

Institution: Queen's University Belfast		
Unit of Assessment: School of Law, UoA 18		
Title of case study: Appointing a More Reflective Judiciary for Northern Ireland		
Period when the underpinning research was undertaken June 2005 – June 2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g., job title):	Period(s) employed by submitting HEI
John Morison	Professor	01.01.1984 – present
Philip Leith	Professor	01.01.1985 – 31.12.2015
Brice Dickson	Professor	01.03.2005 – 30.09.2017
Sally Wheeler	Professor	01.04.2004 – 01.02.2018
Lisa Glennon	Lecturer	01.08.1997- 31.01.2012
Period when the claimed impact occurred: 2013 - present		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>Research completed by staff in QUB Law led by Morison for the Northern Ireland Judicial Appointments Commission (NIJAC) has underpinned changes to the judicial appointments process. This has impacted directly on the diversity of the judiciary in Northern Ireland (NI). Significant and demonstrable changes have followed directly, and are evidenced in the operational policy and practices of NIJAC, and in the profile of the current judiciary at all levels. The summary of this impact is captured by the Lord Chief Justice of Northern Ireland (LCJ NI) who comments, <i>'I am coming to the end of my time as NIJAC's Chairman and I am pleased that the face of the judiciary, and the High Court in particular, looks quite different. When I was appointed the High Court bench was all male, formerly barristers. Now there are two women judges and two with a solicitor background. There is an even more pronounced change at the other court tiers, and in tribunals where around 50% of legal roles are held by women. I can confirm the positive impact that Professor Morison and his team's research has had on the policy, practice and procedures within the Commission. Perhaps more importantly the Commission has been positively challenged, and responded positively to that challenge'</i> – S 1.</p>		
<p>2. Underpinning research</p> <p>The Law School at QUB has traditionally maintained a supportive yet critical role in relation to the local legal system in Northern Ireland. One strong tradition of research has centred on the local judiciary and legal profession, including procedures relating to judicial appointments. Three major reports from QUB, and associated academic scholarship produced by the team, provides both the evidence base confirming the need for change, as well as a strategic road map to achieve that change by recommending specific improvements to the appointment process to make the judiciary more reflective of the community in NI. (It should be noted that there are roughly equal proportions of Protestant and Catholic judicial office holders in the Courts in NI - 46.8% and 47.5% respectively and this is line with figures from the applicant pool. Also, the numbers of those from a minority ethnic background or declaring a disability within the applicant pool are very small indeed.) The research mapped out (a) ways to increase the representation of women (b) how to encourage applications from younger candidates, solicitors and appropriately qualified candidates in public service and the voluntary sectors and (c) how to overcome difficulties which the research had confirmed regarding recruitment to the High Court, emphasizing the importance of developing a "judicial career" that encourages movement from one tier to the next, in particular from the County Court to the High Court. This led directly to a significantly more reflective applicant pool for judicial office and the appointment of a more diverse judiciary. In particular, a policy to tackle the under-representation of women at all levels in the court system was developed by NIJAC based directly upon the QUB research. Overall this research explored a number of dimensions – relating to age, professional status, career background and trajectory, patterns among those making applications, and the application and selection process itself – all of which has directly informed and guided the policy and practice as NIJAC discharges its statutory duty to develop a Programme of Action to ensure that a range of persons reflective of the community in Northern Ireland is available for appointment to the more than 600 listed judicial offices. Each piece of research involved</p>		

extensive reviews of the literature and statistical information, a large number of interviews and focus groups with practitioners, judges and others, and (for the second study) an innovative scenario based questionnaire.

The first major piece of research - **(R1)** – was commissioned by NIJAC in 2008 with a project team drawn from the QUB School of Law with Morison, who was then a NIJAC Commissioner, chairing the Project Steering Group. This work was the first in the UK and was replicated to a large degree by both JAC England and Wales and the Judicial Appointments Board in Scotland. Essentially it mapped issues of diversity and scoped the challenges in ensuring the appointment of a reflective judiciary, particularly around increasing the representation of women, which was confirmed by the research as the major challenge. The impact of this work continued in the period from 2013, and, as the letter from NIJAC's Head of Diversity attests, a series of measures have been taken forward by NIJAC to assist *'in the management of reviews, consultation with stakeholders and improvements in outreach, engagement, all elements of the assessment and selection process, and the suite of assessment and selection policies ... which the original QUB findings gave baselines for'* - **S 2**.

In 2013, having completed his term as Commissioner, Morison led a second QUB research team (with Leith, Dickson and Wheeler and then PhD student Marie Lynch as RA) on the specific issue of the gendered nature of 'merit' in judicial appointments, and provided additional guidance as to how to address the previously identified issues regarding the lack of women applying for or appointed to the judiciary - **(R2)**. This 'road map' provided the template for a series of policy initiatives from NIJAC to address the gender imbalance identified. Further academic commentary – at both national and international level - followed **(R 3, R 4 and R 5)**. The impact of this work became apparent from Autumn 2013 onwards when it led to significant changes to appointment processes and the development of outreach policies as detailed below.

In 2019 Morison (with Dickson) completed a third research study, commissioned to investigate the disincentives facing potential applicants to the Northern Ireland High Court in view of the difficulties that NIJAC has faced when recruiting for High Court vacancies - **R 6**. This was carried out with research assistance from Leah Trainor (who has since successfully completed a PhD on the careers of female barristers) and Andrew Godden (who subsequently co-authored the *NILQ* article drawing out aspects of the research – **R 7**). This work offered an analysis of why the High Court role was often viewed as an unattractive career option for well-qualified applicants, and provided a series of detailed suggestions across five headings to encourage applications. Chief among these is an emphasis on challenging assumptions and traditions, the recruitment process itself, and the importance of developing a 'judicial career' that encourages movement from one tier to the next, and in particular from the County Court to the High Court.

3. References to the research (All available from HEI as required)

1. School of Law, QUB Team, *Propensity to Apply for Judicial Office under the new Northern Ireland Judicial Appointments System: a qualitative study for the Northern Ireland Judicial Appointments Commission* (2008) 113 pp. - **R 1**
2. P. Leith and J. Morison, *Rewarding Merit in Judicial Appointments? A research project undertaken by the School of Law, Queen's University Belfast for the Northern Ireland Judicial Appointments Commission* (2013) 64 pp. - **R 2**
3. J. Morison, 'Finding Merit in Judicial Appointments' in C. Dwyer and A-M. McAlinden (eds), *Criminal Justice in Transition* (Oxford: Hart 2015) pp. 131- 156 - **R 3** (See REF 2)
4. J. Morison, 'Post Conflict Accommodation: Re-engineering the judiciary in Northern Ireland' Paper presented to an *International Workshop on 'The Judiciary in Territorially and Culturally Compound Systems: 'Organisation and Functions'* Trento, 7 and 8 May 2015. (<https://webmagazine.unitn.it/evento/giurisprudenza/4234/the-judiciary-in-territorially-and-culturally-compound-systems>) - **R 4**
5. J. Morison, 'Beyond Merit: The New Challenge for Judicial Appointments' in G. Gee and E. Rackley (eds), *Debating Judicial Appointments in an Age of Diversity*, Abingdon and New York: Routledge (2017) pp. 223-239 - **R 5**
6. J. Morison and B. Dickson, *Barriers to High Court Appointments in Northern Ireland: A Report for the Northern Ireland Judicial Appointments Commission* (June 2019)46 pp **R6**

7. J. Morison, B. Dickson and A. Godden 'Barriers to High Court Appointments in Northern Ireland', *Northern Ireland Legal Quarterly* Vol 70, No. 4 (2019) Pp. 479-501 – R 7

4. Details of the impact

The three reports, commissioned by NIJAC and delivered by QUB, together with the related scholarly outputs, have had a direct, far-reaching and on-going impact on NIJAC's operational policies. New knowledge was produced and this informed practical change. Overall, the Chief Executive of NIJAC concludes, *'The three QUB research reports have undoubtedly contributed hugely to ensuring that policy within NIJAC is developed from a strong research base, and the changing profile of the judiciary at all levels is testimony to the effectiveness of their analysis of the both the issues and the ways forward in ensuring that there is a reflective judiciary in Northern Ireland'* - S 3. In turn, the changes that have been implemented as a result of this research have had a positive impact on three areas in particular.

1. NIJAC's internal Practices

In terms of its own working practices, NIJAC's response to the research has been to put in place a *Research Informed Programme of Action* that is subject to annual review and development which in turn helps shape the organisation's corporate planning process. This has resulted in a wide-ranging strategy designed to ensure that the research findings continue to be addressed in a comprehensive fashion across the Commission. In all of these, as the Head of Diversity comments in her letter, *'the QUB research is pivotal, particularly to the induction of new Commissioners and the development of the new Corporate Plan'* – S 3. The 2013 Report from Leith and Morison focused in particular on how "merit" is understood and used within recruitment, and the dangers of re-producing already established patterns (and the consequences of this for under-represented groups). It provided NIJAC with a detailed road map to address the under-representation of women on the Northern Irish bench. NIJAC's Head of Diversity continues, *'This research has informed and underpinned every major policy decision affecting judicial appointments, should that be in outreach, assessment and selection, working arrangements and influencing others such as the legal professional bodies and serving judiciary'* - S 2.

A number of measures have been taken up directly from the research findings of the 2013 Report. In particular the recruitment and selection policies and practices of NIJAC have been transformed. This has included a move to developing and deploying generic personnel profiles and a clearer, evidence-based approach in selection. Changes to assessment methods, including shortlisting tests, role-plays using professional actors and situational judgement exercises have been introduced to obtain a more nuanced view of merit in line with the findings of the Report. Another important change arising directly from the research, and its investigation of 'visibility' within the legal system, involved the cessation of the use of 'automatic consultees' (referees from the existing High Court) as part of the recruitment process; an issue which the QUB research identified as being inherently discriminatory toward certain members of the applicant pool, especially women.

The final Report from QUB published in 2019 on recruitment to the High Court explored potential changes to NIJAC's recruitment system, with the vast majority of recommendations here being accepted and acted upon as evidenced by the 'Flag F paper' discussed at NIJAC Plenary Meeting on 3 June 2020 - S 4 and further in the LCJ NI's letter - S 1). These included the introduction of opportunities to sit as a temporary High Court judge, transparency about part-time and flexible working, the introduction of a nominated High Court judge as a single point of contact rather than any HC judge being approached, changes to the list of competencies to include 'legal judicial skills' to recognise experience in lower tiers, changes in the assessment scoring system and equal recognition for references beyond those provided by senior judges, and measures to increase confidentiality. As the Chief Executive of NIJAC remarks in her letter, *'The research findings resulted in the Commission reviewing much of its approach to recruitment to the High Court, particularly with regard to demystifying and promoting the role. Changes were also made to the Personal Profile, the scoring system and a firm commitment was confirmed in there being no return to seeking Consultee comments'* - S 3.

2. NIJAC's Relations with wider legal professions

In relation to the wider legal profession and potential applicant pool this too has been directed by the research findings. An initial *Guide to Judicial Careers in Northern Ireland*, produced in response to the first Report, has been replaced from December 2014 with an on-going series of detailed guidance for particular judicial offices with an emphasis on demystifying the roles and process of appointment. An improved communications strategy has been developed with a redesign of the website in January 2016 to facilitate accessibility and transparency producing more than half a million unique page views up to December 2020 - **S 5**. A Judicial Shadowing Scheme was developed in line with the Report's recommendations in June 2014. The most recent figures from 2019 show that more than half of those who took up the shadow scheme opportunity were taking up this opportunity were women, with a majority being solicitors rather than barristers. A 'Women in Law' lecture series, designed to increase awareness and aspirations amongst female law students and practitioners regarding careers on the bench was established and, as well as an annual engagement event for politicians, there is now an annual outreach session with Presidents at each court level. A particularly important development has been the establishment of a Joint Liaison Committee (chaired by the LCJ NI and comprising representatives from NIJAC, the Judges' Council, the Bar Council and Law Society). The objective of this body is directly stated as being to address those findings from the QUB research over which NIJAC has no direct control or influence - e.g. gendered briefing practices, the attrition rate of women lawyers and the under-representation of women in the senior ranks of the profession. Internally, NIJAC also established a number of Commissioner sub-groups to address specific issues raised by the QUB research, including, appointments and renewals, feedback, and confidentiality and consultees. This work is reflected directly in the various *Guidelines for Applicants* (and in the policies on Confidentiality, Feedback and References. Following on from a particular concern articulated in the 2013 Report (and re-visited in the 2019 Report) NIJAC led a Flexible Working Group with the LCJ, Bar Council, Law Society and Judges Council which has produced guidance for serving judges and applicants. This has led to new opportunities for County Court Judges, Employment Judges and District Judges to work in block sittings or during term time. Further specific recommendations from the 2019 Report have been fully accepted where these targeted engagement with the professions via social media, website publication of judicial profiles, interactive webinars as part of pre-application guidance, opportunities to test the waters through a temporary appointment and an improved feedback process for applicants - **S 4**.

Beyond this, as the letter from the NIJAC Chief Executive points out in relation to the 2019 Report in particular, *'the carrying out of the project, particularly in the context of a small jurisdiction, has by itself created awareness among the applicant pool of both the incentives and the barriers to higher judicial office [and] the obstacles identified, and some of the potential solutions advanced – particularly around career progression through different tiers of judicial office, and advancement from the County Court to the High Court – are of very great importance'* - **S 3**.

3. Relations with the Wider Public and a more Reflective Judiciary

The 2013 Report also provided evidence of shifts in perceptions among the wider public, potential court users, and beyond particularly with regard to the under-representation of women in judicial office. The latter issue was ameliorated to a great extent in 2015 when NIJAC appointed two female applicants to the High Court for the first time since the court was created in 1921. The 2013 Report had explicitly advocated the need for not one, but two female appointees to the High Court. As the letter from NIJAC's Head of Diversity makes clear, *'It may not be generally appreciated that this is a seismic change from 2015 and before, when the internal judicial applicant pool for Lord Justices of Appeal and Lord Chief Justice roles [in Northern Ireland] were 100% male barristers'* – **S 2**. These ground-breaking appointments received widespread media attention across the print and broadcast media in Northern Ireland, and were hailed as significant advancements in the struggle against the "glass ceiling", and they remain of interest in the NI Assembly – **S 6**. More broadly, statistics show that the changes that have been implemented by NIJAC in line with the QUB road map have had a positive impact on female participation throughout the legal profession. NIJAC have informed us that the Northern Ireland Statistical Research Agency (NISRA) recently independently reviewed and produced reports on NIJAC's applicants - those shortlisted,

and those appointed – **S 2**. NISRA considered data on the grounds of gender (among other variables) and concluded that there is clear evidence that the programme of action informed by the QUB research has led to improvements in the participation and representation of women.

This has worked through to the appointments to the bench with demonstrable results. As a consequence of research-led changes in policy recent figures from NISRA in its *Equity Monitoring Report 2019* show that now female legal members in tribunals account for almost 50%. Female representation in the Courts (at 28%) is at a higher level than would be expected. At County Court level and above there 15 females and 48 males. As well as the two female judges in the High Court there are now two former solicitors (one of who was previously a County Court Judge) and a Judge under 45 years old - **S 7**. (This is in contrast to the figures in the 2013 Report when, although female representation among those holding legal positions in Tribunals was just over 40%, female representation in the Courts at 22% was lower than might be expected from numbers in the legal profession. At County Court level and above, the 2013 Report notes that there were only 10 female judges and 61 males and there were no female High Court judges - **S 8**.)

Indeed, as it has turned out, the most recent appointments to the High Court, including a solicitor and former County Court Judge, speak directly to the research findings in 2019 concerning the need to develop judicial career ladders and seek meritorious candidates from beyond the traditional pool of the senior bar in order to provide personnel for the High Court. As the LCJ NI points out, '*The 2020 High Court judge recruitment resulted in the highest ever number of applications for a High Court judge competition in Northern Ireland; many from atypical backgrounds including from women and transactional solicitors. I consider this was due to NIJAC's Policy Committee and the High Court Selection Committee applying many of the 2019 report recommendations*' – **S 1**. In a similar vein there is the appointment of five temporary High Court Judges in January 2020 - a measure identified by the *Irish Legal News* as one of the key recommendations of the QUB Report - **S 9**. Additionally, as the LCJ NI's letter points out, the research has been used to develop a number of other measures to ensure adequate recruitment to the High Court, including as an evidence base for the LCJ NI to make the case successfully to the NI Assembly in December 2020 to approve an increase in the complement of High Court judges from 10 to 15, and to allow for more flexible working and part-time High Court judges - **S 1**. This is a measure which the research identified as likely to significantly advance further diversity in the judiciary.

5. Sources to corroborate the impact

1. Letter from Lord Chief Justice and Chair of NIJAC, 3 February 2021 - **S 1**
2. Letter Impact on NIJAC's Policy arising from QUB Research from Head of Diversity and Communication NIJAC 4 July 2019 - **S 2**
3. Letter from Chief Executive of NIJAC, 3 February 2012 – **S 3**
4. Recommendations for NIJAC from QUB Research 'Barriers to High Court Appointments in NI' Paper at Flag F for NIJAC Plenary Meeting 3 June 2020 – **S 4**
5. Analytics Report of All Website Data for <https://www.nijac.gov.uk> from 14 January 2016 to December 2020 supplied by NIJAC - **S 5**
6. Press and NI Assembly Coverage: 'First women appointed as NI High Court judges' (BBC, 23 October 2015); 'Women smash glass ceiling to be appointed High Court judges' (*Belfast Telegraph*, 23 October 2015); 'Female judges appointed to NI High Court for first time' (*The Irish Times*, 23 October 2015); 'Northern Ireland's first-ever female High Court judges appointed' (*Belfast Newsletter*, 23 October 2015); 'Women finally High Court Judges NI after 94 Years' *Irish News* 24 October 2015; NI Assembly, *The Representation of Women in Public Life*, NIA Research and Information Service, 8 March 2017; NI Assembly, NI Assembly Questions from R Woods MLA, tabled 11 December 2020, Ref AQW 11696/17-22. - **S 6**
7. Northern Ireland Statistics and Research Agency (NISRA), *The Judiciary in NI Equity Monitoring Reports 2019* - **S 7**
8. Northern Ireland Statistics and Research Agency (NISRA), *The Judiciary in NI Equity Monitoring Reports 2013* – **S 8**
9. 'Judicial recruitment crisis as High Court vacancies mount' *Irish Legal News* 19-6-20 - **S 9**