

Attorney General's Chambers

Annual Operating Report
for the year ended 31 March 2017

14 September 2017



Introduction

Foreword by H.M. Attorney General, John Quinn QC MLC

This Report provides a summary of the work undertaken by my Chambers (“AGC”) during the year 1 April 2016 to 31 March 2017 and where relevant makes comment about the emerging trend for the current year. 2016/2017 has been a very busy and demanding year for all the Legal Officers in AGC and for all the Support Staff and I thank them all sincerely for their hard work and continuing dedication.

In August 2016 the retirement of my predecessor, Stephen Harding, on the grounds of his ill health was announced. I wish him well for the future.

In March 2017 I was appointed as Her Majesty’s Attorney General (HM AG) for the Island following my 4 years as Acting Attorney General. My appointment followed the announcement that I had been appointed one of Her Majesty’s Queen’s Counsel, an honour I share with all of my team in AGC.

This was the first full year of AGC having a second Crown Officer. Walter Wannenburg, Her Majesty’s Solicitor General (HM SG), has enabled AGC to provide increased support to the Cabinet Office in relation to Moneyval and to the Financial Services Authority (FSA) in relation to its enforcement work.

Despite the challenges of the increasing scope of our work as detailed in this Report, my focus and that of my team remains the same. It is hoped that this Report will be of value to all of our Stakeholders and the public to enable all to better appreciate the nature and value of the work which we do.

During the period under this review there has also been a change of administration on the Island (following the General Election in September 2016). The Government in January 2017 approved its Programme for Government for the next 5 years designed to ensure that the Island remains a special place to work and live by being an inclusive and caring society; an Island of enterprise and opportunity and with financially responsible Government.

It is my responsibility to ensure that AGC provides Government with whatever legal support it requires to help it deliver its Programme and to meet its objectives. Together with my team in AGC we are committed to provide the necessary legal support in a timely and efficient manner.

John L.M. Quinn QC MLC

Her Majesty’s Attorney General



Crown Division

The Crown Officers have a broad range of statutory and non-statutory duties and when necessary HM SG may step in to HM AG's position to provide cover for any duties should he be required to do so. In practice they attend to separate legal duties but ensure that they are both aware of major developments in order to provide effective cover for their busy roles. The following table provides statistics in relation to HM AG's formal committee attendance and roles.

Meeting:	Crown Officer:	Role:	Frequency:	Attendance
Tynwald	HMAG	Non-voting Member	All sittings - monthly	11
Legislative Council	HMAG	Non-voting Member	All sittings - weekly	20
*Council of Ministers	HMAG	Legal Adviser	Weekly	31
European Union Advisory Group	HMAG	Committee Member	As called	6
AML/CFT Strategic Group & Financial Crime Strategic Board	HMAG	Committee Member	As Called	5
Financial Intelligence Unit Board	HMAG	Chair	Monthly	8
International Relations Coordinating Group	HMAG	Committee Member	As Called	5
National Strategy Group	HMAG	Legal Adviser	As Called	10
Banking Reform Working Group	HMAG	Legal Adviser	As Called	1
CoMin Legislation Sub Committee	HMAG	Legal Adviser	As Called	2

* Meetings are held on a weekly basis except when Tynwald sits. When HM AG cannot attend, HM SG or another legally qualified person attends in his place.



In respect of routine duties, HM AG provides advice to His Excellency the Lieutenant Governor as required. He also attends to his Parliamentary duties which are made up of the regular weekly meeting of Legislative Council and the monthly sittings of Tynwald. He attends routine weekly and any extraordinary meetings of the Council of Ministers as its primary source of legal advice. His work with Council of Ministers and its sub-committees includes supporting the Government's delivery of the legislative programme, National Strategy, International relations, Banking Reform and most recently Brexit. HM AG also provides legal superintendence to his Directors and Legal Officers in relation to the delivery of many of his statutory functions, such as Charities oversight and Receiverships under the Mental Health legislation. HM AG is Chairman of the recently created Financial Intelligence Board which Board provides statutory oversight of the Financial Intelligence Unit.

HM SG provides oversight and strategic level support for the Government's International engagement programme, including attendance at Moneyval plenary and other meetings, and ensuring work is undertaken which is aligned to the Financial Action Task Force standards, OECD Global standards and other entities. He provides legal supervision to the International Cooperation work within AGC and has personally supported the Financial Services Authority (FSA) with several enforcement actions.

The Crown Officers meet the Senior Leadership Team weekly, which Team is made up of the Chief Operating Officer, the Director of Civil Law, the Director of Prosecutions and the Chief Legislative Drafter.

The Crown Officers and SLT are supported by a Personal Assistant (PA) who acts as Secretary to the SLT's formal monthly management meetings and who also acts as Secretary to the Board of the FIU. Their PA also supports their other committee work, attends to their public record management responsibilities, co-ordinates diaries and deals with correspondence.

The Crown Officers are further supported by the Chief Operating Officer in the delivery of the AGC Business Plan, wider reforms and strategic planning, designing and implementing improvement projects and the delivery of operational services.



Civil Division

The Civil Division is divided into three teams: Commercial and Property, Civil Litigation and Advisory and Child Care.

The core objectives of the Civil Division are to enable the Attorney to meet his advisory and statutory obligations as follows –

1. To provide advice and assistance to all Departments, Statutory Boards and Offices of Government on all matters of civil law.
2. To bring and defend proceedings in the Civil courts for and on behalf of all Departments, Statutory Boards and Offices of Government.
3. To provide a centralised procurement and commercial resource to provide assistance to all Departments, certain Statutory Boards and Offices of Government when procuring goods and services.
4. To undertake all legal work in connection with the buying, selling and leasing of property and the re-development of land owned by Departments, Statutory Boards or Offices of Government or to be purchased by a Department, Statutory Board or Office of Government.
5. To undertake the statutory functions of the HM AG in relation to:-
 - Charities;
 - Persons unable to manage their affairs due to a mental disability; and
 - International child abduction.
6. To provide training to all parts of Government as required in relation to all areas of civil law.

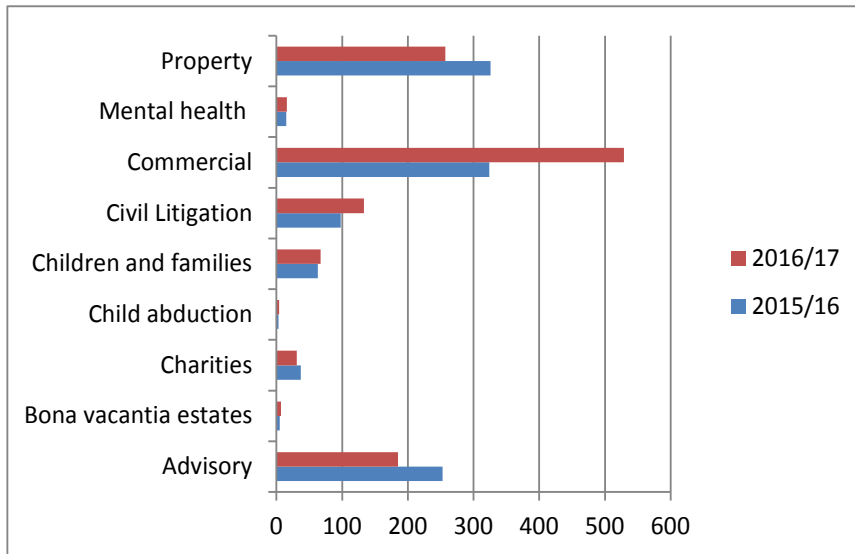
The Division also welcomed the transfer of the procurement services team from Treasury in March 2016. Procurement services now form part of the Commercial and Property Team within the Division.

New Matters opened for the Division

It is not necessarily the case that the number of new matters opened is a correct indication of the amount of work undertaken within the Division. The Division has a policy whereby a new file is only opened if the amount of work anticipated exceeds 1 hour. There is therefore a large amount of work undertaken on miscellaneous files which remain open. The number of new matters opened also does not reflect the amount of work carried out on each file, which could range from a few hours to many hundreds of hours. Notwithstanding this, the number of files opened is a useful indicator of the volume of work undertaken by the Division and can illustrate trends when compared with previous years.



The following chart compares the number of new matters opened in the year 2015/16 to those opened in the year 2016/17:



Looking at each of the headings in turn:

Property

The figures show that there has been a drop in the number of property matters opened in the year 2016/17 (326 in 2015/16 and 257 in 2016/17). This can be accounted for in some part by a drop in the numbers of first time buyer sales, buy backs and re-sales and also because the Commercial and Property team has taken steps to streamline processes and as part of this has slightly altered the way in which new matters are opened.

Mental Health matters

HM AG has a statutory duty to administer the estates of persons who are not able to conduct their own affairs in instances where there is no family member willing or able to undertake this role and where there is insufficient monies to permit the engagement of a third party professional to undertake this role.

The figures for referrals to AGC have remained relatively constant (15 in 2015/16 and 16 in 2016/17). It is however anticipated that this figure will increase over the coming years with increasing life expectancy and an ageing population.



Commercial

This area continues to grow. There has been a sharp increase of approximately 39% in the number of matters over the past year (324 in the year 2015/16 and 529 in the year 2016/17). In part this can be accounted for by the introduction of procurement services to the Commercial and Property team but as AGC have always been instructed to carry out the legal work in relation to procurement (even prior to procurement services joining AGC) this will only account for a small amount of the increase.

Treasury has improved their governance in relation to Financial Direction (FD) 8 and the Commercial and Property team of AGC has improved their monitoring of the terms attached to FD 8 waiver, meaning that where such waivers may be granted on the condition that AGC drafts the contract this is pro-actively followed up where possible.

Civil Litigation

The figures for Civil Litigation show an increase of approximately 26% over the past year (98 in the year 2015/16 and 133 in the year 2016/17). The Civil Litigation team has seen a particular increase in the number of employment matters and in its work for the FSA.

Children and Families

There has been a small increase of approximately 6% in the number of new Children and Families matters. Although this increase is relatively modest it has been a challenging year in this area as there has been a sharp increase in the number of court days where attendance is required.

Child Abduction

There has been a modest increase in the number of cases (3 in year 2015/16 and 4 in year 2016/17) but these figures remain relatively constant each year. When AGC is instructed in relation to child abduction matters, it is required to act immediately.

Charities Oversight

There has been a 16% increase in the number of charities matters commenced in the past year. In addition to this, AGC has been developing a policy for the future policy direction of charities oversight which will be further developed over the year 2017/18.

Bona Vacantia estates

AGC acts on behalf of Treasury in relation to a range of bona vacantia matters. The figures on the chart deal only with bona vacantia estates (i.e. where a person has died without heirs). The numbers for these types of matters remains relatively constant (5 in 2015/16 and 7 in 2016/17).



Advisory

Advisory remains a large area of work for the Division. Although the figures show an apparent drop in numbers of matters (253 matters in 2015/16 and 185 in 2016/17) this is because a lot of the advisory references that we have received over the past year relate to ongoing matters (and thus the advice has been dealt with on transactional files that are already open). It is therefore the fact that the number of “stand alone” advisory matters has dropped whereas advisory work generally remains one of the largest areas covered by the Division.



The Legislative Drafting Division

Core objectives

The core objectives of the Legislative Drafting Division (“LDD”) are to enable the HM AG to meet his legislative obligations as follows –

1. To draft primary legislation in response to appropriate drafting instructions and to supply completed drafts to Tynwald in Bill format, in a timely, professional and accurate manner in accordance with the priorities of the Government’s Legislative Programme.
2. To facilitate the enactment of Bills by drafting amendments as requested by Members of Tynwald and assisting in the preparation of Bills for Royal Assent, in particular by preparing memoranda for submission to the Ministry of Justice.
3. To acknowledge requests to review secondary legislation drafted by the Departments and Statutory Boards within 2 working days and to review the legislation within 2 weeks to ensure it is legally sound and capable of clear interpretation.
4. To provide advice, support and training to Government in respect of matters relating to legislation.
5. To provide and maintain access by Government and the public to:
 - (a) Acts of Tynwald as currently in operation; and
 - (b) Current legal developments.

The Team

The Legislative Drafting resources in AGC are made up of a Chief Legislative Drafter and 5 other Legislative Drafters and Legal Officers. In addition to this the LDD also includes –

- one Legal Officer (International), who provides advice to Government in relation to all aspects of international law affecting the Island and, where appropriate, working with colleagues in the LDD; and
- the Legislation and Research Officer, who maintains the Legislation website and provides research assistance to all lawyers within AGC.



Drafting of Bills

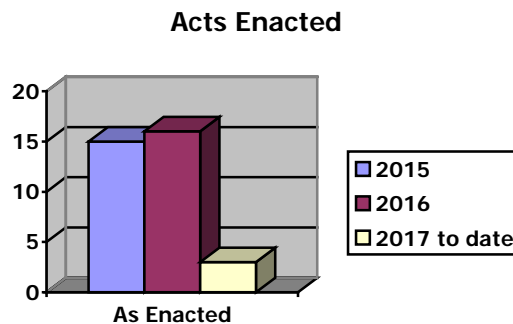
Whereas, the financial year for the AGC runs from 1 April to 31 March every year, the Acts (and secondary legislation) come into operation within a calendar year and the statistics provided below reflect that fact.

In 2015, 15 new Acts came into operation. In 2016, there were 16 new Acts.

In respect of 2017, as at 30 June 2017, 3 new Acts have come into operation, Royal Assent is awaited in respect of 5 Bills and a further 7 are currently passing through the Branches.

Instructions have been received and are being actioned or are to be actioned following the completion of other draft Bills, in relation to 11 new Bills¹.

The Legislative Programme anticipates an average of 15-20 new Bills being introduced per year.



Secondary legislation

Most secondary legislation is drafted by the relevant Department, Board or Office but all secondary legislation should be sent to the LDD for review and, where necessary, for advice and amendment. On occasion the LDD also drafts secondary legislation, such as the first Scheme to be made under the National Health and Care Service Act 2016 and Appointed Day Orders.

The secondary legislation website lists statutory documents which have been submitted to and, where necessary, approved (or not annulled) by Tynwald. That particular site does not include Government Circulars or other quasi legislative instruments which may have been reviewed by the LDD, such as guidance made pursuant to a statutory power (for example the guidance issued by the IOMFSA under the Beneficial Ownership Act 2017 or assistance given in relation to amendments to the Government Code).

¹ Credit Union (Amendment) Bill, Communications Bill, General Registry Bill, Sentencing Bill, Sexual Offences and Obscene Publications Bill, Bail (Amendment) Bill, Airports and Civil Aviation (Amendment) Bill, Licensing Bill, Safeguarding Bill, Douglas Bay Tramway Bill & Anti-Terrorism and Financial Crime Bill.



The number of statutory documents which were added to the secondary legislation website is as follows –

2015 – 332

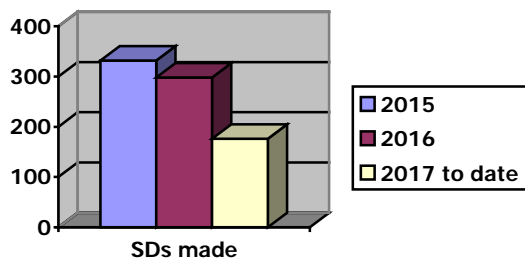
2016 – 298

As at 30 June 2017, the most recently published statutory document was numbered 176.

Advice

The LDD provides advice pertaining to legislation to all Departments, Boards and Offices of the Isle of Man Government and on occasion to MHKs and MLCs (in relation to Bill amendments and Private Members Bills). The advice provided by the LDD can relate to a Bill or proposed Bill, or may be of a more general nature to assist with the interpretation and application of current legislation.

Statutory Documents published



International matters

The Legal Officer (International) sits within the LDD and provides advice to Government in relation to all aspects of international law affecting the Island.

One of the areas of responsibility of the Legal Officer (International) is the provision of advice and assistance in relation to Exchange of Information Requests ("EOIs") received by the Isle of Man. This includes requests made under Tax Information Exchange Agreements ("TIEA") with various jurisdictions and also under the multilateral Convention on Mutual Administrative Assistance in Tax Matters.



Legislation and Research matters

The Legislation and Research Officer is responsible for the administration of the legislation website (<https://legislation.gov.im/cms/>).

The target that the legislation website should be up to date to the beginning of the previous month has been consistently achieved and exceeded. In order to meet that target, over 600 changes have been made to the website during the period 1 April 2016 to 31 March 2017, including –

- 59 Acts amended (comprising 193 amending provisions);
- minor corrections to 47 Acts;
- 18 new Acts prepared and uploaded to website;
- 21 administrative changes made to website;
- all Bills since 2016 uploaded to website (22 in total);
- legislation newsletters from 2008 to date uploaded to website (20 in total);
- all Appointed Day Orders since 2001 for current Acts uploaded to website (100 in total); and
- all pre-2001 Appointed Day Orders for current Acts identified and in process of being uploaded to website (244 in total of which 127 uploaded to website).

For comparison –

	2015/16	2016/17
Acts amended	142	59
Amending provisions	349	193
Acts with minor corrections	108	47
New Acts	14	18
Acts amending Acts	14	18
Statutory Documents amending Acts	38	25
Administrative changes	6	21



Training and guidance

The LDD offers and regularly provides courses to Government employees and politicians. The majority of courses are offered via the Government's Learning, Education and Development Division.

The LDD aims to provide at least 3 courses in every calendar year. As at 30 June 2017, 2 courses have been delivered.

The LDD also provides a number of resources for the use of officers drafting secondary legislation, people involved in sending instructions to the drafters and regarding Manx legislation and the passage of Bills more generally. This is published on the AGC website and is periodically reviewed and updated.



Prosecution Division

Prosecution Division of AGC is managed on behalf of HM AG by the Director of Prosecutions, who was appointed in January 2016.

There are presently 7 Advocates (including the Director), all of whom deal with a mixture of casework relating to criminal offences which are before the Lower Courts (primarily the Summary Court and Magistrates Court) (Summary cases) and cases which are more serious in nature and are referred to the Court of General Gaol Delivery (General Gaol cases).

The Prosecution team of Advocates is assisted by a Support Team of 5 Officers.

The Prosecution team works to standardised time limits within which prosecution advices must be completed. The introduction of these time limits has had the effect of reducing delay and increased overall efficiency.

During the last 12 months AGC has published agreed protocols relating to prosecuting domestic abuse, sexual offending and offending against prison staff and property, which are to be read in conjunction with HM AG's overarching Prosecutions Policy.

Advice files received from all Government Departments, including the Constabulary, decreased slightly by approximately 2% in the year April 2016 to March 2017 (193 compared to 196 in the previous year).

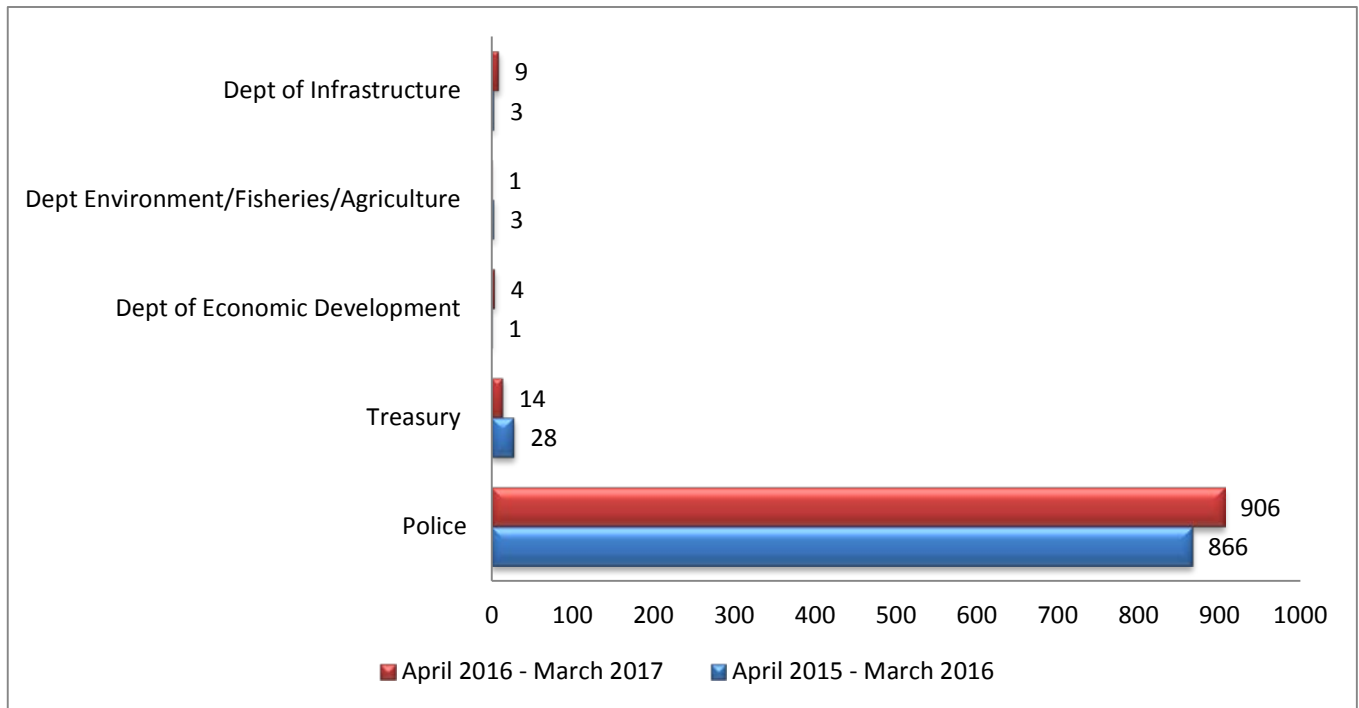
Summary Cases

During the period April 2016 to March 2017 there were a total number of 934 Summary cases. (During the period April 2015 to March 2016 there were a total of 901 Summary cases.)

Details of the Summary case work during these periods is shown in the chart on page 14. It can be seen that the clear majority of the Summary level work comes from the Constabulary, with the remaining 3% to 4% coming from other Government Departments, the largest of these other Departments being the Treasury, primarily relating to benefit fraud cases.



Summary Cases by Referring Organisation



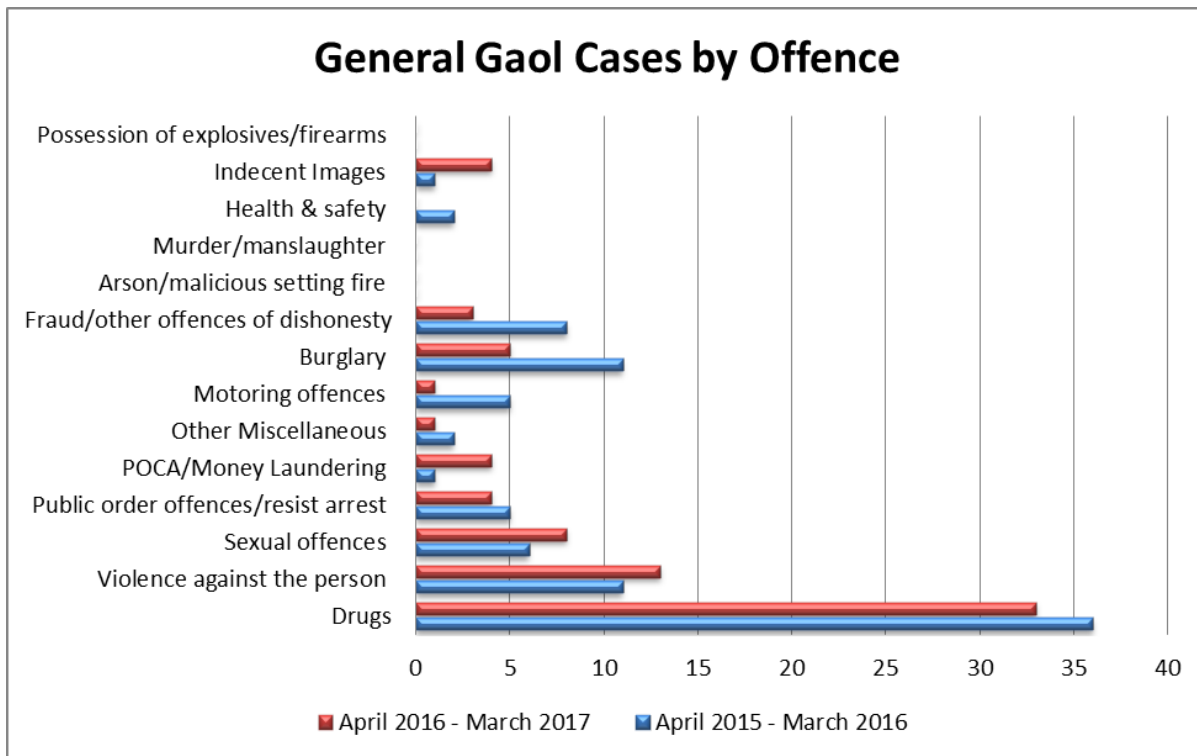
During the period April 2016 to March 2017, we received instructions from the FSA to prosecute a local company for various breaches of financial codes. This resulted in a very substantial fine. In the coming year, our aim to focus more on financial crime generally is in line with our commitment to support the Government to fulfil the Moneyval recommendations. It is anticipated that this renewed focus will result in an increase in financial crime prosecutions.



General Gaol Cases

During the period 1 April 2015 to 31 March 2016, there were 88 General Gaol cases in total. There were 77 cases during the period 1 April 2016 to 31 March 2017.

In the chart below there is a breakdown of the offences in relation to the General Gaol cases dealt with.



It is noted that by far the highest percentage of offending related to drugs. Not all General Gaol cases referred to AGC result in a contested trial.

During the period 1 April 2015 to 31 March 2016, of the 88 matters before the Court of General Gaol Delivery, there were 11 contested trials (12.5%) of which 9 (82%) were found guilty at the trial and the remaining 2 were acquitted.

During the period 1 April 2016 to 31 March 2017, of the 77 cases before the Court of General Gaol Delivery, 17 matters have been listed for trial over this period, 13 of which are still outstanding and not concluded. Of the 4 contested trials there has been 1 guilty verdict and 3 not guilty verdicts reached.



The Prosecution Team also deals with the representation of HM AG in Appeals before the Staff of Government Division (the Appeal Court).

During the period 1 April 2015 to 31 March 2016 there were 10 appeals.

Of these appeals, 2 were against conviction and sentence, both of which were dismissed. The remaining 8 appeals related to appeals against the length of sentence imposed; 3 succeeded and the remaining 5 were dismissed.

During the period 1 April 2016 to 31 March 2017 there were 5 appeals. 2 of those 5 appeals related to cases where HM AG's made a reference (a referral for review) in relation to the length of sentence, 1 of which was successful, the other was dismissed. 2 of the 5 appeals were against sentence, 1 of which was dismissed and 1 was successful. The last remaining appeal of the 5, which was against conviction, was withdrawn by the defence prior to the hearing.



International Cooperation and Asset Recovery Team

In December 2016, HM AG established an International Cooperation and Asset Recovery Team (ICART) to assist the Island meet its strategic aim of promoting measures to increase asset forfeiture and recovery, including civil recovery in respect of the proceeds of crime. The Team's aim also includes continuing the important work of receiving and acting upon international Letters of Request from foreign competent authorities again with the aim of ensuring the Island works effectively in assisting other jurisdictions in their pursuit of criminal assets.

On the 26th January 2017 HM AG issued his ICART Asset Recovery Policy. Taking his lead from the direction given in the Programme for Government 2016 - 2021 (GD 2017/002) which includes the following policy statement:

“Maintain our robust, zero tolerance stance in relation to anti-money laundering and countering the financing of terrorism.”

There are now 5 people working in the ICART, all following the zero tolerance policy.

In the period since 1st January 2017 to 30th June 2017 the results show ICART are already proving effective:-

Confiscations	A total of £50,041.22 has been confiscated from 10 cases.
Cash Seizure	A total of £526,031.01 has been seized from 6 cases.
Production Orders	There are 11 new Production Orders in place.
Restraint Orders	12 Restraint Orders have been obtained totaling over £20mln.
International LORs	20 requests for assistance have been received. (42 requests received between 1.1.2015 to 31.12.2016)

Enforcement of Foreign Confiscation Order

An order has been granted which will result in the Island benefitting from an Asset Sharing Agreement with a foreign jurisdiction.



Support Services and Core Operations

Financial Overview

AGC operates within an annual budget set by Treasury and approved by Tynwald of £4,154,106 in 2016/17. Of that sum, £300,000 was ring fenced as a new revenue budget to meet the costs of paying independent external advocates and guardians to support children who are the subject of Family Court proceedings.

The salary budget covering all costs associated with the position of HM AG , HM SG, the legally qualified staff and the support staff was £3, 678,964 (before the transfer of procurement team from Treasury to AGC).

£230,652 of the annual budget is allocated to non-salary related expenditure which covers such items as the electronic software licenses and legal library subscriptions, law society fees, printing and stationery, etc.

Any unexpected expenditure is generally met from the Legal Costs Reserve with appropriate Treasury permissions being sought in advance wherever possible.

Expenditure was within budget, except for some unexpected expenses in relation to the accommodation move or expenditure which was agreed by Treasury prior to being paid out from the Legal Costs Reserve or the Digital Strategy Fund.

HM AG also collects fees and expenses and had an income target of £61,060. This was exceeded and £74,106 was collected.

Re-charging of Costs

HM AG does not currently re-charge the operational costs of AGC to other areas of Government for the provision of legal services to them, but there is an increasing need for Departments to understand the value of the support that is provided free of charge: It can help to know the indirect costs of legal support on contracts and procurement when out-sourcing services or quantifying costs of legal advice when preparing certain business cases.

Time Recording

As AGC expenditure is primarily made up of salaries, it is imperative that there are good controls in place on how time is spent and whether that expenditure represents best value.

Since 1 April 2016, all staff in AGC (legal officers and support staff) have recorded their attendance with details of how their time is spent during each working day. This now allows improved reporting to support a better understanding of how AGC divides its time and how it uses its legal officers to support



its clients' needs across government. As the records begin to build up through each successive financial year, reflecting on trends identified will allow HM AG to identify how best to continuously reduce operating costs and be even more efficient.

Time is recorded daily and a record is kept against each separate legal matter or Court sitting. The total time available in AGC is calculated as being 365 days, less 116 days for Saturdays and Sundays and other non-working days and a further deduction for annual leave and training days which averages 29 days per person. That leaves an average available time of 220 days per person.

AGC had a staffing complement of 52 persons (including the two Crown Officers) for 220 days (1628 hours) which equates to 84656 available hours. The resources available from legally qualified officers, including the two Crown Officers are 46805 hours.

Detailed Time Recording

The chart on the next page shows legal officer time provided to our clients as a percentage of overall support available to be provided.

Time recording records are particularly relevant when considering the support provided to other areas of Government and the relative value of such legal advice and representation. It also aids an understanding of how much it costs to undertake HM AG's statutory functions, civil litigation (for various areas of Government) and criminal prosecutions (primarily for the Constabulary which is shown under the Department of Home Affairs on the Chart).

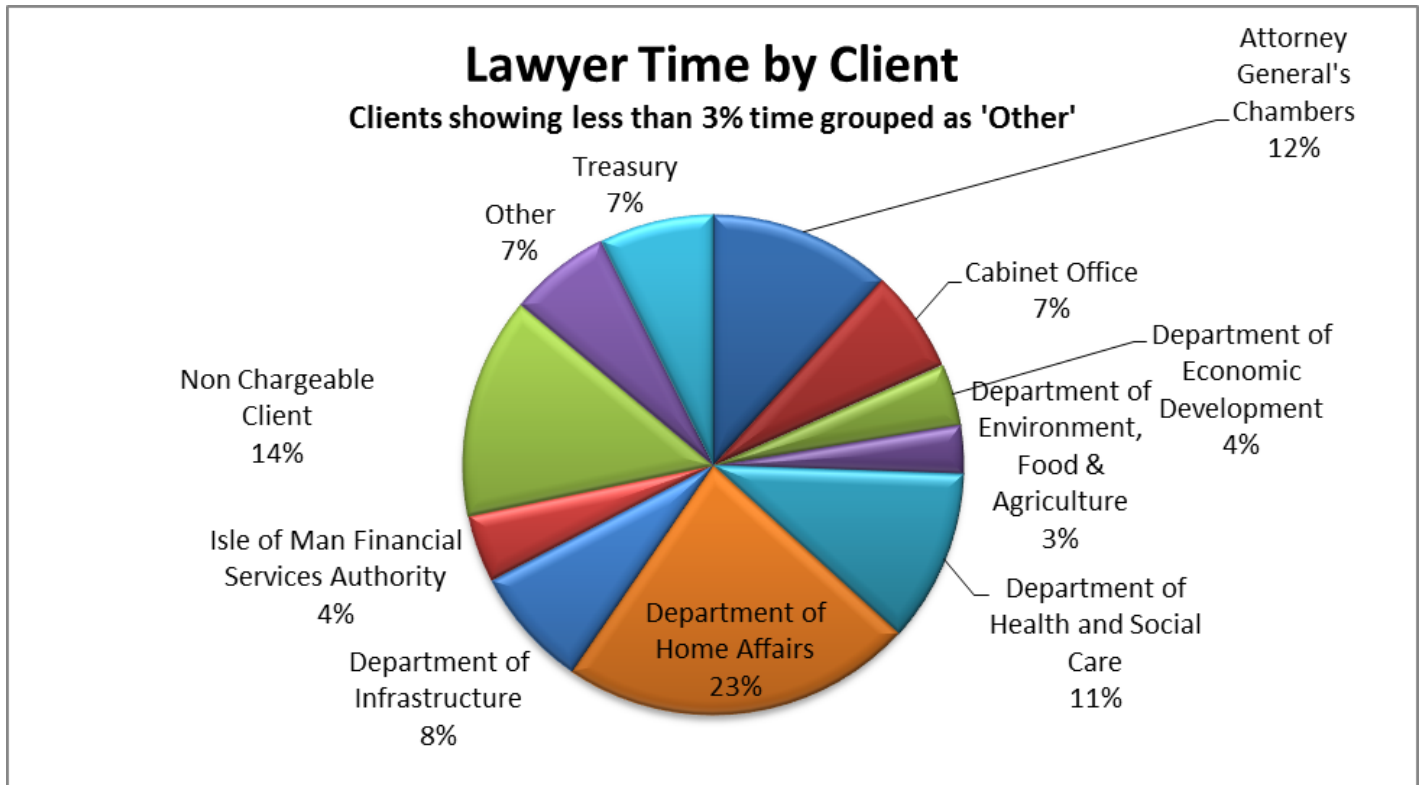
Areas of Government which have been provided with less than 3% of the overall support have been grouped as 'others'.

Time recorded to 'Non Chargeable Client' relates to non-client specific work such as time spent on HR, Finance and managing others.

HM AG's statutory responsibilities are broad and his attendance at Parliament and other related duties are shown as 'Attorney General's Chambers' on the chart. This includes services such as charities oversight and acting as guardian for those persons who lack capacity to manage their own affairs. In total this accounts for 12% of the work undertaken by our legal team.

Not surprisingly the majority of our resources are given to supporting criminal prosecutions and working with the Department of Home Affairs (23%). This includes liaison with the Police and defence advocates and Court attendance.

The relatively broad scope of certain departments and level of contract management and public interaction explains the high level of support provided to the Departments of Infrastructure and Health and Social Care.





Feedback

This report is the first published Annual Operating Report produced by the AGC and we welcome feedback on information that you would find helpful to include in future reports. We will endeavor to continuously improve the amount of information that is routinely published by AGC.

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