FORMAL LAUNCH OF THE REPORTS OF THE REVIEW OF CIVIL AND FAMILY JUSTICE – 5 SEPTEMBER 2017, NISI PRIUS

ADDRESS BY THE RIGHT HONOURABLE LORD JUSTICE GILLEN

Introduction

Good afternoon. I would like to begin by adding my own welcome to that already extended by the Lord Chief Justice. I am delighted that so many of you have joined us today to celebrate the culmination of our extensive, fundamental review of the civil & family justice systems in this jurisdiction. May I also thank the LCJ for his kind words on my role in this matter. The product of the Review is two comprehensive reports on how those systems can be transformed in order to improve access to justice; achieve better outcomes for court users, particularly for children and young people; and to create a more responsive and proportionate system that makes better use of available resources, including new technologies.

I was honoured to be invited by the Chief Justice to lead this Review and it is immensely satisfying to be able to revert to him, having completed the task assigned to me, within the challenging timescale we set ourselves of two years. This has by no means been a solo project. To borrow from Montaigne, I have gathered a posy of other men's (and women's) flowers. Only the string that binds them is mine. I have been very ably supported by a Review Group, a Reference Group, subcommittees and a dedicated small group of civil servants without whose tireless intervention this task would never have been completed. More about this later.

The Case for Reform

Seventeen years have now elapsed since Lord Justice Campbell conducted a review of civil justice in Northern Ireland. The world has certainly moved on during that time. Most notably, the pace of technological change has been exponential. Since the year 2000, we have seen the emergence of broadband, ipods, Skype, Facebook, YouTube, flash drives, Google maps, Twitter, kindles, iphones, electric cars, 3d

scanners, ipads, Xbox and even galactic flights. How we live, work, spend our leisure time, socialise and communicate with each other has changed beyond recognition. The public's expectations about how they should be able to access services have changed accordingly; people now conduct much of their daily communication using tablets or smart phones and there are now more mobile phones in use than there are toothbrushes.

The demographics of Northern Ireland have also changed. Our population has increased by an estimated 11% since the census taken in 2001. The average age of our population has increased, as has our life expectancy. Our society is more ethnically diverse. People lead more mobile lives and family dynamics are more complex than ever before.

In addition, we cannot ignore the fact that we have witnessed the worst economic crisis since the depression in the 1930's. The age of austerity is upon is, like it or not. In the course of our deliberations, we were determined to ensure that austerity did not dominate our Review and induce a fatalistic response; rather, we regarded the downward pressure on the resources available within the public sector as a spur to look critically at our systems, our procedures and our courts so as to ensure that access to justice could be maintained for all, not just for either the very poor or the very rich.

Other parts of the UK and the Republic of Ireland have already recognised the imperative to take a critical look at their systems of justice, and it has certainly been timely for us to do likewise. We have learned much from our immediate neighbours and we have also had the benefit of studying recognised international best practice. We have spoken to a wide array of distinguished experts in other jurisdictions worldwide with similar legal backgrounds, including New Zealand, Australia, Canada, the USA, Singapore, South Africa, Holland and Finland. Comparative law

is an experienced friend and we must foster these friendships in the years that lie ahead.

This Review is not merely a jeremiad against the past and it contains no algorithmic formula for distilling change. However, we cannot remain chained to the present. The case for reform is both compelling and urgent, and we must acknowledge and apply the fresh thinking that has emerged elsewhere lest we get left behind. In the words of Robert Louis Stevenson:

> "To be overwise is to ossify; and the scruple-monger ends by standing stockstill."

Modalities of the Review

As I mentioned earlier, our review methodology embraced two main committees. The Review Group was practitioner focussed and so included members of the judiciary as well as representatives of the legal professions and the relevant Government departments. The Reference Group was established to allow external stakeholder groups to provide their input directly to me and it encompassed a wide range of interested organisations. Members of the public were also encouraged to contribute via a website we set up for this express purpose.

The detailed consideration of the main themes which emerged across the various court divisions and tiers was undertaken by 17 sub-committees of the Review Group made up of just under 100 contributors. They have pursued their tasks with relentless inventiveness and produced a series of excellent issues papers which were then considered, in turn, by both the Review Group and Reference Group.

I also met personally with a number of groups reflecting particular interests, in particular groups representing the interests of children and people with disabilities. I found their accounts of real life experiences of coming to court highly instructive and absolutely invaluable.

The Review's findings were, therefore, substantially informed by the views of very many interested stakeholders and took account of an extremely broad range of perspectives. This Review was not simply a conversation among lawyers. It was ambitious in both its breadth and depth and this far-reaching and inclusive exercise has resulted in over 400 recommendations.

I would like to express my profound gratitude to all those who contributed to the Review process, from those who helped to generate the many constructive ideas and solutions contained in the reports we are launching today right through to those who undertook the laborious process of proof-reading the text for publication. I am indebted to you all.

Key Recommendations

I would like to touch briefly on a few of the main areas for systemic reform which were identified in the course of the Review and to highlight a number of our key recommendations.

Digital justice

In many respects, the advent of the digital era was the beating heart of this Review. Our historic commitment to due process requires us to utilise digital technology to the fullest extent possible, just as our courts have always evolved in the light of technical advances in the past. All the promptings of reason and good sense point in this direction if we are to avoid inevitable acquiescence in inferior solutions. But we must be realistic: technology is no more than a tool to enable us better to realise our commitment to due process, and as such due process must shape and limit the extent to which we can reform in the light of technology. For this reason, while we have signalled our clear commitment to becoming "digital by default" – which

includes moving towards paperless courts, online dispute resolution and other forms of digital justice, such as virtual or remote proceedings – we recognise that the implementation of such reforms will require strategic patience and a need to progress on an incremental basis. The reason for this is twofold: firstly, we must cut our cloth at a time of financial restraint and, secondly, we must be careful to ensure that the technical applications we adopt are in fact the correct solutions needed to meet our business requirements. In short, do not hurry but do not rest.

As a tangible illustration of our commitment in this regard, the concept of paperless courts is already being piloted in the Court of Appeal. The full implementation of paperless courts may be something of a longer-term aspiration, given the significant cultural shift this will undoubtedly require, but this proof of concept pilot has already demonstrated that we should have the wherewithal to move towards 'paper light' courts in the reasonably near future.

Alternatives to court

Another golden thread running throughout this Review has been a recognition that justice can at times be dispensed more efficiently, and arguably more fairly, in settings outside the traditional courts. Alternative dispute resolution and mediation are ideas whose time has come. Mediation must become an early port of call in judicial thinking. In the family sphere, useful approaches may include counselling, therapy and parenting programmes and the concept of courts being seen as a one stop shop where such services are readily at hand at the earliest stage possible as a means of ensuring the focus is kept on promoting the best interests of the child and repairing damaged relationships – matters that are often not best served by an adversarial system of justice.

Governance of the civil and family justice systems

I was struck during the course of the Review by how widely policy responsibilities for civil and family justice matters are currently spread across local departments. While I have had to be careful at all times not to cross the boundary between review and policy-making, I would observe that this spread in responsibilities is a potential impediment to making the many systemic improvements that I believe are required, however professional the officials in those departments may be.

An important by-product of the Review has been that it has demonstrated what can be achieved when all of the relevant interests are able to meet together in the same room. The Review has brought greater coherence and cohesion to discussions on these areas of justice and has drawn many strands together, through an inclusive process. I urge those tasked with the consideration and, it is to be hoped, implementation of the Review's findings to continue in this vein by working collaboratively together and taking on board the views of a wide and diverse array of stakeholders.

The Review reports make a number of important recommendations designed to improve oversight, drive performance improvements and encourage such collaborative working in the future. These include the creation of a Family Justice Board and a Civil Justice Council, and I am delighted that the Lord Chief Justice has today announced that these new bodies are to be established in shadow form in the very near future. I should also like to echo his call for the establishment of a Non-Ministerial Department, through the re-constitution of the Northern Ireland Courts & Tribunals Service, so that this jurisdiction is enabled to reap the benefits of a model which has been shown to work extremely effectively elsewhere.

Other recommendations

Other key recommendations in the reports we have published today include: the introduction of **problem solving courts**, an idea which has already been enthusiastically embraced by the Department of Justice; enhanced support and fresh thinking for **personal litigants** and those with additional needs, such as **children and vulnerable adults**; and **streamlined court processes** that will allow for the more efficient, less costly and timely disposal of court business.

Conclusion

I have made it absolutely clear throughout this Review that we were not undertaking it as a cost-cutting exercise. Many of our recommendations will of course, if adopted, make the courts more cost-effective but that has never been our principal aim. Access to justice - in its true sense, rather than as a euphemism for reducing legal aid spending – has been our guiding principle.

While many of the proposed changes in these reports will fall to the Northern Ireland judiciary to oversee and implement, many others will not. Some will require the agreement of Ministers and may be subject to parliamentary processes. The most important change, however, is a cultural change so that the justice system of the future is seen, operated and perfected in a new light.

As courts look to the future, there are of course many uncertainties, but at least one thing is for certain. The pace at which new issues and new challenges will arise will not abate; rather, it is likely to accelerate. Our court system should be optimistic about its ability to shape that future and should have the right structures put in place to enable it to do so. Judges, court administrators, technology experts, lawyers and the public at large will all play a role in determining the shape of this future. If those who work in and with the court system remain engaged, have sufficient resources, create an interdisciplinary synthesis and do their jobs well, most if not all of the pending challenges can and will be overcome.

I will conclude with another quotation, this time from Francis Bacon, which encapsulates for me the very essence of reform:

> "He that will not apply new remedies must expect new evils; for time is the greatest innovator."

Just because one group of people in the past set the frame does not mean that others in the future cannot break the mould. I commend these reports to you as a blueprint for genuinely transformative change.

Thank you.