

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Review of Arrangements for the Appointment and Removal of Judicial Office Holders

Response of the Law Society of Northern Ireland

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Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,400 solicitors working in some 540 firms, based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society well placed to comment on policy and law reform proposals.

In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, the Society is keen to ensure that its voice is heard. The solicitors' profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

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1.1 The Society welcomes the opportunity to comment on the Committee for Justice Review into arrangements for the appointment and removal of judicial office holders. The judiciary in Northern Ireland are respected for their impartiality and their experience and skill in dealing with complex cases. It is important that the judiciary are supported by an appointments system that enhances the integrity and independence of the judiciary and inspires public confidence.

1.2 An independent judiciary is an essential element of a democratic society, underpinned by the rule of law. The judiciary is responsible for making independent decisions of political, social and economic importance. Whilst it is fundamentally important that members of the judiciary are able to take their decisions free from any undue political interference, it is appropriate that there is an element of democratic accountability in the way in which members of the judiciary are appointed to ensure public confidence in the standards and merit of the judiciary.

Judicial Appointments Process

1.3 The Society takes an active interest in the judicial appointments process and regularly makes representations to the Northern Ireland Judicial Appointments Commission (NIJAC) regarding the experience of solicitor applicants. The Committee will be aware that there is a view that the judicial appointments process favours the skills and experience of members of the Bar over the skills and experience of members of the solicitors' profession. Whilst there are a number of further initiatives that could be undertaken, over recent years the Society has worked with NIJAC to ensure the assessment methodologies used in the judicial appointments process take proper account of the expertise and experience of solicitors. The Society would like to see greater acknowledgement for skills in drafting legal agreements, the provision of complex legal advice to clients and case/practice management. The Assembly Research Paper refers to another widely held view that the appointment methodologies used by NIJAC disadvantage applicants who are not from a public service background. This is accurate and again this is an issue which the Society is working with the NIJAC on.

1.4 Ensuring that the judicial appointments process is open and transparent and takes account of the full range of skills and experiences which make one suitable for judicial office will assist in ensuring a diverse judiciary. The Committee will be familiar with the work of the Advisory Panel on Judicial Diversity in England & Wales. Baroness Neuburger, the chairwoman of the Advisory Panel, recently emphasised that encouraging solicitors to apply for judicial appointments is absolutely key to ensuring judicial diversity. The Committee will wish to bear this in mind when considering judicial diversity.

Operation of the Amendments

3.1 The Society has no specific comments to make regarding the operation of the amendments introduced by way of the 2009 Act. However, the Society wishes to emphasise the fundamental importance of judicial independence. There is much debate as to whether the current arrangements for appointing members of the judiciary throughout the United Kingdom are sufficiently independent of the Executive. The Society notes the suggestion contained in the Ministry of Justice consultation paper 'Appointments and Diversity' that the Lord Chief Justice of

England & Wales assume certain responsibilities relating to the appointment of members of the judiciary in England & Wales from the Lord Chancellor. As identified in the research paper, unlike in England & Wales, the Lord Chancellor no longer has the authority to ask the NIJAC to reconsider a recommendation for appointment. The Society's position is that the independence of the judicial appointments process underscores the independence of the judiciary and it is of fundamental importance that there is no interference by any member of the Government or Executive. It would therefore be inappropriate for a member of the Executive or Government to be empowered to require a judicial appointments body to refuse or re-consider a recommendation.

3.2 In line with developments in England & Wales it is in the best interests of the independence of the judiciary that there is no power to require an appointing body to reconsider a recommendation. However, to ensure confidence in the overall appointments process it is important that there is some form of political accountability for the independence and integrity of the appointments process including the equality of the process that does not compromise operational decision making on individual appointments.

4.1 The Society remains willing to assist the Committee for Justice in any way possible as it takes forward its review.