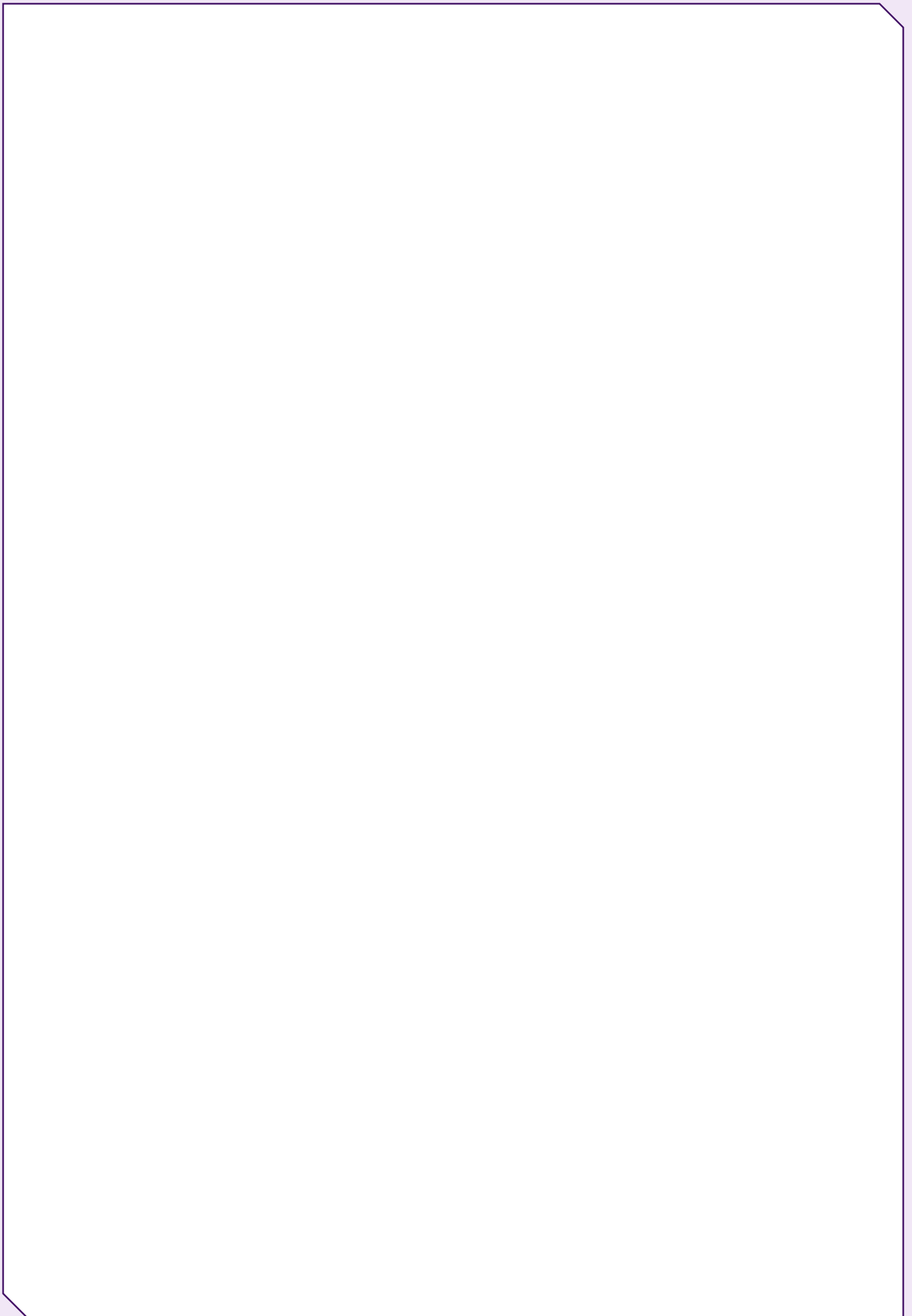


**NORTHERN
IRELAND
JUDICIAL
APPOINTMENTS
OMBUDSMAN**

ANNUAL REPORT

1ST APRIL 2015 TO 31ST MARCH 2016



NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

ANNUAL REPORT **1ST APRIL 2015 TO 31TH MARCH 2016**

Laid before the Northern Ireland Assembly
under Schedule 3A (15) (4) of the Justice (Northern Ireland) Act 2002
by the Department of Justice

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Preface

I was appointed as the first Judicial Appointments Ombudsman for Northern Ireland in September 2006. This role was created by the statutory framework set out in the Justice (Northern Ireland) Act 2002 and provided an independent and external element for those persons who wished to complain about any administrative aspect of their own experience as applicants during an appointment process for judicial office.

This is my tenth (and final) Annual Report to meet the statutory requirement for submission of a report at the conclusion of each financial year and details the performance of my functions. I was reappointed by Her Majesty for a further term in 2013 following a recommendation by the Justice Minister. Since then the Executive had agreed that my role should be subsumed within the new role of the Northern Ireland Public Services Ombudsman (NIPSO) that has been created. I would like to take this opportunity to congratulate Mrs Marie Anderson who is the first NIPSO postholder and who also took on the functions of my role from 1st April 2016. She and her colleagues will doubtless chart their future approach to judicial appointments complaints by taking into account their own experiences and insights in handling complaints in other jurisdictions.

In this final Annual Report I report on one complaint that was received during the past year as well as highlighting any reflections drawn from my term of office.

The devolution of policing and justice to the Northern Ireland Assembly has meant that my original accountability framework in previously reporting to the Lord Chancellor and through him to the Westminster Parliament was replaced by the Department of Justice and the Assembly. This is the sixth (and will be the last) Annual Report within this framework of accountability.

I consider that my tenure as the Northern Ireland Judicial Appointments Ombudsman has been characterised by maintaining a constructive dialogue with the Northern Ireland Judicial Appointments Commission (NIJAC) and the Department of Justice without in any way compromising our independence and impartiality in our respective roles. I have always adopted a stance that we all had a shared interest in promoting public confidence in the administration of justice. In terms of my own

remit I have always interpreted this as ensuring that individual complaints were dealt with expeditiously and with as full an explanation as possible. I saw my role as Ombudsman as being to ensure that those persons who complained had the opportunity to set out their concerns to me as clearly as possible; to ensure that those complained against had the opportunity to respond as fully as possible; to ensure that my reasoning was clearly explained to both parties whilst respecting the confidentiality of others; and that all appropriate information had been made available in my reports dealing with complaints.

My assumptions which underpin comments in previous Annual Reports are also repeated here. These are that the independence and impartiality of the judiciary should be continually underlined; judicial appointments should be free of bias, both in terms of perception and reality; and judicial appointments as well as the processes governing them should not just be of interest to candidates and the legal community but also to a wide range of stakeholders in civic society in Northern Ireland.

In conclusion I would also like to take this opportunity to express my appreciation to Mrs Audrey Fowler for her sustained commitment and loyal support to my role throughout the tenure of my appointment.



Karamjit Singh CBE
Northern Ireland Judicial Appointments Ombudsman

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Chapter 1

The Background to the Ombudsman Role

Introduction

My appointment as the first Northern Ireland Judicial Appointments Ombudsman by Her Majesty The Queen (following a recommendation by the Lord Chancellor after an openly advertised selection process) formally commenced on 25 September 2006. The key purpose of the Ombudsman's role is to investigate any complaints received from applicants for judicial office who are dissatisfied with any administrative aspect of the appointment process. This is my tenth and final Annual Report.

Background

A wide ranging review of the criminal justice system in Northern Ireland concluded in March 2000 and its recommendations also included the appointment of a person to oversee, monitor and audit the existing appointment procedures for judicial roles. This in turn led to the creation of the role of Commissioner for Judicial Appointments who carried out a review of the existing processes for appointing judges. Following the passage of legislation, this resulted in the establishment in Northern Ireland of both the Judicial Appointments Commission and my own role as Judicial Appointments Ombudsman (during 2005 and 2006 respectively when the legislation was enacted).

Legislation and Status

The Justice (Northern Ireland) Act 2002 provided the statutory framework for the establishment of the Northern Ireland Judicial Appointments Ombudsman. Sections 9A to 9H of the Act¹ defined the arrangements for investigating complaints which were made to both the Judicial Appointments Commission and to the Ombudsman respectively and how they were to be reported.

¹ Sections 9A to 9H of the Justice (Northern Ireland) Act 2002 were inserted by sections 124 to 132 of the Constitutional Reform Act 2005

The Justice (Northern Ireland) Act 2002 provided for the Ombudsman to submit a report at the conclusion of each financial year. Following the devolution of policing and justice matters to the Northern Ireland Assembly in April 2010, such reports were laid by the Minister of Justice before the Assembly. This constitutes my sixth report under this procedure. Copies of my previous Annual Reports can be obtained from the website www.nipso.org.uk

The statutory role of Office of the Northern Ireland Judicial Appointments Ombudsman is defined as a corporation sole and is independent of the Assembly Government, the judiciary, the Northern Ireland Courts and Tribunals Service or the Department of Justice.

The Ombudsman and his Office

Appointment to the role of Ombudsman was for a period of up to five years each time on a part time basis up to a maximum term of ten years. Schedule 3A of the Justice (Northern Ireland) Act 2002 provided for the role of Ombudsman and stated that the post holder must never have practised law nor held judicial office in the United Kingdom and should not currently be a civil servant, a member of either the House of Commons or the Northern Ireland Assembly or be engaged in political activity as a member of a political party. A profile of the previous Judicial Appointments Ombudsman, Karamjit Singh CBE, is attached as Appendix 1 to this report.

With the passage of legislation relating to the new role of the Northern Ireland Public Services Ombudsman and the subsequent appointment of Mrs Marie Anderson, this particular role as Judicial Appointments Ombudsman has also been adopted as an additional (and distinct) responsibility by Mrs Anderson. Because she is a lawyer, appropriate arrangements have been put in place within her office to ensure that a non legally qualified person with appropriate complaints handling experience will take responsibility for any complaints that may emerge.

Expenditure by the Judicial Appointments Ombudsman in the discharge of his functions and the administrative arrangements for his Office were met and provided by the Department of Justice, through a separate financial budget that was managed by the Northern Ireland Courts and Tribunals Service. There was a necessary and appropriate degree of confidentiality which allowed the Ombudsman to see complainants or other persons as part of his complaints investigations in locations away from the departmental or courts estate. The Ombudsman and his Office was also supported by the provision of dedicated staffing and administrative arrangements by the Department of Justice.

Remit and Relationships

The remit of the Judicial Appointments Ombudsman, under section 9D of the Justice (Northern Ireland) Act 2002, was to consider complaints from candidates for judicial office where maladministration was alleged to have occurred in the handling of their application either by the Northern Ireland Judicial Appointments Commission (the Appointments Commission) or the Lord Chancellor. In considering whether or not maladministration had occurred, the Ombudsman's role was to determine whether the process for assessing the complainant's application ensured that he or she was treated fairly. The Ombudsman is not able to consider the merits of a decision in terms of determining whether the complainant or any other candidate should have been appointed.

The appointments to listed judicial offices covered by the Commission and the complaints process are contained in Schedule 1 to the Justice (Northern Ireland) Act 2002 (see Appendix 2 to this report).

The Ombudsman did not have a remit to investigate complaints relating to judicial conduct and these are dealt with by the Lord Chief Justice of Northern Ireland. This difference with the legislative framework as it exists in England and Wales occurred because complaints relating to judicial conduct were identified as a distinct issue in the Review of Criminal Justice in Northern Ireland, and the process currently in existence was formally legislated for in the Justice (Northern Ireland) Act 2002. The statutory provision for investigating complaints relating to judicial conduct in England and Wales was established within the Constitutional Reform Act 2005 and included within the remit of the Ombudsman for that jurisdiction.

Two documents entitled 'A Memorandum of Understanding'² set out the framework within which the relationships between the Ombudsman and the Northern Ireland Judicial Appointments Commission and also with the Northern Ireland Courts and Tribunals Service on behalf of the Ministry of Justice were managed.

² The Memorandum of Understanding can be viewed on the NIPSO website

Complaints Procedure

The legislation defined the Ombudsman's remit as covering "Commission complaints" and "Departmental complaints". A "Commission complaint" was one of asserting maladministration had occurred by the Northern Ireland Judicial Appointments Commission in discharging its functions during a specific competition or by a committee of the Commission involved in the process for dealing with that particular judicial appointment. A "Departmental complaint" was one of asserting maladministration by the Lord Chancellor in connection with a recommendation for, or appointment to a listed judicial office.

The legislation defined a "qualifying complainant," as one "...who claims to have been adversely affected, as an applicant for selection or as a person selected...by the maladministration complained of".

Complainants should have exhausted the complaints processes within the Commission (Commission complaint), or those established by the Lord Chancellor (Departmental complaint), before making a complaint to the Ombudsman. Ordinarily such a complaint should be made to the Ombudsman not more than twenty eight days after a complainant was notified of the decision of Commission or Lord Chancellor, but the Ombudsman could exercise his discretion in determining whether a complaint can be registered and investigated after this period if he considers this is consistent with the purposes of the legislation.

The legislation required the Ombudsman to submit a draft report relating to a Commission complaint to the First Minister and Deputy First Minister and to the Chairman of the Northern Ireland Judicial Appointments Commission. In the case of a Departmental complaint a draft report would be submitted to the Lord Chancellor. In finalising his report the Ombudsman had to have regard to any proposal by the First Minister and Deputy First Minister acting jointly or the Commission or the Lord Chancellor, if this was appropriate, for changes to the draft report. The Ombudsman was also required to include in his report a statement about any proposed changes which were not given effect to. The statutory framework provided for the Ombudsman to issue a copy of his final report to the complainant at this point.

The Ombudsman was required to state whether or not the complaint was upheld and if so whether in whole or part. If a complaint was upheld he would recommend what action should be taken as a result of the complaint. Any recommendation for payment of compensation could only relate to loss by a complainant as a result of maladministration and not as a result of failure to be appointed to judicial office. Where the complaint had not been upheld, the Ombudsman could also make recommendations for consideration by the body complained of.

Removal Tribunal

Section 8 of the Justice (Northern Ireland) Act 2002, (amended by section 2(2) of the Northern Ireland Act 2009) provided for the setting up of a tribunal to consider the removal of a listed judicial officer from office on the grounds of misbehaviour. Section 8(1)(a) provides for the Lord Chief Justice to consult with the Northern Ireland Judicial Appointments Ombudsman before convening such a tribunal.

In addition, Section 8(2) of the Act provided for the make up of the tribunal and one of its members is designated as a lay member of the Judicial Appointments Commission. Section 8(3) provides for selection of the lay member (who would participate on the panel) by the Northern Ireland Judicial Appointments Ombudsman.

During the period covered by this Annual Report the Ombudsman did not exercise this function.

Developments in Great Britain

The Judicial Appointments and Conduct Ombudsman for England and Wales investigates complaints about the judicial appointments process and also the handling of matters involving the conduct of judicial office holders. His Office was established under the provisions of the Constitutional Reform Act 2005. The Annual Reports published since the establishment of the Ombudsman's Office in 2006 indicate that a majority of the complaints received have been concerned with the conduct of judicial office holders as opposed to complaints about the appointments process.

The Judiciary and Courts (Scotland) Act 2008 provides for the Judicial Appointments Board for Scotland to investigate any complaints of maladministration with a further stage involving the Scottish Public Services Ombudsman should complainants wish to proceed further. In common with Northern Ireland this complaints process is concerned with appointments only and not with conduct.

Chapter 2

Judicial Appointments Processes in Northern Ireland and Great Britain

Introduction

The Northern Ireland Judicial Appointments Commission was established in June 2005 under the provisions of the Justice (Northern Ireland) Acts 2002 and 2004. It is an independent non departmental body with a specific remit to administer the selection processes for judicial appointments in Northern Ireland up to and including the role of High Court Judge.

Background

Prior to 2005 (and since 1973) the Lord Chancellor had been responsible for directly appointing or advising on the majority of judicial appointments in Northern Ireland. Until the inception of the Judicial Appointments Commission he was supported on an administrative basis by the Northern Ireland Court Service in the discharge of this duty³. The recommendations which were made following the Review of Criminal Justice⁴ envisaged that a Judicial Appointments Commission would enhance public confidence by providing an appointments process that was “transparent and responsive to society’s needs on the one hand, but on the other must be clearly seen to be insulated from political influence”⁵.

Legislation and Status

The continued suspension of the Assembly at that time led to the passage of the Justice (Northern Ireland) Act 2004 by the Westminster Parliament which enabled the Commission to be established in advance of any arrangements proposed for the devolution of justice.

³ The Judicature (NI) Act 1978, gave the Lord Chancellor responsibility for the unified courts administration.

⁴ Review of the Criminal Justice System in Northern Ireland, published March 2000.

⁵ Paragraph 6.102, Review of the Criminal Justice System in Northern Ireland.

Following the devolution of policing and justice to the Assembly on 12 April 2010, the Commission was given new responsibilities (under the Northern Ireland Act 2009), including becoming an appointing body, with an ability to influence the overall complement of judicial posts, and to determine certain terms and conditions in agreement with appropriate sponsoring departments holding the budgets for different judicial offices.

As an executive non-departmental public body the Commission has a responsibility for ensuring that its statutory purposes are being met and that the use of resources is appropriate and effective. The Commission is funded through its sponsor department, which is the Office of the First Minister and Deputy First Minister.

Commission Membership

The Commission has a membership of thirteen Commissioners (including the Chairman) and is chaired by the Lord Chief Justice of Northern Ireland. There are five judicial members and two Commissioners with legal professional backgrounds who are all nominated and five non legally qualified or lay Commissioners who are appointed following a process of open advertisement. The Commission is supported in its work by a secretariat, which is headed by a Chief Executive.

The Commission's Roles and Responsibilities

The Commission has defined its key statutory duties in successive Corporate Plans as being:

- to select and appoint and recommend for appointment, in respect of all listed judicial offices up to and including High Court Judge;
- to recommend applicants solely on the basis of merit;
- to engage in a programme of action to secure, so as far as it is reasonably practicable to do so, that appointments to listed judicial offices are such that those holding such offices are reflective of the community in Northern Ireland;
- to engage in a programme of action to secure, so as far as it is reasonably practicable to do so, that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office; and
- to publish an annual report setting out the activities and accounts for the past year.

Appointment Procedures

The Commission is responsible for making appointments and for making recommendations for appointments of those applicants deemed suitable for appointment to the range of judicial offices that are listed in Appendix 2 to this report.

For each competition, selection panels (comprising a mixture of legal, judicial and non-legally qualified Commissioners) are constituted for the purposes of short listing applicants and then conducting interviews. A feedback process is also available for unsuccessful candidates.

Complaints Procedures

The Commission has a statutory duty to make arrangements for handling complaints from an applicant for appointment who is dissatisfied with some of the selection process. The legislation defines the period during which complaints should be made to the Commission as being not more than twenty eight days after the matter complained of.

Appeals in relation to decisions not to short list for reasons of eligibility or otherwise and complaints are dealt with by panels consisting of Commissioners who were not involved in the short listing or interview panels. In cases where the Commission's internal process has been exhausted and an applicant for judicial appointment still remains dissatisfied, a complaint can be made to the Ombudsman.

The Judicial Appointments Commission includes information on the role of the Ombudsman and contact details for his Office amongst the application materials that are issued to candidates for judicial office.

The Judicial Appointments Process in Great Britain

The Judicial Appointments Commission for England and Wales (JAC) was established in April 2006 by the Constitutional Reform Act 2005 and is an independent non departmental public body sponsored by the Ministry of Justice. The JAC is required by statute to investigate any complaints arising from the judicial appointments process. If the applicant remains dissatisfied a complaint can then be made to the Judicial Appointments and Conduct Ombudsman.

In Scotland, recommendations for judicial appointments are made by the Judicial Appointments Board which was initially established on a non-statutory basis but is now provided for on a statutory basis by the Judiciary and Courts (Scotland) Act 2008. The judicial appointment processes employed by the Board are similar to those of the Judicial Appointments Commissions in England & Wales and Northern Ireland in terms of open advertisements; explicit competency frameworks; and interviews by panels. A personalised feedback process by telephone is also available to unsuccessful candidates if they wish to take advantage of this. The 2008 Act introduced provisions for dealing with complaints from candidates who are dissatisfied with the manner in which the Board has carried out its functions. The Act also makes provision for the Board's handling of the complaint to be referred subsequently to the Scottish Public Services Ombudsman if candidates wish to take this further.

Chapter 3

Complaints During the Year

During the year covered by this particular report I considered one complaint.

As the Ombudsman my role is to investigate the circumstances and determine whether maladministration has occurred in terms of an adverse impact on the appointments process in any particular competition. My statutory remit does not permit me to conclude whether or not a specific candidate should have been appointed by the Northern Ireland Judicial Appointments Commission. As the Ombudsman my role is not to act as an advocate or agent for either the complainer or those complained against but to take a fair and even handed approach in my investigation and adjudication upon the issues which is based on the evidence available to me and my assessment of it. I have focused on whether there was a failure to comply with prescribed procedures or some other aspect of the appointment processes affecting the individual candidate who has complained and which can be described as falling within the definition of maladministration. Because the statutory provisions require confidentiality it has not been my practice to include any details which could identify the complainant, other individual applicants or Commissioners in my reports.

This particular judicial post was advertised by the Commission which had delegated responsibility to a Business Committee for appointing the Selection Committee for any specific competition. The complainant was interviewed as part of a two tier process which saw a reduction in the number of candidates being considered following moderation after the first interview. The complainant was one of those interviewed at the second stage.

Following receipt of a complaint the Commission established a Complaints Committee and in keeping with its usual practice this consisted of individual Commissioners who had not taken part in this particular recruitment competition as members of the Selection Committee. The Commission's normal practice, which was also adopted in this case, is to ensure that staff who support the Complaints Committee have not previously been involved in the same selection competition.

The Complaints Committee investigated the different elements of the complaint and issued its report as required by section 9C(1) of the Justice (Northern Ireland) Act 2002. The Complaints Committee has delegated authority to act on behalf of the Commission in discharging its responsibilities under section 9C of the Justice (Northern Ireland) Act 2002 as detailed in its Complaints Policy and Procedure document. The Committee also ensures that a copy of its report is sent to the complainant after it has approved the final version and draws attention to section 9D of the Justice (Northern Ireland) Act 2002 (which provides for complaints to be made to my office) and also included the contact details.

Based on its consideration of the correspondence which the complainant had sent to the Commission, the Complaints Committee had grouped the different elements of the complaint under three broad headings namely: maladministration in assessment, constitution of the Selection Panel and confidentiality. The themes covered areas such as the assessment and interview questions not testing candidates with rigour; the ability and experience of assessors; the composition of the Selection Panel; bias against the complainant by a Selection Panel member; lack of confidentiality in the process with names of candidates being known more widely.

It would not be appropriate to discuss these separate elements of the complaint except to make two points. The Complaints Committee took the view that some elements of the complaint constituted maladministration and set out in its report why it considered this was the case. It also took the view that the complainant had not suffered any disadvantage as a result of this maladministration. The complainant disagreed with parts of the Complaints Committee report and challenged some of the statements and assumptions.

My Office contacted the complainant after I had received a written complaint (received outside the statutory time limit) and because it was not possible to arrange an early face to face meeting I subsequently had a lengthy telephone conversation with the complainant. The first issue I had to deal with was to explain to the complainant that the legislation was very clear in terms of time limits for receiving complaints and that our discussion needed to focus on whether there were any circumstances in which I could exercise my discretion in order to investigate the complaint.

The legislation makes it clear that ordinarily a complainant is expected to make a complaint within twenty eight days of the Commission informing the complainant of its decision. Should this not be the case the Ombudsman can exercise his discretion to take a complaint. I decided to exercise my discretion to investigate this particular complaint solely because the complainant drew my attention to some personal circumstances and that as a result an earlier complaint to my office had not been forthcoming. I informed both the complainant and the Commission of this decision.

I then made arrangements to begin the substantive investigation by organising a meeting with the complainant and which was my usual practice at the outset. These meetings provide me with an opportunity to explain my remit to the complainant and for clarifying points raised during the discussion as well as assisting me with defining the potential scope of my investigation. This approach was also possible because of the relatively small numbers of complaints that were received but also took into account the sensitivity and complexity of issues that were often raised by complainants in these competitions.

I noted that the complainant wished me to repeat an investigation into the same issues on which the Complaints Committee had undertaken an investigation and for some of them had already made a finding of maladministration. I explained to the complainant that I did not consider that was an appropriate course of action for me to take but I would consider issues arising (such as the question of a remedy) where the complainant took issue with the finding of the Complaints Committee. I also indicated that a number of other matters that had been raised could be subsumed into the terms of reference for my investigation where I considered this was appropriate.

It was clear that the Complaints Committee had a wide remit in its investigation and gave detailed consideration to all the issues including those where it had made a finding of maladministration. In a majority of the issues considered by the Committee I did not identify any further steps that I could take beyond its own investigation and deliberations based on the material available to it. I also took the view that the finding of maladministration in the Complaints Committee report was an appropriate conclusion under the headings identified by the Committee and because I had accepted this, in turn it allowed me to include the point (about remedy) in the terms of reference.

On the issue of confidentiality which had previously been raised with the Complaints Committee, I noted that the complainant felt unable to provide details of the sources of information and the reasons why this was the case. In my response I pointed out that in these circumstances I did not propose to investigate this matter because it would not give me the opportunity to undertake this in an even handed manner.

My investigation into the complaints involved:

- scrutiny of the documentation completed by the Selection Panel members which was concerned with the candidates who were interviewed during both sets of interviews that were organised for this particular competition;
- meeting with the complainant and seeking clarification of the issues;
- seeking further information about the recruitment process from the Chief Executive of the Commission;
- seeking further information from the Commissioner chairing the Selection Panel;
- seeking further information from another Commissioner on the Panel;
- considering the report produced by the Complaints Committee and
- considering all the background material relating to this competition including the minutes of the Selection Panel from its inception at the beginning of the competition up to the time of interviews with candidates.

The complainant had asserted that the covering letter from the Commission with the Complaints Committee report had referred to my role and to the appropriate section in the legislation but had not stipulated the 28 day limit that is set out (and which is ordinarily the limit unless I consider there are grounds for exercising my discretion). Whilst I would regard it as a reasonable proposition that my expectation would be for any lawyer to look at the relevant statutory provisions as part of their research, I was conscious that the Commission also recruits lay persons to roles such as the lay magistracy and tribunal membership. I suggested that the Commission might wish to consider applying a consistent form of wording drawing attention to time limits in its correspondence to complainants when they are being informed of their right to make a complaint to the Ombudsman.

My report and findings indicated that I considered that the Commission's governance framework and selection methodology are robust and were applied appropriately in this particular selection competition. Having had the opportunity to consider the primary documentation that was completed by the members of the Selection Panel I was satisfied that there was a consistent and contemporaneous recording of the interviews but did make some further observations for the

Commission to consider although these points did not raise any fatal flaws in the process. In a small proportion of the sections that were completed by the Selection Panel the markings were altered and some of the commentary was more sparse than others. Neither these markings or briefer comments suggested any outliers but I also noted that the best practice (in my view) during this competition was for changes in marking to be annotated with the reasons and for detailed note taking during the interview and in summary comments before the moderation process. Given the emphasis in the Commissions own training on ensuring a clear audit trail this should be a matter for further reflection. From my own experience of senior appointments in another context I suggested that a training exercise for Commissioners might be to consider a set of anonymised notes of interview and moderation from a Selection Panel during a collective discussion (and perhaps learning) about best practice as part of the training associated with the selection process.

I noted that there are robust arrangements for ensuring that all Commissioners who are involved in a selection competition should make any declarations of interest. The responses ranged from a brief commentary of one sentence at one extreme stating that there were no conflicts to the other end of the spectrum with a detailed response from a Commissioner (who subsequently had to stand down for other reasons) which identified the nature of previous contact with individual candidates before correctly (in my view) concluding that there were no conflicts. I appreciate that this issue is likely to impact more on the judicial and legally qualified Commissioners than lay Commissioners but suggested that the Commission might wish to give further consideration to this in terms of ensuring consistency and further enhancing its own audit trail.

I considered that the Complaints Committee had an extremely wide brief and considered the issues identified in the complaint in a methodical manner. The Committee's report had set out the evidence which it considered and its findings which were clearly the result of detailed discussion.

I became aware that for the complainant a key aspect of this complaint had been the strong sense of indignation associated with a perceived lack of confidentiality about this competition and the perception formed from discussions within the Bar library and beyond that judicial appointments in Northern Ireland are a closed system of appointment with strong overtones of patronage. This is deeply troubling not only because of the perceptions which the complainant (and indeed other applicants or potential candidates may hold) but because it strikes at the reputation of the Commission itself.

The Commission occupies an extremely important role in the constitutional architecture of Northern Ireland and promoting confidence in the administration of justice is an essential part of its remit. Whilst I am satisfied (from my consideration of the documentation) that the Commission has sought to refine and strengthen its internal governance and the robustness of the appointments process, it is clear that negative perceptions have played a major part in bringing forward this particular complaint as well providing an ongoing source for discussion within the Bar Library and elsewhere (which I recognised had been deeply distressing to the complainant).

Northern Ireland has a relatively small judicial and legal establishment and the Commission may wish to consider what additional actions it could take to promote confidence. It is clear that competitions for senior judicial roles in particular appear to generate much speculation within the legal community with names being publicly quoted. The Commission cannot be considered as the inevitable source of this and in this particular competition there was no evidence this was the case.

In accordance with the requirements of section 9F of the Justice (Northern Ireland) Act 2002 I sent the report, in draft, to the Office of the First Minister and deputy First Minister (OFMDFM) and to the Commission in the format mentioned above where no identifiable details about the complainant or other persons were included. The Commission response and that from OFMDFM was received in which the Commission highlighted a small number of factual accuracy issues and the OFMDFM noted its contents. The final version of my report including these comments was then sent to the complainant, the Northern Ireland Judicial Appointments Commission and the Office of the First Minister and deputy First Minister.

Chapter 4

Some Personal Reflections

During the past nine and half years I have had the opportunity to reflect on a number of themes and these have in the main been incorporated within previous Annual Reports (which can be accessed on the NIPSO website). In this chapter I have briefly summarised some of the salient points.

As an Ombudsman operating within a statutory framework that clearly defined my remit solely in terms of judicial appointments, I have always been conscious of the need to ensure that resources were used in a proportionate manner and that good practice from other Ombudsman jurisdictions was drawn on in order to inform how I responded to complaints which were received. In the interests of transparency I have ensured that each of my Annual Reports has included an Appendix showing the financial cost of my Office for that particular year.

In an associated context I gave evidence to the Assembly Justice Committee in February 2013 when it considered the rationalisation of my functions following proposals from the Department of Justice. In my comments to the Committee I pointed out that I appreciated that the discussion was not about abolishing the remit of this role but whether there were other options through which it could be delivered. My stance was that it was important to think about value for money in discharging these statutory responsibilities whilst also thinking about the contribution that this role could make towards promoting confidence in the administration of justice. I also made the point that whilst I felt it was inappropriate for me to argue for the retention of my own role, there were principles such as promoting confidence by ensuring that the Ombudsman's role was independent of the Executive and judiciary and that a non lawyer should be in post. Now that it has been enacted, I welcome the separate statutory provision that has been made for the Judicial Appointments Ombudsman and internal administrative arrangements by the Northern Ireland Public Services Ombudsman to deal with any complaints which are received.

I have also sought to engage with other Ombudsman jurisdictions either on a bilateral basis or through professional gatherings. In this context the publication *Guide to principles of good complaint handling* which was published in 2007 by the British and Irish Ombudsman Association has informed much of my approach with its emphasis on the themes of clarity of purpose; accessibility; flexibility; openness and transparency; proportionality; efficiency and quality outcomes.

Whilst the number of judicial appointments complaints during this ten year period which were considered by me has been relatively small (and this is common to other jurisdictions such as Scotland and England and Wales), a significant proportion have related to senior judicial roles and raised a number of sensitive and complex issues. This has meant that I have had to carefully consider how to operate within the statutory framework which stated that no information relating to judicial appointments must be disclosed without lawful authority and is confidential if it relates to an identifiable individual, whilst at the same time trying to strike an appropriate balance between transparency and confidentiality. As in Chapter Three of this Report I have tried to do this in each of my Annual Reports by providing an anonymous summary of the complaints so that the privacy and confidentiality of complainants is respected as well as complying with the statutory framework.

This balance was tested when I gave evidence to the Assembly Justice Committee in January 2014 following an earlier committee session where a complainant had given oral evidence about his application in a particular judicial appointment competition. In my opening comments to the Committee I reiterated the point that whilst the legislative framework did not allow the Committee to consider the details of my investigations into specific complaints, I recognised that it had a legitimate interest in the administration of justice in Northern Ireland of which judicial appointments were a part. Whilst this statement did not preclude detailed questions from some Committee members about the specific application rather than general principles, I was able to rely on sections of my Annual Reports as a means of responding without compromising my stance and interpretation of the legislative framework.

In my Foreword I have referred to the collaboration which I have received from both the Northern Ireland Judicial Appointments Commission and the Department of Justice. I would like to put on record my appreciation of their assistance. The Commission has always been willing to promptly make available any documentation that was requested as well as facilitating arrangements to meet with individual Commissioners or staff if this was necessary. The complaint in Chapter Three provides an indication of the range of material which I have been able to consider.

I have also appreciated the serious consideration that the Commission has given to the recommendations which I have made in various complaints reports given that as with other Ombudsman jurisdictions these are not binding. I have also been singularly fortunate in being able to deal with the same senior official within the Department of Justice throughout my tenure and would like to place on record my appreciation of his support and understanding.

When I was first appointed in September 2006 I realised that with a statutory provision to produce a report at the end of each financial year, it was unlikely that I would receive and complete any formal complaints within this period. I took this opportunity to meet with over sixty persons (most of them within Northern Ireland) to explore the broader context to judicial appointments. My first report highlighted some of the issues arising from these discussions as well as setting out some of my personal reflections. The discussions included comments focusing on:

- a marked lack of awareness in civic society of the Commission or Ombudsman's role;
- the lack of women in senior judicial roles despite their longevity of experience in the justice system;
- the possibility of candidate details circulating informally as a direct result of lawyers communicating with each other and speculation about their likelihood of being appointed;
- anecdotes about unnamed individuals who were so discouraged by previous experiences that they were unlikely to apply in the future and
- there were few complaints about judicial appointments.

The wider backdrop to complaints about judicial appointments in Northern Ireland (and elsewhere) is of course the need to ensure that public confidence in the administration of justice is maintained and enhanced. I have no doubt that the Commission has sought to raise awareness of the selection process through the provision of information in seminars and materials, as well as focusing on its internal selection processes and systems of governance since its inception. Diversity, and the gender dimension to this in particular, has been identified as a specific challenge and it is pleasing to see some progress in this area.

I have now had the opportunity to work in Northern Ireland in four different roles over nearly two decades. As I bring my last Report to a close I can reflect on the positive changes which have occurred during that time in this society. I believe that the process for appointing judges has continued to evolve in a structured and robust fashion through my observations in complaints investigations as the office holder responsible for the external independent tier of the complaints process. I have also tried to engender confidence in my Office by being accessible to complainants and seeking to provide as much information as I could within the statutory parameters governing my remit.

Appendix 1

Profile of the Ombudsman

Karamjit Singh CBE was appointed as the Judicial Appointments Ombudsman for Northern Ireland on 25 September 2006 and was reappointed in 2013 with his term expiring on March 31st 2016. He was appointed as Chairman of the University Hospitals of Leicester NHS Trust in October 2014.



He was appointed as the Social Fund Commissioner on 1st December 2009 and held two separate positions for both Great Britain and Northern Ireland as head of the independent review process reconsidering decisions made in relation to applications for the Social Fund grants and loans. As a result of legislation passed by the Westminster Parliament the discretionary Social Fund (and with it his statutory role) in Great Britain was abolished in July 2013. Similar legislative proposals were considered by the Northern Ireland Assembly and his appointment expired on 30th June 2015.

The early stages of Mr Singh's career have covered academia, casework in the voluntary sector, local government and the Commission for Racial Equality. His previous public appointments have included membership of the Police Complaints Authority, the Parole Board, the Criminal Cases Review Commission, the Civil Service Commission, the Judicial Studies Board, the Electoral Commission, the Employment Tribunal for England and Wales, the Queen's Counsel Selection Panel for England and Wales and chairing an NHS mental health Trust. Other previous roles in Northern Ireland include appointments investigating suspected miscarriages of justice and also regulating electoral issues.

His voluntary interests in the past have included being a Trustee of the Citizenship Foundation, the Lloyds TSB Foundation, the British Lung Foundation, the Joseph Rowntree Foundation and organising free medical camps in a North Indian village. He was awarded the CBE in 1999 for services to the administration of justice.

Appendix 2

SCHEDULE 1

LISTED JUDICIAL OFFICE – these roles all come within the remit of the Judicial Appointments Commission

Judge of the High Court

Temporary judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978 (c 23)

County court judge

Deputy county court judge

District Judge (Magistrates' Courts)

Deputy District Judge (Magistrates' Courts)

Coroner

Deputy coroner

Statutory officer (within the meaning of section 70(1) of the Judicature (Northern Ireland) Act 1978)

Deputy for a statutory officer under section 74 of that Act

Temporary additional statutory officer under that section

Chief Social Security Commissioner for Northern Ireland

Social Security Commissioner for Northern Ireland

Deputy Social Security Commissioner for Northern Ireland

Chief Child Support Commissioner for Northern Ireland

Child Support Commissioner for Northern Ireland

Deputy Child Support Commissioner for Northern Ireland

President of appeal tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998 (SI 1998/1506 (NI 10)))

Member of the panel of persons to act as members of such appeal tribunals

[Member of the panel of persons who may serve as chairmen of the Care Tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvements and Regulation) (Northern Ireland) Order 2003 (SI 2003/431 (NI 9))]

President of the Industrial Tribunals and the Fair Employment Tribunal

Acting President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (SI 1998/3162 (NI 12))

Vice-President of the Industrial Tribunals and the Fair Employment Tribunal

Acting Vice-President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998

Member of the panel of chairmen of the Industrial Tribunals

Member of the panel of chairmen of the Fair Employment Tribunal

President of the Lands Tribunal for Northern Ireland

Deputy President of the Lands Tribunal for Northern Ireland under section 3(1) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (c 29 (NI))

Other member of the Lands Tribunal for Northern Ireland

Temporary member of the Lands Tribunal for Northern Ireland under section 3(2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964

President of the Special Educational Needs and Disability Tribunal for Northern Ireland

Member of the panel of persons who may serve as chairman of that Tribunal

Member of the tribunal established under section 91 of the Northern Ireland Act 1998 (c 47)

Member of the Mental Health Review Tribunal for Northern Ireland

Lay magistrate

Member of the panel of persons who may serve as chairmen of a tribunal established for the purposes of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997 (SR1997/269)

Chairman of a Tribunal appointed under paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971 in its application to Northern Ireland

Member of a Tribunal appointed under paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland

President or Deputy President of Pensions Appeal Tribunals appointed under paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland

Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland

Deputy appointed under paragraph 6(1) of Schedule 3 to the Plant Varieties Act 1997 for the purpose of proceedings brought before the Plant Varieties and Seeds Tribunal in Northern Ireland

Member of the panel of persons to act as chairmen of Reinstatement Committees sitting in Northern Ireland (appointed under paragraph 2(1)(a) of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985)

President of the Northern Ireland Valuation Tribunal

Member of the Northern Ireland Valuation Tribunal

President or other member of the Charity Tribunal for Northern Ireland

Adjudicator appointed under Article 7(1)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002

Chairman appointed under Article 7(2)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002

Adjudicator appointed under Article 29 of the Traffic Management (Northern Ireland) Order 2005

Chairman of an Appeal Tribunal for the purposes of the Adoption (Northern Ireland) Order 1987

Appendix 3

Expenditure of the Ombudsman's Office

In the period 1 April 2015 – 31 March 2016 the expenditure of the Office of the Northern Ireland Judicial Appointments Ombudsman was **£49,218** and was made up as follows:

Salaries*		£38,988
Ombudsman	£8,925	
Secretariat**	£30,063	
Travel and subsistence*		£ 1,153
Design and Printing of Annual Report		£ NIL
Office running costs:		£ 9,077
Rent and Rates	£2,441	
Managed Services	£4,739	
Other Costs:	£1,897	
Total		£49,218

*** This expenditure relates to all activity covered in chapters 3- 4**

****This figure includes employer superannuation contributions**

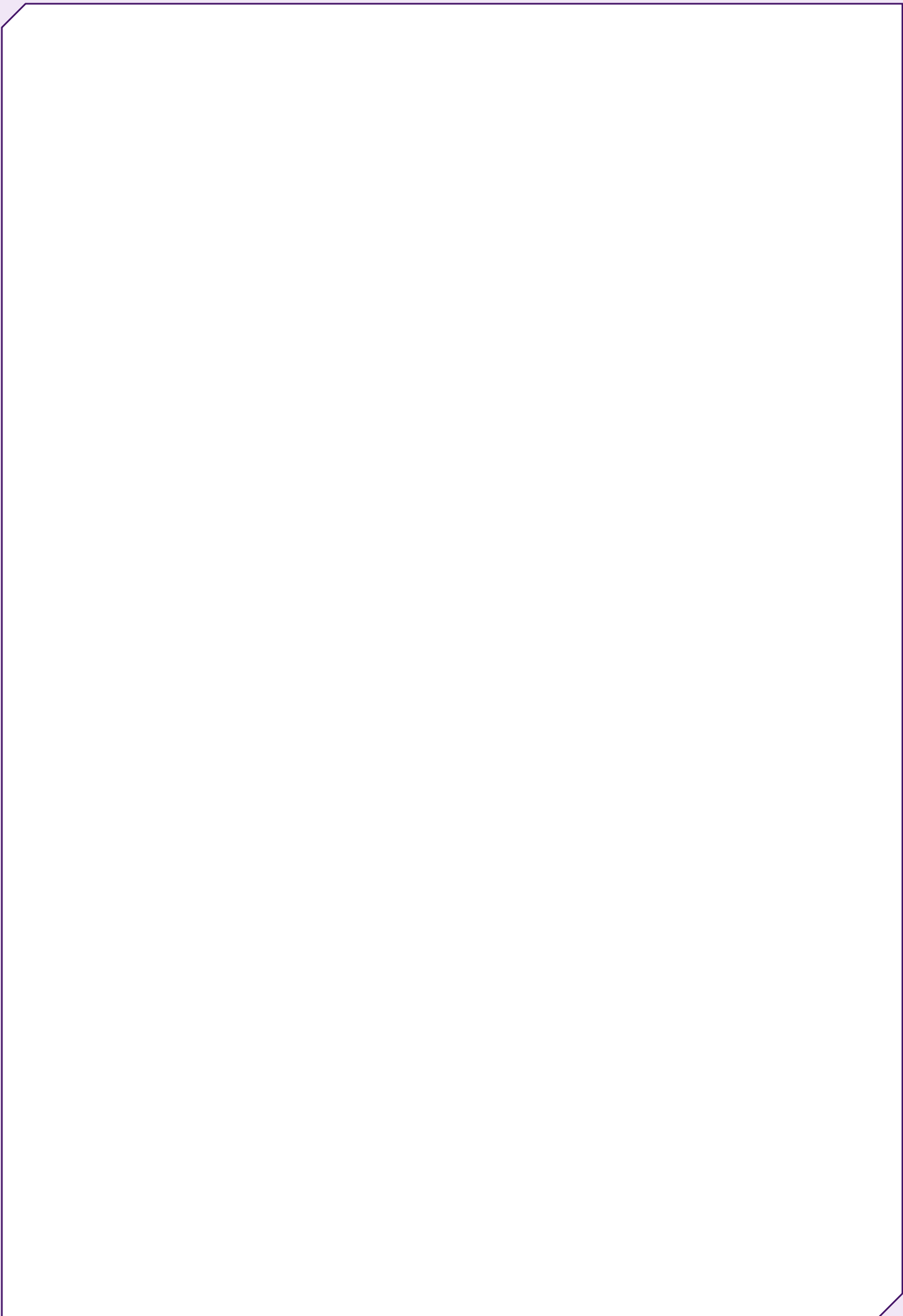
Appendix 4

Visit the NIPSO Website at:

www.nipso.org.uk

Northern Ireland Public Services Ombudsman

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33 Wellington House
BELFAST BT1 6HN**



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Laganside House
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