

# LADY CHIEF JUSTICE OF NORTHERN IRELAND

## OPENING OF TERM ADDRESS

5<sup>TH</sup> SEPTEMBER 2023

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Good afternoon.

It is my pleasure to welcome you to this Opening of Term Address. I extend a particular welcome to those members of the judiciary from other jurisdictions who have joined us today - Lord Matthews, Mr Justice Charleton and First Deemster Corlett. I would especially like to welcome Lord Burnett, the Lord Chief Justice of England and Wales, who is retiring from this role on 30 September after six years of distinguished service.

This annual Address offers me the opportunity to look back and reflect on the legal year just past as well as to look forward to what is ahead.

Looking back, I begin by paying tribute to the late Lord Carswell, former Lord Chief Justice of Northern Ireland, as well as Sir Liam McCollum and Sir John MacDermott, esteemed former Lord Justices of Appeal, all of whom passed away during the last year. Each made a remarkable contribution to justice in Northern Ireland and my condolences as well as those of my judicial colleagues go to their families and friends.

### **Three Themes from last year**

In my Opening of Term address last year, I spoke about three main areas which I said would form key priorities for me. Today I will begin with some follow up on what I said.

First, to update as to delays particularly in the Crown Court. As I have previously explained, the outstanding caseload in the criminal courts increased significantly from the first covid lockdown in March 2020. In the Crown Court, there were 675 outstanding cases in March 2020. This increased to 1,217 in October 2021. The number of outstanding cases has fallen to 980 in June 2023. This is a manageable number which I am confident we will be able to clear within a reasonable time scale given that one fifth of cases are likely to plead and that the other cases are being case managed to hearing.

There is more work to be done but I am confident that we are on the right track. Through funding provided by the Department of Justice we are able to continue this year with additional magistrates and Crown Court sitting days to address the backlog. The reduction I have mentioned clearly demonstrates what can be achieved when all those involved in the criminal justice system and supporting voluntary

organisations work together to the benefit of victims, witnesses, defendants and the overall administration of justice.

I would particularly like to recognise the dedication and resilience of the Crown Court judges this year. I would also like to thank the court clerks and court staff for their unstinting support. I especially welcome that case progression officers have now been embedded within Northern Ireland Courts and Tribunals Service (NICTS) as their role is essential in supporting robust case management by the judiciary.

I am also very pleased that the Crown Court is returning to Downpatrick and Londonderry. Local justice is essential for those who have to attend (as witnesses, practitioners or court staff) but also so that justice can be seen to be done in appropriate venues throughout Northern Ireland.

I am conscious that issues remain about how long cases are taking to complete. It is apparent from the statistics that the primary concern relates to the investigation and case preparation stage. As regards court delays my office has been working with the NICTS and local judiciary to examine more closely the reason recorded for the adjournment of cases. This work was carried out as a pilot exercise between October 2022 and May 2023 in a small number of regional Crown Court venues. Evaluation of that pilot is at an advanced stage and points to issues of readiness with both the prosecution and defence in many cases.

The judiciary do not want cases to be delayed but obviously have to adapt to what they are told as to readiness to ensure a fair trial for all. Delay is a recurring concern raised with me and so to further inform that work my staff will be attending the Crown Courts in Lagside in September to note the reasons being advanced by the parties when seeking an adjournment in order to isolate where the problems lie and engage with those who can assist such as the PPS, Bar and Law Society.

Having visited the Rowan Centre and Foyle Family Justice Centre recently and having spoken to the Victims of Crime Commissioner I have been told that a real issue is effective communication to victims as to case progression and outcomes. I think that this needs some urgent attention and proper consideration of an information hub which can be accessed by those who need to know about their cases. I will push for progress on this with all relevant agencies in the coming year.

An example of concrete progress is that the Recorder of Belfast, Her Honour Judge Smyth, continues to lead an initiative to fast-track serious sexual offence cases involving child witnesses under 13 years old (known as the “voluntary protocol”). The Department of Justice carried out an evaluation of the 25 cases dealt with under the voluntary protocol to 31 March 2023. Evaluation of the eight cases fast tracked from the date reported to the police shows a 74% reduction in the time taken from report to the police to the case being dealt with at court. The evaluation also found a 30% reduction for a further 17 cases falling slightly outside the agreed criteria which were fast tracked “in the spirit” of the protocol at later stages of the criminal justice

process. Having considered the outcomes to date I am impressed at what can be achieved and would urge all those involved to continue to focus their efforts to ensure all child victims of serious abuse are prioritised and do not face avoidable delay at each stage of the process.

The establishment of remote evidence facilities, or RECs, was a key recommendation in Sir John Gillen's report into serious sexual offences. The centres can reduce the risk of re-traumatisation of vulnerable victims and witnesses by removing any chance of encountering a defendant within a court building. They also provide a more relaxed, less intimidating environment including child friendly facilities for child complainants.

I recently visited the new bespoke REC in Belfast which serves Laganside Courts. It is an excellent space. Initial feedback from witnesses is very positive with some indicating that without the availability of the REC they would not have given evidence and would have dropped out of the criminal justice process. While at an early stage, there is also some evidence to suggest that the availability of the REC and associated lower dropout rates could contribute to a higher number of early guilty pleas. I am committed to get the message across that a request for special measures cannot be used against a witness. The judiciary are fully supportive of this initiative and would encourage a greater take up by the profession.

The number of outstanding cases in the magistrates' courts is still approximately 3,000 more than it was pre-covid. It is notable that there has been an increase of 7.5% in new business at this tier. However, this high volume is something I will monitor. It may be that cases are also taking too long absent the complete roll out of committal reform or that there are other reasons for delay.

My second priority last year was my commitment to embedding problem solving justice. I visited the Substance Misuse Court again in April and was extremely impressed at how it is empowering participants to break the spiral of destructive behaviour that they are in. There is excellent work being undertaken by judges and probation officers supported by those working in the voluntary sector. Other problem-solving initiatives such as the Family Drugs and Alcohol Court and the proposal for a new domestic violence court stand paused or unable to go ahead due to resource issues. This is regrettable because the "one stop" shop justice model has already been validated and so there is no reason why there cannot be more progress in this area. I personally think the effort is very much warranted when we see the real opportunity for potential savings, both human and financial, that these initiatives can present.

In the area of domestic violence and abuse, I welcome the recent legislative changes that have been implemented including the new offences of domestic abuse, stalking and non-fatal strangulation. The legislation also introduced the role of Sexual Offences Legal Advisor or SOLA to provide invaluable legal advice to complainants on matters such as third-party disclosure and previous sexual history. The SOLAs

are currently assisting in approximately 55 cases each month with the DoJ considering the development of an equivalent service for children. I think that more can be done in this area with the necessary funding and implementation of outstanding legislative provisions. In particular, I see no reason why victims of sexual offences should not have access to legal advice within the system. That would allow them to know exactly what is happening with their case and to be advised on issues such as disclosure and for any representations to be made in court on their behalf.

My third priority was to work with others to move forward with modernisation of the justice system. Vision 2030 is the shared commitment by the NICTS, the Department of Justice and the judiciary to deliver a modernised, efficient and effective courts and tribunals system. Vision 2030 is structured into three programmes being led by NICTS: People, Estate, and Service Modernisation. Work is ongoing on a major project to procure, design and implement a new line of business solution called Themis which will replace ICOS. The service modernisation programme will also see a number of other online solutions implemented to support the delivery of business.

At the suggestion of the Judicial Advisory Group, I know that active consideration is being given to the promotion of alternative resolution options or initiatives using an online portal; online case initiation and digital progression; and the potential for e-service and digital signatures. I commend the work already undertaken however, I am impatient for change in this area and am concerned about drift which may lead to our legal system being out of step with modern working methods. I have advocated for the use of online portals and online case management. I had hoped that the success of the probate portal would lead to a similar portal for enduring powers of attorney and that by now we would have online filing of case papers starting with areas of non-contentious work.

On the estates side, there are several major projects to address the deteriorating court estate. I was interested to read that the Justice Secretary in England and Wales, Alex Chalk KC MP, recently announced that £220 million will be invested in the court estate over the next two years to bring buildings up to modern standards and improve accessibility. In his announcement he recognised that a modern court estate is one that contributes to the dignity of the law and delivers modern standards of access to justice that is open to all. This sentiment applies equally to Northern Ireland where I think some clear prioritisation is needed otherwise good individual plans will get subsumed within the bigger picture.

The long-standing commitment to projects such as a Northwest court complex and the redevelopment of the Old Townhall are two examples of projects that have waited too long meanwhile family and civil courts and coronial court space is often limited due to competing demands for criminal trials.

## **Rule of Law**

Since my last Opening of Term address, we have seen major challenges to the rule of law emerge both locally and across the globe. In this jurisdiction, we have seen attacks on Newtownards Courthouse and threats to a judge being graffitied on the courthouse wall. The judge concerned described these matters as posing ‘an existential threat to the rule of law’ in the area. I agree with that sentiment.

Without a judiciary that is individually and institutionally independent, and therefore in a position to make decisions free of external pressures and threats, there can be no rule of law. The rule of law is the cornerstone of our democracy. Threats, and attempts to intimidate our independent judiciary are threats to the rule of law and threats to the rule of law are, ultimately, threats to the strength of our democracy.

For the rule of law to prevail, society must be able to be confident that judges can, and will, determine every case that comes before us fairly and with integrity and impartiality. Judges do not make decisions nor act with impunity. We are individually accountable for our judicial decisions through the appeals process, which is also an important constituent element of institutional accountability.

That is not to say that people have to agree with every judicial decision or accept decisions without question or comment. I have no difficulty with judicial decisions being the subject of informed comment or criticism. What is not acceptable is commentary in the press or on social media that takes the form of personal attacks on individual members of the judiciary in furtherance of political or personal agendas. As a society, we must be vigilant in the face of such commentary to ensure that public confidence in the administration of justice is not eroded.

The principle of open justice is also of fundamental importance. The vast majority of court hearings take place in public. Where decisions are likely to give rise to public or media interest, summaries are made available by my Office for the benefit of the parties, the press and the public. These practices ensure that justice is done and seen to be done.

It is my strong view that this openness with the media, and the public, not only secures greater institutional accountability but also contributes to public confidence in the justice system by enhancing public understanding of what courts do and how judicial decisions are made.

Building on this, I have long thought that the broadcasting of our senior courts would represent a very positive step in promoting open justice, allowing greater transparency and helping the public to better understand the complex decisions that judges make. Such broadcasting occurs in the Supreme Court and the other UK jurisdictions. Broadcasting of sentencing remarks has recently been implemented in

the Crown Court in England and Wales. This method of communication, however, is currently prohibited here.

I raised the question of amending the legislation to allow for some broadcasting with the then Justice Minister in August 2022 but unfortunately any action was overtaken by the collapse of the Northern Ireland Assembly. I am currently looking into whether it will be possible to proceed with a pilot in the autumn to consider some broadcasting of court decisions.

Another aspect of institutional judicial accountability is through the conduct of relations with the other branches of government. I have regular meetings with the Minister of Justice when the Executive is functioning. The present circumstances are such that there is not a Minister of Justice nor a Justice Committee with which I can engage. I acknowledge, and have sympathy for, the difficulties our politicians face in trying to deal with the divisions within our society, however, it is a source of disappointment and frustration to me that the Northern Ireland political institutions continue to be inoperative. A lack of political direction to the machinery of government means that those of us who are engaged in the delivery of public services are inevitably restricted in what we can do to modernise and improve the quality of those services.

#### **Themes for 2023/24**

If I may move to discuss some of the other priorities I have for this coming year.

Building on what I have just said, my first and primary aim is to continue with my efforts to implement a non-ministerial department model for the courts in Northern Ireland. This time last year I said that the lack of progress within our political institutions had reinforced to me the importance of leadership and that I was willing to assume responsibility for the control of the court estate and operational support for the running of the courts. One year on and unfortunately we are in the same position, with the lack of government resulting in uncertainty for the justice system.

A non-ministerial department or NMD is a government department in its own right that deals with matters for which direct political oversight has been judged to be either unnecessary or inappropriate. NMDs have budgetary independence as they negotiate their finance directly with the Treasury or Department of Finance. They are, however, accountable to parliament through their sponsoring minister.

The NMD model has been operating successfully in the court services in the Republic of Ireland and Scotland for a number of years. The chief justices of each jurisdiction chair their respective boards which provide strategic leadership for the organisation and are comprised of a mix of judiciary and senior management. Responsibility for the day to day running of the NMD is delegated to a chief executive. Another example of a NMD closer to home is the Public Prosecution Service.

The idea of a NMD for the courts in Northern Ireland was first raised in 2007. This year I had an extremely helpful meeting with the chief justices of Ireland and Scotland and the chief executives of their court services. They told me that the NMD model has created a real cohesion between the judiciary and staff with a shared vision and shared priorities. It has also strengthened the principle of judicial independence and allowed the board the freedom to concentrate on both the operation of the courts but also the strategic direction and policy of the organisation. The staff of the NICTS provide excellent support to the judiciary and the administration of the courts, however I think the NMD model would allow the focus to return to core activities.

The public do not readily see the serious problems that face the justice system such as the high cost of maintaining the court estate and difficulties in recruiting and retaining experienced court staff. Many see the courts and court administration as yet another public service rather than an essential aspect of the state just like parliament and government. At a time when the control of expenditure is under pressure, the benefits of spending on education, health and infrastructure are obvious but the benefit of spending on justice and its modernisation and the remedying of problems is not.

While we now have an agreed budget for 2023/24, justice has again lost out to health and education. The departments of health and education have seen their budget allocation grow by just under 70% and 45% respectively over the last 12 years whereas the justice budget has only seen 3% growth. When accounting for inflationary impacts, this means that in real terms the DoJ budget is around £380m below where it would be if it had kept pace with inflation.

Budgetary pressures are being felt across the whole justice system and there is now a significant risk to the ability to deliver services to support the administration of justice including funding the projects I mentioned earlier, investment in the court estate and the timely payment of the legal profession.

By way of further example, I mention the fact that the Northern Ireland Law Commission was stood down in 2015 because of financial pressures facing the DoJ. This means we are the only jurisdiction in the UK and Ireland without a functioning law reform body. This is disappointing, if not embarrassing. Economic analysis has highlighted the benefits of meaningful law reform to the economy, to society and to businesses. Mr Justice Scofield has been striving to identify some limited resource to try to kickstart the work of the Commission but it is essential that long-term funding can be identified to ensure that we have a proper functioning system of law reform in this jurisdiction.

Of course, health and education are key areas that must be properly funded. But the risk associated with underfunding of the justice system also has major ramifications for the provision of fair and expeditious justice for citizens, including the most vulnerable in society. I believe that the NMD model can benefit the administration

of justice. It allows the judiciary to use our practical and operational insight to ensure that the budget for running the court administration is used effectively and directed to where it is most needed. The benefits of such an approach has been evidenced in our neighbouring jurisdictions. In Scotland, while waiting for the legislation to give effect to a NMD, a judicial led Board to run the courts was set up in a shadow form. That is my primary goal for this coming year driven by a concern I have that without structural change justice will not have the optimum support it requires.

My second focus for the coming year is the welfare and training of judges, matters for which I am statutorily responsible. In December 2022, all Crown Court judges attended training on serious sexual offences cases. Another bespoke training event was held for the family judges. I intend to continue this approach with plans well in place for training this year on homicide and terrorism offences for Crown Court judges and reporting restrictions and open justice.

It is important that judges receive training not only in the black letter law but also on the key concepts of judging such as communication, running court proceedings, assessing the credibility and reliability of evidence, fostering an inclusive and accessible working environment and understanding the needs of those who appear before them.

My statutory role as Head of the Judiciary also comes with responsibility for the maintenance of appropriate arrangements for the welfare and guidance of the judiciary. Welfare is an area which is often overlooked. During the Covid pandemic, the judiciary and court staff worked tirelessly, showing great adaptability and responsiveness in very challenging circumstances. This, however, has had a significant impact on wellbeing as is clear from my engagement with colleagues across the judicial tiers. I have established a Welfare group under the leadership of Madam Justice McBride and we are developing a programme of actions which should make a real and meaningful difference.

In the coming year, I will also continue my focus on increasing the diversity of the judiciary. A diverse judiciary is necessary to secure public confidence and reflect society. While the 2021 census showed 51% of Northern Ireland's population to be female they only make up 39% of the court judiciary and 17% of King's Counsel and women remain under represented at senior levels of the judiciary. While it is more positive that 51% of solicitors are women, only 42% are directors or partners in solicitors' firms. There is clearly an enormous pool of talent available. We need to encourage those in that pool who may previously have felt disenfranchised to see senior positions or judicial office as an option open to them. To that end, a KC appointment process will be launched in September and I encourage all with the necessary expertise to apply.

The NI Judicial Appointments Commission, which I chair, through consultation and collaboration with the legal profession and the judiciary, has developed a new

judicial profile against which applicants for judicial office will be assessed. The profile enables a more flexible, tailored approach to assessing the skills, experience and behaviours needed to serve in each judicial office ensuring the most meritorious applicants being appointed.

I was very pleased to spearhead a working group earlier this year which was set up within the Bar to launch a new Legal Diversity Project with the aim of embracing all forms of diversity but with an initial focus on the issue of gender diversity. We also need to identify ways of increasing diversity and inclusion within the legal profession of women, those with disability, and people of different ethnic and social backgrounds.

The recent pilot of judicial assistants in the Court of Judicature supported by the Bar and Law Society is also an exciting opportunity for young people coming into the legal profession which I hope will provide them with invaluable experience as they progress onto the next stage of their careers.

Finally, as regards legacy issues, I understand that many people have concerns and are fearful of impending changes which they consider might delay or frustrate justice. This is a sensitive and difficult area. Given expected legal challenges it is not appropriate for me to comment on the issues that may arise for legal adjudication. The courts will play their part when called upon in as timely a manner as they can.

On a practical level, many cases remain at present before the courts. There are currently 36 legacy inquests associated with the original five-year plan still to be concluded (16 of these are at hearing). In addition, there are 11 new legacy inquests that have been directed this year by the Attorney General. I understand that each and every family affected will want their inquest heard. The coroners will do their best to manage the caseload within the available resources in liaison my office and the Presiding Coroner Mr Justice Humphreys and we will consult with all interested parties if issues arise in the courts in relation to the management and resourcing of the outstanding cases.

In conclusion, I can see that the coming year is going to present the justice system with a number of challenges. The administration of justice is an essential underpinning of a stable society, but this needs investment and support. The value of clear leadership is more pressing now than ever and I remain committed to working with others to ensure the delivery of justice in this jurisdiction.