

The rule of law – judicial independence and accountability

(A lecture delivered by Deemster Doyle at the Oxford Union
on 6 July 2016 as part of the Small Countries Financial Management Programme)

Opening remarks

Well here I am again, and for the third year running I am focused on the rule of law.

Anyone might think I have a vested interest in the subject.

Well the shock news of the evening is that I do. But not just because it is a vital strand to the fabric of my existence, but much more importantly, it is essential for a decent and dignified human existence.

As I have identified in my previous lectures, the rule of law forms the backbone of economic growth, a backbone that enables countries to fully evolve, and irrespective of size, stand shoulder to shoulder when it comes to the international collaboration needed to fuel economic growth.

But it has not all been laughs. There has been the very serious business of my uncomfortable cycling adventures in France, and my rather inappropriate pride in my prize for the heaviest pumpkin in the Isle of Man. I am sure you cannot wait for an update on the latter, but wait you must. I will just let the excitement build. Last year I gave my 'top ten tips', which I must say that with pumpkins in mind sounds more like gardening advice, rather than guidance regarding the separation of powers.

But that was indeed the subject, and I urged people to treat the separation of powers like a precious jewel that should be polished and protected by everyone in government and elsewhere.

Those of you who have heard me speak before or have read my lectures will be aware of my struggle to eliminate legal verbosity, and you have had to watch me valiantly lose the battle. In my defence I must explain that legal verbosity may be due to the fact that lawyers always like to add value, especially when they are paid by the hour.

But that is no excuse for verbosity tonight, because I'm not getting paid. But if my lecture is well received and I behave myself I may get a free dinner, which will go some way to confirming that there is no such thing as a free dinner. And this very simple and much quoted observation brings me indirectly to my subject tonight.

Every judge must be careful who buys them dinner. They certainly should not accept a dinner invite from one of the parties or their lawyers in proceedings before them. Judges must at all times be conscious of the need to protect their impartiality and independence both in reality and perception.

Put simply, the rule of law can only be maintained by clearly defined judicial independence and accountability. The judiciary must be, and be seen to be, independent and accountable or there will be no public confidence in the judicial system and anarchy and chaos will shortly follow. A free dinner to anarchy and chaos may be a bit of a stretch. But the fact remains that the judiciary must be able to maintain their independence.

The foundation stones of judicial independence are appropriate protection from improper influences and what might corporately be called, an appropriate employment package. Equally, the judiciary must be accountable through the imposition of clear standards and open justice. In the case of judges, clear standards are laid down through a code of conduct and a judicial oath. Open justice is made possible through courts being open to the public and reasoned decisions being made available to the public. Accountability is further enhanced by the availability of systems of appeal and the prompt delivery of clear decisions.

Judicial independence

So first let's examine judicial independence.

Before I do that let me once again place an important caveat on record. Who am I to dictate to you what you must do to ensure judicial independence and accountability in your home jurisdiction? Each country must decide what is best for its people in respect of judicial independence and accountability, and who is to say that what prevails in the Isle of Man and elsewhere is appropriate for your jurisdiction? That is for you and your people to decide.

The Code of Conduct for the judiciary in the Isle of Man provides a possible starting point when it states:

"Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas it is in fact a cornerstone of our system of government in a democratic society and a safeguard to the freedom and rights of the citizen under the rule of law."

The code goes on to clarify that every individual judge and the judiciary as a whole must be, and be seen to be, independent of the legislative and executive branches of government. This means that judges must appear "to a reasonable observer" to be free from inappropriate connections with, and influences by, members of the legislative and executive branches of government.

The code remains unambiguous to the last:

"Members of the judiciary should always take care that their conduct does not undermine or appear to undermine their institutional or individual independence."

A judge's principal function is to interpret and apply the law.

The judiciary should not be subjected to any improper outside influence. If the politicians or others are able to direct judges on how to decide cases, there will be no justice according to the law.

Lord Hope in *The Role of the Court in the Development of Society*, Journal of the Commonwealth Magistrates' and Judges' Association, Vol 22, No 2, December 2015 at page 12 stated that what the judges do is not always universally popular but stressed the need to have systems which respected and guaranteed their independence. Lord Hope cautioned:

"It is when that system breaks down that we really do need to worry."

The processes by which judges are appointed, and the security of tenure that they enjoy once they have been appointed, are designed to ensure that they are truly independent from the executive arm of government.

- ***Independence through appropriate appointment and resources***

To ensure you have a stable, effective and well-motivated judiciary, make sure you appoint the right people to the appropriate judicial positions, provide them with security of tenure and provide them with a competitive salary and pension. As Shetreet and Turenne at page 156 of their well-regarded publication *Judges on Trial* (2nd edition 2013) (“Shetreet and Turenne”) state:

“Judges should be free from financial anxieties.”

At page 156 Shetreet and Turenne refer to the importance of judicial remuneration and the need to safeguard pensions “which are a critical part of a judge’s remuneration package”.

Do not try and adversely change the terms of judicial appointment part way through the period of appointment. This fundamental requirement is wisely recognised by Tynwald, our Parliament, in section 57A of the High Court Act 1991.

In civilised countries which truly value the rule of law such provision is usually expressly incorporated into the constitution and strictly complied with in the letter and the spirit. This reflects the special category of judges as public servants and the place of the judiciary within the constitution. Judges fall within such protected category in view of the nature of the work they are obliged to perform and the onerous and serious responsibilities placed on their shoulders on behalf of civilised societies.

Shetreet and Turenne at pages 166-167 stress that:

“Comparisons with other public sector groups ... are limited by the judiciary’s constitutional position ...”

Reference is made to the concern being “one of quality of recruitment and retention”.

Shetreet and Turenne at page 172 refer to:

“... the principle that a serving judge shall not have his terms of service adversely affected without his consent during his term of service as part of the rule of law and an internationally recognised principle.”

Shetreet and Turenne make another powerful point at page 176 when they state:

“While some may have a limited sympathy for high earners, the judges are entitled to be treated fairly and to have confidence that once they have taken an appointment, the rules of the game will not change adversely to them.”

As well as not adversely interfering with existing terms of appointment, you must ensure that judges have independent administrative support and you must also provide judges with adequate resources to enable them to do their jobs.

But above all, make sure they are valued. If you want a legal system that is fair, efficient and effective, judges must feel properly valued and properly protected from improper influence and, in the words of Shetreet and Turenne, "free from financial anxieties" (at page 156).

Moreover, any vacant judicial positions should be filled on merit using open advertised competition, while taking into account the need for diversity and flexibility. The appointment process should be transparent with specified attributes, qualifications, experience, knowledge, skills and personal qualities that of course include integrity, independence, fairness and impartiality.

There should be the ability within the judiciary of small jurisdictions, as there is in the Isle of Man, to bring in "outsiders" if necessary. Such "outsiders" need knowledge of local values, local tensions and must be sensitive to local concerns.

While sticking to this process please take care that there is no political influence applied to the appointment of judges. We do not want a legal system packed with judges who are reluctant, where the law requires, to decide cases against the government.

The English tradition of judicial independence depends, in the words of Lord Bingham:

"... on the willingness of the most successful practitioners, at the height of their careers, to accept appointment to the judicial bench."

(the Judicial Studies Board Annual Lecture on *Judicial Independence* given on 5 November 1996)

Unfortunately judicial salaries have long been significantly below what most senior and successful practitioners (advocates, barristers and solicitors) expect to earn.

Lord Neuberger, the President of the Supreme Court of the United Kingdom, in a keynote closing address delivered at the World Bar Conference in Edinburgh on 16 April this year made reference, without criticism, to the high earnings of those first class members of the legal profession and issued the following warning (at paragraph 21 of his address):

"Without a cadre of first class advocates, many of whom are prepared to become judges, the very high standard of judiciary we enjoy, indeed which in many of the countries represented here today, is taken for granted, will be lost."

Lord Neuberger added (at paragraph 22):

"... a professional, expert, respected and independent advocates profession, which faces up to its responsibilities represents a very precious asset to a modern civilised society. Indeed, it is a vital component of a modern civilised society."

Clearly the legal system cannot function properly in the absence of advocates and judges with the necessary levels of skill, knowledge and motivation. So the challenges of attracting to the judicial bench the best practitioners who will normally be taking a significant pay cut upon entry to the bench must be anticipated and dealt with.

In summary, individuals of suitable character, ability, experience and motivation will only be attracted to the judicial office if the total reward for judicial posts shows that the judiciary is valued.

On a personal note, in February of this year I was honoured to be invited to participate in a dialogue at the Chinese University of Hong Kong between Hong Kong Court of Final Appeal Justice Kema Bokhary and the US Supreme Court Justice Nino Scalia, just days before his untimely death.

The subject was *Judges and Democracy*. In discussion both Justices endorsed the importance of a democratic country making provision for the separation of powers and especially preserving and protecting the necessary independence of the judiciary.

I believe that travel and the international exchange of ideas is important, and I would suggest you both encourage and facilitate physical and intellectual travel for your judiciary. Travel increases knowledge and understanding and that is vital for judges who might otherwise be confined to a local and at times somewhat insular courtroom.

International connectivity is extremely useful for me because the vast majority of the cases I deal with have an international element, and visiting other jurisdictions is just part of building better international judicial cooperation.

In May of this year I paid a personal visit to Justice Sonia Sotomayor at the US Supreme Court. When appointed to the Supreme Court she was the third woman Justice to be appointed and the only Justice with Hispanic heritage. Brought up in the Bronx her remarkable life story will, I am sure, make it to film. The very fact she was happy to meet with me, a judge from a little island in the Irish Sea, and arrange for me to attend the Supreme Court in session as her guest, gives you an indication of the nature of the unstoppable force that is Justice Sonia Sotomayor. Whilst in Washington I also attended a judicial conference with over 40 countries represented. I could happily spend the rest of my lecture sharing the details of my visits to Hong Kong and Washington, but I must press on with protecting judges from improper influences.

- ***Independence through protecting judges from improper influences***

A judge's decision may only be influenced by the law, the evidence and the submissions of the parties. Any decision should not therefore be improperly influenced by the media, big business, pressure groups, politicians or any other outside third parties.

Moreover, individual judges must be left to decide the legal issues before them without input from other judges unless they are hearing the case with them. It would be quite wrong for even a Chief Justice to endeavour to direct another judge how to decide a case before him or her, just as it would be quite wrong for a government Minister or party official to issue a judge with an instruction about how to decide a case.

Although a Chief Justice may allocate cases to certain judges to deal with, he may not direct that judge how to decide that case. That judge is only accountable through his or her oath, code of conduct and the appeal court.

Unfortunately in some jurisdictions the real threat comes from outsiders in positions of influence. In my previous lectures I have referred to examples of Russian telephone justice and Chinese three chief's justice.

James Spigelman (in a lecture delivered on 10 March 2016 – *Justice "Seen to be Done" or "Seem to be Done"?*) stressed that the delivery of reasons after argument in open court helps to ensure that a person not directly involved in the proceedings has no influence as to the outcome of those proceedings.

All jurisdictions must guard against improper outside influences being exerted over judges.

I will admit these are extreme situations, but I hope they flag up the need to insulate your judges from improper outside influence. Keep your politicians off the backs of your judges.

Pressures on small jurisdictions

Before I leave the general subject of external influences and get stuck into judicial accountability, I would like to pause for a moment to consider the external pressures and influences on small jurisdictions.

Because I come from a small jurisdiction, I know there is frequently pressure from much bigger countries or outside international bodies. These countries and organisations sometimes lack a full and objective appreciation of the difficulties on the ground in the small jurisdictions with limited resources in terms of money, people and infrastructure.

Mark Shimmin, your Executive Director, has reminded me that small jurisdictions such as ours are frequently required to deliver judicial, regulatory and governmental services to high and demanding international standards. And this is putting extreme pressure on our limited resources.

To a certain extent I have some direct personal experience of international initiatives that have tested our resources.

In 2002 I was involved in the Island's legal response to an International Monetary Fund review of our regulatory structures.

More recently I have been heavily involved over the last couple of years in the Manx judiciary's engagement with MONEYVAL. The aim of this European body is to ensure that countries have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields. Insofar as the Manx judiciary were concerned, the assessment focused on the integrity and independence, and the competence and capacity, of the Manx judiciary. It was a useful opportunity to increase awareness of the competency, integrity and independence of the Manx judiciary to members of the assessment team and others.

Although a time-consuming and intensive process, we relished the opportunity to contribute positively and constructively. Of course our hope is that our competence, integrity and independence will be recognised by influential outsiders, and the resulting recommendations will enhance our position in the future. The final report is due early next year.

I believe we should, where ever possible and no matter how time consuming it may be, welcome and positively engage with such international initiatives. We have nothing to hide, but we do have a lot of good things in our jurisdictions to shout about.

The tasks set for us by such international bodies may at first appear somewhat daunting and unachievable. But that does not mean that we should not strive for excellence with the

limited resources we have. We can all help and learn from each other to ensure we are not drowned by the increasing tide of international standards.

The international level playing field still seems somewhat elusive and although I must keep out of matters of potential political controversy I cannot resist sharing with you the comments of Allan Bell, the Island's Chief Minister, at the international anti-corruption summit held in London on 12 May 2016 and hosted by David Cameron, the Prime Minister of the United Kingdom of Great Britain and Northern Ireland. Here is what Mr Bell had to say:

"... I would like to join with others to congratulate the Prime Minister on the excellent work that he has done to bring this conference together, and in particular his focus on leadership, and I congratulate again the Prime Minister for the leadership he has shown and we have heard a lot about today.

But the elephant in the room where leadership absolutely is necessary is the United States, and no-one seems to talk about that. If you look at the Tax Justice Network Secrecy Jurisdiction which was released last year, Switzerland, not surprising, was number one, the United States was number three, Panama was number thirteen. The Isle of Man, I have to add, was thirty-second, so we're not in that league.

But, if you were going to make meaningful inroads into tackling international corruption, the United States absolutely has to be at the forefront taking a lead on this. Now, when Mr Obama took over he attacked a single building in Cayman for having 19,000 companies registered there. There is one building in Delaware which has 285,000 companies registered in that one building, and they don't know the beneficial owner of any of them. That's ten times the total number of companies we have in the Isle of Man and we know the beneficial owner of all of them.

Now the point I am making is, it is all very well to pick on small jurisdictions like Crown dependencies, overseas territories, [but] the United States [must] join in this international agreement, and the Prime Minister is absolutely right to say this will only be resolved in a global sense. Every country has to sign up to this. If the United States does not do more and give confidence to other jurisdictions that they are actually sincere in what they say, and it was heartening to hear Mr Kerry's comments this morning, but we need actions, not fine words, I'm afraid."

Justice requires that everyone is treated equally. As I stated in my first lecture in this series of lectures, the rule of law must ensure that just laws apply equally to everyone except where different treatment is objectively justified. All countries, not just small countries, must comply with their international obligations. We as small countries can all do our best within the limited resources we have as we strive to continue to improve, meeting and potentially setting, international standards.

As you know from previous presentations, I am very keen on setting standards in every aspect of my life, whether it is through judicial decisions or my prize winning pumpkins.

I did promise you a Pumpkin update and here it is. I can only hope the feature is better than my earlier trailer. Last year I got off to a very promising start and by the middle of July I had two pumpkins that had enormous potential. All I needed to do was stick to Deemster Doyle's special secret system, playing them Mozart and reading them recent judgments from www.courts.im and first prize would be assured. Alas, during an off-island holiday in August the watering regime was interrupted. On my return I attempted to

recover ground and overwatered the largest, which rather spectacularly exploded. Left with the smaller pumpkin I had to sadly accept second place. You never win silver. You always lose the gold.

The moral of the story in the context of small jurisdictions? Do not try and over compensate for a small failure because the whole project might just blow up in your face.

It strikes me that the Small Countries Financial Management Programme is an excellent example of how small countries can work well together for the common international good. I congratulate Alison McQuater, your first-class and energetic Programme Director, Mark Shimmin, your experienced Executive Director and Elaine Moretta, your efficient and cheerful Administrator, and all those who support them including Dom Long and Aimee Freegard for the excellent work they have done to assist in the formulation and implementation of the programme this year. With luck these kind comments have secured me a slot within next year's programme and another free dinner in wonderful surroundings.

Judicial Accountability

Now back to my text for this evening, and judicial accountability.

Shortly after I was appointed First Deemster I thought it would be a good idea to invite students from the Island's secondary schools into the Isle of Man Courts of Justice, and in January of 2011 over one hundred students visited the courts. Students were shown around the court building ending up in Court 1 where they were subjected to a presentation by the First Deemster.

Inevitably there were questions, and the most memorable was:

"To whom are you accountable?"

With no stock answer I referred to my oath, to the concept of open justice including publicly available judgments, and to the Appeal Division and the Judicial Committee of the Privy Council.

Undeterred the eager student continued the cross-examination:

"To whom is Her Majesty the Queen Lord of Mann accountable to?"

Well, the question of accountability got me thinking, and it has only taken me 5 years to come up with a more considered answer. The student is probably on his way to becoming a partner in a large city law firm by now. But I hope he looks at www.courts.im and reads this lecture for a rather belated, but more detailed, answer to his very proper question. As to the Lord of Mann's accountability, I will leave that to wiser heads than mine to answer. For my part as First Deemster I am accountable to Her Majesty the Queen. But I am also accountable because I deliver justice in a court which is open to public scrutiny, and I am required to provide reasons for my decisions which are also made public. Decisions at first instance can be challenged via an appeal ultimately to the Judicial Committee of the Privy Council.

A great example of accountability and the Court of Appeal relates to a young Manx advocate, Adam Killip, who posted a stimulating article in a 2015 copy of *Insolvency, Dispute Resolution*, under the provocative heading "Insolvency Update : Has the Privy

Council turned the Isle of Man's Chief Justice into a timorous soul?" In it he commented on my judgment in *Lombard Manx Limited v The Spirit of Montpelier Limited* 2014 MLR 530. I have to say Adam was arguably proved right as our Appeal Court (in a judgment delivered on 18 June 2015) overturned my first instance judgment and provided me with jurisdiction to do what I felt I did not initially have jurisdiction to do, which was in effect tantamount to legislating from the bench where Tynwald had failed to modernise Manx law. Now that is a great example of both accountability and the bold workings of our Appeal Division.

The Appeal Division in *The Spirit of Montpelier* appeal in its judgment delivered on 18 June 2015 stated:

"56. We accept, as did Deemster Doyle in *In Re Impex Services Worldwide Limited*, at 133, that although judicial development of the common law is both inevitable and desirable, 'certainty should not be sacrificed for flexibility or vague notions of where the interests of justice may lie' and that litigants need to be able to know what the law is and the judges need to recognise that their role is to determine the law and not assume the mantle of the legislature."

A perusal of the Manx Law Reports will reveal that my comments at paragraph 50 on page 133 of *Re Impex Services Worldwide Limited* 2003-05 MLR 115 read as follows:

"50. Some judicial development of the common law is inevitable and indeed desirable. The European Court of Human Rights has described this as "a well entrenched, necessary part of legal tradition" (see *S.W. v. U.K.* (48) (21 E.H.R.R. at 399)). I accept, however, that judicial development of the common law should be kept within proper limits and that certainty should not be sacrificed for flexibility or vague notions of where the interests of justice may lie. Litigants need to know where they stand in relation to the law and judges need to be aware that they are there to administer the law of the land and not assume the mantle of the legislators."

You will spot some subtle yet important differences. I qualified my opening comment with the word "Some". I used the word "administer" not "determine". There is, I would respectfully suggest, an important distinction between such words. These differences do not however detract from the significance and importance of the Appeal Division's progressive and bold judgment.

This April advocate Killip also demonstrated he had physical tenacity when he beat me in the Isle of Man 50 kilometre Firefighters' Memorial road race. Out of 103 contenders he came an impressive fourth overall, but I must point out I came third. Well, third in my age group.

I should add that on 19 June 2016 Adam again finished well ahead of me on the road. This time it was the Island's famous Parish Walk, a challenging 85 mile walk through the Island's parishes which must be completed within 24 hours. I hobbled over the finish line on Douglas promenade in 22 hours, 17 minutes and 51 seconds whereas Adam (smashing my personal best in 2006 by nearly 5 minutes) met the challenge in an impressive 17 hours, 30 minutes and 40 seconds.

- ***Accountability through clear standards including a Judicial Code of Conduct and compliance with judicial oath***

Physical prowess aside, I must move on. As I mentioned at the outset, judicial accountability should be built on a solid Code of Conduct supported by judicial oaths,

alongside procedures that fairly deal with complaints against judicial officers, including senior judges.

As to procedures for removing judges from office for misconduct or unfitness, see the report in respect of a former Chief Justice of Gibraltar [2009] UKPC 43 and the report in respect of a judge in the Cayman Islands [2010] UKPC 24.

Codes of Conduct and procedures should of course be publicly available. Ours are available in hard copy and on www.courts.im.

The first line of our Code of Conduct tells most of the story - "Members of the judiciary shall uphold the integrity and independence of the judiciary and perform their duties with competence, diligence and dedication."

The Manx code is based on the six Bangalore Principles of judicial conduct which are well recognised internationally and which are concerned with judicial independence, impartiality, integrity, propriety, equality of treatment and competence and diligence. These principles seek to "establish standards for ethical conduct of judges". They are designed to provide guidance to judges and give the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and legislature, and lawyers and the public in general, to better understand and support the judiciary.

So judges must always comply with their judicial oath and their judicial code of conduct.

- ***Accountability through a robust law on judicial recusals***

However, and I know you will find this hard to believe given the evidence standing before you, no judge is perfect and equally no situation is perfect.

Because of this you need a robust law on judicial recusals.

Applications may be made seeking to disqualify a judge from participation in the decision in a case for reasons of a personal interest in the outcome, or an actual or perceived bias against or in favour of a party to the proceedings.

This is of particular importance in small jurisdictions where judges are perhaps closer to the local community than might otherwise be the case in larger jurisdictions. Judges however need to be appropriately robust and not unduly sensitive.

Our Judicial Code of Conduct, reflecting the common law, provides that members of the judiciary shall not sit in a case where they have a financial interest or where the circumstances are such that a fair minded observer, having considered the facts, would conclude that there was a real possibility that the judge was biased. However, in all other cases they are bound not to abstain from their duty to sit.

Judges should also guard against judge-shopping, particularly in small jurisdictions with a limited number of judges available. Judge-shopping is where litigants try and make a judge recuse without good reason in an endeavour to get another judge to deal with the case, in the hope that the new judge will be more favourable to their case.

Judges should not recuse for inappropriate, wrong or inadequate reasons. See *Inappropriate Recusals* (2016) 132 L.Q.R. 318 by Abimbola A Olowofoyeku, Professor of Law, Brunel University, London.

- ***Accountability through open justice***

One of the key foundation stones to accountability is that judges hear cases in open court under the watchful eyes of members of the public and the media.

There are some exceptions to hearings in open court, for example to protect children, but these are rare. See also my judgments in *Delphi* 2014 MLR 51 and *CMI Trust Company (IOM) Limited* 2014 MLR 45 in respect of open justice and private trust matters.

Judicial decisions, with reasons, being delivered in open court, and judgments being publicly available, are in my opinion the two keys to accountability.

In the Isle of Man all court proceedings are recorded and transcripts can be obtained. The proceedings and the decisions of the judges can be scrutinised by the parties, their advisers, lawyers, academics, other judges, members of the public and others. That intense scrutiny helps to hold judges to account. Open justice means that judges are some of the most scrutinised individuals in the world.

Jeremy Bentham captured the depth of the concept when he said

“Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity.”

Just this year, on 21 April, Lord Neuberger in a keynote address on *Technology and the Law* emphasised (at paragraph 6) the importance of open justice:

“... save to the extent that it is necessary to have secrecy (protection of children, national security, trade secrets for example), the public must have the right to see and hear what happens in court. So, too, we must allow journalists to attend hearings and be free to report what happens in court ...”

Earlier, on 3 March of this year, Lord Neuberger captured the essence and importance of the idea at paragraph 20 of his lecture:

“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.”

However, sunlight in the form of social media is not always so helpful. I referred to the use of social media in my last lecture. I am all in favour of modern technology, but we must all guard against social media being abused in attempts to irresponsibly and improperly influence the result in legal proceedings.

- ***Accountability through an effective appeal system***

Another key foundation stone to accountability is an effective appeal system.

Every national legal infrastructure needs an effective appeal system that can be used as a check on judicial decisions at first instance.

Judges, like all human beings, make mistakes. In the Isle of Man our final appeal court is the Judicial Committee of the Privy Council.

- ***Accountability through prompt delivery of judgments***

Shetreet and Turenne at page 99 state:

“Delays in judicial proceedings are not normally attributable to the judges, but judges are very occasionally responsible for delays in then giving judgment. A strong judicial policy aims for a prompt delivery of judgments ...”

Judgments must be delivered promptly and be readily accessed. There must be investment in the judiciary and the administrative machinery which supports the prompt delivery of judgments.

I can promise you this will be money well spent. Undue delays in judicial proceedings are frustrating and they erode public confidence in the whole system. We must do everything we can to eradicate them.

In my judgment in *Taylor and Neale* 2012 MLR 621 at 627 paragraph [13] I referred to the delay in another court at first instance from a hearing on 27 July 2010 to delivery of the judgment on 7 December 2010 as unsatisfactory. I also stressed that where it was not possible to deliver an extempore judgment, reserved judgments at first instance should not normally be reserved for more than six weeks. I referred to the judgment the Judicial Committee of the Privy Council in *Sakoor Patel v Anandsing Beenessreesingh and Sicom Ltd* [2012] UKPC 18 delivered by Lord Sumption where at paragraph 38 it was stated:

“In the Board’s opinion it is only in the most difficult and complex cases that judgment on an appeal should be reserved for more than three months, and intervals of more than six months should be altogether exceptional.”

Of course the judiciary should decide cases assigned to them within a reasonable time. But this will always depend on a realistic volume of work being assigned to them and the appropriate means and resources being placed at their disposal.

The existence of an independent administrative infrastructure will not necessarily ensure prompt decisions but you will be able to say that you have done everything in your power to facilitate them.

Concluding remarks

You have been very patient. I have talked about judicial independence and accountability and what this means in practical terms when seeking to deliver justice.

I feel I must now lay it on the line and explain why I feel it is so important for people in your roles to engage with the concepts I have shared over the past 3 years.

Whether you are a regulator, a senior government official in finance, audit, accounting, a chief actuary, a central banker, a member of a monetary authority or any other public servant, or indeed any member of any civilised community, it is vital to know the basics in respect of judicial independence and accountability.

It is sometimes difficult for us all to see the bigger picture beyond our own departments and specific areas of responsibility. I know this and work hard to reach out to gain a better perspective.

All of my three lectures to date have focused on the rule of law and its place in economic development, and the maintenance of a fair and just legal system.

You will probably feel some of my guidance was counter intuitive, such as last year when I recommended avoiding the temptation to quickly seek the opinion of the Chief Justice on a legal matter or government policy.

My suggestions in my first lecture might have seemed self-serving when I urged you all, at a time of economic prudence, to protect spending on the structures and processes that support the rule of law. I feel this is always important because it is exactly when money is tight that extra care must be taken to ensure that the fundamental rights of your citizens are respected and maintained.

When it comes to money you may also feel that my suggestion that judges should be encouraged to travel internationally and connect with the judiciary in other jurisdictions is also self-serving because I do not want to be on my own out there.

Far from it. The role of judges today must include stepping beyond their national boundaries to learn from, and collaborate with, the rest of the world.

The importance of giving your judges some international exposure has been emphasised by Lord Dyson in *The Globalization of the Law* at paragraph 41 and by Lady Justice Arden in *An English Judge in Europe* (28 February 2014) at paragraph 87. At paragraph 6 the learned justice stated:

“By looking abroad we can in my view learn to do a better job at home ...”

Moreover, contact with other judges facing similar problems can be refreshing and provide an effective and much needed re-charging of judicial batteries. Just as I hope your batteries have been recharged during this programme.

Lord Neuberger in the lecture delivered on 3 March 2016 at paragraph 32 stated that judges had a duty to ensure that the rule of law is appreciated, maintained and upheld at all times. He said that “judges have a responsibility to act as ambassadors for the rule of law”. At paragraph 33 Lord Neuberger referred to the higher public profile of the judiciary in recent times and felt that this was a good thing “because it reminds people that the law has a human face, that it is made and administered by people”.

Kemy Bokhary, one of the smiling human faces of the Hong Kong judiciary, in *The Rule of Law in Hong Kong Fifteen Years After the Handover* (Columbia Journal of Transnational Law,

Volume 51, 2013, Number 2, 287 at page 299) put it well when he reminded us that inhumanity anywhere diminishes humanity everywhere and that the rule of law, human rights and democracy must be supported by the judges and by "an alert population, a free media, a learned academy and a dedicated profession". I respectfully and wholeheartedly concur. You are all part of "an alert population" that keeps judges on their toes and ensures that the rule of law is respected.

Anthony Lester in *Five Ideas to Fight For* (2016) underlines the need for support where at page 205 he states:

"No law and no system of government can secure the rule of law unless it is supported by a culture of respect for the rule of law and unless men and women of integrity hold it in their DNA."

This brings me to my closing thought for you all this evening.

When your responsibilities surrounding government structures and finance are combined with:

- your understanding of the rule of law and its role in economic growth;
- your understanding of the absolute need for a separation of powers; and
- your understanding of the fundamental requirement for judicial independence and accountability

you can, and should, become the guardians of the rule of law and the judiciary.

I am not suggesting Marvel comic 'Guardians of the Galaxy', but guardians that by definition protect and defend the rule of law and an independent and accountable judiciary.

I am confident you will want to do this because you recognise and respect the role of the rule of law in building bridges between nations and creating more prosperous and more stable and secure communities, countries and continents. In short, a safer world.

Participants in the Small Countries Financial Management Programme 2016, I give you guardianship of your independent and accountable judiciary.

David Doyle
First Deemster and Clerk of the Rolls of the Isle of Man
6 July 2016