

**Minutes of the Plenary Meeting
Held on Thursday 25 February 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 Eoin Doyle
Mrs Breidge Gadd – left meeting at 4:30pm
Mrs Fiona Keenan – left meeting at 4:35pm
His Honour Judge Kinney
Mr James McNulty QC
District Judge (Magistrates' Courts) Rosalie Prytherch
Mr Alastair Rankin
Professor Nichola Rooney
The Honourable Mr Justice Stephens
Mr Lindsay Todd – left meeting following conclusion of the Strategic Planning Session
The Right Honourable Lord Justice Weatherup – left meeting at 4:15pm

In Attendance: Mrs Mandy Kilpatrick (Chief Executive Officer (CEO))
Ms Adeline Frew
Mr Andrew Millar – joined afternoon session
Miss Nicola Quinn (Secretary) – joined afternoon session

1. Annual Strategic Planning Session

9:00am – 1:15pm

Business Session commenced at 1:45pm

2. Apologies

Mr Lindsay Todd sent his apologies to the afternoon session of the meeting.

3. Conflicts of Interest

No conflicts were identified.

4. Confidentiality

The importance of confidentiality was stressed.

5. Minutes of meeting on 3 December 2015

Mr Justice Stephens requested an amendment to Agenda item 9 to highlight that Selection Committees will receive anonymous application forms, identified by applicant numbers only, for papersift shortlisting exercises only.

Plenary approved the amended minutes.

Commissioners confirmed that they were content with the actions arising which have either been progressed or will be addressed on the substantive agenda.

The Chairman confirmed that any actions arising from the Strategic Planning Session along with details of who will be taking them forward will be circulated to Plenary within the next 2 weeks.

6. Chief Executive's Report

Mrs Kilpatrick presented her report to Plenary.

2015/16 Business Plan Objectives

Mrs Kilpatrick presented an update on the detail provided on the Business Plan and advised that there were no areas of concern across NIJAC's four key performance areas with all objectives either achieved or on track for delivery with the exception of one target that is partially met. This relates to the timetable for the High Court Judge Scheme which bridged the 2014/15/16 period. A number of additional work strands were completed in year, particularly in relation to policies.

Risk Register

Mrs Kilpatrick highlighted the following main changes to the Risk Register:

- Two new risks have been added; one in relation to a delay in appointments due to delays in pre-appointment checks by a third party provider and one in relation to budgetary concerns in that NIJAC will be unable to meet its statutory requirements in 2016/17 if no co-tenant is found for Headline Building, or no alternative accommodation is provided at reduced cost.

Mrs Kilpatrick advised that as Mrs Keenan has tendered her resignation with effect from 31 March 2016 and with Mrs Gadd due to retire in October 2016, there is a risk with the loss of two experienced lay Commissioners in such a short timeframe and this will be added to the Risk Register. The Office of the First and Deputy First Minister (OFMDFM) has been informed and are commencing a recruitment scheme for replacements. Following a review of the Skills Audit undertaken in 2015, it has been identified that Human Resources and Corporate Governance (including Finance) are the main skill areas that are being lost, which will be taken into consideration in the upcoming recruitment. Mrs Keenan recommended and it was agreed that the recruitment papers note the requirement for email exchange and that it may be time critical.

The issue of using the 'reply to all' function was discussed. It was noted that it is not considered good practice, particularly in the context of emails that include personal information. However it is acknowledged that there may be circumstances in which 'reply to all' may be appropriate and care should be taken when using this function for issues of a sensitive/confidential nature.

Mr Justice Stephens asked that Plenary consider if the action relating to the Complaints Policy (a substantive item on the agenda) was sufficient to address the risk relating to delays in the appointment process (a key change including that a scheme should only halt or be delayed where there is a fundamental flaw); Plenary confirmed it was content.

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

Annual Report and Resource Accounts (AR&RA) 2016/16

Mrs Kilpatrick advised that preparation is underway for the AR&RA. Board Effectiveness Questionnaires are due to be issued to Commissioners in March 2016 and Commissioners were asked that they be returned as soon as possible in order that an analysis of the outcomes can be included in the AR&RA. Ms Keenan advised that she has a model questionnaire that may be useful which she would share with Ms Kilpatrick.

Ms Kilpatrick advised that dates for Commissioner Performance Reviews with the Chairman will be arranged for April 2016.

ACTION:

- Mrs Kilpatrick to advise OFMDFM of the need for email exchange in Lay Commissioner recruitment scheme.
- Ms Keenan to forward the model for the Board Effectiveness Questionnaire to Ms Kilpatrick.

Recruitment and Selection

Competition updates will be discussed later in the agenda.

Policies

Commissioners were referred to the Review of Legislation and Publication Scheme, the Stakeholder Engagement Strategy and the Programme of Action for 2016/17, all three of which are intrinsically linked.

The Review of Legislation and Publication Scheme was an action arising from the Board Effectiveness Plan and the organisation's risk register (due to the risk of reputational damage caused by misinformation). The review of legislation and the outcome from the recent Information Commissioner's assessment of a decision on

whether certain documents could be released, confirms that NIJAC's interpretation is correct.

Ms Kilpatrick advised that the Publication Scheme was based on the Information Commissioner's model and focuses on corporate information. Commissioners agreed the revised Scheme is to reflect the legislative position that personal data (including test scores) processed for the purposes of assessing suitability for judicial office is exempt.

Ms Kilpatrick advised that the Stakeholder Engagement Strategy is pitched at a high level and its development took into account deliberation on media management, the Publication Scheme and what information NIJAC release. Commissioners were referred to the Stakeholder Classification Table which identifies all stakeholders and their different levels of interest and influence at certain points. Lord Justice Weatherup requested some amendments to the table, full details of which will be forwarded to Ms Frew electronically.

Ms Kilpatrick referred to the Programme of Action which identifies that NIJAC will aim to pro-actively engage with the press/media outside of a period of high interest to explain our responsibilities and the context of our work. Commissioners discussed in detail the benefits and risks associated with this, along with the levels of interest from the press/media and it was agreed that this would be done, where appropriate.

Subject to some minor amendments the Review of Legislation and Publication Scheme, the Stakeholder Engagement Strategy and the Programme of Action for 2016/17 were approved by Plenary.

ACTION:

- Lord Justice Weatherup to forward amendments to the Stakeholder Classification Table to Ms Frew.

- Agreed amendments to be made to the Review of Legislation and Publication Scheme, the Stakeholder Engagement Strategy and the Programme of Action for 2016/17.

Working with Others

Ms Kilpatrick advised that she and Ms Frew met with the Deputy Ombudsman on 28 January 2016 and were advised that the appointment of the new Northern Ireland Public Services Ombudsman (NIPSO) had still not been announced. The legislation, which includes transfer of the role of the Northern Ireland Judicial Appointments Ombudsman to NIPSO, is progressing and is due to be implemented in April 2016. It was agreed that a Memorandum of Understanding would be formalised and that shared presentations would be conducted in 2016/17 to advise the applicant pool and their representatives of the change.

Ms Kilpatrick advised that the Flexible Working Group met on 22 February 2016 to discuss the draft policy. Certain aspects are to be re-worked and a revised Policy will be issued to the group at the end of March with the hope that the Policy can be agreed in April 2016. It was noted a further workstream, developing flexible working models, will be advanced by NIJAC, the Northern Ireland Courts and Tribunals Service and the Office of the Lord Chief Justice.

Ms Kilpatrick advised that Professor Joan Ballentine will attend the Plenary meeting in June 2016 to present a synopsis of the OFMDFM sponsored research on gender equality in senior positions. A seminar which reports on the findings of this research has been arranged for 24 March 2016, any Commissioners interested in attending the event are to contact Ms Kilpatrick for further details.

Staffing

The direct recruitment of Deputy Principal (DP) Assistant Director Judicial Appointments Team was launched on 5 February 2016 in response to the recent resignation and is due to close on 29 February 2016. In anticipation of the Finance Director's secondment ending, a secondment for a DP Accountant will be initiated shortly. A further extension to the Chief Executive secondment has been agreed by the Department of Justice (until October 2018).

Commissioner Training

Commissioners were reminded of the free webinars being provided by CIPFA, which have been made available online; details of the webinars offered were included in an email dated 15 December 2015. Commissioners are reminded that if any of them are of interest they can be accessed via the link provided.

Professional development, involving bespoke training on interviewing and providing feedback is planned for Commissioners and staff on Thursday 3 March 2016.

Business Plan 2016/17

Commissioners discussed the draft 2016/17 Business Plan and a verbal update was provided on Business Committee's comments following their recent meeting. Mrs Kilpatrick advised that the draft Business Plan for 2016/17 contains the core objectives and it is acknowledged that other areas of work which have been identified following the earlier Strategy Planning event will be captured within one overarching objective.

Commissioners were content with the draft plan and approved its issue to the relevant stakeholders.

ACTION:

- Draft Business Plan 2016/17 to issue electronically for consultation with relevant stakeholders.

7. Selection Committees

- Lessons Learned Report: Coroner

Mr McNulty QC presented the Lessons Learned Report for the recent Coroner scheme which was noted by Plenary. A suggestion relating to the scoring matrix (linking percentages to scoring bands) has been addressed for future schemes.

- **Lessons Learned Report: Charity Tribunal Ordinary Members**

Professor Rooney presented the Lessons Learned Report for the recent Charity Ordinary Members scheme which was noted by Plenary. The main issue arising related to the application form not providing a specific section for applicants to show how they met the eligibility criteria in relation to charitable experience. This learning has been taken on board and was applied to the Criminal Injuries Compensation Appeals Panel (CICAP) Adjudicator (Lay Member) recruitment.

- **Lessons Learned Report: CICAP Adjudicator (Medical Member)**

Mrs Keenan presented the Lessons Learned Report for the recent CICAP Adjudicator (Medical Member) scheme which was noted by Plenary. Ms Keenan recommended that consideration should be given to agreeing a maximum number of interviews per day and that the Assessment and Selection Training should reinforce the need to adhere to the agreed questions. Following the recent Plenary decision, a senior staff member attended the moderation session and it was felt by both the Selection Committee and the staff member that it may be more appropriate to agree that a senior staff member should be available if required. It was agreed that a senior staff member would attend the moderation session for the County Court Judge and CICAP Adjudicator (Lay Member) schemes, and this decision would then be reviewed at the April Plenary meeting.

ACTION:

- A senior staff member to attend the moderation session for the next two upcoming schemes. Decision on involving staff member to be considered at the next Plenary meeting in April.

- **Current Scheme Updates:**

County Court Judge

Lord Justice Weatherup provided an update on the County Court Judge scheme and advised that 26 eligible applications were received. Shortlisting via papersift was conducted on 23 February 2016 and 8 applicants passed

the threshold set. A second stage of shortlisting was therefore not necessary and 8 applicants have been invited to the final assessment stage, scheduled to take place on 9 and 10 March.

CICAP Adjudicator (Lay Member)

Mr Doyle provided an update on the CICAP Adjudicator (Lay Member) scheme in Mr Todd's absence. The scheme closed to applications on 22 February 2016, 22 applications were received and a test will therefore not be required. The Selection Committee will undertake an eligibility sift of applications on 1 March 2016 with a shortlisting papersift exercise scheduled for 16 March 2016.

8. Character Issues of Precedent

There has been one scheme during the period where issues have arisen and Mr Justice Stephens presented his report outlining the detail of these and his decisions, which were noted by Plenary. One issue arising was in relation to eligibility on the grounds of nationality and following consideration the applicant was deemed eligible. This did however raise additional questions with respect to eligibility on the grounds of nationality, including the need to determine the exact statutory provisions that govern the question of the nationality requirement for judicial office. Legal advice will be obtained in relation to this matter. Another area for consideration is at what stage during the process the nationality requirement is determined. Following discussion Plenary endorsed the current practice that eligibility on the grounds of nationality would be determined as at the date and time of closing of applications (an applicant will progress pending any decision).

ACTION:

- Relevant scheme documentation to be updated to reflect Plenary's decision that eligibility on the grounds of nationality will be determined as at the date and time of closing of applications.

9. Audit & Risk Management Committee

(update provided in morning session)

Mr Todd noted the draft minutes had been provided to Plenary for this meeting. He advised Plenary that the Committee had reviewed the risk register and noted in particular the issue surrounding delays in pre-appointment checks and the impact of losing experienced Lay Commissioners.

Mr Todd outlined the audit reports which had recorded substantial assurance across all areas; one recommendation related to the arrangements for renewals of appointment and Commissioners will now be provided with a list of all planned renewals at the start of the financial year. He also confirmed the Committee had been advised that the new website would be launched before the end of the financial year and that costs would be met by OFMDFM.

10. Business Committee

The minutes of the meeting on 12 February 2016 were circulated to Commissioners for their information and Mr Rankin updated Plenary on the work of the Committee.

Business Committee continue to monitor quality of service and receive a report on any administrative issues that have arisen along with any outstanding actions; the Quality Assurance Strategy, which had been approved by Business Committee, was accepted by Plenary.

A new Commissioner Claim Form which was approved by Business Committee was circulated to Plenary; this new form will replace the old one and will allow a more accurate breakdown of scheme costs to be recorded.

Business Committee has also approved a recommended guideline of a minimum of 2 applications per hour for individual shortlist. This was determined following a benchmarking exercise undertaken against other similar organisations and will assist in the budgeting of schemes to ensure a standardised approach is taken.

The following amendments made to the Key Performance Indicators (KPI) were highlighted to Plenary;

- The Judicial Appointments Team (JAT) KPI 1, 'Assessment Process completed within 90 working days of advert date' and the Corporate Finance Team KPI 2, '98% of supplier invoices to be paid within 10 working days', will be included within the 2016/17 Business Plan.
- The JAT KPI 2 has been amended to read, 'Lessons Learned reports to be delivered within 30 working days of applicants being informed of scheme outcome'. This KPI, along with KPI 1 for the Corporate Finance Team, '98% of shared purchase invoices to be recharged within 3 working days of receipt by NIJAC', will be retained as internal targets for 2016/17. It was agreed that this internal target would be adjusted from 2 to 3 working days.

Following consideration of detailed information provided to them regarding the reference to complaints in published documentation which included benchmarking against our sister bodies and other arm's length bodies and departments, Business Committee have agreed that the default approach to reporting Complaints in NIJAC's future Annual Report & Accounts will be to add a brief note on the lessons learned where appropriate; Plenary supported this decision.

Plenary noted the Selection Committees for planned schemes that Business Committee were consulted on.

As an aside to this discussion Mr Coulter raised a query with whether legal applicants should be precluded from applying for and being appointed to 'lay' roles. It was confirmed that with the exception of Lay Magistrates, there is no statutory bar on legal applicants applying for and being appointed to 'lay' roles, as long as they meet the relevant criteria.

Ms Kilpatrick drew the attention of Plenary to the results of a survey with the Institute of Professional Legal Studies (IPLS) which was conducted in response to a request by Plenary. The aim of the survey was to update the data on family links with the legal profession. Plenary noted that 57% of respondents had no prior links to the legal profession.

11. Policy Committee

- Reserve List Policies

Mr Justice Stephens presented two Reserve List Policies to Plenary; one for Salaried Judicial Office and one for Fee Paid Judicial Office. Mr Justice Stephens talked through the main aspects of each Policy and highlighted the differences between each.

His Honour Judge Kinney raised a concern with the reference to when eligibility will be considered, specifically for the office of District Judge (Magistrates Court) where the date of eligibility is outlined in statute.

Following detailed discussion both Reserve List Policies were approved pending the following amendments;

- Amendment to be made to reflect that should any additional vacancies arise within the life of the reserve list for salaried appointments which were not anticipated in the Appointment Scheme Requirement form, it can be filled from the Reserve list, and a new scheme will be initiated for the remaining vacancy.
- Any reference to 'scheme closing' to be amended to clarify that this is the 'closing date and time for submission of applications'.
- A change to the template letters attached to the policy.

ACTION:

- Mr Justice Stephens agreed to make the amendments to both Reserve Lists Policies.

- Complaints Policy & Investigators Guidance

Mr Justice Stephens presented the revised Complaints Policy and Procedure along with Investigators Guidance and highlighted the main changes including;

- NIJAC will investigate a complaint made within 28 days of the matter complained of and has discretion whether or not to investigate complaints

made more than 28 days after the matter complained of. There are now three criteria upon which the exercise of discretion will be based.

- In relation to a Commission Complaint made during the progress of a current scheme, ordinarily and unless a 'fatal or fundamental flaw' is apparent, the scheme will proceed.
- The Complaints Commissioner/Complaints Cte (CC/CCte) will appropriately and proportionately investigate, provide analysis and make a determination. The final decision of the CC/CCte is to uphold or not the complaint and state if there is adverse impact; it is also to make recommendations to Plenary as to what if any action to take. Plenary will decide upon any actions arising, which may be based upon recommendations from the CC/CCte.
- Under the oversight of the CC/CCte staff may be tasked to investigate.

The Chairman advised that consideration could be given at a later stage that, in the event of a serious complaint, an ex-Commissioner could be brought in to investigate.

Subject to including the Commission's responsibility to appoint timeously to meet the public interest at 2.9 of the policy document and some minor agreed amendments, the Complaints Policy and Procedure and Investigators Guidance were approved by Plenary.

ACTION:

- Agreed amendments to be made to the Complaints Policy and Procedure.
- **Terms of Reference for Review of Case Studies**
The Terms of Reference for the Review of Case Studies were noted by Plenary.
- **General Policy Amendment re Appropriate Person**
Plenary approved the new general policy position that where a power is to be exercised by the Chairman, he may nominate an appropriate person (a NIJAC Commissioner) to exercise that power either generally or specifically in

relation to a particular issue; this statement is to be included in all policies. It was noted that the Chairman would also consider referring matters to the next most senior Lord Justice of Appeal where appropriate.

ACTION:

- All current Policies to be reviewed to reflect the approved position re: appropriate person.

12. Senior Appointments Review Team (SART)

Professor Rooney provided an update on the meetings of SART held on 14 January 2016 and 22 February 2016. A revised version of the Terms of Reference for this group were approved electronically by Plenary.

Professor Rooney referred Plenary to the narrative which had been developed by SART to precede the Personal Profile for High Court. A similar narrative has also been agreed for County Court.

SART have also considered the use of References (previously Consultees) for High Court and will be going out to consultation with the relevant stakeholders in the coming months with consultation due to close at the end of June 2016. It is proposed that 3 references will be sought, at least 2 of which must be familiar with the applicants work. They will be compulsory; only be requested after shortlisting for those proceeding to the final assessment stage; be used for validation only and based on the personal profile, Referees will be asked to comment on the applicants strengths and areas for development.

A template Referee Form and associated Guidance was shared with Plenary and a number of amendments proposed. It was agreed that the question asking 'Do you know of any reason why this person is not suitable to serve in judicial office?' should be removed from the Form.

Plenary approved the Referee Form and Guidance for use in the current County Court scheme (in the terms set out in the Applicant Information Booklet), prior to consultation with the relevant stakeholders.

Plenary noted the update and planned actions from SART.

ACTION:

- Agreed amendments to be made to Referee Form and Guidance prior to use in the current County Court Judge scheme.

13. Any Other Business

Mrs Keenan has resigned from NIJAC with effect from 31 March 2016 and the Chairman thanked her for her valued contributions, advice and guidance during her time in NIJAC and wished her all the best for the future.

14. Date and Agenda of next meeting

Thursday 21 April 2016 at 9:30am

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

...21 April 2016.....