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THE ENGLISH EXPERIENCE OF ACCESS TO JUSTICE REFORM

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(1) Introduction[1]

1. It is a real pleasure to have been invited to Jersey to deliver the keynote address today. I think that I am the first Master of the Rolls to visit Jersey in an official capacity.

2. My subject today is the English experience of access to justice reform. There has been a considerable amount of activity in this area during the last 20 years or so. You will all be familiar with the Woolf Reforms of the late 1990s. In 2007, Sir Richard Aikens produced his Long-Trials Review, in which he looked at how to deal with so-called 'supercases' – extremely complex high value claims.[2] We then had the Jackson Reforms. And most recently, the Chancery Division of our High Court has been subject to reforms arising from the Briggs Review.[3] Today I want to focus on the Jackson reforms.

[1] I wish to thank John Sorabji for all his help in preparing this lecture.
[2] R. Aikens, *Report and Recommendations of the Commercial Court Long Trials Working Party* (Judiciary of England and Wales) (2007).
[3] M. Briggs, *Chancery Modernisation Review*, (Judiciary of England and Wales (2013).

3. The Jackson Reforms originated from the concerns by Sir Anthony Clarke MR about the high cost of civil litigation. He believed that the Woolf Reforms had not succeeded in delivering proportionality in litigation costs. He, therefore, commissioned Sir Rupert Jackson, then recently appointed to the Court of Appeal, to carry out a fundamental review of the costs of civil litigation. Sir Rupert was asked to do the job within twelve months.and that is precisely what he did and to great effect. By December 2009 he had gathered evidence, consulted widely, toured the country listening to interested parties, and travelled abroad in order to learn from the experience of other jurisdictions. In May 2009, he produced a detailed Preliminary Report[4], and In December he produced his impressive Final Report[5].

4. The work of a reformer does not necessarily end with the publication of his report. Following the publication of the Final Report, Sir Rupert played a central role in the Jackson Implementation working party which was set up by Lord Neuberger MR. This group worked with, among others, the Ministry of Justice and oversaw the implementation of nearly all the recommendations of the Report. Implementation required a combination of primary legislation and changes to the Civil Procedure Rules. Inevitably, questions of interpretation would also arise which would have to be settled by the courts.

5. I became involved with the implementation of the Jackson reforms when I became Master of the Rolls in October 2012. By this time, my two immediate predecessors as Master of the Rolls were safely ensconced in the relative calm of the UK Supreme Court, where questions of procedure are rarely examined. I had moved away from the calm of Parliament Square back to the rough and tumble of the Court of Appeal. But I had had

[4] R. Jackson, *Review of Civil Litigation Costs: Preliminary Report* (May 2009, Vols. I & II).
[5] R. Jackson, *Review of Civil Litigation Costs: Final Report* (TSO) (December 2009).

previous experience of civil procedure during my first period in the Court of Appeal when I was deputy Head of Civil Justice. At that time, the Woolf reforms were still bedding-in.

6. I want to look at three broad issues today. These are: the lessons of implementation; the need for consistency and flexibility; and the culture of reform. I hope that what I have to say may be of interest here as you consider your own Access to Justice Review reports later this year[6].

(2) Learning the Lessons of Implementation

7. My first general point concerns implementation. One of the shortcomings of the approach that we have adopted to procedural reform in England and Wales is that it has generally been carried out without any real data. For example, the Woolf Reforms were criticised for being predicated on anecdote rather than hard data.[7] As Hazel Genn said:

> '*A worrying feature of the civil justice reviews around the world was that they were in all cases conducted and concluded in the absence of any research or understanding of the dynamics of civil justice, or even a convincing description of the work of the courts and the magnitude of cost and delay. Most proceeded on the basis of anecdote and the partial views of different actors within the justice systems.*'[8]

Absence of hard detailed evidence is problematic for two reasons. First, it undermines the case for reform. Without real data it is not possible, with any degree of confidence, to determine the nature and extent of any problem or to consider what might be causing it. Proposed solutions may therefore be directed at a problem which does not exist; or does not exist to a degree that warrants interference by reform; or does not exist in the precise form which the proposed reform assumes it to exist.

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[6] States of Jersey, '*Access to Justice – Interim Review, Report*' (R – 107, July 2014) at 7.
[7] H. Genn, *Judging Civil Justice*, (Cambridge, 2010) at 62, '*the polemic in the Interim Report was supported principally by anecdotal evidence combined with fragments of research material drawn from a number of different sources.*'
[8] H. Genn ibid.

8. The second problem arises post-implementation. If reform is not based on sufficiently reliable evidence, how can one tell whether it has worked? The most telling criticism of the Woolf reforms was that they failed to provide an effective cure for the cost of litigation. Worse, it was suggested that they led to an unjustified increase in costs, in particular by the front-loading of costs. It was said that this was the result of the introduction of Pre-Action Protocols and court-based case management. The extent to which this criticism was well-founded is not clear. First, there was little real data showing the extent of the costs problem that the Woolf reforms were designed to remedy. Secondly, there was no real prospect of isolating the consequences of the Woolf reforms from the consequences of the reforms to the regime for conditional fee funding agreements that had nothing to do with Woolf, although the two sets of reforms came into force at the same time. In the absence of pre-Woolf data, it is difficult to assess the extent to which the continuing high cost of civil justice was the result of the Woolf reforms or of the introduction of CFAs. There was a general feeling that the front-loading of costs was a large part of the problem. The point was repeatedly made that the overwhelming proportion of cases settled before trial, often well before trial, so that, in the pre-Woolf says, many of the front-loaded costs would have been avoided altogether.

9. I would hope that, like the Jackson Costs Review, any future reform in England and Wales is based on hard evidence. If it is, it will have a better chance of success than the lottery of '*policy making in the dark*'[9] that occurs if reforms are made when there is no such evidence. Evidence-based policy-making is a pre-requisite for effective reform. But it is only half the story. Effective implementation also requires effective monitoring.[10]

[9] H. Genn ibid.
[10] J. Sorabji, *Prospects for Proportionality: Jackson implementation,* (2013) 32 CJQ 213

10. Hong Kong is an example to us all when it comes to effective monitoring. Civil procedure reforms were introduced there in April 2009. Rather than simply implement the reform programme and leave it to work, Chief Justice Ma established and chaired a Monitoring Committee. Its membership was drawn from judges, representatives of the legal profession and courts administration. It collated a broad range of evidence on the effects of the reforms as regards, for example, delay, settlement rates, and costs; and detailed evidence on how specific procedural changes were working in practice.[11] Commentators have pointed out that this approach will have two benefits. First, it will demonstrate how particular features of the reforms are working.[12] Where it is seen that they are not working as well as intended and, for example, that they are generating unexpected adverse consequences, intense monitoring allows for early remedial action to be taken. Secondly, it should facilitate the production of cogent and detailed evidence on which any future reforms can be based.

11. This second benefit points to the desirability of an important structural or systemic reform. Lord Woolf recommended the establishment of a Civil Justice Council (CJC). This was done. Its role is to keep the civil justice system under review. This is an excellent aspiration, especially if the Government is not willing or able to apply resources to perform this task. Ideally, the CJC should keep a close eye on the civil justice system generally and on the working of reforms in particular. As Head of Civil Justice, I am its current chairman. But the CJC is not able to undertake a continuing detailed review of all aspects of the working of the system. It does not have the resources or the administrative capacity

[11] See, for instance, Monitoring Committee on Civil Justice Reform, *The First Year's Implementation of the Civil Justice Reform*, (December 2010); Statistics on the First Four Years' Implementation of the Civil Justice Reform from 2 April 2009 to 31 March 2013 <http://www.civiljustice.gov.hk/eng/implement/CJR_First_4Year_Implementation.pdf>

[12] J. Sorabji ibid.

to do this. Ideally it should have more resources and greater capacity than it currently enjoys. Money is very tight at the present time of austerity. Even more constraining is the fact that the members of the CJC are all busy people and they are volunteers. They have day jobs, often very busy ones. They are very committed to the CJC and bard-working, but there are limits to what it is reasonable to ask them to do. I believe that increased resources and capacity could bring considerable benefits to the administration of justice and to litigants. Hong Kong is a smaller jurisdiction than ours. Chief Justice Ma's monitoring committee is therefore in a better position than our CJC to collect data and to make proposals for improvement. I would suggest that post-implementation monitoring of the effects of reform should be carried out by a standing body; one that can keep the system under review and ensure timely adjustments are made to improve the way in which the system operates.

(3) Consistency

12. The next important point is that effective reforms need to be consistently applied, but without undue rigidity. This may sound rather contradictory. Surely, consistency and flexibility are odd bedfellows. I shall try to explain why they are not.

13. One of the recommendations of the Jackson report was that a small number of Court of Appeal judges should be appointed to deal with procedural appeals. The reason for this was that, if the reforms were to succeed, the Court of Appeal would have to take a consistent approach to their interpretation. It would create chaos and bring our system into disrepute if one appeal panel were to adopt one approach, for example, to the granting of relief from the consequences of procedural non-compliance, and another panel were to adopt a different approach to that issue. It was important to ensure, so far as possible, that the guidance given by the Court of Appeal to the lower courts was consistent. A small

number of judges, at least one of whom should sit on any procedural appeal, would ensure that a consistent message was sent out to the courts at the coal face who have to make these procedural decisions day in day out.

14. Consistency of approach should lead to a reduction in the risk of procedural appeals. One of the problems I remember well from my time as deputy Head of Civil Justice was the sheer volume of satellite litigation that arose from the Woolf reforms. But it should be said that the complexity of the reforms relating to conditional fee agreements played its part in generating massive amounts of litigation too. One reason for the litigation arising out of the Woolf reforms was the failure of the Court of Appeal to provide consistent guidance as to the meaning and application of the relevant legislation and rules.

15. The Jackson recommendation was implemented and five judges – sometimes known as the 'Jackson Five' – now deal with Jackson-related appeals. I should say that a similar approach was initially taken in the Court of Appeal following the implementation of the Woolf reforms. Sir Henry Brooke, then Vice-President of the Court of Appeal Civil Division and I, as deputy Head of Civil Justice, formed part of the appeal panels that heard the majority of Woolf-related appeals.

16. It is necessary for a consistent approach to be adopted and maintained, unless there are good reasons to modify the approach. One of the problems that bedevilled the implementation of the Woolf reforms was the failure to adopt and maintain a consistent approach in relation to some aspects of the reforms. This was particularly acute in relation to the question of relief from sanctions for procedural non-compliance. Initially, the Court of Appeal took a tough line. But it did not stick to its guns. This was noted by Lloyd LJ in *Swain-Mason v Mills & Reeve LLP* [2011] 1 WLR 2735.

(4) Flexibility

17. Consistency is not however an end in itself. Effective implementation does not call for a dogmatic, still less an ideological approach. Monitoring may bring to light unexpected flaws and unintended consequences of a reform programme. The same is true of procedural appeals. They too may show that a consistent approach by the courts to the interpretation and application of new rules is producing damaging unintended consequences. If this is the case, slavish adherence to the approach previously adopted is a bad idea. If it becomes clear that a change in approach is necessary, then the change must be made. So the courts need to be sufficiently flexible to be willing and able to respond to circumstances.

18. A need for flexibility in relation to the implementation of the Jackson reforms surfaced last year. Both Woolf and Jackson said that a more stringent approach to procedural default was required. This tougher approach was not motivated by a wish to convert rules into tripwires or to punish defaulters or to teach them a lesson. It was to promote the delivery of justice to the parties at proportionate cost. The aim was to do this by seeking to ensure that parties stick to the reasonable and proportionate case management timetable laid down by the court for their claims; by minimising the need for procedural applications for extensions of time or for relief from sanctions for non-compliance. The tough stance was intended to breed a culture of compliance in order to secure justice at proportionate cost. The purpose of this new approach was also intended to ensure that parties keep within their allocation of court time and resources. These are both limited. They must be equitably allocated to all claims across the entire civil justice system. The disproportionate

use of court time and resources by any particular claim has a deleterious effect on other litigants, and on their right to receive justice.

19. The Court of Appeal dealt with the question of the correct approach to applications for relief from sanctions in a number of cases. The two most significant were *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 and *Denton v TH White Ltd & Others* [2014] EWCA Civ 906. The first of these cases was heard by myself, Richards LJ, the deputy Head of Civil Justice and Elias LJ. Richards LJ and I are two of the Jackson Five.

20. The facts of *Mitchell* were straightforward. Andrew Mitchell MP issued defamation proceedings against News Group Newspapers Ltd. The alleged defamation arose from an incident which became known as "Plebgate". The Sun newspaper had reported that Mr Mitchell, who was at the time the Conservative Party's Chief Whip, had '*raged against police officers at the entrance to Downing Street in a foul mouthed rant shouting "you're f…ing plebs".*'[13] Mr Mitchell has always admitted using the "f" word, but has always strenuously denied using the "pleb" word.

21. Pursuant to the Jackson reforms, both the court and the litigants are now required to engage in costs management, as part of the wider case management process. This requires the parties to prepare and exchange budgets of their litigation costs at the start of proceedings. These budgets are then considered by the court at an early hearing for that purpose. The budgets had to be lodged with the court seven days before the hearing. Mr Mitchell's solicitors failed to do so. This was a breach of a procedural obligation. The rule provided that [ ]

[13] [2013] EWCA Civ 1537 at [2].

22. The Master who dealt with the application refused to grant relief from the consequences of non-compliance. She did so by correctly noting that the thrust of the Jackson reforms was to eliminate the previously lax approach to rule-compliance, and that this was because of the dictates of proportionality. She also, again rightly, stressed that the solicitor's failure to comply had an adverse impact on other court users and on their right to receive justice (another case had to be stood out of the list). The decision came to the Court of Appeal as a test case. The question was what was the correct approach and what guidance could the Court give.

23. We endorsed and explained the Master's approach. The guidance we gave did not, however, meet with universal approval. Some commentators described it as too harsh. One described it as unconstitutional. I found this second charge surprising. First, the relevant rules and amendments were contained in statutory instruments and had therefore been approved by Parliament; and in so far as the criticism was directed to the way we had interpreted and applied the rules, it is worth pointing out that one aspect of the court's constitutional function is to interpret the law. In giving guidance as to the approach that should be adopted when dealing with applications for relief from sanctions, we set out a two-stage test. The first question was whether the defaulting party could show that the default or non-compliance was trivial. If it was trivial, it would have no adverse impact on the parties or on the court's ability to meet the needs of other court users. Where this was the case, relief would usually be granted[14]. Examples that were given of trivial default were where there was a failure of form rather than substance, where a deadline had only just been missed but the defaulting party was otherwise fully compliant. The second question, which arose if the default was not trivial, was whether the defaulting party could discharge

[14] Ibid at [40].

the burden of persuading the court that relief should be granted. In order to do this, the defaulter had to show that there was a good reason for his default.

24. This approach was applied by the Court of Appeal in several subsequent decisions. These consistently emphasised that courts were to adopt the new stricter approach than had previously been followed. The two stage approach stated in *Mitchell* proved difficult to apply in practice. Some courts applied it too strictly, taking the view that the triviality test meant that relief from non-compliance should only be granted in exceptional circumstances. It led some lawyers to adopt an unnecessarily adversarial approach to litigation, on the basis that if they took procedural points they might secure a tactical advantage for their clients. Parties were refusing to agree even short extensions of time for complying with time limits. Some even said that they were at risk of being sued for negligence by their clients if they behave obstructively and refuse to agree to anything.

25. In this febrile atmosphere, it was inevitable that the Court of Appeal would be asked to review the *Mitchell* decision[15]. In July last year, the heard three conjoined appeals in *Denton v TH White Ltd & Others* [2014] EWCA Civ 906. Vos LJ and I gave the majority judgment. We could have struck a dogmatic pose and refused to change a word of what had been said in *Mitchell*. That would have had the merit of consistency. By sticking to its guns, the court would have been consistent. But such a stance would not have served the interests of justice. We had been persuaded that the *Mitchell* decision was causing difficulty and leading to unreasonable decision-making which was neither sensible nor what could reasonably have been envisaged by the rule. This justified a slight modification of the earlier decision and an expansion of its reasoning to make explicit what had previously been insufficiently spelt out. Our approach was one that struck a balance between

[15] *Denton v TH White Ltd & Others* [2014] EWCA Civ 906 at [21].

consistency and flexibility. We endorsed the approach in *Mitchell* but restated the test in order to provide more detailed guidance and, we hoped, bring an end to the problems. We reformulated the two-stage test as a three stage one.

26. The first stage was to identify and assess the seriousness or significance of the default rather than decide whether the default was "trivial": the concept of triviality had given rise to uncertainty and difficulty. We accepted that seriousness could in many circumstances be assessed by asking whether the default was material or immaterial to the conduct of litigation. Our reference to the conduct of litigation was a reference to the conduct of litigation generally, rather than merely the conduct of the immediate litigation. In this way, we maintained the focus on the public interest in the proper use of court resources necessary to ensure that all litigants are able to access a proportionate share of those resources. We also made it clear that a serious breach might arise even where it was not material in this sense.

27. The second stage of the test required the court to consider the question why the default occurred. As we had said in *Mitchell,* the question was whether there was a good reason capable of excusing the default. At the third stage, we were keen to dispel the idea that had apparently taken root that if the default was not trivial and there was no good reason for it, then relief was bound to be refused. We emphasized that the third stage of the test required the court to consider all the circumstances of the case in order to deal with it justly. We emphasised (as we had done in *Mitchell*,) that the need to conduct litigation efficiently and at proportionate cost and the need to secure compliance with rules and court orders were of particular importance in assessing all the circumstances. In *Mitchell* we had used the phrase 'of paramount importance', rather than "of particular importance ". This had led to some confusion over the relationship between these two factors and other

factors that could be taken into account. I hope and believe that this change in language will remove the room for error here.

28. I should note that, although Sir Rupert Jackson, who was the third member of the court in *Denton,* concurred in the main with the majority judgment, he dissented on the proper interpretation of the rule that was relevant to the third stage. He said that the two factors to which I have referred were not of particular importance; they were to be given no more weight than any other relevant factors.

29. We also emphasised that the overriding objective requires parties to co-operate in the conduct of litigation. Taking procedural points such as those that were taken following *Mitchell* was contrary to that objective and in breach of the duty of cooperation. We said that, in order to promote the efficient and proportionate conduct of litigation, parties were not merely required to comply with the rules and court orders. They were also obliged to co-operate with each other. Opportunistic behaviour by lawyers was to be deprecated and if it occurred would be penalised by the court.

30. Richards LJ has described the approach in *Denton* as a 'brilliant readjustment'. It held the line, while ensuring that the approach taken was capable of effective implementation. It appears that it has succeeded in its aim: the stricter line is now being applied and applied consistently. It is having a beneficial effect on litigant behaviour. The adjustment was made in the light of the difficulties in applying the test that had been formulated in *Mitchell*. This is an example of the court modifying its approach to the application of a rule in the light of litigation experience. It seems to me that this evinces a sensitive and sensible degree of flexibility on the part of the court. The same flexibility should be adopted in relation to rule changes. If it becomes evident that a particular procedural reform is producing adverse consequences, remedial action

should be taken to modify it. An ostrich-like attitude and a refusal to confront problems of this kind by sticking to a deficient procedure through thick and thin is to be deprecated. It is important always to be astute to the need to change procedural rules that do not facilitate the efficient and effective delivery of justice.

(5) The culture of reform

31. Finally, I want to say a little about the culture of reform,

32. Disclosure, or discovery as it used to be called until the Woolf reforms, has long been identified as a major source of disproportionate litigation cost. The problem was highlighted in the Woolf Reports. In his report some years after Woolf, Sir Richard Aikens noted that it was still contributing to disproportionate costs. Sir Rupert Jackson reached the same conclusion.

33. Lord Woolf identified the problem with disclosure as emanating from the Peruvian Guano test[16]. This rendered the ambit of disclosure 'virtually unlimited.' His prescription was to place limits upon it. This was to be achieved primarily by limiting disclosure to 'standard disclosure', to those documents that a party wishes to rely upon and those that are adverse to his case or support his opponents. If a party wanted more extensive disclosure than this, je jad to apply for it specifically.

34. That was the theory. In practice the culture remained the same despite the reports of Lord Woolf and Sir Richard Aikens. As Sir Rupert Jackson put it,

[16] *Compagnie Financiere du Pacifique v Peruvian Guano Company* (1882) 11 QBD 55.

'*. . . following an order for standard disclosure, quite often solicitors simply disclose everything that might be relevant. In other words, they continue to follow the old rules, thus saving costs (on their own side) but disclosing a greater quantity of documents than should be disclosed.*'[17]

In dealing with the documents disclosed to them pursuant to standard disclosure, each party would incur massive and disproportionate costs. The cure for this that was proposed by Sir Rupert was to revise the disclosure rules again. Standard disclosure would no longer be the default order. There would be a range of different disclosure orders available to the court. In particular it was made clear, through CPR r. 31.5(1)(b) and r.31.5(7)(a), that the court could limit disclosure to less than standard disclosure or make an order for no disclosure at all. Would the new revised rules have the desired effect? The post-Woolf revision had not altered litigant behaviour. It would appear that to a certain extent the approach to disclosure has not altered significantly even after the latest attempt to change behaviour. Anecdotally (we have no hard data), it appears that the courts and litigants have continued as before. It seems that increasing the range of options has not translated into the making of a wider range of orders, In particular, it seems that courts are not routinely making orders for less than standard disclosure, still less dispensing with disclosure altogether. The tools are at hand, but they are not being used as much as Sir Rupert or I would have wished.

35. Disclosure was not the only area identified by Lord Woolf as a significant contributor to disproportionate costs. The excessive use of expert witnesses was another source of the problem. One of the important Woolf reforms was the introduction of the single joint expert and court control over the number of experts to be permitted where a single expert was not appropriate. An interesting feature of the Jackson reforms was the introduction of what is colloquially known as 'hot-tubbing'. It is sometimes referred to as witness or expert

[17] R, Jackson (December 2009) at 368.

"conferencing". In an article written in Australia in 2004, Justice Heerey described the way in which it works.

'*The procedure involves the parties' experts giving evidence in the presence of each other after all the lay evidence on both sides has been given. The experts are sworn in and sit in the witness box or [at] a suitably large table which is treated notionally as a witness box. They do not literally sit in a hot tub. Constraints of propriety and court design dictate a less exciting solution. A day or so previously, each expert has filed a brief summary of his or her position in the light of all the evidence so far. In the box the plaintiff's expert will give a brief oral exposition, typically for ten minutes or so. Then the defendant's expert will ask the plaintiff's expert questions, that is to say directly, without the intervention of counsel. Then the process is reversed. In effect a brief colloquium takes place. Finally each expert gives a brief summary. When all this is completed, counsel cross-examine and re-examine in the conventional way.*

In a variation of the procedure just described, the brief oral exposition is omitted. The questioning of the experts by each other commences immediately. . . this is perhaps more efficient, particularly where there has already been a conference and preparation of a joint report, as well as the brief written summary of the position. Also, where more than two experts are concerned, it is probably better to have counsel's cross-examination and re-examination take place after each expert's questioning by other experts.'[18]

36. I believe that it has a number of benefits. Those who have experience of hot tubbing believe that it encourages the experts to be more objective in the presentation of their evidence. It is also helpful to the judge to have the competing versions laid before him and tested more or less simultaneously. This is a more efficient way of conducting a trial than hearing the rival versions of the evidence on an issue at separate times.

37. But there are only a few reported cases of hot tubbing being used. One occurred before the power to order it was formally introduced in the CPR[19]. There have been three since its formal introduction[20]. There has been no widespread take up. I think this is a pity. In fact, hot tubbing was deployed years ago to great effect by the Official Referees. These were judges who sat in what is now known as the Technology and Construction Court. This was done

[18] Heerey, *Recent Australian Developments*, (2004) CJQ (23) 386 at 390 – 391.
[19] *Re Baby X* [2011] EWHC 590 (Fam).
[20] *Harrison v Shephard Homes Ltd* (2011) 27 Const LJ 709, [2011] EWHC 1811 (TCC); *Hunt v Optima (Cambridge) Ltd* [2013] EWHC 681 (TCC); *Sonatrach v Statoil* [2014] EWHC 875 (Comm).

using the inherent power of the court, long before the Jackson reforms and long before the term "hot tubbing" had been invented.

38. The difficulties that we have had in making progress in relation to disclosure and in promoting the use of concurrent evidence shows that successful reform requires more than simply changing the rules. Many lawyers tend to be rather resistant to change. They prefer the comfort zone of the familiar. Effective implementation of procedural changes requires the courts and the legal profession to understand the nature of the reforms and their rationale. The judges must take the lead in this. In the post-Woolf and post-Jackson world, they are required to take control of case management and shape the cases that come before them. It is therefore essential that the judges are given proper training to enable them to understand and become familiar with the reforms and to encourage them to apply them routinely. Our judges have all received training in respect of the Jackson reforms. Similar training may also be needed for the legal profession.

39. New rules should also be accompanied by revised standard form orders. For example, standard forms of order should include forms which reflect the broad range of possibilities permitted by the new rules.

40. No doubt there are other ways of ensuring that important reforms that are embodies in rule changes are reflected in what happens on the ground. I am confident that, with the passage of time, litigation behaviour will change. There have already been remarkable changes in England and Wales in the last 20 years.

(6) Conclusion

41. I have only been able to touch on a number of issues arising from recent English experience of procedural reform. Reform of civil procedure is not, of course, unique to England and Wales. Similar reforms have recently taken place in Canada, Australia, New Zealand, Scotland as well as Hong Kong. They are being considered in the United States. There have also been reforms in continental jurisdictions. It is not a common law phenomenon. We have much to learn from each other. The Woolf and Jackson reforms, for example, drew particularly on reforms in Australia and New Zealand, just as they have drawn on our reforms.

42. I hope that this briefest of accounts of our recent experience will be of some interest to you in your current reform process.

43. Thank you.