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CIVIL JUSTICE COUNCIL NATIONAL FORUM

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It is a pleasure to have been asked to speak and lend my support to this year's Civil Justice Council National Forum, the twelfth such annual event!

Our civil justice system has changed in many ways over the last decade. I want to acknowledge the CJC and, particularly this Forum, for the part they have played in those changes.

This Forum discussed the need to develop online dispute resolution in 2014, ahead of the CJC's report into the benefits digitisation could bring to resolution of low value claims. As such you foreshadowed both Lord Briggs' work, the HMCTS reform programme, and – now of course – the digital justice system, harnessing digital technology to better resolve disputes across the whole wide spectrum of the civil justice ecosystem.

Later, you considered how access to justice for vulnerable people could be improved. The Council's work in this area foreshadowed reforms to the Civil Procedure Rules, which now make specific provision for the improvement of access to justice for vulnerable participants. The work on mental capacity in which the council is currently engaged in will, I hope, be of further benefit in what has historically been another overlooked area.

I might also add, that in 2016, a certain Alex Chalk MP, the then Chair of the All-Party Parliamentary Group on Pro Bono work, provided you with an update.

Over the years, your work has also addressed and returned to the funding of our system, including before-the-event insurance, to promote access to justice. Perhaps with the expansion of fixed recoverable costs, the time is ripe for that to be considered again.

Your discussion and your work on ADR as a means to resolve disputes early and cost-effectively, has led the way for significant change.

You have championed law centres. You have charted and continued to raise awareness of the excellent and innovative work of universities in equipping their students to offer advice and learn by doing and helping. You have kept up the discussion on the proper role of legal aid.

These are just some examples of the important work done by the Council and this Forum. I set them out not so that you can simply rest on your laurels, but to encourage you to continue your vital and effective work.

Your work is more important than ever, I think, because there is, of course, a common – a golden – thread that has run through all of your work, that is the question how to ensure that our civil justice system is fully and properly accessible to all, not least those who are most in need of assistance in that regard.

At your first Forum the need for assistance arose immediately from what was then described as an *Age of Austerity* and the effect that choices that were being made then were having on court and legal aid funding. Now the immediate need arises from a context which has been described in the title of today's event as a 'Cost of Living Crisis'. As we all navigate our way through the challenges that this context brings, I very much hope that this Forum, and the ongoing work of the Council, will again provide opportunity for both detailed scrutiny and well-considered advice and recommendations for reform. I, for one, will be listening keenly to that advice.

If I draw on one point from the discussions planned for today, I am particularly interested to hear what you have to say about the future role of data in the development of civil justice. Professor Dame Hazel Genn – a longstanding supporter of this Forum – has said that reforms to the civil justice system have previously mainly been carried out on the

basis of anecdote and impression rather than hard data. This truism has been well emphasised too, in a number of the CJC's reports, those on Anti-Social Behaviour, and Vulnerability to name but a few.

Getting 'data' right will become all the more pertinent for the future, as we consider the next stages of the digitisation of our justice system and come to appreciate the wealth of information which digital systems will make available, but also the scrutiny that such systems will require. Because when considering the nature and type of data that is needed, it will be more important than ever to bear in mind who exactly our civil justice system serves.

Most obviously, it serves individual parties to disputes, enabling them to vindicate, defend, and enforce their rights. So of course, it is necessary to have data about parties, witnesses, and the legal profession, so that the effect of any proposed reform on them and their individual ability to access the system effectively can be determined.

As an aside, we have to bear in mind that enforcement is as important as vindication or defence. The Council may consider that it is perhaps beyond time when that subject received some detailed consideration, especially in the context of today's theme.

But I think we should be careful to not overly focus on individuals. A simplified, user-centred, individual, design approach, risks thinking that individual participation in litigation is the sole purpose of the system, and such a view is of course far too narrow. It ignores a fundamental aspect of civil justice; one highlighted, for example, by the ***R (Unison)*** decision.¹

There, Lord Reed reminded us all that we are **all** users of the civil justice system. We **all** benefit from it, irrespective of whether or not we are directly involved in litigation. Court judgments may provide the framework within which we understand rights and obligations. They certainly demonstrate how the courts approach disputes. The clarity that they provide helps shape how businesses can, with confidence, enter into transactions. They

¹ ***R (UNISON) v Lord Chancellor*** [2017] UKSC 51; [2020] AC 869 at [68]-[73].

underpin the development of safe systems of work, employment rights, property rights and so on.

Broadly put, the system, with its pointy end or its backstop embodied in the courts, provides the basis on which we **all** order our lives consistently with the law and the rule of law.

Our civil justice system should in this way be understood to play three key roles in society: it helps prevent disputes by guiding behaviour; it helps parties resolve disputes consensually, without the need for them to resort to the civil courts; and, in the last resort, it determines disputes by adjudication.

Prevention, resolution, and adjudication. Three forms of justice that flow directly and indirectly from our civil justice system. When we consider how it is developed, we need to consider the effect that specific reforms may have on each of these three, and how each are accessible to all of society. Please bear that in mind in your discussions today.

And so, your work, the CJC's work, is as crucial as ever. Whether it is assessing the operation of the civil courts; litigation costs and funding; the legal profession and access to it; digitisation and the role that AI may play; scrutinising the work of the Civil and Online Procedure Rule Committees; conducting research or making recommendations for reform or research that needs to be carried out by others.

The CJC is still second to none in bringing together the relevant organisations and individuals. You are the ones with the expertise. You are the ones who have the information and the data necessary to facilitate a consideration of scrutinising civil justice and recommending its reform.

With this spirit of shared endeavour in mind, may I wish you all best for your discussions and deliberations today. I look forward to seeing the output.

Also given that spirit of shared endeavour, may I also extend my welcome to the Lord Chancellor who sits alongside me and the Master of the Rolls today — we now hear from him.