



Confidentiality Policy

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“Selecting the Best Applicant and Promoting Diversity”

1. Background

- 1.1 Northern Ireland Judicial Appointments Commission (NIJAC) was established on 15 June 2005 as an independent public body under the Justice (Northern Ireland) Act 2002 as amended. Upon the devolution of justice on the 12 April 2010 the Northern Ireland Act 2009 (the 2009 Act) extended NIJAC's statutory duties.
- 1.2 NIJAC is an appointing body, selecting and appointing to non-crown judicial offices in various Courts and Tribunals throughout Northern Ireland. NIJAC select and make recommendations for crown appointments up to and including High Court Judge.
- 1.3 NIJAC selects, recommends and appoints on merit, through fair and open competition and by selecting from the widest possible range of eligible applicants. Its work encompasses the principles of:-
 - Merit;
 - Independence;
 - Diversity;
 - Fairness;
 - Transparency;
 - Accountability;
 - Partnership.

2. Purpose

- 2.1 Confidentiality is a fundamental principle which is enshrined in legislation regarding the appointment to judicial office. NIJAC consider that information is confidential if it relates to an identified or identifiable individual.
- 2.2 The Commission recognises that NIJAC and others involved in the appointment process obtain and/or receive information in confidence from

applicants and third parties. This policy aims to provide guidance on the handling, retention and sharing of such information in accordance with the essential requirements of the appointment process.

3. Scope:

3.1 This Policy applies to:

- Applicants for judicial office
- Commissioners
- Committees (ad hoc or otherwise)
- NIJAC Staff¹
- Co-opted Selection Committee members
- Third parties (inc. Referees) involved in the appointment to judicial office.

4. Principles and Legislation

4.1 NIJAC will request confidential information for the purpose of appointment to judicial office. That information will be used by NIJAC to identify the best applicants on the basis of merit. It will also assist NIJAC in pursuance of achieving the widest pool of potential applicants and in delivering a Programme of Action to secure, so far as reasonably practicable, that those holding judicial office are reflective of the community.

4.2 Section 91 of the Justice (Northern Ireland) Act 2002 (as amended), as inserted by section 132 of the Constitutional Reform Act 2005, provides the statutory framework on confidentiality in relation to judicial appointments. It is provided that -

“(1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.”

¹ The definition of staff in this document includes permanent staff, temporary staff and seconded staff.

Section 9I(4) provides when and to what extent the disclosure of confidential information can lawfully be made: this can happen (a) when the disclosure is with the consent of each person who is the subject of the information; (b) when the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision or a decision whether to exercise them; (c) when the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.

Disclosure outside of these provisions is **unlawful**.

- 4.3 NIJAC Commissioners and staff are responsible for ensuring that confidential information is not unlawfully disclosed.
- 4.4 Section 107 of the Constitutional Reform Act 2005 provides for the disclosure of information to NIJAC for the purposes of selection. However, such a disclosure must not contravene the Data Protection Act 2018, or be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000. (Part 1 provides a statutory basis for the authorisation and use by the security and intelligence agencies, law enforcement and other public authorities of covert surveillance, agents, informants and undercover officers).
- 4.5 NIJAC is subject to the Data Protection Act 2018 and the sanctions referred to within. NIJAC Commissioners and staff in breach of this policy may also be subject to NIJAC's internal disciplinary/conduct procedures.
- 4.6 Applicants and third party organisations or individuals in breach of this policy are also liable to sanction through the Data Protection Act 2018 and the General Data Protection Regulations.

4.7 The handling of confidential information by NIJAC will also comply with the data protection principles as set out in the Data Protection Act 2018. The principles provide that data should be:

- Obtained and processed fairly and lawfully
- Processed for limited, specified purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept longer than necessary
- Processed in accordance with the individual's rights, as set out in the Act
- Kept secure and protected
- Not transferred out of Europe (unless the country has adequate protection for the individual).

Further personal information processed for the purpose of assessing any person's suitability for judicial office is exempt from the subject access provisions of the Data Protection Act (Section 14 of part 2 to Schedule 2 of the Data Protection Act 2018).

4.8 NIJAC has noted and adopts the advice provided in 'The Employment Practices Code' provided by the Information Commissioners Office. The Code states that the Act does not prevent an employer from carrying out an effective recruitment exercise but helps to strike a balance between the employer's needs and the applicant's right to respect for their private life.

4.9 NIJAC will store confidential information obtained through the appointments process in accordance with the 'Retention and Disposal Protocol'.

4.10 NIJAC will observe its 'Clear Desk Policy' when working with documents containing confidential information.

- 4.11 If information is given in circumstances where it is expected that a duty of confidence applies, under Common Law the general position is that, such information cannot normally be disclosed without the information provider's consent.
- 4.12 Any individual involved with the appointment to judicial office is also subject to the Information Security Policy.
- 4.13 Applicant information must not be disclosed for purposes unconnected to the selection process without the consent of the applicant or information provider, whether that information be held on paper, computer, visually or audio recorded, or held in the memory of the assessors or administrators.
- 4.14 The provisions of this policy apply to all those involved in the process of appointment to judicial offices within the remit of NIJAC. The application of this policy does not terminate upon completion of any appointments process.
- 4.15 Any breach of this policy's provisions on disclosure must be notified to the Chief Executive of NIJAC with immediate effect.

5. Variation to Policy

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

6. Review

- 6.1 The Confidentiality Policy 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.

7. Complaints

- 7.1 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
- 7.2 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

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