

JUDICIAL APPOINTMENTS COMMISSION
RESPONSE TO THE OFFICE FOR CRIMINAL
JUSTICE REFORM GREEN PAPER:
ENGAGING COMMUNITIES IN CRIMINAL
JUSTICE

JULY 2009

Introduction

This is the Judicial Appointments Commission (JAC) response to the OCJR Green Paper, Engaging Communities in Criminal Justice (Cm 8573). It deals with those provisions which may impact on the selection of judges. The Green Paper focuses on Magistrates' Courts, as 'the focal point for justice in the community' (p.8). The JAC response will therefore comment on the selection of District Judges for Magistrates' Courts (DJ(MC)), and Deputy District Judges for Magistrates' Courts (DDJ(MC)).

The response also sets out background information which may be of interest. In particular, it explains in some detail the selection process for DJ(MC) and DDJ(MC).

Key points of the JAC response

- The JAC sees difficulties in involving community representatives in selection exercises which are usually of a national nature. There may, however, be merit in involving communities in the identification of requirements set out in vacancy requests for individual posts, and in individual deployment decisions. These are not primarily matters for the JAC.
- Each selection exercise the JAC runs is tailored to the needs of the business area; the JAC will respond to the requirements set out in each vacancy request which we receive.
- The JAC can see value in giving information to communities, with the aim of increasing confidence in community justice. It may be possible to adapt our current outreach programme, which is targeted at potential candidates in under-represented groups, making use of the channels of communication the OCJR uses to reach out to communities. This is likely, however, to have budgetary implications which for the foreseeable future will be problematic unless new funding can be made available.

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Section one: Response to proposals

1. This section focuses on the proposals and consultation questions set out in the Green Paper and gives the JAC's response. In this section, we will respond specifically to three proposals in the Paper:
 - **Question 16: More information should be made available about the appointment and deployment processes for District Judges in the Magistrates' Courts and the public should be able to get involved in the process. How could community representatives usefully be involved?**
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Question 16: More information should be made available about the appointment and deployment processes for District Judges in the Magistrates' Courts and the public should be able to get involved in the process. How could community representatives usefully be involved?

Budgetary constraints

2. The JAC is currently living within a very tight budget (the JAC's budget was reduced by 7 per cent from 2008/09 to 2009/10, and considering the pressure to make further savings, pressures on our budget will, if anything, increase in the future). This must be considered as the context for any proposals which would have implications for the work of the JAC.
3. The JAC's Business Plan for 2009/10 also commits us to reduce the year-on-year cost of processing each application for judicial office.
4. It would be impossible for the JAC to support any proposal that would add to cost without also ensuring the necessary additional funds were available. A reduction in the number of selections the JAC is able to deliver would have operational impact on Her Majesty's Courts Service (HMCS) and the Tribunals Service (TS).

The selection process

5. The JAC supports the intention to increase local confidence in the delivery of justice. This is central to the overall policy aims of the Trilateral Judicial Diversity Strategy which the JAC, Department for Constitutional Affairs (DCA) (now Ministry of Justice (MoJ)) and judiciary agreed to in May 2006.
6. It is difficult to see, however, how the proposal to involve communities in selections could work in practice.
7. Below (at paragraphs 55-72) the selection process for DJ(MC) and DDJ(MC) is set out in some detail.
8. In summary, the selection process for DJ(MC) is usually as follows: a national exercise is run; candidates are shortlisted, usually by means of a qualifying test; several panels concurrently assess those shortlisted for posts, and the Commission then considers information on all candidates and draws up a merit list of those recommended for appointment. When this list has been approved by the Lord Chancellor, candidates are taken from the list to fill vacancies arising on a number of circuits across England and Wales over a period of time.
9. When selecting DDJ(MC) candidates are selected for immediate appointment to sit on a fee paid basis, usually between 15-30 days a year.

10. Exercises have been run in the past to select a number of candidates. For example, in 2008/09 the JAC was asked to draw up a list of 26 names suitable for the position of DDJ(MC).
11. This process delivers high quality judges, as well as value for money, and allows for flexibility to meet the needs of the business areas. It is difficult to see how representatives of individual communities could usefully be involved in this process, as it is of national scope.
12. In addition, such involvement in a national exercise would, we feel, add little extra value. There is already a non-lawyer chairing selection panels whose role, among other things, is to secure a united view from a panel whose expertise normally includes judicial and HR experience. These positions were advertised nationally, and Panel Chairs were selected in an open competition against clear selection criteria.

Singleton posts

13. When selecting for singleton posts, the JAC would be happy to consider making arrangements along the lines of the process used for the selection of His Honour Judge Fletcher to the North Liverpool Community Justice Centre in 2004. However, it should be noted that the JAC has not to date been asked to select for a singleton DJ(MC) position.
14. In such a case, two options could be considered. Firstly, a Panel Chair who had links with the community in question could chair the selection panel.
15. Alternatively, a community representative could be selected from among the community in question to sit as part of the selection panel.

Community representatives: policy and resource considerations

16. The selection, training and remuneration of a community representative or representatives would have resource implications.
17. Selections would have to be done in an open and transparent manner.
18. The JAC has a statutory duty to select candidates solely on merit and to determine our own selection processes, independent from political influence. As set out below (at paragraph 48), part of developing the selection process was defining merit; we consulted our partners on the definition of merit set out in our qualities and abilities, and are confident that our processes deliver fair outcomes. A community representative sitting on a JAC selection panel would undergo the same panel training that other panel members receive.
19. Community representatives would not represent a particular interest as selection panel members, but participate in selection on merit, against the qualities and abilities for the judicial role. Training for all panels prior to each selection exercise has this principle at its core.

20. The JAC welcomes the confirmation we have received from OCJR officials that the proposal to involve community representatives in selections is not intended to challenge the definition of merit the JAC has developed.

Other methods of involving communities: deployment

21. While we have concerns about community involvement in the selection process for national exercises, it may be possible to provide for community involvement in other ways.
22. First, by means of consultation the MoJ could tailor the detail of its vacancy requests so that specific local requirements may be provided for.
23. Second, local communities could be involved in deployment decisions made by the judiciary. In this case, it would fall to the Senior Presiding Judge to examine ways of involving the community in this process, possibly by working with Presiding Judges on individual circuits.
24. As set out above, in general, exercises to select DJ(MC) and DDJ(MC) will be run to supply a number of judges for several different circuits. Once the cadre of successful applicants has been confirmed, there may perhaps be scope for communities to engage with the process of allocating the successful candidates who have expressed willingness to sit in a particular area to the vacancies in that area.

Question 16: More information should be made available about the appointment and deployment processes for District Judges in the Magistrates' Courts and the public should be able to get involved in the process. What information should be provided? How might this be disseminated?

Policy considerations

25. The JAC can see considerable value in demystifying the selection and appointment of judges, and with our partners we have already put measures in place to achieve this. More explicit and amplified requirements for the JAC and all other partners to provide for local engagement would be welcome and could help to promote local confidence in the working of justice. It might also help to encourage those from under-represented communities to consider a legal and judicial career.

Resource considerations and possible methods of implementation

26. The JAC's resource position was mentioned above. We have a limited outreach budget and Commissioners have decided that resources should be focused on our statutory duty to 'encourage diversity in the range of persons available for selection for appointment;' the targeted outreach the JAC conducts is described below (at paragraphs 78-79). The JAC is not currently resourced to deliver any further outreach.

27. If more funding was available, there are several ways that the JAC could contribute alongside our partners to a programme of information provision for communities.

28. One approach might be to tap into resources and channels of communication which the OCJR already has.

29. As with our existing outreach events, it may be possible for the JAC to provide staff or Commissioners to speak at events. The JAC's cadre of panel chairs, who are based around the country, might also speak at local events.

30. The Green Paper asks whether there are other means of disseminating information to communities. The JAC has transparent processes, and has recently updated its website to provide a large amount of information about the selection process to anyone with an interest.

31. One possible option might be a specific page targeted towards communities on the JAC website.

32. It might also be useful to develop a single web page where links to information on the JAC website as well as information on the Judicial Office, HMCS, Magistrates' Association websites, etc. could be brought together.

Question 15: Community engagement and problem-solving should be integral to the role of District Judges and Magistrates. We will provide training and support but how else can we encourage judicial engagement with communities?

Trilateral Diversity Strategy

33. A key strand of the Trilateral Judicial Diversity Strategy which the JAC, DCA (now MoJ) and judiciary agreed to in May 2006 is:

“to ensure that the culture and working environment for judicial office-holders encourages and supports a diverse judiciary and increases understanding of the communities served.”

The MoJ and judiciary have joint lead responsibility for this strand of the Strategy.

34. The strategy aims to bring about as one of its key benefits:

“greater confidence amongst the general public and users in courts and tribunals, as a result of a judiciary more reflective of and with enhanced understanding of the society it serves.”

35. The JAC supports the aims of the Trilateral Diversity Strategy and welcomes examination and amplification of the ways in which each party can contribute to the fulfilment of these aims.

Encouraging judicial engagement

36. The Paper proposes to embed community engagement and use of problem-solving techniques in the job specification for District Judges. Job descriptions for each role the JAC selects for are supplied by the MoJ in vacancy requests.

37. If a vacancy request set out community engagement as a requirement the JAC would assess this in a suitable way, framing its specific selection criteria and assessments of candidates accordingly.

38. It would be for the Commission to consider in relation to each specific vacancy request whether and if so how the qualities and abilities might need to be tailored to take into account the new aspects of the role.

Equality and diversity implications

39. The JAC notes and welcomes the assurance that there will be training for incoming judges on community engagement and problem-solving techniques, which has already been developed by HMCS and the Judicial Studies Board;¹ this should ensure that there would be a level playing field for candidates with and without experience of these techniques, and no candidate group would be disadvantaged in the selection process by lack of such experience.

¹ *Engaging Communities in Criminal Justice*, OCJR, Cm 8573, para.86

Section two: Background

The JAC selection process

Constitutional duties

40. The JAC was set up under the Constitutional Reform Act 2005, (CRA 2005) and launched on 3 April 2006. It has responsibility for selecting candidates to recommend to the Lord Chancellor for appointment to judicial office.
41. Under the CRA 2005, the JAC has three key statutory duties:
 - to select candidates solely on merit;
 - to select only people of good character; and
 - to have regard to the need to encourage diversity in the range of persons available for judicial appointment.
42. The composition of the Commission is prescribed by statute. There must be a lay Chairman and fourteen Commissioners, comprising five judicial members, one barrister, one solicitor, five lay members, one tribunal member and one lay justice. Each Commissioner was appointed in his or her own right, not as a delegate or representative of his/her profession. The Chairman and eleven Commissioners were selected through open competition, and the three remaining senior judicial Commissioners were selected by the Judges' Council.
43. The JAC is an executive non-departmental public body (NDPB) sponsored by the MoJ. The JAC's aims and objectives are agreed with the MoJ and set out in the JAC Corporate and Business Plans.
44. The Commission has responsibility for ensuring the JAC fulfils its statutory duties as set out in the CRA 2005, and meets its aims and objectives.
45. The JAC has just over 100 staff, led by a Chief Executive and five Directors.

JAC selection processes

46. The CRA 2005 specifies selection panels to make recommendations for appointments to senior judicial positions (the Lord Chief Justice, Heads of Division, and the Lords Justices of Appeal), and specifies that each panel should devise its own selection processes. For the selection of puisne judges and other office holders (numerically, the majority of JAC selections) the CRA provides (in section 88) that the JAC should develop selection processes.
47. After launch the JAC systematically reviewed the selection processes.

48. We consulted widely with partners to produce a simplified definition of merit. This is based on five qualities and related abilities:
- intellectual capacity;
 - personal qualities;
 - an ability to understand and deal fairly;
 - authority and communication skills; and
 - efficiency.
49. The qualities and abilities apply to every judicial role but may be tailored depending on the precise nature of the role.
50. In 2007 qualifying tests were introduced as an alternative, fairer and more objective assessment method for shortlisting for most selection exercises and the use of role-plays was extended.
51. Qualifying tests are usually developed in consultation with the judiciary and HMCS, and are typically written and marked by judges. The preparation and marking of tests are quality assured and they are piloted before use.
52. Role plays are usually developed by judges, piloted, quality assured and equality proofed in the same way as qualifying tests. They have in the past simulated a court or tribunal environment, with candidates asked to take on the role of judicial office holder.
53. The JAC also developed a more targeted approach to references and robust and effective quality assurance systems.
54. Since October 2006 all new exercises have been run under JAC processes.

The selection process for DJ(MC) and DDJ(MC)

55. The Lord Chancellor supplies the JAC with vacancy notices detailing the job description, number of vacancies, and minimum entry requirements. Some entry requirements are prescribed by statute, other minimum entry requirements can be applied by the Lord Chancellor.
56. DJ(MC) exercises have been run under section 94 of the CRA. This involves drawing up a list of candidates from which names may be drawn to fill vacancies arising across England and Wales over a period of time. In 2007 the JAC was asked to draw up a list of 21 names suitable for the position of DJ(MC).
57. Exercises to appoint DDJ(MC) have been run under section 87, to draw up a list of candidates for immediate appointment as fee paid DDJ(MC) (usually sitting 15-30 days a year). In 2008/09 the JAC was asked to draw up a list of 26 names suitable for the position of DDJ(MC).

58. Where the location of vacancies is set out in the vacancy request, candidates will usually be asked when applying to select which circuits they would be able to work in, and indicate a preference.
59. The JAC presses for more exercises to be run under section 87, as under a section 94 exercise, successful candidates can be left in 'professional limbo' for over a year, and may in the end not be called to fill a vacancy; this type of exercise is therefore a deterrent to certain candidates.
60. To give an idea of the size of exercises, the 2007 exercise, run when the JAC was a very new body, to select DJ(MC) received 161 applications. Since then, there has been a steep upward trend in application numbers. The 2008/09 exercise to select DDJ(MC) received 817 applications (for 26 posts).
61. The Tribunals, Courts and Enforcement Act 2007 (which came into force in 2008) amended the minimum legal eligibility requirements for judicial appointments in England and Wales. The criteria for appointment to the posts of DJ(MC) and DDJ(MC) is now that candidates must have possessed the relevant qualification as a solicitor, barrister or member of ILEX for at least five years, and have been gaining legal experience during that time.
62. This is the first time that members of ILEX have been able to apply for many judicial offices. The posts of Deputy District Judge and DDJ(MC), among others, are currently open to ILEX members with the necessary experience; from 2010 the posts of District Judge and DJ(MC) will also be open to them.
63. The Lord Chancellor currently applies the non-statutory minimum entry criterion for DJ(MC) that candidates should have 'normally served in judicial office in a fee paid or salaried capacity for at least two years or to have completed 30 sitting days.'
64. In the interest of ensuring that the eligible pool of candidates is cast as widely as possible, the JAC is concerned to challenge, wherever it is appropriate to do so, the application of non-statutory minimum entry criteria.
65. Qualifying tests are generally used to shortlist for DJ(MC) and DDJ(MC) exercises.
66. The JAC asks candidates for DJ(MC) or DDJ(MC) to nominate three referees, and to identify JAC-nominated referee(s) from a generic list of possible referees. References are taken up after the shortlisting stage.
67. Candidates are invited to a selection day which is likely to consist of an interview and in some cases role-play(s). JAC selection panels assess candidates at the end of the selection day.

68. For larger exercises, several panels will work in parallel over the course of the selection days. Each panel comprises a Panel Chair, an Independent and a Judicial Member. If role plays are being used, there may be an extra Judicial Member to sit with the Independent Member assessing the role play.
69. The JAC recruited its own cadre of 31 Panel Chairs in 2008 through open competition. We inherited a cadre of Independent Members from the former DCA. Judicial Members are supplied for each selection exercise by HMCS, in cooperation with the Senior Presiding Judge.
70. Panel members assess all the information about each candidate and agree which candidates best meet the required qualities and abilities. The Panel Chairs then report on the overall panel assessment. This forms part of the information presented to the Commission.
71. Summary reports on candidates likely to be considered for selection by the Commission are sent to the Lord Chief Justice and to another person who has held the post or has relevant experience, for statutory consultation (as required under sections 88(3) and 94(3) of the CRA 2005.)
72. The Commission considers all the information gathered about candidates from the self-assessment, references, interview, and role play(s) if these were used, to select those who will be recommended to the Lord Chancellor for appointment.

Judicial diversity

73. The JAC is mindful of its statutory duty to ‘have regard to the need to encourage diversity in the range of persons available for judicial appointment’; a more diverse judiciary will enhance public confidence in the justice system.
74. The JAC’s work in this area falls under three headings.

Fair and equal processes

75. The JAC ensures that its selection processes are fair and transparent. We have a Single Equality Scheme and reasonable adjustments policy for the selection process. The key materials for selection exercises are equality proofed internally and by external partners such as the Law Society.
76. An assigned Commissioner maintains oversight of each exercise, including equality and fair treatment.
77. Panel chairs had training on appointment, and prior to each exercise all panel members undergo exercise-specific briefing. Embedded in this are diversity and equality considerations.

Outreach work

78. The JAC Chairman, Commissioners and staff attend and speak at seminars, and the JAC has exhibition stands at other organisations' events. The JAC works in conjunction with partners to deliver targeted events; for example with the Black Solicitors Network.
79. The aim of this targeted outreach work is to encourage a wider range of high quality candidates to apply, and to disseminate information about the selection process.

Partnership work and research

80. Wherever possible, JAC works together with key partners who also have an interest in diversity outcomes, through a range of initiatives: the Trilateral Diversity Strategy commits the JAC, MoJ and judiciary to work in partnership; the JAC Diversity Forum (established in April 2008) brings together a wider range of partners, and the JAC Advisory Group brings together key interested parties to discuss key elements of specific selection exercises.
81. The JAC has a Research Sub-Group – chaired by a Commissioner, Professor Dame Hazel Genn and including representatives from professional bodies – to establish its research priorities. A priority has been to establish why some able candidates from under-represented groups choose not to apply for judicial posts.
82. A major piece of research into barriers to application was commissioned from the British Market Research Bureau, and the results were published on 4 June. The Executive Summary is attached at Annex A.
83. A postal self-completion survey was conducted of eligible barristers and solicitors and over 2,000 completed questionnaires were received. All those surveyed would be eligible to apply for the positions of DJ(MC) and DDJ(MC).
84. The results of this research are key for the JAC in suggesting what factors might attract a more diverse range of candidates; the research informs our response to the consultation.
85. Some of the headline results of the research are as follows:
- Solicitors are much less likely than barristers to see becoming a judge as part of their future career.
 - Many solicitors feel that they are not supported by their firms when they apply for a judicial post.
 - The isolated nature of the role of a judge, the loss of flexibility, the reduction in earnings and the judicial culture are identified as unappealing factors.

- More than a third of respondents had never thought of applying for judicial office.
- Half said the reason they had not applied to be a judge was because they were happy with their jobs.
- 55 per cent of lawyers said they would be more likely to apply for judicial office if they could work part-time.
- 13 per cent of black and ethnic minority (BME) lawyers said they were very likely to apply in future.
- 7 per cent of white lawyers said they were very likely to apply in future.
- Exactly equal proportions of women and men said they intended to apply in future.

Diversity outcomes

86. The JAC recently published data relating to selection exercises run in 2008/09, broken down by diversity outcomes. Applications increased by nearly 40 per cent in this period, and there were fewer available posts (449 against 458 in 2007/09). The headline results are set out below; the full results and accompanying press notice are attached at Annex B.

87. For fee paid legal posts (typically sitting 15-30 days a year):

- 34 per cent of applicants and 30 per cent of those selected were women. The proportion of women in the eligible pool is 35 per cent.
- 14 per cent of applicants and 7 per cent of those selected were BME. The eligible pool is 7 per cent.

88. For salaried legal posts:

- 21 per cent of applicants and 24 per cent of selections were women. The proportion in the eligible pool is 21 per cent.
- 10 per cent of applicants and 4 per cent of selections were BME. The eligible pool figure is 5 per cent.

89. In particular, the diversity results for the recent exercise run to select DDJ(MC) show encouraging signs. (See Annex B.) There were 817 applications for 26 posts.

90. 35 per cent of the eligible pool from which applicants may be drawn were women, and 39 per cent of applications and 42 per cent of selections were women. 7 per cent of the eligible pool were BME, and 17 per cent of applicants and 11 per cent of selections were BME. These two groups were thus appointed in slightly higher proportions than their proportion in the eligible pool.

91. Solicitors made up 85 per cent of the eligible pool, but only 63 per cent of applicants. Despite this, 69 per cent of selections were solicitors, an encouraging performance.