

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**NORTHERN IRELAND COURT SERVICE**

**AND**

**NORTHERN IRELAND JUDICIAL APPOINTMENTS  
OMBUDSMAN**

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## **1. INTRODUCTION**

- 1.1 This Memorandum sets out the understanding between the Northern Ireland Court Service (NICtS) and the Northern Ireland Judicial Appointments Ombudsman (the Ombudsman) of the principles that will underlie the working relations between them. Their intention is to work in co-operation while recognising that their respective roles and responsibilities are different. Their common purpose is to ensure that the judicial appointment system is effective and fair.
- 1.2 The Ombudsman was appointed by Her Majesty the Queen to investigate, determine or make recommendations with regard to complaints from prospective candidates to a listed judicial office or matters referred to him/her under the Justice (Northern Ireland) Act 2002 by the Lord Chancellor.

## **2. PURPOSE OF THE MEMORANDUM**

- 2.1 This Memorandum sets out how the relationship between the Ombudsman, his Office, the Lord Chancellor and the NICtS will be conducted.
- 2.2 The Memorandum will be effective from 1 February 2007.
- 2.3 The document will be reviewed by the Ombudsman and the Director of the NICtS after it has been in place for one year and as necessary thereafter. In addition, amendments may be made at any time by agreement between the Ombudsman and the Director of the NICtS.

## **3. APPOINTMENT OF THE OMBUDSMAN**

- 3.1 The Ombudsman was appointed on 25 September 2006 for an initial period of 5 years and subject to review.

## **4. THE WORK AND PLANS OF THE OMBUDSMAN**

- 4.1 In respect of judicial appointments, the Lord Chancellor's duty is to uphold the independence of the judiciary and to ensure that appointments to judicial office are made solely on merit.

4.2 The work of the Ombudsman contributes towards this objective. The Ombudsman's current operational objectives are as follows:

- 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.
- To investigate any matter in the appointments process which the Lord Chancellor wishes to have examined.
- To provide leadership and strategic direction of the office of Ombudsman, ensuring that the office performs to acceptable standards, recognising standards of behaviour which promote diversity.
- To 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 NICtS.
- To consider comments received from individuals, MPs, representative bodies and other organisations about appointments to a listed judicial office.
- To provide the Lord Chancellor with an annual report on his activities that shall be published and placed before Parliament.

## **5. ACCOUNTABILITY**

5.1 The Director of the NICtS is the Lord Chancellor's principal adviser on matters affecting the NICtS as a whole, including resource allocation and expenditure. The Director is also the NICtS's Principal Accounting Officer and:

- is responsible for advising the Lord Chancellor how the Ombudsman's plans fit into the Lord Chancellor's overall objectives;
- must be satisfied that the Ombudsman has adequate financial systems and procedures in place both to promote the economic, efficient and effective conduct of the Ombudsman's business

within available resources and to safeguard financial propriety and regularity.

- set the financial framework for the Ombudsman, which is described in **Annex B**.

5.2 The Judicial Services Group will be the normal channel for contact with the Ombudsman on the Ombudsman's strategy and work programme, and to this end will have the responsibility of maintaining contact with the Ombudsman and his secretariat, as necessary.

5.3 The secretariat to the Ombudsman will be responsible for ensuring that the Ombudsman's Office adheres to the financial framework set out in **Annex B**.

5.4 The Lord Chancellor is accountable to Parliament for judicial appointments in Northern Ireland and for the work of the Ombudsman. Members of Parliament will be encouraged to deal directly with the Ombudsman on those matters which are the Ombudsman's responsibility, if it appears to the Lord Chancellor that this would be appropriate. In such cases the Lord Chancellor may respond that the Ombudsman will deal directly with such matters.

5.5 The Ombudsman and NICTS will inform each other of all substantive or potentially controversial issues arising with Members of Parliament.

5.6 Both the Lord Chancellor and the Ombudsman will inform the other if an invitation is received to attend a meeting of a Parliamentary Select Committee that it is likely to consider matters relating to the Ombudsman.

5.7 The Ombudsman's Office will have regard to the requirements of the Data Protection Act and Freedom of Information Act 2000 as applicable, in its work.

## **6 Finance, Planning and the Annual Report**

6.1 The Ombudsman accepts in principle the financial framework specified at Annex B. However in view of the current staffing structure of the Ombudsman's office, the Court Service's Resource

Management Branch will support the operation of the recommended financial framework.

- 6.2 The Director, as Accounting Officer of the NICtS will be responsible for allocating resources to the Ombudsman's Office.
- 6.3 The Director will, at the earliest practicable date each year, provide the Ombudsman's Office with an indication of the level of resources that will be allocated to it over the next financial year. The Ombudsman's office will use this information to draw up management and spending plans for each financial year by the date required and in the format required to meet the NICtS's public expenditure and planning timetables. The NICtS will inform the Ombudsman's Office of the final allocation in accordance with an agreed timetable. It is possible that the Ombudsman's management and spending plans may need to be amended if the final allocation differs from the initial indication.
- 6.4 The Ombudsman's Office will inform the NICtS of its expenditure through the departmental accounting system and will prepare such receipts and spend reports as are required by the NICtS Resource Management Branch.
- 6.5 The Ombudsman will draw up and present to the Lord Chancellor on the earliest practicable date each year a report on his activities in the previous financial year. The report will cover the Ombudsman's achievements and details of his planned future activities. It will include the details set out in Section 12 of **Annex A**, together with any other information the Ombudsman considers appropriate to include.
- 6.6 The Ombudsman's office will ensure that its accounting and other procedures incorporate adequate safeguards against theft and fraud. All purchases of goods and services must be purchased through the NICtS and will be subject to the appropriate procurement guidelines.
- 6.7 The Ombudsman's office will develop and maintain an adequate risk management strategy to assess the value of and threat to key assets (including confidential personal records and any other sensitive information that may come into its possession in the course of its work) and how any risks might be minimised. It may not insure against any such risk without the agreement of the

NICtS (with the exception of the third-party insurance required by the road traffic legislation).

- 6.8 The Ombudsman must ensure that financial limits are not breached and that adequate management controls are in place to enable his office to meet Government Accounting requirements.
- 6.9 The Ombudsman's Office will be subject to internal audit by NICtS Internal Audit Service and to external audit by the Northern Ireland Audit Office or their nominee.

## **7. LIAISON BETWEEN NICtS AND THE OMBUDSMAN.**

### **A) General considerations**

- 7.1 The Ombudsman will liaise with the Lord Chancellor and the NICtS in making plans for the investigation of NICtS related complaints and for the efficient and effective conduct of the Ombudsman's business.
- 7.2 The timescales by which the Ombudsman will provide information to the NICtS and within which the NICtS will endeavour to respond to requests from the Ombudsman for information in connection with the Ombudsman's activities are set out in **Annex C**. The NICtS will advise the Ombudsman where it appears that a timescale may not be practicable in a particular case.
- 7.3 The Ombudsman, as an independent public office-holder, will be responsible for his own relations with the media. He will advise the NICtS, as appropriate, of all substantive or potentially controversial announcements on developments relevant to his role as Ombudsman. The Ombudsman may, but is not required to, use the facilities of the NICtS Information Service in his dealings with the media. The Ombudsman will ensure that any press notice issued on his behalf by the NICtS is clearly identified as being from the Ombudsman.
- 7.4 The NICtS will, wherever practicable, check the factual accuracy of any NICtS media statements, press releases, responses to Parliamentary Questions and general briefing concerning the Ombudsman's role and operations with the Ombudsman's secretariat before they are issued. The Ombudsman's secretariat will, wherever practicable, check the factual accuracy of such

material with the NICtS. However, each party will be responsible for the content of material issued in their name.

## **B) Confidentiality**

- 7.5 Information concerning listed judicial and other appointments should normally be classified “restricted-judicial appointments” and should be treated with sensitivity by all parties.
- 7.6 For other information it will be for the NICtS to specify the restrictions to be applied to the material and its usage. It is; of course, open to the Ombudsman to challenge the restrictions as it is to the NICtS to challenge the Ombudsman on any restrictions applicable to information or material at his disposal.
- 7.7 Disclosure of information is subject to the Data Protection Act, and, to the requirements of the freedom of information legislation.

## **8. SECRETARIAT PERSONNEL**

- 8.1 Staff of the Ombudsman’s office will be employees of the NICtS and will be subject to the Court Service policies and procedures as amended from time to time.
- 8.2 The staff will be employed on the terms and conditions set out in the United Kingdom Civil Service Pay & Conditions of Service Code.
- 8.3 Postings to the Ombudsman’s Office will be on lateral transfer, career development or promotion.
- 8.4 Secretariat support will be reviewed periodically and at least annually.

## **9. SUPPORT SERVICES.**

- 9.1 The NICtS will supply to the Ombudsman’s Office with the services listed in **Annex D** in accordance with best practice procedures, as amended from time to time.

**10. COMPLAINTS PROCEDURE.**

10.1 Complaints arising from the work of the Ombudsman's Office should be made in the first instance to the Ombudsman, who will review the case and take such action as he considers necessary to remedy the situation. If the complainant remains dissatisfied, he/she is at liberty to take the complaint, in writing, to the Lord Chancellor. (In the case of a complaint against the Ombudsman, the complaint will be considered by an independent person to be appointed by the Lord Chancellor).

**11. SIGNATURE**

11.1 This Memorandum is agreed, and signed by:

.....  
Northern Ireland Judicial Appointments Ombudsman

.....  
On Behalf of the Northern Ireland Court Service

.....  
(Date)

**Northern Ireland Judicial Appointments Ombudsman**

**Scope, Activities and Functions**

**The Scope of the Ombudsman.**

1. The Ombudsman's role will be independent of the judicial system and Government and will extend to all judicial appointments listed in Schedule 1 of the Justice (Northern Ireland) Act 2002, as amended, which are made or recommended by the Lord Chancellor, including re-appointments.
2. The Ombudsman's role will include the investigation of complaints which allege some form of unfairness in the making of an appointment or maladministration in the judicial appointments process.
3. The Ombudsman will be able to involve himself only with judicial appointments matters that are the responsibility of the Lord Chancellor or his Department. He will not become involved in matters that are entirely the responsibility of the judiciary, and he will have no powers over outside bodies or persons. He will not, therefore, concern himself with other incidental issues (eg the allocation of part-time sitting days or decisions about the designation of judges) regardless of any incidental or indirect consequences they may have for judicial appointments. Decisions on those matters will remain with the Lord Chief Justice and Director of the Northern Ireland Court Service, as appropriate.

**Activities and Functions of the Ombudsman**

- A. Complaints relating to the NICtS's application of the appointments system.**
4. The Ombudsman will not have to take up a complaint made more than 28 days after the matter complained of, but may do so at any time if he/she considers it appropriate.

5. The Ombudsman will only consider complaints of maladministration arising during the time in which he has exercised his supervisory function under Section 9 of the Justice (Northern Ireland) Act 2002, as amended.
6. The Ombudsman should decline to investigate a NICTS related complaint if the complainant has not already complained to the NICTS.
7. The Ombudsman's NICTS related complaint investigation functions will operate as follows:
  - (a) A complainant must have ordinarily exhausted the complaints system operated by the NICTS before the Ombudsman will investigate the complaint.
  - (b) The Ombudsman will obtain complainants' permission to disclose material to the NICTS before referring complaints. In most cases it will be impractical to proceed with a complaint if permission is withheld.
  - (c) The Ombudsman's office may seek copies of relevant background information (e.g. job descriptions, terms and conditions of appointment) to inform the Ombudsman's consideration of the issues raised by complainants before referring them to the NICTS.
  - (d) The method of investigation will be decided by the Ombudsman and may vary from case to case. It may include:
    - The NICTS will be given the opportunity to respond to the complaint, any points made by the complainant and questions posed by the Ombudsman (the Ombudsman will indicate which aspects of the NICTS's response will be disclosed to complainants).
    - Meetings between NICTS officials and the Ombudsman to discuss the issues raised by the complaint. Such meetings may take place either before or after the NICTS responds to the complaint.
    - Complaints may be investigated on the basis of records, correspondence or officials' comments alone.

- The Ombudsman may, following receipt of NICtS's initial response, request further information, clarify points made or request further documentation. NICtS will endeavour to respond to requests to provide such records within the timescale requested by the Ombudsman or, where it appears that the timescales are not practicable, will advise the Ombudsman accordingly.
- The Ombudsman may seek independent legal advice on issues emerging from complaints as he sees fit.
- The Ombudsman may, on occasion, find it necessary to obtain a complainant's comments on the NICtS's response or to meet with the complainant.
- A copy of the draft report will be referred to NICtS to check for factual accuracy.

**Annex C** sets out the time limits by which the NICtS and the Ombudsman shall endeavour to respond to requests for information and observations relating to complaint investigation.

- (e) The Ombudsman will in any case treat the personal information he sees with complete confidentiality.
- (f) Once the investigation of an individual complaint is complete, the Ombudsman will submit a full, written report to the Lord Chancellor. The report will be confidential. In reporting, the Ombudsman will:
  - indicate whether or not the complaint was found to be justified;
  - recommend what, if any, measures are appropriate to make amends to the complainant, and possibly other applicants, if the complaint was found to be justified;
  - recommend what measures, if any, should be taken to improve procedures; and

- identify other matters raised by the complaint on which the Ombudsman could not reach a firm conclusion on the basis of the records studied but which may warrant his further scrutiny.
- (g) If he finds a complaint to be justified, the Ombudsman may, where practicable, take one or more of the following steps, as he considers appropriate.
- (i) The Ombudsman may, without prior reference to the Lord Chancellor:
- Offer advice on changes to procedures that have come to his attention as a result of the complaint.
  - Recommend compensation to be paid to successful complainants for loss suffered as a result of but not in respect of any earnings that the complainant would have received had his/her application for appointment been successful.
  - While the Ombudsman may take any of these steps without prior reference to the Lord Chancellor, he will report any instances to the Lord Chancellor after the event and will refer to them (in summary form) in his Annual Report.
  - The Ombudsman may make recommendations to the Lord Chancellor and the NICTS about the steps which should be taken in relation to a NICTS related complaint that has been upheld.
- (ii) The Ombudsman may make such recommendations to the Lord Chancellor as he considers appropriate, for example that he or his officials send a letter of apology to the complainant.
8. The Ombudsman will not express any opinion as to whether any candidate should have been appointed to the office for which they applied.

9. The Ombudsman will notify the complainant in writing of the outcome of the investigation at the same time as the report is referred to the Lord Chancellor. The complainant will receive a version of the report, which for reasons of confidentiality will not identify commentators, other candidates or other participants in the selection process.
  10. The Ombudsman and NICtS will co-operate in handling and responding to comments about NICtS related aspects of the judicial appointments processes received from individuals and representative bodies.
- B. The Ombudsman will meet regularly with the Director of the Northern Ireland Court Service.**
11. The Ombudsman will have 2 meetings annually with the Director of the Northern Ireland Court Service.
- C. The Ombudsman will publish an Annual Report on his activities.**
12. The Ombudsman's report will be produced independently from the Northern Ireland Judicial Appointments Commission's Annual Report to Parliament. The following information will be included:
    - Number of complaint cases received during the year.
    - Number of complaint cases investigated during the year.
    - A summary passage of the nature of the complaints received, eg types of complaint alleged. (It will not be possible to identify individual complainants).
    - Outcomes of investigations, including the number of complaint cases upheld and remedy applied.
    - A general assessment of the Ombudsman's reflections on the system.
  13. The Ombudsman will publish this report and publicise it as he considers appropriate. The publication will be announced by way of an arranged Parliamentary Question and a copy of the report will be placed in the Library of both Houses of Parliament.

**Financial Framework**

In accordance with paragraph 6.1 of the Memorandum of Understanding, effective from 1 February 2007 the following financial framework will be operated by the Ombudsman and NICTS. In this Annex reference to the NICTS means Resource Management Branch within the NICTS.

**AMENDMENT AND REVIEW**

This framework may be changed in accordance with Government Accounting and Treasury requirements, to take account of new developments. If either NICTS or the Ombudsman requires changes to be made they shall notify the other party in writing. Any changes will need to be agreed by both NICTS and the Ombudsman. The Memorandum of Understanding shall be amended as appropriate to reflect any agreed changes.

**NICTS RESPONSIBILITIES.**

NICTS are responsible for providing:

- (i) the Ombudsman with details of funds allocated to the Ombudsman's office by the earliest practicable date, and if at all possible by the start of the financial year in question;
- (ii) access to accounting information and will make a system report available which the Ombudsman may draw down on a monthly basis;
- (iii) guidance, assistance and training as required to enable the Ombudsman's office to meet its responsibilities.

## **OMBUDSMAN'S OFFICE RESPONSIBILITIES**

The secretariat to the Ombudsman is responsible for ensuring that the Ombudsman's office:

### **BUDGET**

- (i) uses Sun Systems for processing payments from (and, should it become appropriate, receipts to) the budget allocated to the Ombudsman's office under paragraph 6 of this Memorandum; to check these transactions for accuracy; and to monitor their inclusion on the departmental accounting system.

The current staffing structure does not allow for adherence to the NICtS policy on the processing of payments. In these circumstances the NICtS will process payments on behalf of the Ombudsman's secretariat.

- (ii) does not open a bank account nor retain cash balances.
- (iii) monitors the level of expenditure incurred against allocations, alerting NICtS if it appears that expenditure will exceed the amount allocated.

### **PURCHASES AND DISPOSALS**

- (iv) does not rent, lease or purchase any assets without the prior approval in writing of the Director of the NICtS.
- (v) does not dispose of assets without the prior approval in writing of the Director of the NICtS.
- (vi) keeps a separate record of all acquisitions and disposals of fixed assets, including acquisitions and disposals for which the NICtS's approval has been obtained in (iv) and (v) above. All assets are available for inspection by NICtS or its auditors on request.
- (vii) in regard to the purchase and custody of stores and equipment, maintains adequate inventories giving sufficiently detailed information of such stores and equipment, which shall be available for inspection by the NICtS or its auditors on request.
- (viii) all fixed assets purchased by the Ombudsman's office will remain the property of the NICtS

- (ix) does not enter into any contracts for consultancy without the prior approval of the Director of the NICtS in writing. (Note: NIJAO may sub-contract investigations where there is a potential conflict of interests.)

#### **CLAIMS REGISTER**

- (x) maintains a claims register to record any sums due to the Ombudsman's office and shall not abandon any such claims nor remit any receipts without the written approval of the Director of the NICtS.

#### **HOSPITALITY REGISTER AND ENTERTAINMENT**

- (xi) maintains a record of gifts and hospitality, both given and received, and informs the NICtS Finance Officer before any gift or donation is contemplated and before any hospitality is incurred in compliance with the terms of the Gifts and Hospitality Policy.

#### **CONTINGENT LIABILITIES**

- (xii) does not incur any loan or contingent liability whether implicitly or by entering into any indemnity or guarantee to a third party or issue any letter of comfort, without the agreement of the Director of the NICtS.

#### **FRAUD, WRITE-OFFS AND SPECIAL PAYMENTS**

- (xiii) immediately notifies the Director of the NICtS in the event that any instances of fraud, suspected fraud or financial irregularity arise.
- (xiv) does not write off any losses, whether of money, value of assets lost, stolen or damaged or receipts foregone without the prior approval of the NICtS Finance Officer in writing and maintains a record of such losses as they arise. Makes the register available to the NICtS Finance Officer or the auditors on request.
- (xv) does not make any ex-gratia or special payments without first obtaining the approval of the NICtS Finance Officer in writing. Records payments as they arise and makes this register available to the NICtS Finance Officer or the auditors on request.

## **AVAILABILITY OF RECORDS**

- (xvi) makes available to NICtS staff or the staff of the Northern Ireland Audit Office (or their nominee) all financial records on request.

## **STATEMENTS OF FINANCIAL RESPONSIBILITY**

- (xvii) has, within the parameters set out in the NICtS authorisation policy, suitable arrangements in place which allow the Secretary to nominate other officers to act in his or her name and/or authorise them to incur expenditure on behalf of the Ombudsman's office, provided he or she issues them with a clear financial authority and payment authorisation to act in the manner designated.

### **Liaison between the NICtS and the Ombudsman**

The Ombudsman and NICtS will endeavour to respond promptly to requests for information and/or comments made by the other party in respect of all NICtS related aspects of the Ombudsman's work.

The Ombudsman will notify the NICtS of any NICtS related complaints about appointments within 5 working days of receipt. (The complainants' permission to disclose material must be obtained before disclosing material to the NICtS or to another party.) In particular:

- the NICtS will notify the Ombudsman of any NICtS related complaints it receives within 5 working days of receipt. (The complainants' permission to disclose material must be obtained before disclosing material to the NICtS or to another party).
- the NICtS will endeavour to respond to the Ombudsman's request for further information, clarification or further documentation on points made by such complainants, including copies of the requisite papers, within four weeks of the date of request.
- In exceptional circumstances a meeting may be required to discuss a complaint before a response is made; in these circumstances it shall be held at the earliest practicable date.
- NICtS will endeavour to comment on whether draft reports from the Ombudsman about NICtS related individual complaints are factually accurate within two weeks of the referral date.
- NICtS will endeavour to respond to all requests for other information concerning NICtS related individual complaints or miscellaneous correspondence within 15 working days of the date of request unless a shorter timescale is agreed.
- NICtS and the Ombudsman will endeavour to respond to requests by the other party for factual information to inform Ministerial briefing or to contribute to press or Parliamentary statements to the deadline requested.

**SERVICES PROVIDED BY NICTS TO THE OMBUDSMAN**

Accounting services  
Archives  
Contracts and procurement support  
Design and Printing Services  
File storage  
Fuel and utilities  
Health and safety guidance  
Information Technology  
Internal Audit  
Legal advice and support  
Library and information services  
Messenger services  
Office accommodation  
Office Cleaning Services  
Office furniture and supplies  
Office machinery and equipment  
Payment of salaries and pensions  
Personnel management  
Porterage Services  
Postage  
Reprographic services  
Security  
Security vetting  
Staff training  
Staff welfare services

Stationery

Superannuation

Training

Telephones and fax