

Equality in Justice Day



Speech by Baroness Prashar Chairman of the Judicial Appointments Commission 24 October 2008

Thank you. I am pleased to be here today - in this magnificent building - the centre of our justice system. And I am delighted to be sharing a platform with our new Lord Chief Justice. Lord Judge is the first Lord Chief Justice to be appointed under the new selection process established by the Constitutional Reform Act 2005. It is equally significant that he should be making his first speech on judicial diversity, and with such a deep understanding of the issues.

Approximately three years ago a quiet revolution took place in the way judges are selected. Today I want to talk about how judges are selected, how we ensure equality and fairness in those selections, and how we are endeavoring to widen the pool from which they are selected.

The JAC was set up in 2006 as part of the Government's programme of constitutional reform. Until then, the judicial appointment process was the responsibility of one Government minister, the Lord Chancellor. The Lord Chancellor appointed judges. That system has now been abolished.

While appointments are still formally made by the Lord Chancellor, the JAC is responsible for the selection of judges and tribunal members in England and Wales. We are independent of Government, independent and open in the way we make our decisions, but accountable to Parliament through the Lord Chancellor. Those who want to become judges can now apply, provided you have the qualifications. It is no longer the case of having your 'shoulder tapped'. Three statutory duties underpin the Commission's work:

- we are required to select solely on merit;
- we are required to only select people of good character; and
- we must have regard to the need to encourage diversity in the range of persons available for selection for appointments.

As Lord Judge said, the Commission has been in existence for two and a half years. Our initial task was to define merit, that is, what makes a good judge. We have devised a list of generic qualities and abilities required – criteria that candidates must meet.

We have also established and embedded our new selection processes, designed to make sure that everyone who applies for judicial posts is treated fairly.

Our processes are robust and free of bias. They have all been examined by independent experts to ensure that they are free of bias. Through its increased use of qualifying tests as a way of arriving at a shortlist, we have ensured that sifting candidates is fair and objective.

So much for our processes.

Encouraging diversity in the range of persons available for selection for judicial appointment is a bigger challenge.

Despite our judiciary's worldwide reputation for excellence, its composition as we all know is mostly white and male drawn from a narrow social and educational background. Until recently, this profile was to be expected. Intake to the Bar, the traditional source of most judges, was dominated by people of that description. Even now in 2008, the Judicial Office statistics in April this year showed that of the 3820 judges in England and Wales, just under 20% were women and 4% were from ethnic minorities.

As we all know, a modern judiciary should represent the communities it serves. The same goes for the police force, for teachers, for the medical profession.

The wider the range of views, and the wider the field of experience from which our judges are drawn, the more fully considered will be their decisions in court. And a judiciary reflective of society is essential to maintaining public trust and confidence in the role it serves. Our institutions provide a bedrock of stability. But it is important that they do not become relics. They must change and evolve.

In encouraging judicial diversity, the Commission is not simply considering the lack of ethnic minority judges. There are other under-represented groups:

- Women
- People with disabilities
- Solicitors.

I have often been asked whether merit and diversity are compatible. My answer is 'yes', they absolutely are compatible. The JAC selects judges in the fairest possible way, focusing on a candidate's ability to do the job, whatever their background. The merit of our judiciary can only be enhanced if more well qualified people, from a much wider pool, apply.

The Lord Chief Justice has today concentrated on the selection of judges. But we are also responsible for many tribunal posts, some of which require no legal qualifications. This is another reason why the JAC's outreach programme is such an important part of our work.

We want to increase awareness, particularly among under-represented groups, and encourage them to apply for judicial posts. As well as events that we ourselves host, such as candidate roadshows across England and Wales, the JAC Commissioners, all fifteen of us, are keen and willing to speak to any organizations representing people who are qualified for judicial posts but may not know that these jobs are open to them. The Tribunals, Courts and Enforcement Act 2007 has opened up many posts for new classes of candidate and reduced the period for which a legal qualification has to be held. We welcome this.

Widening the pool of suitably experienced and qualified candidates is a very critical task for the JAC.

But the pool available to us is small. Many of our candidates, as you would expect, come from the legal profession. The profession at senior levels lacks diversity. Of the practising Bar, only eleven per cent are from ethnic minorities. Around ninety-five per cent of QCs are white. And while nearly sixty per cent of admissions to the Law Society are women, they make up only twenty-three per cent of all partners in law firms. That is the situation we are up against.

No matter how fair our processes, if we do not have a wide field of suitably qualified people who are diverse, then increasing judicial diversity is going to be a difficult task.

We are working hard to bring about change and beginning to see results. As you know the JAC publishes statistics on diversity for each selection exercise. They reflect how candidates fared throughout the exercise, broken down by gender, ethnicity, disability and professional background. We recently published statistics from seven selection exercises, including for the High Court. As you have heard from the Lord Chief Justice, they show that this year we will have selected five women for appointment to the High Court, bringing the total to seventeen – the highest number ever. A significant improvement when you consider that two and a half years ago (before the JAC was set up) there were just eleven women on the Bench.

Earlier this year we launched the JAC Diversity Forum to bring together representatives from a wide range of interested parties to work collectively on improving diversity within the judiciary and the legal profession. I have to say this Forum is not a talking shop.

It is a meaningful forum for dialogue and communication that identifies real issues and takes necessary action. I say that because potential judicial talent must not be wasted.

In addition to the lack of diversity in the available range of candidates, there are other barriers to entry to consider. Only if we have real evidence – rather than anecdotes - about what is putting off qualified people from applying can we make the necessary improvements to our recruitment process.

My fellow Commissioner Professor Hazel Genn has been conducting research into the barriers to entry to the High Court. I am grateful to the Judicial Office for commissioning this research.

Hazel discovered that the JAC's selection processes are not considered as a deterrent. That's a relief to us, as you can imagine.

She also found that, generally, the legal profession is not put off by the prospect of an application process or taking part in selection exercises. However, barristers and solicitors are not used to applying for promotion so some of them find it difficult to do the self-assessment that form part of our exercises and those, I have to say, for many other jobs. Many top barristers admitted to Hazel that they really didn't think they were ready to apply, which reveals an unexpected humility within the profession. We therefore need an atmosphere in which they get more encouragement to apply. I believe the judiciary has a role to play here as it is the serving judges who see the rising stars from the profession.

And solicitors' firms, as the Lord Chief Justice has mentioned, could do more to encourage their partners to gain the necessary experience to apply for some judicial posts rather than complaining about the lack of their number being appointed. Judicial salaries may not be enticing for those at the top of the legal profession, but fortunately that is not an area for me!

However, there *are* areas where we can do something, we can make judicial appointments more attractive.

There have been several demographic changes which we need to take account of. People are marrying later, having children later, sometimes having second marriages – which often means significant financial commitments until well into their fifties, especially if they have responsibility for their own parents.

Then there is the question of going out on circuit for six weeks which is often very difficult to factor into family life. Making some of the judicial posts more flexible – which is particularly important to women - is an area that we are talking about both to the judiciary and to the Lord Chancellor.

The High Court is important but we know that what happens in other courts is important too. A more diverse profession, and a more diverse judiciary at the lower levels is a necessary condition of a more diverse senior judiciary in the future. So, I'm pleased to announce today that we have commissioned an important piece of research from the British Market Research Bureau. This week they have started canvassing more than six thousand solicitors and barristers. We will find out exactly how they feel about becoming a judge. Within a few months, when the findings will be published, we will be able to work with the Bar Council and the Law Society, as well as with the judiciary and other groups of potential candidates, to direct our efforts to encourage diversity effectively.

The JAC has clear statutory responsibilities, but there are some requirements for judicial candidates that are not within our control.

For example, the length of service and fee-paid experience that are needed for a post can sometimes be restrictive and prevent good candidates from applying. These are areas for the Lord Chancellor to decide. There are occasions when the JAC challenges some of the overly restrictive non-statutory criteria.

For example, we have asked the Lord Chancellor to consider fee-paid experience for most salaried judicial posts to be desirable rather than essential. We understand that, of course, certain posts require definitive experience. What we ask is that such requirements are absolutely necessary, and that they do not adversely impact on the quality of candidates available for selection.

Salaried part-time working is another issue of concern for us. But, again, the number of posts that allow for part-time working is not our decision. It is for the Lord Chancellor, for the Courts and Tribunals Services and the judiciary.

We have been working hard to highlight the need for part-time working and, when we talk of barriers, this is one that can act as a real disincentive to people applying. Again particularly women. We were pleased when we persuaded the MoJ and judiciary that for the current Circuit Bench exercise, two posts per circuit would be made available for part-time working.

Overcoming barriers to entry is a joint effort. They are partly for the existing judiciary, the legal profession and the Lord Chancellor to tackle together. The culture of part-time working, for example, needs to be established in the legal profession if it is to transcend to the ranks of the judiciary. Likewise, sitting experience should be encouraged while it remains the Lord Chancellor's policy for this to be a pre-requisite for many salaried posts.

Our creation in 2006 represented a huge constitutional change. Despite expectations, I know that it will take time to make a real impact. We are talking about a huge culture change. But we have made progress in our first two and a half years. If you look at the figures for 2007/2008, the JAC's first full year, using its own processes, many women and black and minority ethnic candidates successfully applied for vacancies.

For example:

- 35% of those who applied were female and 34% of those selected were women.
- 13% were black and minority ethnic origins, as were 8% of those selected.

The diversity of those recommended for part time office:
115 selections for fee paid of whom 62 were men and 53 were women. These included 10 people who were of BME origin.

I hope you will agree that's not a bad record for a fledgling organisation. Our judiciary is the envy of the world. And now, the way we select and appoint our judges is the envy of the world. We often forget what we have, and don't cherish enough the progress we are making.

But I know there is no room for complacency. We have to take meaningful action, which will bring about real and substantial change.

We're determined to ensure the judiciary of tomorrow reflects the diversity of our society. A judiciary that represents the communities it services and understands the needs of those communities.

That is the reason why I applied for the job I am now doing.

In our work we endeavour to be rigorous in maintaining merit and ensuring that merit is drawn from as wide a field as possible. That is why we want to encourage the best candidates to apply and to look for merit wherever it may be found.

Real equality in justice is dependent on those who deliver it. It's in all our interests so I hope that you will encourage others to apply, apply yourselves and work with us to help us achieve our objectives.

Thank you for listening and I hope that you enjoy the rest of today's event.