

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**NORTHERN IRELAND JUDICIAL
APPOINTMENTS OMBUDSMAN**

AND

**NORTHERN IRELAND JUDICIAL APPOINTMENTS
COMMISSION**

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1. PARTIES TO THE MEMORANDUM

- 1.1 The Northern Ireland Judicial Appointments Ombudsman (the Ombudsman) was appointed under section 9A of the Justice (Northern Ireland) Act 2002 (2002 Act) by Her Majesty the Queen to investigate, determine and make recommendations on complaints from applicants for appointment to listed judicial office.
- 1.2 The Northern Ireland Judicial Appointments Commission (the Commission) is responsible for selecting persons for appointment to the offices of High Court judge, County Court judge, District Judge (Magistrates' Courts) and Child Support and Social Security Commissioner, and for selecting and appointing persons to all the other listed judicial offices.
- 1.3 This Memorandum sets out the principles that will underlie working relations between the Ombudsman and the Commission in the investigation of complaints alleging maladministration by the Commission or a committee of the Commission.

2. PURPOSE AND SCOPE OF THE MEMORANDUM

- 2.1 The Memorandum details how the relationship between the Ombudsman and the Commission will be conducted.
- 2.2 The Memorandum will be effective from the date of signature.
- 2.3 The Memorandum will be reviewed after it has been in place for one year and as necessary thereafter. Amendments may be made at any time subject to agreement between the Ombudsman and the Chief Executive of the Commission.

3. MATTERS ARISING IN RELATION TO THE MEMORANDUM

- 3.1 Issues in relation to the construction of the agreement or the duties and obligations contained therein will be addressed through communication between the Ombudsman's secretariat and the appropriate staff in the Commission. Matters which are not resolved to the satisfaction of both parties will be referred to the Ombudsman and the Chief Executive of the Commission.

4. CONFIDENTIALITY AND DATA PROTECTION

- 4.1 Both the Ombudsman and the Commission are committed to open Government and the meeting of responsibilities under the Freedom of Information Act 2000. Both parties also observe obligations under the Data Protection Act 1998 and section 9I of the Justice (Northern Ireland) Act 2002.

- 4.2 Neither the Commission nor the Ombudsman will, without the written consent of the other party, communicate or disclose to any third party any information relating to the other party obtained in the course of this agreement.
- 4.3 Information concerning judicial appointments should normally be classified 'Protected -Judicial Appointments' and should be treated with sensitivity by all parties.
- 4.4 It will be for the Commission to specify the restrictions to be applied to material and its usage. It is, of course, open to the Ombudsman to challenge the restrictions and to the Commission to challenge the Ombudsman on the application of restrictions to information or material at his disposal.

5. REMIT OF THE OMBUDSMAN

- 5.1 It is an overriding principle that appointments to judicial office be made solely on the basis of merit. The work of the Ombudsman contributes to that principle. He is charged, following a complaint, with investigating, determining and making recommendations to the Commission in relation to the conduct of schemes for appointment to listed judicial office.
- 5.2 The Ombudsman may only investigate complaints made by an applicant for judicial appointment.
- 5.3 A complainant must ordinarily have exhausted the complaints system operated by Commission before the Ombudsman may investigate.
- 5.4 The Ombudsman does not have to take up a complaint made more than 28 days after notification of Commissions decision on a complaint, but may do so at any time if he considers it appropriate.
- 5.5 The Ombudsman will obtain permission from the complainant to disclose material to the Commission before referring a complaint. In most cases it will be impractical to proceed if permission is withheld.

6. LIAISON BETWEEN PARTIES

- 6.1 The Ombudsman and the Commission are committed to the continuance of good working relationships and communication and recognise the importance of co-operation on matters of mutual interest.
- 6.2 The Ombudsman and the Commission will liaise to ensure the efficient and effective conduct of their respective responsibilities and alert each other, as soon as practicable, to matters which may impact on their respective responsibilities or the operation of this agreement.

- 6.3 The Ombudsman and the Commission will assist each other, as appropriate, in providing information required to inform responses to any initiatives, queries or Assembly questions.
- 6.4 The Ombudsman and the Commission will endeavour to respond promptly to requests for information and assistance from the other party.
- 6.5 The Ombudsman, as an independent public office holder, is responsible for his own relations with the media. He will advise the Commission, as appropriate, of substantive or potentially controversial announcements.
- 6.6 The Ombudsman, or his representative, will meet with the Commission at least once a year.
- 6.7 Where a complaint is received by the Commission and/or the Ombudsman the Commission will consider on a case by case basis whether the appointments process should continue whilst a complaint is being considered and advise the Ombudsman as appropriate.

7. COMPLAINTS TO THE COMMISSION

- 7.1 Where a complaint of maladministration is made to the Commission it will inform the Ombudsman of the complaint and the proposed action and timeframe for completion of the investigation.
- 7.2 The Ombudsman will be advised when an investigation has concluded and how the complaint was resolved.

8. CONDUCT OF AN INVESTIGATION BY THE OMBUDSMAN

- 8.1 The Ombudsman will notify the Commission of any complaints received, and the proposed action and timeframe for completion of the investigation.
- 8.2 To inform his initial consideration, the Ombudsman may seek copies of relevant background information (e.g. job descriptions, terms and conditions of appointment) before referring complaints to the Commission.
- 8.3 The method of investigation will be decided by the Ombudsman and may vary from case to case. Complaints may be decided on the basis of records, correspondence or comments from officials alone.
- 8.4 The Commission will be given the opportunity to respond to a complaint, any points made by a complainant and questions posed by the Ombudsman (the Ombudsman will indicate the aspects of the response which will be disclosed to complainants).
- 8.5 The Ombudsman may request a meeting with the Commission to discuss the issues raised in a complaint. Such meetings may take place either before or after the Commission has responded to a complaint.

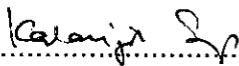
- 8.6 Following receipt of the Commission's initial response, the Ombudsman may seek additional information, documentation or clarification.
- 8.7 The Ombudsman and the Commission may seek independent legal advice on issues emerging from complaints as they see fit.
- 8.8 The Ombudsman may, on occasion, find it necessary to seek comments from complainants on a Commission response to a complaint.
- 8.9 A copy of a draft anonymised report on a complaint will be referred to the Commission and the First Minister and deputy First Minister acting jointly for comment.
- 8.10 In finalising a report the Ombudsman will take into consideration comments made by the Commission or the First Minister and deputy First Minister acting jointly on the draft report.
- 8.11 Once the investigation of a complaint is complete, the Ombudsman will submit a full written signed anonymised report in duplicate to the Commission and the First Minister and deputy First Minister. In reporting, the Ombudsman will:
- state what findings he has made;
 - indicate whether or not the complaint was found to be justified;
 - recommend what measures, if any, are appropriate to make amends to the complainant, and other applicants, including the payment of compensation for loss suffered as a result of the matter complained of (but not in respect of any earnings that the complainant would have received had their application for appointment been successful);
 - recommend what measures, if any, should be taken to improve procedures;
 - identify matters raised in the complaint on which the Ombudsman could not reach a firm conclusion but which may warrant further scrutiny; and
 - highlight any proposals made by the Commission or the First Minister and deputy First Minister acting jointly to change the draft report which were not given effect to.
- 8.12 The Ombudsman will not express any opinion as to whether a candidate should have been appointed to the office for which they applied.
- 8.13 The Ombudsman will notify the complainant in writing of the outcome of the investigation at the same time as the report is referred to the Commission and the First and deputy First Ministers. The complainant will receive a version of the report, which, for reasons of confidentiality, will not identify commentators, other candidates or participants in the selection process. Information which, if disclosed, would contravene section 91 of the Justice (Northern Ireland) Act 2002 and the Data Protection Act 1998 will also be excluded from the complainant's copy of the report.

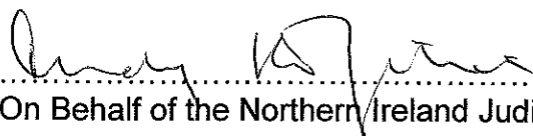
9. TIMESCALES

- 9.1 Both parties will endeavour to respond promptly to requests for information and/or comments made by the other party.
- 9.2 The Commission will notify the Ombudsman of complaints within 5 working days of receipt.
- 9.3 The Ombudsman will notify the Commission of complaints within 5 working days of receipt.
- 9.4 The Commission will endeavour to respond to requests for information, clarification or documentation on issues raised by complainants, including copies of requisite papers, within 10 working days of the request.
- 9.5 The Commission will endeavour to respond to correspondence and other miscellaneous issues within 10 working days of the request unless a shorter timescale is agreed.
- 9.6 In exceptional circumstances, a meeting may be required to discuss a complaint before a response is made. Such meetings shall be held at the earliest practicable date.
- 9.7 The Commission will endeavour to comment on draft reports within 10 working days of the referral date.
- 9.8 The Commission will endeavour to check the factual accuracy of relevant sections of the Ombudsman's annual report within 15 working days of the request unless a shorter timescale is agreed.
- 9.9 Ordinarily the Ombudsman will endeavour to conclude the complaint investigation within 8 weeks of receipt. However the timeframe will be dependant on the timely provision of information by the parties.
- 9.10 Where either party considers that a timescale is not practicable, the other party will be advised as soon as possible of the delay and the reasons for it.

10. SIGNATURE

This Memorandum is agreed and signed by:


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Northern Ireland Judicial Appointments Ombudsman


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On Behalf of the Northern Ireland Judicial Appointments Commission

13th April 2014
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(Date)