



Northern Ireland

Judicial Appointments
Ombudsman

Annual
Report
2019~2020



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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

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, 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.

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.

Investigation

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.

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 the 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.

Chapter Two

Complaint Activity 2019-20

During 2019-20 no complaints about NIJAC were received by the Judicial Appointments Ombudsman.

Appendix 1

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
- 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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