

**Minutes of the Plenary Meeting  
Held on Thursday 3 December 2015  
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  
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  
The Right Honourable Lord Justice Weatherup
- In Attendance:** Mrs Mandy Kilpatrick (Chief Executive Officer (CEO))  
Ms Adeline Frew  
Miss Nicola Quinn (Secretary)

**1. Apologies**

Mrs Fiona Keenan sent her apologies.

**2. Conflicts of Interest**

No conflicts were identified.

**3. Confidentiality**

The importance of confidentiality was stressed.

#### **4. Minutes of meeting on 8 October 2015**

The minutes of the meeting on 8 October 2015 were agreed by Plenary. It was agreed, in the context of the Policy Committee update, that the paper on recording interviews should include the option of a pilot and that the actions relating to staff involvement at moderation sessions and validation of tests were to be implemented.

The Chairman updated Plenary on the actions arising. All have been addressed or are on the substantive agenda.

#### **5. 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 subject to the following matters there were no areas of concern across NIJAC's four key performance areas with all objectives either achieved or on track for delivery: one scheme had been delayed; Plenary had agreed an adjustment for the strategic planning session (February 2016) and Policy Committee had approved the adjustment of the sub target within the Developing Best Practice in Recruitment (DBPR) work plan relating to a review of Role Plays (this now reflects that the report will be issued to Policy Committee on 8 March 2016 and subsequently to Plenary in 2016/17). All Policies due for review in 2015/16 have been reviewed with a number of additional Policy reviews ongoing.

Internal Audit is currently in conducting their audit.

Mrs Kilpatrick advised that a planning meeting with the new Northern Ireland Public Service Ombudsman's Office (NIPSO) to agree an effective transition of Judicial Appointments Ombudsman responsibilities, including communicating the change to stakeholders, was arranged with the NIPSO in November however at their request this has been rescheduled to January 2016. Following this meeting NIJAC will undertake a series of outreach events with relevant stakeholders and

will also take this opportunity to positively balance any negative perceptions amongst the professions, which is another key Business Objective.

The Flexible Working Group Terms of Reference have been agreed. A draft Policy is currently with the Judges' Council for review and comment and will hopefully be finalised by the end of the financial year; the Chairman noted that the financial implications associated with this Policy would represent a significant challenge for its successful delivery.

### Risk Register

Mrs Kilpatrick advised that two risks have been removed; the risk to budget should additional accommodation be required and the IT changes risk, relating to breach of data protection and confidentiality.

The risk concerning the financial implications from legal proceedings has been reduced to reflect NIJAC's limited role and the the reduced likelihood of any proceedings commencing in the 2015/16 Financial Year.

### Risk Appetite

Mrs Kilpatrick advised that Risk Tolerance or Appetite is the degree of exposure arising from risks which is considered to be acceptable, or in general terms, the "amount of risk that the organisation is prepared to live with". In accordance with HM Treasury "Orange Book" the corporate risk appetite should be set at Management Board level and used as a starting point for cascading levels of risk tolerance down the organisation.

Plenary were presented with a paper outlining NIJAC's current Risk Appetite and the appropriate methodology. Plenary considered and approved the continued use of a low to medium Risk Appetite for NIJAC.

### Budget Update

The opening 2015/16 NIJAC budget was £1,094k which has been reduced to £1,003k, signifying an 8.32% reduction. A further £10k will be surrendered in the next monitoring round.

Mr Coulter advised that at the recent Audit Chairs Meeting they were advised of 5-10% reductions required in the 2016/17 Financial Year. Mrs Kilpatrick confirmed that a request had issued asking for the impact of those reductions and she and the team were preparing the response; she noted the most significant issue will be the impact for NIJAC should it become solely responsible for the building and in that regard accommodation options were being actively explored with Strategic Investment Branch.

#### Information Security

Mrs Kilpatrick requested that any Commissioners who have NIJAC papers at home which they no longer need please return to NIJAC for safe disposal.

#### Freedom of Information (FOI) Requests

Mrs Kilpatrick updated on the current FOI Requests received and advised that she met with a representative from the Information Commissioner's Office on 13 November to provide information in response to their investigation of a part Refusal Notice that has been challenged.

It was noted Mr Coulter is currently finalising a second FOI internal review.

#### Review of how confidentiality is stipulated to applicants

Plenary had previously agreed that the current references to the duty of confidentiality in NIJAC's documentation be enhanced to reflect the Commission's position in respect of the importance of confidentiality in relation to judicial appointments. Plenary were presented with a standardised form of wording to be incorporated into the Applicant Information Booklet, Reference documentation and the Application Form. Plenary approved the suggested form of wording presented subject to the new arrangements for the use of References.

#### **ACTION:**

- Plenary approved form of wording on the duty of confidentiality to be incorporated into all future scheme documentation.

### Recruitment and Selection

Competition updates will be discussed later in the agenda.

An action point arising from the October Plenary meeting, related to Community Background figures of 2013 – 2015 schemes. Policy Committee has considered a further paper which outlined that the statistics do suggest that community background of appointments in the Appeal Tribunals scheme did impact upon the overall figures. Plenary acknowledged merit is the overriding statutory duty and that while appointments may be reflective of the applicant pool the changing demographics may constrain NIJAC's ability in the future to secure a judiciary reflective of the society it serves. Policy Committee have agreed a number of action points in this regard, including writing to Queens University Belfast to follow up on the meeting held to highlight the situation.

Plenary requested that the Evaluation Report for the Appeal Tribunals Legal Member scheme is reviewed.

#### **ACTION:**

- Evaluation Report for the Appeal Tribunals Legal Member scheme to be reviewed.

### Outreach and Working with Others

Mrs Kilpatrick referred to the Communications, Outreach and Working with Others update provided to Commissioners.

Professor Joan Ballantine has recently undertaken research charting the experience and perceptions of current and aspiring female executives across the public sector locally. Professor Ballantine has offered to present a synopsis of her findings to NIJAC and Plenary agreed that this should be arranged for the start of the next Financial Year.

***ACTION:***

- Professor Joan Ballantine to be invited to attend Plenary in 2016/17 to present her research findings.

Professor John Morison, former NIJAC Commissioner, has published a chapter on Finding 'Merit' in Judicial Appointments: NIJAC and the Search for a new Judiciary in Northern Ireland.

***ACTION:***

- Professor John Morrison's chapter on Finding 'Merit' in Judicial Appointments: NIJAC and the Search for a new Judiciary in Northern Ireland to be shared with Plenary electronically.

An update on the summary of actions arising from the Review of legislation and Publication Scheme and an update paper on the Stakeholder Engagement Strategy was presented to Plenary for their information. These pieces of work will contribute towards meeting the overarching Communication and Engagement objectives and inform the 2016/17 Programme of Action. Following discussion it was agreed that the Review of legislation and Publication Scheme would address how the outcome of complaints could be documented within the Annual Report.

***ACTION:***

- The Review of Legislation and Publication Scheme to address how complaints could be documented within the Annual Report; due before Business Committee in February 2016.

*Our People*

Mrs Kilpatrick advised that staff is currently at full complement however Helen Anderson, Assistant Director Judicial Appointments has handed in her notice and will be leaving at the end of January 2016 to take up a new post elsewhere. Plenary noted their thanks to Mrs Anderson for all her guidance and work during her time at NIJAC.

A Business Case for a full-time direct recruit replacement is underway.

### Proposed Committee Meeting Dates

Proposed Committee Meeting Dates were shared with and approved by Plenary.

## **6. Selection Committees**

### **- Lessons Learned Report: Charity Tribunal Legal Member**

Mrs Gadd presented the Lessons Learned Report for the recent Charity Tribunal Legal Member scheme which was noted by Plenary. The main issue arising related to the need for applicants to provide enhanced evidence of their examples, particularly in application forms; it was agreed the guidance is sufficient and that efforts to point applicants to this information should continue.

### **- Current Scheme Updates:**

#### **Charity Tribunal Legal Member**

Mrs Gadd provided an update on the Charity Tribunal Legal Member scheme and advised that the successful applicant is to be sworn into office on Friday 4 December 2015.

#### **Coroner**

Mr McNulty QC provided an update on the Coroner scheme and advised that interviews were held on 5 & 6 November 2015. Pre-appointment checks are ongoing for the successful applicant and a reserve list has been identified.

It was noted that this was the first salaried Court based scheme that did not require Consultee Comments and the Selection Committee did not consider it had hindered their assessment and selection; it was also noted that confidentiality appears not to have been an issue in this scheme .

#### **Lands Tribunal President**

One Expression of Interest was submitted and the appointment has been made.

### **Charity Tribunal Ordinary Member**

Professor Rooney provided an update on the Charity Tribunal Ordinary Member scheme. 8 applicants were interviewed and 2 successful applicants identified; pre-appointment checks are underway.

### **Criminal Injuries Compensation Appeals Panel (CICAP) Adjudicator (Lay Member)**

Mr Todd presented an update on the CICAP Adjudicator (Lay Member) scheme. This scheme was scheduled to be advertised in October however the Department of Justice is reviewing the eligibility criteria. With the agreement of the Tribunal, advertisement is now anticipated in January 2016.

### **CICAP Adjudicator (Medical Member)**

The CICAP Adjudicator (Medical Member) scheme closed to applications on 23 November 2015 with 14 applications received. The Selection Committee is to consider the numbers to be interviewed.

## **7. Issues and Character Committee: Precedents**

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 a change to the process for applicants when saving on line applications, which was addressed.

## **8. Business Committee**

There has been no further meeting of Business Committee during the period however the notes of the last meeting were noted by Plenary.

## **9. Policy Committee**

Plenary was updated by the Chair of Policy Committee and the minutes of the meeting on 3 November 2015 were noted by Plenary.

### **- Review of Shortlisting Practice**

A paper on the Review of Shortlisting Practice was presented to Plenary which recommended that Selection Committees receive anonymous



application forms, identified by applicant number only in relation to paper shortlisting only; names of applicants would still be shared separately to ensure no conflicts of interest arise. Plenary approved this change.

***ACTION:***

- Selection Committees to receive anonymous application forms, identified by applicant numbers only for any papersift shortlisting exercise.

- **Standardisation of Documents: Assessment Documentation**

Plenary were presented with a number of standardised documents for shortlist and interview stages for their consideration and approval, which provide for a model answer or positive/negative indicators as appropriate. Following discussion it was agreed that the Individual Shortlisting Form which allows for a brief record of the assessment of the applicant's evidence should be adopted and Mr Justice Stephens would insert an additional comment box to allow any significant changes to scores arising from moderation to be noted; guidance on this aspect and for a similar position at the assessment stage will also be provided.

The Moderated Shortlisting Form to be amended to read 'Minimum Threshold' rather than 'Passmark'.

All documents were approved by Plenary.

Discussion took place in relation to the role of the Chair in Selection Committees. Plenary requested that the Chair's checklist is reviewed by SART.

***ACTION:***

- Mr Justice Stephens to insert an additional comment box in the individual Shortlisting Form to allow any significant changes to scores arising from moderation to be noted; guidance on when it may be appropriate at either shortlisting or full assessment stage to be included in the documentation and training. Once complete, all standardised Assessment Documentation to be

applied to schemes. The Moderated Shortlisting Form to be amended to read 'Minimum Threshold'.

- Chair's checklist to be reviewed by SART.

- **Reserve List Policy**

Judge Prytherch, Professor Rooney and Mr Justice Stephens provided an update on the Reserve List Policy in that two policies (one for fee-paid roles and one for substantive roles) are currently being drafted. It was confirmed a reserve list should only be included where there was a reasonable expectation of additional appointments. Commissioners were content, taking cognisance of applicants expectations once the number of posts advertised had been filled, that the current practice of initiating a further scheme where new appointments are required remained appropriate for substantive posts. It was agreed that the draft Policies would be finalised by Policy Committee prior to submission to February's Plenary.

***ACTION:***

- Reserve List Policies to be drafted and presented to Policy Committee prior to submission to February Plenary.

- **Complaints Policy**

Mrs Keenan and Mr McNulty QC have reviewed the Complaints Policy and a draft is currently with Mr Justice Stephens for his review and comments prior to issue to Policy Committee. The Policy will then be shared with Plenary for consideration and approval.

***ACTION:***

- Complaints Policy and Guidance to Complaints Investigators to be finalised and presented to Policy Committee prior to submission to Plenary.

- **Variation to Policy**

Mr Justice Stephens asked that Plenary approve the following statement, derived from the Equality Commission, for inclusion in all policies:

'NIJAC may, at any time and at its discretion, vary, amend or make reasonable adjustments to this policy or to its procedures and practices implementing this policy, if it considers that this is reasonably necessary to undertake its statutory responsibilities.'

***ACTION:***

- 'Variation to Policy' statement to be inserted into all Policies.

***Lunch (Staff and Charity event at 3.30pm to meet teamwork objective)***

(Items 10, 11 and 12 were discussed together)

**10. Judicial Appointments Ombudsman Report: Evaluation**

Plenary was presented with a report that provided an analysis of the learning associated with the High Court Judge Scheme 2014. It was noted that the Ombudsman did not make any recommendations however he did share some observations. Plenary considered and agreed the planned actions which were outlined in the paper and have been allocated to the appropriate Committees/Sub-Committees to progress; they include, for example, reviewing and consulting on the Consultee Policy and the Ombudsman's observation as to whether the legally qualified Commissioner appointments should be open to external advertisement and if, as a default position, one non Northern Ireland judge should serve on a Selection Committee for a High Court appointment. It was agreed that each Committee/Sub-Committee would report to Plenary on progress of the agreed actions and the first interim report would be provided to Plenary's April 2016 meeting.

It was also noted that once the related FOI requests have been finalised any learning and outcomes should be shared with Policy Committee.

## ***ACTION***

- Each Committee/Sub-Committee to report to Plenary on the progress of the agreed actions; the first interim report to be provided to Plenary's April 2016 meeting.
- The outcome of FOI requests to be shared with Policy Committee for consideration and any further action where necessary.

## **11. Lessons Learned Report: High Court Judge**

Mr Todd presented the Lesson Learned Report; it was agreed the actions arising had been sufficiently addressed or captured in the agreed actions.

## **12. SART**

Professor Rooney provided an update on the meeting of SART held on 10 November 2015. The Terms of Reference for this group were presented to and approved by Plenary.

## **13. Result of Consultation on use of References for County Court posts**

A paper outlining the responses received following consultation on the use of References for County Court posts was shared with Plenary. The Chairman advised Plenary of the detail in the additional two responses received from the Council of County Court Judges and the Judges' Council.

The proposal issued for consultation was that either Reference's are not sought for County Court posts (as is the new position for all posts other than those at the County Court and High Court) or one of two options:

- First, retain the current practice of the applicant nominating people who know their work but reducing the number from 3 to 2; or
- Secondly that, in consultation, NIJAC compiles a list of roles from which an applicant can nominate two References.

The majority of responses received welcomed the change in policy discontinuing the use of Consultees with a general consensus that if References are to be

sought for County Court applicants they should be requested as late in the process as possible.

Given the work in hand by SART it was agreed that as an interim measure the following approach would be used for the next County Court Scheme;

- Two compulsory References to be sought after shortlisting from someone who must be familiar with the applicants work. The References will ask about strengths and areas for development and should be supported by examples. Applicants will be advised in the Applicant Information Booklet that references will be sought after shortlisting and names of referees will be requested at that stage.

***ACTION:***

- Agreed interim approach on the use of references for County Court to be used in next scheme.

**14. Any Other Business**

**- Board Effectiveness**

The Annual Strategic Planning Session is scheduled to take place at February Plenary. In order to ensure that the arrangements for this session meet expectations it was agreed that the sub group of Mr Coulter, Mrs Keenan, Professor Rooney and Mr Todd would provide a detailed paper on what is proposed to be covered at this session to Plenary electronically by 28 January 2016 for any comments. It was noted that an external facilitator may not be needed.

***ACTION:***

- Sub group for the Annual Strategic Planning Session to provide a detailed paper on what is proposed to be covered at this session to Plenary electronically by 28 January 2016 for any comments.

- **Coroner**

The Chairman updated Plenary on the pressures in the Coroners Court (he assumed the role of President on 1 November 2015). He noted the option of requesting that particular tiers of serving judicial office holders are appointed as Coroners, to increase flexibility in deployment for the hearing of legacy cases, is being explored by his office. Commissioners noted that a request was likely and subject to the detail being provided considered such an approach was proportionate and appropriate. The potential for future recruitment at certain tiers to feature a dual role will also be considered.

- **Post Retirement Appointment**

Documents relating to the post retirement appointment had been circulated to Plenary electronically.

Following discussion Plenary approved the post retirement appointment.

***ACTION***

- Post retirement appointment to proceed.

**13. Date and Agenda of next meeting**

Thursday 25 February 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**

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