

**Speech by the Right Honourable Sir Brian Kerr,
Lord Chief Justice of Northern Ireland,
Monday 18 February 2008**

“Avoidable Delay”

1. Minister, ladies and gentlemen.

2. When, at the end of last year, Paul Goggins invited me to attend and speak at a conference on avoidable delay I readily agreed. The opportunity to address an audience comprising representatives from across the criminal justice system and those with an interest in it does not come often. More particularly, however, it allows me to challenge the shibboleth that the judges having no interest or nothing to contribute in the area. That, emphatically, is not to be the case. The contrary is true. As I shall touch on briefly in a few moments, a variety of initiatives has been taken by the judiciary to tackle the seemingly endemic problem of delay and I am determined to continue with my colleagues to explore further ways in which to combat this problem.

3. But this really is an area where the focus needs to be clear. It is incumbent on all of us involved in the criminal justice process, whether at policy level or in the actual delivery of the system of criminal justice, to recognise that we are part of an important public service and to appreciate and embrace the fact that combined efforts, while maintaining mutual deference to our respective roles, can and will achieve improvements. In other words all those working within the criminal justice system whether in courts, prosecution, forensics, legal services, members of the profession, voluntary workers and victim support, etc should have a common aim or objective. And that should be to provide a system that enables justice to be served. You

will all have heard the much used expression that “justice delayed is justice denied” and it will no doubt feature again today. It is not just a resonant phrase. If there is a delay in delivery of justice it may affect victims most acutely but its effect is by no means confined to them. It affects the family of the victim, the witnesses who have to live with the stress and apprehension about giving evidence and, unpopular though this may be in certain quarters, it affects the defendant or defendants. All of us who work within the system have a clear obligation, therefore, to seek ways to improve the efficiency of that system. Obviously I am not advocating shortcuts. The elimination of delay must not be at the expense of a fair and equitable system of criminal trial. And any discussion about this must acknowledge that the law has become increasingly complex over the years and the possible causes of delay are multifarious. The challenge, however, for all of us working within the system is to recognise the complexities, to identify the causes of delay and to tackle them in a comprehensive way so as to create a responsive justice system. But insight into the reasons for delay is essential. Our efforts will not avail if a Pavlovian reaction to delay is to impose unrealistic, unworkable targets. That, I hasten to say, has not been the approach to date and I hope that the measured approach that the government has taken to this problem will continue. We must understand why there is delay and fashion reforms that will deal with that in an insightful and achievable manner.

4. I think, or at least sincerely hope, that one of the reasons Paul Goggins asked me to speak on the topic is because of the pivotal role that the judiciary can and do play in seeking justice and efficiency. Obviously we have the traditional role of determining applications before us and reaching decisions on cases and handing down sentences on conviction. But increasingly the role of the judge in managing the court, in managing cases through their various stages, has become an integral part of judge craft. I expect all judges and magistrates to recognise that they have a duty to organise the court’s business to make best use of the time available, but also to progress cases

efficiently. To do that we need to be clear sighted on what we are seeking to do and we need to communicate effectively with the parties and with the profession and that requires us to set down the milestones in cases. Obviously, and crucially, we need the cooperation of the profession, the Public Prosecution Service and the police among others to achieve success.

5. After my appointment as Lord Chief Justice I assigned a judge in the High Court, Mr Justice Hart, to the function of High Court Crown case review. Virtually every Friday in Laganside, and perhaps much to the suspicion of the profession and Prosecution Service at the outset, he reviews cases so that issues are settled early, applications dealt with well in advance of trial, papers and reports are exchanged and produced for agreed dates. This enables him to monitor the progress of cases and to timetable interlocutory matters, such as applications for third party disclosure, where required. This is not a popular billet but it is one to which Hart J has brought steely determination and imaginative problem solving skills. The purpose of the system is to provide impetus to the case and to ensure that the parties recognise that progress must actually be made and not simply promised. Another obvious advantage is that when cases are listed for trial all parties, indeed all those with an interest including victims and their families and witnesses as well as all others, can plan towards that date unless something arises.

6. And how does the system work in practice? Well, let me take the example of a witness who is unwell or is pregnant and about to give birth or a witness is a student about to do their GCSEs, AS or A levels we will naturally want to take that into account. And we recognise that if the case involves children or witnesses coming from overseas then there is a premium to be placed in keeping that case in the list on the date set. If, for whatever reason a trial has to be moved, a new date should be identified at that time. Equally if a particular counsel is assigned to a case but has already been listed in another

important trial we will look to be flexible as far as possible, but naturally there are limits and generally, although we will try to accommodate counsel who has been chosen by a client, the availability of a particular counsel will not be a reason for removing the case from the list.

7. It has been suggested that availability of courts or judges can also be a problem. And indeed when I looked at this issue I found that the statistics showed that adjournments were often said to be 'court related'. But when I challenged the figures I found that the reasons under this heading covered any manner of non-court related items. Without giving an unnecessary hostage to fortune, on the whole it is our experience that, where a case is ready for trial, a judge and a courtroom will be found to ensure that that trial proceeds.

8. What we are seeking, and I believe that very many in the profession, police and Prosecution Service are at one in wanting to achieve this, is the least delay possible. I think that Kit Chivers, the Chief Inspector of Criminal Justice [who is here today], and with whom I have had constructive exchanges, was right to entitle his report in this area "Avoidable Delay". Crown trials cannot simply happen the day or week or month following charges. Evidence has to be compiled, disclosure has to be made, the defence has to prepare its statement and other material, reports have to be available, legal aid applications considered, and when all that is complete the trial can start. So there will always be some passage of time. What we all want to do is to minimise that time. We want to cut out avoidable delay. To do that we need to focus on the areas where the problems are caused on a regular basis and tackle them.

9. From a judicial perspective that means resolving disclosure issues. It means focusing on witness availability. That means counsel on both sides focusing on the papers early, identifying the issues early and addressing the

issues early. Therein lies the strength of Hart J's review regime and similar management in the County Court section of the Crown Court. Cases are intensively managed before trial. The parties, their legal representatives and the agencies that support them are required to focus on the issues before the trial begins and, if the system works properly, not only is delay before trial minimised, the case should be in a state of preparedness that will allow it to be prosecuted and presented in an economical and efficient manner on the trial itself. The Court Service case progression officers, which you will hear more about later, have a role in assisting this judge led process.

10. As judges, of course, we recognise that not only must we ensure that there is proficient performance from the parties to the case but that we must also be alert to the need to ensure that our contribution to the speedy but fair determination of criminal trials is focused and effective. To that end we have embarked on a number of initiatives over the past four years (apart from the case management regime that Hart J presides over) and I shall say a little of those in a moment. Before I do, may I say something about the relationship between the judiciary and the government generally and in this important area in particular? I have watched with interest the exchanges between the Government and the judges in England and Wales on the relationship between those two elements of the constitutional framework. One aspect of the new Partnership Model announced on 23 January 2008, is that which is termed as "performance and efficiency". There is, the announcement recorded, to be a "joint examination of how we can improve performance and efficiency across all aspects of the operation of the courts, including the contribution of the judiciary may properly make to that whilst respecting their independence as a body and in respect of individual decisions." The latter part of this is particularly important. We will play our part but our independence must be respected. This is vital to the rule of law. We will contribute to the debate - indeed, my presence here today is testament to our willingness to do so but, just as we would not presume to tell the government

how to do its job, we shall not be told how we should perform our judicial function.

11. Let me turn then to the initiatives we have undertaken.

- Firstly, the magistrates' courts.
- In October 2007 the Resident Magistrates implemented a protocol on criminal case management which defines more clearly the duty on the prosecution and defence and also sets out the role of the court in ensuring that cases are dealt with justly and efficiently. The effectiveness of this protocol will be reviewed shortly.
- The Magistrates' Courts Initiatives Group was set up under the chairmanship of my office in October 2005. It includes representatives from the magistracy, Court Service, PPS and PSNI. The group considers various issues that have practical implications for the processing of cases in the magistrates' courts. To date these have included the availability and attendance of witnesses, notification of witnesses and the use of a "connecting" PSNI officer to connect the accused to the charges on first remand (rather than requiring the investigating officer to be present in court).
- There are also a number of pilots in the magistrates' courts in which the judiciary are involved. These include the joint "Early First Hearing" pilot in Ballymena and Larne magistrates' courts where the intention is that simple summary matters should come before the courts within 21 days of the defendant being charged. There is to be, I understand, a presentation on this later.
- The Specific Sentencing Report pilot in Belfast was regarded as a success and is now being rolled out in Greater Belfast and across Northern Ireland. As a consequence, magistrates will be able to dispose of a percentage of cases more quickly than the present situation where they are adjourned for a minimum of 4 weeks for a pre-sentence report. This is to the benefit of all the participants.
- Turning to the Crown Court.
- Targets fixed by me allow for a period of six weeks from committal to arraignment, 18 weeks from committal to start of trial and 6 weeks from finding of guilt to sentence.
- The Crown Court Judicial Committee has implemented a number of initiatives during the year. The overall aim of these is to expedite and render more efficient the criminal process.
- The Committee developed a set of "Best Practice" points for judges governing the management of Crown Court cases. These set out ways in which the Crown Court will seek to avoid delay in cases. A simple but effective

example is the provision that No Bill applications in simple cases should, where possible, be heard on the date of arraignment.

- Following an extensive consultation process, a protocol for third party disclosure in prosecutions of sexual offences or serious assaults was introduced at the start of 2007. The purpose of this is to ensure that third party disclosure applications are made promptly and well in advance of scheduled trial dates.
- The Committee also drafted a practice direction aimed at ensuring that evidence in the form of CCTV footage, photographs, maps etc is disclosed by the prosecution at the earliest possible opportunity and that the material is properly retained by the defence. This came into effect in October 2007.
- While the judiciary can take a number of steps to reduce delay, I am conscious that many of the difficulties lie in the hands of others. I hold regular meetings with the Director of Public Prosecutions, the Chief Constable, the Bar Council and the Law Society where we discuss issues arising in the criminal courts, for example ways to resolve the difficulties being experienced by the courts with regard to the availability of witnesses and disclosure.

12. Finally I want to talk for a couple of minutes about “targets”. I know that the Government and Kit Chivers are keen on these. I want to quote an extract from a recent report produced by a Whitehall department which I think, to avoid any embarrassment, I should not name. This instruction to managers was issued by that department:

“Key to the success of the ZBRs would be DSO delivery plans with sufficient granularity to enable robust costing of activities. It is therefore essential to adopt an integrated approach to refinement of the DSOs and actioning the ZBRs.”

That seems very clear then?

13. The important point is that we need to have realistic and achievable targets. They need to be challenging but they also need to be sensible and, in light of what I have said, comprehensible. I reviewed the targets in the Crown Courts after my appointment and will continue to monitor achievement with

my colleagues. These include the period from committal to arraignment and arraignment to start of trial as well as from a plea or a finding of guilt to sentencing. Although I regard these as my targets, set for the NI judges they, of course, can only be met with the cooperation of others. Take, for example, the six week target that we have for sentencing. Given that four weeks of this is period allowed for the Probation Service to produce a pre sentence report you will see that the judge really only has two weeks. If the Probation report is delayed or leads the defence to want, for example, a psychiatric report then that period is concertinaed yet further.

14. We also need to look at the size of the workload. The magistrates dealt with 55182 criminal cases last year – yes over 55000. This is up from a mere 53710 in 2006. And the Crown Court dealt with 1414 cases which is an increase of nearly 10% on 2007. These figures reflect the high number of cases being prosecuted at all levels and show the pressure on the judges, RMs and the system generally.

15. This is a subject I feel very strongly about and I could talk on it at length. I can understand the seductive temptation to assume that the solution for delay is the imposition of rigid targets. Can I suggest that this approaches the problem from the wrong end? As I have said, a proper understanding of the causes for delay is essential in any proposals to reduce or eliminate it. Targets are not an automatic panacea and they will fail, if they are imposed without an informed insight into the causes of delay. In fact, they have the potential to increase rather than diminish delay if they give rise to protracted debate and applications as to why they cannot be met in individual cases. Although, therefore, I am wholly in favour of well researched and sensible targets, let them be properly worked out and realistic.

16. ‘End-to-end targets’ is a rubric much beloved by some administrators in this field. Apart from the ringing quality of the phrase, in the Crown Court

certainly, it has little to commend it. One can see how attractive it must seem to an administrator – we will set a final deadline for a case to finish, so that everyone charged, everyone who is a victim of a crime, everyone involved in a case, will know when it will be completed. Alas, the creation of such expectations is almost certain to foreshadow disappointment. Cases conducted with the utmost efficiency in the Crown Court can vary from as little as a few days to several months. How is one to set a realistic target for all such cases? And seemingly similar cases can, for perfectly valid reasons that will sometimes only emerge as the evidence unfolds, prove to be as disparate and different as it is possible to be. One cannot set a time limit on the delivery of justice if, in consequence, justice is denied. So that old saying, ‘justice delayed is justice denied’ has its counterpart, ‘justice hastened is justice denied’. Rather than set rigid targets which are unrelated to the infinite variety of a trial’s circumstances, let us concentrate our energies on the identification of the reasons for delay – whether it be a lack of resources, or the better deployment of already available resources, or the better liaison between the agencies responsible for the presentation of cases.

17. I have no difficulty with the concept of judges being responsible for the efficient and speedy conduct of a case when it is before them. I, with my colleagues, have sought to identify and tackle issues which we see as holding back progress. There is also a responsibility, however, on others in the system to act in a similar fashion. It is incumbent on all of us to constantly review the way we approach this task with a focus on the participants in the process. The test is to secure a fair trial within a reasonable period and to respect the rights and expectations of the victims, witnesses and defendants. I have seen improvement in the way we are going about business collectively within the criminal justice system and, with a will, I think that we can see further improvement. For my part I will continue to make the issue a priority.