Speech by Sir Ernest Ryder, Senior President, to the Public Law Project: 12 October 2016

In 1873 Levi Strauss patented his copper riveted overalls – jeans to you and me, Girton College opened for business as the first women only college in Cambridge, Gladstone was Prime Minister and nearly 40 years into the Victorian era the first of the Judicature Acts was passed which reformed the judiciary and the structure of the judicial system.

Innovation, diversity and access to justice, you might think. If I might be permitted to gaze into a crystal ball and look back from the future to the balance of this decade, what is going to mark us out? My hope is that we will be able to measure change against the three objectives of the Public Law Project and that we will have achieved demonstrable success in improving access to justice, enhancing quality and increasing accountability which includes diversity.

The next six years marks out the most ambitious period of change since the Judicature Acts of the 1870s. The aim that the Lord Chief Justice and I have agreed with the Lord Chancellor is quite simply to strengthen the rule of law. The reform programme that was announced this last month is a breathtaking £1bn investment project.

The programme's genesis is of course a response to the realities of our age. Austerity is not the driver of reform – that approach runs the risk of price rationing which is the antithesis of equal access to justice. What austerity has forced us to do is face up to the system's failings and be clear about what is necessary to prevent further decline. We must address lengthy delays that are inimicable to justice and to welfare, processes 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 to impair access to justice by removing legal representation. It ill behoves the judiciary to accept that unless they are prepared to do something about it. I and my colleagues will.

I put the issues in this way because a reform project that is not honest about what needs to be done and why will not succeed.

Our intention is to reform process to make it clear and fit for purpose in an environment where paper is to be replaced by digital materials on the cloud. New process will inevitably lead to new rules and practices which need to be designed before we digitise them. We must strive to make that process intelligible to the user. In administrative proceedings, the first pilot is a ground breaking project to create end to end on-line hearings for benefits appeals where we will replace case management hearings with continuous messaging and determinations with an appropriate mix of on-line questioning and virtual hearings. The process of on-line

dispute resolution will slowly become the norm for most less complex work in the civil, family and tribunals jurisdictions.

In order for on-line dispute resolution to work we will need sophisticated document and case management systems in which judges and the parties will be assisted by trained registrars and case officers to prepare materials for the on-line environment. The method of preparation and presentation of materials for face to face hearings on tablets and screens has already begun in the Crown Court and the quality of the common platform and case management systems there can already be seen. Police forces can serve evidence collected electronically at the scene, the Crown Prosecution Service can advise on the same and the judge, jury and advocates have an electronic case file that does not need to be printed but can be used in any way that paper, the pen and the human desire to analyse might wish. It is plain that effective solutions such as this will be capable of being used in our more complex public law cases.

We are only too aware that in every jurisdiction there will be some who have neither the ability nor the will to take part in a digital dispute resolution system. They may well be some of our most vulnerable users. We must not damage or restrict their access to justice. One of the fundamental principles of our reform programme is that we will improve access to justice. For some, digital access will itself be an improvement: making the justice system something that is more closely associated

with the way they already live. For others, we are designing a whole programme of assisted digital access. Specialist providers whose expertise can be made available to assist litigants in person, those with disabilities, special needs and vulnerabilities will be commissioned to provide a coherent service that most of us know is presently a pipe dream. We intend to make that dream a reality.

In some jurisdictions the possibility of new forms of problem solving will become available. I personally hope that we will have the courage to build on the successes that we have seen in family law. The Dutch among other international colleagues already have intuitive on-line private law children systems with measurable better outcomes than our own paper pathway. They obtain high user satisfaction including from the young people who take part.

I have recently participated in seminars in the City of London on alternative problem solving approaches in Judicial Review proceedings. For those who are more interested in solving their substantive problem rather than seeking procedural redress or a legal point of principle, it is clearly important that a mechanism is available to expedite the solution. Whether that be a tribunal or alternate dispute resolution solution is an interesting question but my support for a pilot in tribunals that exercise both a merits jurisdiction and the judicial review jurisdiction is based upon what the user needs. There is also a very interesting project being pursued by the Equality and Human Rights Commission to look at dispute resolution in equality and human

rights including in relation to goods, facilities and services. The Access to Justice Forum eagerly awaits their recommendations.

There has been renewed interest in the work of those who seek to examine the potential links between adjudicators (public and private ombudsmen in particular) and the tribunals. The facility to have mechanisms of referral between bodies who accept governance principles and regulatory oversight is of considerable interest to some of my jurisdictions.

The challenge for us is to design new process which strengthens rather than dilutes the rule of law and which enhances the citizen's access to justice.

Sometimes we can achieve that by the most simple device e.g. flexible deployment of judges to that they can sit in any courts or tribunals jurisdiction including at the same time. The one stop shop being piloted by tribunal judges is an example of the future. In my property tribunal we are piloting the concurrent hearing of tribunal and court proceedings relating to property before one specialist panel so that the litigant can avoid going to separate places to get a true solution to their property problems.

Each of these reforms and ideas is designed to concentrate our scarcest resources: judges, lawyers and other experts, on the cases that need them. The ways in which

we work will change and change for the better with the consequence that problems will be solved faster and in a more proportionate way. I also hope that the places where we work will, as a consequence, be of a higher quality and more appropriate to the needs of the user. The court and tribunal estate is likely to be further reduced to concentrate better quality buildings in places where we need them to provide access to new ways of working. We will use alternative buildings to provide local access where that is needed: in the tribunals we have a long standing tradition of taking the judge to the user in an appropriate case.

Our emphasis will be on innovation to achieve better access to justice. That must include improvements in the quality of our outcomes. In each of the reform projects with which I have been involved we have emphasised the need for academic scrutiny, by reference to empirical material i.e. rigorous attention to what works.

Changes to process will involve changes to judicial ways or working both in respect of case management and substantive determination. In the more complex areas that most of you are interested in there is a once in a lifetime challenge to help design a better process. We may start with self evident digital improvements to bright line paper processes but when it comes to the White Book are you willing to devote some time to re-writing your part of the decision tree?

It will be so much better if we all collaborate to achieve intelligible swift process that does not lose the sophisticated protections that the common law has developed over many years.

Your third principle is accountability. I have already referred to the danger of price rationing. It is incumbent on us to develop better system management and case management i.e. clearer and more explicit principles of collective and individual proportionality in the way we lead our jurisdictions. Leadership includes performance and that has no adverse implications for judicial independence in the individual case. Leadership also includes embracing change, good practice, what works and representational justice. The opportunity of diversity is critical to the continuing health of the justice system as an institution. I for one will bring forward proposals that are bold and which build on our success in the tribunals. I very much hope some of you in the audience will feel empowered.

These are fascinating, perhaps even exciting times. My invitation to you is to join with me in helping to shape them.