



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Attorney General for Northern Ireland's Draft Human Rights  
Guidance for the Public Prosecution Service and the Police Service  
of Northern Ireland on the Application of Section 5 of the Criminal  
Law Act (Northern Ireland) 1967 to Victims of Serious Sexual  
Offences and Those to Whom They Make Disclosure:  
Mr John Larkin QC, Attorney General for Northern Ireland

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Section 5 is the only codification of the old common law offence of misprision of felony that exists anywhere in these islands. The author of one of the standard criminal law textbooks in the '60s observed that, when the House of Lords dealt with this issue, as it did in a once very famous case, it was thought that the Magistrates' Court would be clogged with cases of that nature on handling stolen goods and things like that.

I know that we are not debating the merits of section 5, but there is an argument for something like section 5 in certain restricted categories of cases. It is very broad; it has to be given an interpretation that is convention-compliant, and that, essentially, is what the guidance does.

**The Chairperson (Mr Givan):** Thank you. I know that the Public Prosecution Service (PPS) will have a copy of what it provided on some of the issues that it raised. How was that taken into account?

**Mr Larkin QC:** It was. If one goes through the text, one sees that the PPS made a number of textual suggestions, many of which were taken on board. I am very grateful, and I am happy to have this opportunity publicly to say how grateful I am, to the PPS for its input to this guidance.

**The Chairperson (Mr Givan):** Likewise, the PSNI have been supportive of it, and, obviously, I welcome that support for what is in the guidance that has been issued. I have no issues on the detail of it. I am not sure if other members have questions on the guidance.

I am keen to make best use of time, and that is why, usually, I would ask you to come at the end of the consideration of the Domestic Abuse Bill, because I am sure that there are other areas that we would like to engage with you on then, but that was not possible, and, obviously, you need to lay this and get it approved by the Assembly. I am not aware of any of your guidance ever having a negative prayer of annulment made against it.

**Mr Larkin QC:** No. I suppose that, looking back with the benefit of hindsight, the guidance that might have run the greatest risk was the Irish language guidance, but even that, dare I say, did not attract any negative voices at least. For that, I am very grateful, and I am grateful, Chair, for that indication. This is important. It gives enormous reassurance to victims and survivors of serious sexual offences and provides clear guidance to police and prosecutors so that they look away from those who have given assistance and support in the early stages to those who are, almost invariably, women and focus on the perpetrators.

**The Chairperson (Mr Givan):** I will formally put it to the Committee shortly —.

**Mr Larkin QC:** Also on the SL1, there is formal issue on the commencement order to consider, Chair, which is important.

**The Chairperson (Mr Givan):** We will deal with that.

I know that this is my second stint as the Chairman of the Committee for Justice — I had a longer period in the role in earlier years — so I put on record my appreciation to you for how, over the past 10 years, you have conducted yourself in office, because, every time the Justice Committee asked you to appear before it to get advice on a range of issues, it was always very willingly and voluntarily provided. In my view, the bar has been set incredibly high for whoever fills the post. The expectation will be clear from the Committee that, whoever fills the office, we will be able to point back and say, "Well, this is the way in which the Attorney General engaged with the Committee". We may not have always agreed with what was said, but the engagement that was there was always given and given very enthusiastically. You have always been able to convey very difficult legal complexities in a way in which laypeople can understand and grasp, and I am very appreciative of what you have been able to do for us over that 10-year period.

One of my highlights was the students' programme, and maybe you will comment on that as I seek to get an overview from you on your last 10 years. It always struck me that people look at QCs, the judiciary and those involved as people who come from a class of society that they can never aspire to and as an elite group of people. However, the students' programme was very much targeted at encouraging working-class people to aspire to get into the law. Even this year, with Linda — in the past, it was with Raymond McCartney — I always enjoyed speaking to those young people and seeing their engagement. The work that you put in to try to attract younger people to have an interest in the law struck me as something beyond the formalities of your role, and it is testament to the character of the individual that you are that that is the type of scheme that you ran. It was not just, "I will fulfil my duty. I will do what I need to do". You always went above and beyond that, and that is a mark of the

man, and I have always very much appreciated that. In your past 10 years, what have your highlights been?

**Mr Larkin QC:** Thank you, Chair, for those very kind words. I will begin with the Living Law programme. It is one of two programmes that we run, and you captured its essence perfectly, if I may say so. It has long been a concern of mine that the law is in danger of becoming remote and inaccessible, and that is not just textually. We can see the difficulty that lawyers have in working out, for example, whether clause 10 in a Bill is within the competence of the Assembly, and there are divergent views on it. I do not so much mean those technical issues, although they perhaps form part of it, but it alarms me that there are families who are growing up in Belfast, perhaps over several generations, where the thought that a member of the family might have contact with the law in a positive way is alien. If one were to suggest that the sons and daughters in that family might want to think about law as something to study or as a possible occupation, one might as well invite the family to begin speaking classical Greek the following morning. It seems to me that the law and the rule of law — that is where I enter into this — will suffer profoundly and, perhaps in our lifetime, irreversibly if the law and the legal profession are seen as so "other" and so apart from the world of so many of our citizens. There is a broader aspect. It is not just about the choice of profession; it is that the law is the birthright of every citizen. It is not just for lawyers and judges, although sometimes the citizen might be forgiven for thinking that it is. The law exists to protect and serve all of us.

One of the examples that I use with the students is that of the oligarch. An oligarch does not need the law, because an oligarch has bodyguards and lives on a private yacht — "yacht" being a euphemism for something that might have been a capital ship in 1914 — and is insulated from the terrors and woes of the world, insofar as money can do that. The people who need the law, who must realise that the law is theirs, are people who do not have much money, people who live in housing estates. They need the law because the law is there to protect them from the hard men who would seek to exercise control over them and how they live their lives.

That feeds into the other programme, which was an aspect of the tackling paramilitarism approach of the Executive Office, and that is simply called "It's Your Law". Whereas Living Law is addressed to schools, It's Your Law is addressed typically to young people who may be at school or, more often than not, not at school or not doing anything particularly constructive with their lives at that time. We act in partnership with the Prince's Trust in relation to the It's Your Law programme. It really tries to deliver the title, to give them the sense that the law is their birthright, that we all need the law, that no one is exempt from its requirements, and that the law exists to serve us all.

At the same time, one of the reasons why I try to have such engagement in the Living Law programme, particularly with the Committee, is that I say, "Listen, don't think that the law is perfect, and don't think that everyone likes all of our existing body of laws". The clear message to the students and young people is this: you can change it. The means exist to change the law, and that, too, is yours, that process is yours, you own that process and must realise that you own it.

In the first year that I ran Living Law I, was enormously struck by two young women from a school in Bangor. I was doing the rounds asking, "Are you interested in studying law?". They had very clear career objectives: both wanted to be nurses in the army, but they had worked it out. They said, "We realise that the law is something that we need to know something about". I filed that away as a perfect answer, because many of the young people will never go near a law faculty and never become solicitors or barristers, but if they have that sense that the law is theirs, the programme has worked. Maybe that is a bad example, because they had got it even before they attended the full programme, but that is exactly what it was designed to do.

It has been successful, and not just for the young people who went on to become barristers or solicitors — happily they do exist — but also for those who understood that the law is not something that they should regard as foreign to their preoccupations or hostile to them and their lives but as something that they can have access to and use to make their lives better and something that they can change.

I often instanced this Committee by saying, "Look, politicians need you to keep them in employment, so get in touch with them, and if there are things that you want them to do, let them know. They will be only too glad to hear from you". My experience over 10 years has been that that is right. I would single that out, and you are right that it is not something that is viewed as part of the core of the job of giving legal advice and appearing in court, but in many ways in seeing law as having a possible transformative effect in individual lives and in the wider community, it is something that I would point

to. I very much hope, and I have no capacity to bind my successors, but I hope that in one shape or form they will take that on too and continue to run with it and develop it.

**The Chairperson (Mr Givan):** On the core aspect of the work, people might often think that it is when you come here or when you are advising the Executive on an issue. One of the things that struck me was the issue of civil liberty and detention around mental health, and so on. What was the bulk of the routine work of the office?

**Mr Larkin QC:** The answer, which I have given to varying forms of that question over the years, is this: no two days are alike. We are still coming through the restoration of devolution and giving advice to Departments, but then we were hit by coronavirus, so we are in very different times, and I hesitate to say that anything about this time is typical.

Certainly for the period immediately before the restoration of devolution, when the Mental Capacity Act (Northern Ireland) 2016 was commenced, in fact parts only of it were commenced, we began getting a large number of notifications with respect to panel decisions authorising the detention of persons who lacked capacity. We were getting more than a hundred a month, and it was an interesting example of how we prepared for what we knew would be a fairly large number of cases coming to us. We devised, as is often the pattern, a kind of a protocol for handling them, but the protocol went out the window fairly quickly, because if we had been running the protocol, we would not have been able to get through the work. At the start, I dealt with all the cases and began getting a feel for the contours of the kind of cases that we were getting. I shared my decisions with colleagues, and then they had the sense of what my thinking was in that area. Then they started drafting replies that all come to me for approval.

The numbers, perhaps unsurprisingly, have gone down in the present emergency, but we are still getting them, and it is a large part of the work at present. If one takes litigation, it is almost all-absorbing. If there are one or two big cases in the office, one can never do enough work in a court case.

**The Chairperson (Mr Givan):** The Charity Commission would be one, I take it.

**Mr Larkin QC:** Yes, and I am delighted with the outcome of the Court of Appeal decision in the case of McKee and others, essentially standing over the judgement of Madam Justice McBride at first instance, and I am delighted that that judgement appears to have been accepted by the Department for Communities and the commission. It is clear that Minister Hargey simply inherited that. She was in no way responsible for the stance that the Department took in that litigation, nor indeed was the previous Minister, the current Chair of this Committee who —.

**The Chairperson (Mr Givan):** I know what would have happened had I still been there.

**Mr Larkin QC:** I am pretty sure, Chair, that it would not have taken that stance because, and one is disclosing no confidences here, it was your work as Communities Minister that identified structural problems and sought solutions to them in the commission. Both the previous Minister and the immediately prior Minister were not responsible for the stance by the Department, nor, a fortiori, for the stance of the commission. That was a long haul, and its outworkings still have to be addressed.

**The Chairperson (Mr Givan):** A final question from me. Obviously, there is not going to be an appointment of an Attorney General; we now have an interim arrangement in place. The Committee has written to the Executive Office with a series of questions. Can an interim Attorney General take cases to court and intervene in mental capacity detention issues? Will those powers continue, or will there be a gap?

**Mr Larkin QC:** The short answer is that I do not know. There are very good reasons, at least in part, why I might not be consulted on the future of the office. It is important that that matter be determined by the future Attorney General, following directions set by the Executive Office as to the scope of that office. However, to answer the question — I hope helpfully but necessarily in the abstract — there is no such creature as an interim Attorney General; one is either the Attorney General or one is not. If one is the Attorney General, one has the powers of the Attorney General; if one is not the Attorney General, one does not have the powers of the Attorney General. On 1 July, I will have ceased to be Attorney General. I cannot refer cases to court. I may sign bits of paper, but those will be vain bits of paper without legal effect. It is possible to appoint an Attorney General for a very short time indeed, for

a matter of months, for example. However, if an Attorney General is appointed for a matter of months, that person is the Attorney General.

**The Chairperson (Mr Givan):** A caretaker role?

**Mr Larkin QC:** If the understanding is, "Dear X, I appoint you as Attorney General for Northern Ireland for three months", that is perfectly fine. There are two requirements: one external, one internal, No matter how short the appointment, the Advocate General for Northern Ireland, the English Attorney General, will have to be consulted. The other is that, by statute, the Attorney General is independent. Therefore, even if it is for a short time, there would have to be a sufficient guarantee of independence. That is important. Certainly, the Committee will know how vital independence is to this job. It is perhaps one of the reasons why there are disagreements from time to time, but I take the larger view. The absence of disagreement is not necessarily a good thing, and, in many ways — RHI is perhaps a good example — we have more to fear from the easily reached consensus than we do from something that is hammered out following full debate and analysis.

**The Chairperson (Mr Givan):** As regards future reform and review of the office, what more — or less, for that matter — could the office of the Attorney General have to discharge its duties effectively? I am thinking about the superintendent powers of the Public Prosecution Service and, in my view, the democratic deficit in accountability, given that the holder of the Attorney General post is not a politician.

**Mr Larkin QC:** In many ways, the post, as shaped by the 2002 Act, is very much a product of its time. I have made no secret of the fact that, while I think that independence is necessary in the here and now, other models are available. It may be that Scotland represents the best possible model. In Scotland, as it happens, the Lord Advocate is not a party politician but is a part of the Government; he is a Scottish Minister. He is independent only in relation to his prosecutorial functions and the investigation of deaths. That is well worth considering. It would be a matter of great satisfaction if we, as a political community here, could reach the maturity where we took the view, "Yes, it is great: our next Attorney General will be an MLA. He has a party political allegiance and is formerly a member of the Executive, but, when he takes decisions" — these could be carved out by statute — "about charities, about prosecutions" — if that change should come about — "he does so entirely independently". The history of devolution in Scotland in recent years has shown that such a model certainly works. When you look at Westminster, you see that there is no statutory underpinning there, but the convention is that certain functions are discharged by the Attorney General, who is now an MP, and, in the new Labour Administration, it was a member of the House of Lords. Such a person can entirely properly take those decisions independently while being an enthusiastic supporter of a particular Government and, indeed, a Member of Parliament in the Conservative or the Labour interest, as the case may be.

**Ms Dillon:** First, I thank you. I am fairly new to the Committee, as you know, so my engagement with you through it has been limited. However, I appreciate the engagement that you had with us, and I wish you all the best for the future.

**Mr John Larkin QC:** Thank you very much.

**Ms Dillon:** One of the engagements that I had with you was on the programme that the Chair mentioned, where you brought students up here. Other professions could take example from what you did with that. Right across the board of professions, we very often do not end up with the right mix of people because we do not attract people from all the different backgrounds. You are right that it is extremely important that we have that mix of thought in the legal profession. Having people who have had all different life experiences and all different kinds of upbringing is the best way to implement law. That is a fantastic programme. I hope that either your successor or somebody else who is in a position to do so will take it on. I do not know whether you would be able to continue with that in your new role, but it is important that that person is somebody like you who actually believes in it and is not somebody who holds the position and, therefore, it becomes their programme. It absolutely needs to be somebody who believes that this is the right thing to do and understands the reasons for doing it. You expressed that very well, and I have to say that it was a very enjoyable and interesting experience.

I come from a working-class family, and I feel that nobody in my family would see being in the legal profession or, to be honest, even being an MLA, as something that they could do, yet here we are. It is important that we instil in young people the belief that they can be anything that they want to be as

long as they are prepared to do the work and they believe that they can do it. Believing that you can do it comes before anything else, including your academic ability. Academic ability is very often limited by a young person's belief that they cannot do something before they even start the work. That is important. I really appreciate your commitment to that programme, and I hope that it continues. I wish you the very best for the future.

I am interested in your last comments on future Attorney Generals and how they will be appointed, who they might be and all that. We will need to look at and think about that and assess the point that we are at. I do not know how to say this, but I am a great believer in the idea that there is no such thing as an independent. Everybody has political views. They may not be party political, but you have political views. Everybody has political views. The only difference is that, while my political views are on the table, the politics of somebody who sits on a board or body as an independent are not on the table. As much as I believe in having independent people on certain bodies and in certain institutions, I also accept that they have politics, regardless of whether they are on the table. I am not criticising that in any way, because I, as a politician, absolutely want everybody to have politics; that is what makes the world go round. It is not a criticism; it is something that I believe in.

**Mr Larkin QC:** I could not agree more. First, thank you very much for those kind words. I smiled at the happy chance that the Deputy Chair's old school was in a very prominent position at the session in the Long Gallery. It was particularly inspirational for those students to see what someone who sat in those classrooms only a few years ago has achieved.

**The Chairperson (Mr Givan):** Just a couple.

**Ms Dillon:** That is the best comment of the day. Make sure that Hansard records that *[Laughter.]*

**Mr Larkin QC:** You are right about independence. However, independence never means neutrality, and of course there will be views. You put your finger on a really important issue. Where there are boards, it is often said, "Oh, that decision was taken by the independent board". Well, yes, but so what? That board is inevitably coloured by the views of the people on it, unless they are thinking machines. None of us are thinking machines; we are creatures of flesh and blood, and, of course, we have views. There is often a strength in having those views out there. It is interesting that one of the reactions of the German system of government to the Nazi era was to permit civil servants to be members of political parties. They usually are. I remember when the German ambassador to the UK visited Northern Ireland some years ago, he was described as, "a member of the Social Democratic Party (SPD)", and that was quite strange. You would never get the UK ambassador to Washington being described as, "a member of the Conservative Party" or "a Liberal Democrat", but that is the German practice. In a way, recognising that politics matters and that people are political, whether they acknowledge it, is healthy. That is why I am certainly very open to those kinds of future developments.

Finally, you are right that what Living Law and It's Your Law need are individuals who are committed and who believe in them. I have made it clear informally — I make it clear as formally as this occasion permits — that I am available to help in any way as the years go on and as what I do permits.

**Ms S Bradley:** I take the opportunity to make this point on behalf of the party. I am a new member of the Committee, but I know that party members who were previously on the Committee were served well by you. I am not shy about saying that the Attorney General's audience is a lot wider than we are perhaps always aware. It is always worth hearing the Attorney General's view on certain issues as they come up. It is a go-to office. John, if I may say, you have great personal skill not just in bringing the law to the people but in breaking down the concept of law. You present it in a way that is very understandable. You move from point A to point B while ironing out any inherent presumptions. I am a great admirer of how you present things. I can only hope that that standard will be achieved going forward, because it has thrown a lot of light on difficult situations. The teasing out of a proper debate is sometimes required, as you say, and the way that you present things has helped to do that. I wish you well personally and thank you for everything that you have done over your years.

**Mr Larkin QC:** Thank you very much indeed.

**The Chairperson (Mr Givan):** That is everybody. On behalf of the Committee, John, I wish you every success in the next chapter. I know that you had already been appointed a High Court judge and so on and have not taken on some of those roles until now. Maybe I will appear before you — or maybe not.

**Mr Larkin QC:** Maybe I can appear for you, Chair. As a QC, the major theme is private practice. I was hugely fortunate in hugely relishing private practice and doing something that I loved and then moving to something that I did not know anything about, namely service as a law officer, and finding that a hugely exhilarating experience. Not every day is enjoyable, but every day is a challenge. The whole 10 years have gone by in a flash. I am leaving something that I enjoy enormously to do something else that, I already know, I enjoy enormously. That is a pretty fortunate position to be in.

I really must leave the last word in thanks to the Committee. When I look at the human rights guidance, for example, I see that it simply would not have been possible to make that over the years without the kind of relationship that I and the Committee have enjoyed. For that and for everything else, thank you very much.

**The Chairperson (Mr Givan):** You established the office under devolution. You had 10 years in the role, and you performed the duties with distinction. On behalf of the Committee, my appreciation goes to you. We wish you well for the future. Thank you, John.