



**Attorney General
for Northern Ireland**

Attorney General for Northern Ireland

Eighth Annual Report

2017/18

*Laid before the Northern Ireland Assembly
under section 26(3) of the Justice (Northern Ireland) Act 2002
by the First Minister and deputy First Minister*

on

5 February 2021



OGL

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Attorney General for Northern Ireland

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Preface by the Attorney General for Northern Ireland

In this, the eighth, annual report that I make as Attorney General for Northern Ireland it will be apparent that devolved government, of which my Office forms part, is not working properly.

It will be seen from this report that a work-stream of great importance in previous years, that arising from my role as chief legal adviser to the Executive, hardly figures at all during this year.

In contrast, it will also be seen that work has arisen directly from the absence of a functioning Assembly and an Executive Committee. Questions about the extent to which devolved government can be carried on have come before the Courts and are likely to continue to arise.

The – modest – reassurance that I offer the public is that I continue, while in office, notwithstanding the absence of an Executive Committee, to do what the powers and limitations of office permit in order to ensure that the citizens of Northern Ireland enjoy the protection of the rule of law.



John F Larkin QC
Attorney General for Northern Ireland

Introduction

1. The Attorney General's role as set out in the Justice (Northern Ireland) Act 2002 differs in important ways from that of other law officers in these islands. As a result of the disruption in devolved government the role, the work, and the constitutional context differ from that explored in previous reports.

2. Guardianship of the rule of law, in the context of this office, informs, is central to, and governs the discharge of, my specific duties. These duties normally include:
 - Serving as chief legal adviser to the Northern Ireland Executive for both civil and criminal matters that fall within the devolved powers of the Northern Ireland Assembly
 - Acting as the Executive's most senior representative in the courts
 - Discharging specific functions to protect the public interest in certain charity matters
 - Deciding whether or not to direct inquests under section 14 (1) of the Coroners Act (Northern Ireland) 1959
 - Participating in the proceedings of the Assembly to the extent permitted by its Standing Orders but not voting in the Assembly (here it is relevant to observe that no such Standing Orders have been made)
 - Appointing the Director and Deputy Director of the Public Prosecution Service for Northern Ireland
 - Producing guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards
 - Protecting the public interest in the courts, which can include both bringing proceedings as well as participating in proceedings that are already extant.

3. Plainly the relative significance of some of these duties is reduced by the present absence of a functioning Assembly and an Executive Committee.
4. By section 22(5) of the Justice (Northern Ireland) Act 2002 my functions are exercised independently of any other person. This means, for example, that I am statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments. Independence for the Attorney General under the 2002 Act means having sufficient material and institutional autonomy to permit the conscientious discharge of the duties of office. It would, I believe, be inconsistent with the statutory independence of the Attorney General for Northern Ireland if budgetary pressures prevented me from taking court action that I judged to be necessary in the public interest.
5. While statutory independence does serve a purpose in the present arrangements, a model of modified independence (as in Scotland) or the existence of strong conventions (as in Westminster) might also be considered for this Office in future. I continue to reflect, in dialogue with others, on how the obligation to act independently can be effectively and transparently discharged and I very much welcome the active interest of the public in this Office.
6. The role of staff appointed to my Office under section 22(4) of the Justice (Northern Ireland) Act 2002 is to assist me in carrying out my statutory and other functions. I am fortunate to be assisted by talented and dedicated colleagues and I thank them again for the quality of their work and commitment throughout the period covered by this report. It is a great pleasure to work with them.
7. I have, of course, no formal role to play in relation to non-devolved matters. Legal advice in relation to them is the responsibility of the

Advocate General for Northern Ireland, the Right Hon Jeremy Wright QC MP who is also the Attorney General for England and Wales.

8. The Overview of Work detailed in the following section of this report offers some illustration of how the rule of law and legal excellence can be placed at the heart of government in Northern Ireland.

Overview of Work in 2017/18

Chief Legal Adviser to the Executive

9. During the period of this Report I have been unable to undertake this function due to the absence of an Executive Committee. I have provided legal support and advice to several Departments.

Departmental Litigation

10. In cases of particular significance it will often be appropriate for me to represent a Minister or Department in court. During the period covered by this Report, I continued with this role in a number of such cases.
11. Following the indication in my last report, I continued to represent the First Minister and the deputy First Minister in a challenge to the lawfulness of section 15 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which makes it an offence to obtain sexual services from a person in exchange for payment. The matter did not proceed to a substantive hearing due to the death of the applicant.
12. As referred to in my last report I represented the Education Minister in a judicial review challenge against the decision to introduce a pilot “Investing in the Teachers Workforce Scheme” to refresh the teaching workforce. The case had been listed as a rolled up hearing in May 2017 with judgment given by Colton J on 19 May 2017 who granted leave to the appellant but refused relief on the substantive issues as the Court found the Scheme to be a proportionate means of achieving a legitimate aim. The Court considered it to be a “controlled experiment”, a pilot scheme which would be assessed at the end of one year.

13. I was instructed by the Minister of Culture, Arts and Leisure to defend an application for judicial review in respect of the release of certain inquest and court files by the Public Record Office. An oral leave hearing took place on 10 September 2015 and the Court subsequently granted leave in a written judgment which was delivered on 17 January 2017. The substantive case was part-heard on 16 January 2018 and 29 January 2018. Mr Justice Treacy (as he then was) directed the Northern Ireland Courts and Tribunals Service (“NICTS”) to file affidavit evidence to address its involvement in the matter. As a result, the NICTS became a party to the proceedings and filed an affidavit. A further hearing date is to be arranged.
14. I also represented the former First Minister, Arlene Foster, in judicial review proceedings brought by Brigid Hughes against the Secretary of State and others in relation to the provision of funding for legacy inquests. I argued against the former First Minister being joined belatedly to these proceedings but was unsuccessful. The substantive hearing took place in October 2017 and judgment was delivered on 8 March 2018. Sir Paul Girvan concluded that there was systemic delay caused or significantly contributed to by a lack of adequate resources which was impacting on the applicant in respect of the inquest into her late husband’s death.
15. The judge’s finding in relation to setting the agenda for meetings of the Executive Committee, if unaltered, are likely to lead to a risk of increased litigation over procedural aspects of government business. This may have to be addressed before a new Executive Committee is formed.

Devolution notices

16. Section 79 of, and Schedule 10 to, the Northern Ireland Act 1998 make provision for the service of devolution notices on a number of persons including the Attorney General for Northern Ireland. In broad terms the purpose of a devolution notice is to ensure that a court dealing with issues central to the interests of the devolved administration receives all necessary assistance. To this end, in appropriate cases, I will enter an appearance in the proceedings and make written and / or oral submissions to the court.
17. The Attorney General for Northern Ireland is also served with notices of incompatibility under the Human Rights Act 1998 in proceedings where a declaration of incompatibility is sought in respect of primary legislation or where the compatibility of subordinate legislation is being considered by the court. Again I will participate in the proceedings, if appropriate, and make written and / or oral submissions as necessary.
18. I continued to participate in a judicial review application brought by the Northern Ireland Human Rights Commission (“NIHRC”) against the Department of Justice in relation to the termination of pregnancy which also gave rise to a devolution issue. The applicant contended that the criminal law on abortion in Northern Ireland is incompatible with the rights protected by the Human Rights Act and sought a declaration of incompatibility under section 4 of that Act. Mr Justice Horner gave judgment in favour of the NIHRC and made a declaration of incompatibility in respect of sections 58 and 59 of the Offences against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945.
19. Both the Minister of Justice and I appealed to the Court of Appeal. The Court upheld the appeals and the declaration of incompatibility was set aside. The NIHRC was granted permission to appeal to the

Supreme Court. As indicated in my previous report, the Court of Appeal also referred certain devolution issues (about the ability of the NIHRC to bring the challenge) to the Supreme Court for determination pursuant to paragraph 33 of Schedule 10 to the Northern Ireland Act 1998. The appeal and reference were heard on 24- 26 October 2017 and judgment is expected in summer 2018.

20. As noted in my last report, I appeared in *Lee v Ashers Baking Company and others* in response to service of a devolution notice. My concerns focussed on provisions in the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and in the Fair Employment and Treatment (Northern Ireland) Order 1998 insofar as they impede or place a burden on certain forms of political or religious expression by suppliers of goods or services given the prohibition on Northern Ireland legislation discriminating on the ground of religious belief or political opinion.
21. The Supreme Court has indicated that it will sit in Belfast for the first time to hear the appeal and related devolution references in May 2018. I very much welcome the Supreme Court's decision to sit here.
22. Pursuant to a devolution notice I intervened in a judicial review application brought by Laura Smyth in relation to humanist weddings. Ms Smyth, a humanist, as was her husband-to-be wanted to have a humanist marriage ceremony. She asked Ms Isobel Russo, the head of ceremonies at the British Humanist Association, to perform her wedding ceremony and Ms Russo applied to the General Register Office ("GRO") in Northern Ireland to seek temporary authorisation to perform the marriage under Article 14 of the Marriage (Northern Ireland) Order 2003 ("the 2003 Order"). This application was refused by the Registrar General and Ms Smyth then sought to challenge this decision. Devolution and Incompatibility Notices were issued by the Court in relation to the 2003 Order. My submissions primarily addressed the argument that, subject to a

compliant interpretation not being possible, certain provisions of the 2003 Order were incompatible with Article 9 and/or Article 14 of the ECHR. I drew attention to the fact that Article 12 ECHR is in fact the ECHR *lex specialis* on marriage and that the applicant had not framed her challenge under this provision; that Article 9 was not engaged; that the applicant's desire to have her humanist marriage or ceremony recognised as legally binding did not come within the ambit of a "'manifestation'" of her humanist belief within the meaning of Article 9(1) so as to enable consideration of Article 14 and that a finding by the court that Articles 9 and 14 ECHR required the State to provide legal recognition for humanist marriage would go far beyond anything currently decided in Strasbourg and against the natural flow of existing Strasbourg case law. The Court however held that there had been an unlawful interference with the applicant's Article 9 rights, with no objective justification in law. In terms of relief the Court made a declaration that the provisions of the 2003 Order could be read and given effect to in a way that it was compatible with the applicant's rights under Articles 9 and 14 ECHR pursuant to section 3 of the Human Rights 1998 thereby enabling the GRO to grant the application for temporary authorisation under Article 14 of the 2003 Order by reading in certain words. I am appealing against this judgment as is the Registrar General.

23. As indicated in my last report, I also intervened in proceedings in the Family Court in which issues arose on the question of parenthood when a child is conceived using assisted reproduction. Judgment is awaited.
24. I was served with a devolution notice in an application for judicial review brought by the Renewable Heat Association Northern Ireland Limited and another who sought to challenge the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 on a number of grounds including, as a devolution issue, the contention that the regulations are invalid by reason that they are

incompatible with Article 1 Protocol 1 of the European Convention on Human Rights. The Court granted leave to apply for judicial review and the substantive hearing took place in June 2017. I decided not to participate in these proceedings at first instance. Mr Justice Colton gave judgment on 21 December 2017 and dismissed the application. The applicant has appealed and a hearing date in the Court of Appeal is awaited. I intend to make a written submission in the appeal.

25. As mentioned in last year's report, a devolution notice was issued in judicial review proceedings in which the applicants sought to challenge Article 6(6)(e) of the Marriage (Northern Ireland) Act 2003 on the basis that it unlawfully prevents individuals of the same sex from entering into a civil marriage. The applicants also challenged the use of Petitions of Concern in the Assembly arguing that such petitions could not be lawfully invoked in matters seeking to advance, protect and promote human rights. Mr Justice O'Hara gave judgment on 17 August 2017 and held the Convention rights of the applicants had not been violated. Mr Justice O'Hara commented that the Strasbourg Court does not recognise a "right" to same sex marriage and, that being the case, the current statutory provisions in Northern Ireland do not violate any rights. It was not the role of a judge to decide on social policy and that this was a matter for the Executive and the Assembly. The applicants have appealed against Mr Justice O'Hara's decision and a hearing date is awaited.
26. Similar issues arose in proceedings brought by Petitioner X who sought a declaration that his marriage in London to a same sex partner which is recognised in law there by the Marriage (Same Sex Couples) Act 2013 is a valid and subsisting marriage under the law of Northern Ireland pursuant to Article 31 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989. Mr Justice O'Hara also gave judgment in this case on 17 August 2017 and held the Convention rights of the applicants had not been violated. The

petitioner appealed. I participated in the appeal on 26-27 February 2018. Further written submissions were filed after the hearing and judgment is awaited.

27. A devolution notice and a notice of incompatibility were issued by the High Court in November 2017 in an application for judicial review brought by a victim of serious physical and sexual abuse in respect of a decision by the Criminal Injuries Compensation Appeals Panel for Northern Ireland. The panel refused the applicant's claim for criminal injuries compensation for historic step-parent abuse on the basis that she had resided in the same household as the perpetrator (often referred to as 'the same-roof rule'). Although not relevant to current claims, this rule continues to apply to some historic abuse claims. I made short written submissions to the court focusing on proportionality and retrospective application of changes to the law. Similar cases are progressing through the courts in England and Scotland (JT and MA). Sir Paul Girvan gave judgment on 1 February 2018 in which he followed the decision of the Scottish Court of Session Inner House in MA and dismissed the application. A notice of appeal was served on 19 February 2018. A further devolution notice was issued by the Court of Appeal and I entered an appearance in respect of this. A hearing date for the appeal is awaited.

28. I may refer devolution issues to the Supreme Court where there are no current court proceedings pursuant to paragraph 34 of Schedule 10 to the Northern Ireland Act 1998. On 8 February 2018 I referred one such matter to the Supreme Court which arose from the introduction of Universal Credit: the application of a "two child limit" and its impact on blended families where each partner has a child or children from previous relationships. This policy choice gives rise to issues as to whether the issuing of postcode lists by the Department for Communities which commenced Universal Credit in those areas are invalid by reason of section 24 of the Northern

Ireland Act 1998 as being incompatible with Articles 8, 12, 14 and Article 1 Protocol 1 ECHR. A hearing date is awaited.

Intervention in Other Proceedings

29. When issues of importance arise I may either initiate litigation myself or intervene in on-going litigation to protect important public interests.
30. The protection of the public interest was central to my involvement in a case in the High Court this year (*Newry, Mourne and Down District Council v Hamill*). Having been invited to intervene by the judge, I agreed to take part and became a party to this case involving a disputed public right of way in South Armagh. The case was heard by Mrs Justice Keegan who delivered judgement on 26 May 2017 on the preliminary issue as to whether the settlement terms of the disputed public right of way should be accepted by the Court. The Court accepted my argument that the Court should not approve settlement terms which are *ultra vires* the District Council. After the judgment the parties resolved the case and an order was made on consent for a public right of way for foot and bicycle traffic.
31. I am participating in a further challenge in respect of the law on abortion, "JR76". The applicants in this case seek to challenge a criminal prosecution taken against a woman under section 59 of the Offences Against the Person Act 1861. The essential facts of the case are largely undisputed being based on admissions made, namely that the woman provided her daughter with abortion-inducing pills. My position is that this judicial review constitutes an improper collateral challenge to a criminal prosecution and lacks both procedural and substantive merit. The case does not disclose any unjustified interference with the Convention rights of either applicant. A number of interested parties made written submissions to the court. The application was due be heard on 31 May to 1 June 2017 before a Divisional Court but was initially adjourned pending

judgment being given by the Court of Appeal in the NIHRC case and was more recently adjourned to await the judgment of the Supreme Court in the same case.

Appointment of Amicus Curiae and Special Counsel

32. Another aspect of my role as guardian of the rule of law is my function in appointing an *amicus curiae* or a special counsel in order to assist courts in appropriate cases.
33. An *amicus curiae* is a lawyer, usually a barrister, who is appointed to assist a court on matters of law connected with proceedings which are before the court. An *amicus curiae* is not a party to the proceedings but is appointed, at the invitation of the court, in order to assist the court by expounding the law impartially or by advancing relevant legal arguments which, due to the circumstances of the case, would not otherwise be made.
34. I appointed an *amicus* in proceedings before the Court of Appeal and subsequent proceedings before Madam Justice McBride which arose from an originating summons by a patient acting by her Controller ad Interim and Next Friend, the Official Solicitor, against her son, Michael Sherrie regarding the construction of a will and a right of residence. Counsel was appointed by me in relation to the Court of Appeal hearing which took place on 25 October 2017. The court gave judgment and remitted the case to Madam Justice McBride so that she could address two of the three determinations sought in the originating summons. Subsequently, Madam Justice McBride also requested the assistance of an *amicus*. In view of the history of this particular matter I was content for counsel already instructed to continue in this role. A hearing date is to be arranged.

Relationship with the Assembly – Legislative Process

35. My role in the legislative process combines statutory and non-statutory elements. Both elements have, as a common purpose, a commitment to assisting with high quality law-making in Northern Ireland.
36. During the period covered by this report, the Assembly has not been sitting and accordingly (and regrettably) it was not necessary for me to scrutinise any draft legislation during this period.

Public Prosecution Service

37. It is my statutory responsibility under section 30 of the Justice (Northern Ireland) Act 2002 to appoint the Director and Deputy Director of the Public Prosecution Service as necessary. I may also convene, if necessary, a tribunal to consider removal of the Director and Deputy Director.
38. During the period of this report the Director, Barra McGrory QC resigned his office. I thank Mr McGrory for leading the Public Prosecution Service during six challenging years for the Service and wish him every success in private practice at the Bar.
39. On 2 January 2018, following an open competition, I was delighted to appoint Mr Stephen Herron as the new Director of Public Prosecutions for Northern Ireland. Mr Herron had previously served as Deputy Director and has deep and varied experience of the organisation he now leads.
40. Due to the vacancy arising from the appointment of Stephen Herron, I have also initiated an open competition for the appointment for a new Deputy Director. At 31 March 2018 the appointment process is on-going.

41. In addition to appointing the Director and Deputy Director of the Public Prosecution Service, my main responsibilities in relation to that service are as a statutory consultee of the Director on his annual report (and arranging for publication of that report) and on any amendments to the Code for Prosecutors.
42. Section 42(3) of the Justice (Northern Ireland) Act 2002 sets out the arrangements between the Attorney General and the Public Prosecution Service: the Attorney General and the Director may consult each other from time to time on any matter for which the Attorney is accountable to the Assembly; with the exception of the matters set out in paragraphs 39 and 40 above, there are no matters relating to the Public Prosecution Service for which the Attorney General is accountable to the Assembly.
43. It is worth emphasising that I do not currently have responsibility for referring unduly lenient sentences to the Court of Appeal. Neither do I have a role with respect to any prosecutorial decision to accept a plea of guilty to a lesser charge than that originally preferred.
44. I continue to believe that a gap exists in the current superintendence and accountability arrangements between the Attorney General and the Public Prosecution Service. The Justice Minister has consulted on this matter. There is, of course, room for a variety of legitimate positions on how the superintendence balance should be struck ever since the issue was first debated in this jurisdiction in 1972¹.
45. Irrespective of how the balance of prosecutorial accountability is struck, I am determined to do all that I can to ensure that we have a Public Prosecution Service that fully meets the needs of the public in Northern Ireland. It has been a pleasure to work with the Director

¹ See the discussion in chapter 9 of John LL Edwards The Attorney General, Politics and the Public Interest (London, 1984)

and Deputy Director of Public Prosecutions during the period covered by this report.

Departmental Solicitor's Office

46. Mr Hugh Widdis is the Departmental Solicitor and Head of the Government Legal Service for Northern Ireland. During the period of this report Ms Claire Archbold has also acted as the Departmental Solicitor whilst Mr Widdis temporarily acted as the Department of Finance Permanent Secretary. I have enjoyed a strong working relationship with both Mr Widdis and Ms Archbold and their senior team during the period covered by this report.

Relator Actions

47. The rule of law lies at the foundations of a civilised society. As guardian of the rule of law, I have a responsibility to represent the public interest in court and to thereby ensure that all persons, institutions and entities, public and private, including the State itself, are properly accountable.
48. Where a member of the public wishes in private law proceedings to enforce (typically by injunction) a right which belongs to the public as a whole rather than a right which has an exclusively private character, she or he can ask me to allow legal proceedings to be brought to assert that public right. The action that then takes place with my consent is known as a relator action. The reason for involving the Attorney General in such a procedure is largely historical in nature, and it may be that some future widening of the traditional rules about standing for injunctions may render relator proceedings obsolete. I did not grant any relators during the period covered by this report.

Inquests

49. Under section 14(1) of the Coroners Act (Northern Ireland) 1959 I can direct a Coroner to either hold an inquest into a death, if none has been held, or to hold a further inquest if one has already been held. At the core of the statutory test I apply in considering whether to direct a Coroner to hold an inquest is a consideration of whether it is 'advisable' to do so. What is 'advisable' may vary considerably from case to case.
50. There are many circumstances that will often be considered as sufficient to warrant my direction. These include the existence of fraud, the improper rejection of significant evidence, irregularity or unfairness of proceedings, insufficiency of inquiry or the discovery of significant new evidence.
51. During 2017/18, under section 14(1) of the 1959 Act, I directed the Coroner to hold an inquest in 3 cases. In 17 cases I determined a fresh inquest was not advisable. 30 cases are still under consideration.
52. Many of the cases in relation to which I have been requested to exercise my power under section 14 of the 1959 Act relate to deaths which occurred in the context of the Northern Ireland troubles. The question of whether I should direct a Coroner to hold an inquest into such a death is a decision to be exercised with regard to the circumstances of the individual case. A succession of individual decisions in such cases can readily prompt consideration of whether, and if so, how Northern Ireland should deal with its troubled past.
53. I have continued to reflect on the capacity of an inquest to discharge the Article 2 ECHR obligations of the State in cases of deliberate killing. Given the emphasis on a criminal justice solution for such cases in the Strasbourg jurisprudence it does seem difficult to see

how an inquest can ever, in itself, be a necessary or sufficient satisfaction of the Article 2 obligations.

54. Unusually, this year one of my decisions (that a fresh inquest was not advisable) was challenged. The application for judicial review by Dorothy Johnstone challenged my decision not to order an inquest into the death of her father in 1988. The essential facts were that Mr Dalton's neighbour had been absent from his flat at 38 Kildrum Gardens in the City of Derry for some time. It later transpired that he had been kidnapped, with another man, by the Provisional IRA and held by them. The IRA had planted an explosive device in the flat. It is likely that the intended victims were police officers who would be lured to the flat either by the abduction of the occupant or by other steps that were taken between 25 and 31 August. Mr Dalton and two other neighbours, Sheila Lewis and Thomas Curran, gained entry to the flat through a window on 31 August 1998 but, tragically, having done so, triggered an explosive device left by the terrorists. Mr Dalton and Ms Lewis were killed immediately and Thomas Curran later died of the injuries he received. I considered that Article 2 of the European Convention and Human Rights did not require a fresh inquest in this case and having regard to the investigation by the Police Ombudsman and the existence of current civil proceedings I did not consider an inquest to be advisable, even if the focus were to be purely on domestic factors. Leave to apply for judicial review was only granted in respect of the Article 2 issue and Mr Justice Deeny in delivering judgment of 28 March 2017 held that my decision was lawful and dismissed the application. The applicant appealed to the Court of Appeal but unfortunately she died before it could be heard. Another relative applied to take on the appeal in her place and this is being considered by the Court.

Charities

55. My responsibility for protecting the public interest extends specifically to the law of charities, an area in which, historically, the Attorney General has always had a central role. Where a matter is before the Charity Tribunal, I am entitled to appear and am treated as a part for the purposes of any appeal from the Tribunal. I will normally only appear (or appeal) when there is some larger public interest at stake. I can also defend the interests of charities in proceedings before the High Court.
56. While provisions of the Charities Act (Northern Ireland) 1964 are still in operation, I retain a consultative and consent giving role as regards some charity matters. This includes section 29 of the 1964 Act as regards applications to the Court where there is or is alleged to be a breach of any charitable trust or where the advice or order of the Court is required in connection with the administration of any charitable trust. I have granted my *fiat* (that is, the permission to bring proceedings) in a number of cases over the course of the year and also intervened in High Court proceedings involving a failed charitable bequest in a will in which I provided legal argument as to the relevant issues relating to the identification of the correct legal beneficiary.
57. There is also a role for the Attorney in consenting to references to the Charity Tribunal where the Charity Commission for Northern Ireland needs a question of law or practice resolved; in giving directions to the Charity Commission on its discretion to authorise *ex gratia* payments by charities; and in presenting petitions for the winding-up of charities. In addition, there are requirements that the Attorney be consulted on various matters.
58. In cases where a donor has shown a clear intention that she or he wishes a gift to be given to charitable purposes but has failed to

define the particular charity they wish to benefit with sufficient clarity and no trust has been interposed, use can be made of the Royal Sign Manual procedure which now resides with the Minister for Communities.

59. I have been involved in a number of cases before the Charity Tribunal on the issue of whether the Charity Commission has the power to allow regulatory decisions to be made by its staff or an *ad hoc* group of Commissioners rather than in a Commission meeting or in a committee meeting operating in accordance with the Commission's standing orders. As three of these cases have now been appealed to the Chancery Division of the High Court, it has decided to hold a consolidated hearing in autumn 2018.
60. I continue to be involved in the case of *O'Loughlin and Others v Her Majesty's Attorney General for Northern Ireland*, which concerns a *cy-près* application in respect of a sizeable amount of lands, where the key issue to be determined is whether those lands are held under charitable trusts. Significant work was carried out to resolve the legal issues involved through legislation putting the trust on a statutory footing. New standing orders for hybrid bills in the Assembly were put in place this year but there was insufficient time for the Bill to be introduced in the short 2016-17 mandate. As the Assembly has not been sitting, it has not been possible to make any progress on the proposed legislative solution.
61. One specific example is section 53(5) of the 2008 Act, which permits the Charity Commission to exercise the same powers with respect to, amongst other things, the taking of legal proceedings with reference to charities or the property or affairs of charities as are exercisable by the Attorney General acting *ex officio*. The powers exercisable by the Commission in this regard are only exercisable with my agreement.

Human Rights

62. Under section 8 of the Justice (Northern Ireland) Act 2004, I am required to produce guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. As Attorney General I also have the responsibility of amending, by order, from time to time, the list of organisations that are subject to the section 8 guidance.
63. Over the past year I have been working with stakeholders in the preparation of guidance on domestic abuse and stalking. It is expected that this guidance will be in force in Spring 2018. A specific piece of guidance has been prepared on the response by prosecutors to disclosures of rape which have not been reported to the police. Again, this is likely to issue early in Spring 2018.

Contempt of Court

64. The Attorney General has a duty to protect the rights of parties to litigate in a fair and dispassionate atmosphere of objectivity. It is crucially important to maintain confidence in the administration of justice and foster a culture in which the independence of the judiciary is both recognised and respected. This, of course, does not preclude informed comment and critique.
65. I may be asked either to consider seeking an order from the High Court restraining a possible contempt of court or else to consider bringing contempt proceedings against someone who has allegedly engaged in actions which might amount to contempt. During this year I have on 10 occasions had to consider bringing contempt proceedings in relation to concerns about potential interference with the administration of justice. These notably included matters arising from a high profile trial of a number of men on charges including rape and attempting to pervert the course of justice. In particular, I was asked to consider certain comments made on

Twitter by the Alliance Party leader Naomi Long MLA and Claire Johnston about the content of defence counsel's closing speech before the jury was sent to consider its verdicts. It is often unwise for comments to be made about the content of closing speeches before the jury has returned its verdict. However, having considered this particular matter I was not satisfied that the tweets in question would be likely, either individually or collectively, to have the effect of creating a substantial risk that the course of justice in the proceedings would be seriously impeded or prejudiced and therefore took no action.

Declaration of Parentage

66. The Attorney General must be placed on notice of every application to court seeking a declaration of parentage. In 2017/18 there were 27 such applications. While it would be unusual for me to seek to intervene in such cases, every application must be carefully considered in order to decide whether issues of wider concern arise which might merit my intervention. Occasionally the facts revealed in an application make it necessary for me to refer those facts to the PSNI.

Determination of Marital Status

67. I am also a notice party in any litigation concerning declarations as to status under Part 5 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989. No applications of this nature were made during the period covered by this report.

Presumption of Death

68. Under section 9 of the Presumption of Death Act (Northern Ireland) 2009 the Attorney General must be served with a copy of every application to the High Court seeking a declaration that a missing

person is presumed to be dead. The Attorney General may intervene in the proceedings on any application in such manner if he thinks it necessary or expedient and argue before the Court any question in relation to the application which the Court considers it necessary to have fully argued. Applications of this nature are relatively rare in Northern Ireland. One such application was received during the period of this report but I decided not to intervene. Another application has not been progressed by the applicant since it was last in court in March 2017.

Vexatious Litigants

69. Under section 32 of the Judicature (Northern Ireland) Act 1978 the Attorney General may ask the High Court to make an order declaring someone to be a vexatious litigant which, if such an order is granted, precludes him or her from bringing further proceedings without the leave of the High Court.
70. Two cases of this nature are currently active. One is expected to be listed for hearing in April 2018. The other case remains under consideration at the date of this report.

Mental Health

71. By Article 72 of the Mental Health (Northern Ireland) Order 1986 I may refer the case of a patient² to the Mental Health Review Tribunal. I did not refer any cases to the Tribunal this year.

Relations with both branches of the Legal Profession

72. During the period of this report I have continued to build and maintain good relations with both branches of the legal profession. As Attorney General I see my role with the Bar and the Solicitor

² As defined by Article 2(2) of the 1986 Order

profession principally as one of encouragement and support and, to that end, I have spoken at several events during the year. It is right that I acknowledge the strong sense of public spirit that I have observed in both branches of the legal profession and, in particular, a commitment to securing access to justice.

73. As Attorney General I am the titular Head of the Bar and can attend meetings of the Bar Council, the Executive Council and the Benchers of the Inn of Court. I am grateful to the Chairman of the Bar, Liam McCollum QC, the Vice Chair, Sarah Ramsey as well as the Chief Executive, David Mulholland for the assistance they have provided me in my work with the Bar.
74. While I have no institutional relationship with the Law Society I am grateful to both its President, Eileen Ewing, and its Chief Executive, Alan Hunter, for their continued cooperation and constructive engagement with my Office.
75. I am particularly grateful to both the Bar Council and the Law Society for their valuable support, along with the Law Centre NI, for my Constitutional Law Summer School in August 2017.

Development of External Relations

76. The legal system of Northern Ireland does not exist in isolation. In addition to its obvious links with the other jurisdictions in the United Kingdom and Ireland, it can safely be said that the influence – sometimes the dominant influence – of EU law and the law of the European Convention on Human Rights runs throughout our legal system and substantive law. It is essential that lawyers in Northern Ireland are aware not only of the formal content of EU law and the law of the European Convention on Human Rights but also how other European jurisdictions develop techniques to cope with these demands. My staff are also involved in assisting government in

preparing to leave the EU following the result of the referendum, in particular through membership of and participation in the Interdepartmental Coordination Group.

77. In November 2017, I co-ordinated and led a study visit for lawyers to the European Court of Human Rights in Strasbourg.

Living Law

78. The Living Law Programme consists of three elements and is aimed at raising knowledge about the importance of law, as well as generating an interest in and appreciation for the law generally. Now in its seventh year, the programme continues to thrive, and builds on the successes of previous years.
79. The first of the three elements is an enrichment programme for students from non grammar schools with A Level classes who may be interested in studying law or learning more about how law operates in society. Past participants in this element of the programme are now studying law at universities throughout the United Kingdom.
80. Throughout the year 64 pupils from 15 schools across Northern Ireland took part in the schools element of the Living Law Programme designed to give young people a fresh and lively introduction to law and the justice system. The programme included a series of debates, case study analyses, a court visit, a session with the Public Prosecution Service, a session at the Northern Ireland Assembly and culminated with the pupils taking part in mock bail applications.
81. The second element is a general outreach programme to community and other groups aimed at raising public understanding about law.

82. Supported by funding under the Executive action plan on Tackling Paramilitarism, Criminality and Organised Crime, I have been delivering the 'It's your law' programme, in partnership with the Prince's Trust. The aim of 'It's your law' is to promote the rule of law: supporting law and order and the justice system; and promote active citizenship in building a culture of lawfulness. The programme is aimed at the young people who are not in employment or education and young people in school who are at risk of exclusion and are educationally under-achieving – with a focus on those schools / young people who are at risk of influence from paramilitary / organised crime.
83. The third element is the provision of conferences and seminars bringing together practising lawyers, academics and policy makers for reflection on themes of general importance or topics of contemporary significance. In May, I met with public and voluntary sector organisations working with young people to look at the issue of pardons and the potential role of the royal prerogative of mercy where a young person has moved on from early offending. In August, I hosted a number of criminal justice colleagues to review our legislative response to hate crime. In October, I hosted a colloquium on inquests, particularly as regards the jurisprudence on Article 2 ECHR.
84. This year I held my second Constitutional Law Summer School from 9 – 11 August 2017. The School was hosted in conjunction with the Law Society of Northern Ireland, the Bar of Northern Ireland and Law Centre NI. It saw lawyers, politicians, academics, policy makers and expert speakers join me in exploring major constitutional law issues for the UK and Ireland drawing on the particular perspective of Northern Ireland. Speakers included the Rt Hon the Baroness Hale of Richmond DBE; Robert Buckland QC, Solicitor General for England and Wales; Juris Rudevskis, European Court of Human Rights; Pamela McCormick, European Court of Human Rights;

Christine O'Neill, Chairman of Brodies LLP, Scotland; Professor Neville Cox, Trinity College Dublin; Dr Eoin O'Malley, Dublin City University; Professor Gordon Anthony, Queen's University Belfast and Michael Anderson, Office of the Legislative Counsel (NI).

Miscellaneous

85. In addition to the significant themes of work outlined above, I have also dealt with a number of miscellaneous issues:

- I received 6 Departmental Consultations for consideration.
- The Office of the Attorney General provided responses to 15 Freedom of Information requests.
- I spoke at 5 external events.
- I hosted 16 work experience students.
- Lawyers from my office have participated in the work of the Court of Judicature Rules Committee, the Crown Court Rules Committee, the Criminal Justice Delivery Group and the Criminal Justice Issues Group.

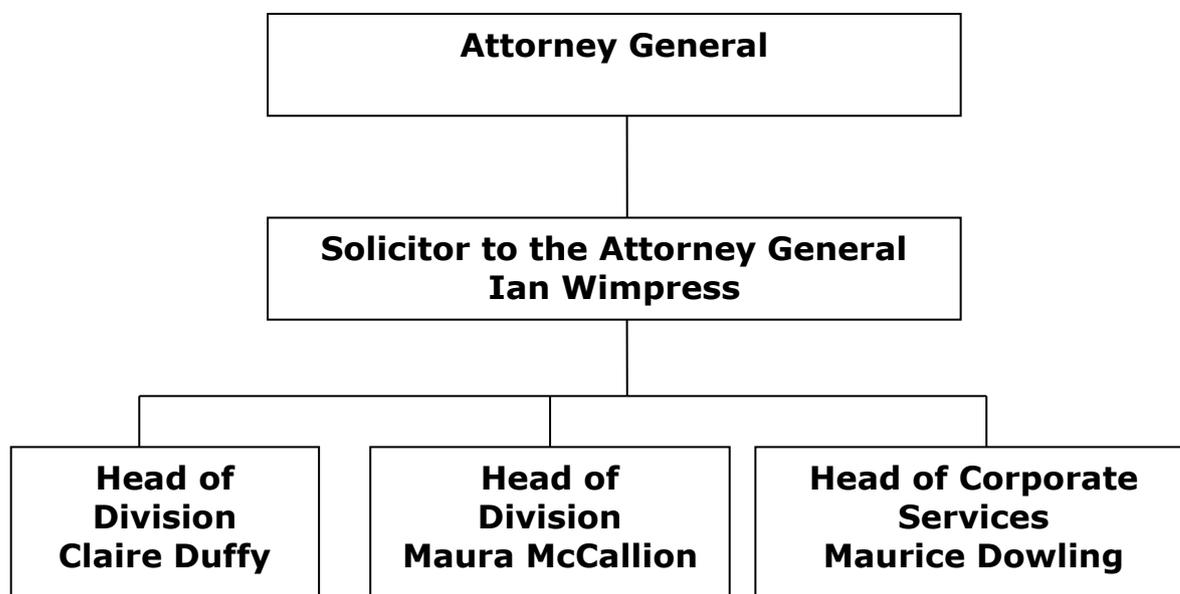
Staff

86. Subject to the approval of the First Minister and deputy First Minister as to numbers, salary and other conditions of service, I may appoint staff to the Office of the Attorney General.

87. As of 31 March 2018, my office consists of 9 full time staff, including 5 lawyers, who are all members of the Northern Ireland Civil Service. During the past year I have also had the benefit of lawyers on

temporary loan from the Department of Justice and the Crown Solicitor's Office.

Senior Management Structure



Corporate Services

88. By section 22(3) of the Justice (Northern Ireland) Act 2002 the Attorney General is to be funded by the First Minister and deputy First Minister acting jointly.
89. For practical administrative and economic reasons, my office avails of the Office of the First Minister and deputy First Minister's financial and audit systems.
90. In 2017/18 the Office of the Attorney General had a budget of £1.23m. The year-end financial spend was £1.25m.
91. Robust systems and processes are in place to ensure effective corporate governance.
92. The office website www.attorneygeneralni.gov.uk outlines the work and responsibilities of the Attorney General. It is regularly updated.

Conclusion

93. Thanks are due, in advance, to those citizens who, having read this report, take time to share their reflections on it with me. Giving legal advice is a confidential exercise but, whether directly or indirectly, the work that is detailed in this report is done on behalf of all of the citizens of Northern Ireland, and everyone who benefits from the protection of our laws, and I welcome public participation in an assessment of that work.