



**Attorney General  
for Northern Ireland**

Ms Christine Darrah  
Clerk to the Committee for Justice  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Our Ref: AGNI/12/010

**COMMITTEE FOR**

**16 FEB 2012**

**JUSTICE**

Date: February 14 2012

Dear Ms Darrah

**Review of Judicial Appointments in Northern Ireland**

Thank you for your letter of 3 February 2012 inviting me to submit views for the Committee's consideration as part of its review of the arrangements for appointment and removal of judicial office holders.

I understand that you are tasked with reviewing the operation of the amendments made by Schedules 2 to 5 of the Northern Ireland Act 2009. Below are some comments on those provisions and some general observations.

Schedule 3 continues the statutory requirement that appointments or recommendations for appointment to a listed judicial office be made solely on the basis of merit. There may be little new in this in that any rational system of judicial recruitment would always want to appoint those who were regarded as likely to be the best judges. A fundamental question that exists about the Northern Ireland Judicial Appointments Commission (NIJAC) system is whether the highest score at one or more interviews is a necessary indication that the 'best' candidate has been identified. I note that the research commissioned by NIJAC found that few respondents were able to define merit clearly and that the methodology used to assess candidates was unfamiliar to many of the potential applicants.

The NIJAC merit system does not appear to operate for appointments to the Court of Appeal or to the office of Lord Chief Justice. Appointments to the Court of Appeal have for some time been based on seniority among existing judges of the High Court. The 2009 Act introduced a requirement that the Prime Minister consult NIJAC before making a recommendation. There does not seem to be any clear reason for these senior appointments not being

made in accordance with the more open statutory appointment criteria. The point is, perhaps, particularly important in relation to Court of Appeal appointments; appointment on the basis of mere seniority will often involve an obvious by-pass of the merit principle.

NIJAC itself may be less transparent (and is almost certainly more expensive) than more traditional methods of appointment: NIJAC cannot answer Assembly questions, for example, while Ministers can. On analysis it may well be that NIJAC is much less accountable vehicle for appointment than the traditional politically accountable method which is still extensively deployed, for example, for Federal judges in the United States.

An alternative which the Committee may wish to explore and which would almost certainly be less expensive than NIJAC would be to have judicial appointments and re-appointments handled through the Lord Chief Justice's office with the assistance of HR Connect.

In relation to removals I see no real reason why there should not be a restoration of the classic constitutional position: that removal of a judge of the Court of Judicature in Northern Ireland is only possible by Her Majesty following a resolution of both Houses of Parliament

I am happy to explore these thoughts with the Committee in person if this would be considered useful.

Yours sincerely



John F Larkin QC  
Attorney General for Northern Ireland