

The Report of the Advisory Panel
on Judicial Diversity 2010

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Overview and Summary of the Panel's Findings

1. There is a strong case for a more diverse judiciary. Not only should there be equality of opportunity for those eligible to apply, but in a democratic society the judiciary should reflect the diversity of society and the legal profession as a whole. Judges drawn from a wide range of backgrounds and life experiences will bring varying perspectives to bear on critical legal issues. A judiciary which is visibly more reflective of society will enhance public confidence.
2. We have concluded that there is no quick fix to moving towards a more diverse judiciary. This will come as no surprise to those who have worked to promote diversity over recent years.
3. We pay tribute to those efforts, many of which are listed at Annex iii, but argue that what has been lacking to date is a coherent and comprehensive strategy to promote diversity.
4. The message from our research and consultations is consistent with research and experience in other jurisdictions: we will achieve significant transformation if, and only if, diversity is addressed systematically – not only within the appointments process, but throughout a legal and judicial career, from first consideration of the possibility of joining the judiciary to promotion at the most senior level.
5. Delivering a more diverse judiciary is not just about recruiting talent wherever it may be found, important though that is, but about retaining talent and enabling capable individuals to reach the top.
6. This message resonated widely with our consultees, though not all of them will agree with all of our recommendations. We sought buy-in, not consensus. The Panel's discussions and inquiries have already galvanised, promoted and supported change. We have already seen:
 - ▶ the establishment of the Solicitors in Judicial Office Working Group that is looking at how law firms can best support talented solicitors to come forward,
 - ▶ joint working between the Ministry of Justice, the Judicial Appointments Commission (JAC) and the Directorate of Judicial Offices (DJO) on data sharing, and
 - ▶ the development of real momentum around the need for judicial appraisal.
7. Sustained progress on judicial diversity requires a fundamental shift in approach from a focus on selection processes towards a judicial career that addresses diversity at every stage.

8. This approach requires:
- ▶ ensuring that lawyers from all backgrounds recognise early on in their career that becoming a judge could be a possibility for them.
 - ▶ more effort by the legal professions to promote diversity at all levels and to support applications from talented candidates from all backgrounds.
 - ▶ better information on the career paths available. These career paths must promote opportunities across the courts and tribunals as one judiciary.
 - ▶ providing a variety of means for potential applicants for judicial office to understand what the role involves and to gain practical experience and build confidence.
 - ▶ open and transparent selection processes that promote diversity and recognise potential, not just at the entry points to the judiciary but also for progression within it to the most senior levels.
 - ▶ the evolution of the Judicial Studies Board (JSB) into a Judicial College. The College should provide training and development that not only equips judges to perform their current role but also enables them to develop to their full potential and address areas of weakness. It should, in partnership with other institutions, support the development of skills for those who want to enter the judiciary through courses on 'Developing Judicial Skills'.
 - ▶ the consistent implementation of appraisal and mentoring throughout the judiciary. This will build confidence and skills, ensure that talent is identified and encouraged, ensure training is better targeted, improve performance and support career development.
 - ▶ terms and conditions that fully support diversity, including reasonable adjustments for those with disabilities and promotion of flexible working, etc.
9. To deliver the fundamental change that is needed will also require new ways of working together, from an approach that co-ordinates activity to one that actively drives change. In particular:
- ▶ Change must be implemented as a comprehensive package of reform.
 - ▶ the existing tripartite judicial diversity strategy between the Lord Chancellor, the Lord Chief Justice and the Chairman of the Judicial Appointments Commission needs refocusing and extending to include the leaders of the legal profession (Bar Council, Law Society, and Institute of Legal Executives (ILEX)) and the Senior President of Tribunals. This Judicial Diversity Taskforce should oversee an agreed action plan for change as a result of this Panel's findings and publish an annual report that demonstrates where progress has been made and where it has not. It must measure its success, acting as a group that delivers change and holds its members to account.
 - ▶ this group also needs to ensure that we learn from experience. That means systematic, consistent monitoring and evaluation of what works and what does not, so that resources can be allocated where they are most effective.

- ▶ there needs to be a proactive campaign of mythbusting to dispel the widespread misconceptions that are deterring good candidates from under-represented groups from coming forward.
- ▶ there must be a new form of engagement. The legal profession must actively promote judicial office among those who are currently not coming forward - the work of the Solicitors in Judicial Office Working Group outlined in this report represents a significant and welcome change. The Judicial Appointments Commission needs to be more responsive to the experience of its customers. The judiciary needs to support and encourage new entrants more actively.

10. We stand by the need to implement our recommendations as a package if we are to make significant progress. In the time available, we have not been able to cost our recommendations in detail. We recognise that resources are scarce in the current economic climate, but do not overlook:

- ▶ the potential benefits of change, e.g. appraisal and improved judicial training will not only increase diversity but improve judicial performance.
- ▶ the scope for initiatives to be self financing, e.g. courses in Developing Judicial Skills.
- ▶ the possibility of reallocating resources from existing initiatives (e.g. uncoordinated outreach) evaluated as less effective than others.

List of Recommendations

A fundamental shift in approach

Recommendation 1. There should be a fundamental shift of approach from a focus on individual judicial appointments to the concept of a judicial career. A judicial career should be able to span roles in the courts and tribunals as one unified judiciary.

Delivering change

Recommendation 2. The recommendations made in this report must be implemented as an integrated package and sequenced carefully.

Recommendation 3. The tripartite judicial diversity strategy between the Lord Chancellor, the Lord Chief Justice and the Chairman of the Judicial Appointments Commission should be extended to include the leaders of the legal profession (Bar Council, Law Society and Institute of Legal Executives) and the Senior President of Tribunals. It should be refocused on implementing the changes we have recommended.

Recommendation 4. This Judicial Diversity Taskforce should oversee an agreed action plan for change and publish an annual report setting out the progress made. The Advisory Panel on Judicial Diversity will meet again in 2011 to take stock of what the Taskforce has achieved.

Measuring progress

Recommendation 5. There should not be diversity quotas or specific targets for judicial appointments.

Recommendation 6. The work already under way on the capturing, handling, sharing and regular updating of judicial data between the Ministry of Justice, Judicial Appointments Commission, and the Directorate of Judicial Offices is essential and should be in place within 12 months of this report's publication.

Recommendation 7. The Judicial Diversity Taskforce should use this information as a starting point to set a baseline against which it will measure future progress.

Recommendation 8. One principal responsibility of the Taskforce must be to ensure that there is systematic, consistent monitoring and evaluation of what works and what does not.

Encouragement to legal professionals

Recommendation 9. Judges and members of the legal profession should engage with schools and colleges to ensure that students from under-represented groups understand that a judicial career is open to them.

Recommendation 10. Diversity and Community Relations Judges should have responsibility for organising contacts with institutions and the professions to promote a judicial career among those from under-represented groups.

Recommendation 11. Judges' marshalls and judicial assistants schemes should be extended, openly promoted, transparent as to process, targeted at under-represented groups, supportive of the work of the courts, and properly evaluated.

Developing a diverse pool

Recommendation 12. The Panel recommends that the Bar Council, the Law Society and ILEX set out a detailed and timetabled programme of change to improve the diversity profile of members of the professions who are suitable for appointment at all levels. They should bring this plan to the Judicial Diversity Taskforce within 12 months of the publication of this report. This plan should include information on how progress will be monitored.

Structured encouragement

Recommendation 13. The legal professions and the judiciary should put in place systems for supporting suitable and talented candidates from under-represented groups to apply for judicial appointment.

Recommendation 14. The Judicial Diversity Taskforce should promote the availability of bursaries for people from underrepresented groups to undertake Developing Judicial Skills courses.

Getting the right experience for judicial office

Recommendation 15. The Judiciary should expand the judicial job shadowing scheme.

Recommendation 16. Developing Judicial Skills courses approved by the Judicial Studies Board should be developed to help aspiring judicial candidates understand and develop the skills they need for judicial appointment.

Encouraging solicitors to apply

Recommendation 17. Law firms should regard part time judicial service as positive for their practices and should encourage part-time service as proposed by the Solicitors in Judicial Office Working Group. A simplified payment regime should be introduced for solicitor fee-paid judges.

Employed lawyers in the public sector

Recommendation 18. Employed lawyers in the public sector with the relevant skills should be encouraged to apply for fee paid roles in jurisdictions where it is less likely that an actual or perceived conflict of interest will arise. They should also be encouraged to consider other opportunities to develop their skills, such as

Developing Judicial Skills courses. The Panel looks to professional bodies to play their part in encouraging employers to permit this development.

Recommendation 19. The terms and conditions for all employed lawyers should permit a part time judicial role.

Selection on merit

Recommendation 20. The JAC's merit criterion 3, "an ability to understand and deal fairly", should be replaced.

Positive action provision in the draft Equality Bill

Recommendation 21. The JAC should make use of the Equality Bill positive action provisions where the merits of candidates are essentially indistinguishable.

The use of non-statutory requirements

Recommendation 22. All non-statutory criteria must be justified.

Recommendation 23. Those applying for salaried judicial posts should normally be expected to have previous judicial experience. There should be provision for exceptional cases where candidates have demonstrated the necessary skills in some other significant way.

Recommendation 24. In those rare cases where candidates have no previous judicial experience they must be tested for suitability for appointment in the same way as those applying for fee-paid office.

The test and role play

Recommendation 25. The qualifying test should be put online.

Recommendation 26. The qualifying test should be reviewed to ensure it is acting as an effective sift process.

Feedback to unsuccessful candidates

Recommendation 27. All candidates for judicial appointment should have access to feedback, including on their performance in the qualifying test.

Recommendation 28. The JAC should capture its statistical data in a way that would allow the monitoring of the number of people who chose to re-apply following a previous unsuccessful application.

References

Recommendation 29. Candidates should not be asked for references until after they have been notified that they have completed the qualifying test successfully.

Recommendation 30. Clear guidance should be given to candidates and referees that references must be evidence based and relate to the skills being tested.

The JAC's interviewing panels

Recommendation 31. The JAC must assemble diverse selection panels. There should always be a gender and, wherever possible, an ethnic mix.

Recommendation 32. Panel chairs and members must receive regular equality and diversity training that addresses how to identify and value properly transferable skills and also to ensure that they are aware of any potential issues regarding their unconscious bias.

Recommendation 33. All JAC selection panel chairs and members should be regularly appraised and membership periodically refreshed. Poorly performing panel members should be removed.

Recommendation 34. There should be a stable pool of high quality, appropriately trained judges available, who have the clear responsibility for sitting on selection panels. This pool should be regularly refreshed.

Appointing candidates with potential

Recommendation 35. Fee paid judges should not normally be appointed for more than 3 renewable terms.

Recommendation 36. There should be a staged period of induction where the appointed person has little or no experience of sitting judicially or of the relevant jurisdiction.

Deployment and streamlining the process

Recommendation 37. The Judicial Diversity Taskforce should lead an immediate review of the current forecasting mechanism.

Recommendation 38. Judges should be required to give notice of their anticipated retirement date.

Recommendation 39. The JAC should operate smaller, more regular selection exercises to aid career planning, with an annual competition for the main tiers of the judiciary wherever possible.

Recommendation 40. The JAC should review the moderation process to ensure that the methods used during large selection exercises can identify effectively and value properly the diversity of talent available.

Appointment to the Supreme Court and Court of Appeal

Recommendation 41. The selection process for vacancies in the most senior courts should be open and transparent, with decisions made on an evidence base provided by the applicant and their referees in response to published criteria. No judge should be directly involved in the selection of his/her successor and there should always be a gender and, wherever possible, an ethnic mix on the selection panel.

Recommendation 42. The selection process for Court of Appeal appointments should be reviewed, with the implementation of a five person panel so there is no need for a casting vote provision.

Recommendation 43. The selection process to the Supreme Court for the United Kingdom should be reviewed to reduce the number of serving Justices involved and to ensure there is always a gender and, wherever possible, an ethnic mix on the selection panel. This review process should include consultation with the Lord Chief Justices of England & Wales and Northern Ireland and the Lord President of the Court of Session.

A judicial career

Recommendation 44. Clear career paths should be identified and published so that people understand the range of opportunities available within the judiciary. Such career paths should look across the courts and tribunals.

Induction and mentoring

Recommendation 45. There should be comprehensive mentoring for all new entrants to the judiciary. This should also be available to established judges who want it.

Appraisal

Recommendation 46. An appraisal system owned and run by the judiciary should be implemented to cover all levels within the judiciary.

Career advancement

Recommendation 47. Selection processes for opportunities for career advancement should be open and transparent and based on assessment of suitability against published criteria.

Judicial training – supporting judicial office holders

Recommendation 48. The Judicial Studies Board should evolve into a Judicial College.

Myths around the judicial role

Recommendation 49. A pro-active and coherent campaign of mythbusting should be undertaken, led by the Judicial Diversity Taskforce. It should be persistent, targeted on talent and started early.

Recommendation 50. All official material should be reviewed to ensure it does not assume a particular previous experience or background.

Flexible working

Recommendation 51. It should be assumed that all posts are capable of being delivered through some form of flexible working arrangement, with exceptions needing to be justified.

Judicial terms and conditions

Recommendation 52. Judicial terms and conditions should reflect the needs of a modern diverse judiciary.

Return to practice

Recommendation 53. There should be no change to the current policy on return to practice but there should be more information made available to individuals about what the restriction on return to practice means.

Section 1. Introduction

11. On 28th April 2009, the Lord Chancellor, the Right Honourable Jack Straw MP, established the Advisory Panel on Judicial Diversity. The establishment of the Panel reflected the Lord Chancellor's concern, shared by the Right Honourable The Lord Chief Justice, Lord Judge, and the Chairman of the Judicial Appointments Commission, Baroness Prashar, that, despite efforts over many years, significant progress on judicial diversity has not been made.

Terms of reference

12. The terms of reference for the Panel (see Annex i) were as follows:

"To identify the barriers to progress on judicial diversity and to make recommendations to the Lord Chancellor on how to make speedier and sustained progress to a more diverse judiciary at every level and in all courts in England and Wales.

In considering this question the panel will:

- ▶ examine the nature of the problem.
- ▶ consider research undertaken on the UK system as well as considering international comparators.
- ▶ draw on the lessons learned from current initiatives, including the JAC Diversity Forum and the follow up work from the Lord Chief Justice's conference on "A Judiciary for the 21st century".
- ▶ draw up a list of practical measures that could be taken, identifying those that could happen quickly and those that would require legislation.

Membership of the Panel

13. The Panel was chaired by Baroness Julia Neuberger DBE. The other members of the panel were Lord Justice John Goldring, Professor Dame Hazel Genn DBE, Dr Nicola Brewer CMG, Winston Hunter QC and Andrew Holroyd CBE. The biographies of the members of the Advisory Panel are set out in Annex ii.

14. The Panel met 11 times and has met, corresponded with and received evidence from over 180 contributors to the review; details of those who contributed to the Panel's findings and the evidence received by the Panel are outlined at Annex x and Annex xi.

The Panel's vision

15. Our vision is that by 2020 we will have a much more diverse judiciary at all levels which:

- ▶ is as talented, respected and independent as it is in 2010
- ▶ recognises the concept of a judicial career
- ▶ seeks and finds talent in more unusual places
- ▶ gives opportunities to a wider range of individuals
- ▶ is more flexible in its working practices.

16. This report contains a comprehensive package of recommendations that, if implemented together, should achieve this vision.

Defining diversity

17. We have considered all aspects of diversity, but have focused particularly on gender, ethnic origin, disability, sexual orientation, geographical location, socio-economic background, and the implications of being a solicitor rather than a barrister. This choice has been influenced by our research, the available statistics and our consultees. Where there is little data available, we have consulted with under-represented groups to find evidence of the barriers they experience.

The case for change

18. The judiciary of England and Wales has historically reflected the demographic composition of the Bar, drawing its membership from well-educated middle-class white male barristers. Over the last two decades eligibility for judicial office has widened to include most members of the legal profession (further information on the diversity profile of the legal profession is set out at Annex vi). Over a similar period the legal profession has diversified so that it reflects more closely the gender and ethnic composition of the population. Based upon the most recent Census¹ undertaken by the Office of National Statistics, women represent slightly over half of the population, while those of Black, Asian and minority ethnic (BAME) backgrounds are just under 9% of the population. 18% of the population of England and Wales stated they were disabled.

19. Since the early 1990s, there has been a growing recognition that the extension of eligibility for judicial office and the increased diversity of the legal profession have been reflected only slowly in appointments to the entry levels of the judiciary of England and Wales, and very little at the highest levels:

- ▶ 1 of the Supreme Court Justices is a woman
- ▶ 3 of the 37 members of the Court of Appeal

¹Office of National Statistics, Census 2001: National report for England and Wales

- ▶ 3 of the 163 judges in the High Court, Court of Appeal and Supreme Court are from BAME communities
- ▶ all of the Heads of Division are men
- ▶ there are 3 solicitor judges in the High Court, Court of Appeal and Supreme Court

20. As at 1st April 2009 in the courts based judiciary 19.4% of judges were women and 4.5% came from BAME communities. In the Tribunals Service, 37% of judges are women and 10.5% from BAME communities, although this varies significantly between different tribunals.²

21. There are three arguments for changing this position.

22. Equal opportunities. All properly qualified people should have an equal opportunity of applying and of being selected for judicial office. Well-qualified candidates for judicial office should be selected on their merits and should not be discriminated against, either directly or indirectly.

23. Inherent in the concept of human equality is the principle that talent is randomly and widely distributed in society, and not concentrated in particular racial or other groups. It therefore follows that the more widely one searches for talent, the more likely it is that the best candidates will be identified.

“You should not be looking for unusual talent, but looking for talent in unusual places”.³

24. The current under-representation of certain well-qualified groups within the judiciary suggests that factors other than pure talent may be influencing either people’s willingness to apply or the selection process, or both.

25. Legitimacy. In a democratic society it is unacceptable for an unelected institution that wields the power of the judiciary to be drawn from a narrow and homogenous group that reflects neither the diversity of society nor that of the legal profession as a whole. Failure to appoint well-qualified candidates from diverse backgrounds to judicial office represents exclusion from participation in power. A judiciary which is visibly more reflective of society will enhance public confidence.

“I believe that our society is enriched by its diversity and that if the judiciary is to command the full trust and confidence of the public, it should reflect that diversity. The same goes for teachers, civil servants, police officers and doctors. I do not consider that merit and diversity are mutually exclusive or opposing.”⁴
The Rt. Hon Jack Straw MP, Lord Chancellor

²It should be noted that gender and BAME representation varies significantly between tribunals, e.g. there is a higher than average representation of BAME judges in tribunals dealing with immigration and medical matters and women are more significantly represented in the social care chamber.

³Attributed to transcript of International Summit on Judicial Diversity, November 2005, London

⁴The Rt. Hon Jack Straw MP, Annual Judges Dinner, Mansion House, 14 July 2009 (<http://www.justice.gov.uk/news/speech150709a.htm>).

26. Perspectives. Judges drawn from a wide range of backgrounds and life experiences will bring varying perspectives to bear on critical legal issues. This is particularly important where there is scope for the exercise of judicial discretion or where public interest considerations are a factor.

The Panel's approach

27. We conducted our work by:

- ▶ looking at what has already been tried in the UK
- ▶ drawing from the experience of other jurisdictions
- ▶ extensive consultation with judges, the Judicial Appointments Commission (JAC), lawyers, academics and experts in the equality and diversity field to understand their experiences and priorities.

Learning from what works

28. Our intention was to build on what works so we began by looking back at past initiatives to improve judicial diversity. A timeline of these initiatives is at Annex iii, which was presented to the Panel by Professor Cheryl Thomas in June 2009. This shows the huge amount of time, effort and resource that has been invested in seeking to promote judicial diversity over recent years.

29. There were sources of frustration for us in this task:

- ▶ the lack of accurate data on judicial diversity, or in some cases any data on the salaried judiciary e.g. on sexual orientation or disability. Consequently we have not been able to establish a complete picture of the current state of diversity in the judiciary or make comparisons;
- ▶ the lack of attention given to evaluating what works and what does not. There is no clear evidence base that demonstrates what impact policy and procedural changes have had in practice;
- ▶ initiatives have not always been followed through as there has been a lack of sustained leadership aimed at achieving change;
- ▶ a piecemeal approach to change, with initiatives tending to be limited to one part of the process.

Key messages from the international experience

30. We are grateful to Professor Cheryl Thomas for preparing a review of the international research (a summary of the evidence we considered has been published and can be found at http://www.ucl.ac.uk/laws/socio-legal/index.shtml?project_judicial).

31. The international experience indicated a number of key requirements for delivering change.

- ▶ **Leadership.** Strong, consistent and sustained leadership is essential if we are to go beyond identifying what needs to be done, to making it happen over a period of years.
- ▶ **Mythbusting.** Ensuring potential applicants have factual information is key to encouraging applications from under-represented groups.
- ▶ **Appointment on merit.** Appointment must be on merit, recognising that merit and diversity are complementary.
- ▶ **Whole system change.** Reform needs to be joined up and systematic, involving all interested parties. Delivering a more diverse judiciary is not just about recruiting talent wherever it may be found but also about retaining talent and enabling capable individuals to reach the top.
- ▶ **Time.** Reforms need to be implemented consistently over an extended period of time. Jurisdictions such as Canada which have delivered real change have taken 20 years to get where they are now.

32. There is no magic bullet, change cannot be delivered overnight – it requires long-term and sustained commitment by everyone involved.

Consultation

33. We have drawn our evidence from the direct experience and ideas of those within the judiciary, the JAC, the legal profession, academia and in equality and diversity groups, given the lack of a consistent UK evidence base. We have spoken to and/or received written representations from over 180 contributors, individually and in groups, many of them more than once. We have spoken to several very senior judges from Canada and New Zealand. We are very grateful for the time they have given to us.

34. We are also grateful to the lawyers and recent entrants to the judiciary who attended discussion groups organised at the Ministry of Justice. A summary of the key points they raised is attached at Annex xii.

Section 2. A Fundamental Shift in Approach

35. This section outlines the fundamental shift in approach we think is necessary to deliver change. It addresses:

- ▶ moving from a focus on judicial appointments to the concept of a judicial career,
- ▶ the commitment and leadership required to deliver change, and
- ▶ the need for effective data collection and monitoring so that we build on what works.

A judicial career

Recommendation 1. There should be a fundamental shift of approach from a focus on individual judicial appointments to the concept of a judicial career. A judicial career should be able to span roles in the courts and tribunals as one unified judiciary.

36. The judiciary differs substantially from other professions in that there is a focus on judicial appointments, not a judicial career. This has meant that efforts to increase diversity have tended to focus on outreach and the selection process in order to affect individual appointments, rather than developing policies and processes to support diversity throughout a judicial career from the time an individual may first consider becoming a judge to progression to the most senior levels. Changes made to promote diversity have tended to be piecemeal: there has not been a thorough consideration of how change in one part of the system might impact on another.

37. The modern judiciary has a variety of points of entry and career paths and requires diverse skills. In addition to giving judgment and passing sentence, judges manage, lead, train, arbitrate, appraise and mentor, engage with the communities they serve and participate in developing a more effective justice system.

38. But the available career paths and the variety of skills required are not clearly spelt out. Judicial training is currently focused on the requirements of a judge's current role with less emphasis on developing skills.⁵ There is no uniform appraisal process across the judiciary to promote confidence, assess performance, identify talent, and enable judges to develop their capability or to discuss what they might need to do to progress to more senior levels.

⁵This is changing with the Judicial Studies Board Judicial Training Strategy where the course of Judgecraft has proved extremely popular and a learning need analysis is being conducted on management and leadership training.

39. Significant progress will take a fundamental shift in approach, to embed diversity throughout the system: through attracting, appointing, retaining, developing and promoting the best talent.

40. The judicial career approach requires:

- ▶ ensuring that young lawyers from all backgrounds recognise early on that a judicial career could be for them.
- ▶ retaining diversity at all levels in the legal profession – retention rates for women and BAME lawyers are too low. We will not have a diverse judiciary without a diverse legal profession at senior as well as junior levels.
- ▶ better information on the career paths available, dispelling the widespread myths about the judicial culture that are deterring good candidates from under-represented groups from coming forward.
- ▶ providing a variety of means for potential applicants for judicial office to understand what the role involves and to gain practical experience.
- ▶ open and transparent selection processes that promote diversity and recognise potential, not just at the entry points to the judiciary but for progression within it to the most senior levels.
- ▶ training that not only equips judges to perform their current role but enables them to develop to their full potential and address areas of weakness.
- ▶ mentoring and appraisal that encourages confidence, develops skills and identifies talent.
- ▶ terms and conditions that fully support diversity including reasonable adjustments for those with disabilities, flexible working, etc.

Delivering change

Recommendation 2. The recommendations made in this report must be implemented as an integrated package and sequenced carefully.

Recommendation 3. The tripartite judicial diversity strategy between the Lord Chancellor, the Lord Chief Justice and the Chairman of the Judicial Appointments Commission should be extended to include the leaders of the legal profession (Bar Council, Law Society and Institute of Legal Executives) and the Senior President of Tribunals. It should be refocused on implementing the changes we have recommended.

Recommendation 4. The Judicial Diversity Taskforce should oversee an agreed action plan for change and publish an annual report setting out the progress made. The Advisory Panel on Judicial Diversity will meet again in 2011 to take stock of what the Taskforce has achieved.

41. The sustained commitment and leadership required to deliver change will necessitate close working between the judiciary, the Judicial Appointments Commission, the legal professions and Government. This will require governance arrangements that:

- ▶ ensure strong and consistent leadership over the long term, and
- ▶ involve and hold to account each individual/organisation.

42. The establishment of the tripartite diversity strategy involving the Lord Chancellor, the Lord Chief Justice and the Chair of the Judicial Appointments Commission was a good start. However, this group has had more of a co-ordination than a delivery role. The Judicial Appointment Commission's Diversity Forum has also made a positive contribution, providing a mechanism for sharing ideas and joining up processes, as has the Lord Chief Justice's 2009 conference on 'A 21st century judiciary'. But these initiatives cannot deliver in isolation. The tripartite group should be re-focused into a body with responsibility for overseeing change, and with a duty to report annually on progress so there can be public and parliamentary scrutiny of what is an area of legitimate public concern.

Measuring progress

Recommendation 5. There should not be diversity quotas or specific targets for judicial appointments.

Recommendation 6. The work already under way on the capturing, handling, sharing and regular updating of judicial data between the Ministry of Justice, Judicial Appointments Commission, and the Directorate of Judicial Offices is essential and should be in place within 12 months of this report's publication.

Recommendation 7. The Judicial Diversity Taskforce should use this information as a starting point to set a baseline against which it will measure future progress.

Recommendation 8. One principal responsibility of the Taskforce must be to ensure that there is systematic, consistent monitoring and evaluation of what works and what does not.

43. We have considered whether progress towards a more diverse judiciary should be achieved through the introduction of quotas for appointments to the judiciary.

44. Quotas were firmly and almost unanimously rejected by those we consulted, particularly by those from under-represented groups. Their main concern was that the introduction of quotas would be seen as undermining the position of people from under-represented groups appointed on the strength of their true personal ability. Quotas might also discourage applications from suitable candidates from well-represented groups, who might fear the system is stacked against them.

These concerns are borne out by the JAC's recent research on perceived barriers to judicial appointment.⁶

45. We also considered and dismissed the idea of aspirational targets, i.e. setting out what percentage of appointments we might aim to achieve from under-represented groups by a particular timescale.

46. Those we consulted generally saw little difference between such targets and quotas, and told us that talented candidates could be deterred from applying for judicial appointments for the same reasons outlined above.

47. Instead, appointments should be regularly monitored in order to track progress on diversity and identify problem areas. The JAC currently reports on the number of recommended candidates and applications by gender, ethnicity and profession against the existing pool of applicants. This should be extended to apply to other diversity categories such as sexual orientation and age and to all parts of the system so that the Taskforce can benchmark change.

Data quality and data sharing

48. Our recommended shift in approach will only be effective if we address the inadequate data currently available. We need to know what works, track progress and identify areas that may be lagging behind.

49. The current problem is sometimes as fundamental as not collecting or publishing the data at all – e.g. statistics on disability in the salaried judiciary are not published and the Judicial Appointments Commission does not currently collect information on sexual orientation.

50. In other instances, different parts of the system are either collecting slightly different data or duplicating data collection. This makes reconciling the figures difficult or impossible. The lack of regular comprehensive data cleansing has compounded the problem.

51. The Ministry of Justice, the Judicial Appointments Commission and the Directorate of Judicial Offices have already recognised there is a real issue with the lack of usable data and are working jointly to resolve this.

52. This work must ensure:

- ▶ data is collected on all of the categories identified in the Equality Bill currently before Parliament.
- ▶ data is collected as few times as possible to ensure that the opportunities for inconsistency are reduced.
- ▶ there is transparency for those applying for judicial office and serving as judges as to how this data will be used.
- ▶ data is collected in a way that enables the evaluation of the impact of policy and procedural change – we need to be able to track progress and identify more clearly where there are potential blockages.

⁶JAC, Barriers to Judicial Appointment Application Research, 2009 http://www.judicialappointments.gov.uk/static/documents/Barriers_to_Application_Research_report_1.pdf

Section 3. Encouraging New Entrants to the Judiciary

53. This section outlines proposals for encouraging applications for judicial appointment to a more diverse group of applicants. It covers the following actions:

Encouragement prior to entering the legal profession

- ▶ Giving younger lawyers and students an opportunity to find out about the role of judges early in their career.

Encouragement to legal professionals and tackling cultural change

- ▶ Increasing diversity within the upper echelons of the legal professions.
- ▶ Using the professions to encourage people into the judiciary, particularly those from non-traditional backgrounds or underrepresented groups (the “tap on the underrepresented shoulder”).
- ▶ Providing more routes for gaining the right experience for judicial office.
- ▶ Changing culture and attitudes within law firms to employees applying for judicial office, in particular by giving encouragement to applications for part time judicial appointment.
- ▶ Removing barriers to those well qualified professionals who may feel restricted in their opportunities for taking judicial office, such as government lawyers and those at the employed Bar.

Encouragement prior to entering the legal profession

Recommendation 9. Judges and members of the legal profession should engage with schools and colleges to ensure that students from underrepresented groups understand that a judicial career is open to them.

Recommendation 10. Diversity and Community Relations Judges should have responsibility for organising contacts with institutions and the professions to promote a judicial career among those from underrepresented groups.

Recommendation 11. Judges’ marshalls and judicial assistants schemes should be extended, openly promoted, transparent as to process, targeted at under-represented groups, supportive of the work of the courts, and properly evaluated.

54. As highlighted in the report on “Fair Access to the Professions”, it is important that the idea of a career in the judiciary is planted early no matter what branch of the legal profession an individual intends to enter. There are a number of ways to encourage interest:

- ▶ direct contact with educational establishments by Judges and practising members of all branches of the legal profession.
- ▶ judicial marshalling schemes.
- ▶ judicial assistants programmes.

Judges and schools, colleges and universities

55. Judges, including those who work in tribunals, barristers and solicitors already engage in work with schools and colleges promoting a career in the law, including the role of the judiciary. In the “Fair Access to the Professions” Report,⁸ the legal professions were often cited as examples of best practice for enabling those from less traditional backgrounds to experience life with the professions, especially with programmes specifically designed to increase diversity. Examples of current initiatives are attached at Annex xiv.

56. This is important for building understanding of and confidence in the legal system, but is also a way of demonstrating to young people that lawyers and judges may come from a diverse range of backgrounds and are people just like them. This work is especially important for those schools, colleges and universities that have a high proportion of students from groups under-represented in the legal profession and the judiciary.

57. Diversity and Community Relations Judges (DCRJJs) act as a bridge between the judiciary and the community so that the public gains a better understanding of the justice system and the role of the judge. This work should be evaluated, and if it is seen as bringing real benefits, extended.

Marshalling and High Court judicial assistants scheme

58. A High Court judicial assistant scheme operated by the Directorate of Judicial Offices (DJO) provides students with the opportunity to spend up to a week with a High Court or Circuit Judge either in London or on circuit. Students are able to observe the workings of the court, and judges will show students the case papers and discuss the case proceedings. At present very few students marshal and of those

⁷http://www.cabinetoffice.gov.uk/strategy/work_areas/accessprofessions.aspx
Unleashing Potential: The Final Report of the Panel on Fair Access to the Professions, July 2009

⁸http://www.cabinetoffice.gov.uk/strategy/work_areas/accessprofessions.aspx
Unleashing Potential: The Final Report of the Panel on Fair Access to the Professions, July 2009

who do, about 50% are students from other jurisdictions,⁹ seeking the view from the Bench to take home to their own legal systems.

59. The Directorate of Judicial Offices (DJO) has contacted the Council of the Inns of Court on developing the Inns' marshalling schemes and, in particular, thinking about how the scheme could be targeted at groups under-represented in the judiciary. The Panel would like to see this scheme extended to other branches of the legal profession. This could be done with limited resource implications, for example by offering places to students from different colleges each year, and asking those establishments to operate the selection process – again this should focus on institutions that have a high proportion of students from under-represented groups.

Judicial assistants in the Court of Appeal and UK Supreme Court

60. Judicial assistants in the Supreme Court help members of the court by sorting out the shape and nature of the appeal in less well-presented cases, and undertaking specific items of research. The job is extremely challenging, requiring the assistants to engage directly with Supreme Court Justices and to adapt immediately to the court and its procedures and practices.

61. The DJO has recently advertised opportunities for students who have completed their first degree to undertake a placement as a judicial assistant to the Lords Justices of Appeal.

62. These schemes offer a means of supporting the senior judiciary, while at the same time providing an inside understanding of the judicial role for those who might not otherwise have considered a judicial career.

Developing a diverse pool

Recommendation 12. The Panel recommends that the Bar Council, the Law Society and ILEX set out a detailed and timetabled programme of change to improve the diversity profile of members of the professions who are suitable for appointment at all levels. They should bring this plan to the Judicial Diversity Taskforce within 12 months of the publication of this report. This plan should include information on how progress will be monitored.

63. Diversity in the judiciary must start with diversity in the legal profession. There will only be the potential for diverse appointments if the legal profession can attract and retain gifted men and women from all backgrounds up to the stage when they are ready and suitable for judicial appointment.

⁹Figures provided by Directorate of Judicial Offices (<http://www.judiciary.gov.uk/>).

64. Men and women enter the legal profession in relatively even numbers, whilst BAME representation has improved, but lower retention rates for women and BAME lawyers means that the pool of well-qualified experienced legal practitioners is not as diverse as it should be. The proportion of female associates made up to partner level in 2009 at the top 30 UK firms stands at 27%. In 2008, just six of the 41 firms that participated in the Black Solicitors Network's (BSN) diversity table had black partners.¹⁰ [Further statistics are attached in Annex vi].

65. Efforts have also been made, including by the Attorney General,¹¹ to ensure that there is fair access to quality work for talented practitioners from all backgrounds and this will be key to ensuring potential candidates for judicial office have the opportunity to shine.

66. The problem to date has been the lack of a planned and concerted programme to move to a more diverse profession at senior levels. For example, large numbers of talented women are lost to the profession when they have a family. There is a real opportunity to develop training to support those who have been absent from the profession and may be interested in returning to the law, although not to practice. The judiciary might be an attractive career option for women, particularly if more flexible ways of working as a judge can be developed. In a number of other jurisdictions e.g. in South Africa, such a Developing Judicial Skills course has been a successful means of encouraging women into the judiciary. Our proposals on Developing Judicial Skills are discussed in more detail later on at paragraphs 80-84.

67. Some consultees expressed concerns that legal aid developments might also adversely affect the diversity of the pool of potential applicants for judicial appointment.

68. A survey by the Bar Council and Family Law Bar Association (FLBA) indicates that dependency on legal aid varies according to gender and ethnicity.¹² 9% of white male family barristers derive more than 80% of their gross income from family legal aid, compared with 14% of BAME men, 17% of white women and 22% of BAME women barristers. According to the survey more than half (52%) of BAME female barristers derive more than 60% of their income from family legal aid, as do 41% of white women barristers.

69. The efficacy of planned reforms to legal aid is not within the Panel's remit, but any disproportionate impact on women and BAME professionals would be a cause for concern, as it would impact upon the eligible pool for judicial office. This needs to be closely monitored.

¹⁰<http://www.thelawyer.com/bme-partners-remain-in-a-minority/135798.article>

¹¹http://www.tsol.gov.uk/Pdfs/Panel%20counsels/Equality_Diversity_Expectations_Statement.pdf

¹²<http://www.flba.co.uk/>

Structured encouragement

Recommendation 13. The legal professions and the judiciary should put in place systems for supporting suitable and talented candidates from under-represented groups to apply for judicial appointment.

Recommendation 14. The Judicial Diversity Taskforce should promote the availability of bursaries¹³ for people from under-represented groups to undertake Developing Judicial Skills courses.

70. Our consultees told us that those from under-represented groups may not apply for judicial office because they lack confidence or they believe that “the judiciary is not for someone like me”.

71. The professions and the judiciary should actively encourage gifted suitable candidates to apply for judicial office and for promotion. There is a big difference between the old days of the “tap on the shoulder” for appointment (which we reject) and a pat on the back of a potential candidate from an under-represented group to encourage them to put in an application. The Canadian experience suggests that this approach has been a crucial element of their progress in appointing women to the bench, and particularly in encouraging them to apply again if they do not succeed first time. We think this needs to become the norm in the UK.

72. This is an area where much activity is underway as set out in Annex xiv, but there is still much more that can be done. This encouragement should take place in a number of ways:

- ▶ direct encouragement to apply from practitioners and judges.
- ▶ outreach events. The Panel applauds the progress made in this area by the JAC since its inception. However, more needs to be done to ensure that outreach is better targeted, co-ordinated, monitored and evaluated so that the right people apply at the right time and are realistic about their chances of being appointed. We were often told that applicants are applying too early. Consideration should be given to tracking the success or otherwise of those attending outreach events/ activities through the selection process as part of assessing what works.
- ▶ making clear that a diverse range of experience is valued within the judiciary.
- ▶ information and support on the application process. The experience of the JAC is that applicants do not always prepare effectively for selection processes. Candidates also need to understand that even highly talented applicants may not succeed first time, due to the large numbers of quality applications the JAC receive.

¹³Bursaries are available through the professions, firms and charitable organisations to support those from under-represented groups in developing their legal career.

Getting the right experience for judicial office

Recommendation 15. The Judiciary should expand the judicial job shadowing scheme.

In particular it should be:

- ▶ targeted at under-represented groups,
- ▶ made part of the judge's job to be shadowed by one person per year,
- ▶ further promoted in those circuits where take up has been poor.

Recommendation 16. Developing Judicial Skills courses approved by the Judicial Studies Board should be developed to help aspiring judicial candidates understand and develop the skills they need for judicial appointment.

73. When individuals decide that a judicial career may be for them, they need further experience in the field.

74. There are currently two main routes for this:

- ▶ Fee-paid service as a part-time judge
- ▶ Judicial shadowing

75. These routes may not be feasible for all. There are restrictions on access to fee paid service for lawyers in the Crown Prosecution Service and government legal service, who tend to be more diverse than lawyers in private practice (details are outlined at Annex vi). Solicitor applicants and members of ILEX may find their applications for fee paid judicial office less likely to be supported by work colleagues than those who are in private practice at the Bar. These issues are explored in more detail below.

76. Drawing from the South African experience, we propose the development of a course or qualification in Developing Judicial Skills to support those who may have less court based experience and so lack the confidence to apply or who are otherwise restricted from undertaking fee paid service. Our thinking is set out in more detail at para. 77–84 below.

Fee paid service

77. While it is not a statutory requirement, there is an expectation that those applying for full-time judicial office will usually have sat in a fee-paid capacity, unless exceptional circumstances apply. This is to ensure that potential applicants for permanent posts are tested as to their aptitude and so that they have the opportunity to explore whether judicial office is right for them. (Our views on non statutory eligibility criteria are explored in more detail in paragraphs – 101 to 107

on the Selection & Recommendation Process.) We have concluded that practical judicial experience is the most effective way to test aptitude and suitability for a judicial role; it is also the only way an individual can tell whether the job is one to which they want to make a long-term commitment.

Judicial work shadowing

78. The Judicial Work Shadowing Scheme provides practitioners considering applying for judicial office with a snap shot of judicial life, as they spend between one and three days work-shadowing a judge. Such experience is particularly important in helping to build the confidence of those who are under-represented in the judiciary. Since the scheme was re-launched in October 2008, there have been over 700 applications.

79. The Panel has been told that take up of such opportunities is patchy in the regions. Meanwhile, the scheme is currently unable to cope with demand in other areas, especially London. The scheme needs to be extended, promoted more consistently and targeted more specifically at under-represented groups who may not have had the exposure to court based work of other potential applicants. It will also need to be evaluated. Details on the DJO's current expansion plans are set out at Annex xiv.

A Developing Judicial Skills Course

80. Many of those interested in a judicial role may not have day to day experience of courts or advocacy. This is a particular issue for employed lawyers and academics. For such potential applicants, training in relation to a judicial role and the skills required for it would be a means of establishing if such a career is right for them, and providing them with the necessary confidence to apply.

81. We recommend that a course in Developing Judicial Skills be developed. Such a course would combine practical sessions focused on the key skills required in being an effective judge along with a period of sitting in with an experienced judge.

82. Such a course would be a means of:

- ▶ providing a means of self assessment for those considering whether or not they have the skills required to be an effective judge.
- ▶ building confidence among those who may have the skills but less court experience, for example employed lawyers who tend to be more diverse than those in private practice. Successful completion of the course would not be a means of obtaining judicial appointment. It would, however, allow potential candidates for judicial office to learn more about the requirements of the role, practise some of the necessary skills and demonstrate the level of their commitment to embarking on a judicial career. Such a course might particularly help those who are returning from career breaks. These include women who might otherwise be lost to the profession, but for whom judicial office may provide an attractive career option, rather than a return to legal practice.

83. Judicial training falls within the statutory responsibility of the Lord Chief Justice. Such a course would therefore need to be accredited, if not run, by the Judicial Studies Board. This would be a significant extension of scope for the Board, but could potentially be self financing. Courses could attract Continuing Professional Development points and might also be attractive for those seeking to improve their court based skills. Such courses could be linked to opportunities for job shadowing. We are aware of a number of institutions that would be interested in working with the Board on such a course.

84. The suggested key learning outcomes for a Developing Judicial Skills course are set out at Annex xiii.

Encouraging solicitors to apply

Recommendation 17. Law firms should regard part time judicial service as positive for their practices and should encourage part time service as proposed by the Solicitors in Judicial Office Working Group. A simplified payment regime should be introduced for solicitor fee paid judges.

85. Solicitors and Legal Executives have not viewed applying for judicial office as the natural extension of a legal career in the same way as barristers. Firms have not always encouraged a judicial career or supported those applying for fee paid judicial office. This has led to a call for the JAC to appoint more judges who have had no part time fee paid experience, to allow solicitors to move directly from their practice to a full-time judicial role. The answer to this problem lies as much with law firms as with the JAC and the criteria for appointment.

86. This is an area where we have achieved significant success in partnership with 5 major solicitors' firms. These firms came together as the Solicitors in Judicial Office Working Group, jointly chaired by Baroness Neuberger and David Cheyne, Senior Partner at Linklaters. This Group supports part-time fee paid service as a way of demonstrating a firm's commitment to public service. It also advocates a proactive campaign of awareness raising among solicitors as to the opportunities available within the judiciary. This represents a major change in approach, and sets a lead for others to follow. The Group's proposals are currently being consulted upon more widely and the Law Society is supportive. A summary of these proposals is set out at Annex viii.

87. Part time solicitors appointed as judges are currently required to be paid as employees. This causes complicated tax arrangements for law firms, increases their overheads and leads to resistance to fee paid judicial service.

Employed lawyers in the public sector

Recommendation 18. Employed lawyers in the public sector with the relevant skills should be encouraged to apply for fee paid roles in jurisdictions where it is less likely that an actual or perceived conflict of interest will arise. They should also be encouraged to consider other opportunities to develop their skills, such as Developing Judicial Skills courses. The Panel looks to professional bodies to play their part in encouraging employers to permit this development.

Recommendation 19. The terms and conditions for all employed lawyers should permit a part time judicial role.

88. Lawyers who are employed in the public sector tend to be more diverse than those in private practice. The Government Legal Service (GLS) employs 42% women and 13% of its staff are from ethnic minorities,¹⁴ while the CPS employs 67% women and 14.9% of its staff are from ethnic minorities.^{15&16}

89. The expectation of part-time fee paid service can be problematic for employed lawyers whose responsibilities may limit the offices for which they might apply.

90. In the past, Serious Fraud Office (SFO), other Government Legal Services lawyers and CPS lawyers were eligible to apply for appointments only in jurisdictions where the State was not habitually a party. In June 2003 the Attorney General and Lord Chancellor announced a revised policy meaning that:

- ▶ CPS and SFO lawyers are eligible to sit in tribunals where the Government is a party.
- ▶ CPS, SFO and GLS lawyers are eligible to sit as Recorders in civil work, except in civil matters that involve their own Department.
- ▶ CPS and SFO lawyers are eligible to sit on criminal matters as Deputy District Judges in cases not involving their own department.

91. Public sector employed lawyers can be selected for any judicial office, but cannot be deployed on cases involving their own department to avoid a conflict of interest. In practice this debars CPS lawyers from sitting as Recorders on the vast majority of criminal cases. The available work will reduce further now that the customs and excise prosecution function is merged with the CPS. Nevertheless the principles set out above allow many ways in which CPS and GLS lawyers can gain part time judicial experience as a precursor to a full time appointment, e.g. in tribunals.

92. Such part time roles should be encouraged and permitted, not only in the GLS and CPS but also by those lawyers employed in Local Authorities, and as legal academics. The professional bodies should work with their employed lawyer groups to promote part time judicial service, including as a magistrate, and take up of the Developing Judicial Skills courses available.

¹⁴Figures received after requests to Government Legal Service

¹⁵Data provided by the CPS, taken from their Key Performance Indicators at 31/03/2009

¹⁶Ibid.

Section 4. The Selection and Recommendation Process for Judicial Appointments

93. We have concluded that non-legislative changes to this area are required to enable the selection process to improve in:

- ▶ recruiting those with potential,
- ▶ valuing a breadth of skills and experience, and
- ▶ meeting the varied skills required within the judiciary.

94. This section addresses:

- ▶ the definition of merit,
- ▶ positive action,
- ▶ eligibility criteria,
- ▶ the Judicial Appointments Commission (JAC)'s processes, and
- ▶ the deployment of successful candidates.

Selection on merit

Recommendation 20. The JAC's merit criterion 3, "an ability to understand and deal fairly", should be replaced by the following:

Social awareness, fairness and public service

- ▶ An awareness and understanding, acquired by relevant experience, of diversity of the communities which the courts serve
- ▶ Scrupulous commitment to fair treatment and an understanding of the differing needs of court users
- ▶ Commitment to public service, preferably demonstrated through experience

95. The Constitutional Reform Act 2005 requires JAC selection decisions to be based solely on merit and good character. Further detail on the role and functioning of the JAC is set out at Annex ix. Merit is not defined in the statute and the JAC has developed its own merit criteria. The broad criteria are: intellectual capacity, personal qualities, an ability to understand and deal fairly, authority and communication skills, and efficiency. They are set out in full at Annex ix. The weighting of these criteria may vary depending on the post advertised.

96. The clear view expressed during consultation was that the current legislative focus on selection solely on merit and good character reflects the correct approach for judicial appointments. Selection on merit through an open and transparent process promotes confidence in the system.

“We must do everything we can to achieve that wider diversity of applicants in order to maximise our chances of picking the very best candidates to be judges.”¹⁷ The Rt. Hon Lord Judge, Lord Chief Justice of England & Wales

“There is no question of compromise in the name of diversity, because there is no need for compromise. Merit and diversity are not incompatible. For us, diversity is the search for merit, wherever it can be found.”¹⁸ Baroness Prashar, Chairman of the Judicial Appointments Commission

97. There is no incompatibility between the intention to increase judicial diversity and selection on merit: talent is not concentrated in people from one particular gender, ethnic or other background. So fishing for talent in wider pools increases the chances of landing more talented people as long as the definition of merit supports the appointment of the most talented applicants from a wide range of backgrounds. We considered the judicial selection criteria of other jurisdictions alongside those of the JAC and concluded that in one area the JAC’s merit criteria could be modified to support and underline with greater clarity the JAC’s commitment to diversity.

98. The current recommendation practice is that the JAC submits to the Lord Chancellor one name per vacancy. The Lord Chancellor can accept, reject or request reconsideration of the recommendation. If the Lord Chancellor does not accept the recommendation, he must explain his reasoning in writing to the JAC. We considered and rejected the possibility of changing this practice to provide the Lord Chancellor with a choice of names. We believe that the current practice supports the independence of the judiciary and of the Judicial Appointments Commission from the Executive, which was a principal objective of the Constitutional Reform Act 2005.

¹⁷LCJ speech at Judicial Diversity Conference: A Judiciary for the 21st Century, 11 March 2009 <http://www.judiciary.gov.uk/docs/speeches/lcj-speech-diversity-conf.pdf>

¹⁸Baroness Prashar speech at LSE, Student Law Society, 22 February 2007 http://www.judicialappointments.gov.uk/static/documents/JAC_Speech_LSE_Student_Law_Society_220207.pdf

Positive action provision in the draft Equality Bill

Recommendation 21. The JAC should make use of the Equality Bill positive action provisions where the merits of candidates are essentially indistinguishable.

99. The Equality Bill currently before Parliament creates a number of protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. We welcome the positive action provisions for recruitment or promotion in the Bill whereby possession of a protected characteristic can tip the balance in favour of that candidate where two or more applicants are essentially indistinguishable.

100. With respect to the judiciary these powers are permissive, and there is no obligation to make recruitment or promotion decisions based on their use. We believe that the provisions should apply to the judiciary and be used by the JAC where, under the merit criteria, two candidates are essentially indistinguishable. In order to meet this recommendation the JAC will have to reconsider how it manages its diversity data and its selection processes at the latter stages.

The use of non-statutory requirements

Recommendation 22. All non-statutory criteria must be justified.

Recommendation 23. Those applying for salaried judicial posts should normally be expected to have previous judicial experience. There should be provision for exceptional cases where candidates have demonstrated the necessary skills in some other significant way.

Recommendation 24. In those rare cases where candidates have no previous judicial experience they must be tested for suitability for appointment in the same way as those applying for fee-paid office.

101. The JAC and others have expressed concern about the use of non-statutory criteria for appointments. These occur most often in relation to recruitment for salaried judicial posts and may include having previous fee-paid experience in a judicial post or having sat as a fee-paid judge for a minimum number of days.

102. As set out in paragraph 88 above, solicitors, women and public sector lawyers, especially members of the Crown Prosecution Service, are currently less likely to have this experience. This has created a concern that the use of non-statutory criteria restricts the eligible pool, limiting the possibility of candidates from non-traditional backgrounds being appointed.

103. We considered these concerns in light of the purpose of the requirement for fee paid service and in relation to the special features of salaried judicial appointment which include security of tenure and a prohibition on return to practice.

104. Requiring some fee paid service before a salaried appointment meets both public and private interests. First, in the public interest, it provides evidence that candidates for permanent salaried appointment have demonstrated the skills required for a post. Such posts, in keeping with the fundamental principle of judicial independence, have no probationary period and are secure to retirement. Second, candidates for salaried judicial appointment who have had fee-paid experience will better understand the demands of the judicial role and therefore be better able to make an informed personal decision about leaving practice for the bench.

105. Serving judges we consulted were virtually unanimous in expressing the view that potential candidates for judicial office do not know whether they will be able to cope with the responsibility of making judicial decisions until they have done so.

106. There should be a continued expectation that candidates will usually have had some form of judicial experience, preferably fee paid. Such service acts as a necessary probationary period.

107. There are a number of other factors that will ensure non-statutory eligibility criteria do not work against a more diverse judiciary:

- ▶ for some posts there will be a business need for applicants to be able to demonstrate a certain level of specific experience and skills, but such **non-statutory criteria must be justified** and where a minimum number of sitting days is specified, the figure must be defensible.
- ▶ **judicial experience need not be gained in the jurisdiction for which the candidate is applying** – this is particularly important for candidates who may be excluded from certain roles, e.g. members of the government legal service may not sit on business areas on which their department is involved.
- ▶ **in exceptional cases it may be possible for candidates to demonstrate the necessary skills and experience in other ways.** Successful completion of a course in Developing Judicial Skills, including a period of job shadowing and evidence of commitment to public service, could demonstrate evidence of potential for appointment. Specialised post-appointment training and staged induction programmes would reduce risk where exceptional candidates have not sat before.
- ▶ **those applying for salaried office who have no previous judicial experience must be tested in the same way as those applying for fee-paid office.** At present the selection process for fee paid judicial posts includes a role play exercise to test a candidate in the sort of situations they may encounter as a judge. The process for salaried appointments does not include this test on the assumption that candidates will have been tested when they apply for fee paid appointments. This could mean that candidates without judicial experience are not tested in what is seen as a key element of the selection process.

The selection process

108. The JAC selection process involves:

- ▶ qualifying tests
- ▶ a role play exercise (primarily used in vacancies for fee paid appointments)
- ▶ interview
- ▶ references selected both by the candidate and statutory consultees (i.e. the Judiciary)

109. The JAC subject their selection processes to diversity proofing and monitor the process at each stage.

The test and role play

Recommendation 25. The qualifying test should be put online.

Recommendation 26. The qualifying test should be reviewed to ensure it is acting as an effective sift process.

110. We have heard that barristers tend to be critical of the test element of the selection process, while some solicitors have been uncomfortable with the role play. We believe both elements are necessary parts of the process.

111. An anonymous test is a transparent means of undertaking a first sift where there are very large numbers of applicants. The key issue is getting the right test. Final decisions on recommendations for appointment are made following attendance at the JAC Assessment Centre and based on evidence from application forms, role plays (where used), interviews, and references.

112. Concern has been expressed that the credibility of the test is undermined when capable serving judges fail to progress through the first stage of a competition for appointment to a different level or jurisdiction. It was suggested that formal appraisal of a judge's performance could be used instead. We do not think this approach would necessarily advance diversity. It is important that all candidates are considered equally.

113. Solicitors and members of the Bar feel that confidentiality is impossible when tests are taken in large groups and that being seen to be unsuccessful may be damaging. Barristers are concerned about the impact on their reputation and practice and solicitors (as mentioned in paragraph 134) may feel unsupported in their judicial ambitions within their practice and fear the repercussions of an unsuccessful application.

114. One solution to this would be the introduction of an online test. This would allow:

- ▶ potential applicants to complete the first stage of the process more confidentially.
- ▶ feedback to unsuccessful candidates on their test performance to be given automatically (e.g. in which quartile their test results fall). This is not currently undertaken (see paragraphs 115 to 117 below).
- ▶ the development of more effective self-assessment, so that candidates apply only when they are ready.

Feedback to unsuccessful candidates

Recommendation 27. All candidates for judicial appointment should have access to feedback, including on their performance in the qualifying test.

Recommendation 28. The JAC should capture its statistical data in a way that would allow the monitoring of the number of people who chose to re-apply following a previous unsuccessful application.

115. The number of applications for some JAC selection exercises is enormous and is growing. Even strong candidates may well not be selected and this inevitably means a large number of disappointed applicants, who will need to decide whether, and when, to re-apply. Faced with this volume, the JAC has found it impossible to provide feedback to applicants at the short-listing stage.

116. Feedback can be very important for unsuccessful applicants, particularly those from under-represented groups who have responded to the JAC's outreach events encouraging them to apply, or who have been persuaded to apply by their peers.

117. We have been told by groups representing women and practitioners from BAME backgrounds that unsuccessful applicants with significant judicial potential may currently be deterred from re-applying.¹⁹ This is supported by research conducted by the JAC, which has suggested that 57% of those who apply for judicial office would not apply again. Clear feedback is likely to ensure that a candidate who has just missed out applies again.

¹⁹Judicial Appointments Commission, Barriers to Application for Judicial Appointment Research, June 2009 (http://www.judicialappointments.gov.uk/static/documents/Barriers_to_Application_Research_report_1.pdf).

References

Recommendation 29. Candidates should not be asked for references until after they have been notified that they have completed the qualifying test successfully.

Recommendation 30. Clear guidance should be given to candidates and referees that references must be evidence based and relate to the skills being tested.

118. Under the current system, applicants are required to identify referees at the earliest stage in the application process, even though we are assured by the JAC that referees need not be contacted until after a successful test. This requirement may deter some applicants from applying. It also puts a large number of applicants in the uncomfortable position of having to tell their referees that they were not successful in proceeding to the short-listing stage. As mentioned above, this is a particular deterrent for solicitors.

119. The quality of references remains variable. Determined measures need to be taken to improve the quality of references so that decisions are made on the basis of evidence of the candidate's skills and suitability for judicial office. Where applicants have previous judicial experience, they should be obliged to provide referees who can comment on their effectiveness in that role.

120. The Constitutional Reform Act 2005 placed a statutory requirement on the JAC to consult the senior judiciary on candidates likely to be recommended for appointment, although the ultimate decision rests with the JAC. There were two criticisms of this approach:

- ▶ in large scale exercises for more junior appointments, many candidates will be unknown to the senior judiciary, so the process is of no benefit to the JAC.
- ▶ there is a perceived advantage for those candidates who are known to the senior judiciary which may therefore be seen to disadvantage those who have taken less common career paths. This is linked to the perception that access to the judiciary is linked to those who are already "in the club".

121. We do not advocate the abolition of the statutory consultation process. The JAC should have access to information that may be relevant to their deliberations. This process takes place after the JAC has made their provisional decision on which candidates to recommend for appointment. In this way all candidates are considered on their merits to this point, whether or not they are known to the judiciary. The statutory process therefore provides a safeguard in case the senior judiciary has material information (e.g. an individual has been an ineffective fee paid judge or there are conduct issues), that the JAC should consider before finalising their recommendation. The role of the statutory consultation process needs to be made much clearer to applicants (see our recommendations on mythbusting.)

The JAC's interviewing panels

Recommendation 31. The JAC must assemble diverse selection panels. There should always be a gender and, wherever possible, an ethnic mix.

Recommendation 32. Panel chairs and members must receive regular equality and diversity training that addresses how to identify and value properly transferable skills and also to ensure that they are aware of any potential issues regarding their unconscious bias.

Recommendation 33. All JAC selection panel chairs and members should be regularly appraised and membership periodically refreshed. Poorly performing panel members should be removed.

Recommendation 34. There should be a stable pool of high quality, appropriately trained, judges available, who have the clear responsibility for sitting on selection panels. This pool should be regularly refreshed.

122. The success of any recruitment exercise depends heavily on the composition and quality of selection panels. It is important that JAC selection panels demonstrate the highest levels of professionalism and are themselves diverse. They should be skilful in identifying ability and potential among a diverse pool of candidates and be able to value properly transferable but unusual skills-sets and career histories. Panel members should understand the demands of the judicial role and variety of skills required.

123. The selection, training and appraisal of members of selection panels should be directed toward achieving these objectives.

124. It is extremely important that the judicial members of selection panels are appropriately trained. The choice of judges to join selection panels is largely a matter of chance and availability. Few are used more than once because of the pressure of sitting requirements and it has not been the practice for judicial members to receive thorough or timely training for selection processes. This must be given higher priority.

Appointing candidates with potential

Recommendation 35. Fee paid judges should not ordinarily be appointed for more than 3 renewable terms.

Recommendation 36. There should be a staged period of induction where the appointed person has little or no experience of sitting judicially or of the relevant jurisdiction.

This should include:

A. Additional training.

B. More intensive mentoring.

C. Close oversight of the cases that person is allocated to try.

Initial placement should be in a suitably large court centre for this to be done.

125. Some of the unique features of judicial appointments are that post holders have no probation period, mostly no formal performance review (although we propose that this should change – see paragraphs 150-151), and there are limited circumstances in which removal is possible. These factors are likely to make selectors risk-averse. They may feel more comfortable with candidates who offer a traditional career trajectory, typical experience and skills-set and who are already very familiar with the relevant field or jurisdiction.

126. We have considered what factors might help to reduce risk aversion and provide selectors with the confidence to appoint candidates who clearly have talent and potential but who are not yet fully familiar with a particular jurisdiction or role.

127. We considered and rejected the possibility of establishing some sort of probationary period. This would be difficult to achieve in a way that is consistent with judicial independence. Such a process would need to be run by the judiciary and would require intensive supervision if a decision to recommend removal were to be properly evidence based, particularly given the current convention that there is no return to practice after judicial service.

128. The constitutional difficulty in implementing a probation period is one of the main reasons that we favour retention of an expectation of prior judicial experience in a fee paid capacity. This provides exactly the testing ground that both potential applicants and the judicial system requires. But to make this work properly, appraisal and mentoring for the judiciary will need to be of high quality, with diversity at the heart of the design of the systems, and consistently applied.

129. To ensure that such fee paid opportunities are made more widely available, and that the pool of fee paid judiciary is regularly refreshed, we recommend that fee paid judges should not be able to stay in post until the statutory retirement

age, but should ordinarily be appointable for a maximum of three renewable terms. These terms will be automatically renewable, as they are now, unless there is an issue of conduct or capacity, or other issues that emerge in the appraisal process. Such issues are for the judiciary to determine.

130. Where talented appointees have demonstrated judicial potential but are unfamiliar with the relevant jurisdiction or have had little or no experience of sitting in a judicial capacity we believe that a strengthened induction programme would provide the training and support necessary.

Deployment and streamlining the process

Recommendation 37. The Judicial Diversity Taskforce should lead an immediate review of the current forecasting mechanism.

Recommendation 38. Judges should be required to give notice of their anticipated retirement date.

Recommendation 39. The JAC should operate smaller, more regular selection exercises to aid career planning, with an annual competition for the main tiers of the judiciary wherever possible.

Recommendation 40. The JAC should review the moderation process to ensure that the methods used during large selection exercises can identify effectively and value properly the diversity of talent available.

131. Candidates and judges, particularly at senior levels, are concerned about the length of selection processes. These concerns apply generally, but there are particular concerns about appointments made under section 94 of the Constitutional Reform Act.

132. The JAC selects candidates for immediate appointment under section 87 of the Constitutional Reform Act, and may select candidates for future vacancies under section 94. Applicants selected to go on a section 94 list for future deployment may remain on the list until an appropriate vacancy arises, or the list “expires”.

133. Section 94 exercises are seen as beneficial when the exact number of vacancies is unknown, and they can provide a swift route for filling unforeseen vacancies. However, we are aware that there are concerns from various quarters, including the Law Society and from the JAC, regarding the uncertainty for successful candidates awaiting deployment following section 94 recruitment exercises.

134. These periods of waiting have particular implications for solicitors, who are faced with an indefinite period of uncertainty when they are unsure whether to wind down their practices, and hand over clients, or make arrangements to accommodate sitting days.

135. This uncertainty is exacerbated by candidates not knowing when competitions for particular vacancies will run. This can mean candidates living in one part of the country feeling they have to apply for vacancies at that level in another region or applying before they are ready. Given the number of candidates who may not reapply if they are unsuccessful, this could mean talented individuals being lost.

136. Consultees among the judiciary, the JAC, HMCS and the Tribunal Service all expressed dissatisfaction with the current process for forecasting and planning for competitions to fill expected vacancies. In particular it was felt that smaller, more regular competitions would aid career planning. This would reduce the need for people to make applications for vacancies far from home or when they were not yet ready. The planning issue could also be assisted by more certainty over when judges planned to retire.

137. Additionally, when the JAC is running large-scale selection exercises, several selection panels will be working at the same time. This requires a moderation process to ensure consistency between panels, which can be very complex. It is important that the conduct of moderation supports the objective of effectively identifying judicial potential and valuing talent and experience from diverse backgrounds.

Appointment to the Supreme Court and Court of Appeal

Recommendation 41. The selection process for vacancies in the most senior courts should be open and transparent, with decisions made on an evidence base provided by the applicant and their referees in response to published criteria. No judge should be directly involved in the selection of his/her successor and there should always be a gender and, wherever possible, an ethnic mix on the selection panel.

Recommendation 42. The selection process for Court of Appeal appointments should be reviewed, with the implementation of a five person panel so there is no need for a casting vote provision.

Recommendation 43. The selection process for the Supreme Court of the United Kingdom should be reviewed to reduce the number of serving Justices involved and to ensure there is always a gender and, wherever possible, an ethnic mix on the selection panel. This review process should include consultation with the Lord Chief Justices of England & Wales and Northern Ireland and the Lord President of the Court of Session.

²⁰JSB Prospectus April 2010 – March 2011 Courts Judiciary (http://www.jsboard.co.uk/downloads/judicial_prospectus_web_240809.pdf)

138. Appointments at the highest level of the court system are of particular importance in signalling that a judicial career is truly open to all. It is therefore essential that processes are not only fair but are seen to be open and fair.

139. The current processes for both the Court of Appeal and the Supreme Court require the significant involvement of the serving judiciary. Given the concern expressed to the Panel that selection panels may subconsciously recruit in their own image, this involvement runs the risk that the process is perceived, rightly or wrongly, as unfair. In particular we believe it is unacceptable for a judge to be directly involved in the selection of his or her successor.

140. In Court of Appeal appointments the Lord Chief Justice has the casting vote if a selection panel comes to a tied result. Although the casting vote provision has never been used, we doubt this is a sustainable position and think an alternative approach with a five person panel should be considered.

141. In the Supreme Court, two members of the Court are involved in the selection process. Again we think this runs the risk of appointments being perceived to have been made on the basis of whether candidates will fit in rather than on whether they best meet the merit criteria. For the Supreme Court we think this requires the following change:

- ▶ having only one of the serving Supreme Court Justices on the panel for Supreme Court appointments
- ▶ a second judicial representative coming from another jurisdiction (this could alternate between each part of the UK), and
- ▶ ensuring the selection commission is diverse. It is important in this regard that nominations from the judicial appointments boards/commissions from each part of the UK (who make up the selection commissions for Supreme Court Justices) support this objective – we do not think it is necessary that the Chair sits on each exercise.

Section 5. Developing a Judicial Career

142. This section looks at how those who enter the judiciary can develop their career and how talent can best be supported to reach the senior levels of the judiciary. It addresses:

- ▶ our concept of a judicial career,
- ▶ induction and mentoring,
- ▶ appraisal,
- ▶ career advancement,
- ▶ judicial training – supporting judicial office holders, and
- ▶ moving from a Judicial Studies Board to Judicial College.

A judicial career

Recommendation 44. Clear career paths should be identified and published so that people understand the range of opportunities available within the judiciary. Such career paths should look across the courts and tribunals.

143. The concept of a judicial career is key to achieving progress on a more diverse judiciary.

144. We think that existing judges and those aspiring to a judicial role should be encouraged to think in terms of a judicial career, particularly given that those taking up judicial office are expected to make a long-term commitment. The importance of identifying and encouraging talent does not stop when an individual enters the judiciary. Swifter progress to a more diverse judiciary at more senior levels will necessitate more transparency in the opportunities for career progression.

145. This means identifying clearer career paths so that those considering joining the judiciary understand their options and know how they can develop the skills and experience required to progress from one section of the judiciary to another. These career paths should also provide those who are looking at lengthy judicial service with opportunities to enhance their skills and re-energise their career. It is important that such career paths should be available not just within any one particular arm of the judiciary but also include opportunities to move across the judiciary.

Induction and mentoring

Recommendation 45. There should be comprehensive mentoring for all new entrants to the judiciary. This should also be available to established judges who want it.

146. The Judicial Studies Board provides a detailed induction programme for new entrants to the judiciary, which includes a period of supervised sittings. At present, this is predicated on the assumption that most new entrants will first serve as fee paid judges. Any candidates who enter directly into the permanent salaried judiciary will therefore require a tailored induction programme that adds both to cost and the time between appointment and the judge being able to sit unsupervised.

147. Some judges new to fee-paid or salaried judicial office may also have access to a mentor to support them through their early period in office, although this is not as consistent as we would wish. One of the factors expressed as a potential barrier to taking up appointment by some of those representing women and BAME candidates in particular, was not knowing whether there would be effective support available to help them adjust to their judicial role. This is also an issue for potential applicants with disabilities who will want to be reassured that reasonable adjustments can be made to accommodate their needs. Some new judges may feel they have to cope alone, given the widespread pressure to get the job done. An established mentoring scheme available for all would make asking for help and support, and receiving it, more “normal”.

Appraisal

Recommendation 46. An appraisal system owned and run by the judiciary should be implemented to cover all levels within the judiciary.

148. This support and opportunity to develop a career needs to continue beyond this induction period. Judicially led appraisal is key to enabling talented judges from diverse backgrounds to progress in their careers more effectively. Appraisal needs to address diversity specifically so that those with unusual career paths can access the development opportunities and advice they need to progress.

149. Magistrates, Deputy District Judges in the County Courts and most judges in the Tribunals Service participate in judicially led appraisal. There are no formal appraisal arrangements for the permanent salaried judiciary or recorders in the Crown and County courts. There is currently no formal mechanism for judges in these areas with aspirations to progress to a more senior level to get the support and guidance they need to develop. This is likely to be a particular issue for those who have entered the judiciary through an atypical career path, who may not have the network of contacts available to others.

150. Appraisal:

- ▶ supports new judges, enabling them to build their confidence – especially important for those less familiar with the court based environment and for women and other under-represented groups who are less likely to put themselves forward,
- ▶ helps judges identify the skills they need to develop their career, and
- ▶ enables talent to be identified and encouraged, and people to be encouraged to apply for more senior roles where they have the necessary skills.

151. We recognise that such a recommendation is being made in a climate of resource pressures. However, in our view, judicial appraisal should also bring benefits for the justice system more broadly in:

- ▶ identifying how judges can improve their capability
- ▶ providing a mechanism to address training needs and poor performance

Career advancement

Recommendation 47. Selection processes for opportunities for career advancement should be open and transparent and based on assessment of suitability against published criteria.

152. For those in the judiciary who are interested not just in an initial appointment but in further advancement, there is a range of options available that might help them to develop their career. An individual might seek:

- ▶ promotion – this will usually be by open competition;
- ▶ deployment under section 9(1) of the Senior Courts Act 1981. These provisions allow the Lord Chief Justice (with the concurrence of the JAC) to deploy judges to deal with High Court matters or criminal matters in the Court of Appeal. The JAC's concurrence requires them to be satisfied that a proper process is in place. (We do not deal with deployments under section 9(4) here as, while not ideal, we recognise that an emergency procedure is needed in exceptional circumstances to deal with one off cases.)
- ▶ appointment to a particular representative/leadership role; and /or
- ▶ the award of a "ticket" to deal with specific types of work such as murder, attempted murder or serious sex offences. These authorisations are awarded by the Senior Presiding Judge, taking into account the view of Presiding Judges, and are invariably run on an "expressions of interest" basis. Judges cannot sit on these areas until they have been appropriately trained.

Judicial training – supporting judicial office holders

Recommendation 48. The Judicial Studies Board should evolve into a Judicial College.

153. Ensuring a diverse judiciary means ensuring that those with the potential and appetite for further advancement are identified and encouraged and supported to go as far as they can.

154. The Lord Chief Justice is responsible for the training of the judiciary in England and Wales and this responsibility is discharged through the Judicial Studies Board (JSB).

155. The Judicial Studies Board (JSB) has recently undertaken a complete review of its programme of education, and has launched its Judicial Training Strategy (JTS).²¹ The review reflects the results of a substantial consultation exercise involving judges in all tiers of court. In the course of its review, the JSB examined and learned from differing methods of judicial education in other jurisdictions, notably Canada.

156. The main conclusion of the review is that, so far as practicable, the JSB should tailor its education to the needs of the individual judge: one size does not fit all. The review also reveals a common request for training in practical skills rather than substantive law.

157. The provision of high quality tailored training, particularly in the practical skills of judging and continuing education is likely to encourage lawyers from under-represented groups to apply for judicial appointment as it will help to reassure those who lack the confidence to apply that they will receive tailored training and support once appointed. The type of work carried out by the JSB is therefore capable of being seen not only in its primary role of serving and supporting the existing judiciary but also as an important element in encouraging and facilitating the establishment of a more diverse judiciary.

158. Furthermore, high quality education and mentoring will help to ensure that judges from diverse backgrounds have the training and development opportunities that enable them to progress to the more senior levels of the judiciary.

159. Traditionally, the JSB has delivered continuing education seminars residentially. This approach works very well, but the JSB recognises that there are some judges whose circumstances make it difficult for them to attend residential seminars. Therefore, for the first time, the JSB is providing a small number of seminars on a non-residential basis, a development we welcome. These are contained in the new prospectus and, if they meet a need and are successful, the number of non-residential seminars will increase.

²¹JSB Prospectus April 2010 – March 2011 Courts Judiciary (http://www.jsboard.co.uk/downloads/judicial_prospectus_web_240809.pdf)

From JSB to Judicial College

160. The JSB's role is currently rightly focused on supporting the salaried judiciary in terms of their primary responsibilities in court. It could have a role in supporting wider judicial career development or supporting potential applicants for the judiciary, by helping them develop judicial skills. This would see the evolution of the JSB into a Judicial College, a role that the JSB has already started to shape. Such a college could, under the direction of the Lord Chief Justice:

- ▶ work with the Judicial Appointments Commission on raising understanding of the work of the judiciary at an early stage in an individual's career – so that a judicial career is seen as a realistic opportunity from early on.
- ▶ accredit courses and schemes enabling individuals to develop the skills and experience they need to apply for judicial office. These schemes could be targeted e.g. towards underrepresented groups, or those returning from career breaks. Such courses might be more generally applicable to those seeking to improve their presentation in court or case preparation and should be capable of earning Continuing Professional Development points. This could lead to such courses being self financing, enabling the College to offset the costs of expansion.
- ▶ support appraisal and mentoring, and respond to the educational and training and support needs identified in a universal appraisal system.
- ▶ support judges in developing the skills they need to develop their career, e.g. the leadership/management courses the JSB is already starting to develop.

161. The essential role the Judicial Studies Board plays in training serving Judges should not be compromised. A Judicial College could expand more quickly if partnerships with other academic institutions are pursued, although the JSB would need to approve/accredit such activities.

162. Wherever possible, skills based training should be undertaken across the courts and tribunals based judiciary, rather than separately. This will support the development of career paths across the judiciary and demonstrate that a judicial career is more than a possibility it is something to be desired and aspired to.

Section 6. Judicial Culture, Terms and Conditions

163. This section addresses whether there is something about the “judicial culture”, or perceptions of it, that could act as a disincentive to candidates from diverse backgrounds applying for judicial office. It considers:

- ▶ The myths that surround the judicial role, and
- ▶ Judicial terms and conditions, and
- ▶ Return to practice.

Myths around the judicial role

Recommendation 49. A pro-active and coherent campaign of mythbusting should be undertaken, led by the Judicial Diversity Taskforce. It should be persistent, targeted on talent and started early.

It should:

- ▶ involve those judges from under-represented groups and/or judges who have taken unusual career paths
- ▶ ensure outreach work is linked closely to the regions to mitigate against a London centric view.

Recommendation 50. All official material should be reviewed to ensure it does not assume a particular previous experience or background.

164. One of the most striking factors to emerge from our consultation was the mismatch between how some groups perceive the judicial culture and the reality that applies in many areas. As identified earlier in this report (see Section 3), some talented individuals think that the judiciary is not for them, on the basis of some well established misconceptions. These include:

- ▶ You need to be part of the “club”
- ▶ Isolation
- ▶ A requirement for High Court judges to go out on circuit irrespective of an individual’s personal circumstances
- ▶ A lack of flexible working

165. Reality proved somewhat different.

You need to be part of the “club”

166. This was linked to a point made earlier in this report that those from underrepresented groups did not see the judiciary as for them. Given the current statistical profile of the judiciary and the virtual invisibility of Lesbian, Gay, Bisexual and Transgender (LGBT) judges and those with disabilities, we can understand this perception. But we found little evidence of this “requirement” in practice. Open recruitment processes at the JAC, an active commitment to promoting diversity among the senior judiciary, clear evidence that the judicial culture is changing, all add up to a different picture. But this needs to be more actively explained and promoted if those from under-represented groups are to hear the message.

167. Some simple changes could help in this regard. In particular the language used can seem to assume a certain previous experience. References in official material to contacting a deputy judge’s “clerk” on administrative matters immediately suggests that those who are not barristers are atypical, and not part of “the club.”

Isolation

168. Those from under-represented groups have made it clear that building confidence is key to encouraging applications. Concern was expressed that potential entrants to the judiciary might be particularly discouraged from applying because of the perceived absence of a support network.

169. The majority of judges we spoke to felt they had support networks, but this was not consistent. Some concern was expressed about a perceived lack of a clear source of advice and guidance. There was:

- ▶ mentoring for most new entrants, although this was not yet as consistent as might be hoped,
- ▶ a well used email and intranet system, and
- ▶ for many, ample opportunity to discuss difficult issues and share experiences with colleagues. Where there were no regular meeting facilities, judges themselves sometimes created them; e.g. some have established regular networking sessions.

170. However, this was not experienced universally. Those based in smaller court centres faced particular difficulties. Where there is a problem, this could be resolved by:

- ▶ direct approaches from existing judges to new entrants, making clear they are able to ask for support and will receive it
- ▶ more effective induction, mentoring and a system of appraisal (see section 5 on career development)
- ▶ clear and effective judicial HR support services to address issues such as reasonable adjustments (see later in this section)

The circuit system and the High Court

171. The circuit system is currently a fundamental part of the organisation of the courts, with High Court judges being based in London. We do not believe that the location of High Court posts in London is of itself a diversity issue as senior posts will often be based in a particular location that requires individuals to make choices as to whether a move is right for them given their personal circumstances.

172. However, we expected that the system whereby some High Court judges normally go out on circuit for regular periods each year would be seen as a disincentive to those with caring responsibilities. Professor Hazel Genn's study of the factors that influence a decision to apply for the High Court,²² found that for some potential candidates for the High Court the existence of the circuit system was a non-negotiable barrier to appointment.

173. What we found in practice was a system that was much more flexible than we had expected, particularly in how personal circumstances could be taken into account, both for those based in the regions and in London. Many of the judges we spoke to welcomed the opportunity to go out on circuit in terms of the wider perspective they gained of the operation of the justice system beyond London. The devolution of the Administrative Court should mean that even more could be done to bring about a more flexible approach in the future. Additionally this flexibility should be made much clearer to potential applicants to the High Court as part of our recommendations on mythbusting.

Flexible working

Recommendation 51. It should be assumed that all posts are capable of being delivered through some form of flexible working arrangement, with exceptions needing to be justified.

174. By flexible working we do not mean only part-time working (that is to say, working a reduced number of hours per week), but options such as term time only working or working for blocks of time, such as three or six months at a time.

175. There are many examples of flexible working in the judiciary that demonstrate how different working patterns can be accommodated. The only area in which there is no flexible working at present is in the High Court and above.

176. As in any profession, some posts will need to be filled by those working full-time. However, the current restrictions on flexible working in the most senior courts should be tested. More flexible working could require an increase in the judicial establishment in terms of actual numbers, if not full time equivalents, which is set by statute.

²²<http://www.judiciary.gov.uk/docs/report-sen-jud-appt.pdf>

Judicial terms and conditions

Recommendation 52. Judicial terms and conditions should reflect the needs of a modern diverse judiciary.

These should:

- ▶ be clear on who is accountable for what, and
- ▶ be consistent with judicial independence.

High quality advice and guidance on HR matters should be provided to the judiciary as a whole

177. A key way of embedding diversity is to ensure that judicial terms and conditions of appointment reflect the needs of a modern diverse organisation. This can include clear policies and procedures on:

- ▶ flexible working,
- ▶ reasonable adjustments to accommodate the needs of those with disabilities, and
- ▶ access to support, advice and guidance.

Return to practice

Recommendation 53. There should be no change to the current policy on return to practice but there should be more information made available to individuals about what the restriction on return to practice means.

178. We were asked to explore whether the current prohibition on full-time salaried judges returning to practice as a solicitor or barrister, operated as a barrier to increased diversity.

179. Under the terms and conditions of appointment to judicial office, candidates accept appointment on the understanding that it is “intended for the remainder of a person’s professional life” and that “following termination of their appointment they will not return to private practice as a barrister or a solicitor”.²³ Former judges are allowed to provide services as an independent arbitrator or mediator or consultant and may receive remuneration for lectures, talks or articles.

²³Section 75 Courts and Legal Services Act 1990 http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900041_en_1

180. In 2006, a consultation paper was issued by the Lord Chancellor and the then Department for Constitutional Affairs, as it was believed that this policy could be a barrier to encouraging those in the talented underrepresented pool applying for judicial office. The paper was distributed to the legal profession. The responses were collated and released in November 2007. The Bar Council was against and the Law Society in support of change.

181. The Lord Chancellor was not satisfied that "the responses to the consultation provide sufficient evidence to support assertions that removing the prohibition to return to practice will increase the diversity of the judiciary to any significant degree."²⁴

182. We agree with the Lord Chancellor's conclusion. We have not identified any substantive evidence that such a change would increase diversity. The issue of whether a judicial career would suit an individual can already be tested through fee paid service and the options on courses in Developing Judicial Skills that we have proposed earlier.

183. Those applying for judicial office should, however, be aware that judicial office is a long-term commitment and of the options open to them if they decided to leave their judicial career in the future. This is linked to the work that should be done on setting out clearer career paths, so that those with a more diverse range of skills and backgrounds can see how their talents can advance more effectively within the judiciary and beyond.

²⁴<http://www.justice.gov.uk/consultations/docs/cp1506.pdf>

Section 7. Conclusion

184. These proposals are designed as a package. The full potential of each recommendation only comes if all of them are implemented as a coherent programme of reform that encourages diversity throughout a legal and judicial career.

185. Refocusing the Judicial Diversity Taskforce is the key step to get this started. That will give the joined up leadership and drive this ambitious programme requires.

186. We recognise that not everything can be done at once. One of the early priorities of the Taskforce will therefore be to consider how to sequence these recommendations, given the interdependencies identified here.

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i. Terms of reference

The Advisory Panel on Judicial Diversity was established in April 2009

The terms of reference for the Advisory Panel were

- ▶ To identify the barriers to progress on judicial diversity and to make recommendations to the Lord Chancellor on how to make speedier and sustained progress to a more diverse judiciary at every level and in all courts in England & Wales.

In considering this question the panel would:

- ▶ examine the nature of the problem.
- ▶ consider research undertaken on the UK system as well as considering international comparators.
- ▶ draw on the lessons learned from current initiatives, including the JAC Judicial Diversity Forum and the follow up work from the Lord Chief Justice's conference on "A Judiciary for the 21st century".
- ▶ draw up a list of practical measures that could be taken, identifying those that could happen quickly and those that would require legislation.

ii. Biographies of Panel Members



Baroness Julia Neuberger DBE:

Baroness Julia Neuberger was Britain's second female rabbi and the first to lead a synagogue on her own. She became a rabbi in 1977, and served the South London Liberal Synagogue for twelve years, before going to the King's Fund Institute as a Visiting Fellow. She was Chair of Camden & Islington Community Health Services Trust 1993-97 until she became Chief Executive of the King's Fund until 2004. She served as a Civil Service Commissioner 2001-02 and was a member of the Committee on Standards in Public Life 2001-04. She is a former trustee of the Runnymede Trust, and she also broadcasts regularly.

She was appointed a DBE in the New Year's Honours List of 2004, and in June 2004 she was created life peer. On 29 June 2007 she was appointed the Prime Minister's champion for volunteering, a post she relinquished in June 2009.



Dr Nicola Brewer CMG:

Nicola Brewer CMG is a British diplomat, currently serving as the British High Commissioner to South Africa.

Dr Brewer served as the first Chief Executive of the newly founded Equality and Human Rights Commission (EHRC), from 5 March 2007 to April 2009. Prior to joining the EHRC, Nicola was Director General for Europe at the Foreign and Commonwealth Office (FCO) and was an executive member of the FCO Management Board. Before that, she was Director General for regional programmes at the Department for International Development (DfID), supervising the UK's overseas bilateral aid programmes, and was also a DfID board member. She was awarded the CMG in 2002.



Professor Dame Hazel Genn DBE:

Hazel Genn is Dean of Laws, Professor of Socio-Legal Studies and co-director of the Centre for Empirical Legal Studies in the Faculty of Laws at University College London. In January 2006, she was appointed an inaugural Commissioner of the new Judicial Appointments Commission and was a member of the Committee on Standards in Public Life from 2003-07.

She worked with the Judicial Studies Board for 12 years, serving as a member of the main board and the Tribunals Committee, and contributing to the design and delivery of training for the judiciary at all levels. She served for eight years as Deputy Chair and then Chair of the Economic and Social Research Council's Research Grants Board.



Lord Justice John Goldring:

Lord Justice Goldring was recently been appointed Senior Presiding Judge in January 2010, having previously been the Deputy Senior Presiding since October. He was called to the Bar (Lincoln's Inn) in 1969. He took Silk in 1987, and was a Recorder from 1987-99. He was a Deputy Senior Judge for the Sovereign Base Areas, Cyprus from 1991-99. Lord Justice Goldring served as a Deputy High Court Judge (1996-99) and a Judge of the Courts of Appeal of Jersey and Guernsey (1998-99). In 1999 he was appointed as High Court Judge, Queen's Bench Division, and served as Presiding Judge for the Midland Circuit 2002-05. He was appointed a Commissioner with the Judicial Appointments Commission in 2006, leaving in 2008 when he was appointed as a Lord Justice of Appeal.



Andrew Holroyd CBE:

Andrew Holroyd became a solicitor in 1974 and has worked as partner at Jackson & Canter in Liverpool since 1977, specialising in immigration law. He has been a Senior Partner since 1994 and managing partner from 2008. He was appointed OBE in 2003 for services to publicly funded legal work in Liverpool and was made a CBE in the 2009 New Year's Honours list. He was President of the Law Society 2007-08.



Winston Hunter QC:

Winston Hunter QC was called to the Bar (Lincoln's Inn) in 1985 and is a civil practitioner. He was appointed Queen's Counsel and assistant recorder in 2000, a recorder in 2001, and a Deputy High Court Judge in 2008. He was a founder member of the Northern Circuit Commercial Bar Association, member of a number of Bar Associations.

iii. Timeline of Judicial Initiatives in England & Wales²⁵

1986

- ▶ Judicial Appointments Group issues **first published guidelines for appointment:** Judicial Appointments: The Lord Chancellor's Practices and Procedures. Appointment criteria described as: "personality, integrity, personal ability, experience, standing and capacity". Guidelines also state that: "The Lord Chancellor's policy is to appoint to every judicial post the candidate who appears to him to be the best qualified to fill it and perform its duties, regardless of party, sex, religion or ethnic origin."
- ▶ Bar Council and Law Society set up Committee on the Future of the Legal Profession (Marre Committee): **first reappraisal of legal profession since 1979** Benson Commission.

1987

- ▶ Lord Hailsham retires as Lord Chancellor (LC). Lord Mackay appointed LC.
- ▶ Mackay announces "**Kilmuir rules**" **abandoned:** guidelines from 1950s requiring public silence from judges.

1988

- ▶ **Marre Committee issues report** A Time for Change. Committee divided over recommendations: solicitor representatives and most independent members recommend extension of solicitors' rights of audience to Crown Court but Bar representatives dissent.

1989

- ▶ Green Paper The Work and Organisation of the Legal Profession (January) and White Paper **Legal Services: A Framework for the Future** (July) published. Key proposals:
 1. Solicitors to gain full rights of audience in all courts if qualified as Solicitor Advocates
 2. All advocates with appropriate qualification and experience to be eligible for judicial appointments
 3. Judges in lower courts should be eligible for promotion to higher courts based on experience.

²⁵Prepared by Professor Cheryl Thomas, UCL Faculty of Laws, for the Secretary of State's Advisory Panel on Judicial Diversity (2009)

1990

- ▶ **Courts and Legal Service Act passed.** Relevance to judiciary and appointments:
 1. Extension of rights of audience in higher courts to solicitors and other legal professionals
 2. Eligibility for higher judicial office now based on rights of audience
 3. Formally established Presiding Judges for each circuit
 4. Full-time judges prohibited from working as or with any legal professionals
 5. County Court Registrars made District Judges and part of judiciary
 6. Provision for equality between male and female judges by allowing widowers to benefit from pension scheme

1991

- ▶ Human rights solicitor, Geoffrey Bindman, **publicly challenges judicial appointments process** on grounds that reliance on opinions of judges in consultation process could violate Race Relations Act (RRA) and Sex Discrimination Act, both of which prohibit unintended indirect discrimination
- ▶ In response, Lord Chancellor Mackay obtains legal opinion claiming RRA does not apply to judges because they are not employees or holders of statutory office.
- ▶ **First blind High Court judge** appointed (Sir John Wall)

1992

- ▶ Lord Lane retires as Lord Chief Justice (LCJ). Lord Taylor appointed LCJ
- ▶ **LCJ Lord Taylor's Dimpleby Lecture:** publicly acknowledges that judiciary is unrepresentative but that gender and ethnicity imbalance will be redressed "in the next few years"
- ▶ LCJ Taylor appears on **Question Time:** first judge ever to do so
- ▶ **The Judiciary in England and Wales – Report of the JUSTICE Committee** chaired by Professor Robert Stevens recommends positive action and a commission for judicial appointments to increase diversity
- ▶ LC commissions **report on sex equality at bar and in judiciary.** Report recommends advertising posts, job descriptions and specific criteria for appointments
- ▶ Lord Chancellor's Department (LCD) issues consultation paper Court Dress: A Consultation Paper Issued on Behalf of the Lord Chancellor and The Lord Chief Justice.
- ▶ **Race and Sentencing** study (Hood) published: finding evidence of racial discrimination in sentencing by judges at certain Crown Courts (Black defendants more likely than White defendants to receive custodial sentences and longer sentences).

1993

- ▶ Lord Chancellor Lord Mackay announces:
 1. Use of **advertising** for judicial positions
 2. **Job descriptions** created for junior judicial posts
 3. **Rules out creation of judicial appointments commission**
 4. Argues for "**trickle up**" explanation of lack of diversity – unrepresentativeness due to lack of diverse pool to choose from, change will occur over time from bottom up as profession changes with new entrants
- ▶ Lord Chancellor and LCJ announce no changes would be made to court dress as a result of the consultation exercise.
- ▶ Runciman Royal Commission on Miscarriages of Justice report published. Highlighted failings of the criminal court system to prevent serious miscarriages of justice.
- ▶ £1million awarded for judicial racial awareness training (JSB publishes first training on Human Awareness)
- ▶ **First academic appointed to High Court** (Baroness Brenda Hale of Richmond)

1994

- ▶ Law Society publishes first results of **Law Student Cohort Study Years 1 and 2 for Entry into the Legal Profession**. Significance: these are first systematic investigations of the key factors affecting patterns of entry into the legal professions. One of the key questions to be addressed in all subsequent studies is: Do sex, age, ethnicity, social background and other factors affect career paths?
- ▶ **First solicitors** appear as advocates in higher courts

1996

- ▶ **Parliamentary Home Affairs Select Committee** examines judicial appointment process. Recommends an end to Prime Minister's involvement in any judicial appointments.
- ▶ **Woolf Report on Access to Justice** published. Recommends alteration in roles of judges in civil justice system, including case management responsibilities and mediation.
- ▶ Lord Bingham appointed Lord Chief Justice

1997

- ▶ New Lord Chancellor Lord Irvine announces:
 1. **High Court appointments no longer to be by invitation only**

- 2. **Applications also allowed from all members of the profession**
- 3. **Annual report to be made to Parliament on judicial appointments**
- ▶ LCD Research Unit commissions and publishes paper on **approaches to judicial appointments in other jurisdictions** (Thomas). Key findings include:
 - 1. European use of selection commissions comprising junior and senior judges and use of blind entrance tests have increased representation of women in judiciary
- ▶ First 2 solicitors appointed QCs (Arthur Marriott and Lawrence Collins)
- ▶ **Parliamentary Home Affairs Select Committee Report: Freemasonry in the Police and Judiciary** recommends: "that police officers, magistrates, judges and Crown Prosecutors should be required to register membership of any secret society and that the record should be available publicly".
- ▶ Report published by Association of Women Barristers claiming chambers dominated by nepotism to exclusion of women.

1998

- ▶ Government **Response to Freemasonry Report**: All new appointments to the judiciary (including part-time offices such as Recorders, Deputy High Court Judges etc), to the magistracy, to the police, to the legally qualified staff of the CPS, to the Probation Service and Prison Service shall have as a condition of appointment a **requirement to declare membership of the freemasons** (and any later admission to them).
- ▶ **First woman appointed to Court of Appeal** (Dame Elizabeth Butler-Sloss)
- ▶ Human Rights Act passed: increases role and profile of judiciary in adjudication of wide range of social and political issues
- ▶ **European Charter on the Statute for Judges** adopted by Council of Europe. Charter aims at ensuring competence, independence and impartiality of courts and judges and deals specifically with selection, recruitment, initial training, career development, liability, remuneration, social welfare and termination of office. The statute "excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin, or by reason of their philosophical and political opinions of religious convictions".

1999

- ▶ LCD starts producing statistics on judicial applications and appointments. Publishes first **Judicial Appointments Annual Report 1998-99**
- ▶ Judicial **Work Shadowing Scheme** introduced by LCD: solicitors and barristers able to follow the work of a Circuit judge, District Judge or Deputy District Judge over 3 days

- ▶ **Home Affairs Select Committee** looks at judicial appointments again and questions slow pace of change.
- ▶ **Peach Report:** Lord Chancellor asks Sir Leonard Peach to conduct a review of the system of judicial appointments. Key recommendations of report include:
 1. Create Commission for Judicial Appointments – oversight, post hoc only role
 2. Revise application form so applicants give own views on suitability for appointment
 3. Applicants should name consultees, no others should be consulted
 4. Consultees should not be invited to make general comments and should be required to provide sources of information for comments on applicant
 5. Job descriptions should be reviewed annually
 6. Assessment centres should be piloted
 7. Use of psychometric and competence tests should be explored
 8. Pilot judicial appraisal scheme should be extended to all Deputy District Judges with eventual extension to all part-time judicial post holders
 9. Annual self-appraisal scheme should be introduced for all part-time judges
 10. Existing informal guidelines on disabled judges should be made public
- ▶ (Sept): Bar Council imposes compulsory levy on senior barristers to support trainee barrister pay following High Court ruling that pupil barristers entitled to minimum salary
- ▶ (October): LC Irvine requires removal of question on judicial application form about **sexual orientation**
- ▶ (October): Law Society calls for end to “secret soundings” and calls a boycott on current appointments system
- ▶ **Stephen Lawrence Inquiry** concludes that investigation and prosecution of 1993 murder marred by “institutional racism”. Also concludes that it is essential for ethnic minority community to feel confidence in criminal justice system, and all government institutions must ensure policies and practices do not disadvantage any section of community. (See DCA response in 2001)
- ▶ **New civil procedures rules** come into force following Woolf report. Significance for judicial appointments is changing nature of skills required for judges working in civil courts, including case management and mediation abilities.2000

2000

- ▶ **Society of Labour Lawyers publishes report** calling for independent judicial appointments commission, for Lord Chancellor to be removed from involvement in appointing judges, and describing judiciary as dominated by white, middle-class, Oxbridge-educated males.

- ▶ **Pilot appraisal scheme** used for Deputy District Judges on North Eastern Circuit
- ▶ Report to Attorney General (by former judge Gerald Butler QC) criticises near **monopoly of high paid prosecution** work by a few barristers in select chambers; “cosy club” contributes to only 1 woman Treasury Counsel
- ▶ DCA Research Unit commissions survey of barristers about **factors affecting decisions to apply for silk and judicial office** (Malleson & Banda). Study finds lack of openness, continuing role of patronage, dominance of elite group of chambers and need to be “known” deterred women and ethnic minority barristers from applying
- ▶ Lord Woolf appointed Lord Chief Justice

2001

- ▶ Creation of the **Commission for Judicial Appointments (CJA)**. Independent statutory body with the remit to review the judicial and Queen’s Counsel appointment procedures, and to investigate complaints about the operation of those procedures. House of Lords and Heads of Division appointments excluded.
- ▶ DCA includes information in judicial application packs on **informal policy on disability** (Peach recommendation)
- ▶ DCA establishes **Courts & Diversity Research Programme (CAD)** to examine whether and to what extent the court system deals fairly and justly with needs of diverse and multicultural society (response to Stephen Lawrence Inquiry)
- ▶ Judicial Appointments Commission established in **Scotland**
- ▶ **Auld Review of the Criminal Courts** published: recommends performance appraisal for judges

2002

- ▶ (April): LC Irvine announces removal of minimum **age requirement** of 35 for judges and abolishes upper age limits
- ▶ **CJA first Annual Report** – criticised appointment process
 1. undue delay in appointment process
 2. unsatisfactory calibre of comments from consultees, not based on adequate or current knowledge of candidates and not related to the selection criteria
- ▶ LC commissions public opinion survey of court working dress in response to Auld Review: Public Perceptions of Working Court Dress in England and Wales

2003

- ▶ Establishment of **assessment centres** for some appointments
- ▶ Provision of **feedback** to unsuccessful candidates in some competitions
- ▶ (May): DCA publishes consultation paper **Court Working Dress in England & Wales**
- ▶ (June): Lord Falconer appointed as Lord Chancellor and Secretary of State for Constitutional Affairs; Lord Chancellor's Department merged into new Department for Constitutional Affairs (DCA)
- ▶ (July): DCA publishes consultation paper **Constitutional Reform: A New Way of Appointing Judges**. It seeks views on form and responsibilities of new independent Judicial Appointments Commission. Three different models are under consideration:
 1. Appointing commission, which would advise Queen directly on judicial appointments above the level of High Court without ministerial involvement, and would make the appointments to High Court and below;
 2. Recommending commission, which would recommend appointments to minister; or
 3. Hybrid commission, which would act as an appointing commission for junior appointments and as a recommending commission for senior appointments.
- ▶ (July) DCA releases additional consultation paper on the proposal to replace the House of Lords with a **new Supreme Court** of the UK. That paper argues that the recommending commission model would be the most suitable for appointments to the new Supreme Court.
- ▶ (July): Government announces abolition of post of Lord Chancellor
- ▶ (October) **First female Law Lord** appointed (Brenda Hale)

2004

- ▶ DCA convenes **working parties** to examine the causes and possible means of redressing the lack of judicial diversity prior to issuing a consultation paper
- ▶ (July): House of Lords overturns provisions in Constitutional Affairs Bill to abolish Lord Chancellor
- ▶ Parliamentary Joint Committee on Human Rights (23rd Report) recommends that JAC be under **express duty to ensure that judicial appointments are "reflective of society"** (citing Northern Ireland provisions)
- ▶ **CJA Review of High Court 2003 Competition** concluded that radical change was needed to High Court appointments competition. Criticisms include:
 1. Existing system seriously lacking in transparency and accountability.
 2. Changes needed to increase applications from candidates from more diverse backgrounds.

3. Recommends elimination of the two track selection system where candidates could apply or be nominated; move to application only; end automatic consultation with senior judiciary; development of generic competencies; roll out of a judicial appraisal scheme; advertising of all vacancies; final selection by a balanced panel of judicial and lay members; clear record of all decisions
- ▶ (October) DCA issues **Consultation Paper - Increasing Diversity in the Judiciary**, outlining policy options for increasing the numbers of women and ethnic minority judges.
 - ▶ Judges' Council publishes a **Guide to Judicial Conduct** on impartiality, integrity, competence, diligence, personal relationships, perceived bias, activities outside court.
 - ▶ Government publishes update on Public Perceptions of Working Court Dress in England and Wales
 - ▶ **First BAME judge appointed to High Court** (Linda Dobbs QC)
 - ▶ **Solicitor appointed to High Court** (Henry Hodge)

2005

- ▶ (March) **Constitutional Reform Act 2005**: Establishes a new Judicial Appointments Commission (JAC) for England and Wales, responsible for nominating candidates for all appointments except Supreme Court. JAC has statutory duty to have regard to the need to encourage diversity in the range of persons available for selection for appointments.
- ▶ LC Falconer announces legislative plans to allow a **wider group of legal practitioners** to apply for judicial office, and to **reduce the period of practice** required before applying (See changes for ILEX in 2008)
- ▶ High Court appointments now by application only
- ▶ DCA publishes "**Competency Frameworks**" in Judicial Appointments in England and Wales: Policies and Procedures
- ▶ "**Step Up to a Judicial Career**" programme introduced by DCA - a series of events designed to provide information about applying for judicial appointment
- ▶ **DVD** on life as a judge made by DCA
- ▶ (May): Monthly **E-Newsletter** introduced with information on the appointments process and upcoming competitions
- ▶ **Pilot appraisal scheme** for recorders on Northern Circuit undertaken
- ▶ (June): Judicial Appointments Commission established in Northern Ireland
- ▶ Sutton Trust publishes survey showing **senior judiciary overwhelmingly privately educated** and with degrees from Oxbridge, little change in 15 years
- ▶ (November): Secretary of State seeks advice from the Judicial Council on allowing judges to **return to practice**, and institutes a disability action plan.

- ▶ (November): CJA convenes **International Policy Summit on Judicial Diversity**
- ▶ CJA publishes **Review of Judicial Diversity: Research, Policies and Practices in the United Kingdom and Other Jurisdictions** (Thomas)
- ▶ **CJA Audit of Recorder 2004/05 Competition** highlights two main areas of concern:
 1. Continued practice of inviting members of the senior judiciary to comment on the outcome of interview panels
 2. Lack of successful female candidates.
Also recommends new Judicial Appointments Commission be properly resourced to administer appointment competitions.
- ▶ **CJA Audit of Sift Stage** of the Deputy Judge (Civil) 2005/06 Competition concludes that use of competency-based application procedures and use of judicial appraisal may have contributed to a slight increase in success of minority and female candidates at Sift.
- ▶ Legal Services Consultative Panel issues report **The Legal Profession: Entry, Retention and Competition**. The Report made 17 recommendations covering future monitoring and research, higher education, firms and chambers, professional bodies, government departments.
- ▶ Government publishes **Increasing Diversity in the Legal Profession: A Report on Government Proposals** in response to Legal Services Consultative Panel report
- ▶ High Court judge resigns and works as consultant in practice (Sir Hugh Laddie)
- ▶ Lord Woolf retires as Lord Chief Justice and practices as mediator
- ▶ Lord Phillips appointed Lord Chief Justice

2006

- ▶ (March) **CJA publishes Judicial Diversity and the Appointment of Deputy District Judges** (Thomas), first empirical study of the factors leading to a lack of diversity in the judicial appointments process. Key findings include:
 1. Women increasingly applying and being appointed as DDJs, but not BAMEs. Younger applicants and highest income earners most likely to succeed. BAME applicants consistently scored lower than White applicants by Sift panels.
 2. BAME solicitors criticised DDJ application form as overly long, complicated; said culture and attitude of judiciary and lack of women and minorities judges were main deterrents to applying; direct encouragement, appointment of women and minorities to senior judiciary, and official targets would be most effective strategies.
- ▶ (March) **CJA publishes Final Annual Report** arguing that in 5 years time the appointment process should encompass:

1. appraisal
 2. targeted and structured references
 3. better feedback
 4. career planning
- ▶ (April): **Judicial Appointments Commission comes into effect**, along with JACO (appointments Ombudsman). CJA ceases operation. Lord Chief Justice becomes head of judiciary.
 - ▶ (May) **Trilateral Judicial Diversity Strategy** agreed (MOJ, JAC and Judicial Office)
 - ▶ (July) JAC publishes measures against which joint diversity strategy will be monitored. Identifies 4 groups considered under-represented: women, solicitors, BAME, disabled.
 - ▶ (September): DCA launches **consultation paper on judicial return to practice** Return to Practice, Conditions and Safeguards
 - ▶ (October): **JAC defines merit**. It specifies five core qualities and abilities generally required of a candidate for any judicial post: (1) intellectual capacity, (2) personal qualities, (3) ability to understand and deal fairly, (4) authority and communication skills, (5) efficiency
 - ▶ **JAC revises application form** – removes question on decorations/honours and question on salary
 - ▶ Judicial Office assumes responsibility for Work Shadowing Scheme and conducts a review of the programme (see 2008 for outcome)

2007

- ▶ (May) Ministry of Justice created replacing DCA; Jack Straw appointed Secretary of State for Justice and Lord Chancellor.
- ▶ JAC publishes guidance on what constitutes “good character”.
- ▶ JAC devises **mechanisms to “encourage a wide range of applicants”** to apply including: speaking engagements; “roadshows” providing potential candidates with information on selection process and first-hand accounts of judicial office; email newsletter Judging Your Future; marketing plan for selection exercises.
- ▶ JAC commits to **collecting data on candidate diversity** at each stage of the selection process for the purposes of publication.
- ▶ (October): **The Governance of Britain: Judicial Appointments** Green Paper published. 16 specific questions on the judicial appointments process seeking views on the role of executive, judiciary and legislature in the process, and whether existing arrangements need alteration.
- ▶ (November): **Neuberger Report on Entry to Bar** published - recommends statistics policy for collecting diversity data for Bar.

- ▶ **Tribunals, Courts and Enforcement Act (TCE)** passed. Act changes eligibility for tribunal judicial office to increase diversity by allowing fellows of ILEX, Registered Trademark and Patent Attorneys to serve as tribunal judges.
- ▶ **JSB Strategy Plan 2007-2011** published. States that in developing the Strategy it "recognises and has taken account of the changing nature and role of the judiciary including appointments made from more diverse backgrounds and experiences." A key milestone in the Strategy is the development, promotion and delivery of a programme of equality and diversity training for the senior judiciary.
- ▶ First solicitor appointed to Court of Appeal (Lawrence Collins)
- ▶ Secretary of State agrees **appointment process for new UK Supreme Court**
- ▶ Secretary of State determines that proposal for former salaried judges to be able to **return to practice will not be implemented**. He stated that he did not believe there was sufficient evidence that this would achieve a more diverse judiciary. MOJ publishes **summary of responses** received to consultation on this issue.

2008

- ▶ JAC introduces **qualifying tests** as method of short-listing candidates for Recorder, District Judges and Deputy District Judges
- ▶ JAC standardises form of **feedback** to unsuccessful candidates
- ▶ JAC revises **good character guidance**
- ▶ JAC recruits new chairs for selection panels
- ▶ JAC convenes a **Diversity Forum** to coordinate activities (JAC, MOJ, judiciary, AG's Office, Bar Council, Law Society, ILEX)
- ▶ Judicial Office **re-launches Work Shadowing Scheme**
- ▶ (October) **Legal changes allow fellows of Institute of Legal Executives (ILEX) to apply for some judicial posts**, including tribunal chairs and DDJs (and DJs in 2010)
- ▶ (January) Changes to **judicial dress** come into effect
- ▶ (October) Lord Judge appointed Lord Chief Justice
- ▶ (December) Report published on **The Attractiveness of Senior Judicial Appointments to Highly Qualified Practitioners** (Genn). Key findings include:
 1. Aspects of High Court role that highly qualified practitioners saw as deterrents to applying were: requirement to go on circuit, to sit on crime cases, low salaries compared to private practice, high workload and lack of support, inflexible working patterns.
 2. Aspects of the **selection process** generating concerns were: no tap on shoulder means loss of reluctant "stars"; unfamiliarity with self-assessment methods; delays and lack of confidentiality in the process.

2009

- ▶ (Jan) Milburn **Panel on Access to the Professions** convened to identify means for widening access to the professions in Britain
- ▶ (March) **Sutton Trust publishes submission to Milburn Panel** highlighting fact that overwhelming majority of senior judges and barristers and majority of senior partners in law firms were educated in independent fee-paying schools and Oxbridge
- ▶ (March) Lord Chief Justice convenes **Conference on Judicial Diversity**
- ▶ (April) Justice Secretary convenes **Advisory Panel on Judicial Diversity**
- ▶ (April) **UK Supreme Court** justices finalised (11 of 12): **1 solicitor and 1 woman**
- ▶ (May) Fawcett Society publishes **Report on Women in Criminal Justice System**: report criticises pace of change in judiciary as disappointingly slow.
- ▶ (June) **Barriers to Application for Judicial Appointment Research** published by JAC. Key findings include:
 1. Perceptions of judicial role that act as barriers to application are isolation of judicial role, lack of flexibility, travel
 2. Career aspirations and information most likely to affect propensity to apply
 3. Career aspirations: barristers more likely to expect support from chambers than solicitors from firms; under-represented groups most likely to think that judicial office is for other people
 4. Information: Having information most likely to make people apply, but very limited awareness of key JAC initiatives, limited contact with JAC, widespread misunderstanding of role of references
 5. Members of under-represented groups perceive their background as a liability, but White male barristers also perceive their own background as a liability
- ▶ (July) JAC **Diversity Forum agrees joint initiatives**, including:
 1. Solicitor mentoring scheme for those interested in judicial office run by Law Society
 2. Extension of Bar Council's Circuit mentoring scheme to focus more on candidates from a wider range of groups
 3. Film of mock role-play to help prepare candidates for the selection process.
- ▶ (July) **Milburn Panel on Fair Access to the Professions reports on** social mobility in the professions. Among recommendations is **access to internships**.
- ▶ (October) **UK Supreme Court** begins operation

iv. Statistics - Women Judges in Post

As at 1 April 2009

Post		Former Barristers	Former Solicitors	Total
Lord of Appeal in Ordinary	Women	1	0	1
	Men	11	0	11
	Total	12	0	12
	% Women	8.33	0	8.33
Heads of Division	Women	0	0	0
	Men	5	0	5
	Total	5	0	5
	% Women	0	0	0
Lord Justice of Appeal	Women	3	0	3
	Men	34	1	35
	Total	37	1	38
	% Women	8.11	0	7.89
High Court Judge	Women	15	0	15
	Men	92	2	94
	Total	107	2	109
	% Women	14.02	0	13.76
Circuit Judge	Women	78	14	92
	Men	480	69	548
	Total	558	83	640
	% Women	13.98	16.87	14.38
Recorder	Women	153	16	169
	Men	1023	43	1066
	Total	1176	59	1235
	% Women	13.01	27.12	13.68

Post		Former Barristers	Former Solicitors	Total
Judge Advocates	Women	0	0	0
	Men	8	1	9
	Total	8	1	9
	% Women	0	0	0
Deputy Judge Advocates	Women	1	0	1
	Men	9	1	10
	Total	10	1	11
	% Women	10.00	0	9.09
District Judge	Women	15	89	104
	Men	30	310	340
	Total	45	399	444
	% Women	33.33	22.31	23.42
Deputy District Judge	Women	40	154	194
	Men	61	413	474
	Total	101	567	668
	% Women	26.38	27.16	29.04
District Judge (Magistrates' Courts)	Women	13	19	32
	Men	34	69	102
	Total	47	88	134
	% Women	25.00	29.13	27.71
Deputy District Judge (Magistrates' Crt)	Women	6	30	46
	Men	48	73	120
	Total	64	103	166
	% Women	25.00	29.13	27.71
Masters, Registrars, Costs Judges and DJ (PRFD)	Women	6	6	12
	Men	21	14	35
	Total	27	20	47
	% Women	22.22	30.00	25.53
Deputy Masters, Deputy Registrars, Deputy Costs Judges and Deputy District Judge (PRFD)	Women	21	8	31
	Men	25	30	53
	Total	46	38	84
	% Women	49.65	21.05	36.90

These figures are not directly comparable to 2007's figures as the data has been widened to include four new types of judicial post. These are:

- ▶ Judge Advocates
- ▶ Deputy Judge Advocates
- ▶ Masters, Registrars, Costs Judges and DJ, and
- ▶ Deputy Masters, Registrars, Deputy Costs

Implementation of the Tribunals, Courts and Enforcement Act 2007 concluded in April 2009 and brought together the administrative and record-keeping facilities of a large number of tribunals with varying levels of data. Diversity data for the tribunals will be supplied following an exercise to review and update the information currently held.

Standard practice normally would not include very small numbers, and associated percentages. However, in order to not lose the ease of comparison these figures, including percentages, have been included.

V. Statistics - Minority Ethnic Judges in Post

As at 1st April 2009

Note: The database of the ethnic origin of the judiciary may be incomplete as (a) candidates are asked to provide the information on a voluntary basis and (b) such details have only been collected since October 1991.

	Not stated *	White	Asian or Asian British	Chinese	Black or Black British	Mixed	Other Ethnic Group	Total Minority Ethnic	Total in post	% Minority Ethnic
Lords of Appeal in Ordinary	Men	0	11	0	0	0	0	0	11	0.00%
	Women	0	1	0	0	0	0	0	1	0.00%
	Total	0	12	0	0	0	0	0	12	0.00%
Heads of Division	Men	0	5	0	0	0	0	0	5	0.00%
	Women	0	0	0	0	0	0	0	0	0%
	Total	0	5	0	0	0	0	0	5	0.00%
Lords Justices of Appeal	Men	14	20	0	0	0	0	0	34	0.00%
	Women	0	3	0	0	0	0	0	3	0.00%
	Total	14	23	0	0	0	0	0	37	0.00%
High Court Judges	Men	19	73	0	0	0	2	2	94	2.67%
	Women	5	9	0	0	1	0	1	15	10.00%
	Total	24	82	0	0	1	2	3	109	3.53%
Circuit Judges	Men	55	483	2	0	0	8	10	548	2.03%
	Women	15	73	1	1	1	1	4	92	5.19%
	Total	70	556	3	1	1	9	14	640	2.46%
Recorders	Men	239	778	13	11	9	16	49	1066	5.93%
	Women	49	112	1	3	1	3	8	169	6.67%
	Total	288	890	14	14	10	19	57	1235	6.02%
Judge Advocates	Men	0	9	0	0	0	0	0	9	0.00%
	Women	0	0	0	0	0	0	0	0	0.00%
	Total	0	9	0	0	0	0	0	9	0.00%
Deputy Judge Advocates	Men	1	8	1	0	0	0	1	10	11.11%
	Women	1	0	0	0	0	0	0	1	0.00%
	Total	2	8	1	0	0	0	1	11	11.11%

	Not stated *	White	Asian or Asian British	Chinese	Black or Black British	Mixed	Other Ethnic Group	Total Minority Ethnic	Total in post	% Minority Ethnic
District Judges (County Courts)	Men	25	6	0	1	1	2	10	340	3.17%
	Women	9	2	0	1	2	2	7	104	7.37%
	Total	34	8	0	2	3	4	17	444	4.15%
Deputy District Judges (County Courts)	Men	91	1	1	3	4	6	15	474	3.92%
	Women	64	8	0	2	1	0	11	194	8.46%
	Total	155	9	1	5	5	6	26	668	5.07%
District Judges (Magistrates' Courts)	Men	26	1	0	0	0	0	1	102	1.32%
	Women	11	1	0	0	0	0	1	32	4.76%
	Total	37	2	2	0	0	0	2	134	2.06%
Deputy District Judges (Magistrates' Courts)	Men	45	4	0	0	0	0	4	120	5.33%
	Women	14	0	1	0	1	0	2	46	6.25%
	Total	59	4	1	0	1	0	6	166	5.61%
Masters, Registrars, Costs Judges and DJ (PRFD)	Men	9	1	0	0	0	0	1	35	3.85%
	Women	4	0	0	0	0	0	0	12	0.00%
	Total	13	1	0	0	0	0	1	47	2.94%
Deputy Masters, Deputy Registrars, Deputy Costs Judges and Deputy District Judge (PRFD)	Men	23	0	0	0	0	0	0	53	0.00%
	Women	12	0	0	1	0	1	2	31	10.53%
	Total	35	0	0	1	1	1	2	84	4.08%
Totals	Men	557	29	1	15	14	34	93	2901	3.97%
	Women	185	13	1	8	7	7	36	700	6.99%
	Total	742	42	2	23	21	41	129	3601	4.51%

Notes:

1. * Not all judges declare their ethnicity and so the ethnicity figure is calculated as a percentage of those members of the judiciary who have agreed to provide ethnicity data and from whom we have collected this information.
2. Ethnicity data has been gathered through the 2007 diversity survey (carried out by Judicial Office).
3. Ethnicity data on appointments made post April 2006 has not been available. Therefore ethnicity data is not held for those judges who were appointed after 2006, and whose ethnicity has not been declared through the survey mentioned at paragraph 1.
4. In May 2009, the Judicial Office began collecting ethnicity data from all new judicial appointees with the help of the Ministry of Justice. This information will be incorporated in the ethnicity data for 2010.
5. Implementation of the Tribunals, Courts and Enforcement Act 2007 concluded in April 2009 and brought together the administrative and record-keeping facilities of a large number of tribunals with varying levels of data. Diversity data for the tribunals will be supplied following an exercise to review and update the information currently held.
6. Standard practice normally would not include very small numbers, and associated percentages. However, in order to not lose the ease of comparison these figures, including percentages, have been included.

vi. Legal Professions Statistics

Bar data collated by Bar Council and Bar Standards Board

As of 2008

Male %	48.9	46.4	68.9	53.7	90
Female %	51.1	44.3	31.1	46.3	10
Unknown%	0	9.3	n/a	n/a	n/a
White %	39.4	71.6	89.4	84.9	95.9
BAME %	46.4	18.8	10.6	15.1	4.1
Unknown%	14.2	9.6	n/a	n/a	n/a

* Percentages calculated excluding no data held.
Solicitors Profession Statistics collated by the Law Society²⁸

As of 31 July 2009

Male %	38.5	54.8	57.0	48.7	75.2
Female %	61.5	45.2	43.0	51.3	24.8
Unknown%	n/a	0	n/a	n/a	n/a
White %	68.4	77.7	79.9	n/a	38.4
BAME %	31.6	10.6	9.8	n/a	25.9
Unknown%	n/a	11.7	10.3	n/a	38.8

Crown Prosecution Service statistical data collated by CPS²⁹

²⁶Reference to 'self-employed' barristers applies to those who work as tenants in Chambers, instructed by external solicitors.

²⁷Reference to 'employed' barristers applies to those who work in-house or for organisations such as the Government Legal Service.

²⁸Taken from the Law Society, Trends in the Solicitors' Profession: Annual Statistical Report 2009, <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/researchpubs.law>

²⁹Provided by CPS Secretariat

Ethnicity

	White	Black	Asian	Count
Legal Trainee	10.5%	75.5%	14.0%	57
Associate Prosecutor	10.8%	66.7%	22.5%	453
Crown Prosecutor	14%	64.9%	21.1%	114
Senior Crown Prosecutor	12.2%	61.9%	25.9%	1686
Chief Crown Prosecutor	16%	64%	20.0%	50
Total known	14.9%	85.1%	n/a	6524
Grand total	11.6%	65.8%	22.6%	8888

Gender

	Male	Female	Count
Legal Trainee	38.6%	61.4%	57
Associate Prosecutor	30.7%	69.3%	453
Crown Prosecutor	23.7%	76.3%	114
Senior Crown Prosecutor	38.4%	61.6%	1686
Chief Crown Prosecutor	62.0%	38.0%	50

Government Legal Service statistical data collated by GLS³⁰

	White	Black	Count
Gender	44% female	61% female	n/a
Ethnicity	6.4% BAME	13% BAME	n/a
Alternative Working Patterns*	16%	17%	n/a
Disability	3.8% (response rate low)		
Solicitors	76%		79.2%
Barristers	24%		20.8%

*9% of total GLS population has a declared formal home working arrangement.

³⁰Provided by GLS Secretariat

Gender and Ethnicity Data for Eligible Pool of Practitioners for Judicial Office collated by Directorate of Judicial Offices³¹

The eligible pool of candidates for judicial office has been estimated by looking at the number of barristers and solicitors who have been qualified for more than 10 years. Based on 2008 figures: the percentages are as follows

Barristers	28.2	9.89
Solicitors	16.8	3.4

It is worth noting that these figures will change in the next collection of data released, due to the impact of provisions of the Tribunals Courts and Enforcement Act 2007 upon post-qualification requirements.

Gender and Ethnicity Data for members of the Institute of Legal Executives³²

75% of ILEX members are women, while around 13% of all of its members are black or of an ethnic minority.

³¹Collated from Law Society and Bar Council Data

³²http://www.ilex.org.uk/about_ilex/equality_and_diversity/membership_diversity.aspx

vii. Women as Partners in Top 50 Law Firms

The Lawyer survey, 27 January 2010

Berrymans Lace Mawer	110	54	39	15	35	28
Beachcroft	135	84	44	25	33	30
Shoosmiths	109	37	35	6	32	16
Withers	107	52	33	16	31	31
Irwin Mitchell	112	55	34	11	30	20
Hill Dickinson	151	53	41	5	27	9
Charles Russell	100	45	26	7	26	16
Halliwells	154	42	38	8	25	19
McGrigors	83	47	20	12	24	26
Trowers & Hamlins	109	25	26	6	24	24
Nabarro	135	95	32	21	24	22
CMS Cameron McKenna	190	122	45	24	24	20
Mills & Reeve	87	58	20	10	23	17
Olswang	101	62	23	11	23	18
Salans	181	75	40	20	22	27
Eversheds	350	150	76	22	22	15
Denton Wilde Sapte	181	86	39	17	22	20

Firm	Total	Total Equity Partners	Total Female Equity Partners	Total Female Equity Partners	% of partnership	% of equity
Addleshaw Goddard	182	111	39	18	21	16
Berwin Leighton Paisner	184	84	39	12	21	14
Field Fisher Waterhouse	124	41	26	5	21	12
Kennedys	117	40	24	5	21	13
Bird & Bird	192	72	39	15	20	21
Watson Farley & Williams	79	57	16	9	20	16
Pinsent Masons	283	116	57	10	20	9
Slaughter and May	131	125	25	23	19	18
Dundas & Wilson	79	79	15	15	19	19
Lovells	349	240	66	39	19	16
Hammonds	180	73	34	11	19	15
DLA Piper (Emea)	595	188	108	17	18	9
Ashurst	221	144	40	21	18	15
Stephenson Harwood	87	43	15	4	17	9
Wragge & Co	112	112	19	19	17	17
Norton Rose	264	171	44	26	17	15
LG	83	45	13	9	16	20
Clifford Chance	637	368	96	51	15	14
Osborne Clarke	114	56	17	9	15	16
Linklaters	513	428	76	57	15	13
Allen & Overy	490	372	72	52	15	14
Herbert Smith	238	137	34	14	14	10
Clyde & Co	150	87	21	9	14	10
Macfarlanes	75	52	10	3	13	6

Firm	Total	Total Equity Partners	Total Female Equity Partners	Total Female Equity Partners	% of partnership	% of equity
SJ Berwin	170	98	22	16	13	16
Burges Salmon	70	51	9	3	13	6
Holman Fenwick Willan	114	61	14	4	12	7
Freshfields	444	417	54	51	12	12
Simmons & Simmons	232	134	28	10	12	7
Taylor Wessing	280	152	32	11	11	7
Barlow Lyde & Gilbert	88	77	10	8	11	10
Travers Smith	63	46	7	6	11	13
Ince & Co	85	50	9	6	11	12

Supplementary Results - Female Attrition Rates: Main Reasons for Leaving

Burges Salmon	17	13	9	13
Taylor Wessing	17	17	0	11
Berrymans Lace Mawer	16	84	0	35
DLA Piper (Emea***/Asia)	13**	34	1	18
Norton Rose	N/A	13	39	17
Mills & Reeve	12			23

Linklaters	9**	10.5*	10.5*	15
Addleshaw Goddard	8	5	16	21
Nabarro	7	4	19	24
Field Fisher Waterhouse	6	9	3	21
Wragge & co	5	24	14	17
Hammonds	3	22	0	19
CMS Cameron McKenna	1	22*	22*	24
* Aggregate of all moves to other legal employment				
** Includes 'personal and / or domestic reasons'				
*** Europe Middle East and Asia				

Figures taken from <http://www.thelawyer.com/blm-is-most-female-friendly-firm-in-uk-top-50/1003262.article> and <http://www.thelawyer.com/1003384.article>

viii. Proposals from Solicitors in Judicial Office Working Group

Membership

Baroness Julia Neuberger (Joint Chair) – Advisory Panel on Judicial Diversity

David Cheyne (Joint Chair) – Linklaters LLP

Michael Smyth – Clifford Chance LLP

Andrew Clark – Allen & Overy LLP

Guy Morton – Freshfields Bruckhaus Deringer LLP

David Gold – Herbert Smith LLP

Concrete proposals:

1. Solicitors in their 40s being encouraged to undertake tribunal or other judicial positions as part of public service.
2. Firms changing present custom and having serious discussions with senior solicitors about the future. This would include encouraging them to apply to do 'fee paid' service as recorders, as part of public service, to see if they were suitable for judicial office and whether it appealed to them. This should no longer be seen as a quick way out of serious work within a firm.
3. In order to work effectively greater flexibility would be needed to enable judicial positions to fit in with client work, for example in transactional work because of the inevitable uncertainty as to when transactions complete.
4. This should be part of a wider campaign to improve solicitors' awareness of what might be open to them in terms of judicial appointment opportunities, and eventually be shared with the JAC. It would also require active work and encouragement from the senior judiciary, who would need to ensure solicitors were welcomed onto the bench.
5. Some investigation to take place as to whether solicitors could be the 'case managers' of long cases, alongside a trial judge, as suggested by Lord Woolf, since the time involved may make this attractive only to those who are in the process of changing careers
6. The firms around this table to take the lead on agreeing a way forward and publishing it together, so they set a lead for others who might be encouraged to do likewise.
7. Some kind of small monitoring group to be set up between the firms to assess progress on these proposals on an annual basis.

ix. The Role of the JAC and the Definition of Merit

The Judicial Appointments Commission (JAC) was established by the Constitutional Reform Act 2005 (CRA) and formally came into being on 3rd April 2006. The JAC selects candidates for judicial appointments in England and Wales and for tribunals for which the Lord Chancellor is responsible, some of which also have jurisdiction in Scotland and Northern Ireland.

Under section 63 of the Constitutional Reform Act, the JAC is obliged to

- ▶ select candidates solely on merit;
- ▶ select only people of good character.

Subject to section 63, section 64 of the Act requires the JAC to have regard to the need to encourage diversity in the range of persons available for selection for appointment.

The JAC is responsible for determining merit criteria and selection processes for judicial and tribunal appointments up to and including the High Court. For these appointments, the JAC selects one candidate per vacancy and passes on this recommendation to the Lord Chancellor. The Lord Chancellor can accept, reject or request reconsideration of the recommendation. If the Lord Chancellor does not accept the recommendation, he must explain his reasoning in writing to the JAC.

Definition of Merit

The JAC has identified the following qualities and abilities that are required for judicial office.

1. Intellectual capacity

- ▶ High level of expertise in your chosen area or profession
- ▶ Ability quickly to absorb and analyse information
- ▶ Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

2. Personal qualities

- ▶ Integrity and independence of mind
- ▶ Sound judgment
- ▶ Decisiveness
- ▶ Objectivity
- ▶ Ability and willingness to learn and develop professionally

3. An ability to understand and deal fairly

- ▶ Ability to treat everyone with respect and sensitivity whatever their background
- ▶ Willingness to listen with patience and courtesy

4. Authority and communication skills

- ▶ Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved
- ▶ Ability to inspire respect and confidence
- ▶ Ability to maintain authority when challenged

5. Efficiency

- ▶ Ability to work at speed and under pressure
- ▶ Ability to organise time effectively and produce clear reasoned judgments expeditiously
- ▶ Ability to work constructively with others (including leadership and managerial skills where appropriate)

The precise qualities and abilities for each post will be published in the information pack for each exercise.

x. Contributors to this Review

Ministry of Justice

The Right Honourable Jack Straw MP	Lord Chancellor and Secretary of State for Justice
Sir Suma Chakrabarti KCB	Permanent Secretary and Clerk of the Crown in Chancery

Lord Chief Justice of England & Wales

The Right Honourable The Lord Judge	Lord Chief Justice of England and Wales

Judicial Appointment Organisations

The Right Honourable The Baroness Prashar of Runnymede	Chair, Judicial Appointments Commission England & Wales
Sir Muir Russell	Chair, Judicial Appointments Board for Scotland
The Right Honourable Sir Declan Morgan (Chair) Her Honour Judge Loughran (Commissioner) Mrs Ruth Laird (Commissioner)	Northern Ireland Judicial Appointments Commission

Justices of the Supreme Court

The Right Honourable Lord Phillips of Worth Matravers	President of the Supreme Court
The Right Honourable Lord Hope of Craighead	Deputy President of the Supreme Court
The Right Honourable Lord Mance	Justice of the Supreme Court
The Right Honourable Baroness Hale of Richmond	Justice of the Supreme Court (UK Association of Women Judges)
The Right Honourable Lord Clarke of Stone-cum-Ebony	Justice of the Supreme Court

Heads of Division

The Right Honourable Sir Anthony May	President of the Queen's Bench Division and Judge in Charge of the Administrative Court
The Right Honourable Sir Andrew Morritt CVO	The Chancellor of the High Court
The Right Honourable Lord Neuberger of Abbotsbury	Master of the Rolls and Head of Civil Justice
The Right Honourable Sir Mark Potter	President of the Family Division and Head of Family Justice

Lords Justices of Appeal

Dame Mary Howarth Arden DBE	Court of Appeal Judge
Baroness Elizabeth - Butler Sloss of Marsh Green GBE	Retired President of the Family Division
Sir Terence Etherton	Court of Appeal Judge

Dame Heather Hallett DBE	Court of Appeal Judge
Sir Anthony Hughes	Court of Appeal Judge
Sir Maurice Kay	Chairman of the Judicial Studies Board
Sir Brian Leveson	Court of Appeal Judge
Dame Janet Hilary Smith DBE	Court of Appeal Judge

High Court

Sir David Bean	High Court Judge
Dame Jill Black DBE	High Court Judge
Sir William Blair	High Court Judge
Sir David Clarke	High Court Judge
Sir Jeremy Cooke	High Court Judge
Dame Laura Cox DBE	High Court Judge
Dame Linda Dobbs DBE	High Court Judge
Dame Elizabeth Gloster DBE	High Court Judge
Sir Gary Hickinbottom	High Court Judge
Dame Julia Macur DBE	High Court Judge
Sir Andrew Nicol	High Court Judge
Dame Anne Rafferty DBE	High Court Judge
Sir Ernest Ryder	High Court Judge
Dame Elizabeth Slade DBE	High Court Judge
Sir Andrew Smith	High Court Judge
Dame Caroline Swift DBE	High Court Judge
Sir Geoffrey Vos	High Court Judge

Circuit Judges

Her Honour Judge Baucher	South Eastern Circuit
His Honour Judge Blackett	South Eastern Circuit
His Honour Judge Peter Clarke QC	South Eastern Circuit
His Honour Judge Cooke	Midlands Circuit
His Honour Judge William Davis QC	Midlands Circuit
Her Honour Judge De Haas QC	Northern Circuit
His Honour Judge Flahive	South Eastern Circuit
His Honour Judge Globe QC	Northern Circuit
His Honour Judge Hopmeier	South Eastern Circuit
His Honour Judge Jenkins	Midlands Circuit
His Honour Judge Kamil	Northern Circuit
Her Honour Judge Kent	South Eastern Circuit
His Honour Judge Lodge	South Eastern Circuit
His Honour Judge Mettyear	North Eastern Circuit
His Honour Judge Million	South Eastern Circuit
His Honour Judge Phillips	Northern Circuit
Her Honour Judge Plumstead	South Eastern Circuit
His Honour Judge Salomensen	Midland Circuit
His Honour Judge Stewart QC	Northern Circuit
Her Honour Judge Jane Sullivan	South Eastern Circuit
His Honour Judge David Swift	Northern Circuit
His Honour Judge Sycamore	Northern Circuit
His Honour Judge Wood	North Eastern Circuit

Tribunal Judges

The Right Honourable Lord Justice Robert Carnwath CVO	Senior President of Tribunals
Judge Arfon-Jones	Deputy President of Asylum & Immigration Tribunal
Judge Bart-Stewart	Fee Paid Judge, Asylum & Immigration Tribunal
Judge David Latham	Employment Tribunals President
Judge Robert Martin	President of Social Entitlement Chamber
Sir Goolam Meeran	Retired Judge & Former Employment Tribunals President
Judge Searby	District Judge
Lucy Scott-Moncrieff	Fee-Paid Judge on the Mental Health Review Tribunals
Judge Storey	Principal Judge – Asylum Support

District Judges

District Judge Avis	South Eastern Circuit
District Judge Chaudhuri	South Eastern Circuit
District Judge Edward Cross	South Eastern Circuit
District Judge Ikram	South Eastern Circuit
District Judge Millward	South Eastern Circuit
District Judge Oldham	North Eastern Circuit
District Judge Pearce	South Eastern Circuit
District Judge Trigg	South Eastern Circuit

International Judges

The Right Honourable Madam Chief Justice Beverley McLachlin, PC	Chief Justice, Supreme Court of Canada
The Right Honourable Chief Justice Dame Sian Elias, PC	Chief Justice of New Zealand
The Honourable Madam Justice Rosalie Silberman Abella	Justice Supreme Court Judge – Canada

Members of the House of Commons and Lords

The Right Honourable The Lord Charles Falconer of Thorton PC QC	Lord – Former Lord Chancellor
The Right Honourable The Baroness Scotland of Asthal, PC, QC	Attorney General
Dominic Grieve QC MP	Shadow Secretary of State for Justice, Conservative MP
David Howarth MP	Shadow Secretary of State for Justice, Liberal Democrat MP
Keith Vaz MP	MP, Labour

Judicial Associations

Judicial Appointments Commission	Claire Pelham (Chief Executive) and Nigel Reeder
Judicial Studies Board Judicial Studies Advisory Council	Lord Justice Maurice Kay (Chair) His Honour Judge Phillips (Director of Studies) Judith Killick and Maggie Pigott (Joint Executive Directors) Judith Lennard
Judicial Appointments Board for Scotland	Trevor Lodge (Chief Executive)
Northern Ireland Judicial Appointments Commission	Edward Gorringe (Chief Executive) Adeline Frew Connor Curran
Tribunals Service	Kevin Sadler (Chief Executive) Paul Stockton (Director of the Tribunals Judicial Office)
Directorate of Judicial Offices	Anne Sharp (Chief Executive)
Office of Judicial Complaints	Sheridan Greenland

Legal Associations

Association of Women Solicitors
Bar Council – Chairs 2009 & 2010
Bar Council - Equality and Diversity Committee
Black Lawyers Directory
Black Solicitors Network
Chartered Institute of Patent Attorneys
City of London Law Society - Chair
Honourable Society of the Inner Temple
Institute of Legal Executives – President
InterLaw Diversity Forum
Junior Lawyers Division of the Law Society
Law Society – Presidents 2009 & 2010
Law Society for Commerce and Industry
Law Society Diversity Committee
Law Society, Northern Ireland – President 2009 and Chief Executive
Legal Services Board – Chair
Liverpool Law Society
Manchester Law Society
Nigerian Lawyers Association
Northern Circuit Leader
Solicitors Association of Higher Courts Advocates
Solicitors in Local Government
Solicitors Regulation Authority
Society of Asian Lawyers

Society of Black Lawyers
South Eastern Circuit Minorities Committee
UK Association of Jewish Lawyers and Jurists
Wales & Chester Circuit Representative

Legal Firms

Addleshaw Goddard LLP	
Clifford Chance LLP	
Linklaters LLP	
Herbert Smith LLP	
Freshfields Bruckhaus Deringer LLP	
Garden Court Chambers - Senior Clerk	
CMS Cameron McKenna	Fiona Woolf
Matrix Chambers	Rabinder Singh QC
Norton Rose LLP	
Allen & Overy LLP	
Enterprise Chambers	Caroline Hutton

Government Organisations

Cabinet Office – Diversity and Well-being	Jennifer Hutton
Crown Prosecution Service	<p>Kier Starmer QC (Director of Public Prosecutions)</p> <p>Alison Levitt QC (Principal Legal Advisor)</p> <p>Dale Simon (Director of Equality and Diversity)</p>
Serious Fraud Office	Vivian Robinson QC
Cabinet Office – Fast Stream	Rhonda Calder
Government Legal Services	Paul Jenkins
Her Majesty’s Court Service (HMCS)	<p>Sir Duncan Nicol (Chair of HMCS Board)</p> <p>Chris Mayer (Chief Executive)</p> <p>Adrian Draper</p>
Legal Services Commission	Carolyn Regan (Chief Executive)
Office of the First Minister and Deputy First Minister, Northern Ireland	Dame Joan Harbison DBE (Older People’s Advocate)

Equality and Diversity Associations

Equality and Diversity Forum	Sarah Spencer CBE (Chair) and Amanda Ariss (Chief Executive)
Organization Resources Counselors (ORC), Inc. Worldwide	Deirdre Golden
Employers Forum on Belief	Alan Beasley
Employers Forum on Disability	Nick Bason
Royal Association for Disability Rights	Stephen Springer
English Regions Equality Network	Liz Bavidge
Gender Identity and Research Education Society	Paula Dooley
Trades Union Congress	Sarah Veale
Stonewall	Ben Summerskill (Chair)
Northern Ireland Human Rights Commission	Peter O'Neill (Chief Executive)
Equality Commission for Northern Ireland	Bob Collions (Chief Commissioner) and Evelyn Collins CBE (Chief Executive)

Other Organisations

Eleanor Sharpston QC	Advocate – General at the European Court of Justice
Odgers Berndtson	Nicky Oppenheimer
Sutton Trust	Sir Peter Lampl
Queens Counsel Appointments	David Watts Professor Joan Higgins
Commissioner for Public Appointments	Janet Gaymer CBE QC

Academics

Professor Fiona Cownie	Keele University
Professor Rosemary Hunter	University of Kent
Dr Erika Rackley	University of Durham
Dr Hilary Sommerlad	Leeds Metropolitan University
Professor Dermot Feenan	University of Ulster
Professor Geraldine Healey	Queen Mary's University London
Professor Kate Malleson	Queen Mary School of Law
Professor Cheryl Thomas	University College London
Professor Les Moran	Birkbeck University

Other Discussion Group Attendees

Mark Hilton	Solicitor
David McGrady	Institute of Legal Executives
Pamela Bhalla	Bar Council – Equality and Diversity Committee
Annalisa Checchi	Junior Lawyer Division, The Law Society
Sean Poulter	Solicitor
Mick Ralph	Chartered Institute of Patent Attorneys
Warren Gordon	Solicitor
Dr Clare McConnell	Association of Women Solicitors
Judith Gordon-Nichols	Institute of Legal Executives
Stephen Ward	Communications Inclusivity and CSR, The Law Society
Keith Barrett	Institute of Legal Executives
Alexandra Marks	Solicitor & Recorder

Sundeep Bhatia	Society of Asian Lawyers
Alison Parkinson	Law Society of Commerce and Industry / Association of Women Solicitors
Babatunde Akinyanju	British Nigeria Law Forum
Beatrice McClellan	Freelance Consultant
Stephen Leslie QC	South Eastern Circuit
Yvette Genn	Barrister and Recorder (Facilitator)
Susan Hewitt OBE JP	Judicial Studies Board (Facilitator)

xi. Research Presented to the Panel

Bar Council

- ▶ Bar Council Exit Survey, April 2009 (by ERS Research)
- ▶ Model Diversity Awareness Training for the Bar: Toolkit for Trainers, January 2009
- ▶ Neuberger Report on Entry to the Bar

Crown Prosecution Service

- ▶ Breakdown of staff by ethnicity and gender, data taken from Key Performance Indicators, 31st March 2009
- ▶ Paper on Crown Prosecution Service and Judicial Appointments (put together for the Panel), October 2009.

Department for Constitutional Affairs

- ▶ Inter-Agency Working Group Report on the Appointment to Judicial Office of Crown Prosecution Service, GLS and other Departmental Prosecutors, April 2002

Desmond Browne QC

- ▶ Diversity on the Circuits, Counsel Magazine, November 2009

Directorate of Judicial Offices

- ▶ Report on the Lord Chief Justice's Conference on Judicial Diversity, October 2009

Mrs Justice Dobbs

- ▶ Speech, Diversity in the Judiciary, October 2007

Dame Sian Elias, Chief Justice of New Zealand

- ▶ Speech, Address to the Australian Women Lawyers' Conference, June 2008.

Sir Terence Etherton

- ▶ Paper based upon lecture given at the Institute of Advanced Legal Studies – forthcoming publication

Fawcett Society

- ▶ “Engendering Justice – From Policy to Practice” in The Final Report of the Commission on Women and the Criminal Justice System, May 2009

Professor Dermot Feenan

- ▶ Applications by Women for Silk and Judicial Office in Northern Ireland, June 2005.
- ▶ Judicial Appointments in Ireland in Comparative Perspective, (2008) 1 Judicial Studies Institute Journal 37-66.
- ▶ Women Judges: Judging Gender, Justifying Diversity, (2008) Journal of Law & Society 35(4) 490-519.

Professor Dame Hazel Genn DBE

- ▶ Report on Attractiveness of Senior Judicial Appointments, December 2008 (for the Judicial Executive Board)

Professor Geraldine Healy

- ▶ Assessment Centres for Judicial Diversity’ Research – Report for the Department of Constitutional Affairs, March 2006
- ▶ Submission to the Lord Chancellor’s Panel on Judicial Diversity

Professor Rosemary Hunter

- ▶ Submission to the Lord Chancellor’s Panel on Judicial Diversity

InterLaw Diversity Forum

- ▶ LGBT Judicial Diversity Survey 2009 (preliminary results)
- ▶ LGBT Solicitors Survey 2009 (preliminary results)

Judicial Appointments Commission

- ▶ Barriers to Application for Judicial Appointment (by British Market Research Bureau), June 2009
- ▶ Judicial Studies Board
- ▶ Survey of recently appointed recorders on mentoring and appraisal, October 2009

Legal Services Commission

- ▶ Aspire Programme: Helping Students Achieve Their Potential 2009–2010
- ▶ Draft Impact Assessment for Criminal Law Legal Aid Reforms (with the MoJ)
- ▶ Impact Assessment for Family Law Legal Aid Reforms
- ▶ LSC Training Contract Scheme 2008
- ▶ Quality Assurance for Advocates (QAA): Summary Report for the QAA Equality & Diversity Data Survey and Focus Groups, Containing Recommendations for Pilot Design, January 2009

Professor Kate Malleson

- ▶ Rethinking the Merit Principle in Judicial Selection, *Journal of Law and Society*, Vol. 33, No. 1, (pp. 126-140), March 2006
- ▶ Diversity in the Judiciary: The Case for Positive Action, Irish Institute for Civil Liberties, Dublin, September 2008.

His Honour Judge Mithani

- ▶ Submission to the Lord Chancellor's Panel on Judicial Diversity

Professor Les Moran

- ▶ Judicial Diversity and the Challenge of Sexuality: Some Preliminary Findings, *Sydney Law Review*, vol 28, 2006, pp 565-598

Panel on Fair Access to the Professions

- ▶ Unleashing Aspiration: Final Report of the Panel on Fair Access to the Professions, Cabinet Office, July 2009

Dr Erika Rackley

- ▶ Key Barriers to Progress on Judicial Diversity, September 2009
- ▶ Rethinking Judicial Diversity, June 2009

Joshua Rozenberg

- ▶ Supreme Courts Appointments Process – Need for Change?, The Law Society Gazette, November 2009

Professor Hilary Sommerlad

- ▶ Let History Judge? Gender, Race, Class and Performative Identity – Presentation, June 2009
- ▶ Researching and Theorizing the Processes of Professional Identity Formation, Journal of Law and Society, vol 34, no 2, June 2007, pp 190-217
- ▶ That Obscure Object of Desire: Sex Equality and the Legal Profession, May 2008.
- ▶ Top Three Changes to Improve Judicial Diversity, August 2009

Professor Cheryl Thomas

- ▶ Judicial Diversity in the United Kingdom and Other Jurisdictions: A Review of Research, Policies and Practices, November 2005
- ▶ International Comparisons on Judicial Diversity, June 2009
- ▶ Paper on the Mandatory Diversity Criteria for the Judicial Appointments Commission, June 2009
- ▶ Return to Practice for US Judges, June 2009

Tribunals Judiciary

- ▶ Tribunals Judiciary Welfare and Appraisal Group: Report to the Tribunals Judicial Executive Board on Appraisal, December 2008

xii. Evidence gathered from Discussion Groups

This annex details some of the themes and key points of discussion that arose either consistently or repeatedly during meetings with delegates to discussion groups. It follows the list of agreed questions/topics, with significant statements attributed to each one. Some answers were repeated throughout meetings, as they were suitable for each topic area, whereas some questions are particular to a specific group.

Questions and Key Points

What do you believe are the key diversity issues for the judiciary?

- ▶ There is a lot of focus on gender and ethnicity, but other strands such as disability and sexuality are not visible – all strands need to be considered.
- ▶ However, there is a definite need to increase these two main strands in the higher level judiciary.
- ▶ Progress has been made in some places but not in others. These success stories are not advertised enough.
- ▶ There are issues with people from solicitors' firms, those with ILEX qualifications and other in-house / employed barristers not being made aware of the roles.
- ▶ Solicitors' firms came under heavy criticism in each group, especially as their profession was much more diverse.
- ▶ Some solicitors said that they had been pushed out of firms once they had applied for a position.
- ▶ There needs to be a change in culture so that solicitors' firms are allowed to advertise that their solicitors have judicial sitting experience, as clients would welcome this extra example of legal ability and knowledge.
- ▶ There should be more varied advertising about the roles; the website and select media often aren't enough, and there can be too much reliance on personal networks to find out information.
- ▶ The proposed changes to the legal aid scheme will have an impact on the eligible pool in the future, as women and BAME lawyers make up a substantial part of both family and criminal practice areas.
- ▶ It has to be recognised that sometimes the white middle class well educated male is the best candidate for the job and we must not alienate them as well.

What aspects, if any, of the current structure and criteria of the appointments system would you change? What would you retain?

- ▶ Giving the JAC a better ability to forecast vacancies will be useful – people worry about the negative impact of losing work when they start the appointments process but have to wait for a very long time before being appointed, or sometimes have to reapply when a new competition opens.
- ▶ The test is a good idea but candidates only appreciate. However, it should be made either extremely general or extremely specific to the competition it is being used for.
- ▶ Some sort of consistency in the nature of the tests would also be welcomed as no one can get advice on how / what to prepare from previously successful candidates.
- ▶ The JAC needs to be able to run competitions in relation to the vacancies that are available.
- ▶ References would be better at the end of the process to ensure that firms / Chambers didn't see it as disloyalty.
- ▶ The form can be an impediment, as it is very labour intensive – a key phrase was "a tax on modesty".

In light of the aim of increasing diversity, are there any recommendations to be made about the structure and powers of the Judicial Appointments Commission? Would they be simple to implement?

- ▶ The JAC needs to tie in with the diversity networks a lot more – there are people out there who want to help but there is no perception of anyone willing to listen.
- ▶ As the JAC is sponsored by the MoJ, there are concerns over whether there is any influence by the Executive on the process.
- ▶ There needs to be increased diversity within the selection panels – people can feel intimidated by being utterly different from those on the selection panel.

What is the ideal manner to encourage applications from the best candidates for judicial posts?

- ▶ Ending the "tap on the shoulder" approach has meant the loss of a very structured and formal method of encouragement. Although using it for elevation to a role is undoubtedly wrong, the sense of being chosen for office made the person feel "wanted". There needs to be a way of having something similar to help encourage people to apply.
- ▶ Advertising of open roles is very limited; there should be a greater coverage of advertisements, as not everyone reads Counsel, The Times or The Law Society Gazette.

- ▶ There should be more information available about the vacant post, such as locations. If in doubt as what to provide, ask those who have been appointed what information they would have liked to see.

How can we best ensure diversity in the appointments process?

- ▶ There needs to be equal access to opportunities, both in manner of advertising and funding.
- ▶ People who are successful in getting appointed need to go back to their firms / communities to show that success can be achieved.
- ▶ The job shadowing scheme is a very worthwhile project and its growth is a good sign; however, it needs more resources (both financial and human) to expand even further so people are not waiting long to do it.
- ▶ It is also worthwhile to find a way to ask all judges whether they would be willing to host a shadow as many aren't aware of the scheme.
- ▶ Ensure a diverse range of judges is available at the roadshows, as someone applying to the District Bench would get no useful support from a visiting Recorder.

Are there issues around training / career development that you think would support a more diverse judiciary?

- ▶ A judgecraft course prior to application could help people in determining their own suitability for a role.
- ▶ Examples of other non-judicial roles that could give a good grounding in the skills (such as school governor positions) need to be promoted.
- ▶ There needs to be a career path – there should be a judge nominated in a court as a “go to” figure to help those interested find out more about judicial appointment.
- ▶ There needs to be a way to test suitability for a role, especially with no return to practice after a judicial career, as people are afraid that they may be stuck in an unsuitable career.
- ▶ Some of the courses run by the JSB are suitable for lower level judges but are filled with higher level judges who want to take the easy option to fill their training requirement.
- ▶ There need to be incentives such as CPD points for people taking part in activities like marshalling and work shadowing to both attract people to them and also to encourage firms to give people the time to do it.

Are there aspects of the judge's role / the way judges are asked to work that you think are counterproductive against a diverse judiciary or discourage talented applicants from coming forward?

- ▶ The perceptions of Circuit work are not positive due to the extended periods of time away from home.
- ▶ Sometimes there is a lack of clarity about what it is to "be a judge" until a successful application has been made.
- ▶ The need to sit in blocks in part-time positions can require more time off than firms will usually tolerate.

Are there issues around culture or career expectations that you think need to be addressed?

- ▶ There is a worry that the judiciary might be perceived to be a career for those with failed professions looking to secure a decent income; the JAC and MoJ need to stress the merit principle.
- ▶ Solicitors' firms need to change the way they value judicial appointment; there are regulations that advertisement of office holders is not allowed, unlike at the Bar. This lack of association continues into full-time roles where a previous partner is all but forgotten.
- ▶ To prevent isolation, there should be some sort of formal judges' lunch where the Bench can discuss either cases or more general matters – collegiality can be good in certain courts, but good practice needs to be delivered nationally
- ▶ There definitely needs to be increased post-appointment support – there are many HR and Health & Safety issues for the Judiciary but no one seems willing to help. Pastoral care needs to be improved drastically, especially as some courts are poorly designed and judges can be exposed to members of the public involved in their cases as they enter and leave the court.
- ▶ Those trying to gain other tickets for sitting seem to receive no support either – no one seems willing to help them find out how to progress.
- ▶ Library and IT facilities are a problem, as a new judge needs access to case law immediately but there can often be delays in the supply of their equipment or online database access.

What are the top three changes you think, from all your experience, would make a difference towards making sustained progress to a more diverse judiciary? Which of these do you think could be achieved quickly, and/or relatively simply?

- ▶ Get any positive role models back into their communities, maybe use the DCRJs more (though it is worth noting that not many judges are aware of them).

- ▶ Change solicitors' firms culture – they need to see judicial office as a positive feature for their firms, not just as a loss of income.
- ▶ Create the role of an Access Judge in each court to give advice on judicial careers.
- ▶ A career path / progression route needs to be more overtly obvious, maybe the area or regional managers can deliver talks on this, which would also expose them to the judges in their areas (some of whom have never met their area / regional manager).
- ▶ There should be more information on the vacant roles – people might have expectations / queries that require answering, but any requests for information are often dealt with unsatisfactorily, or are delayed so that a useful answer often comes too late.
- ▶ MoJ and associated bodies need to take the appointments process on Circuit to gain buy in from everyone, and to show there is an holistic process and range of support.

What challenges did you face in applying for a judicial post? What did you do to overcome them?

- ▶ It wasn't that hard or difficult, the main issue comes in deciding to apply.
- ▶ If a competition is cancelled, people need to be informed as soon as possible.
- ▶ There should also be joined up thinking in relation to where people are posted and their current location.

Are there any improvements that could be made to the application process?

- ▶ The process itself is fine but the JAC could offer more structured advice and guidance on how to complete the forms, the sort of things that a role play or the test would be looking for, etc.
- ▶ There must be clarity about what is required when someone sits in judicial office

**What has been your experience of the judiciary since your appointment?
Has anything been particularly positive / negative?**

- ▶ Generally positive, though those situated in small courts / sitting on one's own can feel very isolated.

Do you feel you have been adequately supported in your early experience?

- ▶ It depends upon the court but there is a general negative feeling; pastoral care is lacking, even those with good practice arrangements in other areas.

What were your perceptions of the judiciary prior to appointment? Did the life appear isolated? Was there a strong sense of collegiality?

- ▶ It depends where someone sits; a court can be big and other judges friendly, otherwise someone can be sitting just on their own.

Has your experience as a judicial office holder changed your preconceptions of being a member of the judiciary?

- ▶ Many people are surprised by the nature of the work being more than simply judicial, and also by the time commitment required.
- ▶ It all depends on the background of the individual.
- ▶ Isolation often is not as bad as feared, but court size is a crucial factor.
- ▶ Preconceptions on Circuit requirements are often incorrect, as asking to move can result in a change of location. However, this needs to be advertised, as knowing that personal needs are taken into account can show people that appointment will not necessarily mean too long a time away from the family.

xiii. Proposed Developing Judicial Skills Course

The key learning outcomes for such a course would be:

- ▶ Knowledge of jurisdiction and function of judiciary in different types of courts and tribunals
- ▶ Understanding of roles and varying challenges in performance of roles in different courts and tribunals
- ▶ Understanding of typical workload of judge in different courts and tribunals
- ▶ Participants will obtain an understanding of what are regarded as generic judicial skills and qualities and will have had an opportunity to practise such skills in role. For example:
 - ▶ Knowledge of legal principles and ability to acquire new knowledge or apply knowledge to novel circumstances
 - ▶ Analytical ability
 - ▶ Authority and control of proceedings
 - ▶ Communication skills
 - ▶ Essential requisites of fair hearings and attentiveness to needs of different kinds of court users
 - ▶ Questioning skills
 - ▶ Listening skills
 - ▶ A structured approach to decision-making
 - ▶ Fact-finding
 - ▶ Assessing credibility
 - ▶ Decision-writing

Participants will gain an appreciation of judicial ethics and the need to act in a way that always contributes to public confidence in the integrity and impartiality of the judiciary. Participants will have had the opportunity to consider and discuss scenarios presenting ethical challenges, including:

- ▶ Making the transition from practice to bench
- ▶ Conflicts of interest
- ▶ Propriety
- ▶ Independence
- ▶ Competence

xiv. Examples of outreach work to promote diversity

Clifford Chance

- ▶ together with the **BLD (Black Lawyers Directory)**, have been sponsoring the "Today's Children, Tomorrow's Lawyers" programme, aimed at ethnic minority and disadvantaged 13-17 year olds and supporting BLD's Black Letter Law publication.
- ▶ Have been participating in **Pure Potential**, a series of events that provide help and advice about higher education and careers to over 10,000 state sector pupils who are encouraged to raise their aspirations and apply to leading universities and employers. Many other firms and local Law Societies are engaged in similar schemes with similar aims.

Additionally:

- ▶ A scheme devised by The Education & Training Committee of the Honourable Society of the Inner Temple has proven very successful at attracting schoolchildren from state schools to consider the Bar as a career.

Law Society initiatives with the Black Solicitors Network

The Law Society has been working very closely with the Black Solicitors Network (BSN) on raising awareness of judicial appointments. In 2009, the BSN organised 4 seminars with the JAC aimed at providing BAME solicitors with helpful information on the application and selection process for judicial appointment. The seminars attracted over 250 BAME solicitors.

To help identify the barriers that BAME solicitors were facing when applying for judicial appointment, the Law Society organised a focus group, with a cohort of BAME solicitors. The feedback from the focus group became the basis of a competency skills based workshop which took place in August 2009. The workshop was very positively received and covered coaching, mock interviews and self-assessment. A further workshop ran in November 2009, and it is hoped a further series will run in 2010.

The Law Society and the JAC are working together on a video that explains the JAC process, especially the role play

Extending the job shadowing scheme

- ▶ The DJO are also looking into a scheme which enables a newly retired or about-to-retire partner from a firm of City solicitors to work-shadow a High Court judge jointly with a student from the College of Law (CoL). The CoL has links with the Sutton Trust, and so it is hoped that the many of the students will be from less privileged backgrounds.
- ▶ The Judiciary are assisting the Law Society in a scheme which it will pilot in the spring of 2010, in which judges will meet with solicitors and help them to think about any application for appointment they wish to make. The DJO have provided a skeleton script giving them the information that they will need to put forward. The DJO are also seeking to strengthen the Work Shadowing Scheme by increasing the guidance to judges being shadowed.

The Bar Council's Circuit Diversity Mentor Scheme

The Bar Council launched its Circuit Diversity Mentor Scheme in early 2008. The aim of the scheme was to encourage the widest and most diverse possible range of applicants for the judiciary, Silk, and appointment to the Attorney General's Civil Panels.

It brings the search for qualified candidates down to a local level, where trained fellow practitioners are able to identify those with the potential and the talent to succeed in judicial office, and can therefore provide a structured "tap on the shoulder" by their peers on behalf of the profession to encourage those people to apply.

There are 4 key aspects to the Circuit Diversity Mentors' role:

- ▶ To identify those ready for appointment and encourage them to prepare and apply for appointments for which they have the skills, abilities and experience.
- ▶ To encourage junior practitioners to plan their careers with a view to seeking an appointment. The aim of this is to encourage younger members to take the first step to gaining a role whilst keeping senior appointments in mind as a goal.
- ▶ To work through the Circuits and local networks to widen mentoring provision, so that there are more professionals able to assist in identifying the raw talent required for judicial office and to help in discussing applications and procedures with candidates.
- ▶ To be a reliable source of information on appointments for members of the Circuit. Briefings are provided by the relevant authorities for appointments to keep mentors up to date.

Diversity and Community Relations Judges

Examples of sort of work undertaken:

- ▶ Conducting sessions with groups of students on legal careers, the work of courts and judges. One judge prepared a sentencing exercise based on a real case. All students took part in prosecution or defence submissions, with sixth form students acting as jurors. One of the sessions was filmed by the school as a prospective teaching aid.
- ▶ Hosting work experience for students, especially from under-represented groups.
- ▶ Assisting in advocacy mock trials for students participating in inter-school competitions.
- ▶ preparing podcasts on role of the judge
- ▶ Participating in open days and schools days, either in mock trials, Q&A sessions or talks to students.

The **Ministry of Justice** is producing a booklet "Step up to a Judicial Career" that includes pen pictures of judges from diverse backgrounds who may have taken an unusual route to their current role or who work flexibly.

