

Character Policy and Procedure

Contents:	Page No:
▪ Background	2
▪ Policy Objectives	3
▪ Scope	3
▪ Principles	3
▪ Roles & Responsibilities	5
▪ Future / Repeat Applicants	7
▪ Procedure	7
▪ Variation	8
▪ Review	8
▪ Complaints	9
Annex 1: Character Guidance for Applicants	10

Policy Statement

1. Background

- 1.1 Judicial office is a position of utmost trust. It is essential, therefore, that robust policy and governance arrangements regarding the assessment of character are in place in order to maintain a high standard for recommending or making appointments to judicial office.
- 1.2 It is necessary to have in place a clear and transparent policy and procedure to implement arrangements for the consideration of character issues that may arise in a selection process.
- 1.3 This policy is supported by the legislation detailed below and other detailed documents that set out the high standards of personal integrity expected for judicial office.
- 1.4 These include:
 - 1.4.1 The Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”). The 1978 Order makes it possible for many convictions to become “spent” and for the person to be treated as if he/she has never been convicted. There are, nevertheless, certain jobs or appointments where applicants must always declare their convictions, even if they are considered spent. These are known as “excepted” employments or appointments and include judicial appointments under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland 1979). Thus, it is essential that any persons applying for judicial office who have a criminal conviction, of any description, extending back over any length of time, must declare this on their application form;
 - 1.4.2 The Police Act 1997 (Section 116 of Part V) provides that an enhanced criminal record check can be carried out for judicial appointments;
 - 1.4.3 the Statement of Ethics for the Judiciary in Northern Ireland details the exacting standards of public life required of the judiciary and that the nature of their office exposes them to considerable scrutiny;

1.4.4 the terms and conditions of service for judicial office which refer to outside activities and interests, criminal convictions and other matters relating to conduct and good character; and

1.4.5 the Personal Profile for each office under recruitment which stipulates that personal integrity is an essential criterion for judicial office.

2. Policy Objectives

2.1 NIJAC is committed to:

- Implementing a fair and transparent process with regard to the handling of character issues that may arise in a recruitment process;
- applying this policy and procedure fairly and consistently to ensure the process is administered fairly and without bias; and
- setting out the key roles, responsibilities and procedures for those involved in the assessment and administration of character issues.

3. Scope

3.1 This policy and procedure will apply to all applicants for judicial office and at any stage of the process.

3.2 This Policy and Procedure will operate in addition to the Screening and Pre-Appointment Checks Policy.

4. Principles

4.1 In determining any character issues for any applicant for legal, medical, lay or other judicial office NIJAC will adopt the following principles and approach:

4.1.1 Principles

The overriding principle that NIJAC adopts in determining good character is based on the need to maintain public confidence in the standards of the judiciary (and the fact that public confidence will only be maintained if judicial office holders and those who aspire to such office maintain the highest standards of behaviour in their professional, public and private lives).

The principles of this guidance apply equally to legal professionals, existing judicial office holders and lay members of the public applying for a judicial office.

The NIJAC will consider character issues declared for previous applications and any behavioural trends over time, particularly where applicants have been recommended for judicial office.

Following legislative change in August 2016, applications to the NIJAC are covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974.

- This means applicants must disclose to the NIJAC all criminal convictions or cautions that they have ever received, regardless of whether they are spent or unspent.
- The NIJAC will take into account the whole picture of a candidate's character when deciding whether to recommend a candidate for judicial appointment.
- The NIJAC will not reject a candidate on the basis of issues it considers minor – but all potentially relevant issues must be declared, as the Commission will assess recurring themes in addition to isolated incidents.

Approach to be taken

4.2 NIJAC will adopt the following approach in respect of all issues arising:

- NIJAC will be fair and impartial in assessing and/or investigating issues of character. Information obtained by NIJAC from any source will not necessarily debar an applicant from appointment
- NIJAC will have regard to the Employment Practices Code published by the Information Commissioner (www.ico.org.uk) as to the acquisition and handling of personal sensitive information,

- NIJAC will have regard to the need to promote equality of opportunity to all applicants in line with its Equal Opportunities Policy and Procedure, and
- NIJAC will have regard to published Ombudsman's decisions dealing with judicial appointments and the assessment of character.

Matters to be considered

4.3 In addition to the principles and approach outlined above NIJAC may also consider the following when reviewing any character matters arising in relation to an applicant, for instance:

- relevance to the office under recruitment and the high standards of personal integrity and behaviour expected from a person who may hold a judicial office
- information relating to the number and nature of any matters, including, a court and/or non-court disposal, any past or ongoing litigation or any finding or ongoing investigation by a professional body
- the number and nature of any penalty, order or finding
- mitigating circumstances
- rehabilitation and contribution to society
- information relating to character provided through, for example, referees, professional bodies or provided through any other source, and
- any other relevant information provided by the applicant.

4.4 With regard to the consideration of complaints against existing judicial office holders NIJAC will not re-investigate what has already been determined but will:

- ask for the outcome of the complaint investigation

- seek confirmation from the Lady Chief Justice's Office or other representative that there are/are not concerns with regards to character which impact upon the suitability of the applicant for the office under recruitment, or
- seek confirmation as to whether an investigation is outstanding.

- 4.5 NIJAC will take into account the whole picture of an applicant's character when deciding whether to recommend or appoint to judicial office and the specific considerations set out in Annex 1. Annex 1 will be made available to applicants on NIJAC's website.
- 4.6 The failure of an applicant to disclose any material issue at any time may lead to disqualification of that applicant.
- 4.7 NIJAC will maintain transparency in dealings and communications with applicants
- 4.8 It is a matter for the Chief Executive in consultation with NIJAC's Chairman, or their nominee, to consider and determine the course of action required in respect of information from any source that may require referral for example, to a Professional Body or the Police Service for Northern Ireland (PSNI). Any relevant Issues and Character Cte may be consulted.

5. Roles and Responsibilities

- 5.1 Character issues will be dealt with by the Issues and Character Committee (ICC). It will consider and make decisions regarding character and other issues declared by an applicant in their application form or that otherwise come to the attention of NIJAC.
- 5.2 The ICC will normally comprise one Nominated Commissioner. The Nominated Commissioner will be a Commissioner who is not a member of the SC. If the Nominated Commissioner is a member of the SC then a different Nominated Commissioner will be designated by the Chief Executive. With the agreement of the Chief Executive the Nominated Commissioner may call upon another Commissioner or seek other assistance if they consider it appropriate to do so, for example, where the matter under consideration is unique or potentially contentious. In relation to any actual, potential or perceived conflict of interest the Conflict of Interest Policy should be referred to.
- 5.3 The ICC may consider and make decisions on character at any stage of the process to ensure effective and efficient decision making.

- 5.4 The ICC may refer matters for determination to the Chairman or an Appropriate Person.
- 5.5 Staff will be responsible for processing character information and compiling reports for consideration by the ICC. Staff will provide advice and information to ensure consistency and to inform the decision-making process. If an applicant has not disclosed an issue on their application form and staff are aware that a previous decision relates to that applicant they may bring this to the attention of the ICC who may consider what, if any, action to take. Staff will implement decisions made by the ICC.
- 5.6 Following consideration of a Character issue the ICC has three options;
1. Rule the applicant out on the basis of character
 2. Determine that the applicant may continue through the assessment and selection process
 3. Determine that the SC should be made aware of the Character issue so that it can be taken into account in the assessment process.
- 5.7 If the ICC rules an applicant out on the basis of character the applicant will not proceed to the next stage of assessment.
- 5.8 The outcome of any character issue considered will be communicated to the applicant and, if appropriate, to other relevant parties (for example a professional body). The ICC may exercise discretion to provide its report, in part or in whole, to the applicant concerned.
- 5.9 The ICC may provide information to a Selection Committee (SC) at any stage if it may impact on an applicant's suitability for judicial office.
- 5.10 Where NIJAC is made aware of information that calls into question the character of an applicant the matter may be referred to the Chief Executive who will determine the appropriate course of action.
- 5.11 Following the completion of the final assessment stage the ICC will provide the SC with any determinations not to rule a potential appointee out of the process to allow the SC to complete the recommendation report. This information will not inform the decision making process.
- 5.12 NIJAC may seek legal advice during the course of assessing character for judicial office.

6. Repeat Applications

6.1 Applicants who have previously applied must declare any previous and/or new issue(s).

7. Procedure

7.1 Applicants will be advised of their continued duty to inform NIJAC of all matters that might affect their application, including those that arise after the submission of their application form.

7.2 Applicants will be advised of the exacting standards of good character through the Guidance on Character for Applicants (Annex 1), on the website and in the Applicant Information Booklet. Additionally, the applicant will be advised to disclose, on the application form, all past and present character information. The application form asks whether there is anything else the applicant wishes to bring to the attention of NIJAC. While it is not possible to provide a definitive list of matters that may be relevant, examples might include work related and outside activities, such as voluntary roles or directorships or issues of controversy in which they have been involved, and the conduct of close relatives or those with whom the applicant has business connections.

7.3 Applicants will be advised in guidance published on the NIJAC website that they are required to declare:

- All such matters that may impact on their suitability for judicial office;
- all such matters whether or not these have been declared in a previous application;
- all such matters whether or not they have been declared to another body;
- all such matters even if the applicant holds or has held any judicial office;
- all matters that have occurred within or outside the United Kingdom.

7.4 Applicants for whom there are character issues will be advised that these will be considered at an appropriate stage and that they will be advised of the outcome.

7.5 Applicants may be provided with a 'right of reply' and/or the opportunity to provide further information in respect of issues that have arisen. The end date to the 'right of reply' must be established by the ICC and complied with by applicants to ensure no unnecessary delay to a scheme progressing and business needs being met.

8. Variation to Policy

- 8.1 This policy, or the arrangements under it, may be varied, amended or adjusted at any time.

9. Review

- 9.1 The Character Policy and Procedure will be reviewed in three years from the date of approval by Plenary or as required due to relevant legislative changes or in light of new learning.

10. Complaints

- 10.1 All complaints relating to this policy will be considered, dealt with or investigated promptly and confidentially, in accordance with NIJAC's Complaints Policy and Procedure which is available at www.nijac.gov.uk
- 10.2 Complaints may be escalated to the Northern Ireland Judicial Appointments Ombudsman's office

Northern Ireland Judicial Appointments Ombudsman
c/o Northern Ireland Public Service Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN

Email: nipso@nipso.org.uk

Character Guidance for Applicants

1. Introduction

Judicial office is a position of utmost trust. It is essential, therefore, that robust policy and governance arrangements regarding the assessment of character are in place in order to maintain a high standard for recommending or making appointments to judicial office.

2. Obligation to Disclose

Failure to disclose any material matter will have an adverse effect on your application. You have a continuing responsibility to disclose any relevant matter that may arise at any time.

This guidance is supported by the legislation detailed below and other detailed documents that set out the high standards of personal integrity expected for judicial office.

2.1 These include:

- (i) The Rehabilitation of Offenders (Northern Ireland) Order 1978 (the 1978 Order). The 1978 Order makes it possible for many convictions to become “spent” and for the person to be treated as if he/she has never been convicted. There are, nevertheless, certain jobs or appointments where applicants must always declare their convictions, even if they are considered spent. These are known as “excepted” employments or appointments and include judicial appointments under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland 1979). Thus, it is essential that any persons with a criminal conviction, of any description, extending over any length of time, applying for judicial office must declare this on their application form;
- (ii) the Police Act 1997 (Section 116 of Part V) provides that an enhanced criminal record check can be carried out for those candidates for judicial appointments;
- (iii) the Statement of Ethics for the Judiciary in Northern Ireland details the exacting standards of public life required of the judiciary and that the nature of their office exposes them to considerable scrutiny;

- (iv) the terms and conditions of service for judicial office which refer to outside activities and interests, criminal convictions and other matters relating to conduct; and
- (v) the Personal Profile for each office under recruitment which stipulates that personal integrity is an essential criteria for judicial office.

You are required to declare:

- (i) all such matters that may impact on your suitability for judicial office;
- (ii) all such matters whether or not these have been declared in a previous application
- (iii) all such matters whether or not they have been declared to another body; and
- (iv) all such matters even if the applicant holds or has held any judicial office ; and
- (v) all matters that have occurred outside the United Kingdom.

3. Principles

3.1 In determining any character issues for any applicant for legal, medical, lay or other judicial office NIJAC will adopt the following principles and approach:

- (i) The overriding need to maintain public confidence in the standards of the judiciary. Judicial office is a position of utmost trust and as a public appointment is subject to scrutiny.
- (ii) Fairness and impartiality in assessing and/or investigating issues of character. Information obtained by NIJAC from any source will not necessarily debar an applicant from appointment.
- (iii) Proportionality in the consideration of character issues. For example, where a short-listing test is used the character issues of those shortlisted may be recorded and proceed for determination by the Issues and Character Cte (ICC).

- (iv) When shortlisting by papersift it may be that only those character issues which are significant and precedent setting will be brought to the attention of the ICC ahead of shortlisting.
- (v) Due regard to the need to promote equality of opportunity to all applicants in line with NIJAC's Equal Opportunities Policy.

3.2 The failure of an applicant to disclose any material issue at any time may lead to disqualification of that applicant.

3.3 It is a matter for the Chief Executive in consultation with NIJAC's Chairman, or their nominee, to consider and determine the course of action required in respect of information from any source that may require referral for example, to a Professional Body or the Police Service for Northern Ireland (PSNI). Any relevant Issues and Character Cte may be consulted.

3.4 In addition to the principles outlined above, NIJAC will also consider the following when reviewing any character matters arising in relation to an applicant, including:

- (i) relevance to the office under recruitment and the high standards of personal integrity and behaviour expected from a person who may hold a judicial office;
- (ii) the number and nature of any matters, including a court and/or non-court disposal, any ongoing litigation or any finding by a professional body;
- (iii) the number and nature of any penalty, order or finding. For example, any conviction resulting in a custodial sentence or the imposition of a term of imprisonment would normally prevent an applicant from being selected for judicial office;
- (iv) mitigating circumstances;
- (v) rehabilitation and contribution to society;
- (vi) Information relating to character provided through, for example, Referees, professional bodies or provided by any other source;
- (vii) any other information provided by the applicant; and

(viii) transparency in dealings and communications with applicants.

4. Examples for Consideration: Criminal matters

- 4.1 You must declare all criminal convictions and/or all non-court disposal(s) and any part or ongoing litigation.
- 4.2 You must declare all past or ongoing criminal investigation(s) and all matters outstanding before any criminal court.
- 4.3 Court and/or non-court disposals for motoring offences (other than parking offences) must be declared in the appropriate section of the application form.
- 4.4 NIJAC treats motoring offences committed while under the influence of alcohol or drugs or involving refusal to provide a specimen seriously and a conviction will normally prevent you from being selected for judicial office.
- 4.5 Any road traffic offence resulting in a custodial sentence or disqualification from driving must be declared. This will normally prevent you from being selected for judicial appointment.
- 4.6 You must declare any endorsements on your licence. This will include endorsements resulting from exceeding the speed limit or using a hand-held device while driving.
- 4.7 You must declare any fixed penalty notices received. Such a penalty may be disregarded at the discretion of the NIJAC, depending on factors such as the nature, number and date(s) of the incident(s) involved. You need not declare any speeding offences dealt with by a speed awareness course.

5. Examples for Consideration: Civil matters

- 5.1 You must declare all civil proceedings including those which you have brought and those that have been brought against you or any firm in which you are, or were a partner, or company in which you are, or were a director, or company secretary.

6. Examples for Consideration: Family Law

- 6.1 You must declare all family proceedings including those that have been brought by or against you including, for example, any application for a non-molestation and/or occupation order.

7. Examples for Consideration: Financial matters

Insolvency and debt

- 7.1 If you have been discharged from bankruptcy this will normally prevent you from being selected for judicial appointment for a period of at least five years from the date of discharge.
- 7.2 Being an undischarged bankrupt or someone who has an outstanding Individual Voluntary Arrangement (IVA) or any other similar arrangement will normally prevent you from being selected for judicial appointment.
- 7.3 Depending on the circumstances, you may be prevented from being selected for judicial appointment if you have been:
- (i) discharged from an IVA; or sued to judgment for any debt; or
 - (ii) a director of a company that has become insolvent.
- 7.4 You must provide full details of the circumstances with your application. NIJAC will consider each case on its merits, including factors such as the length of time the debt has existed and whether or not it has been substantially reduced.

VAT and Tax

- 7.5 NIJAC considers good character to require that your VAT and other tax affairs are in good order. Any penalty applied against you, or against your company or firm for a matter for which you had a personal responsibility, must be declared in your application form. Occasional administrative penalties for late returns or payments must be declared and should be supported by documentary evidence but will not normally prevent you from being selected. NIJAC will consider each case on its merits.
- 7.6 Repeated late returns or payments, or action taken in the courts to pursue you for payment, may prevent you being selected for judicial appointment for a period that will depend on the specific circumstances of the case. NIJAC will consider each case on its merits, including factors such as the level of arrears accrued, whether an agreement to pay was or has been entered into and complied with to date, and any mitigating circumstances.
- 7.7 Where action is taken against your company or firm rather than you as an individual, NIJAC may in its discretion take this into account depending upon the degree of

personal culpability involved. You must supply sufficient details for NIJAC to make this decision.

8. Examples for Consideration: Professional conduct

Professional negligence and other legal action

8.1 NIJAC will consider on its merits each finding against you of professional negligence. You must, therefore, provide full details to NIJAC on your application form. NIJAC recognises that some applicants, because of the nature of their practice, are more likely to face claims of professional negligence.

8.2 You must disclose any action that has been brought against you or someone under your direct supervision. Professional negligence findings against your partners or other employees need only be declared if they involved you personally, directly or indirectly, or someone under your direct supervision.

8.3 You must also disclose any action for unfair or wrongful dismissal or discrimination, or any other adverse finding or settlement in civil proceedings against you, or against your company or firm in respect of a matter for which you had personal responsibility.

8.4 NIJAC will consider each case on its merits, including factors such as the degree of personal culpability involved, how long ago the events took place, the nature of the claim and the outcome.

Professional Complaints and Disciplinary Action

8.5 You must disclose the circumstances if you have been dismissed, or asked to resign and resigned, from employment or from a position of trust.

8.6 If you have ever been removed from judicial office, you will not be considered for selection for a further judicial appointment. This applies equally if you retired or resigned before you were due to be removed from office.

8.7 NIJAC will consider on its merits each case of a professional body upholding a complaint or disciplinary matter against you personally or someone under your direct supervision. Where no findings have been made against you personally, or where findings relate solely to your partners, or other members or employees of the firm, they need not be declared.

8.8 NIJAC will consider factors such as:

- (i) recognition that some people, by the nature of their work, are likely to receive a greater number of complaints than others;
- (ii) the number of matters upheld;
- (iii) the nature and seriousness of the matter(s);
- (iv) the action (if any) taken by your or any other professional body;
- (v) your personal culpability;
- (vi) whether it is a finding of misconduct, or finding of inadequate professional service.

8.9 NIJAC will generally view misconduct findings more seriously than findings which relate solely to inadequate professional service, but both must be declared.

8.10 If you have been removed from professional practice on grounds of misconduct then you will not be considered for selection.

8.11 If you are disbarred or have been struck off from practice in your profession on any other grounds, you will not be prevented from being considered for selection for a judicial appointment once you have been reinstated and have resumed practising for 5 years without further incident. After 5 years without further incident NIJAC will consider each case on its merits, including factors such as the degree of personal culpability involved, how long ago the events took place and how long you have practised without further incident since reinstatement.

8.12 If you have been suspended from practice as a penalty, you will not be considered for selection during the period of suspension and for at least a year following the end of that period. Thereafter NIJAC will consider each case on its merits, including factors such as the degree of personal culpability involved, how long ago the events took place and how long you have practised without further incident

8.13 You will not normally be considered for selection if there are conditions on your practising certificate.

8.14 You must declare information about any ongoing investigations where no determination has yet been made. Depending on the particular circumstances of the investigation your application may be allowed to proceed. However, you would not normally be recommended for judicial appointment until the outcome of the investigation is known.

8.15 If you have been suspended from practising your profession pending further investigation or a tribunal hearing, you will normally be considered unsuitable for selection during your period of suspension.

8.16 Depending on the particular circumstances your application may be allowed to proceed. However, you would not normally advance to the appointment stage until the outcome of any proceedings or investigation is known.

9. Further information to be disclosed

9.1 The application form asks whether there is anything else you wish to bring to the attention of NIJAC. While it is not possible to provide a definitive list of matters that may be relevant, examples might include previous decisions of the ICC, issues of controversy in which you have been involved, and the conduct of close relatives or those with whom you have business connections.

9.2 Any failure to declare on the application form relevant information which later comes to light will normally rule out further consideration of your application.

9.3 Failure to disclose information additional to that included on your application form, upon the request of NIJAC and to the timetable requested by NIJAC, may also rule out further consideration of your application.

9.4 In addition to the categories covered above, you should consider if there is any factor or event, either current or that has occurred in the past, which might either cast doubt in the view of the public on your suitability for judicial office or cause embarrassment to that office. If you consider that there might be such a factor or event, you must declare it, even if it has been declared in a previous application to NIJAC.

10. Use of character information in the assessment of applicants

10.1 NIJAC will take into account the whole picture of an applicant's character when deciding whether to recommend or appoint to judicial office.

11. Repeat Applications

Applicants who have previously applied must declare any previous and/or new issue(s).

Approved 8 September 2020

Tonya McCormac

Chief Executive