

## OPENING OF THE LEGAL YEAR 2016-2017

The opening of each legal year marks a new chapter in the history of our justice system, our court service, and in our professional lives. It is in the nature of things that some chapters - some years - will be particularly significant and momentous, and will live long in our collective memory. The implementation of the structural provisions of the Courts Reform (Scotland) Act 2014 over the last year may well be considered by many to be of great significance. In the same way, chapters which appear to pass uneventfully may take on a new significance with the passage of time. Sometimes changes which are continuous or gradual are the ones which are truly transformative. The full picture cannot be seen by focusing only on one or two discrete chapters in isolation.

In February 2017, a decade will have passed since Lord Gill was tasked with carrying out a review of the civil justice system. Over that period, all of our professional lives - as judges, advocates, solicitors, and court staff - have become steeped in the process and language of change. The purpose and principles of the reforms - to make the justice system work efficiently and, in particular, to promote just decisions which are delivered in proportionate time and at proportionate cost - are well known. We must not lose sight of that goal. The purpose of procedural reform is ultimately as a means to an end. It is to secure substantive rights by ensuring that the public have access to the courts, unhindered by undue delay or expense.

In the past year, the headline recommendations of the reforms - the creation of the Sheriff Appeal Court; the increase in the privative jurisdiction of the Court to £100,000, and the introduction of the All Scotland Personal Injury Sheriff Court at Edinburgh Sheriff Court - have begun to bed in. A significant proportion of appellate and first instance business will be taken out of our Supreme Courts. Although that effect has certainly been felt administratively, the impact on court time – on the number of sitting days - will probably not become apparent for another few years. Teething problems are to be expected in any change of this magnitude.

The focus must now shift from structure to function. The success of the reforms, and of the new courts, will depend not only on the structure which is now in place, but on the continued commitment of the judiciary, court staff, and the profession to make sure that the goal of the reforms is met.

Progress towards a modern justice system continues on a number of other fronts in both the civil and criminal spheres. Digital innovation is crucial to ensuring that the service which the courts provide is in line with public expectation in the modern era. The digital process is coming, and coming soon, with the Integrated Case Management System (ICMS) undergoing live testing in Sheriff Courts across Scotland. The online portal will launch in November at the same time as the new Simple Procedure Rules come into force. It should allow all Simple Procedure cases to be submitted (and managed) electronically. In time, it will be rolled out to other forms of Sheriff Court business and hopefully to the Court of Session in the coming year.

Changes to the way in which civil business in the Court of Session is programmed are also about to be implemented. At first instance, two Outer House judges will sit throughout the term to hear ordinary civil business. The aim of this measure is to reduce the prospect of losing proof and judicial review diets. Programming of cases continues to be a major challenge, given the level, and more significant, the timing of settlements. However, with two permanent Lords Ordinary in the Outer House, augmented by 2 more at any given time, to deal with Ordinary and Family causes, the Cinderella reputation of the non-commercial Outer House ought to be successfully addressed. In January, there will again be four full time commercial judges, returning the court to its complement before the untimely death of Lord Jones.

The increased efficiency of the Criminal Appeal Court and the diversion of summary business from that court ought to mean that there will be two civil Divisions sitting in appellate business throughout the year along with one criminal Division, reversing the situation five years or so ago.

The programming of civil business throughout the legal year is also about to be altered. There will be no significant summer recess at the end of the legal year 2017-2018. The beginning of the winter term will start a few days after the end of the summer term. Whilst it is to be anticipated that the courts will not run at full power over the summer months of 'vacation', as it is still commonly called it, since the judges too need a holiday, the sitting days of the civil courts, both first instance and at appellate level, will be evenly spread over the whole legal year. Put another way,

business will be programmed on the basis that the civil courts will sit throughout the year other than for periods of two weeks at both Easter and New Year. Practitioners will take their vacations according to their own business calendars rather than having to follow that of the court. This is perhaps less of a culture shock than it first appears. Many of our civil courts now sit in procedural matters and urgent disposals in the summer months. The e-motion system sees many matters, which might previously have been held over, dealt with routinely. Judicial Reviews have a timetable which must be adhered to. The commercial courts have been used to fixing substantive diets during recess periods.

Vacation has been a feature of history in the criminal courts for many years. In the criminal sphere, there are important changes to make; notably in the way in which we take evidence from children, and vulnerable witnesses, are progressing, under the auspices of the Evidence and Procedure Review. The response from the legal profession has been very positive. The intention is that in the future the necessary culture shift will result in a more consistent use of special measures, and in particular evidence on commission, in so far as permitted under current legislation. In the longer term, questions of how best to capture the evidence of all witnesses will be considered. The answers may ultimately lead to more radical change, perhaps initially at summary level. The new methodology may impact on the way in which evidence is presented in the civil sphere where the eviscerated spectre of hearsay has long since departed.

Modernisation of the court estate and court service itself also continues. The proposal to have a new Justice Centre in Inverness, incorporating facilities for the criminal and civil courts, tribunals and the children's hearings, have recently been announced. Plans are now being developed. Because of the substantial recent increase in the number of criminal trials, although not indictments, in the High Court, a new West court in the Saltmarket in Glasgow has been opened. Work is well underway on the East Court there too.

The past legal year has been particularly significant for the judiciary. Lady Dorrian on her appointment as Lord Justice Clerk has become the most senior female judicial office holder in Scottish legal history, a significant milestone in the history of the courts. Lord Glennie has been appointed to the First Division, and Lord Turnbull to the Second Division. This will maintain a sufficient complement in the temporary absence of Lady Smith on important inquiry duties.

The courts are now largely operating with a full complement of judges following the appointments of Lords Ericht and Clark, Lady Carmichael, Lord Becket, and shortly Frank Mulholland QC. This, along with some continued use of experienced sheriffs and a few retired judges, sheriffs and sheriffs principal, acting up as judges in the High Court and occasionally the Outer House, ought to produce the requisite degree of efficiency.

However, there is continuing concern about the time which Outer House Opinions are taking to be issued following avizandum. Further steps are being explored in this jurisdiction, as they are in others, to ascertain the nature and cause

of this common phenomenon, in an effort to solve what is recognised as a serious and ongoing problem. The time which it is taking to fix hearings in long proofs also remains a subject of worry. This is, however, recognised and hopefully the changes to the Outer House and the court terms will go some way to bring down the relative waiting periods.

I am pleased to take this opportunity to thank all of my judicial colleagues, not least of course the Lord Justice Clerk, but also Lords Bracadale, Menzies, Boyd and Turnbull for their work as the administrative judges, and the Principal Clerk, and all of the court staff, whose commitment and hard work are important driving forces in the continued progress of our justice system. I wish to thank too the legal profession and all the clerks and support staff who have engaged with the spirit and letter of the reforms which have been implemented in the last year. Their support, and occasional patience, is much appreciated.

It is now my pleasure to introduce those who have gained the rank and dignity of **Her Majesty's Counsel**.

Ms Edwards, as Assistant Principal Crown Counsel you bring a wealth of experience from your work in the High Court of Justiciary at both first instance and appellate levels, particularly in the important area of taking evidence from child and vulnerable witnesses.

Ms Henderson, as a leading specialist in clinical negligence claims, you have contributed much to the development of the law in this area, particularly in complex cases involving catastrophic injuries.

Mr Love, you bring vast experience in the field of personal injury litigation and regulatory matters, from a career as both a well-established solicitor and advocate.

Mr Macfarlane, your wealth of experience in family law, and in particular child law, and as an accredited mediator, has contributed much to the development of the law in recent years. To this you have added the string of Advocate Depute.

Mr Mackenzie, with your broad civil practice, including as Standing Junior Counsel to the Scottish Government for the past decade, you bring a wealth of experience to the senior bar in public law, planning and environmental law.

Mr McKay, you are a leading expert in the field of planning and environmental law, with a distinguished practice in planning appeals, as well as public inquiry and project consent advisory work.

Mr Ross, with your academic background and in your role as First Standing Junior Counsel to the Scottish Government, you bring much experience particularly in the area of administrative law, judicial review and human rights.

Ms Ross, you have a distinguished practice in EU law, public and administrative law, as well as in commercial matters. You have contributed much to the work of the Commercial Court. Your skills as a civil advocate are well recognised, even when attacking the reasoning of the Divisions.

Ms Springham, you bring your skills and experience from a broad civil practice, particularly in reparation and public law, as well as in your work for the Equality and Human Rights Commission.

Ms Sutherland, through your work as both a solicitor and an advocate, you have contributed significantly to the development of the law on clinical negligence, as well as your important work as Junior Counsel to in the Vale of Leven Hospital Inquiry.

Ms Tanner, you have a distinguished civil practice, as well as public service as an Advocate Depute. Your work in the criminal courts particularly at first instance has been a major feature of your career.

Mr Walker, you are a leading expert in international commercial law, with particular specialism in international arbitration and energy disputes. Your international experience gives you invaluable insight into our system.

Mr McSporran, you are one of only a handful of practitioners to distinguish themselves as both prosecutor and defence solicitor. As a Solicitor Advocate, you have continued your public service as a Senior Advocate Depute, bringing the benefit of your work, notably in the Criminal Appeal Court, to the senior bar.

The rank and dignity of Queen's Counsel is hard earned and well-deserved for each of you. I offer you all my sincere congratulations and best wishes for this next chapter in your legal career. I should say that, for my own part, which is not inconsiderable, I will attach particular importance to service as an Advocate Depute when determining suitability in the future.

The court will now adjourn.



