

Character Guidance for Applicants

1. Introduction

Judicial office is a position of utmost trust. It is essential, therefore, 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.

2. Obligation to Disclose

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 the legislation detailed below and other detailed documents that set out the high standards of personal integrity expected for judicial office.

2.1 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 which refer 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 that may impact on your suitability for judicial office;
- (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 the applicant holds or has held any judicial office ;
and
- (v) all matters that have occurred outside the United Kingdom.

3. Principles

- 3.1 In determining any character issues for any applicant for legal, medical, lay or other judicial office NIJAC will adopt the following principles and approach:

- (i) The overriding need to maintain public confidence in the standards of the judiciary. Judicial office is a position of utmost trust and as a public appointment is subject to scrutiny.
 - (ii) Fairness and impartiality in assessing and/or investigating issues of character. Information obtained by NIJAC from any source will not necessarily debar an applicant from appointment.
 - (iii) Proportionality in the consideration of character issues. For example, where a short-listing test is used the character issues of those shortlisted may be recorded and proceed for determination by the Issues and Character Cte (ICC).
 - (iv) When shortlisting by papersift it may be that only those character issues which are significant and precedent setting will be brought to the attention of the ICC ahead of shortlisting.
 - (v) Due regard to the need to promote equality of opportunity to all applicants in line with NIJAC's Equal Opportunities Policy.
- 1.2 The failure of an applicant to disclose any material issue at any time may lead to disqualification of that applicant.
- 1.3 It is a matter for the Chief Executive in consultation with NIJAC's Chairman, or their nominee, to consider and determine the course of action required in respect of information from any source that may require referral for example, to a Professional Body or the Police Service for Northern Ireland (PSNI). Any relevant Issues and Character Cte may be consulted.

3.4 In addition to the principles outlined above, NIJAC will also consider the following when reviewing any character matters arising in relation to an applicant, including but not limited to:

- (i) relevance to the office under recruitment and the high standards of personal integrity and behaviour expected from a person who may hold a judicial office;
- (ii) the number and nature of any matters, including a court and/or non court disposal, any ongoing litigation or any finding by a professional body;
- (iii) the number and nature of any penalty, order or finding. For example, any conviction resulting in a custodial sentence or the imposition of a term of imprisonment would normally prevent an applicant from being selected for judicial office;
- (iv) mitigating circumstances;
- (v) rehabilitation and contribution to society;
- (vi) Information relating to character provided through, for example, Referees, professional bodies or provided by any other source;
- (vii) any other information provided by the applicant; and
- (viii) transparency in dealings and communications with applicants.

4. Examples for Consideration: Criminal matters

- 4.1 You must declare all criminal convictions and/or all non-court disposal(s) and any part or ongoing litigation.
- 4.2 You must declare all past or ongoing criminal investigation(s) and all matters outstanding before any criminal court.
- 4.3 Court and/or non-court disposals for motoring offences (other than parking offences) must be declared in the appropriate section of the application form.
- 4.4 NIJAC treats motoring offences committed while under the influence of alcohol or drugs or involving refusal to provide a specimen seriously and a conviction will normally prevent you from being selected for judicial office.

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

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

4.7 You must declare any fixed penalty notices received. 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. You need not declare any speeding offences dealt with by a speed awareness course.

5. Examples for Consideration: Civil matters

5.1 You must declare all civil proceedings including those which you have brought and those that have been brought against you or any firm in which you are, or were a partner, or company in which you are, or were a director, or company secretary.

6. Examples for Consideration: Family Law

6.1 You must declare all family proceedings including those that have been brought by or against you including, for example, any application for a non-molestation and/or occupation order.

7. Examples for Consideration: Financial matters
Insolvency and debt

7.1 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.

- 7.2 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.
- 7.3 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.
- 7.4 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.

VAT and Tax

- 7.5 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 must be declared and should be supported by documentary evidence but will not normally prevent you from being selected. NIJAC will consider each case on its merits.
- 7.6 Repeated late returns or payments, or action 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.
- 7.7 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.

8. Examples for Consideration: Professional conduct

Professional negligence and other legal action

- 8.1 NIJAC will consider on its merits each finding against you of professional negligence. You must, therefore, provide full details to NIJAC on your application form. NIJAC recognises that some applicants, because of the nature of their practice, are more likely to face claims of professional negligence.
- 8.2 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.
- 8.3 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 personal responsibility.
- 8.4 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.

Professional Complaints and Disciplinary Action

- 8.5 You must disclose the circumstances if you have been dismissed, or asked to resign and resigned, from employment or from a position of trust.
- 8.6 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.

- 8.7 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.
- 8.8 NIJAC will consider factors such as:
- (i) recognition that some people, by the nature of their work, are likely to receive a greater number of complaints than others;
 - (ii) the number of matters upheld;
 - (iii) the nature and seriousness of the matter(s);
 - (iv) the action (if any) taken by your or any other professional body;
 - (v) your personal culpability;
 - (vi) whether it is a finding of misconduct, or finding of inadequate professional service.
- 8.9 NIJAC will generally view misconduct findings more seriously than findings which relate solely to inadequate professional service, but both must be declared.
- 8.10 If you have been removed from professional practice on grounds of misconduct then you will not be considered for selection.
- 8.11 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. After 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.
- 8.12 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. Thereafter 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

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

8.14 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.

8.15 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.

8.16 Depending on the particular circumstances your application may be allowed to proceed. However, you would not normally advance to the appointment stage until the outcome of any proceedings or investigation is known.

9. Further information to be disclosed

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

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

9.3 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.

9.4 In addition to the categories covered above, you should consider if there is any factor or event, either current 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.

10. Use of character information in the assessment of applicants

10.1 NIJAC will take into account the whole picture of an applicant's character when deciding whether to recommend or appoint to judicial office.

11. Repeat Applications

Applicants who have previously applied must declare any previous and/or new issue(s).