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DRAFT NOTE OF A MEETING WITH THE LEGAL AND JUDICIAL WORKING GROUP TO  
LOOK AT IDENTITY ISSUES

A meeting of the working group on legal and judicial issues took place at Maryfield on 1 March 1994. The British side was represented by Mr Williams, Mr Kyle and Mr Barbour together with Mr Simpson from the Northern Ireland Court Service and Mr Whysall from Criminal Justice Policy Division. The Irish side was represented by Mr O'Donovan, Mr Farrell, Mr Cole and Ms O'Donoghue together with Mr Hennessy from the Department of Foreign Affairs.

**BACKGROUND**

2. Mr O'Donovan welcomed those who had come to attend the meeting and reminded those present that the subjects for discussion had been examined in 1985 and 1986 and related to the overall question of identity issues under Article 5 of the Agreement. He felt there was value in revisiting some of the points which had been raised in the past in order to see what the current position was. He believed that both Governments shared the desire to foster a greater sense of identification and participation in the administration of justice and if items such as Oaths and symbols inhibited such participation then that raised matters which needed to be addressed, although he wished to stress that he was not advocating change for change's sake.

**OATHS**

3. Mr O'Donovan said that the Irish side were aware that the Judiciary, Queen's Counsels and Jurors' Oaths all involved declaring allegiance to the Monarch. He was obviously aware of the historical provenance of a Queen's Counsel being engaged on duties of the Monarch, but he wondered if such oaths of allegiance were common for the whole of the United Kingdom?

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4. Mr Simpson advised there was no requirement in England and Wales for either the Judiciary or Queen's Counsels to take an oath of allegiance. In its place, however, was a declaration which varied slightly from the formula used in Northern Ireland, did include references to the Monarch. Northern Ireland's position differed in that in addition to the declaration there was also the Oath of allegiance. He had to say that this was not an issue which he was aware had either been raised in the past or brought to the attention of either the Lord Chief Justice or the Court Service. Proposals in 1991 on the legal services had not addressed the issue of Oaths and the Government's aim above all was to maintain the unity of the Bar Library system and to foster it with a view to preventing it splitting along sectarian lines. He had had recent discussions with the new Chairman about accommodation for the Bar within the Royal Courts of Justice and he felt that if the question of the QC Oath was now to be raised it might not go down well within the Bar; indeed he wondered if it was a sufficiently important issue to risk the disruptions it might cause.

5. Mr Williams enquired whether the 1991 Green Paper had made any references to the Oath or the declaration and if any comments were made about it. Mr Simpson reported that the consultation document had dealt mainly with education and rights of audience and that overall it had been decided not to make any other changes to a system which was working well. Nor could he report any discussion that he was aware of amongst the judiciary about the Oath. He was aware that the last three appointments to the Judiciary were from the minority community and none of them had expressed any unease in taking the Oath. Whilst he could see some argument in making the Oath optional, he felt that this would only lead to division and he wondered on the strength of merit in encouraging the Inn of Court to adopt similar procedures in England and Wales.

*7. Some on the  
should be Wales.*

6. Mr Williams enquired what the Irish side's position on the question of Oaths was? Mr O'Donovan responded by saying that

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they believed that wherever there was a variation between practice in Northern Ireland, and England and Wales, the more simple form should be chosen. He acknowledged that he had not received a large number of complaints about Oaths but he was aware that people had sometimes asked why they were necessary. He recalled a celebrated case from a few years ago when there was a debate on whether or not a person for a legal appointment would or would not take the Oath and it was the case that some people had thought that the very need to take an Oath was now redundant.

7. Mr Simpson pointed out that the Oath of allegiance had come about through custom and not statute and as a result there was a problem in identifying with whom the matter should be raised. He was unsure if this fell within the jurisdiction of the Lord Chief Justice who (unlike England and Wales) decided on the granting of silk or, if it was a matter for the Inn of Court. Mr Williams wondered if it was possible for someone (who was clearly worthy of the office) to choose to take the declaration but not the Oath and if that course of action would debar them from office? Mr Simpson said that it might cause a fuss but it would certainly not debar them. It was only customary to take the Oath of allegiance, but he felt that the Lord Chief Justice might be unwilling to change what was seen as an old established practice.

8. Mr O'Donovan acknowledged the practical difficulties that might exist in approaching people about the subject but he wondered if one way around the controversy might be to seek changes through Government reform. He was aware that it was intended to simplify the Jurors' Oath by means of an Order to be introduced in the coming months and he wondered if that could also prove a suitable vehicle to make changes to the other Oaths?

9. Mr Simpson confirmed that no thought had been given to the matter. It was certain that a consultation period would be necessary as had been the case with regard to changes in the Jurors' Oath and, it could very well be possible that the Order might not be a suitable vehicle to convey the changes proposed by Mr O'Donovan.

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The Government might take the view that the whole question was a matter for the profession, and the Lord Chief Justice and the Inn of Court might consider that they alone were responsible for their own affairs. Mr O'Donovan drew the attention of the meeting to Section 21 of the Northern Ireland Constitution Act 1973 which forbade the taking of an Oath as a condition of office. He wondered if this section applied to judicial and legal appointments? Mr Simpson said he was unaware of the legal position and that he would take advice on the point raised. He also undertook to look at the question of making changes to the Courts and Legal Services Order although he had to say that he would be concerned if the Order missed its slot in the legislative programme.

**THE CORONER'S DECLARATION**

10. Discussion turned to the question of the Coroner's Declaration and its precise status. Mr O'Donovan understood that the Declaration (which again made reference to the Monarch) was voluntary and he wondered if it would not be sensible to point out the voluntary nature of that Declaration in the guidelines that were issued to new coroners.

11. Mr Simpson said that as matters stood this was not an issue. In practice deputy coroners (and there was only one full time coroner) were never sworn and the rules had fallen into disuse. He felt that raising the matter might risk making an issue when one currently did not exist. Mr O'Donovan noted the comments and suggested that the whole question might be addressed when the rules were next revised.

**COURT DRESS, THE ROYAL COAT OF ARMS AND THE FLYING OF THE UNION FLAG**

12. Mr O'Donovan wondered if court dress, the display of the Royal Coat of Arms and the procedure for flying the Union flag in Court Houses were the same in Northern Ireland as for Great Britain.

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13. On the question of flags, Mr Simpson reported that Chief Clerks were obliged to ensure that flags were flown from Court Houses on the specified flying days, but they had no other discretion to fly the flag more frequently. (He mentioned in passing that failing to fly the Union flag formed the largest number of the parliamentary questions that he had to answer.) With regard to court dress, he went on to say that the Lord Chancellor, in consultation with the Lord Chief Justice, had published a joint consultation paper and the overwhelming view was that court dress should continue to be worn. The Royal Coat of Arms was displayed in all court houses, (although in some of the older Court Houses, such as the old Civil Court of Record in Downpatrick, the county Coat of Arms was displayed). These were now produced in standard size and many of the modern devices were made of plastic.

14. Mr O'Donovan acknowledged that the whole issue of dress was less important for the Irish side than Oaths but nonetheless he felt that when a suitable opportunity arose it might be useful to look at the whole question again and he reminded those present of the simplicity of court dress that was used in the Republic and other European countries. Mr Simpson explained that that was one of the reasons why the Lord Chief Justice and the Lord Chancellor had consulted widely to canvass views but he again drew attention to the fact that the majority of representations had proposed no change.

**GOD SAVE THE QUEEN**

15. Mr O'Donovan enquired about the use of the acclamation "God Save the Queen" in courts in Northern Ireland. Mr Simpson said that he understood that there was no such acclamation in the High Court and Magistrates' Court but only in the Crown and County Courts. He could only assume in the case of the Crown Court that the reason lay in the fact that it was the Queen's Court and that cases were taken there in the name of the Monarch. He also supposed because the crier who worked to the Judge would also be in attendance at the

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County Court whenever the latter sat there, that the practice must have transferred from one Court to another. This was, however, something which the Court Service could examine. He could see that there was an argument for the acclamation being kept in the Crown Court but for it to be removed from the County Court.

16. Mr O'Donovan enquired whether the same practice occurred in courts in England and Wales? Mr Barbour reported that there was no acclamation in Magistrates' Courts but that there was in the Crown Court.

CONFIDENCE IN THE ADMINISTRATION OF JUSTICE

17. Mr O'Donovan brought the discussion to a conclusion by referring to the social attitudes survey polls which he felt showed that there was still a long way to go to persuade members of the minority community to have more confidence in the administration of justice. Mr Simpson said that he understood from research carried out by the PPRU that there was confusion on how the court system actually worked. This was an area which he wished the Court Service to address under their Citizen's Charter obligations. Mr Whysall pointed out that the figures regarding confidence in the administration of justice actually came out quite well when compared with those for England and Wales. Mr O'Donovan appreciated that the same question had not been asked over previous years and he hoped that the forthcoming "rolling statistics" would be more interesting to study.

[Signed]

CLIVE BARBOUR  
2 MARCH 1994

[Note to Mr Simpson. With regard to the question of the Royal Coat of Arms appearing in Magistrates' Court you may be interested to note that in the Magistrates' Court for the City of London - the Guildhall Justice Rooms - the Coat of Arms displayed is that of the City of London and not that of the Queen. I suspect that this must be due to some historical privilege given the City's unique status.  
C. Barbour]

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