

JUDICIAL INDEPENDENCE IN NORTHERN IRELAND

Note of Seminar held in Belfast, 7 November 2012

1. Introduction

This is a note of a seminar on 'Judicial Independence in Northern Ireland' held at the offices of the Northern Ireland Attorney General in Belfast on 7 November 2012. The seminar was the sixth in a series run under the auspices of a 3-year AHRC-funded project on *The Politics of Judicial Independence in Britain's Changing Constitution* by the Constitution Unit at UCL, Queen Mary University of London and the University of Birmingham. Those participating in the seminar had a professional interest in the issue, with contributions from senior and former judges, civil servants and others. The event was run under Chatham House Rule and this short note is intended to give a general impression of some of the themes discussed.

2. The Role of the Judiciary in Administration

The judiciary in Northern Ireland have a high degree of institutional independence and since justice was devolved a form of 'institutional estrangement' has developed between the judiciary and the civil servants who run the court service. Change came with the Constitutional Reform Act 2005 as the Lord Chief Justice of Northern Ireland replaced the Lord Chancellor as head of the Northern Irish judiciary.

The Northern Irish judiciary consider judicial involvement with policymaking to be inimical to independence, but draw a distinction between formal participation in policymaking bodies and informal assistance and consultation. Judges do not participate in bodies like the Northern Ireland Court and Tribunals Service (NICTS) Board, but do attend them. The judiciary also regard it as crucial that the Lord Chief Justice should have a right to be involved in determining the budget settlement for the courts. Some participants objected that there should be no problem in principle with judges participating in the administration of the courts in a more formal way.

Several participants referred to the current system for the administration of the courts in Northern Ireland as an interim one, but one that has nonetheless worked well. At present the judiciary have a voice in administration but not a direct deciding role. Most seemed to feel that something like the Irish or Scottish models for court administration, in which judges control the courts service, was the best fit for Northern Ireland. However, the small size of the Northern Irish judiciary creates a practical obstacle to greater judicial participation in administration.

3. Judicial Appointments

The Northern Ireland Judicial Appointments Commission (NIJAC) is unusual because it is chaired by the Lord Chief Justice (equivalent bodies in England and Wales and in Scotland have lay chairs). This is largely due to local political concerns. The nature of politics in Northern Ireland is such that the governing parties do not trust each other with judicial appointments. Several speakers referred to a perception that NIJAC is controlled by the judiciary and that there is little influence by the lay members and some advocated greater political accountability for the organisation. However, this was rejected strongly by some participants who pointed to the fact that lay members are appointed by the First Minister and Deputy First Minister as an important form of accountability.