

NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

Karamjit Singh CBE

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

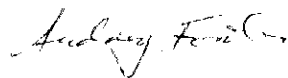
21 February 2012

Dear *Christine*,

**Review on the arrangements for appointment and removal of judicial office holders**

Further to your letter and enclosures dated 3 February 2012, I enclose a written submission to the Justice Committee prepared by Karamjit Singh CBE, Northern Ireland Judicial Appointments Ombudsman, for consideration.

Yours sincerely,



**Audrey Fowler**  
**Office of the Northern Ireland Judicial Appointments Ombudsman**

## **Submission to the Committee for Justice Review on Arrangements for Appointment and Removal of Judicial Office Holders**

### ***Introduction***

My submissions to the Committee are based on my perspectives which are drawn from my own position as the Judicial Appointments Ombudsman for Northern Ireland. I was appointed as the first postholder for a five year term beginning in September 2006 and this appointment was extended for a further two year term until September 2013. This role was created by the statutory framework as set out in the Justice (Northern Ireland) Act 2002 and provides an independent and external element for those individuals who wish to complain about any administrative aspect of their own experience as candidates during an appointment process for judicial office. The devolution of policing and justice issues to the Northern Ireland Assembly has meant that my accountability framework in previously reporting to the Lord Chancellor and the Westminster Houses of Parliament has now been replaced by the Minister of Justice and the Northern Ireland Assembly.

My remit is to investigate complaints for judicial appointments where maladministration or unfairness is alleged to have occurred. I do not have any role in commenting on whether a specific individual should have been appointed in any competition. Unlike the Judicial Appointments and Conduct Ombudsman in England and Wales I do not have a remit for investigating complaints of conduct against judicial office holders. The Constitutional Reform Act 2005 stipulates that I should not be a lawyer or have sat in any judicial capacity previously. I was appointed following a publicly advertised selection process.

My perspectives on the arrangements for judicial appointments and removals are drawn from my consideration of complaints during this period and contacts with the Northern Ireland Judicial Appointments Commission. Since September 2006 I have published five Annual Reports which have previously been laid before the Westminster Parliament and since the devolution of policing and justice have been laid before the Northern Ireland Assembly.

The assumptions underpinning all five of my Annual Reports are as follows:

- the demonstrable independence and impartiality of the judiciary in discharging their responsibilities ;
- that judicial appointments should be free of bias, both in terms of perception and reality;
- that judicial appointments should not just be of interest to the legal community but also to the wider public.

A statutory requirement to produce my first Report six months after my appointment for the year ending March 2007 provided me with a unique opportunity to meet with a wide spectrum of sixty individuals who were active in different facets of civic life. Their names are listed in the Appendix to that report.

### *Themes Arising From These Discussions*

I have summarised below some of the themes that were identified by various individuals during these discussions. The full report can be viewed on the website at [www.nijao.gov.uk](http://www.nijao.gov.uk)

Complainants needed to understand how the complaints process operated; and it was important for my office to show it was demonstrably independent; as well as creating a wider understanding of the Ombudsman role in that it was not acting as advocate for complainants but investigating impartially and making recommendations to ensure good administrative practice.

A relatively small legal and judicial community, as is the case in Northern Ireland, could lead to a reluctance to complain and also a possibility of candidate details circulating informally or speculation about potential applications. The judiciary should be reflective of the community and seeing judges appointed from a diverse range of non traditional backgrounds would be taken as a more open minded approach in judicial appointments. Other commentators emphasised appointments should be strictly on merit and not be influenced by seeking a community or gender balance. Although there was now a pool of women lawyers who were eligible for appointment, it was noted that few women were visible at senior levels and that organisations in the justice system should be sensitive to the image they conveyed.

The Judicial Appointments Commission should ensure there was consistency in its approach to competition procedures and appointments. It was felt by some that there was a marked lack of awareness across civic society about the role of the Commission and it should therefore focus on how it was discharging its responsibilities so that the public at large could understand how judges were being appointed on an open and fair basis. Dealing with actual or potential conflicts of interest on the part of Commissioners when appointments were advertised was also highlighted as an issue that might arise.

There were perceptions that judicial appointments were largely seen as the preserve of the Bar with an emphasis on visibility before judges and that because of this, solicitors were likely to be disadvantaged. It was noted that the justice system had been subject to considerable scrutiny and organisational change with a public focus on police and prisons whilst judicial appointments had only attracted the interest of the judicial and legal community. It was felt that the manner in which lay persons were appointed to the magistracy was also an important factor towards promoting confidence in the justice system.

A broader perspective noted that whilst Northern Ireland was changing as a society, community relations were still viewed through a traditional prism of two communities and there was little research into the experiences of minority ethnic communities or lawyers from these backgrounds.

### *Themes Arising From Complaints*

I have published four further Annual Reports up to the period ending March 2011 and considered a small number of complaints relating to competitions administered by the Northern Ireland Judicial Appointments Commission. These reports can be viewed on the website. I summarise below the themes arising from these complaints:

- the Commission's arrangements to consider complaints ensured that a committee of different Commissioners was appointed to those involved in the selection process;
- outstanding consultee comments were now addressed by ensuring that candidates would know when the deadline for these responses required by the Commission would expire so that they could remind the consultees who had been nominated by them;
- the Commission had also published documentation which described its role, the work of judicial postholders and the opportunities for career advancement;
- the arrangements for dealing with complaints that were raised whilst competitions were still ongoing;
- the Commission had to balance transparency and fairness to complainants when responding to their complaints with respecting the confidentiality of other candidates;
- the clarity of and extent of detail in audit trails showing discussions and decisions taken at various stages of each competition;
- how feedback was drafted and communicated to candidates ;
- how the training and insights for Commissioners (whether lay or legally qualified) could be developed further to ensure a consistency of approach for all competencies and in particular when assessing applications from candidates with traditional and non traditional career paths;
- what further guidance could be issued to consultees in order to further enhance their contribution to making a rounded assessment of applicants;
- not formally completing a selection process until the process for any outstanding complaints from any candidate in that particular competition had been completed;
- when there are few candidates in any specific competition, how did the Commission satisfy itself that it had taken account of the duty to promote diversity;
- to ensure that there was no confusion over the responsibilities of the Lord Chief Justice in his capacity as Head of the Judiciary and as Chairman of the Commission ;
- and similarly that staff in his office (Office of the Lord Chief Justice) were not involved in any aspect of the responsibilities exercised by staff in the Commission however minor the tasks.

As the Ombudsman I have to respect the right of any complainant to expect as full an explanation as can be offered in the circumstances so that there is a clear understanding of the basis on which I have made my decision. Ensuring a thorough investigation does not mean that transparency must be absolute. I also have to balance the issue of confidentiality to other candidates. These competing interests are accentuated when there are only a small number of candidates in any specific competition. The Commission also has a responsibility for maintaining confidence in

the integrity of future competitions in addition to the immediate one where there may be a complaint.

### *Some Additional Comments*

In my Annual Report for the period ending in March 2011, I reported that I had been asked by the Lord Chief Justice to nominate a member from the Northern Ireland Judicial Appointments Commission in order to sit on a Removal tribunal convened by him. I did so and, this is the one occasion that I have exercised this power.

During the past five years I have also been appointed as a Temporary Ombudsman by the Lord Chancellor in order to deal with a small number of cases in England and Wales where the Judicial Appointments and Conduct Ombudsman in that jurisdiction considered there may be a potential or actual conflict of interest. With one exception these cases were concerned with complaints about the personal conduct of judicial office holders. In the one appointment complaint I made a recommendation that the Judicial Appointments Commission for England and Wales should consider whether the Commissioners determining complaints should be separate from those taking decisions in relation to the selection process. The Commission's response to this recommendation was that it considered its existing procedures were "tried and tested".

This may highlight a difference in the role of Commissioners from that of the Northern Ireland Judicial Appointments Commission, where they are intimately involved in the detail of all competitions and that of England and Wales where they may provide the final tier of approval within the Commission. There are considerable differences in the scale of appointments in the two jurisdictions.

In Scotland where there has been a Judicial Appointments Board since 2002, there were no provisions for external investigation of complaints until legislation in 2010 provided for such complaints to be considered by the Scottish Public Services Ombudsman.

All the three Judicial Appointments Commissions/Boards in the United Kingdom have Commissioners drawn from different sectors (the judiciary, the legal professions and non legally qualified persons) and who appear to have been appointed in different ways. For example, non legally qualified Commissioners tend to come through publicly advertised processes whilst this does not appear to be the case for judicial and legal members. However there is a responsibility for all these individual Commissioners with different experiences and perspectives to work together as part of a unitary Board and engender confidence in the appointments process. As with other public bodies the Commission must take value for money considerations into account. This means that selection processes should be proportionate but must have robust audit trails in order to promote confidence that appointments are being made on merit and in a considered fashion.

Diversity should be an integral component of the appointments process. I draw on my own experience as a member of the Judicial Studies Board over a decade ago when I chaired the panel which drafted the Equal Treatment Bench Book that was circulated to the judiciary at all levels. Then (as now) a connection exists with human rights, access to justice and confidence in the administration of justice.

All the complaints that I have considered up to the present time have related to competitions that were initiated before the devolution of policing and justice functions to the Northern Ireland Assembly, so that draft and final reports have been sent to the Lord Chancellor and Lord Chief Justice (in his capacity as Chair of the Commission) and as required by the legislation.

My remit is to consider individual complaints only and I have no audit role analogous to that of the Commissioner for Judicial Appointments whose role predated the Ombudsman position.

I would be pleased to assist the Committee further if that would be helpful.

**Karamjit Singh CBE**  
**Northern Ireland Judicial Appointments Ombudsman**  
February 2012