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Criminal Justice Institutions in Times of Change

This version is as written, not as delivered.

Thank you for the invitation to speak to you. I did not realise when I accepted the invitation that I would be speaking to you immediately after my distinguished South Island cousin. I am sure that by the time you get to morning tea you will feel you have had quite enough of the O'Regan clan.

Before I begin, I would like to take the opportunity to acknowledge the contribution made by our Christchurch colleagues in keeping the wheels of justice turning in very difficult circumstances since the earthquakes in that city. I include Judges, counsel, court administrators, police officers and Department of Corrections officers. Those of us who have not lived through the disruption they have faced can only imagine how difficult it has been for all of them and express our admiration for their efforts.

The programme for the conference is interesting and I am sorry that I am not going to be able to be here to hear the presentations that will be made. I think the sessions on juries are timely, and I am very pleased to see that more empirical research is being undertaken into the workings of juries. The paper on the googling juror will be fascinating. The advent of social media and the internet, and the ability to find at the click of a button information relating to the accused or otherwise relevant to the trial provides some new challenges that we are still grappling with.

I am also pleased to see the international dimension to the conference. The idea of an international regime for cybercrime is interesting and the papers on the International Criminal Court and the international criminal trials in Cambodia emphasise the imperative of looking beyond national boundaries in dealing with crime.

All of the presentations relate in one way or another to the criminal justice process that commences when a prosecution is initiated, that is the court system and the sanctions that follow the court process. In my presentation, I want to go back a step to that part of the system that takes place before the court process is initiated. I do not think we should

¹ I acknowledge the research assistance of my clerk, Hamish McQueen, in the preparation of this speech.

underestimate how significant these pre-prosecution processes can be in the operation of the criminal justice system in the broadest sense. So I am expanding the field of discussion at the conference a little. The point I want to make is that I think the significance of this earlier stage in the process is growing and commentators should not devote all their attention to what happens after a case crosses the threshold of the courthouse.

I have used the title “Criminal Justice Institutions in Times of Change”. This involves consideration of some recent policy changes relating to the way we dispense criminal justice in New Zealand. The purpose of my raising these issues is not to express support or opposition. Rather, it is to raise issues so that there will be informed debate about them. Although I refer to recent New Zealand experience, I am aware that in some respects the recent changes in New Zealand have some similarities to practices followed in England and Wales. I am sure similar issues are being debated in the Australian jurisdictions as well, and I would be interested in comments from overseas delegates.

It will come as no surprise to anyone that the cost of the operation of the criminal justice system is significant and has been increasing over the past few years. The same can be said about the operation of the prison system. Recent changes or proposed changes have been directed at reducing these costs and in reallocating resources away from dealing with accused people and convicted offenders after the event to allow more effort to be put into dealing with the causes of crime and with crime prevention. The crime rate is falling in New Zealand, as is the prison population. To some extent this has been assisted by the ageing of the population. Our children might not accept this proposition, but the crime statistics seem to give credence to the proposition that people get wiser as they get older. (I mean wiser in the sense of not committing crimes, rather than wiser in the sense of committing crimes in a way that avoids detection). So the ageing population, which is something of a nightmare for those charged with administering our health system, is something of a windfall for those administering the criminal justice system and the prison system.² A paper published by Statistics New Zealand in 2010 found that growth in justice sector spending between 2008 and 2018 would be about one fifth higher if it were not for changes to the age-gender structure of the population.

The principal change I am going to address is a change in the practice adopted by the police in relation to prosecutorial discretion that is part of a programme called “Policing Excellence”. We are also about to see changes in criminal procedure contained in the Criminal Procedure Act 2011, arising from an exercise called “Criminal Procedure Simplification” undertaken by the Law Commission and the Ministry of Justice that had an objective of improving efficiency in the court system. There have also been changes to the method of funding defence counsel and prosecutors, which are designed to drive costs out of the criminal justice system. These are significant developments too. Time does not permit me to address them and in the case of legal aid there is the potential for an appeal to the Court

² Sonja Dekker and John Bryant “Ageing and Violent Crime in New Zealand” (Statistics New Zealand Working Paper 10-01, September 2010). Available at <www.stats.govt.nz>.

of Appeal by the Criminal Bar Association that means it would not be proper for me to express any public views on the topic.

The justice sector

For those of you from outside New Zealand I need to give some context to the changes to the way in which the justice system is administered. In New Zealand the Ministry of Justice has a number of different roles impacting on the court system. It is the Government agency responsible for providing administrative support services to the court system. Previously there was a separate Department for Courts that had as its sole role the operation of, and policy relating to, the courts. However, this was merged with the Ministry some years ago. The Ministry through another arm is responsible for the administration of the legal aid system: the previously separate Legal Services Agency has been merged into the Ministry. In addition, the Public Defence Service is part of the Ministry, and in areas where it has been fully established, 50 per cent of legal aid files are allocated to the Public Defence Service, with the remainder being allocated to approved legal aid service providers.

New Zealand does not have a centralised prosecution agency, like a Director of Public Prosecutions. Rather, private sector lawyers in main centres are granted a Crown warrant to undertake prosecutions in the relevant area. The warranted lawyer is known as the Crown Solicitor in the relevant area and the firm in which he or she practices is responsible for prosecutions in the area, other than police prosecutions, which are undertaken by police staff. Responsibility for prosecutions on a national basis rests with the Solicitor-General and the Crown Law Office supervises the Crown Solicitors and lawyers employed by Crown Law undertake criminal appellate work particularly in the Court of Appeal and Supreme Court.

Recently, the Ministry of Justice, the Police, the Department of Corrections, Crown Law and the Serious Fraud Office (which is responsible for the investigation and prosecution of major fraud cases) began to work together under the supervision of the Justice Sector Board. The object of these changes is to manage what is described as the criminal justice pipeline, which is depicted in different ways in different public publications. In some it covers everything from the drivers of crime to the sentencing outcome for a convicted offender. In that depiction, the pipeline covers not only pre-prosecution events but events before the commission of an offence has even entered the mind of the putative offender. This emphasises the importance of engaging with the causes of crime rather than just dealing with the aftermath of the commission of an offence. In others it shows the operation of the criminal justice system from the initiation of a prosecution to the sentencing outcome. This latter description focuses on the areas that are covered in many of the presentations at the conference and shows the variety of outcomes that can result from an alleged offender's progress through the system. Although it is shown as seamless, it involves different branches of Government at different points.

The objectives of the Justice Sector Agencies working together include fiscal objectives and as well redeployment of expenditure from post-offending to pre-offending activities. The Government has issued a Result Action Plan for the Justice sector that sets targets for the

Justice Sector. These include targets to be achieved by 2017: reducing the overall crime rate by 15 per cent, reducing the violent crime rate by 20 per cent, reducing the youth crime rate by 5 per cent and reducing the reoffending rate by 25 per cent (in all cases starting from the base of the rate as at 30 June 2011).³ Achieving those targets would bring obvious benefits to our society.

Policing Excellence

I want to describe a change of police prosecution policy that has a potentially significant impact on the whole criminal justice sector in New Zealand. This is an initiative by the police to reduce the volume of criminal cases in the District Court by use of a system of pre-charge warnings as an alternative to prosecution. This has been instigated by operational decisions within the police. It is characterised as a new and more active approach to the utilisation of the prosecutorial discretion.

The prosecutorial discretion is a well established aspect of our criminal justice system, though possibly one that has not had a lot of attention. Prosecuting agencies act under guidelines issued by the Crown Law Office, the most recent being those issued in January 2010.

In brief, under the new policy, police officers dealing with eligible offenders after arrest will, before a decision to prosecute is made, consider whether to release the offender after giving him or her a formal pre-charge warning. In that event there will be no involvement of the court or a Judge at all.

The Policing Excellence Programme was put in place in 2009. The objective of the programme, as stated in the Introductory Justice Sector Briefing to Incoming Ministers after the 2011 election, is to reduce reported crime by 13 per cent compared to 2008–2009 levels and to reduce the number of prosecutions for non-traffic apprehensions by 19 per cent compared with 2008–2009 levels.⁴ There are a number of aspects to the programme which are beyond the scope of this presentation, and the only one I wish to discuss is the greater use of alternative resolutions to relieve pressure on the criminal justice system. This policy is explained in the Police Statement of Intent for 2012/13–2014/15. That statement indicates that the police are on target to meet the goal of 19 per cent reduction in criminal prosecutions by 2014/15.⁵

³ Ministry of Justice “Delivering better public services: Reducing crime and re-offending: result action plan” (July 2012). Available at <www.justice.govt.nz>.

⁴ Ministry of Justice, New Zealand Police, Department of Corrections, Crown Law and Serious Fraud Office “Introductory Justice Sector Briefing: Briefing to Incoming Ministers” (2011). Available at <www.justice.govt.nz>.

⁵ New Zealand Police “Statement of Intent: 2012/13–2014/15” (May 2012). Available at <www.police.govt.nz>.

The Evaluation Report of the pre-charge warning pilot programme outlined that there are three stages at which “Alternative Resolutions” can take place in New Zealand:⁶

- (a) *Pre-arrest stage*: where police can administer an informal, verbal warning.
- (b) *Pre-charge stage*: where police can arrest a person, take them to the station for processing and issue a warning as an alternative to charging and prosecution.
- (c) *Post-charge stage*: where at the end of the prosecution process instead of a conviction the offender receives a diversion on the condition that they have admitted guilt and completed set conditions outlined in a Diversion Agreement.⁷

I do not want to say anything about the first of these. A police officer at the scene of minor offending always has a number of options open to him or her, ranging from defusing the situation without more up to the arrest of the offender. Often an officer will move the alleged offender on or arrange for the offender’s parents to pick them up. There is nothing very controversial about this.

Nor do I want to discuss the third in any detail. The police diversion scheme has been in place for some time. It provides for some involvement of the court because the offender is charged and it is only after the diversion outcome is reached that the charge is formally withdrawn. As I understand it, the use of post-charge diversion has fallen as the use of pre-charge warnings has grown. I think there are some issues about the legal underpinning of the diversion scheme that are worth discussing but time does not permit me to do so today and, as I said, it seems the use of the diversion scheme is reducing in any event.⁸

Pre-charge warnings

I do, however, want to talk about the use of pre-charge warnings. A pre-charge warning can be issued only by a Sergeant or above, and the following criteria must be met:⁹

- (a) the offender must be 17 years of age or over;

⁶ Justine O’Reilly “New Zealand Police Pre-Charge Warnings Alternative Resolutions: Evaluation Report” (NZ Police, Wellington, 2010). Available at <www.police.govt.nz>.

⁷ There is no statutory basis for the diversion scheme, it is a restorative justice initiative initiated by the police. As a prerequisite, a criminal information must be laid, and when the conditions of the diversion programme are completed the withdrawal of the charge follows. The scheme does have statutory recognition in s 36(1A) Summary Proceedings Act 1957, which allows a Registrar to withdraw information if diversion is successfully completed.

⁸ In addition to pre-charge warnings there is a statutory process for police to give a child or young person a warning or caution under ss 209–213 of the Children, Young Persons, and Their Families Act 1989. Where an officer is considering initiating criminal proceedings against a child or young person they must consider giving them a warning. If a family group conference recommends that a formal police caution be given to a child or young person, then an officer may caution that child or young person.

⁹ See Law and Order Committee “Vote Police: 2011/12 Police Response to Additional Supplementary Estimates Questionnaire, Questions 145–181”. Available at <www.parliament.nz>.

- (b) the offence must carry a maximum penalty of six months imprisonment or less (excluding possession of methamphetamine or any offences arising from a family violence related incident);
- (c) the offender must admit the offence;
- (d) victim considerations must be taken into account, but the issuing of a pre-charge warning is not contingent on the victim being agreeable;
- (e) reparation considerations must be taken into account, but the issuing of a pre-charge warning is not contingent on reparation being paid;
- (f) criminal history and previous pre-charge warnings must be taken into account, but do not exclude a second or subsequent pre-charge warning being issued.

A record that a pre-charge warning has been given may be presented to a court during any future court proceedings.

In the Police's "Policing Excellence Update 2012", some details are given of the alternative pre-charge resolution procedures that the police have been trialling as part of Policing Excellence.¹⁰ Of particular note are the following:

- (a) The initial target was for pre-charge warnings to be used to resolve 9 per cent of non-traffic charges. It is not clear why 9 per cent was determined to be the appropriate level. In reality, that target has been exceeded. Ten per cent of non-traffic charges have been resolved by pre-charge warnings since implementation of the policy in September 2010, with a total of 34,845 pre-charge warnings issued up to the date of the update. The percentage of offences resolved by pre-charge warnings in the 2011/2012 financial year (ended 30 June 2012) was 12 per cent, with a total of 21,881 pre-charge warnings issued in that period. All police districts reached or exceeded the original target of 9 per cent. The target is described as an "upper" target. However, the fact that it has been reached *or exceeded* seems to be perceived as an achievement. There does not seem to be any concern about overshooting the targeted level of offences resolved without court involvement.
- (b) A similar process is being trialled Auckland in relation to traffic offences, where Written Traffic Warnings are issued for minor traffic offences. According to the update, about 10,000 such 53 warnings have been issued.
- (c) Community Justice Panels are being trialled in Christchurch. Under this initiative offenders are held accountable for their offending by a panel of "vetted and trained community representatives". I will come back to this development later.

¹⁰ New Zealand Police "Policing Excellence Update" (7 September 2012). Available at www.police.govt.nz.

The system of pre-charge warnings has some similarities to the system operating in England and Wales. The system there has been running in a formalised way since 1984, and is governed by a Home Office circular.¹¹ The system is rather more complex in England and Wales and apparently allows for warnings to be given in relation to more serious offending than the New Zealand scheme. The proportion of offences dealt with in this manner seems to have increased markedly over time. In a speech given in 2010, Rt Hon Lord Justice Leveson of the England and Wales Court of Appeal raised concerns about the system operating in England and Wales, particularly the number of offences being resolved outside the courtroom.¹² His speech was given in 2010 so he was referring to figures which applied in 2009. He noted that, in that year, there were about 460,000 pre-charge resolutions: 282,500 cautions, 170,000 “penalty notices for disorder” and 8,500 “conditional cautions”. In the last mentioned case, the prosecutor imposes conditions on the caution that can include attending a course or making reparation. Lord Justice Leveson expressed some concerns about the scale of these non-court methods of disposal of criminal proceedings. He said:

On the basis of efficiency and speed, a strong case can be made for the use of these types of disposals in appropriate cases but, just to take penalty notices for disorder and cautions, were over 450,000 cases truly appropriate? Further, when we consider issues such as transparency and open justice the picture becomes a little more blurred. In issuing an out of court disposal the police are essentially acting as prosecutor and judge, outside the environment of an open court. Although these disposals are not convictions, they are kept on record and at the least serious end can risk “criminalising” people who on a one off occasion do something out of character and who feel that the quickest thing to do is to accept the penalty or caution that is being proposed by the police even if further analysis might have revealed no offence.

He then referred back to what he had said three years before:

I do not believe that I am alone in expressing concern about these powers. It is not a question of not trusting the police or the [Criminal Prosecution Service], or challenging the will of parliament. It goes back to the origins of our system of summary justice, carried out in public by members of the public, appointed as magistrates, whose decisions can be scrutinised by the public, can be the subject of public debate and, if appropriate, appeal to the court in public. A drunken 18 year old of prior good character ends up in the cells. He is not entirely sure what he did but does not want his parents to know that he has been in trouble. What would he admit and accept rather than risk going to court, whether or not he could truly be proved to have committed an offence? And what impact would such a conditional caution, part of a record, have upon him that an absolute or conditional discharge, which could be appropriate depending on the circumstances, would not? Where is the mechanism for accountability for these important decisions, taken behind closed doors?

Lord Justice Leveson acknowledged that there are many advantages to out of court disposal, but expressed concern about the extent to which police officers are required to act in a quasi-

¹¹ Home Office “Simple cautioning of adult offenders” (HOC 016/2008, 10 July 2008).

¹² Lord Justice Leveson “Criminal Justice in the 21st Century” (The Roscoe Lecture, St George’s Hall, Liverpool, 29 November 2010). Available at <www.judiciary.gov.uk>.

judicial capacity, and noted that we should be slow to dismiss the social harm that ostensibly trivial offences can cause. He indicated that he believed the proportion of cases resolved by out of court disposal was too high.

I reiterate that the English position appears to have been significantly different from the current position in New Zealand at the time Lord Justice Leveson made his speech. In particular, the proportion of cases dealt with outside the court system was higher, which may mean that the criteria for disposing of cases outside the court system were more permissive. This is reflected in these remarks by the Lord Chief Justice of England and Wales, Rt Hon The Lord Judge in a speech delivered in July 2011, in which he refers to figures that are even higher than those mentioned by Lord Justice Leveson:¹³

There has always been, and I strongly support the continuation of, a discretion in the police whether or not to prosecute. The sensible exercise of the discretion is valuable.

A system of informal warnings makes sense. The metaphorical clip behind the ear is all well and good, but the problem with the not so metaphorical clip is that if administered nowadays, the police officer and his or her Chief Constable will be taken into the civil courts to face a claim for damages – because that is the way of society today. However all this means, obviously, that a thirteen year old caught pinching a packet of sweets for the very first time can properly be dealt with by a formal warning. So too, with parking infringements and speeding, and fixed penalty notices, and failure to pay television license fees, and dealing with motorists who have gone just a little over the speed limit by way of training and education, all are to the public advantage. But, and it is an important but, I have to tell you of a degree of unease developing in my mind at the number of cases of criminal behaviour which are not brought to court when perhaps they should be. I understand the imperatives. Police resources are limited. From the police point of view the process in the magistrates' courts is less efficient than it should be. So the way to save police resources is to limit the number of cases taken to court.

The Lord Chief Justice went on to say that:

- From 2003–2008 the total number of out of court disposals in England and Wales increased 135 per cent, from 241,000 in 2003 to 507,000 in 2008. (I understand that in recent years these numbers have steadied somewhat, with a 34.4 per cent reduction in out of court disposals since 2007, the 2011 figure being 439,400.)
- While the number of convictions has remained stable, the proportion of offences dealt with out of court increased significantly. In 2008, 40 per cent of all crime in England and Wales was resolved outside of court.
- Whether these figures were good or bad, they undeniably represented a shift in the way summary justice is administered in England and Wales.

¹³ Lord Judge “Summary Justice In and Out of Court” (John Harris Memorial Lecture, Drapers Hall, London, 7 July 2011). Available at www.judiciary.gov.uk.

- The possibility that the convenience of avoiding the court process may lead an offender to admit to something for which he or she would have a defence was a matter of concern. He expressed the need to be careful about creating in England and Wales a parallel summary justice system in which police officers act as prosecutor, jury and judge.
- A Chief Inspector's report from June 2011 about the use of out of court disposals found that of 190 disposals studied, 64 did not appear to comply with the guideline standards.¹⁴ In many out of court disposals the offender had a number of previous convictions, or the offence was more serious than the guidance envisaged as appropriate for out of court disposal.
- The report found that the use of out of court disposals varied widely across the police force regions. Depending on the region between 26–49 per cent of all resolved offences were dealt with out of court. This lack of consistency was troubling, especially in light of the effort put into ensuring consistency in sentencing convicted offenders throughout the country.
- It was concerning that there was no supervisory mechanism for out of court disposals.

The Lord Chief Justice emphasised that this was not a question of “turf wars” with the police. Rather, he was concerned about the public interest in open justice. He recommended that a reporting system in relation to out of court disposals should be implemented so that the public could be aware of how the system was operating. Lord Judge emphasised that he was not antagonistic about out of court disposals, but was troubled by a lack of transparency and supervision to ensure regional consistency.

The situation appears to have changed since Lord Justice Leveson and the Lord Chief Justice raised their concerns. English statistics show that out of court disposals have decreased significantly since 2007. About 22 per cent of offences in England were resolved by out of court disposals in 2011.¹⁵ In contrast, New Zealand statistics show that in 2011, 27 per cent of police apprehensions resulted in a warning or caution, compared to 16 per cent five years ago.¹⁶ The proportion of police apprehensions that ended in a prosecution was 60 per cent in 2011, compared to about 70 per cent in 2006–2009.

¹⁴ Criminal Justice Joint Inspection “Exercising Discretion: The Gateway to Justice” (Inspectorate of Constabulary and Crown Prosecution Inspectorate, June 2011). Available at <www.hmic.gov.uk>.

¹⁵ United Kingdom Ministry of Justice “Criminal justice statistics: Main findings” (September 2012). Available at <www.justice.gov.uk>.

¹⁶ Ministry of Justice “Trends in Conviction and Sentencing in New Zealand” (May 2012). Available at <www.justice.govt.nz>. The raw data for earlier years is available at Statistics New Zealand “New Zealand Recorded Crime Tables” (September 2012) <www.stats.govt.nz>. Percentages of police apprehensions resolved by issuing a warning or caution for earlier years are: 2010, 22.8 per cent; 2009, 17.5 per cent; 2008, 15 per cent; 2007, 16 per cent; 2006, 16.2 per cent.

It is notable how forthrightly these judicial views were expressed in the speeches I have quoted. That may reflect the fact that the system had become entrenched and had expanded without much public input. I am content to raise issues for consideration rather than expressing views on them. I think that is the appropriate course because the system is in its infancy in New Zealand and so there is room for considered debate about its scope and scale. I think such a debate is warranted because the use of pre-charge warnings on a large scale is a potentially significant change to our criminal justice system. Any change that affects the way 12 per cent of alleged offences are dealt with is significant. In this case, the change has come about as a result of policy development in the police and has not required any more formal law making process. While it involves the invoking of the traditional prosecutorial discretion, it involves a change in approach to that discretion and, as the numerical targets illustrate, is exercised against a background of a drive to reduce volume in the criminal justice pipeline. The objective of the system is the reduction of workload in the District Courts as well as a reduction in workload for police officers who are not required to undertake the paperwork required for the pursuit of a prosecution and can therefore spend more time on activity aimed at detecting and preventing crime. Given the numbers just mentioned, these impacts will be significant to both the court system and the police.

Why do I say that? It is instructive to look at the pre-charge warning policy in terms of the criminal justice pipeline. The policy will, as long as those exercising the prosecutorial discretion continue to meet or exceed the targets set for them, become a significant factor in determining the volume of cases in the pipeline and, therefore, the size of the pipeline itself. Future needs in relation to criminal justice institutions will be assessed on the assumption that the targets will be met and allocations of resources will be made at a level that is sufficient to meet that need.

So we need to consider whether the concerns raised in England and Wales resonate here. As I mentioned, the way the English system was operating when the comments already referred to were made involved more serious offences being resolved by pre-charge warnings than is the case here. And of course the proportion of offences being resolved in that way appears to have been higher than the 12 per cent figure in New Zealand. But there are also many similarities and we would do well to learn from others' experience.

Even though the offences may be minor, the difference between a pre-charge warning and prosecution is significant for the individual involved. A warning means no conviction. A prosecution for an offender who admits the offence means conviction except in the rare cases that a discharge without conviction is available. The guilty plea can be recognised by a credit in relation to sentencing, but only up to a maximum of 25 per cent.¹⁷ Given that most of those in the running for a pre-charge warning will be first offenders, a conviction against their name will be significant to them. The decision maker has a considerable responsibility and considerable power.

¹⁷ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

So I think it is worthwhile to pose some open-textured questions to allow a proper consideration of whether we should have such a scheme and if so what its scope and scale should be (and similar questions could be asked about other methods of disposal of criminal cases outside the court system):

- Under what legal framework should a pre-charge warning scheme be implemented?
- Is it appropriate to have a target level for pre-charge warnings and, if so, what level?
- Should the target be an intended minimum or maximum or both?
- What range of offences should be eligible for pre-charge warnings?
- What process should be followed by the decision maker?
- What reporting should occur?
- Should there be a monitoring or review system? And, if so, of what sort?

I am sure there are others that will arise from the consideration of these questions.

Community justice panels

An initiative that is associated with the development of the pre-charge warning system is a pilot scheme which has been set up by the police in Christchurch called a community justice panel. The reports I have seen about this development indicate that the panel is peopled by volunteers. Offenders who are prepared to admit guilt and co-operate go before the panel and the panel determines what the sanction should be, but in an environment of much greater interaction with the offender than occurs in the court where summary offences are being dealt with. A recent report referred to 100 offenders having appeared before the panel, of whom 89 per cent complied with the order set by the community panel. Those who do not co-operate are returned to the court system. The result of sanctions being imposed by the panel is not, however, the stigma of a conviction. It is not clear from the publicity material I have seen what record is kept of those who appear before the panel.

This proposal seems to be similar to neighbourhood justice panels in England and Wales. Lord Judge had some words of caution about this proposal as well, and they also bear repeating. He said:¹⁸

So while I am perfectly happy to accept that neighbourhood justice panels may have their role in some parts of the country, the arrangements by which they are created, the ways in which they work, and their jurisdiction and powers need to be very carefully examined so as to ensure that they are either directly linked to the Magistrates Court system or directly linked to the Police out of court disposal system. As an extension of one or the other, in an appropriate place, well and good: but a third distinctive and separate method for the administration of summary justice has no appeal for me, and I suspect that if you are required to think about it, it may have no appeal for you. The

¹⁸ Lord Judge, above n 13, at 18.

devil will be in the detail, and the availability of resources, whether police or community resources, and how these panels should be assimilated into our existing structures.

We need to consider the issues raised by Lord Judge in the context of the English neighbourhood justice panels before the pilot becomes a firm initiative. Lord Judge's concern that we should not end up with a quasi-judicial function sitting somewhere between the executive and the judiciary, but not subject to the normal accountability requirements that apply to the exercise of judicial power, including the requirement to operate in public and rights of appeal, deserves to be debated. Equality of treatment will also be an important issue: is it appropriate to have one system of summary judgment that ends with a conviction for the guilty and another that does not?

Conclusion

Most of us here today are engaged in the enterprise of operating a fair and efficient criminal justice system in our respective jurisdictions. The pressure to increase efficiency is not going to slow down and the imperative of the right to a fair trial never diminishes. Our challenge is to meet the former objective without compromising the latter. I thank you again for the opportunity to speak to you today and I hope that you have an enjoyable and informative experience at the Conference.