

**NORTHERN
IRELAND
JUDICIAL
APPOINTMENTS
OMBUDSMAN**

ANNUAL REPORT

25 September 2006 to 31 March 2007

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Preface

I was appointed as the first Judicial Appointments Ombudsman for Northern Ireland in September 2006. This role was created by the statutory framework as set out in the Constitutional Reform Act 2005 and provides an independent and external element for those who wish to complain about any administrative aspect of their own experience as applicants during an appointments process for judicial office.

One of the statutory requirements for my role is the submission of a report at the conclusion of each financial year which details the performance of my functions during the preceding period. I am using the unique opportunity provided by this first report in order to explore the broader context to judicial appointments by highlighting some of the issues arising from my discussions with a wide range of organisations and individuals (both here in Northern Ireland and beyond) and to set out some personal reflections on those issues.

I am also conscious that the Ombudsman's role is inextricably linked to the consideration of individual complaints and it is essential that the issues raised by such complaints form the basis of future reports. When exercising the function of Ombudsman it is important to observe the appropriate administrative and jurisdictional limits, not least because administrative integrity is at the heart of this process.

I make a number of assumptions which underpin this report. These include:


- the independence and impartiality of the judiciary needs to be continually reinforced;
- judicial appointments should be free of bias both in terms of perception and reality;
- judicial appointments are not just a matter of interest to the legal community but also, to the wider community;
- the possibility of political developments such as the devolution of justice and the face of society in Northern Ireland is likely to increasingly reflect more diverse characteristics and experiences than hitherto.

The most significant recent development in relation to judicial appointments in Northern Ireland has been the statutory establishment of the Judicial Appointments Commission. How that body discharges its responsibilities towards individual applicants and whether this gives rise to complaints will be a focal point for my own role as Ombudsman.

I look forward to continuing a constructive dialogue with the Northern Ireland Judicial Appointments Commission and Northern Ireland Court Service without in any way compromising our respective roles. We all have a shared interest in promoting confidence in the fair and proper administration of justice. Achieving fairness in judicial appointments, promoting access to justice and ensuring process experiences which have the hallmark of equal treatment are all interlinked. The perception of fairness is as important as achieving fairness itself.

I would like to thank all those individuals who I have met during the past six months for the indulgence of their time and views. I have been struck by the considerable interest that exists at large, in relation to appointments for judicial office, despite a limited knowledge base. There is a need for continued engagement and dialogue in order to create a broader understanding of judicial appointments.

Finally I would also like to take this opportunity to single out Mrs Audrey Fowler for a special mention because of her committed personal contribution in supporting my role from the outset.

A handwritten signature in black ink, appearing to read 'Karamjit Singh'.

Karamjit Singh CBE

Northern Ireland Judicial Appointments Ombudsman

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The Northern Ireland Judicial Appointments Ombudsman

Introduction

I was appointed as the Northern Ireland Judicial Appointments Ombudsman by Her Majesty The Queen on the recommendation of the Lord Chancellor. This followed an openly advertised and competitive recruitment process for the post. It is a new role which formally commenced on 25 September 2006. The key purpose of the Ombudsman's role is to investigate any complaints received from applicants for judicial office who are dissatisfied with any administrative aspect of the appointment process

Background

Prior to 2001 there were no internal mechanisms for dealing formally with any complaints or concerns which might have emerged from those individuals seeking judicial appointment. The role of Commissioner for Judicial Appointments was created by an Order in Council in 2001 with a specific responsibility for handling any complaints in relation to judicial appointments. The creation of my own role as Judicial Appointments Ombudsman has been through a framework of primary legislation approved at Westminster.

A wide ranging review of the criminal justice system in Northern Ireland was concluded in March 2000. Amongst its terms of reference was "the arrangements for making appointments to the judiciary and magistracy, and safeguards for protecting their independence"¹. The recommendations also included the appointment of a person to oversee, monitor and audit the existing appointment procedures. This led to the appointment of the Commissioner for Judicial Appointments who carried out a review of the existing processes. These reviews and other developments contributed to the statutory establishment in Northern Ireland of both the Judicial Appointments Commission and my own role as Judicial Appointments Ombudsman during 2005 and 2006 respectively.

¹ Review of the Criminal Justice System in Northern Ireland Chapter 6, paragraph 6.1

Legislation and Status

The Constitutional Reform Act 2005 provides the statutory framework for the establishment of the Northern Ireland Judicial Appointments Ombudsman. Sections 124 to 131 of the Act² define the arrangements for investigating complaints which are made to both the Judicial Appointments Commission and to the Ombudsman respectively and how they are to be reported. There is also provision for the Lord Chancellor to refer any matter for investigation to the Ombudsman which relates to procedures of the Judicial Appointments Commission or a Committee of the Commission. Such matters may relate to procedures generally or to the circumstances of a particular case.

The Office of the Northern Ireland Judicial Appointments Ombudsman is defined as a corporation sole and is independent of the Government, the judiciary and the Northern Ireland Court Service.

The Ombudsman and his Office

Appointment to the role of Ombudsman was made following open advertisement and independent assessment in common with the selection process for public appointments. The appointment is for a period of five years (which can be renewed for a further five year period) and the role is part time. Schedule 15 of the Constitutional Reform Act³ provides for the role of Ombudsman and states that the Ombudsman must never have practised law or held judicial office in the United Kingdom and should not currently be a civil servant, a member of either the House of Commons or the Northern Ireland Assembly or be engaged in political activity as a member of a political party.

Expenditure by the Ombudsman in the discharge of his functions and arrangements for administrative and other assistance to the Ombudsman are met by the Lord Chancellor, through the Northern Ireland Court Service. In practice this means the Office is situated independently from the Court Service estate. This provides a necessary and appropriate degree of anonymity in order to allow the Ombudsman to see complainants or other persons should he consider this is necessary as part of his complaints investigation. The Ombudsman and his Office also have a separate financial budget which is managed by the Northern Ireland Court Service. In addition the role is supported by dedicated staffing provision located at the Office.

² *Inserted sections 9A to 9H into the Justice (Northern Ireland) Act 2002*

³ *Inserted Schedule 3A in the Justice (Northern Ireland) Act 2002*

Remit and Relationships

The Ombudsman's remit is to investigate complaints, where maladministration or unfairness is alleged to have occurred during the judicial appointments process by the Northern Ireland Judicial Appointments Commission or Committees of the Commission, the Northern Ireland Court Service or the Lord Chancellor. The appointments to listed judicial offices covered by the Commission are contained in Schedule 1 to the Justice (Northern Ireland) Act 2002 (see Appendix 2).

The Ombudsman does not investigate complaints relating to judicial conduct and these are dealt with by the Lord Chief Justice of Northern Ireland. However the Ombudsman can be appointed on a temporary basis by the Lord Chancellor in order to investigate and adjudicate on such complaints in England and Wales when the Ombudsman for that jurisdiction is not able to do so. This difference with the framework as it exists in England and Wales occurs because complaints relating to judicial conduct were identified as a distinct issue in the review of criminal justice, and the current process was formally legislated for in the Justice (Northern Ireland) Act 2002. By contrast the statutory provision for investigating complaints relating to judicial conduct in England and Wales was only recently established within the Constitutional Reform Act 2005 and included within the remit of the Ombudsman for that jurisdiction.

A mutually agreed Memorandum of Understanding explicitly sets out how the relationship between the Ombudsman, his Office, the Lord Chancellor and the Northern Ireland Court Service will be conducted as well as defining operational objectives. The Ombudsman's current operational objectives are to:

- investigate, determine and make recommendations to the Lord Chancellor relating to complaints about the application of the appointments system to a listed judicial office;
- investigate any matter in the appointments process which the Lord Chancellor wishes to have examined;
- provide leadership and strategic direction of the office of Ombudsman, ensuring that the office performs to acceptable standards, and recognising standards of behaviour which promote diversity;
- oversee the day to day running of the office, devising and implementing working practices and complaint handling procedures in line with any guidance issued under the Act by the Northern Ireland Court Service;

- consider comments received from individuals, MPs, representative bodies and other organisations about appointments to a listed judicial office and
- provide the Lord Chancellor with an annual report on his activities that shall be placed before Parliament and published by the Ombudsman.

A similar document is currently being finalised and agreed with the Northern Ireland Judicial Appointments Commission. This is important in order to ensure that arrangements for access to Commission documentation and agreed timescales can be publicly communicated to complainants and others. The Judicial Appointments Commission also includes an information leaflet on the role of the Ombudsman amongst the application papers issued to candidates for judicial office, which has been prepared and published by my Office.

The Constitutional Reform Act 2005 provides for the Ombudsman to submit a report at the conclusion of each financial year on the performance of his functions to the Lord Chancellor and who in turn is required to present it to each House of Parliament before publication by the Office of the Ombudsman. This constitutes my first such report under this procedure.

Complaints Procedure

The legislation defines the Ombudsman's remit as covering "Commission complaints" and "Departmental complaints". A "Commission complaint" is one of maladministration by the Judicial Appointments Commission or a committee of the Commission in the process for judicial appointments. Appendix 2 lists the judicial offices which are covered by the Judicial Appointments Commission. A "Departmental complaint" is one of maladministration by the Lord Chancellor or the Northern Ireland Court Service in connection with a recommendation for, or appointment to a listed judicial office.

The legislation defines a "qualifying complainant," as one "...who claims to have been adversely affected, as an applicant for selection or as a person selected...by the maladministration complained of".

Complainants should have exhausted the complaints processes within the Commission (Commission complaint) or the Northern Ireland Court Service (Departmental complaint), before bringing a complaint to the Ombudsman. Ordinarily such a complaint should be made to the Ombudsman not more than 28 days after a complainant is notified of the decision of Commission or Lord Chancellor (in the case of the Court Service).

Following the complaint investigation the Ombudsman will report his findings to the complainant, the Lord Chancellor and the appropriate organisation complained of (such as the Judicial Appointments Commission or the Northern Ireland Court Service). The Ombudsman must state whether or not the complaint is upheld and if so whether in whole or part. If a complaint is upheld he will recommend what action should be taken as a result of the complaint. Any recommendation for payment of compensation will only relate to loss by a complainant as a result of maladministration and not as a result of failure to be appointed to judicial office. The report of each complaint will be sent to the Lord Chancellor irrespective of whether it is a Commission or Departmental complaint and to the complainant.

Developments elsewhere in the United Kingdom

Sir John Brigstocke KCB, was appointed as the first Judicial Appointments and Conduct Ombudsman for England and Wales in April 2006. He investigates complaints about the judicial appointments process and the handling of matters involving judicial discipline or conduct. His Office was established under the provisions of the Constitutional Reform Act 2005. It is an Associated Office of the Ministry of Justice but acts autonomously under the Ombudsman's direction and is also independent of the Government and the judiciary.

At the present time there is no statutory provision for handling complaints emerging from the judicial appointments process within Scotland. The draft Judiciary (Scotland) Bill which was published during the previous Parliamentary session provided for the Judicial Appointments Board for Scotland to investigate any complaints of maladministration and subsequently for the Scottish Public Services Ombudsman to externally review any matters arising. Complaints concerning judicial conduct are currently handled by the Scottish Executive Justice Department and the draft Bill proposed that the Lord President (in his new role as head of the Judiciary) should have responsibility for such issues as judicial conduct.

The Northern Ireland Judicial Appointments Commission

Introduction

The Northern Ireland Judicial Appointments Commission was established in June 2005 under the provisions of the Justice (Northern Ireland) Acts 2002 and 2004. It is an independent body with a specific remit to administer the selection processes for judicial appointments. The Commission states: "Our aim is to produce a judiciary that is reflective of our society and that is the best that it can be"⁴.

Background

Prior to the introduction of direct rule in Northern Ireland in 1972, the Governor of Northern Ireland was responsible for appointing county court judges and resident magistrates, on the advice of the Minister of Home Affairs. Appointments of High Court Judges, Lords Justices of Appeal and the Lord Chief Justice were made by Her Majesty the Queen on the advice of the Lord Chancellor. Since 1973 the Lord Chancellor has been responsible for directly appointing or advising on the majority of judicial appointments in Northern Ireland. Until the inception of the Judicial Appointments Commission he was supported administratively by the Northern Ireland Court Service in the discharge of this duty⁵. As noted in the previous chapter the establishment of the Judicial Appointments Commission followed recommendations made following the review of criminal justice⁶. The recommendations envisaged that such a body would enhance public confidence by providing an appointments process that was "transparent and responsive to society's needs on the one hand, but on the other must be clearly seen to be insulated from political influence"⁷.

Lord Clyde, Justice Oversight Commissioner⁸, concurred with this view in his sixth and final report "an obvious example of the courses taken to make processes more open has been the establishment of the Judicial Appointments Commission this should make the appointment of judges a more transparent process and enhance the confidence which they already possess in the public's mind."⁹

⁴ Northern Ireland Judicial Appointments Commission Corporate Plan 2006- 09

⁵ The Judicature (NI) Act 1978, gave the Lord Chancellor responsibility for the unified courts administration.

⁶ Review of the Criminal Justice System in Northern Ireland, published March 2000.

⁷ Paragraph 6.102, Review of the Criminal Justice System in Northern Ireland.

⁸ Lord Clyde was appointed in June 2003 to provide an independent scrutiny of the changes in the criminal justice system which were recommended in the Report by the Criminal Justice Review Group published in March 2000.

⁹ Sixth Report of the Justice Oversight Commissioner June 2006; chapter 2.26

Legislation and Status

A number of the recommendations made within the Criminal Justice Review Report were given legislative effect in The Justice (Northern Ireland) Act 2002 including the establishment of the Commission. At the time it was assumed that the devolution of justice matters to the Northern Ireland Assembly would shortly follow. The continued suspension of the Assembly led to The Justice (Northern Ireland) Act 2004 which enabled the Commission to be established in advance of any arrangements proposed for the devolution of justice.

The Commission is an executive Non-Departmental Public Body which has responsibility for ensuring that its statutory purposes are being met and that the use of resources by it as a public body is appropriate and effective. The Commission is funded through its sponsor department, which is the Northern Ireland Court Service.

Commission Membership

The Commission has a membership of thirteen Commissioners, is chaired by the Lord Chief Justice of Northern Ireland and also includes five judicial members who were nominated by the Lord Chief Justice. They are a Lord Justice of Appeal, a High Court judge, a County Court judge, a Resident Magistrate and a Lay Magistrate.

There are also two Commissioners with legal professional backgrounds, (a barrister and solicitor) who were nominated by the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland respectively. There are also five non legally qualified Commissioners who were appointed following a process of open advertisement and selection. All Commissioners (with the exception of the Chairman) have been appointed for an initial period of three years. The Commission is supported in its work by a secretariat, which is headed by a Chief Executive and has its own office.

The Commission's Roles and Responsibilities

The Commission has five key statutory roles (*as defined in its Corporate Plan 2006 - 09*). These are to:

- conduct the appointments process and make recommendations to the Lord Chancellor in respect of all listed judicial offices up to including High Court Judge. The judicial offices for which the Commission are responsible are set out in Schedule 1 of the Justice (Northern Ireland) Act 2002 and are also listed in Appendix 2 to this report;
- recommend candidates solely on the basis of merit;

- engage in a programme of action to secure, so as far as is reasonably practicable to do so, that appointments to the listed judicial offices are such that they are reflective of the community in Northern Ireland;
- engage in a programme of action to secure, so as far as it is reasonably practicable to do so, that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office and
- publish an annual report setting out the activities and accounts for the past year.

Appointment Procedures

The Commission is responsible for recommendations to the Lord Chancellor of those applicants suitable for appointment to the range of judicial offices mentioned above. Other than in exceptional circumstances the procedures for all appointments comprise advertisements, self - assessment application forms, supporting documentation from consultees and interviews. Separate selection panels comprising a mixture of legal, judicial and non legally qualified Commissioners are constituted for the purposes of short listing applicants and conducting interviews.

Since its inception in June 2005, the Commission has recommended a number of judicial appointments including the roles of High Court Judge, Coroner, Master of the High Court (statutory officer) and the President, Chair and Members of some tribunals. Re-appointments will have also been recommended by the Commission in those instances where existing office holders' terms have expired.

Complaints Procedures

The Commission has a statutory duty to make arrangements for handling complaints from an applicant for appointment who is dissatisfied with some part of the process. Legislation defines the period during which complaints should be made to the Commission as being not more than 28 days after the matter complained of.

Appeals in relation to decisions not to short list for reasons of eligibility or otherwise and complaints are dealt with by panels specially constituted for each appointment scheme. This ensures a membership of Commissioners which differs from the short listing or interview panels. In circumstances when the Commission's internal process has been exhausted and an applicant for judicial appointment still remains dissatisfied, a complaint can be made to the Ombudsman¹⁰.

¹⁰ In the period 15 June 2005 to 22 September 2006, complaints from dissatisfied applicants (i.e. after the Commission's internal complaint process), fell to the Commissioner for Judicial Appointments for Northern Ireland.

Developments elsewhere in the United Kingdom

The Judicial Appointments Commission for England and Wales (JAC) was established on 3 April 2006 by the Constitutional Reform Act 2005. The JAC is an independent non departmental public body sponsored by the Ministry of Justice. The JAC comprises fifteen Commissioners of whom ten, including the chairman, (who must be a non legally qualified member), are appointed following an openly advertised recruitment process. The remaining five Commissioners with judicial backgrounds are nominated by the Judges' Council. The current JAC membership includes five judicial members, two professional lawyers, five non legally qualified members, one tribunal member and one lay justice.

The JAC selects judges and tribunal members (both legal and non legal) on merit through fair and open competition. The judicial posts in the JAC's remit are listed in Schedule 14 of the Constitutional Reform Act 2005.

The JAC is statutorily required to investigate any complaints arising from the judicial appointments process. If the applicant remains dissatisfied a complaint can then be made to the Judicial Appointments and Conduct Ombudsman.

In Scotland, recommendations for judicial appointments are made by the Judicial Appointments Board which was established on a non statutory basis in June 2002 by the Scottish Executive. The Board comprises ten members with an even balance between non legally qualified and legal members, and with a non legally qualified chair. Following consultations and publication of a white paper, Ministers made a commitment to place the Board on a statutory basis. The current members of the Board were appointed by Scottish Ministers to whom the Board is responsible for its activities.

The remit of the Board differs from the Appointments Commissions both for Northern Ireland and England and Wales in that it covers appointments such as Sheriff Principal, Sheriff, Temporary Sheriff, Part - time Sheriff and Senator in the College of Justice. Another important difference is that tribunal jurisdictions are not covered by the Board.

The appointment processes employed by the Board are similar to those in England & Wales and Northern Ireland. Applicants complete self assessment application forms, supply details of referees and following short listing processes, interviews are conducted and the Board makes its recommendations to the First Minister. A personalised feedback process is also available to unsuccessful candidates. There is no formal internal appeal or complaints mechanism within the process and no external process similar to the Judicial Appointments Ombudsman role. As noted earlier there were proposals to introduce statutory provision for complaints of maladministration in the draft Judiciary (Scotland) Bill in the previous Parliamentary session.

Complaints

During the period 26th September 2006 to 31 March 2007, my Office did not receive any formal complaints relating to any of the recruitment competitions administered by the Northern Ireland Judicial Appointments Commission.

My Office did receive some informal enquiries about the overall operation of the complaints process. It was made clear that internal complaint mechanisms, and in this case those operated by the Judicial Appointments Commission, should be utilised in the first instance. These queries have not resulted, thus far, in a formal complaint being received by this Office.

During the same period I have been appointed as an Acting Judicial Appointments and Conduct Ombudsman for England and Wales by the Lord Chancellor. Schedule 13 of the Constitutional Reform Act 2005 provides for the Lord Chancellor to appoint a person to exercise the functions of the Ombudsman under certain specified conditions which are set out in the statute. In this instance, the Judicial Appointments and Conduct Ombudsman for England and Wales had notified the Lord Chancellor that it would be inappropriate for him to exercise any of his functions in connection with a particular matter because of a possible conflict of interest.

Themes Arising From Discussions

Introduction

I have met with a number of commentators (in Northern Ireland and beyond) since my appointment to this role (see Appendix 3). The views expressed covered a wide range of issues. I have sought to distil these comments into four broad themes that I consider are pertinent to discharging my responsibilities. The four themes are:

- the essentials of good complaints handling ;
- issues raised in relation to judicial appointments;
- the wider context such as confidence in the administration of justice and
- the changing face of Northern Ireland's society.

The essentials of good complaints handling

The scope and purpose of my own role is defined clearly in the statute and in the operational objectives that were agreed with the Northern Ireland Court Service as set out in the Memorandum of Understanding. I hope to finalise a similar document with the Northern Ireland Judicial Appointments Commission shortly. I also note that the British and Irish Ombudsman Association has issued guidelines underlining the importance of clarity through a clear statement of roles, intent and purpose as being an essential element to good practice in complaints handling.

It was suggested to me that complainants needed to clearly understand how my office and the complaints process operated. This point was also underlined by comments that my Office needed to be demonstrably independent and that I should seek to create a wider understanding of the Ombudsman role and its context.

The concept of accessibility through a service that is free, open and available to all who need it is another good practice dimension to complaint handling. Although neither my Office nor the Judicial Appointments Commission is providing a personal public service that is analogous for example to health, education or housing it can be argued that the existence of openly advertised appointments processes with internal and external complaints mechanisms satisfies this criterion.

It was observed that good practice in complaints handling is enhanced by ensuring openness and transparency through the provision of public information which clearly explains the process. It is also important that potential complainants are able to explore all relevant issues before determining whether a formal complaint needs to be

made. A clear audit trail setting out the information which is provided to individuals from the point at which they raise any queries is essential.

It was also suggested that, as with public bodies in general, my Office should think about how to communicate an appreciation of its role to a wider audience. A distinction was made between the need to establish rapport rather than relationships with stakeholders such as complainants, those complained against and others who may have an interest in such issues. Discussions in the context of a non statutory complaints process emphasised the importance of achieving good working relationships with the appropriate sector. Both staff and complainants needed to understand that the role was not as an advocate (for complainants) but to investigate and ultimately ensure sound administrative practice. Some complaints raised issues that had a systemic dimension and the Annual Report was perceived as the appropriate conduit to air such points.

Another issue raised was the concept of proportionality – namely that the investigation process and resolution is appropriate to the complaint. Some complaints focused processes and roles in Northern Ireland and elsewhere have no statutory framework that is analogous to mine and the investigation process is entirely paper based. There are no legal powers or administrative provisions to interview complainants or other individuals, and the time taken for provision of documentation by those complained against varies considerably. With no guarantee that this information was automatically forthcoming combined with a lack of a statutory framework, it is not surprising that timescales for complaints investigations can become extended.

It was also suggested that the crux of the Ombudsman role was to determine what the key issues raised in the complaint were and what information should be obtained as part of the investigation. It was observed that two principles were central to decision making – firstly, in terms of the process, a decision on what is in the best interests of the complainant and secondly, for the adjudicator to explain clearly how the decision was reached in relation to a specific complaint. It was also noted that the experience of other complaints systems suggested that there were also likely to be a minority of persistent complainants and at some point an assessment about finality in decision making had to occur.

An analogy was drawn with public services when it was suggested that a good practice indicator for complaints might be to demonstrate that it was a service which strove to meet targets for good administration. It was suggested that key questions for roles such as the Ombudsman were whether there were sufficient resources, did the process deal with more than complaints and was it seen as providing added value. One perspective was that the question which should be asked by all public bodies was – what do we learn from this complaints process and how do we encourage good practice? It was suggested that key indicators could focus on the quality outcomes

and complaint resolution that lead to positive change. Another perspective was that Ombudsmen offices should keep their own internal processes under review as part of a continuous improvement approach and it was helpful to monitor how other complaints systems and regulatory processes operated in practice. As part of this process it was felt that my Office might wish to obtain the views of complainants about the procedure at some point after I had adjudicated on their complaint.

It was also suggested that because there is a relatively small legal and judicial community within Northern Ireland there may be a reluctance to complain.

I have considered the points raised by some of these comments which are set out above. I set out some preliminary thoughts in the next Chapter on how I envisage discharging my responsibilities in relation to investigating and adjudicating complaints.

Issues Raised in Relation to Judicial Appointments

In introducing this section I should comment that there was a general belief in most discussions that judicial appointments processes in Northern Ireland were basically operating on a sound footing and that few complaints occurred in relation to judicial appointments or how judges discharged their responsibilities. One perspective was that whilst there appeared to be no serious complaints about judicial appointments, a process espousing merit may result in an imbalance in terms of community background. It was observed that the judiciary needed to be reflective of the community.

However I also noted there was a marked lack of awareness (even amongst active and otherwise informed individuals from a cross section of civic society in Northern Ireland) both of the Judicial Appointments Ombudsman role or indeed that of the Judicial Appointments Commission. There was little awareness of the Commission's current activities or its potentially wide remit in not only covering judicial roles (as they are generally understood) but also lay magistrates and various tribunal jurisdictions.

It was suggested that seeing judges appointed from a diverse range of non traditional backgrounds would be taken as evidence of a more open minded approach in judicial appointments. It was asserted that there were obvious equality considerations in relation to the appointment of women candidates for judicial roles. One statistic quoted was that it has been some two decades since the numbers of women who were studying law have been roughly equal to those of men. This was linked to issues such as the need to introduce more flexible working policies and take into account legal specialisation in the public and voluntary sectors for some women lawyers as against taking up posts with generic responsibilities in the private sector. It was suggested that there was now a pool of women lawyers in Northern Ireland who were eligible for appointment across the entire range of judicial roles. However it was noted that no information was published or available.

I will be discussing the issue of actual or perceived outcomes in the next Chapter.

Some discussions emphasised that the Judicial Appointments Commission needed to ensure that there was actual and perceived consistency in terms of its approach towards appointments. It was observed that recent advertisements published by the Commission highlighted the fact that an open process for judicial appointments was now emerging and this was contrasted with the situation a decade or so earlier. A recurring issue in several discussions was the extent of openness on the part of the Judicial Appointments Commission about how it discharges its responsibilities. It was suggested that there was a need for the public at large to understand that judges were now being appointed on an open and fair basis.

Some perceptions stressed that until recently the process of appointment to the Bench had been centred around an opaque system based on soundings and had been targeted exclusively at candidates with a traditional career path in private sector practices. Other commentators still perceived the process as being cloistered and operating effectively within a field with narrow parameters. Another perspective was that judicial appointments had traditionally been seen as the preserve of the Bar and depended heavily upon visibility before judges. It was observed that application forms currently appeared to be too complex and focused on the extent to which applicants had appeared in different courts or before various judges. Solicitors were also likely to be disadvantaged by this emphasis on previous court experience.

It was observed that the most commonly held perception of the judiciary was of a closed community standing aloof from the general public. There was recognition from some discussions that this was inevitable given the collective and individual security experiences of the judiciary during the past three decades or so. However another viewpoint expressed was that there appeared to be little sign of the judiciary responding to changes in the Northern Ireland environment in recent years.

Looking at the forms used recently during an appointment process for a judicial post, one consultee noted that all information about achievements was since qualification thus signalling an implicit assumption that applicants usually qualified as lawyers in their early twenties. (I understand that the application form specifically invites information about other qualifications, experience or employment). Previous non legal experience did not appear to be taken into account on the application form (and by inference during the selection process) however extensive this might be. It was also emphasised that the processes needed to be as transparent and open as possible. It was suggested that there was a need to ensure that extensive and clear notes were taken throughout the selection process as well as clarity in the accompanying documentation for applicants so that clear feedback could be provided. Instances where feedback from the Judicial Appointments Commission had been requested by candidates indicated that (on an anecdotal basis) this had been useful. The feedback had been helpful to individuals and not defensive in tone so that it was likely (based

on a small sample) that applicants would continue to seek feedback during future competitions should they be unsuccessful.

A number of specific questions also emerged in discussions such as:

- if candidates from diverse backgrounds were to be encouraged then how could this be encompassed within a merit based framework?
- if judicial appointments processes were changing significantly then how should this to be communicated to potential applicants and others?
- if the Judicial Appointments Commission intended to undertake a programme of outreach work , then how would this be linked to any demonstrable outcomes? It was also suggested that such outreach activity should be addressed towards both the legal profession and to the wider public at large.

Some discussions stressed the importance of making potential applicants aware of the intricacies of how judicial appointments processes operated so that they could prepare for the selection process. My attention was drawn to a course that was being run on a sessional basis over several weeks at a higher education institution and which provided information about the nature of public appointments in general as well as explaining what the appointments process entailed.

Discussions about recruitment to senior roles in the public sector and with the underlying assumption that an analogy to judicial appointments was valid identified questions such as:

- what inhibits potential applicants from applying?
- what strategies could be adopted for widening the pool of applicants so that the broadest range of good applicants can be attracted ?
- how to effectively quality assure the assessments made at various stages of the recruitment process and ensuring that the procedures do not disadvantage any particular groups?
- how to raise awareness of these issues and monitor progress overall?

These discussions also highlighted a number of associated points such as:

- the relative visibility, or lack of it, of specific groups as potential applicants;
- perceptions that processes which are ostensibly emphasising merit may not actually be achieving their objectives;
- the issue of relative age versus length of service or experience; and
- the robustness of recruitment processes and how to measure outcomes.

It was suggested that the judicial appointments processes needed to demonstrate these issues were being given active consideration. Another observation was that a

rigid emphasis on application forms and competency frameworks could lead to a formulaic assessment and also that a dogmatic interpretation of the merit principle could itself conceal unfairness within the selection process. It was felt that the emphasis on a formulaic process might be counter intuitive to the flair in judgecraft skills which might be identified as being necessary attributes for appointing outstanding candidates. It was suggested that there should be scope for introducing further scenarios or assessment of these factors after traditional competency based assessments had initially been undertaken. Another general dilemma raised in discussions was how to achieve any aspirations of reflectiveness in terms of gender, age, ethnic background or class. (It should be noted that class is not a category contained under Section 75). In some instances it might be difficult to measure these dimensions or recognise that specific groups may effectively be invisible. It was recognised that the appointments process needed to be seen as being fair and that all applicants had confidence they would be fairly treated.

It was also suggested that there was the important and related issue of who trained those undertaking the recruitment processes. It was pointed out that one of the difficulties of a small legal jurisdiction (as in Northern Ireland) was the likelihood of candidate details circulating informally as a direct result of lawyers informally associating with each other. Another less positive aspect was the speculation about specific candidates and whether or not they were likely to be successful. There were anecdotes about unnamed individuals who were so discouraged by previous experiences that they were unlikely to apply for judicial roles in the future.

I have been informed that the Northern Ireland Judicial Appointments Commission has taken considerable care and time to draft competences which are complete and relevant and which relate to the particular judicial office which is being advertised and to ensure that it is clear about how those competences are being tested, assessed and scored. Guidance is made available to Selection Committee members in fairly detailed format and guidance is also available to the Chairman of the Selection Committees. In addition training has been made available to the Selection Committee members. The Commission does not use personal knowledge about candidates. The Commission has a feedback policy which permits feedback in the first instance in writing, followed by face to face for candidates called to interview if requested.

The Judicial Appointments Board in Scotland has tried to ensure that relevant competencies were tested, assessing individual judgement, and obtaining enough information through self assessment and other procedures. Guidance was made available by the Board in order to ensure consistency of approach in interviews and in the format of references. The legally qualified members of the Board determined the legal competence of applicants but do not utilise their personal knowledge about candidates. This was particularly important in the context of a relatively small legal jurisdiction. Feedback is managed by a lengthy telephone conversation rather than in writing and appointments are made in advance for the feedback. There had been a continued emphasis on ensuring the quality of this feedback is helpful to applicants since the inception of the Board.

Another perspective was that in recent years a number of different institutions had emerged in Northern Ireland and there were differences between them in terms of how open they appeared to be and the extent of their engagement with community based institutions. It was felt to be important that the Judicial Appointments Commission liaised not only with organisations interested in justice issues but more widely.

Ensuring appointments were made on merit and the judiciary were reflective in relation to society was highlighted in various discussions including with those taking an interest in the international context. The emergence of women's lawyer organisations in different United Kingdom jurisdictions reflected increasing numbers entering the legal profession and the existence of a larger potential pool for judicial appointments.

It was suggested that the merit principle is not inconsistent with diversity and that it was important to recognise the value of differing backgrounds amongst the judiciary. The point was made that this dichotomy is more apparent than real and may be masking some unfavourable assumptions currently being made in appointments procedures. I will return to a number of the points made in this section in the next Chapter.

The Wider Context

It was suggested that Fair Employment legislation introduced some three decades ago had gradually led to an increasing awareness on the part of public organisations about their responsibilities for employing a workforce that was reflective of the Northern Ireland population. The introduction of section 75 of the Northern Ireland Act 1998 had also led to public sector organisations now having to consider the effectiveness of their consultation and outreach processes. A related issue had been the ability of the voluntary sector in Northern Ireland to raise appropriate issues with public bodies and advocate change with some considerable success.

It was suggested that Human Rights legislation and case law had also been the backdrop to a number of successful legal challenges which had led to change. Within the justice system this was linked to areas such as policing and the under representation of women. External visitors to Northern Ireland were quoted in some discussions as having commented on the relative absence of women appointees to senior judicial roles. The perception on the part of those raising such issues was of a legacy of several factors combining together over previous decades. This included the historically low numbers of women within the judicial system and the existence of essentially male networks comprising a relatively small pool of potential candidates with common social characteristics and educational experiences.

It was perceived by some commentators that Northern Ireland was replete with too many accountability mechanisms. Another perception saw the justice system as being characterised by:

- relatively few voluntary organisations taking an interest in this area;
- few women being visible at senior levels;
- organisations not being sensitive to the image they conveyed;
- the current composition of the judiciary not being reflective of the community; and
- lack of external awareness of whether there was any provision of sensitivity awareness training for the judiciary .

It was observed that the judiciary also faced their own challenges in terms of visibly responding to the wider changes now occurring within Northern Ireland. Whilst policing had received a high profile focus in the past, it was felt that other justice issues were also emerging. These included the extent to which the changes recommended in the justice system were being monitored and implemented; the extent to which section 75 equality duties were being implemented and the extent to which confidence in the justice system would be maintained in the context of devolution.

A number of reports, including those produced by the Justice Oversight Commissioner and the Commissioner for Judicial Appointments, have highlighted the fact that the justice system in Northern Ireland had been the subject of considerable scrutiny and organisational changes. Some commentators also noted that with some parts of the justice system receiving more public interest than others, for instance policing and prisons, interest in judicial appointments had tended to be confined to the legal community in Northern Ireland. It was observed that there had been less public awareness of the Criminal Justice Review and its outcomes than the Patten Report which had focused on policing.

It was noted that politicians would inevitably become more interested in the administration of justice as discussions about the devolution of these functions progressed and this would be mirrored in organisational developments such as the establishment of a statutory Assembly committee with a focus on these issues. Some discussions also alluded to the crucial importance of maintaining an emphasis on the independence and impartiality of the judiciary. It was observed that this dimension needed to be continually reinforced in order to retain confidence in the administration of justice in Northern Ireland. The view was expressed that confidence in the administration of justice was also linked to confidence in the legal and judicial communities. A minority perspective put forward was that because few people applied for and had direct experience of the judicial appointments process, it was in

fact a specialist interest issue rather than one of interest to the wider community. In most discussions a clear link was seen between confidence in the administration of justice and the judicial appointments process.

One perspective was that there should be greater political involvement in judicial appointments. It was suggested that the new independent selection process still retained too much emphasis on judicial views about candidates and this may be seen as being disproportionate. It was asserted that all persons in Northern Ireland had a political or community affiliation and regardless of whether or not this influenced judicial decision making, it was unrealistic to ignore this dimension or perceptions about it. Introducing a similar process to public appointments in England and Wales was suggested in which candidates were required to declare any political affiliations. It was not suggested that individual political or community affiliations were demonstrably leading to bias in judicial decision making.

In addition to those appointments to judicial roles which require legal qualifications and expertise, it was suggested that the manner in which lay people were appointed to the lay magistracy was an important contributory factor towards promoting confidence in the justice system. It was suggested that there is a widespread public perception that the judiciary do not have much personal exposure to different lifestyles and in collective terms as a group its social experience is quite restricted. This had direct implications for confidence in the administration of justice.

In Scotland an issue which had arisen was how to ensure the continued independence of the Judicial Appointments Board from the Executive. It had been proposed in the Justice Bill (which was before the previous Scottish Parliament) that future appointments to the Board would have no Scottish Executive involvement at Ministerial level and that the recruitment process would be regulated externally.

In an international context, it was observed that a number of Commonwealth countries have reported tensions in the relationship between the judiciary and executive. Attention was drawn to the Commonwealth (Latimer House) Principles¹¹ which stress it is important to ensure that appointments processes support the basic tenets of judicial independence, impartiality and integrity and how diligently Judicial Appointment Commissions were able to discharge this responsibility. The Principles define the desirable relationships between the judiciary and the Executive in the following terms:

“While dialogue between the judiciary and the government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence.”

¹¹ adopted by the Commonwealth Heads of Government in December 2003

It is worth noting that the Principles also comment as follows:

“Judicial vacancies should be advertised. Recommendations for appointment should come from the Commission.”

“Judicial training should include the teaching of the law, judicial skills and social context, including ethnic and gender issues.”

Whilst it was acknowledged that much had been achieved through Fair Employment legislation and case law in terms of achieving integrated workforces in Northern Ireland, how the merit principle was interpreted and applied in a sensitive manner was now perceived as being the key issue. I will be discussing this issue further in the next Chapter.

The changing face of Northern Ireland

A number of commentators recognised that although Northern Ireland was changing as a society, most people still viewed community relations in terms of two communities. Greater freedom of movement within Europe and the migration of other communities to Northern Ireland were inevitably leading to a changing face. It was suggested that little research had been undertaken into the views of, or experiences of minority ethnic communities in Northern Ireland.

It was observed that there were few minority ethnic lawyers in Northern Ireland and this was unlikely to change. Perceptions of a relatively small legal world coupled with a large number of family dominated legal practices and a strong insider culture had led to minority ethnic students either applying for law courses in Great Britain or seeking legal training opportunities there after graduation. It was suggested that for minority ethnic communities, equal access to employment in legal and other fields was a key issue. It was observed that the legal profession itself was demonstrably more integrated now in terms of the different categories of professional work being undertaken. However it was felt that family and other links within the legal community was still a major determinant for access to lucrative casework. The legal profession was perceived as being largely drawn from middle class backgrounds. Class was also seen a major factor in determining access to justice by different sections of the community.

Another issue highlighted in several discussions was the under representation of women in public life across Northern Ireland and it was pointed out that a majority of public sector organisations were being chaired by men. For some commentators this raised the issue of whether there were differential experiences for men and women in applying for and being appointed to public bodies. There were two contrasting perceptions – either that no dramatic change will occur, against a more widespread belief that change in the gender profile of senior public appointments will happen in

Northern Ireland over time. Questions were also raised about the existing pool of suitably qualified candidates as against enhancing the pool by developing potential candidates and addressing factors which led to a lack of confidence on their part.

It was suggested that statistics now showed community background was no longer the primary issue and that whilst the gender make up was gradually improving in terms of overall board membership for public bodies, more needed to be done. It was observed that the balance of staff community backgrounds within a public body could also have a significant impact on how that organisation was perceived by different communities. It was also noted that public bodies in Northern Ireland were subject to scrutiny in areas such as implementing equality policies.

I will discuss issues arising from a number of these points in the next Chapter.

One perspective was that whilst there appeared to be no serious complaints about judicial appointments, a process espousing merit may result in an imbalance in terms of community background. It was observed that the judiciary needed to be reflective of the community. An alternative perspective emphasised the need to ensure that judicial appointments were made strictly on the basis of merit. Concerns were expressed that those responsible for judicial appointments processes may be swayed by the concept of achieving “balances” in the judiciary, for example in gender or community background, rather than selecting the most meritorious candidate within a particular recruitment competition.

Some Reflections on the Issues Arising In the Previous Chapter

Introduction

I have previously drawn attention to the review of criminal justice and subsequent reports and developments which have led directly to various policy and legislative responses including the establishment of the Judicial Appointments Commission and my own role as Ombudsman.

In his sixth and final report (which was issued last year) the Justice Oversight Commissioner highlighted a number of issues in relation to judicial appointments which I have summarised as follows:

- it is not just an issue of mechanisms changing but also changes in mindset that are necessary;
- the justice system should be perceived as fair and equitable in the choice of persons engaged within it;
- clumsy and incompetent complaint handling detracts from confidence in the process;
- the membership of the Judicial Appointments Commission needs to take account of both sides of the community and the changing nature of Northern Ireland;
- the Commission should engage in a programme of action ensuring that successful applicants not only have the ability to do the job but also provide the best quality of justice;
- stressing impartiality and independence is necessary for confidence in the judiciary;
- with the possible development of devolution this introduces a new dimension with emerging political interest in these issues.

All these issues are pertinent to my own reflections in this particular Chapter.

My Role in Handling and Processing Complaints

Unlike some Ombudsman roles, my role is clearly defined within a statutory framework. Relationships with key organisations such as the Judicial Appointments Commission and the Northern Ireland Court Service will be explicitly defined in Memoranda of Understanding. It is my intention to publish these Memoranda and a reference to the legislation on my website so that applicants, potential complainants and others can understand the process. The Memorandum of Understanding (once it

is agreed) with the Commission will be important because it reflects our shared understanding of clearly defined and published timescales for the provision of information to my Office during the course of complaint investigations. This is fundamental to achieving a process which is perceived by complainants to be responsive and expeditious and that indicates a commitment on the part of the Commission to this.

Other measures that I consider are essential for enhancing confidence in my role are the provision of an independent office and dedicated staff resource. Within the context of a relatively small legal and judicial community it will be essential for my office to underpin that confidence through secure handling facilities for documentation and guaranteed anonymity for discussion. I am committed to providing as thorough a complaint investigation as possible and which is conducted in a manner that is appropriate and proportionate to the issues raised. There will not be automatic presumption of the investigation being a paper based one, and I will seek to provide as full an explanation of relevant issues as is possible to complainants without compromising the identity of other applicants who may have been part of the same competition. I will also seek to do this within as short a timescale as possible and with a focus on the key issues at the heart of the complaint. It is unlikely that any complaints investigation will be initiated until I have had an opportunity to meet with the complainant to clarify the issues. This emphasis on transparency to complainants and to those complained against whilst respecting the legitimate interests of third parties is likely to be an on-going feature of my investigation reports and future Annual Reports.

I will also seek to take advantage of any opportunities which may present themselves in order to explain my role and the operation of this Office.

I am conscious that it is important to demonstrate not only impartiality but to adhere to best practice in complaints handling. My Office has been accepted as an Associate Member of the British and Irish Ombudsman Association (BIOA), whose members' schemes exemplify current best practice and should also provide a benchmark for this Office. My Office will continue its engagement with Association. The Office will also continue a close relationship with the Judicial Appointments and Conduct Ombudsman and his office colleagues in the England and Wales context in order to exchange ideas on best practice when investigating complaints relating to judicial appointments.

I would also like to take this opportunity to express my personal appreciation to the Chairman of the Local Commission for England and Wales and the Northern Ireland Ombudsman who both generously arranged for Mrs Fowler to spend time with their staff during the period ending 31st March 2007. Both of them are active and committed members of the Association.

Issues Raised In Relation To Judicial Appointments

Any discussion about outcomes inevitably leads to an early focus on monitoring and this sometimes leads to an emphasis on statistics without thinking more deeply about the context. Any monitoring exercise will by its very nature provide a snapshot in time. It is important to look at how the picture painted by the figures has occurred. This means collecting data of a qualitative as well as quantitative nature and trying to discern patterns over time. I am conscious that the Commissioner for Judicial Appointments exercised his ability to do this with his powers of audit, which I do not have, and commissioned work such as examining what were the relevant factors influencing the numbers and quality of women applicants¹².

This raises a broader question about the contribution that such research can make towards understanding and appreciating the nuances behind equity monitoring and what the objective of such monitoring should be. Some of my discussions highlighted the belief that there needed to be a clear link between achieving more transparency in understanding the picture in relation to judicial appointments and any changes in process.

My view is that a consideration of statistics by themselves will only raise more questions. If for example there are marked gender differences in the range of judicial roles, then what are the factors that have contributed to this? Are there any implications for considering whether more part time roles are likely to attract women candidates with the requisite experience and ability and could this be achieved without compromising the quality of justice? This is distinct from any arguments that seek to consolidate traditional working practices. Central to the implementation of monitoring must be the assumption that an evidence led approach will characterise the analysis and subsequent actions. There should also be a willingness to publish the results of any such statistics with an appropriate contextual explanation.

Further questions arising are what factors should be considered in the short term and what issues require a longer term systemic approach? Entry at basic legal education and vocational training levels and subsequent progression in the profession are longer term issues which come within the purview of academic, professional and other organisations.

In terms of the appointment process itself, this means looking at the competencies that are identified, the advertising process, and ensuring that no implicit assumptions are made about experience. It has been observed that visibility as a successful advocate was traditionally seen as a route to judicial appointment but this was also seen as a ground for criticising the previous system. Whether excellence in advocacy

¹² *Applications by Women for Silk and Judicial Office in Northern Ireland* by Dermot Feenan, School of Law University of Ulster

automatically denotes future success as a judge could certainly be discussed further. Not everyone who is a successful advocate may wish to become a judge but a process that emphasises such experience is likely to skew the profile of successful applicants. Even allowing for cultural differences, an interesting study of the legal profession in the United States makes some intriguing observations about personality characteristics and behaviours¹³. This is in the context of a general dearth of research on lawyers in relation to these dimensions and which might be relevant to any discussions about the competency framework for appointing judges.

The book quotes a number of research studies over four decades which highlight a number of attributes that are seen as being synonymous with lawyers such as:

- focus on individual competitiveness;
- strong achievement orientation and intellectual ability;
- strong materialistic focus for some and for others, emerging interests in public interest work or social concerns;
- clear goals;
- the increase in numbers of women lawyers sometimes led to gender differences in approach and
- certain decision making preferences in style.

This last point is developed further by psychological exploration of what style of decision making is preferred by lawyers and how this can be measured using Myers – Briggs type indicators. This is not a clinical test in that it does not measure mental health but rather how individuals prefer to focus their mental energy, gather data, make decisions, perform mental tasks and deal with the external world. With this qualification in mind it might be thought that the following quotations are relevant to any assessment of future potential for judgecraft;

“Those who prefer to make decisions on the basis of Thinking prefer to come to closure in a logical, orderly manner. They can readily discern inaccuracies and are often critical, They are excellent problem solvers; they review the cause and effect of potential actions before deciding. Thinkers are often accused of being cold and somewhat calculating because their decisions do not reflect their own personal values. They focus on discovering truth and they seek justice.”¹⁴

“Most of what lawyers do involves introverted activity: quiet concentrated work, reading, writing, researching and analysing cases, reviewing and drafting legal documents, thinking through fact situations and strategies.”¹⁵

¹³ *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* by Susan Swaim Daicoff published by the American Psychological Association.

¹⁴ Quote on Page 34 from another study by Susan J Bell and Laurence Richard entitled, “Do You Really Want to be Lawyer?”

¹⁵ Page 34 -35 of *Lawyer, Know Thyself*

It is sometimes assumed that there is a seamless transition from the lawyer's role to that of judge. This overlooks distinctions which can be made between lawyers who operate with different kinds of civil and criminal practices and the extent to which oral and written advocacy for court purposes differs from activity focusing on oral and written negotiation and reaching a settlement. One of the research studies quoted in the book by Daicoff which is mentioned above suggests there may be some important differences between lawyers and judges. If this is indeed the case it might suggest that the link between defining excellence in advocacy and judgecraft is not a direct one.

Some of my discussions have highlighted frustrations and misunderstandings which touched on the relationship between diversity and the assessment of merit. It has been suggested that the notion of diversity is linked to political correctness or can actually skew an objective recruitment and assessment process. Indeed it was felt that the very use of the term diversity might evoke some of these reactions.

I consider that a starting point has to be the importance of treating diversity like any other competency rather than being viewed as an optional extra in the recruitment process. One important reason for this is the risk of appointing anyone, however able, who would be the wrong kind of judicial role model for the future. Integral to being a judge is the notion of fairness and promoting confidence in the administration of justice. Commitment to equal treatment (actual and perceived) in the justice system should be the cornerstone.

An appropriate assessment of diversity should be able to provide candidates with the ability and opportunity to draw on their professional experiences in being aware of the needs of others, understanding the possible impact of individual differences, acting to promote fairness, confronting discrimination where it is apparent and learning from these experiences. This would allow candidates to demonstrate from their professional life that they have responded appropriately and sensitively to diverse needs which may result from personal social experiences and have awareness of how such factors may impact upon witnesses, parties to proceedings or their own clients. Demonstrably acting as a role model for others in promoting fairness through learning from their own or others experience and responding to negative behaviour and attitudes can also be assessed.

For some years now, successive Lord Chancellors and senior members of the judiciary have propounded the benefits of diversity. It is equally important that the reasons why diversity is seen as an integral part of judicial appointment processes is communicated as widely as possible, both within the legal and judicial communities as well as in the community at large in Northern Ireland.

Some discussions also highlighted the apparent homogeneity of the judicial community in Northern Ireland both in terms of gender and class. It is important that

the reasons why apparent differences occur do not simply look at a snap shot in time but seek to understand why change has not occurred as quickly as some have expected. It is important that discussions about relative career patterns and achievements are underpinned by evidence rather than assumptions and that this information is made widely available. Apparent homogeneity in ethnic terms can mask considerable differences in personal social experiences and attitudes. A similar suggestion that the legal community in Northern Ireland is now more reflective needs to take cognisance of the strong perceptions that in essence little has changed in terms of its culture , access to and progression within the profession.

One issue that has strongly emerged in some discussions is the belief that merit based selection processes are not assisted by a formulaic approach which is adopted in the interests of achieving diversity. Does this rigid and narrow application assist the measurement of excellence? The adoption of standard questions and other rigid competency based frameworks are unlikely to provide appropriate examples of outstanding as opposed to good or effective practice.

The starting point is to ensure that the definition of competencies is intrinsically linked to the nature of the role. What constitutes excellence in terms of judgecraft assuming that appointment will be on merit only? After considering the self assessment that candidates will put forward as part of their application and considering consultee comments, the next stages will be shortlisting and interview. The purpose of the interview should be to provide further evidence as to the competencies, and especially in respect of those areas where adequate evidence is lacking. The interview should be part of an overall selection process that is seeking demonstration of the competencies to a standard of excellence and allows the exploration of various issues. This evidence adds to the applicants own self assessment and information in the references. It may also be the case that the use of assessment centres and other selection techniques which have been present in some public and civil service appointments processes for some time may be appropriate in order to test some of the competencies.

The importance of adopting a holistic approach is that it does not elevate the interview to being the ultimate arbiter in the selection process and lead to a situation where rigid formulas are adopted because of concerns about subsequent challenges that may occur from candidates. Excellence is something that requires careful assessment and understanding in the context of each type of appointment. It could be suggested that the adoption of a formulaic and rigid response may not assist in producing the desired outcome of appointing candidates defined in terms of excellence. It is my view that it would be helpful to have a wide ranging and open discussion focusing on how selection processes across the public sector in general can achieve better and more effective outcomes in terms of excellence as defined by candidate quality.

Another issue of crucial significance in any appointments process, and that will certainly be a major factor in determining the incidence of complaints in the future to my Office, will be the time and attention that is paid to ensuring candidates receive appropriate feedback.

There should be auditing of the effectiveness of the processes, research into the reasons why certain patterns are emerging and promoting greater awareness of judicial appointments procedures.

The Wider Context

I am mindful of my own relationship to the Judicial Appointments Commission which is an independent body when I make the comment, that as an important part of the architecture for the justice system, it needs to ensure that there is a wider understanding of its role. Inevitably as with the establishment of any organisation there will be a time lag between external expectations and demonstrable performance.

Linked to this is ensuring there is a wider public understanding of what the judicial role entails and the personal and professional characteristics that are necessary. This material is sought of course from applicants through application forms and could usefully be synthesised for a wider audience. Appendix 4 lists the general criteria adopted for judicial appointments by the Scottish Board and a similar type of document might be considered.

The emergence of political interest in the devolution of justice within the Northern Ireland context inevitably links judicial appointments to the wider question of the constitutional relationship between the judiciary and the executive. There was an overwhelming emphasis throughout my discussions to ensure that judicial independence and impartiality were not compromised in fact or perception.

The Changing Face of Northern Ireland

Northern Ireland is a society that will continue to change. These wider changes have implications for the confidence in the justice system both in terms of access and perceptions about whether or not equal treatment occurs. The challenge for those working within the system is to recognise that critical external perceptions may exist and need to be responded to.

Concluding Comment

For the avoidance of any confusion I should again emphasise that the sole reason for providing my first report in this manner is to contextualise my own role and that of judicial appointments processes. I should also emphasise that my personal reflections are not intended to set out a template or suggested course of action for the Judicial Appointments Commission. The Commission, as an independent public body established by statute, is rightly entitled to determine its own priorities and procedures in discharging its remit.



Mr Karamjit Singh took up his office on 25 September 2006. His earlier career has covered academia, the voluntary sector and local government. Since January 2001 he has held a special responsibility for Northern Ireland issues in addition to his corporate United Kingdom wide role on the Electoral Commission. He will be relinquishing his Northern Ireland responsibilities later this year. He also chairs an NHS Trust in the West Midlands and serves as a non legally qualified member of the Queens Counsel Selection Panel for England and Wales.

Mr Singh's previous public appointments in England and Wales have covered such areas as investigating suspected miscarriages of justice, adjudicating on parole applications, investigating complaints against the police, judicial training, regulation of financial services and recruitment to senior civil service positions.

His voluntary interests include being a Trustee of the British Lung Foundation and organising a medical camp in India each year. He has previously been a Trustee of the Citizenship Foundation and the Lloyds TSB Foundation for England and Wales. During 1990-1991 he was awarded a mid career Harkness Fellowship to the United States with a focus on the relationships between institutions and their communities.

He was awarded the CBE in 1999 for services to the administration of justice.

SCHEDULE 1

LISTED JUDICIAL OFFICES –
these roles all come within the remit of the Judicial Appointments
Commission

Section 2

Judge of the High Court

Temporary judge of the High Court

County court judge

Deputy county court judge

Resident magistrate

Deputy resident magistrate

Coroner

Deputy coroner

Statutory officer

Deputy for a statutory officer

Temporary additional statutory officer

Chief Social Security Commissioner for Northern Ireland

Social Security Commissioner for Northern Ireland

Deputy Social Security Commissioner for Northern Ireland

Chief Child Support Commissioner for Northern Ireland

Child Support Commissioner for Northern Ireland

Deputy Child Support Commissioner for Northern Ireland

President of appeal tribunals

Member of the panel of persons to act as members of such appeal tribunals

Chairman of an Appeal Tribunal for the purposes of the Adoption (Northern Ireland)
Order 1987

Member of the panel of persons who may serve as chairmen of the Care Tribunal

President of the Industrial Tribunals and the Fair Employment Tribunal

Acting President of the Industrial Tribunals and the Fair Employment Tribunal

Vice-President of the Industrial Tribunals and the Fair Employment Tribunal

Acting Vice-President of the Industrial Tribunals and the Fair Employment Tribunal

Member of the panel of chairmen of the Industrial Tribunals

Member of the panel of chairmen of the Fair Employment Tribunal

President of the Lands Tribunal for Northern Ireland

Deputy President of the Lands Tribunal for Northern Ireland

Other member of the Lands Tribunal for Northern Ireland

Temporary member of the Lands Tribunal for Northern Ireland

President of the Special Educational Needs [and Disability] Tribunal for Northern Ireland

Member of the panel of persons who may serve as chairman of that Tribunal

Member of the tribunal established under section 91 of the Northern Ireland Act 1998 (c 47)

Member of the Mental Health Review Tribunal for Northern Ireland

Lay magistrate

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 paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971

Member of a Tribunal appointed under paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943

President or Deputy President of Pensions Appeal Tribunals

Chairman of the Plant Varieties and Seeds Tribunal

Member of the panel of persons to act as chairmen of the Reserve Forces Reinstatement Committees

Member of the panel of persons appointed under section 6(1) of the Tribunals and Inquiries Act 1992 to act as chairmen of tribunals that sit in Northern Ireland

Member of the panel of chairmen of VAT tribunals for Northern Ireland

Northern Ireland Valuation Tribunal Members

[General Commissioner for a division in Northern Ireland (appointed under section 2 of the Taxes Management Act 1970)] – not yet enacted.

Appendix 3

Discussions took place with the following persons:

Alliance Party

Dr Stephen Farry MLA (Justice Spokesperson)

British Irish Rights Watch

Ms Jane Winter (Director)

Chairpersons' Forum (Northern Ireland)

Mr Brian Rowntree CBE (Northern Ireland Housing Executive)

Mrs Anne Balmer (Southern Health and Social Care Trust)

Mr Frank Caddy (Royal Group of Hospitals & Dental Hospital Health & Social Services Trust)

Mr Steve Costello MBE (The Consumer Council)

Mrs Denise Fitzsimons (South Eastern Health & Social Services Trust)

Mr William Gillespie OBE (Northern Ireland Fire & Rescue Service)

Mr Brian Hanna CBE (Local Government Staff Commission)

Mr Sean Hogan (Newry & Mourne Health & Social Services Trust /AFBI)

Mr Tom McGrath OBE (Northern Ireland Tourist Board)

Mr Leonard O'Hagan (Belfast Harbour Commissioners)

Dr Joan Smyth CBE (Chief Executives' Forum)

Civil Service Commissioners for England and Wales

Ms Janet Paraskeva (First Commissioner)

Civil Service Commission for Northern Ireland

Mrs Brenda McLaughlin (Chair)

Mr Brian Carlin OBE

Mr Alan Henry

Mrs Ruth Laird

Dr Alan Lennon

Mr Sid McDowell CBE

Commission for Local Administration in England

Mr Tony Redmond (Chairman)

Commissioner for Judicial Appointments

Mr John Simpson OBE

Commissioner for Public Appointments for England & Wales

Mrs Janet Gaymer CBE (Commissioner)

Commissioner for Public Appointments for Northern Ireland

Mrs Felicity Huston (Commissioner)

Committee on the Administration of Justice

Ms Maggie Beirne (Director)

Ms Aideen Gilmore (researcher)

Commonwealth Magistrates' and Judges' Association

Dr Karen Brewer (Secretary General)

Democratic Unionist Party

Mr Ian Paisley (Jnr) MLA (Justice Spokesperson)

Ms Emma Little (Special Advisor)

Equality Commission

Mr Bob Collins (Chief Commissioner)

Judicial Appointments Board for Scotland

Mrs Barbara Duffner OBE (Lay Board member)

Mrs Valerie Stacey QC (Legally qualified Board member)

Judicial Appointments and Conduct Ombudsman (England and Wales)

Sir John Brigstocke KCB (Ombudsman)

Mrs Liz Humphreys (Head of Office)

Justice Oversight Commissioner

Lord Clyde (Commissioner)

Law Centre NI

Mr Les Allamby (Director)

Northern Ireland Commissioner for Children and Young People

Ms Patricia Lewsley (Commissioner)

Northern Ireland Council for Ethnic Minorities

Mr Patrick Yu (Director)

Northern Ireland Court Service

Mr David Lavery (Director)

Northern Ireland Human Rights Commission

Professor Monica McWilliams (Chief Commissioner)

Northern Ireland Judicial Appointments Commission

The Right Honourable Sir Brian Kerr, Lord Chief Justice of Northern Ireland
(Chairman)

Her Honour Judge Loughran

Mrs Ruth Laird

Mr Alan Hunter (Chief Executive)

(Also introduced to remaining Commission members during an initial meeting)

Northern Ireland Ombudsman

Mr Tom Frawley (Ombudsman)

Prisoner Ombudsman for Northern Ireland

Mr Brian Coulter (Ombudsman)

QC Appointments Panel for England & Wales

Mr David Watts (Head of Secretariat)

Regulation and Quality Improvement Authority, Northern Ireland

Ms Stella Burnside OBE (Chief Executive)

Scottish Public Services Ombudsman

Professor Alice Brown (Ombudsman)

Ms Carolyn Hirst (Deputy Ombudsman)

Ms Emma Gray (Communications Manager)

Sinn Fein

Councillor Alex Maskey MLA (Policing and Justice Spokesperson)

Social Democratic and Labour Party

Councillor Alban Maginnis MLA (Justice Spokesperson)

The General Council of the Bar of Northern Ireland

Ms Noelle McGreenera (Chair)

Mr Brendan Garland (Chief Executive)

Ulster Unionist Party

Lady Sylvia Hermon MP (Justice Spokesperson)

Functions attended by the Ombudsman or his staff during the period to 31st March 2007

12 October 06	The Information Commissioner's Office - Reception
27 October 06	Law Society President's Annual Council Dinner
20 February 07	Chairpersons' Forum (Northern Ireland) - Chairs' Dinner
8 March 07	Inn of Court; Hilary Term Grand Night - Dinner
14 March 07	House of Lords – St Patrick's Day "Champ" Reception

Criteria for Judicial Appointment as used by the Scottish Board

Successful candidates will have:

- attained a high level of legal knowledge and experience;
- the ability to apply knowledge and experience to make sustainable decisions;
- intellectual and analytical ability;
- sound judgement and the ability to exercise discretion effectively;
- the ability to marshal facts and competing arguments and reason logically to a correct and balanced conclusion;
- the ability to reach firm conclusions, to think, decide and act independently of others and rely on their own judgement;
- good communication and listening skills;
- the ability to communicate with all types of court user, including lay people, giving instructions, explaining complex issues and giving decisions clearly, concisely and promptly, either orally or in writing;
- the ability to command the respect of court users and to maintain fair – minded discipline in court and in chambers without appearing pompous, arrogant or overbearing;
- the ability to manage cases effectively and promote the expeditious despatch of business.

Successful candidates will also possess the following personal qualities:

- integrity and independence – they will have a history of honesty, discretion and straightforward dealing with professional colleagues, clients, and the courts;
- independence of mind and moral courage – prepared to take and maintain unpopular decisions when necessary;
- fairness and impartiality – they will be open minded and objective, with the ability to recognise and discount any personal prejudices. They will seek to ensure that all who come before them have the opportunity to put their case clearly and have it considered as fully and as objectively as possible;
- understanding of people and society – respect those of different backgrounds and be sensitive to the influence of different ethnic and cultural backgrounds on the attitudes and behaviour of people whom they encounter in the course of their work;
- maturity and sound temperament – they will display a maturity of attitude and approach and be firm and decisive while remaining patient , tolerant, good humoured and even tempered;

- courtesy – they will be courteous and considerate to all court users and court staff;
- commitment, conscientiousness and diligence – committed to public service and to the proper and efficient administration , which they will pursue conscientiously, with energy and diligence and a due sense of responsibility.

In assessing these qualities the Board will have regard to the information provided by candidates in their applications, the reports from referees and the performance of individuals at interview.

Expenditure

In the period 25 September 2006 – 31 March 2007 the expenditure of the Office of the Northern Ireland Judicial Appointments Ombudsman was **£ 60,146.38** made up as follows:

Salaries £27,807.06

Ombudsman	£4,810.52
Secretariat	£22,996.54

Travel and subsistence £2,619.08

Design & Printing of leaflet £350.00

Office running costs £29,370.24

Rent and Rates	£13,298.53
Service Charges – Rented building	£4,386.22
Managed Services	£7,438.85
Other Costs: E.g. Electricity, Telephones, Office Machinery leases	£4,246.64

HOW TO CONTACT THE OMBUDSMAN

Telephone: 028 9072 8930

Fax: 028 9072 8936

Write to: Northern Ireland Judicial Appointments Ombudsman
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Bedford Street
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BT2 7DS

Visit the Website at: www.nijao.gov.uk

If you would like additional copies of this Annual Report please contact the Office of the Northern Ireland Judicial Appointments Ombudsman.

Copies can also be obtained from our website.

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