



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Briefing by Dame Brenda King, Attorney
General for Northern Ireland

11 April 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Joanne Bunting (Chairperson)
Miss Deirdre Hargey (Deputy Chairperson)
Mr Doug Beattie
Mr Maurice Bradley
Mr Stewart Dickson
Mr Alex Easton
Mrs Sinéad Ennis
Mrs Ciara Ferguson
Mr Justin McNulty

Witnesses:

Dame Brenda King	Attorney General for Northern Ireland
Ms Maura McCallion	Office of the Attorney General for Northern Ireland
Ms Orla Ward	Office of the Attorney General for Northern Ireland
Mr Ian Wimpres	Office of the Attorney General for Northern Ireland

The Chairperson (Ms Bunting): I welcome Dame Brenda King, the Attorney General for Northern Ireland; Ian Wimpres, solicitor for the Attorney General; and Maura McCallion and Orla Ward, division heads of the Office of the Attorney General for Northern Ireland. Thank you for taking the time to brief us today. I will hand over to you for your briefing and your remarks, and presumably there will be time for questions at the end. I apologise for having kept you waiting, but you will appreciate that we had some procedural issues to deal with. Thank you very much.

Dame Brenda King (Attorney General for Northern Ireland): Absolutely; we appreciate that. Thank you very much for your invitation to address the Committee today. I am pleased to see you all as new Committee members. Some of you I know from my 33 years around Parliament Buildings, and some of you I do not, but I am sure that I will by the end of the mandate. You will have an awful lot of challenging issues to address during the short remaining years of the mandate, and I wish you well with that. I am sure that our paths will cross again.

I particularly welcome the invitation to brief you, because I think that not enough is known about the role of the Attorney General, oddly enough, sometimes not by lawyers. We tend to focus on the areas of the Attorney General's role and functions that interest us or affect the areas of work that we are involved in but not the wide range. I hope today to give you an overview of what all of those functions are. You will be more interested in some of them than others, but it is important to go over all of those.

All of my senior lawyers are accompanying me today. We are a small team. You have already introduced Ian Wimpres, Orla Ward and Maura McCallion, and I am grateful for their help. It is

unusual that Attorneys General are appointed for a period of five years or less. You can have an Attorney General, perhaps, appointed for a shorter period than that, and it is really important that you have a good, stable office and structure to support the Attorney General, who may, often, come from the independent Bar and will be less familiar, perhaps, with the machinery of government procedures.

I will say a little about the origin of the role of Attorney General, because it is different now from 2010 onwards. The Justice (Northern Ireland) Act 2002, which you will all be terribly familiar with, is a useful starting point. We have had an Attorney General in Northern Ireland since 1920; prior to that, of course, we had an Attorney General for Ireland. Throughout the period from 1972 to 2010, which, you must remember, was a period of 38 years, there was no locally based Attorney General, and the Attorney General for England and Wales carried out those functions. That has perhaps led to the obscurity of the role, because, when you do not have someone here in place, it makes a big difference.

The Justice (Northern Ireland) Act 2002 provided for the devolution of justice to the Assembly and the Executive but did not really come into operation until 2010. We have really only had 14 years' experience of the new role, with only two local Attorneys General in place since then. The new role encompassed all the new constitutional powers set out in the Northern Ireland Act 1998, particularly in relation to the scrutiny of Assembly Bills and work with the Assembly, but, of course, those powers did not fully come into operation. Those functions were carried out by the English Attorney until then.

A significant feature of the new role was that the previous prosecution functions of the Attorney General for Northern Ireland were removed and transferred to the newly established Public Prosecution Service (PPS) and the Director of Public Prosecutions (DPP). Since 2010, the Attorney General has had a reduced role there. Many provisions on the statute book of Northern Ireland prior to that referred to having the Attorney General's consent to prosecute and to prosecutions being taken by the Attorney General. Those have now gone and are with the DPP.

I still have a large number of criminal justice functions that might be called "residual" but are still substantial. The main ones relate to the appointment of the DPP — I will come to a bit more on my relationship with the Director of Public Prosecutions a bit later; the issue of human rights guidance to a range of bodies that have criminal justice functions, which will probably interest the Committee; and formal consultation and interaction with a wide range of criminal justice organisations. I think that it is the move from the previous wider criminal justice role to the current role that creates quite a lot of the confusion. I still get correspondence from members of the public asking about what they perceive as unduly lenient sentences and queries relating to prosecution decisions taken by the DPP. As I said, that relates to not as much being known about the role as should be the case. Having our own Attorney General for Northern Ireland is a really important part of the devolution settlement. The architecture of the whole devolution settlement fits with that. While I have been in office, I have been keen to speak to a wide range of organisations, and, if there are any organisations that, you think, it would be useful for me to speak with, I will be happy to do that and to engage with others.

If it suits, I thought that I might divide my description of functions into three sections, just to make it easier: my general functions and responsibilities — while some may not directly relate to the matters you normally deal with, a lot of them will; my particular functions in relation to criminal justice matters; and some new and recent functions that have been conferred on me of which you may not be aware. I will try to explain those.

The first important thing to say is about my independence. It is a very unusual feature of the role here. Section 22 of the Justice Act requires that I exercise all my functions "independently of any other person". That is a very important obligation to ensure my political independence. Although I am appointed by the First Minister and the deputy First Minister, you might call it the political appointment of a non-political person. That is different from a lot of Attorney General roles elsewhere. I am prohibited from standing for election to Westminster, the Assembly or a district council, which is not difficult for me to follow, as I am apolitical personally. I am, however, very interested in politicians and admiring of all that you do and your stamina. I do not make policy, although I advise Ministers of the legal implications of the policies that they are developing and delivering. Because of the nature of the power-sharing arrangements here, there is a greater complexity to the role in Northern Ireland than perhaps there is elsewhere, but giving advice to Ministers at a very early stage helps with consensus and agreement across the range.

One of the first things that I did was draw up a full list of the functions of the Attorney General, and I think that the Clerk has circulated that to you all. I thought that it was useful to do that. Of course, I compile an annual report on how I have exercised my functions, and we have two of those reports to

lay soon. Those are laid by the First Minister and the deputy First Minister, and, with those Ministers not being in place, we have not been able to do that until now.

I will talk about my general functions. One of the most important roles that I have is that of chief legal adviser to the Executive. I am called on to provide advice to Ministers and the Executive on some of the most difficult and complex issues on a day-to-day basis, not just at the Executive but as those issues arise from time to time. Those are often issues where there is no legal precedent or guidance. I am entitled to attend Executive meetings — there was one this morning, of course — and give advice to Ministers orally, but I also give written advice and opinions as well. I do not attend all Executive meetings, although I may attend a lot one after the other. It just depends on the areas that are coming up for discussion.

I have had many years of experience in the constitutional legal world and have advised Departments and Ministers since 1998 involved in the implementation of the Good Friday Agreement. I have held two international roles that have been interesting politically, although I am not a politician, and I was First Legislative Counsel from 2012 until 2020, so I am used to dealing with legislation. I pay tribute to Alec Gordon, who is acting First Legislative Counsel while I am Attorney General. I am grateful to him. There are very few legislative counsel worldwide, so it is important that that role goes on to serve the Assembly.

I receive copies of all Executive papers and comment on those. As you can imagine, that is a demanding task in its own right. Each Northern Ireland Minister and Department has recourse to its own legal advisers, and you might be interested in hearing a bit about the relationship there and how that works. I am called on to advise on the most complex matters, including when there might be disagreement between Ministers on different views or perhaps when differing legal opinions have been obtained on an issue. During my time in office, I have agreed a protocol with the Departmental Solicitor's Office (DSO) so that I can access the background information that I need to be able to advise on those cross-cutting issues.

I will mention something that is often forgotten, and that is the long-standing constitutional convention that not only is the advice given by the Attorney General to Ministers not to be disclosed, but it should not even be revealed that the Attorney General has been asked to advise on an issue. That is known as the "law officers' convention", and it is important because we need to provide space for Ministers to discuss freely their policies and ideas. In our devolved government, it is particularly important to reach consensus on different issues. I have been dismayed in the past when my advice has appeared on the front page of some publications. That is unheard of elsewhere, because it might deter Ministers from seeking advice. That is an important constitutional protection to have. It also means that I may not be able to answer all of your questions that relate to legal issues that I have been advising on or may be advising on, but I will try to help you as much as I can, today and in the future, if there is anything that I can do for you. I have in the past assisted the Committee on different issues that have arisen.

You will all know that one of my most significant statutory roles is in relation to advising on the legislative competence of Assembly Bills. Just remember that that covers Executive and private Members' Bills, although I may not see private Members' Bills until the very last minute or when they are introduced. With Executive Bills, there is a lot of engagement at the early stages, so that, if I spot anything that may be problematic, those issues can be ironed out. Obviously, I am looking for Bills that go into the reserved or excepted areas and now, of course, provisions that may be in conflict with article 2(1) of the Windsor framework, so that is a new role. I look at the convention rights carefully, and there are other factors. I know that you will spend a lot of your time scrutinising the many criminal justice Bills and justice Bills that will come your way. I note the size of those; often they are omnibus Bills. They will take up a lot of your time, and I wish you well with that.

The point of this, really, is that I have a power under section 11 of the 1998 Act to refer the question of whether a Bill is within competence to the Supreme Court for a decision. I scrutinise every Bill in detail, obviously, before I decide whether I will exercise that power. It really should not happen very much or at all in practice, if there has been good engagement at an early stage. Often, issues will arise where a Bill inadvertently touches on another area of law but that is not recognised. As I said, I will look at those Executive Bills early, and I am open to Members also engaging at an early stage if I can and I have the capacity to do that.

You will be aware that I have exercised my referral power on one occasion. It was fairly exceptional and came at the very end of the Assembly mandate, when I referred a provision of the Abortion (Safe Access Zones) Bill to the Supreme Court. Maura might like to say a little about that later on, because she was there in the Supreme Court when the judges decided on that. That was really, if you

remember, where one clause of the Bill created a number of offences that could be committed within a safe access zone, including impeding access to premises or causing alarm or distress. The Supreme Court was asked to consider just one of the offences and one provision, and that related to "influencing", which is a fairly flexible concept, as opposed to causing alarm or distress or impeding access. The issue that arose was whether there was an appropriate balance between the article 8 rights to private life of those accessing abortion services and the rights to freedom of assembly and expression of those who wished to protest in a way that does not cause distress. That was determined by the Supreme Court, and it welcomed the reference and decided that, balancing the competing considerations, the restrictions on convention rights were justifiable and therefore within the Assembly's legislative competence. That was a Bill where, if there had been uncertainty, there probably would have been a lot of litigation in the courts, so it was useful to get the court's view on that, and it used the occasion to review case law in relation to protest, which it found useful as well.

I also have a role in relation to general litigation in the courts, particularly where there are constitutional or other matters concerning the public interest. Ian is the solicitor to the Attorney General so has charge of filing all documents before the courts on my behalf, from the highest to the lowest. I am put on notice of any court case in which a devolution issue under the Northern Ireland Act arises — you will be aware of those — and I may participate in the litigation. Attorneys General will take different views on participating in or initiating litigation. In relation to each of these cases, I read the papers very carefully to decide whether I will intervene. Normally, I will not intervene — that is simply my practice — if the matters arising in the case have, in my opinion, already been adequately covered by the parties to the case. I will always look for gaps. I also intervene if Ministers would like me to intervene on their behalf or to support them, perhaps, with supplementary submissions or observations. I will also intervene if I do not think that the issues have been adequately covered or if they relate to a particular responsibility of mine that you will hear about later. I may also lead on litigation arising from a matter on which I have provided advice, if the Executive wish me to do so, but that will normally be led by the lead Department. The Departmental Solicitor's Office will take the lead on that. It is really a matter of judgement.

I can also take legal action in the public interest if certain types of contempt of court appear to have been committed or to obtain a declaration that a person is a vexatious litigant. That does not often occur, but it is an important way in which to support the courts. Vexatious litigants are people who repeatedly litigate when earlier litigation has been unsuccessful and when, on any rational basis, the time has come to stop and the courts are getting clogged up with unnecessary applications. I can make applications to the High Court under section 32 of the Judicature (Northern Ireland) Act 1978 in relation to those cases as and when required, but often a warning is enough. It supports the judiciary.

I am also, rarely, placed on notice of proceedings where there is a declaration of incompatibility in relation to the Human Rights Act 1998 in respect of primary legislation or where the compatibility of secondary legislation is being challenged, and I can participate in those proceedings. There has been one recent example of this that related to the Children (Northern Ireland) Order 1995. The point there was not so much the substantive elements of the litigation but whether the Children Order, which was an Order in Council, was primary or secondary legislation. That is not an easy question to answer unless you are fully aware of all of the provisions of the Northern Ireland Act.

I also have a lot of functions in relation to the protection of the public interest in court or tribunal cases relating to charities. Ian handles a lot of those. That can involve proceedings before the Charity Tribunal, for example, where it is impossible to distribute the funds of a charity when the original purposes no longer exist. I make legal submissions to the Charity Tribunal or the High Court, but often those might be in relation to issues of statutory interpretation, which are quite complex, or the reading of ancient documents setting up a charity. Sometimes, my consent is required before certain proceedings are issued, usually relating to the law of charities or to enable someone who wishes to enforce, typically by injunction, a right that belongs to the public as a whole, rather than having a private nature. Those are rare.

A function that I do not think has ever been exercised is my role in relation to missing persons who are presumed dead. That is quite interesting, since I drafted that legislation. I never thought that I would be Attorney General and have a role in relation to it. I also have a role with regard to declarations of matrimonial status — again, that is rare — and parentage, which arises from time to time. Of course, it is of more interest now than it has been before.

One of the areas that will probably interest you will be my powers to direct coroners to direct an inquest. That, of course, very much affects the court system. I have a power under section 14(1) of the Coroner's Act (Northern Ireland) 1959 to do that. It is broadly drafted, so I can direct a coroner to hold

an inquest into a person's death, in essence, to find out how that death came about. In some cases, the coroner will look at the broader circumstances beyond the immediate cause of death, but those are usually fairly limited. Again, I had an inquest case before the Supreme Court last year to clarify the time within which certain proceedings could be taken, so the court ruled on that. I can say a bit more about that, if you are interested. Again, the Supreme Court welcomed the opportunity to clarify the law.

As I have said, it is a wide power. It really turns on whether it is advisable or not to direct an inquest. That may vary from case to case. My office receives a large number of applications each year from a range of parties, including the next of kin of the deceased or solicitors acting on their behalf, as well as representatives of victims' groups and others. I have to say that, personally, that is probably the part of the role that I find most difficult, because, of course, the family of the victim or person who has died has suffered, and you would love to be able to direct an inquest in all kinds of cases, but you exercise your powers within a range of parameters.

One interesting point is that a decision not to direct an inquest is never final. I often receive renewed inquests. When I was appointed as Attorney, there was an influx of new applications where the previous Attorney had taken decisions not to direct an inquest. There were renewed applications. That was interesting. You probably get a lot more of those when a new Attorney is appointed. In some cases, of course, where there is a likelihood that someone may be prosecuted, I will refer the matter to the DPP or the Police Service of Northern Ireland (PSNI). There are a range of things that might happen there. I consider those applications in great detail and have a look at what material was available to any previous inquest and any new information that might be available, among a lot of other things, such as whether witnesses will still be available to give evidence and, importantly, the utility of holding an inquest and what that might add to what is already known. Of course, the inquests that attract most attention are those that are described as the "legacy inquests". As you know, my powers on those will come to an end at the end of the month, but I emphasise that those form only part of the inquest workload in my office. We have a lot of other inquests that relate to all kinds of causes of death that will keep us busy.

The introduction of the legacy Bill — I will call it that, although it has now been enacted, of course — resulted in a large number of applications coming into the office at very short notice. It has taken up a considerable amount of my and my team's time and resource to ensure that all those requests are dealt with before 1 May. It has put quite a strain on the office, particularly since it is very small. We have been able to cope with things while we did not have Ministers in place, but that is very much changing. Like every area, we are a bit short on resources and funding, but I am not going to make a plea for any of that now. Another interesting thing is that when I decide not to direct an inquest, that decision may be judicially reviewed. That is another volume of work, and, indeed, that is where the Dalton case arose from. I have covered that in a good bit of detail.

I mentioned the DPP, so I will say a little more about that. I appoint the DPP or, rather, the Attorney does. I keep talking about myself in the third person because it is an office, and I, Brenda King, am filling it at the moment. I am the Attorney General, and I have these official functions. I appoint the DPP when one needs to be appointed, but I have no supervisory or superintendence role as regards the DPP. The DPP will consult me, and, beyond that, I engage informally with the DPP, as is right, in relation to criminal justice matters, but in a more limited form than it would have been before. I am consulted by the DPP on amendments to the code for prosecutors — that is a statutory requirement — and I lay the DPP's annual report before the Assembly. Obviously, the human rights guidance that I issue will also apply to the Public Prosecution Service in relation to the exercise of its functions. That takes up time when those issues come up for renewal.

The human rights guidance that I issue will be of interest to you as well because, obviously, you will spend time scrutinising that when new guidance is issued. I have a duty under section 8 of the Justice (Northern Ireland) Act 2004 to produce guidance for criminal justice organisations on the exercise of their functions in a manner that is consistent with international human rights standards. There are 14 sets of guidance in place, and I am reviewing those to see whether there is a need to revisit any of the guidance or, indeed, to issue fresh guidance on new topics. Those can be found on my website, and, as you know, they cover issues such as prison standards, support for victims and witnesses, restorative justice, retention of biometric material and, importantly, domestic abuse and stalking. Criminal justice agencies such as the police, the PPS, the Court Service and the Prison Service must have regard to that when they carry out their functions. There may be engagement with you if new guidance is to be laid in this mandate.

You will be glad to hear that I am coming to the end of my remarks. I mentioned some of the relatively new functions that have been given to the Attorney General, and I am sure that more will come down

the line, once Ministers get into the process of introducing and enacting legislation. I have new functions as a result of the UK's exit from the EU. I will, of course, be scrutinising Assembly Bills, which now, instead of having to comply with EU law, will be subject to article 2(1) of the Windsor framework. That is a change to legislative competence, which is slightly narrower. I have also been given new powers under the Retained EU Law (Revocation and Reform) Act 2023 in specified circumstances to refer a question on a point of retained EU law to the courts or to participate in proceedings on a question of EU retained law — retained EU law, rather; it is difficult to get that right. It is hard to know how often those issues will arise in practice at the moment, but they are there.

I have also been given a recent new power to act under regulation 5 of the Windsor Framework (Implementation) Regulations 2024. That allows me to take or defend High Court proceedings if a question arises about whether a function of a Northern Ireland Department is exercised for the purpose of observing or implementing what is called a "relevant provision" of the Windsor framework. Again, I do not know whether that will ever arise in practice, but it may.

Importantly, I also have functions under the Mental Capacity Act (Northern Ireland) 2016. It is an important area of work, and it takes up a large part of our office resource and staffing. The previous Attorney addressed the previous Justice Committee about that just as he was about to step down in June 2020, because the relevant provisions of the 2016 Act came into effect at the end of 2019. They were fairly new then. There would have been a small number of cases per day, but the number of cases has ramped up to approximately 25 cases a day, and, on occasions, we may receive up to 54 authorisations to be reviewed in a single day. I have a small team of paralegals, headed up by a lawyer, who look at those authorisations initially, and they then come to me. The Review Tribunal, which was formerly known as the Mental Health Review Tribunal, is an independent judicial body. It will be of interest to you, and I am sure that you will engage with the Court Service in relation to a number of functions. I will explain what it does. It has functions in regard to those who are detained under mental health legislation and whose care arrangement has to be such that an authorisation depriving them of their liberty is required. That is a fairly extreme thing to do, and there needs to be judicial superintendence of that. Such an authorisation might be made because a person has dementia or a severe learning disability or for other reasons. My role is to review those authorisations and to refer them, if necessary, to the Review Tribunal. The important thing there is to ensure compliance with the right to liberty under article 5 of the convention and secure a person's right to review by a judicial body, because they do not have the capacity to make that decision for themselves.

Few provisions of the 2016 Act have been commenced to date. If further provisions are commenced, a further workload will probably come to my office in relation to that. It is a very important role and one that people do not know much about. It is a complex set of statutory provisions, and we need expertise in Northern Ireland in that area. While the legislation is not new, it has come into operation only recently, and, because of that, courts may ask for my assistance, and the tribunal does so when there are certain complex questions of statutory interpretation. That is quite precedent-setting, as you can imagine.

I will end by talking about my general engagement across the justice system, which, as you can imagine, is fairly wide. I engage a lot with the Attorney General for England and Wales, who is also the Advocate General; we do not have a separate one for Northern Ireland, unlike Scotland. I engage with the judiciary, the Lady Chief Justice, the DPP, the Departmental Solicitor's Office — I can say a bit more about that relationship — the Office of the Legislative Counsel (OLC), the Bar, the Law Society of Northern Ireland and a range of other legal colleagues who are connected to the justice system. It is important to maintain those relationships and keep my antennae tuned as to what issues might arise and to support those bodies in their aims. I occasionally engage, when needed, with the Attorney General in Dublin, the Counsel General for Wales and my Commonwealth colleagues. I had a Commonwealth role in which I met all the Attorneys General of the Commonwealth, all 52 or 53 of them. It was interesting to see the different roles of Attorneys General, and I wish that I had thought of doing a PhD on the subject before Dr Conor McCormick from Queen's produced his. It is interesting to read that book about the issues.

I am also consulted about a number of important appointments in the justice field, including the appointment of the Crown Solicitor and the chair and members of the Law Commission. That may interest you. There are also statutory obligations placed on criminal justice organisations to consult me. For example, the chief inspector of the Criminal Justice Inspection Northern Ireland (CJINI), who, I am sure, you will have present to you, has to consult me. The Department of Justice must consult me before a programme of law reform is approved by the Law Commission, when we get that body up and running again.

As you can see from all that, the role of the Attorney General for Northern Ireland is a much wider one than most people know. I really am passionate about increasing awareness of the role, and I am happy to come back to talk to you about that at any time. Thank you again for your interest. I am happy to take any questions to me or my team.

The Chairperson (Ms Bunting): Thank you very much, Dame Brenda, for that comprehensive overview.

Miss Hargey: Thanks very much, Brenda and your team, for coming in today. As you say, you cover a wide range of stuff and important areas that people probably do not even realise or on which there is not much scrutiny of or insight into.

My first question is around with human rights compatibility and balancing rights and also your role in general litigation matters in terms of public interest. What is the threshold for public interest, and how is that measured? Around some of these matters, is it each Attorney General's interpretation, or, again, is there a standard that is set within the office?

The other question is on the inquest stuff, because there is a concern about what is now the legacy Act and the impact that that will have on inquests. I know that you say that you cover matters beyond legacy inquests, but, at this point, how many requests that are in the system around legacy will fall come May? Do you have numbers?

The last question is about the review, which you touched on, of the sets of guidance for human rights. You say that there are big issues that you deal with around mental health and capacity. Other issues may be around parentage and stuff, and these are massive issues that have an impact on individuals' rights in society and have broader societal consequences. I am keen to see how you see an increase around mental health and capacity issues, because we are obviously seeing that reflected in the justice system and in health. The other bit is around the guidance. When are you going to review that? Is there a timeline for that? Do you engage externally? I know that you talked about the justice family, but do you engage with the rapporteurs, for example, in terms of international human rights or, indeed, with local human rights organisations here? Does that take into consideration the outcomes of cases or appeals through our domestic courts or European courts?

The Chairperson (Ms Bunting): There were just the 11 questions there, Dame Brenda. *[Laughter.]*

Miss Hargey: Sorry.

Dame Brenda King: They are interesting questions. Thank you, Deirdre.

Miss Hargey: You can answer some and then come back afterwards.

Dame Brenda King: First of all, I spend a lot of time assessing Bills and Ministers' actions for compatibility. As you know, a lot of the time, the law relating to human rights is less precise than our domestic law, so that takes up a lot of my time. There is also a lot of work that goes on that is not visible. I think that the most effective way to influence those who make the law is by letting them know at the earliest possible opportunity where there may be risks. I have always wanted to get in at the very early stages, and that is why engagement is so important to say, "I am in room 227. Knock on the door and come in. I am here every Monday and Tuesday. I am in the town the rest of the week, but just come and see me". It really is a very rigorous assessment, and it is a balancing exercise, as, indeed, is the case with litigation on these issues.

You asked about public interest and when the Attorney might get engaged and whether that varies from Attorney to Attorney. In terms of the public interest, I would look to see whether the issues have been addressed fully and whether there is anything I can add. Sometimes the courts also ask me to proactively provide an opinion, and it is very welcome that they do that. You ask whether that varies from Attorney to Attorney, and that probably depends on how an Attorney approaches all of their functions. As I have said, I try to see things off before they arise, and that requires quite a lot of engagement. That is how I approach things, and there is an opportunity in making submissions to the court to draw attention to things that might not have been considered previously. Some of those issues might be in relation to something that seems as simple as access to the law, but that is very important because if you do not have access to the law, the whole rule of law is undermined.

In relation to inquests, you asked how many will fall. Of the inquests which I have under consideration, there are only five on which I have yet to take a decision. That will be done within the next few days, and I will have completed all of my work on those. I take the view — the only right one to me — that my functions continue right up until the end of April. What the courts can or cannot do after that is a matter for them, but I will exercise my functions right up until then, even though some of those applications came in only very recently. My workload on that will be complete within the next week or two.

The fourth thing related to the review of sets of guidance. That is something that we would like to do, but we do not have much resource to do it at the moment. Maura, would you like to say something about that? We do not have a timeline at the minute.

Ms Maura McCallion (Office of the Attorney General for Northern Ireland): It is, I suppose, just a matter of trying to keep under review the big issues that are emerging. You mentioned mental health, and we would think about whether the guidance is adequate and whether it reflects current international standards. If there has been a new decision or recommendation from a rapporteur, for example, we would look at that and see whether there was any need to change or accommodate a bit of flexibility. The guidance at present is at quite a high level. There is a process involved, obviously, in going through the Assembly and making a statutory rule (SR) to change it. We would not necessarily amend for a word or two; we would want to make sure that there was enough there to make it worthwhile to issue fresh guidance. However, there could be stand-alone new guidance as well, so that is something that certainly the Attorney is considering.

Miss Hargey: Thank you.

Mr Bradley: Thank you very much for your presentation. Indeed, you have a very wide-ranging workload and area of responsibilities. You touched upon your role in the appointment of the DPP, and you also alluded to enquiries that people may throw at you about lenient sentences and to not taking prosecutions that are not your remit. I am going to ask you a leading question here, and if you do not answer, that is all right. You think it is time for a review of the whole Public Prosecutions Service? Do not answer if you do not want to.

Dame Brenda King: That really is a policy question for Ministers. There may be a side issue: you can always review the relationship between the DPP and the Attorney General and the various bodies. That is a policy decision. I know that the previous Attorney had views on that. Again, that is a matter for Ministers. It is not a very long time since criminal justice matters were devolved, when you think about it. To me, it seems like a long time ago, but it is not that long. It is something that you, as politicians, can propose, but it is beyond my pay grade, at the moment, I am afraid.

Mr Bradley: That was a very political answer; thank you very much. I am amazed at the amount of work and responsibility that you have. I will need to replay this when I go home, just to get it all. Thank you.

Dame Brenda King: As I say, come along and have a chat at any time. I am open to people finding out more about the office.

Mr Bradley: Thank you.

Mr Dickson: As Maurice has alluded to, you have an absolutely incredible breadth of responsibility. It is one, which, I have to confess, having been a member of a previous Justice Committee — not in the immediate past mandate — previous Attorneys General have not managed to explain to us in the friendly way in which you did, today. That has been extremely helpful; it was a very good overview. Thank you very much for that.

I have two brief questions. First, I am interested in why the courts would need your protection from vexatious complainants. Can they not simply protect themselves? Surely, for example, the Lady Chief Justice could intervene where a judge, or others, are getting continual litigation from an individual. My second question is, perhaps, a little on the lines of Maurice's question, but, hopefully not. I understand that there is a political question here, but I think that there is also a practical question on the potential implications of the United Kingdom withdrawing from the European Court of Human Rights.

Dame Brenda King: The first question — the question on vexatious litigants — is the easier of the two. The big picture here is that I am supporting the courts to be able to do their business. I cannot give you an example of a vexatious litigant, for obvious reasons, but there is only intervention when things get extreme. I will ask Ian to say something; he has had many years of dealing with vexatious litigants. I do not very often have to step in, but the aim is to support the courts. It means that they have someone of the heft of the Attorney General making an application.

Mr Ian Wimpres (Office of the Attorney General for Northern Ireland): It goes back to a statutory power under section 32 of the Judicature (Northern Ireland) Act 1978, which gave the Attorney General the power to make these applications to the High Court. It is a structural thing that is built into the system allowing the Attorney General here, and those in other jurisdictions, such as England and Wales, to perform a similar role; in fact, a lot of our case law is taken from the courts across the water. There have been several cases, which you will find in the law books, through the High Court here and as far as Court of Appeal during my tenure as solicitor to the Attorney General. The Attorney is, understandably, unable to talk about current cases. If you have access to the law reports, you will find previous cases that the Attorney's predecessor, particularly, referred to the High Court. Several more are under consideration at the moment. There is a whole system which ends up being published in that esteemed organ, 'The Belfast Gazette', in which a notice is put up saying that a person is a vexatious litigant. At least readers of, or people with access to, that publication, will know where they stand.

Dame Brenda King: Your second question relates to the European Convention on Human Rights (ECHR). Obviously, I looked at that in great detail when there were proposals to repeal the Human Rights Act. I cannot go into detail on that at the moment, but, obviously, the major implications for us in Northern Ireland will be the preservation of any rights that are there as a result of the Belfast/Good Friday Agreement and are enshrined in the Northern Ireland Act 1998. It is a bit like the issues relating to Brexit. There would be a lot of work and complication and, no doubt, years of working things out through the courts, if any decision were taken politically to do that.

Mr Dickson: Thank you.

The Chairperson (Ms Bunting): Members, I am conscious of time; we have another directorate waiting outside. I have Justin and then Ciara.

Justin's connection has frozen. I will take Ciara in the interim.

Ms Ferguson: I very much appreciate you coming along today. As a new member of the Committee, I am delighted to meet you face to face.

Dame Brenda, are you remaining until the end of the mandate?

Dame Brenda King: That is a good question. The terms of appointment of the Attorney General are set out in the Justice Act. You can appoint an Attorney General for a period of up to five years. My term will end at the end of June next year, which is not all that far away. I cannot believe how quickly time has gone in. The First Minister and deputy First Minister can also appoint someone for a shorter period; people are not very aware of that. That is when my term will expire. We have had a couple of years of COVID and a couple of years of Brexit. I cannot think of a more turbulent time, but, as someone said, I really enjoy a good crisis and getting stuck into it. It is a term of up to five years, and you can be reappointed for any period of up to five years after that. It is all set out in the Justice Act.

Interestingly, there is no provision for a deputy to the Attorney General, which most other offices have. There is a slight risk in that regard: if I were to get run over by a bus or anything like that, there is nothing else. The First Minister and deputy First Minister can make arrangements, but it is not quite as straightforward as it is elsewhere.

Ms Ferguson: You mentioned that the team is quite small. What size is the team? We have heard, across justice, about the increase in mental health issues, and we see the outcome of that in our health sector and communities. I was not aware of the scale and breadth of the other areas of work, such as parentage, missing persons, and divorces and dissolutions. What has been that increase versus the scale and size of the organisation? How do you cope? How is that managed?

Dame Brenda King: That is an interesting question, because I am trying to expand the team a bit. I have 17 staff in place, including my administrative team and my mental capacity unit in the office. At

the moment, a good proportion of the staffing in the office goes to that. We did not get any extra legal resource for that at the time at which that was set up, because it was not anticipated just how large that task would be.

Another thing is that a lot of the people who joined the office have become judges. That is very impressive and very good for their careers, but it is difficult to replace those people. For a lot of the time, I had, essentially, the three people you see here, who are exceptionally good. I certainly could not do my job without them. They have years of experience. Recruiting the right people is very important.

I have 14 full-time-equivalent permanent posts and 5-8 lawyers. We have people who are part-time. We have a trainee solicitor, and they contribute greatly. It is lovely to see the students coming in and beginning their legal career. I also have three paralegals, 3-4 administrative staff and, at the moment, two temporary staff, although I do not know how long I will have them for. It really is a very small unit. The hours are long, but everybody is very passionate about the work, which is what makes the difference. Everybody is keen to be appointed to the Office of the Attorney General because the work is so interesting and varied.

Ms Ferguson: On capacity, you mentioned that the number of mental health cases has basically doubled. Are there any other areas where you are concerned about the increase over the past few years and where that is having an impact on the workload?

Dame Brenda King: In some areas, such as the production of human rights guidance, we could do with a bit more resource. It would be a good idea to have a formal director or chief executive officer because of the nature of the role. The previous Attorney General referred to this in the setting up of the office. Very often, someone will come in directly from the Bar. I was about to say that I am unusual because I have been a civil servant and a diplomat and done a range of other things, but the Attorney General for England and Wales spent 17 years in the Government legal department so, like me, she has that experience. A person may come from the Bar as a very experienced senior counsel, but the machinery of government in Northern Ireland is so complex that you need a very good team. I found that extremely helpful when I came in, even though I had that background from 1998 onwards and was involved with the political negotiations. Ian has such experience in litigation and Maura in human rights issues. I am very lucky that Orla has joined us for the past year on a temporary basis. I am delighted to have her, because she is focused on EU-exit matters, which is one of the most complex areas of law you could ever imagine having to deal with. We are a very tight team and work well together, which is important.

Ms Ferguson: Thank you.

The Chairperson (Ms Bunting): Members, I am conscious that we are 30 minutes over time. Justin, we will try again.

Mr McNulty: Brenda, you have a challenging and broad remit.

Can you hear me, Chair?

The Chairperson (Ms Bunting): Yes. We have you. It might be helpful if you turn your screen off.

Mr McNulty: OK.

On the Mental Capacity Act 2016, the Office of the Attorney General currently deals with approximately 25 deprivation of liberty authorisations a day. In a 48-week year with a five-day week, that amounts to 6,000 a year. How on earth do you accommodate that burden? How does the system accommodate that burden of cases?

Dame Brenda King: That is a good question, because it has an impact not just on my office but, obviously, on the trusts, the doctors, the nurses, the social workers and, indeed, the tribunals. You will be interested in that, because there has had to be a huge increase in the number of members appointed to those tribunals. There have been 20,000 cases in the past four years. That is a very large number of cases going through the system. It is very time- and resource-intensive, because there are over 20 forms, which, importantly, have to be assessed first, because an irregularity in those forms may affect the legality of the detention of the person. The fact that my team deals with so many per

day is a tribute to them, and I am very proud of them for that. However, that number was unimaginable. When I was appointed, there were, perhaps, four or five a day. That has ramped up and had a big impact on every part of the system.

Mr McNulty: That is a shocking statistic: 20,000 in the past four years is extraordinary. My heart goes out to all the people impacted and the teams dealing with them.

On the 1 May Troubles-related inquest cliff edge, there are those who are waiting with bated breath. There are families of victims who are seeking a charge before that deadline. There are perpetrators who know that, after that cliff edge passes, they will have got off scot-free and can live their lives without concern about being tackled for their deeds. What was your advice to the Executive on that Bill?

The Chairperson (Ms Bunting): I am not sure that the Attorney General can give that information, Justin. The Attorney General's advice to the Executive will be privileged, as any legal advice is. Is that fair enough, Dame Brenda?

Dame Brenda King: That is correct, Chair. It is an Act of the UK Government. I know that the different political parties have voiced their views on that Act. Also, aspects of it are, of course, being litigated at the moment, and we cannot comment on that. However, I understand that the cases are being expedited, so we may hear more before long.

The Chairperson (Ms Bunting): Members, we are now 35 minutes behind with two more evidence sessions to come.

Dame Brenda, Ian, Orla and Maura, thank you so much for taking the time. It has been really useful to understand the breadth and depth of your work. No doubt we will deal with you in future.

Dame Brenda King: Thank you very much. We wish you all well.