

**Judicial Appointments Commission evidence to the Senior Salaries
Review Body**

September 2009

Introduction

This is the evidence of the Judicial Appointments Commission (JAC) to the Senior Salaries Review Body (SSRB) to inform its 2010 report.

The Ministry of Justice (MoJ) is separately supplying evidence on the deployment and retention of judges, and it is for the Lord Chief Justice to comment upon judicial welfare and morale.

In our evidence we will, therefore, focus on the recruitment of judges, as well as the work of the JAC to increase judicial diversity, covering the following points:

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Background

1. In our evidence last year we supplied information about the creation of the JAC and our selection processes. This is summarised and updated below.

Constitutional framework

2. 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.
3. 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 selection for appointments.
4. 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.
5. The JAC is an executive non-departmental public body 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.
6. 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.
7. The JAC has just over 100 staff, led by a Chief Executive and five Directors.

Selections for judicial offices

8. The JAC selects for senior judicial offices: that is, the Lord Chief Justice, Heads of Division, and the Lords Justices of Appeal. The CRA 2005 stipulates that for these offices, the JAC should convene a selection panel, which will be a committee of the Commission, and will determine the selection process and make a selection.
9. The JAC selects puisne judges and other office holders (numerically, these make up the majority of JAC selections). The CRA provides¹ that the JAC should apply its own selection processes for these selections.
10. The processes for JAC selections are set out in detail below. They are also set out on the JAC's website (www.judicialappointments.gov.uk) and in the JAC's Annual Report, attached at annex A.
11. The JAC does not make selections for the Supreme Court, though a member of the Commission is involved. The selection process is outlined below for information.

¹ CRA 2005, section 88

12. It is not now expected that the JAC will take over the selection of Magistrates; the Constitutional Reform and Governance Bill as introduced to the House of Commons on 20 July 2009 removes the possibility that the selection of Magistrates may pass to the JAC in future – though of course this Bill has yet to pass through Parliament and may be amended in the interim.

The selection process for senior judicial offices

13. For senior judicial positions the CRA 2005 specifies that the Lord Chancellor will ask the JAC to convene a selection panel (which is a committee of the Commission) to determine the selection process and make a selection. The CRA 2005 sets out the composition of selection panels for recommendations for appointments to senior judicial positions.²
14. For the selection of the Lord Chief Justice and Heads of Division the panel must consist of four members. The membership can be summarised as follows: the Chairman of the JAC; a lay member of the JAC designated by the Chairman; the Lord Chief Justice, and the most senior England and Wales Supreme Court Judge. For the selection of Lords Justices of Appeal, the latter is replaced by a Head of Division or Lord Justice of Appeal designated by the Lord Chief Justice.
15. Selection processes are determined by each individual panel in order that they may ensure that the selection process is suitable for the particular vacancy.
16. A joint note agreed by the JAC and Judicial Executive Board sets out the agreed process that will be considered by each selection panel for appointments to the Court of Appeal. This has been published in order to make the judicial appointments process as open as possible.
17. The selection panel must apply the selection process decided upon, and make a selection accordingly. If practicable, the panel must consult the current holder of the office for which a selection is to be made. A recommendation is then made in a report to the Lord Chancellor.

The selection process for puisne judges and other office holders

18. The CRA provides that the JAC should determine its own processes for these selections.
19. After its creation, the JAC sought the views of key interested parties on 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.

² CRA 2005, sections 67-84

20. After launch the JAC also systematically reviewed the selection processes. Since October 2006 all new exercises have been run under JAC processes, which are kept under continual review.
21. The MoJ, the judiciary, Her Majesty's Courts Service (HMCS) and the Tribunals Service (TS) work together to forecast expected vacancies at the start of each financial year. We are working in partnership with them to develop a rolling programme covering three years. We have also successfully agreed a programme for 2009/10 and this is posted on the JAC's website. Good forecasting of vacancies is key to managing resources most effectively; forecasting cannot, however, be an exact science, and we respond flexibly to changes to requirements.
22. The formal start of a specific selection exercise is when the Lord Chancellor supplies the JAC with a vacancy request 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. Planning by the JAC naturally starts before the vacancy request is received.
23. 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.
24. Exercises may be run under section 94 of the CRA 2005, to draw up a list of candidates from which names may be drawn to fill vacancies arising across England and Wales over a period of time. Alternatively, exercises may be run under section 87, to draw up a list of candidates for immediate appointment.
25. 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; the JAC considers this type of exercise to be a deterrent to certain candidates and we have asked the Lord Chancellor to use the section 87 procedure wherever possible.
26. The JAC has adopted qualifying tests as a more fair and objective method for taking shortlisting decisions for selections up to and including Circuit Judge and equivalent roles, than the alternative paper based approach using self-assessments and references. However, we tailor our processes appropriately and might not always use qualifying tests: where, for example, there are a small number of vacancies or in other limited circumstances we may instead use a paper sift.
27. The tests, developed most often by experienced judges, are tailored to the requirement of the post. They might contain case studies and/or technical questions. Tests are equality proofed and piloted before use.
28. The JAC asks candidates to nominate a certain number of referees, and to identify appropriate JAC-nominated referees from a generic list of possible referees. If a paper sift is used to shortlist candidates, references are

taken up before shortlisting; if a qualifying test is used, they are taken up after the test.

29. Candidates successful at shortlisting stage are invited to a selection day which may consist of an interview or an interview and role-play(s). The JAC has extended the use of role-plays as a selection tool; they are developed and quality assured in the same way as qualifying tests.
30. Selection days are assessed by JAC selection panels. Each panel usually comprises a Panel Chair, an Independent Member and a Judicial Member. If role-plays are being used, there may be an additional Judicial Member to sit with the Independent Member assessing the role-play.
31. 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 Department for Constitutional Affairs. Judicial Members are supplied for each selection exercise by HMCS, from a list approved by the Senior Presiding Judge, or from the TS, and in cooperation with the judicial members themselves.
32. Panel members assess all the information about each candidate and agree which candidates best meet the required qualities and abilities for the post in question. The Panel Chairs then report on the overall panel assessment. This forms part of the information presented to the Commission.
33. Summary reports on candidates likely to be considered for selection by the Commission are sent to the Lord Chief Justice and to a past or present post holder, or another person who has relevant experience, for statutory consultation (as required under sections 88(3) and 94(3) of the CRA 2005).
34. The Commission considers the panel assessments based on all the information gathered about candidates from the self-assessment, references, interview, and tests and role-play(s) (where appropriate), as well as the responses to statutory consultation, to select those who will be recommended to the Lord Chancellor for appointment. Recommendations are made after final good character checks.

Developments in the selection process

35. As mentioned above, the JAC keeps all processes under continual review. The JAC Advisory Group brings together key partners, including representatives from the judiciary and profession, to examine key elements of specific selection exercises.
36. In 2008/09 the JAC, MoJ, HMCS, TS, Directorate of Judicial Offices for England and Wales and representatives of the judiciary undertook a LEAN review of the appointments process. LEAN is a process designed to improve efficiency, simplify and streamline processes. The LEAN review aimed to do this while maintaining the independence and quality of selections.
37. It was agreed that a few changes should be made to the end-to-end selection process. These included:

- initial good character checks for selection exercises should be made not at application stage but later in the exercise;
- the JAC will ask candidates to complete a medical self-declaration form during the selection process, to enable the MoJ to complete medical checks on candidates more quickly after the Lord Chancellor has accepted recommendations;
- a 'delivery team' will operate for each exercise, to address any problems which cross organisational boundaries.

Selections for the Supreme Court

38. The Supreme Court will come into being in October 2009. Selections for the Supreme Court are not conducted using JAC processes or by a panel convened by the JAC.
39. The procedure to be followed is set out in section 26(5) of the CRA 2005, which provides for the Lord Chancellor to convene a Selection Commission for the selection of a person to be recommended to fill a vacancy on the Supreme Court.
40. The composition of that Selection Committee is set out in Schedule 8 of the Act. The JAC recommends one of its Commissioners to the Lord Chancellor for his nomination to the Selection Commission. The JAC Commissioner does not chair the Selection Commission.
41. The Selection Commission determines the selection process to be applied, applies that process and makes a selection (after consultation, as set out in section 27(3) of the Act.) The Commission then reports its recommendation to the Lord Chancellor for appointment.
42. The Lord Chancellor undertakes further consultation before deciding whether to accept the recommendation, reject it, or require the Selection Commission to reconsider the recommendation.
43. The Lord Chancellor notifies the Prime Minister of the person he has selected.

JAC budget constraints

44. As with many other bodies in the public sector, the JAC is currently living within a tight budget: the JAC's budget was reduced by 7% from 2008/09 to 2009/10. Considering the need to deliver further efficiencies in the current financial climate, pressures on our budget will, if anything, increase. This must be seen, too, in the context of steeply increasing application numbers, set out below at paragraphs 69-71.

Legislation and implications for the JAC

Tribunals, Courts and Enforcement Act 2007

45. The Tribunals, Courts and Enforcement Act 2007 (TCE Act 2007) (which came into force in 2008) amended the minimum statutory eligibility requirements for judicial appointments in England and Wales. It reduced the length of time that candidates must have possessed the relevant qualification from 10 to 7 years and 7 to 5 years, depending on the post in question.
46. The Act introduces a judicial appointment eligibility condition. Where this applies, eligibility for judicial office is no longer based simply on possession of rights of audience for a specified period. Rather candidates must:
 - possess a relevant legal qualification;
 - for the requisite period; and
 - while holding that qualification, must have been gaining legal experience.
47. Not all posts have an absolute requirement of a legal qualification. Many tribunals exercises include the option of someone whose experience the Lord Chancellor considers equivalent.
48. The Act also enables the Lord Chancellor, following consultation with the Lord Chief Justice and the JAC, to extend by order the list of relevant qualifications for the purpose of the judicial appointment eligibility condition.
49. It opens some judicial posts beyond solicitors and barristers for the first time. The Statutory Instrument extends eligibility for appointment to some judicial posts to members of the Institute of Legal Executives (ILEX), the Institute of Trade Mark Attorneys and Chartered Institute of Patent Attorneys.
50. The Act made the following posts open to suitably qualified ILEX fellows:
 - Deputy District Judge;
 - Deputy District Judge (Magistrates' Courts);
 - Road User Charging Adjudicator;
 - Legally qualified member of the Asylum and Immigration Tribunal;
 - Member of Panel of Chairmen of the Employment Tribunal;
 - Judge of the First Tier Tribunal; and
 - Adjudicators (regulation 17 Civil Enforcement of Parking Conventions).
51. From 2010 the following posts will also be open to ILEX fellows:
 - District Judge; and
 - District Judge (Magistrates' Courts).
52. Patent and Trade Mark Attorneys will be eligible to apply for the following posts:
 - Chairman or Deputy Chairman of the Copyright Tribunal; and

- Persons appointed to hear and determine appeals under the Trade Marks Act 1994.

53. The number of people qualified to apply for judicial posts is thus substantially increased by the TCE Act 2007.

Constitutional Reform and Governance Bill

54. The constitutional framework for the JAC remains unchanged from that provided for by the CRA 2005. While the Constitutional Reform and Governance Bill, as introduced to the House of Commons on 20 July 2009, does not alter this, there remains the potential for amendments to be made during the passage of the Bill which could have implications for the JAC.
55. In our evidence to the SSRB in 2008 we noted that the Report of the Joint Committee following its scrutiny of the Draft Constitutional Renewal Bill was largely consistent with the evidence submitted by the JAC. In particular, the report concurred that it was premature to make further changes to the recently established system of appointments. A copy of the JAC's evidence is attached at annex B.

Equality Bill

56. The Equality Bill was introduced in the House of Commons in April 2009 and has now completed its Committee Stage in that House. Subject to the Bill completing its passage early in the 2009/10 Session, it may receive Royal Assent in Spring 2010.
57. The Bill contains provisions to make it clear that positive action in respect of under-represented candidates is lawful at the point of recruitment. The Bill as drafted stipulates that a candidate from an under-represented group can be chosen over another candidate where the two candidates are 'as qualified as' each other to do the particular job. This is a voluntary provision.
58. This has the potential to alter the way the JAC makes selections. The Commission will fully consider the application of such provisions and their relationship with the Commission's statutory duty to select candidates solely on merit.

Engaging Communities in Criminal Justice Green Paper

59. The Office for Criminal Justice Reform (OCJR) published a consultation paper on how communities can be engaged with the criminal justice system on 29 April 2009. This proposed that community representatives might be involved in the selection and/or deployment of judges, specifically District Judges and Deputy District Judges in the Magistrates' Courts; as well as a raft of other measures to demystify the justice system. It also proposed to embed community engagement and use of problem-solving approaches in the job descriptions for these judges.
60. The JAC's response to the consultation is attached at annex C. It stated that we see difficulties in involving community representatives in selection

exercises which are usually of a national nature. We also set out the considerable resource implications of implementing such a proposal.

61. The JAC will respond to the requirements of any post, as set out in the vacancy request received from the Lord Chancellor. We await the recommendations of the OCJR following their consultation.

The JAC's work in 2008/09

Competitions and selections

62. In 2008/09 the JAC completed 24 selection exercises. A further 13 were launched in year and were still in progress at the end of the year. (These are listed in full on pp.22-3 of the JAC's Annual Report, at annex A.)
63. 3,518 valid applications were received for selection exercises completed in 2008/09. Recommendations were made to the Lord Chancellor for 449 posts.
64. In 2008/09 suitable candidates were recommended for all vacancies for which the JAC was asked to make a selection, with the exception of one District Judge (Magistrates' Courts) section 94 call-off vacancy (referred to in paragraph 90).
65. The Lord Chancellor asked that one recommendation for Circuit Judge, South East Circuit, be reconsidered in May 2008. The issue arose because of a lack of clarity over what were essential requirements for the post and what were optional. When this was resolved, a new recommendation was sent and accepted in July 2008.

Seniority of exercises run

66. Of exercises for salaried posts completed in 2008/09, the High Court exercise was the only exercise for positions in pay group 4. Two exercises were run for posts in pay group 5, four exercises for posts in group 6.1, and seven exercises for posts in groups 7 and 7+.
67. While the range of positions for which the JAC is asked to select is bound to vary each year in line with the needs of the business areas, such a spread of exercises is largely in line with what might be expected.
68. The highest number of selections for salaried roles was made for positions in pay group 6.1 (93 selections were made). This is largely due to an exercise to select 84 Circuit Judges.

Volume of applications

69. In last year's evidence to the SSRB, we noted that although application numbers were healthy overall, there were a small number of specialist exercises where applications had been low.
70. As processes, outreach work, and relationships with key partners have become more established, there has been an upward trend in applications.
71. From 2007/08 to 2008/09 there was an increase of nearly 40 per cent in the number of applications, from 2,535 to 3,518; and this was for fewer posts – 449 against 458.
72. Figure 1 below summarises the exercises, selections and (eligible) applications for salaried posts at each level of seniority for which the JAC completed selection exercises for in 2008/09. (Those exercises which

were launched in 2008/09 but not completed before the end of year are not included because at the time of writing, application numbers were not known for all these exercises; in some cases the final number of recommendations the JAC is asked to make may change.) It also shows the ratio of applicants to each position.

Pay group	Total number of exercises	Total number of selections	Total number of applications	Ratio of applicants to each position
4	1	22	129	6
5	3	6	51	9
6.1	4	98	430	4
7 and 7+	7	41	443	11

73. The ratio of applicants to each position remained at a healthy level at all levels of seniority.
74. There were fluctuations between different exercises in each pay group. This is to be expected, as exercises for different positions attract varying levels of interest.
75. It is worth noting, as fee paid experience is seen by the Lord Chancellor as a normal requirement for the salaried judiciary, that application numbers were buoyant for fee paid legal posts as well. There were on average 10 applications for each legal fee paid position. The ratio for certain posts was particularly high, with, for example, 31 applicants for each vacancy in the exercise for Deputy District Judges in the Magistrates' Courts.
76. There will always be some variation in the range of posts the JAC selects for each year, and what sort of field of candidates those posts attract. All selection exercises for salaried posts attracted four or more candidates for each vacancy; this is no doubt due in some part to the nature of the posts themselves; there were few very specialist exercises. The continued increase in applications is also likely to be in part due to the growing maturity of the JAC and the recognition that our selection processes are open and fair. We also consider it likely that the current financial climate forms part of the reason for such a steep increase in applications.
77. We therefore expect that application numbers for most posts will probably continue to rise over the next year.
78. The JAC sees diversity and merit as complementary. For the JAC, encouraging a wider range of candidates to apply is a statutory duty: the aim is to increase the merit of the judiciary by drawing from a wider and larger pool. The JAC therefore views increased application numbers positively, although it brings resource pressures.

Quality of JAC selections

79. The quality of JAC selections has been widely recognised, in official and unofficial feedback from key partners.

80. The JAC quality assures all selection exercise policies and processes and keeps them under constant review. There are a range of Working Groups to monitor the selection process. Assigned Commissioners for each exercise maintain oversight of all aspects of the process. Panel Chairs had training on appointment, and prior to each exercise all panel members undergo exercise-specific briefing. There is also a formal appraisal system in place for Panel Chairs. And in turn Panel Chairs are responsible for appraising Independent Members.
81. The then Lord Chief Justice, Lord Phillips, in his Annual Review in March 2008 said that, ‘Since the JAC has been in operation, the quality of judicial appointments has been consistently high.’³ This was echoed by the MoJ evidence to the SSRB in October 2008: ‘the Judicial Appointments Commission (JAC) has been able to recommend high quality candidates for all the salaried judicial posts for which it has been asked to run selection exercises.’⁴
82. In evidence to the Public Accounts Committee on 16 March 2009, Peter Handcock, Director General of Access to Justice, the JAC’s sponsoring department in the MoJ, said that:
- There is no evidence whatsoever from the level of applications and quality of applications being received by the JAC that there is any more disincentive now than there ever was for people to seek appointment to the bench, either the Circuit bench or the High Court bench. There is certainly no evidence of any diminution in the quality of candidates.⁵
83. In 2008/09, 99.8% of JAC recommendations were accepted by the Lord Chancellor (the Lord Chancellor asked that one recommendation for Circuit Judge, South East Circuit, be reconsidered in May 2008; a new recommendation was sent and accepted in July 2008).
84. At present, the evidence for the quality of JAC selections, while positive, is largely anecdotal. This reinforces the case for judicial appraisal, which the JAC has long supported.

The number of candidates judged appointable

85. At no stage in the process do Commissioners make a judgement as to whether a particular candidate is ‘appointable,’ other than when a particular candidate is recommended for appointment. Selection panels make an assessment of each candidate they see, and a selection of candidates which JAC staff, in consultation with the assigned Commissioner, consider will be of interest to the Selection and Character Committee, is put to a meeting of the Committee. The Committee considers each candidate individually, and examines carefully the particular requirements of each

³ The Lord Chief Justice’s Review of Administration in the Courts, March 2008, para. 4.28

⁴ MoJ Departmental Evidence to the Senior Salaries Review Board, 7 October 2008, Annex B, para. 12

⁵ House of Commons Public Accounts Committee: The administration of the Crown Court, Thirty-fifth Report of Session 2008–09, HC 357

post, to select one candidate for each post to recommend to the Lord Chancellor.

86. The CRA requires that the Lord Chancellor specifies the number of vacancies available. The JAC can recommend no more than have been requested, but will not make recommendations for the full number sought unless it is fully satisfied that there are candidates of sufficient merit available.
87. If there are low numbers of applications for the number of posts in question, the JAC will consider its options, in consultation with partners; for example, re-advertising the position, as well as running more targeted advertising if it considers that it may lead to additional quality applications. The JAC makes a decision on which course to pursue taking into account individual circumstances in each case. There is no implied criticism of the candidates who have applied.
88. The JAC decided to re-advertise a post due to low numbers of applications in one case in 2008/09. That was the exercise to select a Senior Circuit Judge (Resident Judge) (Birmingham). We could not be confident that the small number of candidates who applied represented the full field of candidates who might be eligible to apply. It was re-advertised. There was one precedent for this: in November 2007 a Senior Circuit Judge (Chancery) (Birmingham) position attracted very few applicants and was re-advertised along with two other Senior Circuit Judge positions in Birmingham. As these exercises were very small we do not report on numbers of applications, to protect confidentiality. Both exercises resulted in a recommendation being made and accepted by the Lord Chancellor. It is important to note that a small field of candidates does not necessarily mean that the merit of those candidates is low. In line with the JAC's statutory duty to have regard to the need to encourage diversity in the range of persons available for judicial appointment, the JAC endeavours to attract a large pool of candidates.
89. In the event that a selection process fails to identify sufficient candidates of the required calibre, the JAC will inform the Lord Chancellor, including reasons if they are known. It will be a matter for the Ministry of Justice whether a second selection exercise is run immediately, and prioritised over other planned exercises.
90. It has proved impossible for the JAC to recommend a candidate to fill a vacancy on one occasion in 2008/09. A request for a call-off from the section 94 list of candidates suitable for appointment as District Judges in the Magistrates' Courts was received in November 2008. This was to recommend a candidate for a position in the North West in a specialist Family Proceedings Court. The JAC found no candidate on the section 94 list with the required specialist experience. We therefore examined the near misses from that selection exercise, including conducting statutory consultation on these candidates. None was judged appointable, however, and the Lord Chancellor was informed of this.
91. The SSRB will already be aware of the problems experienced in past years in attracting sufficient numbers of applicants for the position of Medically Qualified Members of the Social Security and Child Support Appeals

Tribunals. These are fee paid positions, however, and thus not under the remit of the SSRB in this instance; in addition, it is understood that the reason for the low level of applications is the fee level. The JAC is aware that the SSRB has conducted a review of the fee level for this position and JAC officials met with PricewaterhouseCoopers consultants as part of that review.

92. The JAC can make no comment on the level of applications to exercises run since the close of the financial year 2008/09. These figures are official statistics, and accordingly cannot be reported on before their publication.
93. While the JAC cannot make a comment on the number of candidates judged appointable, occasions on which the JAC has been unable to make a recommendation to fill a post have, as is shown above, been extremely limited. The evidence of high quality applications and selections, as well as increased application numbers, are some further indications which can be pointed to as evidence of a strong field of candidates.
94. The following example is further, incidental evidence of a strong field of candidates. In October 2008 one candidate whom the JAC recommended for appointment in the future declined (the post was Salaried Legal Member of the Mental Health Review Tribunal). A second candidate would have been recommended, but chose to take up another post. In November a third candidate was selected, and the Lord Chancellor and candidate both accepted this recommendation. In addition, on the one occasion on which the Lord Chancellor asked the JAC to reconsider a selection, mentioned above at paragraph 65, a new recommendation was made and accepted.

The JAC's equality and diversity work

95. As set out above, the JAC has a statutory duty to have regard to the need to encourage diversity in the range of persons available for selection. The JAC undertakes a range of work in relation to this duty.
96. The JAC ensures that its selection processes are fair and open. We have a Single Equality Scheme and Reasonable Adjustments Policy for the selection process. All processes, policies, and materials for selection exercises are equality proofed internally and by an external diversity specialist and external partners such as the Law Society. Diversity and equality strands are embedded in all panel training. An assigned Commissioner maintains oversight of each exercise, including equality and fair treatment.
97. Wherever possible, the 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.
98. 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. 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.

99. In 2008/09 the JAC engaged with a wide range of organisations through over 40 outreach events. These included events hosted in partnership with bodies including the Employed Barristers' Committee, the Law Society, the Society of Asian Lawyers, the Association of Women Solicitors, the Association of Women Barristers, and the Black Solicitors' Network. Feedback forms from these events were overwhelmingly positive. We have also redesigned our website to make it more accessible.

Diversity statistics 2008/09

100. On 30 June 2009, the JAC published data from selection exercises in 2008/09, broken down by diversity outcomes. As mentioned above, applications increased by nearly 40 per cent in this period. The headline results are set out below, and the full data is attached at annex D.
101. 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 from which candidates may be drawn is 35 per cent.
 - 14 per cent of applicants and 7 per cent of those selected were of black or ethnic minority origin (BME). The eligible pool is 7 per cent.
102. 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.

British Market Research Bureau research

103. In 2008 the JAC commissioned research from the British Market Research Bureau (BMRB) into the barriers to application to judicial appointment, in order to understand what factors might attract or deter candidates. The results were published on 4 June 2009. The full research report is attached at annex E.
104. A postal self-completion survey was conducted of eligible barristers and solicitors. They were considered eligible if they had been qualified for seven years or more, the usual requirement for eligibility for most judicial posts prior to the TCE Act 2007. They were selected randomly from lists supplied by the Law Society and Bar Council, the representative organisations for, respectively, solicitors and barristers. Certain groups (barristers, and female and BME lawyers) were oversampled, to ensure that the numbers in these groups were large enough for meaningful comparison. The samples were weighted to correct the over-representation of these subgroups.
105. After the initial survey was sent out a postcard reminder and a targeted full survey pack were sent out to follow up. Over 2,000 completed questionnaires were received – a response rate of 35 per cent.
106. While this was the most suitable means of engaging with eligible candidates, it must be noted that the self-selecting nature of this approach means that those receiving the survey who already had an interest in judicial office would be more likely to respond.
107. 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% of lawyers said they would be more likely to apply for judicial office if they could work part-time.
 - 13% of BME lawyers said they were very likely to apply in future
 - 7% 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.

Findings on judicial salary levels

108. There was evidence that judicial salary level is a deterrent to some potential applicants: 50 per cent of respondents said an increased salary

would make them more likely to apply.⁶ And when asked which aspects of judicial office were unappealing, 44 per cent responded that reduction in earnings was one such factor.⁷

109. However, this evidence should be placed in context. 81 per cent of respondents had never applied (32 per cent had considered applying, 49 per cent had not even considered it).⁸ And of the 81 per cent who had never applied, only 6 per cent said that a drop in salary was a reason for their not having applied – far below other reasons for choosing not to apply.⁹
110. In fact, the major reasons that four fifths of respondents had chosen not to apply were: that they were happy in their current job (51 per cent) and that they didn't think they would be appointed (50 per cent).¹⁰
111. Judicial salary was not among the factors identified most as appealing to respondents, but it was appealing to the majority of respondents. When asked how appealing certain aspects of judicial office are, 62 per cent of respondents said that the salary was appealing: 16 per cent said it was very appealing, and 46 per cent said that it was slightly appealing.¹¹
112. There were seven factors which over 75 per cent of respondents said were very or slightly appealing: interesting work, public service, be a decision maker, make a difference to the law, job security, pension arrangements, and change of career focus. The factor “interesting work” was the most attractive, appealing strongly to 59 per cent of respondents.¹²
113. There were four factors which 50 per cent or more of respondents felt were amongst the top three most unappealing aspects of the role. These were: the isolated nature of the role; the loss of flexibility; travel or being based in different places, and the judicial establishment or culture. These are not factors that are largely within the JAC's power to alter.¹³
114. Job security and pension arrangements are aspects of remuneration above and beyond the salary, and both were significantly more attractive to respondents than the salary itself. 83 per cent felt that job security was very or slightly appealing, and 81 per cent felt that pension arrangements were very or slightly appealing.¹⁴

Implications for judicial diversity

115. The BMRB research suggests that the level of judicial salary might attract or deter particular under-represented groups. This is significant for the JAC in light of our statutory duty. There is also a wider current, in

⁶ BMRB report on barriers to application for judicial appointments, chart 3.2

⁷ Chart 4.4

⁸ Chart 3.4

⁹ Chart 3.6

¹⁰ Chart 3.6

¹¹ Chart 4.3

¹² Chart 4.3

¹³ Chart 4.4

¹⁴ Chart 4.3

Parliament and the public sphere, of concern about the diversity of public appointments, and how far these reflect society.

116. A detailed breakdown of the four questions relating to salary (that is, questions 7, 9, 17 and 18) analysed by profession, ethnicity and gender suggests the following points.
117. There is some indication that men are more deterred than women by the relatively low level of judicial salaries: increased salary would make 49 per cent of men compared with 38 per cent of women more likely to apply for judicial office (Q9). 68 per cent of women said judicial salaries are appealing, compared with 59 per cent of men (Q17).
118. There was no statistically significant difference between the attitudes of barristers and solicitors towards judicial salaries.
119. BME respondents seem to be more deterred by the level of judicial salaries than white respondents. 37 per cent of BME respondents said increased salary would make them much more likely to apply for judicial office, compared with 20 per cent of white respondents (Q9). 58 per cent of BME respondents rated "Reduction in earnings" as one of the three most unappealing aspects of judicial office, compared with 44 per cent of white respondents (Q18). Interestingly, however, there was no significant statistical difference between the percentage of white and BME respondents who said that judicial salary was appealing (63 per cent of white respondents, 61 per cent of BME respondents) (Q17).
120. The research thus suggests that a more generous salary increase might attract more BME applicants, and might also attract more male candidates. It would probably have little effect on the proportions of barristers and solicitors applying.

Collection of earnings data from candidates

121. In 2008 the JAC agreed we would collect salary information if it was done on a separate form circulated to candidates with the application pack, clearly marked as from the SSRB, explaining the reason for its circulation, and that the form should be returned directly to the SSRB. It is not appropriate that salary information forms part of, or is thought to form part of, the selection process for judicial office.
122. In subsequent discussions, the SSRB has requested that the JAC circulate the form at a later stage in the selection process. The Commission was happy with the original approach, but felt that this proposal would be inappropriate. At later stages in selection exercises, there are often a small number of candidates: the collection of earnings data is much more sensitive, as individuals' earnings could in some cases be deduced. There is more scope for requests for salary information to be misinterpreted.
123. The SSRB has not (at the time of writing) responded substantively to the Chairman's letter of 5 February 2009, but has since indicated that they do not wish to move forward with the initial approach suggested, and that the question will be re-examined in the context of a forthcoming major review of the judiciary. The JAC remains happy to work with the SSRB to develop an approach which is amenable to all.