

# **Justice Innovation Programme Lecture for the Northern Ireland Assembly Committee for Justice**

**Lord Neuberger, President of the Supreme Court**

**3 March 2016**

1. It is a great pleasure to be here in Belfast, and a particular pleasure and indeed a privilege to be asked to address the Assembly's Committee for Justice, and to be a guest of the Bar Council of Northern Ireland. The work of the Committee, led by its chairman, Alastair Ross, has been exemplary in terms of substance and procedure. Your pioneering work in investigating what can be done to improve and modernise the justice system, and in particular criminal justice has been imaginative and thorough. And the constructive way in which you have worked together with the Justice Minister, the Lord Chief Justice and others concerned with the administration of justice and the criminal law has been exemplary.

2. I know that this talk marks the final segment of the Committee's Justice Innovation programme, and I will certainly want to discuss some issues in that connection. However, this is the first time that a President of the Supreme Court of the United Kingdom has formally addressed the Committee for Justice, or indeed any arm of the Assembly, and as president of the Court, I cannot pretend to be at the sharp end of the judicial system. Accordingly, I hope that you will forgive me if I also discuss some wider issues. There will be time for questions at the end and if you have a question, please do not feel limited to the topics I am about to discuss.

3. Given that the United Kingdom rightly prides itself on a long and unbroken history of law, legal systems and courts, the UK Supreme Court with its twelve justices, is a surprising newcomer, having only sprung into life in 2009, less than seven years ago. In fact, of course, it was not so much a birth as

a reincarnation, as we had previously been the Appellate Committee of the House of Lords, which consisted of the twelve so-called Law Lords, the Lords of Appeal in Ordinary. The Appellate Committee had been around in some shape or form for many centuries. By 2005, however, it was considered to be inappropriate to have judges, who are meant to interpret statutes, sitting together with, or even in the same building as, those who actually enact the statutes in the Houses of Parliament.

4. So the Supreme Court was created by the 2005 Constitutional Reform Act. And four years later, after a suitable building was found and refurbished, the Lords of Appeal in Ordinary flew from the House of Lords on the east side of Parliament Square to their newly refurbished building on the west side of the square. So I suppose one may say that it was a case of twelve lords a-leaping; actually it was eleven because I went off to be Master of the Rolls, the head of the English and Welsh Court of Appeal, and only arrived at the Supreme Court to take up my present job three years later.

5. The Supreme Court Justices, like the Law Lords before them, represent, of course, the top court for all parts of the United Kingdom. With the exception of Scottish criminal appeals (which have always been excluded from its remit), the Supreme Court is the final appellate court in all cases, whether in Northern Ireland, Wales, Scotland or England. The Supreme Court is not only the top UK court; with one or two small, but important exceptions, it is the only court or tribunal with UK-wide jurisdiction. The jurisdiction of almost all the other courts and tribunals in the UK is, of course, limited to (i) Northern Ireland, (ii) Scotland or (iii) England and Wales. The fact that we hold the important position of being the top UK court explains our essential function, and also explains why we allow some applications to appeal to us but not others.

6. Traditionally, our essential historic function has been (i) to clarify the law when it may have become unclear, (ii) to correct the law when it appears to have gone wrong, (iii) to modernise and

develop the law when it has become out-dated or out of touch, and (iv) to reconcile and resolve inconsistent decisions of different courts. Let me give you two examples.

7. First, a very recent decision where we corrected the law. You may have read about the *Jogee* case, which involved the criminal law of joint enterprise in relation to murder, on which the courts had taken a wrong turn in 1984. The decisions since 1984 made it possible to convict an accessory of murder if he foresaw the possibility of serious injury to the victim, even though he didn't intend the victim to be seriously harmed, let alone killed. This was inconsistent with normal legal principles, and it was in stark contrast with the position of the person who actually did the killing: he could only be convicted of murder if he intended to kill or cause serious injury. As we emphasised, if the accomplice foresaw the risk of the victim being seriously injured, he would not get off scot-free: he would be guilty of manslaughter, which, like murder, can carry a life sentence. And, as we also pointed out, the fact that the accomplice foresaw serious harm would be evidence from which a jury could conclude that he intended serious harm – and could therefore convict him of murder.

8. A somewhat older case is *R v R*, which is an example of the law not being so much corrected as brought up to date. It had been the law for many centuries that a man who had sex with his wife against her will was not guilty of rape, because, as our forefathers (but no doubt not our foremothers) saw it, a man was entitled to have sex with his wife if he wanted to. By 1990, this view seemed worse than out-dated: it was simply indefensible, and the Law Lords changed the law. It might seem to be surprising to some people that this change was only made as recently as 25 years ago, but I think that judges have to be very careful before changing the law to keep up with the times. We should not be too ready to react to every change: only to those which are fundamental and long term. Interestingly, many other European countries similarly changed their law on this point between 1980 and 2005.

9. These two examples raise another issue: should judges leave it to the legislature to change the law rather than correcting or developing the law themselves? As usual when it comes to fundamental issues of wide application, there is no generally applicable “one size fits all” answer to this question. Of course judges cannot change the law when it is set out in a statute passed by Parliament: their duty in the case of statutes is, as I have mentioned, to interpret them. But there are many areas of law which have been developed by judges and have not been made the subject of any statute: such judge-made law is known as the common law.

10. If the common law as developed by judges has become outdated or has taken a wrong turn it would seem pretty sensible, indeed some people may say pretty obvious, that today’s judges should develop or correct the law as made by earlier judges. The notion that the law should remain ossified until the legislature choose to step in seems wholly out of keeping with the United Kingdom’s approach to law and to constitutional issues. That approach has been distinguished by a flexibility and pragmatism which is very different from countries with a civilian law system based on detailed codes, which leave the judges with no law-making capacity. But that does not mean that we should update or even correct the law whenever we consider it needs updating or correcting. Thus, in *Prudential v HMRC* three years ago, we decided that the law as developed by the judges relating to legal advice privilege was unsatisfactory, but we nonetheless decided that it was inappropriate for the judges to alter or develop it, as the issue involved many nuanced and policy questions which rendered it more appropriate for Parliament to consider. But that does not undermine the notion that, in appropriate cases, we should develop, update or correct the common law.

11. As was said by one of the most respected law lords of the 20<sup>th</sup> century, Lord Reid, the notion that judges do not make or develop law in the UK constitutional system is, and always has been, a “fairy tale”. And there is a great deal to be said for enabling, even encouraging, judges to develop or change the law when it is appropriate for them to do so. It is true that judges are unelected, and therefore do

not have the democratic legitimacy which democratic legislatures, such as the House of Commons and the Northern Ireland Assembly, have. However, there are three important answers to that.

12. First, I think it is fair, if not entirely original, to say that the rule of law and democracy are the twin constitutional foundation stones, or pillars, of our society. Part of the rule of law, I suggest, is that absolute power should never be concentrated in the hands of one body, however impeccable its democratic credentials, and the checks and balances so often cited by students of the US constitution exist to ensure that there is no such absolute concentration. A very important function of the courts is to provide a counterweight to the powers of the legislature, as well, of course, as the very substantial powers which the executive has developed over the past century. Secondly, and in contrast with this first point, in our system, the legislature can always have the last word. If the politicians do not like what the judges have decided, they can reverse the decision by legislation – and they sometimes do. In the UK, sovereignty is ultimately very simple: it lies with Parliament. This is a real contrast with the United States, where as we all can see the system does not have such an overriding “tie-breaker”, and gridlock can ensue.

13. Thirdly, there are occasions when the very fact that judges are not subject to re-election worries and media pressures renders it appropriate for them to make necessary but difficult changes. And judges are sometimes better able to make a correct, but unpopular, decision, or to investigate an issue which parliaments are not inclined to look at because there are no votes in it. Sometimes, I think that politicians may often be positively relieved that judges have resolved an issue so that the judiciary rather than the politicians get any flak. And, as I have emphasised, if they do not agree with what we have decided, the politicians can overrule us by legislation enacted in Parliament.

14. I have been criticised in some quarters for saying that the UK does not have a constitution. The short answer to that point is, as it is with so many arguments, that it depends what you mean by a

constitution. On any view, the UK does not have a coherent or embedded constitution; it has some constitutional conventions and some quasi-constitutional statutes, and they are conventions and statutes which can be changed or repealed by Parliament. People often refer to Magna Carta and the 1688/9 Bill of Rights as being part of our constitution, but, over the years, almost all the provisions of Magna Carta have been repealed and all the provisions of the Bill of Rights have been repealed or amended, by a simple majority in Parliament.

15. Because we have parliamentary sovereignty and no embedded constitution, the judges have no power to overturn parliamentary legislation (save to the extent that parliament gives them that right). The UK is very unusual in having no formal constitution: only New Zealand and Israel are in the same position among democratic countries. So, whenever people in the UK read about “unelected judges” thwarting the will of democratically elected parliament, they should remember that, unlike countries such as the USA or Germany, we do not have a judiciary like they have, judges who can (and not infrequently do) quash laws approved by both democratically elected houses and a democratically elected president.

16. However, things have changed a little, although not, I think, fundamentally, in the UK over the past few decades. I have so far been discussing the traditional role of the Supreme Court Justices, and before them the Appellate Committee of the House of Lords. Now, more recently, our role has expanded. The best known aspect of our expansion is of course in the field of human rights, and I must be particularly careful about discussing that aspect in the present political climate, which, when it comes to anything to do with Europe, whether EU or human rights, is rather feverish. However, it is clear that human rights are going to remain part of our constitutional set-up, whether through the European Convention on Human Rights or through a British Bill of Rights – or indeed both. Human rights have given UK judges a rather more constitutional role than we had before, in that we now have to deal with fundamental rights such as freedom of expression, privacy, right to respect for family life etc. And

another development which has made the Supreme Court's role more constitutional is devolution from London to Belfast, Edinburgh and Cardiff. In the event of a dispute or a challenge, the Supreme Court now decides whether the power to legislate in a particular area or on a certain topic has been devolved or whether it remains at Westminster. That is a constitutional role on any view.

17. In setting out this assessment of the modern role of judges generally and Supreme Court Justices in particular, I am not implying that judges are out for any sort of power-grab. Apart from anything else, our human rights and devolution powers have been given to us by Parliament through legislation. Furthermore, while both human rights and devolution have provided the judiciary with some very stimulating new legal developments and some new responsibilities, most of us judges are rather cautious about exercising our powers in these new areas. We are well aware of the fact that we are not democratically elected or accountable, and we are cautious lawyers rather than fervent revolutionaries. As I have said, judges in the UK have far less political power than judges in most other countries, and the great majority of us are content with that.

18. Thus, the judges' role has expanded somewhat over the past twenty years or so, due to various factors, perhaps most obviously the introduction of human rights and increased devolution. However, the creation of the Supreme Court in 2005 was not of itself intended to change the functions of the top UK court, and that was made very clear by the then-Lord Chancellor, Lord Falconer. And, although some judges and commentators, including me, were concerned that the creation of the Supreme Court would cause the top judges to get ideas about expanding their powers, I really think that that has not happened. But what has happened with the creation of the new Supreme Court is some real modernising when compared with the Appellate Committee of the House of Lords.

19. The very fact that we now have a tribunal with the name Supreme Court with its own building is itself a great improvement over the past, with what to ordinary citizens was its mysteriously named

Appellate Committee of the House of Lords which sat in a relatively inaccessible committee room tucked away on the second floor of the Houses of Parliament. Even some reasonably sophisticated lawyers were not quite sure what the Appellate Committee of the House of Lords was and who exactly its members were and what precisely they did. The Supreme Court, with its twelve Justices, is a very different matter: to use a rather tired expression, it does what it says on the tin. I shudder at the thought of UK Supreme Court Justices having the same notoriety as US Supreme Court Justices. However, I think that it is important for the rule of law, and indeed important as a matter of public education, that ordinary citizens know that there is a top UK court called the Supreme Court, that it has its own dignified, but not grandiose, building, and that it consists of twelve “top judges” (as the newspapers love to put it). It is also important that ordinary citizens also have some idea of what that court actually does and where it sits in our constitutional arrangements.

20. But our modernising by no means stops with the change of name and change of location. The Supreme Court has taken full and proper advantage of its rebirth and removal to modernise itself in a number of ways. First, it has taken a number of steps to ensure increased public accessibility as a result of its new freestanding existence, following its 2009 re-launch under a new name in its own newly refurbished building. Public accessibility is not just a self-conscious 21<sup>st</sup> century media-orientated concept. Open justice is a fundamental ingredient of the rule of law. Unless what goes on in court can be seen by the public, by those in government, and by the media, there is a real risk that public confidence in the courts will start to wane, and, indeed, a real risk that we Judges will gradually start to get sloppy in our ways. Sunlight has been famously said to be the best disinfectant, and without public access to the courts, there is a real danger that justice is neither done nor seen to be done.

21. So our public accessibility is very important, and we have ensured that physical public access to the building is both much better advertised and much more easily achieved. This has enabled over 500,000 people to visit the building over the past six or so years. Many of them have come in order to



see the court at work and/or to have guided or unguided tours round the building. Others have visited to take part in mock trials or moots. Many of the visitors have been tourists, many have been lawyers and interested lay people, but there has also been a very high proportion of school-children and students – and by no means just law students. Visitors who come to watch a case being argued are provided with a sheet of paper, which contains a summary of the issues in the case, how it was decided in the lower courts and identifying the Justices who are sitting on the bench. We are considering opening the Court on some evenings, so that people who are unable to visit during the day can have the opportunity of seeing the Court, although I doubt that we will find the Justices or the lawyers to provide a night Supreme Court.

22. Visitors to our building may attend Supreme Court hearings. But they may also see hearings which represent another aspect of the Justices' work which I have not so far mentioned. In addition to sitting in the Supreme Court, the Justices sit in the Judicial Committee of the Privy Council – the JCPC. The JCPC hears appeals from the Channel Islands, the Isle of Man, and many islands in the Caribbean, the Indian Ocean, and elsewhere. Gone are the days when JCPC heard appeals from India, Australia, Canada, Malaysia, Hong Kong and New Zealand. But there are, as I have indicated, still a number of smaller countries who use our services, and we are very proud and happy to continue serving them as long as they want us to do so. It is an enriching experience to hear appeals from other countries. On average, JCPC work accounts for about 25-30% of the Justices' work, the rest being Supreme Court work.

23. Visitors who see a case being argued may be surprised, even disappointed, to find that the Justices and advocates are all simply in ordinary clothes – no wigs and gowns. In the House of Lords and in the JCPC, the Law Lords never wore wigs and gowns (because they were technically not a court but a committee of the House of Lords), but the barristers always did. We felt it was both modern and traditional for the Justices to continue not to wear wigs and gowns, and we thought it appropriate to

leave it to the barristers in a particular case to decide whether to robe up or not. Very few advocates do now robe in the Supreme Court, but it is still quite common for advocates to do so in the JCPC. In terms of having a modern approachable court, it is, in many peoples' eyes, a good thing that the archaic robes are no longer part of the system. But many other people, I acknowledge, may regret the absence of the rather characterful robes which UK barristers still wear in most courts: a memorable feature in an increasingly conformist world. Some people may also feel that the wearing of robes increases the dignity of the court; that may be a strong argument in cases involving witnesses and juries, but I think it has less force in the Supreme Court.

24. To our surprise and gratification and to some of my more traditional colleagues' slight embarrassment, we learnt last year that the UK Supreme Court had been awarded four and half stars out of a maximum five by Trip Advisor – which I have just checked we still maintain. I am also relieved to note that the “traveller rating” under the title “working court” is a unanimous “excellent”, so we must be getting something right. I am similarly pleased to see that “guided tour” and “security screening” both score very highly. I would like to pay tribute to the Court's excellent staff and security contractors, without whom we Justices could not function and without whom we would not be able to ensure that public access is as effective and popular as it appears to be.

25. But it is not just physical access to the Supreme Court which we have tried to improve. It is also electronic access. Almost all of our hearings are contemporaneously streamed, and recently we have set up a system whereby footage can be watched back at a later date via our website. Of course, as all our hearings are appeals or legal references, we have no witnesses, and the hearings are limited to arguments about the law. So, to non-lawyers and even to many lawyers, our hearings are not always very exciting. However, law students and trainee lawyers can benefit from them, and academics and practitioners interested in the case, can see the arguments as they are developed. We have more than 10,000 users a month accessing this service.

26. If I may go off on a slight tangent, it is right to say that the question of cameras in court generally has been the subject of discussion from time to time. It is, I think, hard to find much ground for objecting to cameras in a court such as the Supreme Court where there are no witnesses and no juries. It is true that there is a risk of advocates playing to the gallery, but we have had no problems at all in that connection in the six and a half years of filming in the Supreme Court. And, if it did occur, I would expect judges to deal with it pretty summarily. As for judges playing to the gallery, the idea is unthinkable – I hope. Having said that, filming cases with witnesses and juries is much more problematical for obvious reasons. Further, there may also be a question of who has control over the filming: in the Supreme Court we do.

27. Reverting to the Supreme Court, in our aim to be more open, we have developed a UK Supreme Court users group (and there is a corresponding JCPC users group). The user groups have lawyers and others who frequently use the Court, and they meet regularly in order to consider any changes which might be made in our practices. The discussions within the groups have proved very useful - both selfishly, in terms of keeping the Justices in touch with what is going on in the litigation world, and in the public interest, in terms of keeping the Court up to date with modern practices. The user groups are an excellent way of demonstrating the fact that we are a public service, and our commitment to be open to suggestions and complaints.

28. I suppose our judgments would in the commercial world be referred to as our core business, and we are very keen to make them as accessible as possible to members of the public and indeed interested lawyers. It is fair to say that Supreme Court judgments are sometimes very long and detailed – and are often made more complicated by the fact that more than one judge has given his or her analysis. As a result even interesting and important judgments are quite difficult to follow and appreciate to a non-lawyer or even to a lawyer in a bit of a hurry. So another development we have undertaken is

to make the substance of all our judgments and decisions much easier to understand. We have done this in two ways. The first is to publish a short summary of our decision, setting out, in summary form, the essential facts, the issues between the parties, and our conclusions and reasons. These written summaries very rarely exceed two sides of paper (admittedly fairly, but not very, closely typed). In addition, one of the Justices prepares an even shorter summary of the decision, and, as the judgment is being published, he reads out this short summary which is recorded, posted on our YouTube channel and made available to all broadcasters.

29. The Supreme Court also tweets, and it currently has a Twitter following of over 180,000. The Twitter service informs any follower of forthcoming hearings and judgments, as well as speeches and other events which Supreme Court Justices are involved with. And, of course, we have a website, which apart from explaining what the Supreme Court is and does, contains a list of past and forthcoming decisions, future hearings, and speeches and other events.

30. This is all a very far cry indeed from the Law Lords even six years ago. Another change which has been more gradual is the number of speeches and other out-of-court public engagements in which senior judges now participate. In the 1950's, the Lord Chancellor ruled out the possibility of senior judges even taking part in a BBC radio series about famous judges of the past on the ground that it was unseemly for serving judges to be involved in public entertainment. Nowadays, senior judges are, quite rightly, far more ready to participate in public discussions. Normally, we do so through making speeches, but we also take part in seminars, question-and-answer sessions, and other events. Scarcely a fortnight goes by without at least one of the twelve Supreme Court Justices giving a talk or participating in a seminar on some legal or legally related topic. And that is as it should be. We owe the public a duty to explain what we are doing and why, and indeed to give the public an opportunity to ask us questions.

31. We are very fortunate indeed to have a long and unbroken history of the rule of law in most of the United Kingdom, and this means that there is a real risk that it is simply taken for granted. Just as the price of liberty has been famously said to be eternal vigilance (as is recorded in the entrance to your library), so is it the price of the rule of law. As I speak, it occurs to me that here in Northern Ireland, with your troubled recent history, you are much more likely to appreciate the importance of the rule of law and not to take it for granted, than people in Great Britain.

32. But whether or not the rule of law is taken for granted, senior judges, as much as, or even more than, anyone else, have a primary duty to ensure that the rule of law is appreciated, maintained and upheld at all times. As I have said, it is one of the two pillars of a decent modern society. Freedom of expression, freedom from oppression, freedom of conscience, access to justice, and all the other rights we hold so dear all flow from democracy and the rule of law. So judges have a responsibility to act as ambassadors for the rule of law, particularly in this media-intensive age.

33. One of the consequences of the judiciary's increased responsibilities in court (eg through human rights and devolution) and our increased exposure in and out of court (eg through electronic coverage and speech-giving) is that we have a higher public profile. This is a good thing not merely because it enables people to be educated about the rule of law and our justice system; it is also welcome because it reminds people that the law has a human face, that it is made and administered by people. However, this development also carries risks because one of the advantages of the UK's justice system has been that individual judges have never, or at least very rarely, been well known, let alone controversial figures. And this is desirable: justice should not, I believe, be personalised. It should be seen to be objective and reasonably detached, as the more it is about personalities the greater the risk of it being devalued and trivialised.

34. And, more broadly, popularisation carries with it a real risk of trivialisation. Consider the position of a journalist faced with our decision in the *Jogee* case, about joint enterprise and murder. The judgment runs to over 16,400 words, and the moment such a judgment is published, any interested journalist will want to produce a story about it immediately and probably in less than 500 words. He or she will be keen to produce a human story rather than a dry legal explanation, and will in many cases will also want to generate emotional feelings at least as much as intellectual stimulation. So it is inevitable that what is served up to the public is often, at least from the dry legal perspective, a superficial or one-sided story. I make no complaint about this: journalists, like judges, have a very important public role, but it is a very different one from that of judges, although fundamentally both are essential in a modern democratic society, in that judges embody the rule of law and journalists embody freedom of expression.

35. Of course, this is one of the main reasons why we produce written summaries of all our decisions – to help journalists to report the decision accurately. But more broadly, the very different perspectives of judges and journalists emphasises that we judges are treading a difficult line by trying to tell people about the law while avoiding trivialising the law.

36. Internally, the Supreme Court is collaborative, with more meetings between the Justices to discuss cases and with a view to minimising disagreements and minimising the number of judgments in most cases than occurred when we were in the House of Lords. There is always room for tension in the sense of disagreement when more than one judge sits on a case.

37. It can be said that there is a question whether you regard such a court as a single tribunal which happens to consist of a number of judges, or as a number of judges who happen to be sitting in the same tribunal. The cast of mind which says there is a single tribunal which happens to consist of a number of judges is typified by the European Court of Justice in Luxembourg, who have to give a single, unanimous judgment, even if some of them disagree with it. On the other hand, the common

law system which we have in the UK treats an appeal court as a number of judges who happen to be sitting in the same tribunal: hence every judge is free to give a full judgment of their own. Each system has its own advantages and disadvantages. The European system only has one judgment to read in every case, but their judgments are not infrequently internally inconsistent, and occasionally evade the legal question actually raised in order to arrive at a mutually acceptable product. On the other hand, the multiplicity of judgments you can get in our system can be confusing and tedious, but, whatever else may be said about it, our system produces more entertaining and stylish judgments.

38. More technically, the Supreme Court has a very effective IT system. The judges are very happy with their systems in court, in their chambers and when away from the Supreme Court. I believe that the staff are very happy too, although we have had teething problems. When the Supreme Court was being established during 2007-2008, we had a two year programme liaising with the Government to produce an IT system which turned out to be mediocre so far as the Judges were concerned and worse than mediocre so far as the court staff and court users were concerned. However, two years ago, we installed a new system, which has worked very well. I think that there are a number of lessons which can be drawn from this experience.

39. First, if at all possible, get an off-the-shelf system, as we did second time round; seductive though they may be, bespoke systems, such as we had first time round, are expensive, time consuming and much more likely to fail. Off the shelf systems have been rigorously stress-tested, whereas the same cannot be true of bespoke systems. Secondly, and connected with the first point, as we discovered from our successive experiences, even courts should not balk at the idea of changing their procedures to enable maximum efficacy for new IT systems. Of course this does not mean that courts should be prepared to sacrifice any practice which supports or facilitates the rule of law. But the notion that IT always has to be designed to fit working practices, and working practices should never be adjusted to fit with IT is wrong. Thirdly, careful attention to actual working practices is absolutely necessary when

acquiring or designing any IT system. The working practices of Justices and court staff inevitably changed after our move in the Supreme Court, and this could be, and was, taken into account when acquiring and designing the second IT system, but not the first. Fourthly, it is important to encourage everyone, especially judges (I was going to say “even judges”) to use IT systems once they are installed. At the moment, we have parallel paper and electronic systems, so that all the Justices go into court with a full set of papers in hard copy and another full set on their laptops. It would obviously be beneficial if we could go paperless, but the only one among us twelve Justices who gets close in that connection is, you will be pleased to hear, Lord Kerr, the one Northern Irish member of the UK Supreme Court.

40. Lord Kerr is also helping to make sure that we do not sit on our laurels. He is chairing a committee of three Justices to try and see whether we can cut down the amount of paper in most cases and do more on screen. We are also examining the possibility of greater use of video links, which would save parties time and money. Video links would be of particular value in relation to the JCPC, and it is due to have its first video hearing – in an appeal from Mauritius as it happens – in the next few weeks.

41. The Supreme Court is very conscious that it serves all the United Kingdom. Because London is so large, and we always sit in London, I am conscious that we risk appearing to be not just very London-centric, but more English than Northern Irish, Welsh or Scottish. And this risk is reinforced by the fact that nine of us Justices are English, two are Scottish and one is Northern Irish. And the great majority of appeals we hear are English cases. Given that England has well over 80% of the total population of the UK, these figures are inevitable, but we Justices are keen to make it clear that we genuinely see ourselves as UK judges to whom each part of the UK is as important as any other part.

42. Supreme Court Justices are keen to come to Belfast, Cardiff and Edinburgh, particularly to see the Judges, and, subject to not treading on judicial and political toes, to meet other people concerned with the rule of law and access to justice – including practising lawyers, law students and academics.



However, you must realise that there are only twelve of us and we have a day job to do. Interactions such as my visit today, and the visit to the Court of some of the members of your Committee a year or so ago are very important and valuable. We are always very keen to hear and consider any other suggestions, such as the possibility of the Supreme Court coming to sit in Belfast – if that is thought appropriate by the Assembly, Ministers and, of course, the Lord Chief Justice.

43. Finally, I turn to the even broader question of the delivery of justice across the United Kingdom. As the President of the Supreme Court of the UK, that is obviously an issue of prime importance to me, indeed it would be fair to say that, ultimately it is *the* issue of prime importance to me. However, it is only right to add that the primary judicial duty for the practical delivery of justice within the UK lies with the Chief Justices of Northern Ireland and of England and Wales and the Lord President in Scotland. I am the most senior judge in the UK, but, when it comes to judges and courts, my responsibility only extends to the Supreme Court and its eleven other judges. As someone said to me after the appointment of John Thomas as Lord Chief Justice of England and Wales, “David, John has an army; you have a cricket team”.

44. Having said that, I am of course very interested in the vexed question of access to justice in an age of austerity. Challenges and difficulties are also opportunities. But we have to face the fact that we are in something of a perfect storm. Legal services are increasingly very expensive and increasingly unaffordable to ordinary people. At the same time, government money to support the courts and legal aid is in very short supply. There are a number of reasons why legal services are expensive. First, UK lawyers (like UK judges) are of outstanding quality in global terms, and quality and cost are closely connected. Secondly, in this electronic age, litigation and legal advice involve a great deal of potentially relevant documentation to be collated and considered, and there is a plethora of reported legal cases for legal advisers and judges to consider. Thirdly, reflecting society’s attitude more generally, we are increasingly concerned with due process, which means that the trial process is increasingly expensive.

45. We have to address the issue, because the increased cost and complexity of litigation coupled with the shrinking of legal aid means that access to justice is very much at risk. Steps are being taken in England and Wales in the form of streamlining and tightening up litigation procedures generally, enabling judge to control costs and hearing times more proactively, increasing the types and size of claims which can be heard in the small claims court and those where only fixed costs are recoverable from the loser, encouraging mediation, and, more radically, introducing ODR – on-line dispute resolution – for small claims. I understand that the Bar of England and Wales are investigating the possibility of introducing a streamlined system of litigating smaller claims, which is also good news.

46. At the same time, the Government is proposing to make available a large sum of money to overhaul both the physical and the electronic infrastructure of the courts. There will be fewer but larger and more modern court buildings throughout the UK, and the antiquated and fissionous IT systems in the courts will be replaced by a modern system.

47. I am aware that in this last part of my talk I am concentrating on what is going on in England and Wales. That is because, as Master of the Rolls between 2009 and 2012 I was in charge of civil justice in that jurisdiction before I moved on to this job, and modernisation of the justice system in that jurisdiction is and was a matter close to my heart. Now of course, as President of the Supreme Court, modernisation of the justice systems throughout the United Kingdom is close to my heart, and I am delighted to learn today that the same sorts of matters that I have been describing are also being considered here.

48. But let me end by emphasising what a privilege it is for the UK Supreme Court to continue to serve as final court of appeal for all parts of the United Kingdom, including of course Northern Ireland, and how excellent this evening has been. I have not only enjoyed myself greatly, but I have had the

opportunity to meet many of the people (some not for the first time) with a responsibility for, and an interest in, maintaining and improving the rule of law and access to justice in Northern Ireland.

David Neuberger

Belfast, 3 March 2016