

# THE NORTHERN IRELAND JUDICIAL APPOINTMENTS COMMISSION

*Abstract: The article discusses the unique judicial appointments structure of Northern Ireland, shaped by its historical and constitutional context. It emphasises the importance of selecting judges based on merit and experience, rather than political considerations, to maintain public trust in and the independence of the judiciary. The author, Michael Robinson, explains the establishment of the Northern Ireland Judicial Appointments Commission (NIJAC) following the Good Friday Agreement of 1998, which aimed to enhance public confidence in the judiciary. The paper details NIJAC's operations, including its commitment to transparency, outreach efforts to promote diversity, and the rigorous assessment methods used to select judicial candidates, ultimately highlighting the significance of an independent judiciary in a democratic society*

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## Introduction

How we select judges is an important task in any society and, by the nature of how societies mould their own administration, each jurisdiction's own legal history and cultural values will influence how it approaches that task. Northern Ireland is no different, and its history and constitutional position have contributed to what can be considered a unique judicial appointments structure. The separation of powers is a fundamental principle of democratic governance, intended to ensure that no one branch of government becomes too powerful. Overreach by the executive branch in the appointment of judges can undermine the independence and impartiality of the judiciary. Furthermore, judicial appointments are intended to be based on merit, experience, and judicial temperament, rather than political considerations. If the executive branch interferes in judicial appointments, it can undermine public trust in the judiciary.

There is an ever-increasing executive challenge to the independence of the judiciary. How best to make judicial appointments continues to be an important issue globally.

In this paper, I will discuss the historical and political factors which have led to the creation of Northern Ireland Judicial Appointments Commission ('NIJAC'), how NIJAC operates, and how it has developed its own approaches to identifying who is best to become a judge.

## Northern Ireland Judicial Appointments Commission

This section will briefly detail how NIJAC came into being, from the perspective of a Judicial Appointments Commissioner in Northern Ireland. NIJAC exists in the context of a small jurisdiction, where lawyers are generally familiar with each other, everybody has a view on who should or should not be appointed to judicial office, and consequently, there is a significant risk of conflicts of interest arising on that

basis. NIJAC's existence must be viewed through the lens of 30 years of conflict within Northern Ireland and a wider UK political movement toward greater transparency in government.

Following on from the Good Friday Agreement of April 1998, which ended most of the violence of the political conflict, there was an awareness that public confidence in the judiciary is enhanced by having one which is reflective of the community it serves and is independent from political interference. During the civil strife, the Stormont government was suspended and the devolved powers, including the area of justice, were transferred back to London under direct rule. The 1998 Agreement led to the creation of a new local administration and the return of powers to the new local Northern Ireland Assembly.

In anticipation of this, the Justice (Northern Ireland) Act 2002 was introduced, establishing a Judicial Appointments Commission in Northern Ireland to make representations to the new First and Deputy First Ministers of Northern Ireland on the appointment of judicial office holders up to and including High Court judges, all of whom were to be selected solely on the basis of merit. That Act, together with the Constitutional Reform Act 2005, provided statutory guarantees of independence of the judiciary in Northern Ireland. Following some tweaking of the legislative framework, NIJAC was established in 2005 to ensure that appointments to Northern Ireland's judiciary would always be based on merit and determined by open competition. The new devolution arrangements were captured in the Northern Ireland Act 2009 ('the 2009 Act') and were developed to reflect an agreement by the main political parties that to ensure the independence of the judiciary, responsibilities in relation to the appointment and removal of judicial office holders would rest with the Judicial Appointments Commission.

In accordance with that intention, in the second reading of the Bill which ultimately became the 2009 Act, former Northern Ireland Member of the Parliament of the United Kingdom, Nigel Dodds, observed: 'I would have thought that most people were reassured by the fact that there should be no suggestion of political interference in the appointment of High Court judges, given the role they play [in the administration of justice].'<sup>1</sup> The 2009 Act cast the arrangements for judicial appointments to minimise, to the fullest extent practically possible, any role for Northern Ireland Ministers. As a non-ministerial public body, the executive's only role in the political sense in NIJAC is one of oversight, ensuring accountability for NIJAC's governance and finance. It is also technically responsible for the appointment of members to the Commission, other than the chair who is *ex-officio* the Chief Justice. The Commission also includes five judicial members reflecting the main court tiers, each of which is nominated by the Chief Justice. The other members of the Commission are a barrister and solicitor appointed by the Bar Council and Law Society, respectively. The executive also appoints five lay persons to the Commission, but this is undertaken following open public competition, application, and interview.

NIJAC Commissioners have an extensive role in that they not only serve on Selection Committees, but are also responsible for the strategic direction, policy, decision-making, governance and finance of the Commission. As such, they have complete oversight of the Commission's operation. In all areas they have an equal status,

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<sup>1</sup> Second Reading Northern Ireland Bill Hansard Volume 488 Wednesday 4 March 2009

regardless of background, and lay members frequently chair Selection Committees for legally qualified appointments. This also ensures that, having removed the executive from the process, there cannot be a criticism that the result is simply that judges are appointing judges.

There is also oversight of the Commission by the Judicial Appointments Ombudsman, who is independent of government. Applicants for judicial office can complain about the actions of NIJAC through the office of the Ombudsman. These matters aside, unusually, in the majority of appointments in Northern Ireland, NIJAC not only makes the selection of candidates but acts as the appointing authority in relation to more than 95 per cent of the judicial offices it selects applicants for. In total, NIJAC has in its remit 1007.2 (FTE<sup>2</sup>) appointments. These include 400.2 legal appointments across courts and tribunals, 225 appointments in medical tribunals and 342 other or lay appointments (including lay magistrates).<sup>3</sup>

NIJAC's statutory duty is to appoint on the basis of merit. In addition to that, the legislation also requires that NIJAC engage in a programme of action that is designed to ensure, as far as it is reasonably practicable to do so, that appointments are reflective of the community in Northern Ireland and that a range of persons is available for consideration whenever it is selecting for appointment.<sup>4</sup> In the pursuit of its aims and goals, NIJAC engages in significant outreach and engagement activities. Many partners work with NIJAC in promoting opportunities to serve in judicial offices such as the Law Society, the Bar Council and the Government Lawyer Network. A full range of Royal Colleges relating to various branches in the medical profession assist in promoting various Tribunal roles. For lay roles, the essential criteria of the job under application will dictate those to whom we reach out in those posts. For example, we will reach out to the full range of disability, health and social care networks when appointing lay members to the Appeals Tribunal, which determines social security and disability payment appeals. We use the full panoply of internet, social media and webinar-based outreach, the latter of which is very effective for ensuring confidentiality for potential applicants.

Further targeted outreach is undertaken when under-representation is identified following an examination of the current composition of the Court tier or Tribunal membership ahead of launching a particular recruitment scheme for that tier. Much of NIJAC's outreach concerns informing our potential applicant pools about how we assess applicants and what the process contains.

## Merit and The Judicial Profile

To ensure that the merit principle is adhered to, and that the appointment process is open and transparent, NIJAC has developed a generic judicial profile which has been researched, consulted upon with the judiciary, and tested with our applicant pools. Applicant feedback indicates that it has become embedded and accepted in the judicial appointments process. It can be tailored to reflect the requirements of a specific role under recruitment to include the following:

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<sup>2</sup> Full Time Equivalent posts

<sup>3</sup> NIJAC October 2024

<sup>4</sup> Pt 4 Sch 3 Justice (NI) Act 2002 (as amended)

Skills & Attributes			Behaviour & Effectiveness		
What judicial office holders should do well and their typical characteristic features.			How judicial office holders should act and how successful they are at achieving desired outcomes.		
Knowledge and Expertise	Intellectual Capacity	Exercising Judgement	(Leading and Collaborating Effectively)	Communicating Effectively	Managing Effectively
Has a level of expertise which is founded upon breadth and depth of knowledge and has the ability to transfer that expertise and knowledge to other areas.	Quickly assimilates information, develops a clear understanding and clarifies uncertainty through eliciting and exploring information.	Demonstrates integrity and applies appropriate independence of mind to make incisive, fair, sustainable and sound decisions.	(Leads and) Contributes to proceedings appropriately, respects difference and shows empathy and sensitivity in building relationships.	Communicates effectively with a broad range of people across multiple platforms.	Works effectively and plans to make the best use of resources available.
Has achieved expertise. Has breadth and depth of knowledge. Can transfer their skills into other areas.	Is able to absorb and analyse information. Is respected, confident and maintains authority. Maintains and improves knowledge.	Believes in justice and fairness. Is principled, impartial and independent. Makes good and effective decisions.	Works well with others in all environments. Recognises and respects difference. Deals effectively with others.	Listens patiently and courteously to others. Explains their decisions succinctly and timeously. Asks effective and relevant questions.	(‘Thinks strategically and’ where applicable) leads effectively. Disposes of business effectively. Is competent, diligent, resilient and calm.

The ‘Skills and Attributes’ criteria requires applicants to demonstrate their knowledge of the area the court or tribunal deals with. NIJAC seeks to understand the applicants’ ability to handle volumes of information and grasp the salient facts of a particular case. They require applicants to demonstrate their ability to make fact-based decisions with independence and integrity. The ‘Behaviours and aspects of Effectiveness’ criteria aims to test applicants’ ability to work with people of all backgrounds, to communicate with and understand those from other backgrounds, and to manage volumes of work and dispose of business effectively.

The Judicial Profile does not exist in isolation, but provides the framework through which the exact needs of each judicial role can be determined. The key contributing process is one of ‘Job Analysis’, which allows NIJAC and the presiding officers of the various court and tribunal tiers to identify the most important, challenging and frequently occurring activities within the respective roles. Using this information NIJAC, in conjunction with the Selection Committee, derives the list of skills, attributes, behaviours and aspects of effectiveness which are required to succeed in the role. This process ensures that the expertise of judicial office holders, the experience of skilled assessors and the knowledge of specialists in recruitment is combined to create a Person Specification. That Person Specification is the sole basis upon which merit can be assessed.

## Assessment

Importantly, when the Selection Committee is undertaking their shortlisting for interview, all application forms are anonymised and the selection panel is blind to the identity and background of the applicants, thereby underpinning the merit principle and promoting fairness in assessment through the minimisation of potential biases.

A wide range of assessment methods has been developed and an approach agreed whereby, in most instances, a minimum of three sources of evidence will be available in any selection decision (for example, the applicant's own self-assessment against the criteria, an interview and situational judgement exercise relating directly to the office applied for, but may also include a Role-Play, an In-Tray Exercise, a Presentation, a test or other assessment method). Each of those assessment methods has been subject to extensive research and continuous monitoring of its impact. This monitoring evidences NIJAC's commitment to equitable outcomes from the various methods across both the personal and professional characteristics of applicants. Bespoke tests have been designed for shortlisting purposes to manage the increasing number of applications. The involvement of experienced judicial office holders in the design and validation of questions is a vital step in test construction and has been key to gaining acceptance of testing as an assessment approach within our small jurisdiction.

Each Selection Committee typically comprises three members, including at least one 'lay' member. Every member is required to complete regular and intensive training in assessment and selection. This training focusses on both local employment law and the statutory basis of NIJAC. It educates them as to the NIJAC approach, how their role exists within that approach, and the expectations upon them as assessors to act fairly, impartially and with integrity in their role.

Equality within the Selection Committee itself is also important. There is no predominance in assessment or weighting toward any particular members, legal or lay. This balance is achieved through the provision of extensive model answering in the preparation of law-based questions, enabling the lay members to assess the legal aspects of responses from an informed perspective.

The method by which assessors arrive at their decisions is also important. NIJAC uses a standard rating scale which uses extensive written descriptions of required performance so assessors can determine the merit of applicants. In that process, there is a clear trail of individual and moderated assessment, so that the individual appraisal of each assessor and a record of their agreed (or moderated) outcome is maintained to evidence their decision. At final assessment, the selection methods may include a situational judgment exercise, role play, a presentation, an interview, or an in-tray exercise - whatever methods the Selection Committee determines will gather the best combination of evidence as to how a person may perform in a particular role.

The confidentiality of applicants to judicial office is very important for commercial reasons and data protection. Significantly, it is due to this reason that references are only sought for judicial candidates applying for positions in the High Court and County Court, and only where they reach the final stage of their application to ensure confidentiality. Notably, we do not require the referees themselves to be judges, as this acts as a bar to applicants not active in the courts and tribunals, and our eligibility extends beyond those narrow confines. Assessment methods are also managed to ensure that they do not act as a detriment to disabled applicants. Reasonable adjustments are provided when relevant, for example the provision of additional reading time, or the provision of documents in Braille.

## Socio-Political Factors

NIJAC is conscious that there are many factors influencing judicial selection beyond its sphere of influence, such as demographics, social and education policy, and the attrition rate of women in the legal profession. NIJAC has embarked upon a series of research initiatives to gather baseline equality data and commissioned Queen's University Belfast School of Law to conduct research into the perceptions of NIJAC and barriers to securing judicial office<sup>5</sup>. This evidence has informed NIJAC's outreach and has led to initiatives with, and by, our Law Society and Bar Council partners including mentoring schemes for women and the 'women in law' lecture series. Gender equity in senior judicial offices remains a challenge. In addition to gender representation, recent demographic changes have also highlighted that the judiciary is becoming less representative of the ethnic diversity within Northern Ireland than previously recorded. These factors are a key focus of our future outreach.

## Working with Applicants

Gaining the trust and confidence of our applicants has been a long and laboured effort. NIJAC is mindful that it is, at its core, a recruitment organisation, with the consequence of giving satisfactory outcomes to less than five per cent of our applicants. There is an open and frequently utilised avenue for complaints about our approach. It is reassuring that few of such complaints have been about the approach itself.

Working with our applicants to help them understand what is required within the assessment process and the reasons for our assessment decisions in respect of them as individuals is a significant part of our approach. We recognise that the scale of our jurisdiction makes much of our efforts in this respect manageable and in much larger jurisdictions, this may not be viable. Nonetheless, our relationship with our applicants, and in particular, the openness and transparency of our approach, has a direct effect on achieving our objectives.

## Conclusion

NIJAC demonstrates several strengths, including a strong commitment to merit-based appointments, transparency, and inclusivity within its selection processes. NIJAC's structured approach to judicial profiles and its anonymous assessment methods effectively minimise biases, ensuring fairness in the selection of candidates. The incorporation of lay persons onto the Commission, their involvement in selection decision making and their contribution to the implementation of best practice approaches in recruitment has been a notable achievement. NIJAC's outreach efforts aim to reflect the community's diversity in judicial appointments, which is crucial for

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<sup>5</sup> Philip Leith and John Morison, 'Rewarding Merit in Judicial Appointments; A research project undertaken by the School of Law, Queen's University Belfast for the NIJAC, (January 2013) available at [https://pure.qub.ac.uk/files/16480169/NijacReportJan16\\_1\\_.pdf](https://pure.qub.ac.uk/files/16480169/NijacReportJan16_1_.pdf)

John Morison and Brice Dickson, 'Barriers to High Court Appointments in Northern Ireland: A Report for the Northern Ireland Judicial Appointments Commission' (June 2019) QUB. ISBN 978190913190, available at <https://pure.qub.ac.uk/files/192730958/ReportFINAL.pdf>

public confidence in the judiciary.

However, NIJAC also faces challenges. Despite its efforts, there is still a significant underrepresentation of certain demographics, such as women in senior judicial roles and ethnic minorities within the judiciary.

Bodies such as the Judicial Appointments Commission of Ireland can learn from NIJAC's established frameworks for ensuring transparency and meritocracy in judicial appointments. Implementing comprehensive outreach strategies similar to NIJAC's could enhance diversity and public trust in the judiciary. Moreover, adopting NIJAC's anonymised assessment processes may help mitigate biases, fostering fairness in candidate evaluations

## Appendix

### Northern Ireland Judicial Appointments Commission Statistics<sup>6</sup>

Judicial Office	No. of Judicial Office Holders
Offices requiring a legal qualification	365 (156 in Courts, 209 in Tribunals)
Offices requiring a medical qualification	203
Lay Judicial Office Holders	230 (including 101 Lay Magistrates)
<b>Total</b>	<b>798</b>

Table 1.1: Total Number of Judicial Office Holders in Northern Ireland (in office, excludes vacant offices)

### Judicial Diversity in Northern Ireland

Judicial Office	No. of Judicial Office Holder	Male	Female
Chief Justice	1	0	1
Lord Justices of Appeal	3	3	0
High Court Judges	11	10 (91%)	1 (9%)
County Court Judges	17	12 (71%)	5 (29%)
District Judges (Magistrates' Courts)	18	11 (61%)	7 (39%)
District Judges	4	1 (25%)	3 (75%)
Masters	7	3 (43%)	4 (57%)
Coroners	4	1 (25%)	3 (75%)
Deputy County Court Judges	25	12 (48%)	13 (52%)
Deputy District Judges (Magistrates' Courts)	17	15 (88%)	2 (12%)
Lay Magistrates	101	37 (37%)	64 (63%)
Deputy Statutory Officers	17	8 (47%)	9 (53%)

Table 1.2: Gendered Breakdown of Judicial Office Holders of Courts in Northern Ireland

Tribunal Member	No. of Tribunal Members	Male	Female
Legal Members	209	93 (44%)	116 (56%)

<sup>6</sup>Figures collated May-June 2024. Percentages have been rounded to nearest whole number

Lay Members	129	40 (31%)	89 (69%)
Medical Members	203	106 (52%)	97 (48%)

Table 1.3: Gendered Breakdown of Tribunal Members in Northern Ireland

Background	No. of Judicial Office Holders
Roman Catholic	415 (52%)
Protestant	318 (40%)
Neither	25 (3%)
Not Declared	40 (5%)

Table 1.4: Community Background of Total Judiciary in Northern Ireland

Race	No. of Judicial Office Holders
White	787 (98.6%)
Ethnic Minority	11 (1.4%) <sup>7</sup>

Table 1.5: Ethnicity of Total Judiciary in Northern Ireland

According to the 2021 Census, 3.4 per cent of the population or 65,600 people, belonged to Minority Ethnic Groups. This is around double the 2011 Figure (2 per cent, 32,400 people) and four times the 2001 Figures (0.8 per cent - 14,300 people).<sup>8</sup>

Disability	No. of Judicial Office Holders
Declared disability	30 (3.8%)
No declaration or declared that they do not have a disability	768 (96.2%)

Table 1.6: Declared Disability of Total Judiciary in Northern Ireland

NIJAC commissioned a survey through the Northern Ireland Statistics and Research Agency in 2022 of existing judicial office holders on this topic and 13 per cent of those who responded to the survey indicated that they considered they had a disability. NISRA concluded that actual disability rate amongst the whole judiciary was likely to be in the range of between 9.5 and 16.5 per cent.<sup>9</sup>

## Legal Professions in Northern Ireland

Position	No. of Members	Male	Female
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<sup>7</sup> Two are Lay Magistrates, the remaining nine are in Tribunals.

<sup>8</sup> Northern Ireland Statistics and Research Agency, 'Census 2021' <<https://www.nisra.gov.uk/statistics/census/2021-census>> accessed 1 October 2024.

<sup>9</sup> NIJAC Disability Survey 2022 (NI Statistics and Research Agency – Guiney and Clarke 2022)

Kings Counsel	161	125 (78%)	36 (22%)
Barristers	642	388 (60%)	254 (40%)
Total Membership	807	517 (64%)	290 (36%)

Table 2.1: Gendered Breakdown of the Bar of Northern Ireland

<b>Position</b>	<b>No. of Members</b>	<b>Male</b>	<b>Female</b>
Principals in Private Practice	1062	719 (68%)	343 (32%)
Consultants in Private	50	38 (76%)	12 (24%)
Heads of Department in Government /Public Service	11	5 (45%)	6 (55%)
Total Membership	6303	3030 (48%)	3273 (52%)

Table 2.2: Gendered Breakdown of the Bar of Northern Ireland