

# THE LADY CHIEF JUSTICE'S OPENING OF TERM ADDRESS 2022

5 SEPTEMBER 2022

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It is a real pleasure to be here with you all today. I am delighted that we have been able to come together in person once again. I want to extend a particular and warm welcome to all of the judiciary and guests who have attended, particularly our guests Lord Stephens from the Supreme Court, Lord Justice Underhill of the Court of Appeal in England and Wales, Lord Malcolm from the Inner House of the Court of Session in Scotland and the Chief Justice of Ireland Donal O'Donnell. Your presence highlights the close and vital links we have.

This past legal year was framed by the Legal 100 History Project. I am indebted to those who contributed as we learnt much of our past and how law has developed over the last 100 years and where we are going as we move into the next century of law in our jurisdiction.

Of course, we have also been affected by the Covid 19 pandemic which has wrought significant societal changes and impacted on law. I am not sure that all of the change brought about by necessity is fully apparent as yet. However, I have been impressed by how adaptable the system has been.

I want to acknowledge the commitment and drive of all of those who have worked so hard during these challenging times to deliver justice, not least my judicial colleagues on whom we rely to ensure that justice is done and seen to be done. Also, court staff who processed applications, supported hearings, and managed the court houses and the technology. The legal profession who ensured clients were effectively represented and litigants in Northern Ireland who also helped make the contingency arrangements work, often at short notice. Those at the front line I also commend, such as probation workers, social workers, expert witnesses, guardian ad litem, and police as they assisted greatly in the adaptation and delivery of services.

The value of judicial leadership has never been more relevant than it is now, in the face of responding to the pandemic and planning recovery. Our lives have been dominated by an unprecedented public health pandemic. However, it is in the face of that adversity that we have come together to ensure that what we do is focussed on delivering access to justice.

This morning a new Lord Justice of Appeal, Lord Justice Horner, was sworn into office. He will be a great addition to our most senior court and I wish him well in his new role. Today I also want to acknowledge the huge contribution of our retiring Lord Justice of Appeal, Sir Paul Maguire.

Sir Paul has stepped down from a long and distinguished career. After serving as Crown Counsel with distinction Sir Paul brought his vast experience of public law to the bench and he has contributed greatly to the jurisprudence in that area. He has applied his legal skills to many other areas including Queen's Bench, criminal and family law. He has written some hugely significant judgments characterised by their thoroughness and clarity particularly in areas of constitutional law and human rights.

Sir Paul's public service has been unfaltering. He has also been a highly valued colleague to all in the Court of Judicature. I have greatly valued his support and his sterling contribution to the Court of Appeal and I wish him well in retirement.

I also wish Master McCorry our senior Queen's Bench Master well in his retirement after a long career. His institutional experience, and calm and measured approach has contributed greatly to the work of the High Court and I have valued Master McCorry's assistance throughout the last year.

The core values which are central to an independent judiciary are reflected in the Bangalore Principles and our code of judicial ethics. Mr. Justice Thomas encapsulated these in a speech given in 1998 entitled, 'Judicial Ethics in Australia' (1998). He said this:

"We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise

of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgement. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations.”<sup>1</sup>

I think that these words remain as pertinent today as they did then. They are the standard against which my colleagues and I measure ourselves on an ongoing basis.

That is because an independent judiciary is a fundamental component in any democracy. It is integral to upholding the rule of law. In Northern Ireland, all judges take an oath or affirmation of office which states:

“I .... do swear [or solemnly and sincerely and truly affirm] that I will well and faithfully serve in the office of .... And that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”

Section 1 of the Justice (Northern Ireland) Act 2002 establishes a clear constitutional commitment to the independence of the judiciary that must be upheld by the First Minister and deputy First Minister and all other Northern Ireland Ministers, along with all those individuals with responsibility for matters relating to the judiciary or otherwise to the administration of justice.

Generally, it has been reassuring to me that in Northern Ireland, parties to proceedings, politicians, the media and others in public life, respect judicial decisions and the independence of the judiciary and recognise that the appellate process is available for any challenge to decisions. That is the way it should be as cases are adjudicated independently, on their own facts.

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<sup>1</sup> (2nd ed. (1997) p9)

None of what I have just said detracts from the accountability of the judiciary to those who we serve including the public. This principle is allied to the fact that as a judiciary we aim to be open and transparent and engage where appropriate with those affected by the administration of justice.

During the past year I have engaged with many different groups, visited court houses around our jurisdiction, attended training and spoken to judiciary, lawyers and staff, all to get a better understanding of what we are doing well, and where improvements can be made. Drawing from these experiences I want to deal with three main areas which form key priorities for me and which I think it appropriate to address.

First, I want to address the recurring issue of avoidable delay which I know negatively impacts on those affected in a myriad of ways. Second, I want to reiterate my commitment to embedding problem solving justice so that we collectively address the underlying problems facing our society. Third, I want with the assistance of others involved in the administration of justice system to move forward with modernisation of the system.

Any discussion of delay requires an understanding that each case will have its own characteristics and complexity which will shape its trajectory. This issue cuts across all areas of law but I know is most acutely felt in the criminal courts when people are waiting for their cases to be heard. We have been able to keep Crown Courts running during Covid 19 and so the backlog is not as acute as it might have been. Also, by robust case management, those cases of vintage are being actively progressed and victim's needs are being taken into account. I have been impressed by the dedication and resilience shown by my judges. I know that while there remains much to do to address both the systemic issues and the impact of the pandemic, they are making significant inroads into the outstanding caseload.

In addition, access to justice requires proper funding of the courts. There must be secure and effective mechanisms to ensure that the administration of justice is adequately funded. Of course, this is not just a concern for the judiciary. It is a

concern of each of those organisations involved in the criminal, civil and family justice systems as justice is a system where delays in one part combine and escalate to cause delays in another.

By way of example, the Criminal Justice Board is the main strategic oversight group for the criminal justice system in Northern Ireland. The Minister of Justice, supported by the Permanent Secretary for the Department of Justice, chairs the Board and members include myself, Simon Byrne, the Chief Constable and Stephen Herron, the Director of Public Prosecutions.

This multi- disciplinary framework has agreed, while each of us recognising our independence, that we should highlight collectively our concerns regarding the system wide impact of the current financial position on the justice system.

The Northern Ireland Fiscal Council's assessment, in January this year, of the proposed three-year draft budget was stark. The Council set out the 'winners and losers', showing justice as the worst affected area and the only department to have a reduction in baseline. This independent analysis shows that justice would bear a disproportionate amount of pain, the impact of which could do lasting damage to the delivery of justice.

In England & Wales, an additional £2billion was allocated in recognition of the need to invest in justice services, and the importance of avoiding a detrimental impact on those in contact with the system.

The justice system has an obligation to provide access to justice and to build trust and confidence within the community. We know that without appropriate funding, backlogs and delay will continue, with unacceptable impacts that risk undermining confidence in the justice system.

That is not to say that the judiciary have stood still in the face of criticisms in relation to delay. Judicial initiatives, with the support of the profession, and other justice and voluntary organisations, are already driving changes some of which I would like to mention.

First, the Recorder, Her Honour Judge Smyth has spearheaded a successful protocol to expedite serious sexual offences involving children under 13 years of age. While formal extension of this initiative is subject to securing the necessary funding it has already made a positive impact. The aim is to make sure these vulnerable complainants are not re-traumatised by delays.

We are also to pilot, with the support of court staff, a robust system whereby the reason for adjournment of Crown Court trials will be carefully assessed to identify any thematic issues and solutions. The Crown Court Case Performance Groups, chaired in each of the divisions by the resident judge, are collaboratively addressing localised issues causing delay, promoting the Indictable Case Process initiative, and embedding the case management guidance and vulnerable witness protocols set out in Practice Direction 2/2019, developed, and led by Mr Justice Colton. Given the coincidence with Covid 19 this practice direction has not bedded in as it ordinarily would and so it is now a priority, through training and practical application, to make it our established good practice.

The planned abolition of oral evidence at committal is a welcome change that is long overdue. It should make a real difference to victims in that there is no risk that they might be called on to give their evidence at the magistrates' court. But to tackle delay substantively we need to drive forward implementation of the other parts of the Committal Reform legislation. Referring serious cases directly to a Crown Court judge will facilitate early case management and engagement that will inform what evidence is necessary to shape a case for hearing.

The judiciary also fully support use of Remote Evidence Centres for vulnerable victims and witnesses. Attending these Centres ensures that those giving evidence do not encounter a defendant within a court building and it avoids any disruption should an alternative court venue be necessary on the day of hearing. Additional facilities in this area have been funded by the Department and we encourage their increased use.

More generally, the wider implementation of remote participation, established within the current Covid legislation, has enhanced the ability of courts to progress cases that might not otherwise have been able to proceed.

Each of the measures in progress go some way to improving the position. Further legislative change, however, for example increasing the jurisdiction of the magistrates' court, that has the potential to address systemic issues while also alleviating the impact of direct transfer on the Crown Courts, is necessary in my view to ensure that we continue to improve our system and address avoidable delays. We need government action on some of these initiatives. It would be unfortunate if these opportunities were missed

I now turn to the second priority which is problem solving initiatives within the justice system. Clearly, there are pressures across all our public services and Health is one area that has been at the forefront of all our minds, and we cannot help but be concerned by the current rise in energy bills. Many of you will know and understand the various aspects of the justice system that link to socio-economic and health outcomes.

Problem-solving, hands-on initiatives are I consider, an invaluable tool when used appropriately to address such issues. They increase the potential for constructive engagement, which can assist in delivering an agreed and sustainable outcome at a lesser cost.

While one size does not fit all, as I have said previously, the fact that sitting judges do not mediate does not prevent them from adopting problem-solving approaches.

There are a number of examples I can turn to in the criminal justice field, such as those relating to Substance Misuse, Drugs and Alcohol, Domestic Violence and Mental Health. These initiatives require the engagement and support of others working in the field of health and social services and they cannot be successful without a shared commitment. The very real impact on our society is palpable, when we hear of a death of yet another person, who has been living on our streets; this cannot be acceptable.

I have visited the Substance Misuse Court during the past year and have seen what a difference it can make in empowering people with little hope to break the spiral of destructive behaviour that they are in. The key is encouragement and support services which means to my mind a proper joined up approach between justice, health, housing, and education. I think that taking problem-solving initiatives forward is a priority; they present a real opportunity for potential savings, both human and financial.

Over the summer I have also been working with Lord Justice Horner and Presiding District Judge McGarrity in another problem-solving context. We have engaged with a number of organisations in relation to using sport as a deterrent for those before the courts.

The judiciary witness, on a daily basis, some of the challenges facing young people who come before the criminal courts. We want to divert these young people from criminal behaviour at this crucial stage of their lives. Sport is another pathway that has the potential to prevent young people from committing crime and it has the capacity to help young people who have committed crime to become law-abiding citizens.

The benefits of such an approach are recognised in other contexts, including within the Fresh Start Agreement. I understand that the Department for Communities funds a Sporting Partners project to provide sports-based learning and support for hard-to-reach young men and women to prevent them from becoming involved or recruited into paramilitary activity, organised crime, and criminality. The Department of Justice also funds a sports initiative within our custodial establishments. Over the coming year, I and my judicial colleagues plan to promote this worthy concept so that it might positively impact the levels of reoffending and the remand population and so the impact on our society.

It is evident that addressing delay, embedding problem solving initiatives to protect and support some of the most vulnerable in society and modernising our justice system requires investment. Investment of time and funds. It also requires a



willingness to change, a willingness to work collaboratively, sharing knowledge and resources, and leadership.

On Friday last I was invited to speak at the official opening of the Foyle Family Justice Centre. This highlighted the considerable progress in addressing domestic violence and there is much in hand. The Centre has been long in its development but has finally come to fruition and it represents a bringing together, a collaboration and common approach of the different agencies to provide accommodation, services, and support together in 'One Safe Place' for those affected by domestic abuse. This will reduce the number of places a victim needs to visit for support with a view to reducing the re-traumatisation of victims and survivors. The centre will be the first co-located, multi-disciplinary, interagency centre for domestic abuse in Northern Ireland which will increase access to services and support for victims and their children and undoubtedly positively impact on many.

Many of the problems evident within the youth justice system stem from family issues and reinforce the need for early intervention in the family law jurisdiction. If the right solutions are found for children at an early stage, I think there is a better chance of stability going forward. That is why I have developed a new resolution model within family justice, which will be piloted from September. Mr Justice McFarland will lead a Family Resolution Court. Following detailed engagement with all those involved, the Guidance has issued online, and the judge will be identifying and listing suitable cases to progress within the planned structure.

In clearly identifying the issues in dispute, the court will aim to achieve early resolution wherever possible. There are obvious personal benefits to children and parents in focusing on the crucial issues and achieving earlier resolution. As many of you will know, I have been closely involved in family work within my career at the Bar and at the Bench; it has always been a subject close to my heart. I have worked with the judge on this initiative, and I am convinced of its real potential to improve the outcomes for families.

As we know however, courts are not always the best place of resolving disputes. Nevertheless, once an issue is before the courts, extending a problem-solving concept and using a funnel or triage system, enables early judicial oversight at the most appropriate level to identify the most urgent or serious matters, and the opportunity for early case management directions where needed. I want to encourage managing cases in this way to strengthen existing practice and build on a problem-solving framework.

Addressing delay, developing, and implementing cross cutting problem solving initiatives require the justice system to be transformative, which leads me to my third priority, modernisation.

My Judicial Modernisation Paper, which issued in autumn 2021, established a shared view of the way forward across the inter-reliant areas of estate, service re-design, and digital transformation. It has informed Vision 2030, a shared commitment by the Northern Ireland Courts & Tribunals Service, the Department of Justice and the judiciary, to deliver a modernised, efficient and effective courts and tribunals system that is essential in any modern society.

Under Mr Justice Huddleston's leadership a new Judicial Advisory Group, that also incorporates members of the profession, including the Young Bar and Young Solicitors Associations, will work alongside colleagues in each of the relevant areas to develop and implement new and improved practices. We have strong, independent, professional bodies in Northern Ireland that set a high standard. I particularly wanted to involve our newer members in this area of work. Their enthusiasm can only help drive us forward as they motivate and encourage those around them to appreciate the art of the possible.

Working closely with the NICTS we will test proposals and emerging innovations, identifying all opportunities to build on lessons learned throughout the pandemic. A recent success has been the introduction of a Probate Portal that has proven to be a very successful model, which online applications for Enduring Power of Attorney

will build upon. Each of these initiatives reflect a life stage where members of the public encounter the courts, at a time when ease of access is so important.

Enabling online access and lodgement of supporting documents is fundamental; e bundles represent such an important step forward and many case management decisions can be made by flexible approaches such as telephone and virtual hearings. We need to reduce reliance on hard copy papers that can only be in one place at one time, eliminate routine tasks and automate as much as possible, freeing up time and allowing expertise to be focussed and applied, as and when appropriate.

Our court estate includes many listed buildings but that in itself is also a constraint. The estate needs substantial investment. The NICTS is to be commended for their valiant efforts to enable online access at an escalated pace under very difficult circumstances. It has been a tremendous achievement. There is dismay when remote hearings are interrupted or unable to start but the staggering increase in the numbers of hearings involving some level of remote engagement over the past two years should not be lost or the value of what could proceed despite the impact of the pandemic underestimated.

Research is underway on the use of physical, hybrid and remote hearings. I understand that there will be many personal preferences, but we must take advantage of more efficient systems and technology. We must also ensure however, that the integrity and formality of court hearings is respected and that decisions as to whether all or some of the parties are involved physically or remotely, are made in the 'interests of justice'; taking into consideration the impact on those involved, including public services, such as health professionals, social workers, psychologists, forensic scientists and police officers. All involved will want to ensure that they only appear at court when absolutely required.

I have issued Guidance on Remote, In Person & Hybrid Attendance that aims to balance the interests of justice and the efficacy of our system, particularly as we recover from the impact of the pandemic. While there will always be a need to take into consideration the individual nature of a case, I have set out arrangements that

should provide some consistency and predictability to the question of attendance in courts, whether that is based on the type of case, the stage of the proceedings or the role of an individual.

I have previously outlined the categories that may require physical attendance and those that may be best suited to primarily remote attendance and as we commence a new term, we will work on that basis, using remote means as a complement to our traditional court methods where appropriate.

I think it is important to take this opportunity to re-iterate them.

Each category is non-exhaustive. However, in terms of physical attendance it will obviously include full, final or lengthy proceedings, proceedings involving sensitive and/or complex matters, children or young persons, those requiring an interpreter, those where quantum is an issue, some proceedings involving personal litigants, those requiring client instructions to be taken at regular intervals in the course of the proceeding and proceedings where there is a challenge to substantive evidence or where the demeanour or credibility of a witness is important.

Alternatively, some matters that are suited to primarily remote attendance, include short or uncontroversial procedural business, non-complex short contested proceedings, proceedings that are mainly or fully by way of legal submissions or expert evidence or where the evidence is uncontested and both parties are represented, first appearances and bail applications, where evidence is being given by professionals or where the parties are abroad, where parties are in agreement to proceedings/parts of proceedings being held remotely and the court is content, where the situation requires immediate protection of a child or vulnerable adult and initial and ex parte applications for non-molestation or occupation orders.

The current context in which we all live, with primarily digital access to services, the need to tackle avoidable delay and minimise cost must represent the drivers by which we go forward. A willingness to be innovative and creative is essential, as is the need to collaborate. So much of what is before the court stems from systemic

socio-economic issues. We must bravely look towards adopting holistic cross cutting approaches that can address the core issues and improve society for all.

As outlined in Vision 2030 our justice system must allow people to assert their rights if they have been infringed; to be reassured that an allegation of crime will be pursued fairly and openly; and to be able to seek the support of the justice system at key points throughout their lives, should the need arise.

While a number of business areas have recovered to the levels experienced before Covid, we cannot be complacent, as we need further improvement and to recognise that remote working is not in itself modernisation of the system. There is much more to be done on that front to bring us into the 21<sup>st</sup> century and aligned with social conditions where our day to day applications are made and processed online.

I have mentioned the Family Resolution Court and in addition I know the shadow Family Justice Board is also taking forward several work streams to improve the arrangements for family courts at each tier, with the recommendations made as a result of Sir John Gillen's review of family justice underpinning the way forward. Examples include speeding up transfer of cases between family court tiers, the transfer of undefended divorce hearings to Masters, which commences this term and the agreement of a new Protocol for cases involving children across the United Kingdom.

Similarly, Mr Justice McAlinden as chair of the shadow Civil Justice Council is overseeing the production of pre-action protocols in relation to civil matters as diverse as personal injury, ejectment, defamation and clinical negligence proceedings. The aim of these pre-action protocols will be to create more efficient and streamlined processes for civil claims, with an emphasis on early resolution where possible. Development of revised processes are necessary before any technology changes are made.

All of the above is within the context of our obligations to maintain the rule of law. That is central to our legal system and has been reiterated by many throughout the last 100 years. It remains our touchstone. Lord Tom Bingham's 2010 book, 'The Rule

of Law' describes it as "a sacred flame which animates and enlightens the society in which we live."

The lack of progress within our political institutions has reinforced to me the importance of leadership. I am willing as those before me to assume responsibility for the control of the court estate and operational support for the running of the courts, particularly at this time. I hope that there will be further meaningful engagement on this issue. I also earnestly hope that we will see the return of government here in the near future, as that will no doubt assist the administration of justice.

In conclusion, I consider it essential that we take time to reflect and learn. There are many opportunities to progress within the justice system. We must work together to prioritise those that will deliver the best outcomes within the best framework. Working together we can carry out our responsibilities with a shared sense of purpose.

Thank you.