



.....

DIRECTORATE OF
JUDICIAL OFFICES FOR
ENGLAND AND WALES

The attractiveness of
senior judicial appointment
to highly qualified practitioners

Report to the
Judicial Executive Board

Professor Dame Hazel Genn DBE, QC

December 2008

Professor Dame Hazel Genn DBE, QC Professor of Socio-Legal Studies, University College London



Biography

Dame Hazel Genn BA, LLB, LLD, FBA is Dean and Professor of Socio-Legal Studies in the Faculty of Laws at University College London, where she is also an Honorary Fellow. She previously held a Chair and was Head of the Department of Law at Queen Mary and Westfield College, University of London. Before joining London University, she held full-time research posts at Oxford University Centre for Socio-Legal Studies (1974-1985) and the Cambridge Institute of Criminology (1972-74). In January 2006, she was appointed an Inaugural Commissioner of the new Judicial Appointments Commission established under the Constitutional Reform Act 2005, and was

a member of the Committee on Standards in Public Life from 2003 to 2007. She has been a Fellow of the British Academy since 2000, was a member of its Council 2001-2004 and was appointed Vice-President of the Academy 2002-2004. In 2005, she was awarded the US Law and Society International Prize for distinguished scholarship and she holds Honorary Doctorates from the Universities of Edinburgh, Leicester and Kingston. She worked with the Judicial Studies Board for 12 years, serving as a member of the Main Board and the Tribunals Committee, and was closely involved in 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. She has a long-standing research interest in civil justice and has published widely in the field. She recently delivered the 2008 Hamlyn Lectures on the subject of civil justice. In recognition of her work on civil justice, she was awarded a CBE in the Queen's Birthday Honours List in 2000 and appointed DBE in the Queen's Birthday Honours List in 2006. That year she was also made an honorary Queen's Counsel (QC). In 2008 she was elected an Honorary Master of the Bench of Gray's Inn.

Foreword

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

The Judicial Executive Board is pleased to publish this report by Professor Dame Hazel Genn DBE, QC analysing the reasons why senior practitioners who are generally regarded as suitable for appointment as High Court judges either do or do not apply.

As well as being one of the most distinguished academics in her field, Hazel Genn is also a member of the Judicial Appointments Commission. It is important, therefore, to point out the research was not conducted by her as a Commissioner. It was conducted on behalf of the Judicial Executive Board. Her report is not the work of the Commission and does not bind or commit the Commission. Moreover, the research was not commissioned because of any concerns about the success of the Judicial Appointments Commission in attracting high quality candidates to apply for appointment to the High Court; in fact the two High Court selection exercises it has conducted have been notably successful.

It is, nevertheless, clear that there are a number of apparently highly qualified potential candidates who do not apply, and it was thought important to discover why they do not.

The research is based on interviews conducted in late 2007 and early 2008 with six recently appointed High Court judges and 29 highly qualified barristers and solicitors. I believe this is the first research of its kind, and it provides some interesting insights. Some confirm what one would expect – it has long been clear that judicial salaries are far below what the most senior and successful practitioners, both barristers and solicitors, expect to earn. Others reflect recent social and demographic changes, with lawyers, like others, tending to marry later than before, and to divorce and re-marry more frequently than in the past. This means that many lawyers still have a high degree of financial responsibility for either young or teenage children, or both, at a time in their forties and fifties when in the past many individuals would start to think about judicial appointment. Still others have caring responsibilities for elderly parents, which again affects their willingness or ability to consider a judicial career. And of course, quite apart from any other consideration, not every successful barrister or solicitor wants to be a judge at all.

One striking feature of the research is the coincidence in many of the views expressed by those who were appointed to the High Court, and those who did not apply. In some cases the perceived deterrents were overcome, and in others they continued to deter.

Some of those who have not applied did not think the work of a judge appealed to them, or that they were cut out for it. There is no particular surprise in that. Many excellent barristers and solicitors, at the top of their professions, have no desire to be judges. The work, the role, the temperament and the responsibilities of a judge are not identical to those required of a barrister or solicitor, whether practising as an advocate, or as someone giving legal advice, or as someone conducting litigation. In short, not everyone wishes to assume the heavy burdens of responsibility which are a concomitant of judicial office.

Two particular concerns expressed in the research seem to me to be based on misapprehensions about life as a High Court judge, which may once have been but are no longer true. The first is a general concern about working in an old-fashioned, fustian atmosphere, with old-fashioned, fustian colleagues. High Court judges are, in the main, in their fifties and sixties, with a sprinkling of new judges still in their forties and a very small number of older judges in their early seventies. One of the most striking features of this apparently disparate group of independent-minded individuals is the warm collegiate support that they offer to each other. And certainly the cases which they hear are firmly rooted in the real world, whether in crime, family breakdown, banking or commerce.

The concern however develops its fullest expression in the perception that the essential problem is encapsulated in judicial life on Circuit. I am a wholehearted defender of the Circuit system. Those who live and work out of London are entitled to the same judicial quality as those who live and work in London. For example, criminal justice is considerably strengthened by a system where the most serious offences are tried locally but by High Court judges from London. This process ensures that the senior judiciary are kept in touch with the work of the courts throughout the country. On reflection, it is not particularly unusual for different people to have responsibilities which keep them away from home. Members of the armed forces do so, so do many businessmen and women, many lawyers, and politicians.

What however is not sufficiently understood is that the system for Circuit visits is extremely flexible. Professor Genn herself points out that few of the practitioners interviewed had “reliable information about Circuit requirements or life”. Some High Court judges do not visit a Circuit at all and some go more or less often than others. It is possible for arrangements to be made to accommodate judges whose circumstances mean that they cannot be away from home, while simultaneously maintaining a system in which most Queen’s Bench judges, in particular, will normally spend some time on Circuit. In practice, those who expect to dislike Circuit visits often find, after appointment, that it is far more enjoyable and less disruptive than they had feared. It is a matter of regret to me and my colleagues on the JEB that the perceptions of life on Circuit reflect what happened years ago. The research has highlighted an area where the perceptions have not caught up with the reality.

Another theme which emerges clearly from the research is the particular concerns which women lawyers may have, often related to the two issues of going on Circuit and ‘atmosphere’ to which I have just referred.

It is true that there is a heavy preponderance of men among the High Court judiciary but if women are deterred from applying by that fact, it will inevitably remain so. I hope that women lawyers will be encouraged by the fact that in the most recent selection of 22 lawyers to be High Court judges by the Judicial Appointments Commission, five of the 11 women who applied were successful. That is a much higher success rate than for the male applicants who applied. The figures also illustrate that the underlying problem is that more women candidates need to apply for appointment. I can only share, enthusiastically, in the efforts of the Judicial Appointments Commission to encourage them to do so.

There are similar issues in relation to ethnic minority lawyers. The research did not identify any special factors deterring ethnic minority lawyers: their concerns are the same; the main difference, perhaps, is the low representation of ethnic minority lawyers in the upper reaches of both professions. This is something which they must address.

It is unusual, perhaps, to think of solicitors as an under-represented group, but in terms of the High Court Bench they are. In the most recent High Court competition only one successful candidate came from the solicitors’ branch of the profession, and he was already a Circuit judge. I doubt whether it is fully understood that any solicitors intending to seek a full-time judicial appointment should gain part-time sitting experience, and that they should be supported by their professional partners if they do so. The part-time sitting process enables potential candidates to see whether they have the necessary skill and aptitude for the role and whether they are suited for judicial responsibilities. The normal minimum sitting requirement for those in fee-paid office is fifteen days, or three weeks, a year, and we expect applicants for permanent appointment normally to have at least two years’ experience. In principle this should not present an insuperable burden, and the requirement is applied flexibly. This is an issue which the solicitors’ profession will need to address if they wish, as I do, to see more of their members on the Bench at senior levels.

All able and successful lawyers, whether barristers or solicitors, men or women, from every ethnic background, should be encouraged to think seriously about a judicial career, and a possible career as a High Court judge. We do not want them to be put off by outdated perceptions of the life and work that they would be undertaking. Everyone who applies will be fairly assessed in an open and transparent competition by an independent appointments commission, and selected on the basis of merit alone. What is certain is that those who do not apply cannot be appointed.

I am very grateful to all those took part in this valuable research, whether in due course they became judges or not.

Jgn Judge



Contents

	Paragraphs
Background	1
Research objective and method	2-7
Areas of questioning	8-9
The respondents	10-13
A. Recently appointed High Court judges	14
The attractions of senior judicial appointment	15-24
The downsides of senior judicial appointment	25-33
Experience of the selection process	34-41
B. Practitioners' views of senior judicial appointment	42
The attractions of senior judicial appointment	43-47
Main factors deterring potential applicants	48-69
Some who turned it down	70
Female specific issues	71-75
C. Practitioners' views about the selection process	76-79
Not deterred by the selection process	80-82
Deterred by the selection process	83-87
Other Issues	88-91
D. Issues arising and discussion	92-95
Aspects of the role	
– Circuit and geographical deployment	96
– Jurisdictional deployment	97-98
– Salary	99-100
– Workload and support	101
– Inflexible working patterns	102
The selection process	103
– Improving the selection process	104
– Providing encouragement to apply	105
– The reluctant 'stars'	106

Background

1. This research project was commissioned by the Judicial Executive Board to improve understanding of the factors that attract highly qualified practitioners to senior judicial appointment and those that might deter such people from applying. Although a proper understanding of these issues is important in ensuring the future quality of the senior judiciary, there has been no systematic research on the subject to date. Indeed, there is almost a complete absence of UK research on this subject, despite a wealth of anxious discussion, speculation, and anecdote. In the wake of the Constitutional Reform Act 2005 and the establishment of the Judicial Appointments Commission in 2006, research exploring such questions is timely.

Research objective and method

2. The main research objective was to identify the attractions of senior judicial office and the factors that might deter practitioners at the top of their field from applying for judicial appointment. The study involved conducting interviews with two groups of respondents:
 - Six recently appointed High Court judges
 - A ‘snowball sample’¹ of 29 highly qualified barristers and solicitors
3. Interviews with recently appointed High Court judges provided information about the factors that attracted them to apply for judicial office and how they overcame any perceived barriers or concerns about the selection process. The High Court judges interviewed were those appointed since the JAC selection exercise in October 2006.
4. Interviews with well-qualified practitioners, comprising a diverse range of barristers and some solicitors from Magic Circle firms, focused on: the attractions or otherwise of senior judicial office; judicial aspirations; and views about the selection process. The ‘snowball sample’ of practitioners started with the names of prominent practitioners at the Bar and in Magic Circle firms, identified by Heads of Division, the Court of Appeal, and High Court judiciary. It was then expanded by means of interviewees suggesting the names of other people to contact. The sample of respondents was not intended to be representative of the profession as a whole. Practitioners were selected deliberately because they were deemed to be at the top of their field. All but two of the barristers interviewed were in silk, and all solicitors interviewed were partners in Magic Circle firms.
5. All potential interviewees were initially contacted by the Judicial Office and asked whether they would co-operate with the research. They were then sent a brief statement of the research objectives. Respondents suggested by interviewees were contacted directly by the researcher and sent the research objectives statement.

¹ Snowball sampling is appropriate when studying a particular group whose characteristics are known. The interviewer uses initial respondents to identify other potential participants with specified characteristics. This approach is effective in qualitative interviewing, but does not support statistical analysis.

6. Eight of the total 35 interviews were conducted face-to-face. The remaining 27 interviews were conducted by telephone, lasting, on average, around 30 minutes. Telephone interviewing is an appropriate, efficient, and highly effective way of eliciting information from professionals who are used to conducting business on the telephone. With one exception, interviewees were happy to give their views. They spoke frankly and, occasionally, sent follow-up emails with additional thoughts and suggestions.
7. Contemporaneous notes of face-to-face and telephone interviews were made. All extracts from interviews or written communication presented in this report have been anonymised. Information that might identify respondents has been removed or modified.

Areas of questioning

8. Face-to-face and telephone interviews followed two slightly different topic guides that included, but was not limited to, the following areas of questioning:

Judiciary: Perceived attractions and motivating factors for application
 Pre-appointment concerns
 Perceived disadvantages of senior judicial office
 Overcoming barriers
 Critical factors in encouraging application
 Experience of the JAC selection process

Practitioners: Whether interested in judicial appointment
 Potential attractions of appointment
 Perceived disadvantages
 Whether ever encouraged to apply
 Attitudes to selection process
 Beliefs about impact of application on practice
 and career prospects
 Fears about selection process e.g. confidentiality

9. The style of questioning was completely open. No suggestions were made to respondents about possible advantages or disadvantages of judicial appointment. The conversations were allowed to follow a natural course, while covering the key questions on the topic guide. The issues presented in this report therefore reflect the spontaneous reactions of interviewees to questions, not responses to pre-selected options.

The respondents

Diversity

10. Interviews were conducted with six newly appointed High Court judges (all men) and 29 practitioners. Among the practitioner respondents, 16 were men and 13 women. Five were from minority ethnic backgrounds. Eight of the practitioners were senior solicitors from Magic Circle firms, of whom three were men and five were women. Of the 21 barristers interviewed, 19 were in silk.

Age

11. The age group of practitioner respondents was as follows:

Table 1: Age group of practitioner respondents

Age Group	Men	Women	Total
35-39	1	1	2
40-44	2	3	5
45-49	2	3	5
50-54	5	5	10
55-59	6	1	7
Total	16	13	29

Judicial appointment

12. Among the practitioner respondents, eight of the women and four of the men had no judicial appointment. Nine of the practitioners sat as recorders (including two women partners at Magic Circle firms). Two silks had been appointed as Deputy High Court judges although they had not been appointed as recorders. Six respondents were recorders and also sat as Deputy High Court judges.

Area of practice

13. Practitioner respondents' main areas of practice broadly fell into the following categories: Commercial (10); Intellectual Property (4); Crime/fraud (3); Family (3); Property/construction (3); Chancery (2); Public Law (1); Employment/tax (1); Gambling/licensing (1); Environment/planning (1).

A. Recently appointed High Court judges

14. All but one of the recently appointed High Court judges had come directly from the Bar; the remaining judge had been on the Circuit Bench. All but one had previously sat as recorders.

The attractions of judicial office

15. According to those recently appointed to the High Court bench, the most important attractions of judicial office were (roughly in order of importance):
 - Opportunity to make the decision
 - Intellectual challenge/interest
 - Less or different kind of stress as compared with practice
 - Prestige/professional acknowledgement
 - Public service ethic
 - More temperamentally suited to Bench than practice
 - Financial security

Making the decision

16. Those who mentioned this as a key attraction of judicial appointment spoke of the satisfaction offered by the opportunity to be the decision-maker, rather than the advocate. This covers a number of issues: the possibility of contributing to the development of the law and policy and in some cases, the opportunity to 'do good' or to 'do justice'.
17. Interestingly, while the opportunity and responsibility of being the decision-maker represents a crucial attraction for those who apply for judicial office it also seems to be a principal disincentive for some of the highly qualified practitioners who expressed no interest or even an aversion to judicial appointment (see paragraphs 63-66).

Interest and different kind of intellectual challenge

18. Another factor that seemed to be important in attracting recently appointed judges to the High Court Bench was the interest and challenge offered as well as a change. This covered the opportunity to hear a variety of cases, to hear high quality cases and to pursue particular areas of law.

Less or different kind of stress

19. For several recent appointees to the High Court bench, an important attraction had been the perception that appointment would offer a reduction in stress or

would involve stress of a different kind. Judicial appointment was contrasted with the relentlessness of advocacy – worrying about where the next case is coming from; pressure to maintain income; pressure to take as many cases as possible, but also worrying about whether practice might dry up.

Acknowledgement of achievement/prestige

20. For most recent appointees, appointment to the High Court Bench was public acknowledgement of their quality as a lawyer. It was also a signal that they were regarded as responsible and had good judgement.
21. Although none of the recent appointees suggested that the Knighthood was an important attraction, it was clear that the status and prestige accorded to High Court judiciary was an essential aspect of the appointment.

Public service

22. Several recent appointees were at least partly attracted by the public service aspect of judicial appointment. They felt that having been successful at the Bar it would be appropriate to 'give something back' to society.

Temperamentally suited

23. One or two recent appointees made reference to their perception either that they were temperamentally suited to the Bench, or that they were not entirely temperamentally suited to the challenges of the Bar. Being *suited to the Bench* was associated with decisiveness, not being especially extrovert, and comfortable with solitariness. Being *unsuited to the Bar* was associated with feeling the stress of practice and being less extrovert or sociable. To some extent, this overlaps with the explanations given earlier about the desire to seek a less stressful or pressurised existence.

Financial security

24. Only one or two of recent appointees mentioned the pension or regular salary as an attraction for them. On the contrary, most referred to the financial sacrifice that had been made (see paragraphs 26-27).

Downsides of judicial office

25. Among recently appointed judges, few downsides of the role were mentioned. Although reference was regularly made to the financial sacrifice involved in taking salaried appointment, the subject was raised as a matter of record rather than complaint, since only those in a position to make the sacrifice apply for appointment. The downsides mentioned, roughly in order of importance were, therefore:

- Financial sacrifice
- Requirement to go on Circuit
- Requirement to sit outside specialist field, especially in crime
- Becoming an employee and dealing with bureaucracy;
- Solitude

Financial sacrifice

26. Almost all recently appointed judges recognised that appointment would involve a significant financial sacrifice for those at the top of their field, especially in commercial practice. Most had prepared for appointment by making financial provision and felt that the financial sacrifice involved was part of the public service aspect of appointment. Others had applied when they felt that they had reached a stage where their financial responsibilities were fewer and so could afford to manage on a reduced income – their children had grown up, had left full-time education and mortgages had been paid off. But they were aware of colleagues in practice who had not made similar provision or had financial commitments which would effectively prevent them from applying for judicial appointment. The disparity between earnings at the top end of practice and on the Bench was thought to be greater than in the past; nevertheless, there was acceptance that there was no prospect of judges being paid £1 million salaries to match the earnings of leading barristers and solicitors.
27. The concerns about salary raised by recently appointed judges and their speculation about the way in which salary might deter good practitioners from applying was borne out in interviews with practitioners (see paragraphs 56-59).

Circuit

28. Contrary to some of the views expressed by practitioner respondents (see paragraphs 54-55) recently appointed High Court judges appeared to be largely untroubled by the requirement to go out on Circuit, although it was raised once or twice during interviews. Those who did mention Circuit tended to do so in the context of explaining why they would not have been ready for appointment at an earlier stage in their career, when they had young children.
29. The lack of concern about Circuit is unsurprising since only those prepared to meet Circuit responsibilities would put themselves forward for appointment. Some appointees positively welcomed it, as a source of interesting variety and a continuation of travelling on Circuit they had done either as counsel or as recorders.

30. Not all the judges had welcomed the prospect, however. One recent appointee to the Chancery Division made clear on application that he would not sit in the Queen's Bench Division, specifically because of the Circuit requirement. As he explained, life in the Chancery Division is somewhat different from elsewhere on the High Court Bench, with no usual requirement to go on Circuit, and as a civil specialist he would not have wanted to try crime in any case, having had no criminal law experience.

31. The effect of the Circuit requirement seems, therefore, to be that for some highly qualified practitioners it constitutes a temporary deterrent to judicial application as children are growing up, while for others it represents a permanent barrier to application (see paragraphs 54-55).

Becoming an employee and dealing with bureaucracy

32. For some, the change from being self-employed to becoming an employee was an irritant. Although this was not an issue of great significance, it is possible that when judicial life is discussed, complaints about bureaucracy and loss of autonomy reinforce apprehensions that are evidently significant among some practitioners considering judicial appointment (see paragraphs 60-62).

Solitary life

33. Similarly, although most recent appointees did not appear to be very concerned about the more solitary nature of judicial appointment as compared with practice, it was raised as an aspect of the environment, which could be improved, and that such improvement might have a positive impact on the image of High Court appointment among practitioners (see also paragraph 69).

Experience of the selection process

34. All recent appointees were asked about their experience of the appointments process. Several of those interviewed had experience of both the old DCA process and the JAC post-2006 process. Concerns were raised about both systems, but, on balance, all of those interviewed were supportive of the JAC and the principle of more open and transparent processes.

35. There were, however, significant complaints about aspects of the process and some thoughtful and important comments about what has been lost from the 'tap on the shoulder' system. The principal concerns raised about the appointment process, roughly in the order of importance were:

- Delay and impact on practice
- Confidentiality
- Self-assessment

Delay: Too long/too much silence

36. Almost all recent appointees complained that the delay in the appointment process and periods of long silence were unacceptable. One or two of those recently appointed felt that the delay in the process would put people off from applying.

Impact on practice

37. Several recent appointees firmly believed that their practice had suffered during the period that they were waiting for a decision about appointment. It is thought that once solicitors discover or suspect that an application has been made, they will divert work (especially long cases). Some pointed out, however, that as soon as a person takes a fee-paid appointment there must be speculation about the possibility of salaried appointment. It is possible that the habitual and deeply ingrained apprehension at the Bar about a collapse in practice feeds these concerns. A few practitioners expressed the view that applying for judicial office is likely to damage practice at the Bar. That was largely seen as the problem of delay in the process (see paragraph 86).

Confidentiality

38. Recent appointees also complained about an apparent lack of confidentiality, in the sense that news of their appointment appeared to have circulated and sometimes even before the successful applicant had been informed of their appointment. There was also one complaint that the JAC had been lax about leaving telephone messages at chambers.

Structured 'discussion'

39. Recent appointees were asked about their experience of being invited to participate in a 'structured discussion' as part of the JAC selection process. The reaction was generally very positive, although there was some doubt about its value as compared with other forms of evidence, such as references. Respondents were also slightly amused at the nomenclature, given that the 'discussion' was experienced as an interview in all but name. One or two felt that the discussion had not been particularly challenging and most felt that it had been easier than expected. Indeed, one or two felt that they might have been given a somewhat greater challenge, and that the discussion had added nothing to what could have been learned from their application forms.

Self-assessment

40. Both recently appointed High Court judges and practitioners had concerns about the emphasis on self-assessment in modern selection processes. It is seen as an unfamiliar and largely alien method of obtaining information about ability and aptitude for judicial office. Many had never previously had to submit themselves to any similar process, and had accordingly found it difficult.

41. Comments from other recently appointed judges about the issue of self-assessment and the need for applicants to be encouraged to apply for judicial office are discussed in more detail later (see paragraphs 83-89), together with anxieties about self-assessment raised particularly by the Bar. These apprehensions involved some cynicism about what applicants might say about themselves and how helpful such information could be in the selection process, and whether applicants who were good at praising their own achievements were likely to have the right sort of temperament to be judges. The comments also reflect the fact that the Bar is inexperienced in the process of self-assessment, being more accustomed to client/clerk evaluation and the brutality of covert peer excoriation.

B. Practitioners' views of senior judicial appointments

“To be frank, to think about it, being a High Court judge would be a really great job in the not-too-distant future. I know some people who have hated it, but I think they didn't think it through.” [Female silk]

42. Most of the practitioners who gave interviews were recorders and several sat as Deputy High Court judges. Questions about seeking judicial office therefore related to salaried appointments only. Out of the 29 interviews conducted, two practitioners had recently applied for salaried judicial office and said that they would apply again if they were not appointed before the launch of the next High Court exercise. Four other practitioners said that they were definitely interested in applying, but not just yet. The remainder said either that they had no plans to apply, although there was a possibility that they might apply some time in the future, or that they had no intention of applying and could not foresee any likelihood of applying.

The attractions of judicial office

43. Those practitioners who had already applied for the High Court bench and those that thought they might be interested in applying at some time in the future were asked what attracted them about senior judicial appointment. The attractions mentioned by practitioners were virtually identical to those mentioned by the recently appointed High Court judges:
- The bench would offer a less pressurised existence
 - There was an attraction in having the opportunity to be the decision-maker
 - Judicial appointment offered the opportunity to ‘give something back’ to society
 - That the High Court bench was a prestigious appointment

Less pressurised existence

44. Those practitioners who were definitely interested in appointment, and many of those who were not particularly interested, felt that the bench offered the possibility of doing interesting work in a less pressurised way than in practice. Barristers spoke of the stress created by clients' demands, clerks' expectations, and the relentlessness of the need to find the next case. Furthermore, trial advocacy was described as physically and emotionally demanding. The Bench has traditionally been seen as a natural progression for advocates who have reached the top of their profession, offering an intellectually challenging alternative to the treadmill of practice, with certainty about earnings and a pension, rather than dependency on clients and the next case.
45. One or two barristers suggested that judicial appointment had become increasingly attractive as they aged and grew fearful of their practice withering

away. This may be somewhat peculiar to the commercial bar with its dependence on Magic Circle law firms, who retire partners in their early to mid-fifties. In this way, long-standing valuable contacts are lost and, to the younger partners who step into the shoes of retirees, mature, highly experienced silks may look more old than wise.

Opportunity to be the decision-maker

46. In common with recently appointed High Court judges, a key attraction for some practitioners was the opportunity to make the decision, rather than advocate. This involved relishing the opportunity to ‘decide’ and also the chance to ‘do justice’ or ‘do good’. Many practitioners interviewed already had some experience of this from sitting as recorders or Deputy High Court judges. Indeed one practitioner who had been sitting as a Deputy High Court judge found that the experience of being the decision-maker had changed his perspective and made some aspects of advocacy slightly less palatable. He found it hard to have the same enthusiasm for putting forward every argument, whether or not a judge was likely to accept it, and for operating the adversarial system in its full and unexpurgated form.

Prestige

47. Although the prestige of the role of High Court judge was rarely the principal attraction of appointment, its importance was stressed by most of those interviewed, whether or not they personally had judicial aspirations. Quite apart from the accompanying knighthood, which few claim would directly influence their own behaviour, appointment to the High Court bench carries with it acknowledgement of excellence, authority, achievement and respect. The contribution of these attributes to the desirability of High Court appointment, and the risks involved in undermining them, should not be underestimated in terms of the future quality of the senior judiciary.

Main factors deterring potential applicants

*“It’s a very jolly life **not** being a judge. Getting loads of money, making jokes and doing really interesting work. You do really unusual, fascinating things working with people you like. There is lots of flexibility, long holidays, no bureaucracy. Why would you stop?” [Female silk]*

48. The majority of practitioners interviewed had no immediate intention of applying, and thought it unlikely that they would apply in the future. This was equally true of women and men. Moreover, of the 21 barristers interviewed for the research, four had been ‘tapped on the shoulder’ at least once by previous Lord Chancellors and had turned down the offer of appointment to the High Court bench. Two of these were men and two were women.

49. Overall, men and women gave similar sorts of reasons for not being interested in judicial office. There were, however, some issues relating to the culture and environment of the bench that were expressed more frequently by women than by men and these are dealt with separately at paragraphs 71-75.
50. The most common reasons given by practitioners for not seeking salaried judicial appointment, roughly in order of frequency, were as follows:
- Workload and conditions
 - Circuit – absence and environment
 - Salary – differential and demographic change
 - Loss of autonomy
 - Prefer to advocate than decide
 - Temperament more suited to the Bar than Bench
 - Isolation and lack of support

Workload and conditions

51. About half of those who said that they were not really interested in a salaried judicial appointment either now or ever, cited the workload and working conditions as the principal deterrents. Reference to workload often focused on the quality of work and the perception that cases on the High Court bench might be less interesting than in practice, less challenging and of poorer quality, or at least that some work would be of poorer quality, and there would be a loss of the power to turn down such work.
52. Another aspect of working conditions is the amount of work and lack of control over workflow. To some extent, this overlaps with concerns about loss of autonomy and flexibility discussed below (paragraphs 60-62). There is a perception that High Court judiciary are working harder than was the case in the past, that they are required to cover a wide range of work, and that there is little time available for judgment writing, even when dealing with complex issues. There seemed to be a strong sense that one would be working hard, with little support of the kind that senior practitioners enjoy in terms of junior barristers, assistant solicitors and so on, for less money and with less control.
53. A further workload concern was the requirement to work outside of one's specialist area. While some practitioners felt reasonably comfortable covering a spread of work, others saw the requirement to deal with highly unfamiliar areas of law – especially crime – as a serious disincentive. This is a particular issue in relation to the Queen's Bench Division, with its wide range of work from crime to Admiralty, Commercial, TCC and the Administrative Court. Senior practitioners would not now normally cover more than one of these areas, and some would not feel capable of sitting in areas outside their immediate experience and expertise.

Circuit – absence

54. About half the practitioner respondents mentioned the presumed requirement for High Court judges to go out on Circuit as a major disincentive to applying for judicial office now, and for some respondents it represented a total barrier to appointment. Indeed, the Circuit requirement was mentioned even more frequently than salary as the principal reason why a respondent would not consider applying for appointment. This is an important diversity issue since it impacts particularly strongly on those with responsibility for children or parents. The principal concern here is absence from home – being away from children and/or a partner for lengthy periods. It has to be said that few of the practitioners interviewed had up-to-date and reliable information about Circuit requirements or life. Their information comes principally from conversations with serving judges and general gossip. But this is an important issue because, whatever flexibility there may be in reality, the belief that there is a requirement for all High Court judges to go on Circuit is both a temporary and, for some, a permanent deterrent to application, and this affects both men and women.

Circuit – environment

55. Although the principal concern about Circuit life is that of absence from home, there is another aspect that may impact disproportionately on women and those who do not relish the special atmosphere and environment of Circuit life. Some practitioners are very familiar with the world of the senior judiciary and enjoy the status, prestige, and atmosphere of the bench and life on Circuit. For others, however, the same features constitute a disincentive to applying. Some respondents, both male and female, referred specifically to the Circuit environment as off-putting and a disincentive to seeking judicial office. Key factors were the formality of lodgings, dress, dining protocol, and, for women what was seen as a conservative male environment.

Salary – differential

56. Most practitioner respondents referred to the fact that the High Court salary compares unfavourably with practice, and about one-third of barristers interviewed stated that salary was the principal reason for not seeking judicial appointment. While historically, appointment to the High Court Bench seems to have involved some reduction in salary, practitioners have accepted this as part of the public service aspect of appointment. However, at least two things seem to have changed in the past 20 years: an exponential increase in earnings at the top end of the Bar and solicitors' practice (particularly in commercial practice), and social and demographic changes.
57. As far as the differential between judicial salaries and practice is concerned, there were copious references during interviews to the size of the difference, even when practitioners were not arguing that salary was an important factor in their decision not to apply for appointment. Estimates of the difference suggest that the gap between practice and judicial salary is very large, with practitioners at the

top end of commercial practice regularly earning more than £500,000 per year as compared with the High Court salary, which is currently £165,900.

58. Most solicitors who were interviewed had not considered full-time judicial appointment and seemed to be rather vague about the level of the High Court salary. One or two Magic Circle partners, however, did see judicial appointment as a possibility for the future, but felt strongly that the level of judicial salaries had fallen to an unacceptably low level by comparison with practice and that this had had a corrosive effect on the status and prestige of the appointment. Like barristers, the most successful solicitors now expect to earn very much more than a High Court judge's salary.

Salary – demographic change

59. A second factor that compounds the pay differential problem and impacts on decisions about applying for judicial office is demographic/social change. People in general are having children at an older age and there is a high rate of divorce and re-marriage. Many practitioner interviewees who were over 50 had quite young children. Some had been divorced and now had a second young family to support. This means that significant financial commitments are continuing longer and to an older age than perhaps was the case 30 years ago. The result is that it may be harder for people to make the kind of financial provision necessary to contemplate a significant drop in income, or that they are only in a position to do so once they have reached their mid-fifties.

Loss of autonomy

60. Several practitioners were concerned that salaried appointment would lead to a loss of control over the organization of their working life. Barristers work hard, but feel that they have a high degree of autonomy and the freedom to structure when they do their work. Thus the liberty to choose to work all evening and weekend in order to free up some time during the day, or to take a 'breather' after a difficult case is something that is valued.
61. There is a fear of losing control and independence. Although this concern was expressed more frequently by barristers than solicitors, several respondents felt that judicial appointment would inevitably mean a loss of flexibility and a move toward rigid working conditions. They would effectively become an 'employee' or 'civil servant', and expected also to work in their own time writing judgments and preparing cases for no extra pay.
62. Such concerns were not limited to the Bar. Magic Circle partners also enjoy a degree of autonomy, both in what they do and in the way they work, reflecting their seniority, and they also work in teams, with more junior solicitors in their teams to assist in preparation work for them.

Prefer to advocate than decide

63. Some practitioners were positively averse to the idea of being the decision-maker, preferring the challenge of advocacy. Reluctance to be the decision-maker was not generally described as lack of decisiveness, since all practitioners were in the habit of giving robust advice to clients; it was more about the responsibility for making the final decision.
64. Some explained their reluctance to decide by saying that they simply enjoyed advocacy and that their skills and temperament were best suited to that role. Their skills as a partial advocate in an adversarial system would not necessarily translate into the skills required as an impartial judge. They had gone into the law in order to be advocates, not judges, and they retained an enthusiasm for the cut and thrust of advocacy, which some other colleagues perhaps lost as they got older.
65. Some were reluctant to sit in judgement on others and this was raised particularly, although not exclusively, in relation to sentencing in criminal cases. For some practitioner respondents, the experience of sitting as a recorder had effectively convinced them that they would not be interested in a full-time appointment.
66. Others felt that the responsibility on the judge, in all kinds of cases, is significantly greater than that on the advocates and were concerned that as a judge they might worry too much about whether they had reached the right decision. The job of the advocate is to make the arguments: the job of the judge is to decide what the right outcome should be, give the decision, live with that decision, and then move on.

Wrong temperament

67. Some practitioners argued that they were temperamentally unsuited to the passivity of the judicial role and therefore questioned whether they would make good judges. Barristers have strong views about what makes good and bad judges and some were critical of those who had been unable fully to make the transition from Bar to Bench when sitting in court. Some respondents clearly appreciated that the skills set of the good judge is, in some crucial respects, very different from that of the good advocate, for example being appropriately silent.
68. Other practitioners, both at the Bar and in Magic Circle law firms, felt that salaried judicial appointment was something that should be considered in the closing stages of a career, perhaps when one was feeling less vigorous, not when one was still on an upward trajectory and enjoying practice. It might be something to consider later, after a career had 'plateaued'.

Isolation and lack of support

69. Many senior practitioners have friends or former colleagues who are judges and there is a common perception that the life of a judge is more isolated,

unsupported, and unsupportive as compared with practice. This was something mentioned both by barristers and solicitors. As practitioners, they met lots of different people and had excitement and amusement from their work which was shared and discussed with colleagues. A judge's life is seen as more remote and solitary, and less collegiate.

Some who turned it down

70. Four of the practitioners who were interviewed had been 'tapped on the shoulder' by a Lord Chancellor and turned down the offer of appointment to the High Court Bench. Their explanations for the decision neatly encapsulate many of the disincentives identified in the earlier paragraphs. These extracts are presented as mini-case studies:

Case 1: Female silk

"I have no interest in full-time appointment. It is the conditions of service. Five-fold reduction in income. Less control over professional life and I would feel bound to go on Circuit. It would involve being away. I have young children and I am not willing to do that. I'm married and I like to have dinner with my husband and friends rather than talk to a load of High Court judges. And also the social milieu. I've sat as a Deputy and I don't find the High Court encouraging of collegial enterprise... The hours of service are also an issue. 60-70 hours. That is similar to me, but I feel I have a choice and feel very well rewarded for what I do. But judges have a huge workload and other activities. I can take a week off if I want to. The loss of autonomy and flexibility is an issue... There is no guarantee that you would get to the Court of Appeal. The idea of spending the next 15 years of my life being a High Court judge doing rubbish work is frankly too depressing to contemplate...[the Lord Chancellor] tapped me on the shoulder when I was 45... If I had had no family at all my sense of public duty might make me do it. But when you see the reality of what you have to do on the High Court Bench – work like a dog, lots of extra-curricular stuff and administration..."

Case 2: Female silk

"I found being an assistant recorder awful. I decided it was a nightmare. During my two week sitting it became completely obvious that I was not suited to the role. I am not very judgemental. I can always see the other side. I didn't enjoy the work. I really, really didn't enjoy it. I am happy giving really strong advice in my practice, but I did not enjoy judging. Also, I hated not knowing about criminal law and having to sit. A few years later, I was asked if I wanted to be a High Court judge and I said 'No'. Then [the Permanent Secretary to the Lord Chancellor] asked me to go and see him. He wanted to check and asked me to reconsider. I would have had to go on Circuit and that for me was non-negotiable... I couldn't possibly have gone on Circuit. I wanted to be at home. Nothing has happened since to make me regret my decision. Money didn't come into it at all. It wasn't a factor."

Case 3: Male silk

“I was offered the High Court by [the Lord Chancellor] and I said ‘not yet’ and I have never found a ‘yet’. At the time, I didn’t feel I could afford the High Court. I had young children at private school. And it would be the QB and I had no great love of the idea of going out on Circuit... I don’t like being away from home to be honest. I don’t want to be away from my wife... It would help if you could negotiate Circuit. I hear that judges on Circuit are now being put up in hotels. Having to live in a hotel is appalling beyond belief. Hotel life is hateful. I don’t think policy people understand this... I’ve enjoyed my practice hugely. The life of a High Court judge doesn’t strike me as hugely attractive. Lots of boring stuff. Procedural stuff. Litigants in person... And you are no longer your own master. I have quite a bit of control and if a case settles, I take time off. In the High Court, if a case settles they give you the next one... It is a more rackety life at the Bar. The obvious attraction of the Bench would be a regular salary and pension, but I have already provided for my pension so that is not vital for me, but it is for some people.”

Case 4: Male silk

“My shoulder was tapped and I said ‘No, not for the moment’. I said ‘No’ because I was still enjoying the Bar. You should not take on the job of judge unless you are absolutely sure that’s what you want to do... If you’ve got friends who are judges, you should know what’s expected. I didn’t feel at that stage I wanted to do it. I didn’t want to give up the Bar. I didn’t want a full-time judicial appointment. What most of us enjoy, if we are lucky enough to be a senior silk, is that we are very well paid; we have interesting jobs; we do a variety of things and life is much more flexible. If you finish a big case, you can take a breather. And if I’m not in court and something interesting is happening at home – like going to watch a child play football – I can do that. I like the flexibility and the autonomy. I declined the offer of appointment. I said ‘not yet’. I might do it, but I am not 100 per cent sure. Ignoring the money, as long as I’m enjoying the Bar and the challenges and the freedom, I am not sure I want to have to give that up. You get boring cases as a barrister and as a judge. But it’s about being an employee.”

Female-specific issues

71. Although, in general, the response of female practitioners in interviews was similar to that of men, some issues raised by women related specifically to gender. These are worthy of separate attention in an inquiry into the attractions of judicial office, particularly given the Judicial Office and JAC’s commitment to encouraging applications from a more diverse range of candidates.
72. The chief concern raised by women was that the senior judiciary is predominantly male and there were questions about whether the environment would actually be hostile to women, let alone supportive. There was unease about the absence of female role models, the shortage of women to provide advice and encouragement and the possible loneliness of the position. These reservations were expressed by female barristers and female solicitors.

73. This perception and concern is likely to continue until there are sufficient women appointed to the High Court bench to change the look of the environment. A critical mass of female High Court judges will be able to provide encouragement and support to potential candidates and new female appointees.
74. For some female barristers, the Bench is merely seen as an extension of a male-dominated and conservative Bar, with the same culture of male self-confidence and intellectual posturing but with no respite, and therefore an unattractive prospect as an alternative career. Interestingly, female solicitors who had reached partnership in Magic Circle firms, and who felt that their professional journey had been something of a struggle, were reluctant to begin again, and perhaps have to struggle to re-establish their credibility, in a world that they perceived to be even more antediluvian than city commercial law practice.
75. Another issue for women is that in order to become eligible for senior judicial appointment it is necessary to have a part-time judicial appointment. For women trying to juggle the demands of practice and family life, this can seem like an impossibility. Female Magic Circle partners suggested that an additional problem for them was securing agreement from partners for release for part-time judicial work. There were several concerns. First, the time commitment might be more than their co-partners felt could be spared from the practice. Second, they would have to forego a significant amount of salary to compensate for the time out of practice. Third, they would have to work very hard to make up the time spent while sitting. Finally, they were concerned that taking a part-time judicial appointment might be interpreted by their partners as reflecting a lack of commitment to the practice. Women solicitors who had nevertheless become recorders thought that they had had to struggle to do so in the face of strong opposition from their firms, and had feared that they might be committing 'career suicide'.

C. Practitioners' views about the selection process

76. All practitioners were asked about their views of the High Court bench selection process. Most had a reasonable understanding of the process, with the exception of Magic Circle solicitors, only one or two of whom had a clear idea about eligibility criteria or the selection process.
77. The majority of practitioners were supportive of the change from appointment based on invitation – the 'tap on the shoulder' – to more open processes, although some expressed greater enthusiasm than others. Even some of those who were fully supportive of selection based on application felt that there had been some positive aspects to the 'tap on the shoulder', which have now been lost. This issue is discussed at paragraphs 88-91 and 105-106.
78. Only two practitioners who declared any judicial aspiration stated that the prospect of a formal selection process would deter them from applying. One or two of those practitioners who said that they had no interest in judicial office expressed complete disapproval of both the idea and the nature of the selection process.
79. The expressed attitudes to the selection process have to be understood within the context of the pattern of legal careers. Historically, this has involved little or no movement following pupillage or articles. The stars of the profession have arrived at the top without applying for promotion, re-grading, salary enhancements, or having been mentored, appraised, or peer reviewed. A transparent selection process for appointment to silk was only introduced in 2005. This lack of experience in completing application forms, with the inevitable risk of failure and rejection, leads to some apprehension about applying for senior judicial appointment, even if it does not actually deter those with serious judicial aspirations. It also points to the need for structures that identify and encourage talent.

Not deterred by the selection process

80. The vast majority of those interviewed, while not necessarily relishing the idea of having to go through a selection process for senior judicial appointment, claimed that the process would not deter them from applying if they genuinely wanted to be appointed. In fact, many of those interviewed claimed that they had been opposed to the 'tap on the shoulder' method of appointment and had supported the creation of the JAC, and welcomed greater openness, transparency and competition.
81. Even some of those who were quite negative about the application process and who felt that the 'tap on the shoulder' was a perfectly reasonable way of selecting High Court judges claimed that, had they wanted appointment, they would have been prepared to go through the application process.

82. One female practitioner, although happy with the changes introduced by the JAC raised specifically her concerns about whether the process was succeeding in bringing more women into senior judicial posts and more black and minority ethnic candidates.

Deterred by the selection process

83. Several practitioners, however, said that the selection process would deter them from applying. There were at least three partially interlinked issues expressed here: the process of ‘self-assessment’; fear of rejection; and expecting to be flattered and persuaded.

Self-assessment

84. Some members of the Bar expressed strongly the view that the emphasis on self-assessment in selection processes was unwelcome, misguided and an unreliable form of evidence for selectors.

85. As mentioned earlier, barristers and solicitors are less familiar with the concept and practicalities of self-assessment than are many comparable professionals. Within the Bar, however, there is an additional queasiness about completing self-assessments, which possibly derives from the historic culture of a small, highly competitive market system, in which it seems that reputations can be affected by tittle-tattle as much as by performance. The world of the Bar is one of tough, binary assessment. You are judged right or wrong on the law, you win or lose your case, you are therefore deemed to be a good or bad lawyer, clever or stupid, and ultimately successful or unsuccessful in practice. In this anxious world, self-congratulation is regarded as bad-mannered and hubristic. This ethos leads to the remarkable situation in which a profession, regularly accused of arrogance, flinches so conspicuously from documenting its positive qualities and achievements.

Fear of rejection

86. Some practitioners expressed the inevitable fear of rejection that successful professionals are likely to experience when applying for any kind of serious appointment. Rejection is generally painful to the psyche, but in the highly competitive and gossipy world of the Bar, there is an additional dread that failure will become known and that that will have a deleterious effect on reputation and practice.

Expecting to be persuaded

87. There is also a view that in taking senior judicial appointment, high-flying practitioners are doing a public service. They are giving up their generous salaries and congenial working conditions to undertake serious work for the public good. To expect them to compete for appointment in these circumstances

is seen as unreasonable and unrealistic. The old system, in which the Lord Chancellor invited people to talk to him, and offered them appointment was more likely to flatter people into making the sacrifices that accepting appointment entails.

Other issues

Lack of confidence

88. A significant issue that emerges from the shift to open application processes is the loss of any structured form of encouragement to apply. In a profession that has no system for mentoring or career planning, the tap on the shoulder system – whatever its principled and practical drawbacks – effectively took away from individuals the responsibility for deciding whether to put themselves forward. This is not just about fear of failure. It is also about confidence and self-assessment. Interviews with both recently appointed High Court judges and practitioners demonstrated the need to encourage talented individuals to apply – even those at or near the top of their profession. Several spoke about uncertainty as to whether they would have a chance if they applied, and the need for encouragement from an authoritative and respected source.

Value of encouragement

89. Some recently appointed judges spoke of the significance of receiving direct encouragement either in person or by receiving a letter from a senior judge. Practitioners considering appointment also spoke of uncertainty about their quality and the need for guidance and a frank assessment of their prospects in relation to appointment.
90. Although both men and women talked about their lack of confidence and the need for encouragement, one or two women referred to the specific difficulties facing women in a male-dominated profession without structures for career development and progression. There was a sense that women were even less likely than their male colleagues to receive encouragement and informal mentoring and, in the culture of the Bar, the system of silk patronage that brings on younger men almost inevitably disadvantages the progression of women.
91. Among senior women solicitors, it seems there is little consciousness of the possibility of judicial appointment, let alone systems for working toward such a career step. The outreach work done by the JAC, such as their roadshows, will not affect those practitioners for whom judicial appointment is not even on their radar.

D. Issues arising and discussion

“Finally, I concentrated on some of the things which might deter rather than encourage, because they may be less evident. I do not forget that the job is, objectively speaking, fantastic with excellent conditions all round. But as the selectors of the next England team manager know, that does not always suffice to attract the top talent.” [Male silk, extract from post-interview email]

92. Interviews with recently appointed judges and highly qualified practitioners suggest that there are considerable attractions in senior judicial appointment. The appointment offers interest and intellectual challenge together with what is seen as a prestigious release from the pressures of practice. It also offers the opportunity to make important decisions, to shape the law, possibly to ‘do good’, and to contribute to public service.
93. However, to ensure that senior judicial appointment remains attractive to the most suitably talented practitioners, consideration needs to be given to significant aspects of the role that, according to interviewees, represent a deterrent to application. There are also aspects of the selection process that might deter or fail to encourage potential applicants.
94. While it is clear that some of the highly-qualified practitioners interviewed have never seriously been, and are unlikely to be interested in judicial appointment because they are temperamentally unsuited to the work, many are deterred either temporarily or permanently by practical issues relating to working conditions that are, at least theoretically, open to adjustment. For example, the geographical and jurisdictional deployment of the senior judiciary, salary, workload, location, support, patterns of working and general flexibility. Most of these issues apply equally to women and men, but some aspects impact disproportionately on women and especially those who have primary caring responsibilities.
95. There are also adjustments that could be made to the selection process that might remove some barriers and provide encouragement to those who are unsure about whether they have reached an appropriate level of experience and distinction. Again, in looking at issues concerning eligibility, selection criteria, and application processes it is important to bear in mind that competing directly with men to reach the top of either branch of the legal profession is challenging for women with children or dependant parents. In considering how talent should be identified and developed for the future, it is also worth noting that the pressures of life at the Bar and the informal system of silk patronage through which the careers of junior members of the Bar are advanced, disproportionately impacts on women.

Aspects of the role

Circuit and geographical deployment

96. The requirement to go on Circuit for Queen's Bench and Family Division judges quite clearly represents an important barrier for many highly qualified practitioners, both men and women. People with caring responsibilities cannot, and will not, leave their children or parents for extended periods. Some do not want to leave their partners and home lives irrespective of whether they have caring responsibilities. Although potential candidates do not have comprehensive up-to-date information about Circuit requirements, such information as is available through gossip is off-putting for many.

Jurisdictional deployment

97. Another deployment practice which operates either in isolation, but more often in combination, to deter highly-qualified applicants from seeking High Court appointment is the perceived requirement for Queen's Bench and Family Division judges to sit in crime. While some highly qualified practitioners will have served as recorders, this is not always the case. Even if it is, some commercial, civil or family practitioners who would relish the challenge of high quality civil cases on the High Court bench are deterred by the perceived requirement to sit in crime.
98. This is compounded by the fact that highly qualified civil, commercial and family practitioners are concerned that, if newly appointed to the High Court bench, they might be required to sit in crime at a very early stage and before judgecraft skills have been tested and developed in more familiar legal territory. While some might welcome this challenge, it is a disincentive to others, especially when coupled with the requirement to be away from home.

Salary

99. There is a widespread perception that the salary of the High Court judiciary has fallen significantly behind earnings in private practice as well as other areas of the public sector and in comparison with the position of the judiciary in the past. While this is most evident in the field of commercial law, where there has been an exponential increase in earnings at the top end over the last twenty years, the yawning gap between the bench and practice is apparent. Although, historically, senior members of the Bar may have 'accepted' High Court appointment as a public duty together with a drop in salary, there are a number of factors that are combining to change the climate.
100. First, the earnings differential is greater than in the past, so the drop in income on appointment is more significant. Second, people are having children later and having more than one family so that substantial financial responsibilities continue to a later age. As a result, highly qualified practitioners who might be interested in High Court appointment cannot afford to consider it until well into

their fifties. In addition, the decline in the judicial salary has a damaging impact on the prestige of the role. Although one would not expect judicial salaries to compete with the highest earnings in practice, as practitioners have pointed out, salary is an important indication of the value that society places on the position of High Court judge.

Workload and support

101. There is a common perception that the role of the High Court judge is more demanding than in the past. It is thought that the workload is heavier, that there is less reading time, even for complex cases, and virtually no writing time, even for complex judgments. Listing is seen as demanding and there is thought to be a complete absence of the kind of support provided in practice by pupils or juniors, or teams of assistant solicitors in Magic Circle law firms. Thus, the image of the work life of a High Court judge in the minds of many well-qualified practitioners is somewhat negative. When this is put together with the salary issues raised above, some highly qualified practitioners had formed the view that the role was less attractive than continuing in practice. For those interested in a change of gear, change of career or public service, other opportunities might seem more appealing.

Inflexible working patterns

102. Another concern about High Court appointment is lack of flexibility. This involves a number of issues. First, Circuit and location discussed above. Second, the inability to undertake a part-time work pattern that might, for example, involve not sitting during school holidays, or some other pattern than might permit time for parental care. This would meet the concerns about the loss of the flexibility and autonomy that practitioners enjoy once they have reached the senior level of the profession. Finally, there was the concern about becoming 'locked in' to appointment. It was suggested that if there was greater flexibility about retirement or if it was possible to undertake a period appointment and return to practice, this might remove some of the disincentives to applying.

The selection process

103. Discussions with recently appointed judges and practitioners suggest that most people regard the shift from 'appointment by invitation' to an open selection process as a good thing. There are, however, some reservations about aspects of the process that can be improved. There are also concerns that the positive aspect of the 'tap on the shoulder' – in the sense that it picked out people who might not have had the confidence to apply – has been lost. There is also a concern that moving from invitation to application excludes reluctant 'stars' who under the old system might have been susceptible to arm-twisting by the Lord Chancellor over a cup of tea, but who would not be prepared to undergo a formal selection process.

Improving the selection process

104. The main complaints about the selection process concerned unfamiliarity with the culture and practice of self-assessment; delay in the selection process leading to concern about impact on practice; and the confidentiality of the process

Providing encouragement to apply

105. Interviews with recently appointed judges and practitioners revealed that encouragement to apply for judicial appointment from judges or respected colleagues was very important in either creating or crystallising aspirations, and in providing reassurance that potential candidates had reached an appropriate level of experience and distinction. In an appointments system that depends on candidates putting themselves forward, it is necessary to ensure that within the structure of professional careers, the widest range of potential judicial talent is identified, cultivated, and encouraged.

The reluctant 'stars'

106. Interviews suggest that there are broadly three categories of potential candidates for the High Court Bench. First, there are practitioners who do not want a salaried judicial appointment because they feel temperamentally unsuited to the bench and/or because the work and life of a High Court judge simply does not attract them. This category arguably would have been un-persuadable even in the days when appointment was by invitation and four examples of the category were cited earlier (see paragraph 70). Second, there are those who are definitely interested in salaried appointment, either immediately, or in the future, and who are willing to subject themselves to the selection process, even though they do not relish it and are apprehensive about rejection. Finally, there is a hypothetical category of 'stars' who are not particularly interested in salaried judicial appointment, but who, if cajoled and flattered, might accept appointment in the name of public service and because of the prestige of the appointment. It was argued forcefully by several interviewees that this category is now lost to the High Court bench because of the requirement for applications to be made. Certainly, one or two of those interviewed maintained that, had they been interested in appointment, they would not have applied. But with some encouragement from the senior judiciary and greater familiarity with the application process, it is hoped that even reluctant stars will be prepared to put themselves forward.

