

**Minutes of the Plenary Meeting
Held on Thursday 1 December 2016
Third Floor Board Room,
Headline Building, Victoria Street, Belfast**

Present: The Right Honourable Sir Declan Morgan, the Lord Chief Justice of Northern Ireland (Chairman) – joined the meeting at 11:00am
Mr Brian Coulter
Mr Eoin Doyle
Mr Paul Douglas
Mr James McNulty QC
District Judge (Magistrates' Courts) Rosalie Prytherch
Mr Alastair Rankin
Professor Nichola Rooney
The Honourable Mr Justice Stephens
Mr Lindsay Todd
The Right Honourable Lord Justice Weatherup

In Attendance: Mrs Mandy Kilpatrick (Chief Executive Officer (CEO))
Ms Adeline Frew
Mrs Nicola Byrne (Secretary)

Lord Justice Weatherup Chaired the meeting until the Lord Chief Justice joined at 11:00am.

1. Apologies

Ms Marion Matchett
His Honour Judge Kinney

2. Conflicts of Interest

Mr James McNulty QC declared a conflict of interest with Agenda item 9 'Complaints Committee Determination'. It was agreed that Mr McNulty QC would leave the room when this agenda item was being discussed.

3. Confidentiality

The importance of confidentiality was stressed.

4. Minutes of meeting on 20 October 2016

The minutes of the meeting on 20 October 2016 were approved subject to one amendment to the title of agenda item 14 to 'Character Issues'.

Lord Justice Weatherup noted that the majority of actions arising were complete. Plenary noted that the ratio of interviews for senior appointments was agreed at the meeting on 20 October 2016 and that it had been agreed that the ratio of interviews for all other offices would be looked at through the continuous improvement plan.

5. Chief Executive's Report

Mrs Kilpatrick presented her report to Plenary.

2016/17 Business Plan Objectives

Mrs Kilpatrick presented a verbal update on the detail provided on the Business Plan Objectives and advised that subject to one matter all objectives are on track for delivery.

Mrs Kilpatrick explained that one adjustment was required relating to the agreement of a Memorandum of Understanding (MOU) with the Judicial Appointments Ombudsman (JAO). Mrs Kilpatrick and Ms Frew met with the JAO on 10 November 2016 and were advised that as part of the Northern Ireland Public Service Ombudsman (NIPSO) office the JAO is not putting any MOUs in place. They have however indicated that they consider a Service Level Agreement that focuses on process to be more appropriate and it was agreed that they would aim to provide a draft to NIJAC in due course. Plenary agreed

that the target should be adjusted to 31 March 2017 to allow for an exchange of drafts and for Plenary to consider the appropriateness of a Service Level Agreement at their March meeting.

ACTION:

- Target date for Business Plan Objective 9 to be amended to 31 March 2017.
- JAO Service Level Agreement to be put on March Plenary Agenda.

2016/17 Risk Register

The 2016/17 Risk Register was reviewed by the Executive Team on 3 November 2016 and the following changes made;

- The score has been adjusted for Risk 1, which relates to the risk of misinformation causing reputational damage. Ms Kilpatrick highlighted that a number of actions have been completed and controls enhanced.
- In acknowledgement of the appointment of two new Commissioners and completion of induction as action planned, the scores for Risk 3 'Loss of experience in the Commission' have been reduced.
- Target adjusted at Risk 4 to reflect the timetable for agreement of arrangements with the JAO.

Clarity on the consideration given to the 2016/17 budget position within the Risk Register was discussed. Ms Kilpatrick advised that this was addressed at the meeting on 3 November 2016 however given the current budget situation and anticipated income it was considered it was not necessary to include at this stage. Mrs Kilpatrick noted however that it would be kept under close review given the accommodation position.

The changes and other aspects of the Risk Register were reviewed and actions required and controls in place were discussed and agreed by Commissioners.

Corporate Plan 2017 – 2020

Plenary reviewed the draft Corporate Plan 2017-2020 which was reviewed by Mr Rankin and Mr Coulter in conjunction with the Executive Team having considered the presentations made at October Plenary.

Mr Todd advised that at a meeting of the Audit and Risk Committee Chairs that he attended on 30 November 2016, they were advised of the importance of an organisation's Corporate Plan including reference to the Programme for Government. Plenary agreed that in addition to the narrative already included within the message from the Chairman, additional reference should be made to the Programme for Government within the section on 'Our Future Direction'.

It was agreed that the Executive Team would amend the draft Corporate Plan to reflect the agreed amendments and would circulate electronically to Plenary for approval.

ACTION:

- Executive Team to make agreed amendments to the draft Corporate Plan and circulate electronically for approval.

Programme for Government

Ms Kilpatrick referred to the new consultation document on the Programme for Government and Plenary agreed that a response similar to that issued to the first consultation be sent in response as there was nothing additional for NIJAC.

ACTION:

- Executive Team to respond to the new consultation document on the Programme for Government.

2016/17 Budget Position

Mr Todd updated Plenary following a meeting of the Audit and Risk Committee Chairs on 30 November 2016 and advised that cuts of around 4% are envisaged for 2017/18 with potentially more to come.

Mrs Kilpatrick confirmed that as at 31 October 2016 the Commission incurred expenditure of £560,790 against a budget allocation of £560,443, an over spend of £347 (0.06%). The final monitoring round of the year was commissioned on Wednesday 9 November and following a detailed review of the budget, NIJAC have surrendered £30k back to The Executive Office (TEO) which primarily reflects additional income.

Commissioners discussed the potential for identifying other work such as research that any future surplus could be used to address. It was noted that Business Committee would consider the overall budget position at their meeting in January 2017, and that at the next meeting of Policy Committee in January 2017, they would consider future research options that would be beneficial in event that funds are available.

ACTION:

- Policy Committee to consider research options for future consideration.

Health Check Update

Following the Plenary recommendation in October, views have been sought from the relevant stakeholders on ceasing to obtain health checks for prospective appointees with responses asked for by 14 November 2016.

Initial responses from the Northern Ireland Courts and Tribunals Service (NICTS), the Department of Justice (DoJ) and the Department for the Economy were considered.

The importance of identifying reasonable adjustments was acknowledged by Commissioners however it was noted that this responsibility was distinct from conducting a health check.

Following discussion Plenary agreed to adopt the phased approach recommended, in that NIJAC should cease conducting health checks as part of the pre-appointment checks process for all fee paid offices and that health

checks will continue to be sought for substantive appointments while further consultation is undertaken. Plenary to be updated once further views have been sought on the proposed approach for substantive appointments.

ACTION:

- NIJAC to cease conducting health checks as part of the pre-appointment checks process for all fee paid offices.

6. Selection Committees

- **Current scheme updates**

Appeal Tribunals Disability Qualified Members

Mr Coulter advised that the scheme closed to applications on 17 October 2016. This scheme was the first to apply the Plenary recommendation made in June 2016 to trial two members of the Selection Committee undertaking the papersift (to include the co-opted member and one NIJAC Commissioner and maintaining a gender and community background balance where possible). Mr Coulter advised that he would feed back on this through the Lessons Learned report for the scheme.

Appeal Tribunals Specialist Medical Members

Ms Kilpatrick provided an update on behalf of Mrs Breidge Gadd. Expressions of Interest were received for this scheme however three applicants withdrew prior to attending interview. The applicants attending interview were all deemed appointable and pre-appointment checks are ongoing. Ms Kilpatrick advised that feedback is being sought from those applicants who withdrew prior to interview to try to ascertain the reasons for their withdrawal and to assist in learning for future appointments. The Selection Committee will feed back to Plenary through the Lessons Learned report for the scheme.

Appeal Tribunals Medical Generalist Members

Mr Doyle provided an update on the 11 appointments (plus reserve list) sought. He noted that following shortlisting 14 applicants were being invited to the final assessment stage which is scheduled to take place on 7, 12 & 15 December 2016.

Appeal Tribunals Legal Members

Mr Rankin advised that as at the closing date over 50 applications were received and a decision taken to use a shortlisting test. This is scheduled for 6 December 2016, and will identify a merit order of applicants from whom the top 50% will proceed to the papersift stage.

It was agreed that upon conclusion of this scheme, in the context of evaluation for Lessons Learned, that the Commissioner Selection Committee members would undertake an anonymous papersift on a sample of the applications of those who did not proceed through to the second phase of shortlisting (papersift) and include their findings in the report to Plenary.

ACTION:

- Upon conclusion of this scheme the Commissioner Selection Committee members to undertake an anonymous papersift on a sample of the applications of those who did not proceed through to the second phase of shortlisting and include findings in Lessons Learned report.

Criminal Injuries Compensation Appeals Panel (CICAP) Adjudicators (Legal Members)

Mr Todd advised that interviews concluded on 29 November 2016 and two successful applicants were identified. Whilst a reserve list was not specially requested within the Appointment Scheme Requirements, a merit list of applicants has been identified in the event that an unforeseen vacancy may arise within 12 months from the anticipated date of appointment as advertised within the scheme documentation.

High Court Judge

The Chairman advised that the High Court Judge scheme is currently open to applications and is due to close on 9 January 2017. Shortlisting, consisting of a situational judgement exercise and interview is planned for 1-3 February 2017. The Selection Committee are due to meet again on 12 December 2016 to finalise the papers.

7. Character Issues

Mr Justice Stephens presented his report advising that there have been three schemes during the period where issues have arisen resulting in five decisions relating to eligibility. This was noted by Plenary.

8. Policy Committee

Minutes of 8 November 2016

The minutes of 8 November 2016 were noted by Plenary.

Eligibility Policy & Procedure

Mr Justice Stephens advised that following an issue arising from the Charity Tribunal Ordinary Members scheme in 2015 where there was a qualitative eligibility criteria which could only be assessed by the Selection Committee, an amendment to the Policy was recommended to reflect that;

- “1.3 This policy relates solely to a statutory eligibility criterion concerning a period of standing, post qualification experience or nationality.”
- “1.4 The Issues and Character Cte (ICC) may refer an eligibility criterion which relates to knowledge and/or experience to a Selection Cte for assessment.”

A reference to eligibility in relation to nationality was also proposed to ensure compatibility/consistency with other Policies.

Plenary approved the proposed amendments to the Eligibility Policy and Procedure.

Complaints Policy

Mr Justice Stephens advised that the Complaints Policy included a requirement to consider a number of matters when exercising discretion whether or not to accept and investigate a Commission Complaint received 28 days after the

matter complained of. In recognition that the consideration of those matters may not always be proportionate it is proposed that the policy is silent on how discretion should be exercised and that the detailed requirement be provided as optional in the 'Guidance to Commission Complaints' document.

Lord Justice Weatherup proposed some amendments to the case law references in the extract which are to be considered by Mr Justice Stephens.

Plenary approved the proposed amendment to the Policy and that the section relating to the exercise of discretion should be transferred to 'Guidance to Commission Complaints'.

ACTION:

- Mr Justice Stephens to consider the proposed amendments and make the relevant changes to the Complaints Policy and Guidance to Commission Complaints document.

Following discussion it was agreed that following their meeting in January 2017, Policy Committee would report back to Plenary on the Committee's workplans including identifying where matters may be dealt with by the Committee and those that will require Plenary approval.

ACTION:

- Policy Committee to consider workplans for the next 12 months.

9. Complaints Committee Determination

Mr James McNulty QC left the room while this agenda item was discussed.

Lord Justice Weatherup and Mr Todd presented their Complaints Committee report following a complaint arising from a recent scheme.

ACTION

- Letter to be sent to Complainant to advise of decision.

10. Tribunal Representation

Ms Kilpatrick advised that in October Plenary had asked that tribunal representation on NIJAC be considered. The Justice (Northern Ireland) Act 2002 sets out the composition of NIJAC Commissioners and does not include a requirement for Tribunal representation.

Plenary discussed the current representation / participation of the Tribunal judiciary within NIJAC's decision making process, including regularly working with tribunal members through schemes and consulting them on NIJAC policy matters, and agreed that the current representation was appropriate and that no further actions were needed at this stage.

11. Flexible Working Cover Paper

The Recorder of Belfast, Judge McFarland and Presiding Magistrates' Court Judge Bagnall joined Plenary for the session on flexible working within the judiciary.

Ms Kilpatrick advised that NIJAC facilitated a Flexible Working Group involving relevant stakeholders, including the DoJ, NICTS and the Office of the Lord Chief Justice, representatives from the Judges Council and professional legal bodies. Extensive work has been undertaken by this group to develop a practical guide on flexible working for judicial office holders.

The guidance aims to set out the arrangements whereby a permanent salaried judicial office holder may seek flexibility through a change to their working pattern and to set out the arrangements whereby those being appointed to a permanent salaried judicial office may take up their new post by working flexibly, when that is consistent with the requirements of the post or needs of the court or tribunal.

Judge McFarland and Judge Bagnall talked through the opportunities, benefits and challenges that flexible working poses for their respective judicial tiers.

Plenary reviewed and considered the document 'Flexible Working for Salaried Judicial Office Holders: A Practical Guide' and agreed that subject to reflecting

appropriately the decision making responsibilities that the guide should be introduced in the New Year.

12. Any other business

CIPD Research Report: A Head for Hiring

Plenary were presented with a synopsis of the Chartered Institute of Personnel and Developments' (CIPD) Research Paper; A Head for Hiring: The behavioural science of recruitment and selection. The report addresses some issues relevant to NIJAC's assessment and selection process from outreach to assessment and also considers the importance of the applicant experience, including 18 tips for better recruitment practice.

Plenary noted the information provided and agreed that consideration should be given to reflecting any lessons learned in future continuous improvement plans.

13. Date and Agenda of next meeting

Thursday 9 March 2017 at 9:30am.

It was agreed that the theme for the afternoon session of this meeting would be 'Outputs'.

Signed

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The Right Honourable Sir Declan Morgan, the Lord Chief Justice of Northern Ireland, Chairman of the Northern Ireland Judicial Appointments Commission

Dated

...9 March 2017.....