

OPENING OF THE LEGAL YEAR 2022/2023

Welcome

Welcome everyone. I thank you all for coming. It's good to be back.

Today marks the ceremonial opening of the legal year, although since the abolition of the court vacations in 2017, the courts have run throughout the year. It is still meaningful to observe the beginning of a new legal year, even just as a matter of tradition. It provides us with an opportunity to reflect and to look to the future.

The Death of the Queen and the Accession of the King

We convene only three weeks after the sad death of our longest reigning monarch, Queen Elizabeth. As a mark of respect, courts and tribunals across Scotland adjourned on 9 September and were closed on 19 September for Her Majesty's funeral. The period of national mourning has now ended. We may begin to settle down in anticipation of things to come as we enter the first legal year to commence during the reign of Charles III.

On a practical level, a change of monarch may not have much impact on the workings of the courts and tribunals. It is nevertheless of legal significance. Justice is done in the name of the reigning monarch, which stems from his historic role as the fount of law and justice.

Recovery

For the first time since the opening of the 2019/2020 legal year, we convene as a Full Bench in open court.

We are beginning to put the pandemic behind us, but its long term effects on outstanding criminal cases should not be understated. It is a significant problem which has to be and is being addressed. It is one which cannot be solved without the assistance of both branches of the legal profession and, critically, government funding. The SCTS began the Recover, Renew and Transform programme in September last year. As part of that programme, a criminal court recovery programme, which aims to reduce the backlog of trials, was launched. There always has to be some backlog of criminal cases. The overall aim of the programme is to return the number of outstanding trials to what were satisfactory, if not ideal, levels pre-Covid. On Thursday, the SCTS published updated modelling for the recovery. This records that during the first year of the recovery programme, the backlog has been reduced by almost 9000, albeit mostly summary, trials.

Four new temporary High Court judges, 15 part-time sheriffs and 17 part-time summary sheriffs have been appointed since September 2021 in order to run the programme.

I am acutely aware that the appointment of additional judicial office holders will have an impact on the profession, who are being asked to prosecute and to defend an increasing number of cases. I am very grateful to the Faculty and the Law Society and to all those counsel and solicitors who practice criminal law for their efforts in keeping business running. I shall continue to do what I can to support the profession and to take steps to alleviate any pressures where it is within my power to do so.

The cinema model has worked well. Most juries are now back in the courtroom, but some of the remote centres will be retained simply to enable us to get through trials as quickly as is compatible with the interests of justice. There have been many lessons learnt from the cinema experience. First and foremost, the system works. There does not appear to be any significant statistical difference in the verdicts returned. The juries have had no apparent difficulty in assessing witnesses on screen. More research is no doubt needed on both of these aspects. Secondly, balloting in open court will not return. Rather, remote balloting, which does not require anyone to come to court unless they have been selected to sit on the jury, or are one of a very few reserves, will continue. It saves money, and, most important, it reduces inconvenience to others.

Renewal

Pilots of virtual summary trials and virtual custody hearings have taken place this year. The idea behind virtual custody hearings on a pan sheriffdom and maybe on occasions pan Scotland basis is to ensure that those who do not require to be remanded are not being transported around the country for no practical reason and are liberated; that is not kept in custody unnecessarily for several days. As I have said frequently the need to bring those arrested before a court as soon as practicable, must remain a priority of the system.

Following the Evidence and Procedure Review, a case management pilot under the auspices of Sheriff Principal Anwar re-commenced for summary cases at Dundee, Hamilton and Paisley Sheriff Courts earlier this month, although it is temporarily halted. This aims to achieve the earlier satisfactory resolution of cases. From the first hearing, the sheriff is to take on a pro-active role in case management and automatic early disclosure of evidence will be a significant feature.

Transformation - The Lord Justice Clerk's Review

A key component of transformation of the criminal justice system lies in the implementation of the recommendations of the Lord Justice Clerk's Review. Some of these will require legislative underpinning. Where that is not necessary, SCTS have been making substantial progress, notably in the creation of facilities to support the pre-recording of evidence of children and vulnerable witnesses; and the giving of the evidence remotely. October will see the launch of designated facilities for the taking of evidence by commission in Edinburgh. Similar facilities are already available in Glasgow and in Inverness. We have committed full time judicial resources to enable us to run these facilities concurrently as part of an effort to reduce potential trauma to witnesses in the trial process.

The Judicial Institute, with input from leading experts, has developed trauma-informed training for the judiciary. SCTS has made a commitment to develop and implement a training strategy that will equip court staff with the skills and knowledge to understand and to respond in a trauma-informed way. The Jury Manual Committee and the JI have been working to innovate and develop materials aimed at improving the quality of jury involvement.

Increasing Transparency

We continue to strive to improve access to, and the transparency of, the courts. The advent of new technology means that we can open up the courts to a wider public. In November 2021, an appeal hearing in the Court of Session was live-streamed for the first time. This was well-received. Other live streaming has followed. Lord Pentland is heading a task force with the aim of putting in place a permanent system, starting with the Appellate Divisions. A trial of the system took place in July and it is hoped that it will be up and running soon. Live streaming will not be appropriate for all hearings. A decision will be made based on the circumstances of the particular case.

Thanks

For their help and support, I thank all of my judicial colleagues; especially the Lord Justice Clerk, Lady Dorrian, and the administrative judges: Lords Pentland, Matthews, Clark and Beckett. I thank the SCTS chief executive, Eric McQueen, the Executive Director of the Judicial Office for Scotland, Kay McCorquodale, 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. I thank them in particular for their ingenuity in developing new ways of processing business, and for their unstinting commitment and professionalism in supporting the judiciary and continuing to serve the people of Scotland in these difficult times.

On the civil side, for the Court of Session I will continue to support the work of the commercial judges, those specialising in family cases and all those dealing with judicial review and ordinary actions. The need for the Court of Session to operate efficiently is no less important than the conduct of trials in the High Court. The work of the Sheriff Appeal Court continues apace. I am equally grateful to the Sheriffs Principal and all those sheriffs, summary sheriffs and other judicial office holders working throughout the country from Lerwick to Stranraer.

Dean of Faculty and President of the Law Society

Last year the subject matter of this address, and the conditions under which we were operating, were extraordinary. In recognition of that, I invited the Dean of the Faculty and the President of the Law Society to say a few words. Although times are no longer quite as extraordinary, I am pleased to invite them to do so again this year.

Dean of Faculty.

Mr Etherington.

King's Counsel

It is now my pleasure to welcome those 16 advocates and solicitor advocates who have been recommended for the rank and dignity of King's Counsel. It will not have escaped your attention that there has been a great emphasis on criminal practitioners this year for obvious reasons.

Ms Ennis – you are skilled in the areas of child and family law and reparation. You have been a Standing Junior to the Scottish Government and have served as an Advocate depute since 2021. This breadth of experience will be an asset to the senior bar.

Mr Gavin Anderson – your Fatal Accident Inquiry, regulatory crime and health and safety practice has been highly successful. Since last year, you have brought those skills to bear as a senior Advocate depute working in a specialist team for health and safety in the Crown Office.

Mr Wilson – you passed advocate in 2002 after ten years as a solicitor. You developed a busy practice in general reparation, industrial diseases and medical negligence. You held office as Clerk of Faculty for 5 years. Your experience makes you well-suited to hold the rank and dignity of King's Counsel.

Mr Borthwick – you have had a long and full career in criminal law, including eight years in the Crown Office. You were made a senior Advocate depute in 2017. You have prosecuted a number of significant High Court trials and argued a number of substantial appeals.

Mr Nelson – you called to the bar in 2004 after a decade of practice as a solicitor in the field of criminal law, both for defence and prosecution. Since calling, you have built up a busy practice as a respected trial lawyer, although you have also appeared occasionally in the appeal court.

Mr Pirie – you called to the bar in 2004 after three year as a procurator fiscal. Since then, you have been involved in an impressive range of public law cases. You have been a standing junior to the Advocate General since 2012 and are currently the first standing junior. The senior public law bar will benefit greatly from your expertise.

Ms Glancy – you called to the bar in 2005 after 12 years as a solicitor and as a procurator fiscal. During your time in the Crown Office, you served as the Head of the Child and Vulnerable Witness Unit in Glasgow. Since calling to the bar, you have developed a criminal practice covering a wide range of cases. You will be an important asset to the senior criminal bar.

Mr Lenehan – your reputation in the criminal law sphere goes before you. You have been at the bar for 17 years, during which you have both prosecuted and defended a large number of trials. Your appearances in the appeal court in recent years have been notable.

Ms Arrol – you passed advocate in 2005 following a successful career as a solicitor. Since calling, you have developed a strong and well-regarded practice, focussing on child law,

health and safety and crime. I have no doubt that you will bring all of that to bear as senior counsel.

Mr Michael Anderson – your fruitful career as a criminal lawyer spans nearly twenty five years, including eight years as a solicitor. You have appeared as lead counsel in a number of trials and appeals. I have no doubt that your skills will also prove to be a valuable asset to the senior bar.

Mr Pugh – you have built a wide-ranging and successful practice. You have a large number of important reported cases to your name. You have been standing junior to the Advocate General since 2015 and Clerk of Faculty since 2019. Your versatility will be valuable as senior counsel.

Mr McKenzie – you are well respected in the field of commercial law and have a number of notable cases to your name, including one of the first group litigations in Scotland. You have appeared in the Appellate Divisions as a leader and that experience will stand you in good stead at the senior bar.

Mr Jones – you have had an accomplished career. You are dual qualified, having called to the bar of England and Wales in 2002 before passing advocate in 2011. You have significant judicial experience, having sat as a Tribunal judge for a number of years and as a part-time sheriff. You have a busy criminal defence practice which has seen you appear in the appeal court on a number of occasions.

Mr McElroy – you have substantial experience in all aspects of the practice of criminal law, both as a solicitor and as an advocate. You gained extended rights of audience in the High Court in 2000, before calling to the bar in 2013. More recently, you have served as an Advocate depute. Your appointment represents a significant strengthening of the senior criminal bar.

Mr Keenan – you gained extended rights of audience in the High Court in 2001. You have been an Advocate depute since 2021. During your career you have prosecuted a number of very serious High Court trials and have appeared in the appeal court on a number of occasions. The senior criminal bar will welcome your experience.

Mr Fyffe – you gained extended rights of audience in the High Court in 2006 and developed a busy High Court trial practice. You have been an Advocate depute since 2020, have prosecuted a number of cases, and have appeared in the appeal court in several reported cases. You too will be a valuable asset to the senior criminal bar.

The rank and dignity of King's Counsel is hard earned, but it is well deserved for each of you. I have given but brief summaries of what have been full and fruitful careers. I offer you my sincere congratulations and best wishes for this next chapter in your legal careers.

I am conscious that there will be those who will be disappointed at not being recommended this year. Several of those will merit silk in the future, some perhaps in the near future. I repeat what I have said in the past that, although by no means determinative, I attach

particular importance to service as an advocate depute, when determining suitability, and also, both in the civil and criminal contexts, to appearances in the Appellate Divisions.

My thanks again to you all for coming this morning. The court will now adjourn.

Lord Carloway

Lord President

September 2022