

**Minutes of the Plenary Meeting
Held on Thursday 20 October 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)
Mr Brian Coulter
Mr Paul Douglas
Ms Marion Matchett – left the meeting at 13.00
Mr James McNulty QC
District Judge (Magistrates' Courts) Rosalie Prytherch
Mr Alastair Rankin
Professor Nichola Rooney – left the meeting at 12.00 / rejoined at 12.45
The Honourable Mr Justice Stephens
Mr Lindsay Todd – left the meeting at 12.30
The Right Honourable Lord Justice Weatherup

In Attendance: Mrs Mandy Kilpatrick (Chief Executive Officer (CEO))
Mr Mark Bryson – left the meeting at 13.00
Ms Adeline Frew
Mr Andrew Millar
Mrs Julie Monahan
Mrs Karen Kelly (Secretary)

1. Apologies

Mr Eoin Doyle
His Honour Judge Kinney

The Chairman welcomed and introduced Ms Marion Matchett CBE and Mr Paul Douglas as new Lay Commissioners of NIJAC.

2. Conflicts of Interest

No conflicts were identified.

3. Confidentiality

The importance of confidentiality was stressed.

4. Minutes of meeting on 2 June 2016

Plenary confirmed that no amendments were required and approved the minutes of the meeting on 2 June 2016.

The Chairman noted that the actions arising were either complete or substantive matters on the agenda.

Agenda item 17 which relates to Reasonable Period of Service was discussed and it was agreed that this should be added to the Policy Committee agenda.

ACTION:

- Reasonable Period of Service to be added to the upcoming Policy Committee agenda for timetabling.

5. Draft Corporate Plan 2017-2020

Mrs Kilpatrick presented the draft Corporate Plan 2017-2020 for consideration by Plenary.

The Chairman suggested a number of changes to be made to the narrative and presentation of the document.

The Chairman acknowledged the current statutory composition of NIJAC's Plenary Committee and proposed that pending any legislative change further Tribunal Representation, other than as Co-opted members of Selection Committees (SC), on an informal basis could be beneficial; it was discussed and agreed that the matter would be put on the agenda for the next Plenary meeting in December.

Following the agreed amendments and the outcome of the presentations on matters affecting courts, tribunals and the legal profession, the Corporate Plan 2017-2020 is to be considered by Business Committee representatives and presented to Plenary in December for final approval.

ACTION:

- Tribunal Representation to be added to the December Plenary agenda.
- Corporate Plan 2017-2020 to be issued electronically to Mr Coulter and Mr Rankin of Business Committee and added to December Plenary agenda.

6. Audit & Risk Management Committee (ARMC)

Mr Todd provided a verbal update on the meeting of the ARMC on 13 September 2016 and confirmed the Annual Accounts were laid on Monday 10 October 2016. Mr Todd confirmed the Internal Audit Contract with ASM had been renewed for the coming year, with the Audit taking place in November/December 2016.

7. Business Committee

Mr Rankin presented the minutes of the last meeting on 12 September 2016 which were noted by Plenary.

Mr Rankin advised that **Commissioner Terms of Appointment** are currently staggered with the judicial, lay and the legal professional bodies' representatives set at five, four and three years respectively; Business Committee had considered the terms and recommended to Plenary that all Commissioner terms of appointment be for two terms of four years.

Commissioners discussed the terms of appointment in the context of enabling effective and efficient succession management and minimising the risk of disruption to NIJAC business due to the loss of valuable knowledge and experience.

Commissioners took into consideration the statutory position¹ and noted that while the Commissioner for Public Appointments outlines in guidance that appointments for the same position are restricted to two terms and “notwithstanding the length of individual appointment terms, the maximum period in a post must not exceed 10 years”, more recently there was a move to encourage shorter terms to enable regular refreshing of Boards.

Commissioners discussed the options and considered that five year terms would allow greater opportunity to build experience in a role which requires active operational involvement in schemes.

Plenary therefore agreed to recommend to The Executive Office (TEO) that all future Commissioner Appointments are for a five year term with the option of renewal for a further 5 years, based on satisfactory performance.

ACTION:

- Write to TEO advising of the recommended change to Commissioner Terms of Appointment.
- Write to the professional bodies to advise of the recommended change to Commissioner Terms of Appointment.

8. Senior Appointments Review Team (SART)

Professor Rooney advised of a number of proposals from SART in relation to: References; Introductory Narratives; Assessment Methodologies; Weighting within the Personal Profile; and Shortlisting and Appointable thresholds.

Commissioners discussed the template **Reference** form and the ‘**Guidance for those acting as Referees**’ and noted that in the context of the confidentiality statement, Referees should be advised not to divulge the contents of the Reference to anyone, including the applicant it pertains to. It was agreed the

¹ Schedule 2 of the Justice (Northern Ireland) Act 2002, as amended, provides that “..a person may not be appointed ...for more than five years at a time; and the aggregate period for which a person may be a ...member....must not exceed ten years.”

option of seeking advice to clarify whether a potential conflict of interest arises should be included within the Guidance documentation.

Commissioners discussed the **ratio of interviews** to vacancies at final assessment and it was agreed that the narrative would be reworked to include reflecting the significance of the threshold.

Commissioners discussed the **methodologies** for High Court Judge schemes including the recommendation that applicants will be required to submit a full application form along with examples of their written work along with a brief synopsis of why they have selected each example. Professor Rooney advised that SART were satisfied that all potential High Court Judge applicants will be able to produce examples of their written work; no limiting timeframe will be set in terms of how recent the examples need to be and a non-exhaustive list of pieces of written work will be provided as guidance.

Plenary discussed the recommendations and agreed, subject to minor amendments, the proposed approach for County Court and High Court Judge schemes including that examples of applicants' written work should be included in the assessment methodology for High Court Judge schemes and that this should be communicated via outreach activities to the applicant pool as soon as possible.

ACTION:

- Additional reference to confidentiality required on template reference form and the 'Guidance for those acting as Referees.'
- Additional comment also to be added to the Guidance to include the option of seeking advice to clarify a potential conflict of interest.
- Narrative on ratio of interviews to vacancies at final assessment to be reworked to include reflecting the significance of the threshold.
- Examples of applicants' written work should be included in the assessment methodology for High Court Judge schemes and this should be communicated via outreach activities.

- A non-exhaustive list of pieces of written work to be provided as guidance.

Professor Rooney referred to the **Chair's Checklist** and Mrs Monahan gave an overview of the document. As indicated in the Introduction section of the Checklist Commissioners must confirm they have read and noted a number of policies. It was agreed that a hard copy file of these policies would be available at forthcoming SC meetings. Plenary considered and approved the Chair's Checklist.

ACTION:

- Hard copy policy folder to be available at SC meetings.

Mrs Kilpatrick presented the **Bank of Indicators** paper and advised that their purpose was to assist a SC with objective marking throughout all stages of the assessment and selection process. She advised that these indicators, which can be adapted as appropriate and should not be viewed as exhaustive, would provide one option for Guidance on Responses along with, for example model answers. Plenary considered and subject to minor amendments approved the template list of indicators.

ACTION:

- NIJAC staff to make minor amendments to Bank of Indicators.

9. **Policy Committee**

Policy Committee recommended that as a '**Recommendation and Appointment**' Policy that detailed administrative processes is now embedded practice it was no longer required as a policy. Plenary accepted and approved this recommendation.

Policy Committee also recommended an amendment to the **Reserve List Policy** to reflect that Business Committee rather than Plenary may approve the use of a Reserve List in a scheme as it linked with their responsibilities to approve

Appointment Scheme Requirements (ASR) and Scheme Outreach Plans (SOP).
Plenary accepted and approved this recommendation.

ACTION:

- Removal of Recommendation and Appointment Policy.
- Amend Reserve List Policy to reflect that Business Committee instead of Plenary will approve the use of a Reserve List.

Policy Committee asked Plenary to consider and ratify the **Standardised Application Form** that now included reference to confidentiality, the job description and discretion for character issues to be referred to a SC.

Commissioners considered it was important that all applicants be advised if any matters or information ascertained by the Nominated Commissioner would be divulged to the SC. It was also noted that only those matters or information that may impinge on the attributes being assessed may be disclosed to the SC.

Following the discussion Plenary agreed the three proposals for inclusion in the application form along with changes to the ordering in the Senior Salaries Review Body (SSRB) questionnaire and minor changes.

ACTION:

- NIJAC staff to make amendments to Application Form including the re-ordering of the paragraphs in the final section on the SSRB Questionnaire which is included for salaried schemes.

Mr Justice Stephens as Chair of Policy Committee asked Plenary to approve the proposed Personal Profile and **standardised approach to medical schemes**. Following a discussion on the difficulty in attracting applications to Consultant level posts Plenary welcomed the continued use of Expression of Interest Forms and approved the Personal Profile and standardised approach as recommended.

ACTION:

- NIJAC staff to implement the standardised approach to medical schemes.

Following consultation with the Equality Commission Mrs Monahan presented a number of changes to the **Equal Opportunities Policy**; it was highlighted that the reference to Section 75 had been removed as NIJAC is not a designated public authority. Plenary welcomed the footnote which had been added for clarity regarding statutory retirement age and approved the changes to the policy.

ACTION:

- NIJAC staff to make amendments to Equal Opportunities Policy.

Plenary considered and approved changes to the **Complaints Policy & Procedure** relating to the process for providing a Complaints Committee's report to Plenary and a Complainant subject to minor amendments.

ACTION:

- NIJAC staff to make amendments to Complaints Policy & Procedure.

Commissioners considered and agreed the **References Policy** which reflected SART proposals. Following discussion Plenary approved the References Policy subject to minor amendments and the conflicts of interest advice discussed earlier.

ACTION:

- NIJAC staff to make amendments to References Policy.

Plenary considered the proposed amendments to the **Conflict of Interest Policy** to reference the mitigation options, taking into account the Northern Ireland Audit Office (NIAO) Practice Guide. Commissioners asked that staff ensure that the wording in NIJAC's policy reflects the wording in the Practice Guide in relation to paragraph 4.4 (ii). Subject to that one check, Plenary approved the changes to the policy.

ACTION:

- NIJAC staff to ensure paragraph 4.4 (ii) is reflective of NIAO Guide.

Plenary considered the amendments to the **Character Policy** as recommended by Policy Committee and recommended a small number of minor changes. It was queried whether ‘informed warnings’ should be included at appropriate points. Commissioners discussed and agreed the Policy should be reworked to ensure that all criminal law and/or all other court and non-court disposals should be disclosed by applicants applying for judicial office. Policy approved by Plenary subject to amendments.

ACTION:

- NIJAC staff to make amendments to Character Policy.

10. Any other business

Proposed consultation on Health Checks

Mrs Kilpatrick presented a paper asking Plenary to review proposals regarding NIJAC’s practice of conducting a health check as part of the pre-appointment checks process. The importance of identifying reasonable adjustments was acknowledged however it was noted that this responsibility was distinct from conducting a health check. Plenary agreed that NIJAC should consult with the relevant stakeholders by the end of November to enable December Plenary to be advised of responses.

ACTION:

- NIJAC to consult with the relevant stakeholders on health checks.

Approval of additional Coroner Complement

The Chairman advised Plenary that the job descriptions of the two County Court Judges appointed on 5 September 2016 stated that they may be asked to sit as

a Coroner and hear inquests on an occasional basis. He explained that he had also sought expressions of interest from existing County Court Judges and others have now indicated that they are interested in being appointed as Coroners to assist with legacy cases.

The Chairman advised Plenary of the importance of having the ability to allocate Coroners as and when legacy cases arise and he therefore sought approval from Plenary to write to the Justice Minister to seek agreement to increase the coronial complement by seven.

Plenary considered and were content to approve the increase in complement. It was agreed that on receipt of the Minister's approval the seven County Court Judges would subsequently be appointed as Coroners.

ACTION:

- Issue letter to the Justice Minister seeking agreement to increase coronial complement by seven.

Renewals of Appointments

Mrs Kilpatrick outlined NIJAC's current policy which provides that NIJAC will initiate, following consultation with NICTS, the renewal process. Mrs Kilpatrick advised Plenary that following consideration of the legal position and practice elsewhere interim arrangements needed to be agreed as to how and by whom Renewals of Appointment should be processed.

Plenary considered the options presented and agreed a transitional arrangement that limits the process to confirmation by a Judicial Office Holder that they wish to continue and that there is no reason not to renew. Plenary also agreed that a sub-committee of Policy Committee, including a Lay Commissioner, should be established to carry out a review of the current arrangements and recommend future arrangements.

ACTION:

- NIJAC staff to implement transitional arrangements and draft a revised Renewals of Appointment Policy.
- Convene a sub-committee of Policy Committee, to include a Lay Commissioner.
- Consult relevant stakeholders.

Complaints Committee (CCte) Recommendation.

Mr Justice Stephens drew Plenary's attention to a CCte recommendation regarding the arrangements for subsequent applications where an issue has been determined by the Issues and Character Committee. It was agreed that the Determination and CCte's recommendation would be considered at Plenary's meeting in December 2016.

ACTION:

- Determination and CCte Report provided to Plenary in December 2016.

Document Compatibility / IT Assist Update

Mr Todd and Professor Rooney advised that they were still having document compatibility issues which staff have been trying to address. Mr Rankin confirmed that he is also an Apple user and does not have any problem accessing documents, as did Mr McNulty. Mrs Kilpatrick advised that IT Assist have informed NIJAC that they cannot identify the issue causing the compatibility issues and indicated it may be due to certain Apple software updates on individual devices; it was noted IT Assist had work planned on Northern Ireland Civil Service (NICS) issued Apple devices and that may identify a solution. In the interim it was agreed that NIJAC staff would carry out document compatibility tests in liaison with the Commissioners affected.

ACTION:

- Document compatibility tests to be organised in November 2016.

Committee Membership from October 2016

Plenary approved Committee Membership for the two new Lay Commissioners; Ms Matchett to join Policy Committee and Mr Douglas to join Business Committee. Induction, including 'buddying' arrangements to be arranged directly with new Commissioners as soon as possible.

Plenary approved Mr Justice Stephens as the Nominated Commissioner for the Issues and Character Committee (ICC) for another year, until October 2017.

Committee Membership will be reviewed by Business Committee in January 2017 and will be considered by Plenary in February 2017 for meetings commencing September 2017.

Presentations to inform the Corporate Plan 2017-2020

Three informative presentations were delivered by:

- The Northern Ireland Courts & Tribunals Service, Ronnie Armour, Chief Executive and Maura Campbell, Principal Private Secretary to the Office of the Lord Chief Justice;
- The Law Society, Alan Hunter, Chief Executive supported by John Guerin, President; and
- The Bar Council, Mr David Mulholland Chief Executive

The presentations were to help inform Commissioners on matters affecting courts, tribunals and the legal profession which may require consideration when finalising the Corporate Plan 2017-2020. Plenary thanked the speakers for their time and presentations.

Policy session recommenced following Mr David Mulholland's presentation

11. Policy Committee continued

Evaluation of Schemes and Appointments made (October 15- September 16) A Gender Overview: The NI Judiciary and Potential Legal Applicant Pools NIJAC's Impact 2006 – 2016 (Judicial Appointments)

Mr Justice Stephens explained to Plenary that three papers (Flag S, T and U) had been produced as an overview of NIJAC's impact with regard to judicial appointments both in the last year and the 10 years since inception, and to provide an update on the composition of the current applicant pool and the judiciary within Northern Ireland.

Flag S provided an overview of the nine schemes (five Legal, two Lay and two Medical) delivered during the period October 2015 – September 2016.

Flag T provided Commissioners with statistics on the current judiciary within Northern Ireland, including a gender breakdown of those holding judicial office; and the gender composition of the legal profession in Northern Ireland generally.

Flag U provided Commissioners with an overview of NIJAC's impact with regard to judicial appointments, based on a number of factors including gender, professional background and religion, and indicated that since 2006 NIJAC has handled approximately 2381 applications across 86 schemes; 1378 (57.9%) from men and 1003 (42.1%) from women; and had been responsible for 393 appointments; 228 (58.0%) men and 165 (42.0%) women.

It was acknowledge that such data plays an imperative role in informing policy, research and outreach.

Review of Papersifting (Executive Summary)

Mr Millar presented the Executive Summary to Plenary which recommended that papersifting is validated as an approved assessment methodology. Plenary were content noting that further examination of the interplay between assessment methods and the stage at which each is used will be taken forward in the context of the continuous improvement plan.

12. Chief Executive's Report

Mrs Kilpatrick presented her report to Plenary.

Mrs Kilpatrick presented an update on the detail provided on the **Business Plan Objectives** and advised that all but one objective are on track for delivery. Mrs Kilpatrick advised that due to the Judicial Appointments Ombudsman meeting being postponed it is expected that the new Memorandum of Understanding will be presented for approval at December's Plenary. Plenary noted the updates provided and agreed the target date should be adjusted accordingly.

Mrs Kilpatrick advised that the **Risk Register** was reviewed by the Executive Team on 7 July and 12 August and was considered by Business Committee on 12 September. Mrs Kilpatrick provided an update on the changes and planned actions.

Mrs Kilpatrick informed Plenary that the ARMC agreed to implement immediately a new NICS reporting standard for audit reports, which removes the 'substantial' rating and aligns recommendations according to organisational priorities, which is likely to reduce the number of priority one actions.

13. Selection Committees

Mrs Kilpatrick presented the current scheme updates and advised Plenary that **Lessons Learned** reports had been completed for the District Judge (Magistrates' Court); Pensions Appeal Tribunals (PAT) Medical Members and Traffic Penalty Tribunal (TPT) Adjudicator schemes.

Following discussion two actions were agreed, firstly that a cover page should be included at the beginning of each assessment pack detailing what documents should be contained within; secondly that a mock papersift exercise is incorporated within recruitment and selection training for co-opted members.

ACTION:

- Cover Page to be included at the beginning of each assessment pack detailing the documents contained within.

- Mock papersift exercise to be incorporated in training for co-opted members of SCs.

14. Character Issues

Mr Justice Stephens presented his report advising that there have been two schemes during the period where character issues have arisen resulting in five determinations relating to an issue of character. This was noted by Plenary.

15. Date and Agenda of next meeting

Thursday 1 December 2016 at 9:30am

It was agreed that the theme for the next Plenary would be Flexible Working and that NIJAC would invite the Recorder and Presiding District Judge. The draft Guide to Flexible Working in the Judiciary would be circulated to all Commissioners electronically.

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

...1 December 2016.....