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COMMITTEE FOR

17 FEB 2012

JUSTICE

Dear Ms Darrah

Review of Judicial Appointments and Removals

Thank you for your letter of 3 February which was addressed to the Lord Chief Justice.

I enclose written evidence on behalf of the Chief Justice who as you know is Chairman of the Northern Ireland Judicial Appointments Commission. The Commission will not therefore be submitting any separate evidence.

I understand that both the Lord Chief Justice and NIJAC may be invited to give oral evidence to the Committee on either 1 or 8 March. Given the Chief Justice's dual role we think, if the Committee is content, it would be sensible to combine that evidence in one session. As well as the Chief Justice the other witnesses would be Edward Gorrings (Chief Executive of NIJAC) and myself. I hope the Committee would find that acceptable.

I am sure Committee members will appreciate that the Chief Justice will not be able to answer questions about any individual judicial appointment scheme nor will he want to comment on policies which are a matter for Ministers or which would compromise judicial independence. Subject to that the Chief Justice would welcome the opportunity to assist the Committee's deliberations if the members would find that helpful

I look forward to hearing from you.

Yours sincerely

Laurene McAlpine

Ms Christine Darrah
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NIJAC evidence to

Justice Committee

February 2012

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1. Introduction and Summary

- 1.1 The Justice Committee has invited evidence on its review of the judicial appointment and removal provisions made by the Northern Ireland Act 2009.
- 1.2 NIJAC is an independent non-Government body responsible for judicial appointments in Northern Ireland. It is chaired by the Lord Chief Justice and has a mix of judicial, legal and lay members.
- 1.3 It has a statutory remit to select, and recommend for appointment or select and appoint, persons for judicial office solely on the basis of merit.
- 1.4 NIJAC also has a statutory duty to engage in a programme of action to ensure that the Northern Ireland judiciary is reflective of society and that the widest possible range of people are available for selection and appointment.
- 1.5 NIJAC's sponsoring department was originally the Northern Ireland Court Service but on devolution sponsorship became the responsibility of the Office of the First Minister and the Deputy First Minister (OFMDFM).
- 1.6 There is a varied and wide range of judicial posts to which NIJAC recruits i.e. legal and lay/ordinary and posts which require other experience outside the legal profession i.e. land valuation, medical, finance, HR and health and social care (58% are non legal posts).
- 1.7 Since June 2005, NIJAC has run 43 recruitment campaigns. There have been 254 appointments to judicial office; 110 legal offices, 20 medical and 124 others.
- 1.8 In addition, NIJAC has overseen 551 judicial appointment renewals.

- 1.9 NIJAC has developed and maintained a judicial equity monitoring database, plus mechanisms for collating and analysing feedback, to inform the judicial appointments process and the programme of action.
- 1.10 It has also commissioned research into the barriers and disincentives to applying for judicial office and undertakes regular benchmarking exercises in relation to other jurisdictions organisations, to ensure awareness and best practice.
- 1.11 In relation to equity monitoring:
- 53% of judicial officers declared a Protestant community background, 41% declared a Catholic background and 6% stated that they were from neither;
- 1.35% of current NI judicial office holders have declared a non-white ethnic background.
- 43% of the judiciary are women (although there are no women in on the High Court bench).
- 1.12 To ensure the merit principle is adhered to and that the appointments process is open and transparent, NIJAC has developed a generic Judicial Selection Framework which can be tailored to the specific requirements of the judicial office to which an appointment is to be made.
- 1.13 A range of assessment and selection methods have also been developed i.e. role plays, case studies, shortlisting tests, to ensure robustness, transparency and openness in the judicial appointments process.
- 1.14 Given Northern Ireland's demographics and smaller jurisdiction, NIJAC recruits on a competition-by-competition basis. Typically, it does not routinely retain reserve lists or undertake 'batch recruitment exercises',

as is the practice in England & Wales and Scotland. This approach helps to ensure that the applicant pool is not limited.

- 1.15 In addition, again due to a smaller jurisdiction and NIJAC's statutory duty to ensure the widest possible range of people are available for selection, NIJAC does not restrict recruitment to substantive office to those already holding fee-paid judicial office (sometimes referred to as deputy judges).
- 1.16 NIJAC has in place a robust programme of action and undertakes specific tailored outreach (Competition Outreach Plans) and general outreach to the legal and medical profession, other professional bodies, law students and civic society.
- 1.17 Commissioners, under the Chairmanship of the Lord Chief Justice and Head of the Judiciary of Northern Ireland, carry out their work ensuring NIJAC fulfils all of its statutory obligations, free from any improper influence or interference.

NIJAC's Statutory Powers and Duties

2. The Justice (NI) Act 2002 (as amended by the Justice (NI) Act 2004) set out NIJAC's key responsibilities.

- To conduct the appointments process and to select and recommend for appointment in respect of all listed¹ judicial appointments up to, and including, High Court Judge.
- To select individuals for appointment solely on the basis of merit.
- To engage in a programme of action to secure, so far as it is reasonably practicable to do so, that appointments to judicial office are reflective of the community in NI.

¹ These listed offices are set out in Schedule 1 of the 2002 Justice Act (approximately 680 judicial offices including many of NI's Tribunal appointments).

- To engage in a programme of action to secure, as far as it is reasonably practicable to do so, that a range of persons reflective of the community in NI are available for consideration by the Commission whenever it is required to recommend a person for appointment to a listed judicial office.
- To publish an annual report setting out the activities and accounts for the period.

3. The 2009 Act extended NIJAC's statutory duties so that:-

- NIJAC is not only a **recommending** body in respect of appointments made by the Queen, but also an **appointing body** in respect of other appointments. (The different types of appointment are at Annex A).
- It is empowered to –
 - agree with the DoJ the maximum number of persons who may hold a judicial office at any one time;
 - agree legislative change governing the maximum number of judicial offices;
 - decide elements of terms and conditions for certain judicial offices;
- a Lay Commissioner could be asked to sit on a statutory tribunal to consider the removal of a member of the judiciary from office. Such a tribunal might be convened by the Lord Chief Justice or by the Judicial Appointments Ombudsman for NI.

Commissioners

4. The Commission is chaired by the Lord Chief Justice and its other members are appointed by FM/dFM in accordance with the Justice (NI) Act 2002 comprising:-

- five judicial members nominated by the Lord Chief Justice (to include a Lord Justice of Appeal, a judge of the High Court, a county court judge, a district judge (magistrates' courts) and a lay magistrate);
- two legal members (to include a barrister nominated by the General Council of the Bar of NI and a solicitor nominated by the Law Society of NI); and
- five lay persons.

5. NIJAC's Commissioners have an expansive role in that, they not only serve on Selection Committees in relation to judicial appointments, but they are also responsible for strategic direction, policy decision making, governance and finance.

6. In addition Commissioners may be asked to sit on other judicial appointment schemes for example to the UK Supreme Court or the European Court of Human Rights.

Staff and Budget

7. NIJAC has an annual budget of £1,463,910 and 18 staff, a number of whom work part time and term time. It is based at Headline House in Belfast.

Selection Process

8. Given NI's demographics and smaller jurisdiction, NIJAC will generally recruit on a competition-by-competition basis (unless there is a clear

business reason to the contrary). This approach assists in underpinning the merit principle and also allows for those who may have just attained the appropriate eligibility requirements to apply for judicial office. For example, if a competition was not run each time a need arose but someone was appointed from a reserve list, this would be limiting the applicant pool especially where e.g. fewer females had the requisite years' standing for a particular post.

9. NIJAC does not restrict recruitment to legal substantive posts to fee-paid judicial office holders nor retain reserve lists or engage in 'batch recruitment exercises'.
10. Since June 2005, NIJAC has run 43 recruitment campaigns. There have been 254 appointments to judicial office; 110 legal offices, 20 medical and 124 others. In addition, NIJAC has overseen 551 judicial appointment renewals
11. Commissioners have continually strived to ensure that NIJAC fulfils all of its statutory responsibilities. An open and transparent system for judicial appointments enhances public confidence in the justice system as a whole.
12. For each competition a Selection Committee (representative of the Commission) will be established. The Committee will agree the shortlisting criteria, assessment methods (which may include e.g. role playing and case studies) and interview questions.
13. Regardless of the route to application and the assessment methods to be used – NIJAC uses a Judicial Selection Framework for assessment and selection across all competitions. This Framework has been well researched and tested and applicant feedback would indicate that it has become embedded, and accepted, in the judicial appointments process. It can also be tailored to reflect the requirements of the specific office under recruitment.

14. The Framework consists of knowledge requirements and four areas of competence: analysis/decision making, leadership/management, communication and understanding people and society.
15. NIJAC has its own published complaints procedure, and ultimately, an individual can go to the NI Judicial Appointments Ombudsman.
16. In addition to the above, each competition is also evaluated at each stage of the appointments process and an evaluation report is produced for each competition.

Reflective of the Community

17. Out of approximately 670 judicial officeholders (42% of which are legal posts) the following appears from our database and survey of officeholders.

Gender

18. Approximately 43% of the judiciary are women:-
 - almost a quarter of County Court Judges and District Judges (Magistrates' Courts) are women;
 - a third of Masters are women;
 - half of District Judges (Civil) are women;
 - a third of Coroners are women;
 - a quarter of 10 legal tribunal offices are held by women;
 - a third of tribunal medical members are women; and
 - over half of the lay magistracy are women.

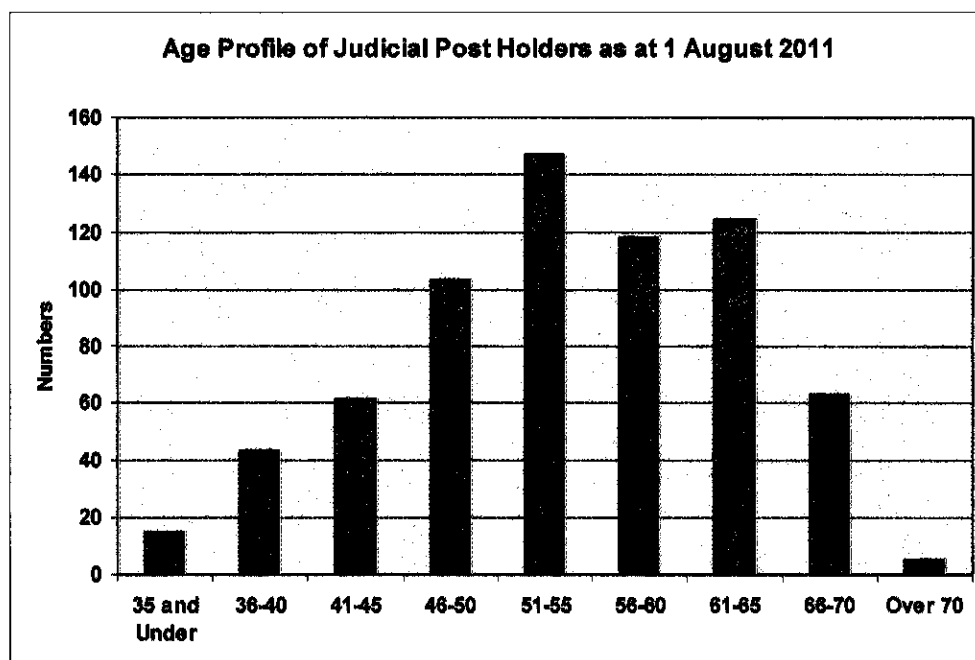
To date there are no women serving on the High Court Bench. This may be indicative of other 'professions' e.g. low female representation within the legal profession itself (partnership level within law firms and at QC level).

Community Background

19. Approximately 53% of the judiciary have a Protestant Background, 41% declared a Catholic background and 6% stated that they were from neither.

Age Profile

20. Approximately 54% of judicial post holders are aged 55 and under (see below).



Ethnicity

21. Approximately 1.35% of the judiciary have declared a non-white background. While all legal judicial office holders (substantive and fee-paid) are white, 7 fee-paid judicial medical members declared a non-white ethnic background and one 'other' judicial office holders declared a Chinese ethnic background.

Outreach and Programme of Action

22. In conjunction with establishing a judicial equity monitoring database, NIJAC also commissioned a research project into the 'Barriers and Disincentives to Judicial Office'. The research findings were published in October 2008 and informed NIJAC's programme of action. Measures undertaken in that programme include:

- the introduction of a judicial shadowing scheme (launched in October 2009);
- publication of a Guide to Judicial Careers which contains interviews with judicial post holders, deals with some of the myths and misconceptions about judicial office and highlights the range of work available; and
- the launch of the NIJAC website (www.nijac.gov.uk) which is regularly updated with vacancies, guidance, appointments, renewals and tips re applying (weblog/evaluation reports have indicated that it has now become the primary source of information for judicial vacancies and news).

During 2010/2011, NIJAC contributed to or hosted 16 events reaching over 1,200 people across various legal and other professional organisations (including law students at both under and post graduate level).

Conclusion

23. Since NIJAC's inception in June 2005 there is now in place in NI:

- an independent judicial appointments body;
- a judicial appointments process that is robust, open and transparent;
- a programme of action to ensure that the widest possible range of people are available for selection, to help to achieve a NI judiciary that is reflective of the community it serves;

- a judicial equity monitoring database that allows for the identification of any under-representation;
 - a generic Judicial Selection Framework which can be tailored to the specific requirements of the post under recruitment and a range of assessment/selection methods to ensure the judicial appointments process is open and transparent; and
 - mechanisms which allow for continual evaluation/analysis to further improve/refine the judicial appointment process and inform the programme of action.
24. It is positive to note that community background is not an issue and that there is an increasing number of women being appointed to judicial office. There is also a positive picture emerging in terms of the age profile of the judiciary in NI.
25. NIJAC Commissioners are well aware that more work needs to be done in encouraging applications from women for the higher court tiers but the issue of low women representation at senior levels is replicated across other areas e.g. the legal profession itself, public appointments etc.
26. NIJAC continues to work with key stakeholders i.e. judiciary, Bar Council, Law Society, Northern Ireland Courts and Tribunals Service etc to influence those policies which may impact upon NIJAC's statutory remit to ensure the NI judiciary is reflective of the society it serves and that the widest possible range of people is available for judicial selection.
27. The Commission also work closely with the Northern Ireland Courts and Tribunals Service in identifying vacancies at relevant judicial tiers.
28. The Commission also has an effective working relationship with its sponsor department FM/dFM in relation to finance and governance. FM/dFM does not take any role in relation to judicial appointments.

29. NIJAC carries out its work, under the Chairmanship of the Lord Chief Justice who is also Head of the Judiciary in NI and free from any political influence.

Appointments made by Her Majesty the Queen which will continue to be made on the recommendation of the Lord Chancellor following selection by the Northern Ireland Judicial Appointments Commission:

- Judge of the High Court;
- County Court judge;
- District Judge (Magistrates' Court);
- Chief Social Security Commissioner for Northern Ireland;
- Social Security Commissioner for Northern Ireland;
- Chief Child Support Commissioner for Northern Ireland; and
- Child Support Commissioner for Northern Ireland,

Appointments which will be made by the Northern Ireland Judicial Appointments Commission:

- Deputy County Court Judge;
- Temporary High Court judges;
- Deputy District Judge (Magistrates' Courts);
- Coroners and deputy Coroners;
- Statutory Officers;
- Deputy and temporary Statutory Officers;
- Deputy Social Security Commissioner for Northern Ireland;
- Deputy Child Support Commissioner for Northern Ireland;
- President of Appeal Tribunals;
- Panel of Persons to Act as Members of Appeal Tribunals;
- Chairman of an Appeal Tribunal for the purposes of the Adoption (NI) Order 1987;
- Member of Panel of Chairmen of Industrial Tribunals;
- President and Vice President of the Industrial Tribunals and the Fair Employment Tribunal and Chairman of the Fair Employment Tribunal;
- Acting President and Acting Vice President of the Industrial Tribunals and the Fair Employment Tribunal;
- President and other Members of the Lands Tribunal for Northern Ireland;
- deputy President and Temporary Members of the Lands Tribunal for Northern Ireland;
- President and Panel of Persons to serve as Chairman of the Special Education Needs Tribunal;
- Members and Chair of Tribunal established under section 91 of the Northern Ireland Act 1998;
- Members of the Mental Health Review Tribunal for Northern Ireland;
- Lay Magistrates;
- Member of the Panel of persons who may serve as Chairmen of a tribunal established for the purposes of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997;
- Chairman of a Tribunal appointed under Schedule 3 to the Misuse of Drugs

Act 1971 in its application to Northern Ireland; • Member of a Tribunal appointed under paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland;

- President or Deputy President of Pensions Appeal Tribunals appointed under paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland;
- Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland;
- Member of the panel of persons to act as Chairmen of Reinstatement Committees sitting in Northern;
- President of the Northern Ireland Valuation Tribunal;
- Member of the Northern Ireland Valuation Tribunal;
- Member of Panel of Persons who may serve as Chairmen of the Care Tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvements and Regulation) (Northern Ireland) Order 2003;
- President, legal and other members of the Charity Tribunal;
- Adjudicator and Chairman appointed under the Criminal Injuries Compensation (NI) Order 2003;
- Adjudicator appointed under the Article 29 of the Traffic Management Order; and
- Chairman of an Appeal Tribunal for the purposes of the Adoption (NI) Order 1987.

