



Northern Ireland

**Judicial Appointments**  
Ombudsman

# Annual Report

**1 April 2016 to 31 March 2017**

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ANNUAL REPORT  
of the  
Northern Ireland  
Judicial Appointments Ombudsman  
1 April 2016 to 31 March 2017

Laid before the Northern Ireland Assembly  
under Schedule 3A (15) (1) of the Justice (Northern Ireland) Act 2002



## Preface

**I was appointed as the Judicial Appointments Ombudsman for Northern Ireland in April 2016 following the decision by the Northern Ireland Executive that the role should be adopted as an additional (and distinct) responsibility by me within the new role of the Northern Ireland Public Services Ombudsman (NIPSO).**



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

As a lawyer, it would be contrary to the legislation governing this role for me to conduct complaint investigations. However, I have put in place appropriate arrangements within my Office (as provided for by the Public Services Ombudsman Act (Northern Ireland) 2016) to ensure that a qualified person with appropriate complaints handling experience will take responsibility for any complaints that may emerge.

This is my first 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 report on one complaint that was received during the past year.

The devolution of policing and justice to the Northern Ireland Assembly has meant that the 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. The legislation (as amended) now provides for the Ombudsman to lay the report before the Assembly.

As Judicial Appointments Ombudsman I am pleased to lay this report before the Northern Ireland Assembly as the formal document of record. The role of considering and investigating complaints of maladministration in the judicial appointments process is important in order to ensure trust and confidence in that appointment process and to underpin the independence and impartiality of the judiciary.

*Marie Anderson*

**Marie Anderson**  
**Northern Ireland Judicial Appointments Ombudsman**



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## CHAPTER ONE

# The Background to the Ombudsman Role

### Introduction

My appointment as the Northern Ireland Judicial Appointments Ombudsman by Her Majesty the Queen took effect on 1 April 2016 when I was appointed as the Northern Ireland Public Services Ombudsman. This followed a decision by the Northern Ireland Assembly to subsume the role within that of the Northern Ireland Public Services Ombudsman. The purpose of my role as Judicial Appointments Ombudsman is to investigate complaints received from applicants for judicial offices in schedule 1 to the Justice (Northern Ireland) Act 2002 (the 2002 Act) who complain of maladministration by the Northern Ireland Judicial Appointments Commission (NIJAC). This is my first Annual Report as Judicial Appointments Ombudsman.

### 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 NIJAC in 2005 and the Northern Ireland Judicial Appointments Ombudsman in 2006.

### Legislation and Status

The 2002 Act provided the statutory framework for the establishment of the Northern Ireland Judicial Appointments Ombudsman. Sections 9A to 9H of the 2002 Act<sup>1</sup> defined the arrangements for investigating complaints which were made to both NIJAC and to the Judicial Appointments Ombudsman respectively and how they were to be reported.

The 2002 Act provides for the Judicial Appointments 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. However, the legislation governing the procedures for laying a report were amended by the Public Services Ombudsman Act (Northern Ireland) Act 2016 (the 2016 Act) to provide for the report to be laid before the Assembly by the Ombudsman. Copies of previous Annual Reports can be obtained from the website [www.nipso.org.uk](http://www.nipso.org.uk)

<sup>1</sup> 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 statutory role of the Judicial Appointments Ombudsman is defined as a corporation sole and is independent of the Assembly Government, the judiciary, NIJAC, the Northern Ireland Courts and Tribunals Service or the Department of Justice (Northern Ireland).

The tenure for the role of Judicial Appointments Ombudsman is for a period of seven years. (Prior to the role being subsumed within the role of Northern Ireland Public Services Ombudsman, tenure was for a period of five years at a time renewable for a further five). Schedule 3A of the 2002 Act provides for the Judicial Appointments Ombudsman and for a number of disqualifications as follows: that the post holder must not have practised law or 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. However provision was made in the 2016 Act at (Schedule 6(4)), for the Judicial Appointments Ombudsman to direct a person to exercise specified functions where the Ombudsman is ineligible to exercise that function. Further, where so directed, that person is to be treated, for the purposes of exercising that function, as the Ombudsman.

## Jurisdiction

The jurisdiction of the Judicial Appointments Ombudsman, under section 9D of the 2002 Act, is to consider complaints from candidates for judicial office where maladministration is alleged to have occurred in the handling of their application either by NIJAC or the Lord Chancellor. In considering whether or not maladministration has occurred, the role is to investigate 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 ought to have been appointed.

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

The Ombudsman does not have a remit to investigate complaints relating to judicial conduct as these complaints 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 2002 Act



## NIJAC Complaints Procedure

The legislation defined the Ombudsman's remit as covering 'Commission complaints' and 'Departmental complaints'. A 'Commission complaint' is a complaint asserting maladministration by NIJAC in discharging its functions during a specific competition or by a NIJAC complaints committee. A 'Departmental complaint' is one 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'.

All complainants must have exhausted the NIJAC complaints processes, or those established by the Lord Chancellor (Departmental complaint), before complaining to the Judicial Appointments Ombudsman. A complaint should generally be made to the Ombudsman not more than 28 days after a complainant was notified of the NIJAC decision or the Lord Chancellor. However, there is a discretion in determining whether a complaint can be investigated outside this 28 day period if the Judicial Appointments Ombudsman considers this is consistent with the purposes of the legislation.

## Draft Report

The 2002 Act requires the Judicial Appointments Ombudsman to submit a draft report relating to a Commission complaint to the First Minister and deputy First Minister and to the Chairman of NIJAC. In the case of a Departmental complaint a draft report must be submitted to the Lord Chancellor. In finalising the investigation report the Ombudsman must 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 Judicial Appointments Ombudsman is also required to include in his report a statement about any proposed changes which are not given effect to. The 2002 Act provides for the Judicial Appointments Ombudsman to issue a copy of the final investigation report to the complainant at this point.

## Recommendations

The Judicial Appointments Ombudsman is required to state whether or not the complaint was upheld and if so whether in whole or part. If a complaint is upheld the Judicial Appointments Ombudsman may recommend the action that should be taken by NIJAC as a result of the complaint. Any recommendation for payment of compensation can 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 has not been upheld, the Judicial Appointments Ombudsman may also make recommendations for consideration by NIJAC in relation to changes in judicial appointments practice or processes.





## Removal Tribunal

Section 8 of the 2002 Act, (amended by section 2(2) of the Northern Ireland Act 2009) provides 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 NIJAC. Section 8(3) provides for selection of the lay member (who would participate on the panel) by the Judicial Appointments Ombudsman.

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

## Developments in Great Britain

The Judicial Appointments and Conduct Ombudsman (JACO) 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 former Judicial Appointment Ombudsman's Office in 2006 indicated that a majority of the complaints received have been concerned with the conduct of judicial office holders as opposed to complaints about the judicial appointments process.

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



## CHAPTER TWO

# Judicial Appointments Processes in Northern Ireland and Great Britain

### Introduction

NIJAC 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 creation of NIJAC he was supported on an administrative basis by the Northern Ireland Court Service in the discharge of this duty<sup>2</sup>. The recommendations which were made following the Review of Criminal Justice<sup>3</sup> 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'<sup>4</sup>.

### 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 NIJAC to be established in advance of any arrangements proposed for the devolution of justice.

Following the devolution of policing and justice to the Assembly on 12 April 2010, NIJAC 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 NIJAC has a responsibility for ensuring that its statutory purposes are being met and that the use of resources is appropriate and effective. NIJAC is funded through its sponsor department, which is the Office of the First Minister and Deputy First Minister.

2 The Judicature (NI) Act 1978, gave the Lord Chancellor responsibility for the unified courts administration  
3 Review of the Criminal Justice System in Northern Ireland, published March 2000.  
4 Paragraph 6.102, Review of the Criminal Justice System in Northern Ireland.



## NIJAC Membership

NIJAC 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. NIJAC is supported in its work by a secretariat, which is headed by a Chief Executive.

## NIJAC's Roles and Responsibilities

NIJAC 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 NIJAC 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

NIJAC 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 1 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.



## NIJAC Complaints Procedures

NIJAC 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 NIJAC 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 NIJAC's internal process has been exhausted and an applicant for judicial appointment still remains dissatisfied, a complaint can be made to the Judicial Appointments Ombudsman.

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



## CHAPTER THREE

### Complaint Activity 2016/17

As Judicial Appointments 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. The statutory remit does not permit me to conclude whether or not a specific candidate should have been appointed by NIJAC. As the Judicial Appointments Ombudsman my role is not to act as an advocate for either the complainant or NIJAC but to conduct a fair investigation of the issues of complaint.

During 2016/17 one complaint about NIJAC was received and considered by my Office.

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 complained and which can be described as maladministration. Because the statutory provisions require confidentiality, no details which could identify the complainant, other individual applicants or Commissioners can be included in my Annual Report.

The complainant wrote to NIJAC about a number of issues within a High Court judge appointment process some time after the completion of the appointment scheme. The 2002 Act states that the Commission has a statutory duty to make arrangements for handling complaints from an applicant for appointment who is dissatisfied with any part of the selection process. That legislation provides for the period during which complaints should be made to NIJAC as being not more than 28 days after the matter complained of. A further provision states that arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.

The arrangements made by NIJAC for investigating any complaint made to it are contained within its Complaints Policy and Procedure 2016 (Complaints Policy). It was NIJAC's view that it was not required to make arrangements to investigate this complaint, given the timescale provided for by the legislation. NIJAC's Complaints Policy provides for discretion as to whether or not to investigate complaints made more than 28 days after the matter complained of. The exercise of this discretion is guided by specific criteria as set out in paragraph 2.8 of NIJAC's Complaints Policy. Paragraph 2.8 states that:



*'NIJAC has decided that the arrangements for investigating a complaint, including a Commission Complaint, need not apply to a complaint made more than 28 days after the matter complained of. Rather NIJAC has discretion whether or not to investigate complaints made more than 28 days after the matter complained of. The Three criteria on which the exercise of discretion will be based are (1) Is there a reasonable objective excuse for making the complaint late? (2) What if any, is the damage in terms of hardship or prejudice to the third party rights and detriment to good administration, which would be occasioned if the complaint were now accepted and investigated? (3) In any event, does the public interest require that the complaint should be accepted and investigated?'*

The NIJAC Complaints Committee considered each of the grounds for complaint and provided the reasons for its decisions in a report to the complainant. The Committee did not find merit in any of the nine issues. The Committee stressed that this analysis was to establish a preliminary view of the strength of the complainant's grounds of complaints so that the Committee could, if necessary, exercise its discretion to accept the complaint for a full investigation as would have been afforded the complainant had the complaint been lodged within 28 days of the matter(s) complained of.

Having assessed the merits of each of the complaints the Complaints Committee then addressed the criteria against which the exercise of discretion to accept a complaint is based under the 2016 Complaints policy. The Committee did not find a reasonable objective reason for not making the complaint within time and furthermore the merits of the complaint did not allow for it to exercise discretion to accept it for a full investigation.

The complainant was dissatisfied with this response (including the handling of the complaint) and brought the complaint to my Office. In considering whether the investigation of the complaint was necessary [Section 9D (2) of the Justice (Northern Ireland) Order 2002], the process followed by the Complaints Committee in the application of its Complaints Policy was examined in respect of accepting complaints out of time and consideration was given to whether the process had been applied fairly and robustly.

Consideration of this complaint focused on the exercise by NIJAC of its discretion in relation to whether or not to accept the complaint as 'out of time'. This included consideration of the relevant provisions of the 2002 Act and the application of NIJAC's Complaints Policy.



The decision was that NIJAC's Complaints Committee carried out a detailed and full assessment of the complaint in line with paragraph 2.8 of its Complaints Policy. It is not for the Judicial Appointments Ombudsman to question the merits of a decision, rather to establish if maladministration occurred in the process conducted by NIJAC for reaching a decision. Maladministration was not found by my office in the decision not to accept the complaint. Therefore, it was concluded that it was not necessary to conduct a full investigation into this complaint.

Having considered that the exercise of NIJAC's discretion to accept the complaint or not was taken correctly, and that it was not necessary for to investigate the complaint, it was not considered necessary to investigate the remaining issues raised by the complainant relating to NIJAC's complaints handling.



## Appendix 1 SCHEDULE 1

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

Judge of the High Court	Chief Child Support Commissioner for Northern Ireland
Temporary judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978 (c 23)	Child Support Commissioner for Northern Ireland
County court judge	Deputy Child Support Commissioner for Northern Ireland
Deputy county court judge	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)))
District Judge (Magistrates' Courts)	Member of the panel of persons to act as members of such appeal tribunals
Deputy District Judge (Magistrates' Courts)	[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))]
Coroner	President of the Industrial Tribunals and the Fair Employment Tribunal
Deputy coroner	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))
Statutory officer (within the meaning of section 70(1) of the Judicature (Northern Ireland) Act 1978)	Vice-President of the Industrial Tribunals and the Fair Employment Tribunal
Deputy for a statutory officer under section 74 of that Act	Acting Vice-President of the Industrial Tribunals and the Fair Employment
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	





Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998	Provisions) Order (Northern Ireland) 1997 (SR1997/269)
Member of the panel of chairmen of the Industrial Tribunals	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 the panel of chairmen of the Fair Employment Tribunal	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 of the Lands Tribunal for 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
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))	Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland
Other member of the Lands Tribunal for 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
Temporary member of the Lands Tribunal for Northern Ireland under section 3(2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964	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 Special Educational Needs and Disability Tribunal for Northern Ireland	President of the Northern Ireland Valuation Tribunal
Member of the panel of persons who may serve as chairman of that Tribunal	Member of the Northern Ireland Valuation Tribunal
Member of the tribunal established under section 91 of the Northern Ireland Act 1998 (c 47)	President or other member of the Charity Tribunal for Northern Ireland
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	



Appendix One  
Schedule 1

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





Northern Ireland

# Judicial Appointments Ombudsman

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