



**NORTHERN IRELAND  
JUDICIAL APPOINTMENTS COMMISSION**

Complaints Policy and Procedure

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## **POLICY**

### **1. Background**

1.1 Northern Ireland Judicial Appointments Commission (NIJAC) was established on 15 June 2005 as an independent public body under the Justice (Northern Ireland) Acts 2002 & 2004 (the 2002 and 2004 Acts), as amended. Upon the devolution of justice on the 12 April 2010 the Northern Ireland Act 2009 (the 2009 Act) extended NIJAC's statutory duties.

1.2 NIJAC is an appointing body, selecting and appointing to non-crown judicial offices in various Courts and Tribunals throughout Northern Ireland. NIJAC select and make recommendations for crown appointments up to and including High Court Judge.

1.3 NIJAC selects, recommends and appoints on merit, through fair and open competition and by selecting from the widest possible range of eligible applicants. Its work encompasses the principles of:-

- Merit;
- Independence;
- Diversity;
- Fairness;
- Transparency;
- Accountability;
- Partnership.

### **2. Purpose**

2.1 NIJAC seeks to develop and promote continuous improvement by a range of means including scheme feedback, comments or complaints. We are committed to dealing with any difficulties that may arise in the delivery of our commitments fairly, thoroughly, impartially and in a timely way. This policy relates to complaints arising from any aspect of NIJAC conducting its

function and sets out the arrangements for 'Commission' and 'Non-Commission' Complaints. It also provides a mechanism for informal resolution through direct engagement with the Chief Executive or her nominee.

2.2 'Commission Complaints' are defined by Section 9B of the Justice (Northern Ireland) Act 2002. A Commission Complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission who claims to be adversely affected, as an applicant for selection or as a person selected, by the maladministration complained of.

2.3 Those making a 'Commission Complaint' are required to complete and deliver to NIJAC the form at Annex 1.

2.4 Those making any other type of complaint are required to complete the form at Annex 2.

2.5 Complaints regarding staff, which are not 'Commission Complaints', will be directed to the Chief Executive, or her nominee or the Chairman as appropriate and will be handled under Northern Ireland Civil Service procedures.

2.6 A Complainant is required to set out the grounds of complaint and sources of information upon which s/he seeks to rely. Complainants are obliged and required to assist the investigation openly and honestly and the Complaints Commissioner ("the CC") or the Complaints Committee ("the CCte") has discretion to dismiss a complaint on the basis of a breach of that obligation. Equivalent discretion exists when a complaint is considered to be vexatious.

2.7 NIJAC will investigate a complaint made within 28 days of the matter complained of.

2.8 Pursuant to section 9C(3) of the Justice (Northern Ireland) Act 2002 NIJAC has decided that the arrangements for investigating any 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<sup>1</sup> 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?

Amongst the circumstances that may be taken into account when considering those criteria are (i) The length of time since the matter complained of occurred; (ii) the public interest in the issue raised being resolved; (iii) whether accepting and investigating the complaint would cause hardship or prejudice or would be detrimental to good administration; (iv) the strength of the complainant's case; (v) the potential consequences to the complainant; (vi) when did the complainant become aware of the matters complained of; (vii) when did the complainant become aware that he/she had grounds to complain; and (viii) whether the complainant had taken time in attempts to resolve the matter with NIJAC in circumstances where NIJAC had been requested in writing to and had agreed in writing that during that time the complainant need not lodge a formal complaint.

Ordinarily, in the context of exercising discretion, no weight will be given to whether the complainant had taken time to pursue an alternative remedy, such as Freedom of Information or other routes.

2.9 In relation to a Commission Complaint made during the progress of a current scheme ordinarily and unless a 'fatal or fundamental flaw' is apparent the scheme will proceed.

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<sup>1</sup> suitably adapted from R v Secretary of State for Trade and Industry, ex-parte Greenpeace Limited (2000) Env LR 221 where Kay J adopted and then posed three criteria set out by Laws J in R v Secretary of State for Trade and Industry, ex-parte Greenpeace Limited (no 1) (1998) Eu LR 48 (1998) Env LR 415 .

### **3. Commission Complaint: Role of the Judicial Appointments Ombudsman**

3.1 The Judicial Appointments Ombudsman for Northern Ireland (JAO) investigates complaints from applicants for judicial appointments who allege they have been adversely affected by maladministration by NIJAC. This has been set out in legislation as:

*“A commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.”  
(Justice (Northern Ireland) Act 2002)*

3.2 The JAO will normally expect the Complainant to exhaust the complaint mechanisms within NIJAC before submitting a complaint to his office.

3.2 When NIJAC receives a qualifying ‘Commission Complaint’ the Chief Executive or her nominee will inform the JAO that a complaint has been received, however, the Complainant will remain unidentified. The JAO will also be informed of the outcome and the date it was issued to the complainant.

### **4. Commission Complaint: What is maladministration?**

4.1 Maladministration is not defined and it is acknowledged that it is a broad concept. A helpful guide to the meaning of maladministration is aided by the comments of Lord Denning in Regina v Local Commissioner for Administration for the North and East Area of England, ex parte Bradford Metropolitan City Council [1979] QB 287 where he said at Page 311:

*‘So this is the guide suggested to the meaning of the word ‘maladministration’. It will cover bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on.’*

*'It 'would be a long and interesting list,' clearly open-ended, covering the **manner** in which a decision is reached or discretion is exercised; but excluding the **merits** of the decision itself or the discretion itself. It follows that 'discretionary decision, properly exercised, which the complainant dislikes but cannot fault the manner in which it is taken, is excluded': see Hansard, 734 H.C. Deb., col 51.*

*In other words if there is no maladministration, the Ombudsman may not question any decision taken by the authorities. He/she must not go into the merits of it or intimate any view as to whether it was right or wrong. This is explicitly declared in section 34 (3) of the Act of 1974. He/she can enquire whether there was maladministration or not. If he/she finds none, he/she must go no further. If he/she finds it, he/ she can go on and enquire whether any person has suffered injustice thereby.'*

## **5. Policy Objectives**

5.1 The objectives of the policy are to:

- (i) implement a fair and transparent process with regards the handling of all complaints that are made to NIJAC;
- (ii) ensure that this procedure is applied fairly and consistently to ensure the process is administered fairly and without bias;
- (iii) set out the key roles, responsibilities and procedures for those involved in the assessment and administration of complaints; and
- (iv) ensure any lessons learnt are reported and applied.

## **6. Scope**

6.1 This policy and procedure will apply to:

- Complainants
- NIJAC Commissioners and staff
- Those supporting the work of NIJAC, including Co-opted Members.

## **7. Key Principles of Effective Complaint Handling**

7.1 Below are the principles of effective complaint handling:<sup>2</sup>

- (i) accessible and simple
- (ii) fair and impartial
- (iii) timely, effective and consistent
- (iv) accountable and
- (v) delivering continuous improvement.

## **8. Investigating Complaints**

The powers set out in this part of the policy which are to be exercised by the Chairman of NIJAC may instead be exercised by another member of NIJAC (“an Appropriate Person”) nominated for that purpose by the Chairman either generally or specifically in relation to a particular complaint.

### **8.1 Investigating ‘Non Commission Complaints’**

8.1.1 The Chief Executive or her nominee will appropriately and proportionately investigate and determine all non – Commission complaints and advise the Complainant as appropriate.

### **8.2 Investigating ‘Commission Complaints’**

8.2.1 A Commissioner, known as the Complaints Commissioner (CC) will be appointed by the Chairman of NIJAC for a three year period.

8.2.2 Should the CC be of the view that additional members are required to serve on a Complaints Committee (CCte) s/he will make a

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<sup>2</sup> NIJAC have adopted principles from the ‘Standards for Complaint Handling in the Public Service’, March 2014. The Permanent Secretaries Group (PSG) convened an Inter-departmental Group on Complaint Handling which made a number of recommendations which were accepted and included in the Inter-departmental Group’s ‘Complaint Handling Across Government’ final report. This included acceptance that complaints handling should be subject to coverage by internal audit.



recommendation through the Chief Executive or her nominee to the Chairman of NIJAC for a decision as to whether it is necessary to form a CCte and if so for the appointment by the Chairman of NIJAC of all the members of the CCte whose members may or may not include the CC. The Chairman of NIJAC will nominate a NIJAC Commissioner to chair any CCte and in the event that no NIJAC Commissioner is able to chair a CCte then the Chairman of NIJAC may nominate a person who is not a member of NIJAC to chair the CCte.

8.2.3 Where the CC identifies a conflict of interest another CC will be appointed by the Chairman of NIJAC to determine the complaint.

8.2.4 NIJAC's Standing Orders sets out the Code of Practice for members of ad hoc committees such as a CC or a CCte. The 2002 Act provides that any committee or sub-committee may consist of or include persons who are not members of NIJAC.

8.2.5 The CC/CCte in accordance with this policy and the procedure will appropriately and proportionately investigate, provide analysis and make a determination. The final decision of the CC/CCte is to uphold or not the complaint and state if there is adverse impact; it is also to make recommendations to Plenary as to what if any action to take. Plenary will decide upon any actions arising, which may be based upon recommendations from the CC/CCte.

8.2.6 Legal advice may be sought.

## **9. Communicating the Outcome of a 'Commission Complaints'**

9.1 The CC/CCte will set out its findings of fact and determination. The CC/CCte's report will be communicated internally to Plenary and be issued to the Complainant by the Chief Executive or her nominee.

9.2 Complainants will be advised that they have the further option of seeking redress through the JAO if they are not satisfied with the outcome of the complaint investigation. (See contact address at section 3 of the Complaints Procedure). The JAO will consider the investigation of a complaint made to him by a qualifying complainant under section 9D of the 2002 Act.

## **10. Reporting on Complaints**

10.1 It should be noted that in accordance with section 9I of the 2002 Act, information about judicial appointments is **confidential** and that, consequently, NIJAC's report to the Complainant of its investigation will not include information which relates to an identified or identifiable individual other than the Complainant. In addition while section 7 of the Data Protection Act 1998 provides rights of access to personal data, a report should take cognizance of paragraph 3 of Schedule 7 which sets out an exemption on the disclosure of personal data that is processed for the purpose of assessing suitability for judicial office.

The investigation report is considered confidential and will not be shared beyond the Complainant, those investigating and NIJAC.

10.2 Confidentiality will be respected in accordance with the Confidentiality Policy no matter the nature of the complaint, unless there is a statutory or regulatory necessity to share the information.

10.3 All formal complaints are reported in the Annual Report for the accounting period.

10.4 Complaints are anonymised and reported to Audit and Risk Committee.

10.5 This policy and procedure does not preclude a complainant referring a complaint to any other relevant external authority.

## **11. Variation of policy**

11.1 NIJAC may, at any time and at its discretion, vary, amend or make reasonable adjustments to this policy or to its procedures and practices implementing this policy, if it considers that this is reasonably necessary to undertake its statutory responsibilities.

## **12. Policy Review**

12.1 This policy and procedure will be reviewed in three years from the date of approval or amendment or as the need arises.

## **Northern Ireland Judicial Appointments Commission**

### **COMPLAINTS PROCEDURE FOR COMMISSION COMPLAINTS**

#### **Making a Commission Complaint**

- 1.1 A complaint should be made within 28 days of the matter complained of on the appropriate form (page 15) and delivered to NIJAC .
- 1.2 The complaint will be acknowledged within 3 working days of receipt.
- 1.3 Upon receipt the Chief Executive or her nominee will confirm whether the complaint is a 'Commission Complaint' before adopting this procedure and has discretion to consult with the Complaints Commissioner (CC).

#### **Informal Resolution**

- 1.4 The Complainant may be invited to discuss with the Chief Executive or her nominee, the nature of the complaint, including:
  - (i) the specifics of the complaint made;
  - (ii) the basis upon which the complaint is made;
  - (iii) any relevant documentation upon which the Complainant wishes to rely in support of their complaint; and
  - (iv) whether an informal route or explanation can be provided to resolve the complaint.

#### **2. A Formal Complaint**

- 2.1 If Informal Resolution is unsuccessful or inappropriate the Complainant will be advised of the steps NIJAC will take.

- 2.2 The Chief Executive or her nominee will consult the CC and if the CC is of the view that additional members are required to assist in reaching a determination, they will follow the arrangements set out in the policy at 8.2.2.
- 2.3 Determinations may be based upon only the information provided. Further information may be sought from others including the Complainant and the Selection Committee.
- 2.4 Where an investigation is to take place the Terms of Reference, should they be required will be agreed and an anticipated timescale to conclude the investigation will be indicated to the Complainant.
- 2.5 Emphasis will be on achieving as speedy a resolution as the circumstances of the investigation and the nature of the complaint will permit. NIJAC will endeavour to reach a determination in respect of a complaint within 28 days of the commencement of the investigation. Where it is not possible to meet this timescale, the Complainant will be advised and provided with a revised indicative time-table.
- 2.6 In relation to a Commission Complaint made during the progress of a current scheme ordinarily and unless a 'fatal or fundamental flaw' is apparent the scheme will proceed. To continue, to delay or to halt the appointment scheme is the decision of Plenary.
- 2.7 If necessary the CC/CCte or Plenary will give consideration how best to communicate with other affected applicants. The SC and / or the Chairman may be consulted.
- 2.8 It is important to emphasise that information about judicial appointments is **confidential** (section 9 of the 2002 Act and paragraph 3 of Schedule 7 to the Data Protection Act 1998, refer) and that, consequently, NIJAC's report to the Complainant of its investigation and determination will not include information which

relates to an identified or identifiable individual other than the Complainant. This report will be treated in confidence.

- 2.9 Confidentiality will be respected in accordance with the Confidentiality Policy no matter the nature of the complaint, unless there is a statutory or regulatory necessity to share the information.

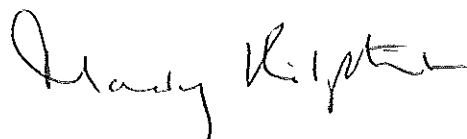
### **3. Complaints to the Office of the Northern Ireland Judicial Appointments Ombudsman**

- 3.1 Complainants who wish to refer a complaint to the Judicial Appointments Ombudsman should do so within 28 days of issue of the Commission's decision. The JAO can be contacted at:

Northern Ireland Judicial Appointments Ombudsman  
c/o Northern Ireland Public Service Ombudsman  
Progressive House  
33 Wellington Place  
Belfast  
BT1 6HN

This Complaints Procedure has been adopted by the Plenary Committee of the Northern Ireland Judicial Appointments Commission with effect from 25 February 2016.

Signed:



Chief Executive  
29 February 2016

## Complaints Form for Commission Complaint

Section 9B of the Justice (Northern Ireland) Act 2002 defines a Commission Complaint as a qualifying complaint of maladministration by the Commission or a committee of the Commission and being adversely affected, as an applicant for selection or as a person selected, by the maladministration complained of.

<b>Name:</b>
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<b>Telephone Contact Details:</b>	<b>Mobile:</b>
	<b>Home:</b>
<b>E Mail Address:</b>	

<b>Address:</b>
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### Details of Complaint

**1 (a)** Date(s) upon which the matter(s) complained of occurred:

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If you consider that any matter complained of occurred more than 28 days prior to the making of this complaint or if it could be held that any matter complained of occurred more than 28 days prior to the making of this complaint then state whether you consider that discretion should be exercised to accept and investigate the grounds of complaint or any of them and set out why you consider that discretion should be exercised to do so.

A large, empty rectangular box with a black border, intended for the user to provide details of the matter(s) considered to be maladministration.

**1 (b)** Please set out as succinctly as circumstances allow the detail of the matter(s) which you consider may constitute maladministration.

You may attach documents upon which you seek to rely. A determination may be made solely on the information and documents you provide.

A large, empty rectangular box with a black border, intended for the user to attach documents or provide further information related to the matter(s) described above.



**1 (c)** Please set out as succinctly as circumstances allow the adverse impact you consider to have occurred.

**2.** Please set out what you consider is a reasonable resolution of your complaint and specify the reasons why you consider such a resolution to be reasonable.

**3. Signature of Complainant**

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**Complaints Form:**

<b>Name:</b>
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<b>Telephone Contact Details:</b>	<b>Mobile:</b>
	<b>Home:</b>
<b>E Mail Address:</b>	

<b>Address:</b>
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**Please set out, as succinctly as circumstances will allow:**

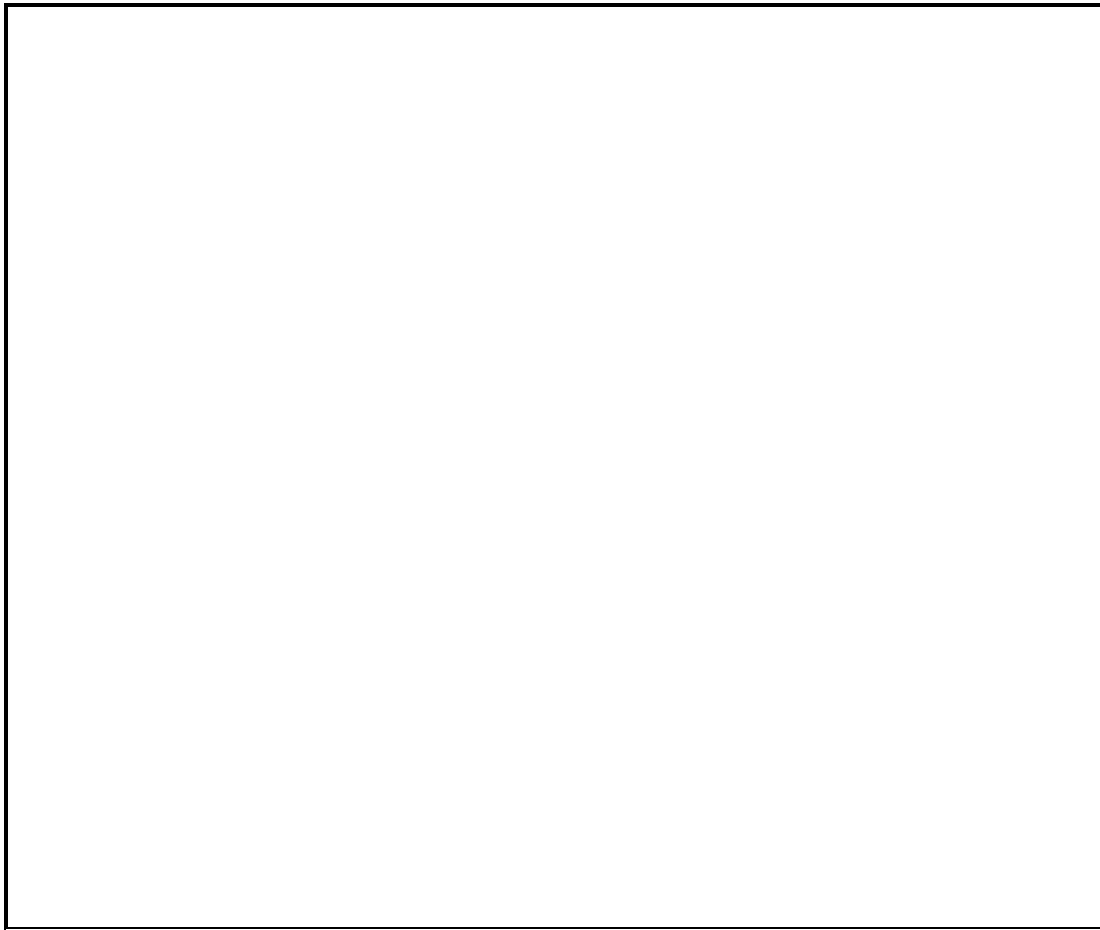
**1 (a)** the date upon which the matter complained of occurred

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**1 (b)** the detail of the complaint.

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**2. Please set out what you consider is a reasonable resolution of your complaint and specify the reasons why you consider such a resolution to be reasonable.**

A large, empty rectangular box with a black border, intended for the complainant to provide a reasonable resolution and reasons for it.

**3. Signature of Complainant**