



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Northern Ireland Judicial Appointments
Ombudsman — Rationalisation of Functions:
Briefing from Mr Karamjit Singh

21 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr Karamjit Singh Northern Ireland Judicial Appointments Ombudsman

The Chairperson: This meeting is to discuss the Department of Justice's (DOJ) proposals for the rationalisation of the functions of the Office of the Northern Ireland Judicial Appointments Ombudsman. I welcome the Northern Ireland Judicial Appointments Ombudsman, Mr Singh, to the meeting. I invite you to give an initial outline to the Committee, after which members will have the opportunity to ask questions.

Mr Karamjit Singh (Northern Ireland Judicial Appointments Ombudsman): Thank you for inviting me to speak to the Committee about the rationalisation of the functions of my office. I appreciate that the discussion is not about the remit of the office but to consider the options of how it might be delivered. The Committee will already have seen my response to the Department in September 2012 and my recent note that provides some background context. I do not propose to repeat that information but will reiterate a couple of points, if I may.

First, as a public servant, I am mindful of the importance of thinking about value for money in discharging my statutory responsibilities as efficiently as possible. However, I think that you need to consider that issue against the question of promoting confidence in the administration of justice, particularly the contribution that the role makes to that.

Secondly, whatever view the Committee takes on the future administration of my office, it may also wish to consider, when it returns to the question of judicial appointments in the future, whether the remit of my role and the processes that relate to consideration of my reports merit any further attention. However, that would be for another occasion. Chairman, I am pleased to answer any questions from you and your colleagues.

The Chairperson: Members, now is the opportunity to ask questions. Those members who have any questions, feel free to ask them.

Mr A Maginness: I wonder whether you would permit me to ask a certain question, Chair.

Your background note states that you have dealt with six complaints since your appointment. That is a very limited number of complaints. With regard to expanding your remit, as it were, do you feel that there would be merit in dealing with matters other than simply appointments per se and issues that might extend beyond that with regard to how some judges deal or interface with the public? Would you countenance that?

Mr Singh: Could I seek some guidance from the Chairman here?

Mr A Maginness: Yes.

Mr Singh: You appreciate that that is not necessarily linked to the question of the rationalisation of my functions.

Mr A Maginness: No.

Mr Singh: However, if the Chairman is content with it, I am happy to respond.

The Chairperson: I certainly am, yes.

Mr A Maginness: He is a very liberal Chair, you know.

The Chairperson: That is a first. *[Laughter.]*

Mr Singh: My answer is based on how I really see the role. I see it — as I see the role of the Northern Ireland Judicial Appointments Commission (NIJAC) and, indeed, the Department of Justice — as trying to make a contribution to promoting confidence in the administration of justice. It seems to me that, with this role, we have a situation whereby the current remit focuses on complaints about the appointments process. Equally, however, when you compare it with the role of my counterpart in England and Wales, you see that it does not cover appointments only. In fact, a minority of cases that he deals with are complaints about appointments. Most of the cases that he deals with are about conduct. That must raise the question of whether complaints about the conduct of judges, not necessarily decisions, should be included in the remit.

Mr A Maginness: Of course.

Mr Singh: Interestingly, as I put it in the background note, although you are quite right to say that I have dealt with six cases to do with appointments in Northern Ireland, when I was appointed, my counterpart in England and Wales was appointed at the same time, and we met, as you would expect us to, and exchanged notes. We came, perhaps, to an informal understanding that when he might have a conflict of interest, I might be prepared to be considered as a temporary ombudsman because you have to go through a process and the Lord Chancellor has to appoint you. Similarly, when there might be a conflict of interest on my part, he would be prepared to consider that. He obviously appears to know more judges than I do, or perhaps he comes into contact with them more frequently than me. I have ended up doing nine cases during that period, and he has not ended up doing any cases on my behalf. I say that as an aside.

If you were to extend the remit, I think that complaints would clearly be one area. The only other area that comes to mind is whether one could stand back and undertake some kind of audit to look at it. Looking at the extent to which the judiciary here is reflective of the community in Northern Ireland, for example, is one of the objectives of the Judicial Appointments Commission. I will put this question on the table: should the commission look at itself or should someone else do that? It could raise the question of whether an audit or process ought to be done outside the commission, perhaps by this post holder. I simply make those comments. Those are the two areas that strike me.

Mr A Maginness: On the latter point, during our consideration of NIJAC, which was fairly limited, the issue of composition arose for gender proofing appointments, and there appeared to be an imbalance,

certainly at a senior level, of females on the bench. Perhaps it would be useful for you or anybody in your office to examine, in general terms, the balance so that somebody outside the commission comes in to have a look at issues. There might be value in that.

I will go back to the point about conduct and the interface with the public and judges. The position in England and Wales is that the ombudsman looks at conduct. Is it the same in Scotland?

Mr Singh: I am not aware that it is the same in Scotland. The situation there is that complaints about the appointment of judges have recently become the responsibility of the Scottish Public Services Ombudsman. When I say "recently", I mean during the past two years. Up until then, there was no provision for an external independent process for complaints about an appointment. Having checked recently, I am not aware that the Scottish Public Services Ombudsman has considered any complaints about appointments during those past two years.

Mr A Maginness: So that is not a discrete position? Your position is discrete but in Scotland —

Mr Singh: No, that is not a discrete position. To answer your point: the ombudsman there does not consider complaints about the conduct of judges.

The Chairperson: What is your view on the preferred option by the Department to abolish the Judicial Appointments Commission and merge it with the Public Services Ombudsman?

Mr Singh: That is a very difficult question, given that I am the post holder at the moment. What I would like to do, if I may, is to answer that by stating the considerations that I think that you should take into account.

On the one hand, you clearly have to take into account the impact on the public purse. You need to look at that consideration. Equally, in my view, you should give weight to how it looks to the wider public and, indeed, to potential complainants who may come to me or to anyone in this role. This is about promoting confidence. So there are two questions. The first links to the issue of eligibility. I have expressed my views on that very clearly, and you will have seen them. Under the current statutory provisions, no one in an elected position can be appointed to my role. Equally, no one who has either practised law or who has held judicial office anywhere in the United Kingdom can be appointed to my role. Let me say that I am certainly not casting any aspersions on the integrity of anyone in the legal or judicial professions. However, the question is: how does this look from the outside? Even from the very small number of cases that I have dealt with in Northern Ireland, I know that there is considerable scepticism on the part of complainants about the issues of confidentiality and appropriate anonymity when one meets with them. I go to considerable lengths to try to reassure complainants. There is no doubt in my mind that there may be other people who might consider making a complaint, and they are perhaps concerned about the implications of that for their future career prospects. One has to think about those issues. I also take the view that, from the point of view of the administration of justice and the rule of law, the independence of the judiciary from the Executive is a very important principle. All those considerations lead me towards the argument that what you need is a role that is defined as "judicial appointments ombudsman" — or, if you are also going to look at conduct, "judicial appointments and conduct ombudsman" — which would have certain explicit restrictions. Given that Northern Ireland is a relatively small legal jurisdiction, I think that it is important that you give serious consideration to the eligibility restrictions, partly because of confidentiality being very important.

As to my views, I have very carefully read and considered the note that the Department of Justice has put forward. One of its options is putting this under the umbrella of the Public Services Ombudsman but maintaining it as a separate statutory office. I think that that is possible, but you must then ask yourself two further questions: how does one convey to a wider public, or a potential complainant, that this role will not be subsumed into or marginalised within that wider remit, and how do you promote confidence in that role being separate? That is where the critical issue of the eligibility restrictions comes in.

The only alternative, at present, is to continue with the role as it is. The issue is that, during the past six years, we have had six cases. I do not count the nine cases that I dealt with in England, but that certainly has been during this time. It seems to me that the argument is whether that is sustainable. As a public servant, I would have to say to you that, from a value-for-money point of view, I do not think that we are particularly expensive, when you look at the fact that we did 15 cases during that period. However, I would say to you that, as a long-term trend, it may be that this is not sustainable as

a separate office but perhaps could be subsumed under the umbrella of the Public Services Ombudsman, but only if careful thought is given to the architecture of the role.

I am sorry to have gone on at some length.

The Chairperson: I appreciate that because obviously there will be a Prisoner Ombudsman, a Police Ombudsman and a Public Services Ombudsman and, as it stands, we have a Judicial Appointments Ombudsman. Under this proposal, that post may be retained as a separate statutory function but under the umbrella of the new Public Services Ombudsman. It depends on whether you think that value for money for the taxpayer is what we should be looking at, or whether the balance of the argument is on the side of this as a judicial appointments process, administration and confidence in all of that, so that retaining the current provision is what should happen.

Mr Singh: My short answer is that, as elected representatives, you have to consider both and come to a balance.

I have been in the fortunate position of having held public roles in Northern Ireland for the past 15 years, so I have had the opportunity to see the transition in this society. The devolution of policing and justice is an important aspect of that, and I would argue that promoting public confidence in the administration of justice is a very important part of that. Therefore, coming from that perspective, I would argue that one should do everything possible to emphasise the statutory independence of the Judicial Appointments Ombudsman role and to think about its potential contribution to promoting further confidence in the administration of justice.

The Chairperson: We can look at the arguments as to where the public's confidence would be. This may be a difficult question for you to answer, but would judges prefer your system — the status quo — or a Public Services Ombudsman?

Mr Singh: I do not know. Obviously, I have not discussed that with judges. I have seen the responses from the Lord Chief Justice's office and the Judicial Appointments Commission. I have also read the response from the Law Society, which I thought was quite interesting, given that it came from the legal profession.

I think that it is really important that this post holder and this post are seen to be independent of the judiciary and certainly of the Executive. It should also be seen to be accountable to the public purse and the money that is spent. Equally, I think that potential and actual complainants need to see the role and the post holder as being independent. There are two elements to that. One is the design of the role — in other words, what the statutory provisions are. When you have a role such as this, there has to be something in statute that sets out the framework. The second aspect will be the way the individual in that role interprets that and conducts himself or herself in the way they do that.

Mr McCartney: Thank you very much for your presentation. You have dealt with six cases that all predate the transfer of policing —

Mr Singh: They were all linked to competitions that predated devolution. Two of the complaints were made after the date of devolution but were linked to a particular competition. I want to stress that, during that time, I undertook the work, the investigations and the reports for those other nine cases in England and Wales. The informal agreement that I made with my counterpart was that that work would be on a quid pro quo basis. You may, of course, say to me that perhaps I should now charge them if they ask me in future.

Mr McCartney: How many of the complaints were upheld?

Mr Singh: I have written about each of those cases in my annual reports. You will remember that my role is to make findings of maladministration. You will see that there are components of some of those cases. None of those cases was upheld in entirety, but I upheld some aspects of some cases.

Mr McCartney: How long would a typical case last with regard to resource?

Mr Singh: The cases have differed in the complexity of issues and material that I have had to look at. I will give you an idea of how I have approached this. In all cases, it has always been my practice to meet the complainant first. Therefore, I met the complainant and had a detailed session to try to

appreciate and understand the issues; I asked the commission for the file and the documentation relating to the particular competition; I interviewed appropriate people in the commission, whether they were commissioners, members of staff, etc; and wrote a draft report. As you will see from my material, the current statutory framework does not allow for that draft report to go to the complainants; it goes to the commission. As those competitions predated devolution, that draft report went to the Lord Chancellor. If I were to receive a complaint tomorrow, the draft report would go not to the Lord Chancellor but to the Office of the First Minister and deputy First Minister (OFMDFM). That is the change in the process.

Mr Elliott: Thank you very much. I have one brief question. In response to the Chairman, you mentioned the independence of the post from the judiciary. What would make it more independent, a stand-alone post or a post incorporated into a wider commission? Is there anything that would make it more independent?

Mr Singh: There are two issues. The first is the eligibility of the post. This is the point that I was making, and I am not casting aspersions on the legal or the judicial community. However, I will put myself in the shoes of someone sitting on the outside looking in. If I, as ombudsman, had a legal qualification, no matter how independent my thought processes, the person sitting outside might take the view that there was not as much independence of thought and action there. I am talking about perceptions. I mentioned the nine occasions on which my counterpart, who, like me, is a layperson, identified an actual or potential conflict of interest in the cases that he was dealing with.

The second issue is the relative independence of the arrangements that support the post. When I meet complainants, for example, it is my practice to ensure that I meet them off the court estate or off the Department of Justice estate. I make arrangements to meet them on a confidential basis away from those estates, simply to underline the point that I am quite separate. It is important that complainants feel confident that they are meeting me on a confidential basis. If this role were under the umbrella of the Public Services Ombudsman, I suspect that confidentiality would not be a difficulty because meetings could be held in the Public Services Ombudsman's offices. The issue would be one of eligibility because, if a lawyer were appointed as the Public Services Ombudsman, there could be a difficulty. On the other hand, given the way I have stepped in and taken on some English cases, perhaps one could have an arrangement whereby someone from the English jurisdiction could look at some of these cases.

Mr Elliott: That is quite interesting. I have some concerns about the eligibility criteria, which imply that judges should not be appointing judges either. That also suggests that the Northern Ireland Ombudsman — I do not know the exact criteria for that appointment — should not come from a Civil Service background or —

Mr A Maginness: Or a legal background.

Mr Elliott: Yes, but the current Northern Ireland Ombudsman investigates Departments, so he or she should not have a Civil Service background. Again, it is clearly difficult always to meet these criteria.

Mr Singh: I accept that. I referred to that earlier, when I said that there had to be balance. You have to think about the question of rationalisation from the perspective of efficiency and value for money. From the point of view of independence, I understand that there are restrictions on the current ombudsman, in that he or she must not have a background in health. So having eligibility restrictions is not a new concept. Obviously, commissioners have a very hands-on role in the current process for appointing judges. I have looked at the selection process, and the panels are always made up of judges, people from the legal community and people from a non-legal background. So I am not sure that your point holds true in the sense of judges appointing judges, but I can see your point that there is a question of —

Mr Elliott: Perception.

Mr Singh: There is a perception, and perception is a very important issue. I think —

Mr Elliott: If we follow your argument on the appointment of the Judicial Appointments Ombudsman, the same would hold for the appointment of the judiciary.

Mr Singh: Sorry, the same would hold for what?

Mr Elliott: The appointment process for judges because you are saying that it is all about perception.

Mr Singh: It is important to distinguish between the appointments process and the complaints process. I was a Civil Service Commissioner in the past. I have sat on and chaired panels that included civil servants but also people like me representing a lay non-Civil Service perspective. It is about bringing those perspectives together because you need to have people with some understanding of the role to which you are appointing. Equally, you need to have people who are seen to be visibly holding the ring as referees, as it were, or bringing a non-technical perspective to the particular role. I do not see that as a difficulty. All sorts of appointment processes are undertaken by people from within and without that sector.

In complaints, however, the issue is one of giving confidence, not only to complainants but to the wider public that the process is being undertaken in a certain way. That is the distinction that I would draw. My final point is that, after all, is providing greater transparency and a non-judicial perspective in the appointments process not the *raison d'être* of having an appointments commission?

Mr Elliott: The point that I am labouring is that people may suggest that, because you have no background in the legal profession, what gives you the right to assess a complaint about the appointment process?

Mr Singh: Right, OK.

Mr Elliott: I will not argue for or against that —

Mr Singh: No, I understand that.

Mr Elliott: — but I would like to get a better understanding.

Mr Singh: First, as a non-lawyer, and without personalising this too much, I point to my previous experience with different parts of the justice system. If I may, with your permission, I will briefly outline that experience. As someone who has been a commissioner of the police complaints process in England and Wales; a member of the Parole Board in England and Wales; a board member of the Judicial Studies Board in England and Wales; and a commissioner for the miscarriages of justice body for England, Wales and Northern Ireland, I have some understanding of the courts process and looking at the output of judges. I also bring a decade's experience as a lay member of the employment tribunals and my experience as a Civil Service commissioner.

I come from a pedigree of understanding something about the appointments process. However, I understand your point. I will simply say that this is a balancing exercise of taking these different things into consideration. At the end of the day, I fall on the side of the fence that says that it is important to try to promote confidence as much as possible, and I think that this role has an important contribution to make to that. Equally, I think that it is very much a question of striking a balance and thinking about the role that eligibility restrictions can play. That is my personal view.

Mr Dickson: I can see both sides of the argument, but we will have to come down on one side or the other. One of the complaints about the public sector — you have had connections with a raft of public sector organisations — concerns silo working and people not knowing what is going on in the organisation on this side of them or the organisation on that side of them. Is there not some value in suggesting that a broad-spectrum ombudsman would get us out of the silos? Would he or she take an even higher view of all people's issues and concerns about appointments in the public sector?

Mr Singh: There is that argument, but there are two issues that you have to balance. Of course, I understand the argument that what we had in the past was, perhaps, a proliferation of roles that dealt with different complaints processes in different parts of the public sector. So perhaps we ought to think — particularly with the pressure on public finances — about bringing many of those together. I understand that argument.

Equally, you have to ask yourself whether you are comparing like with like. We have, for example, a Police Ombudsman and a Prisoner Ombudsman in the justice sector alone, let alone anywhere else. The subject matter that they deal with is very different from the subject matter that I deal with as the Judicial Appointments Ombudsman. It is fair to say that not only the nature of the complaints but

where the complaints come from will be different because, by and large, although my remit also covers the magistracy, it is likely that the complainants whose cases I consider will be serving judges or lawyers seeking judicial appointment. Also, my remit is to look at maladministration, not to review the original decision.

The Police Ombudsman looks at the conduct of individual police officers. When I was on the Parole Board, there was a whole host of issues and complaints, but there was a strong link to the conduct of individuals and prison officers. The question is this: can one construct architecture and an overall umbrella that can not only distinguish between different sorts of complaints and outcomes but, crucially, deal with the question of perceptions and promote confidence? You might be able to do that by having one post holder, but having the same post holder for two statutory offices. That is one of the ideas that I noted from the paper from the Department of Justice.

Mr Dickson: I do not disagree with you, and I see, for example, the broad divide when you distinguish between process-led investigations and pure acts of maladministration. That is your role. You are not looking at who said what and whether someone filled in the right application form, and so on, because that is all about process, which is supposed to be dealt with by the commissioners.

Mr Singh: I will not get into the ins and outs of the complaints that I have dealt with, but when I look at complaints about potential maladministration, I inevitably look at what has gone on and at the documentation produced by the people involved in that selection process.

Mr Dickson: Yes, but only if it helps to lead you to a conclusion, for or against.

Mr Singh: Absolutely. The other issue to consider is the link between individual complaints and the learning for the organisation or jurisdiction. That is also really important and links back to my point about the audit function. How do you close the loop? Surely, the whole point of having a complaints process, whether it relates to maladministration or not, is that you want to know what that public service, sector or organisation learns from it and how it changes its processes to try to minimise the problem in the future.

The Chairperson: I have some final questions and then we will conclude, because I think that we have exhausted the subject from your perspective. The appointment of the Northern Ireland Public Services Ombudsman (NIPSO) will be through the Assembly. So, if this function is to be carried out under the auspices of that individual and the Assembly appoints that individual, would that not compromise the independence of your office, given the political interference from which you want to protect it?

Mr Singh: I am not quite sure, Chairman, that I would put it in the words that you ascribe to me. I simply make the point that the current eligibility restrictions do not allow for the appointment of serving or former elected representatives.

The Chairperson: My point is that politicians will appoint the NIPSO. Currently, as I understand it, the Department recommends you and the Queen signs off on that. Under the new proposal, Assembly Members, through a vehicle such as the Assembly Commission, will recruit and interview, and the NIPSO will get the post by virtue of the MLAs, not the Department. I will elaborate on that. Tom Frawley seems to make it quite clear that the NIPSO will be nominated by the Assembly, and the Queen will make the official appointment. If that does not happen, how does that complicate the independence of that office?

Mr Singh: That is interesting because my assumption was that the NIPSO would be appointed in the way that Dr Frawley suggested. However, if that does not happen, Members would have to ask themselves what implications that would have for emphasising the independence of the role from the Executive and the judiciary. When I was appointed, the post was openly advertised. I was interviewed by a panel, and, as I understand it, my name went forward as a recommended name to the Lord Chancellor, who forwarded it to the Queen. I assume — I do not know whether it will happen for the NIPSO — that there would be some kind of process in which the position would be openly advertised and clear competencies, person specifications and skills for the role would be set out. There would, presumably, be a process whereby the individual would be assessed against that by whomever.

As a Civil Service Commissioner in the past, I may have chaired the panel making very senior appointments, but I was certainly made aware of perceptions that Ministers, for example, have had about particular applications and the kind of skill sets that they thought the person should have. That is not the same as saying that a Minister should clearly appoint that person, which is, as you know, a fairly topical subject elsewhere, but not necessarily here.

I do not see any difficulty with the post holder, as a public servant, being accountable to the Assembly. The question is how you go through the process of appointing that individual so that he or she has gone through a process that is seen to be robust. Being accountable to the Assembly and being seen as a creature of the Assembly are two different things, if I may say so.

The Chairperson: On the latter point, if that was how it was seen — that the person was a creature of the Assembly — does that go too far as far as the independence of the role is concerned?

Mr Singh: You are asking me to express a personal view, and I will. I think that one would have to look very carefully at the implications for the post holder. If I were in that position, I would be concerned about how it looked, not only to the community from which the complaints will come but to the wider community. Those are the two questions that I would ask myself. I would be concerned if I felt that there was an issue that was compromising the independence of the role.

Let me stress that, when I talk about independence, it is not about being in a position in which one is not accountable for the use of resources or how one's responsibilities are discharged. As a public servant, that is absolutely appropriate, and you as elected representatives have every right to expect to see how I discharge my responsibilities. Clearly, however, under the current framework, which is, I think, appropriate, that does not extend to getting into the detail of individual complaints.

I want to finish on that last question. When you come back to look at judicial appointments, as you may do in the future, you may wish to look at the processes linked to this role and, particularly, at the question of whether draft reports from my post or that of the post holder should be considered in an OFMDFM context or, indeed, any other aspect of the Assembly's government.

The Chairperson: OK. Thank you very much for your time. It is much appreciated.

Mr Singh: Thank you.