



Northern Ireland

Judicial Appointments
Ombudsman

Annual Report

2018 | 2019

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ANNUAL REPORT
of the
Northern Ireland
Judicial Appointments Ombudsman
2018-19

**Presented to the Assembly pursuant to Part 9
of the Local Government Act (Northern Ireland) 2014.**

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Preface

Introduction

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.

Background

A wide ranging review of the criminal justice system in Northern Ireland concluded in March 2000. One of its recommendations 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 Northern Ireland Judicial Appointments Commissioner (NIJAC) in 2005 and the Northern Ireland Judicial Appointments Ombudsman (NIJAO) 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 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

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).

Chapter One: NIJAO Report 2018-19

The tenure for the role of Judicial Appointments Ombudsman is for a period of seven years. 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.

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 decision by NIJAC 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.

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. This Office was established under the provisions of the Constitutional Reform Act 2005. The Annual Reports published since the establishment of the Judicial Appointments and Conduct 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.

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. The recommendations which were made following the Review of Criminal Justice 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'.

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'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 for appointment 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 judicial 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 whenever we are required to select a person to be appointed, or recommend a person 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 part 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 complaints process has been exhausted and an applicant for judicial appointment still remains dissatisfied, a complaint can be made to the Judicial Appointments Ombudsman.

Chapter Three: Complaint Activity 2018-19

The role of Judicial Appointments Ombudsman 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 the Ombudsman to conclude whether or not a specific candidate should have been appointed by NIJAC. The Ombudsman's 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 2018-19 the Judicial Appointments Ombudsman received one complaint against NIJAC. This related to a decision by the Commissioner's office not to accept a complaint, primarily on the grounds that it was submitted late. The Ombudsman wrote to NIJAC, suggesting that it carried out a review of the decision. Following this it agreed to carry out a fresh assessment of the complaint.

The complainant did not subsequently contact the Ombudsman.

Paul McFadden,

Northern Ireland Judicial Appointments
Ombudsman

Appendix I SCHEDULE 1 to the Justice (Northern Ireland) Act 2002

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

Section Two: Assessments, Investigations and Adjudications

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



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