



Attorney General  
for Northern Ireland

**Attorney General for Northern Ireland**

**Third Annual Report**

**2012/13**



Attorney General  
for Northern Ireland

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

X XXXXXXXX 2013

## **Contents**

<b>Preface by the Attorney General for Northern Ireland</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Overview of Work in 2012/13</b>	<b>6</b>
Chief Legal Adviser to the Executive	6
Devolution Notices	8
Intervention in Litigation	9
Appointment of Amicus Curiae and Special Counsel	13
Relationship with the Assembly	14
Legislative Process	15
Public Prosecution Service	16
Criminal Justice Inspectorate	18
Relator Actions	18
Inquests	19
Charities	21
Human Rights	23
Contempt of Court	24
Declaration of Parentage	24
Vexatious Litigants	25
Mental Health	25
The Matrimonial Causes (Northern Ireland) Order 1978	25
Relations with both branches of the Legal Profession	26
Development of External Relations	26
Living Law	27
Miscellaneous	30
Staff	30
Senior Management Structure	31
Corporate Services	31
<b>Looking Forward to 2013/14</b>	<b>33</b>



## **Preface by the Attorney General for Northern Ireland**

It is with pleasure that I present this third annual report as Attorney General for Northern Ireland pursuant to section 26 of the Justice (Northern Ireland) Act 2002.

During this third year in Office it has continued to be a privilege and honour to serve the citizens of Northern Ireland as Attorney General. This has been an interesting and challenging year presenting a number of significant new issues. Again, I thank my staff for meeting the challenges of this year so successfully and with such obvious commitment and enthusiasm.

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. I am pleased that this year has seen the completion of the first three sets of draft guidance – Guidance on Human Rights Standards Relevant to the Protection of the Right to Life; Human Rights Guidance for Forensic Science Northern Ireland; and Human Rights Guidance for the State Pathologist's Department. These are available on my website.

During the period covered by this report I have continued to reflect on the centrality of my role as guardian of the rule of law. It has struck me that while the law is the common birthright of all of the citizens of Northern Ireland, individuals and communities here may experience difficulty in accessing the law adequately or at all. While we are all rightly concerned to ensure that citizens enjoy access to justice, generally understood as being able to obtain legal advice and to bring

or defend proceedings in court, access to justice itself depends, at least in part, on a citizen's own awareness – however limited – of the relevantly applicable law.

In my work with schools and with community groups this year I have been keen to emphasise the importance of legal understanding as a condition of effective citizenship. I look forward to continuing this work in the year ahead.

I conclude, as in previous years, by encouraging those reading this report to share their views with me.

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. With the devolution of justice responsibilities on 12 April 2010, the provisions of the Justice (Northern Ireland) Act 2002 relating to the Office of Attorney General for Northern Ireland came into effect. It is now widely known that the structure of the Attorney General's role contemplated by the 2002 Act results in substantial differences from that of other Law Officers in these islands.
  
2. As my direct experience of this role deepens, the centrality of my responsibility as guardian of the rule of law becomes clearer. The rule of law does not merely mean playing according to the rules in a technical sense; it also connotes the idea that the law should respect fundamental human values<sup>1</sup>. A responsibility for protecting the rule of law is not the same thing as a general commission to investigate (or remedy) abuses. Guardianship of the rule of law, in the context of this office, informs and governs the discharge of my specific duties. These 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
  - Overseeing the legal work of the in-house legal advisers to the Northern Ireland Executive and its departments
  - Participating in the proceedings of the Assembly to the extent permitted by its standing orders but not voting in the Assembly
  - Appointing the Director and Deputy Director of the Public Prosecution Service for Northern Ireland

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<sup>1</sup> See the valuable discussion in the late Lord Bingham's [The Rule of Law](#) (London, 2010)

- 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. 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. The necessary material and institutional autonomy have so far been satisfactorily provided for through the current arrangements. I continue to reflect on how the obligation to act independently can be effectively and transparently discharged.
4. 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 throughout the period covered by this report.
5. 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 who is also the Attorney General for England and Wales. The holder of that Office is the Right Hon. Dominic Grieve QC MP.

6. The Overview of Work detailed in the following sections of this report illustrates how the rule of law and legal excellence can be placed at the heart of government in Northern Ireland.

## **Overview of Work in 2012/13**

### Chief Legal Adviser to the Executive

7. As Attorney General I can 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 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 from me are followed up by detailed discussions between the relevant Department and this office.
8. My role as Attorney vis-à-vis the Executive is principally about ensuring that top-quality legal advice is available to Ministers, and I consider it also helps to maintain or improve public confidence in good government when it is known that the Law Officer who is guardian of the rule of law can decide when direct interface with the Executive Committee as a whole is required. Having reflected on the matter, my current position is that it is appropriate to attend Executive Meetings only for an issue or issues in which oral advice would be plainly required.
9. One of my key responsibilities is to provide legal advice to the Executive on both civil and criminal matters that fall within the devolved powers of the Northern Ireland Assembly. It is my responsibility to consider and advise on matters of the greatest legal complexity or which cut across the responsibilities of two or more Departments. I also advise in matters of political controversy or sensitivity.

10. In April 2012 the First Minister and deputy First Minister finalised the Terms of Reference for a review of the Attorney General's relationship with the Executive and Departments. The Right Honourable Dame Elish Angiolini QC was invited to conduct the review and she reported her findings and recommendations to the First Minister and deputy First Minister on 27<sup>th</sup> October 2012. My views on the Report were sought and these have been provided to the First Minister and deputy First Minister.
11. Throughout the year I have given legal advice on a large number of matters. The nature of those matters, and the contents of the advice are, by reason of a long standing constitutional convention, not normally disclosed.
12. 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 represented the Department of Health Social Services and Public Safety in three judicial review cases brought by the Family Planning Association, JR 65 and the Northern Ireland Human Rights Commission respectively.
13. The Family Planning Association brought judicial review proceedings against the Department in order to compel it to publish guidance on the termination of pregnancy in compliance with an Order made by the Court of Appeal in a previous case on this topic. The proceedings gave rise to significant issues in relation to discovery but were ultimately withdrawn following the Minister's decision to consult on draft guidance.
14. The JR 65 case arose from a challenge brought in relation to the lifetime deferral of blood donation by persons who had engaged in male to male sexual relations (MSM). The hearing commenced on

4 February 2012 and will conclude on 16-17 April 2013. It is anticipated that the court will reserve judgment.

15. The application by the Northern Ireland Human Rights Commission is a challenge to the content of the law on adoption here. Under Articles 14 and 15 (1) of the 1987 Adoption (Northern Ireland) Order as amended by the Civil Partnership Act 2004, a same-sex couple, not in a civil partnership, could not apply to adopt as a couple and the individuals in a civil partnership could not apply to adopt either as individuals or as a couple. A single person regardless of his or her sexual orientation could apply to adopt. It was alleged that the cumulative effect of these provisions violated Article 14 of the European Convention on Human Rights taken in conjunction with Article 8. Treacy J found in favour of the applicant and his judgment is currently the subject of an appeal by the Department.
  
16. I have also acted on behalf of the Department of Justice in a judicial review concerning whether the Legal Aid Rules made appropriate provision for the remuneration of a defendant's new legal team who were instructed for the first time at the sentencing stage of the proceedings, the defendant having lost confidence in his previous legal team after he was convicted of a number of serious offences (Re Raymond Brownlee's Application).

#### Devolution Notices

17. 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. During the course of this year I was served with Devolution Notices in 9 cases.

18. Active compliance with the provisions of Schedule 10 to the Northern Ireland Act 1998 (which deals with Devolution Issues) is, and will continue to be, a powerful instrument for enhancing the rule of law in this jurisdiction.

#### Intervention in Litigation

19. When issues of importance arise in litigation I am able to intervene separately to protect important public interests. In my last report I referred to a case in which I intervened in relation to the investment of court funds. The High Court was asked to determine whether it was lawful for the Court Funds Office to deduct management fees for professional investment advice from funds lodged in court for children and people lacking sufficient mental capacity to manage their own affairs. The case was brought by the Northern Ireland Court Service against the Official Solicitor. McCloskey J delivered judgment in April 2012. The Northern Ireland Court Service appealed against certain aspects of the judgment and I made both written and oral submissions to the Court of Appeal which heard the appeal in February 2013. Judgment is awaited.
20. A case came before the Lands Tribunal in relation to the level of compensation payable to a private home owner whose property was vested by the Northern Ireland Housing Executive and where the compensation offered to him was much less than the value of his outstanding mortgage. On the invitation of the Tribunal President I made written and oral submissions to the Tribunal on the human rights aspects of the case and in particular the impact of Article 1, Protocol 1 to the European Convention of Human Rights (ECHR). In the event the Tribunal found against the applicant. The issue of 'negative equity' for home-owners is not, I think, susceptible to an easy solution but I consider that the resources of Article 1, Protocol

1 to deal with the kind of issues thrown up by this case are not yet exhausted.

21. At the leave stage in the judicial review case brought by the Alternative A5 Alliance I made written submissions in relation to Protective Costs Orders and the issue of standing in Judicial Review proceedings and in statutory appeals under article 67 BA of the Roads (NI) Order 1993 (as amended).
22. In July 2012, the Attorney General for England and Wales formally challenged, for the first time, the legislative competence of a Bill passed by a devolved legislature. The Attorney General of England and Wales made a reference to the UK Supreme Court in relation to the question of whether certain clauses in the Local Government Byelaws (Wales) Bill 2012 were within the legislative competence of the Welsh Assembly.
23. Aspects of this reference including the proper interpretation of commonly used statutory language were of importance to the devolved administration in Northern Ireland and I therefore made written and oral submissions to the court at the hearing on 9 and 10 October 2012.
24. The court delivered its judgment on 21 November 2012 and found that the provisions in question were within the competence of the Welsh Assembly. The court also gave guidance as to how such references should be made in future. Since this judgment was delivered my office has been in contact with the Chief Executive of the Supreme Court and has drawn attention to certain amendments which should be made to the relevant Practice Direction and Rules as a result of legislative changes in Northern Ireland. These suggestions were accepted and incorporated in the revised Supreme Court Practice Direction.

25. In addition, I made written submissions to the European Court of Human Rights in the case of X v Austria in which the applicants complained under Article 14 (ECHR) taken in conjunction with Article 8 that they were being discriminated against in the enjoyment of their family life on account of the first and third applicants' sexual orientation. They submitted that there was no reasonable and objective justification for allowing the adoption of one partner's child by the other partner where heterosexual couples, whether married or unmarried, were concerned, while prohibiting the adoption of one partner's child by the other partner in the case of same-sex couples.
26. In my written intervention I drew attention to the 2008 European Convention on the Adoption of Children and in particular Article 4 which established the best interests of the child as the governing principle of any adoption and Article 7 which made it clear that there was no consensus in respect of adoption by same-sex couples. I also pointed out that the Convention did not guarantee the right to adopt and judicial restraint had traditionally been exercised in this controversial sphere. I also drew attention to the case brought by the Northern Ireland Human Rights Commission.
27. The European Court of Human Rights held unanimously, that there had been no violation of Article 14 with Article 8 ECHR when the applicants' situation is compared with that of a married couple in which one spouse wishes to adopt the other spouse's child. It also held by a majority that there had been a violation of Article 14 with Article 8 ECHR when the applicants' situation is compared with that of an unmarried different-sex couple in which one partner wishes to adopt the other partner's child. The unanimous conclusion of the European Court of Human Rights is supportive of the position of the Department of Health, Social Services and Public Safety (DHSSPS) on adoption.

28. In May 2012, the Northern Ireland Court of Appeal delivered its judgment in the case of *The Queen v Brown, Wright, McDonald and McCaul*. These cases had been referred to the Court of Appeal by the Criminal Cases Review Commission and consisted of Appeals against convictions in respect of terrorist related offences committed during the 1970s. The common factor was that in each case the sole evidence against the accused consisted of confessions obtained in circumstances where the accused had been refused the opportunity to have the benefit of legal advice.
29. In referring the cases to the Court of Appeal, the Criminal Cases Review Commission relied strongly on previous decisions of the Court of Appeal and in particular the case of *The Queen v Fitzpatrick and Shiels* which appeared to indicate that, where the sole evidence consisted of a confession obtained as a result of police questioning in the absence of legal advice, that fact alone would almost invariably be sufficient to render the conviction unsafe. During the 1970s and 1980s suspects in terrorist related cases were routinely interviewed without the benefit of the presence of legal advisers and confirmation by the Court of Appeal that the approach of the Court in *Fitzpatrick and Shiels* was the correct one would undoubtedly have had far reaching consequences, given the number of convictions from that period which were based on confession evidence.
30. With the leave of the Court of Appeal, I intervened in the proceedings and made both detailed written and oral submissions to the court regarding the legal issues raised by the cases. I argued that the true test to be applied by the court was whether the convictions were unsafe, that the law to be applied was the law existing at the time of the original trials and that the mere fact that a Defendant had been interviewed in breach of the procedural rules applicable at the time did not, by reason of that fact alone, render a

conviction unsafe. My submissions were subsequently adopted by the Public Prosecution Service.

31. In deciding the case, the Court of Appeal made it clear that the case law which had been drawn to its attention clearly demonstrated that admissions obtained in breach of the Judges Rules were admissible under the Emergency Provisions legislation in force at the time and that the residual discretion to exclude such statements would not be exercised on that ground alone. Applying this approach the Court of Appeal quashed the convictions of two of the appellants and upheld the convictions of two others. Permission to appeal to the Supreme Court was refused to the latter appellants.

#### 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. This year I appointed an amicus curiae on one occasion at the request of the Chancery Judge to assist the court in respect of proceedings before the High Court concerning issues relating to the title to premises which had been tainted by fraud. The circumstances of this case were that the Defendants named in the proceedings indicated that they had no interest in defending those

proceedings. The court concluded that it would not be fair to impose the burden of defending the proceedings upon them and they were granted leave of the court to take no part in the proceedings. This case is ongoing and the amicus curiae appointed by me has assisted the court by making written and oral submissions.

35. A special counsel is a barrister appointed to represent the interests of an accused from whom certain information or material is being withheld on public interest grounds. Special counsel perform two principal roles. Firstly they test the objections of the prosecution in order to establish whether more information could or should be disclosed. Secondly, they represent the interests of the accused person substantively in any closed hearing or proceedings. During the past year I appointed special counsel on one occasion in order to assist an appellant person in proceedings before the Court of Appeal.

#### Relationship with the Assembly

##### Committee on Procedures

36. Section 25 of the Justice (Northern Ireland) Act 2002 provides for the Attorney's participation in Assembly proceedings to the extent that is permitted by its Standing Orders. I gave evidence to the Committee on Procedures on 28 September 2010 in relation to the development of such Standing Orders. The matter remains with the Committee on Procedures to take forward and I look forward to working with the Committee as it does so.

##### Justice Committee

37. I gave evidence on 5 July 2012 and 14 February 2013 to the Justice Committee in relation to their consideration of the Criminal

Justice Bill. I also attended in closed session to assist the Committee with its consideration of criminal law and regulatory issues raised by the opening in Northern Ireland of a clinic by Marie Stopes International.

38. I discuss below my work on producing human rights guidance for criminal justice organisations. I have found the Justice Committee to have been of particular assistance in discussing the content of the guidance with me in evidence sessions and correspondence and in exploring the impact with those to whom it is directed. I am grateful to them for their engagement with me on this area of my work.

#### Committee for Finance and Personnel

39. At the invitation of the Committee for Finance and Personnel I gave oral evidence on 19 September 2012 to the Committee in advance of the second stage of the Civil Service (Special Advisers) Bill.

#### Legislative Process

40. 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.
41. 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 consideration to all Assembly Bills as they complete final stage. During the period covered by this report, I undertook final scrutiny on seven bills. These were the Historical Institutional Abuse Bill, the Charities Bill, the Business Improvement Districts Bill, the Budget (No.2) Bill 2012, the Air

Passenger Duty (Setting of Rate) Bill, the Superannuation Bill and the Budget Bill 2013. Consideration at this stage is mirrored by consideration in advance of introduction. The form that this early consideration takes varies according to the nature of the proposed Bill and the particular needs of Departments.

42. At the commencement of the legislative process, and, on occasion even before then, I am asked for advice about, the legislative competence of, and other legal issues arising from, proposed Bills. No fixed criteria exist to determine whether or not any provision of a Bill 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.
43. In addition to working with Ministers in advance of introduction of Bills this year, I brought together key individuals to assist in the working through of complex legislative policy decisions prior to drafting. To this end, I held colloquia on criminal justice delay in May 2012 and on adoption law in June 2012. New bills are expected in these areas this session.
44. I wish to pay tribute to the First Legislative Counsel, Ms Brenda King and her staff both for the precision and elegance of their work and for the unfailing assistance they have given to me during this year.

#### Public Prosecution Service

45. 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.

46. On 2 April 2012 after an open competition I was delighted to appoint Pamela Atchison as the new Deputy Director of Public Prosecutions for Northern Ireland.
47. 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.
48. 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 45 and 47 above there are no matters relating to the Public Prosecution Service for which the Attorney General is accountable to the Assembly.
49. I do not, to give only two examples, have responsibility for referring unduly lenient sentences to the Court of Appeal, and I have no role with respect to any prosecutorial decision to accept a plea of guilty to a lesser charge than that originally preferred.
50. I 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 1972<sup>2</sup>.

51. Irrespective of the outcome of this consultation 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.

#### Criminal Justice Inspectorate

52. The Chief Inspector of Criminal Justice, Mr Brendan McGuigan and I have met to discuss a number of specific issues as well as the CJI Inspection programme for 2013/2014.

#### Relator Actions

53. 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.
54. 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.

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<sup>2</sup> See the discussion in chapter 9 of John LL Edwards The Attorney General, Politics and the Public Interest (London, 1984)

55. One relator action was brought during this period.

### Inquests

56. 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.
57. 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.
58. During 2012/13, under section 14 (1) of the 1959 Act, I directed the Coroner to hold an inquest in 10 cases. In 3 cases I determined a fresh inquest was not advisable. 27 cases are still under consideration and 2 requests were withdrawn. In a further 17 cases the initial notice of intent has not progressed to a formal request for an inquest.
59. In November 2012, the Senior Coroner announced his decision to take no further action in relation to a number of directions made by me pursuant to my power under section 14 of the Coroners Act (NI) 1959 pending clarification of the powers of the Attorney General under that section. The Senior Coroner expressed the view that at least some of the directions had been made ultra vires the powers of the Attorney General on the basis that national security was likely, in the view of the Senior Coroner, to be an issue in those inquests and that the directions were made without reference

to the Secretary of State and the Advocate General. In correspondence between my staff and the Coroners Service, it was made clear that I disagreed profoundly with the suggestion that any of the directions made had been ultra vires. The Senior Coroner indicated in court that he had asked his staff to forward the correspondence between our respective offices, together with a copy of the legal opinion upon which the decision to suspend the inquests was based, to both the Advocate General and the Secretary of State and to invite their comments upon the scope of the section 14 power.

60. The decision of the Senior Coroner to suspend the inquests was challenged by a judicial review taken by a number of families of deceased persons to whom the suspended inquests related. The judicial review was based, inter alia, on the ground that the Senior Coroner's decision to suspend the inquests was itself ultra vires and that the Senior Coroner lacked a lawful basis for taking this course of action. Leave was granted for judicial review of the Senior Coroner's decision on all grounds on 19 November 2012.
61. The judicial review proceedings were discontinued in February 2013 when the court was advised that the proceedings were no longer necessary and that the Senior Coroner had decided to proceed with the suspended inquests in accordance with my original directions.
62. In 2011/12 I began to consider the questions of principle that arise from the apparent non-availability of inquests for the deaths of children who die shortly before birth. In this context in July 2012 I directed the Senior Coroner to hold an inquest in relation to Axel Desmond (Deceased). The Senior Coroner refused to convene an inquest and as a result I was compelled to issue judicial review proceedings which were heard on 19 March 2013.

63. Many of the cases in relation to which I have been requested to exercise my power under section 14 of the Coroners Act (Northern Ireland) 1959 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. However, this raises a wider question of whether, and if so, how Northern Ireland should deal with its troubled past in a more wide ranging and comprehensive manner.
64. In order to provide an opportunity for reflection and discussion on this important issue, I organised a colloquium which was held at my offices in November 2012. This event was attended by representatives of the main political parties in Northern Ireland and other key individuals. In order to assist the free and open expression of ideas, the colloquium was held under the Chatham House Rule.

### Charities

65. As Attorney General my responsibility for protecting the public interest extends specifically to the law of charities, an area in which, historically, the Attorney has always had a central role. Where a matter is before the Charity Tribunal, I have power to intervene so as to represent the wider public interest. I can also defend the interests of charities in proceedings before the High Court.
66. There is also a role for the Attorney in consenting to references to the Charity Tribunal where the Charities Commission needs a question of law or practice resolved; in giving directions to the Charities Commission on its discretion to authorize 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.

67. In order to ensure protection of the interests of charities, I may give or withhold my fiat or consent to allow cy-pres applications to proceed to the High Court. One such case this year involved granting the fiat to allow an application to the High Court by Glendermott Parish Church Vestry. The applicants sought a Declaration that relevant lands were held on valid charitable trusts for the purposes of the Glendermott Parish Church of the Church of Ireland, approval of the new draft Trust Deed and the appointment of trustees. Another case in which I granted my fiat involved the approval of a cy-pres scheme for distribution of funds following the sale of Magheralin Evangelistic Hall.
68. In cases where a donor has shown a clear intention that he or she 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. By Royal Warrant dated 24 November 2004 the Royal Sign Manual powers were delegated by Her Majesty to the Attorney General for Northern Ireland and his successors in that office. Therefore the Attorney General can issue a Sign Manual Direction 'curing' uncertainty by directing that an otherwise failing gift be given to one or more specific charities.
69. In June 2012 I issued a Royal Sign Manual Direction in the case of Re BK. This was a case in which a gift had been left to a nonexistent autism charity. Using these powers I was able to ensure that the testator's intention that autism charities benefit from his estate was reflected in an effective gift to two local autism charities working on a joint initiative.

## Human Rights

70. 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.
71. An aspect of this work includes the continuing challenge of keeping the guidance up to date in light of new developments and decisions from, for example, the European Court of Human Rights, the Council of Europe, UN Committees and other sources.
72. Over the past year I have completed three sets of draft guidance. As I have previously noted, the Justice Committee has been of particular assistance to me through their detailed consideration of the draft guidance, for which I am very grateful. I am also indebted to those individuals from the Department of Justice and the criminal justice organisations whose valuable knowledge, assistance and input contributed to this work.
73. Draft guidance addressed to Forensic Science Northern Ireland and to the State Pathologist's Department was published on my website on Human Rights Day, 10 December 2012. My guidance relating to the protection of the right to life and addressed to all the criminal justice organisations listed in section 8 of the 2004 Act is also available on my website and has now been formally laid before the Northern Ireland Assembly.
74. I have also benefited from the expertise of a lawyer on secondment from the Public Prosecution Service who worked alongside my staff in the research and development of draft human rights guidance for the Public Prosecution Service

### Contempt of Court

75. The Attorney General has a public 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.
76. I may be asked either to consider seeking an order from the 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 7 occasions had to consider bringing contempt proceedings in relation to concerns about possible interference with the administration of the justice process.
77. Proceedings were taken at the end of last year to protect public confidence in the administration of justice. They were made necessary by a passage in the memoirs of the Right Honourable Peter Hain MP and by his ongoing refusal to reduce the risk to public confidence in the administration of justice arising from that passage. I considered it necessary not to take the proceedings any further when Mr Hain confirmed by letter his belief in the integrity and independence of the judiciary in Northern Ireland and very clearly and publicly disavowed any imputation on judicial motivation within this jurisdiction.

### Declaration of Parentage

78. The Attorney General must be placed on notice of every application to court seeking a declaration of parentage. In 2012/13 there were 20 such applications. While it would be unusual for me to seek to intervene in such cases every application must be carefully

considered in case issues of wider concern arise which might merit my intervention. Occasionally the facts revealed in the applications make it necessary for me to refer those facts to the PSNI.

### Vexatious Litigants

79. Under section 32 of the Judicature (Northern Ireland) Act 1978 the Attorney may ask the High Court to make an order declaring someone to be a vexatious litigant which, if such an order is granted, precludes them from bringing further proceedings without the leave of the High Court. No cases of this nature were brought to my attention in the last year.

### Mental Health

80. By Article 72 of the Mental Health (NI) Order 1986 (“the Order”) I may refer the case of a patient<sup>3</sup> to the Mental Health Review Tribunal. My understanding is that this power has never been exercised at any time by my predecessors. I am currently reflecting on how it may be placed at the service of patients and those advising them. This provision is potentially a valuable safeguard in protecting the liberty of persons detained under the Order and I encourage persons concerned with the welfare of patients to give me their ideas on how it can best be used.

### The Matrimonial Causes (Northern Ireland) Order 1978

81. Under Article 10 of the Matrimonial Causes (Northern Ireland) Order 1978 the Attorney General may intervene in the case of a petition for divorce where either the Judge hearing the petition or any other person has provided material to the Attorney which he believes makes an intervention by him appropriate. This is linked

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<sup>3</sup> As defined by Article 2 (2) of The Mental Health (NI) Order 1986

to the more general right of the Attorney to intervene when a divorce case gives rise to an important issue of public policy<sup>4</sup>.

82. No interventions have been made by me in the past year.

#### Relations with both branches of the Legal Profession

83. 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 professions 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, the commitment to ensure that citizens enjoy access to justice.

84. As Attorney 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, Mark Mulholland QC, the Vice Chair, Denise McBride QC as well as the interim Chief Executive, Andrew Trimble for the assistance they have provided me in my work with the Bar.

85. While I have no institutional relationship with the Law Society I am grateful to both its President, Michael Robinson, and its Chief Executive, Alan Hunter, for their continued cooperation and constructive engagement with my Office.

#### Development of External Relations

86. The legal system of Northern Ireland does not exist in isolation; in addition to obvious links with other jurisdictions in the United

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<sup>4</sup> See *Adams v Adams* [1970] 3 All ER 572 at 577

Kingdom it can safely be said that the influence – sometimes the dominant influence – of EU law and the law of the ECHR 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 ECHR but also how other European jurisdictions develop techniques to cope with these demands.

87. In May 2012, I, along with members of my legal staff and members of the Young Bar Association met Judges and senior lawyers of the European Court of Human Rights in Strasbourg. An intensive programme of talks by Judges and legal staff of the Court had been arranged to reflect the interests of this office.
88. At the close of the visit Mr Michael O'Boyle, the Deputy Registrar of the European Court of Human Rights, underlined the importance of such meetings in fostering a culture of human rights within the member states of the Council of Europe. I look forward to continued engagement with the Court.

#### Living Law

89. 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 third year, the programme continues to thrive, building on the successes of previous years.
90. 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.

91. Throughout the year 35 pupils from 11 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 Prosecutions Service, a session at the Northern Ireland Assembly and culminated with the pupils taking part in mock bail applications.
92. The second element is a general outreach programme to community and other groups aimed at raising public understanding about law.
93. A significant development in this element was the launch of my Media Awards. The Awards aim to recognise outstanding journalism in the published and broadcast media that contributes to the public's understanding of the law, the legal system or a specific legal issue. A number of entries have been received and will be considered by an adjudication panel.
94. Other aspects of this programme involved direct engagement. The first was a meeting to discuss the reach of article 2 of the European Convention on Human Rights with members of the Victims and Survivors Forum in December 2012. The second, in March 2013, was a training session on media and the law as part of a training initiative developed with the Committee on the Administration of Justice. Several of those attending were members of the group, 'Families Against Supergrass Trials'.
95. In March 2013, I gave an interview on the responsibilities of the Attorney General to Frontline, a local social welfare law and policy journal.

96. 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.
97. I was delighted in November 2012 to welcome Judge Lopez Guerra and Michael O'Boyle from the European Court of Human Rights to Belfast. They were joined by Dr Henner Jorg Boehl, from the Federal Ministry of the Interior of Germany. This conference on electoral law and human rights was held in partnership with the School of Law at the University of Ulster.
98. Earlier in November, I was pleased to speak at a seminar on judicial independence in Northern Ireland organised by the Constitution Unit at University College London. The event was hosted in my offices.
99. The Attorney General's Young Bar and Young Solicitor's Seminar Series is an integral part of the Living Law programme. The series of 3 seminars was attended by delegates from the Young Bar and Young Solicitors' Associations. Speakers from my Office along with other barristers and solicitors explored current issues in human rights law.
100. For the third year I offered a Pupillage Scholarship as support to pupil barristers who are unable to undertake paid advocacy during the first six months of their pupillage. I was delighted with the response this year and with the very high quality of submissions received. The Scholarship (together with the opportunity to do pro bono work for this office) was awarded to Lauren Cheshire. I take this opportunity to wish her well in her career at the Bar.

## Miscellaneous

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

- I received 81 Departmental Consultations for consideration.
- The Office of the Attorney General provided responses to 14 Freedom of Information requests.
- I appointed 3 Panels of Junior Counsel.
- I spoke at 7 external events.
- Lawyers from my office have participated in the work of the Court of Judicature Rules Committee, the Crown Court Rules Committee, the Criminal Justice Board and the Criminal Justice Issues Group.
- Lawyers from my office have assisted the Public Prosecution Service by participating in the selection of a panel of prosecuting counsel and the Police Ombudsman for Northern Ireland by participating in a recruitment panel.

## Staff

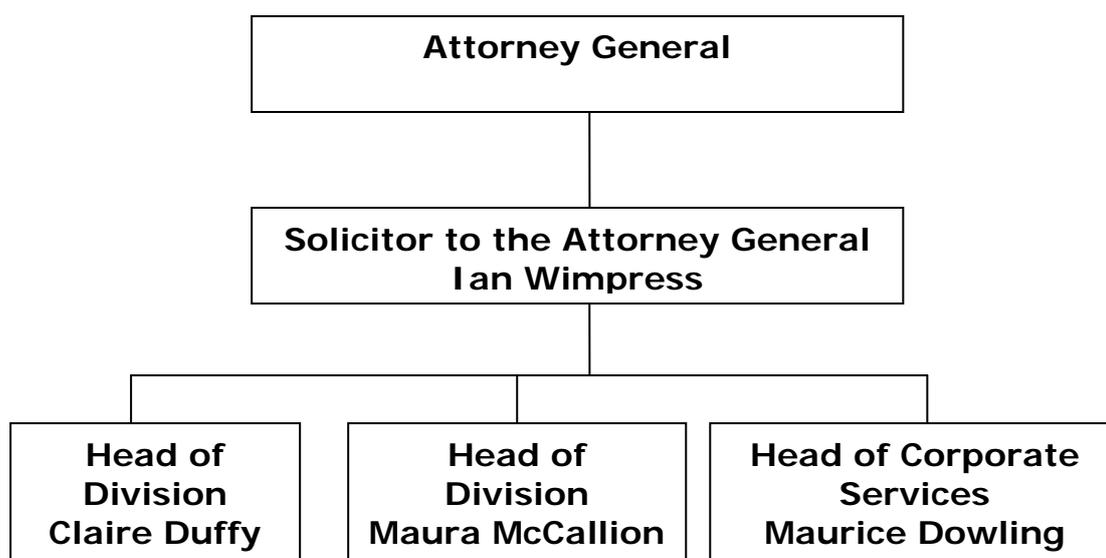
102. Subject to the approval of the First Minister and deputy First Minister as to numbers, salary, and other conditions of service I may appoint staff to the Office of the Attorney General.

103. Following the appointment of Philip Gilpin as a District Judge in March 2012 I was delighted to appoint, after an open competition, Ian Wimpress, formerly Head of Litigation in the Departmental

Solicitor's Office, as the new Solicitor to the Attorney General for Northern Ireland.

104. During the year I launched an Attorney General Solicitor Trainee competition for law graduates at Queens University and the University of Ulster. Following a comprehensive selection process from 51 applicants I was delighted, in September 2012, to appoint a Trainee Solicitor on a fixed two year contract.
105. As of 31 March 2013, my Office consists of 14 full time staff, including 8 lawyers, who are all members of the Northern Ireland Civil Service.

#### Senior Management Structure



#### Corporate Services

106. 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.

107. 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.
108. In 2012/13 the Office of the Attorney General had an initial budget of £1.45m. During the year the budget was continually reviewed against the work of the office with some funding surrendered as part of the in year NICS Departmental Monitoring Rounds. The year end financial spend was £1.41m.
109. Robust systems and processes are in place to ensure effective corporate governance.
110. The office website [www.attorneygeneralni.gov.uk](http://www.attorneygeneralni.gov.uk) outlines the work and responsibilities of the Attorney General. It is regularly updated.

## Looking Forward to 2013/2014

111. As I enter the final year of this four year appointment I look forward to its new challenges and opportunities, and to building upon the work already undertaken to develop the role of the Attorney General for Northern Ireland.
112. It is my intention to publish further human rights guidance under Section 8 of the Justice (Northern Ireland) Act 2004 and I look forward to working with the criminal justice organisations to which the guidance will be addressed.
113. The series of 'Living Law' colloquia will continue in Spring 2013. Of these colloquia the first will be on planning and economic considerations, which I hope will be useful as the Planning Bill makes its way through the Assembly. I am pleased to be building relationships with the Justice Directorate of the European Commission and will be hosting a colloquium at which we will benefit from European Commission input on how the European Charter of Fundamental Rights must inform our thinking on access to justice reforms. I also plan to bring together representatives from the (sometimes overlapping) worlds of law, politics and the arts to reflect on what can be learned about the rule of law from Sophocles' *Antigone*. In this context, I look forward to welcoming the internationally renowned scholar and critic (and expert on *Antigone*), Professor George Steiner as the principal speaker at this event and I am grateful to the University of Ulster Law School for supporting it.
114. If I can presume on three year's experience of this office to speculate about the coming year it is to say that the unexpected is always to be expected. That was the experience of the last twelve months and I have little doubt it will be true also for 2013-2014.