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Managing Judicial Leadership

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I noticed while browsing the IOJT's website that the theme of the second conference in Ottawa in 2004 was '*Judicial Education in a World of Challenge and Change*'. I imagine that we judges would agree that change is nowadays a permanent state. At the time of the Ottawa conference the Judicial Studies Board of England and Wales had recently held a pilot of a course entitled 'Managing Judicial Leadership'. The development of this course was a new departure and a direct response to a request by the Lord Chief Justice that the JSB should make the design and implementation of a strategy for judicial management skills a strategic priority.

In making this request, Lord Woolf was undoubtedly anticipating the day when the Constitutional Reform Bill, which began its passage through the UK Parliament in February 2004, would come into force and the Lord Chief Justice would assume the judicial functions formerly exercised by the Lord Chancellor, becoming responsible for the training, guidance and deployment of judges and for representing the views of the judiciary of England and Wales to Parliament and ministers. Lord Woolf knew that the effective, day-to-day management of the judiciary would require a management structure, managerial skills and a common recognition by judges of the principles and importance of good management.

Such is the pace of change these days that it is difficult to recall how radical was the concept of offering leadership and management training to judges even five years ago. It would certainly have been inconceivable when the JSB was established in 1979.

In that year, one of the best-known and most distinguished judges of the 20th century celebrated his 80th birthday while still in office. Lord Denning, as Master of the Rolls, headed the civil side of the Court of Appeal for 20 years, holding one of the most influential posts in English law in which he made an unparalleled contribution to the development of the law from the 1960s to the 1980s.

By the time Lord Denning retired in 1982, he was regarded as irreplaceable. Fortunately his successor, Sir John, later Lord Donaldson, had no intention of making a career out of a tribute act. He did not monopolise the biggest and best cases. Instead, he turned his attention to an area that had been neglected by his predecessor: the serious backlog of cases in the Court of Appeal.

Administration was regarded then as a task for bureaucrats, not judges. There would have been many who agreed with Lord Chancellor Hailsham's view that "any idiot with good manners and a knowledge of precedents" could do it. Despite this, I doubt that anyone could have drawn up definitive lists of functions that were administrative and those that were judicial. Even if they could, there would undoubtedly have been functions, such as the listing of cases for hearing that would probably have appeared on both.

What Lord Donaldson understood was that the civil appeals system encompassed the judges, the processes and the staff and that he was head of **all** of them. As a judge, he was able to identify failures in individual and collective judicial performance. Without apportioning blame, he introduced measures that would help judges to make better use of their time as well as markedly increasing productivity overall. Neither, when identifying significant weaknesses in the administration, did he seek to heap blame on officials. Rather, he made it clear that he expected the civil service to provide him with a capable administrative head, with whom he could work closely and who would ensure that staff and office procedures kept pace with his reforms. He spent a lot of time talking to people about what they thought was wrong before coming to his own conclusions. He then went back and spoke to them again. In this way, he ensured that everyone had a common understanding of the problem that he was intending to tackle and achieved consensus that his proposed solution was the right thing to do.

He was wont to remark that "Judges are no different from other people: they need managing just like everyone else." There is a lively debate to be had about whether it is profound judicial thinkers or skilled judicial administrators who have the potential to make the greater impact on the legal process. Not now perhaps! It is, however interesting to consider why it was that although a very senior judge made a conspicuous success of administration, there was apparently no real interest at the time in identifying the abilities and qualities he displayed in order to help other senior judges to do the same.

The pace of change in the law has probably been greater over the last 30 years than at any other time in modern legal history. Despite the perception of judges as conservative and resistant to change, they have, as a group, tended to adapt to it remarkably successfully. Many individuals, both in their pre-appointment professional lives as lawyers, and on the Bench, have led or been at the forefront of, developments in the administration of justice. What the judiciary currently lacks, however, is an agreed set of principles and skills that can be used by those in leadership positions both to drive and support the management of change.

As I have already mentioned, the event that has been the principal catalyst in the development of a management and leadership training strategy for judges is the Constitutional Reform Act 2005.

The Lord Chief Justice (then Lord Phillips of Worth Matravers) formally assumed his role as President of the Courts of England and Wales, created by the Act, on 3 April 2006. The holder of that office exercises his powers principally through a Judicial Executive Board, which he chairs. The other members of that Board are the Master of the Rolls, the heads of the three divisions of the High Court, namely the President of the Queen's Bench and Family Divisions and the Chancellor of the High Court who is responsible for the work of the Chancery Division. The Senior Presiding Judge of England and Wales and the Vice-President of the Queen's Bench Division are also members. The Judicial Executive Board met for the first time, in shadow form, in July 2005.

The members of the Judicial Executive Board are responsible, individually and collectively, for the strategic development of judicial business management and for the organisation, at national level, of criminal, civil and family business in the High Court, Crown Court and county and magistrates' courts, including the deployment of the judiciary in these jurisdictions. At regional level, judicial business is managed along jurisdictional lines and is the responsibility of Presiding Judges, Family Division Liaison Judges and Chancery Supervising Judges, who are members of the High Court Bench. At local, or court level, day-to-day management falls to Resident Judges in the criminal courts and Designated Civil and Designated Family Judges, who are normally members of the Circuit Bench.

In England and Wales, there are over 1500 salaried, mainly full-time judges and about 2,300 fee-paid, mainly part-time judges. In total there are about 180 judges who hold management and leadership positions.

The management structure of the judiciary is unusual when compared with other hierarchical organisations. It is relatively 'flat' with a short line-management chain. The average judge has only one or two tiers of manager above him or her. It is also unusual in the sense that about 90% of judges, at Circuit Bench level at least, serve more than one jurisdictional master. The majority of Circuit Judges sit in at least two jurisdictions: crime and civil or civil and family, or family and crime. Or sometimes all three. In each jurisdiction there is a sort of chain of command going back to the jurisdictional President who is a member of the Judicial Executive Board, and ultimately to the Lord Chief Justice. However, although the Judicial Executive Board is a cross-jurisdictional body, the judges who are responsible for managing judicial business at regional level tend not to meet or to operate cross-jurisdictionally and turf wars can occasionally break out.

Let me give you an example. We have negotiated protected time for judges who act as course directors and tutors so that they are not forced to prepare training materials in their own time. When we hold recruitment competitions for membership of the JSB's team of tutor judges we ask applicants to inform their Presiding, or Family Division Liaison Judge that they have made an

application. Where individuals sit in two jurisdictions, for example civil and family, it is not unknown for the judge in charge of Family business to indicate that all the protected time should be taken out of the judge's civil sittings or vice versa.

This kind of thing shows that the corporate management of judicial business across the piece is still developing. Unlike many corporate bodies, the judiciary lacks a dedicated, professional managerial cadre: the primary and most time-consuming job of judicial managers, like any other judge, is adjudication. It is not surprising that those in judicial management positions need time and support to become as effective in their administrative role as they are in their adjudicative one.

The judiciary as a body demonstrates many of the characteristics of a profession – for example, superior levels of knowledge, commonly bordering on expertise, of law and legal procedure, high ethical and behavioural standards as well as codified terms and conditions of service (which happen to be founded in statute) and independence, recently also guaranteed in statute, in the discharge of their judicial functions. There is, however, no single, written body of professional rules, standards and codes of conduct.

As I have indicated above, demands on the members of the Judicial Executive Board are particularly acute. Following the constitutional reforms in 2006, came the creation of the Ministry of Justice in 2007. MOJ is now one of the largest Departments of State in the United Kingdom with a much greater remit than its predecessors, adding the management of prisons and the probation service to the former Lord Chancellor's responsibilities for administration of the courts, development of civil, family and constitutional law and legal aid. Almost from day one the Justice Secretary made it clear that the new Ministry was over-committed and would have to make savings of about £1 million a week until the end of 2010.

It is crucially important for senior judges to maintain effective working relationships with the Government and its agencies such as HM Courts Service in order to safeguard the independence of the judicial process. At the same time they must ensure continued public confidence in the independence and judgement of the judiciary by being careful not to be associated in the public mind with any part of the Executive. In order to demonstrate that they are doing all of this, they need to be comfortable in their ability to work with the news media and to exploit the opportunities that they offer.

I am sure that I have painted a picture that will be familiar to many judges present at the conference and I would not try to claim that the judiciary of England and Wales is unique. As I have indicated, however, significant elements of the picture are new to us. As new, in fact, as training in judicial leadership and management is novel to judges at all levels.

In considering how to develop a programme of training that will enable judges who have such responsibilities to discharge them effectively and with confidence, the JSB has faced two challenges.

First, its training has for many years tended to focus largely on the practice and refinement of technical skills through the discussion of case studies and developments in law and procedure. These have typically included social context issues in order to enable judges to fulfil the requirements of the judicial oath by demonstrating that the judicial process is fair and free from bias. Otherwise, however, the training has not been designed to enable judges to acquire and develop practical skills such as work- time- people- and self-management. Although the fundamental principle of judicial training is that judges learn from other judges, it is clear from what I have already said about the lack of a codified set of professional judicial standards that training has not focused on what it really means to be a judge, including the full range of duties and obligations that attach to judicial office.

Second, it is self-evident that management does not exist in a vacuum. When we thought about the best way of developing a programme of training to support judicial management and leadership, we realised that our entire curriculum would need to change. We decided that we would have to design training that would give judges the knowledge and skills that they need to perform their judicial functions competently while at the same time enabling them to recognise those aspects of their performance that are susceptible to oversight by others and develop their responses accordingly.

The JSB is therefore now going through a period of major change itself. Since 2004 we have been planning a new judicial training strategy that meets both of the challenges I have outlined above. We began by undertaking a full learning needs analysis of the salaried and fee-paid judiciary at High Court, Circuit and District Bench level. We also carried out an extensive programme of research looking at developments in judicial training practice internationally. Closer to home, we examined good training practice in the legal and medical professions and sought the perceptions of lawyers on the qualities and abilities that are required to make an effective judge. The findings of the first phase of our strategy enabled us to draw up a competence framework of judicial abilities and qualities that will be the starting point for the design of judicial training from now on. The framework included an outline set of competences for leadership and management but it was quite brief.

The learning needs analysis told us that judges wanted more, and more regular, training than we were then offering. Since a day spent on a training course is a day out of court, we have had to negotiate 'protected' training time for all salaried judges with the senior judiciary. Unfortunately, the Ministry of Justice, from which we ultimately receive our funding, does not feel able to assure us of the money that we will need to implement our strategy. We are therefore implementing in stages and a big step forward was the publication of our training Prospectus on 7 September this year. Judges will be able to manage their own continuing education by selecting the courses that they want to attend, between 1 April 2010 and 31 March 2011 rather than being called up to attend the training courses identified by the JSB as being appropriate for their needs as has happened until now.

At the same time as we have been developing our broader training strategy, from 2004 onwards we have also devised a programme of management and leadership training for all levels of judge who exercise management functions. This became more urgent than the implementation of the general strategy because as I told you a few moments ago, the Judicial Executive Board held its first meeting in shadow form in July 2005. The Lord Chief Justice was naturally keen that it should get quickly into its stride. He recognised, however, that his and his colleagues' instinctive tendency to protect individual judicial independence could be inimical, if not fatal to their ability to act corporately as a board. In addition, he recognised that the Board would, individually and collectively, be regularly talking to civil servants about matters such as resource, programme, project, performance and personnel management, all of which were unfamiliar concepts to judges, particularly in a public services context. In order to make sure that members of the Board were able to work effectively and on equal terms with ministers and senior civil servants he asked for support that would enable the Board rapidly to acquire a facility with the principles of public sector management.

The JSB worked with the Judge Institute at Cambridge University to put together a conference for the Board that included talks from experts in management theory and practical workshops that enabled individual members to think about how their own personality preferences (using the Myers-Briggs Type Inventory) might impact on their management styles and corporate behaviour and to consider how to balance the demands of their administrative and judicial workloads.

By all accounts the conference was a great success. The participants were intrigued to discover that the prevailing personality preference was ESTJ: I will leave it to you to discover what this means by looking at the 'Managing Judicial Leadership' booklet that you have received with your papers.

Despite the success of the conference, the Lord Chief Justice knew that as soon as he and his colleagues got into the thick of their new roles, the lessons learned during training would soon recede in their memories. He therefore asked what could be done to help keep the lessons fresh without taking members of the Board away from their other duties for days at a time. The obvious answer was coaching.

It is now generally recognised that in business as in sport, a good coach can help an individual to improve his game significantly. The JSB set up a contract with a high-powered firm of consultants who have a successful record of providing coaching to individuals at the most senior levels of business and government, including cabinet ministers. The standard 'package' is six sessions, each of two hours' duration, over the course of a year. Those of you familiar with the principles of coaching will know that it is defined as a means of enabling an individual to move towards his or her full potential. It is not about providing answers or solutions. The JSB now offers coaching to any judge who is appointed to the Judicial Executive Board or any other senior judicial management position. Not everyone who is eligible has taken it up, but those who have tend to want to continue with it.

As I have already indicated, the Constitutional Reform Act has significantly raised the public profile of the judiciary. In addition, but over a much longer period, public expenditure pressures and the rise in consumer culture have increasingly placed professional people who are paid from the public purse, like judges, under greater and often more critical scrutiny. In the past, judges took a metaphorical vow of silence when they were appointed to the bench on the grounds that if a judge allowed himself to be interviewed and happened to express a commonplace or foolish opinion, then the majesty of the law would be diminished. These days, more and more judges consider it imperative to be seen to be playing a part in public life and life outside the law in order to demonstrate that they are in touch with the society that they serve. Although judges are used to working in the public eye, different skills are required when dealing with the news media. All judges are given written guidance on this and the senior judiciary are offered dedicated training on being interviewed on radio and television and by the press.

During 2004, the JSB started to run the first of a series of courses entitled Managing Judicial Leadership. It was directed at resident, designated civil, designated family judges and those members of the tribunal judiciary who held leadership roles. The planning process for the programme fell into two stages. First, the seminar tutor team, led by a tribunal Regional Chairman, assembled the job descriptions of as many tribunal and courts judges with management responsibilities as they were able to find. Second, they met and talked to a number of judge managers about their management role. Each was sent a questionnaire in advance. Their responses showed that management of change, working with stakeholders, pastoral responsibilities and making the most of limited time and resources were abiding concerns for all of them, albeit to different degrees. In consequence, the programme included all of these items through speaker, small group discussion and plenary feedback. The case studies for the small groups were devised by post-holders from the various categories of participant to ensure credibility and, as with all JSB courses, were very popular because of the opportunity that they gave for detailed discussion. The speakers were a member of the Courts judiciary and a tribunal judge who were able to present complementary management perspectives. The Chief Executive of HM Courts Service also presented a session on the management of change both generally and by reference to specific examples.

The programme ran successfully for two years until every courts and tribunal judge who exercised a management and leadership role had received or been given the opportunity of, appropriate training. In 2007, the JSB published a 'Managing Judicial Leadership' handbook which is a distillation of the information, suggestions, tips and questions that arose on the courses. You will have received copies of the handbook with your papers.

Another two years has gone by and we are starting to develop a new Managing Judicial Leadership programme. Demands on judicial managers are increasing. As I have already said, the JSB wants to provide more training in judicial skills. Judges at all levels are starting to recognise the importance of a set of skills that, ten years ago, the great majority would have said had nothing to do with judging. We think it is increasingly important that leaders of the

senior judiciary have effective training and development which prepares them for the most senior management roles and enables them to take collective decisions well and implement them effectively. In the spirit of our Judicial Training Strategy, we also think it is important for the judicial 'culture' to include a strong emphasis on personal learning and development not least to enable judges who move into leadership and management roles to be comfortable in their role from the outset and to their impact over time.

During the summer of this year we started another learning needs analysis, the outcome of which will, among other things, be a much more detailed set of leadership and management competences than emerged from the 2005 learning needs analysis. We intend to have interviewed about 80 judge managers and to have analysed their responses by Christmas. Early indications are that judges still want help that will enable them to deal with time and work pressures, delegate effectively, make the best use of what little administrative support is given them and deal with difficult pastoral issues, people who are not in their direct management control or who are their equal in rank. Increasingly, there is a recognition that juggling administrative and adjudicative responsibilities is hard work and judges are asking for advice on how to maintain their physical and emotional well-being.

The next step once the results of the Learning Needs analysis have been analysed, will be to refine the competence framework and start to put together a new Managing Judicial Leadership programme. We know from experience that the greater part of the design and delivery will have to be done by judges. We may call upon outside help as we did with the training and coaching of Judicial Executive Board members, but we have to make our training relevant to the situations that judicial managers are likely to encounter. It is no good trying to buy a management training package off the shelf. Judges are easily put off by jargon and will not waste their time attending training events that they consider irrelevant.

As we expand our training curriculum to place more emphasis on judicial skills, we intend to add training in judicial management and leadership to our Prospectus. We hope that this training will help all judges to understand what it means to be managed, to consider using some of the skills of a judicial manager in order to manage themselves and their workload and possibly to aspire to become judicial managers in their turn.