

# THE LORD CHIEF JUSTICE'S OPENING OF TERM ADDRESS 2019

5 SEPTEMBER 2019

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Colleagues, ladies and gentlemen you are all very welcome and I appreciate your attendance here today.

It was a great pleasure this morning to swear in His Honour Judge Gilpin to the county court bench and Lord Justice McCloskey, a member of the Court of Appeal. Both I am sure will give outstanding service to their respective tiers. Lord Justice McCloskey has been appointed following the retirement of Lord Justice Deeny and today provides a further opportunity to note my thanks to Lord Justice Deeny for the sterling service he has given throughout his judicial career.

This past year has been particularly demanding for the High Court, not least given that we have been and will remain under complement. A new scheme to recruit two High Court Judges is to launch soon and for the first time a scheme to recruit Temporary High Court Judges is to be initiated. It will launch tomorrow. I strongly encourage applications for both schemes from outstanding individuals who can meet the challenges required to fulfil this entrusted position.

Meeting the demands of the past year would not have been possible without the valuable assistance provided by retired colleagues and members of the county court bench, who have enabled the timely provision of court hearings. I have greatly appreciated their contributions.

One particular judge I want to mention is Sir Anthony Hart. His recent passing has saddened us all. Sir Anthony was held in the highest regard. He was an outstanding judge who exemplified the highest levels of integrity and he consistently displayed his dedication to public service.

It is shocking that the recommendations outlined in the Report into Historical Institutional Abuse, launched by Sir Anthony on 18 January 2017, have yet to be implemented. He had expressed to me his profound disappointment that the victims were still awaiting action. I understand work is in hand and a positive outcome should be achievable in the coming months. However I would ask that the necessary legislation is driven forward as soon as possible so that Sir Anthony's work is fulfilled and the victims are given the redress that is so long overdue.

The lack of progress for victims of historical abuse epitomises how the lack of an Assembly impacts negatively on the lives of Northern Ireland's citizens.

There are many other areas where legislation and ministerial decisions are essential to tackle difficult issues and address shared social problems.

Last year I outlined a number of areas that we in the judiciary have been taking forward, despite the political vacuum. Northern Ireland is a relatively small jurisdiction and we have and will continue to use the opportunity that presents to work with others in the justice system to improve it where we can.

For example, in March 2019 I introduced judge-led collaborative Crown Court Case Performance Groups across the North West, Belfast/ Antrim and Craigavon/Newry regions. The groups include representatives from the police, the prosecution, the court service, the department of justice and defence lawyers. The need for legislation to abolish committal remains a key outstanding issue to speed up criminal justice, as is evidenced from the statistics published today, however, the members of the Groups are tackling local and generic issues and particularly reinforcing the importance of early engagement between the parties to narrow the issues and facilitate speedy progress.

I also asked Mr Justice Colton to reinstate the Crown Court Liaison Committee at which the judiciary, the Law Society and the Bar are represented. The Committee are focussing on:

- How to deal with vulnerable witnesses;
- Expert Evidence and how to deal with the issue of delay, and
- Third Party Disclosure.

They are currently finalising a revised Crown Case Management Practice Direction that incorporates protocols for vulnerable witnesses and defendants. In conjunction with appropriate training, this will undoubtedly go a long way in effecting the culture change necessary to ensure that vulnerable witnesses, particularly in serious sexual cases, are dealt with justly and fairly in the courts.

The Practice Direction and Protocols have been reviewed to reflect best practice. They will introduce new procedures to include the accommodation of all types of vulnerability, reflect the use of Ground Rules Hearings and Registered Intermediaries in a wider range of cases, and encourage early disclosure and the greater use of combined special measures. In any given case, the steps which should be taken to comply with the Protocol must take account of the age, maturity and development (intellectual and emotional) of the vulnerable witness and their role in the trial along with all other circumstances of the case.

The judiciary will also liaise closely with the Court Service's Case Progression Officers to ensure that all procedural or administrative matters are being progressed and that as far as is possible, any blockages or impediments to effective case progression are addressed. We are confident that adopting this approach will improve case management in all cases, particularly through the early identification of issues.

Early in the next term the Committee will initiate their work to tackle delays caused by expert evidence and the issue of disclosure.

Mr Justice Colton, the Recorder of Belfast, His Honour Judge McFarland, and Her Honour Judge Smyth are also working closely with the criminal justice organisations, NSPCC's Young Witness Service and defence lawyers to specifically address serious sex offence cases involving child witnesses under 13 years of age by ensuring that these cases are prioritised across the whole justice system. Arrangements have been agreed to pilot new procedures within each of the criminal justice organisations to fast-track these cases to come to trial before the Crown Court with an ambitious target of 6 months after the report of a complaint, where this is in the best interests of the child.

Sir John Gillen's Report in April 2019, into the law and procedure in Serious Sexual Offences, made 253 recommendations which are grouped under 16 main headings. There are over 60 recommendations which concern or have an impact on the judiciary. Work has already started to significantly address those recommendations.

A high priority has been given to relevant training on matters such as trauma, jury myths, reasons around under-reporting, withdrawal of complaints and how best to approach the cross-examination of children and vulnerable witnesses.

Furthermore, my involvement in the Criminal Justice Board, along with the Director of Public Prosecutions, Chief Constable and Permanent Secretary for the Department of Justice, will assist in raising understanding and awareness of the approach being adopted by the judiciary to streamline the process and address cross cutting issues.

Within the Criminal Justice Board we also work collaboratively on a range of Problem Solving Justice initiatives to improve both performance and outcomes. The introduction of the Substance Misuse Court and Enhanced Combination Orders are particular examples where an alternative approach has succeeded where more traditional approaches have failed. I have also met with Koulla Yiasouma, Northern Ireland's Commissioner for Children and Young People to explore how we can better accommodate the arrangements for children within the justice system.

When the Civil and Family Justice Reports were initially launched, on 5 September 2017, it was agreed that in the absence of Ministers the remit of shadow Civil Justice Council and shadow Family Justice Board, led by Lord Justice Deeny and Mr Justice O'Hara respectively would be to:

- oversee the co-ordination of a draft plan for the implementation of the recommendations of the Civil and Family Justice Reports;
- make proposals on which of the recommendations should be prioritised, taking account of available resources;
- engage with incoming Justice and Finance Ministers on matters relating to their responsibilities; and
- identify potential “quick wins” that could be taken forward in the short term.

Their work has continued to enhance and improve the court process and Mr Justice McAlinden will be taking over the reins on the shadow Council.

Mr Justice McAlinden is also the judicial representative on a reference group, established by the Department of Justice, to consider what practical support might be provided to Litigants in Person. I have met with Grainne McKeever, Professor of Law and Social Justice at the Ulster University and Les Allamby, Chief Commissioner of the Human Rights Commission who are also working with this group, and carrying out further research in this field. I am very supportive of the work they are all doing, and look forward to their recommendations.

Last year I noted that Mr Justice Horner was taking forward planning to develop a Commercial Hub. This was one example of where the shadow Council considered progress could be made within the current legislative framework. The necessary work has been successfully completed. The new Hub was introduced on 29 April 2019 and will be supported by Madam Justice McBride and Mr Justice Huddleston. Operating as a business court, the Hub deals with all forms of commercial dispute with specific arrangements for early case management, appropriate consideration of alternative dispute resolution and early neutral evaluation as outlined in the Practice Direction. The Practice Direction was developed and completed through collaborative work, particularly with the lawyers involved in these cases and it is hoped this joint approach will ensure its effectiveness.

A number of training sessions and demonstrations were also arranged for commercial practitioners to introduce BOX, an online application which allows practitioners to file court documents electronically, and those arrangements are

working well. The recent provision of courtroom Wi-Fi will facilitate the Hub's further development.

Under the leadership of the Recorder of Belfast the centralisation of civil hearing centres has also progressed well. The structure of county court business has generally followed local government boundaries and after implementation of the new single jurisdiction three administrative divisions, aligned with Local Government Districts were created.

Following the success of a pilot, examining the efficiencies to be achieved by concentrating judicial and staff resources in Armagh Civil Hearing Centre, the pilot was expanded to include Equity business from 1st December 2018. Further proposals are being considered to pilot the hearing of all civil bill business within four Hearing Centres at Belfast, Armagh, Coleraine and Omagh.

Work is also being progressed to consider more effective case management within three or four family care hearing centres aligned with health and social care trust boundaries not only in public law cases but also in private law cases, with court children's officers based in trust areas.

Led by Mr Justice O'Hara a 'Media in Court' Pilot in the Family Division of the High Court has commenced. A 'Proof of Concept' phase launched in November 2018, and is ongoing. A sub-committee involving senior journalists and legal representatives has been progressing work on proposals, which were the subject of a targeted consultation over the summer and a pilot is expected to launch later this new term. The lessons learned from the pilot should be used to inform future policy on open justice in the wider family court.

I have previously set out how I consider the implementation of a Non-Ministerial Department in Northern Ireland should be progressed, taking into account the positive experiences in Scotland and the Republic of Ireland.

The concept of a Non-Ministerial Department was included in the Review of Civil and Family justice so that it could be considered alongside other proposals for structural reform. It is important for there to be coherence in how these structures interrelate and I consider there is great potential should the role of the judiciary extend to include responsibility and accountability for the effective administration of the courts as is the case in the rest of the United Kingdom and Ireland.

In June I, and a number of my colleagues, met with representatives from the local political parties. It was an opportunity to set out some of the work we have been taking forward and to ensure that there are open lines of communication from all perspectives. I have always said that my door is open.

It is important that the judiciary remain independent and impartial but judicial independence does not mean judicial isolation. There is much to be gained on both sides from appropriate discussion between judges and local politicians about the way in which we can improve the administration of justice. Collaboration generally produces a better result and I am grateful to Lord Justice Stephens and Lord Justice Treacy for their contributions to those discussions.

Earlier this year I was finally advised that the funding for legacy inquests was being made available. In February 2016 I had presented my plan to address the outstanding legacy inquests within five years.

I set out at the time the challenges involved in progressing legacy cases and explained that judicial leadership alone would not solve the significant problems they involved.

Legacy inquests are but one part of the jigsaw. The Northern Ireland Office has consulted on the Stormont House Agreement Bill which outlines a number of institutions other than the Coroners' Courts for dealing with the past. The lack of progress in establishing structures to deal with the legacy of our past means that those who seek truth, justice or information often feel that they have no option but to come before the courts to get those answers. That is not an appropriate or effective way of dealing with those issues. It places an impossible burden upon the case list managed by Mr Justice Maguire and the resources available to the courts and other agencies dealing with the administration of justice.

It is not part of my role to enter the political fray but I have always said there is a need for both political agreement on the mechanism for dealing with the past and significant additional resources if we are to move forward in any meaningful way.

Following the announcement that funding is being provided, Mrs Justice Keegan, the Presiding Coroner, held a mention of all the outstanding legacy inquests. The purpose was to provide an update on the work that is being taken forward to progress the legacy inquests.

Mrs Justice Keegan spoke about the review she is leading to follow up on the work undertaken by Lord Justice Weir when he carried out a comprehensive review of the legacy cases in February 2016. She announced that she intends to carry out preliminary hearings in each case later this month to establish the state of readiness and to consider the approach that may be taken in relation to the sequencing of inquest hearings. The legal representatives for the families and the relevant agencies have been asked to provide an update on each case in advance of these hearings.

It is important that all those involved work together to ensure that legacy inquest cases are prepared for hearing expeditiously and that disclosure issues are identified early and, through collaboration and dialogue, that reasonable and proportionate solutions are found.

I and the judiciary are committed to doing everything we can to assist in dealing with the past.

The eagle eyed among you will have noted that I have not yet referred to Brexit! Unlike some others I have little to say. The future arrangements are unclear. I recognise, however, that this jurisdiction will be the only part of the United Kingdom having a land border with the European Union after Brexit. We already have sensible judicial liaison arrangements to deal in particular with family law cases and I expect that the judges of our neighbouring jurisdiction will assist us in ensuring that practical issues arising in the justice system will continue to be addressed within the scope of the legal options available to us.

## **Conclusion**

One of the themes that I hope has been clear from my remarks today is the importance of collaboration and discussion between the various agencies involved in the administration of justice. Many of you here today are the people who will be involved in those discussions and I hope that we can build on the relationships that we have established to deliver for our community a justice system of which it can be proud.