

**Minutes of the Plenary Meeting
Held on Thursday 2 June 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
His Honour Judge Kinney – left the meeting at 12:15pm
District Judge (Magistrates’ Courts) Rosalie Prytherch – joined the meeting at 10:15am
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
Mr Andrew Millar – joined the meeting at 1:30pm
Miss Nicola Quinn (Secretary)

1. Professor Joan Ballentine

Professor Joan Ballentine attended the morning session of Plenary to deliver an informative presentation on an investigation of gender equality issues at the executive level of the Northern Ireland Public Sector. Plenary noted a number of the issues are similar to those experienced by NIJAC and also that a number of the initiatives chimed with those adopted by NIJAC.

Business session commenced following Professor Ballentine’s presentation

2. Apologies

Mr James McNulty QC

3. Conflicts of Interest

No conflicts were identified.

4. Confidentiality

The importance of confidentiality was stressed.

5. Minutes of meeting on 21 April 2016

Plenary confirmed that no amendments were required and approved the minutes of the meeting on 21 April 2016.

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

6. Chief Executive's Report

Mrs Kilpatrick presented her report to Plenary.

2016/17 Business Plan Objectives

Mrs Kilpatrick presented an update on the detail provided on the Business Plan Objectives and advised that all objectives are on track for delivery.

Mr Rankin, as Chair of Business Cte and on behalf of the Chairman, and Mrs Kilpatrick shared the information provided when they attended a Northern Ireland Civil Service (NICS) planning event on 12 May 2016. The event outlined the intended approach to future Business Planning in the context of the new Programme for Government (PfG). The consultation period for the PfG was also discussed and it was agreed that Business Committee would consider a NIJAC response at their next meeting and provide electronically a draft response for Plenary's consideration.

Plenary noted the updates provided and planned actions.

ACTION:

- Business Committee to consider a NIJAC response to the current consultation on the PfG which is due to close on 22 July 2016 and provide electronically a draft response for Plenary's consideration.

2016/17 Budget Position

Mrs Kilpatrick confirmed that the Accounts for 2015-16, reflecting a tolerance level of 1% have been closed, however subject to the planned audit they may need adjusted.

Mrs Kilpatrick confirmed that the 2016/17 budget of £1,062k was issued on 7 March 2016. The Office of the President of Appeal Tribunals (OPAT) has confirmed that they intend to remain in Headline until December 2016. The reduction of 4% (compared to the anticipated 5.7%) along with the additional income means the budget position is less stressed than anticipated. NIJAC have however been advised of the requirement for four additional schemes over and above those budgeted for annually, and subject to consultation with our sponsor department, the rental income should enable delivery.

2016/17 Risk Register

The 2016/17 Risk Register was reviewed by the Executive Team on 10 May 2016 to consider and reflect discussion and decisions at the 25 April 2016 Plenary.

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

Letter from JAC Chairman

Mrs Kilpatrick referred Plenary to the letter from Christopher Stephens CBE, retiring Judicial Appointments Commission England & Wales (JAC) Chairman, to the Lord Chancellor, Michael Gove. Plenary noted a number of the initiatives undertaken are similar to those undertaken by NIJAC.

Working with Others

Mrs Kilpatrick referred Commissioners to the outreach and working with others update provided. Consultation has been underway with the relevant stakeholders by the Senior Appointment Review Team (SART) and outreach engaged in with the Northern Ireland Public Service Ombudsman (NIPSO). The Joint Liaison Committee (JLC) met on 1 June 2016; both the Bar and Law Society stated they are content with the current arrangements for identifying their representatives to serve as NIJAC Commissioners. The JLC were not supportive of the Judicial Appointments Ombudsman (JAO) observation that an external judge could be appointed to sit on future senior appointment selection committees.

Staffing

Mrs Kilpatrick advised that the new Assistant Director Judicial Appointments Team will commence at the start of June 2016 and the new Finance Director will commence in the middle of June.

Board Effectiveness Questionnaires

Mrs Kilpatrick referred to the findings from Commissioners' replies from the recent Board Effectiveness Questionnaires. Feedback shows that NIJAC's Board is healthy and pride is taken in the standards of delivery and the ethos of continual improvement. Plenary agreed that any actions identified have already been addressed through the work carried out in the Strategic Planning Session in February and a number of work streams have been identified and appropriately allocated.

7. Annual Report and Accounts 2015/16

Mrs Kilpatrick presented the draft Annual Report and Accounts 2015-16 (AR&A) for consideration by Plenary ahead of release to the Northern Ireland Audit Office (NIAO). The Audit and Risk Management Committee (ARMC) considered and approved the draft Annual Accounts and Governance Statement 2015-16 at their meeting on 24 May 2016.

It was noted that the NIAO may require some amendments to the accounts following the audit and Plenary were advised that any substantial adjustments would be referred back to Plenary and the ARMC as appropriate.

Plenary approved release of the Annual Report and Accounts 2015/16 subject to agreed amendments being incorporated and with an acknowledgement that the Complaints section may need updated pending current activity.

ACTION:

- Agreed amendments to be made to the Annual Report and Accounts 2015/16 and released to the NIAO.

8. Selection Committees

- Lessons Learned Report: Criminal Injuries Compensation Appeals Panel (CICAP) Adjudicator (Lay Member)

Mr Todd presented the Lessons Learned Report for the recent CICAP Adjudicator (Lay Member) scheme which was discussed by Plenary. It was noted that the successful applicant was sworn into office on 1 June 2016.

It was noted that consideration of environmental factors affecting applicants is important and that the purpose for the provision of the Application Form for applicants at interview should be explained to the applicant.

Mr Todd referenced the view of the co-opted member that, subject to a fair distribution of work, it was considered beneficial to involve the same Commissioners in related schemes, given the acquired knowledge of the business, which Plenary accepted. Mr Todd recommended that consideration should be given to an appropriately qualified member of staff undertaking the eligibility sift of applications in those schemes where it is a qualitative assessment and it was agreed that this would be considered as part of the corporate planning process.

Following discussion Plenary agreed that the next Selection Committee to be composed for a fee paid post would trial two (rather than all) members of the

Selection Committee undertaking the papersifting exercise (to include the co-opted member and one NIJAC Commissioner and maintaining a gender and community background balance where possible) and this will then be evaluated and considered further by Plenary.

ACTION:

- The purpose for the provision of the Application Form to applicants at interview to be explained to the applicant.
- The next Selection Committee to be composed for a fee paid post, to trial two members of the Selection Committee undertaking the papersifting exercise (to include the co-opted member and one NIJAC Commissioner and maintaining a gender and community background balance where possible).

- **Current Scheme Updates:**

District Judge (Magistrates' Courts) (DJMC)

Update provided by Judge Kinney (morning session); a shortlisting test was carried out on 25 May 2016 and shortlisting papersift moderation is scheduled for 7 June 2016. The Selection Committee has agreed that up to 10 applicants will proceed to the final assessment stage.

Pensions Appeal Tribunals (PAT) Medical Members

Mr Doyle provided an update on the four appointments sought. Shortlisting moderation is scheduled for 7 June 2016; a maximum of 12 will proceed to the final assessment stage.

Traffic Penalty Tribunal (TPT) Adjudicator

Mr Rankin advised that the pre-scheme meeting was held on 20 May 2016 with the aim of advertising on 9 June 2016. In the event that more than 50 applications are received the Selection Committee have approved the use of a test and staff are pursuing the possibility of facilitating this through the use of JAC's online testing system.

9. Character Issues of Precedent

Mr Justice Stephens presented his report advising that there has been one scheme during the period where an issue has arisen resulting in one decision relating to an issue of character. This was noted by Plenary.

10. Audit & Risk Management Committee

Mr Todd provided a verbal update on the meeting of the ARMC on 24 May 2016. Internal Audit is due to commence their audits in November and December with the aim of presenting a report in January 2017.

As noted the ARMC considered and approved the draft Annual Accounts and Governance Statement 2015-16, subject to any further amendments being required.

11. Business Committee

Mr Coulter (acting Chair) presented the minutes of the last meeting on 28 April 2016 which were noted by Plenary.

Mr Coulter advised that at the next meeting in June they will be considering the planning timetable for the 2017/2020 Corporate Plan and Commissioners' terms of appointment, taking into account the statutory position and public appointments guidance.

12. Policy Committee

Mr Justice Stephens updated Plenary regarding Policy Committee considerations on two matters:

Contingency in appointments

Plenary considered proposals around the provision of contingency should a judicial office remain unfilled for a time, in order to help provide sufficient provision to ensure ongoing access to justice should there be a delay to an appointment. Following consideration, Plenary agreed that in respect of appointments to the High Court it is in the public interest for these to be substantive appointments. Following consideration of all other tiers, it was agreed

that sufficient contingency exists however it is important that NIJAC deal with any issues or requests for appointment as expeditiously as possible.

Triennial Policy Review

Mr Justice Stephens advised that Policy Committee have revised the Policy Review timetable due to the considerable number of policy revisions undertaken in 2015/16 to ensure a proportionate distribution of work and ensuring that each policy is reviewed within a three year period. This was noted by Plenary.

Mr Justice Stephens advised of a number of recommendations in relation to Policy reviews which were agreed by Plenary:

- 1) Minor, cosmetic, non-material amendments to policies can be approved by Policy Committee, without seeking Plenary approval. Plenary will be informed electronically and through the minutes of Policy Committee meetings.
- 2) That revision of a Policy in light of learning can wait until scheduled review unless a matter of substance. The decision will be a matter for the Chair of Policy Committee.
- 3) That discretion not to refer routine policies for approval by Plenary is held by the Policy Committee Chair; for example Cookies Policy, Disclosure Certificates Policy.

ACTION:

- Minor, cosmetic or non-substantial amendments to policies can be approved by Policy Committee, without seeking Plenary approval.
- Revision of a Policy in light of learning can wait until scheduled review unless a matter of substance. The decision will be a matter for the Chair of Policy Committee.
- Policy Committee Chair has the discretion not to refer routine policies for approval by Plenary.

13. Senior Appointments Review Team (SART)

Professor Rooney advised that consultation is ongoing with the relevant stakeholders in relation to the following:

- Personal Profile for County Court, including preceding narrative;
- Narrative preceding the Personal Profile for High Court; and
- Use of References for County Court and High Court.

Responses received to date have been positive and are predominantly in support of the proposals to reduce Referees to three nominated by the applicant. A meeting of SART has been arranged for 20 June 2016 to consider the consultation responses and other relevant matters.

14. Numbers and duration of appointment for those appointed under the auspices of the Post Retirement Appointment Policy

Ms Frew confirmed that the Post Retirement Policy has now been in place for approximately 4 years and was reviewed by Plenary in July 2015. In that time 12 people have been appointed under the Policy. Following detailed discussion it was agreed that suggestions or comments should be forwarded to Ms Frew in the first instance and any feedback will be considered by Policy Committee.

ACTION:

- Commissioners to forward any issues / considerations in relation to the Post Retirement Appointment Policy to Ms Frew.

15. Outreach and Working with Others

Update provided within the Chief Executive Report.

16. Board Effectiveness

Update provided within the Chief Executive Report.

17. Any other business

- Complaints Committee Determination

(Matter discussed in morning session)

Plenary confirmed that they have received the determination from the Complaints Committee addressing the recent complaint received by NIJAC. Plenary noted the detailed and informative report and endorsed the Complaints Committee recommendation that the complaint should not be accepted or further investigated.

Upon consideration as to whether or not there were any lessons learned from the complaint, Plenary discussed and agreed the following;

- Section 6 of the Application Form should include a note reinforcing the earlier statement in the application form that this section is not made available to the Selection Committee.
- On communicating the outcome of a complaint, Plenary agreed an amendment to the current Policy to reflect that it will be communicated internally to Plenary in the first instance, allowing 3 days for a response in the event that any queries / concerns are raised. If any serious matters of concern are raised, a special Plenary may be arranged to discuss. Following circulation to Plenary, the outcome will be issued to the Complainant.

Further discussion took place around the information that is released to complainants. It was confirmed that in respect of complaints, it is normal practice that complainants receive a copy of the full determination; however in other determinations for example a decision undertaken by the Issues and Character Committee, only a summary of the decision is disclosed. Plenary agreed that in the event that an applicant is being excluded from a scheme, and subject to the overriding need to maintain confidentiality, the full decision may be disclosed to the applicant.

ACTION:

- Section 6 of the Application Form to include a note reinforcing the earlier statement in the application form to advise that this section is not made available to the Selection Committee.
- Complaints Policy to be updated to reflect that on communicating the outcome of a complaint, it will be communicated internally to Plenary in the first instance, allowing 3 days for a response in the event that any queries / concerns are raised. If any serious matters of concern are raised, a special Plenary may be arranged to discuss. Following circulation to Plenary, the outcome will be issued to the Complainant.
- In the event that a decision is made to exclude an applicant from a scheme and subject to maintaining the overriding need to maintain confidentiality, the full decision may be disclosed to the applicant.

- **Document compatibility issues**

Professor Rooney advised that she has been having document compatibility issues which staff are trying to address, it has been recommended that an alternative app will hopefully address the issue.

- **Special Educational Needs Assessment Tribunal (SENDIST) Increase to Complement**

Plenary considered a request from the Head of the Tribunals Service for an increase to the complement of the SENDIST Legal Members from eight to ten, which they approved. They noted the Minister of Justice will now be written to, seeking their approval.

- **Post Retirement Appointment**

Plenary approved the post retirement appointment to the office of Deputy District Judge (Magistrates' Court).

- **Reasonable Period of Service**

Plenary were advised that an applicant in a current scheme, if successful, would be able to provide less than one year of service. Plenary discussed the

Reasonable Period of Service and it was clarified that current scheme guidance states;

‘Subject to the statutory retirement age for the office there is no age limit for this appointment. The statutory retirement age is 70 years and a reasonable period of service before retirement is expected.’

Plenary agreed that NIJAC write to the Northern Ireland Courts and Tribunals Service (NICTS) to seek their view on what they deem to be a reasonable period of service.

ACTION:

- NIJAC write to the NICTS to seek their view on what they deem to be a reasonable period of service.

- **Memo from Lord Chief Justice re: Court of Appeal Vacancies**
On consideration of the memo from the Lord Chief Justice, advising of the upcoming vacancies in the Court of Appeal and the process to be undertaken to fill these vacancies, Plenary noted that it was content.

- **Mrs Gadd**
Mrs Gadd is due to leave NIJAC at the start of October 2016 and as this was her last Plenary meeting, 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.

18. Date and Agenda of next meeting

Thursday 20 October 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

...20 October 2016.....