

## OPENING OF THE LEGAL YEAR 2017-18

### Welcome

Welcome everyone to the opening of the legal year. First let me thank you all for coming. Can I first introduce our guests from our neighbouring jurisdictions:

Lord Thomas, the Lord Chief Justice of England and Wales and President of the Courts of that jurisdiction and Lady Thomas;

Sir Declan Morgan, the Chief Justice of Northern Ireland and Lady Morgan

Mr Justice Frank Clarke the new Chief Justice of Ireland and President of the Irish Supreme Court

Mr Justice John MacMenamin, a member of the Supreme Court in Ireland

and a welcome return to Edinburgh to the new President of the United Kingdom Supreme Court, Lady Hale and Dr Julian Farrand

I am also pleased to welcome the Cabinet Secretary for Justice, Michael Matheson, Annabelle Ewing, Minister for Community Safety and Legal Affairs and Paul Johnston, the Director General for Education, Communities and Justice.

It is also a pleasure to have with us Liam McCollum, Chair of the Bar of Northern Ireland, Paul McGarry, the Chair of the Bar of Ireland, Seamus Woulfe, the Attorney General of Ireland and David Barniville, also from the Bar of Ireland.

## **Changes**

Without indulging in a lengthy essay on the current state of the Scottish Courts and Tribunals, I would like to say a few words about where we are now and where we are going next.

We have now seen the structural changes of the Courts Reform Act bedding in; with the advent of the Sheriff Appeal Court, the All Scotland Sheriff Personal Injuries Court and the raising of the exclusive jurisdiction of the sheriff court to £100,000. We have introduced important changes to the structure of Scotland's tribunals, with the establishment of the First-tier Tribunal for Scotland and the creation of distinct chambers for housing and property and for taxation.

As anticipated by the reforms, there has been a significant reduction in both appellate and first instance civil work in the Court of Session and in summary criminal appeals to the High Court. There has also been a predicted drop in the number of commercial cases. As a consequence of all of this, this court the Court of Session ought to become leaner, trimmer and fitter in the coming years.

There ought to be a significant reduction in waiting times for civil first instance and appellate hearings. This has already happened with appeals, which are generally being disposed of (including judgment) on average within 8 months of marking. Proofs of 4 days duration are fixed within 6 months of the request to do so. However, I fully recognise that further work requires to be carried out to accommodate longer proofs, within much shorter time-scales. I include in that equation the issue of the final opinion. This will be achieved partly as a consequence of the abolition of court terms in the coming year. This has already seen some of these proofs being allocated over what was formerly known as the Summer Vacation or Recess.

The policy of having at least 4 non-commercial judges in the Outer House over a period of at least 3 months will continue, or rather increase to 5, so as to avoid any criticism that ordinary first instance business is being regarded as less of a priority than other work. Major inroads have been made in relation to providing all judges with sufficient writing time in civil cases. Statistically, there has been a substantial improvement in the time taken to issue judgments, even if there continue to be problems in specific cases.

The High Court is already processing solemn appeals as efficiently as is reasonably practicable with disposals occurring within 6 months of the grant of leave. It is anticipated that far fewer criminal appeal courts will be needed in the coming months. This will mean that we will be

able to continue to run two civil Divisions each week if necessary. The post reform developments will result in much less reliance on retired or temporary judges and, in the sheriff courts, dependence upon fee paid and retired sheriffs. I remain very conscious of the fact that almost all High Court cases require an extension of time. However, I do not consider that this is caused by an inefficiency in the system. Rather, the introduction of enhanced disclosure, the need to search electronic databases and social media and advances in forensic science have made it all but impossible to comply with timescales set in a different era whilst at the same time accommodating the diaries of parties' legal representatives. As a result of concerted efforts over the past year, all sheriff courts are now able to fix summary trial diets within the optimal 16 week timescale. In relation to domestic abuse cases that timescale is under 10 weeks. Reform in sheriff and jury practice ought to place the sheriff courts onto a similar efficient footing to the High Court.

As I said at this time last year, the focus must now change from structure to function. As is often the case, pronouncements, about the advent of digital technology as the panacea for procedural and evidential woes, have proved somewhat optimistic. The new digital Integrated Case Management System has been rolled out in the sheriff courts, but glitches and gremlins have slowed its process. Even assuming that the digital portal, which is designed to absorb all court documents, including productions, into the ICMS, will be operational in

the not too distant future, it may still be some time before the ICMS is introduced to the Court of Session.

The enormously ambitious rules rewrite project, under the auspices of the Scottish Civil Justice Council, continues apace. Having produced its first report, the project now enters a second stage designed to develop a core narrative of draft civil rules applicable in both the Court of Session and the sheriff court. It has, to some, rather dull aspects, but the development of case management powers in relation to the conduct of proofs and other hearings will see an exciting change in the way things are done and the time which it takes to do them; provided, that is, that we continue to have a judiciary committed to improvement.

The next significant reform in solemn criminal procedure will be the expanded use of recorded evidence with vulnerable and child witnesses. This is already done, although not always consistently across the board. It is in summary criminal procedure that greater change is anticipated with fundamental proposals being made following upon the "New Model" paper produced earlier this year. The plan is to have all pre-trial procedures conducted by a digital case management process. More important will be the creation of a means to store, manage and share evidence digitally and securely. The idea that truth can be ascertained by using a combination of memory test, pressure and general inconvenience to witnesses will be replaced by a system which

gives far greater precedence to images and statements recorded electronically at or about the time of the relevant incident and to the need to accommodate witnesses generally.

## **Thanks**

I would now wish to thank all of my judicial colleagues, especially the Lord Justice Clerk, Lady Dorrian, for their continued help and support. I am grateful to the administrative judges Lords Malcolm (formerly Lord Menzies), Turnbull, Boyd and Matthews, for all their assistance throughout the year. I also thank the SCTS chief executive, Eric McQueen, the new head of the Judicial Office, Tim Barraclough, our new Principal Clerk, Gillian Prentice, and all the court clerks and other staff working here in Parliament House, in the High Court Centres and throughout the country. Their commitment and hard work remain important an driving force in ensuring not only the continued existence of the justice system but also its progress. I have also very much appreciated the court's continuing engagement with the Law Officers, all of whom are here today, in helping to develop policies and plans, both past and future, which make the system, as it is at present, fit for the 21<sup>st</sup> century.

Not least, I wish to thank the legal profession, especially those institutions represented here today, including the Faculty, the WS, SSC and Law Society, and also all those many counsel and solicitors who

have participated so willingly, and for no reward, in the committees and working groups now beavering away in the background, for their dedication to the Scottish Legal System, for the effort which all have put in over the last year and in anticipation of the invaluable work which they will be carrying out in the coming year.

### **Q.C.s**

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

**Mr Barne**, you come to the senior bar with a wealth of experience in public and commercial litigation, including from your position as Standing Junior to the Scottish Government, and your involvement in complex corporate cases.

**Ms Brabender**, your specialism in family and child law, your experience as a family arbitrator, and your contribution to the important work of the Family Law Committee of the Scottish Civil Justice Council, has developed the law in this important area.

**Ms Delibegovic-Broome**, you are an expert in the area of corporate and insolvency law, having gained experience as Standing Counsel to Her Majesty's Revenue and Customs.

**Mr Findlay**, you come to the Scottish senior bar having distinguished yourself in practice at the senior bar in England and

Wales, taking silk there in 2008, particularly in the area of planning and environmental law.

**Mr Graham**, you have distinguished yourself at the criminal bar, particularly at first instance in defence work, but also at appellate level, and from your experience as an *ad hoc* Advocate Depute.

**Mr MacColl**, you come to the senior bar with significant experience gleaned from a broad and varied practice in commercial law, particularly in contractual and property disputes.

**Mr O'Rourke**, you have distinguished yourself in your practice as a public and administrative law specialist, in your service as an Advocate Depute, and as a qualified and accredited mediator and arbitrator.

**Mr Parratt**, you have a varied and successful practice in the field of commercial and trust law, are a qualified arbitrator, as well as your service as an *ad hoc* Advocate Depute. You have contributed a great deal to the training of your fellow advocates as Director of Training & Education at the Faculty, from which position you have now moved on.

**Mr Richardson**, whilst your main expertise is in the area of commercial law, and particularly in professional negligence and construction, you have adapted those skills to make use of them in

cases involving human rights issue, and in your service as an Advocate Depute.

**Mr Ross**, you come to the senior bar as a distinguished criminal defence practitioner, initially as a solicitor, and then as junior counsel. As past-President of both the Glasgow Bar Association, and the Scottish Criminal Bar Association, you have made a significant contribution to the criminal defence bar during your career so far.

**Mr Stuart**, you bring to the senior bar your wealth of experience gleaned from a broad civil practice, in the areas of commercial and property law, family law, and professional negligence, as well as from your service as an Advocate Depute.

**Mr Thomson**, you are a leading commercial law and insolvency practitioner, as well as a qualified arbitrator, and you have gained significant experience as Standing Junior to the Advocate General for Scotland, and before that as Standing Junior to the Scottish Ministers.

**Mr Walker**, you come to the senior bar as a distinguished practitioner in the field of commercial law, with a particular expertise in construction disputes, Intellectual Property, and professional liability, and in arbitration and adjudication proceedings.

**Mr Jones**, you have gained this distinction with a wealth of experience as a solicitor and Solicitor Advocate, as partner and head of your firm's commercial dispute resolution team, and with particular expertise in the area of construction disputes and professional negligence.

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 the next chapter in your legal careers, which, I hope, will be as practitioners at the Bar for some time to come. I am conscious that there will be those who will be disappointed this year. I repeat what I said last year that, although by no means determinative one way or the other, I attach particular importance to service as an Advocate Depute, when determining suitability, and also, both in the civil and criminal contexts, to regular appearances by those aspiring to be Queen's Counsel in substantive matters heard in the appellate courts, especially when they have already represented the party at first instance.

The court will now adjourn.