

Character Guidance for Applicants

The function of NIJAC is to make appointments, renewals of appointment, and recommendations for appointment to judicial office up to, and including High Court Judge. Judicial office is a position of utmost trust. Therefore it is essential 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. Obligation to Disclose

1.1 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 legislation relating to judicial appointments and other supporting documents setting out the high standards of personal integrity expected for judicial office.

1.2 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 make reference 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 as they affect you;
- (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 you have already been selected for judicial office or are/have been a judicial office holder, including matters that may have occurred outside the United Kingdom.

2. Background

- 2.1 The standards expected for appointment to judicial office are equally applied to any applicant for judicial office whether legal, medical, lay or other as are the principles that NIJAC will adopt in determining good character, which are based on:

- (i) the overriding need to maintain public confidence in the standards of the judiciary. Judicial office is a position of utmost trust and is a public appointment and therefore subject to scrutiny.
- (ii) the expectation of the highest standards of personal integrity which are required for judicial office as these are set out in the following documents for appointment to judicial office:
 - (a) the essential criteria (personal Integrity) of the personal profile which is compiled for each judicial office under recruitment;
 - (b) the statement of ethics of the Judiciary; and
 - (c) the terms and conditions of service for judicial office.
- (iii) fairness and impartiality in assessing or investigating issues of character. Therefore, any information obtained by NIJAC may not necessarily debar an applicant from appointment unless NIJAC considers that it renders them unsuitable for appointment.
- (iv) proportionality in the administration and consideration of character. For example, where a short-listing test is used the character issues of only those shortlisted will be recorded and proceed for determination by ICC.
- (v) When shortlisting by assessment of the application form only those character issues which are significant and precedent setting will be brought to the attention of the ICC ahead of shortlisting.
- (vi) due regard to the need to promote equality of opportunity to all applicants in line with NIJAC's Equal Opportunities Policy and Procedure.

2.2 Failure of an applicant to disclose a character issue or any material issue relating to a character issue will mean disqualification of an application.

2.3 In addition to the above NIJAC will also take account of the following risk assessment criteria when considering criminal convictions/offences and/or cautions:

- (i) relevance of conviction / caution / offence to the office under recruitment and the high standards of personal integrity and behaviour expected from a person who may hold a judicial office which is a position of trust;
- (ii) severity of penalty imposed by a court and any conviction resulting in a custodial sentence or the imposition of a term of imprisonment (which normally would prevent an applicant from being selected for judicial office);
- (iii) consideration if the convictions demonstrated a propensity to violent, destructive, or abusive or reckless behaviour;
- (iv) consideration if the convictions demonstrated serious negligence causing death or injury to others;
- (v) consideration if the conviction demonstrated dishonesty;
- (vi) circumstances surrounding any conviction, regardless of disposal, for a listed offence;
- (vii) any other adult conviction resulting in a non-custodial sentence;
- (viii) any other conviction received as a young offender;
- (ix) nature, number and date(s) of the conviction(s)/offence(s) and/or cautions;
- (x) mitigating circumstances or general circumstances of the conviction(s)/offence(s) and/or caution(s);
- (xi) rehabilitation and contribution to society;
- (xii) statements of character provided by the applicant through, for example, Consultees or other information supplied;
- (xiii) any other information provided by the applicant which tends to suggest that, for example, the convictions are not representative of the overall character of the candidate e.g. a GP letter if an applicant was unwell; and
- (xiv) transparency in dealings and communications with applicants. 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 below.

3 Specific Considerations

3.1 Criminal offences - Criminal convictions (other than motoring)

- 3.1.2 You must declare any/all convictions received as an adult or young offender regardless of the outcome or date.
- 3.1.3 Applicants should note a conviction will normally prevent you from being selected for judicial office.
- 3.1.4 The Commission may at its discretion disregard such a conviction. The factors it will take into account include: the nature, number and date(s) of the offence(s); the circumstances of the offence(s); and the circumstances of the conviction (s).

3.2 Cautions for criminal offences

- 3.2.1 You must declare any caution administered; and any other adult caution administered.
- 3.2.2 Because a formal caution requires an admission of guilt by the person concerned, NIJAC will treat caution in the same way as a conviction, and will take into account all the factors listed above.

3.3 Fixed penalties

- 3.3.1 You must declare any fixed penalty received (including moving traffic offences). 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. Please see below for further detail in respect of motoring offences.

3.4 Motoring offences

- 3.4.1 Convictions for motoring offences (other than parking offences) must be declared in the section of the application form relating to criminal convictions. You must declare any conviction resulting in a custodial sentence and any conviction for any offence. Guidance on other motoring convictions which you

must declare is provided below. In general any conviction for a motoring offence will be treated in the same way as any other criminal conviction.

3.4.2 You must declare any conviction received for any motoring offence committed while under the influence of alcohol or drugs or involving refusal to provide a specimen. NIJAC treats these offences seriously and a conviction will normally prevent you from being selected for judicial office.

3.4.3 Any disqualification from driving or offence resulting in a custodial sentence must be declared. This will normally prevent you from being selected for judicial appointment.

3.4.4 You must declare any other endorsement currently remaining on your licence. This will include endorsements resulting from exceeding the speed limit or using a hand-held device while driving.

3.4.5 You need not declare any speeding offences dealt with by an informal warning or speed awareness course.

3.5 Current investigations

3.5.1 You must declare information about any criminal charges you are subject to or any ongoing criminal investigation into your conduct. 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.

4. Financial matters

4.1 Insolvency and debt

4.1.1 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.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.2 VAT and tax

4.2.1 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 will not normally prevent you from being selected but full details must be provided, preferably supported by documentary evidence. NIJAC will consider each case on its merits.

4.2.3 Repeated late returns or payments, or county court judgments or actions 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.

4.2.4 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.

5 Professional conduct

5.1 Professional negligence and other legal action

5.1.1 NIJAC will consider on its merits each case of a finding against you of professional negligence, so you must provide full details on your application form. We recognise that some candidates, because of the nature of their practice, are more likely to face claims of professional negligence.

5.1.2 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.

5.1.3 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 a personal responsibility.

5.1.4 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.

5.2 Professional Complaints and Disciplinary action

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

5.2.3 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.

5.2.4 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.

5.2.5 NIJAC will consider factors such as:

- 1) recognition that some people, by the nature of their work, are likely to receive a greater number of complaints than others (for example those working in criminal or mental health practices);
- 2) the number of matters upheld;
- 3) the nature and seriousness of the matter(s);
- 4) the action (if any) taken by your or any other professional body;
- 5) your personal culpability;
- 6) whether it is a finding of misconduct, or finding of inadequate professional service.

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

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

5.2.8 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. 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.

5.2.9 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.

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

5.3 Current investigations

5.3.1 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.

5.3.2 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.

6. Further information to be disclosed

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

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

6.3 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.

6.4 Finally, in addition to the categories covered above, you should consider if there is any factor or event, either currently 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.

7. Use of character information in the assessment of personal integrity

- 7.1 NIJAC considers that information supplied in answer to the “character” questions on your application form provides evidence relevant to the personal integrity criteria on the personal profile. Therefore the information is used by the ICC to make a decision as to whether you have demonstrated the quality as advertised for the role in question.

8. Previous applications

- 8.1 Applicants who have previously applied for a Judicial Appointment and have declared a character issue on their application form must restate the issue(s) on future application forms. They must also state the date and outcome the ICC arrived at. NIJAC only keep a record of character assessments for 12 months after the decisions are made. The recorded information remains anonymous hence the requirement for this repeat of information.

9. Complaints

- 9.1 Any complaint arising from the application or as a result of this policy will be diligently 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.