

## **OPENING OF THE LEGAL YEAR 2019/20**

### **Welcome**

Welcome everyone to the opening of the legal year. I thank you all for coming. The coming together of the constituent part of the legal profession; the Faculty, The Law Society, the SSC and the WS continues to mark the legal year and remains one of the most important dates in our legal calendar.

### **General**

Over the last three years I have tried to use these occasions to explain the direction of the courts in a manner which addresses reality and is not self-congratulatory in tone. While there are many things that we do well, there are others that undoubtedly need improvement.

There has been a planned reduction in the business of the Court of Session following the Gill Review. There has separately been a significant change in the behavioural patterns of members of the profession stemming from advances in technology. There is less need for advocates, solicitors and others – although perhaps not judges and clerks - to come to Parliament House with the advent of online legal research systems, email and tele or video conferencing. The dynamic of the building has, and will continue to, change. It appears less busy.

Tuesdays are not quite what they used to be. Nevertheless, the building is rightly the centre of our legal system and it is important that the building and the history of the system is preserved for future generations. Here we remain; dealing with the great legal issues of the day, whether concerning local difficulties stemming from our unique Scots civil or criminal law and practice, or the great United Kingdom and potentially Europe wide constitutional issues which have captured the public imagination over the last few weeks.

### **The Court of Session**

At Parliament House, the opportunity to take advantage of the Gill reforms has been grasped. It is transforming the Court of Session into a much more dynamic, focused and forward looking court than it might have been perceived to be in the relatively recent past. Much of the routine and lower value work has been transferred to the sheriff courts. The Sheriff Appeal Court and the increase in the privative limit have bedded in well to create a buffer which ensures that the supreme civil court is dealing only with the most important cases both at the appellate and first instance levels.

The space which this has provided, especially to the appellate Divisions, ought to have produced noticeably faster and improved justice. The time which the judges now have to prepare and to write ought to ensure that they can reach decisions in accordance with parties'

expectations in terms of rapidity of issue, comprehension to the reader and, most of all, succinctness and simplicity in expression. This does not always occur, but it remains at the forefront of my own thinking with a view to Scots law developing in its unique fashion, tailored to the values and attitudes of today's society, and helping to make Scotland an attractive place, certainly for the resolution of civil disputes involving a Scottish dimension, but also those where international parties are seeking a cost effective, recognisably neutral, English speaking jurisdiction. I acknowledge the contribution Lord Malcolm has made to this as the Inner House administrative judge.

As always, the professions' participation in the process of continuing modernisation plays a vital role. The working group, which is chaired by Lord Pentland, and which is tasked with consulting widely with Court of Session users, will explore new avenues for improvement in practice and procedure. The court is grateful for the high level of engagement of the profession with this exciting project and to Lord Pentland for his dedication to it.

I take this opportunity of assuring everyone of my policy that, notwithstanding pressures from elsewhere in the system, the Court of Session will continue to maintain not only an efficient commercial court with its four senators but also an Outer House which is not the Cinderella of the Supreme Courts justice system but one which is properly served by experienced judges, many of whom are allocated to

the Ordinary Roll for months rather than days at a time. This will secure continuity of performance in the important areas of Outer House business, including judicial review and high value reparation. The work of Lord Boyd, and now Lord Pentland, in conjunction with the administrative staff, notably the Keeper, has been invaluable.

I am grateful, as always, to the Principal Clerk of Session and Justiciary, Gillian Prentice, her Depute Diane Machin and the Keeper, Trish Fiddes, and all the Depute Clerks of Session for their tireless work in oiling the civil wheels of justice.

### **The High Court**

The pressure of business on the High Court of Justiciary continues to rise. In the year 2018/19, there was a 26% increase in the number of indictments; with a 9% increase on that already in the first quarter of 2019/20. The level at which the High Court is now operating may not be particularly well known as a generality. When I started in practice, albeit that this was 40 years ago, there were 2, sometimes 3, High Courts in the Saltmarket in Glasgow, operating at least theoretically on two week circuits. There might have been one in Edinburgh and two or three scattered about in Dundee, Aberdeen and one or more of the county towns. There are now nine fully operational courts in the Saltmarket, four in Edinburgh, and two more permanently sitting in Aberdeen and Livingston. This year we have requisitioned extra

courtrooms from Glasgow and Edinburgh sheriff courts in order to cope with the demand. Cope with it we do, thanks to a remarkable team of first instance judges, who seldom flinch under the pressures of the current diet of crime, under the watchful first instance eye of Lord Matthews and the Deputy Principal Clerk of Justiciary, Joe Moyes and all the Depute Justiciary Clerks.

The appellate business in the High Court has reduced, as planned. The business of the Criminal Appeal Court is substantially less than it was prior to the reforms. What is seen as a result is, hopefully, a much more efficient unit which deals with the most serious of criminal appeals within a few months of the Note of Appeal, rather than the years of yesteryear. I am grateful to Lord Turnbull for his administrative leadership and to Alex McKay, the appeals manager, in ensuring the smooth running of this most important, and final, court of appeal.

## **Modernisation**

The last year has seen the justice system continue on the path of modernisation, both technologically and more broadly. The extensive work of SCTS's Evidence and Procedure Review has now seen it encompassed in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. The aspiration of using pre-trial recorded witness accounts will now become a reality, which will avoid re-traumatising vulnerable witnesses, particularly in the most serious criminal cases,

while at the same time obtaining the most accurate, reliable and comprehensive evidence.

These aims will be greatly assisted by the new and impressive evidence suite for children and vulnerable witnesses in central Glasgow. This provides specially designed facilities, including child-friendly hearing and live link rooms, together with ancillary accommodation including a sensory room to help create a calm and supportive environment. Facilities supporting the taking of evidence by commissioner will be upgraded in Inverness, Aberdeen and Edinburgh.

Another important element of modernisation is the improvement of the SCTS estate. In May, Lady Smith, the President of Scottish Tribunals, joined Sir Ernest Ryder, the Senior President of the UK Tribunals, to open the new Glasgow Tribunals Centre at Atlantic Quay, which, in the words of Sir Ernest, is the finest tribunals centre in the UK. A range of tribunals operating under both devolved and reserved systems will be centred here with 34 shared tribunal hearing rooms, and ancillary accommodation for 40 tribunal members and around 300 staff.

Political agreement on the devolution of the remaining UK tribunals remains somewhat slow moving. However, in relation to the expansion and continued operation of the devolved tribunals, I am grateful to Lady Smith for her continued energy in this area,

notwithstanding her ongoing onerous inquiry into institutional child abuse.

One of the most innovative projects, and which ought to be fully operational by the Spring, is the Inverness Justice Centre. This will be the first purpose built Justice Centre in Scotland. It will have six digitally equipped courtrooms, including two jury courts with the capacity to deal with high court cases, a child and vulnerable witness evidence suite and tribunal hearing facilities. The Centre will house staff from the Crown Office, Local Authority Social Services, the NHS and a range of third sector organisations, who will be able to combine to provide a wide range of specialist services, including support and advice to victims and witnesses, as well as supporting problem solving approaches to help reduce re-offending.

The longstanding problems of space in Kirkcaldy ought to be substantially alleviated with the creation of a two jury court complex nearby. Meantime, in Airdrie, Sheriff Principal Abercrombie opened the new Justice of the Peace court, across the road from the sheriff court, which replaced the old one in Coatbridge.

## **Civil Online**

A milestone was achieved last month at Aberdeen, where a digital evidential hearing in a simple procedure case took place. The court heard evidence presented by the parties and supported by digital documents and photographs submitted online. This was the first civil case in a UK court to be processed from end to end by digital means.

This followed on from the SCTS's launch earlier this year of its fully digital Civil Online service in simple procedure cases. Uptake is steadily rising. At the last count, 11% of new cases have been submitted through Civil Online and for cases already in the system 54% of pursuers and 33% of respondents opted for online notification of the steps in their cases. The experience of digital justice in simple procedure is but an early step on the journey to the adoption of online processing across the whole system of courts and tribunals. This has not been easy. There is a long way to go and we need to all find a way of turning these small steps into bigger strides in the coming years. This is not the time for defence of tradition. Online cannot be viewed as an option or alternative to the courts system; it is the future of the court system.

## **Thanks**

For their help and support, I thank all of my judicial colleagues, whom I have not already mentioned, especially the Lord Justice Clerk, Lady Dorrian, whose advice and guidance to me has been invaluable.

I also thank the SCTS chief executive, Eric McQueen, the head of the Judicial Office, Tim Barraclough and all the other staff working here in Parliament House, in the High Court Centres, sheriff and justice of the peace courts, the office of the public guardian and Accountant of Court and the Tribunals Centres throughout the country. They continue to show a determination to modernise and improve the system, against increasing pressures of business and financial constraints. I have also very much appreciated the engagement of the Law Officers with SCTS as it pursues these improvements.

Most of all, today, I wish also to thank all of you in the legal profession, including the many counsel and solicitors who have participated so willingly, and for little reward, in the Scottish Civil Justice Council, the Criminal Courts Rules Council and the users groups; the work of which shows the wider profession's commitment to a thriving, user-friendly justice system.

## QCs

It is now my pleasure to introduce those who have gained the rank and dignity of Her Majesty's Counsel. All of you will be major assets to the senior bar.

**Mr Mackenzie**, you are experienced in the complex areas of professional negligence and industrial disease, and are accredited as a mediator. You have also been involved in legal development

projects in Malawi and Kenya. Your work as Director of Training and Education is well recognised.

**Ms Smart**, you have distinguished yourself by your specialisation in clinical negligence and personal injury cases. Much of your work has been in the Outer House and we look forward to increased appearances in the Division.

**Mr Jackson**, prior to calling to the Bar, you practised as a solicitor in criminal law, latterly as principal of your own firm. You have significant experience of complex criminal cases and will be a credit particularly to the senior criminal bar.

**Mr Mackintosh**, you have a wealth of experience in criminal and public law. Your appearances in the Criminal Appeal Court, especially your well prepared and objective analyses, have been much appreciated by the judges.

**Mr Meehan**, you have gained considerable experience in criminal practice both as a solicitor-advocate and as an advocate for the defence and in Crown Office. You will be a credit to the senior criminal bar.

**Ms Mitchell**, you too have substantial experience with a focus on human rights, especially in the criminal appeal court. Your

appearances, which involve focused and objective submissions, marked a turning point in appeal court advocacy.

**Ms Davie**, you are experienced in a broad range of commercial and civil litigation, including accomplished appearances in the Inner House.

**Mr Duthie**, you also have a broad civil and commercial practice, serving also as Standing Junior Counsel to the Advocate General. Of note is your work prosecuting Somali pirates in Mombasa for the EU Naval Force.

**Mr Ewing**, as a solicitor advocate, you have distinguished yourself in your work in the High Court; and occasionally in criminal appeals. You have also undertaken work as an advocate depute.

The rank and dignity of Queen's Counsel is well-deserved honour for each of you. I offer you all my sincere congratulations and best wishes for the coming years as Senior Counsel.

The skill and talent of those applying for silk was once again outstanding. I repeat that unsuccessful candidates should not be discouraged from applying again in future. For those who are considering applying, I reiterate that, although never decisive, demonstration of commitment to public service, in particular as an Advocate Depute, experience of both civil and criminal law, and regular

appearances in substantive matters heard in Scotland's highest appellate courts, especially when they have already represented the party at first instance, are regarded as favourable attributes.

The court will now adjourn.