

**Opening of the Legal Year 2010/11**  
**Speech by the Rt Hon Sir Declan Morgan, Lord Chief Justice, Monday**  
**6 September 2010, Royal Courts of Justice, Belfast.**

1. Thank you for attending today. You are all most welcome.
2. This is an opportunity for me to address you and, through the media, the public on the work of the judiciary and on a number of initiatives that have been taken by us since my appointment a little over a year ago. The judges are here to serve the community and it is therefore important that we keep the public at large informed of the work that we undertake. It is clear to me from the contact my colleagues and I have with those outside the profession and with those who regularly appear in court, that we need to communicate what judges do and how we go about our work. The public also need to understand what judges cannot do. For example, we do not make or comment on policy or legislation to increase maximum sentences. That is for the Assembly. We operate within the framework set for us by government.
3. Perhaps I should start by explaining my role, indeed my duty. Since the introduction of the Constitutional Reform Act 2005 the Lord Chief Justice is the head of the judiciary in Northern Ireland. Naturally as Chief Justice I have a role in court but I also have a responsibility, in law, for the welfare, training and guidance, among other matters, of the judiciary. I take both roles very seriously indeed. I am also empowered to make representations to the Assembly, although I hope not to need to do so.
4. One of the reasons for the Lord Chief Justice being established in statute as the head of the judiciary, and replacing the Lord Chancellor who previously had that function, is to ensure the independence of the judiciary. An independent judiciary is a critical element of every democracy and its importance in this jurisdiction was expressly acknowledged in the Hillsborough Agreement. It means that an independent and impartial judiciary is not responsible to the Assembly or the Executive. But the judges must apply the law. They cannot act arbitrarily and there is a proportionate system of appeals in place by way of safeguard to ensure this. And, of course, it is for the Assembly to determine whether the law should be changed.
5. As head of the judiciary obviously I am conscious of the very important role that judges perform on behalf of the community and I will endeavour to ensure that we perform that role as effectively as possible.
6. I am planning to make it a particular priority over the next year to seek to find ways in which the role of the judiciary within the criminal justice system can be better explained to the community we serve. That may not be a straightforward task because the issues we deal with are often complex. They fall within a legal backdrop which is not always capable of easy explanation. We are, of course, judged by the media coverage of the latest sentencing decision. And the media operate to deadlines which may not easily permit explanation of the detail of a case to them

before they report it. I hope, however, to be able to put our role in its proper context to enable informed opinion to be formed. If that opinion leads to critical or negative comment, based on good cause, then I will listen to it and seek to address it. If, however, it is ill-informed then naturally I will want to seek to correct that impression.

### **Statistics on judicial work**

7. I mentioned that we often judged by the current case in the headlines. I think it would help to look at and appreciate the workload of the judges and courts.

8. In 2009 the judiciary dealt with over 100,000 cases- on average some 2000 cases per week of all varieties. In terms of crime, over 57,000 criminal defendants were dealt with in the Crown, magistrates' and youth courts. Looking at those cases which are dealt with in the Crown court- in other words the most serious matters coming to trial - under 1% of all convictions in the Crown Court and 1% of sentences were successfully appealed in the Court of Appeal

9. The bald numbers of course reveal nothing of the variety and complexity of the cases that come before the courts. So I want to make the point today that while judges may not get it right in every case, the vast array and number of cases they take on should be recognised as should the fact that they invariably do make the correct decisions. That is greatly to their credit and should be a reassurance to the public.

10. I think it would be entirely appropriate, therefore, to recognise the outstanding work of all my judicial colleagues in dealing with a workload of this quantity. The presiding judges and Mr Justice Hart have a particularly challenging role in making the criminal courts function and I would like to record my thanks to them. But there are many other individuals, organisations and groups involved in this system to make it work and I would like to recognise that today as well. That includes too many to name but comprises those bringing cases to court, those supporting victims and witnesses and others without whom the system simply could not function effectively.

11. As we are all aware, the system is not perfect: no system of this magnitude ever is. There are undoubtedly changes that we would all wish to see and improvements made in certain areas. And work is ongoing to meet the need for improvements across many organisations. I will comment on the judicial work in this area later. But I think sometimes there is a tendency to focus on the negative while not recognising the positive. And there is a lot to be positive about. What I would say, however, is that we should all- and I include the judiciary in this - continuously look to see what needs to improve and how collectively that can be achieved.

### **Visits/ meetings**

12. Since I took office in July last year, I have visited all the main court venues across Northern Ireland. I wanted to see how things worked on the ground and to meet those involved in running the system at that level. I have had the pleasure of

meeting many individuals and groups throughout our community and listening to their accounts of the system both the good aspects and the rubbing points. What I have seen and heard has reinforced my view that the system works best when there is good local co-operation between judiciary, court staff, police and parties.

### **Devolution**

13. One of the most significant happenings over the past year has been the devolution of policing and justice on 12 April. Obviously the decision on whether or not to trigger that was a political one and was not something for the judiciary. In one sense at a constitutional level devolution has not changed matters significantly for the judiciary. The judges, however, recognise the impact of devolution in bringing justice within the sphere of the Northern Ireland Assembly with a Northern Ireland Minister David Ford who is here today.

14. The Minister and I have already had two meetings which, I hope he will agree, were helpful and constructive. We are due to meet again later this week. I look forward to developing a constructive relationship in the interests of the administration of justice on behalf of the community.

15. I have also had a meeting with Lord Morrow and Raymond McCartney, chairman and deputy chairman of the Justice Committee at the Assembly. While under the constitutional arrangements the judiciary are obviously not accountable to that committee or the Minister any more than they are accountable to us, I am sure we can develop a constructive dialogue.

16. While judges should not comment on policy matters – as I have said that is not our role – we will continue to contribute when asked about the operational implications of legislative changes or to explain the way we do our work. So if a particular proposed provision will bring about an unintended consequence, such as significant delay, we will draw that to the attention of the policy makers.

17. Devolution has brought changes in the judicial engagement with the Northern Ireland Courts Service. For a start it has now become the Northern Ireland Courts and Tribunals Service and is an agency of the Department of Justice with an Agency Board. It is no longer accountable to the Lord Chancellor but rather to the Minister. That said, clearly the judiciary work extremely closely with the Court Service staff and we welcome that relationship and the significant support we receive. Because of the close working relationship I accepted an invitation from government to nominate members of the judiciary to act as my representatives on the Agency Board and there are now three judges and a tribunal member attending it. They are attending to give a judicial perspective on the issues before the Board. I have agreed to this as it is clearly important for the Board to have access to the judicial perspective of the strategic issues under discussion. Of course, the judicial representatives will not discuss individual judicial decisions or participate in any debates on policy or legal aid. And they are not accountable to the Minister because of their independent judicial status.

18. I have made it clear to the Director of the Northern Ireland Courts and Tribunals Service, David Lavery, that I will keep their involvement under review as I expect that work will begin in the not too distant future on the commitment given by the Assembly and Executive Review Committee in its 11 March 2008 report on its inquiry into the devolution of policing and justice that:

“... matters relating to the independence, governance and accountability of the Court Service be examined further, as a matter of priority, after the devolution of policing and justice matters” (recommendation 35).]

19. When my predecessor Lord Kerr met the AERC he made clear his view that there should be a non -ministerial department to ensure the appropriate level of independence for the Courts Agency. Such a body would be governed by a Board chaired by the Lord Chief Justice or his nominee. I am strongly of the view that this approach would best preserve the independence of the judiciary from the Executive while allowing for appropriate accountability for the resources given to the courts. The model has already been adopted in Scotland and the Republic of Ireland as well as many other jurisdictions in the Commonwealth. One of the strengths of a NMD is that it provides a clear mechanism for ensuring that the necessary resources are provided for the courts in line with the statutory responsibility on the Minister of Justice to secure an efficient and effective system to support the carrying on of the business of the courts.

20. This is particularly important when there are clearly serious challenges surrounding the public finances. One must examine the justice system as a whole to ensure that efficiencies introduced at one end of the system do not lead to costs at another end. Any efficiencies or cuts must be implemented in a thoughtful and appropriate way so as not to undermine the system of justice.

### **Community engagement**

21. The judiciary recognise that we have a part to play in securing public confidence in the system for the administration of justice. We seek to achieve this primarily through the quality of our decision making which is delivered in open court and may be reported by the media both nationally and locally. Our written judgments, which explain how we reached our decisions, are published on the Courts and Tribunals website. I recognise, however, that it is not possible for the full judgment to be published in the papers or referred to in news programmes. In order to assist public access to our judgments my office has recently started to publish summaries of important or complex cases on the internet.

22. I touched earlier on engagement with the Minister and Committee responsible for justice. I think it is important for the judiciary to have appropriate engagement with others with responsibilities for delivering the administrative of justice. That is in part to ensure that they understand the concept of independence, but it is also a recognition that judges cannot operate in isolation in terms of management of the criminal and civil justice systems. I have listened and will listen to views on our work and will consider those, but naturally it is important that our

approach to our work is ours alone and not subject to undue influence from one side or another, one lobby group or another. The judicial function requires impartiality and I do not intend to take steps which will damage that or indeed even the perception of our impartiality.

23. In recent months, members of the judiciary have participated in events organised for members of the District Policing Partnerships by the Policing Board. The judges spoke about their obligations and responsibilities when granting bail and sentencing. The feedback from these events was very positive. Judges have also given public lectures and participated in meetings with community organisations.

24. As I have already said it remains a fundamental principle that judges cannot discuss policy issues or, in general, the details of individual cases during these sessions. But such engagement should provide useful opportunities to explain the work of the judiciary. I see this as part of our responsibility to ensure and enhance public confidence in the justice system. I am fully committed to continuing to build on these relationships and to identify other ways in which authoritative but readily understandable information about the work of the judiciary can be disseminated.

25. Another significant area in terms of engagement, this time between those with a more direct interest in the system, is a committee, the Criminal Justice Issues Group, established in 2008 whose membership includes the heads of the criminal justice organisations, representatives from the community and voluntary sector and the judiciary. The Children's Law Centre and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) are represented on the Group. They are there to cascade information downwards and to bring information to the group from the community and voluntary sector. The Criminal Justice Issues Group provides a forum for discussing operational issues. It is aimed at improving the Criminal Justice System by considering emerging trends, promoting best practice and ensuring public confidence. While one has to recognise the independence and individual perspectives of all the groups and organisations on the Criminal Issues Group I think it is a useful forum for exchange.

### **Judicial Training**

26. One of the important means by which judges keep themselves up to date and on top of new laws and initiatives is through judicial training. The programme is developed and overseen on my behalf by the Judicial Studies Board for Northern Ireland, which is convened under the chairmanship of Lord Justice Higgins. Its remit is to ensure that all judicial office holders – from lay magistrate to Lord Chief Justice – are equipped as far as possible with the skills and knowledge which they need to discharge their duties effectively and in a way which preserves judicial independence and promotes confidence in the justice system.

27. The value of effective continuing training for the judiciary cannot be underestimated. In a legal context where the pace of change continues to increase inexorably training is indispensable to ensure that the public continues to be served by fully competent courts of law. In seeking to serve that purpose, the Board will

endeavour to be responsive both to the demands of the broader public context and to the needs of the judiciary.

### **Judicial Initiatives**

28. I thought that I might touch on some of the other initiatives that have been taken forward by the judiciary in the past year.

29. For instance, in respect of the criminal law and the operation of the Crown Court and Magistrates' Courts in that area, there have been important judicial initiatives. One of these is a criminal courts judicial committee which I have established comprising senior representatives from the Crown Court and Magistrates' Courts as well as representatives from the Courts and Tribunals Service who are meeting to look at a number of issues concerning the progression of criminal cases. These include:

- Preparing and reviewing guidance for the judiciary
- Communicating best Practice
- Monitoring performance statistics

30. This group has been asked to consider these issues and to make recommendations to me on ways to tackle delay. I am expecting to have areas of good practice and less good practice drawn to my attention so that praise can be given where it is due and action taken where necessary.

31. I have recently established a Judges Council under the chairmanship of Mr Justice Gillen. I have a statutory responsibility for judicial welfare and the Council will assist the discharge of my duties in this and other areas.

32. On sentencing, I recognise the importance of the judiciary being clear in the reasons behind the sentences they give so that these are understood by the parties and the public. As I said earlier, however, we do deal with some 57,000 defendants per annum

33. Sentencing of offenders is a difficult exercise. The individual judge, hearing the individual case, is bound by the maximum and sometimes minimum sentence which the legislature has prescribed. The elected institutions also on occasion set out some of the factors which the court should take into account in deciding on a certain sentence. For example, an extended custodial sentence can only be given if the offender is dangerous. For a probation order to be made, there must be evidence that it would help the offender to deal with an addiction or other personal difficulty.

34. The judge will also take into account any guidelines previously issued by the Court of Appeal in Northern Ireland, and may have regard to what has been done in other cases in the lower courts. But after that, he or she has to apply the law to the individual facts. That means, taking a huge number of considerations into account. In short the judicial process aims to provide in each case a tailored sentence which will best act as sufficient punishment and retribution, protect the community

adequately and provide the best opportunity for rehabilitation for the offender within the sentencing options and limits provided by the legislature for each offence.

35. My purpose in mentioning this is to refer to a sentencing group, judges supported by my office under the chairmanship of Lord Justice Girvan. I established this in 2009 to assess the help and support available to the judiciary as a whole to assist with this difficult task, and to identify any gaps or room for improvement in our system. The group focussed on the support provided by the production and dissemination of guidance and training to the judiciary, through Court of Appeal guidelines and update materials and training events from the Judicial Studies Board.

36. The committee's report was published in June 2010 and is available on the web. It made a number of recommendations, all of which I accepted. Some of them are simple and very practical. The value of a review is sometimes that it reminds you to do the obvious, and perhaps the upgrading of the search engine in the JSB website, where judges and the public can access sentencing guidelines, or having the Court of Appeal say in a judgment that it is intended as a guideline, fall into that category.

37. Other recommendations are likely to be more far reaching and indeed significant. One of the weaknesses of the current system is that the Court of Appeal has to be reactive - it can only hear those cases which come before it. Following the Committee's recommendations, I have set in place a system to identify those areas where guidelines or guidance are most needed, and to find suitable cases at first instance and in the Court of Appeal in which guidance can be given. Guidance by a first instance court is not binding but once placed on the JSB website it will be a very useful resource for other sentencers as well as the legal profession and the public. Having a prioritising system will allow us to focus research on priority areas. It will allow us to produce guidance faster and will not cost the taxpayer any more money.

38. A really important question is where the list of priority areas will come from? One group of people who have a clear sense of where some of the gaps are is the judiciary, and I have already asked them for their views. But other court users and members of the public will also have views, and will now be able to communicate them to my office for consideration. The areas we are currently considering include:

39. Domestic violence, dangerousness, serious sexual offences environmental crime, attacks on the vulnerable and people trafficking

40. I am happy to consider suggestions for other areas. Obviously the sentencing group advising me will need to consider whether the offences identified have guidance in place, whether this is current and will give priority to more prevalent offences. That said, we will consider all areas put to us.

41. Clearly neither I nor anyone else can use this process to change the sentence which has been passed by a judge in an individual case, and it would not be helpful for responses to focus simply on one case that they feel has not been decided correctly. We are also bound by the sentencing framework provided by

Government. But I would like to hear about the areas that others think we should consider and why.

42. On civil justice, where the courts primarily deal with disputes between individuals, or between individuals and institutions, a number of initiatives have been taken. The legal process is a dispute resolution mechanism, and it aims to resolve the parties' disagreement justly and let them move on with their business, their project or their life. As the statutory Overriding Objective says, the goal is equality of arms and a just result, but with a proportionate use of resources and without unnecessary expense. It is the experience of every judge in Northern Ireland that not all the cases which come before us should properly be there. Some cases will settle easily between the parties or their lawyers. Others can be resolved with the help of a trained mediator or arbitrator. Although only a small minority of civil cases come to hearing, there will always be a significant minority which need the structure of the court process to enable their resolution. One area we looking at, therefore, is the potential for greater use of mediation, or alternative dispute resolution as it is sometimes called, in appropriate cases. While we recognise that the courts must continue to provide an independent and impartial forum we also think that they have a role in encouraging mediation in appropriate cases while not discouraging the public from using the court if that is their wish. Work is under way to consider how the courts can assist mediation rather than, perhaps, directing parties into it. It is evident to me and my colleagues that in appropriate cases if differences can be resolved early through mediation then this is more efficient, economical and potentially less damaging to relationships.

43. Mediation is not, however, a panacea, and there are cases for which it is not suitable. You cannot drive parties to mediation, and there will always be those cases which need to come before a court. Two of the early academic pioneers of alternative dispute resolution referred to a large part of the legal process as "bargaining in the shadow of the law"<sup>1</sup>, and the rule of law means that, in my view, we must not lose sight of the fact that the legal system is the sanction behind all dispute resolution.

44. The judiciary has recently introduced a number of initiatives to tackle the problem of delay in the civil courts. For reasons of time, I will not explain the detail of our suite of pre-action protocols and enhanced system of judicial case management. But I do want to tell you the differences we are starting to see. Instead of some cases – the worst offenders – drifting through the system we are setting time frames to shepherd them through the system. Instead of parties ambushing each other with their best points at the last minute, we are encouraging a "cards on the table" negotiation that is fairer to everyone, as well as less expensive. Improvements will need to work through the system but we need to ensure that for individuals whose cases come to court there is a reduction in expense and a reduction in the long-drawn out stress of waiting for a case to be determined. These may seem simple changes, but they enhance the rule of law and help create a justice system we can all be proud of. We will continue to look at other possibilities for change.

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<sup>1</sup> Mnookin and Kornhauser (1979), referring to divorce mediation and settlement.

## **Conclusion**

45. I wanted today to set out a number of messages about the role of the judiciary in this society or indeed in any democratic society. Judges must be independent and have a right to expect that the Executive will respect that position. As a corollary we must respect the role of the Executive and the Assembly. But while we are independent we should continue to listen to comments about our work and to respond to those.

47. I will continue to seek to build relationships, to progress the work that we have identified and begun, for example on sentencing, and seek to build confidence in our system of justice of which I think we should be proud.