



Northern Ireland  
Assembly

**Committee for Justice**

# **OFFICIAL REPORT (Hansard)**

**Review of Judicial Appointments:  
Northern Ireland Judicial Appointments  
Ombudsman**

**29 March 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

### Review of Judicial Appointments: Northern Ireland Judicial Appointments Ombudsman

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Colum Eastwood  
Mr Seán Lynch  
Mr Basil McCrea  
Mr Alban Maginness  
Mr Peter Weir  
Mr Jim Wells

**Witness:**

Mr Karamjit Singh

Northern Ireland Judicial Appointments Ombudsman

**The Chairperson:** We have the Judicial Appointments Ombudsman with us today. You are very welcome, Mr Singh, and thank you for coming along. Please outline your briefing paper, after which I am sure that members will raise some questions.

**Mr Karamjit Singh (Northern Ireland Judicial Appointments Ombudsman):** Thank you, Chairman, for inviting me to give evidence to your review that covers schedules 2 to 5 to the Northern Ireland Act 2009. I had not intended to repeat at length what is in my written submission, as I felt that you might think that brevity was better and that we could go straight to questions. I have tried to pick up three or four themes, the first of which gives you the background to my appointment. The second is that, in my first year, I had the opportunity to talk about judicial appointments to over 60 individuals active in different aspects of civic life in Northern Ireland. I have tried to summarise some of the points and themes that came out of that. I have also tried to summarise some of the themes that came out of the complaints that I have considered, and, finally, I have listed some additional points that I thought would be of interest to the Committee.

In the past five years, I have published five annual reports, and I made three assumptions in them. First, there should be demonstrable independence and impartiality of the judiciary in discharging its responsibilities. Secondly, judicial appointments should be free of bias, actual or perceived, and, thirdly, judicial appointments ought to be a matter of interest to the wider public rather than just the legal community. I say that because the notions of fairness and promoting public confidence in the

administration of justice ought to be integral to being a judge, as should a commitment to equal treatment in discharging responsibilities in the justice system.

My perspective comes from considering individual complaints. In addition to having had the opportunity to look at judicial appointments processes here in Northern Ireland, there are two other aspects of my personal experience that I would particularly like to highlight. In the past, I was a Civil Service commissioner in a Great Britain context. I was also, for a number of years, a member of the independent panel that selected Queen's Counsel in England and Wales. I am happy to take questions.

**The Chairperson:** Thank you. I think that members will want to pick up on points that others have made. One of the issues that has been talked about is that the Lord Chief Justice investigates complaints about the judiciary. Could your role be expanded to deal with complaints from the public about their experiences of the judiciary?

**Mr Singh:** That is a matter for you to take on board. In my briefing note, I have drawn attention to the distinctive system that you have here in Northern Ireland. You have that system because the Justice Act 2002 did two things: it set out in principle that the Northern Ireland Judicial Appointments Commission (NIJAC) should be established, and it set aside the responsibility for investigating complaints and left that with the Lord Chief Justice. We then moved to the Constitutional Reform Act 2005, which set up the Judicial Appointments Commission (JAC) and the ombudsman in England and Wales and gave that responsibility to them. In Northern Ireland, your legislation of 2004, which established the commission, did not transfer that responsibility. One must look at whether establishing those responsibilities would provide greater confidence. I am not sure that I am the person who ought to be giving a view on whether I should have an expansion of my responsibilities. If I may put the question back to you, you must ask whether that would enhance confidence in the administration of justice.

**The Chairperson:** That is the question that we are trying to grapple with. Some have questioned the need for a Judicial Appointments Ombudsman at all. We are considering a consultation on the Police Ombudsman, and there are questions about the Prisoner Ombudsman. Do you think that the distinct office of Judicial Appointments Ombudsman is needed, or could that role be absorbed into that of a broader justice ombudsman who looks at all branches of the Department of Justice?

**Mr Singh:** If I may, I will take the opportunity to put that question into a slightly wider context. At the very beginning, when I was talking to the 60 or so people whom I mentioned, someone expressed the view that perhaps Northern Ireland was replete with too many accountability mechanisms. We also have to take note of the fact that, in public sector expenditure, there is an issue of having proportionality in your accountability mechanisms. It is important that, whatever mechanism you have, such as a justice ombudsman covering all sectors, it must not only have the confidence of the sector that is being investigated but be able to project a sense of confidence to a wider public. In my case, the legislation stipulates that I should not be a lawyer and that I should have not sat in a judicial capacity. It seems to me that those are important characteristics, and I am not saying that simply because I was appointed.

I am not sure that, if you were to combine this role with another ombudsman's role simply because it was another ombudsman's role, it would be particularly helpful, because there is such a wide range of public services. On the other hand, if you are going to limit it to the justice system, you have to ask whether that would be sufficient. Another comment that was echoed back to me at the very beginning is that, in Northern Ireland, there seems to have been a lot more concentration and emphasis on policing and prison issues than on the rest of the justice system. If you were to take the route of a single justice ombudsman, you would have to ensure that he or she gave equal weight to all sections.

**The Chairperson:** How many complaints have you had to deal with? Is it five in five years?

**Mr Singh:** I am currently dealing with a sixth.

**The Chairperson:** It seems to be an incredibly small amount of complaints to justify the office.

**Mr Singh:** It is a small number, and I would not want you or the Committee to go away with the impression that I am seeking to justify the continuation of the office.

**The Chairperson:** No, I appreciate that you are filling the structure that we established. You probably cannot go into the detail of the nature of those complaints, but are there serial complainers?

**Mr Singh:** Statute does not allow me to discuss the intimate details of complaints, but I produce annual reports. I report on each complaint that I receive and the issues arising, and I highlighted those in my briefing note to the Committee. I am not sure that I can go any further than that.

**Mr Lynch:** Thank you for coming here. There is a view out there that NIJAC is a method of judges appointing judges. You also said that the judiciary needs to be reflective of the community. Do you think that the current judiciary is reflective of the community?

**Mr Singh:** I will, if I may, make two points before we come to that. I have been looking at the sections of the Act that you are reviewing. Section 3, Part 4 concerns the responsibilities of NIJAC:

*"The selection under this Schedule of a person to be appointed, or recommended for appointment, to a listed judicial office must be made solely on the basis of merit."*

Also in Part 4:

*"It requires the Commission, so far as it is reasonably practicable to do so, to secure that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is selecting a person to be appointed, or recommended for appointment".*

That is the statutory background, and that is NIJAC's responsibility. If we then move forward, and you will have seen this in my comments in my report and I have picked this up elsewhere, clearly there has been a perception that the judiciary is not currently reflective of the community in Northern Ireland in terms of, for example, gender. Certainly, less concern has been expressed to me about community background; the concerns are more about gender and ethnicity. That raises two questions: given the statutory responsibility on the part of the commission, what can the commission do to enhance that confidence, and how does the commission go about making the wider public aware of what it is trying to do in that area? I have been involved in various roles trying to create change within institutions, and part of that has involved diversity issues. In my experience, there is always a time lag between external expectations and changes occurring. As part of any process of accountability, one ought to say, "This is the system that has been established: what changes does one hope to see coming through?" One ought then to monitor the situation. I do not know whether that addresses your point.

**Mr Lynch:** It does to an extent, but there are no women currently on the bench. I think that the Southern Government appointed a female Chief Justice last year. The majority of people going into law are women, yet all those at a higher level are male. Is the cultural mindset an issue, and is it being dealt with?

**Mr Singh:** I can talk about the Northern Ireland context only on the basis of the complaints that I get. However, in a slightly wider context, I have also been a member of the Judicial Studies Board in England and Wales. Therefore, I have also had a chance to look at issues relating to the judiciary from the dimension of equal treatment.

We have to recognise that there are all sorts of reasons why a judiciary ends up having a certain composition. The issue here and over there — I have seen this in QC appointments — is that it takes some time for people to start coming through the system. The questions that you must ask yourself, however, are these: are there issues relating to the current pool that limit it, and could you expand that pool in some way? I suppose that a radical question might be whether you would look at a pool beyond Northern Ireland, for example. Do you look at working practices and opportunities for part-time appointments? Do you look at whether there are factors that hold people back from applying? Are

people reticent in applying? Do you look at people's progress through the appointments system and at why people are not successful?

There is a range of issues here. You mentioned culture, and there may be a cultural issue when it comes to working practices, for example, and other issues that inhibit people from coming through. If I may, I will personalise my response for a moment. For the past 30 years or so, I have, probably, been the first person of my background and heritage to take on a whole series of roles. At times, seeking to understand the culture of the setting in which I found myself has been very interesting. I have always seen that as being an essential prerequisite to being able to move on in that context.

**Mr A Maginness:** Thank you for coming today. Thank you for your contribution to this field and for your submission to the Committee. I wish to make a point that reflects what Mr Lynch said about our having a gender problem on the High Court bench. According to the Lord Chief Justice, throughout the judiciary, the real level of female representation is about 22%. If you included lay magistrates or lay appointments, it would be about 43%. Therefore, there is a significant under-representation of women at many different levels of the judiciary. Yet, we have had the commission since 2005. Seven years is a considerable time, yet the commission has not been able to crack the nut of increasing female representation at the highest level, which is the High Court. Is that really acceptable?

**Mr Singh:** You are asking me to express a personal opinion, and I am sure that that is not really what you are looking for. If I may, I will answer your question from two perspectives. From my experience and insight, I thought that Baroness Neuberger's report was very interesting because she made a number of recommendations on how you could try to bring about change. I do not think that this is an issue only for me as the Northern Ireland Judicial Appointments Ombudsman. Baroness Neuberger made the point that the Judicial Appointments Commission for England and Wales faced similar challenges in relation not only to gender but ethnic background. If a commission has a statutory responsibility to appoint judges on the basis of merit — it must be on the basis of merit and excellence — it must also recognise that diversity is not a bar. Diversity is about increasing the pool and considering a wider pool of eligible people, but how do you facilitate the creation of that large pool? From my experience, as it is possible in other walks of life, there is no reason why it should not be possible in appointing the judiciary.

As Northern Ireland has a relatively small judicial community, the numbers of vacancies and opportunities to fill posts are much smaller. Therefore, any change will probably take longer. It is not just a question of who is appointed. The last thing that anyone wants is for someone to be appointed solely because she is a woman. That is not good enough. You want good, able, female lawyers applying and being considered for those roles, so you must ask how many able women lawyers are actually applying? Are they being encouraged, and what kind of messages are going out?

The other issue is what connection, if any, is there between having a successful career as a lawyer as opposed to being a good judge. My experience on a panel that selects QCs, for example, raised the point in my mind that being a very good advocate does not necessarily mean that someone will go on to be a very good judge. It is about also looking at what the criteria and issues are. When trying to select on merit, what are you trying to identify and how do you go about doing that?

My final comment on this is that the commission, like other public bodies, was always going to face the challenge of expectations of what it could deliver as opposed to what it is able to deliver within a certain period.

**Mr A Maginness:** Central but not exclusive to the pool that you mentioned is the number of senior counsel. Do you know how many women occupy the position of senior counsel?

**Mr Singh:** Not in a Northern Ireland context, as I have not viewed that as part of my role. What I can tell you from my experience in England and Wales, as someone who was on that panel for seven years from its inception, is that we were very successful in increasing the number of women Queen's Counsel. The considerable number of women practising one level below as senior junior counsel meant that there was a considerable pool. A significant number of people were making applications, so we went out and really tried to encourage people to apply.

**Mr A Maginness:** We received today a very useful article from 'The Guardian' on Monday 26 March. It was written by Joshua Rozenberg, a very distinguished legal journalist. The article is based on a report by the liberal think tank CentreForum, the authors of which are Chris Patterson and Professor Alan Patterson from the University of Strathclyde. You may not be familiar with the article, but I will read from it. The authors of the report were looking at the equivalent of NIJAC in England and Wales. They came to the conclusion that it:

*"shows the 'potential danger for this branch of government to become a self-perpetuating oligarchy'."*

They are talking really about judges appointing judges, as Mr Lynch's initial question reflected. They also quote Lord Justice Etherton, a strong supporter of judicial diversity, who argued:

*"the dominant extent to which the senior judiciary is involved in the selection of the senior judiciary as 'quite unacceptable ... for constitutional legitimacy'."*

In the course of the House of Lord's sessions — its inquiry has just been produced — Lord Etherton argued that, really, judges were appointing judges, which he did not find acceptable. He wanted a broader selection process. Have you any sympathy with that view? Is that something on which you can comment on?

**Mr Singh:** First, I apologise to Mr Lynch. If that was the question that you were trying to get at, Mr Lynch, and I did not —

**Mr A Maginness:** I think that his question was in two parts, and that formed the first part.

**Mr Singh:** If the perception is that judges are appointing judges, it seems to me that the whole assumption behind setting up judicial appointments commissions, whether that is here, in England and Wales or in Scotland, is fundamentally flawed. The whole assumption, surely, behind setting up independent commissions is that it is about promoting public confidence in the way in which judges are being appointed. If it is seen that this is simply judges appointing judges, as it were, the argument for having any kind of independent body does not stand up. Today, I opened by saying that this is not a matter of interest solely for the legal and judicial community, but for the wider public. I am not talking only about constitutional issues; this is a matter of wider public interest. The administration of justice and confidence in it is, or should be, an integral part of our democracy. I think that the challenge for any judicial appointments commission, whether in Northern Ireland, England or Scotland, must be to be able to put across very clearly what the commission does and how it discharges its responsibilities in seeking not only to ensure that appointments are being made on merit, but that they deal with the question of diversity and having a judiciary that is reflective of the community in which it is based.

I am aware that, over the years, commentators have, from time to time, had the perception of the judiciary's appointing the judiciary. I have not seen the article from which you quoted, but I am sure that it makes the same point.

That brings me to the challenge of the individual commission, which is composed of different types of members. Around the table are those who are non-legally qualified; those who represent the legal profession, such as solicitors and members of the Bar; and judicial members. In my briefing note to you, I made the point, in passing, that they all come to that table via different routes. Some come through the publicly advertised route, and, as I understand it, some are nominated. If I may say so, the challenge for the different members is a bit like the role that you as a Committee have. All of you are members representing different viewpoints, but you have to come together and work together as a Committee to come to a common view, presumably. It seems to me that judicial appointments commissions have to harness those different perspectives round that table in a way that ensures an appointments system and processes that enjoy confidence. Those skills should also be used in such a way that people, externally, can see and appreciate that.

**Mr A Maginness:** Thank you for that. In your annual report of April 2010 to March 2011, you made some recommendations in relation to what you call the second complaint. We will not go into the actual complaint, but you said:

*"I note that there is no formal agreement between my role as Ombudsman and the Commission whether the appointment process should continue whilst I am still considering a complaint. In this particular competition, the Commission had decided to make a formal recommendation to the Lord Chancellor before I had issued my final report. I am mindful the Commission is an independent statutory body and I am also aware I have no power to substitute my own decision in any selection process. I consider that such decisions taken in the midst of a complaints process can give rise to the perception on the part of complainants and others that the complaint is viewed as being of little value or there are closed minds with regard to the outcome. Confidence in the integrity of the selection process can only be a casualty of such perceptions. I recommend that the Commission gives consideration to adopting a general policy that no formal part of the appointment process to fill a post will be made unless any outstanding complaints process relating to the same competition has been completed."*

When the Lord Chief Justice appeared before the Committee, I raised that with him. Can I take it from your recommendation that, despite the fact that a complaint was being considered, the commission went ahead and made an appointment or made a recommendation for appointment?

**Mr Singh:** I think that that is very clear from my comments.

**Mr A Maginness:** Yes. That was a rather unusual thing to do, was it not?

**Mr Singh:** It was a surprising thing to do. I felt that it ought to be commented upon. At the end of the day, an ombudsman — not just me, but any ombudsman — does not have mandatory powers. An ombudsman has to work, obviously, on the basis of persuasion, if you like, or put forward comments that he or she thinks will enhance the process. My view is that I am here to be fair to complainants and the commission. However, I do not think that it is fair or helpful for the commission to make recommendations while an individual's complaint about a selection process is ongoing. I am thinking not only about the position of the complainant but the question of wider public perception at some point. Therefore, I felt that it was necessary to make that recommendation. I hope and trust that the commission will have taken that into account.

**Mr A Maginness:** Has that matter been completed as yet? Has the competition been completed yet?

**Mr Singh:** I am not sure that I ought to discuss individual competitions.

**Mr A Maginness:** OK. I will not press you in case it prejudices any position like that.

**Mr Singh:** Thank you.

**Mr A Maginness:** Thank you for your extremely helpful contribution.

**The Chairperson:** Mr Maginness touched on the perception of NIJAC. Do you think that there are too many judges on NIJAC? Obviously, their input is needed. However, there is a perception that they are the dominating block. Do we need to look at NIJAC's composition?

**Mr Singh:** I certainly do not think that there is anything that prevents you from doing that as part of your review of schedules 2 to 5. My one comment, however, reflects a point expressed to me at the time of my first annual report, and it is about the fundamental question of the relationship between the number of people who come from a legal background — not just judges — and the number who come from a non-legal background. I do not think that it is a question simply of the number who sit around a table. It is a question of how to address perceptions that might exist. In a sense, the commission has got to reflect on that challenge. Again, to put it in a wider context, I might add that I do not think that it is unique to Northern Ireland. Having skimmed through the Committee for Justice report, I get a sense that the commission in England and Wales has similar difficulty.

**Mr McCartney:** Are complaints made to you by individuals or can someone make a thematic complaint?

**Mr Singh:** Towards the end of my briefing note, I made the point that, unlike the Commissioner for Judicial Appointments, whose role was prior to mine, I am unable to take up thematic complaints, look at wider issues or undertake auditing. I think that that is what you mean. The legislation clearly sets out that my role is to look at complaints from individuals who have participated in a selection process. Therefore, I cannot even take complaints from individuals on behalf of someone else.

**The Chairperson:** No other members have indicated that they wish to ask questions. Thank you very much for taking the time to come to the Committee today. It is much appreciated.