at an earlier stage.

The third is a complex party-party environment which will combine the new end to end process from asylum with COR, video hearings of the kind trialled in the tax tribunal for case management and simpler contested cases and sophisticated booking arrangements for judges, hearing rooms and cases. We may trial Employment first because that has mandatory conciliation as its first stage and the availability of judge mediation before cases are listed for contested hearing. Settlement opportunities will be a key objective as in British Columbia.

I do want my cake and eat it. I want to apply fundamental principles. I want to design new a new process that is user focused. I want to enhance quality specialist decision making that is speedy.

I actively encourage research and data analytics. Our new Administrative Justice Council is the most active justice council in the United Kingdom. Its academic panel has experts on a range of important topics including cyber security and behavioural issues surrounding online resolution. We have strong contacts with the Nuffield Foundation, the Legal Education Foundation and through them the Alan Turing Institute and the Ada Lovelace Institute which is leading the way with the Royal Society and the British Academy in considering the ethics of data use and AI. I strongly support that work and am delighted that our academics have responded so positively, for example those in the Administrative Justice Council's academic panel, in the Oxford Internet Institute and the Bonavero Human Rights Institute have risen to the challenge and deserve our thanks.

I do not rule out the use of machine learning to help judges identify issues, the most relevant and up to date authorities and possibly even the tracking of cases into types, identifying existing norms and developing new norms. We will be careful and will follow empirical research and expert advice. We will remember that technology must be the servant of justice, not its master.

I tell my judges and members that their leadership is fundamental to our success. Not just leadership of their jurisdictions but of an independent limb of the State – that is the process in which we are engaged.

To everyone here – you have helped us over the last two days and we are very grateful for your collaboration. Thank you. We hope we have encouraged and helped you.

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