

**THE LADY CHIEF JUSTICE'S OPENING OF TERM ADDRESS
THE HON DAME SIOBHAN KEEGAN**

6 SEPTEMBER 2021

INTRODUCTION

Colleagues, ladies and gentlemen, it is my absolute pleasure to be speaking to you today. I am sorry that we are still operating in a restricted environment but nonetheless you are all very welcome and I am grateful for your presence either in person or remotely.

I am particularly honoured that the Lord Chancellor is with us today. Many of you will know that the Rt Hon Robert Buckland QC was appointed as Lord Chancellor and Secretary of State for Justice on 24 July 2019. During his legal career he gained a breadth of experience that includes acting as a Recorder of the Crown Court, sitting on the Midland Circuit. No doubt his advocacy skills, nurtured and recognised at the Inns of Court School of Law have served him well both within his legal and political work. I know that since his appointment he has been very supportive to judiciary in Northern Ireland, and for that we are very grateful.

Lord Chancellor you are very welcome and I really appreciate that you have joined us today, which as you can understand is a particularly special occasion for me.

I would also like to thank Dame Victoria Sharp DBE, President of the Queen's Bench Division in England & Wales, The Right Hon Lady Leeona Dorrian, Lord Justice Clerk, Scotland, Mr Justice Donal O'Donnell, judge of the Supreme Court of Ireland, nominated in May for appointment as the next Chief Justice of Ireland from October 2021 and Chief Deemster, Andrew Corlett the First Deemster of the Isle of Man. Minister of Justice, Naomi Long MLA you are also very welcome and thank you too to Lord Stephens and Lord Justice Weatherup for attending today.

SECTION 1: ACKNOWLEDGEMENT

As this is my first address at the opening of term I want to start by mentioning my predecessor Sir Declan Morgan who has given outstanding service as Lord Chief Justice of Northern Ireland for the last twelve years. Not only has he been an exceptional and insightful judge, who intuitively gets to the heart of the most complex issues, he has also been a distinguished leader. His accomplishments and successes as Head of the Judiciary in Northern Ireland have positively influenced the full breadth of the justice system for the benefit of all who engage with the courts.

We all know how difficult and challenging the last eighteen months have been but Sir Declan set out a clear way forward in response to the Covid 19 emergency which I recognise. At each stage the priority has been that courts continued to operate. This included immediately reducing to 5 hubs for urgent business and we were quick to

recover with most types of business being listed again across the court estate by September 2020. Significant efforts have been made in the magistrates' courts, where we have the highest volume of cases coming into the system, and we are optimistic about recovering the backlog in the first half of next year.

In all courts new measures were adopted, whether that was dealing with straightforward matters administratively or by telephone. Most importantly we were able to extensively use remote evidence facilities to enable cases to proceed that might otherwise have been delayed.

This could not have been done by the judiciary alone. It involved the collaborative efforts of the court staff, the legal profession, all the organisations and individuals involved in the justice system.

Given the challenges presented by the Covid 19 pandemic I recognise the huge efforts of all of those who have contributed to the continuation of legal services. In particular, I want to thank the Northern Ireland Courts & Tribunals Service for their herculean efforts to support and enable courts to proceed. There were difficulties, not least with everyone learning very quickly how to use technology and get through the full business of the day, allowing for both a very different way of working and a dependency on the signal and equipment of any of the participants. There is no doubt that Covid has made us assess how we work within an accelerated timeframe and there are positives that we can take away as hopefully we move forward into recovery.

The pandemic has also highlighted the importance of using court time effectively and fairly through the use of physical, hybrid or remote court hearings. Now is the time to build on what we have learned and so I will turn to the future path ahead and my vision as head of the Northern Ireland judiciary.

SECTION 2: VISION GOING FORWARD

I understand that the law affects people across the criminal, civil and family jurisdictions. Common to all of these jurisdictions is the need to have decisions made in an effective and efficient way which are accessible and understandable.

With this in mind, I understand that delays cause problems for many engaged in the system and that is something I intend to closely monitor. Where I can assist I will, however it must be remembered that many agencies are involved in the delivery of justice and so improvements require a collective effort.

Open justice is also an important tenet of our justice system. I appreciate that during Covid 19 there have been some logistical difficulties with physical access but nonetheless public and media access has been facilitated and that is something that will continue.

I have referred to other agencies who are involved in the delivery of justice. In my view it is important that there is ongoing dialogue with those bodies and all affected by the application of law in order to promote good understanding and confidence. I am committed to collaboration with all justice agencies and justice users in order to achieve this aim.

Through Covid 19 I think we have realised how adaptable we can be. We have utilised methods of remote working for instance that we would not have contemplated before and this is something I want to build on going forward. The methods we have utilised are not replacements but we have to modernise and so I believe in a complementary approach and ongoing consideration of making our systems more accessible and user friendly. I do this bearing in mind that some users of the justice system are more adept than others, some have physical disabilities or learning issues or are self-representing and so all needs must be catered for.

I also encourage all who are qualified to think of public service as a member of the judiciary. This should ensure that we have a diverse judiciary reflective of our society as I consider that another important aspect in the promotion of justice. I am conscious that my appointment marks a change in terms of leadership in senior office. I hope that it will demonstrate that judicial office including the most senior post is achievable for all, women and men, and those from a range of backgrounds, on the basis of merit.

SECTION 3: DELIVERY

As I said we need a flexible and reliable system that meets the needs and expectations of contemporary society, a system that will keep pace with our changing environment and technological developments.

To achieve such an aim there must be sensible, long-term investment for the courts and tribunals. Such investment must of course be managed in a modern and efficient manner. Each of those involved in the justice system is responsible for their own part of a process which, for many members of the public, seems like one overall process.

I believe strongly in working collectively and cohesively to strengthen the provision of access to justice, whether that is through early resolution, mediation or in a court or a tribunal. Judges cannot bring about these developments on their own. I, and my judicial colleagues, will play our part in devising the right solutions.

There is significant work in hand but there remains much to do both in relation to how we use technology and in how we engage with those involved. Each of these themes featured heavily in Sir John Gillen's Reviews of Civil and Family Justice, which he undertook at the request of Sir Declan, as well as his review into the handling of Serious Sex Offences, which the Department of Justice instigated.

It is always important to remember that proceedings involve people, often at significant points in their lives, whether that relates to, for example, a victim of crime, an accident, injury or wrongdoing, bankruptcy, divorce or family breakdown, the need for protection of vulnerable adults and children, or where there has been a death in the family.

In terms of engagement the Crown Court Liaison Committee, chaired by Mr Justice O'Hara will be taking forward the work initiated by Mr Justice Colton that resulted in a revised Practice Direction for case management of Crown cases to reflect many of the recommendations made in Sir John Gillen's report. It sets out best practice and particularly the procedures required when vulnerable victims are involved. It was developed with the prosecution service and representatives of the legal profession and having taken on board feedback from the police, Victim Support and the NSPCC. We will be reviewing its application and effectiveness, ensuring that key parts such as establishing ground rules hearings, avoiding victims and witnesses being brought to court unnecessarily and improving case progression are embedded in our case management.

Most crown trials, of course, cannot proceed without juries. We need to ensure that arrangements to maintain the safety of our jurors, who play such a vital role in our courts, are maintained. I have been impressed by how willingly they returned to courts, once the appropriate facilities were put in place. The use of the International Convention Centre at the Waterfront in Belfast, along with Marlborough House in Craigavon and County Hall in Coleraine has really assisted with the process to empanel jurors and hopefully those facilities can continue so that cases listed can proceed timeously.

There are significant numbers of trials to be heard and delay can be so detrimental to those involved. While many other areas of business have been able to recover, the time lost within the Crown Courts creates a challenge for us all. While jury trials recommenced across the province in September 2020 it was April 2021 before we were back to the same levels of jury courts pre Covid. NICTS have worked hard to increase our capacity and an additional two courts are to be ready next month. That increase in physical capacity, as well as additional staff in courts and the prosecution service, will provide a foundation to increase the numbers of cases listed and address the backlog.

It is an area of acute concern at the Criminal Justice Board, which I attend with the Minister, Naomi Long, Simon Byrne, Chief Constable, the Director of Public Prosecutions, Stephen Herron, the Permanent Secretary of the Department, Peter May and Glyn Capper, Director of NICTS. Although the Crown Court was in a reasonable position pre-Covid the challenge to recover a backlog of 50% cannot be underestimated. While there is a shared commitment and funding has been provided we cannot be complacent and the current momentum must be maintained.

The planned changes to the committal legislation are long overdue but they will be key in helping to improve the timeliness and effectiveness of the system for the most serious criminal cases, which can currently spend significant periods at the initial file building stages. The reforms will facilitate early engagement between the prosecution and defence supported by judicial case management by the Crown Court judges. Most importantly however it will also mean a victim will no longer be at risk of having to give their evidence other than for a trial.

As mentioned I am also keen to pursue a greater emphasis on early resolution more generally. This is an approach that is suited to many different types of business but, as in the Crown Court, too often it is only at the last minute, at the door of the court, that the net issues are addressed. There are potential savings, both human and financial in the early resolution of disputes.

There are two areas where I consider there is great potential to build on what are currently informal working methods. Early neutral evaluation has been utilised within our Commercial Courts and I have discussed with Mr Justice Horner how we might develop a formal structure, testing it in such a way so that we can consider its further extension into other jurisdictions to provide a framework for early resolution of disputes.

Similarly I have discussed with Mr Justice McFarland how we can strengthen established practice within our family court by providing a bespoke resolution court overseen by the judge. A series of experienced family judges in Northern Ireland have over the years transformed family justice by deploying this model and it is something I support to deal particularly with contact disputes. This chimes with the Private Family Early Resolution Plan, jointly published last month by the Ministers for Justice and Health which I welcome. Such initiatives are progressing under the auspices of the Shadow Civil and Family Justice Boards which Mr Justice McAlinden and Mr Justice McFarland now chair.

We also have a very strong example of problem solving justice already underway in Northern Ireland. The leadership role taken on by Judge Bagnall, as Presider of the magistrates' courts, before her recent elevation to the County Court, working alongside Dr Geraldine O'Hare Director of Rehabilitation in the Probation Board, has made a significant impact on the lives of those involved in the Substance Misuse Courts. While we await a full evaluation, the judiciary, and many others, are very conscious of the challenges of dealing with people with addiction and mental health issues that lead them into a cycle of offending and reoffending. There remains much to do and while early intervention is key we must also assist those individuals who are affected now to limit the risk of ongoing harm to them and others. These approaches can be further enhanced if, as suggested by Sir Declan, there was progress on the introduction of smaller monitored holding centres where individuals who would normally be in custody while on remand can receive the treatment and support they need.

There has been notable progress on initiatives addressing the impact of domestic violence, which is a significant area of concern that has been exacerbated during Covid. The Minister has pressed forward and the Domestic Abuse and Civil Proceedings Act was enacted in March 2021. Work is underway to implement provisions for special measures to protect victims of domestic abuse in civil and family proceedings. They include the prohibition of cross-examination of victims by alleged abusers and the introduction of the new offences to address psychological abuse. We hope to see that legislation commenced early next year and Lord Justice McCloskey is leading on training for the judiciary to ensure its effective implementation.

The police have also just recently announced a new initiative that involves them working closely with schools to ensure that teachers are aware of issues of domestic violence arising in the home and Judge Bagnall's proposal for Domestic Violence Courts, is being progressed by the Department along with both police and the Prosecution Service. Each of these initiatives should contribute positively to improving the system. We will continue to work to ensure that we are ready to lead and embrace the changes and manage these cases sensitively and expeditiously within our day to day business.

While it is very likely that hybrid hearings will become more usual practice they are just one aspect of a new approach. A modernisation programme has been underway and in March 2021, Sir Declan agreed a shared vision on the way forward with the Minister and Courts Service. It is both creative and practical. We are a small jurisdiction however and we must therefore develop our approach taking into account the experiences of others. The successful development of the Commercial Hub, led by Mr Justice Horner and which extends to Chancery, with the support of Mrs Justice McBride, is an excellent example of an initiative that was developed based on learning from both judicial colleagues in England and worldwide.

Early in this term we hope to finalise a Judicial Modernisation Paper that will inform the wider Courts modernisation programme that extends across technology, the estate and processes. We are working towards utilising e bundles in the High Court on a wider basis. Other initiatives will take forward similar concepts across the various tiers.

Alternative, less formal, quicker, and more cost-effective ways to address disputes will also be a key part of the toolkit available in the future to secure the administration of justice. Some of those involved in court proceedings do not wish or need formal court hearings or complex legal argument to achieve that aim.

For matters proceeding to court, we are planning for a funnel or triage system to facilitate early judicial oversight at the appropriate level to identify the most urgent or serious matters, and give early case management directions where needed. Earlier and more detailed input will be a core feature in attempting to streamline cases.

Overall, the judiciary continue to contribute in many ways. For example, the Historical Institutional Abuse Redress Board, led by Mr Justice Huddleston, is now established and running since March 2020 and within the last week the Victim Payments Board has launched, under the guidance of Mr Justice McAlinden.

I have asked Mr Justice Humphreys to take over the role as Presiding Coroner. He will also lead handling of legacy litigation cases. I know that this is a complicated and politically sensitive area, particularly given the proposals to address the legacy of the troubles in Northern Ireland announced in July. It is not for the judiciary to express a view on the proposals and therefore while that debate may continue the judiciary, as a body independent of the executive or legislature, will continue to perform our duty and deal with the cases before us.

There are many difficult and complex issues to face whether related to legacy, Brexit or social issues. However the judiciary will deal with whatever challenges come before them and we will ensure that we do that impartially and in the most effective way. I very much appreciate the support of my colleagues and know that I will benefit from the extensive knowledge and expertise of my colleagues within the Court of Appeal, Lord Justices Treacy, McCloskey and Maguire.

CONCLUSION

Before concluding, I want to acknowledge the enormous contribution of the nine Lord Chief Justices of Northern Ireland who have gone before me. I also want to mention my sincere sadness at the passing of Lord Kerr in December 2020. He was a fearless and relentless judge who was pioneer in his contribution to the administration of justice. As the epitome of an independent judge his example encourages us all in our endeavours. My thoughts are with his family as they no doubt still feel his loss.

On 1 October 1921 the Supreme Court of Judicature came into being. As the 10th appointment in our 100 year history since Sir Denis Henry, the first Lord Chief Justice, who was appointed in 1922, I am immensely proud to take up this post. You may not know this but his appointment ceremony was held in Portrush Town Hall as the Lord Chancellor was on holidays there at the time! Sir Denis had to establish a new home for the Supreme Court and an administration team, a lot of which he undertook himself.

The Public Records Office's record reflects Sir Denis's first sitting to have been on 2 November 1921. The case was one taken by Lazarus Bros Ltd of Magherafelt against James Henderson of Knockloughrim, for recovery of £10.10s due goods and services. The defence successfully won an appeal for the case to be remitted to Magherafelt Quarter Sessions. Those were times of old and the history we will uncover will no doubt highlight many gems.

Each of my predecessors faced many challenges, often accentuated by the circumstances prevailing in Northern Ireland at various times. However each made an important and unique imprint on Northern Ireland and its society. They have undertaken their role with integrity and a sincere commitment to ensuring that the people of Northern Ireland can have confidence that their cases will be decided fairly and in accordance with the law.

I will be engaging with my judicial colleagues and representatives of the wider legal community to mark our centenary year through a series of events so that we can learn more about the history of the legal and judicial system in this jurisdiction and the roles that individuals played. I hope many of you will be able to contribute and get involved.

Taking on the role as head of the judiciary in Northern Ireland is an immense privilege. I have as my guide the rule of law. I will strive to do all I can to ensure our high professional standards are maintained, that our independence is respected and that we engage, listen and play our part in the delivery of the administration of justice for Northern Ireland.