

Response of the Judicial Appointments Commission to the consultation exercise on amending the JAC's merit criterion: 'an ability to understand and deal fairly'

1. The Report of the Advisory Panel on Judicial Diversity recommended (number 20) that the JAC's merit criterion 3 'An ability to understand and deal fairly' should be replaced with:
 - Social awareness, fairness and public service
 - An awareness and understanding, acquired by relevant experience, of diversity of the communities which the courts serve.
 - Scrupulous commitment to fair treatment and an understanding of the differing needs of court users.
 - Commitment to public service, preferably demonstrated through experience.
2. On 21 February the Commission launched a consultation on this proposal. The consultation document was sent to a wide range of interested parties and placed on the JAC news section of the JAC website. The consultation ran for eight weeks and closed on 21 April 2011.
3. The consultation document set out the text recommended by the Neuberger Panel on Judicial Diversity and asked for views on specific aspects of the Panel's recommended wording.
4. The document further set out the JAC's existing wording and a proposed re-wording of the existing merit criterion, which reflects the thrust of the Panel's recommendation, but dealing with some problems with the Panel's text. The JAC's proposed new wording was:
 - An ability to understand and deal fairly
 - An awareness and understanding of diversity of the communities which the courts and tribunals serve.
 - Commitment to fair treatment and an understanding of differing needs.
 - Willingness to listen with patience and courtesy.
5. A total of sixteen responses were received. Ten were from interested organisations and included The Bar Council, The Law Society, The Judicial Office, The Association of Her Majesty's District Judges and Lord McNally on behalf of the Ministry of Justice. A further six responses were received from individuals including members of the judiciary, a barrister, solicitor and a JAC independent panellist.

6. A summary of responses is annexed to this response. Two additions that were suggested by a number of respondents were:
 - A commitment to public service
 - Relevant experience
7. The Commission has decided to amend its proposed text to include a reference to public service.
8. As all merit criteria are assessed against evidence presented by candidates of their experience or knowledge, rather than on opinion or assertion, the Commission considers 'relevant experience' to be equally pertinent to all its merit criteria, and will be amend the introductory text as follows:
 - Merit will be assessed using the following qualities and abilities, based on evidence showing relevant knowledge and experience.
9. The Commission will be changing the specific merit criterion under discussion to
 - An ability to understand and deal fairly
 - An awareness of the diversity of the communities which the courts and tribunals serve and an understanding of differing needs.
 - Commitment to justice, independence, public service and fair treatment.
 - Willingness to listen with patience and courtesy.
10. This change will take effect from the autumn of 2011, when all selection material and guidance will be amended. Until then, the existing wording will apply.
11. The Commission wishes to thank all those who responded to the consultation.

July 2011

Consultation responses - amending the JAC's merit criterion: 'an ability to understand and deal fairly'.

Organisation Responses: The Association of her Majesty's District Judges (ADJ)
 Bar Council (BC)
 The Law Society (LS)
 Institute Legal Executives (ILEX)
 Justice College (JC)
 Equal Justices Initiative (EJI)
 Ministry of Justice (MoJ)
 Judicial Office (JO)
 Matrix Chambers (MC)

Individual responses: Shelagh Szulc, JAC independent panellist
 Lady Justice Arden, Judiciary
 Jane Beale, Solicitor
 Mrs Justice Dobbs
 Nigel Bird, barrister/recorder
 Sir Thomas Clegg KBC QC
 Lady Justice Hallett

Question	Response	Organisation
1 Should the JAC retain or change its existing merit criterion 'an ability to understand and deal fairly'?	No comment	ADJ
	The existing criterion should be amended to include a specific reference to diversity.	BC
	The existing criterion should be amended in light of the Neuberger recommendation	LS
	ILEX support the addition of the term 'diversity'	ILEX
	The JAC should change the existing criterion and make the changes proposed in the consultation (para 18)	JC
	The EJI support the recommendation of the advisory panel that the criteria could be modified	EJI

Question	Response	Organisation
	The MC support the development of the criteria	MC
	The existing criterion should be amended	MoJ
	The present criteria should be retained. - Nigel Bird, barrister/recorder	Other
2. What are the advantages and disadvantages of adopting the wording proposed by the Lord Chancellor's Advisory Panel on Judicial Diversity?	No comment	ADJ
	BC support the proposed inclusion of social awareness within the merit criterion	BC
	LS welcome the specific reference to diversity but have reservations about some of the wording in the panel's suggestion ('relevant experience, scrupulous commitment). Lack of clarity is likely to lead to uncertainty amongst applicants as to how they could meet the criterion.	LS
	ILEX see no disadvantage to adding the word 'diversity' and using New Zealand as an example feel that experience of diversity is evidence of social awareness albeit it not conclusive another evidence can demonstrate social awareness of diversity.	ILEX
	JC agree that diversity considerations may form a relevant part of assessment. JC support the JAC's argument on the introduction of the element of 'public service'	JC
	The EIA supports the Advisory Panel's recommendations with the addition of "willingness to listen with patience and courtesy"	EJI
	MC support the Advisory Panel's recommendation to add 'commitment to public service', experience of diversity and 'social awareness'	MC
	The panel's wording deals with diversity in a direct way, and also aimed to support the needs of the business by seeking to recruit people who can demonstrate a suitable level of previous experience.	MoJ

Question	Response	Organisation
	The MoJ feel it would be a positive step to allow people to demonstrate a wide range of experiences at interview and that to show an 'awareness' of diversity does not go far enough.	
	<p>Disagrees with the Panel's suggested new wording, the requirement to demonstrate 'commitment to public service, preferably through experience' and feels this is unlikely to widen the pool and could in itself be discriminatory - Jane Beale, Solicitor</p> <p>In support of the panel's wording and recommendations - Lady Justice Arden, Judiciary</p> <p>Agrees with the addition of 'experience' as suggested by the panel. The Suggested wording for the criterion is 'An awareness and understanding of diversity acquired by relevant experience of communities which courts and tribunals serve': 'Commitment to fair treatment and an understanding of the differing needs of court users' and 'willingness to listen with patience and courtesy'. - Lady Justice Dobbs</p>	Other
<p>3. What are the advantages and disadvantages of adopting the new wording at paragraph 18? Could we use the space here to amplify what para 18 says, just for ease of reference?</p>	<p>ADJ support the proposed amendment as set out in para 18 and is likely to amend its Appraisal Form accordingly should the proposed changes be made.</p>	ADJ
	<p>BC strongly support the inclusion of a specific reference to diversity in the JAC wording.</p> <p>BC propose adding Demonstrates an awareness of understanding etc or changing the wording to read An awareness of understanding acquired by relevant experience of diversity etc.....</p>	BC
	<p>The revised criterion suggested in para 18 is an improvement on the Neuberger panel suggestion. The retention of the heading 'ability to understand and deal fairly' is preferable to adopting a completely new heading.</p>	LS
	<p>ILEX agrees with the JAC and feels that the term 'public</p>	ILEX

Question	Response	Organisation
	<p>service adds little to the criteria because it is inherently subjective.</p> <p>ILEX propose the existing criterion is replaced with: Social Awareness, including gender and cultural awareness replacing bullet 2 under the criterion to read</p> <p><i>'compassion and empathy, courtesy to all persons regardless of their circumstances and humanity and bullet 3 to 'Independence, impartiality and a commitment to equal justice under the law'.</i></p>	
	<p>JC agree with the JAC proposal in para 18 and see the proposed wording as a significant improvement.</p>	JC
	<p>The EJI do not support the JAC's proposed wording</p>	EJI
	<p>The MC do not feel the proposed wording in para 18 goes far enough, their suggested revision is as follows:</p> <p>Social awareness, fairness and public service.</p> <ul style="list-style-type: none"> o <i>An awareness and understanding, acquired by relevant experience, of the diversity of the communities which the courts and tribunals serve</i> o <i>Scrupulous commitment to fair treatment and an understanding of differing needs</i> o <i>Willingness to listen with patience and courtesy</i> o <i>Commitment to respecting the equality and dignity of all court users including by securing equality in access and participation</i> o <i>Commitment to public service, demonstrated through experience.</i> 	MC
	<p>The MoJ feel that the proposed JAC wording (para 18) does not capture the issue of experience. However they are in favour of the JACs proposal to re-introduce 'willingness to listen with patience and courtesy'.</p>	MoJ
	<p>In agreement with the JAC's proposal to amend it's existing criteria as set out in para 18 - Sir Thomas Clegg KBC QC</p>	Other

Question	Response	Organisation
	Supports the new JAC proposed wording - Shelagh Szulc, JAC independent panellist	
4. Do you have any other relevant views?	No comment	ADJ
	No comment	BC
	<p>LS still have some concerns that applicants will be able to prove themselves against each criterion.</p> <p>Guidance on the new criteria, should it be adopted, should be given to both JAC panel members and potential candidates.</p>	LS
	<p>A more transparent and procedurally fair judicial appointments system that reflects the population can only increase public confidence. ILEX applauds the efforts of the JAC to bring this policy into fruition.</p>	ILEX
	<p>The JC has published 3 framework designed to underpin training and self development. The wording in para 18 and structure are not incompatible with the terms used in the College's framework but asks for the JAC to bear in mind the work on developing a single 'core judicial qualities and abilities framework'</p>	JC
	<p>The MC consider further work needs to be undertaken on the concept of merit – including the contribution a diverse judiciary makes to a more meritorious judiciary</p>	MC
	<p>Lord McNally's personal view is that "after a year's experience of the 'diversity' responsibility is that judicial appointments still reflect what I described in the House of Lords as a 'trickle up' approach, which does not meet the needs of our society in the 21st century.</p>	MoJ