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COURTS AND TRIBUNALS JUDICIARY

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ASSISTING ACCESS TO JUSTICE

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(1) Introduction¹

1. It is a real pleasure to be here today to talk about access to justice. It has been described as the most fundamental of rights that we have. Without it our other rights – whether they are rights to property, rights under contract, public law rights or human rights – are chimerical. Access to justice is *‘not just a right in itself. It is [the] key enabler for making other fundamental rights a reality.’*² It is incumbent on all of us – whether judges, lawyers, law teachers, law students, just as it is of wider society – to do all we can to ensure that access to justice is such a reality. We are all called on to assist access to justice. And that is my theme today. In looking at it I want to focus on a number of necessarily related ideas:

- a principled basis for access to justice;
- the judiciary’s responsibility for securing effective access in order to promote the effective administration of justice and the rule of law; and
- civic responsibility for securing effective access.

¹ I wish to thank John Sorabji for all his help in preparing this lecture.

² Michael O’Flaherty, Director of the Fundamental Rights Agency, at <http://www.equineteurope.org/New-practical-guide-on-access-to-justice-in-European-law>.

A principled basis for access to justice

2. The usual starting point for explaining the importance of access to justice is to highlight how effective access is to the courts as an essential feature of a liberal democracy, one committed to the rule of law. Support for this idea would, for instance, be Lord Diplock's imprecation from the *Bremer Vulcan* case³, that

'Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy which he claims to be entitled to in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant.'

3. More recent support – and as clear an explanation of the importance of access to justice as you will find – is that of Lord Reed in the Supreme Court's decision in the *Unison* case. In his judgment, he emphasised how the constitutional right of access was 'inherent in the rule of law'.⁴ He went further than that, however, and went on to explain:

'At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless

³ *Bremer Vulcan Schiffbau und Maschinenfabrik v South India Shipping Corp. Ltd* [1981] A.C. 909 at 979.

⁴ *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2017] 3 W.L.R. 409 at [66]ff.

charade. That is why the courts do not merely provide a public service like any other.

. . . the value to society of the right of access to the courts is not confined to cases in which the courts decide questions of general importance. People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations. That is so, notwithstanding that judicial enforcement of the law is not usually necessary, and notwithstanding that the resolution of disputes by other methods is often desirable.’⁵

4. Lord Reed’s judgment is particularly important as a caution to anyone who wrongly thinks that the courts exist as service providers. It is an antidote to the fallacious consumer service view of the justice system. It is also important because it highlights aspects of justice that go beyond, but yet are necessary for, the courts to be the effective means to secure rights enforcement. In particular, it highlights how effective access is necessary for there to be a properly functioning democracy. It does so in two ways: first, most obviously, by emphasising how individuals need access in order to enforce their rights; and, second, through a broader public access to the courts and their decisions. What do I mean by this?
5. Broader public access rests on an understanding of constitutional government that has been remarked upon a number of times in the United States. It is the idea articulated by James Madison that a constitution, in and of itself, is nothing more than a ‘parchment barrier’ protecting individual liberty. He was, of course, referring to the nascent US Constitution. We have no equivalent codified constitution here. Our constitution is far more of a living instrument contained within a number of Acts of Parliament, constitutional conventions and practices. His point is and will remain valid here. It was that unless the Constitution and the values it articulated

⁵ Ibid. at [68] and [71].

was one that lived in the hearts and minds of citizens, it would be of little practical utility as a defence of liberty, of rights.⁶

6. There are many ways in which a State can ensure that its constitutional values are lived values. Education. Citizen engagement in wider, civic, society. Active participation in democratic government. And through effective access to justice. Through participation in our justice system. We can, and do, secure such participation in a number of ways.
7. First, and most obviously, we secure it through our courts and tribunals, their processes, and their judgments being open to all. The constitutional right to open justice, to public justice, is the foundation of effective public participation.⁷ It is through this that the courts can play their part, although that is with the government and Parliament, in explaining the laws, and the constitutional and legal values they embody. It is an example of the inter-dependence between the three branches of the State; of how they work together even if independently to help secure our democratic constitution. It is through doing this that we are able to ensure that the public, not least through the media reporting what goes on in the courts accurately and fairly, are able to engage with those values and our laws. It enables them to debate and consider them. It helps maintain their vibrancy, while also helping to ensure that those values can develop over time as society develops. And so it helps ensure that our constitution and laws evolve as society evolves.
8. Second, this has a further, and wider, democratic role. Access to our courts helps to ensure that our courts, as institutions of the state do not become estranged from Society. Access is a means to ensure that our courts as social institutions remain inclusive ones. There are, of course, many different ways in which we achieve this. Democratic participation through the lay jury in the Crown Court and through lay justices in the Magistrates' courts are two such ways to secure direct participation. Lay panel members in our specialist Tribunals is another. Scrutiny of our open

⁶ A point underscored by Justice Learned Hand in *The Spirit of Liberty* in 1944, 'I often wonder whether we do not rest our hopes too much upon 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.' <http://www.digitalhistory.uh.edu/disp_textbook_print.cfm?smtid=3&psid=1199>.

⁷ *Scott v Scott* [1913] A.C. 417.

courts in our civil courts and Tribunals is another, less direct, but equally important way. When we consider both this, and access through judgments and open proceedings, we need to be astute to take appropriate steps to ensure that we secure them effectively. I return to this shortly.

9. Third, and this links to the previous two points, we secure participation through court judgments providing the framework within which socio-economic activity takes place. As Lord Reed rightly pointed out, judgments developing the common law, articulating and enforcing statutory law, provide the underpinning of our daily lives. In the shadow of *Donoghue v Stevenson*, as he noted, we buy drinks from cafes.⁸ In the shadow of *Entick v Carrington*, we rely on our property rights and the limits of State power.⁹ And so on. We rely on them without being aware of that fact. We give life to them and the values they give life to, whether we end up involved in a dispute that ends up in court. For very many, if not the vast majority of Society, we do so notwithstanding the fact that we never become involved in litigation.

10. Importantly, and this draws me back to my previous points, it is through effective access to courts that we test those decisions and the values they articulate. And it is through effective access to judgments that we can test them in public, democratic debate. Again, the framework and access to it and the means to test it, to develop – and correct it in the light of social evolution. As I have said recently this aspect of ‘observational justice’ should not be underestimated particularly at a time when there is something of a growing tendency otherwise to irrational populism or at least populist propositions that are incapable of empirical validation.¹⁰

11. Access to justice then is more than access to courts in order to enable claims and the rights and obligations they engage to be adjudicated. It is the means through which we uphold and articulate the law and ensure that our laws and constitution remain living instruments of our democracy. It is on this understanding that I want

⁸ [1932] A.C. 562.

⁹ (1765) 19 Howell's State Trials 1030.

¹⁰ Sir Ernest Ryder SPT, *Open Justice*, (Max Planck Institute Luxembourg for Procedural Law & Saarland University, Luxembourg, 1 February 2018) <<https://www.judiciary.gov.uk/wp-content/uploads/2018/02/ryder-spt-open-justice-luxembourg-feb-2018.pdf>>.

to consider the judiciary's and civic society's role and responsibility for ensuring access is effective access.

The judiciary's responsibility for securing effective access

12. My starting point is that it is beyond doubt that the judiciary has a responsibility for securing effective access to justice. This arises in a number of ways, some well-understood, others perhaps not so well understood.
13. Most obviously, and most well-understood, is the responsibility a judge has to ensure that justice is done in the court room. It is the responsibility to ensure that proceedings and trials are carried out consistently with procedural principle. This is given effect through long-established common law principles such as: the right to due notice of the case put against you; the right to evidentiary disclosure; to challenge the case and evidence against you; the right to equality of arms; and, of course, the right to open justice and judgment in its many facets.
14. Such principles are now supplemented by more modern developments, such as the now fundamentally important principle of proportionality. Although, I would suggest, it is not as new as some commentators believe and we can trace that principle back into the past. We can see it in the creation of our County Courts, which provided a simpler, less expensive, and more effective form of justice than provided by the great common law and equity courts and then the High Court. We can see it in Magna Carta's requirement that the punishment must fit the crime.¹¹ It now underpins the operation of all our civil, family and Tribunals justice systems. Modern case management techniques also ensure that judges are able to ensure that effective access is secured for all claims, through ensuring – as we are required to do in for instance civil proceedings – that when we manage claims we do so taking account of the effect of our decisions on other claims. We do not manage claims in isolation from each other. We manage a whole system of claims, and do so holistically.¹² And it underscores the responsibility we have to ensure that where

¹¹ Magna Carta (1215) chapters 20 and 21.

¹² A point emphasised by Lord Dyson MR, *The application of the amendments to the Civil Procedure Rules*, (2014) 33 C.J.Q. 124 and underscored by *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 W.L.R. 795 and *Denton v White* [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926.

individual litigants are unable to afford or do not wish to have legal representation we take such steps as are necessary to ensure they receive a fair trial.¹³

15. Some people still see, and quite wrongly see, I suggest, that the judicial role as extending to no more than ensuring that justice is done in that way. The judiciary as an institution, and as one of the three institutions of state, requires judges – and particularly those in what are now known as leadership roles, such as the Senior President and the Lord Chief Justice, to take a wider role. As Senior President I have – by way of example – a statutory responsibility to have regard to the need to ensure that the Tribunals are accessible and to develop innovative means to resolve disputes.¹⁴ It is difficult to conceive of how this duty could be carried out, if I were not to play such a leadership role. This role is in addition to the fundamental role that the Lord Chief Justice and I have in the administration of Her Majesty’s Courts and Tribunals Service. That is a constitutional partnership between the judiciary and the Executive, which is encapsulated within the HMCTS Framework Agreement.¹⁵ The Lord Chancellor represents the latter, and does so through discharging his statutory role in providing the resources, buildings and staff to run the courts and tribunals. The Lord Chief Justice and I represent the former, to ensure, through our leadership of the courts and tribunals’ judiciary, that HMCTS can support the courts and tribunals in exercising the judicial power of the State. The idea that we could not or should not properly be engaged in developing and leading the HMCTS reform programme is one that stands no scrutiny; it rests on the misconception that the judiciary should not be involved in leading the reform of the means through which they discharge their functions. More than that it rests on a conception of the judiciary that was rejected in this country in 2005, when the Concordat between the Lord Chancellor and Lord Chief Justice, and the partnership model for the delivery of justice it contained, was given effect through the Constitutional Reform Act 2005.

16. This leads me to the HMCTS reform programme, which is reshaping our courts and tribunals system. As a formal, constitutional partnership between the government

¹³ See, for instance, CPR r.3.1A.

¹⁴ Tribunals, Courts and Enforcement Act 2007, s.2.

¹⁵ See <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384922/hmcts-framework-document-2014.pdf>.

and the judiciary, reform cannot but be carried out in partnership. It is not a question of the judiciary involving itself in reform impermissibly. On the contrary, for one partner to absent themselves from the reform of a joint venture would be an impermissible abdication of responsibility. We cannot but, we must, take a leading role. And our guiding principle in doing so is that we seek to ensure that our justice system is one that can better deliver effective access to justice. We are not in the business of reducing access or of producing a second-class system of justice. If that were our aim or intention we would be complicit in a series of reforms that would undermine the rule of law. No judge can or could properly do that.

17. It might be objected that the HMCTS reform programme was born of austerity following the 2007-2008 financial crisis. That, as such, it is a belt-tightening exercise. As I have said before austerity has had and is having no impact on the aim underpinning our justice system or our commitment to ensuring that all our citizens have effective access to justice. Austerity was the spur to fundamental reform, not its objective.¹⁶ For economists, this is a point that they would know well from Milton Friedman. He famously noted that ‘. . . *only a crisis – actual or perceived – produces real change. When the crisis occurs, the actions that are taken depend on the ideas lying around.*’¹⁷ That crisis for us was the financial crisis. It forced us to consider exactly how we delivered justice. It did so at a time of fundamental societal change. It did because 2007 was also the year that the smartphone revolution took off, with the launch of the first iPhone. The idea that just happened to be lying around was that provided by the technological revolution; the fourth industrial revolution.

18. This is not to say that we ran headlong, and without due consideration, into embracing the use of technology as a means to reform the courts and tribunals. Detailed consideration was given to how and in what ways the use of digital technology could be used in this way by reform bodies such as Justice and the Civil Justice Council.¹⁸ Consideration was given to how other jurisdictions, such as

¹⁶ Sir Ernest Ryder SPT, *The Modernization of Access to Justice*, in J. Copper (ed), *Being a Judge in the Modern World*, (OUP, 2017) at 136.

¹⁷ M. Friedman cited in M. Blyth, *Austerity – The History of a dangerous idea*, (2013) at 103.

¹⁸ JUSTICE, *Delivering Justice in an Age of Austerity*, (2015) <<http://2bqk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2015/04/JUSTICE-working-party-report-Delivering-Justice-in-an-Age-of-Austerity.pdf>>; Civil Justice Council, *Online Dispute Resolution for*

British Columbia and the Netherlands were putting technology to innovative use through the development of online dispute resolution systems.¹⁹ And, of course, serious consideration was given to the issue by Sir Michael, now Lord Briggs in his Civil Courts Structure Review.²⁰

19. The upshot of all this work was the development of the HMCTS reform programme on principled lines agreed by the Lord Chancellor, Lord Chief Justice, and me as Senior President in 2016.²¹ Those reform principles were, and remain that our justice system must be: Just; Proportionate; and Accessible.²² By this we meant that,

‘ . . . the procedures and remedies should be available and intelligible to non-lawyers. People with disabilities should never feel excluded because they cannot attend a physical courtroom or handle documents or traditional procedures. Likewise, people who are not comfortable with new technology must always be supported.’²³

20. From a practical perspective, this has meant, for instance, that we have been developing digitisation of our processes through pilot schemes, such as the civil money claims online (court) pilot in the County Court, and through various pilot schemes in the Tribunals. At all times, it must however be remembered that these pilots, and the reform programme, are taking place within the context of the HMCTS Framework Agreement. They are a partnership, one in which the judiciary has a duty to lead. Our aim here is not reform for reform’s sake. Our aim is, on the contrary, specific and targeted. It is to create a better and more accessible justice system. One with better buildings. One with a better, and less daunting, environment within those court buildings. One with new, simpler, more accessible,

Low Value Claims, (2015) <<https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>>.

¹⁹ See Civil Justice Council (2015) at 13-29.

²⁰ M. Briggs, *Civil Courts Structure Review – Interim Report* (December 2015), <<https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf>>; M. Briggs, *Civil Courts Structure Review – Final Report* (July 2016), <<https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16.pdf>>.

²¹ Lord Chief Justice, Senior President of Tribunals, *Transforming our Justice System* (September 2016) <<https://www.judiciary.gov.uk/wp-content/uploads/2016/09/narrative.pdf>>.

²² *Ibid* at 5.

²³ *Ibid*.

processes. And one which facilitates better use and deployment of our expert judges.

21. Our destination, for civil, family and tribunals is for the creation of a single web-based system, leading to e-filing and management. The aim is a system where there are no complex rules or rule books to master, but rather easy to use webpages which guide litigants through the litigation process, especially those who either choose to or cannot but litigate-in-person. Our traditional approach has tended to the daunting; a brief look through the various procedural rules for our various justice systems shows that. They are unintelligible to all but the specialist professional. Greater use of the Internet and well-designed courts and tribunals platforms should enable us to ensure that access truly is accessible.

22. It is not only our court and tribunal rules and procedures that can be daunting. We sometimes talk about the majesty of the law and of our law courts. I do not underestimate that our buildings are part of an institution that needs to command confidence, trust and legitimacy ie respect in order to function, but ‘majesty’ can sometimes be used when what we mean to say is that something is daunting. A court building and a court room can, and perhaps often are, daunting to a litigant, particularly one who does not have a lawyer to represent them. Where this is the case we can, unless we are careful, fail – by omission – to secure effective access. The daunting all too often translates into inaction; into rights not being vindicated, into abuse of private and public rights remaining unchallenged and effectively unchallengeable. Access is more than simply being able to navigate court procedure and ensure your claim comes before a judge. Access requires you to take part in the proceeding effectively. If litigants are intimidated it is unlikely that they will properly secure effective access without assistance.

23. We already take a number of steps to ensure that they can do so, whether that is through active case management or whether it is through the very good work carried out by the volunteers who work in Personal Support Units throughout the country. We can go further. Our reform programme through focusing on greater use of digital processes, and digitally-accessible hearings aims to utilise what the vast majority of society is now familiar with: the Internet. With so much of our lives

now being online, whether buying through Amazon or direct from businesses, selling via eBay or similar web-platforms, blogging or tweeting, we are at home on the net. That we are, suggests to me that an internet-based process to initiate and manage and conduct proceedings will be something with which individuals will be familiar, and to a far greater extent than the previous paper and court-building process. Greater use of the Internet can thus be harnessed to increase access to justice, to genuinely equal access. This is not to say that all process will take place on line. We are not moving to an entirely online process. It will remain essential for many claims and procedures that they take place in the established way ie face to face.

24. For those claims and hearings that should take place in court buildings, the reform programme and its focus on increasing our use of technology should enable us to ensure that litigants, judges and the courts and tribunals' administration have an improved environment. Reform enables us to move away from our post-Victorian, and in some cases, Victorian court estate. We can design our courts for today's environment, one where court bundles need not be on paper, but can be on a memory stick – already an option in the UK Supreme Court. It also enables us make better use of available space: as back-offices can reduce in size through less use of paper filing, we can better use it for litigants and lawyers when they need to attend court. It should go without saying that reducing the amount of times an individual is required to attend court reduces the cost and inconvenience of litigation. As Jeremy Bentham might have said, we increase access to justice by reducing justice's vexations.

25. Better access has another meaning. We are not just concerned with creating a better and more accessible system for those individuals who would litigate under the unreformed system. The reform programme's vision – and this can be seen from Lord Briggs' original vision in the Civil Courts Structure Review – is an expansive one. It seeks to make our justice system accessible to those who would not otherwise bring their disputes to court. As such it seeks to expand justice's reach to those who at the present time sit outside the law's protection because they do not perceive the courts and tribunals to be presently open to them or cannot afford the risk of access. An expansive vision of an accessible reality.

26. The reform programme is expansive in another sense. It seeks to remake our courts and tribunals in the light of modern technology so that we are looking to expand our concept of justice. Historically, justice dispensed in the courts stood in parallel to justice secured via mediation, negotiation and other forms of consensual settlement or Alternative Dispute Resolution. Reform in the shadow of online developments in ADR – i.e., in online dispute resolution, has given rise to a broader vision of justice. I do not shrink from the fact that we must maintain the incremental development of the common law through precedent but an appropriate and compatible aim in the civil courts and Tribunals is to incorporate negotiation, mediation and forms of preventative or preventive justice into the formal process: there will be ‘just dispute resolution’, or as it has been described a problem-solving approach to justice.²⁴ I aim to ensure this approach is adopted in the Tribunals. An expansive vision is one that sees accessible justice as access to a wider variety of forms of dispute resolution. It seeks to provide the right one for the right dispute, rather than one or two sizes fit all.

27. Just as one size does not fit all, a further practical effect of the reform programme, and one that was clearly stated in the statement of the reform principles I set out earlier is the benefit that the development of assisted digital can bring. By this I meant to refer to something that was foreshadowed by Sir Brian Leveson when he referred to the development of what he described as ‘digital navigators’.²⁵ By this he meant ‘*individuals who could help the public ‘navigate’ the system.*’ They would do so through telephone or secure live web chat platforms or face to face. From this earlier expression of the idea we have been developing as part of the reform programme systems to help individuals who are unable to access the internet effectively. We are testing these systems and, particularly through the online court and Tribunals pilots, we are learning from the feedback we are receiving to tailor the system. And here we see a lesson that justice reform has learnt from developments in private online dispute resolution systems, such as those used by

²⁴ Sir Terence Etherton MR, *The Civil Court of the Future*, at [29] (14 June 2017) <<https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf>>.

²⁵ Sir Brian Leveson PQBD, *Justice for the 21st Century*, (Isle of Man, 9 October 2015) at [46] <<https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pqbd-caroline-weatherill-lecture-2.pdf>>.

eBay. Those systems learn from their users. And they put that learning into practice through changing the way their system operates. In this way they can easily and quickly resolve problems in the system. They can understand where there are gaps in the system, and they can plug those gaps.

28. Assisted digital is not just a means to improve access for those who would otherwise be excluded. It is a means by which the system itself can learn. It can assist the system as it assists the users. We have to ensure that this ability to learn from its own operation is something that we hardwire into our digitised courts and tribunals. If we do so it will mark a quantum leap forward in terms of our ability to understand how our justice systems work, where and how they do not work and crucially the extent to which they deliver access to justice. Whether it is through the use of embedded data that is harvested for analysis and research or the use of artificial intelligence to capture good practice, it is my hope that we can ensure that through the reform programme we are able to fully realise this vision.

29. Finally, I want to touch on a further form of accessibility; one which the judiciary also have a duty to secure. That is the duty to bring about a more diverse judiciary, one reflective of the society we live in. We see this duty, particularly in the obligation placed on the Lord Chief Justice to act to encourage diversity in s.137A of the Constitutional Reform Act 2005. It is a duty that as Senior President I have strongly endorsed through, for instance, our emphasis on new recruitment principles for the Tribunals judiciary and work on the judicial mentoring scheme.²⁶ There are many reasons why increasing judicial diversity is of central importance. A more diverse judiciary means that the long web of the common law can draw upon the experience, knowledge and values of society as it is today. It helps to ensure that our law draws its strength from all of society and not a thin strand. The reason I want to highlight tonight though is related to this, but goes beyond it. It goes back to the point I made earlier about constitutions drawing their strength, their value from civic engagement. Engagement occurs when people are part of something; when they can and do take part. If our courts and tribunals are to properly engage

²⁶ See, for instance, *The Judicial Mentoring Scheme*, 21 February 2015 <<https://www.judiciary.gov.uk/about-the-judiciary/judges-career-paths/judicial-mentoring-scheme/>>.

society, they need to be part of society and society in its breadth and diversity must be part of our courts.

30. Our society is an open society. Our courts are open courts. And our judiciary must be an open judiciary. As such it seems to me that we need to do all we properly can, I say properly because we must of course act consistently with what the law permits, to encourage applications to the judiciary from all under-represented groups. None must be left behind in this. We must focus on all and not just some. And in this we must tailor our approach. What works for gender diversity may not work for BAME diversity, and which may not work for socio-economic diversity.

31. It is often said that justice must not only be done, it must be seen to be done. That is as true of improving judicial diversity. We must do and be seen to do: if we do not, then it will become difficult for the courts and tribunals to maintain public confidence. All parts of society must see they have a stake in the delivery of justice. We show that by what we do. And what we do – what we must continue to do – is ensure that the judiciary as an institution is open to all with talent, ability and experience. If – as we rightly do – we recruit the judiciary on merit, as a society we need to ensure that we nurture and develop that talent.

Civic responsibility for securing effective access

32. This takes me to the third issue I want to consider: civic responsibility for assisting access to justice. My starting point here again is the idea that justice is not something that is done to you. A just society is one where the delivery of justice, the commitment to do justice is inherent in all our institutions, in all of civic society. There are many examples of excellent work being done in this respect across the country. And it takes many shapes and forms.

33. On the one hand, our universities – of which Keele is in the forefront – demonstrate real leadership. Law and its study is, of course, very often as practical as it is theoretical. This is particularly true of our common-law system. Oliver Wendell Holmes was quite right when he emphasised the fact that the life of the law was not

logic but experience.²⁷ Our laws have grown from cases; from practical problems. Our universities now embody this truth in the work they do through their legal advice clinics and their clinic legal education programmes.

34. In this regard, the work done by the CLOCK programme in Keele is truly inspiring.²⁸ The work it is doing for the disadvantaged in society is vitally important. It is civic engagement in the pursuit of a more accessible justice system at its best. With the ever-increasing growth in litigants-in-person, its work with the Litigants in Person Network cannot be underestimated. It is a programme that should serve as a template for others to emulate. Equally, ground-breaking programmes have been developed in other universities across the country, such as Kent University's law clinic²⁹ or University College London's Access to Justice Centre³⁰.

35. These examples show engagement by our civic institutions at its finest. As you may have guessed, I am not one for resting on laurels. Just as the courts and tribunals are subject to a reform programme, the aim of which is to create better access to justice, I would challenge universities to go further than they have already. There is always room to innovate. Such a challenge was laid down approximately fifteen months ago by the Master of the Rolls, Sir Terence Etherton. In a lecture to LawWorks, he suggested that '*universities, pro bono advice centres and organisations, and law firms [should collaborate] to create an expanded advice scheme*'.³¹

36. His idea was that, along with the legal professional regulators and the courts and government, there was scope to expand the nature of such pro bono assistance to litigants-in-person by law students. He did not suggest this would be unsupervised assistance. On the contrary, he suggested that there should be greater access to

²⁷ O. W. Holmes, *The Common Law, Lecture I, Early Forms of Liability* at [1], '*The life of the law has not been logic; it has been experience. The law embodies the story of a nation's development...it cannot be dealt with as if it contained the axioms and corollaries of a book of mathematics . . . In order to know what it is, we must know what it has been, and what it tends to become.*'

²⁸ See <<https://www.keele.ac.uk/law/legaloutreachcollaboration/>>

²⁹ See <<https://www.kent.ac.uk/law/clinic/>>

³⁰ See <<https://www.ucl.ac.uk/access-to-justice/>>

³¹ Sir Terence Etherton MR, *LawWorks Annual Pro Bono Awards Lecture*, (15 December 2015) at [24]ff <<https://www.judiciary.gov.uk/wp-content/uploads/2016/12/law-works-lecture-mr-20161205.pdf>>.

appropriate supervision, they would be insured and they would be subject to professional regulation. The benefit to society is obvious: greater assistance for those who need it most. It draws more of society within the protection of the law. The benefit to the student is the ability to use that experience to enter the profession. He called for detailed consideration of the idea. I reiterate that call today. Our universities have shown they have the will and the experience to innovate here, to develop programmes that are both socially responsible and of benefit to their students. In the spirit of assisting further civic engagement could they not take the lead in helping to develop the Master of the Rolls' idea? I hope so. And I hope that other parts of civic society join them in doing so.

37. The universities are not alone. The legal profession through the development of its own pro bono schemes, such as the Bar litigants-in-person support scheme or the long-established Free Representation Unit, and the important work done by the Law Society under its Pro Bono Charter, exemplify their civic engagement. Again, this shows the breadth of what is being done. It is not just pro bono work though. The Legal Education Foundation has through its Justice First Fellowship Scheme funded training contracts and pupillages and CILEx qualifying placements for law graduates who intend to work in the field of social welfare law. It not only provides training, it helps its Fellows – as they are called – gain the necessary broader skills to develop successful careers.³²

38. If all these schemes and those behind them came together and collaborated – as CLOCK demonstrates – we could not only achieve a significant increase in civic engagement by our universities, legal professions and those charities that work in this area. We would also provide a clear template for wider civic engagement. We would lead by example.

39. That then is my challenge for you tonight. It is not to carry on the excellent work you are doing here. That is a given. It is to lead. To lead the development of wider civic engagement. And in leading, you will not simply be assisting access to justice,

³² See <<https://jff.thelegaleducationfoundation.org/about/about-the-fellowship/>>.

you will be playing an essential role in securing it at the heart of our living constitution.

40. Thank you.

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