

# PRESS STATEMENT

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Opening Statement to the Assembly and Executive Review Committee

## INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

**Introductory Remarks by the Lord Chief Justice  
Tuesday 2 October 2007**

Can I say immediately that I am grateful for the chance to address the committee today on the subject of the arrangements for the Court Service after devolution of justice? I have read with some bemusement reports in the press that I am to be 'quizzed' by the committee or that I am to 'take a rare turn in the witness box'. In fact, I hazard that I am among the few people in the room today who has given evidence in the past from a witness box but I do not visualise my appearance before this committee as an occasion for quizzing or confrontational cross-examination but rather as the opportunity for a fruitful and constructive exchange which will be not only of mutual benefit to the committee and the judiciary but which, hopefully, will inform the public on a topic which is – or, at least should be – of interest to us all.

When I have concluded these brief opening remarks, I will be happy to deal with such questions as I can on the issues that I have touched on already in the letter from my office to your committee of 30 July and on what I have to say this morning. Before I begin, may I introduce Simon Rogers, my private secretary and Alison Houston from my office?

I am, of course, anxious to help the committee in any way that I can and I hope that I will be able to answer most of the queries that the subject that I am about to address may prompt. If, however, there are questions that require consideration or, perhaps, a more elaborate answer than I can give *ex tempore* I hope that you would find it helpful for me to supply supplementary material in writing. I have referred already to the letter of 30 July. We have also sent you some material on the experience in other jurisdictions which I hope that you have found to be of assistance in your deliberations to date. If we can help further, we would naturally be anxious to do so.

I hope that you will forgive me if I start with a truism. I have no doubt that all the members of this committee accept that judicial independence is a cornerstone of democracy. The

importance of this central and critical element of a fully functioning and healthy democracy cannot be over-emphasised. Inasmuch, however, as the independence of the judiciary must be accorded its proper respect, so the deference due to the roles of the other two institutions of government – the legislature and the executive must not be neglected. A proper understanding of the respective roles of each of the organs of government and an acute insight into the perimeters of their powers and functions is vital to the successful relationship that should exist between them.

The need to recognise and preserve the independence of the judiciary was, no doubt, the reason that this fundamental constitutional principle found statutory expression in the explicit and prominent guarantee enshrined in the Constitutional Reform Act of 2005. That Act enjoins not only the First Minister, the deputy First Minister and Northern Ireland Ministers to adhere to the principle of judicial independence, it requires them and all those “with responsibility for matters relating to the judiciary or otherwise to the administration of justice” to refrain from seeking to influence particular judicial decisions through any special access to the judiciary.

Of course, while the independence of the judiciary must necessarily set the context for relationships between the various arms of government, it does not preclude interaction between them and I hope that my presence before your committee can be taken as a clear acceptance on the part of the judiciary of the value of contact between us, provided there is a clear understanding and acknowledgement on the part of all concerned – judges and politicians alike – of the roles that each of us play and of the areas into which we must not stray.

The report by the House of Lords Select Committee on the constitution published on 26 July this year captures this point neatly. The Committee was examining ‘Relations between the executive, the judiciary and Parliament’, and at paragraph 27 the report stated: -

“... [A] constitutional principle of central importance in governing the relationships between the judiciary, the Executive and Parliament is that of the ‘independence of the judiciary’. This does not and should not mean that the judiciary have to be isolated from the other branches of the State. Nor does it mean that the judiciary . . . need to be insulated from scrutiny, general accountability for their role or properly made public criticisms of conduct inside or outside the courtroom”.

Judges are not troubled by the need for them to be accountable. After all, because of our systems of appeals, no judge can expect that his or her decisions will be free from the most painstaking scrutiny in as public a forum as it is possible to imagine. But accountability must take place in its proper context and should not imperil the essential concept of judicial independence.

It is important that it be recognised that the need to preserve this concept is not as a defence for judges or as a means for them to forestall or deflect scrutiny. It is, as I said at the outset, a cornerstone of our democracy and is as important for every citizen of our society as it is for members of the judiciary.

This notion was well expressed by Sir Igor Judge, the Senior President of the Queen’s Bench Division in England and Wales in his evidence to the select committee. He is quoted at paragraph 29 as having said this: -

“The independence of the judiciary is something which is precious to every single member of the community. You must be able to go into court and know that the person sitting in judgment is neutral – not on one side or the other – coldly applying the law that applies to your case. So although people sometimes think that when we defend judicial independence we are simply defending our own corner . . . that it not the case. The issues which arise here (therefore) are of great importance to every member of the public.”

I hope therefore that the members of this committee will accept that when I place particular emphasis on this point it is not for the purpose of shielding the judges from unwanted scrutiny or criticism. Rather it is because the entire basis for such exchanges as may legitimately take place between the judiciary and the other arms of government must be clearly understood from the beginning so that a productive and suitable relationship between us can develop. And it is important that you should understand that we judges recognise that there are matters that fall uniquely within your province and on which it would be entirely inappropriate that we should comment. Thus, for instance, you will not receive observations from me on whether there should be two Ministries or one, or two Ministers or one. That, as it seems to me, is a matter of policy on which a political decision must be taken. It is not something on which I, as a judge, should make comment.

But it is entirely right that I should comment on the arrangements for the establishment of the Court Service because this will impact very directly on the judiciary and how we do our work. The most substantive part of the submission made on my behalf in the letter of 30 July and my remarks today therefore concentrate on the structural arrangements for the Court Service on devolution. I have given a good deal of thought to this question and have discussed it with colleagues in other jurisdictions, particularly England and Wales, Scotland and the Republic of Ireland. It is also a topic that I raised and considered with colleagues during a meeting of Chief Justices at the recent Commonwealth Law Conference in Kenya. Indeed, as you know, I was invited to meet this Committee last week on a day when I was actually in Scotland discussing their proposals.

Professor Robert Hazell, Director of the Constitution Unit at University College, London, was questioned by the House of Lords Committee on the issue of an autonomous court administration. He said that “there is a recent trend throughout northern Europe to introduce greater separation of powers between the executive and the judiciary, and as part of that to give the judges greater responsibility and control for managing the Court Service.” That experience was echoed at the recent Commonwealth Law Conference.

As a result of my discussions and reading about this issue, I hold the view that the most appropriate arrangement for the Court Service would be a body at arms length from the Government under a Board chaired by the Lord Chief Justice - in other words a non-ministerial department. I do not suggest that there are no other possible models. Indeed, you will have seen from the papers that I sent you that different approaches have been taken in some jurisdictions, but I have concluded that the non-ministerial department is the best option for reasons that I hope to explain.

This is a model that has been, as I have said, adopted in many other jurisdictions in the

Commonwealth; it is the model that is planned for Scotland; and that has been in place for some years in the Republic of Ireland. A 2006 report by the Canadian Judicial Council recommended precisely the type of model that I propose to this committee.

I believe that it provides the maximum safeguard for judicial independence, but also will provide administrative efficiency. Now, I obviously recognise that if there is to be such a non-ministerial department, legislation will be required. And I appreciate that it may not be feasible to introduce such legislation before devolution. That, if I may say so, makes the deliberations of this committee all the more important because it is my hope that the legislation to provide for what I firmly believe is the optimal arrangement will not be long delayed following devolution.

That legislation should enshrine the independence of the Board. But it should also be recognised – in the statute, if necessary, that the Board would not deal with policy – as I have said, that is a matter for Government. I also understand that there must be accountability to the Executive for the money provided by the legislature to the Court Service. I freely accept that it should be incumbent on the Board to produce a strategic plan with key objectives, outputs and strategies including on the use of resources. I also accept that this plan should be submitted to the Minister for approval. I anticipate that it would be a requirement that the Board would report to the Minister annually and would provide information on performance of functions and such other information as the Minister may request. One would also expect that staff numbers and different grades would be a matter for the Board to agree with the Minister as well as the budget. Finally, one would also anticipate that the Ministry of Justice would be represented on the Board.

What then are the advantages of such a model?

- First I believe it reflects the appropriate constitutional position by preserving the independence of the judiciary.
- Secondly, I think that it will provide a more efficient service. The judges and others on the Board, including representatives of the Department, profession and suitably qualified independent members would set the strategy for the Service. They will be best equipped to know what the service requires.
- Thirdly, staff working for the Service would know clearly what their lines of accountability were. They would identify the Board as giving direction to their role.
- Fourthly, since the judiciary control the actual business of the courts in terms of case listing and case throughput and since they have experience of the difficulties that these challenges raise, they are best placed to devise and enforce realistic targets and goals.
- Finally - and I accept that this is crucially important - the structure that will be put in place will have built in accountability arrangements so that the Executive can discharge its duty of ensuring that proper standards are set for the service provided.

I am happy to take questions.

ENDS

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