## Ms Justice Mary Laffoy, President of the Law Reform Commission: Introductory Remarks

**General welcome**

[Distinguished speakers, distinguished guests, ladies and gentlemen, and fellow Commissioners]

You are all very welcome to the Law Reform Commission’s Annual Conference for 2018.

This year marks a departure from the usual approach we have taken to our Annual Conference theme. Traditionally, it has involved either a consultation on a specific project on which we are working or else a consultation on possible projects for a new Programme of Law Reform.

This year, the theme is not directly related to a specific project on which we are currently working, but to the possible effects of Brexit on Law Reform in Ireland. In one respect I suppose this seems like an obvious theme, given what many people in legal circles, and even in society more generally, have been talking about for the past 2 years. But an important question is whether Brexit is likely to have any impact on the work of the Commission. I strongly believe that this morning’s conference will provide a clear affirmative answer to that question.

I propose in these brief opening remarks to make just a few general observations as to why Brexit affects the work we do, whatever form Brexit might take [and that remains somewhat clearer/not much clearer after yesterday’s Cabinet meeting in London].

In the first place, it is important to note that regardless of the United Kingdom’s relationship with the EU, much of our law reform work takes place outside of any EU context: yes, it may be worth remembering that quite a lot of our law, including in the commercial area, in criminal law, family law, land law, succession and trusts and tort law, remains a matter for each state to determine. In that respect, where the Commission’s work involves those areas, as it often does, there is an inevitable magnetic pull of history (roughly 800 years worth) towards examining what the position in the UK might be. For perfectly valid, albeit pragmatic, reasons, it will often make sense to conclude that, all other things being equal, an English solution to a legal problem could also be a suitable solution to an Irish legal problem.

In fact, we inherited quite a lot of British law in 1922; and 4 years away from marking our centenary as a State, about 1,100 Public Acts that remain in force in Ireland date from before 1922. Of course, being an adventurous people, and long before the Commission was established, we have examples of where it made sense to depart from inherited norms of English law – for example in the *Succession Act 1965*, which adopted many civil law principles such as the legal right share (in that case *via* the civil law influences in the succession law of our Scottish neighbours).

And this Commission has made its own distinct contribution to placing an Irish imprint on our law, including for example our land and conveyancing law, through the work that led to the *Land and Conveyancing Law Reform Act 2009*: the 2009 Act amounts to a virtual code of law that would be familiar to lawyers from a civil law tradition; and even to English lawyers, whose land law codes of the mid 1920s bear the name of their proposer FE Smith, Lord Birkenhead; and while the 2009 Act went further than the Birkenhead legislation by abolishing the last remnants of feudal tenure, the influence of English law can be seen in some of the detailed provisions of the 2009 Act.

UK law will, for these historical reasons, continue to be important for our work. But, will Brexit have any direct impact? I leave the detail of that to our distinguished speakers. For the moment, I will mention just one example of the Commission’s recent work, our major review of insurance contract law, which culminated in the 2015 *Report on Consumer Insurance Contracts*, completed a year before the Brexit referendum. Looking back from 2018, the recommendations made in that Report are a good example of how our research work remains firmly rooted in a common law approach, but in which the EU/civil law influence is also present, and which in retrospect also now has a kind of “Brexit marker.” That Report is a useful case study for a number of reasons.

First, it followed, and then paralleled, a comparable project on insurance contract law reform being undertaken by the Law Commission of England and Wales, which greatly influenced our analysis and recommendations, even if we also took some different views in a few discrete areas; for example, we preferred in some instances the reforms enacted in Australia in the early 1980s, which were based on recommendations by the Australian Law Reform Commission, chaired at that time by Mr Justice Michael Kirby. In general, though, the gravitational pull of UK law concerning insurance contract law was highly significant, so that our final recommendations in 2015 were largely to follow the UK reforms.

Second, that Report had what could be described as a “not-EU” dimension, in that, although the EU Commission had published a proposed Directive on insurance contract law in 1979, this was rebuffed at the time, and the resistance was particularly strong in a Report of the Law Commission of England and Wales at that time. As we mention in our 2015 Report, the equivalent reaction here (in a 1979 Oireachtas Committee report) was along the lines of: “this needs further consideration”; but, because of the UK reaction, this “further consideration” was not needed. Since the late 1970s, there has been virtually no movement at EU level on harmonisation of insurance contract law (there are some minor contractual matters in the 2009 “Solvency II” Insurance Directive). As things stand, therefore, any general reform of insurance contract law remains a matter for each member state to address.

But, we also noted in the 2015 Report, the EU Commission stated in 2013 that disparities between the member states can lead to unnecessary cross-border costs that should, where possible, be avoided. That also influenced our 2015 Report gravitating towards the UK model of reform enacted in the wake of the recommendations of the Law Commission of England and Wales. The rationale for this is clear: many insurance undertakings are multi-national and often operate out of the UK, so our laws should remain closely aligned for good commercial reasons. Looking back from 2018, therefore, and now in the context of Brexit, the need to avoid unnecessary cross-border costs to business and consumers seems even more important. It may be that, even after March 2019, a project on the reform of insurance contract law would probably lead to the same conclusions that the Commission made in the 2015 Report; but the Brexit context may make the need for close alignment with UK law even more important.

May I add one last point about this Commission’s external links. For many years, the Law Commissions of England and Wales, Scotland, Jersey and Ireland (and Northern Ireland, when its Law Commission was in operation) have developed and maintained close working relationships. These are reinforced by an annual meeting of the Commissions, which was hosted in Dublin earlier this year. These close ties are highly valued by each Commission, and they operate outside any EU context. On behalf of the Commission, I wish to emphasise that these ties that bind will remain strong regardless of any form that Brexit takes.

I very much look forward to hearing from our distinguished panel of speakers this morning, and I hope that you will all take the opportunity to put your views and questions to them at the Open Forum, which is scheduled for 12.30.