

Opening of the Legal Year 2011/12

Speech by the Rt Hon Sir Declan Morgan, Lord Chief Justice,

Monday 5 September 2011, Royal Courts of Justice, Belfast.

Introduction

Ladies and gentlemen. Last year I used this opportunity as one of the ways in which the judiciary explained its work to the community we serve, so as to increase the transparency of the justice system and the public's confidence in it. I am glad to be able to do so again this year

The legal landscape is changing fast, both in Northern Ireland and in our sister jurisdictions. We face challenges to the established way of doing things from the financial crisis, from developments in technology, from new trends in the business world and from the public's changing expectations. Issues like super injunctions, phone hacking, legal aid, sentencing in sexual offences and others are important but as judges we must remember that our commitment is to deal with each case fairly and promptly according to law and to play our part, working together with others, to build a justice system of which everyone here can be proud.

Public confidence and respect

This morning I called to the Bar 31 new barristers and suggested to them that as they face the undoubted challenges of the future, they should look forward but also look back to reflect on and learn from the best traditions of their profession in the past.

I similarly want to acknowledge the contribution that solicitors have made throughout Northern Ireland in providing advice and guidance to their local communities. Many local solicitors serve the communities in which they live

on boards as school governors, as trustees of charities and credit unions, treasurers of churches and sports clubs, and in many other ways.

The legal profession is an honourable one, and deserving of respect, but that respect must be earned anew by each succeeding generation. Some of our current generation of solicitors and barristers will earn it in this type of general practice. Others will do so in new, specialist roles. But the confidence of the public in the legal profession and the justice system itself depends on the actions of each of them, every day of their working lives.

The system of justice must also promote the respect of the public for the judiciary. Everyone who comes to court must be able to trust that the judge is independent of government and impartial between the parties. Those are fundamental components of the rule of law and an independent judiciary is there for the benefit of the community, not that of the judges themselves. It is a fundamental principle of democracy, which is why the principle has been recognised in statute, and in the Hillsborough Agreement of 2010 and its importance has been acknowledged by the Minister for Justice. As our devolved justice institutions bed down, it will be important not to lose sight of the need to continue discussing arrangements between the judiciary and executive to ensure that these statutory obligations are fulfilled to a standard of international best practice.

Such a conversation must take place in an atmosphere of mutual respect. Each of us has our role to play in the justice system. But as I have said before, the fact that the judiciary is independent does not mean that it is isolated. Over the last year, we have seen again and again the benefits of working together with others in the justice system, respecting each others' roles and professionalism.

Listening and working together have been two key themes of our work in the past year.

Outreach and engagement

Public confidence in the justice system requires understanding of the justice system, and engagement not only between judges and professionals, but between the public and the judiciary. Circumstances in the past have made public engagement by the judiciary difficult, but I am determined that we should interact with the community we serve to the greatest extent possible. To that end, in the past year the judiciary has been involved in **explaining** our role, **listening** to the community's experience of the legal system and **engaging in debate** with people from outside Northern Ireland about how other jurisdictions meet the same challenges that we face.

During the year, I have delivered the Vice Chancellor's Lecture at UU, considering the themes of the rule of law and the independence of the judiciary. I am engaging in a programme of visits to schools to speak about justice issues and members of my staff have worked with the universities here to put in place a programme of visits and internships for students considering a legal career. The judiciary have met throughout the year with local community groups to discuss issues such as sentencing and to hear from them about their experience of the justice system. I hold a programme of regular meetings with key stakeholders in the justice system – the Minister, the Chief Constable, the legal profession, and representatives of civic society. This year I also held an interview with Frances Gibb, the Times' legal correspondent to give my views on some of the important issues which we face.

In addition to participating in the conversation about justice within Northern Ireland, the judiciary here contribute in various ways to the international debate. This year, I took part in seminars with judges of the Supreme Court

and the European Court of Justice on the interfaces and tensions between EU and domestic law. We have held a number of visits for overseas judiciary, to allow learning to be shared with colleagues facing some of same the challenges we have faced in the past and today. And judges from Northern Ireland have shared their experience with fellow-judges in some of the most difficult situations in the world. For example, one of our retired lay magistrates, Mr McCarney, has worked this year in Liberia with UNICEF, helping to train magistrates there in the fundamentals of doing justice according to law.

Specific achievements in the past year

Certainty and delay

It is easy for members of the legal community and other court-involved professionals to underestimate the amount of stress that is caused to a litigant, a witness, a defendant and in particular the victim of a crime by the delay and uncertainty of the court process. It is, for many people, an ordeal to have to attend court once, and that ordeal is prolonged every time that a case is adjourned or cannot go on for some reason. That is why the judiciary has, in the past year led a major initiative with PSNI/PPS to reduce avoidable delay. The measures we have put in place will benefit witnesses, victims and defendants as well as creating efficiencies and so, we hope, cost savings in court time and police resource.

The work which we have done results from a careful systematic analysis of criminal cases to see what causes avoidable delay. Because all the key players were around the table, it was possible to identify both the problems and ways to tackle them. Each factor on its own may appear rather minor, but cumulatively they cause significant delays in individual cases.

We have identified the availability of witnesses as a key issue, and I have introduced a Practice Direction in the Crown Court to put in place new

arrangements for the listing of trials, agreeing non-essential witnesses, notifying witnesses, and ensuring that the prosecution and defence take steps to check witness availability. Similar steps are being taken in the magistrates' court. The benefits not only witnesses, victims and defendants. There are also efficiency benefits for the police and PPS. The improved framework means that they are able to go about their jobs of detecting and prosecuting offences without losing days of "dead" court time. By working together, we have achieved a great deal more than we could have achieved on our own.

Sentencing guidelines

One of the public's key concerns about the legal system is that offenders should receive a just sentence for the crimes they commit. Sentencing is one of the most complex tasks which the judiciary has to undertake. The judge must balance the need for a sentence which is consistent with those passed for other, similar crimes, and one which is appropriate for this offender, who has committed these offences against this victim, in these circumstances. My awareness of the public's concerns, which were matched by a desire on the part of the judiciary for a sentencing guidance system which is the best that it can be, led me to set up a judicial Sentencing Group. I asked my Group to identify gaps in the structures by which we ensure consistent, transparent and fair sentences. I also asked the public, last September, for their views on the areas in which new sentencing guidelines were needed.

The response to the public consultation was well-informed. The replies suggested a number of areas in which fresh guidance for the judiciary would be helpful. I had put out an initial "Priority List" of areas in which initial consultation with the judiciary had suggested a need for action. The public consultation confirmed those suggestions and put forward further ideas which broadened the scope of the recommendations somewhat. For this reason, and because the term "priority list" may misleadingly suggest a ranking of issues, the final recommendations will be referred to as the First

Programme of Action on Sentencing. This will contain the original suggestions, which are:

1. Domestic violence;
2. Serious sexual offences (ie those dealt with in the Crown Court), including offences against children;
3. Human trafficking;
4. Attacks on public workers, including police officers;
5. Attacks on vulnerable people, including the elderly;
5. Duty evasion and smuggling;
6. Environmental crime in the Crown Court.

As a result of the public consultation, I have added to this list:

1. Honour-based crime;
2. Tiger kidnapping;
3. Intellectual property crime;
4. Road Traffic Offences;
5. Hate crime;
6. Health and safety offences causing death;
7. The recently reformed law of manslaughter;
8. Child cruelty and neglect and serious assaults on children.

I have also accepted consultees' recommendations that we should look for an opportunity to consider offences taken into consideration, breach of a court order or licence, and the developing law on extended and indeterminate sentences for dangerous offenders. The programme is not static. It will be added to over the years ahead and consultation with the public every two years will allow us to report on progress and to enable the Programme to be refreshed.

The programme is a challenging one and I intend to take action on it using a flexible range of mechanisms which will allow us to tailor our response to the need in each instance.

I am pleased to be able to tell you that work is well under way on the First Programme of Action. During the past months, there have been guidelines from the Court of Appeal on issues including manslaughter, social security fraud and the concept of dangerousness under the new Sentencing Framework. A sentencing event on road traffic offences has already been held by the Judicial Studies Board, and another on environmental crime is scheduled for the 29th of this month. The Magistrates' Court Subcommittee of the Sentencing Group has made a strong start on comprehensive guidelines on the most common offences in that court. These guidelines are agreed by the District Judges acting as a body and like the Court of Appeal guidelines are publicly available on the JSB website. Sets of guidelines on road traffic offences, dishonesty offences and offences of violence are already on the website. Guidelines on drug offences, sexual offences, further road traffic offences and public order offences will be brought forward this term. I am particularly pleased with this initiative, as the concept of specific magistrates' court sentencing guidelines is a new one in Northern Ireland.

The Minister for Justice has, as you know, also consulted this year about what is the best mechanism for sentencing guidelines in Northern Ireland. Our initiatives are separate responses to the public's interest in the area but the Minister and I have discussed these issues and we share a common interest in ensuring our structures work well. There is scope for us to work together and I look forward to talking to the Minister about how we might do that. We are all servants of the same community, and we all have the same objective of making our justice system the best it can possibly be.

Victim impact statements

Access to justice is also a real issue for victims in our criminal justice system, and I am very supportive of the work which is being done on how we can best use victim and community impact assessment statements to enable those who have been injured by offending to have a voice in proceedings. These are not straightforward issues, but it is another area in which I am delighted that the Minister is leading an inter-agency exploration of how best we can serve the victims of crime. My office is represented on that group. While we cannot contribute to the policy debate, we can use our operational experience to ensure that proposals will work to serve the interests of justice.

Personal litigants

The area in which many people will think about access to justice, though, is in the civil courts. We are seeing increasing numbers of people coming to court without a lawyer. Sometimes, this is because they cannot afford legal advice. On other occasions, it is because they feel able to represent themselves. Personal litigants can range from a small business owner dealing with debt cases to a householder whose home is being repossessed. For all of these people, the case is often about important issue in their lives, with important consequences for them and their family. The courts do their best to give access to justice to unrepresented litigants, but we operate an adversarial system, and the judge must be fair to both sides. Rather than address this on a case-by-case basis, therefore, I have set up a Judicial Personal Litigants' Committee which has developed a strategy to deal with these difficulties.

The judiciary is working with the Courts and Tribunals Service, the legal professions and the voluntary sector to provide accessible and easy-to-understand information to those facing common types of proceedings. For example, in repossession proceedings, a leaflet on how to get advice from Housing Rights Service will be included with the court papers served on the homeowner. An easy-to-read information sheet and a short video-

presentation by Housing Rights Service about coming to court have been prepared and will be available on the Courts and Tribunals Service website and the Housing Rights Service website. A pre-action Protocol explains in plain English the steps that the court will expect a lender and a borrower to take to try to resolve the problem before a case is started. We are trying to provide useful information in different ways so that people in many different circumstances can find and use it. Packages of information have also been prepared on bankruptcy, the administration of estates and divorce and ancillary relief, and these are available from court offices and on the NICTS website. The Senior Queen's Bench judge is working with the High Court Masters and court staff to prepare information for those involved in personal injury proceedings in the High Court and further assistance for unrepresented litigants is planned.

We are in discussions with the Bar Council and Law Society about a small pro bono pilot scheme to provide advice on practice and procedure for those who find themselves involved in key types of High Court litigation without legal representation. Pro bono is an established part of the legal world elsewhere. Such work has citizenship benefits for the firms involved. It offers valuable experience to young lawyers as well as those with more experience. Most importantly, it is a route to access to justice for those who could otherwise face real problems. I am excited by the potential for pro bono work in Northern Ireland and look forward to working with the profession to see how it might be developed here.

Transparency and avoiding delay in judgments

You will see from this speech that my focus in the past year has been on the ways in which the judiciary can ensure timely and meaningful access to justice, create transparency in the courts and build confidence in the rule of law. Among other measures in the interests of open justice I have directed that at the end of this and every other month any outstanding reserved

judgments at all court levels will be published on the internet and will be relisted in court for explanation if they are not delivered within an appropriate time frame. This is a new and important step. I believe that openness is an important element of promoting confidence in the justice system.

Conclusions

I hope that I have conveyed some of the actions which we have taken to ensure that the objectives of the court system are met. The role of the judiciary in any democratic society is to do justice according to law. We also have an important role to play in building confidence in the justice system and the rule of law among everyone in Northern Ireland. At a time of economic and social uncertainty around the globe, a gold-standard, transparent and respected legal system is a reassurance of inestimable value. All of those are reasons for us to continue working with others, in an atmosphere of mutual respect, to build a justice system that we can all be proud of and I look forward to working with all the people in this room in the year ahead to do just that.