

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**NORTHERN IRELAND JUDICIAL APPOINTMENTS  
COMMISSION**

**AND**

**NORTHERN IRELAND JUDICIAL APPOINTMENTS  
OMBUDSMAN**

# **CONTENTS**

- 1. INTRODUCTION**
- 2. PURPOSE OF MEMORANDUM**
- 3. APPOINTMENT OF OMBUDSMAN**
- 4. THE OMBUDSMAN’S WORK AND PLANS**
- 5. ACCOUNTABILITY**
- 6. LIAISON BETWEEN THE COMMISSION AND THE OMBUDSMAN**
- 7. SIGNATURE OF THE PARTIES TO THE MEMORANDUM**

**ANNEX A – SCOPE, ACTIVITIES AND FUNCTIONS**

**ANNEX B - LIAISON BETWEEN THE COMMISSION AND THE OMBUDSMAN**

## **1. INTRODUCTION**

- 1.1 This Memorandum sets out the understanding between the Northern Ireland Judicial Appointments Commission (the Commission) 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 and/or make recommendations with regard to complaints from qualifying complainants of maladministration by the Commission or a committee of the Commission in the process to appoint persons to listed judicial office or matters referred to him under the Justice (NI) 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 and the Commission will be conducted.
- 2.2 The Memorandum will be effective from 3 April 2008.
- 2.3 The document will be reviewed by the Ombudsman and the Chief Executive of the Commission 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 Chief Executive of the Commission.

## **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 Commission's role is to conduct the appointments process and make recommendations, solely on the basis of merit, to the Lord Chancellor in respect of all listed judicial appointments.
- 4.2 The Ombudsman's current operational objectives are –
- to investigate, determine and make recommendations to the Lord Chancellor and the Commission with respect to complaints from qualifying complainants about maladministration by the Commission in the application of the process to recommend for appointment candidates to listed judicial office
  - to investigate and report to the Lord Chancellor on any matter relating to the procedures of the Commission referred to him for investigation by the Lord Chancellor.
- 4.3 The Ombudsman must (unless he considers that investigation of the complaint is not necessary) investigate a complaint which the complainant has made to the Commission in accordance with its Complaints Procedure and which the complainant makes to him not more than 28 days after being notified by the Commission of its decision on the complaint.
- 4.4 The Ombudsman may, however, investigate a complaint which the complainant has made to the Commission in accordance with its Complaints Procedure which the complainant makes to him at any time if he considers it appropriate to do so.
- 4.5 The scope, activities and functions of the Ombudsman are set out at Annex A.

#### **5. ACCOUNTABILITY**

- 5.1 The Ombudsman's Office will have regard to the requirements of the Data Protection Act and the requirements of the Freedom of Information Act legislation and Section 9I of the Justice (Northern Ireland) Act 2002, as amended, as applicable in its work.

5.2 The Ombudsman will consult the Commission before disclosing under Freedom of Information legislation any material provided to the Ombudsman by the Commission.

**6. LIAISON BETWEEN COMMISSION AND THE OMBUDSMAN.**

**A) General considerations**

- 6.1 Where a complaint of maladministration in the appointments process is made to the Commission in accordance with its Complaints Procedure the Commission will inform the Ombudsman that a complaint has been received and provide him with details of the action being taken and the proposed timeframe to complete the investigation of the complaint
- 6.2 The Commission will notify the Ombudsman if and when any complaint is concluded (resolved satisfactorily) and will provide him with a summary of the process used to resolve the complaint.
- 6.3 The Ombudsman's office will notify the Commission of any complaints received and provide the Commission with details of the action being taken and the proposed timeframe for investigation of the complaint.
- 6.4 The timescales by which the Ombudsman will provide requests for information to the Commission and within which the Commission will endeavour to respond to requests from the Ombudsman for information in connection with the Ombudsman's activities are set out in **Annex B**. The Commission will advise the Ombudsman where it appears that a timescale may not be practicable in a particular case.
- 6.5 The Ombudsman, as an independent public office-holder, will be responsible for his own relations with the media. He will advise the Commission, as appropriate, of all substantive or potentially controversial announcements on developments relevant to his role as Ombudsman.

**B) Confidentiality**

6.5 Information concerning listed judicial and other appointments should normally be classified “restricted-judicial appointments” and should be treated with sensitivity by all parties.

6.6 For other information it will be for the Commission 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 open to the Commission to challenge the Ombudsman on any restrictions applicable to information or material at his disposal.

**7. SIGNATURE**

7.1 This Memorandum is agreed, and signed by:

.....  
Northern Ireland Judicial Appointments Ombudsman

.....  
On Behalf of the Northern Ireland Judicial Appointments Commission

.....  
(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.
2. The Ombudsman's role will be to investigate complaints from qualifying complainants of maladministration by the Commission or a committee of the Commission in the judicial appointments process.

**Activities and Functions of the Ombudsman**

**A. Complaints relating to the Commission'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 considers it appropriate.
5. The Ombudsman will only consider complaints arising during the time in which he has exercised his supervisory function except where invited to do otherwise by the Lord Chancellor. He will not consider a complaint which has already been the subject of independent inquiry.
6. The Ombudsman should decline to investigate a Commission related complaint if the complainant has not already complained to the Commission.
7. The Ombudsman's complaint investigation functions will operate as follows:

- (a) A complainant should have ordinarily exhausted the complaints system operated by the Commission before the Ombudsman will investigate the complaint.
- (b) The Ombudsman will obtain complainants' permission to disclose material to the Commission before referring complaints. It will be impractical to proceed with a complaint if permission is withheld "in accordance with section 9I (4) (a) and (b) of the Justice (Northern Ireland) Act 2002".
- (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 Commission.
- (d) The method of investigation will be decided by the Ombudsman and may vary from case to case. It may include:
- The Commission 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 Commission's response will be disclosed to complainants).
  - Meetings between Commission members and/or officials and the Ombudsman to discuss the issues raised by the complaint.
  - The Ombudsman may, following receipt of the Commission's initial response, request further information, clarify points made or request further documentation. The Commission 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 and the Commission may seek independent legal advice on issues emerging from complaints as they see fit.
- A copy of the draft report will be referred to the Commission (and the Lord Chancellor) for comments.
- In finalising his report the Ombudsman will have regard to any proposal by the Commission (Or Lord Chancellor) for changes in the draft report and must include in the report a statement of any such proposal not given effect to.
- The ombudsman will treat the personal information he sees with complete confidentiality in every case

**Annex B** sets out the time limits by which the Commission and the Ombudsman shall endeavour to respond to requests for information and observations relating to complaint investigation. There are statutory provisions covering the procedures which should be observed by the Ombudsman when producing complaint reports. These are set out in Annex C.

8. The Ombudsman has stated that he will not express any opinion as to whether any candidate should have been appointed to the office for which they applied.

## **Annex B**

### **Liaison between the Commission and the Ombudsman**

1. The Ombudsman will meet with the Northern Ireland Judicial Appointments Commission at least once a year.
2. The Ombudsman and Commission will endeavour to respond promptly to requests for information and/or comments made by the other party in respect of all Commission related aspects of the Ombudsman's work. In particular:

- The Commission will normally notify the Ombudsman of any Commission related complaints it receives within 5 working days of receipt. (The complainants' permission to disclose material must be obtained before referring complaints to another party).
  - The Ombudsman will normally notify the Commission of any Commission related complaints he receives within 5 working days of receipt. (The complainants' permission to disclose material must be obtained before referring complaints to another party).
  - The Commission will endeavour to respond to the Ombudsman's request for information, clarification or documentation on points made by complainants, including copies of the requisite papers, within 15 working days 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.
  - The Commission will endeavour to comment on draft reports from the Ombudsman about Commission related individual complaints within 15 working days of the referral date.
  - The Commission will endeavour to respond to all requests for other information concerning Commission related individual complaints or miscellaneous correspondence within 15 working days of the date of request unless a shorter timescale is agreed.
3. In any circumstance in which it is not possible for one party to provide information within the timeframe that party shall notify the other party of that fact and the reasons for it.

### **The Ombudsman's Annual Report**

4. The Commission will endeavour to respond to requests from the Ombudsman concerning checking for factual accuracy the relevant sections of the Ombudsman's annual report within 15 days of the date of request unless a shorter timescale is agreed.

Report on the investigation of Commission complaints

12. The Ombudsman must prepare a report on any Commission complaint he investigates.
13. The report must state –
  - What findings he has made
  - Whether he considers the complaint should be upheld in whole or part
  - What, if any, action he recommends should be taken by the Commission as a result of the complaint
14. The Ombudsman must submit a draft of his report of the investigation of a Commission complaint to the Commission and the Lord Chancellor for their comments
15. The Ombudsman must sign the finalised version of the report before sending it in duplicate to the Commission and the Lord Chancellor.
16. The Ombudsman must send a copy of the report to the complainant but that copy must not include information –
  - Which relates to an identified or identifiable individual other than the complainant; and
  - Whose disclosure by the Ombudsman to the complainant would be contrary to section 9I (Confidentiality in relation to judicial appointments and discipline) of the Justice (Northern Ireland) Act 2002, as amended, or to the Data Protection Act or the requirements of the Freedom of Information Act.

Report on the investigation of references by the Lord Chancellor

17. Where the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission the Ombudsman must investigate and will provide the Lord Chancellor with a report on his investigation –
  - The matter may relate to such procedures generally or in a particular case

- The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- The method of investigation will be decided by the Ombudsman and may vary from case to case. It may include:
  - The Commission 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 Commission's response will be disclosed to complainants).
  - Meetings between Commission members and/or officials and the Ombudsman to discuss the issues raised by the complaint.
  - The Ombudsman may, following receipt of the Commission's initial response, request further information, clarify points made or request further documentation. The Commission 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 and the Commission may seek independent legal advice on issues emerging from complaints as they see fit.
  - A copy of the draft report will be referred to the Commission (and the Lord Chancellor) for comments.
  - In finalising his report the Ombudsman will have regard to any proposal by the Commission (Or Lord Chancellor) for changes in the draft report and must include in the report a statement of any such proposal not given effect to.
  - The ombudsman will treat the personal information he sees with complete confidentiality in every case

18. The report must state –
  - What findings he has made; and
  - What if any action he recommends should be taken by any person in relation to the matter
19. The Ombudsman must sign the report.