



Attorney General for Northern Ireland

Fourth Annual Report

2013/14

*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

20 November 2014



Attorney General
for Northern Ireland

OGL

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Preface by the Attorney General for Northern Ireland

This is my fourth annual report as Attorney General for Northern Ireland pursuant to section 26 of the Justice (Northern Ireland) Act 2002.

As in previous years I am again grateful to my staff for their commitment, dedication and enthusiasm. Working with them continues to be a pleasure as well as an honour.

During the period covered by this report I have produced three further sets of guidance for criminal justice organisations under Section 8 of the Justice (Northern Ireland) Act 2004: guidance on Conditions of Imprisonment; and Prison Order and Discipline for the Northern Ireland Prison Service; as well as guidance for the Public Prosecution Service for Northern Ireland. In preparing to amend the list of criminal justice organisations to which guidance can be addressed, by adding the Police Service of Northern Ireland, it has become clear that Assembly Standing Orders do not make provision for the amending order to be proposed and defended on the floor of the Assembly. I have worked closely with the Assembly's Committee on Procedures in addressing how my work on this amendment can best be advanced.

This year I was pleased with the outcome of my appeal to the Court of Appeal arising from the inquest I had directed into the death of Axel Desmond. As a result of this decision it is now clearer that the deaths of unborn children capable of being born alive may be investigated at inquests.

As in previous years, I hope that this report will be widely read and I welcome public interest in its contents.

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. 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. These created a statutory platform for a new approach to the office of Attorney General for Northern Ireland. At that time it had been widely known that the structure of the Attorney General's role contemplated by the 2002 Act gave rise to substantial differences from that of other Law Officers in these islands.

2. With the experience of almost four years as Attorney General my belief about the centrality of my responsibility as guardian of the rule of law grows stronger. 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 values¹. 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
 - Discharging specific functions to protect the public interest in certain charity matters
 - Deciding whether or not to direct inquests under section 14 (1) of the Coroners Act (Northern Ireland) 1959

¹ See the valuable discussion in the late Lord Bingham's The Rule of Law (London, 2010)

- 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
 - 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. I continue to reflect on how the obligation to act independently can be effectively and transparently discharged and I welcome the active interest of the public in this office.
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 and commitment 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.

6. 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 2013/14

Chief Legal Adviser to the Executive

7. 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 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 excellent 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 continues to be 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 27th 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.

Departmental Litigation

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, those brought by JR 65, the Northern Ireland Human Rights Commission, and HM respectively.
13. As set out in the last annual report 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 took place on 4 February 2012 and 16-17 April 2013. Treacy J gave judgment on 11 October 2013 and found in favour of the applicant. Treacy J held that as the competent authority for the purposes of Directive 2002/98/EC and designated by the Blood Safety and Quality Regulations 2005 the Secretary of State for Health is responsible for the determination of the appropriate deferral periods in Northern Ireland and whether to

maintain or not the impugned lifetime ban. Accordingly the Minister was not empowered to give any directions in relation to the implementation or interpretation of the Directives; Paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 provides that technical standards and requirements in relation to products in pursuance of an obligation under Community law are reserved matters. Under paragraph (d) of Article 29 of the 2002 Directive deferral criteria are included as a technical requirement. By virtue of Section 24(1) of the 1998 Act the Minister has no power to act incompatibly with Community law; the lifetime ban is both controversial (it has generated much publicity and public debate, and views on the issue are highly polarised) and cross-cutting (it is acknowledged in the SaBTO report that it touches on equality issues, it further deals with the implementation of EU Directives) and as such the Minister had no authority to act without bringing them to the attention of the Executive Committee which he failed to do. In doing so the Minister breached the Ministerial Code and by virtue of Section 28A(10) of the 1998 Act he had no legal authority to take a decision in breach of the Ministerial Code; the decision of the Minister was irrational because blood is imported from other parts of the UK where the categorization of MSM donors is in the lower risk group and such donations are therefore not subject to the permanent deferral criteria. This judgment is currently the subject of an appeal both by the Department as well as the United Kingdom Department of Health.

14. As summarised in my last report the application by the Northern Ireland Human Rights Commission was 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 the Department appealed to the Court of Appeal. On 27 June 2013 the Court of Appeal gave judgment and held that as under domestic law an unmarried heterosexual couple in Northern Ireland would be eligible to be considered for adoption and given that the Department had put forward no justification to exclude same sex couples they have an entitlement to be considered for adoption. Furthermore if Article 15(1)(a) had to be read as prohibiting either partner to a civil partnership adopting in any circumstances, the outcome would be irrational and could not be a justified form of discrimination reading Articles 8 and 14 together. The Department sought permission to appeal to the UK Supreme Court but this was refused.

15. I acted for the Department in an application brought by a patient (“HM”) detained in Holywell Hospital Antrim pursuant to the provisions of the Mental Health (Northern Ireland) Order 1986 who wished to change his nearest relative. The Northern Health and Social Services Trust had determined that HM’s nearest relative under the Order was his sister. The nearest relative plays an important role under the 1986 Order and in particular ensures that a patient has a close contact outside the psychiatric institution with sufficient powers to intervene in the best interests of the patient. HM wanted to change his nearest relative to his cousin. Article 36 of the 1986 Order makes provision for applications to be made to the County Court for a change of nearest relative by any relative of the patient, any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted) or an approved social worker but not the patient. In England, a similar legislative provision, section 29 of the Mental Health Act

1983 was amended in 2007 to include the patient as one of the people authorised to apply to the County Court to appoint the nearest relative and to add as a ground for such an application “that the nearest relative of the patient is otherwise not a suitable person to act as such”. This change was made as a result of a Strasbourg application, *JT v United Kingdom* 26494/95 (2000) ECHR 133. The applicant sought to contend that Article 36 was incompatible with Articles 5 and 8 of the Convention. The Department considered that Article 36 could be read compatibly with Articles 5 and 8 of the Convention. As a result an application was made by an Approved Social Worker to the County Court to change his nearest relative but Judge Marrinan rejected this contention. The judicial review application was heard on 12-13 February 2014 and judgment is awaited.

16. I acted for the Minister for Culture Arts and Leisure in High Court proceedings which arose from the Minister’s decision to disclose inquest and Crown Court papers deposited in the Public Records Office for Northern Ireland in response to a number of requests under the Freedom of Information Act 2000. This prompted an application by the Secretary of State for Northern Ireland and the Chief Constable of the PSNI for an interim injunction. On 9 August 2013 an interim injunction was granted against the recipients of the documents and their solicitors. A writ was then issued on 12 August 2013 which added the Minister as a Defendant to the proceedings. At this point I was instructed to act on behalf of the Minister. The writ was subsequently withdrawn on 13 September 2013 and the proceedings were dismissed.
17. I also acted on behalf of the Minister for Culture Arts and Leisure in judicial review proceedings brought by Crusaders Football Club which sought to challenge the Department’s decision to provide funding to the Irish Football Association for the redevelopment of Windsor Park on the basis that it constituted unlawful State Aid.

The Applicant also contended that there was a breach of the Competition Act 1998 and a failure to give reasons or lack of transparency. Treacy J granted leave on the State Aid ground and the alleged lack of transparency. Ultimately the application was withdrawn due to the Department's decision to commence a notification process with the European Commission. The Commission will therefore determine whether the funding constitutes State Aid and if so whether or not it is compatible.

18. During the period covered by this report I continued to act on behalf of the Department of Justice in a judicial review challenge to the provision in the Legal Aid Rules for remuneration of a defendant's new lawyers who were instructed for the first time at the sentencing stage of the proceedings, the defendant having dismissed his previously instructed lawyers just before he was convicted of a number of serious offences (Re Raymond Brownlee's Application). The Court of Appeal upheld an appeal against the judgment of Treacy J in this matter on the basis that where the accused dismissed his counsel and solicitors without any reasonable explanation at a late stage of his trial the trial judge should decide whether the absence of legal representation gives rise to a breach of Article 6 and that criminal proceedings should not be subjected to delay by collateral judicial review challenges where the complaint could be raised within the criminal trial and appeal process. The defendant sought leave to appeal to the UK Supreme Court. The Supreme Court convened an oral hearing on 5 December 2013 in respect of the permission issue with a full hearing to follow immediately if permission to appeal was granted. In the event the Supreme Court dealt with the matter as a rolled up hearing and allowed the appeal on the basis that Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 required the rule making body to devise rules that prescribe the payments to be made which reflect the time and skill necessary to carry out particular types of criminal legal aid work, and a failure

to make provision for remuneration of preparatory work by a new legal representative is, to that extent, ultra vires the enabling provision. The Supreme Court granted a declaration that the failure of the rule making body to take account of the need to provide for such payment rendered the Rules to that extent unlawful and ultra vires their powers under Article 36 of the 1981 Order. It is to be noted that the point which found favour with the Court had not been raised on behalf of the Applicant in the courts below and was raised for the first time by Lord Reed JSC in the course of the hearing.

Devolution Notices

19. 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 a devolution notice in one case. The nature of this case did not require my intervention. As mentioned in my 2011/12 Annual Report I entered an appearance in another devolution notice case in March 2012 and made submissions in support of the position of the Northern Ireland Local Government Officers' Superannuation Committee ("NILGOSC") on the lawfulness of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (NI) 2009. In that case the applicant challenged a decision that she was not entitled to a survivor's pension following the death of her partner as he had not formally nominated her as a cohabiting partner prior to his death. The case turned on whether there is unlawful discrimination resulting from the nomination requirement, contrary to Article 1 of the Protocol 1 taken together with Article 14 of the European Convention on Human Rights, given that spouses and civil

partners are automatically entitled to a pension. The hearing took place on 21 June 2012 and Treacy J gave judgment in favour of the applicant on 9 November 2012. Both NILGOSC and the Department of the Environment appealed. I made written and oral submissions in support of the appeal. The appeal was heard on 8-9 May 2013 and the Court of Appeal gave judgment on 1 October 2013 and allowed the appeal. The applicant has since sought a re-opening of the appeal on the basis that important information was not disclosed which might have had a bearing on the outcome of the appeal as well as permission to appeal to the Supreme Court. A decision on these matters is awaited.

20. In addition to the possibility of me referring Assembly provisions to the United Kingdom Supreme Court on the basis that such provisions may be outside the legislative competence of the Assembly, I may intervene in analogous references by other Law Officers. Two such references were brought to my attention over the past year. The Attorney General for England and Wales referred the Agricultural Sector (Wales) Bill on the basis that agricultural wages constituted an employment matter and was not devolved to the Welsh Assembly. I have made written submissions in support of the Counsel General for Wales who contends that the Bill is within competence. Judgment is awaited. I was also served with papers in the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill. This reference was made by the Counsel General for Wales as he considered that there was an issue about compliance with Article 1 of Protocol 1 of the European Convention on Human Rights on which the Supreme Court should be asked to pronounce. I decided not to intervene in that reference and the only participating parties will be the Counsel General and the Association of British Insurers.

Other Litigation

21. When issues of importance arise I may either initiate litigation myself or intervene in litigation separately to protect important public interests. On occasion I may have to defend litigation brought against me, for example, HL (a minor) v Facebook and others.

22. In this case, the minor plaintiff brought proceedings in the High Court by her father and next friend against Facebook, the Northern Health and Social Care Trust and a number of government departments and Law Officers arising from her own posting and/or uploading of sexually suggestive and/or inappropriate photographic images and literary content of herself to Facebook. The essence of the plaintiff's case against the several governmental bodies was that they had failed to protect her human rights by not imposing a regulatory framework on Facebook that would have ensured that the plaintiff was prevented from posting inappropriate content about herself on it. The case against the Attorney General for Northern Ireland was later refined to the contention that that Law Officer was the correct residual defendant in a case such as the present where none of the authorised Northern Ireland departments was appropriate or where there was a reasonable doubt as to whether any of them or which was appropriate. I resisted this contention on the basis that telecommunications and the internet are reserved matters and therefore do not fall within the remit of any Northern Ireland government department. I also agreed with the position adopted by the Attorney General for England and Wales that the Department of Culture, Media and Sport should be substituted as the sole authorised government department as defendant to the proceedings pursuant to section 17(4) of the Crown Proceedings Act 1947. In these circumstances I applied to be dismissed from the proceedings. The plaintiff's legal

representatives accepted my analysis and discontinued the proceedings against me.

23. I also intervened in writing and orally via the Solicitor in a case before the Information Tribunal in which the applicant, Matthew McDermott, sought a copy of any advice received by the Minister for Health, Social Services and Public Safety from the Attorney General for Northern Ireland in respect of the lifetime ban on men who have sex with men from donating blood in Northern Ireland. These proceedings gave rise to debate on an important constitutional convention, that is, the convention that Law Officers' advice is not normally disclosed, nor is the fact that it has been (or has not been) sought. The Information Commission found in favour of the applicant and the Department appealed against its decision. The Information Tribunal allowed the appeal on the basis of the legal professional privilege exemption and indicated that had it gone on to consider the exemption under Section 35(1)(c), either separately or cumulatively, it seemed inevitable that the Tribunal would have found in favour of DHSSPS on this issue also, especially having regard to the weight which must be attached to the Law Officers' Convention. The applicant subsequently sought permission to appeal. The Tribunal refused permission to appeal. The applicant has since lodged an application for permission to appeal with the Upper Tribunal and it has been stayed pending the outcome of an appeal in *Browning v ICO and DBIS (2013) UKUT 236 (AAC)*.

Appointment of Amicus Curiae and Special Counsel

24. 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.

25. 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.
26. During the period covered by my last report I appointed amicus curiae 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 details of this case are set out in my last report. The amicus curiae appointed by me assisted the court by making written and oral submissions. This case concluded on 26 September 2013 with the court making a declaration that the premises in question were not subject to any trust save in favour of the applicant and that the applicant was the sole legal and beneficial owner of the property.
27. During the period covered by this report I also appointed an amicus curiae, again at the request of the Chancery Judge, to assist the Court on an issue arising from an appeal by Ulster Bank Ltd from a decision of the Chancery Master concerning the various forms of relief available to a mortgagee in circumstances where the mortgagor fails to discharge his or her obligations. In this appeal both Respondents were unrepresented and the amicus curiae made written and oral submissions in order to assist the court in determining four legal issues arising from the judgment of the Chancery Master. The issues in question were decided by the Court in accordance with a joint position paper submitted by the appointed amicus curiae and counsel for the Ulster Bank.
28. 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. I was not asked to appoint special counsel in the period covered this report.

Relationship with the Assembly

Committee on Procedures

29. 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 and 28 May 2013 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

30. I gave evidence on three occasions to the Justice Committee. This included giving evidence to assist the Committee in its scrutiny of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. I attended the Committee twice to discuss adding the Police Service of Northern Ireland to the list of criminal justice organisations to which human rights guidance under section 8 of the Justice (Northern Ireland) Act 2004 should be provided.
31. 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 both in evidence sessions and through written correspondence. The Committee has also been of great value in helping to explore the impact of draft guidance on those criminal justice organisations to which it is directed. I am grateful to all of the Committee members, especially the Chair and deputy Chair for their engagement with this important area of my work.

Legislative Process

32. 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.
33. 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 eight Bills. These were the Criminal Justice Bill; the Water and Sewerage Services (Amendment) Bill; the Budget Bill; the Budget (No.2) Bill; the Road Races (Amendment) Bill; the Public Services Pensions Bill; the Tobacco Retailers Bill; and the Civil Service (Special Advisers) Bill.
34. 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.
35. 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.

36. 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 and my colleagues during this year. The splendid work of the Office of the Legislative Counsel deserves to be more widely known outside Government.

Public Prosecution Service

37. It is my statutory responsibility under section 30 of the Justice (Northern Ireland) Act 2002 to appoint the Director and Deputy Director of the Public Prosecution Service as necessary. I may also convene, if necessary, a Tribunal to consider removal of the Director and Deputy Director.
38. 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.
39. 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 37 and 38 above there are no

matters relating to the Public Prosecution Service for which the Attorney General is accountable to the Assembly.

40. For the purposes of clarity, 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.
41. I continue to believe that a gap exists in the current superintendence and accountability arrangements between the Attorney General and the Public Prosecution Service. The Justice Minister has consulted on this matter. There is, of course, room for a variety of legitimate positions on how the superintendence balance should be struck ever since the issue was first debated in this jurisdiction in 1972².
42. Irrespective of how this completed consultation is dealt with in Government 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.
43. On 7 October 2013, the Director of the Public Prosecution Service, in recognition of the very considerable public interest surrounding the decision not to prosecute Gerry Adams T.D. in relation to an allegation that he had withheld information from police relating to the investigation into Liam Adams, requested that I review the Public Prosecution Service handling of the file. In order to assist me in this task, the Director undertook to make all relevant paperwork available to me and indicated that, should I wish to speak to any member of his staff involved in the decision making

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

process, any such member of staff would make himself or herself available to me.

44. Upon receipt and consideration of the papers provided by the Public Prosecution Service, I caused one of my colleagues to request further information and documentation. These requests were complied with. I then undertook a non-statutory review of the decision making process within the Public Prosecution Service which culminated in the decision, taken on or about the 27 October 2011, not to prosecute Gerry Adams T.D for an offence under section 5 of the Criminal Law Act (Northern Ireland) 1967. In this review I examined whether or not the Public Prosecution Service, in coming to this decision, had followed its own procedures and whether or not its handling of the existing or potentially available evidence was satisfactory. As I made clear, it was not my function, in conducting this review, to determine whether or not Mr Adams should be prosecuted for any offence.
45. The review was completed and a report furnished to the Public Prosecution Service on 11 December 2013. As it is important that the PPS have the opportunity to reflect on the report and any action which the report may invite the Public Prosecution Service to specifically consider, I do not discuss this report's content here. Once reflection and consideration is complete, and in the absence of any substantive counterweighing reason for withholding any part of it, I consider that this report should be made available to the public.

Criminal Justice Inspectorate

46. The Chief Inspector of Criminal Justice, Mr Brendan McGuigan and I have met to discuss a number of specific issues as well as the Criminal Justice Inspectorate Inspection programme for 2014/2015.

Relator Actions

47. The rule of law lies at the foundations of a civilised society. As guardian of the rule of law I have a responsibility to represent the public interest in court and to thereby ensure that all persons, institutions and entities, public and private, including the State itself, are properly accountable.
48. Where a member of the public wishes in private law proceedings to enforce (typically by injunction) a right which belongs to the public as a whole rather than a right which has an exclusively private character, she or he can ask me to allow legal proceedings to be brought to assert that public right. The action that then takes place with my consent is known as a relator action. The reason for involving the Attorney General in such a procedure is largely historical in nature, and it may be that some future widening of the traditional rules about standing for injunctions may render relator proceedings obsolete.
49. One relator action was brought during this period.

Inquests

50. 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.
51. 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.

52. During 2013/14, under section 14 (1) of the 1959 Act, I directed the Coroner to hold an inquest in 21 cases. In 18 cases I determined a fresh inquest was not advisable. 42 cases are still under consideration and 1 request was withdrawn. In a further 44 cases solicitors have not progressed the initial notice of intent to a formal application for an inquest.

53. 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 hold an inquest and I was obliged to issue judicial review proceedings which were heard on 19 March 2013. On 8 May 2013 Treacy J dismissed the judicial review application. I appealed against this judgment. I appeared personally on the hearing of the appeal which took place on 13 November 2013 with judgment being given on 21 November 2013. The court accepted that the effect of section 18 (1) (a) of the Coroners Act (Northern Ireland) 1959 Act as enacted was to extend the definition of "deceased person" in the 1959 Act to include an unborn child then capable of being born alive. As a result the court was satisfied that the effect of section 18 of the 1959 Act as enacted is that the Coroner can carry out an inquest into an unborn child falling within that definition. The Court therefore allowed the appeal and the Senior Coroner has indicated that he will hold an inquest in relation to Axel Desmond (Deceased).

54. 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. 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 in a more wide-ranging and comprehensive manner.

55. In this context I met Richard Haass and Meghan O'Sullivan, chair and vice chair respectively of the Panel of Parties in the Northern Ireland Executive, to articulate my views on dealing with the past. Their draft document was published on 31 December 2013. I also expressed my views publically in interviews to the BBC and the Belfast Telegraph. I hope and believe that my expression of views on these important issues will continue to contribute usefully to the necessary public debate. I have been touched by the personal testimony of those directly affected by violence who have taken the time to write to me.

Charities

56. 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. As a result, this year, as the Charity Commission develops its policies, I was pleased to be able to work with them as 'a critical friend'. Where a matter is before the Charity Tribunal, I have power to intervene so as to represent the wider public interest and I did so this year in the cases of Bangor Provident Trust Limited v The Charity Commission for Northern Ireland and Victoria Housing Estates v The Charity Commission for Northern Ireland. I am also intervening in the appeals in both cases before the High Court, to be heard later this year. I can also defend the interests of charities in proceedings before the High Court and I did so this year in the

case of *Boylan v Her Majesty's Attorney General for Northern Ireland*, which concerned a cy-pres application in respect of a sizeable amount of charitable property. In another case before the High Court, concerning the Spirit of Enniskillen Trust, which concerned an application in respect of an insolvent charitable trust, although I did not oppose the Plaintiffs' application, I invited the court to "shine a spotlight" on the circumstances resulting in the trust's insolvency in the interests of preventing such circumstances recurring in the future.

57. While provisions of the 1964 Act are still in force I retain a consultative, and consent giving role as regards some of the Department's functions in charity law. One such example is section 14 of the 1964 Act, which confers on the Department the power to deal with bequests under £2,500 where there are mis-described charitable beneficiaries in wills. This provides an opportunity for personal representatives to transfer property to the Department in instances where they are satisfied that the institution as described in the will does not exist and the testator intended to devise or bequeath a property to a charity. Where the Department accepts the property, I have a role in consenting to either the transfer of the property to a specific charity (if the Department are satisfied that they are the intended devisee) or legatee of the testator. In cases where the Department are unable to satisfy themselves of the intended devisee/legatee, my consent is required to transfer to a charity/charities in a class of charities as appears to them appropriate having regard to the intentions of the testator. Such an instance recently arose in respect of a bequest to an institution, which as drafted in a will did not exist (the charity had changed its name) but where it was clear that a certain charity was intended by the testator. In that case I was happy to advise the Department of my consent to transfer that property to the intended charitable beneficiary.

58. 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 authorise ex gratia payments by charities; and in presenting petitions for the winding-up of charities. In addition there are requirements that the Attorney be consulted on various matters.
59. 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. I gave my fiat to three such applications this year.
60. 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. As a result of my research in respect of a case I brought before the High Court to determine the limits of the jurisdiction of the Royal Sign Manual, there has been, this year, a significant shift in my involvement in the Royal Sign Manual procedure. Although a Royal Warrant dated 24 November 2004 purported to delegate the Royal Sign Manual powers by Her Majesty to the Attorney General for Northern Ireland and his successors in that office I am now satisfied that these powers can only be lawfully exercised by the Department for Social Development as this prerogative power passed to the Department on devolution. The Department is in agreement and I am currently in discussions with the Department on transitional arrangements.

Human Rights

61. 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.

62. 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.
63. Over the past year I developed three sets of draft guidance addressed to the Northern Ireland Prison Service – Conditions of Imprisonment; the Northern Ireland Prison Service – Prison Order and Discipline; and the Public Prosecutions Service, all of which are available on my website. I hope to have this Guidance completed and laid before the Northern Ireland Assembly by the end of April 2014.
64. 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 Public Prosecutions Service and the Prison Service whose valuable knowledge, assistance and input contributed to this work.

Contempt of Court

65. 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.

66. 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.

Declaration of Parentage

67. The Attorney General must be placed on notice of every application to court seeking a declaration of parentage. In 2013/14 there were 46 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

68. 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 them from bringing further proceedings without the leave of the High Court. One case of this nature was brought to my attention in the last year and consideration is being given to making such an application.

Mental Health

69. By Article 72 of the Mental Health (NI) Order 1986 (“the Order”) I may refer the case of a patient³ to the Mental Health Review Tribunal. My understanding is that this power has never been

³ As defined by Article 2 (2) of The Mental Health (NI) Order 1986

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

70. 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 to the more general right of the Attorney to intervene when a divorce case gives rise to an important issue of public policy⁴.
71. No interventions have been made by me in the past year.

Relations with both branches of the Legal Profession

72. During the period of this report I have continued to build and maintain good relations with both branches of the legal profession. As Attorney General I see my role with the Bar and the Solicitor 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.
73. As Attorney General I am the titular Head of the Bar and can attend meetings of the Bar Council, the Executive Council and the

⁴ See *Adams v Adams* [1970] 3 All ER 572 at 577

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.

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

Development of External Relations

75. The legal system of Northern Ireland does not exist in isolation; in addition to obvious links with other jurisdictions in the United Kingdom it can safely be said that the influence – sometimes the dominant influence – of EU law and the law of the European Convention on Human Rights runs throughout our legal system and substantive law. It is essential that lawyers in Northern Ireland are aware not only of the formal content of EU law and the law of the European Convention on Human Rights but also how other European jurisdictions develop techniques to cope with these demands.
76. In June 2013, I along with members of my legal staff, one of my panel counsel and colleagues from the Public Prosecution Service, met judges and senior lawyers of the European Court of Human Rights in Strasbourg. As in previous years, the opportunity for dialogue on developing jurisprudence was particularly beneficial to the needs of this office.

Living Law

77. 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 fourth year, the programme continues to thrive, and builds on the successes of previous years.

78. The first of the three elements is an enrichment programme for students from non grammar schools with A Level classes who may be interested in studying law or learning more about how law operates in society. Past participants in this element of the programme are now studying law at Universities throughout the United Kingdom.
79. Throughout the year 72 pupils from 18 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.
80. The second element is a general outreach programme to community and other groups aimed at raising public understanding about law.
81. In 2012/13 I announced the launch of my Media Award 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 were received and I was delighted to present the Award this year to Barry McCaffrey from The Detail.
82. 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.

83. My colloquium, organised in conjunction with the School of Law at the University of Ulster: 'Antigone: law against justice?' took place on 23 May 2013. Professor George Steiner FBA gave the keynote speech. This was a tour de force which brought delight and illumination to those attending, who included members of the judiciary, lawyers, legal academics, officials, theatre directors, writers, actors, and arts journalists. Professor Steiner's speech can be viewed on my website. Passages from the play Antigone were presented by local actors directed by Conall Morrison. The Minister for Culture, Arts and Leisure, Ms Carál Ní Chuilín MLA and the Minister for Justice, Mr David Ford MLA, then co-chaired a discussion, which was marked by lively and enlightening debate.
84. In June I welcomed Antoine Buchet from the European Commission to speak at a colloquium on 'Civil Justice: ensuring fair access', with particular reference to the EU Charter of Fundamental Rights. Robert Crawford from the Public Legal Services Division of the Department of Justice provided an update and analysis of the local context to aid discussion.
85. No one can doubt the importance of legislation for all aspects of contemporary social, economic and cultural life, making a focus on its quality all the more necessary. I held a colloquium in October 2013 to provide an opportunity for officials who develop policy proposals for new legislation to come together with those who draft, scrutinise, amend and approve Bills and those who implement, interpret and advise on legislation to share ideas and good practice. I was delighted that both Brenda King, First Legislative Counsel and Daniel Greenberg, formerly of the Office of the Parliamentary Counsel, both expert drafters, shared their experience in producing legislation.

86. I was pleased to be able to follow this colloquium with a tailored seminar led by my legal staff on the EU Services Directive for the Department of Social Development. This was held in December 2013.
87. In February, 2014, I organised a colloquium to bring together those interested in thinking about and discussing how public authority decision making at local, national and EU levels impacts on the effective implementation of law, policy and the rights of citizens. This was prompted, in part, by the work being done at EU level on developing a set of model rules for administration procedures. I was honoured to have both Professor Paul Craig of Oxford University and Will Haire, Permanent Secretary at the Department for Social Development gave their perspectives on improving public decision making.
88. In March 2014, I held a colloquium on European developments in charity law to discuss proposals for a European Foundation Statute and what the implications might be for local charities and our charity law. Dr Oonagh Breen of University College Dublin provided an enlightening commentary on the proposed Foundation Statute. Ben Harrison MBE, senior adviser in the Cabinet Office, gave the UK government perspective and an update on the progress of negotiations within the Member States.
89. The Attorney General's Young Bar and Young Solicitor's Seminar Series is an integral part of the Living Law programme. The series of 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 the *Use of Comparative International Materials* and the *EU Charter of Fundamental Rights*.

90. For the fourth 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. This year I found it much more difficult than in previous years to select a winner. I decided, therefore, to split the award between two first placed entrants. The Scholarships (together with the opportunity to do pro bono work for this office) were awarded to Sue-Helen McConnell and Katie Quinn. I take this opportunity to wish them well in their careers at the Bar.

Miscellaneous

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

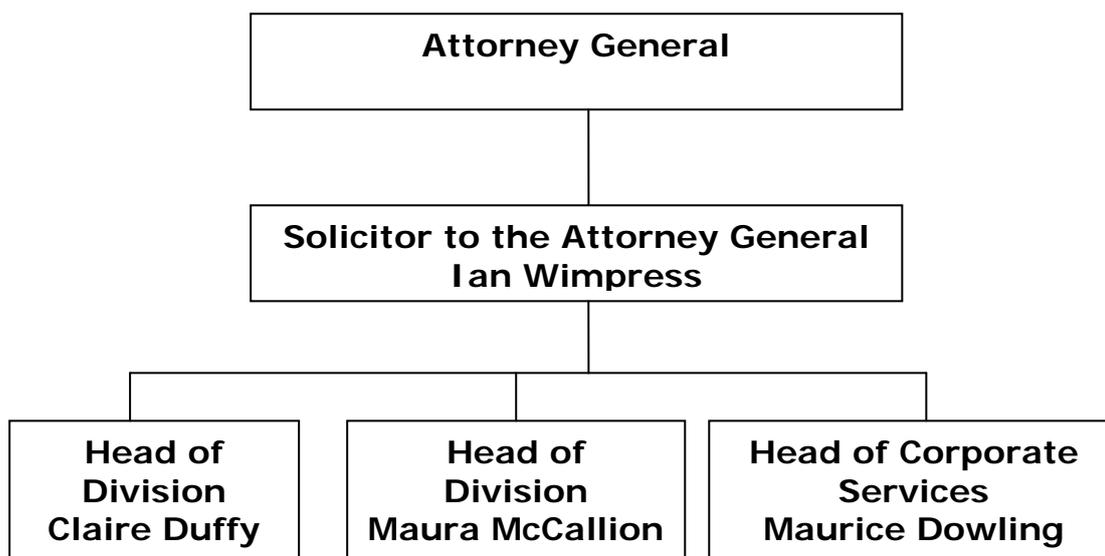
- I received 71 Departmental Consultations for consideration.
- The Office of the Attorney General provided responses to 9 Freedom of Information requests.
- I spoke at 7 external events.
- I hosted 11 work experience students.
- Lawyers from my office have participated in the work of the Court of Judicature Rules Committee, the Crown Court Rules Committee, the Criminal Justice Board and the Criminal Justice Issues Group.

Staff

92. 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.

93. During the year I launched a second Attorney General Solicitor Trainee competition for law graduates at Queens University and the University of Ulster. Following a comprehensive selection process I was delighted, in September 2013, to appoint a Trainee Solicitor on a fixed two year contract.
94. As of 31 March 2014, 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

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 2013/14 the Office of the Attorney General had an initial budget of £1.493m. The year end financial spend was £1.484m.
98. Robust systems and processes are in place to ensure effective corporate governance. Internal Audit completed a review in year and determined that there was a substantial level of assurance over the system of internal control established in this office.
99. The office website www.attorneygeneralni.gov.uk outlines the work and responsibilities of the Attorney General. It is regularly updated.

Conclusion

100. This is the final annual report of this four year term of office. Irrespective of who may be appointed by the First Minister and deputy First Minister to serve from 24 May 2014 onwards I very much hope that among the ways this office continues to guard the rule of law will be by emphasizing the importance of just and wise law to the citizens of Northern Ireland, and delivering legal advice of the highest quality to the government of Northern Ireland.