

Imagine Rhyl on a sunny day. Difficult I know. Away from the peeling paint of ageing Victorian glory, MDF advertisement boards, coloured light bulbs that had long ago ceased to illuminate and neon signs that spoke of an earlier age of amusements, there was His Honour the late Judge Michael Farmer.

Modernisation or even reform and Michael were not likely to be words heard in the same breath but despite that I hope he would have forgiven me for saying that he epitomised the judge who could change anything to make it work. He understood that you cannot have reform done to you. You have to want it, participate in it, improve it as you go along.

He would have told you that the process of change is ultimately being involved in doing the job i.e. delivering justice in the individual case. That is why Michael was so good. He changed lives. He focussed on the quality of outcomes and that is what the family justice reforms were all about.

His own versions of rules and procedures were legendary, occasionally notorious but his desire for a successful outcome extended even to the fabric of the fabulous institution that was the courthouse in Rhyl. It gave every impression of a lifeboat station with someone who lived above the ship. In truth it was both of those

things. Without Michael family justice in North Wales would not have been the personal service that it became with an emphasis on quality that was his trademark.

Amidst the decay of a once fine resort he (with his team of loyal colleagues and officials) did everything from converting the toilet into a conference room to persuading the Women's Institute to provide an excellent dedicated coffee shop across the road – complete with twinkling fairy lights and suburban domesticity.

Did we, and by that I mean the so called controlling hand of the family reform programme, learn from his legacy? The answer is an emphatic yes. First, light touch leadership is a must. Second, respect for the individual judge's own commitment to fairness should not only be a given but should be openly acknowledged. Third, local needs must be provided for and good practice both in leadership and validated methods will be the consequence.

I am delighted that his son Sean is with us here today and continues his father's interest in and dedication to the law.

We live in interesting times where judges together with their academic and other professional colleagues are collaborating in developing ideas, structures and processes in a way that would surprise and alarm my predecessors on the bench. Changing i.e. improving process, has involved creating new structures. In my case

the privilege of being allowed to help create a new statutory court, the Family Court. Working with Government and the Legislature on independent and equal terms, developing new languages and new governance requirements with which to do that but above all acknowledging with appreciation the importance of the joint endeavour in which we were all engaged.

I want to use this opportunity if I may to look forward, but by reference to the principles that informed us in undertaking the family modernisation programme. The creation of a Family Court and the re-training of family judges in workload management and rigorous case management were not, I hope, the consequence of the uninformed musings of those who could not leave well alone. They were solutions to problems identified over many years – at least since the Finer Report – including whether our processes added value i.e. whether the outcomes of the family justice process could be measured, benchmarked and improved.

Those of you who have read the family justice reform materials will understand how we developed our thoughts incrementally and by undertaking one of the longest conversations of its kind. With over 6000 colleagues we identified basic jurisprudential principles to create improved procedural integrity and governance in the application of good practice supported by research i.e. evidence based justice. Those principals were judicially developed and it is to that key responsibility that I will return in due course.

We developed two central themes or pillars to try and improve process and we suggested that between the two pillars there should be a new way of working in court. The two pillars or good practice frameworks are described in the report which I published in July 2012.

There was a framework of leadership and management for those judges who now control the workload of the new court that Parliament created. That is a framework that allows leadership judges to plan, and to allocate or distribute business between the judges of the court including the magistrates and their legal advisors. In that way we prioritise and monitor what we are doing. We use management information to inform our decision. We may even (eventually) develop effective peer review mechanisms. We attempt to match judicial resources to cases and use the overriding objective in a much more pro-active way.

There is also a framework of good practice. We wanted judges to be able to make case management decisions knowing what effect their decisions would have on the family and in particular on the welfare of the child. That required a much more rigorous focus on the quality of evidence and analysis and also a knowledge of what works: by use of peer reviewed and accepted research into outcomes. By that route welfare becomes much more predictable, less subjective and more child

focussed. We created good practice pathways signposting how best outcomes can be achieved in a timetable that reflects the needs of the child in the proceedings.

We made no apologies for having taken the idea of clinical good practice from the best academic and healthcare environments. It seemed to us that to constantly inform good judicial practice by evidence based research and standards agreed with other professionals with whom we regularly work, would help to improve the quality of analysis on which the court depends and thereby reduce the number of time consuming and expensive expert's reports which are sometimes used to undertake work that has already been done by skilled and experienced professionals. We realised that these mechanisms alone would not be sufficient unless they are accompanied by a significant change of culture which would need to be embraced by everyone in the system. It was this change of culture which was at the heart of the hypothesis that underscored reform.

In family justice, the judicial bridge between the two pillars that are the evidence based frameworks is an investigative rather than an adversarial system of justice. The judge had to become more than the referee on a playing field where the parties (often without any direct involvement with the child affected) decided what issues they wanted to litigate and what evidence they were going to present. That had to change.

The judge had to become the arbiter of what the key issues are that need to be decided so that the ultimate problem can be solved by the court and the judge decides what evidence he or she needs. That may involve preventing parties litigating disputes that are not key i.e. where they are only marginally relevant and where it is not proportionate for the dispute to be resolved because the resolution of that dispute is not necessary for the ultimate decision that needs to be made. We developed a style of justice that is genuinely problem solving and therefore by definition more effective.

The stereotypical criticism of what we did is that it attempts to create out of justice a commodity that behaves like a product on a production line reducing the judge and each participant to no more than a semi-skilled operative dealing with standard situations in a predictable way. In the sense that achieving earlier resolution of family cases demands a much more engaged judiciary who identify issues, evidence and options at the earliest stage, then I concede there is in the design an optimum process. That process is also a court controlled inquisition albeit a collaborative inquisition between the judge and other professionals and the parties themselves. It is a new style of delivery of justice that demands more specialist judges who know their caseload, know what is out of the ordinary, can predict, react and pro-actively direct a case so as to try and achieve the best quality outcome in each case. That is not a production line approach. That is a flexible, skilled, value added individual approach.

Does any of this have a more general application? I hope to persuade you that it should.

In the tribunals we are about to embark on an ambitious programme of engagement and change. We will work together with the courts judiciary and HM Courts and Tribunals Service to deliver three things:

One justice system: the Lord Chancellor's plea for one class of justice – and that should be first class.

One judiciary: a specialist, innovative judiciary capable of being deployed across different jurisdictions.

And research validated good practice in our leadership, our courtcraft and in the application of our specialist knowledge.

We hope to do this with new resources which could change the landscape of our infrastructure with new judicial IT, a digital or on-line dispute resolution service, significantly changed estate and new judicial ways of working. In terms of fiscal challenge, we will need to be careful about how we plan to implement our ambitions – but ambitions they remain.

Will we make a difference? The bottom line is that I believe it is our duty to make a difference. The prize is the rule of law and hence the nature and extent of the

function of the judiciary in England and Wales (and, for tribunals, the wider UK); and in particular our responsibility for change in the justice system.

Constitutionally, the independent judiciary are the third limb of the state: validating and where appropriate invalidating the relationships between the Executive, Parliament and its citizens. In a state in which most of the fundamental principles and structures to which we adhere are unwritten, the role and functions of the judiciary as the minute taker for civil society rightly becomes the object of great scrutiny and comment perhaps more so than may be the case in a codified constitutional structure. If we are to avoid being the political footballs of others, the fashionistas of populist commentary and a genuine bulwark upon which both the citizen and our civil institutions can rely, we must secure the independence of the judiciary by a process of change so that we remain both effective and efficient and true to our principles – for that is the basis of our role – to provide effective and efficient justice according to law.

For those of us who have been involved in the reform of justice over the last decade, the need for change is a given. For the institution of justice, like all institutions, to survive and add value, it must derive the need for its existence and the needs it satisfies from its citizens. If it fails to do that it will lose respect, and ultimately sow the seeds of its own decline. That requires leadership and a strategy. A strategy for the judiciary will involve system change and that will feel



uncomfortable. But it will not be change for change's sake. Our aim must be to provide a system that is fairer, provides better quality justice outcomes but does not fail because of unreasonable expectations on those involved – be they litigants or judges.

That is what this is all about. We must acknowledge that having control over the administration of justice involves responsibilities. The judiciary must be seen to administer an effective justice system, providing for those who need it – the effective and efficient administration of justice is not something that is done to us by others. In order to succeed we have to demonstrate that we can measurably make a difference. In that context, what are the drivers for change at the moment?

I would argue that they are three-fold:

- (1) Financial austerity – both personal and Governmental;
- (2) The increasing impact of the decisions of State agencies on individual citizens i.e. the volume of work reflected in the exponential rise in public law family cases, Judicial Review, the enormous and diverse jurisdictions of the tribunals judges in areas where decisions touch on fundamental freedoms and where administrative decisions can have significant effect;
- (3) The increasing complexity of our relationships in a plural society reflected in increasingly long and delayed cases in every jurisdiction.

We have financial challenges, an increasing volume of work, and subtle but important complexities. We have fewer lawyers to help. We have more litigants in person with the consequence that cases can take longer with a need for the judiciary to try and reduce sophisticated process and language into simple and clear propositions without losing their legal effect. We have many litigants who need help to present their case. The increasing volume of work in some jurisdictions is not always well forecasted and may in any event reflect changing attitudes in society that we have to consider or reflect. Increasing complexity involves a proper reflection of the diversity of values in society.

The drivers for change will force us to re-consider how we administer justice. The Tribunals have some helpful and long standing principles to deal with just these issues –

- Accessibility;
- Simplicity and clarity;
- Specialist innovation;
- Efficiency i.e. affordable and speedy justice; and
- Fairness.

I intend to use them and build on them during our change programme.

If Churchill was right when he characterised the rule of law as a building block of civilisation then we have to be good at conservation if building blocks are not to

disintegrate. We must take steps not just to put new cement between them but sometimes to replace them with new and stronger materials.

The challenge is significant. The prize is beyond doubt. I hope you will join me in recognising that change is not for its own sake but for the benefit of everyone.