

## THE LORD CHIEF JUSTICE'S OPENING OF TERM ADDRESS 2018

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Colleagues, ladies and gentlemen I am grateful to you all for attending today.

I want to give a particular welcome to Mr Justice McAlinden, who as you will know was sworn in as a High Court Judge in June, and I have also welcomed today our new County Court Judge Mrs RoseAnne McCormick QC who was sworn in just this morning.

I must share my sincere thanks and deep gratitude to the many retired Judges who have continued to support me and my colleagues in the Court of Judicature over the past year by providing their time, skills and wealth of knowledge and experience. Without their support and the ongoing support from colleagues on the county court bench we could not have delivered sufficient high court hearings while we remain under complement within the High Court. A further appointment is anticipated shortly and a new scheme will be launched later in the Michaelmas term that will hopefully ensure we attain our full complement.

We are now approaching 600 days without an Executive in place. In my speech last year I said that the political lacuna had stalled the agenda for reform of the justice system. Initiatives that required ministerial approval had to be held in abeyance and those that were already underway were constrained by resourcing considerations.

However, the judiciary had not been inhibited from bringing forward ideas for positive reforms. We had consciously taken the lead in certain areas so that a roadmap for reform would be ready to be presented to Executive Ministers on their appointment.

Implicit in those remarks was an expectation that those responsible for giving political direction to the machinery of government would have devised a method of ensuring that those of us engaged in the provision of public services could continue to enhance and improve the quality of what we do. This has been a period of intense frustration and I shudder to think what message it sends to the thousands of young people leaving our shores for university or work, people that we should be trying to attract back to populate our legal and other services.

I have chosen one particular example in the legal context that I consider is indicative of the real impact a lack of government in Northern Ireland has on the lives of local people.

The Report into Historical Institutional Abuse (HIA) was launched by Sir Anthony Hart on 18 January 2017. David Sterling, Head of the Northern Ireland Civil Service, explained to a Northern Ireland Affairs Select Committee earlier this year that he had directed the preparation of two draft bills to give statutory effect to the Inquiry's recommendations that a Redress Board and a Commissioner for the

Survivors of Institutional Childhood Abuse (COSICA) be set up. Implementation of the Recommendations is urgent because in January 2017, almost 20 months ago, over a third of those who had engaged with the Inquiry were over 65, a number had died and others were in very poor health. Groups speaking on behalf of many of those who were in residential homes have made repeated pleas to have the Recommendations implemented. Those pleas have been supported by all of the main political parties in Northern Ireland yet today those Recommendations have still not been implemented and the human cost on those affected is increasingly severe.

I want to acknowledge both the respect and sympathy I have for politicians seeking to deal with the evident divisions within our community. Equally I acknowledge the difficulty for civil servants responsible for day to day business and the restrictions on what they can achieve within the current legal framework. But handling difficult and challenging disputes is a feature of what we do as judges. It requires a process. The first stage is to identify and fix, preferably by agreement, the time required to try to resolve issues. Where possible a facilitator or mediator, a person in whom the parties can have confidence, may be identified to assist with the resolution of as many of the issues as possible. If, however, resolution is not possible there must be a fall-back position, a decision maker. The provision of political direction to the machinery of government is a requirement of a functioning democracy. It is not an optional extra!

Although it is extremely disappointing and frustrating to say yet again that the political lacuna has hindered the potential for significant progress within the justice arena I will take the opportunity today presents to outline many of the positive steps that have been taken, and will continue, at the instigation of the judiciary as we embrace the need to continually enhance and improve the court system across all types of business so that it is accessible, particularly for those who are vulnerable, expeditious and efficient.

I have previously set out how the implementation of a Non Ministerial Department would enhance the governance and accountability of the justice system. Experience in other jurisdictions, such as Scotland and the Republic of Ireland, have shown that greater involvement by judiciary positively facilitates the management of court business.

You will know that the financial situation remains a challenge to all aspects of public services, including courts. Northern Ireland's judiciary has responsibility for case management and deployment and by extending those responsibilities to include an effective role in the management of the courts I consider that we can engage in as open and transparent a way as possible to identify and lead on a range of initiatives to ensure the most effective use of court capacity.

By way of example it was this time last year when I introduced Sir John Gillen to set out a blueprint for transformative change as a result of his Review of Civil and Family Justice. Sir John adopted a very inclusive approach to each Review which ensured a thorough and comprehensive report on the changes required to improve cohesion and benefit all those involved in the civil and family justice systems. While

a substantial number of the recommendations require ministerial consideration and agreement, not least the establishment of the Civil Justice Council and Family Justice Board, there is much that can be achieved in the interim.

Through the leadership of Lord Justice Deeny, and Mr Justice O'Hara, in the Shadow Civil Justice Council and Shadow Family Justice Board respectively, responsibilities have been allocated across the various representatives, including those from the Departments of Finance, Health, Justice, Northern Ireland Courts and Tribunals Service (NICTS) and the Legal Professions. Both the Council and Board have also established their priorities.

The Shadow Civil Justice Council aims to advance the key components of a new culture in civil justice here in Northern Ireland. This involves working with NICTS to determine priorities for digitisation, paperlite and in the longer term paperless courts, an aspect that is gathering momentum across the UK. The benefits of learning from the experience of other jurisdictions cannot be underestimated and both NICTS and the judges consider there is great potential to build on current online services and extend them to include case initiation and progression and where possible the opportunity for resolution. An aspect of the Council's work, which you may note is a recurring theme, is how best to assist vulnerable individuals. The courts and legal profession have established a working group to enhance arrangements for those with disabilities and I hope this type of work will contribute to ensuring a positive and constructive environment in which all members of society feel they can engage when necessary.

A particular area of work which Sir John was keen to see advanced related to the development of a Commercial Hub and to support the Council's work in this area, I have assigned Mr Justice Horner with lead responsibility for the implementation of these recommendations in the commercial world.

The phrase, "the commercial world", to use its everyday sense, involves not only commercial disputes, but also cases involving significant assets such as property, shares and money – all of which are often the subject of separate proceedings in other divisions of the High Court. Collaborative discussions are currently taking place regarding those cases that may benefit from being heard within a Commercial Hub. These will include chancery matters and family matters such as ancillary relief applications where substantial assets are at stake.

The assistance of NICTS, in providing IT support for an electronic diary system and administrative support, for the Commercial Hub is greatly appreciated.

The Shadow Civil Justice Council is also planning to consider the Research Report, Litigants in Person in Northern Ireland: barriers to legal participation, which Professor Grainne McKeever and her colleagues will be formally launching later this month. A number of judiciary, including Lord Justice Stephens, the Recorder and Master McCorry are involved with this work.

The involvement of Personal Litigants within the court system is something that cuts across many business areas.

As Sir John's report identified there is significant room for improvement in how we ensure Personal Litigants are provided with the right level of information and support. Work is continuing on the development of online information and the potential for a visual aid.

In the context of the Shadow Family Justice Board there are a range of initiatives under consideration including, for example, the NSPCC's work on developing a Young Witness Service in family courts; sub teams have been established to take forward work on the Use of Experts and the composition of trial bundles and NICTS are working with input from the Board on increasing digitisation.

The Board is actively engaging with media representatives to enhance their accessibility to family courts and a pilot is shortly to be initiated within the High Court. Subject to the sensitivities of the subject matter and the vulnerability of those involved, especially children, the principle of open justice is important and we are keen to work with journalists and editors to enable them to report what is appropriately in the public interest.

A key recommendation for a formal Board's consideration is the development of a single jurisdiction, which is of course subject to consideration by ministers and changes to the current legislation. However work is in hand by both the Recorder of Belfast, His Honour Judge McFarland and His Honour Judge Kinney to re-organise family care centres so that they are structured around the Health and Social Care Trusts and benefit from consistent and regular judicial assignment. The Board is also working on the arrangements to improve the transfer of cases and the case files between the court tiers. Each of these aspects draws together the principles behind the single jurisdiction by facilitating greater cohesion, the invocation of timely expert assistance and where the voice of the child can be heard to enable cases to be gripped and dealt with at an early stage.

In the context of Family Justice there has and will be further work to provide relevant training for both the judiciary and legal profession. In March training organised by Mr Justice O'Hara and supported by NIGALA (Ms Teresa Fallon, Assistant Director) involved two inspirational young people who provided their personal accounts of their experiences in the family courts and an insight into the lives of children in care.

Their presentation included some seven top tips for Judges meeting young people, including for example:

- Explain to me if you might not be able to agree with what I want to happen
- Be honest and direct with me about what is possible/safe

This was an exceptional opportunity, not just because of the manner in which the training was delivered but in how simply and emphatically it revealed the importance of our conduct as well as our decisions.

While a number of problem solving initiatives have been identified through the Review of Civil and Family Justice they are closely linked to the work of the criminal courts. We have had a busy year in the criminal courts, and judges have been pioneering in their approach to dealing with some of the societal problems which play out in Northern Ireland's criminal courts.

In particular, I want to commend Judges Bagnall, McElholm and King in the stellar work they are doing in three particular problem solving courts - the first such initiatives in this jurisdiction.

For a long time I have been concerned about the perceived revolving door of the courts and have been advocating a more holistic approach to dealing with victims and perpetrators in domestic violence, and also the problems facing those with addiction to drugs and alcohol.

I have had the privilege to attend one of the first sessions of the Substance Misuse Court in Laganside. It was like no other court I have seen here in this jurisdiction. The judge had time to engage directly with the offenders, and to get to know and address their circumstances.

The defendants also personally engaged with the judge on an exceptional level. I got to sit in to observe as the court dealt with about ten defendants. One case sticks in my mind, and it was a case involving a young lady, let's call her Laura, a young woman in her twenties with young children, who was before the court and had taken full advantage of all the services and support offered to her with her addictions. What struck me was that this was the first time Laura was getting effective help with her addiction problems. She spoke frankly to the Judge about the challenges she had faced in the past week, family stresses, financial problems, and other stressors which she was finding hard to deal with. Laura told the court how she had been able to deal with that week by staying in close contact with her support workers - provided by the court, and her addiction counsellors, also provided by the court. I have no doubt that the challenges which Laura will face in the future, in dealing with her addictions will be hard. I also have no doubt that this approach to solving the problems around addiction is much more likely to be successful and therefore safer for all.

Seeing pioneering judicial practice like this is encouraging. It is a change of approach for Judges who are used to dealing with offenders in a different way. It is also a change of approach for solicitors and barristers who are used to doing all the talking in court as they remain pretty much silent in the problem solving courts. And it is a change of approach for the offender who talks and engages directly with a judge who has personally invested their time and interest in them.

I am delighted to announce today that we plan to extend the domestic violence perpetrators programme pilot running currently in Londonderry to the Belfast area, so very shortly we will have four problem solving courts in a pilot mode - one

substance misuse court in Belfast, a domestic violence court in both Derry and Belfast and a Family Drugs and Alcohol pilot in Newry.

Informal feedback is positive and I expect that the DoJ will remain committed and supportive of these projects, and that following their conclusion their formal evaluation on the outcomes for offenders will reaffirm the need to resource them fully and roll them out across the North.

You may recall that in October 2015 I asked the Probation Service for Northern Ireland to commence what has commonly become known as an ECO, an Enhanced Combination Order. The ECO, an early problem solving justice initiative, enabled a defendant facing a prison sentence, of up to 12 months, to instead be subject to an enhanced community sentence involving intense supervision by a Probation Officer.

An ECO can include a range of options depending on the defendant's individual circumstances and the nature of the offence. The options include:

- unpaid work,
- a psychology assessment and intervention where required; mental health needs have been identified as a significant problem.,
- an accredited programme
- restorative intervention through which victim issues are addressed,
- parenting/family support work through Barnardos

The ECO has been available in Armagh, Newry (including Banbridge), Downpatrick and Newtownards courts. At 30 April 2018, 267 defendants had been made subject to an ECO rather than being given a short custodial sentence (12 months or less). While longer term evaluation will be needed it has been found that there was a 40% reduction in the reoffending rate for those who completed the order. An evaluation has also found that the number of prison sentences of 12 months or less awarded by courts involved in the ECO pilot decreased by 10.5%, suggesting that ECO was impacting positively on prison numbers.

Phase 2 is now planned and I will be supporting the rollout of the next stage in October when the pilot extends to the North West to include the courts in Londonderry, Strabane and Limavady. Three more phases will see completion of the planned rollout, culminating in Laganside, Lisburn and Craigavon

More broadly in the context of criminal courts Judges remain committed to reducing delay, and I am pleased that the principles and procedures aimed at tackling the causes of delay, as introduced by my Ards Pilot initiative will continue to be rolled out across Northern Ireland. I have consistently said that the key is earlier engagement between the police and the prosecution pre-charge; then close engagement between the defence and the prosecution at the early stages to narrow the issues before trial commences. Judges need to and will continue to do their part to ensure that cases are robustly case managed and that the principles established in Ards are embedded throughout the criminal courts.

I have said it on many occasions before, and I feel it merits repeating here again, that it is my view and the view of the judiciary that the process by which serious cases are transferred from the Magistrates' Court to the Crown Court must change. I appreciate the DoJ cannot bring forward the necessary legislation in the absence of an Assembly but it is essential that legislative changes are made to allow appropriate cases to come under the control of a Crown Court judge at the earliest possible stage.

### **Conclusion**

It is very easy to get caught up with the day to day pressures and lose sight of what needs to be achieved. However while there have been many pressures, not least in dealing with legacy matters, I and my colleagues are committed and actively engaged in facilitating and progressing a fresh approach to deliver what we can within the current legislative and financial framework. We can but hope that this year we will all see constructive progress in the political sphere.

Problem solving initiatives are the way forward for many aspects of the justice system. They take into consideration the needs of individuals especially where those individuals are vulnerable, whether through their age, disability, mental health or other difficulties. Problem solving requires a helpful and collaborative approach by all those involved with a clear focus on the desired outcome.

The draft Programme for Government focussed on outcomes and I hope that the valuable work carried forward by the judiciary is acknowledged and provides a sound foundation upon which a future government can build. There is much still to be done and structural change required. Many of you will be aware of the work underway by Sir John Gillen as he leads a review of arrangements to deliver justice in serious sexual offence cases. We will of course also support this work and other such initiatives in any way we can.

I know that I and my colleagues remain dedicated to tackling the challenges we face and driving forward transformational change for all those who come before the courts in Northern Ireland.