LADY CHIEF JUSTICE OF NORTHERN IRELAND

GOVERNMENT LEGAL SERVICE OF NORTHERN IRELAND ANNUAL CONFERENCE

"PUBLIC LAW DEVELOPMENTS SINCE RE BUICK"

WHITLA HALL, QUEEN'S UNIVERSITY, BELFAST

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Good morning colleagues, guests, and friends.

It is a privilege to join you today at the Whitla Hall for the GLSNI Annual Conference. I want to thank the organisers for their vision in curating a programme that speaks to both the challenges and opportunities facing government lawyers in Northern Ireland.

The theme of my remarks this morning about the journey from the *Buick* decision is not simply a chronological account of case law. Rather, I aim to examine the principles that underpin lawful governance, the responsibilities that rest on those who exercise public power, and the importance of collective decision-making in a devolved administration.

Why does this matter? It matters because law is not an abstract exercise. It is the framework that ensures decisions taken in the corridors of power are not only efficient, but legitimate. In Northern Ireland, that framework is distinctive. It reflects the constitutional settlement forged in the Belfast Agreement, a settlement that prioritises principles such as inclusivity, transparency, and shared responsibility. Sections 20 and 28A of the Northern Ireland Act 1998, together with the Ministerial Code, are not mere procedural niceties. They are the statutory expression of the principles I have just mentioned.

The cases I will consider include *Re Buick*[1], *Safe Electricity*[2], and *No Gas Caverns*[3], which each illuminate this point in their own way. These judgments have practical consequences for every lawyer advising government, for every minister exercising statutory powers, and for every citizen who depends on the integrity of our institutions.

This discussion is also situated within a broader context. That is because we live in a time of profound change across fields including technological, environmental, and political spheres. The decisions scrutinised in *No Gas Caverns* were not only legally complex; they were environmentally consequential. They engaged questions of energy security, climate policy, and interdepartmental responsibility.

In reflecting on these cases, I will draw on themes including the need for vigilance against complacency, the importance of transparency, and the ethical responsibility that accompanies legal authority as well as providing some comment on comparative law from England and Wales and the European Court of Human Rights.

The Northern Ireland Act 1998 is the legislative expression of the Belfast Agreement, a constitutional pact designed to secure peace, stability, and inclusive governance. At its heart lies the principle of collective responsibility. Decisions of strategic importance are not to be taken unilaterally. They are to be discussed and agreed within the Executive Committee, a body designed to reflect the pluralism of our political landscape.

Section 20 of the Act gives statutory force to this principle. It provides that the Executive Committee shall consider and agree any matter that is cross-cutting, significant, or controversial. These are not empty words. They are safeguards

[1] *Re Buick's Application* [2018] NICA 26
[2] *Safe Electricity A&T Ltd's Application* [2021] NIQB 93
[3] *No Gas Caverns Ltd and Friends of the Earth Ltd v DAERA* [2024] NICA 50

against fragmentation, against the concentration of power, and against decisions that might undermine public confidence in government.

Subsection (4)(aa) of the amended section 20 is instructive. It states that, where no Programme for Government has been agreed by the Assembly, the Executive Committee must discuss and agree any controversial or significant matters. This provision recognises that, in the absence of an overarching policy framework, the need for collective deliberation becomes even more acute. It ensures that major decisions are not made in isolation, but in dialogue.

Subsections (7) and (8) introduce nuance. They acknowledge that certain planning decisions may be made by the Department for Infrastructure without recourse to the Executive Committee. But they also impose limits. Referral is required where a matter affects the statutory responsibilities of one or more other Ministers more than incidentally. These provisions reflect a balance: between efficiency on the one hand and accountability on the other.

Section 28A of the Act makes provision for the Ministerial Code, a document that translates statutory principles into practical obligations. Paragraph 2.4 of the Code imposes a duty on Ministers to refer cross-cutting matters, and controversial or significant matters outside the Programme for Government, to the Executive Committee for discussion and agreement. This duty is not optional.

Yet, as the courts have observed, the relationship between statute and Code is not always seamless. Amendments to section 20 introduced by the Executive Committee (Functions) Act (Northern Ireland) 2020 were not immediately reflected in the Ministerial Code. This mismatch created uncertainty, described as a "mess," by Scoffield J in *Safe Electricity*. It raised questions

about the extent to which the Code could impose obligations beyond those required by statute, and about the consequences of non-compliance.

The courts have provided guidance. They have recognised that the Ministerial Code may go further than the statutory regime, but they have also emphasised that such divergence must be navigated with care. Technical breaches of the Code, absent wilful disregard, may not carry the same weight as breaches of statute.

Of course, the principles just discussed are easier to state than to apply. What does it mean for a matter to be "significant"? How do we measure "controversy"? When does an issue become "cross-cutting"? These are questions that require judgment exercised in good faith, informed by context, and guided by the purpose of the statutory scheme.

The courts have recognised this. They have resisted rigid definitions and adopted a common-sense approach, acknowledging that significance may arise from financial implications, from strategic importance, or from symbolic value. They have noted that controversy is not measured by the volume of objection alone, but by its substance and its resonance within the Executive. They have affirmed that cross-cutting is not triggered by incidental overlap, but by material impact on the responsibilities of other Ministers.

These interpretive challenges are not flaws. They are features of a system that values flexibility and context. But they also underscore the importance of reasoned decision-making. Where a Minister concludes that a matter is not significant, not controversial, and not cross-cutting, that conclusion must be explained. It must have a reasoned, rational foundation.

In 2018 the case of *Re Buick's Application* arose. I heard this case at first instance and it then progressed to the Court of Appeal. Few cases have so starkly illuminated the constitutional contours of devolved governance in

Northern Ireland. At its core, *Buick* posed a deceptively simple question: in the absence of a Minister, can a civil servant lawfully make a major policy decision? The answer, as the Court of Appeal made clear, was no, and in saying so, the court reaffirmed principles that resonate far beyond the facts of the case.

The backdrop was one of political paralysis. In September 2017, Northern Ireland had no functioning Executive and no sitting Assembly. Against that vacuum, the Permanent Secretary of the Department for Infrastructure granted planning permission for a major waste treatment facility at Hightown Quarry, a project of considerable scale and controversy. The decision was taken "in the public interest," but without ministerial oversight and without referral to the Executive Committee.

The question before the court was whether such a decision could stand. Could the machinery of government continue to operate without ministers? Could civil servants step into the breach and exercise powers ordinarily reserved for elected officeholders?

The text of Article 4 of the Departments (Northern Ireland) Order 1999, provides that "the functions of a department shall at all times be exercised subject to the direction and control of the Minister." Those words, the court observed, are substantive. They affirm that ministerial oversight is not optional; it is integral to the statutory scheme.

Both tiers of court rejected the argument that civil servants could assume ministerial powers in the absence of ministers. To do so, it said, would offend the ordinary meaning of Article 4 of the 1999 Order, undermine the legislative context of the Northern Ireland Act 1998, and erode accountability. It could not have been Parliament's intention to permit unelected officials to take major policy decisions for an indefinite period. Such an interpretation would

invert the constitutional order, replacing democratic responsibility with administrative discretion.

The judgment also underscored the distinctive nature of governance in Northern Ireland. Unlike Westminster, where collective responsibility allows any Secretary of State to act in the absence of another, Northern Ireland operates on a model of individual ministerial responsibility within a power-sharing Executive. There is no safety net of collective authority. When ministers are absent, the gap is real, and the law does not permit civil servants to fill it.

Beyond the question of civil service authority, *Buick* engaged the principles found in section 20 of the Northern Ireland Act 1998. The court found that the decision to approve the waste facility was significant, controversial, and cross-cutting. It affected multiple departments. It attracted intense public debate. It carried strategic implications for environmental policy. As such, it was a decision that, under the statutory scheme, required referral to the Executive Committee for discussion and agreement.

This finding was not incidental. It reinforced the purpose of section 20: to ensure that decisions of major importance are taken collectively, not unilaterally. It affirmed that legality is not merely about who signs the letter; it is about the process by which decisions are made.

If *Buick* was a case about the limits of civil service authority in the absence of ministers, *Safe Electricity* was a case about the boundaries of ministerial discretion when ministers are in post. It asked a deceptively simple question: when can a minister act alone, and when must they act collectively? The answer, as Scoffield J demonstrated, lies in a careful reading of section 20 of the Northern Ireland Act 1998 and an appreciation of the constitutional principles that animate it.

The case concerned a decision by the Minister for Infrastructure to grant planning permission for two applications relating to the North–South Electricity Interconnector, a project of considerable scale and strategic importance. The interconnector would stretch 138 kilometres from County Meath to County Tyrone, linking the electricity grids of Northern Ireland and the Republic of Ireland. It was designated by the European Commission as a "project of common interest," reflecting its significance for energy security and market integration.

The applicants, objectors to the project, advanced two grounds of challenge. First, they argued that the decisions required referral to the Executive Committee under section 20 of the 1998 Act. Second, they contended that amendments made to section 20 by the Executive Committee (Functions) Act (Northern Ireland) 2020 were unlawful and *ultra vires*.

To understand the court's reasoning, we must consider the legislative context. Section 20, as originally enacted, required referral of any matter that was cross-cutting, significant, or controversial. The 2020 Act introduced a new subsection, section 20(7), which provided that certain planning decisions could be made by the Department for Infrastructure, or its Minister, without recourse to the Executive Committee. This amendment was designed to facilitate decision-making in a system often hampered by political deadlock. But it raised questions about the scope of ministerial autonomy and the continuing relevance of collective responsibility.

Scoffield J addressed these questions. He concluded that the amendments were lawful, noting that they fell within the legislative competence of the Assembly and had received the requisite consent from the Secretary of State. But the more interesting, and more instructive, aspect of the judgment lies in

the court's analysis of the first ground of challenge: whether the decisions were cross-cutting, significant, or controversial.

The judgment contains two passages that have since become touchstones for interpretation. At paragraphs [73] and [74], Scoffield J explained what it means for a matter to be "significant":

> "The term 'significant' is not merely used as the antonym of 'insignificant.' Rather, it relates to a matter of some importance and noteworthiness, judging that against the gamut of other responsibilities the Minister has. Significance might arise because of the financial implications of the matter (either in terms of cost or benefit) or because of the effects it will have on citizens in Northern Ireland. It is also conceivable that an otherwise run-of-the-mill decision might be significant because of its symbolic or precedent value."

This is a nuanced approach. It recognises that significance is not a binary concept. It is a matter of fact and degree, involving judgment and context. It may derive from considerations such as financial scale, strategic impact, or symbolic resonance.

At paragraphs [81] and [82], Scoffield J turned to the concept of controversy:

> "There may be differing levels of controversy in relation to a proposed decision, ranging from mild disagreement to implacable hostility … A common-sense approach has to be taken. Not every decision which will displease some can be required to be referred to the Executive."

Again, the emphasis is on judgment being exercised in good faith, informed by the purpose of the statutory scheme. Controversy is not measured by the decibel level of objection alone. It is assessed in context, with particular regard to whether the matter is contentious within the Executive itself.

Applying these principles, Scoffield J found that the interconnector project was both significant and controversial. It was significant because of its strategic importance, its financial implications, and its potential impact on citizens. It was controversial because it attracted thousands of objections and engaged issues of public concern. Yet, the court also noted that section 20(7), as amended, permitted the Minister to act without referral in certain circumstances. This created a tension which was then compounded by the fact that the Ministerial Code had not been updated to reflect the statutory amendments. The result was what the court described, with commendable candour, as a "mess."

Ultimately, the court characterised the Minister's failure to comply with paragraph 2.4 of the Ministerial Code as a technical breach rather than a wilful disregard. It acknowledged the complexity of the legislative landscape and the discretionary nature of section 20(7). But it also sounded a note of caution. Ministers cannot escape the plain purpose of the statutory scheme by disclaiming the obvious significance or controversy of a matter. Where there is legitimate contention, the Executive Committee is the proper forum for resolution.

What does this case teach us? First, that statutory interpretation is not an exercise in semantics. It is an exercise in purpose. This approach accords with current Supreme Court jurisprudence on statutory interpretation including *R (on the application of O (a minor, by her litigation friend AO)) v Secretary of State for the Home Department* [2022] UKSC 3 and *For Women Scotland Ltd v The Scottish*

Ministers [2025] UKSC 16. The purpose of section 20 is to secure collective responsibility. That purpose must inform every judgment that considers significance, controversy, and cross-cutting impact.

Second, that legislative amendment does not absolve us of constitutional principle. Efficiency is important. But it cannot come at the expense of accountability. The 2020 Act sought to streamline decision-making. It did not, and could not, abrogate the foundational principle that major decisions should be subject to scrutiny and consensus.

Third, that clarity matters. The mismatch between statute and Code created uncertainty. Uncertainty breeds risk of litigation, risk of delay, and risk of erosion of public trust. If we are to uphold the rule of law, we must ensure that our governance instruments speak with one voice.

Incidentally, in *Re SAFE Electricity*, the court considered that the issue of whether a matter was 'controversial' should be considered by reference to the views of other Ministers, as it had also found in *Re Central Craigavon.* However, in *Re Buick*, it may be argued that the Court of Appeal took a broader approach and considered the question by reference to the level of public interest in (and opposition to) the proposed incinerator. This is an interesting issue: 'public controversy' may not be the same as 'politically controversial'.

If *Buick* was about the limits of civil service authority, and *Safe Electricity* about the boundaries of ministerial discretion, *No Gas Caverns* was about collective responsibility in the face of decisions with profound environmental, economic, and political consequences. It is, in many ways, the culmination of the jurisprudential journey I have traced, being a case that reaffirmed that legality is not negotiable, even when the stakes are high.

The case concerned a proposal to construct seven underground gas storage caverns beneath Larne Lough, with a total capacity of 500 million cubic metres. The project, initiated in 2008, envisaged solution mining to create the caverns and involved marine construction licences, discharge consents, and water abstraction licences granted by the Department of Agriculture, Environment and Rural Affairs (DAERA) in November 2021.

On its face, this was a technical matter of environmental regulation. In reality, it was a decision of strategic magnitude. It engaged questions of energy security, climate policy, and interdepartmental responsibility. It raised issues of public trust and democratic accountability. And it did so against the backdrop of Northern Ireland's statutory commitment to achieve net zero carbon emissions by 2050—a commitment enshrined in the Climate Change Act (Northern Ireland) 2022.

The appellants challenged the decision on two grounds. First, they argued that the Minister's failure to refer the matter to the Executive Committee breached sections 20 and 28A of the Northern Ireland Act 1998 and paragraph 2.4 of the Ministerial Code. Second, they contended that consideration of a £1 million community fund offered by the developers rendered the decision unlawful, relying on the Supreme Court's judgment in *Wright v Resilient Energy Severndale Ltd* [2019] UKSC 53.

The Court of Appeal began by reaffirming the statutory scheme. The court then turned to the three key questions: Was the decision significant? Was it controversial? Was it cross-cutting?

On significance, the court endorsed the approach articulated by Scoffield J in *Safe Electricity*, reflecting that significance is a matter of fact and degree, involving judgment and context. It may arise from financial implications, strategic impact, or symbolic value. Applying this test, the court found that

the gas caverns project was significant as it was a large-scale infrastructure development with long-term consequences for energy policy. It carried economic weight. It engaged environmental commitments of constitutional importance. To classify it as anything less than significant was, in the court's words, "an error of reasoning which robs the decision of logic."

On controversy, the court again drew on *Safe Electricity*. Controversy is not measured by the mere existence of objection, but by its substance and resonance. Here, the evidence was compelling: objections came from a variety of sources including Friends of the Earth, Ulster Wildlife, the National Trust, local residents, and two political parties; concerns voiced by an MLA; and widespread public debate. The court concluded that the proposal was "clearly controversial," and that the failure to acknowledge this was irrational.

On cross-cutting, the court's analysis was decisive. The Department for the Economy has statutory responsibility for gas supply and energy security. Energy strategy is integral to its remit. The gas caverns project, by its nature, affected those responsibilities more than incidentally. It was, therefore, a cross-cutting matter within the meaning of section 20(8). The Minister's failure to refer the decision to the Executive Committee breached the statutory scheme and the Ministerial Code.

The court then addressed the second ground of appeal: the consideration of a £1 million community fund offered by the developers. Here, the judgment in *Wright* was pivotal. In that case, the Supreme Court held that community benefit payments are not material considerations for planning purposes. They do not relate to the character of the use of land. They serve an ulterior purpose. To take them into account is to act unlawfully.

Applying this principle, the Court of Appeal found that the community fund had been considered by the Minister. It appeared in the Environmental Impact

Assessment report. It was referenced in ministerial answers. Its presence in the decision-making process was undeniable. That consideration was unlawful. Planning permission cannot be bought or sold. The integrity of the system depends on decisions being made for planning purposes, not for extraneous inducements.

The Court of Appeal allowed the appeal. It quashed the impugned decisions. In doing so, it reaffirmed the constitutional principle: significant, controversial, and cross-cutting decisions must be made collectively by the Executive, not unilaterally by individual ministers.

While previous case law indicated that classifying a matter as significant or controversial was a matter of Ministerial judgment subject to a standard rationality review, the Court of Appeal acknowledged that in a "constitutional context", that standard must be elevated. This higher intensity scrutiny is not about replacing the Minister's policy decision; it is about ensuring the decision's underlying rationale can withstand rigorous examination. The court referenced the principle that the nature of judicial review depends upon the context. In a power-sharing Executive, the failure to refer a decision on a large-scale project that directly intersects with statutory climate commitments must be supported by a robust, rational explanation. The absence of such a rationale created a "significant gap" in the explanation from the Minister and was the direct pathway to the finding of irrationality in this case. This approach affirms that Executive authority is contingent on an accountable and reasoned decision-making process. Incidentally, the court also thought that an affidavit from the Minister whilst not mandatory or usual in these cases may have assisted given that the Minister was clearly thinking about the cross-cutting element of the project.

Northern Ireland is not alone in grappling with these issues. Across jurisdictions, questions of ministerial accountability, collective responsibility, and environmental governance are pressing.

In Scotland, the interplay between devolved competence and climate obligations has generated complex litigation. The recent Outer House decision in *Greenpeace and Uplift v Advocate General for Scotland* [2025] CSOH 10, concerning the consents for the Jackdaw and Rosebank offshore oil and gas fields, provides a stark example. There, the court was asked to rule on decisions made under reserved UK powers that directly impacted Scotland's climate goals. The court found the consents unlawful, reaffirming that a decision of such magnitude is flawed if its environmental assessment fails to account for the full, downstream emissions.

The UK Supreme Court has wrestled also with the boundaries of planning law in cases involving major infrastructure projects, demonstrating that climate policy and constitutional principle are complementary imperatives which require legality and sustainability to be addressed in concert.

In *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others*[4], a developer applied to Surrey County Council for planning permission to expand oil production from six wells over a period of twenty years. The Council took the view that the necessary environmental impact assessment was required to assess only the impact of the direct release of greenhouse gases at the site over the lifetime of the project and not the impact on the climate of future combustion of the oil. The appellant argued that the greenhouse gas emissions which will occur when the extracted oil is refined and burnt as fuel must be included in the environmental impact

[4] *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20

assessment (EIA) before development consent may be given. By a three to two majority, the Supreme Court allowed the appeal, ruling that 'downstream' emissions which will occur when the oil produced is burnt as fuel, fall within the scope of the requisite EIA.

Most recently, on 22 October 2025, the Supreme Court handed down its decision in *C G Fry & Son Limited v Secretary of State for Housing, Communities and Local Government and another*[5]. In that case, outline planning permission was granted, subject to specified reservations, for an extensive residential development on land within the catchment area of the River Tone. Some weeks later, new scientific advice was published noting that the site was at risk from environmental factors linked to development and advising that a Habitats Regulations assessment should be undertaken. On this basis, the developer's subsequent application to have the reserved matters approved was refused. The matter ultimately reached the Supreme Court which found that, where outline planning permission reserves matters for subsequent approval, the extent to which the authority can withhold approval is restricted to what has been expressly reserved. The authority is not permitted to go back on points of principle which it has accepted by granting the permission. In the instant case, the conditions in the outline permission did not reference the objective of protecting the site and it was therefore not open to the planning authorities to refuse to discharge the planning permission sub-conditions on the basis that additional measures were required to promote the protection of the site.

Internationally, constitutional courts are increasingly called upon to adjudicate disputes at the intersection of law, policy, and sustainability. In

[5] C G Fry & Son Limited (Appellant) v Secretary of State for Housing, Communities and Local Government (formerly known as Secretary of State for Levelling Up, Housing and Communities) and another (Respondents) [2025] UKSC 35

April 2024, in what is known as 'the Swiss Senior Women' case[6], the European Court of Human Rights gave its decision in relation to complaints brought by four women and an association whose members are all older women, on the basis of concerns about the consequences of global warming on their living conditions and health. The applicants submitted that Switzerland had failed to fulfil its positive obligations to protect life effectively and ensure respect for their private and family life and further, that they had no access to a court and no alternative remedy for the purpose of submitting their complaints.

While the court ruled that the four individual women did not have victim status, rendering their complaints inadmissible, it did, by a majority, hold that there had been a violation of the association complainant's article 8 and article 6 ECHR Rights. It was held that article 8 rights include effective protection from climate change on lives, health, well-being and quality of life. The court found that the Swiss Confederation had failed to comply with its positive obligations under the Convention and had failed to devise, develop and implement relevant legislation.

On the same day that the *Swiss Senior Women* decision was handed down, the European Court gave its judgment in another climate change case, that of *Duarte Agostinho & Others v. Portugal and 32 Other States*. The applicants in that case were Portuguese nationals aged between 10 and 23 who had sought to argue that global warming affected their generation, and interfered with their rights, to a greater extent than older generations.

The applicants complained that thirty-three Council of Europe member states failed to comply with their positive obligations under articles 2, 8 and article 14 of the ECHR read in light of the Paris Agreement on Climate Change. The

[6] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*

applicants alleged the failures had, among other things, resulted in heatwaves affecting their living conditions and health.

The Grand Chamber unanimously declared the application inadmissible, holding that there were no grounds in the European Convention for the extension of the court's extraterritorial jurisdiction in the manner requested by the applicants. Territorial jurisdiction was established in relation to Portugal alone and it was found that the applicants had not pursued any legal avenue there thus leading to the complaint being dismissed for non-exhaustion of domestic remedies.

Most recently, in *Greenpeace Nordic & Others v. Norway,* delivered on 28 October 2025, the European Court of Human Rights examined a complaint against Norway regarding the 2016 licensing of petroleum exploration in the Barents Sea. The applicants, two environmental organisations and six individuals, argued that the licensing process violated Norwegian citizens' ECHR rights, including those under article 8, due to an allegedly faulty decision-making process in one specific round of the licensing process. By contrast with *Swiss Senior Women* which concerned substantive obligations, the *Norway* case was focused on the procedural obligations of the State. Norway's overall climate policy was not at issue, therefore, although the European Court recognised that the challenge to the validity of the administrative decision could not be assessed in a vacuum but rather had to be considered in the light of its cumulative consequences for petroleum policy and for the climate as a whole.

In its judgment, the European Court reaffirmed that article 8 applies to climate change cases where serious risks affect life, health, and well-being. It found a sufficient link between petroleum exploration and climate change risks, however, the individual applicants, including indigenous Sami members, as

in the *Swiss Senior Women* case, did not meet the high threshold for victim status due to a lack of evidence of high-intensity personal harm. Their cases were therefore inadmissible. By contrast, the court was satisfied that the applicant organisations, Greenpeace Nordic and Young Friends of The Earth, were a collective means of defending the rights and interests of individuals against the threats of climate change and found, taking an overall view, that granting *locus standi* to the applicant organisations was in the interests of the proper administration of justice.

The challenge failed on its merits, however, with the court finding no violation of article 8. The court reiterated that states have a wide margin of appreciation regarding their choice of the means of implementing climate obligations and what was especially material for the court in determining that Norway had remained within its margin of appreciation was the existence of the procedural safeguards of the requirement for an adequate, timely and comprehensive environmental impact assessment conducted in good faith and based on the best available science; informed public consultation; and the ability to effectively challenge the authorisation of a project.

Also of note in this case is the reference by the European Court to recent advisory opinions on various aspects of climate justice issued by the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, the EFTA Court and the ICJ respectively, emphasising the global nature of the challenges that climate change is bringing.

What can we learn from these experiences? First, that the challenges we face are not unique. They are part of a global conversation about how law can serve as a framework for responsible governance in an era of complexity. Second, that comparative analysis enriches our understanding. It offers insights into alternative models, innovative solutions, and cautionary tales.

Third, that while contexts differ, principles endure; that power must be exercised within bounds; that decisions of major importance must be subject to scrutiny; that legality and legitimacy are inseparable.

The ethical dimension is that clients must adhere to a duty of candour. It is also important to guard against heightened rhetoric in correspondence or overly combative litigation strategies in these controversial areas, particularly in a small jurisdiction. Allied to that is the avoidance of delay and promotion of costs saving approaches. All of this is meat and drink to you as government lawyers and practised well here. I am impressed in particular by the speed and detail of your correspondence despite heavy workloads.

Let me turn to an ancillary issue. One of the most profound developments in public administration is the increasing use of artificial intelligence and algorithmic systems in decision-making. From welfare entitlements to immigration control, from predictive policing to resource allocation, technology is reshaping the landscape of governance. Courts across the world are beginning to grapple with questions that would have seemed fanciful a decade ago: Can an algorithm comply with the principles of natural justice? How do we ensure transparency when decisions are made by systems that operate in opaque, data-driven environments?

In Northern Ireland, these questions are not hypothetical. Research initiatives such as those led by Queen's University Belfast are exploring the implications of AI for judicial processes and administrative decision-making. These developments offer opportunities for efficiency, consistency, and cost reduction. But they also carry risks of bias, risks of opacity, and risks of eroding accountability.

The rule of law demands that decisions affecting rights and interests are reasoned, reviewable, and transparent. It demands that those who exercise

power can be held to account. These demands do not diminish in the digital age. If anything, they intensify. As we integrate technology into governance, we should simply insist on safeguards: clear legal frameworks, robust oversight, and mechanisms for redress.

The second challenge is increasing environmental litigation. The decision in *No Gas Caverns* illustrates the intersection of constitutional principle and climate policy. It reminds us that legality and sustainability are complementary imperatives. The Climate Change Act (Northern Ireland) 2022 imposes binding obligations to achieve net zero by 2050. These obligations are statutory and by necessity will shape the context in which decisions are made.

As we confront the realities of climate change the pressure on decision-makers will intensify. Projects will be proposed in the name of energy security, economic growth, or technological innovation. Some will be necessary. Others will be contentious and occupy the political space. That is why lawyers advising in this area require the courage of their convictions in advising and need to provide clear coherent advice which will then stand up in court.

Finally, we must acknowledge the particular challenges post Brexit and with application of the Windsor Framework which arises in many situations including trade and also when diminution of rights is alleged. The Divisional Court has sounded a warning recently that Windsor Framework arguments must be properly rationalised before our courts.[7]

In Northern Ireland, all of the issues resonate. Our constitutional settlement was forged in the crucible of conflict. It was designed to secure inclusivity, transparency, and shared power. Sections 20 and 28A of the Northern Ireland Act 1998, together with the Ministerial Code, are not ornamental features of

[7] *In the matter of an application by Mitra Shahriyari for leave to apply for judicial review* [2025] NIDiv 2

that settlement. They are its structural supports which frame governance in this jurisdiction.

As we look ahead, the challenges will be formidable. Technology will transform the way decisions are made. Climate change will test the resilience of our legal frameworks. Public expectations will demand ever greater transparency and accountability. In meeting those challenges, I am confident that you as government lawyers will hold fast to the principles that define our constitutional order and continue to provide a vital legal service.

Thank you.