



JUDICIARY OF  
ENGLAND AND WALES

# **Judicial Diversity Conference: A Judiciary for the 21<sup>st</sup> Century**

Wednesday 11 March 2009  
Clifford Chance, London

## **Contents**

Introduction from Lord Judge, the Lord Chief Justice of England and Wales	3
Report of the Judicial Diversity Conference held on 11 March 2009	5
Annex A: A Judiciary for the 21 <sup>st</sup> Century: The views of the delegates	11

## **Introduction from Lord Judge, the Lord Chief Justice of England and Wales**

The coming into force of the Constitutional Reform Act 2005 changed the system of judicial appointment, radically. The Judicial Appointments Commission, a statutory body for judicial appointments was created, to select candidates for recommendation to the Lord Chancellor for judicial appointment, in place of the old system of recommendation.

In making selections, the Judicial Appointments Commission is required to have regard to a single criterion – that the candidate is appointed solely on the basis of merit. The judiciary must be made up of individuals of the highest calibre. Those who come before the courts have the right to expect nothing less.

Merit in this context consists partly of knowledge of the law, experience and expertise. But in addition we expect our judges to have certain personal qualities. Wisdom, integrity, patience, independence of mind, a sense of practical realities, an understanding of people, fairness and balance, and a passionate desire that justice should be administered according to law and the ability to see that it is, the list of necessary qualities is a very long one. Judgment is made without fear or favour, affection or ill-will.

The judge must also have the ability to make a decision, which might be profoundly unpleasant and have very serious consequences for others. He or she must also have moral courage to make decisions that will defend the right to equality and fair treatment before the law of those who are unpopular at any given time, indeed particularly those who for any reason are unpopular.

What troubles the judiciary, and others, is that the pool of potential candidates for appointment to judicial office is neither as large nor as wide as it could be, nor as it should be. Women and members of the ethnic minority communities are not as well represented on the bench as a whole as they should be. That must be addressed. In recognition of this the Judicial Appointments Commission is also required by statute to have regard to the need to encourage diversity in the range of persons available for selection for appointment.

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. We must ensure that the pool of eligible candidates for consideration for judicial appointment is as wide as it can be, consistent with maintaining standards, such as the requirement that candidates are suitably qualified in the law, and we also wish to encourage all potential candidates to consider whether to seek a judicial career. By doing this we will find the best possible judges.

In order to assist in the debate about how to encourage both diversity and quality in the judiciary, Mrs Justice Dobbs, as the senior Judge responsible for diversity issues, organised a conference in March on my behalf to look at these

issues. I was pleased to welcome to the conference Baroness Prashar and other members of the Judicial Appointments Commission, with many other judges, lawyers, academics, civil servants, interested parties and people with relevant experience. The conference considered the judiciary of the future, and how to ensure that all suitable applicants for office could be encouraged to apply. The delegates divided into smaller groups to assist their deliberations and then reported back in a plenary session. I had the opportunity to visit most, if not all, of the different groups, and was pleased by the wide range of ideas that was generated. I undertook to publish an account of the conference and to include within it the suggestions made by delegates. This is that account.

The suggestions are at the back of this report, at Annex A. These have been edited and combined to remove duplicate suggestions and present the ideas in a coherent way.

There was no vote at the conference, and it did not result in any single agreed outcome, or plan of action. That was not its purpose, which was to generate ideas. In the nature of things, some of those ideas are practical and good, others perhaps less so. Some of the suggestions did not meet with unanimous approval. I should say that I do not agree with all of the ideas put forward, and the list of suggestions does not constitute a list of actions necessarily agreed with by me or by the judiciary. It is a report of the ideas which some delegates, lawyers and non-lawyers, put forward because they thought their suggestions might increase judicial diversity. And these ideas can be the subject of further discussion and evaluation.

# **Report of the Judicial Diversity Conference held on 11 March 2009**

## **Background**

1. The Constitutional Reform Act 2005 removed the old system of appointments. Instead, it created the Judicial Appointments Commission, a statutory body for judicial appointments. It selects candidates for recommendation to the Lord Chancellor for judicial appointment. It was assumed that this would make a dramatic change to the number of women and minorities appointed to judicial office. Change has come, but perhaps more slowly than many had hoped.
2. The tripartite judicial diversity strategy was agreed between the Lord Chancellor, the Lord Chief Justice and the chairman of the Judicial Appointments Commission in 2006. Its overall policy aim is to bring about a more diverse judiciary with increased understanding of the communities it serves, in order to ensure a judiciary of the highest quality which contributes to increased public confidence in the justice system.
3. The judiciary was aware of the need for greater diversity among judges some years before this strategy was agreed, however. It has often been castigated for being white, male and middle aged, but judges have for some time been keen to see the widest possible pool of applicants coming forward, because they see a wider pool of applicants as increasing the recruitment of judicial office-holders of the highest possible quality, as a result of recruiting from the widest possible range of talent. Therefore they have undertaken initiatives designed to increase the number of potential applicants, both for the law as a career and for the bench directly.

## **Work already undertaken by the judiciary**

### ***The Diversity and Community Relations Judges (DCRJJs)***

4. The DCRJJs are a group, initially established in about 2001, whose purpose is to act as an interface between the courts and local communities, with a view to increasing the confidence of those communities in the justice system, and enabling the judges to understand better the issues and needs of those communities. Some of the work undertaken by these judges includes arranging for community leaders, religious leaders, schools and colleges to visit the courts and meet the judges and court staff. DCRJJs also take part in justice-related employment events to encourage members of minorities and others who might not have considered law as a career to think about working within the justice system and, eventually, to increase the pool of potential judges.

5. The Judicial Office works with HHJ Geoffrey Kamil CBE, the lead DCRJ, to find ways to enhance and support the DCRJ network. (MoJ gave funding towards the production of the DCRJs' handbook, although it did not undertake work on the initiative.) Following a recent expressions of interest exercise, Judge Kamil now leads a group of about 46 DCRJs. These judges are spread around the Circuits according to perceived need, which is constantly changing. They exchange best practice at an annual conference and training event.

### ***Judicial Work-Shadowing Scheme (JWSS)***

6. The Judicial Work Shadowing Scheme, which commenced in 1999, is now administered by the Judicial Office. It allows practitioners considering applying for judicial office to spend between one and three days work-shadowing a High Court, circuit, district, district (magistrates' courts) or tribunal judge. Since the scheme was re-launched in October 2008 there have been over 700 applications in its first year.
7. The Judicial Office will conduct a review of the Judicial Work Shadowing Scheme, to assess its effectiveness in encouraging potential applicants and widening the pool of candidates who apply for judicial office.

### ***Work with children, young people and students.***

8. The judiciary continues its outreach work at all levels, encouraging schools, students and young lawyers to spend time in court, to help them to understand better how judges and courts work. If funding permits, the Judicial Communications Office will be appointing an education officer to undertake outreach work with children and young people and to offer information for them on the judiciary's website.

### ***Initiatives to encourage understanding of the role of judges among the wider community***

9. Members of the judiciary regularly give talks to various organisations on legal matters as well as on the role of the judge. A product of this work may be that familiarity with the judiciary will encourage the audiences to these talks to feel less intimidated at the idea of applying for judicial office and that judges will gain a greater understanding of the community.

### ***Joint initiatives with professional organisations***

10. The judiciary has always worked closely with the professional organisation and will be working with the Law Society and law firms, to find ways of encouraging more solicitors to consider judicial appointment. There has been communication with ILEX on the same issue. The issue of legal academics being appointed to the bench is also under consideration.

## ***Outreach by the Judicial Appointments Commission***

11. The Commission runs roadshows and other outreach events designed to explain the selection system to potential applicants and to encourage them to consider a judicial career. Staff from the Judicial Office attend these events to make applicants aware of the judicial work shadowing scheme (JWSS).
12. However, the judiciary was keen to discover whether other institutions or companies had better or different ways of encouraging diversity within their organisation. If so, we wished to learn from that experience. It was for this reason that a conference, entitled “A judiciary for the 21<sup>st</sup> Century” took place on 11 March 2009. The purpose of the conference was to offer an opportunity for some “blue sky thinking” about the judiciary of the future. The conference was held under the “Chatham House Rule”.
13. The conference brought together almost 170 delegates from a wide range of backgrounds; judiciary, legal practitioners, academics, those who work within the justice system, diversity consultants, representatives from interest groups, and others who could make a contribution. Representatives from the armed forces, the media, the intelligence services, private enterprise, minority groups, industry and public services all attended. The Lord Chief Justice attended for the day, speaking at the beginning and end of the conference and a copy of his speech opening the conference is available at the following address: <http://www.judiciary.gov.uk/docs/speeches/lcj-speech-diversity-conf.pdf>.
14. The aim of the conference was not to provide a view from the judiciary but rather to gain a different perspective on the issue of judicial diversity and to find out whether anything new could be done that had not been tried previously. Its intention was not to produce an agreed outcome or a plan of work, but rather to explore ideas and consider the issues and how other professions and industries had tackled them.
15. In the break out groups, delegates considered:
  - What kind of judiciary do we need in the 21<sup>st</sup> century? What qualities and abilities should judges have? How should these qualities and abilities be tested?
  - How can we widen the pool of applicants for judicial appointments and overcome barriers to application to encourage more applications by women and members of under-represented groups?
16. The facilitators of breakout groups were encouraged to ask delegates to consider issues from first principles, considering matters such as the

qualities required to be a good judge at various levels, ways to test for those qualities and ways to increase diversity.

## **Themes for consideration**

17. The conference did not reach an overall set of conclusions with which all delegates agreed, but several themes emerged from the different groups, including

- A need to increase diversity in the judiciary, while maintaining appointment on merit alone, by attracting a more diverse pool of applicants.
- Promotion of the role of judges to inspire others to seek judicial office. Suitable candidates who were uncertain about a judicial career should be actively encouraged to apply. Delegates identified lack of retention of women and BME groups within the legal profession after qualification as a key concern.
- Concerns were raised about the need to seek references early in the appointments process and about not having the option to return to practice once appointed.
- Candidates being offered posts outside their residential area or being offered a post about which they know little in terms of law were seen as factors which were possible deterrents for potential applicants.
- Some delegates thought there was a need to consider the definition of “merit” to ensure it does not “define out” certain groups.
- The non-existence of an appraisal system was perceived by some to be a serious barrier, both when applying for office and during a judicial career.

## **Table of outcomes**

18. The complete list of suggestions made by delegates in breakout sessions has been combined (to avoid duplication and overlap) and grouped thematically, and is annexed to this report at A. The suggestions were not universally agreed by delegates and are not a record of the views of the judiciary.

## **Next Steps for the Judiciary**

19. Not all of the suggestions which delegates made fall either wholly or partially within the remit of the judiciary. These, therefore, either could not be done at all or could not be done without agreement from and input by other organisations. None of the suggestions put forward were

costed, and some will undoubtedly prove too costly or require staffing levels unavailable to the Judicial Office. Some of the suggestions will be considered by the Advisory Panel on Judicial Diversity (chaired by Baroness Neuberger), which is in a better position to make recommendations on cross-departmental working or on initiatives in which the judiciary plays no major role. Nevertheless the conference produced some suggestions which could be taken forward before the Panel reports.

**a) *Extending the Judicial Work-Shadowing Scheme***

- The Judicial Office has extended the scheme to include the shadowing of High Court judges.
- The Judicial Office is also considering the possibility of a work shadowing scheme for judges, beginning with district judges work shadowing more senior members of the judiciary. This would allow judges to progress in a better-defined career structure. It would also allow district judges, a group with the most diverse profile, potentially greater access to higher judicial office, should they wish it.

**b) *Learning from best practice among DCRJs***

- The DCRJs have undertaken excellent initiatives which have proved particularly successful. The Judicial Office will put details of these, if sent to them by the DCRJs, on the judicial intranet, so that other judges can use the ideas in their own areas. The Judicial Office is also providing an email group comprising all DCRJs, so that judges can send information to all members of the group if they so choose. These changes arise from proposals made by DCRJs at their conference held in May 2009. If the website permits it might also be possible to offer information on community groups and others who would be keen to hear about judicial diversity, such as the Association of Women Solicitors, the Association of Muslim Lawyers, Reach, etc.

**c) *Collating and recording outreach work undertaken by the judiciary***

- DCRJs are not alone in undertaking outreach work in the community. The Judicial Office will collate all examples of this kind of work to provide a record of activities carried out by the judiciary as a whole. This will have two advantages. First, it will enable judges to learn from successful work undertaken by other members of the judiciary, and secondly it will give a better overview of who is being reached and, crucially, who is not.

**d) *Working with solicitors to encourage more applications for judicial office***

- Members of the judiciary are working to form links with solicitors' firms, both small and large, to see how best to encourage practitioners to apply for judicial office and how their firms can provide them with the opportunity to sit regularly.
- The judiciary is also considering its own internal structures, to see whether its working patterns can be adjusted to allow greater flexibility for those who might currently be unable to apply for office.

## **Annex A**

### **A Judiciary for the 21<sup>st</sup> Century: The views of the delegates**

These ideas were each put forward by at least one conference delegate. Some were clearly minority views. They are produced here to provide a record of the contributions made during the conference which are relevant to the judiciary and the Judicial Office and which can be carried out by them in whole or in part. It should be noted that other suggestions were made but they were not within the remit of the judiciary.

#### **a) Increasing awareness of the role of the judiciary among the lay public**

- More community engagement, including targeting of wider audiences and an increase in the number of court open days.
- Judiciary and legal profession need a greater profile in the press. There should be more articles in the media showing “a day in the life of . . .” particular members of the judiciary and legal profession.

#### **b) Ways of increasing applications for judicial office from a more diverse pool**

##### **i) Information, marketing and targeting**

- PR campaigns by all players to encourage more applicants from minority groups.

##### **ii) Shadowing, mentoring and support**

- Assessment of how better to target appropriate persons/organisations to promote the JWSS.
- Extension of the JWSS to younger lawyers identified as having good potential.
- Support and mentoring before and after JWSS.
- A work shadowing scheme for judges to shadow those in higher tiers.
- Liaising with barristers’ clerks and practice managers to reinforce the importance of diversity and fair access to work.
- Examining the barriers to judicial office for those in solicitors’ firms and employed lawyers, including considering an obligation for employers to release those wishing to carry out judicial service, along the lines of jury service.

- Broadening the eligibility criteria to allow a wider range of legally qualified persons to apply.

### **c) Education and training for applicants**

- Consider the provision of a qualification, suitably assessed and appraised, available to those who wish to apply for judicial appointment and which would allow a successful candidate to rely on it for satisfying the competencies when applying for judicial appointment.
- A judges' college could also provide ongoing training for judges as their role evolves over time (e.g. increased management responsibilities following Constitutional Reform Act 2005).

### **d) Changes to judicial work patterns and conditions**

- There should be a clearer career path for the judiciary so that candidates can see where they could go and how that could be achieved.
- There should be greater flexibility in working patterns such as part-time working and job sharing, especially in the working patterns of the senior judiciary.
- The requirement for High Court judges to go on circuit should be abolished.
- The provision of reasonable adjustment needs to be highlighted to disabled lawyers.
- Judges should be permitted to return to practice if they wish.

### **Proposals for other organisations**

Some delegates suggested that the definition of merit should be redefined to include a diversity competence.