JUDICIARY OF
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Challenges facing the judiciary in the next Parliament

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1. The judiciary's single most important challenge from the perspective of the efficiency and effectiveness of dispute resolution and access to justice is the implementation of the most transformative court reform programme in a generation. This will include modernising IT, reforming procedures and consolidating the court estate. There has been a provisional allocation by the Treasury of £700 million over 5 years to modernise HMCTS subject to the production and approval of a transformative business case this month.
2. A core feature of the reform programme is to make greater use of digital capabilities – with plans already underway for a common digital platform for criminal justice, which will embrace the criminal courts and judges, the CPS, the police and others. The report earlier this year by Sir Brian Leveson on "Efficiency in the Criminal Justice System" – which was prompted by concerns as to how the criminal justice system could cope with increasingly complex cases with reducing financial resources - outlined this and other proposals for greater use of IT. In the civil area, a new IT system for the work in the Rolls Building, housing the Chancery Division and the Commercial court and the TCC of the Queen's Bench Division, is due to come into operation later this year. It will enable all cases to be issued and filed on line anywhere in the world, 7 days a week 24 hours a day. Consideration will be given as to whether it can be rolled about across the rest of the High Court in due course.
3. A key feature of the reform programme is that it will involve a true partnership between HMCTS/MoJ/and the judiciary. It is intended that there will be a governance arrangement which will give effect to that principle as well as enabling input into the programme by the judiciary at all levels.

4. Another central feature of the reform programme is the recognition that dispute resolution services need to be more cost effective and adapted to modern needs rather than follow an outdated 20th century model. This means recognising that there are different categories of dispute resolution, which require different processes. At one end are the small disputes which either ought never to come to court or, if they do, ought to be resolved in as simple, speedy and inexpensive a way as possible. The report of the Civil Justice Council's advisory group on Online Dispute Resolution, under the chairmanship of Professor Richard Susskind, published in February 2015 addressed this category of dispute. It suggested a three stage approach – (1) the avoidance of litigation by online general advice as to rights and obligations and the options and remedies available; (2) online facilitation to assist the resolution of the dispute without the involvement of judges; and (3) the resolution of the dispute by judges online and with the support of telephone conferencing facilities.
5. At the other end of the spectrum are the high value, complex and sometimes lengthy cases, often (but not necessarily) about business and property matters. These can be disputes between companies and other parties based in this jurisdiction and about events occurring here, or cases involving some international elements. They could even be cases where the dispute has nothing whatever to do with the United Kingdom other than that the parties have provided for adjudication under English law or by English courts in the event of dispute. Even in these types of case, which may involve large scale disclosure, expert evidence, numerous witnesses and complex areas of national or foreign law, cost effectiveness and efficiency are critical. Such considerations may be decisive in attracting business and financial international work, which creates considerable wealth in this country not just for lawyers but for allied professions, including accountants and actuaries, and the financial sector. There is increasing competition for this financial work from New York, Hong Kong, Singapore, the Hague, Dubai and Quatar. In relation to patents and other Intellectual Property cases, there is competition from Germany, France and the Netherlands. In these areas of work the high standard and standing of our senior judges is critical but other matters such a speed of resolution and cost are also important. The senior judiciary are constantly focusing on ways to improve the efficiency and timeliness of such litigation here.
6. In between the two litigation extremes that I have mentioned lies the vast bulk of litigation. The critical issue here will be the allocation of litigation to the right level of court and judge. A high court judge is a valuable and expensive commodity: even more so a judge of the Court of Appeal. It is wasteful, inefficient and costly to deploy a higher level of judge than the case requires. That contributes to waiting times being longer than they should be

because judges up the ladder are spending time on cases that should be decided at a lower level. So, for example, at the present time a significant proportion of the work of the Court of Appeal comprises permission to appeal applications, first on paper and then with an oral renewal. These include permission to appeal applications in family cases from circuit judges, and permission to appeal applications in part 7 multi track county court cases. The High Court judges are also hearing some cases which do not warrant their level of expertise. The re-alignment of jurisdiction so that the level of judge is appropriate for the type of case (in terms of value, complexity, importance etc) is a complex task. Re-alignment can only take place if there are the capacity and administrative and judicial resources at the county court level to enable work to be devolved from the High Court so that the High Court can in turn take work from the CA. That will inevitably mean investment at the county court level. Apart from that critical practical consideration, there is also a tricky issue as to the appropriate increased financial limits for the county in order to be able to take on work currently undertaken at the High Court level. There is no consensus as to the extent to which, if at all, the current £100,000 non-equity limit should be raised or the £30,000 limit for probate cases.

7. The reduction in the availability of legal aid and ever increasing costs of litigation have resulted in far greater number of litigants in person. There is therefore a greater need than ever to ensure that cases are dealt with fairly and proportionately where one or more of the parties is without professional legal representation. A number of initiatives have already been implemented to achieve this but huge challenges remain. The problem is particularly acute in private law family cases where, for example, in custody disputes both parents are acting in person and where there is the potential for victims of abuse to be cross-examined by perpetrators. One of the matters currently under consideration and debate is whether so called Mackenzie Friends, non-lawyers who assist a litigant in person and are sometimes permitted to act as advocates, should be permitted to charge for their services. Another question is the extent to which judges should pursue an inquisitorial role where there are litigants in person. There may be much to learn in that context from the Tribunals service, which has traditionally had a far greater presence of litigants in person than the courts.

8. Other important challenges are the recruitment and retention of judges at the High Court level and above of the highest standard; the achievement of greater diversity among the judiciary, particularly at the higher levels; the review by Ryder LJ of judicial deployment; the need to improve significantly the comprehensiveness and accuracy of performance data and other data such as the value and type of claims being handled at the different levels; and

seeking to ensure that business, property and high value work is dealt with locally and not all sent to London. And, of course, there is always the spending review for 2016-2020; the SSRB discussions, including a possible quinquennial review; and the ongoing implications of devolution.

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