



Attorney General for Northern Ireland

**Attorney General for Northern Ireland
Annual Report**

2022/23

*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

Wednesday 4th September 2024



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Attorney General for Northern Ireland

Foreword by the Attorney General for Northern Ireland

I am pleased to present my third report as Attorney General for Northern Ireland, prepared in accordance with section 26 of the Justice (Northern Ireland) Act 2002.

The office of Attorney General for Northern Ireland continues to be one which I am honoured to hold. The functions and responsibilities I exercise are extremely diverse. Some are statutory and some have their origins in the common law. All of these are of considerable importance in supporting and maintaining the rule of law and are exercised by me impartially and independently.

The dominant feature of this reporting year was the absence of a functioning Northern Ireland Executive. An election was held on 5th May 2022 but an Executive was not formed. As one of my key functions is to advise the Executive, this had an impact on my work. As some Ministers were in place until the end of October 2022, I continued to advise them and thereafter Northern Ireland departments on a range of significant legal issues, not least of which were the changes made to the constitutional settlement in Northern Ireland by a number of Acts of Parliament passed to deal with the absence of Ministers.

I continued to exercise my other functions, which are extensive, and outlined in the annex attached to this report. The absence of Executive work was counterbalanced by an increase in work in other areas. In particular, there was a greater focus on applications asking me to direct a coroner to hold an inquest into deaths related to the Northern Ireland conflict. This was partly due to the introduction by the UK government of the Northern Ireland Troubles (Legacy and Reconciliation) Bill in Parliament in May 2022. The provisions of the Bill most relevant to my functions prospectively removed my power under section 14 of the Coroners Act (Northern Ireland) 1959 to direct inquests which related to "Troubles related" deaths. The Bill, when enacted, would also end the progress of inquests already commenced which have not yet reached an "advanced stage" and prevent future inquests into "Troubles

related” deaths. The progress of this legislation through Parliament attracted much scrutiny and criticism.

A significant amount of my time this year was spent on analysing the complex changes made during the year to the post EU Exit legal landscape.

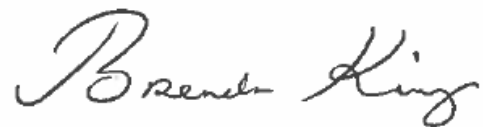
The publication of the Windsor Framework in February 2023 set out new arrangements for business and consumers in Northern Ireland and was a key focus for the work of my office as we kept pace with legal developments in this ever more complex area.

The discharge of my functions under the Mental Capacity Act (Northern Ireland) 2016 (MCA) continues to take up an overwhelming amount of the resource within my office. These important and relatively new statutory duties conferred on the Attorney General and the Department of Health include the review of authorisations of detentions and the referral of relevant authorisations to the Review Tribunal on behalf of those who lack capacity to do this for themselves. Between March 2021 and March 2023 annual MCA notifications increased considerably from 2985 to 5547. Both legal and administrative staff have supported the upward trajectory of this area of work by refining and improving processes while closely scrutinising each case on its merits. The exponential rise in case numbers since 2021 supports my continued assertion of the need for a longer term and strategic review of resourcing and procedures to safeguard the delivery of this statutory human rights protection which has been entrusted to this office along with the Department of Health.

I was pleased to see a return to in person office working during the reporting year. This was, for me, hugely important to the fabric of a small but collegiate team, increasing face to face collaboration, connectivity and the general well-being of our staff.

The support of my dedicated and highly skilled team is essential. While the enduring challenge of delivering the highest quality public service against a backdrop of competing and emerging demands and limited resources is not unique to this office, the professionalism, resilience and drive of the people in my team has yet again been remarkable in this reporting year.

I could not carry out my functions without them. Together, we remain committed to delivering the functions entrusted to this office. I have every confidence that we will continue to adapt and respond to new and challenging circumstances in the years ahead.

A handwritten signature in cursive script that reads "Brenda King". The signature is written in black ink on a white background.

Dame Brenda King

Attorney General for Northern Ireland

Introduction

1. The Justice (Northern Ireland) Act 2002 establishes the Attorney General for Northern Ireland as a statutory and independent office holder within the devolved administration of Northern Ireland. The functions and responsibilities of the Attorney General comprise both statutory duties and common law duties. A summary of the Attorney General's functions is set out in the annex to this report. The role of the Attorney General for Northern Ireland is similar to that of other law officers in these islands but differs from those roles in some important respects.
2. The Attorney acts as chief legal advisor to the Northern Ireland Executive, working closely to support the Executive both collectively and in individual Ministerial capacity. Although politicians appoint the Attorney General, the Attorney is not a politician but works closely with the Northern Ireland Executive both as a collective and with Ministers individually in support of their departmental responsibilities.
3. While the Attorney General is appointed by the First Minister and the deputy First Minister acting jointly, the office is entirely independent of any direction or control by any political party [section 22(5) of the Justice (NI) Act 2002].
4. Guardianship of the rule of law is central to, and governs the discharge of, the Attorney General's specific duties. The range of work covered by the Attorney General reflects all of the areas which fall within the Executive's remit. The most significant of the Attorney General's duties include:
 - Serving as chief legal adviser to the Northern Ireland Executive in relation to any matter that falls within the devolved powers of the Northern Ireland Assembly.
 - Scrutiny of all Bills passed by the Northern Ireland Assembly (both Executive Bills and Private Members' bills initiated by individual MLAs) to determine whether the provisions of those Bills are within the legislative competence of the Assembly and, where appropriate, referring those Bills to the Supreme Court for a decision on competence .

- Assisting the Courts on devolution issues, that is, matters set out in paragraph 1 of Schedule 10 to the Northern Ireland Act 1998 -
 - (a) a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly.
 - (b) a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24 of the 1998 Act.
 - (c) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights; or
 - (d) any question arising under the 1998 Act about excepted or reserved matters.
- Protecting the public interest in the courts where appropriate. This can include the initiation of proceedings as well as participating in proceedings to assist the court.
- Deciding whether to direct a coroner to hold an inquest under section 14 of the Coroners Act (Northern Ireland) 1959.
- The discharge of statutory and historic functions to protect the public interest in matters relating to charities.
- The discharge of functions under the Mental Capacity Act (Northern Ireland) 2016: this includes the review of authorisations of detentions and the referral of relevant authorisations to the Review Tribunal on behalf of those who lack capacity to do this for themselves.
- The examination of cases of contempt of court: the Attorney General can take legal action in the public interest if certain types of contempt of court have been committed.
- Producing guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards.
- Dealing with vexatious litigants: the Attorney General can apply to the High Court to have a person declared a vexatious litigant by applying to the court for an

order to prevent that person from issuing further proceedings without leave of the High Court.

- The appointment of the Director of Public Prosecutions and the Deputy Director when vacancies arise.

Statutory Independence of the office

5. By virtue of section 22(5) of the Justice (Northern Ireland) Act 2002 the Attorney General's functions are exercised independently of any other person. The Attorney General is statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments.

Reserved and excepted matters

6. The Attorney General has no formal role to play in relation to non-devolved matters. Legal advice in relation to such matters is the responsibility of the Advocate General for Northern Ireland, the Rt Hon Victoria Prentis KC MP who is also the Attorney General for England and Wales.

People

7. The Attorney General may, in accordance with section 22(4) of the Justice (Northern Ireland) Act 2002, appoint staff to assist her in carrying out her functions, subject to the approval of the First Minister and deputy First Minister.
8. While the absence of an Executive has provided flexibility in terms of staff resources, the office continues to operate with an exceptionally small team. Staffing remains under constant scrutiny by the Attorney and senior management team to ensure the office is sufficiently resourced, always with maximum efficiency at the forefront of its operating model. The ability to serve an Executive in tandem with having sufficient capability to respond to changing priorities and workloads remains paramount.

9. The Office of the Attorney General for Northern Ireland (OAGNI) places a strong emphasis on valuing its people and developing their full potential. The ethos of an inclusive and supportive team, as reflected in actions set out in its Business Plan and Learning and Development plans and by means of ongoing staff engagement remain core elements of ongoing efforts to maintain a fully inclusive and supportive working environment for everyone.

Overview of the 2022-2023 Year

Absence of an Executive and Northern Ireland Assembly – functions and context

10. As noted in the foreword, a principal function of the office of Attorney General is that of chief legal adviser to the Northern Ireland Executive. During this reporting period this function has not been exercised due to the absence of an Executive Committee. The Attorney has, however, provided legal support and advice to those Ministers who remained in place until 28 October 2022 and thereafter to Northern Ireland departments exercising their functions under the Northern Ireland (Executive Formation) Act 2022, as amended by the Northern Ireland (Interim Arrangements) Act 2023.

Scrutiny of Assembly legislation

11. The ability of the Northern Ireland Assembly to make law (its legislative competence) is established by (and limited by) the Northern Ireland Act 1998. Where there is uncertainty as to whether a provision of a Bill passed by the Assembly is within legislative competence, the Attorney General can ask the UK Supreme Court to determine the point. [Section 11 (1) of the Northern Ireland Act 1998]. This provision allows for an expedient and authoritative resolution of issues which might otherwise give rise to uncertainty as to the validity of the law.
12. While no Assembly Bills were introduced during this reporting period, in April 2022, the Attorney General referred clause 5 (2) (a) of the Abortion Services (Safe Access Zones) Bill (passed towards the end of the previous Assembly mandate) to the UK Supreme Court for consideration of whether the provision was within the legislative competence of the Assembly.
13. One of the grounds on which a Bill may be found to be outwith the competence of the Assembly is if it is incompatible with the European Convention on Human Rights which was the key issue in the case of this referral.

14. The Supreme Court was asked whether the offence created by clause 5 (2) (a) was compatible with the European Convention on Human Rights. The Court was asked whether criminalisation of peaceful protest which does not cause distress is a proportionate interference with Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly), noting that there was no apparent discretion afforded to a judge in a trial to take account of these rights in the particular circumstances of an individual case.
15. The Supreme Court heard the case over two days in July 2022 and gave its determination in December 2022. It held that, balancing the competing considerations, the restrictions on Convention rights which will result from this particular clause of the Bill are justifiable. This decision provided clarity and certainty for all affected, reducing the likelihood of protracted future litigation. For more detail see [REFERENCE by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill \(supremecourt.uk\)](#).

Litigation - Devolution and Incompatibility Notices

16. The Attorney General may participate in litigation which gives rise to devolution issues. 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, including the assistance of the Attorney General where appropriate.
17. In appropriate instances, the Attorney General may enter an appearance in the proceedings and make submissions to the court. During the reporting year the Attorney General was notified by the courts in 12 cases in which devolution issues

arose and having assessed each case carefully chose to participate in one case (see below).

18. The Attorney General is also served with notices of incompatibility under the Human Rights Act 1998 in proceedings where a declaration of incompatibility is sought in respect of primary legislation or where the compatibility of subordinate legislation is being considered by the court. During the reporting year the Attorney General was notified by the courts in five cases in which an incompatibility issue arose but having assessed each case carefully did not participate.

19. The devolution or incompatibility issues arising for scrutiny this year included policy on the exhumation of remains, recall of a former prisoner, third party disclosure in the Crown Court, continuing health care policy, the continuation of the Muckamore Abbey Hospital inquiry, emergency protection orders, non-molestation orders, the presumption of innocence, religious education, police misconduct proceedings and entitlement to cost of living payments.

20. The Attorney will participate in litigation on a devolution or incompatibility issue where:

- Ministers express a wish that the Attorney participates;
- The legal issues have not, in the opinion of the Attorney, been adequately covered or understood or expressed correctly by the parties to the litigation;
- The issues relate to a particular responsibility of the Attorney.

21. The Attorney decided to participate this year in one case in which a devolution issue arose before the Northern Ireland Court of Appeal. This was important litigation as regards the interpretation of the Northern Ireland Act 1998. The case concerned a challenge to the grant of planning permission authorising the construction of the North-South Interconnector. Scofield J, at High Court level, had found that the Infrastructure Minister did not act in accordance with the provisions of section 2.4 of the Ministerial Code having not brought the decision on the relevant planning

applications to the Northern Ireland Executive. The Attorney participated in the appeal against the High Court decision, submitting that the Minister for Infrastructure did not fail to act in accordance with the Ministerial Code as it did not require her to bring the impugned decision to the attention of the Executive Committee. The Court of Appeal agreed with the Attorney's submission and upheld the appeal. See [IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND \(judiciaryni.uk\)](https://www.judiciaryni.uk).

Participation in litigation to assist the court

22. The Attorney General may also provide submissions at the request of the court. The Court of Appeal sought assistance from the Attorney in two cases this year.

23. In *SV and PV* the Court of Appeal asked the Attorney for submissions on a complex issue which had arisen as to whether the Children (Northern Ireland) Order 1995 is primary or subordinate legislation for the purpose of the Human Rights Act 1998. The Attorney expressed her view in a detailed written submission that the 1995 Order was subordinate legislation and the Court accepted the Attorney's analysis.

24. In *R v XY* the Court of Appeal requested the Attorney's assistance as amicus in relation to an appeal by a defendant in criminal proceedings against a ruling by McFarland J that a pre-sentence report and a police report should be disclosed to the press. The Attorney submitted a paper on the complex legal issues arising for the court.

Appointment of Amicus Curiae and Special Counsel

25. Another aspect of the Attorney General's role as guardian of the rule of law is her power to appoint an amicus curiae or a special counsel in order to assist the courts in appropriate cases.

26. 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 setting out the law impartially or by advancing relevant legal arguments which, due to the circumstances of the case, would not otherwise be made.
27. During the period covered by this report the only request to appoint an amicus arose in *R v XY*. In that case the court, having received the Attorney's paper requested additional oral submissions and senior counsel was appointed to assist the court. No requests were made by the courts to appoint special counsel.

Inquests

28. Under section 14(1) of the Coroners Act (Northern Ireland) 1959 the Attorney General 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 the Attorney General applies in considering whether to direct a coroner to hold an inquest is a consideration of whether it is 'advisable' to do so.
29. What is 'advisable' may vary considerably from case to case. The Attorney General will consider any application made to her that an inquest should be directed. Information which may be considered could include (but is not limited to) material available to any previous inquest, the sufficiency of inquiry by the inquest, any irregularity or unfairness in those proceedings, any significant new evidence that may be available, whether the procedural obligation under Article 2 of the European Convention on Human Rights applies, any other investigations which are ongoing (in particular, whether the death is being investigated or ought to be investigated by the PSNI and any investigation by the Police Ombudsman, for example), whether witnesses will be available to give evidence at a new inquest and the general utility of holding an inquest.

30. During the reporting period 6 new applications were received. The Attorney General directed the Presiding Coroner to hold an inquest in 3 cases and in 10 cases determined a fresh inquest was not advisable. At the conclusion of the reporting period 18 applications remained under consideration.

31. The Attorney's inquest function was examined by the UK Supreme Court in an appeal brought by the Attorney during this reporting period. A challenge to the decision of her predecessor as Attorney General not to order an inquest into the death of Mr Sean Eugene Dalton had been upheld by the Court of Appeal and the Attorney General appealed to the Supreme Court. The case concerned the extent to which the positive obligation on public authorities to investigate an individual's death under Article 2 of the European Convention on Human Rights includes deaths that occurred before the Human Rights Act 1998 came into force. Mr Dalton had died in a bombing in 1988. The Supreme Court heard the Attorney's appeal in October 2022 and judgment was given after the end of this reporting period on 18 October 2023.

[In the matter of an application by Rosaleen Dalton for Judicial Review \(Northern Ireland\) \(supremecourt.uk\)](https://www.supremecourt.uk/judgments/2023-10-18-1.html)

Charities

32. The Attorney General's responsibility for protecting the public interest extends specifically to the law of charities, an area in which, historically, the Attorney General has always had a central role. In addition to the Attorney's role in relation to charity related proceedings in the courts, where a matter is before the Charity Tribunal, the Attorney General is entitled to appear and is treated as a party for the purposes of any appeal from the Tribunal. Two cases were brought to the Attorney's attention this year. The Attorney General will normally only appear (or appeal) when there is some larger public interest at stake or when specifically invited to do so by the Charity Tribunal. At the request of the Tribunal this year, the Attorney participated in an appeal brought by the Disabled Police Officers Association.

33. The Attorney General can also refer a question to the Charity Tribunal under paragraph 2 (b) of Schedule 4 to the Charities Act (Northern Ireland) 2008 and her first reference issued under this power was heard during this reporting period. The Attorney asked whether a lawful direction to produce documents has been issued by the Charity Commission in a particular case. This matter had arisen in consequence of the Court of Appeal's ruling in *McKee and others v Charity Commission* on how decisions can be made by the Charity Commission. The Charity Tribunal confirmed that where a statutory inquiry had not been lawfully opened, a direction was ultra vires the powers of the Commission and was null and void.
34. The Attorney General can defend the interests of charities in proceedings before the High Court and was placed on notice of two cases this year in which it was anticipated that this might be necessary. Both cases are ongoing at this time. The Attorney may also be asked to give her fiat [permission] to applicants to bring proceedings in the Chancery Court usually involving cy-près applications. During the period covered by this report there was one such application which arose from a testamentary gift to trustees of a church who were unable to accept the gift. The court was asked to approve a cy-près scheme which divided the estate between a number of charitable institutions that the deceased had identified in her will.
35. The Charities Act (Northern Ireland) 2008 (s.184 and Schedule 9) repeals provisions of the earlier Charities Act (Northern Ireland) 1964 but not all of the provisions of the 2008 Act have yet been commenced. As certain provisions of the Charities Act (Northern Ireland) 1964 are still in operation, the Attorney General retains a consultative and consent-giving role as regards some charity matters under that Act. These include section 29 of the 1964 Act as regards applications to the court where there is or is alleged to be a breach of any charitable trust or where the advice or order of the court is required in connection with the administration of any charitable trust.

Contempt of Court

36. The Attorney General may be asked to consider seeking an order from the High Court restraining a potential contempt of court or to consider bringing contempt proceedings against someone who may have engaged in actions which might amount to contempt. The Attorney General considered several matters potentially amounting to contempt during the reporting year. Appropriate action was taken but no court proceedings were required.

Declaration of Parentage

37. Applications for declarations of parentage must be sent to the Attorney General. In 2022/23, 37 such applications were received. While it would be unusual for the Attorney General to seek to intervene in such cases, every application must be carefully considered in order to decide whether issues of wider concern arise which might merit intervention and whether the papers are complete. The Attorney will also assist the courts, if requested to do so.

Vexatious Litigants

38. Under section 32 of the Judicature (Northern Ireland) Act 1978 the Attorney General may ask the High Court to make an order declaring someone to be a vexatious litigant which, if such an order is granted, precludes him or her from bringing further proceedings without the leave of the High Court. During the reporting period the Attorney General considered two such cases but decided not to refer either to the High Court.

Mental Capacity Act (NI) 2016

39. The Mental Capacity Act (NI) 2016 provides a statutory framework for people who lack capacity to make a decision for themselves, and for those who now have capacity but wish to make preparations for a time in the future when they lack capacity. The provisions of the Act dealing with deprivation of liberty (to address risks to the person who lacks capacity or others) were commenced on 2 December 2019. The 2016 Act is key to the safeguarding of the rights under Article 5 ECHR for many citizens, for example those with dementia or with significant learning disability.
40. A Health & Social Care Trust must notify the Attorney General where it appears that a person in respect of whom it has authorised a deprivation of liberty lacks capacity in relation to whether an application should be made to a Review Tribunal for an independent review of that authorisation. The Attorney General has a power under section 47 of the 2016 Act to refer to the Review Tribunal the question of whether the authorisation in a particular case is appropriate. In deciding whether to exercise that power, it is necessary for the Attorney General to review, in relation to each case notified to her, the evidence on which it is said that the person is lawfully deprived of liberty. The Attorney General also needs to consider if the person, if he or she had capacity, would ask for the care arrangements to be reviewed by a Tribunal.
41. During the period of this report, the Attorney General received 5547 notifications from the five Health and Social Care Trusts. In 1649 cases the Attorney General referred the question of whether the authorisation is appropriate to the Review Tribunal.
42. In five cases, the Attorney was asked and agreed to provide the Review Tribunal with written submissions on points of law.
43. There have been two cases in the High Court this year which have originated in referrals made to the Review Tribunal by the Attorney General. These were judicial

review applications brought by the Northern HSC Trust and the Belfast HSC Trust. The Attorney participated in both cases in order to assist the court on the interpretation of the Mental Capacity Act (Northern Ireland) 2016.

44. A Principal Legal Officer from the Office of the Attorney General represents the Attorney General at, and co-chairs, the regional multi-agency Mental Capacity Act Implementation Group which meets monthly. This provides an effective forum for partnership working, bringing together the Health and Social Care Trusts, the Department of Health, the Northern Ireland Courts and Tribunal Service, the Regulation and Quality Improvement Authority and the Directorate of Legal Services.
45. The implementation of these safeguards for persons deprived of liberty through care arrangements continues to be an important and demanding area of work which has put significant additional pressure on the Attorney General's limited staffing resource. The Attorney General is grateful to colleagues in the Department of Health, the Health and Social Care Trusts and the Review Tribunal for their helpful engagement in ensuring these safeguards work effectively to protect the rights of those who lack capacity to make decisions for themselves.

Human Rights Guidance

46. Under section 8 of the Justice (Northern Ireland) Act 2004, the Attorney General is required to produce guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. The Attorney General is also responsible for amending, by order, from time to time, the list of organisations that are subject to the section 8 guidance.
47. During the year the Attorney benefitted from the assistance of a student from Queen's University law school who assessed current guidance against developments

in international human rights standards. The research undertaken will contribute to the Attorney's decisions on future guidance.

Criminal Justice

48. The Attorney General was represented on the Criminal Justice Improvement Group by one of her senior lawyers. This group is a forum in which the full range of criminal justice organisations in Northern Ireland can meet to share learning. A senior lawyer also represents the Attorney General on the Crown Court Rules Committee.

Relations with the Departmental Solicitor and Crown Solicitor

49. During the period covered by this report the Attorney General enjoyed positive working relationships between her office, the Departmental Solicitor's Office ("DSO") and the Crown Solicitor's Office ("CSO").

50. The Attorney General holds monthly meetings with the Departmental Solicitor, Mr Hugh Widdis, and the Crown Solicitor, Mrs Jennifer Bell.

51. The Solicitor to the Attorney General, who handles all litigation and court work on behalf of the Attorney General, has formal meetings with his counterparts in DSO and CSO to review current litigation and trends together with other matters of mutual interest

52. In addition, the Solicitor to the Attorney General attended quarterly meetings of the Northern Ireland Civil Service Legal Profession Steering Group in an observer capacity on behalf of the Attorney General to discuss staffing and other matters of mutual interest to government legal offices.

53. The Attorney is grateful to the Departmental Solicitor for facilitating useful working relationships. Early engagement on advisory, litigation and legislative matters is crucial to facilitate good government and maximise efficiency in legal proceedings. The Attorney is grateful for the collective efforts made by the Departmental Solicitor and the Crown Solicitor in helping to achieve this.

Public Prosecution Service

54. It is the Attorney General's statutory responsibility under section 30 of the Justice (Northern Ireland) Act 2002 to appoint the Director and Deputy Director of Public Prosecutions for Northern Ireland when such appointments are required. The Attorney General's other main responsibilities in relation to the Public Prosecution Service ("PPS") are as a statutory consultee of the Director of Public Prosecutions on his annual report (and arranging for publication of that report) and on any amendments to the Code for Prosecutors. The Attorney reviewed and arranged for the publication of the Director's annual report. She also engaged with the Director on the Code for Prosecutors.

55. Section 42(3) of the Justice (Northern Ireland) Act 2002 sets out that 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 the paragraph above, there are no matters relating to the PPS for which the Attorney General is accountable to the Assembly.

56. It is worth emphasising that the Attorney General does not have responsibility for referring unduly lenient sentences to the Court of Appeal, though the Attorney occasionally receives correspondence on this. The power to refer an unduly lenient sentence to the Court of Appeal rests with the Director of Public Prosecutions. Neither does the Attorney General have a role with respect to any prosecutorial decision to accept a plea of guilty to a lesser charge than that originally preferred.

Office of the Legislative Counsel

57. A good working relationship between the Attorney General and the Office of the Legislative Counsel (OLC) facilitates rigorous and timely scrutiny of Assembly bills. Although no bills were introduced during the period of this report, the Attorney worked with the acting First Legislative Counsel, Mr Alex Gordon on preparation for the return of the legislature.

Criminal Justice Inspectorate for Northern Ireland

58. In accordance with section 47 of the Justice (Northern Ireland) Act 2002, the Chief Inspector of Criminal Justice in Northern Ireland must consult the Attorney General about her programme of inspections of the following organisations:

- The Police Service of Northern Ireland.
- Forensic Science Northern Ireland.
- The State Pathologist's Department.
- The Public Prosecution Service for Northern Ireland.
- The Probation Board for Northern Ireland.
- The Parole Commissioners for Northern Ireland.
- The Northern Ireland Prison Service.
- The Youth Justice Agency.
- The Northern Ireland Courts and Tribunal Service.
- The Office of the Police Ombudsman for Northern Ireland.
- The Legal Services Agency Northern Ireland.
- The Health and Social Care Boards and Trusts.
- The Department of Agriculture, the Environment and Rural Affairs.
- The Department for the Economy.
- The Department for Communities (Benefit and Fraud).

- The Department for Communities (Child Maintenance and Enforcement Division).
- The Health and Safety Executive for Northern Ireland.
- The Royal Mail Group plc.
- Belfast International Airport Limited.
- Belfast Harbour Commissioners; and
- Larne Harbour Limited.

59. The Attorney General met with the Chief Inspector of Criminal Justice on a number of occasions to discuss and provide input to her programme of work.

Miscellaneous

60. The Office of the Attorney General provided responses to 11 Freedom of Information requests.

External Engagements

61. Though the Attorney General has no formal links with the Bar and the Law Society, she is keen to promote, and assist with, the work done by both branches of the legal profession.

62. The Attorney is an ex officio member of the Council of Law Reporting for Northern Ireland.

63. In April 2022, the Attorney met with the other UK law officers to discuss support for the rule of law in Ukraine. The Attorney hosted a meeting with the Public Prosecution Service, the Bar and the Law Society to discuss the scope for contributions from Northern Ireland based lawyers. A member of her staff participates in the UK wide Law Officers' Forum on Legal Support for Ukraine.

64. In August 2022, the Attorney met with the Commissioner Designate for Victims of Crime.
65. In September 2022, The Attorney General attended the reading of the Accession (King Charles III) Proclamation at Hillsborough Castle and attended the funeral of Her Majesty, Queen Elizabeth II .
66. In September 2022, the Attorney attended the British-Irish Association Annual Conference, the aim of which is to promote mutual understanding between the peoples of our islands, to identify emerging issues and to support positive change.
67. A meeting between the Attorney General and the President of the Review Tribunal, Mrs Attracta Wilson, took place in December 2022.
68. In March 2023, the Attorney was delighted to meet with the Lord Advocate, the Rt Honourable Dorothy Bain KC and the Solicitor General, Ruth Charteris KC on a visit to Edinburgh. Also in March, the Attorney was pleased to have the opportunity to meet with the Attorney General and the Advocate General for Northern Ireland, the Rt Honourable Victoria Prentis KC MP.
69. In March 2023 the Attorney engaged with young female lawyers and law students at an event organized by QUB Women in Law. She also spoke at the Commonwealth Lawyers Association conference in the same month on “Supporting the Rule of law by Making Laws Accessible and Clear”.
70. In March 2023 the Attorney attended the Commonwealth Lawyers Association’s 23rd annual conference in Goa to deliver a talk on legal drafting and its contribution to problem prevention and the protection of rights.
71. The Attorney General spoke at a number of external events. In June 2022, the Attorney gave a talk to the Belfast Solicitors Association on “The role and responsibilities of the Attorney General”. Also in June, the Attorney was a keynote speaker at a Sisters IN Leadership Programme whose mission is to enable, empower and develop female pupils to become leaders of tomorrow.

72. In November 2022, the Attorney General met with representatives from the Shankill Women's Centre.

73. Also in November 2022, the Attorney gave a presentation to the Government Legal Service of Northern Ireland Conference on "Government Lawyers – Leading in Turbulent Legal Times".

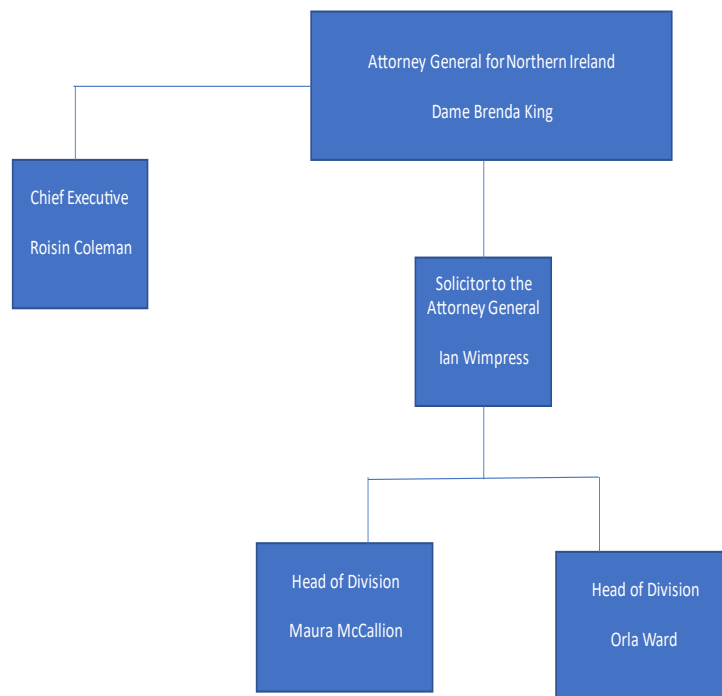
74. In March 2023, the Attorney was a speaker at the Commonwealth Law Reform Conference titled "The role of legislative drafters in supporting the rule of law by making law accessible and clear".

75. The Attorney's office also delivered a legal awareness session to staff from the Health and Social Care Trusts on the Mental Capacity Act.

Staff

76. Subject to the approval of the First Minister and deputy First Minister as to numbers, salary and other conditions of service, the Attorney General may appoint staff to the Office of the Attorney General. As of 31 March 2023, the Attorney General is supported by 5.8 full time equivalent lawyers (one of whom is deployed exclusively on deprivation of liberty cases); 2 trainee solicitors; 3 paralegals (who deal exclusively with deprivation of liberty cases); and 4.6 Administrative Staff.

Senior Organisational Structure



Corporate Services

77. Under section 22(3) of the Justice (Northern Ireland) Act 2002 the office of the Attorney General is to be funded by the First Minister and deputy First Minister acting jointly.

78. The financial expenditure of the Office of the Attorney General is included in the Annual Report and Accounts of The Executive Office.

79. In 2022/23 the Office of the Attorney General had a resource budget of £1.568m. The year-end financial spend was £1.444m. The majority of expenditure is on salaries and accommodation.

Corporate Governance and Financial Management

80. The senior management team (SMT), as the OAGNI corporate advisory and decision-making body, set the vision, culture, resource and strategic priorities for the office. The SMT also leads on people management and financial planning. A strategic business plan in tandem with an agile learning and development programme aided the delivery of key objectives within the reporting year.

81. All OAGNI systems, policies and processes are in place to ensure effective corporate governance in line with NICS procedures.

About us

82. The Office website www.attorneygeneralni.gov.uk outlines the work and responsibilities of the Attorney General.

**DUTIES AND RESPONSIBILITIES OF THE
ATTORNEY GENERAL FOR NORTHERN IRELAND**

Introduction

1. The Justice (Northern Ireland) Act 2002 establishes the Attorney General for Northern Ireland as a statutory officeholder. With the devolution of justice responsibilities on 12 April 2010, the provisions establishing a new post of Attorney General for Northern Ireland were brought into force. Section 22(5) of the 2002 Act provides that the functions of the Attorney General shall be exercised by the Attorney independently of any other person.

2. The duties and responsibilities of the Attorney General may be classified as follows:
 - (a) principal duties:
 - (b) other statutory duties and responsibilities.
 - (c) other constitutional or common law duties.

3. Some functions can be traced back to both statute and the common law while the other duties fulfil the constitutional principles that inform both the statutory and common-law responsibilities of the office.

Principal duties

Chief legal adviser to the Executive

4. The Attorney General provides advice on the most important and complex legal matters facing the Executive and Ministers.

Engagement with the Executive

5. The Attorney General may attend Executive meetings and pre-meetings. All draft Executive papers are copied to the Attorney General at the same time as they are circulated by the originating Minister to other Ministers for comment, to assist the Attorney General in identifying legal issues.

Scrutiny of legislation and devolution issues

6. Section 11 of the Northern Ireland Act 1998 provides that the Attorney General may refer the question of whether a provision of a Bill would be within the legislative competence of the Northern Ireland Assembly to the Supreme Court for decision.
7. The Northern Ireland Act 1998 defines devolution issues, which relate to whether the Assembly is acting within its legislative competence and whether Ministers and Northern Ireland departments are acting compatibly with Convention Rights. The 1998 Act outlines the powers of the Attorney General to institute proceedings for the determination of a devolution issue.

Devolution Notices

8. The Northern Ireland Act 1998 make provision for the service of devolution notices on a number of persons including the Attorney General for Northern Ireland. In broad terms the purpose of a devolution notice is to ensure that a court dealing with issues central to the interests of the devolved administration receives all necessary assistance. To this end, in appropriate cases, the Attorney General may enter an appearance in the proceedings and make written and / or oral submissions to the court.

Incompatibility Notices

9. The Attorney General for Northern Ireland is also served with notices of incompatibility under the Human Rights Act 1998 in proceedings where a declaration of incompatibility is sought in respect of primary legislation or where the compatibility of subordinate legislation is being considered by the court. Again the Attorney General may participate in the proceedings, if appropriate, and make written and / or oral submissions as necessary.

Litigation on behalf of The Executive

10. In matters of litigation in which the Attorney General has provided advice, the Attorney General may act on behalf of The Executive.

Guardian of the rule of law

11. The Attorney General has an overarching duty to support and maintain the rule of law.

Statutory duties and responsibilities

Independence

12. The Attorney General is statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments. The Justice (Northern Ireland) Act 2002 requires that the Attorney's functions be exercised independently of any other person.

Charities

13. The Attorney General has a number of functions under the Charities Act (Northern Ireland) 2008 (the 2008 Act). The Attorney General also retains some functions under

the earlier Charities Act (Northern Ireland) 1964 such as consent to the disposition of misdescribed charitable beneficiaries in wills.

14. Under the 2008 Act the Attorney General may intervene in Charity Tribunal proceedings the proceedings and has a right to appeal its decisions. The Attorney General may also refer a question which involves either the operation of charity law or the application of charity law to a particular state of affairs to the Charity Tribunal.
15. The 2008 Act also requires the Attorney General to supervise the Charity Commission in the exercise of its power to authorise ex gratia payments.

Mental Health

16. The Mental Health (Northern Ireland) Order 1986 provides that the Attorney General may refer the case of any patient who is liable to be detained under Part II of the Order to the Review Tribunal.

Mental Capacity

17. The Mental Capacity Act (Northern Ireland) 2016 (the 2016 Act) imposes a number of duties on the Attorney General. Provisions relating to deprivation of liberty were commenced in December 2019.
18. The 2016 Act provides that the Attorney General may ask the Review Tribunal to consider whether any authorisation for detention or treatment under Schedule 1 (authorisation by panel of certain serious interventions) or Schedule 2 (authorisation of short-term detention in hospital for examination etc.) is appropriate.
19. The 2016 Act provides that the Attorney General must be notified where a number of events occur. These concern persons being detained where it appears that the person lacks or probably lacks capacity in relation to whether an application to the Tribunal should be made.

Directing inquests

20. Section 14(1) of the Coroners Act (Northern Ireland) 1959 provides that where the Attorney General has reason to believe that a deceased person has died in circumstances which in the Attorney's opinion make the holding of an inquest advisable the Attorney General may direct any coroner to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of the 1959 Act.

Guidance for criminal justice organisations on human rights standards

21. The Justice (Northern Ireland) Act 2004 requires the Attorney General to issue guidance to criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. The Attorney General may by order amend the list of organisations that are subject to the section 8 guidance.

Contempt of Court

22. The Attorney General may bring contempt proceedings in respect of actions which may interfere with the administration of justice usually in the context of civil or criminal proceedings. The Attorney General may also issue an advisory notice to the media and the public if there is a concern about an individual case, to flag up that particular care should be taken when reporting or discussing an issue relating to that case. There are special rules in relation to publications which may breach the contempt laws and the Contempt of Court Act 1981 provides a central role for the Attorney General in consenting to the instituting of proceedings for contempt of court under the strict liability rule.

Restriction on vexatious litigants

23. In accordance with 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 that person from bringing further proceedings without the leave of the High Court.

Declaration of parentage

24. The Attorney General must be placed on notice of every application to the court seeking a declaration of parentage and may intervene in proceedings to argue before the court any question relating to the proceedings.

Missing persons presumed to be dead

25. Section 9 of the Presumption of Death Act (Northern Ireland) 2009 provides that rules of court must require the Attorney General to be served with a copy of every application to the High Court seeking a declaration that a missing person is presumed to be dead. The Attorney General may intervene in the proceedings on any application in such manner as the Attorney thinks necessary or expedient.

Declarations as to marital status

26. The Matrimonial and Family Proceedings (Northern Ireland) Order 1989 provides that in applications for declarations as to marital status, the court may send papers in the matter to the Attorney General or, regardless of whether the court has sent papers, the Attorney General may intervene in the proceedings.

Divorce, dissolution and nullity

27. The Matrimonial Causes (Northern Ireland) Order 1978 provides that the Attorney General may intervene in the case of a petition for divorce where either the court

hearing the petition or any other person has provided material to the Attorney General which the Attorney General believes makes an intervention by the Attorney General appropriate.

28. The Civil Partnership Act 2004 provides that if an application has been made for a dissolution order or nullity order the court may, if it thinks fit, direct that all necessary papers in the matter are to be sent to the Crown Solicitor who must under the directions of the Attorney General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued.

Conduct of Councillors

29. The Local Government Act (Northern Ireland) 1972 provides the Attorney General with a power to apply to the High Court in relation to the recovery of wrongful gains and remedies against councillor guilty of reprehensible conduct.

Systemic maladministration or injustice

30. Under section 54 of the Public Services Ombudsman Act (Northern Ireland) 2016 where the Ombudsman makes a finding of systemic maladministration or injustice and that this is likely to continue unless the High Court grants relief, the Attorney General may apply to the High Court for relief under section 55.

The Director of Public Prosecutions for Northern Ireland and the Public Prosecution Service

31. Under section 30 of the Justice (Northern Ireland) Act 2002, the Attorney General is required to appoint the Director and Deputy Director of Public Prosecutions for Northern Ireland (and to convene a tribunal for dismissal if necessary) when such appointments are required. The Attorney is a statutory consultee of the Director of Public Prosecutions on his annual report (and arranging for publication of that report) and on any amendments to the Code for Prosecutors.

Consultative function with the Inspector of Criminal Justice

32. The Chief Inspector of Criminal Justice must consult with the Attorney General in preparing a programme of Criminal Justice inspections.

Consultative function on the appointment of Crown Solicitor for Northern Ireland

33. The Advocate General for Northern Ireland must consult the Attorney General before appointing the Crown Solicitor for Northern Ireland.

Consultative function relating to the Northern Ireland Law Commission

34. The Minister responsible must consult with the Attorney General before appointing a person to the Northern Ireland Law Commission and before approving any programme of work prepared by the Commission.

Reporting requirements

35. The Attorney General, as soon as possible after the end of each financial year, must prepare a report on how the Attorney General has exercised their functions during the financial year.

Constitutional or common law duties

Public interest litigation

36. In the Attorney General's capacity as guardian of the public interest, the Attorney General may institute court proceedings or intervene in proceedings to protect a public right that is infringed or threatened.

Appointment of amicus curiae and special counsel

37. The Attorney General may appoint an amicus curiae to assist a court on matters of law. 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 setting out the law impartially or by advancing relevant legal arguments.

38. The Attorney General may appoint special counsel to represent the interests of an accused from whom certain information is being withheld on public interest grounds. Special counsel test the objections of the prosecution to the disclosure of information and represent the interests of the accused person in any closed hearing or proceedings.

Relator actions

39. 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, that member of the public can ask the Attorney General to allow legal proceedings to be brought to assert that public right.