

**Deemster Corlett's speech at his swearing in as
First Deemster and Clerk of the Rolls
19 September 2018**

Your Excellency, Lady Gozney, Your Honours, Your Worships, Mr President, Chief Minister, Mr Attorney, friends and colleagues.

Firstly may I welcome you all at this rather early hour and congratulate you all for being on time!

I thank His Excellency and Deemster Montgomerie for their kind words. I also welcome the opportunity which has become customary on these occasions to make some general remarks of my own. So I hope you will indulge me for a few minutes.

I happened recently to come across the short address which I gave on the occasion of my swearing in as Deputy Deemster in November 2007, nearly 11 years ago. I had just left private practice and it seems that I was interested then in what it was to be a "professional" in the context of some reflections on 23 years of practice as an advocate.

In my 2007 address I expressed the hope that those qualifying at the Manx Bar in the future would be able to justify the label of "professional", and practise in a fiercely independent calling which is not part of an anonymous commercial machine. I also said this:

"There is of course a key role to be played in all this by the Government. If an advocate is properly to fulfil his or her public interest role in representing those of limited means, it is vital that we have a properly funded legal aid system which provides the best possible legal advice and representation allied to reasonably competitive fees and proper eligibility criteria for the public. Tynwald is to be commended in at least preserving a reasonably functioning legal aid system, in marked contrast to the situation in England and Wales where legal aid appears to be in the process of being systematically dismantled, and I hope that the Isle of Man will remain a beacon of civilised practice in an otherwise rather bleak legal aid desert. All our residents should be able to vindicate their legal rights before the courts in a prompt and cost-effective manner, and in my view legal aid should be regarded as one of the proud cornerstones of our society on a par with the provision of universally excellent health and educational services."

Now I am fully aware that there are few things worse than a judge who quotes himself! But when I recently re-read this address I realised that I still very much share these sentiments and that they have not been dimmed in any way by 11 years on the Bench. Indeed, I probably espouse them now with even greater fervour. I say this because what has struck me as a judge is how crucially reliant the judiciary is on the professionalism of an independent, able and well-resourced Manx Bar. Put simply, we would be unable to do our job without professional advocates.

Some of you may think this is a rather obvious point – the Manx courts obviously must rely on advocates as that is the way things have always been. But the biggest change which I have noticed over the past 11 years has been the inexorable rise in the number of litigants who represent themselves in court. So it is that in many family cases, and also civil matters, we find that one or both sides are unrepresented. They would rather of course have an advocate but simply cannot afford one. In addition, there is a continuous call from some quarters who would wish to see the curtailment, or even the end, of our legal aid system, much as has happened in England and Wales in the last eleven years, with a disastrous effect on the quality of justice in those countries.

In considering such issues I hope that Tynwald will bear in mind that it is all well and good trumpeting the Isle of Man's respect for the rule of law, if its own citizens are entirely unable to vindicate those rights in our courts and tribunals. Those courts and tribunals must be accessible to all, not merely in the sense that the doors of The Ritz are open to all, otherwise the phrase "the rule of law" is meaningless.

Sir Andrew McFarlane, Lord Justice of Appeal and now President of the Family Division of the High Court in England and Wales, put it in a nutshell when he is reported by The Times as having said recently that:

"It's all very well and it's really good that we live in a country that has developed a very sophisticated idea of human rights. But those rights are no good to anybody unless the person has access to them. And the only way to access those rights is with a key, and the key is the lawyer. Without the lawyer, access to rights is really an empty phrase."

I hope I will not be found guilty of mixing my metaphors too much when I say that the idea of the lawyer as a key to the vindication of rights hits the nail on the head.

It has been claimed that we can do without legally aided lawyers in court for most cases and that we must simply help those who cannot afford representation to do a better job for themselves by simplifying legal procedures and the laws which underpin them. I am sorry to say that those individuals certainly do a pretty bad job of it at the moment, causing delay and extra cost to the entire system.

This supposed solution to the problem is in my view wholly misconceived. Making the legal system "simpler" would involve a major rewrite of our laws and procedures. The agony of the Brexit process is I would suggest tame in comparison. I simply ask is it desirable or even practical to dismantle hundreds of years of sophisticated legal rights and remedies, and in effect rewrite the entire statute book? We must recognise that the law as it is today is a very complex animal, designed to deal with a highly complex world. It takes years of training and experience to represent someone well in court. Those who suggest that the system can work perfectly well with self-representation as the norm would not, I think, suggest that a sick patient should be allowed to operate on him or herself or even perhaps on others at Nobles Hospital.

No, in my view the answer to the current rather confused and uncertain situation is to ensure that those who cannot afford good representation before our courts and tribunals receive state funding to enable this to happen. By no means are all disputes suitable for or can be resolved by mediation. Only in this way can we ensure that our citizens can benefit from the many sophisticated rights and remedies bestowed upon them by Tynwald. Only then can we truly say that the Isle of Man respects the rule of law.

As I said in 2007, justice is every bit as important as state education and the National Health Service. If the state, through Tynwald and the common law, constructs a sophisticated system of rights, it must be prepared to fund access to the courts and tribunals for those who have a good case but cannot afford to pay for legal representation. As Lord Reed put it in 2017 when giving judgment in the Supreme Court in the *Unison* case, which involved an attempt by the UK Government to impose a substantial increase in fees payable to start a case in the Employment Tribunals :

“In order for the courts to perform (their) role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other. Access to the courts is not, therefore, of value only to the particular individuals involved.”

Before I leave this topic I would just like to point out that when the legal aid scheme was first introduced in England and Wales after the Second World War, a very substantial part of the population were eligible for legal aid. In 1949 eight in ten people had access to legal aid based on income and assets. By 2008 only around three in ten people satisfied the means test. There are no similar statistics available in the Isle of Man but I have no reason to doubt that the situation is any different here.

It may also come as a surprise that my own researches from publicly available sources reveal that the total expenditure on the administration of justice in this Island (i.e. the cost of criminal and civil legal aid, the judiciary and the Attorney Generals Chambers) is, and has been consistently for the last 5 years, less than one per cent of total government expenditure, so to suggest that the cost of justice is spiralling out of control is in my opinion simply wrong.

Well, you will all be relieved to know that my early morning lecture is now over!

Looking to the future, I am hoping during my term of office to make significant changes in the public's understanding of what goes on in the courts and tribunals. I also want to make sure that our dedicated and hardworking judges and staff receive the resources, training and support which they need. Some changes are long overdue in the laws and procedures which govern the work of the courts and tribunals, and I intend to do my very best to ensure that our system of justice is one of which we can all be proud and which serves all

its users, whether they be the most vulnerable child facing being taken away from its birth parents in to care, a victim of crime, the directors of a multinational company, an unfairly dismissed employee or someone seeking compensation as a result of a life changing accident.

In undertaking this task I know I can count on the support of our new and most able Chief Registrar, Stuart Quayle, and my judicial colleagues, both permanent and full time, and of course not forgetting the magistrates and our many tribunal chairmen and members.

While on the subject of support, I cannot speak highly enough of the excellent court clerks and support staff who are well represented here today and who have been an enormous source of encouragement to me particularly over the last nine months or so.

I am also delighted to welcome His Honour William Cain QC,CBE,TH to whom I was articled in the distant days of 1981 to 1984, and whose outstanding reform work when he was AG remains unsurpassed, and whose judgments when he was Deemster I have always admired for their style, learning and concision.

I am also delighted to welcome Marianne Kerruish. The late Mike Kerruish QC was a breath of fresh air for me after several rather demoralising years in private practice. I joined him in the then tiny AGs Chambers in the mid-1990s. We worked as a real team, based on mutual respect, good communication and sheer hard work. When I re-joined him in 2007 and became a member of the judiciary he was equally inspiring. Marianne knows that he is still remembered with great fondness in the Courts of Justice.

I would like also to mention Geoffrey Tattersall QC who retired last year as our long serving and very distinguished Judge of Appeal. Geoffrey has been a particular source of support and encouragement to me, and it is a pity that his church duties have prevented his attendance here today.

I wish also to express my particular gratitude to His Excellency and Lady Gozney for hosting this ceremony and to the staff at Government House and the Cabinet Office and also our own Stephen Robertson for arranging everything so efficiently.

I feel enormously privileged and lucky to be here today. My parents scrimped and saved to give me the best education possible and, unlike for many of our young people today, the Manx government when I was a student was far sighted enough and had no hesitation in funding my fees at both university and Bar school in London. Of course my career in the law, such as it has been, has not all been smooth sailing. The law can be a demanding taskmaster and is quite capable of taking over all one's waking hours. Like no doubt many of the lawyers here, I have encountered rough waters, mostly nothing to do with cases I have conducted, or clients, but more often caused by the self-interest of those who one thought of as colleagues and who really should know better.

At those difficult times it is to one's friends and family that one turns. In that regard I am uniquely blessed with having a wonderful wife, Angelina, and my children James and Annabel. I would not be here without their fantastic support.

They have also fulfilled the important role of preventing me (I hope) from succumbing to the dreaded disease known as "judgitis", a fatal condition marked by pomposity, arrogance and a generally deteriorating and bad temper, combined with a tendency to make inappropriate comments in court to which all present are expected to collapse in fits of laughter! Angelina might I think disagree with my assessment.

But in any event long may my family and friends continue to have this beneficial effect and ward off at least the worst effects of that awful condition.

I conclude by saying that as both Deputy Deemster and Second Deemster I have been privileged to preside over some of the most interesting and challenging cases that one could hope to encounter. The First Deemster's primary duty is of course to preside over cases in the Manx courts, so I now look forward to yet more of the same, but also the opportunity to shape the administration of justice in this Island for the better.

As First Deemster, Clerk of the Rolls, and of course Deputy Governor, I promise that I will do my utmost to live up to my oaths of office, and above all to serve the people of this Island to the best of my ability. This is for me a fantastic opportunity which I intend to grasp with both hands. As the learned historian Peter Kelly MBE, CP who is also present today, recently reminded me, despite the prevalence of my surname in these parts, I was the first "Deemster Corlett", I was the first "Second Deemster Corlett" and I am indeed now the first "First Deemster Corlett" !

Concision is a virtue to which I aspire but occasionally fail to achieve. I have now gone on quite long enough. Thank you all for listening to me and for making this such a special and memorable day.