
**Speech by Baroness Prashar and Frances Kirkham
Chairman of the Judicial Appointments Commission
22 November 2006**

Baroness Usha Prashar, Chairman

Good evening. Thank you for inviting me and Frances Kirkham here to speak tonight. We are delighted to have this opportunity to talk to you about judicial appointments.

I will speak first, to give you the background of how and why the JAC was established, our remit, and the priorities we have been focussing on for the first eight months of our existence.

I will then hand over to Frances, who will speak from personal experience on what a judicial career holds, the variety of work and posts available, training and development opportunities. We will both be pleased to answer your questions at the end of our presentation.

So, first some history. We, the JAC, were set up under the Constitutional Reform Act 2005, which came into force earlier this year. The establishment of JAC is one of a number of fundamental, historical changes brought about by the Act, which also reformed the office of Lord Chancellor, and established the Lord Chief Justice as head of the judiciary of England and Wales.

For the first time in its 1,000-year history, the judiciary is fully and officially independent of the government. This has been described as the most significant change since Magna Carta in 1215.

But why was the change needed? The current Lord Chancellor, Lord Falconer of Thoroton, summed up this issue well when he said: "In a modern democratic society, it is no longer acceptable for judicial appointments to be entirely in the hands of a government minister. For example, the judiciary is often involved in adjudicating on the lawfulness of the actions of the Executive. And so the appointments system must be, and must be seen to be, independent of Government."

JAC comprises fifteen Commissioners, including myself. Everyone has been selected through open competition, except three who were selected by the Judges' Council. We include people from across the judiciary and the legal profession - and some lay people who are all highly distinguished in their respective fields.

But none of us are delegates or representatives of particular professions. Every Commissioner has been appointed in his or her own right. Our breadth and diversity

are important. Our collective strength comes from each Commissioner's knowledge, expertise and - above all - independence of mind.

Being in the Commission carries a great responsibility. JAC's establishment is nothing short of a revolution – a quiet revolution. The UK has one of the world's most competent, independent and respected judiciaries and we have been clear that nothing will be allowed to compromise the high standard that has been established over many years.

JAC's primary task, is to select candidates for judicial office. We do so for a wide variety of judicial roles – from High Court Judges to tribunal panel members, who may be selected for their expertise in employment law, immigration cases – or, of course, construction law.

We will be making some 500-700 appointments a year to vacancies throughout England and Wales. In due course, we will also select magistrates.

The Act gives the JAC some very specific responsibilities, including three statutory duties.

The first of these is to select candidates solely on merit. The reputation and quality of our judiciary cannot be compromised - we must select the very best.

The second duty is to select only people of good character. In doing so, the Commission will adopt two fundamental principles:

- the overriding need to maintain public confidence in the standards of the judiciary; and
- that public confidence will only be maintained if judicial office holders and those who aspire to such office maintain the highest standards of probity in their professional, public and private lives.

And the third duty is to have regard to the need to encourage applications from a wider range of candidates. And let me stress here that diversity is not the enemy of merit – quite the opposite. For us, diversity means the search for merit wherever it can be found.

JAC does not make the actual appointment of candidates: that remains the responsibility of the Lord Chancellor, who is responsible to parliament for the appointments. For each vacancy the Commissioners will select one candidate to recommend to the Lord Chancellor for appointment. He can reject that recommendation but he is required to provide his reasons to the Commission. He cannot select an alternative candidate.

Before I talk in more detail about the new selection system it is worth stepping back to look at the previous system and what were seen to be some of the short comings about this system.

Before 1993, the system of appointments had been described in the Home Affairs Committee as “a closed system of selection by peers and supervisors which is free from scrutiny and largely free from challenge or redress”.

One of the main criticisms was about the system of consultations, often referred to as “secret soundings”. Frances Gibb, legal correspondent of The Times, highlighted the keeping of confidential files with comments on candidates going back several years, and suggested that it was a system which fostered suspicion and secrecy.

These views were echoed in 1991 by the Law Society, which described the system of judicial appointments as “a very peculiar creature indeed”. It urged the Lord Chancellor to establish an independent appointments commission to help improve public confidence in the objectivity and even-handedness of the process.

Over the next 10-15 years the appointments system evolved, and a number of improvements were made. In 1993, the then Lord Chancellor, Lord McKay of Clashfern, said that he intended to introduce specific competitions for judicial vacancies. He announced open advertising, more specific job descriptions, more structured consultations on candidates, and the involvement of lay people.

His successor, Lord Irvine of Lairg, showed an appetite for further measures. He asked Sir Len Peach, a former Commissioner for Public Appointments, to consider whether safeguards against racial or sex discrimination were effective in selection procedures for judges and Queen’s Counsel.

All this was fine as far as it went. But it did not go far enough, and it did nothing to encourage people outside the stereotypical group of most appointees to think that their application would be seriously considered. So, while no-one questioned the very high calibre of the judges being appointed, they certainly could not observe great diversity. As the Association of Women Barristers wryly put it: “the plums fall very close to the tree”.

So in March 2001, the Commission for Judicial Appointments was established. Despite its title, CJA did not select candidates for judicial office, and despite its similarity to JAC in name, it was not in any real way our predecessor body. Instead, its job was to monitor the Lord Chancellor’s procedures and to act as Ombudsman for disappointed candidates and groups. It was also asked to select further improvements to the process.

The Commission proved to be the catalyst for a number of significant improvements, including the introduction of assessment centres for some judicial appointments, and the provision of formal feedback to unsuccessful candidates. But it complained of a continuing lack of transparency and revealed that not only did the public not understand the judicial appointments system: the legal profession itself was also in the dark.

A major criticism of the old system was the way in which potential applicants were identified. It was generally believed that the system didn’t look widely for applicants. Don’t bother applying, said the whispers, unless you are in a favoured position.

This rumour was particularly strong in the case of High Court appointments. The CJA had already acted as catalyst for reform. For example, the twin route approach of application or nomination was abolished - all candidates had to apply; and the consultation process was streamlined to provide better feedback and to help candidates not usually known by the community which was consulted. But this did not stop the questions. Was “merit” adequately described in relation to High Court appointments? How could it be assessed? And very importantly, was the widest pool of applicants being reached?

As well as a perceived lack of transparency, the system was felt to be burdensome, time-consuming and very complicated. The numbers tell it all. Applicants were judged against 9 competencies, involving 50 supporting behaviours. All of these have to be

demonstrated in the application, so the application form was around 20 pages long, with similarly lengthy guidance notes.

It also tells you something when even the legal profession complain that these are over-complex, time-consuming, and hard to follow. A great deal of resource had to be devoted just to explaining the process to would-be applicants. *Our priorities* 30. This was the situation which JAC inherited when we came into being in April this year. From the outset, we set ourselves three priorities.

The first priority was to define it - in other words, to define what makes a good judge. Earlier this month we published the new criteria for what we think makes a good judge.

Our new definition covers 5 core qualities and 14 supporting abilities which we will look for in judicial applicants. The precise qualities and abilities will vary slightly - for example a High Court judge would be expected to display a high level of legal knowledge, whereas a lay tribunal member would be expected to display expertise in their professional field.

I won't run through all of our required qualities and abilities now – you can find them on our website - but here are some examples:

- Intellectual capacity. We are looking for people who show a high level of expertise in their fields; who can quickly absorb and analyse information; and who have appropriate knowledge of the law, and its underlying principles.
- Personal qualities. We want people who demonstrate integrity and independence of mind; who show sound judgement and are decisive and objective.
- We will select only those candidates who show that they are able to treat everyone with respect and sensitivity, and are willing to listen with patience and courtesy.
- Authority and communication skills are essential. Judicial appointees must be able to inspire respect and confidence, and to maintain authority when challenged.
- And they must be efficient, able to work under pressure and show appropriate leadership or management skills.

The next priority was to develop the fairest and most effective ways of assessing candidates. We have established a new process for judicial selection, which draws on the best of the old system but ensures it is streamlined and transparent, as well as being as objective as possible.

So, for example, we have cut the application form for candidates down by almost a half. We have introduced new, impartial processes for all candidates, which may include qualifying tests, case studies, interviews or role-play, depending on the nature of the job. And the system of references – what were formally called consultations – has been refined, with no more 'secret soundings' or taps on the shoulder. Details of our new selection process were also published on our website earlier this month.

The third priority we set ourselves was to devise ways of reaching out to and encouraging more applicants to the judiciary.

As well as making the process itself more streamlined and objective, we are advertising more widely - online as well as through traditional print media. And we

are working closely with a wide range of organisations, from the Association of Women Barristers to the Black Solicitors Network, to make sure as many eligible candidates as possible find out about vacancies.

I want to just touch here on the issue of diversity, because I am often asked if there is a tension between the requirement to seek candidates from the most diverse pool and the requirement to appoint on merit.

Merit is our bedrock. We will not depart from it when making recommendations. There is no question of compromise in the name of diversity, because there is no need for compromise. Merit and diversity are not incompatible. For us, diversity is the search for merit, wherever it can be found.

Let's just spend a moment looking at the facts and figures about judicial appointments and their diversity. The changes – or lack of change – over time provide a salutary lesson.

In 1950, about 25 judges were appointed, excluding magistrates. No-one would have been surprised about a lack of diversity back then. But the demand for judges has grown by 28 times over the next half century. There was thus certainly the opportunity for greater diversity. But despite the hard work by successive Lord Chancellors during this period, the results are disappointing.

These are the diversity figures for October 1, 2006 – just last month.

- There are 52 holders of the highest judicial offices. 4 are women. None are from minority ethnic groups.
- There are 107 High court judges. But just 11 are women – around 10 percent of the total. Only 1 is from a minority ethnic group – less than one per cent of the total.
- There are 641 circuit judges. 73 are women – just over 11 percent. 9 are from minority ethnic groups – just under 1.5 per cent.
- Amongst the 1,461 Recorders just 14 per cent are women and 4 per cent are from ethnic minorities.
- The picture is a little better among district and deputy district judges. Here, the proportion of women ranges between 22 and 27 per cent. But for minority ethnic groups, the proportion is no higher than just over 5 per cent.

Diversity, therefore, is a major challenge. We must find new ways to attract suitable candidates, who for various reasons are put off from applying at present. Then we have to make sure that there is no bias in our processes that disadvantages any particular group whether they are ethnic minorities, women, or people with disabilities - or even white middle aged males.

The JAC cannot and does not work in isolation. We have developed a trilateral Diversity Strategy with the Department for Constitutional Affairs and the Lord Chief Justice. This commits the three parties to bringing 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.

The JAC will do everything in its power to widen the range of applicants to the judiciary. We will fish every part of the pool, but we can only deal with the pool as it is. The range of eligible candidates must be bigger. We need the greatest diversity of people to enter the legal profession, from every community.

Expanding the pool requires the combined and continuing efforts of the DCA, Bar Council the Law Society, other professional bodies and of the firms where you may be working now, or in the future. Everyone needs to encourage the widest range of the brightest and best people to take up the law, and to ensure that no-one feels excluded from any job within it.

It is of course similarly important that, once they are in post, judges receive training and support so that they continue to appreciate the needs of a diverse society. That responsibility and the ongoing training and development of the judiciary lies with the Lord Chief Justice and the Judicial Studies Board.

And after we have trawled the legal profession and made our selection, the Lord Chancellor makes his appointments. New judges must be trained. Building their appreciation of the issues and needs of a diverse society is a responsibility which lies with the Lord Chief Justice and the Judicial Studies Board. So this is a joint effort. 49. I hope I have explained the changes brought in under the Constitutional Reform Act and how the JAC is going about its job.

Before I hand over to Frances let me make it clear that you do not have to be an advocate to be eligible for appointment, nor do you have to be known to the senior judiciary, and nor do you have to be from any particular educational background. There are, of course, strict eligibility criteria: – the standard for legal appointments is 7 to 10 years on the roll, depending on the appointment: – while lay tribunal members are expected to demonstrate knowledge and experience in their relevant field. But we are determined that, whatever the vacancy our processes will be transparent, objective and fair.

The judicial appointments system can and will appoint only the very best candidates. It cannot afford to do less. But the composition of the judiciary sends an important signal. When it comes to reassuring communities there can be few stronger messages than the knowledge that our judges are the best people for the job, drawn from throughout our diverse nation and united in their service to the law, justice and the public. Hence what we do and how we do it is of critical importance.

Her Honour Judge Frances Kirkham, Commissioner

A career in law can be very rewarding, and not just financially. But there's no doubt it's very hard work. Every legal job should carry a health warning: this occupation can damage your family and social life, and possibly your health.

Imagine then a job where you don't have to battle with partners, colleagues in chambers or clients; where there are no bad debts to worry about; where you can go on holiday without offering mobile phone numbers and fax numbers in order to be ever contactable by clients. A much better quality of life is just one of the benefits of working as a judge.

There are a number of practical attractions to working in the judiciary. It is now possible for full-timers to work part time - an attractive proposition for younger applicants with child or parental caring responsibilities. Part time working patterns are an option open to everyone, regardless of age, and are a route increasingly being chosen by those who are running down towards retirement. Working as a judge provides a stable work/life balance: you will probably have to work some evenings and weekend, but at least you will have greater certainty as to what time you will get home at night!

I began with the benefit of better life style. But of course the benefits of a judicial career go *much* further than that. We are immensely fortunate to have a job which is very stimulating, often fun and where colleagues are friendly and helpful.

It is a job which carries heavy responsibilities: the decisions we make often have a profound effect on people's lives. It is a heavy burden every time you undertake any judicial task to be doing so in a fair, transparent and just way. We are privileged to be doing what, for me, is a terrific job.

And it is a job which is potentially accessible to all of you here this evening.

There is no one route into the judiciary. My own background, for example, is not what you would call the traditional path. I read Modern Languages at Kings, worked for a few years at the Bank of England before becoming a solicitor in private practice, specialising first in litigation and then construction law. I sat as a Recorder for about 5 or 6 years before becoming the full time Technology and Construction Court judge in Birmingham.

If I can do it, so can you!

Some of you may have experience sitting as arbitrators, which can also offer very valuable experience of acting in a role akin to that of a judicial role.

There is a strong tradition across the judiciary of expecting people to sit on a fee-paid basis for a few years, before being appointed full time. This is stated in the eligibility requirements for many jobs, which are set by the Courts and Tribunals services.

This requirement does make sense: it provides the courts with the assurance that candidates will have relevant experience before taking a full-time job, and gives candidates the chance to see if they enjoy judicial work. So, as a first step to a judicial career, you need to look at the various opportunities for fee paid appointment.

Most people immediately think of becoming a Deputy District Judge, or a Recorder or a Deputy High Court Judge. Of course, those are options you will want to consider. But it's easy for barristers and solicitors engaged in commercial work as you are to overlook the very wide range of possibilities. There are many more opportunities than these obvious choices. Think, for example, of tribunals.

There are many different types of tribunal, each with a focus on a specific area of law, for example employment law, or immigration cases. They offer a wide range of opportunities for both lawyers and non-lawyers.

There are over 130 tribunals altogether, of which about 20 sit regularly. They cover the widest range imaginable: from parking fines, employment issues, agricultural land disputes, to mental health, asylum and immigration. Between them, tribunals hear over a million cases a year.

The constitution of each tribunal may vary, but usually they sit as a panel, incorporating a legally qualified tribunal chairman, as well as panel members with specific areas of expertise. Their main role is to try and bring about a successful resolution of difficulties, and in some cases, to make a decision on the level of compensation or redress to be awarded to the successful party.

So, tribunals offer opportunities for lawyers and non lawyers alike – they are a field of the judiciary which may be of particular interest to any non-lawyers in the audience

tonight who are eligible to sit as lay panel members. For lawyers, they offer an excellent opportunity to develop judicial skills.

I should stress here that tribunal work is not an easy option. It can involve working with the disadvantaged in society, and the work itself can be technical and challenging.

Tribunals are of course just one aspect of the judiciary. There's a very wide range of jobs available, and enormous variety within some of the jobs themselves. In Birmingham, for example, the Chancery, Mercantile and TCC judges each undertake work in all three fields. This makes for a job with great variety, and the work is challenging and stimulating.

Now that solicitors and barristers specialise to such an extent, the variety of work offered by a judicial appointment can be a welcome change. It is certainly mentally stretching to take on work in areas which were hitherto unknown.

I say from my own experience of sitting on a fee-paid basis before full-time appointment, that it is very useful in your practice to see, from the bench, how a case unfolds and how different it looks from that vantage point, compared with seeing one side only of the case.

It is very useful for advocates to see the case from the point of view of the judge. That will undoubtedly make you a better advocate. And for solicitors, it is so helpful to understand what judges actually need to help them make a decision.

From the point of view of personal development, it is good to get away for short periods and tackle something different. *What skills and qualities do you need to be a judge?*

Baroness Prashar has already touched on the qualities which the JAC has set out as being required for a good judge. A generic list of these is available on the JAC website, and specific requirements are published for every individual selection exercise.

For example, you need to be able to listen and to understand people from all backgrounds. You need to be able to treat people with respect. It is vital that parties consider that they have had a fair hearing, even if the court does not find in their favour.

If you are appointed to, or interested in a career in the judiciary you will find that there is a great deal of support and advice available. The Judicial Studies Board is responsible for training judges in England and Wales, and offers a variety of training courses. Colleagues too can be very helpful. You will be equipped to tackle the work.

There has been a long tradition at the Bar of moving towards judicial appointment during one's career. This career progression has not been common amongst solicitors and those in academic life. We are beginning to see some welcome movement here – the number of solicitors appointed to judicial office is increasing – and the JAC is committed to building on this.

I recognise that some firms of solicitors are not supportive of those who want to take on judicial roles. This is a great pity – there is so much to be gained, for the firm as well as the individual. I speak from experience when I say that it improves one's own approach enormously to understand first hand what the judge needs to handle a

case and make decisions. Judicial experience is thus of benefit in doing client work, and those who sit can offer invaluable training to other solicitors in their practice.

I recognise though that it is still a real problem for some solicitors who worry that to express an interest in judicial appointment is not a good career move. Baroness Prashar has mentioned the work we are doing with the professions to increase awareness of the range of judicial posts available and to encourage applications from a wide range of people. We are working with bodies such as the Law Society to help increase awareness of the opportunities available and the benefits to solicitors' practices of having their staff sit as fee paid judges.

So, what should you do if you are interested in a judicial career?

Perhaps the first step is to visit at the JAC's website, sign up for our regular monthly newsletter, and make the site a favourite on your laptop.

For more hands-on experience, you can sign up to the work shadowing scheme, run by the Lord Chief Justice's department. This gives solicitors and barristers the opportunity to spend up to three days observing the work of a judge, both in and out of court. You can find information about it on the DCA website, or on judiciary.gov.uk.

TeCSA work with London and Birmingham TCC judges to run a marshalling scheme, which takes trainee and newly qualified solicitors as marshalls for one week periods. Marshalls read the papers, sit in court next to the judge, and discuss the case with the judge out of court. It's a valuable scheme for those early on in their careers.

Or you may want to contact a friendly judge and ask if it might be possible to sit in for a few days. Many judges are only too willing to help in this way.

I'm going to conclude with a word of advice: don't delay! I've already mentioned that you will want to sit on a fee-paid basis for a few years before considering full-time appointment. The years slip by, so don't leave it too late!

As a starting point, you may want to look at the JAC website and think about the skills and abilities we have identified for judicial appointment. From the website you can get examples of application forms and information packs from recent selection exercises, to get an idea of the sort of questions asked in the application. JAC will want to know why you consider that you fulfil the requirements for any particular job, and how you say you can demonstrate the necessary skills and qualities.

It will take time to compile detailed evidence to support your application. My advice is to begin now to keep a record of any experiences which may be helpful in future eg how you handled a particularly difficult situation or person. Keep updating that record so that you will have some material on which to draw when eventually taking the plunge and making your application.

If you do apply, don't leave it until the last minute to complete your application. It takes time and needs careful thought.

I hope I have encouraged you to think seriously about a career in the judiciary. I cannot overstate how much I enjoy the job. I have only one regret: that I did not begin earlier!