



**Attorney General
for Northern Ireland**

Attorney General for Northern Ireland

**Tenth Annual
Report**

2019/20

*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



Attorney General for Northern Ireland

OGL

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Attorney General for Northern Ireland

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Preface by the Attorney General for Northern Ireland

This preface is being written during the COVID-19 health emergency. The formation of a new Executive Committee in January 2020, following the return of an active Assembly, gave hope to many people in Northern Ireland. Within a short time after these hope-filled events, the entire community in Northern Ireland faced, and still faces, a health challenge unequalled in living memory.

It is impossible now, at least for me, to predict what medium and long term effects this emergency will have on our government and way of life. That it will have significant effects seems certain.

One observable feature of the present crisis is how it has disclosed both the necessity of law – and the law’s limitations. Citizens have acted generously and with a zeal for the common good that the law could welcome but never itself properly demand. It is not law that makes us kind and considerate citizens and neighbours; it is for the law to set clear standards of the behaviour of which we as a polity disapprove; the law can punish when these standards are broken, but it is not for the law to try to make us perfect.

One of the great joys of serving as Attorney General had been to work with so many extraordinarily talented and kind people who work in the office of the Attorney General. They are dedicated public servants and they have my deepest gratitude and admiration.

Another great joy has been meeting and working with such a range of public-spirited and engaging politicians, police officers, lawyers, clergy,

officials, academics, campaigners and citizens both in and beyond Northern Ireland.

I must draw particular attention here to the Justice Committee of the Assembly. The effectiveness and collegiality of this Committee has been one of the most uniformly successful elements of the devolution settlement since 2010. While differences in policy originating in the differences of party are present (and in a democratic institution why should it be otherwise?) this Committee shows a way for others in working collaboratively across parties, improving the quality of legislation, and constructive investigation of policy. It has been heartening to work with such distinguished public representatives.

This is my last annual report. I will at the end of June 2020 leave office having served over ten years as Attorney General for Northern Ireland. To have had this opportunity to serve Northern Ireland in this office has been the greatest professional honour and personal privilege. I am grateful to the Right Hon. Peter Robinson and the late Martin McGuinness for first appointing me, as I am for successive re-appointments, most recently in May 2019, by the Right Hon Karen Bradley MP, then Secretary of State for Northern Ireland.

On 9 June 2010, before the Lord Chief Justice of Northern Ireland, I took the following oath:

“I, John Francis Larkin, swear by Almighty God that I will well and faithfully serve the people of Northern Ireland and uphold and defend the rule of law in the office of Attorney General for Northern Ireland”

Over ten years, I have sought to serve the people of Northern Ireland and to uphold and defend the rule of law to the best of my ability. I leave the judgment of that service to Almighty God and to my fellow citizens.

A handwritten signature in black ink, appearing to read 'J F Larkin', followed by a period.

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. For the period of disruption in devolved government, the role, the work, and the constitutional context differ also from those explored in previous reports; from January 2020, there is a return to what can be regarded as normal devolution.

2. Chief among my responsibilities is that of guardian of the rule of law. A commitment to protect the rule of law does not mean that I have a general commission to right wrongs. My commitment to protect the rule of law will, on occasion manifest itself in unusual circumstances. As is well known, the Government of the Peoples' Republic of China is seeking to expand its power and influence *per fas aut nefas* in Northern Ireland, among other places. When, in March 2019, the Consul General of China sought to pay an official visit to my office, I made it clear that any conversation between us "must focus on the extent to which fundamental human values and the rule of law may be said to be respected in the Peoples' Republic of China as they are in Northern Ireland." When confirmation was sought "that this necessary focus is accepted by the Consul General", there followed an unbroken silence. I have not received the Consul General in my office.

3. More routinely, guardianship of the rule of law, in the context of this office, is central to, and governs the discharge of, my specific duties. These specific 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 charity matters
 - Discharging statutory responsibilities under the Mental Capacity Act (NI) 2016
 - 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.
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, among other safeguards, 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. Given, in particular, the increased responsibilities of this office under the Mental Capacity Act

(Northern Ireland) 2016, any substantial reduction in the present budget would imperil statutory independence.

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.
7. I have 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 Suella Braverman QC 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 2019/20

Chief Legal Adviser to the Executive

9. For a significant period of this report I have been unable to undertake this function due to the absence of an Executive Committee. However, on 11 January 2020, I welcomed the restoration of the Executive.

10. As Attorney General I may attend the meetings of the Northern Ireland Executive. Draft Executive papers are copied to me at the same time as they are submitted by Departments to the Executive Secretariat, so that relevant issues can be explored and addressed timeously. Normally the pattern of circulation begins with a paper addressed by one Minister to his or her colleagues inviting their views. My views are usually addressed to the Minister issuing the paper, but are normally sent also to everyone on the circulation list. On occasion it may be a response to the original paper rather than the original paper itself that attracts substantive comment from me. Often comments are followed up by detailed discussions between the relevant Department and my office.

Departmental Litigation

11. In cases of particular significance it will often be appropriate for me, or counsel instructed by this office, to represent a Minister or Department in court.

12. As referred to in my last report I was instructed by the then 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. The case was part-heard in January 2018 and concluded on 17 January 2019 following which judgment was reserved and is still awaited.

Intervention in Proceedings Pursuant to Devolution Notices and Notices of Incompatibility

13. 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.
14. 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.
15. Following the Supreme Court decision that the Northern Ireland Human Rights Commission did not have the necessary standing to bring the proceedings in which it sought a declaration of incompatibility in relation to the legislation governing the termination of pregnancy, Sarah Ewart applied for judicial review focusing in her case on terminations in the case of pre-natal life-limiting diagnoses. I participated on the devolution issues which arose. The case was heard in the High Court in January 2019 and judgment was given on 3 October 2019. Mrs Justice Keegan found in favour of the applicant both in relation to standing and compatibility. I made further submissions on the question of relief and the Judge's decision on her final disposal of the case is awaited.

16. 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 still awaited.
17. 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 ECHR. 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 applicants have appealed and a hearing date in the Court of Appeal is awaited.
18. 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) Order 2003 on the basis that it unlawfully prevents individuals of the same sex from entering into a civil marriage. The judgment of Mr Justice O'Hara was appealed and the appeal was heard in September 2018. Over the following year a number of written submissions were filed on recent judgments of the Supreme Court. Judgment was handed down by the Court of Appeal on 7 April 2020 in favour of the Appellants holding that as of August 2017 the absence of same sex marriage in this jurisdiction discriminated against same sex couples and that that discrimination was not justified.
19. 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 petitioner had not been violated. The petitioner appealed. I participated in the appeal on 26-27 February 2018. Further written submissions were then filed over the next year. Judgment was handed down on 15 April 2020, the Court of Appeal holding that the maintenance of the traditional concept of marriage was a legitimate aim and provided justification for the prohibition on the recognition of same sex marriage for the period until the summer of 2017 and as such saw no basis upon which it could have been argued that the failure to recognise a same sex marriage celebrated in England and Wales could have given rise to unlawful discrimination during the period up to the summer of 2017 during which the prohibition on same sex marriage was justified in this jurisdiction. The Court held that this prohibition was not justified beyond the summer of 2017.

20. I also made written submissions to the Court of Appeal pursuant to a devolution notice in *JR80* which arose from the failure to implement a recommendation by the Historical Institutional Abuse Inquiry that compensation should be paid to the victims of historical institutional abuse. The challenge gave rise to important constitutional issues including whether during the absence of an Assembly the constitutional arrangements for Northern Ireland which allow decisions to be taken by civil servants who are not accountable to the Assembly were invalid. The Court of Appeal gave judgment on 4 November 2019 and held that the Executive Office could exercise the prerogative to set up an ex gratia redress scheme and that the Secretary of State should consider giving a direction to the Executive Office under section 26 of the Northern Ireland Act 1998. The Court further held that the Secretary of State has no residual prerogative powers as respects transferred matters; the Secretary of State has no prerogative power to set up an ex gratia redress scheme and that the provisions of the Northern Ireland

(Executive Formation and Exercise of Functions) Act 2018 as amended by the Northern Ireland (Executive Formation etc) Act 2019 Act are valid.

21. A challenge by Stuart Lee Johnston to Assembly legislation gave rise to a devolution issue. I participated in a judicial review hearing before the Divisional Court. Mr Johnston was subject to indefinite notification requirements as a result of offending behaviour. He initiated his right to a review of the need for these requirements to continue. Ultimately his case was considered in the Crown Court and rejected. Mr Johnston then argued that the review arrangements (section 1 and Schedule 1 of the Criminal Justice Act (Northern Ireland) 2013) were deficient in not allowing for an appeal from the Crown Court and, not being compatible with the ECHR, not law. I argued that the rights protected by Schedule 1 to the Human Rights Act do not include a general right of appeal – there was no need for the Assembly to have enabled an appeal. The Court agreed that the review arrangements as set out in the 2013 Act were not outside the legislative competence of the Northern Ireland Assembly. The challenge was dismissed.

22. I also made written submissions in response to a devolution notice issued in judicial review proceedings brought by Thomas Pearce against the Department of Justice, the Chief Constable and His Honour Judge Kerr in relation to a Violent Offences Prevention Order imposed on him. The applicant contended that the Violent Offences Prevention Order (Notification Requirements) Regulations 2016 made under the Justice Act (Northern Ireland) 2015 and impugned Violent Offences Prevention Order were in breach of his rights under Article 7 and Article 8 ECHR. I submitted that the legislation did not breach the applicant's Article 7 and 8 rights; that there had been no breach of section 24 (1) (a) of the Northern Ireland Act 1998 by the Department of Justice in making the Violent Offences Prevention Order (Notification Requirements) Regulations (Northern Ireland) 2016 and that the applicant has failed to establish that the threshold

for the grant of leave on the Convention arguments has been reached. I also disagreed with the applicant's contention that these proceedings constituted a criminal cause or matter and should therefore be heard by a divisional court. The Court dealt with the matter in a rolled up hearing. The Court was satisfied that the proceedings did not constitute a criminal cause or matter and dismissed the substantive application having concluded that the threshold for the grant of leave had not been overcome.

23. I have also filed a summary of legal arguments in a judicial review application brought by Robert McFarland in which it is contended in the devolution notice that the absence of a 'fitness to plead' procedure in the Magistrates' Court and the holding of a preliminary inquiry or investigation falls short of what is required by Article 6 ECHR. I submitted that neither claim gives rise to a devolution issue in accordance with paragraph 1 of Schedule 10 to the Northern Ireland Act 1998. In particular, I made the case that no question arises about a failure of the Justice Minister or Department to comply with Article 6 through failing to propose amendments to the law as there is no relevant 'unlawful act' in such an omission and that the judicial review application should be dismissed as, in the absence of an unlawful act by either, no relief under the Human Rights Act 1998 can be granted. I also disagree with the applicant's contention that these proceedings constitute a criminal cause or matter and therefore should be heard by a divisional court. This application has not yet been heard.
24. I participated in proceedings brought by Raymond McCord, Jamie Waring and JR 83 challenging various decisions made by the Prime Minister and of the Secretary of State for Exiting the EU which relied on section 10 of the European Union (Withdrawal) Act 2018. The impugned decisions were those which led the UK Government to conduct negotiations with the EU 27 proposing measures which, the applicants suggested did not protect the Belfast Agreement and/or

which were not compatible with the Northern Ireland Act 1998. I queried whether a devolution issue arose and submitted that sections 52A-C and 54 did not prevent the respondents from acting in the manner in which they did or from leaving (as it was proposed they might do) the EU without a withdrawal agreement. The applicants contended that the prerogative power of the Executive to conduct negotiations has been curtailed or abrogated either expressly or by necessary implication by the European Union (Withdrawal) Act 2018 so that those negotiations are justiciable and subject to the supervisory jurisdiction of the courts. Mr Justice McCloskey dismissed the applications and the applicants then appealed to the Court of Appeal. The Court of Appeal gave judgment on 27 September 2019 and dismissed the appeals.

25. I may also 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). As noted in my last report, in February 2018 I referred questions to the Supreme Court arising 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 questions as to whether the publication of postcode lists by the Department for Communities which commenced Universal Credit in those areas is 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 preliminary hearing took place on 27 November 2019 on the question of whether a devolution issue arose. Judgment was given on 5 February 2020 and the Court held the action of the Department of Communities, in the overall context, was not sufficient to give rise to a devolution issue and decided it could not therefore consider the human rights issues highlighted. I emphasised these human rights concerns in a submission to the Joint Inquiry into welfare policy in Northern

Ireland which was established by the Northern Ireland Affairs Committee and the Work and Pensions Committee.

26. I also referred five devolution issues to the Supreme Court in relation to decision-making by Northern Ireland Departments in the absence of an Executive after an interpretation by the Court of Appeal which limited the powers of civil servants to make decisions. After a preliminary hearing held in December 2018, the reference was adjourned pending consideration of whether the issues might arise in cases currently before the Northern Ireland courts. Some provision was also made for decision-making by senior civil servants in the absence of Ministers by Westminster legislation – the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018. During the period covered by this report there were no live cases before the Northern Ireland courts in which these questions were under consideration and the Supreme Court has been so advised. With the return of the Executive and Assembly this year these issues while important do not require immediate determination but may well have to be revisited in future.

Intervention in Other Proceedings

27. When issues of importance arise, I may either initiate litigation myself or intervene in on-going litigation to protect important public interests.
28. I intervened in an appeal to the Supreme Court which arose from a judgment by a Divisional Court in relation to sentencing calculation. This case arose from a decision by the Northern Ireland Prison Service to refer Michael Stone's case to the Parole Commissioners for consideration of his release on licence on the basis that having included time spent previously on release on licence his current tariff had expired. A divisional court was convened and it decided that the period in question should not count towards tariff expiry. Both Mr

Stone and the Department of Justice sought to appeal against this judgment. The divisional court certified a question of law of general public importance suitable for appeal to the Supreme Court. I disputed the assumption that the application for judicial review constituted a criminal cause or matter. The Supreme Court agreed and held unanimously that it did not have jurisdiction to hear the appeals [*In the matter of an application by Deborah McGuinness for Judicial Review (Northern Ireland and In the matter of an application by Deborah McGuinness for Judicial Review (Northern Ireland (No. 2) [2020] UKSC 6.*] As a result the appeals will be heard by the Northern Ireland Court of Appeal and in future that Court will hear more cases of this nature.

29. I participated in a further challenge in respect of the law on abortion, *JR76*. The applicants in this case sought 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 was that this judicial review constituted an improper collateral challenge to a criminal prosecution and lacked both procedural and substantive merit. The application was heard in November 2018 before a Divisional Court and judgment was given on 16 December 2019. The Court dismissed the challenge. It held that there had been no breach of Article 3 ECHR and that the decision to prosecute did not offend the fair balance between the rights under Article 8 ECHR of the applicants and the public interest in the protection of the health of children in the circumstances of this case. The Court also accepted my argument that even if a Convention right had been breached, it was not unlawful for the Public Prosecution Service to enforce this particular provision of primary legislation.

Appointment of Amicus Curiae and Special Counsel

30. 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.
31. 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.
32. I appointed an *amicus* in proceedings 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. The hearing took place on 2 and 31 May 2018 and judgment is awaited.
33. The Court of Appeal asked me for assistance in relation to an appeal involving a liquor licencing matter. I agreed to assist and made written submissions and oral submissions at the hearing on 15 October 2018. The Court of Appeal gave judgment on 3 May 2019 and reached the same conclusions.

34. The Court of Appeal also asked for my assistance as an amicus in the *Department of Finance v Mary Quinn* an appeal by way of case stated from a decision from a decision of the Northern Ireland Valuation Tribunal. Mrs Quinn was not represented nor did she appear in person. Mrs Quinn had applied to the Department under Article 31A of the Rates (Northern Ireland) Order 1977 for special rates relief in the form of Disabled Persons Allowance. The Department refused the application on the basis there were no qualifying facilities in her home. Mrs Quinn appealed to the Tribunal which awarded her the allowance on the basis that the ramps to the front and back door of her home were facilities necessary to meet her needs and thus were qualifying facilities within Article 31A(2)(a) of the 1977 Order. I made a series of written submissions both to assist the Court and to address the Department's submissions. The Court gave judgment on 4 September 2019 and held, consistently with the Department's view, that the ramps at the applicant's home were not qualifying facilities.
35. In April 2019 I filed a position paper with the High Court, at the invitation of Keegan J, addressing the discrete issue of judicial recusal. That matter arose in relation to a series of cases brought by two brothers, Marek and Radko Belkovic, claiming compensation against a number of medical doctors and the Belfast Health and Social Care Trust. In the various proceedings, it appeared the plaintiffs had requested that the County Court judge hearing their claims recuse himself. When the judge refused to do so, the Plaintiffs, who were not legally represented, appealed to the High Court. Keegan J dismissed the interlocutory appeals, with the cases being returned to the County Court for their substantive hearings.
36. I was also invited to appoint an amicus in a commercial action before Mr Justice Horner: *Andronics Communications Limited v. AIB Group (UK) PLC t/a First Trust Bank*, in circumstances where the Plaintiff was acting by way of a former director, as personal litigant. The case

concerned the law on corporate insolvency. The Plaintiff had been the subject of a compulsory winding-up order made by the High Court. A liquidator was appointed, at the end of which the company was dissolved and removed from the Companies Register. On the director's application, the Plaintiff was restored to the Register. He had also issued a writ, in the name of the Plaintiff, claiming damages against the Defendant in respect of the business banking services it had provided to the company. A liquidator was again appointed by the Official Receiver, and that liquidator disclaimed the cause of action against the Defendant. On the Defendant's application, the Plaintiff's action was then struck out by the Master on the grounds that it was frivolous, vexatious or an abuse of the process of the court.

37. The Plaintiff, acting by its former director, appealed the matter to the judge. The two principal issues I was asked to assist the court with were the effect of the cause of action relied on having been disclaimed by the liquidator; and the effect of the restoration order when the Plaintiff was restored to the Companies Register. I lodged a position paper with the court, and made brief oral submissions. Judgment was handed down in February 2020 dismissing the appeal.

Relationship with the Assembly – Legislative Process

38. 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.
39. By section 11 (1) of the Northern Ireland Act 1998 I may refer the question of whether any provision of a Bill would be within the competence of the Assembly to the Supreme Court of the United Kingdom. Accordingly, I give particular consideration to all Assembly

Bills as they complete final stage. No fixed criteria exist to determine whether or not any provision of a Bill that I consider falls outside the legislative competence should be referred to the Supreme Court. Among the concerns that will weigh heavily with me is the desirability for a speedy determination of legal questions that would, if a reference were not made, occupy considerable time in the Northern Ireland Courts.

40. During a significant period covered by this report, the Assembly has not been sitting. Since the period of restoration I undertook final statutory scrutiny of the Budget Bill which received Royal Assent on 26 March 2020. I gave initial consideration to the Domestic Abuse and Family Proceedings Bill which was introduced to the Assembly on 31 March 2020.

Public Prosecution Service

41. 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 or Deputy Director.
42. 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.
43. 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.

44. 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.
45. I continue to believe that a gap exists in the current superintendence and accountability arrangements between the Attorney General and the Public Prosecution Service. In my first appearance before the Justice Committee since the restoration of devolution this issue was raised. 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.
46. 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 and Deputy Director of Public Prosecutions during the period covered by this report.

Departmental Solicitor's Office

47. Mr Hugh Widdis is the Departmental Solicitor and Head of the Government Legal Service for Northern Ireland. I have enjoyed a strong working relationship with Mr Widdis and his senior team during the period covered by this report.

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

Office of Legislative Counsel

48. Ms Brenda King is First Legislative Counsel. I am very grateful for the support of Ms King and her colleagues this year, whether as active participants in the Constitutional Law Summer School or in the day to day exchange in the development of high quality legislation. The public should be aware of the debt it owes to such skilful and dedicated lawyers.

Relator Actions

49. 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.
50. 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 the standing required by an applicant for an injunction of this type may render relator proceedings obsolete. I did not grant any relators during the period covered by this report.

Inquests

51. 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.

52. 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.
53. During 2019/20, I directed the Presiding Coroner to hold an inquest in 4 cases. In 11 cases I determined a fresh inquest was not advisable (including cases that involved requests that I reconsider an earlier decision not to direct an inquest). In total, 16 applications are still under consideration. 14 of those applications were received during 2019/20, and they include 6 repeat applications.
54. 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 through a succession of litigated cases.
55. I have continued to reflect on the potential 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.

56. The application for judicial review by Dorothy Johnstone challenged my decision not to order an inquest into the death of her father in 1988. I considered that Article 2 ECHR 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. The Court of Appeal ruled that Ms Dalton could take over the appeal. The appeal was heard on 8 October 2018 and judgment is awaited.
57. An application for leave to apply for judicial review has also been lodged in relation to another legacy case in which I declined to direct a fresh inquest – an application by Patricia Burns. Skeleton arguments have been filed with the court by the applicant and counsel acting on my behalf. At this stage, the leave hearing has not yet taken place.

Charities

58. 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 party 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.

59. The Court of Appeal gave judgment on 19 February 2020 on the interpretation of the Charities Act (Northern Ireland) 2008. The Court confirmed the position which I had advocated: that the Charity Commission for Northern Ireland is not able to take regulatory decisions, such as the removal of trustees, through its staff acting alone (or through a non-*quorate* group of Commissioners outside of a designated committee).
60. While certain 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 also have a consultative/consent role in relation to a number of provisions contained in the 2008 Act, including a consultative/directory role in the authorising of *ex gratia* payments by the Charity Commission and authorisation to take proceedings.
61. 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 or Department for Communities.
62. I have also indicated that I wish to intervene in a number of appeals before the Charity Tribunal which have yet to be heard, a number of these centre on the effect of the Court of Appeal decision noted in the paragraph above.

Human Rights

63. 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.
64. This year I issued one set of guidance to the Police Service of Northern Ireland and the Public Prosecution Service on the use of the Irish Language.

Contempt of Court

65. 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.
66. This year, I have been taking forward recommendations made as part of Sir John Gillen's report on law and procedure in relation to the prosecution of serious sexual offences. An aspect of this has involved developing effective methods of addressing contempt which occurs online.
67. I may be asked either to consider seeking an order from the High Court restraining a potential contempt of court or else to consider bringing contempt proceedings against someone who has allegedly engaged in actions which might amount to contempt.

68. I am taking forward an application to commit an individual in respect of a contempt certified by the Master sitting in the Judgments Enforcement Office. This arose from an allegation that when he attended before the Master to be examined as to his means he refused, having been sworn, to answer any questions about his employment, his income or to provide any financial information. The matter initially came before Mr Justice Maguire in 2017 and he gave a judgment on 8 December 2017 in which he held that the Attorney should be joined to the proceedings and expressed the provisional view that the proceedings fell within the arena of criminal contempt. Thereafter the matter remained in abeyance for some time as mediation was ongoing but as the dispute was not resolved by this means the application for committal is currently proceeding and is at the leave stage.

Declaration of Parentage

69. The Attorney General must be placed on notice of every application to court seeking a declaration of parentage. In 2019/20 there were 21 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 Police Service of Northern Ireland.

Determination of Marital Status

70. I am also a notice party in any litigation concerning declarations as to marital 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

71. 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. No such applications were submitted during the period of this report.

Vexatious Litigants

72. 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. No applications of this nature were made during the period covered by this report.

Mental Health

73. By Article 72 of the Mental Health (Northern Ireland) Order 1986 I may refer the case of a patient² to the Review Tribunal. I made no such referrals to the Tribunal this year.

Mental Capacity Act (NI) 2016

74. The Mental Capacity Act (NI) 2016 provides a statutory framework for people who lack capacity to make a decision for themselves, and for those who now have capacity but wish to make preparations for a time in the future when they lack capacity. The provisions of the

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

Act dealing with deprivation of liberty (to address risks to the person who lacks capacity or others) were commenced on 2 December 2019. The 2016 Act is key to the safeguarding of the rights under Article 5 ECHR for many citizens, for example those with dementia or with significant learning disability.

75. A Health & Social Care Trust must notify me where it appears that a person in respect of whom it has authorised a deprivation of liberty lacks capacity in relation to whether an application should be made to a Review Tribunal for an independent review of that authorisation. The Attorney General has a power under section 47 of the 2016 Act to refer to the Review Tribunal the question of whether the authorisation in a particular case is appropriate. In deciding whether to exercise that power, it is necessary for me to consider, for each case notified to me, the evidence on which it is said that the person is lawfully deprived of liberty. I also need to consider if the person, if he or she had capacity, would ask for the restrictive care arrangements to be reviewed by a Tribunal. A number of complex legal issues have arisen and I am conscious that the Article 5 jurisprudence has been and will continue to be dynamic.
76. In the period 2 December 2019 to 31 March 2020, I received 458 notifications from the five Health and Social Care Trusts. In 237 cases I did not refer a question to the Review Tribunal; and in 218 cases I did refer the question of whether the authorisation is appropriate (3 cases did not require any further consideration).
77. The implementation of these safeguards for persons deprived of liberty through care arrangements has been a significant aspect of work this year. I am grateful to colleagues in the Department of Health, the Health and Social Care Trust and the Review Tribunal for their helpful engagement in understanding and working these safeguards.

Relations with both branches of the Legal Profession

78. 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 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 upholding access to justice.
79. 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, Sarah Ramsey, the Vice Chair, Bernard Brady as well as the Chief Executive, David Mulholland for the assistance they have provided me in my work with the Bar.
80. While I have no institutional relationship with the Law Society I am grateful to both its President, Rowan White, and its Chief Executive, David Lavery CB, for their continued cooperation and constructive engagement with my Office.
81. 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 2019.

Development of External Relations

82. The legal system of Northern Ireland does not exist in isolation. There are obvious links with the other jurisdictions of the United Kingdom, the Crown Dependencies, and Ireland. It is obvious, too, that the influence – sometimes the dominant influence – of European Union law (shortly to be retained EU law and the EU law applicable

by virtue of the Ireland/Northern Ireland Protocol) and the law of the European Convention on Human Rights runs throughout our legal system and substantive law. It will continue to be necessary for lawyers in Northern Ireland to know not merely the formal content of EU law and ECHR law, but also of how other European jurisdictions handle these sources of law. I was pleased, therefore, to again host a study visit to the European Court of Human Rights in Strasbourg in December 2019.

Living Law Programme

83. My Living Law Programme 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 ninth year, the programme continues to thrive, and builds on the successes of previous years.
84. At its core, Living Law 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 the law operates in society. The premise of the programme is that the law is our common birthright and that no young citizen should consider herself or himself excluded from learning about the law and considering law as a career. Past participants in this element of the programme are now studying law at universities throughout the United Kingdom, and Ireland. Some past participants have qualified, or are in the process of qualifying, as solicitors or barristers.
85. Throughout the year 72 pupils from 20 schools across Northern Ireland took part in this element of the 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 and a session with the Public Prosecution Service, and a session at the Northern Ireland Assembly.

Unfortunately, a final session of mock bail applications for students and the formal presentation of certificates had to be cancelled due to Covid-19 restrictions.

'It's Your Law' programme

86. 'It's Your Law' is a general outreach programme to community and other groups aimed at raising public understanding about the law.
87. 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 young people who are not in employment or education and those in school who are at risk of exclusion and are educationally under-achieving – with a focus on those schools / young people who are perceived to be at risk of influence from paramilitary / organised crime.
88. I led a seminar for the Factory Community Forum, a community development organisation that works to improve quality of life for everyone living in the Ferris Park area of Larne on 24 June 2019. The theme was "the rule of law", and topics explored included- the purposes and principles underlying the law, how law gets made, what makes a law good (or bad), and the workings of the criminal justice system. I held a similar session in Carrick Community Forum in November 2019. I was pleased to work with Debbie Watters of Northern Ireland Alternatives in setting up these outreach opportunities.

Conferences and Seminars

89. There is, I believe, considerable value in the provision of conferences and seminars to bring together practising lawyers, academics and policy makers for reflection on themes of general importance or topics of contemporary significance.
90. This year I held my fourth Constitutional Law Summer School from 7-9 August 2019. The School was hosted with the support of 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 Lord Lloyd-Jones of the UK Supreme Court; Mr Justice Richard Humphreys; Professor Ferenc Horher, National University of Public Service, Hungary; Juris Rudevskis, European Court of Human Rights; Lord Caine; Pamela McCormick, European Court of Human Rights; James Mure QC, Faculty of Advocates; and Leonie McLoughlin, Office of Legislative Counsel.
91. In January 2020, together with the Consumer Council, I co-hosted a Roundtable Discussion on the subject of tackling illegal money lending in Northern Ireland. Presentations were given by the National Illegal Money Lending Team, the Police Service of Northern Ireland and the Public Prosecution Service. HM Treasury and the Financial Conduct Authority also joined us remotely. We agreed to hold a follow-up event in the autumn of 2020.

Miscellaneous

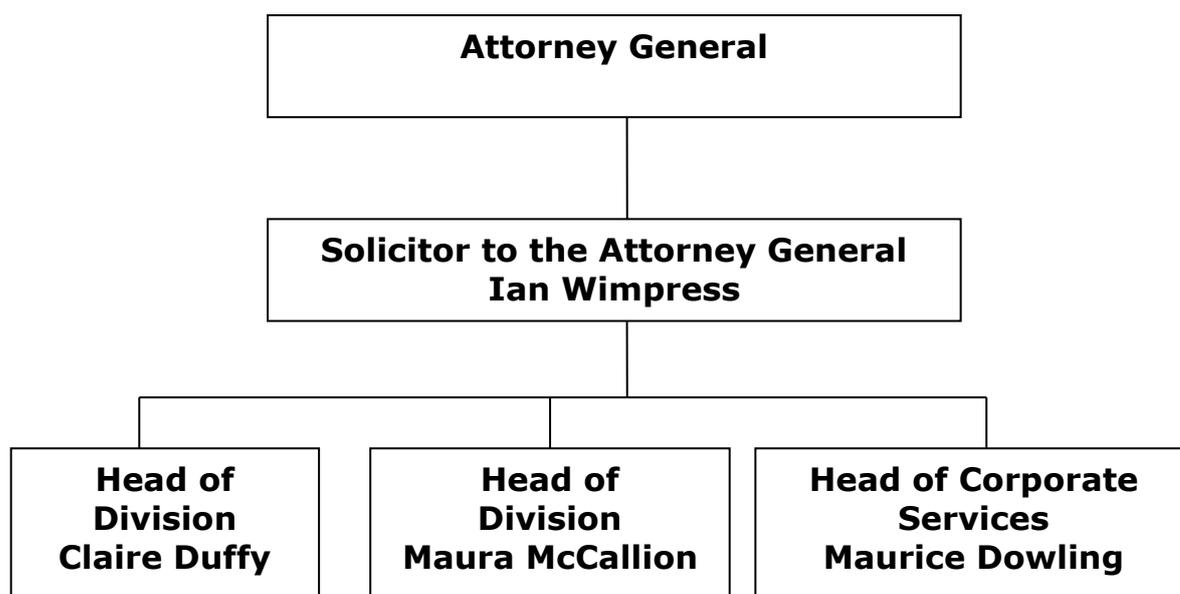
92. In addition to the significant themes of work outlined above, I have also dealt with a number of miscellaneous issues:
 - I received 8 Departmental Consultations for consideration.

- The Office of the Attorney General provided responses to 13 Freedom of Information requests.
- I spoke at 18 external events.
- I hosted 22 work experience students.
- Lawyers from my office have participated in the work of the Court of Judicature Rules Committee, the Crown Court Rules Committee and the Criminal Justice Delivery Group.

Staff

93. 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.
94. As of 31 March 2012, 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 a lawyer on temporary loan from the Department of Justice.

Senior Management Structure



Corporate Services

95. 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.
96. 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.
97. In 2019/20 the Office of the Attorney General had a budget of £1.18m. The year-end financial spend was £1.17m.
98. Robust systems and processes are in place to ensure effective corporate governance.
99. The Office website www.attorneygeneralni.gov.uk outlines the work and responsibilities of the Attorney General. It is regularly updated.

Conclusion

100. The current period of devolution will bring great challenges to the office of Attorney General for Northern Ireland. Among these will be the difficulties of maintaining independence in an era of increasing budgetary demands across government as a result of the COVID-19 crisis, and the opportunities and challenges of Brexit.
101. While I have suggested publicly that a substantial period of stability in devolved government in Northern Ireland might offer an occasion to think again about the need for the Attorney General for Northern Ireland to possess a statutory independence unique in these islands and to consider, perhaps, moving to a model of government/law officer relationship on the Scottish pattern, that occasion seems remote.
102. It will be important for my successors, in advance of such an occasion, to preserve the independence of this office, not as a perquisite or privilege of the office-holder, but as a principle necessary to ensure the effectiveness of the office in the profoundly divided community that is ours. It will be of equal, or perhaps even greater, importance that my successors bring to this office an independence of mind, without which the value of statutory independence is diminished.