



Northern Ireland  
Assembly

Committee for the Office of the First Minister  
and deputy First Minister

# OFFICIAL REPORT (Hansard)

Northern Ireland Judicial Appointments  
Ombudsman: DOJ/Northern Ireland Courts  
and Tribunal Service Briefing

22 May 2013

# NORTHERN IRELAND ASSEMBLY

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Northern Ireland Judicial Appointments Ombudsman: DOJ/Northern Ireland Courts  
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**Members present for all or part of the proceedings:**

Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mrs Brenda Hale  
Mr Stephen Moutray  
Mr George Robinson  
Mr Jimmy Spratt

**Witnesses:**

Ms Geraldine Fee	Department of Justice
Mr David Lavery	Department of Justice
Mr Martin Moore	Department of Justice

**The Chairperson:** I welcome Geraldine Fee, David Lavery and Martin Moore from the Department of Justice.

**Mr David Lavery (Department of Justice):** Chair, I will make some brief opening remarks, if that is all right. My colleague Geraldine Fee heads the jurisdictional redesign division in the Department of Justice. Martin Moore is one of the senior officials in that division. I am head of the access to justice directorate in the Department of Justice. I thank you and the Committee for the opportunity to address the Committee this afternoon about the future of the Office of the Northern Ireland Judicial Appointments Ombudsman. It is a matter on which we gave evidence to the Committee for Justice on 21 February.

I will sketch out the background to the role of the Judicial Appointments Ombudsman. The post of Judicial Appointments Ombudsman in Northern Ireland was established in 2006 as part of the new arrangements for judicial appointments that can be traced back to the report of the criminal justice review published in 2000, which flowed from the Belfast Agreement. The ombudsman is independent of government, but sponsored by the Department of Justice. The ombudsman's role is to investigate complaints of maladministration from applicants for judicial appointments. Since 2006, there have been six complaints of alleged maladministration for the ombudsman to investigate.

In view of the relatively small number of complaints, we thought it timely, in the context of the Executive's review of arm's-length bodies, to reconsider the arrangements for the ombudsman's office. The costs of the office are quite modest. The ombudsman has already successfully reduced his office

running costs by approximately one third, from around £90,000 in 2010-11 to just over £60,000 in 2011-12. The purpose of our review was not to question the functions of the ombudsman, but to examine options for providing administrative support for his office. The Department believes that the ombudsman function in relation to complaints about judicial appointments strengthens confidence in the process for appointing judges in Northern Ireland. Our guiding principle, therefore, has been that, in looking at alternative ways of delivering the ombudsman's functions, we ought to disturb those functions as little as possible.

The proposal that we have developed would involve combining the Office of the Judicial Appointments Ombudsman with the new office of public services ombudsman. We favour that course for three reasons. First, the roles of both ombudsmen are complementary, as they involve investigating complaints of maladministration. Secondly, the Northern Ireland Ombudsman has a large resource of relevant investigative skills and expertise. Thirdly, the Judicial Appointments Ombudsman would remain statutorily distinct and, thus, counter any perception that the role was being diminished. I should point out that the idea of combining judicial appointment complaints with the office of public services ombudsman is not new. That is the model that has been adopted for Scotland, and we think that it would be suitable for Northern Ireland. We propose to retain the Judicial Appointments Ombudsman as a distinct statutory appointment in its own right, but the appointment would be held simultaneously by the person appointed to be the public services ombudsman for Northern Ireland.

There are a few policy issues arising from the proposal that need to be addressed, the main one being eligibility and the current eligibility restrictions that apply to the Office of the Judicial Appointments Ombudsman. The issue here is that there are some disqualifications that currently apply to the Office of the Judicial Appointments Ombudsman that may not apply to the new post of public services ombudsman; in particular, the disqualification of lawyers, persons who have held judicial office and persons who have been engaged in political activity as a member of a political party.

Following consultation with the Justice Committee, our proposal is to retain the current disqualifications in relation to judicial appointment complaints. That would mean that, in the event that any of the restrictions that I have mentioned applied to the person holding the position of public services ombudsman, a particular investigation relating to a judicial appointment could be delegated to the deputy ombudsman, a director of investigations or, if necessary, to an ombudsman from an outside jurisdiction. As to the disqualification of those engaged in political activity, I understand that Dr Frawley has written recently to this Committee to suggest that that disqualification should also apply to the new post of public services ombudsman.

In summary, Chairman, we consider that combining the role of Judicial Appointments Ombudsman with that of the public services ombudsman would be a sensible arrangement for Northern Ireland. It is a proposal that has the support of the Committee for Justice, and we commend it to this Committee for consideration. Giving effect to the proposal would, of course, require primary legislation, and an obvious candidate for that would be the Committee's proposed public services ombudsman Bill.

My colleagues and I are pleased to answer any questions that the Committee has for us this afternoon.

**The Chairperson:** OK, David. Thank you very much for those remarks. Can we start with the eligibility restrictions? You would bar somebody who was engaged in political activity as a member of a political party. What does that mean? What are the parameters of political activity?

**Mr Lavery:** I think that I am right in saying that that is a current disqualification that applies to the Office of the Judicial Appointments Ombudsman. I do not think that we have ever tested it. In the past seven years, we have had only one ombudsman, who was someone from outside the political world.

**The Chairperson:** But, surely voting is a political activity.

**Mr Lavery:** With respect, I think — I am not sure if I misspoke — that it is political activity as a member of a political party. It is slightly more explicit than just being a member of the electorate.

**The Chairperson:** Are you saying that you should not be a member of a political party?

**Mr Lavery:** I am saying that, at the moment, the current criteria for appointment as Judicial Appointments Ombudsman prohibits a person from that category being appointed.

**The Chairperson:** Does it? I want to be really clear about this. Are you saying that, if you are a member of a political party, you cannot be the ombudsman?

**Mr Lavery:** You cannot, at present, be the Judicial Appointments Ombudsman.

**The Chairperson:** If you are a member of a political party.

**Mr Lavery:** Yes; that is correct. I am not saying that it is a good restriction. I am just saying that that is what the law currently provides. I think that it replicates the provision in England and Wales, where there is an equivalent office.

**Ms Geraldine Fee (Department of Justice):** Yes. I think that the focus in the legislation is "engaged in political activity".

**The Chairperson:** Yes, but voting is a political activity. Surely there is nothing more political than voting.

**Mr Lavery:** I am not here to justify it but to explain it. The Justice Committee felt that rather than displace the eligibility criteria, they should be replicated.

**The Chairperson:** So, you do not take a view on —

**Mr Lavery:** I argued — obviously not very convincingly — before the Justice Committee that I am not personally convinced that disqualifying categories of people is desperately satisfactory. I would have thought that any public appointment needs to be underpinned by a strong principle of preparedness to acknowledge and step aside where a conflict of interest arises. For example, I tried to argue that the fact that lawyers are disqualified seems to be rather wide-ranging. You are disqualifying a whole category of professional people. I can immediately think of former contemporaries at law school who went off to England and have never set foot in Northern Ireland since and who are very distinguished law professors and hold other positions in England. Those sorts of people would automatically be disqualified from holding this position were they to want to return. However, all that I can do this afternoon is to report that the Justice Committee felt that the retention of those three categories of disqualification is a desirable principle.

**The Chairperson:** I am just trying to tease out the specific one of being engaged in political activity as a member of a political party. If I am a member of a political party and I vote, it would seem that I would disqualify myself.

**Mr Lavery:** It is "actively engaged", and I am not sure whether that has been tested in any way in its legal meaning. I have to say that it did not occur to me that it applied in the way that you are suggesting, although that might be the natural construction of the words.

**The Chairperson:** What is voting if it is not a political activity?

**Mr Lavery:** It is certainly a political act, but being an active participant in the political process is really what was meant to be captured by it.

**Mr Spratt:** It is a democratic right to have a vote.

**Mr Lyttle:** No one knows how you voted either; it is a private act.

**Mr Spratt:** And no one knows how you voted; it is a private act. Yes.

**The Chairperson:** If you disbar somebody, surely they are going straight to Europe.

**Mr Cree:** It seems unfair to me.

**Mr Lavery:** As I said, I tried to persuade the Justice Committee that, whilst I could see grounds for disqualification of those who hold or have held judicial office — I just think that the optics of that could

be wrong — to disqualify lawyers or other generic categories is problematic. We have a relatively shallow talent pool. We should open it up as broadly as possible in this community and underpin it with a principle that if there is an actual or perceived conflict of interest, one would stand aside.

**The Chairperson:** A relatively shallow talent pool?

**Mr Lavery:** If you disqualify whole swathes of the community, you exclude everybody — good, bad or indifferent. I think that you want the best in all public offices.

**The Chairperson:** Sure; you want the best for the job.

Let us move on to the costs. Obviously, if we go with the recommendation of bringing the Judicial Appointments Ombudsman under the Northern Ireland Public Services Ombudsman (NIPSO), there will be administrative costs and investigation costs. Members, in the paper, there is a table of recent costs. As David said, they have come down significantly. However, on the basis that there is, on average, only one investigation per annum, why does it cost somewhere between £56,000 and £95,000? Is that not a huge amount of money?

**Mr Lavery:** There is an irreducible minimum cost in the salary that is paid to the ombudsman and, I think, half of the salary of a member of administrative staff who supports the office. So, there are certain people costs. I am sure that, as with all such financial models, it must include national insurance and everything else. It is not just salaries; it is all the people costs.

What the ombudsman has managed to do, however, is to move to what might be called a virtual office. Instead of having permanent office accommodation in Belfast city centre, which is where we started when we established the office in 2006, the current incumbent has instead arranged to hire office accommodation as and when an investigation is live. Some of those costs might conceivably be absorbed into the office of the public services ombudsman, at least in part.

**The Chairperson:** And funded from Justice?

**Mr Lavery:** That is a debate to be had between the Department of Justice and the office of the public services ombudsman. I am quite sure that we could arrive at a formula, whereby, if these responsibilities were transferred to the public services ombudsman, some associated support costs would also be allocated.

**The Chairperson:** If we went with this, on the occasions that NIPSO was wearing the Judicial Appointments Ombudsman's hat, to whom would he or she report?

**Mr Lavery:** Reports on individual investigations are made to the relevant appointing authority, which, in some instances, might still be the Lord Chancellor but, in most instances, is the Judicial Appointments Commission. Geraldine has more information on that.

**Ms Fee:** There are two types of complaint that can be investigated. One is a departmental complaint, where the Lord Chancellor still has a role. That is in a very minor number of cases where it is still a Crown appointment. Most complaints are commission complaints, which are complaints brought against the Northern Ireland Judicial Appointments Commission (NIJAC) for maladministration in its appointment schemes. In such cases, the complaint, a copy of the draft report and then the full report go to NIJAC and OFMDFM, which is NIJAC's sponsor body. Obviously, the complainant gets a copy of the report.

**The Chairperson:** This is a relatively small point, David: if we go with this, there will obviously be a need to brief the parliamentary draftsmen.

**Mr Lavery:** Yes.

**The Chairperson:** That is not without cost.

**Mr Lavery:** No. We will not see you stuck. *[Laughter.]* In the meantime, knowing that these things take time, we have continued the appointment of the incumbent, Karamjit Singh, who has held the

office since 2006. His appointment is being extended to allow time for the legislative process to run its course.

**The Chairperson:** I do not want to get into areas that are not core business for us, but in the responses to your consultation, I think that the Law Society was at variance with the proposal. Should we put a lot of weight to that?

**Mr Lavery:** You should always put weight to what the Law Society says. With respect, however, we feel that this is a proportionate approach. It is a relatively small piece of administrative activity. We have had the benefit of having someone who has been very skilful at and capable of discharging that role for the past seven years, but we think that a natural fit for it remains the public services ombudsman.

At the risk of reopening the issue about conflicts of interest, I will say that it is interesting that, in England and Wales, where the same restrictions on the Judicial Appointments and Conduct Ombudsman apply, conflicts of interest have still arisen, even though they disqualify the same categories of people as the legislation would do in Northern Ireland. Even with those disqualifications, conflicts of interest, or, more likely, perceived conflicts of interest, have arisen in about 10 instances. They have had to send for our ombudsman to do those investigations. I am simply making the point that, no matter who you disqualify generically, inevitably, there must be instances in which people are known to one another. That reinforces my point that some fallback principle of standing aside if there is a perceived conflict is always necessary to underpin a position like this.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** David, Geraldine and Martin, thank you very much.