

**Summary of the Committee for Justice  
Consideration of the Judicial  
Appointments Process in Northern  
Ireland**

**Agreed by the Committee for Justice  
on Thursday 10 March 2016**

## Background

### Committee Review of Judicial Appointments in Northern Ireland (April 2012)

1. The Committee for Justice published its [‘Review of Judicial Appointments in Northern Ireland’](#) in April 2012, in fulfilment of a statutory requirement under section 29C of the Northern Ireland Act 1998. This provided for a review of the operation of the amendments made by Schedules 2 to 5 to the Northern Ireland Act 2009, to be undertaken by an Assembly committee which should report by 1 May 2012, and include in its report any recommendations it had for changes to the way in which judicial office holders are appointed and removed.
2. In its report the Committee considered a number of issues including:
  - a) The role of elected representatives – and noted that in any further consideration of where power should reside in relation to judicial appointments and to what extent, if any, political representatives should have a role, a distinction should be made between involvement in the selection process and involvement in the appointment process.
  - b) The appointment of the Lord Chief Justice and Lords Justice of Appeal – and indicated its belief that all judicial appointments should be based on merit; and supported the position of the NI Judicial Appointments Commission, that, when consulted by the Prime Minister on the appointments process, NIJAC will inevitably recommend that the appointment should be on merit; and there should be a process to ensure that appropriate candidates can apply.
  - c) The composition of NIJAC – and highlighted the perception of some that NIJAC is dominated by its judicial members. The Committee agreed with the Judicial Appointment Ombudsman’s assertion that NIJAC should reflect on the challenge of addressing any perceptions that might exist.
  - d) That judicial appointments are reflective of the community – and expressed its disappointment that no progress appeared to have been made to address this long standing issue. The Committee was of the view that NIJAC should take forward appropriate work as outlined in the evidence as a matter of urgency and give appropriate priority to it.
  - e) The removal of a person from a listed judicial office – the Committee noted that this is an area where power has shifted from elected representatives.
  - f) The maximum number of persons who may hold a listed judicial office – and questioned where power rests in relation to this as NIJAC has the responsibility to determine the

compliment of judges, and that NIJAC must agree the maximum number with the Department of Justice.

- g) Sponsoring Department – and noted that NIJAC has indicated that it has an effective working relationship with the Office of the First Minister and deputy First Minister in relation to its finance and governance arrangements; and that the Department of Justice is also positive regarding the delivery of these functions.
- h) Delivery of the Functions of the Judicial Appointments Ombudsman – and noted that the Department of Justice was considering alternative options for the delivery of the functions of the NI Judicial Appointments Ombudsman. The Committee agreed to give further consideration to this issue when the Department presented its findings and options.
- i) Investigation of complaints in relation to Judicial Officer Holders – and welcomed the acceptance by NIJAC of the recommendation by the NI Judicial Appointments Ombudsman that it should implement a 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.

3. The Committee concluded as follows:

*132. Having considered the evidence received and noting that the Department of Justice and the NI Judicial Appointments Commission (NIJAC) are of the view that the arrangements created by the 2009 Act, while only in place for a relatively short period of time, appear to be working satisfactorily, the Committee for Justice recommends that there should be no changes to the current process for judicial appointments and removals in Northern Ireland at this time.*

*133. Given the statutory requirement to report to the Assembly by 30 April 2012 which restricted the time available to complete this review and the fact that a number of issues may merit further consideration, the Committee intends to undertake a further review of the Judicial Appointments and Removals processes.*

## Developments with regard to judicial appointments

### England and Wales

4. Following the Committee's review in April 2012 a number of significant developments have occurred with regard to judicial appointments in England and Wales including:

- a. Crime and Courts Act 2013

Following the [House of Lords Constitution Committee Inquiry](#) and the Ministry of Justice report on '[Appointments and diversity: A Judiciary for the 21st Century](#)', the [Crime and Courts Act 2013](#) made changes in respect of judicial appointments. Notably, Schedule 13 provides for the use of 'positive action' allowing for a candidate from an under-represented group to be appointed in situations where there are two or more candidates of equal merit. The schedule also refers to the number of judges to be appointed to the Supreme Court in terms of full-time equivalence, paving the way for part-time working. In addition it amends the role of the executive in judicial appointments.

- b. NIJAC / QUB Research 2013

[Research commissioned by NIJAC](#) and published by the School of Law at Queen's University, Belfast in January 2013 found amongst legal professionals "a considerable amount of scepticism that merit is being rewarded by the current appointments system, particularly at the High Court level".

### NI Judicial Appointments Ombudsman

5. Developments have also occurred with regard to the role of the NI Judicial Appointments Ombudsman. In April 2015 the Committee for the Office of the First Minister and deputy First Minister introduced the Northern Ireland Public Services Ombudsman Bill, which included provision for the NIJAO to remain as a separate statutory office, but with the functions carried out by the proposed new Northern Ireland Public Services Ombudsman.
6. This followed an indication from the Department of Justice in April 2013 that the Minister had decided to ask the Executive to agree that the NIJAO should remain as a separate statutory office but that the functions should be carried out by the proposed new Northern Ireland Public Services Ombudsman. The Department indicated that the Minister wished to retain specific disqualifications that currently apply to the NIJAO, but only in relation to investigations of

judicial appointments complaints. This would be achieved by providing that, should the Public Services Ombudsman be so disqualified, he or she should delegate such investigations to an appropriate person (eg. the Deputy Ombudsman or another Ombudsman from a different jurisdiction) who is not disqualified. As far as possible, the Minister did not wish to disturb the NIJAO's existing powers, duties and responsibilities, which are provided for in the Justice (Northern Ireland) Act 2002.

7. These proposals were included as Part 5 of the Committee for OFMDFM [Northern Ireland Public Services Ombudsman Bill](#) which passed its final stage in the Northern Ireland Assembly on [10 February 2016](#).

#### High Court Judge Competition

8. In addition, both specific and general concerns in respect of a High Court Judge competition that started in 2009 were brought to the attention of the Committee by one of the candidates who applied. In this respect the Committee took oral evidence from Judge Marinnan, the Lord Chief Justice and the Judicial Appointments Ombudsman during the 2013/14 session.

#### **Committee intention to undertake a review of judicial appointments policy and procedures**

9. In light of the developments with regard to judicial appointments and the evidence considered, the Committee decided in September 2014 that a key priority for the 2014/2015 session would be a Review of Judicial Appointments Policy and Procedures, with an expected completion date of June 2015.
10. Given the need to prioritise completion of the Committee Stage of the Justice Bill during the 2014/15 session, and give consideration to a range of other issues of public interest that arose, the Committee subsequently deferred work on the Review of Judicial Appointments Policy and Procedures, but agreed to give consideration as to how this work could be progressed before the end of the 2011/16 Assembly mandate.
11. In September 2015 the Committee agreed to bring together the evidence received from Judge Marinnan, the Lord Chief Justice and the Judicial Appointments Ombudsman and produce a short report highlighting the key issues.
12. The Committee also agreed to recommend that the issue of judicial appointments policy and procedure should be a priority for the next Justice Committee.

### Summary of evidence received

13. In November 2013 the Committee received oral evidence from His Honour Judge Desmond Marrinan regarding the judicial appointments process and a High Court Judge Competition. A copy of the Official Report of the evidence is available at:  
[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/131107\\_judicialappointmentsandcompetitionforahighcourtjudge.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/131107_judicialappointmentsandcompetitionforahighcourtjudge.pdf)
14. While many of the issues raised by Judge Marrinan were in relation to aspects of a specific High Court Judge competition, several highlighted concerns and issues with the judicial appointments process more generally. These included:
- the perception that the process of judicial appointments is dominated by the senior judiciary;
  - the need for a clear distinction between the NI Judicial Appointments Commission and the Office of the Lord Chief Justice;
  - the lack of options open to a candidate in relation to progressing a complaint about the process/procedure and the costs associated with taking a judicial review;
  - whether the Lord Chancellor has a power of veto over Northern Ireland Judicial Appointments Commission (NIJAC) decisions;
  - the restricted remit of the Judicial Appointments Ombudsman;
  - how the Judicial Appointments Ombudsman did not find for maladministration despite upholding a number of complaints in this specific example;
  - the judicial appointment process in other jurisdictions;
  - the flaws in the judicial appointments and appeals process as illustrated by this particular case;
  - options for reform of the judicial appointments process in Northern Ireland; and
  - the meaning of sub-section 6 of the Justice Act.
15. In January 2014 the Committee received oral evidence from the Northern Ireland Judicial Appointments Ombudsman, Mr Karamjit Singh CBE. A copy of the Official Report of the evidence is available at:  
[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140116\\_judicialappointmentsetcnijudicialappointmentsombudsman.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140116_judicialappointmentsetcnijudicialappointmentsombudsman.pdf)

16. In his evidence Mr Singh outlined a number of issues regarding the Judicial Appointments Process and the complaints he had dealt with specifically regarding Judge Marrinan, and also more generally, including:

- how he assessed complaints and the difference between the terms he used such as 'Appearance of Bias' and 'Perception of Unfairness';
- whether the Ombudsman had the power to advise the Northern Ireland Judicial Appointments Commission (NIJAC) that a competition should be rerun;
- whether a person appointed would have to step down if a competition was rerun;
- the process by which the Ombudsman may change his draft findings and why his draft report is only shared with the Chairman of NIJAC and not the complainant;
- the guidelines used by NIJAC when conducting interviews;
- the circumstances that would justify a finding of maladministration;
- whether recommendations made to NIJAC are binding or whether there is/was an option to reject them;
- the potential conflict of interest between the role of the Lord Chief Justice as Head of the Judiciary and as Chair of NIJAC; and
- what structure would best enhance public confidence in the judicial appointments process.

17. In June 2014 the Committee received oral evidence from the Lord Chief Justice of Northern Ireland on the Judicial Appointments process. A copy of the Official Report of the evidence is available at:

[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140604\\_lordchiefjusticeandnijac.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140604_lordchiefjusticeandnijac.pdf)

18. In his evidence the Lord Chief Justice addressed a number of specific issues raised by Judge Marrinan. He also commented more generally on the Judicial Appointments process. Key issues covered included:

- why NIJAC made a recommendation for an appointment to the Lord Chancellor in relation to the 2009 competition when the complaints process with the NI Judicial Appointments Ombudsman had not been completed;
- public perception of NIJAC and whether a review of NIJAC's processes was necessary to restore confidence in the handling of judicial appointments;

- whether there should be a separation between the role of the Lord Chief Justice as Head of the Judiciary and as Chair of NIJAC;
- review mechanisms within NIJAC and what changes have been made as a result of the handling of the 2009 competition;
- the role of the Northern Ireland Judicial Appointments Ombudsman;
- how to address the perception that the senior judiciary continue to influence the appointment process;
- the role of NIJAC Lay Members;
- whether there is a need to increase the diversity of applicants;
- whether a lay person should be appointed as chair of NIJAC; and
- how the judicial appointments process can be improved.

19. In September 2014 Assembly Research and Information Service prepared a research paper (which can be accessed [here](#)) to assist the Committee with its proposed inquiry into judicial appointments in Northern Ireland. This provided statistical information on the Judiciary in Northern Ireland; highlighted recent developments in Great Britain, including report recommendations and legislative change; outlined international best practice with regard to judicial appointments; and, practice in other jurisdictions.

## **Conclusion**

20. The Committee for Justice notes that the most recent High Court competition has resulted in the appointment of two female judges which is to be welcomed in terms of diversity.

21. However the Committee still believes that there is merit in undertaking a Review of Judicial Appointments Policy and Procedures that would give particular consideration to:

- a) a critical review of the structures and processes associated with the appointments to, and removals from, judicial office, including the composition of NIJAC and the role of the Lord Chief Justice as Chair;
- b) the impact and effectiveness of NIJAC policies and programmes designed to ensure, as far as reasonably possible, that judicial appointments are reflective of the community in Northern Ireland, identification of any barriers, and how these could be addressed;
- c) good practice from other jurisdictions; and
- d) actions that could be taken to enhance public perception of, and public confidence in, the judicial appointments system.



## **Recommendation**

**A Review of Judicial Appointments Policy and Procedures in Northern Ireland should be a priority for the next Committee for Justice.**

## **Papers**

### **Judicial Appointments and Competition for a High Court Judge 7 November 2013**

[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/131107\\_judicialappointmentsandcompetitionforahighcourtjudge.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/131107_judicialappointmentsandcompetitionforahighcourtjudge.pdf)

### **Judicial Appointments and Competition for a High Court Judge: Northern Ireland Judicial Appointments Ombudsman 16 January 2014**

[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140116\\_judicialappointmentsetcnijudicialappointmentsombudsman.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140116_judicialappointmentsetcnijudicialappointmentsombudsman.pdf)

### **Briefing by Rt Hon Sir Declan Morgan (Lord Chief Justice) and Northern Ireland Judicial Appointments Commission 4 June 2014**

[http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140604\\_lordchiefjusticeandnijac.pdf](http://www.niassembly.gov.uk/globalassets/documents/official-reports/justice/2013-2014/140604_lordchiefjusticeandnijac.pdf)

### **Assembly Research Paper on Judicial Appointments – September 2014**

<http://www.niassembly.gov.uk/globalassets/documents/committees/2011-2016/justice-2011-2016/reports/research-paper-on-judicial-appts--1-sept-2014-2.pdf>