



Attorney General for Northern Ireland

Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Our Ref: 18/05/13/012

Date: September 16 2014

Dear Ms Darrah,

Justice Bill

Thank you for sending me the draft Justice Bill following its initial consideration by the Committee. I offer some comments below but am, of course, happy to deal with any specific issue that the Committee might later wish to raise with me.

Proposed amendment to the Coroners Act (Northern Ireland) 1959

By letter dated 5 March 2014, during the passage of the Legal Aid and Coroners Courts Bill I asked the Committee to give consideration to a potential amendment to the Coroners Act (Northern Ireland) 1959 ('the 1959 Act') which I considered would be of material benefit to the public.

My proposed amendment (drafted as an insertion into the 1959 Act) reads as follows:

“Provision of information to Attorney General for purposes of section 14

14A.-(1) The Attorney General may, by notice in writing to any person who has provided health care or social care to a deceased person, require that person to produce any document or give any other information which in the opinion of the Attorney General may be relevant to the question of whether a direction should be given by the Attorney General under section 14.

(2)A person may not be required to produce any document or give any other information under this section if that person could not be compelled to produce that document or give that information in civil proceedings to the High Court.

(3)In this section-

“document” includes information recorded in any form, and references to producing a document include, in relation to information recorded otherwise than in legible form, references to providing a copy of the information in legible form;

(4)A person who fails without reasonable excuse to comply with a requirement under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

Under section 14(1) of the 1959 Act I can direct a coroner to hold an inquest where I consider it is ‘advisable’ to do so. I do not possess a statutory power to obtain papers or information that may be relevant to the exercise of this power. In recent years I have had some difficulty in securing access to documents from Health and Social Care Trusts (‘HSC Trust’), such as

Serious Adverse Incident ('SAI') report forms, which I have considered relevant to the proper exercise of my discretion. One recent, and high profile, incident involving a particular HSC Trust has served to strengthen my view that a power to obtain relevant material is crucial to the public interest in ensuring a high standard of healthcare and investigation of incidents that result in the death of a patient.

On 30 March 2014 I became aware of media reports concerning the deaths of at least twenty patients, including five babies, occurring between 2008 and 2013, at both Antrim Area and Causeway Hospitals. One report indicated that some of the deaths may have been treated as an SAI and reported to a coroner, but others may not.

I immediately sought information from the Northern HSC Trust concerning each death and on 6 June 2014 I was supplied with material relating to eleven deaths. Of these deaths, six had not been reported to a coroner at the time of death and four were only referred after my request for information. That medical practitioners had not reported these deaths before my intervention, and a considerable time after these deaths, is of very great concern and highlights the importance of my proposed amendment in closing the current information gap.

As you know, the proposed amendment was first considered during the Committee Stage of the Legal Aid and Coroners' Courts Bill. It was not thought possible to include the amendment in this Bill as further clarification was required. However, when the Committee took the opportunity of requesting written evidence on my proposed amendment a number of favourable responses were received from a wide variety of consultees including the Health Minister and HSC Trusts.

Three HSC Trusts (South Eastern, Southern and Northern) responded with a spectrum of degrees of support for the amendment. The Health Minister is also supportive of the amendment, subject to further clarification on a number of discrete matters.

The Law Society indicated that I should have adequate powers in order to provide me with sufficient information to take a decision under section 14(1) and agreed with the proposed amendment. The Association of Personal Injury Lawyers, Castlereagh Borough Council and the Law Centre all agreed that the proposed amendment was necessary to ensure that deaths were investigated effectively.

The Information Commissioner's Office indicated that it would be appropriate to provide a specific statutory power to the Attorney General so that relevant documents could be disclosed.

The Northern Ireland Policing Board sought further clarity regarding the remit of the proposed amendment and was concerned about resource implications for the Police Service of Northern Ireland ('PSNI'). I have since written to Mr Jonathan Craig, the Chairman of the Policing Board Performance Committee, on behalf of the Policing Board, assuring him that no additional obligations will be placed on the PSNI as a result of the amendment.

When I gave evidence to the Committee on 28 May 2014 I indicated that the amendment would be confined to deaths that occurred within a health and social care setting and would not affect historic inquests which involved the police or military. This remains the case. Neither do I believe that the amendment will create a burden on the health service and I remain of the view that there is a degree of urgency with the issue that the amendment

seeks to address, given the circumstances regarding the Northern HSC Trust outlined above.

Rights of audience for lawyers working in Attorney General's Office

In September 2013 I wrote to the Minister for Justice raising an issue which affects the operation of my office and which could usefully be dealt with in the Justice Bill. At present employed barristers and solicitors in my office cannot fully avail of their considerable advocacy skills because they do not have rights of audience in all courts. It would be of very great assistance to me, and would result in substantial savings, if the new Bill contained a clause conferring the rights of audience of barristers in independent practice on any lawyer working in the Office of the Attorney General for Northern Ireland and designated by the Attorney General. At present there are three barristers and five solicitors working in my office so this change will not deprive the Independent Bar of significant amounts of work.

The Minister for Justice wrote to me in August 2014 indicating that the Department of Justice had issued a short preliminary discussion paper to a number of key stakeholders inviting their views. The responses to this paper will be used to inform further consideration of the need for a wider consultation exercise. My view remains that this proposal should apply, at the outset, to the small number of lawyers working in my office and under my direct supervision.

I would be grateful if the Committee would look favourably on this proposal which, as well as having considerable substantive merit, has particular importance in this period of budgetary pressure.

Proposed Clause 11A – Ending the life of an unborn child.

I have examined clause 11A and am satisfied that it would be within the legislative competence of the Assembly to enact this provision.

Comments on the Justice Bill as introduced

Part 1 Single Jurisdiction

In clause 3, a further safeguard could be added to protect local justice. I note that in clause 4(4) the Lord Chief Justice, in giving a direction, is to have regard to the desirability of a lay magistrate sitting in courts in reasonable proximity to where he or she lives or works. A similar duty to have regard to the benefit of justice being administered locally could be usefully added to clause 3.

Part 3 Prosecutorial Fines

Multiple Offences

Where a person is accused of a number of summary offences arising out of the same circumstances, a prosecutorial fine notice can only be offered in relation to *all* the offences and a person cannot accept a fine for one offence and proceed to trial on others (clause 17(2)). I understand that this arrangement is to avoid a prosecution for an offence being hampered by the suggested inability to refer at trial to the evidence relating to a separate offence, arising out of the same circumstances, for which a fine has been accepted. There may be some concern about a person being unduly pressured to accepting responsibility for one of the offences which they would otherwise have defended given the certainty of avoiding a conviction

via a prosecutorial fine. There is no reason in principle why provision cannot be made to enable relevant evidence to be used despite the acceptance of a prosecutorial fine, if the person is to be prosecuted for an offence arising out of the same circumstances.

Part 4 Victims and Witnesses

Clauses 28(7) and 30(6) exclude judges and members of the prosecution service (in the exercise of a discretion) from any obligations under the Victim or Witness Charter. It seems to me that an obligation, for example, to treat a victim with courtesy, dignity and respect would not in any way impinge on judicial independence – and could be viewed as strengthening support for it. Further, it seems to me that the obligations in Article 1 of the Victims' Directive must apply to judges and prosecutors.

Part 7 – Violent Offences Prevention Orders

Clauses 51(4) and 53(3) contain retrospective provisions regarding the making of VOPO's when the offence was committed prior to the commencement of the Bill. A VOPO is more likely to constitute a public protection measure than a penalty. In that circumstance, the Committee can be confident that article 7 ECHR is not engaged. The severity of the VOPO prohibitions or requirements can be measured by the sentencing judge to ensure Convention compliance.

Part 8 - Miscellaneous

Avoiding delay in criminal proceedings

In relation to clause 79, rather than providing a power to make regulations outlining a general duty to progress cases, this duty could be placed onto

the face of the Bill (perhaps as an amended clause 79). The duty might be phrased similarly to Rule 1.1 of the English Criminal Procedure Rules 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John F Larkin', written in a cursive style.

John F Larkin QC
Attorney General for Northern Ireland