



'Appointments and diversity: A judiciary for the 21 century'

**Response of the Judicial Appointments Commission
February 2012**

Introduction

1. The Judicial Appointments Commission (JAC) is pleased to respond to the consultation on judicial appointments and we welcome the renewed focus on judicial diversity.
2. We believe an intrinsic part of making selections on merit, and encouraging the widest possible pool of those eligible and ready to apply, is the fairness, transparency and openness of selection procedures used. The Constitutional Reform Act was subject to a great deal of debate in its progress through parliament and it is right that significant changes to it, such as those discussed in the consultation paper, should be subject to a similar level of debate.
3. The consultation proposals touch on some very important constitutional issues and the balance of power and responsibilities in making judicial appointments should only be changed where a real benefit would arise from this. It is also important that the independence of the judicial selection process, both from the executive, and from the judiciary, is respected and remains clear to prospective candidates and the public as a whole. In our responses we have reflected the principles that the selection processes leading to the recommendations should be free from executive involvement, that senior selection panels should be chaired by a lay person and that there should be a lay majority on these panels.
4. We agree that the length of the end to end judicial appointments process is of concern, but the JAC's section is only one part of that. Key roles are played by the Ministry of Justice, including HM Courts and Tribunal Service and the Judicial Office, in the forecasting and planning stages prior to the JAC being asked to make a selection. This is also the case in the stages following a JAC selection, when making the appointment and moving to the position where a successful candidate is ready to sit. We are pleased to be working with these bodies in tackling the length of the whole process as these are largely issues that can be tackled without legislative change. We consider that the two proposals in the consultation paper which might relate to the speed of process (proposals 16 and 18) would only shorten the process by potentially compromising the quality of selections.

Question 1: Should the Lord Chancellor transfer his decision-making role and power to appoint to the Lord Chief Justice in relation to appointments below the Court of Appeal or High Court? (S67, 70 - 76, 79-85, 88 – 93 of CRA)

5. We recognise that there would be a benefit to the workload of the Lord Chancellor should this role be transferred to the Lord Chief Justice, but there would be a corresponding addition to the workload of the Lord Chief Justice. Overall, the JAC considers that the current system has generally worked effectively and can see no overwhelming argument for change.
6. The Lord Chief Justice currently has the opportunity to influence selections at all levels from the High Court down, through the statutory requirement that he is consulted by the JAC before recommendations are put to the Lord Chancellor.
7. While transferring decisions on selections below High Court would reduce an administrative task for the Ministry of Justice and the Lord Chancellor, there are three main concerns against which this must be set:
 - accountability to Parliament for appointments; the Lord Chief Justice does not hold the same level or form of accountability to Parliament as the Lord Chancellor. There is therefore unlikely to be any executive involvement and thus accountability for the vast majority of judicial posts;
 - the apparent increase in judicial influence in the selection process that appointments being made by the head of the judiciary would bring. There is a risk of public perception that the judiciary was both unaccountable and self-perpetuating; and
 - the creation of a two-tier appointments process which may lead to a perception that those appointments made by the Lord Chief Justice are of lesser importance when, in fact, most citizen interactions with the judiciary are at these levels, not at the High Court and above. It may also lead to a perception of the Lord Chancellor having a higher status than the Lord Chief Justice.
8. The JAC considers that the argument for change is not sufficiently persuasive to outweigh these concerns.

9. However, should this proposal be taken forward we would expect that the Lord Chief Justice's power in making appointments and his ability to reject or ask for a reconsideration should be constrained in exactly the same way as the Lord Chancellor's currently is (see sections 90 to 93 of the Constitutional Reform Act).

10. In addition, the proposal would have important implications for statutory consultation responsibilities. At present the Lord Chief Justice must, by statute, be consulted before selection decisions are made and the JAC finds his responses helpful in making these decisions. Should this proposal be taken forward it would be inappropriate to have judicial comment on candidates, as well as judicial responsibility for appointment, as this would significantly increase the judicial influence in selections. We would therefore expect that the statutory consultation responsibilities would be changed and the value of the current statutory consultation in allowing comment from the Lord Chief Justice before selections are made would be lost.

Question 2: Do you agree that the JAC should have more involvement in the appointment of deputy High Court judges? (Part 4, Chapter 2 of the CRA, s.9 Senior Courts Act 1981)

11. Yes, the JAC should be responsible for the selection process for deputy High Court judges. The exception to this is in cases where authorisation is an incidence of office (as described at paragraphs 16 and 17).

12. The Senior Courts Act 1981, as amended by the Constitutional Reform Act, specifies that the concurrence of the JAC is required to designations made by the Lord Chief Justice allowing certain judicial office holders to sit as deputies in the High Court. In itself this does not allow the JAC an effective role in the process and these designations have not been subject to the same degree of openness and transparency as the selection processes operated by the JAC.

13. The role of concurrence is therefore difficult, because the JAC is linked to these decisions but has no real influence in the process. The JAC believes that it is important that the process for appointing Deputies is fair, transparent and open to the widest possible pool and this is not clearly the case under current processes. If the JAC is to have a role in the process it is important that this is a meaningful one.

14. We are aware that many see designation as career enhancing and this was made clear by the number of responses highlighting the issues in written evidence to the Constitution Committee's current inquiry into judicial appointments. It appears to be the case that experience as a Deputy is beneficial in applying for High Court positions. Of selections made by the JAC for High Court appointments over 80% have had this experience.
15. There is currently no published data available on the number and diversity breakdown of existing deputy High Court judges and we consider that it would be helpful for the Judicial Office to publish data on this.
16. We understand the need of the judiciary to differentiate those occasions where authorisation is an incidence of office, such as for Designated Family Judges, from those cases where authorisation is a career development step, as for practitioners (s9(4) Senior Courts Act 1981), Recorders and some Circuit Judges (s9(1)).
17. In the first of these scenarios, where authorisation is an incidence of office, the JAC would prefer to have no role at all and for this to be made clear in legislation, rather than having a concurrence role. It does not seem reasonable for the JAC effectively to give credibility to a process with which it is not directly engaged.
18. Regarding the second of these scenarios, where candidates for authorisation can be sought more widely, we believe that greater transparency could be provided by designating these selections as a JAC process. We have expressed our concerns to the judiciary and have recently agreed a new protocol to govern the way authorisations are made under s.9(1).
19. We welcome the new protocol and anticipate it will provide a more open and transparent process, an overview of the protocol is provided below. However, it is questionable whether it will achieve the same level of openness and transparency as those processes operated by the JAC and it will not be clear that these selections are made solely on merit.

20. We also note that the process is not consistent with similar appointments in the Tribunals Service whereby the JAC is required to make selections for appointment of deputy judge of the Upper Tribunals.
21. In addition, in line with our statutory duty to widen the pool of those available for selection, we consider that the current restrictions on those able to be authorised as deputy High Court judges under section 9(1) should be broadened. At present this is restricted to Recorders and Circuit Judges, which is narrower than those who can be selected for High Court positions.
22. Persons qualified for appointment as a judge of the High Court, generally practitioners, may also be authorised to sit as Deputy High Court Judges as a temporary measure to facilitate disposal of High Court business (under s.9(4) of the Senior Courts Act 1981). We consider that if the process for authorisation of Recorders and Circuit Judges under s.9(1) is subject to legislative change, then s.9(4) should also be amended in line with this and be a JAC process.

Overview of the protocol

23. Under the new protocol, exercises, organised on a division-by-division basis, will typically occur at intervals of one year to eighteen months, however there may be a need for authorisations to be made in the periods between the large-scale exercises to satisfy urgent business need or to facilitate the performance of a judicial office, which will not be subject to the protocol. Expressions of interest exercises will be advertised to all those eligible for authorisation i.e. all Circuit Judges and Recorders. The exercise will be publicised widely via a number of sources by Judicial Office. These will differ depending on Division but may include:
- The Circuit secretariats and Presiding Judges
 - Liaison or Supervisory Judges
 - Directly to Circuit Judges and Recorders (where feasible)
 - Appropriate publications
 - Interested organisations such as the Law Society and local Law Societies
 - Specialist Bar Associations

24. Anyone wishing to be considered for selection will be able to visit judiciary.gov.uk and complete an Expressions of Interest form. Although not a JAC process, candidates must complete a form which includes self assessment against the JAC's High Court qualities and abilities. The candidate's judicial senior will have to endorse the form. The appropriate Head of Division will send the JAC information detailing the campaign, their support for the business need and the forms of the candidates for whom concurrence is sought.

Question 3: Should the Lord Chancellor be consulted prior to the start of the selection process for the most senior judicial roles (Court of Appeal and above)? (s70, 75B and 79 CRA)

25. The JAC considers that it may be appropriate for the Lord Chancellor to be given the opportunity to give comments early in a selection process for those being considered for appointment to positions in the Court of Appeal and above.

26. In order to ensure that the process remains transparent these comments should relate only to views of the specification of the role and not be comments on individual prospective candidates. The preferences of the Lord Chancellor should be made public prior to the launch of the exercise.

27. The Lord Chancellor's comments should inform, but not constrain the selection process, and panels should be protected from being bound to make decisions to align with the Lord Chancellor's comments.

28. This proposal must be considered alongside others within this consultation regarding the compositions of these panels.

Question 4: Should selection panels for the most senior judicial appointments be comprised of an odd number of members? (S71, 75C and 80, of the CRA)

29. While the JAC anticipates that in the vast majority of situations selection panels should be able to come to a joint conclusion we consider that selection panels for the most senior posts should have an odd number of members, so that the Chair does not have the casting vote. We also believe that the

majority of members should be lay so that judicial views can be taken into account in selections, but not be overwhelmingly decisive.

Question 5: Should the Lord Chief Justice chair selection panels for Heads of Division appointments in England and Wales? (S71 CRA)

30. The JAC believes that the most significant issue relating to the selection panels for these appointments is that there should be a lay majority on the panel to ensure that judicial influence is not the overwhelming factor in decision making. We therefore do not agree with the proposal, contained within paragraph 58 of the consultation document, that the panel should consist of two judicial members, two lay members and a fifth member nominated by the Lord Chief Justice who can be either judicial or lay. We believe that the fifth lay member should be nominated by the Chairman of the JAC.
31. While the JAC believes that for other senior appointments the panel should be chaired by a lay person, in the case of the Heads of Division we agree with the proposal that the Lord Chief Justice should chair the panel, given the management requirements of these roles.
32. At present the selection process for the Senior President of Tribunals is set out at Schedules 1 and 2 of the Tribunals, Courts and Enforcement Act 2007. This allows that the selection can be made either by the Lord Chancellor following consultation with the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland or by the JAC.
33. The JAC considers that in order to ensure that selection processes are consistent and equivalent levels of transparency are brought to the processes, the Senior President of Tribunals should be subject to a similar selection process as the Heads of Division but adapted to account for the UK wide jurisdiction of the role.
34. In addition to the anomaly that the JAC should be involved in the statutory process for all senior appointments except the Senior President of Tribunals; it is also anomalous that the JAC should be responsible generally for the

selection of tribunal appointees (which accounts for a considerable portion of our work) but have no statutory involvement in the appointment of the top tribunal judge.

Question 6: Should only one serving Justice of the Supreme Court be present on selection commissions, with the second Justice replaced with a judge from Scotland, Northern Ireland or England and Wales? (Schedule 8, pt1 to the CRA)

35. We support this proposal as it counters the risk, as highlighted in the report of the Lord Chancellor's Advisory Panel on Judicial Diversity, of the Supreme Court being self-perpetuating and appointing in its own image. It would also allow for greater jurisdictional knowledge within the panel and for panellists who may bring different perceptions of both the candidates and the Supreme Court to be present.

36. In addition, the consultation (paragraph 59) also refers to the composition of the panel for Supreme Court selections. At present the Constitutional Reform Act requires it to consist of two judges of the Supreme Court, a representative from the Judicial Appointments Commission for England and Wales, the Judicial Appointments Board for Scotland, and the Northern Ireland Judicial Appointments Commission, at least one of whom must be non-legally qualified. This means that the lay/judicial split could vary from 1:4 to 3:2 (lay:judicial) depending on the representatives of the appointment bodies.

37. The JAC would welcome clarification of this situation to ensure a lay majority. While the proposal at question 6 addresses the question of the Supreme Court appointing in its own image, if the balance of the selection panel leads to a preponderance of judicial members, the perception of judicial patronage is likely to remain.

Question 7: Do you agree that the Lord Chancellor should participate on the selection panel for the appointment of the Lord Chief Justice as the fifth member and in so doing, lose the right to a veto? (S 71, 73 and 74 of CRA)

Question 9: Do you agree that the Lord Chancellor should participate in the selection commission for the appointment of the President of the UK Supreme Court and in so doing, lose the right to a veto? (S26, 27, 29, 30 of, and Schedule 8 to, the CRA)

38. The JAC's response to questions 7 and 9 are grouped.

39. We do not believe that the Lord Chancellor should sit on any selection panels.

40. We believe the same issues apply here as in the proposal for consultation with the Lord Chancellor (question 3). There is a high degree of public confidence in selections that are made by a Commission which is demonstrably independent of both Government and the judiciary. This is evidenced by the fact that some highly meritorious selections which previously might not have been made due to the political sensitivity, can now be made without comment and there are a number of selections made by the JAC since our creation to which this applies. Were the Lord Chancellor to be directly involved in the selection process by sitting on selection panels, he could face allegations of cronyism.

41. In addition, we believe that the Lord Chancellor should have the final say in accepting or rejecting recommendations and that he should be fully accountable to Parliament for those decisions; something his current veto over appointments provides. While we believe selection panels should operate on the presumption of unanimity, if legislation does not provide for this then were Lord Chancellor to lose his veto in exchange for becoming a member of a selection panel he could be in the position of being required to make an appointment, which he feels to be fundamentally flawed. There seems to be no advantage in allowing the possibility of this situation to arise.

Question 8: Do you agree that as someone who is independent from the executive and the judiciary, the Chair of the JAC should chair the selection panel for the appointment of the Lord Chief Justice? (S71 of CRA)

Question 11: Do you agree with the proposal that the Chair of the selection panel to identify the President of the UK Supreme Court, should be a lay member from either the Judicial Appointments Commission for England and Wales, the Judicial Appointment Board for Scotland or the Northern Ireland Judicial Appointments Commission?

42. The JAC's response to questions 8 and 11 are grouped.

43. The JAC agrees with these proposals. We believe it is appropriate that these panels are chaired by a lay person independent of the executive. For the panel for selection of the Lord Chief Justice we believe the Chairman of the JAC is appropriately qualified to take this role.

44. For the selection of the President of the Supreme Court we also believe the Chairman of the JAC is the appropriate person to undertake chairmanship of the panel, but we are aware of the importance of reflecting the interests of the devolved administrations. We believe the most important principle is that the Chair is either one of the lay Chairmen of the English or Scottish selection commissions, or a lay member of the Northern Ireland commission.

Question 10: What are your views on the proposed make-up of the selection panel for the appointment of the President of the UK Supreme Court? (S26, 27 of, and Schedule 8 to, the CRA)

45. The consultation document proposes that the panel should have seven members, consisting of:

- Chair – a lay member of one of the appointments bodies;
- the Lord Chancellor;
- two judicial representatives; and
- one representative from each appointments body (at least one lay and one judicial member)

46. It also proposes that there should always be a gender and, where possible, an ethnic mix on the selection panel.

47. This proposal contains a number of elements. The JAC's view on the principles that should be taken into account are:

- as in response to questions 7 and 9, we do not believe the Lord Chancellor should sit on selection panels;
- as in response to question 8, we agree that the chair should be a lay member of one of the selection commissions and believe that in the majority of cases it would be appropriate for this to be the Chairman of the JAC;
- as in response to questions 5 and 6, we believe the panel should contain a lay majority; and

- we agree that there should always be a gender and, where possible, an ethnic mix on the selection panel.

Question 12: Should the Lord Chancellor make recommendations directly to HM the Queen instead of the Prime Minister? (S26 and 29 CRA and convention)

48. In 2008, in response to the Pre-legislative Scrutiny by the Joint Select Committee on the Draft Constitutional Renewal Bill, we supported the removal of the Prime Minister from the approval process for Supreme Court selections on the basis that the Constitutional Reform Act gives him very little discretion in relation to his role in the appointments process.
49. We agree with this proposal on the same basis, combined with the argument outlined in the consultation document (paragraphs 77 and 78) regarding the increased clarity on the executive accountability of the Lord Chancellor in making appointments. This may also help to reduce the length of the end to end process, which would be beneficial for both candidates and the Courts and Tribunals.
50. However, this proposal should be considered alongside proposals 7 and 9. If the Lord Chancellor sits on a selection panel, loses his veto and has less accountability for selections, it might then be appropriate for the Prime Minister to remain involved in the process.

Question 13: Do you believe that the principle of salaried part-time working should be extended to the High Court and above? If so, do you agree that the statutory limits on numbers of judges should be removed in order to facilitate this? (Sections 2 and 4 of the Senior Courts Act 1981)

51. The JAC believes that salaried part time working should be available at all levels, up to and including the Supreme Court. We therefore agree that this should be extended to the High Court. It is not for the JAC to say how many judges there should be but we would like these to be considered on a FTE (full time equivalent) basis.
52. We know from our own research that for many under represented groups, the absence of part time working is a real disincentive to application for judicial office. While there are some salaried part time working opportunities up to circuit judge level, we believe making salaried part time working available

much more widely would have positive implications for judicial diversity. Ideally the availability of salaried part time working should be the default position with HM Courts and Tribunals Service being required to justify why it should not be available.

Question 14: Should the appointments process operated by the JAC be amended to enable the JAC to apply the positive action provisions when two candidates are essentially indistinguishable? (S63 of the CRA)

53. Section 159 of the Equality Act allows for a candidate with a protected characteristic to be selected where they are 'as qualified' as another candidate, and where they are currently under-represented. As the only published diversity data on the existing judiciary is on gender and ethnicity for Courts these are the only characteristics and positions for which the provision could be used.
54. The JAC believes that merit should be primary in selections. Should the situation where there were two 'essentially indistinguishable' candidates occur the JAC believes that it would be appropriate for the candidate with the protected characteristic to be selected. However, we consider that this would be a rare event as during the selection process we gather a substantial amount of information on individual candidates, who provide evidence against our qualities and abilities.
55. There are several issues to be addressed before the provision could be used or implemented:
- how to prioritise between protected characteristics (e.g. does ethnicity trump gender?)
 - many from under-represented groups are uncomfortable with the use of this provision as they fear it would devalue appointments.
56. At present we collect diversity data from candidates for statistical purposes and we use the information to monitor progression rates and ensure fairness in the selection processes. It is not made available to those making selection decisions. If that were to change and the information were to be used for making selection decisions we would need to change the basis on which we collect the information to ensure that candidates were content with their

personal diversity data being used in making selection decisions. There is a real risk that this would prove counterproductive and candidates would not choose to provide us with their data on this basis.

57. We consider that as this is a provision that would be used rarely, it should not be considered a panacea to address judicial diversity. Neither should it distract attention from other measures which may be more wide reaching and have a greater impact, such as those outlined at question 20.

Question 15: Do you agree that all fee-paid appointments should ordinarily be limited to three renewable 5 year terms, with options to extend tenure in exceptional cases where there is a clear business need?

58. Effective performance management of existing office holders, including use of appraisals, is fundamental in ensuring healthy turnover rates, particularly in Courts positions. If this happens then fresh talent will be able to apply for fee-paid positions. This is important in changing the long term diversity of the judiciary as these fee-paid roles are generally a pre-requisite for salaried appointment.

59. In the absence of effective performance management, a limit of three renewable five year terms with limited flexibility in granting extensions which would be subject to regular review, appears to be a practical way of achieving this turnover. If this proposal is introduced consideration should be given as how to ensure that younger potential applicants are not deterred from applying, as they may not be ready to apply for a salaried position after 15 years.

Question 16: How many Judicial Appointments Commissioners should there be? (Schedule 12 to CRA)

Question 17: Should the membership of the Commission be amended as proposed above? (Schedule 12 pt1 to CRA)

60. The JAC's answers to questions 16 and 17 are grouped.

61. The JAC consider that it would be appropriate for provisions relating to the composition and size of the Commission to be in secondary legislation to give increased flexibility in this area. As with our response to question 19 we

believe any changes should require the concurrence of the Chairman of the JAC and the Lord Chief Justice.

62. As the Ministry of Justice have only just appointed a full new Commission it would seem premature to reach a decision on the exact number and composition required at this stage. However, it is clear that allowing for flexibility could be beneficial, for example, when the CRA was passed it was envisaged that the JAC would take on the appointment of lay magistrates. The previous Lord Chancellor has made it clear this will not happen and it therefore now appears unnecessary to have a lay magistrate as a statutory member of the Commission.
63. In introducing flexibility, the current requirement that there is a lay majority should remain and there should be statutory guidelines framing the overall breakdown of judicial, lay and professional Commissioners. Retaining a balance on the Commission, including drawing upon different levels of the judiciary and branches of the profession, is important in retaining the confidence of stakeholders. Any changes should only be made with the concurrence of the Chairman of the JAC and the Lord Chief Justice.
64. The JAC has found that the breadth of views brought by a range of Commissioners has resulted in a rich and balanced exchange in making selection decisions. This reflects a balance of lay views with those from across the judiciary.
65. The total number of JAC Commissioners does not impact on the length of a selection process. It is not a statutory requirement, nor one that the JAC imposes, that all Commissioners should be present in making selection decisions. Between March and December 2011 on average, nine Commissioners were present at selection meetings and this has allowed for effective debate and decision making. In practice, the JAC has found it helpful to arrange extra selection meetings in the course of the year to respond to the needs of HM Courts and Tribunals Service.
66. Reducing the number of Commissioners would not have a significant financial impact. The JAC considers that while a breadth of views from Commissioners is valuable these can be utilised to best effect through the way in which they

are deployed. For example, where appropriate we have used Commissioners to provide oversight of selection exercises and make selection decisions in alternative ways, for example by using the quorum of only three Commissioners.

67. In addition to reducing the number of Commissioners, the consultation document also proposes loosening the criteria which currently prescribe who can be a Commissioner and instead requiring that the Lord Chancellor ensures that between them the Commissioners have knowledge and experience of holding judicial office; knowledge and experience of practice in a legal profession, and other knowledge and experience which the Lord Chancellor considers suitable.

68. Currently under the Constitutional Reform Act the Tribunal Commissioner is not recognised as a judicial member for the purpose of quoracy in taking selection decisions. The JAC would like it to be recognised that where the Tribunal Commissioner is from a legal position he or she should be regarded as a judicial member of the Commission.

Question 18: Should the CRA be amended to provide for selection exercises (such as judicial offices not requiring a legal qualification) to be moved out of the JAC's remit, where there is agreement and where it would be appropriate to do so? (S85 CRA)

69. It is important to recognise that non-legal tribunal members form part of collective judicial decision making that has considerable impact on the public and business – some of these are of life changing importance to those involved. Consequently, the JAC believes that selection processes used to select these members should be just as robust as those used to select legal members in order to retain public confidence.

70. As we have not seen any robust evidence that selection exercises can be run more cheaply or effectively outside of JAC processes, while retaining the same standards and levels of public accountability and scrutiny, we can see no strong argument for making these selections outside of the JAC.

71. Where posts are very rare and specialist, for example, members of the Transport Tribunal or Hydrologists, it may be appropriate for these selections

to be made outside of JAC processes. However, these are a small minority of the selections the JAC makes, and while this could be provided for through secondary legislation; any changes should be subject to agreement of the JAC Chairman and the Lord Chief Justice.

Question 19: Do you agree with the proposed approach to delivering these changes?

72. The Constitutional Reform Act represented an important constitutional change and alterations to it should only be made through comparable legislation. The JAC considers that the use of secondary legislation to allow minor process change could be appropriate, but use of secondary legislation should be clearly restricted to changes of this nature. Any secondary legislation must be subject to affirmative procedure (as proposed in the consultation document paragraph 107) and subject to the agreement of the JAC Chairman and the Lord Chief Justice prior to the parliamentary process.

73. The power to make changes to the Constitutional Reform Act by delegated legislation, which could impact on the role of the JAC, has constitutional implications. For example, a power to alter the composition of senior selection panels by secondary legislation could diminish the JAC's role in selections, and without the Chairman's consent being required, we would object to this.

74. The Constitutional Reform Act made the JAC responsible for its own procedure (schedule 12, 21). The powers of the Lord Chancellor to give direction to the JAC are limited. This was deliberate. Part of the constitutional arrangement was that the JAC should be independent in its means of operation as well as its recommendations. Any power to change the way it operates by delegated legislation should require the agreement of the Chairman of the JAC.

Question 20: Are there any other issues/proposals relating to the process for appointing the judiciary or for improving the diversity of the judiciary that you believe the MoJ should pursue?

75. The JAC considers that while the proposals contained within the consultation document show positive intentions to improve judicial diversity they can not

be considered in isolation. Focus should remain on the recommendations of the Lord Chancellor's Advisory Panel on Judicial Diversity, particularly on the necessity that the professions (particularly solicitor firms) and the judiciary engage with and promote the judicial appointments process.

76. The JAC would also like to see a review of the policy on positions open to government lawyers, and Crown Prosecution Service lawyers in particular, which are currently restricted. We understand that it will be necessary to have provisions in place to prevent conflicts of interest but believe there is scope to widen this.

77. The JAC believes that other issues which should be considered to help improve judicial diversity include:

Attractiveness of judicial roles

- fewer requirements for the JAC to make selections under section 94 of the Constitutional Reform Act – which means that the JAC are required to place successful candidates on 'waiting lists' which can leave candidates in an uncertain position for an indefinite period;
- real commitment to making more salaried part-time working available at all levels, including the senior judiciary;
- fewer High Court positions required to go out on circuit;
- continued diligence in ensuring pay and benefits remain attractive and do not have a disproportionate impact on younger potential candidates, particularly in relation to Tribunal positions and resolution of pensions uncertainty;

Increased training and support

- support for judicial appraisal to enable development and to allow effective performance management;
- better funding of Judicial College to provide training for less conventional candidates;

Increase in candidate pool – action for the professions

- further measures to address attrition rates of women in both branches of the profession, including increase in availability of part-time working for lawyers

- access to wider range of challenging and high profile legal work for women and BME lawyers;
- more diversity in QC selection;
- more mentoring and training targeted at underrepresented groups;
- recognition of the value of employees taking judicial roles by firms.

Question 21: We welcome your views on the EIA in terms of likely equality impacts. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity?

78. Equality impacts, where we understand they exist, have been addressed at the relevant proposal.

Question 22: We are particularly interested in understanding more about the barriers faced by people with protected characteristics. Are there any further sources of evidence of equality impact that you are aware of that would help better understand the impacts of the proposals?

79. Robust annual data on the composition of the Courts and Tribunals is important to track how the diversity of the judiciary is changing and to assess the impact of these proposals. The Judicial Office currently make data available on the composition of the Courts, broken down by gender and ethnicity, but there is no published diversity data available on the composition of Tribunals.

80. We also consider that it would be helpful for the Judicial Office to publish data on the number and diversity breakdown of existing deputy High Court judges.

81. In considering the protected characteristics the current diversity data published by the Judicial Office is too narrow. The JAC considers this should be broadened and data should be made available, for both Courts and Tribunals, on other protected characteristics.