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Department for  
Constitutional Affairs  
Justice, rights and democracy

# Increasing Diversity in the Judiciary



Consultation Paper

CP 25/04

Date of publication 13/10/2004

This consultation will end on 21/01/2005

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# Introduction

This paper sets out for consultation proposals on how the judiciary of England and Wales can be made more reflective of society today, whilst continuing to make judicial appointments based solely on merit. It is looking to identify the barriers that deter able candidates from wishing to become judges and to find ways of solving or minimising these problems in order to widen the pool of applicants for judicial appointment. The consultation is aimed at all those with an interest in judicial diversity in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 7, have been followed.

An initial regulatory impact assessment indicates that individuals wishing to pursue a judicial career, the judiciary and the legal profession may be affected by the proposals in this paper. We have therefore attached a Partial Regulatory Impact Assessment, at *Annex F*.

Comments on this regulatory impact assessment are particularly welcome.

Copies of the consultation paper are being sent to:

- judicial and legal professional bodies
- consumer bodies, for example Citizens Advice
- equal opportunities bodies, for example the Equal Opportunities Commission
- academic institutions
- all government departments.

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in the subjects covered by this paper.

## How to respond

The questions for response are included in the text of the paper, and are listed in *Annex E*, page 80. They are also available on the DCA website ([www.dca.gov.uk](http://www.dca.gov.uk)) as a downloadable WORD document.

Please send your response by **21 January 2005** to:

**Judicial & Appointments Policy Unit (Diversity Consultation Responses)**  
**Department for Constitutional Affairs**  
**Judicial Policy and Correspondence Division**  
**3rd Floor**  
**Selborne House**  
**54-60 Victoria Street**  
**London SW1E 6QW**

**Tel: 020 7210 1685**

**Fax: 020 7210 8283**

**Email: [judicialdiversity@dca.gsi.gov.uk](mailto:judicialdiversity@dca.gsi.gov.uk)**

## Introduction

In your response, please give your name, the organisation (if any) which you represent, your address and the date of your response.

**Representative groups are asked to give a summary of the people and organisations they represent when they respond.**

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

**If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.**

Confidential responses will be included in any statistical summary of numbers of comments received and view expressed.

Further paper copies of this consultation paper can be obtained from the address on page 5, and the paper is also available online at <http://www.dca.gov.uk/index.htm>.

A paper summarising the responses to this consultation will be published in spring 2005. The response paper will be available online at the same web address.

## Consultation co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs consultation co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at [consultation@dca.gsi.gov.uk](mailto:consultation@dca.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Laurence Fiddler  
Consultation Co-ordinator  
Department for Constitutional Affairs  
5th Floor Selborne House  
54-60 Victoria Street  
London SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 5.

## The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## Acknowledgements

The Department for Constitutional Affairs is grateful to the following for their contributions to this paper.

Dr Cheryl Thomas, Director, the Jury Diversity Project, University of Birmingham, for information on judicial appointments procedures in other jurisdictions in *Annex A*.

The General Council of the Bar and The Law Society, for their contributions on measures to increase diversity in the legal profession, initiatives to support members who wish to seek judicial appointment and for statistical information.

The Law Society for providing access to their Research Study 48, *Equality and Diversity: Women Solicitors*, May 2004.

The Institute of Legal Executives, for information on the route by which individuals who qualify as legal executives can go on to become solicitors.

# Foreword

## From the Secretary of State for Constitutional Affairs and Lord Chancellor

Since being appointed as Secretary of State for Constitutional Affairs and Lord Chancellor in June 2003, I have regarded it as one of the priorities of my new Department that the diversity of the nation should increasingly be reflected in the diversity of its judges. A more diverse judiciary is essential if the public's confidence in its judges is to be maintained and strengthened. We need to change, over time, the make-up of the people who hold judicial office in England and Wales.

This is happening. I was delighted recently to announce the appointment of the first High Court Judge in England and Wales who is from a minority ethnic background – and who is also a woman. Change is not happening quickly enough, however. We need to find out why people from diverse backgrounds and people with disabilities are not applying for judicial appointment in the numbers we might expect, and, once we have identified the barriers, we need to do something about removing them.

I will make clear at the outset that *judicial appointments will continue to be made on merit*. Our judges are of exceptional ability, independence and probity, and we must preserve that. But I do not believe that there is any conflict between merit and diversity. Rather, we must encourage more talented individuals to apply, whatever their background, so that we can be sure that the best are being appointed and the judicial system benefits from their talents and experience.

The Government is proposing, subject to the approval of Parliament, to set up an independent Judicial Appointments Commission to advise on individual judicial appointments. This represents an opportunity to establish better transparency and accountability in the selection of judges and to open up the bench to more candidates. The Commission will not be in place for some time yet, however, and I am convinced that there is much we can do in the meantime to encourage more people from diverse backgrounds and people with disabilities to apply.

This paper explains what has already been done, by the Department and the legal profession, to increase the diversity of the judiciary. It outlines our plans for more changes in the very near future. Most importantly, however, it invites comments and suggestions about what further action might be taken prior to the establishment of the new Commission.

The Department has worked closely with members of the judiciary and with the respective branches of the profession for many years in our efforts to improve judicial diversity, and we look forward to those relationships continuing in the future. I am deeply grateful to all those who attended and contributed to the consultation events which led to the drafting of this paper, and I am very pleased that the Lord Chief Justice, the Chairman of the Bar and the President of The Law Society are sharing the writing of this Foreword with me.

This consultation paper will clearly be of great interest to judges, lawyers and legal academics, and I am eager to receive their views. When the new Department for Constitutional Affairs was set up last year however, I said that we were here, not primarily for the judges or the lawyers or the constitutional thinkers, but for the public – because the courts, the law and the justice system have a far-reaching effect on the daily lives of us all. With that in mind, I hope that this paper will itself find a diverse readership and I hope that people from a wide cross-section of society will feel able to offer me their comments and suggestions on the questions it raises.

**The Right Honourable the Lord Falconer of Thoroton**  
October 2004

### **From the Lord Chief Justice**

I warmly welcome this important paper and the consultation process of which it is part. The results could be of the greatest significance to the future state of health of the judiciary.

We are singularly fortunate in this country in having a judiciary that is generally accepted to be of the highest calibre: free of corruption, independent and certainly better trained than ever before. However the judiciary can be, and are, criticised for the undoubted fact that, as a group, they do not sufficiently reflect the society for which they are responsible for providing justice. There is the potential for this lack of diversity to undermine the public's confidence in the justice system.

In this situation it is accepted generally by the judiciary that we must increase among our number the percentage of women judges and the percentage of judges who come from the ethnic minorities. It is imperative that this is achieved in ways that enhance rather than damage the existing quality of the judiciary.

We could just wait until the changing patterns of recruitment into the professions bring about the necessary changes to the pool from which the judiciary is, at present, recruited. This would undoubtedly happen over a period of time. However, such a policy would devalue the importance of what is in issue. I am satisfied a more proactive approach is required and I hope this consultation process will identify the action that should be taken.

## Foreword

In determining that action, it will be essential to have fully in mind the reasons for the existing strengths of our judiciary.

These include:

- i) the fact that, unlike most other jurisdictions, we are able to recruit many of the leading highly experienced practitioners into the judiciary;
- ii) our judiciary is not a career judiciary;
- iii) the great majority of our judiciary have, prior to appointment, demonstrated their suitability for appointment by serving as part time judges.

I have confidence that a way forward can be devised that will preserve these important characteristics while broadening the pool from which candidates for judicial office are drawn. I look forward to hearing about the responses to this paper.

**The Right Honourable the Lord Woolf**  
Lord Chief Justice of England and Wales

## From the Chairman of the Bar Council

The Bar is pleased to take part in this initiative to support diversity in the judiciary.

Our Bench is of unrivalled quality and integrity. The judges are appointed on merit and all are agreed that must continue. The stereotype of remote and pompous judges is indeed a stereotype, and is very far from the reality.

At the same time, the makeup of the bench reflects those who were joining the legal profession many years ago. There are few members of the ethnic minorities and relatively few women. As long as there is no compromise on the merit of appointments, it would be a real gain to increase diversity amongst the judges. The Bar has been arguing for this for many years, notably in the 2003 Glidewell Report.

At the Bar, we have been pursuing diversity for years. The Bar is far from its own stereotype – our entry is now 51 per cent female and about 19 per cent from the ethnic minorities. Only a little over 20 per cent come from Oxbridge, and of course many of them came through the state schools, as I did myself. We are proud of our own increased diversity and we are setting out to ensure that process continues, with programmes to retain women and ethnic minority barristers within the profession in equal numbers as they progress in their careers. Our new Equality and Diversity Code will play its part in all this. With the appointment of Linda Dobbs, the Bar has just given the High Court its first ethnic minority judge, and a superb judge she will be.

I very much hope that this consultation, and the measures that flow from it, will result in some concrete steps increasing diversity on the Bench. But almost more than that, I hope that the exercise will encourage women and those from the ethnic minorities to say to themselves 'I can do that'. For the truth is – the Bar and the Bench are for everybody, provided they are good enough.

**Stephen Irwin QC**  
Chairman of the Bar of England and Wales

## From the President of The Law Society

There are few things more fundamental to a democratic society than a high calibre and independent judiciary.

Not only must members of the judiciary be of the highest calibre, they must also reflect the diverse nature of the society that they serve. In England and Wales, we derive enormous benefits from the rich diversity of cultures and creeds within our society. If our judiciary is to retain the respect of society as a whole, it is imperative that the diversity of society is reflected in its ranks. Unnecessary barriers to appointment must be identified and broken down. No solicitor or barrister should be dissuaded from seeking judicial office because of his or her background – ability alone should be the determining factor, and the profession and the public should know that that is the case.

I congratulate the Lord Chancellor on seeking to break down the barriers to appointment. The Law Society is eager to play its part in ensuring that high calibre solicitors from all backgrounds and types of practice are encouraged to seek judicial office. This consultation document is a vital step in ascertaining whether the preliminary proposals of the Department for Constitutional Affairs, with the support of the professional bodies, get to the root of the problems of the current system and present appropriate options for reform. But this is only the beginning of the process. Much needs to be done if these proposals – and others identified in the course of consultation – are to become a reality.

I am delighted to be able to commit The Law Society to playing a full part in the reform programme and I urge every solicitor to play his or her own part to ensure the continued strength of the judiciary.

**Edward Nally**  
President of The Law Society

## Executive summary

It is a matter of great concern that the judiciary in England and Wales – while held in high regard for its ability, independence and probity – is not representative of the diverse society it serves. This consultation paper examines the extent of, and the reasons for, this lack of diversity; and specifically the barriers which may discourage people from diverse backgrounds and disabled people from applying for judicial appointment. It explains what action has been taken in the recent past to increase diversity in the judiciary, and what further action is planned; but its main purpose is to invite views, comments and suggestions as to what more can be done before the proposed Judicial Appointments Commission comes into operation.

The areas covered by the paper are:

- What needs to be done to improve the information provided to potential candidates and others about the judicial appointments system, and how to increase awareness about the possibility of becoming a judge among lawyers early in their careers. **(Chapter 2)**
- Whether the conditions for becoming a judge deter people from applying for appointment, and if so what needs to be done to remedy the situation. In particular, the paper considers the statutory requirement that an individual must have been qualified as a barrister or a solicitor for a certain number of years before becoming eligible for judicial appointment; and the policy requirement that an individual should have served in a fee-paid, or part-time, judicial appointment prior to being considered for full-time appointment. It seeks views on whether these conditions remain necessary, and invites comment on options for change. **(Chapter 3)**
- How the judicial appointments procedures might be further improved before the Judicial Appointments Commission is established, so as to minimise those factors within the system which deter people from applying. Particular aspects of the system upon which views are invited are the system for consultation on candidates, and the composition of interview panels. **(Chapter 4)**
- What needs to be done to change those aspects of judicial working practices which deter people, particularly those from groups under-represented in the judiciary, from applying for office. Comments are specifically invited on ways of encouraging and assisting disabled lawyers to apply for judicial appointment; on the part played by the prohibition on return to legal practice in deterring people from applying for judicial appointment in the first place; and on whether traditional ideas about specific career paths leading to specific appointments are an obstacle to increasing diversity. **(Chapter 5)**
- What should be the role of the legal profession both in ensuring the diversity of the pool of experienced lawyers from which entrants to the judiciary are drawn, and in supporting those of its members who are interested in seeking judicial appointment. **(Chapter 6)**
- What action should be taken in future to monitor progress in increasing the diversity of the judiciary. **(Chapter 7)**

# 1. Introduction

This paper examines the lack of diversity in the professional judiciary in England and Wales. It invites views, comments and suggestions on a wide range of options for increasing diversity. It is acknowledged that not every option would be compatible with all the others. The challenge will be to achieve accelerated improvement in judicial diversity whilst continuing to make judicial appointments based solely on merit.

This paper focuses particularly on the issues of gender, ethnic origin and disability. It also looks at how lawyers' professional backgrounds might affect whether they can and should seek judicial office. The paper does not cover such other aspects of diversity as sexual orientation, religion and belief or wider educational and social background. Chapter 7 looks at how judicial diversity should be scrutinised after this consultation exercise, including the examination of these other aspects of diversity.

For the purposes of this paper, the term 'judge' covers any legal judicial office-holder, including a tribunal member, unless the context indicates otherwise. Justices of the Peace are not included.

The Government is not proposing to move to a 'career judiciary'<sup>1</sup> on the European model, where an individual can opt for a judicial career, as opposed to a career in legal practice, from early in their working life. There was a clear view from those who responded to the 2003 Consultation Paper on Constitutional Reform, *A New Way of Appointing Judges*, that 'judicial progression'<sup>2</sup> (where individuals enter the judiciary after a considerable period in legal practice, and are then able to progress from one office to another) and not a 'career judiciary' was favoured.

## Background: what is the problem?

**1.1** The judiciary of England and Wales is held in high regard for its exceptional ability, independence and probity. The Commission for Judicial Appointments<sup>3</sup> has stated that the judiciary "is the envy of many jurisdictions".<sup>4</sup> Full-time judicial office is unique in that it is an office which is held until retirement and the powers to remove a judicial office-holder are extremely limited and rarely exercised. In these circumstances the benefit of any change must be carefully assessed. Yet change is needed. Currently, only 24.9 per cent of the judiciary are women, and 6.9 per cent are from minority ethnic groups.<sup>5</sup> Of this proportion, only 15.8 per cent of judges in the courts (as opposed to tribunals) are women, and 3.4 per cent are from ethnic minorities. In the High Court and

<sup>1</sup> See glossary.

<sup>2</sup> See glossary.

<sup>3</sup> See glossary.

<sup>4</sup> The *2002 Annual Report* of the Commission for Judicial Appointments [www.cja.gov.uk](http://www.cja.gov.uk)

<sup>5</sup> This figure includes postholders in the courts, and legal and lay members of tribunals.

## 1. Introduction

above, at 3 September 2004 there were only 14 women (8 per cent) and only one from a minority ethnic background.<sup>6</sup> In comparison, women comprise 51.3 per cent of the population of England & Wales, and ethnic minorities, 7.9 per cent. A full statistical analysis of the current position is at *Annex G*. It is not known exactly how many serving judges or applicants for judicial appointment have disabilities, and consideration is being given as to how their number might be monitored in the future. From the data that are currently available, however, it appears that few serving judges or applicants have disabilities.

- 1.2** Why should we be concerned? Our society is diverse, made up of people from a wide variety of backgrounds and cultures. There is no evidence to suggest that, for example, a black person who comes before a white judge will not feel that he or she will get a fair trial. However, in the last 30 years, other areas of the public sector (for example, medical consultants) have changed to reflect this diversity. Society must have confidence that the judiciary has a real understanding of the problems facing people from all sectors of society with whom they come into contact. However, if the make-up of the judiciary as a whole is not reflective of the diversity of the nation, people may question whether judges are able fully to appreciate the circumstances in which people of different backgrounds find themselves. We must ensure that our judicial system benefits from the talents of the widest possible range of individuals in fairness to all potential applicants and to ensure that talent, wherever it is, is able to be appointed. More fundamentally, the judicial appointments process must (and does) comply with the current law on grounds of gender, race, sexual orientation and religion and belief, both in employment and more generally, and will comply with forthcoming legislation on disability and age.
- 1.3** There is evidence that public confidence in the judiciary is not as high as it might be. For example, in a 2003 MORI survey of confidence in the criminal justice system respondents were asked how much confidence they had that different branches of the system were doing a good job. Whilst 54 per cent said they were “very or fairly confident” that judges were doing a good job, 43 per cent were “not very or not at all confident”.<sup>7</sup> (By comparison, 76 per cent expressed confidence in the work of the local police.) In the popular media, judges tend to be portrayed and viewed as elderly, male and representative of a narrow social class. As the MORI data confirms, the media and popular opinion then go on to take the view that judges are out of touch with the concerns of the public and, in particular, lack the necessary life-experience to enable them to identify with victims of crime. These are, of course, stereotypical and misleading views: but they can have a very real, adverse impact on public confidence in the judicial system, and they are liable to persist for as long as the judiciary remains statistically unrepresentative of the society it serves.

### *Merit must be the sole criterion*

- 1.4** There is no question about the abilities of judges appointed under current arrangements, but the public must continue to have confidence that the judiciary is made up of the most talented and able lawyers.

<sup>6</sup> The appointment of Linda Dobbs QC as the first High Court Judge from a minority ethnic background was announced on 2 September.

<sup>7</sup> MORI, 2003.

- 1.5** The method of selecting judges is and must be based on a system where the sole criterion is merit. This is to say that the Lord Chancellor appoints those who appear to him to be best qualified, regardless of gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability. This is also the view of the Commissioners for Judicial Appointments, who said in their response to the Government's constitutional reform consultation papers in November 2003 that selection on merit must remain the overriding principle in the appointment of judges. However, given that this is the basis on which appointments have been made for many years, why is it that the judiciary continues to be unrepresentative of society? What is it about our current system that is leading to unequal outcomes? It is essential for government, together with the judiciary and the legal professions, to understand and change any aspects of the present system of entry into the judiciary and progression within it which may inhibit talented individuals, whatever their background, from being considered on merit for judicial appointment.
- 1.6** Some progress has been made, most in the last 10 years. In 1950, only one woman was recorded as holding a court position, as a Stipendiary Magistrate. Twenty years later, in 1970, the first female High Court Judge was in post, alongside one female Circuit Judge, one female Recorder and two Stipendiary Magistrates.<sup>8</sup> The number of female High Court Judges increased slowly; by 1980, three women were High Court Judges, but this remained the same until at least 1987. The number of female Circuit Judges and Recorders rose steadily, but only to just over four per cent in each post by 1987. The figure for female Stipendiary Magistrates rose slowly, but reached just under 12 per cent by 1993. (*Annex G, tables 1 and 2.*)
- 1.7** Since 1993, the percentage of women sitting in the Courts has nearly doubled – from 8 per cent to 15.8 per cent. (The percentage of female Circuit Judges and Recorders has nearly doubled from 5.1 per cent to 10.1 per cent and 7.7 per cent to 13.2 per cent respectively, the percentage of District Judges and Deputy District Judges has increased from 7.2 per cent to 18.8 per cent and 11.9 per cent to 22.9 per cent respectively and District Judge (Magistrates' Courts) 11.4 per cent to 19.4 per cent. The greatest number of women in courts posts are Deputy District Judge (Magistrates' Courts) – in this jurisdiction 22 per cent of postholders were women in 2003). (*Annex G, table 2.*)
- 1.8** Statistics for ethnic minorities in the judiciary have only been in existence since the early 1990s. The data shows that in 1993 and 1994 the percentage of judges in the courts from minority ethnic backgrounds was less than one per cent. Of these, only five held full-time posts. The available data in relation to ethnic minorities in the judiciary is less robust than for women. Until 2000, the figure for minority ethnic postholders in the courts remained under two per cent. It rose to 2.31 per cent in 2002. In 2003, an ethnic origin survey of the serving judiciary was carried out, whereby the methods of monitoring ethnic origin were re-classified. Under the new classification, the figure for postholders in courts rose to 3.36 per cent, though it is likely that this significant rise was due more to the collation of better statistical information, rather than a real increase in judicial diversity. (Details of the survey are included in *Annex G.*)

<sup>8</sup> Historical figures for District Judges are not available, so there may have been female District Judges additionally in post. (District Judges were formerly known as County Court Registrars; District Judges (Magistrates' Courts) were formerly known as Stipendiary Magistrates.)

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- 1.9** Despite this change, women and members of ethnic minorities are still significantly under-represented in the judiciary, as shown by comparing their numbers in the legal profession with their numbers in society. (It is believed that similar considerations apply to people with disabilities, but data on this are currently incomplete.) There has been a huge shift in the numbers of women in both branches of the profession over recent years. In the solicitors' profession there has been an increase from under three per cent to over 40 per cent in the last 40 years. In 2003, women accounted for 32 per cent of the barristers' profession – a figure which has risen by seven per cent since 1997. The number of women now entering the profession is extremely high; 56.8 per cent of entrants to the solicitors' profession in 2002-03 were women and in 2003 50.9 per cent of those called to the Bar were women. (*Annex G, tables 8-11.*)
- 1.10** The story for ethnic minorities is similar. The percentage of solicitors from minority backgrounds has risen considerably over the last 13 years, to 7.9 per cent in 2003 – the same as that for the population for England and Wales (Table 33). There is an even higher percentage of barristers from minority ethnic backgrounds – 10.7 per cent in 2003 (*Table 34*). The numbers from minority ethnic backgrounds *entering* the solicitors' branch of the profession has been consistently high since 1994 and at 17.3 per cent in 2003 is more than double the percentage of those from minority ethnic backgrounds in the population (*Annex G, table 33*).

### Why is there a lack of diversity in the judiciary?

- 1.11** Why is it, then, that the judiciary is so different in its gender and ethnic composition? A number of reasons have been put forward for the lack of diversity in the judiciary.

#### *The appointments process pre-1994*

- 1.12** An insufficiently diverse judiciary suggests that the present system may not be encouraging or identifying able lawyers who come from different backgrounds and who wish to be judges. Open competitions for most judicial appointments have been in place only since 1994. Prior to that, the appointments process was much less structured. Individuals were expected to put themselves forward for consideration as and when they felt ready to take up an appointment, or they were invited or encouraged to be considered. There were then no competences against which individuals could measure whether they had the relevant skills and experience for judicial office. There was not even a standard procedure for making an approach to DCA; individuals were left to decide how to make contact. This meant that, unless lawyers already knew a judge or colleague with experience of the process, they were very unlikely to put themselves forward. As a result, there was a feeling that people were appointed only because of who they knew, rather than on the basis of their suitability to be a judge. The lack of procedural structure also resulted in appointments often being made only from among those individuals whose candidacy happened to be under consideration at the time when the vacancies became available.

- 1.13** The establishment of open competitions for judicial appointments below the High Court in 1994 therefore represented a major step forward towards a more open and transparent appointments process.<sup>9</sup> Since then, the Department has made strenuous efforts to improve the process and encourage a more diverse range of applicants. The statistics show that there has been some success. There was roughly a five per cent increase between 1998-99 and 2002-03 in the number of women applying and being interviewed for judicial appointment, and an increase of over seven per cent in the number appointed. Similarly, the figures for ethnic minorities are encouraging: over the same period, percentages of applicants from minority ethnic backgrounds increased to 10 per cent and the percentage of appointments to 8.9 per cent. (*Annex G, tables 4-7 and 27-30.*)
- 1.14** The improvements to the appointments process have clearly had some effect in increasing diversity. However, perceptions of bias about the system take a long time to dispel. There are only a relatively small number of appointments made each year at the higher levels of the judiciary which in part explains why a better appointments process has had only a small impact on the overall position.

#### *Lack of diversity of those eligible to apply*

- 1.15** The history and nature of the appointments process is not the only reason why the judiciary is not more diverse. It has been argued that the reason for lack of diversity in the judiciary was the lack of diversity in the legal profession, from which judges are drawn. According to this argument, as more women and people from minority ethnic backgrounds joined the profession, it was expected that there would be a ‘trickle-up’ effect which would lead naturally to a corresponding improvement in the diversity of the judiciary.
- 1.16** On examination, the statistics indicate that ‘trickle-up’ is working, but it is working slowly, at least for appointments in the courts (as compared with tribunals). The following paragraphs explore why this might be.

#### *Applicants delay applying*

- 1.17** There is a tendency on the part of *all* applicants to apply for initial appointment some considerable time after actually becoming eligible. For example, in 1989-90, 46.6 per cent of entrants to the solicitors’ profession and 38 per cent of those called to the Bar were women (*Annex G, tables 9 and 6*). These women would therefore have been eligible to apply for Deputy District Judge posts or Tribunals from 1996-97, and Recorderships from 1999-2000, but the appointments figures show that a much lower number applied (*Annex G, table 7*).<sup>10</sup> Similarly, in 1994, 15.5 per cent of minority ethnic lawyers were admitted as solicitors. Seven years later, only 8.2 per cent of minority ethnic lawyers applied for judicial appointment. (*Annex G, tables 33-35*).

<sup>9</sup> It has been possible to apply for appointment as a High Court Judge since 1998: please see paragraph 5.20.

<sup>10</sup> However, it is significant that until April 2002 a lower age limit applied to appointments to fee-paid judicial office (normally 35, though exceptions could occasionally be made). This would have prevented most younger lawyers from applying, despite their having held the appropriate rights of audience for the required number of years.

## 1. Introduction

**1.18** Statistics show that even for first-time appointments, people tend to apply for judicial appointment much later in their careers than when they are first eligible (*Annex G, tables 12 and 13*). This might suggest that the large pool of women in the profession who were called or admitted in the late 1980s and early 1990s will emerge during the next few years as candidates for appointment. Other data, however, indicates that this might not be so.

### *The attrition rate: 'trickle-out'*

**1.19** Rather than a 'trickle-up' effect, there is evidence of a 'trickle-out' from the profession. While numbers of men and women entering the profession now reflect the gender balance of the nation generally, by the stage at which lawyers become eligible for judicial appointment, this diversity has reduced. (This is demonstrated in *Annex G, tables 14 and 35*.) The attrition rate for women in the profession (albeit for various reasons, including personal choice) is greater than for men.<sup>11</sup>

### *Other factors*

**1.20** Even among those who remain in the profession, women apply less often for judicial appointment than men, with the result that the judicial system loses the contribution that they could bring. *Chapter 6* explains how the profession is addressing this problem.

**1.21** In 1998, Dr Kate Malleson and Dr Fareda Banda were commissioned by the then Lord Chancellor's Department to undertake research into the factors which affect the decisions of barristers and solicitors, and in particular women and minority ethnic practitioners, when considering whether to apply for judicial appointment.<sup>12</sup>

**1.22** They found that there was widespread approval for the changes that had been introduced in recent years, but there nevertheless remained a range of concerns that might have deterred individuals from under-represented groups from seeking judicial appointment. For example, some respondents believed that their chances of appointment depended on the chambers or firm to which they belonged and the extent to which they were prepared or able to network and socialise in the 'right' circles to get known. A number of respondents cited the problems which solicitors experienced in combining judicial office with practice, and considered that barristers enjoyed an advantage in this respect. Among white female barristers, however, the demands of practice was the most dominant reason given for not applying for judicial office, followed by lack of confidence in their chances of being taken seriously. Family responsibilities were also mentioned as a reason for not applying, in particular the implications of the requirement for some High Court judges to travel on circuit. An equal number, however, cited the compatibility of judicial work with family responsibilities as a reason *for* applying.

<sup>11</sup> The *2003 Annual Report of the Commissioners for Judicial Appointments* suggests some reasons for the attrition rate for women in the profession: these include non family-friendly working practices at the Bar, the impact of partnership requirements on women solicitors who wish to start a family and the difficulty of re-establishing a practice after taking a career break (paragraph 5.51 of the Commission's Report).

<sup>12</sup> Malleson, Kate and Banda, Fareda: *Factors Affecting the Decision to Apply for Silk and Judicial Office* (Lord Chancellor's Department Research Series No 2/00, June 2000).

## What has DCA done so far to increase judicial diversity?

- 1.23** Since the establishment of open competitions for judicial appointment in 1994, DCA has worked with the judiciary, the Bar Council, The Law Society, minority lawyers' groups, academics and others to increase the professionalism and transparency of the process and to promulgate information about how to become a judge as widely as possible. However, there remains a lack of confidence in the appointments process. This is why the Government has decided to set up an independent Judicial Appointments Commission.<sup>13</sup> This may open up the bench to candidates who might in the past not have thought it worth applying and will provide the opportunity to establish better transparency and accountability in the selection process.
- 1.24** Discussion about how to establish the new Commission has been vigorous and healthy, both inside and outside Parliament. That process is still ongoing and, as a result, it is currently expected that the Commission will not be in operation before April 2006 (subject to Parliamentary approval). This will be an important step forward but DCA believes that it should work to improve judicial diversity in advance of the Commission coming into being. In addition, there are a range of issues which are, and will continue to be, the responsibility of the Government or the professions and it is important that these are addressed as quickly as possible.
- 1.25** This consultation paper therefore explores these issues and seeks views on how the system might be changed to reduce or remove barriers or deterrents which may currently prevent people from deciding to pursue judicial office. In particular, this paper looks at:
- how we can better communicate what judicial appointments offer as a career option, and how one goes about becoming a judge;
  - the requirements for judicial office;
  - the working practices of the judiciary and opportunities for progression; and
  - what more might be done by the legal profession to increase the diversity of the applicant pool and to support those of its members who wish to seek judicial appointment.

## The process and timetable for change

- 1.26** The production of this consultation paper has been highly participative. Four working groups were convened over lunchtime sessions in June, where a number of questions about the lack of diversity in the judiciary were addressed by a wide range of people with expertise in this area (including representatives from a large number of minority groups and different legal sectors). The results of these discussions were drawn together at a seminar attended by around 50 people at which the key problems and potential solutions were distilled into the options for change outlined in this paper.

<sup>13</sup> See glossary.

## 1. Introduction

**1.27** Overseeing this whole process is a Senior Steering Group led by the DCA minister with responsibility for equality issues (Lord Filkin, until his move to another Ministerial post in September 2004, and since then Baroness Ashton) with Mrs Justice Hallett (the senior liaison judge for diversity), Edward Nally (The President of The Law Society) and Stephen Irwin QC (the Chairman of the Bar Council). The Group will continue to be involved by overseeing the review of the responses to consultation, and the implementation of the resulting programme for change. This programme will be announced by the Government by spring 2005 and is expected to include some changes which can be made immediately, with plans for making more substantial or complex changes in the medium term.

**1.28** DCA hopes that the participative nature of the process for producing this paper means that the major issues affecting the diversity of the judiciary have been identified and addressed. The Department will, however, be pleased to consider any other relevant views or comments which might be put forward.

1. Do you consider that this consultation paper reflects an adequate understanding of the issues and asks the appropriate questions?
2. Are there any other views or comments relevant to increasing judicial diversity that you would like to draw to the DCA's attention? If so, what are they?

## 2. Improving information and communication strategies

It is vital that lawyers are as well informed as possible about the judicial appointments process and the realities of life as a judge. This chapter looks at ways in which we can ensure that we are getting the right information, in the right format, to the right people at the right time in their careers so that people are not wrongly deterred from applying.

### What is the problem?

- 2.1** DCA has for many years been committed to improving the provision of information about how the appointments process works. Despite these efforts, however, there remains a significant information gap. Stakeholders<sup>14</sup> have said that not enough information about the system is available to the right people at the right time in the most accessible format. This would appear to be borne out by statistics on age and time since call or admission, which indicate that people tend to apply for judicial appointment some years after becoming eligible.<sup>15</sup> The information gap causes two problems. Firstly, there is a lack of awareness about forthcoming competitions and how to apply. People clearly cannot put themselves forward for consideration if they do not know when and how to do so. Secondly, people continue to harbour misconceptions about the process because they are unaware of recent process improvements and may therefore decide not to apply on the basis of a false premise. In both cases, the result is that talented and able lawyers are missing opportunities to become judges – and the judicial system is missing out on the contribution they could make.
- 2.2** There is also anecdotal evidence that some potential applicants (particularly those whose practice does not regularly bring them into direct contact with the courts) may feel themselves disadvantaged by their less detailed knowledge of the judicial role and of the positive and negative aspects of being a judge.

<sup>14</sup> See glossary.

<sup>15</sup> See Annex G, table 13.

## 2. Improving information and communication strategies

### What has been done?

#### *Providing information about life as a judge, and the appointments process*

- 2.3** DCA regularly runs appointments events (often in conjunction with the Bar Council and The Law Society), where a panel of judges speak about their experience of the system, and a DCA representative talks in detail about the appointments process. DCA also contributes a judicial appointments element to the development of events organised by others. For example, a workshop took place at the Minority Lawyers Conference 2003 which included a role-play session where serving members of the judiciary gave an insight into the reality of sitting on the Bench. Many minority groups' websites have links to DCA's web pages dealing with the judicial appointments process, and the Department also attends a wide range of other events such as the National Graduate Law Fair.
- 2.4** The Department recently started to seek feedback from attendees about the effectiveness of appointments events. The initial results show that people find them very helpful and informative, and in many cases are more likely to apply for judicial appointment after attending them.
- 2.5 Reports and publicity.** The Judicial Appointments Booklet was first published in its current format in 1999 and explains the policies and procedures which apply in appointing judges. A Judicial Appointments Annual Report is also published to provide an overview of the process, to describe reforms introduced over the year and to provide statistics on the appointments made. Both the booklet and the report are available on the DCA website.<sup>16</sup> In addition, the website contains further information about judicial appointments, including information on current competitions, together with application forms, the criteria for appointment and accompanying guidance. The Department is currently reviewing the quality and accessibility of the judicial appointments section of its website.
- 2.6 Work-shadowing scheme.** It is important that individuals are able to make an informed decision about applying for judicial appointment. DCA currently runs a successful judicial work-shadowing scheme which enables potential applicants to learn about what it might be like to sit as a judge and provide an invaluable insight into the realities of life as a judge.<sup>17</sup> Qualified solicitors and barristers can spend up to five days observing the work of either a Circuit Judge or a District Judge (Civil). The scheme is open to all solicitors and barristers, irrespective of how many years they have been qualified, who may be interested in seeking judicial appointment as a Recorder or Deputy District Judge. The potential applicant is able to observe the judge throughout his or her working day and will, over a week of shadowing, have the opportunity to observe how the judge prepares, manages cases and determines issues and trials. The scheme is particularly useful for lawyers, such as academics and employed lawyers, who do not appear regularly in Court, and also for those whose experience is limited to particular types of court or tribunal. Feedback

<sup>16</sup> [www.dca.gov.uk](http://www.dca.gov.uk)

<sup>17</sup> See *Annex G*, table 37 for statistics on the number and breakdown of participants.

from the scheme has been very positive – many people have said that, as a result of their experience, they are more likely to apply for judicial office. Building on this success, the DCA is investigating how it might be extended to the posts of District Judge (Magistrates’ Courts) and Tribunals.

## What more needs to be done?

### *Targeting the right people at the right time in the right way*

- 2.7** To encourage a more diverse range of lawyers to consider applying for judicial office, we need to make sure that people have the right information about the judiciary and the appointments process at the right time to help them decide whether they wish to be a judge and, if so, how to apply. For example, lawyers who already meet the eligibility requirements, or who may shortly do so, may need information about becoming a judge and the appointments process. Alternatively, law students and lawyers who have only recently qualified probably do not need to know about the intricacies of the appointments process, but are more likely to need information on becoming a judge in due course and how their legal career might lead them in that direction.
- 2.8** The Department considers that its first priority must be to ensure that there is comprehensive and accessible information available to those lawyers who are already, or who will shortly be, eligible for appointment. It must then look at ways of encouraging people earlier in their careers to consider judicial office in due course.

### *Improving the promulgation of information about being a judge and the appointments process*

- 2.9** It is essential for DCA, with the professions, to quickly plug the information gap about the appointments process and the opportunities for learning more about life as a judge (described in more detail in paragraph 2.1). Subject to consultation, the Department therefore proposes to take the following action.
- **Establish a more structured, regularly evaluated, annual programme of appointments events which are linked more closely to forthcoming competitions.** At present, events tend to cover all judicial appointments and are arranged on a relatively ad hoc basis. Feedback from stakeholders suggests that these popular events could be even more successful if they were more widely publicised well in advance, and tailored to particular upcoming posts. The programme would be evaluated regularly to ensure and improve its effectiveness.
  - **Publicise more widely the fact that individuals or groups can ask the Department to run events for particular groups of lawyers.** Events tailored to the needs of a particular group have been well received. When publicising the annual programme of events, DCA could also make it clear that it will be happy to consider requests for more specific, ad hoc events.

## 2. Improving information and communication strategies

- Revise the current Judicial Appointments booklet. Stakeholders have said that, while this booklet is comprehensive, its format is rather inaccessible. The success of the newly formatted literature about the work-shadowing scheme suggests that a more modern look for the appointments booklet would encourage more people to read it. In addition, the current booklet does not provide a lot of information on what it is like to be a judge, and the new literature would explain this in more depth.

**2.10** It has also been suggested that DCA should consider the following measures to promulgate information about the system more widely:

- inviting people to receive by email regular communications about updates on the appointments process and/or future competitions
- sending information to all lawyers when they reach seven years' call or admission informing them about the possibility of applying for judicial appointment<sup>18</sup>
- targeting the particular sectors of the professions from which there are few applicants with information about the process
- establishing a dedicated helpline to deal with queries and to provide general information on judicial appointments
- expanding the work-shadowing scheme to include mentoring opportunities

3. Do you agree that DCA should proceed with the proposal for change outlined in paragraph 2.9?
4. Do you support the suggestions in paragraph 2.10? If so, which measures do you consider would be most effective and why?
5. Do you have any other suggestions for ways to inform and prepare people for judicial appointment?

<sup>18</sup> See *Annex C* which sets out the current statutory requirements.

*Promoting judicial appointments for lawyers early on in their careers*

**2.11** A number of suggestions have been made to DCA about how to increase awareness about the possibility of becoming a judge among lawyers early on in their careers.

- Different types of material on the judiciary could be produced specifically to target lawyers and trainees at different stages in their legal career.
- Work could be undertaken with universities to provide information to law students, as a standard part of law courses, about the judicial appointments process.
- Information could be provided to schools about the judiciary, possibly through links with the citizenship-related requirements of the National Curriculum and/or organisations such as the Citizenship Foundation, which runs annual mock trial competitions.

6. Do you agree that DCA should consider how to target lawyers early on in their career to raise awareness about becoming a judge?
7. Do you consider that the measures suggested in paragraph 2.11 would help to raise awareness?
8. Do you have any other suggestions for raising awareness about the judiciary among young and potential lawyers, if considered to be worthwhile?

## 3. Becoming a judge

There are certain conditions which individuals must meet before they can be considered for judicial appointment. In particular, requirements are laid down by Act of Parliament as to the length of time which must have elapsed since an individual qualified as a barrister or a solicitor before he or she can be considered for appointment to judicial office. For full-time appointments, there is also a policy requirement that an individual must first have served in a fee-paid<sup>19</sup> (part-time) capacity. This chapter considers whether and to what extent these conditions might deter people from seeking appointment and suggests options for possible review.

### The current position

**3.1** To be appointed as a judge, individuals must first possess the relevant statutory qualification.<sup>20</sup> The statutory qualifications currently vary from one judicial office to another, but for most appointments they refer to the rights of audience which an individual possesses and the length of time which has elapsed since he or she qualified as a barrister or a solicitor.<sup>21</sup> It is also currently the case that fee-paid (part time) service is normally a pre-requisite for appointment to full-time office. That is, before being considered for any full-time judicial post, a candidate must usually have served in that or a similar post in a fee-paid capacity for long enough to establish his or her competence and suitability for full-time appointment.

### What are the problems and what more needs to be done?

#### *The statutory qualifications*

**3.2** The intention behind the statutory qualifications was to ensure that individuals seeking judicial office would first have a measurable level of experience of the law. However, the current requirements have the effect of excluding certain categories of lawyers from applying for judicial office. Examples include legal executives, or academics and researchers who are experts in the law but who have never qualified as a barrister or as a solicitor. The current statutory approach also puts solicitors and barristers in different positions. Solicitors must complete their training contract (the period of which ranges from two years for those working full-time, to four years if working part-time) before they are admitted and acquire rights of audience, whereas barristers acquire rights of audience after six months' pupillage.

<sup>19</sup> See glossary.

<sup>20</sup> See glossary for a definition, and *Annex C* for details of the statutory qualifications.

<sup>21</sup> See glossary for a definition, and *Annex C* for full details of the current statutory requirements.

- 3.3** It could also be argued that these qualifications in themselves do not assist the process of identifying the best candidates for appointment to judicial office. One advantage of the judicial system in England and Wales, compared with other countries that operate a ‘career judiciary’ approach, is that lawyers are able to develop practical, relevant experience of the way that the law and the courts work before becoming a judge. It will usually (though not necessarily) be the case that a lawyer holding a rights of audience qualification over a particular period will have had that practical experience on which to draw when making an application for appointment. However, it is the experience, rather than the qualification in itself, that is the important factor here. In view of this, the current statutory approach is potentially in conflict with a merit-based appointments process that tries to be flexible enough to allow any individual (whatever their background or choice of legal career) to use a range of different experiences to demonstrate they have an appropriate level of competence.<sup>22</sup> The issue is whether it is appropriate to exclude an able lawyer with demonstrable expertise over a period of time in a relevant area of the law from seeking judicial appointment simply because his or her legal training does not confer a rights of audience qualification.
- 3.4** Subject to the responses to this consultation paper, the Government is prepared to review the current statutory rights of audience-based qualifications and to consider whether there is a case for a system which ensures that appointments are available to all lawyers, provided that they can demonstrate the requisite skills and experience for appointment. It must be emphasised, however, that the statutory qualifications can only be changed as and when a suitable legislative opportunity arises.

9. Do you consider that the current statutory requirements provide the right starting point for identifying suitable candidates for judicial appointment, and if so why?
10. If you support the retention of the current statutory requirements, do you consider the current time periods of seven and 10 years to be the right ones? If not, what alternative periods do you consider should be adopted?
11. Alternatively, do you consider there to be an argument for changing the statutory requirements?
12. If so, what should be the standard which lawyers must meet before being eligible for judicial office?

<sup>22</sup> In their second *Annual Report*, the Commissioners for Judicial Appointments set out what they regarded as the requirements of the principle of selection on merit. They did not discuss the role of the statutory eligibility criteria, but made the point that selection criteria should relate solely to applicants’ potential ability and suitability to perform to the required standard in the position concerned. (*The Commission for Judicial Appointments Annual Report 2003*, paragraph 5.10.)

### 3. Becoming a judge

#### *Fee-paid service as a pre-requisite for full-time office*

**3.5** The Lord Chancellor currently has the statutory authority to appoint suitably qualified individuals direct to full-time office, although this power is very rarely used. There are a number of reasons why fee-paid service is usually required before an individual can progress to full-time office.

- Full-time judicial office is unique in that it is an office which is held for life.<sup>23</sup> As such, it is essential that a decision to appoint a judge to a full-time post is underpinned by absolute confidence that he or she is (and will continue to be) capable of doing a good job. Service in a fee-paid capacity is one way of allowing an individual to demonstrate their suitability for appointment to full-time office.
- Sitting as a fee-paid judge allows individuals to decide whether they wish to pursue full-time office, and whether they wish (or do not wish) to sit in any particular jurisdiction.
- It allows them to build the range of level of skills and experience required for full-time posts and, as such, can help to widen the pool of applicants for full-time office. For example, there are lawyers who meet the statutory qualifications, but who do not have practical experience of court procedure (such as academics). Service in a fee-paid capacity allows individuals with this type of background to develop the necessary experience to be able to demonstrate suitability for full-time appointment.
- It affords the opportunity to conduct appraisals which can both help a judge to develop his or her skills in that office, and provide evidence of suitability for full-time appointment.
- It is seen as a way of ensuring that a high and consistent standard of appointments is made to the full-time benches.

There are also business reasons for using fee-paid judges; it ensures that the Court Service has sufficient numbers of judges, whom it can deploy flexibly to achieve an efficient and effective throughput of cases.

**3.6** The difficulty with the fee-paid service requirement is that it can deter people from pursuing judicial office because of their work or personal circumstances. For example, some solicitors find that their colleagues are not supportive of their wish to sit part-time as a judge, rather than contributing to the firm's throughput of business. Indeed, some firms' terms and conditions for partners specifically preclude individuals from sitting judicially. In addition, people with commitments outside work, such as caring responsibilities, might find it difficult, if not impossible, to contemplate taking on an additional role, even on a part-time basis.

<sup>23</sup> Only in very exceptional circumstance can a judge be removed from office. High Court Judges and above can be removed only by The Queen on an address presented by both Houses of Parliament. The statutory provisions governing the removal of other members of the judiciary vary, but in general the grounds for removal relate to incapacity or misbehaviour.

**3.7** There are two issues here:

- Does the fee-paid service requirement deter people from seeking judicial office to an extent that makes it necessary to reconsider this approach?
- If the retention of the fee-paid sitting requirement can be justified, how can the legal profession be encouraged to support those lawyers wishing to seek judicial appointment? (This is discussed in *Chapter 6*.)

### *Should the fee-paid service requirement be retained?*

**3.8** The appointments process now allows lawyers to draw on a wide range of evidence to demonstrate that they have the necessary skills and experience for appointment to the judiciary. Sitting as a fee-paid judge is one way of acquiring those skills and experience. But it may not be the only way of enabling those aspiring to full-time appointment to demonstrate the required level of skills and experience. It could be argued that the new competence-based appointments' process (see paragraph 4.3 below) provides a firmer basis on which to accept applications from individuals who have not sat as a fee-paid judge (for whatever reason).

**3.9** More important, however, is whether the fee-paid sitting requirement deters people, particularly those from under-represented groups, from seeking judicial office. The Government would welcome views on the extent to which this is a problem and will review this policy if there is evidence to show that it is a factor which contributes to the lack of diversity in the judiciary.

**3.10** If it were agreed that the fee-paid service policy should be relaxed or dropped, it is envisaged that anyone seeking direct appointment<sup>24</sup> to full-time office would need to apply in the usual way for the relevant competition and be assessed alongside all other applicants. As such, they would need to provide sufficient evidence in their application form, and throughout the process, that they demonstrated the competencies to the required standard. There would be no question of making direct appointments in any way other than through an open competition.

**3.11** It should be borne in mind that if individuals were no longer required to sit on a fee-paid basis, their performance in fee-paid service could not be appraised and the benefits that appraisal brings in terms of providing evidence of suitability for full-time appointment would not be available. There would also be business implications for the Court Service, who would no longer have a body of fee-paid judicial officers upon whom they could draw. In addition, it can be argued that fee-paid sitting provides individuals with a helpful means of deciding whether they wish to be a full-time judge and, if so, whether they wish (or do not wish) to sit in any particular jurisdiction.

<sup>24</sup> See glossary.

### 3. Becoming a judge

13. Do you consider that the fee-paid sitting requirement is a factor which inhibits judicial diversity? If so, why?
14. If you are a lawyer, does the fee-paid service requirement mean that you are unable to pursue a judicial career? If so, why?
15. Is it justifiable that solicitors firms are able to prohibit employees from sitting as fee-paid judges?
16. Do you consider that a more diverse range of people would be encouraged to apply for judicial office if the fee-paid service requirement was relaxed, made optional or abandoned? Why?
17. If you consider that this policy is no longer necessary or appropriate, are you content that the approach outlined in paragraph 3.10 (i.e. that no direct appointments would be made other than as a result of success through an open competition) provides a sufficiently clear and open means of making direct appointments? If not, how else should direct appointments be made?

#### *Full-time appointments based on fee-paid service in the same jurisdiction*

**3.12** The move to a competence-based appointments process now allows fee-paid lawyers in any jurisdiction to demonstrate that they have the right level of skills and experience for a full-time appointment, even though they may not have sat in that particular jurisdiction. The Government has therefore decided to remove the policy that links full-time appointment to fee-paid service *in the same jurisdiction*.

#### *Seeking judicial office when not in practice*

- 3.13** There are many people who, for many different reasons, choose to stop practising as a solicitor or a barrister. For example, lawyers may take a career break to bring up their children or be offered positions in other countries as advisers, academics or on tribunals.
- 3.14** One of the requirements of the appointments process used to be that applicants had to be in 'active practice'. Understandably, this was interpreted as meaning that an individual had literally to be practising as either a solicitor or a barrister. However, it has never been a requirement that an individual must actively be practising in order to be able to apply for judicial office; rather, an applicant must be able to demonstrate that they have up to date knowledge of the law. This has been clarified in DCA's literature on appointments.
- 3.15** Nevertheless, a perception remains that individuals who have stopped practising must return to practice in order for their application for judicial appointment to be successful. This is an example of the kind of misconception that needs to be dispelled through improved communications, as discussed in *Chapter 2*. In addition, however, there may be practical steps which could be taken to help individuals who are not in practice, but who nevertheless wish to take up judicial office.

- 3.16** *Chapter 5* looks at ways in which increased flexible working for the judiciary might encourage a more diverse range of applicants. In addition, the possibility of direct appointment to full-time office (as discussed in paragraphs 3.8 to 3.11 above), rather than having to return to practice and/or sit as a fee-paid officer may offer an incentive for people to seek judicial appointment. However, the main concern for those who have taken a career break is often the difficulty of keeping up to date with legal developments.
- 3.17** One way of doing this is to maintain a practising certificate by continuing to meet the Bar Council and The Law Society's Continuing Professional Development requirements. Another way is to continue to subscribe to legal journals and publications. DCA's work-shadowing scheme<sup>25</sup> can be a very useful way for an individual to update his or her legal knowledge. In addition, the Bar Council and The Law Society support professional training courses for anyone who needs help with the application process itself. There may, however, be other ways in which the legal professional bodies, DCA or the judiciary can help. Of course, any such support would be on the basis that it offered no guarantees of appointment or advantages over others applying in the same competitions.

18. Do you consider that the legal professional bodies, the Department and/or the judiciary could do more to help people who are not in practice to pursue judicial appointment?
19. If so, what additional help should be available and from whom?
20. Would the availability of a wider range of support options encourage a more diverse range of applicants? If so, who would benefit and why?
21. If you are a lawyer and are not currently practising, has any aspect of the current judicial system deterred you from seeking appointment?
22. What measures would assist you with being able to make an application for judicial appointment?

### Intensive fee-paid sitting opportunities

- 3.18** One difficulty that lawyers sometimes have, particularly if they have stopped practising for a time, is that their progression to full-time appointment is delayed by having to accumulate sufficient sitting experience to build up the necessary skills for full-time appointment (for some posts, this means sitting for at least two years on a fee-paid basis).<sup>26</sup> To overcome this difficulty, DCA already allows fee-paid judges to condense two years' worth of sittings into a single block. They then have the requisite number of sittings at a fee-paid level to apply for full-time appointment.

<sup>25</sup> See paragraph 2.6 for details of DCA's Work-Shadowing Scheme.

<sup>26</sup> This requirement does not apply to tribunal posts.

### 3. Becoming a judge

- 3.19** This opportunity can be helpful, but it is left very much up to the individual to organise his or her sittings on a block basis. It has been suggested that the block sitting approach could be developed into a more formal scheme which would provide a structured, closely managed programme for helping suitably qualified individuals to progress to full-time office more quickly than might otherwise be possible. The programme might consist of sittings in a range of different jurisdictions, perhaps for longer than the minimum number of sittings, but still within a relatively short period of time. The individuals on the scheme could be assigned to a full-time judge acting as a mentor, who would provide guidance and support as necessary. The aim would be to equip the individuals on the scheme with the necessary skills and experience to progress more quickly to full-time appointment.
- 3.20** This proposal is not without its difficulties. Consideration would need to be given to the method of selecting individuals to join any such formal programme; it would be essential to ensure that any selection process was open, fair and entirely merit-based. It might also be felt that such a scheme would not be necessary if some or all of the other proposals in this paper were implemented. For example, it may not differ greatly from the existing route or the 'direct' route, if that is implemented.

23. Do you think that the idea of a formal scheme to assist those who have stopped practising for a time is a good idea in principle?

24. What specific problems do you think it would address?

25. If the fee-paid sitting requirement were removed, would a formal scheme be necessary?

26. Are there any other ways of opening up the appointments process which you think DCA should consider to encourage a more diverse range of applicants?

27. If you are a lawyer, would the existence of an intensive sittings scheme encourage you to consider pursuing judicial office? If so, why?

28. Would this be more or less beneficial than the other proposals for access to judicial appointments in this paper? If so, why?

29. If it would not encourage you to apply, why not?

30. What else might encourage you to apply for judicial office?

## Summary

**3.21** This chapter has raised a number of options for possible review:

- whether the statutory eligibility requirements continue to meet the needs of the system
- whether the fee-paid sitting requirement acts as a deterrent to judicial office
- whether more support should be available to people who are not in practice but wish to seek judicial appointment
- whether the establishment of a supported 'intensive sittings' scheme would encourage more people to apply.

**3.22** Making changes in these four areas will be complex and potentially lengthy. However, the Government is prepared to consider taking on those changes if the evidence from this consultation exercise is that these matters are significant factors in limiting diversity in the judiciary.

## 4. The appointments process

The aim of this paper is to examine those factors within the judicial system which deter people from applying for appointment in order to establish how to accelerate improvements in judicial diversity. It is clear that the appointments process is a key part of the overall picture. However, as paragraph 1.23 explains, significant changes are already planned for the appointments process. This chapter therefore summarises what has happened to date and outlines the changes which the Government intends to make to the appointments process prior to the establishment of the Judicial Appointments Commission.

### What has been done?

**4.1** In recent years a number of improvements have been made to the appointments process.

- The Government has removed lower age limits for most appointments and upper age limits for those applying for professional judicial office (subject to the overall statutory retirement<sup>27</sup> age for most members of the judiciary).
- Following the Report from Sir Leonard Peach in 1999,<sup>28</sup> one-day assessment centres<sup>29</sup> were piloted and have now been introduced for all Deputy District Judge competitions. The centres' activities have been developed to ensure that all arrangements support the principle of equal opportunity and diversity and do not unfairly discriminate against or disadvantage any applicant. A competency framework<sup>30</sup> is used as an alternative to the established criteria for appointment.<sup>31</sup>
- It is now made clear in all competition material that the Lord Chancellor does not regard advocacy experience in itself as an essential requirement for appointment to judicial office.
- Judicial and independent panel members have for some time been involved in both the sift and interview stages of the appointments process.
- A significant programme to retrain existing panel members and recruit new independent members with human resources backgrounds has been undertaken. The aim has been to ensure that all panel members have sufficient knowledge of, and guidance in, their respective roles and that their sifting and interviewing skills are of a high standard.

<sup>27</sup> See glossary.

<sup>28</sup> *An Independent Scrutiny of the Appointment Processes of Judges and Queen's Counsel in England and Wales: A Report to the Lord Chancellor by Sir Leonard Peach*, December 1999 (available on the DCA website: [www.dca.gov.uk](http://www.dca.gov.uk)).

<sup>29</sup> See glossary.

<sup>30</sup> See glossary.

<sup>31</sup> See glossary.

## What more will be done?

### *Changes to the appointments process*

- 4.2** A full description of the current appointments' process can be found on the DCA website<sup>32</sup> or in the booklet *Judicial Appointments*. The Department continues to make improvements to the appointments' process. This section sets out some of the main changes that are planned for implementation in the near future for all appointments up to and including Senior Circuit Judge; separate arrangements apply to appointments to the High Court and above.
- 4.3 Introducing a single competence framework for all judicial posts.** The Department is in the process of improving on the current criteria-based approach to appointments, which is accepted as being cumbersome and unwieldy. It is moving to a single competence framework for all judicial posts below the level of the High Court, which will cover the range of skills and behaviours expected of holders of judicial office. The framework will be tailored as necessary to individual offices and builds on that already developed for the Deputy District Judge assessment centres. A copy of the framework is at *Annex D*.
- 4.4 Appointments through assessment centres.** As mentioned above,<sup>33</sup> Deputy District Judge posts are currently filled by competitions run through assessment centres. (All other competitions – for appointments below the High Court – are conducted on the more traditional basis of written applications supplemented by a 45-minute interview. For some competitions, for example for Employment Tribunal Chairmen, candidates are also asked to tackle a technical paper or case study which will be assessed by the panel.) The assessment centre approach is seen as the preferred method of appointment for fee-paid offices at least, since these are likely to be the route into the judiciary for those seeking appointment for the first time. It gives candidates a much greater opportunity to demonstrate a wider range of behavioural skills and is acknowledged as being more transparent, fairer and encouraging of applications from a more diverse background than the interview-only approach.
- 4.5** In view of this, DCA intends to adopt this approach wherever practicable for all fee-paid appointments and is currently piloting an assessment centre-based competition for Recorders on Western Circuit. There is a question as to whether this form of selection process should be used for full-time appointments. A distinction might be drawn between fee-paid appointments where candidates are being tested on the extent to which they have the skills to enable them to transfer successfully from the professions to judicial office – and full-time appointments where candidates, will usually have experience and a proven track record in the judiciary. In these latter circumstances, more reliance might be placed on that record, drawn for example through extended appraisal arrangements for those in fee-paid posts. Appraisal is already a feature for Deputy District Judges and DCA is currently designing a pilot appraisal scheme for Recorders. (Were appraisal to be abolished as a result of any abolition of fee-paid sitting, of course, that would have implications for the development of assessment centres.)

<sup>32</sup> [www.dca.gov.uk/judges.htm](http://www.dca.gov.uk/judges.htm)

<sup>33</sup> paragraph 4.1.

## 4. The appointments process

**4.6** DCA would also be interested to hear views on the extent to which greater involvement of selection/search agencies would enhance the attractiveness of appointments processes for a wider group of applicants. For example, agencies might play a role in supporting the initial parts of the selection process (such as advertising and the sift to select applicants for the assessment centre). They could take references, or perhaps take on a search function to identify and attract a wider range of high calibre candidates. (It would still be necessary for these candidates to seek appointment through the competition process.)

31. Do you consider that the assessment centre approach should be extended to full-time appointments?

32. Do you consider that the appointments process would be enhanced if selection/search agencies were used to support the Department in securing and processing applications? Would this be likely to identify and attract a wide range of high calibre candidates?

**4.7 Consultation.** It is a central feature of the current appointments system that assessments of the qualities and work of practitioners and fee-paid office-holders are made by judges, members of the Bar<sup>34</sup> and others, as appropriate.<sup>35</sup> These assessments are collected in writing and are used to inform the overall consideration of an individual's application. Some aspects of this process have been criticised for a number of reasons, including:

- a perception of bias in favour of candidates who are well known to senior judges and senior members of the practising Bar
- candidates who do not regularly appear in court perceive that they need to find consultees who can comment on their ability in the context of courts rather than on the competencies
- a sense that the nature of the process allows for inconsistent and sometimes poor-quality, less discerning assessments.

**4.8** The gathering of assessments or references is a standard step in any recruitment process, particularly for senior positions. In the context of judicial appointments, DCA takes the view that the consultation element of the process can provide valuable evidence with which to corroborate the assessment of candidates' applications by those involved with the sift, interview and (where relevant) the assessment centre. However, the Department recognises the need to refocus and improve the quality of consultation. This will ensure that relevant

<sup>34</sup> The Law Society withdrew from automatic consultation because of its concern that the process is discriminatory. There are others who do not share this view.

<sup>35</sup> Consultation takes two forms: automatic consultation, where a number of senior judiciary and the leaders of the Bar Circuits are asked to provide evidence of suitability against the criteria; and nominated consultation, where applicants can themselves nominate up to six people who could provide evidence of suitability. The process differs slightly for tribunals where automatic consultation occurs only where applicants already hold judicial office. Timing of consultation can vary across competitions.

and valuable consultation evidence against the criteria (or, in due course, the generic competence framework) continues to help decide whom to interview and recommend for appointment.

**4.9** The current planned improvements include:

- reducing the number of automatic judicial consultees to: up to four judges who know a candidate and will be nominated by the senior Presiding Judge<sup>36</sup> of a circuit where he or she carries out more than 40 per cent of his or her work; or the circuit's lead in a specialism (where relevant)<sup>37</sup>; and the leader of the Bar on circuit
- continuing to invite candidates to nominate up to six consultees (to minimise the impact of limited visibility among the automatic consultation<sup>38</sup> community).

**4.10** Timing of consultation can currently vary by competition. Most typically, evidence gathered from consultation is used to inform sift decisions. However, in some tribunal and in the Deputy District Judge competitions, such evidence informs interview or the Assessment Centre stage only. In other sectors, it is more usual to collect and use such references to inform the interview and final selection stages. Sometimes in these sectors, references are used, not to inform decisions of a selection panel but to confirm there are no other reasons why a person otherwise suitably qualified should not be appointed to a position (for example an undisclosed issue of impropriety) rather than seeking additional evidence of suitability (which applies in judicial appointments).

33. Do you consider that these proposals represent an improvement on the current approach? If so, how?

34. If not, how do you consider that the process could otherwise be improved?

35. Does there remain a case for automatic consultation? In what circumstances?

36. If you disagree that consultation should continue to be part of the appointments process, in what other ways could DCA establish a candidate's track record and previous, proven experience?

37. Do you consider that consultation assessments should be used in making decisions at sift or at interview?

38. Should the use of consultation assessments be further restricted; for example, only to establish whether there is a reason not to appoint someone who has been identified by the process as meeting the required standards?

<sup>36</sup> See glossary.

<sup>37</sup> The term 'the Circuit's lead in a specialism' refers, in relation to candidates who spend more than 40 per cent of their time practising in a specialism, to the following persons: for family practitioners, the Family Division Liaison Judge; for Chancery practitioners, Chancery Supervising Judges; and for tribunals, Presidents and Regional Chairs.

<sup>38</sup> See glossary.

## 4. The appointments process

**4.11 Constitution of interview panels.** There are no current plans to change the current make-up of panels (which are chaired by a senior DCA official, supported by a judicial member and a lay member). However, DCA is prepared to consider suggestions as to who should chair the panels and, as such, would be prepared to consider a different approach to the constitution of panels. It should be noted that changes will be inevitable following the creation of the new Judicial Appointments Commission, where DCA will not have a role in the selection panels.

39. Do you consider that the appointments process would be improved by changing the constitution of panels, for example, so that they were chaired by the independent member or by the judicial member? If so, what would be the benefits?
40. If there were to be a different chair person, do you think that there should be a continuing role for DCA involvement?
41. If so, what should be the role for DCA?
42. If you do not consider that the DCA official should remain on the panel, would you be content for panels to consist of only two members (e.g. the lay member in the chair, supported by the judicial member)?
43. If not, what other form of constitution would you suggest and why?

**4.12 Feedback.** DCA has for some time invited candidates to seek feedback on their (unsuccessful) applications if they wished. Feedback is provided by telephone or in a small number of cases verbally, or via a written feedback form. Many people have said how helpful it is to receive feedback. However, the current volume of applications usually means that the feedback is delivered third hand by a DCA official working on a particular competition, but not necessarily directly involved in the sift and interview process, with inherent accompanying risks.

**4.13** DCA wishes to retain the benefits of feedback, while alleviating these risks and is therefore moving to a system of written feedback provided directly by the panel. This would match evidence against the criteria or competencies, assess the candidate's self-assessment<sup>39</sup> and (where relevant) his or her performance at interview. The feedback will also include (as now) a summary of the evidence gathered from consultees.

**4.14** The Department will be pleased to consider any further suggestions for improvements to the appointments process which might appropriately be made before the establishment of the Judicial Appointments Commission.

<sup>39</sup> See glossary.

44. Do you consider that there are any more improvements which should be made to the judicial appointments processes before the Judicial Appointments Commission is established? If so, what?
45. If you do consider that changes should be made, why do you think that it is important for this to be done *prior* to the setting up of the Judicial Appointments Commission?

## 5. Judicial working practices

This paper has already outlined the ways in which DCA is improving the process for appointing judges. It has also raised questions about issues concerning eligibility and who can apply to be a judge. Another important factor for lawyers when they are considering whether to pursue a judicial career is the nature of working life as a judge. This chapter looks at ways in which the structure of judicial jobs might be changed to encourage a more diverse range of applicants.

### What is the problem?

- 5.1** There is anecdotal evidence that there are elements in the nature of current judicial working practices that deter people, particularly from under-represented groups, from applying for judicial office.

### What has been done?

- 5.2 Salaried part-time working.** It is becoming increasingly important for people to feel that they have a choice about the way their working lives are structured. Many individuals have caring responsibilities; many have other types of commitments; most people want to maintain a sensible work-life balance. Whilst a range of family friendly policies (such as parental and special leave) were already available for the judiciary, in 2001 DCA introduced opportunities for salaried part-time working for new District Judge and tribunal appointments. As a result, around 40 judges now work on a flexible basis, most of them sitting between two and four days a week. The Department has announced that from 1 April 2005, all new and existing salaried appointments below High Court level will be suitable for part-time sitting unless the nature of the office or business needs dictate otherwise.<sup>40</sup>
- 5.3 Appraisal.** An effective system of appraisal provides support to individuals by supplying feedback to them on their performance in the judicial role and by identifying areas for development. The basic tenet of judicial appraisal is that it is carried out by judges for judges with the aim of improving performance, realising potential, and assisting with mentoring, development and training. It is open and constructive and does not compromise judicial independence. At present, appraisal schemes are in place for Deputy District Judges (Civil) and Deputy District Judges (Magistrates' Courts), as well as for Appeals Service tribunal members and part-time Immigration Adjudicators. DCA is currently designing a pilot appraisal scheme for Recorders. Appraisal is used mainly to identify an individual's strengths and development needs, but the results can also be used to support applications for full-time appointment for those offices where schemes are already in existence. It therefore provides objective and

<sup>40</sup> DCA Press Notice, 4 August 2004.

focused evidence of an individual's suitability for full-time appointment and, as such, boosts confidence in the appointments process. As already mentioned (see paragraph 3.11), this valuable system would be lost if the requirement for fee-paid (part-time) service were abandoned.

### *Disability*

- 5.4** DCA does not have complete data on either the number of disabled judges in post or the number of disabled applicants for judicial appointment. In recent years, applicants for judicial appointment have been asked to complete a voluntary disability monitoring questionnaire, but a full monitoring survey on disability has not been carried out for the whole serving judiciary. However, from the data available, it is clear that the numbers of disabled applicants and judges are very low. This means that it is not appropriate to publish the data because it may prove possible to identify individuals. As part of the programme of work described below, consideration is being given as to how disability might be monitored in the future with a view to being able to publish statistics.
- 5.5** DCA has two priorities – ensuring that the appointments process for disabled lawyers is as accessible as possible; and making sure that disabled judges are provided with sufficient support to enable them to operate effectively.

### *An accessible appointments process*

- 5.6** DCA first addressed a problem for disabled applicants in 2002. Following discussions with the Group for Solicitors with Disabilities, the phrase 'subject to the physical requirements of the office', which appeared in advertisements and statements about equal opportunities in judicial appointments was removed as it was felt that the statement showed a lack of care and concern towards potential applicants with disabilities.
- 5.7** In 2003, the Department engaged the services of a disability expert to consider what could be done to ensure that the appointments process was as accessible and encouraging as possible for candidates with disabilities. The consultant reviewed DCA's advertising and application material and its monitoring and interviewing arrangements, as well as providing general advice on best practice.

### *Advertisements and application material*

- 5.8** The consultant suggested that one way of encouraging applicants with disabilities might be to advertise posts in specialist disability publications. DCA discussed this idea with stakeholders. It was concluded that, rather than concentrating on specialist disability publications, a more effective way of targeting disabled lawyers would be to publicise success stories on disabled judges as role models. As a result, disabled judges have taken part in the Department's appointments workshops (described in more detail in *Chapter 2*). More generally, DCA's guidance about the appointments process encourages candidates with disabilities to apply for judicial appointments and emphasises that they will be assessed on their merits against the relevant criteria for appointment. The literature also explains that any reasonable adaptations to the working environment that might be required will be considered separately.

## 5. Judicial working practices

When preparing the new annual publicity programme as proposed in paragraph 2.9, DCA will ensure that events and the appointments process generally are widely publicised in media which are accessible to disabled lawyers.

- 5.9** All application material is now available in electronic form on the DCA website. The text size can be increased on screen using the 'view text size' option. Feedback from disabled judges is that this helps ensure that the material is more 'user-friendly'. The Department is also happy to produce application material (as well as other literature on judicial appointments) in other formats (for example, Braille and large print) on request. This option is publicised in the competition literature.

### *Interviews*

- 5.10** Following the recent recruitment and re-training exercise (paragraph 4.1 discusses this in more detail), the Department is in the process of reviewing the guidance which panel members need to enable them to discuss any issues which candidates wish to raise at interview regarding the practical arrangements for being a judge (in the event that they are successful). The material for candidates about their interview will also make it clear that this opportunity is available to them.
- 5.11** In addition, there is now a single team dealing with all matters concerning the logistics of the appointments process. One of the benefits of this approach is that there is a single point of contact for disabled candidates to discuss any concerns or queries they might have about interview arrangements. In addition, this team has been trained in, and is aware of, diversity issues (for example, the effects of diabetes on a candidate's dietary routine). The Department is happy to consider establishing a more general, ongoing point of contact for disabled applicants and judges if this would be helpful.
- 5.12** New interview suites for the judicial appointments process are situated on the ground floor at DCA's Steel House office in London, and include a range of facilities for disabled candidates. In addition to the legal requirements concerning building access and toilet facilities, there is also access to hearing loops, tables suitable for use with wheel chairs, laptop availability for written exercises, internet facilities, accessible refreshments, lockers at accessible heights, and room available for carers as required. The application form also invites candidates to state whether they need any special facilities if called to interview. Any such needs will be accommodated as far as possible.

### *Other process-related issues*

**5.13** DCA is keen to ensure that changes to the appointments process do not adversely impact on disabled applicants. For example, it has now been decided that feedback on a candidate's performance will be provided only in writing (for the reasons set out in paragraph 4.12). However, arrangements will be made for disabled applicants to receive their feedback in the medium of their choice.

### *Reasonable adjustments*

**5.14** As with all employers, DCA has a legal obligation to make reasonable adjustments where its premises or arrangements cause a substantial disadvantage to a person with a disability. As such, there are systems in place to ensure that the requirements of disabled judges are accommodated as far as possible. This links with the Department's overall commitment to ensure that employees (and judges) have the support they need to do their job effectively and that court buildings are as accessible as possible for everyone.

46. With regard to publicity for events and the appointments process generally, in what other ways do you consider that DCA should raise awareness about the system among disabled lawyers?

47. Do you consider that it would be helpful to establish a single point of contact for disabled applicants and judges to deal with a wider range of enquiries as well as the appointments process?

48. Is there anything else that you consider the Department (or the legal professions) should be doing to encourage and assist disabled lawyers who wish to seek judicial appointment and disabled judges?

### **What more needs to be done?**

**5.15 Flexible working arrangements.** Anecdotal evidence suggests that people may be deterred from seeking judicial office because life as a judge is not sufficiently flexible to be compatible with their other commitments. There are, of course, many other ways of working flexibly. The Department has received the following suggestions for more flexible judicial working patterns:

- introducing more flexible sitting arrangements, including being able to sit in the evenings and at weekends
- establishing a formal scheme for applying for career breaks

## 5. Judicial working practices

49. Do you consider that there are judicial working practices which have an adverse impact on judicial diversity? If so, what are they? What might be done to manage them?
50. Do you support the introduction of any of the options listed in the paragraph above? If so, which ones and why?
51. Do you foresee any difficulties with implementing any of the options? If so, which ones and why?
52. Do you consider that an increased range of flexible working options would encourage a more diverse range of applicants for appointment? If so, who would benefit and why?
53. If you are a judge, would you be in favour of any of these options? If so, which ones and why?
54. Are there any other flexible working arrangements which you would like DCA to consider?
55. If you are a lawyer, would the availability of any of these flexible working options encourage you to apply for judicial office? If so, which ones and why?
56. Are there any other flexible working arrangements which you would like DCA to consider?

**5.16 Returning to professional practice.** Members of the full-time and salaried part-time judiciary are currently precluded from continuing professional practice while in office.<sup>41</sup> In addition, current policy is that full-time judges should not return to practice after they have stopped being judges. This is because of the potential for conflicts of interest; for example, taking a case as an advocate which related to matters dealt with previously as a judge. Essentially, this means that appointment to the full-time Bench is for life. As such, there is anecdotal evidence that individuals with a wide range of skills and expertise can be deterred from applying for full-time appointment because it represents a final career choice, and they may not wish to close the door on other career choices. However, it has been noted that fee-paid judges are able to balance their judicial and practising commitments, dealing with conflicts of interest on a common-sense basis if and when they arise. However, there are administrative implications in listing fee-paid judges' cases to ensure that no conflicts arise.

<sup>41</sup> The Courts and Legal Services Act 1990, Section 75.

**5.17** If the preclusion policy were to be removed, it would give individuals the freedom to consider judicial appointment earlier in their legal career, knowing that they still had choices available to them about whether to return to practice or continue on the bench. It is important to note, however, that allowing judges to return to practice might have an adverse impact on the stability of the judiciary as a whole if large numbers of judges decided to make such a change. In addition, such a policy change would need to be supported by clear guidelines covering issues such as:

- how to deal with potential conflicts of interest
- the arrangements for relinquishing judicial office, including whether reference could be made (if at all) to an individual's former status as a judge in, for example, new business literature
- the impact of the possibility of returning to practice on judicial terms and conditions
- whether an individual could come back to judicial office having returned to practice and what the arrangements would be
- the impact on judicial pensions.

57. Do you consider that the preclusion of return to practice acts as a significant deterrent to those who might otherwise consider a judicial career? If so, why?

58. If you are a judge, how would you have viewed the option to return to practice when you were considering applying for appointment?

59. Would you now welcome the opportunity to return to practice?

60. If you are a lawyer, would the removal of the preclusion policy encourage you to apply for judicial office? If so, why?

61. If not, why not?

62. Do you have any concerns about the potential removal of this policy?

**5.18 Progression through judicial ranks.** It is possible for full-time judges to apply for appointment to a higher rank if they have the relevant statutory qualifications (see *Annex C*). In recent years, the numbers of judges moving from District Bench (and other full-time appointments) to Circuit Bench, and from Circuit Bench to the High Court, have steadily increased, though the numbers in absolute terms are small. Statistics on movement between ranks of the judiciary can be found in *Annex G, tables 38 and 39*.

## 5. Judicial working practices

- 5.19** However, the overall picture is of a system where there are considerably higher proportions of women and minority ethnic office-holders at the more junior levels of the judiciary. For example, women constitute 21.4 per cent of District Judges and Deputy District Judges, compared with 12.2 per cent of Circuit Judges and Recorders, and 8 per cent of High Court Judges and above.<sup>42</sup> The statistics also show that fewer women and minority ethnic lawyers are applying for Recorder and Circuit Judge posts (in 2001-02, for example, only 12.1 per cent and 17.6 per cent of applications for the Circuit Bench and Recordership respectively were from women, compared with 33.2 per cent for the Deputy District Judge competition). The options for change discussed in this paper are relevant to all judicial ranks. However, because the judiciary is least diverse in the most senior ranks, it is important to explore whether any additional measures are needed specifically to increase diversity in the High Court (leading in turn to increased diversity in the most senior judicial ranks).
- 5.20** As with appointments to other judicial offices, High Court competitions are advertised, the criteria for appointment are published, and the application form and guidance for applicants is available on the Department's website and in hard copy. The Department seeks to encourage the widest range of applicants through its publicity programme (described in more detail in *Chapter 2*). The Department is currently considering what improvements need to be made to the appointments process for the High Court in the light of the Commission for Judicial Appointments' recent audit.<sup>43</sup> This includes looking at any changes which may need to be made now, as well as preparing for the implementation of the Judicial Appointments Commission in due course.
- 5.21** There may, however, be other, non-process related issues that have an effect on the diversity of the High Court Bench. For example, there has traditionally been a sense that individuals with a particular professional background are most likely to be appointed to a particular judicial office. Most High Court Judges have been appointed from the ranks of senior barristers and/or from the Circuit Bench (99.1 per cent of High Court Judges are barristers, and eleven were Circuit Judges. 85.7 per cent of Circuit Judges are barristers). This might give the impression that, although appointment to the High Court is based solely on merit, there are nevertheless certain routes (i.e. being a barrister and/or a Circuit Judge) that lawyers will have been expected to follow in order to be in contention for the relatively few posts available each year. As such, individuals not following those 'traditional' routes may feel that the system is indirectly discriminatory. Given that the majority of judges from under-represented groups are concentrated in offices other than the Circuit Bench, this could be a significant factor which contributes to the lack of diversity in the senior offices.

<sup>42</sup> Annex G, table 2.

<sup>43</sup> *Report of the Commissioners' Review of the High Court 2003 Competition* (available on the Commission's website, [www.cja.gov.uk](http://www.cja.gov.uk)).

**5.22** The Government is not predisposed towards any particular career path; the fact that an individual has a particular professional background, or has already sat in a particular jurisdiction should not of itself make him or her any more (or less) eligible for consideration for any other post (although experience in another jurisdiction may well provide an individual with evidence that he or she meets the standards required for the post applied for). What matters is the degree to which the candidate can demonstrate that he or she meets or can develop the prescribed competences for the post applied for. The Lord Chancellor appoints those who are best qualified for the post, with merit being the sole criterion. As such, there may also be a need for awareness to be raised among the judiciary that opportunities are available for them to apply for different (more senior) offices if they wish.

**5.23** *Chapter 3* discusses ways of promulgating information about opportunities more widely. In addition, it may be that some form of support structure (possibly linked to a mentoring scheme) would encourage judges (fee-paid and full-time) to consider moving to different (more senior) posts. Such a scheme might involve, for example, members of the senior judiciary sharing their knowledge and experience with a view to boosting confidence and increasing awareness of the options available.

63. Do you consider that there is a perception that lawyers must have followed a particular career path in order to be in contention for appointment to the High Court?

64. If so, do you consider that this might be one of the reasons why the senior judiciary is not more diverse? How might this issue be addressed?

65. Are there other factors which inhibit diversity in senior judicial ranks that you consider need to be addressed?

66. Do you consider that increased awareness of the availability of opportunities to progress from one rank to another would act as an incentive for individuals when deciding whether to seek judicial office?

67. If you are a judge, do you favour the establishment of a support structure to offer mentoring and career advice?

68. If you are a lawyer, would the ability to progress through the judicial ranks and/or the availability of a support structure be a factor in encouraging you to apply for appointment?

## 6. The role of the legal profession

This paper has looked at ways in which the Government could change the judicial system to encourage a more diverse range of lawyers to decide to put themselves in the pool. However, judicial appointments can only be made from the pool of people who are eligible for appointment and who have decided to pursue judicial office. It is, therefore, equally important that the legal profession, from which the judiciary is drawn, is itself sufficiently diverse, and that the profession supports those of its members who are interested in seeking judicial appointment.

### What is the problem?

**6.1** There are two main problems. One (outlined in *Chapter 1*) is the attrition rate in the legal profession, which means that women in particular are tending to leave the profession before the point at which they might be expected to apply for judicial appointment. This reduces the applicant pool, and means that the increase in the numbers of women joining the profession is unlikely to be fully reflected, in due course, in the numbers entering the judiciary. The second problem is the lack of support given by the profession to those who are seeking, or who wish to seek, judicial appointment. This is a particular issue for solicitors, some of whom have, for example, reportedly been forced by their firms to choose between partnership and applying for fee-paid judicial appointment.

### What is being done – and what more needs to be done?

#### *Increasing and maintaining the diversity of the applicant pool*

- 6.2** As discussed in *Chapter 1*, the legal profession is more diverse than the judiciary. Between 1993 and 2003, the proportion of solicitors with practising certificates who were women increased from 27.6 to 39.7 per cent, and the proportion of practising solicitors who were from minority ethnic backgrounds increased from 3.1 to 7.9 per cent.
- 6.3** At the Bar, the proportion of practising barristers who were women increased from 25.4 per cent in 1997 to 32 per cent in 2003, and over the same period the proportion from minority ethnic backgrounds rose from 6.6 to 10.7 per cent. The Bar Council's most recent pupillage statistics show that over 50 per cent of those entering the profession are female and over 19 per cent are of minority ethnic origin. However, it is known that a significant number of women leave the Bar roughly at the point when they reach 7-10 years call.

- 6.4** The Bar Council has started a survey of all members of the Bar who have ceased to practise, or altered their category of practice, within the last three years. It is hoped that the results of this survey will give valuable information on reasons why barristers leave practice, or move between independent and employed practice. This information will enable the Bar Council to identify further measures to ensure that the Bar does not lose its most talented practitioners. This will ensure a larger and more diverse pool of qualified applicants for judicial appointments.
- 6.5** The Bar Council is now moving into the second stage of its policy implementation where it will focus on initiatives to retain and promote members within the profession, whether that be self-employed or employed practice. The aim is to achieve equality of opportunity in relation to access to good quality work and good quality chambers across all specialisations at the Bar.
- 6.6** The Bar Council unanimously approved the revised *Equality and Diversity Code for the Bar* in July 2004, and it will come into effect in autumn 2004. It places great emphasis on the importance of practice development for pupils and junior tenants. Access to good quality work is crucial to the development of the range of skills needed to apply for a judicial appointment. In addition to the *Code's* recommendations in this area, the Bar Council is giving priority this year to issues regarding fair instruction; it is holding meetings with those public bodies who regularly instruct counsel to ensure that work is distributed on merit to a diverse group of counsel.
- 6.7** The Bar Council also recently approved a *Maternity, Paternity and Flexible Working Policy* aimed at encouraging greater flexibility in working arrangements for members of Chambers with parental responsibilities.
- 6.8** Other new initiatives include a Code of Conduct requirement for all chambers to have an equality policy and a nominated member of chambers to take responsibility for equality and diversity issues. The Bar Council is also encouraging the circuits and specialist bar associations to appoint one or more individuals to take responsibility for equal opportunities issues within their organisations. It is known that the South East Circuit, the Criminal Bar Association and the Family Law Bar Association have set up sub-committees for this purpose.
- 6.9** These initiatives will be supported with the provision of diversity training at each stage of a barrister's career from the Bar Vocational Course into practice. This will be incorporated into the Bar's continuing education programme and the induction programme for members of main Bar Council committees. It will attract Continuing Professional Development points for those attending the training.
- 6.10** The Law Society is committed to playing a leading role in the elimination of discrimination and the promotion of equality and diversity in all its activities as a regulator, a representative body and an employer. It has developed a detailed *Equality and Diversity Framework for Action* to support the delivery of this commitment. The Law Society plans, as a pilot exercise, to undertake a survey of those solicitors who fail to renew their practising certificates to ascertain their reasons for non-renewal. The Society recently published a study into the motivations of women leaving and returning to the profession. It is undertaking

## 6. The role of the legal profession

significant work to draw the profession's attention to its revised Anti-Discrimination Rule which came into effect on 1 September 2004. The new rule has greatly enhanced enforcement provisions and goes beyond the current anti-discrimination legislation. The Law Society is developing a programme of training and support to enable solicitors to comply with its new Anti-Discrimination Rule as well as anti-discrimination legislation. Furthermore the Law Society is considering if equality and diversity training should be a compulsory component of continuing professional development of solicitors.

- 6.11** The Crown Prosecution Service runs a Law Scholarship scheme, designed to provide a comprehensive education and training framework for CPS administrative/clerical employees who wish to become qualified in law. The scheme is aimed at increasing the opportunities for those people who have not been able to take advantage of educational opportunities in the past (i.e. those from non-traditional backgrounds) and offer them the chance to pursue a career in the legal profession.
- 6.12** In the meantime, the legal profession is keen to resolve other issues. Paragraph 3.6 referred to the difficulties faced by solicitors in pursuing fee-paid judicial office and sought views on how the profession's governing bodies and other organisations might work to reduce the sense that holding judicial office is detrimental to the firm.
- 6.13** Another difficult problem relates to the financial cost of entering the profession in the first place. There are significant financial implications for anyone wishing to become a lawyer. This is a particular problem for students who do not secure a training contract prior to commencing law school, or for those at the Bar who do not gain one of the limited scholarships for the Bar Vocational Course. Further pressure arises from the introduction of university tuition fees. As a result, students from less financially secure backgrounds may find themselves unable to pursue a legal career. This may be further exacerbated by the limited availability of private loans which cater for the position in which newly qualified barristers find themselves.
- 6.14** An alternative route to qualification as a solicitor is first to qualify as a legal executive. Entrants to the course operated by the Institute of Legal Executives (ILEX) do not require a degree, and registration as a mature student does not require any formal qualifications. Qualification as a legal executive takes approximately five years; after that, it is possible to continue on the ILEX training route to qualify as a solicitor. Those working towards ILEX qualifications undertake their studies at the same time as being employed in legal work. This greatly reduces the total cost of qualifying as a lawyer and therefore opens up the legal profession to a wide range of people from all backgrounds, particularly those who could not afford to go to university, or who decided not to. This option is also used by many individuals wishing to qualify as a lawyer as a second career.

- 6.15** Another factor affecting successful entry to the profession is a sense of bias within the system against lawyers who do not have degrees from particular universities. There is a perception that individuals holding what are seen to be 'lower quality degrees' (because they were not awarded by the 'best' universities) and also those who come through non-traditional routes do not secure places with leading solicitors' firms, or the most successful chambers. This in turn means that they may not be exposed to the same level and quality of work as some of their counterparts in other firms or chambers, and that as a result they may feel less able to demonstrate suitability for judicial appointment.
- 6.16** At present, it is difficult to assess the extent of these problems, as those entering the profession are not tracked. However, it seems clear that both the legal profession and DCA have a responsibility to tackle these issues. The legal professions need to find ways either to reduce the cost of qualifying as a lawyer or to increase the availability of funding for individuals who are less able to support themselves. In addition, the legal professions, in conjunction with the Department, need to find ways to dispel unjustified perceptions (amongst employers and schools as well as individuals) that particular qualifications are worth more than others, and that an individual's educational and social background impact on the quality of his or her legal work.

69. Do you agree that the problems described above act to deter people from entering the profession, and/or cause them to leave it?
70. If so, how do you consider the problem should be tackled and by whom?
71. In particular, what responsibilities do the legal professions and the Department have in addressing this issue?
72. Are there other problems or difficulties which impact on diversity and which you consider need to be addressed?
73. Do you think that the route of articulated clerkships, whereby attendance at university was not necessary to become a solicitor, should be reintroduced?

### *Support from the legal profession for those seeking judicial appointment*

- 6.17** The Government is fully prepared to review policies and procedures for which it has responsibility in order to reduce or remove barriers or deterrents for people wishing to become judges. But the legal professions have also acknowledged that there is more they can do to promote judicial appointment as a positive career option for lawyers.

## 6. The role of the legal profession

- 6.18** The Bar Council has said that it will continue to support those seeking judicial office with a range of initiatives which: ensure access to information about the range of judicial appointments available; enable individuals to work flexibly in order to take advantage of these; and enable them to compete on merit for judicial appointments. It will continue its support for the roadshows mentioned in paragraph 2.3 above. It will also encourage circuits and specialist bar associations to sponsor judicial appointments events for their members. The Bar already offers Continuing Professional Development points to those attending such events.
- 6.19** The Law Society has said that it could offer support to those seeking judicial appointment in a number of ways. For example, in co-operation with members of the judiciary, the Society could facilitate opportunities for interested members of professional groups (such as the Association of Women Solicitors or Black Solicitors' Network) to be mentored or undertake work-shadowing. The Society already offers some support to solicitors interested in judicial appointment, through regular seminars and training workshops to facilitate the understanding of the judicial appointments process. However, there may be scope for enhancing this support, to ensure that those seeking appointment understand more clearly, what the standards of competence are and how they are assessed. The Society could also explore opportunities for obtaining feedback from assessors after each assessment round, to enhance the training it provides.
- 6.20** The Law Society has also suggested working with the DCA to identify a pool of potential applicants from under-represented groups on whom resources might be focused. The Society would be keen to explore the possibility of accrediting CPD points for specific judicial sittings for a limited period and where it is particularly meritorious to do so. There may, additionally, be benefits in promoting judicial office as a means of enhancing the firm's reputation and standing in the United Kingdom and, perhaps, abroad.
- 6.21** The Law Society's Diversity Access Scheme, launched in September 2003, seeks to enhance the diversity of the solicitors' profession. It targets people who are talented and face particular obstacles to qualify as a solicitor. Those obstacles might relate to social, educational, financial, or family circumstances, or to a disability that makes the goal of qualification as a solicitor a particularly challenging one. The scheme provides scholarships to enable students to complete the vocational part of their studies as well as mentoring and work-placement opportunities. The scheme is supported by the profession through the provision of free places at Law Colleges. Members of the profession act as mentors and make offers of work-placements in law firms, or in-house legal departments.

**6.22** Fourteen talented law students were awarded scholarships under the Scheme in its first year of operation. All of the recipients have demonstrated talent, desire to be a solicitor and determination to succeed despite the obstacles they face. They have the kind of skills and life experience that will enrich the solicitors' profession. Without the scholarships some of these students could be lost to the legal profession. It is hoped that the awards will serve as a springboard to enable the students to realise their full potential. The award covers the cost of course fees for twelve students starting the Legal Practice Course and each scholar will be allocated a mentor.

74. What do you consider the respective branches of the profession should be doing to promote the possibility of judicial appointment as a career option for lawyers?

75. Which of these measures do you consider should be their priority?

## 7. Monitoring judicial diversity in the future

DCA will ensure that any changes implemented as a result of this consultation paper are fully evaluated as to their effects on judicial diversity. It is important that this project is not seen as simply a 'one-off' exercise; the judicial system will need to be continually monitored to ensure that the system can be further modified as necessary in the light of future developments.

### Understanding the demographics

- 7.1** In order to track any changes in diversity, it is essential to have a comprehensive understanding of the current position. The Department keeps a wide range of statistics on applicants and appointees. In addition, the Law Society and the Bar Council keep statistics on the demographics of their respective professions. Annex G summarises the information currently available from all three organisations. However, it is accepted that more work is required jointly to establish a more co-ordinated approach to understanding the legal profession as a whole, and those individuals who are eligible for judicial appointment. DCA plans to work with The Law Society and the Bar Council on ways in which this can be achieved.
- 7.2** To oversee this work, the Senior Steering Group under Ministerial chairmanship (referred to in paragraph 1.27) will take responsibility for ensuring that the various sectors of the profession work together on establishing a profession-wide assessment of the current position, against which future changes can be measured. This will not simply be a matter of collecting data, but of reviewing progress and the impact of changes, and considering what more needs to be done.
- 7.3** At present, very few data are available on issues relating to sexual orientation, religion and belief or wider education and social background. The Steering Group will therefore also ensure that a review is undertaken of these aspects of diversity in the judiciary, and will put in place whatever programme of work is required to address them.

## Continued input from stakeholders

**7.4** DCA has worked for a number of years with a wide range of stakeholders who have an interest in judicial diversity. For example, the Department's representation on the Women Lawyers Forum and Minority Lawyers Conference committees<sup>44</sup> helps to ensure that stakeholders' needs and issues are understood. The Senior Steering Group is committed to maintaining this approach and would welcome views on how best stakeholders can contribute to the continuing process of increasing judicial diversity. One option would be to establish a co-ordinated body which could be charged with tracking and assessing improvements across the legal profession. However, it would be important that any such group had a focused remit, with members being willing to participate in taking any necessary action.

76. Do you agree that it would be helpful to do more work to understand fully the demographics of the legal profession?

77. If so, are there any specific issues which you consider should be covered as part of this work?

78. How best can stakeholders be involved in the continuing improvement process?

<sup>44</sup> see paragraph 2.3.

## Glossary

<b>Appointment on merit</b>	The principle that decisions about appointments should be based on assessments of candidates against specific published <b>criteria for appointment</b> (or a <b>competency framework</b> ), with the best qualified candidates being appointed regardless of their gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability.
<b>Assessment centre</b>	An approach to selection which includes not only an interview, but also other activities designed to test a fuller range of skills and behaviours required by the <b>competency framework</b> for the post. The assessment centres used in judicial appointments competitions involve a written exercise, a technical paper and practical role-play exercise, as well as an interview.
<b>Automatic consultation</b>	The practice whereby certain judges and members of the legal profession are consulted on candidates in a particular competition as a matter of course, without the candidates concerned naming them as consultees.
<b>Career judiciary</b>	A system found in many civil law countries, where to be a judge is a career choice made at post graduate stage and is the subject of specific postgraduate training. There is seldom a requirement for qualification to practise as a lawyer independently of state systems. In some, an alternative route to appointment is through being a state prosecutor. The protracted nature of the postgraduate training, which may include an administrative stage within public administration, usually means that the first judicial responsibility (in an equivalent role to a paid magistrate) is undertaken in the judge's early 30s. This differs from <b>judicial progression</b> , as referred to in the paper.
<b>Commission for Judicial Appointments</b>	The Commission was established in 2001 to conduct a continuing scrutiny of the judicial and Queen's Counsel appointments procedures and to investigate complaints about the way the procedures have been applied in individual cases. The Commission is not involved in making or recommending appointments, and is different from the forthcoming <b>Judicial Appointments Commission</b> .
<b>Competency (or competence) framework</b>	The set of behaviours required for a particular post, determined by a detailed job analysis exercise. Exercises used at an <b>assessment centre</b> are specifically designed to test candidates' suitability against those competences.

<b>Consultation process</b>	The aspect of the existing judicial appointments system under which judges, members of the legal profession and others are invited to provide assessments of the qualities and work of candidates. Consultation may be <b>automatic</b> , and/or consultees may be nominated by the candidate.
<b>Criteria for appointment</b>	The skills, abilities and personal qualities required of a successful candidate. For most judicial appointments, these are, in summary: <ul style="list-style-type: none"> <li>• legal knowledge and experience</li> <li>• intellectual and analytical ability</li> <li>• sound judgement</li> <li>• decisiveness</li> <li>• communication and listening skills</li> <li>• authority and case management skills</li> <li>• integrity and independence</li> <li>• fairness and impartiality</li> <li>• understanding of people and society</li> <li>• maturity and sound temperament</li> <li>• courtesy</li> <li>• commitment, conscientiousness and diligence.</li> </ul>
<b>Direct appointment</b>	Appointment of an individual to full-time office without their previously having served in a part-time (fee-paid) capacity. Direct appointment is contrary to current policy.
<b>Diversity</b>	The presence among a group of individuals of a wide variety of backgrounds, cultures, opinions, styles, perspectives, values and beliefs.
<b>Fee-paid judicial office</b>	The arrangement under which an individual is appointed to sit judicially for (usually) between 15 and 30 days per year, for a period of not less than five years, alongside their professional practice. Satisfactory service in fee-paid judicial office – normally for at least two years – is normally a pre-requisite for appointment to full-time office. Fee-paid appointments were previously known as part-time judicial appointments, but the term was changed to avoid confusion with <b>salaried part-time judicial appointment</b> .
<b>Judicial Appointments Commission</b>	An independent body which will assume the responsibility of recommending candidates for judicial appointment. The Commission is being established under the Constitutional Reform Bill and is not expected to be in place before April 2006. It will be a different body from the existing <b>Commission for Judicial Appointments</b> and will exercise a different role.
<b>Judicial progression</b>	A system whereby having entered the judiciary after a considerable period in legal practice, individuals might progress from one judicial office to another as they acquire the necessary competences.

<b>Lawyer</b>	For the purposes of this consultation paper, the term 'lawyer' is used to mean a barrister, a solicitor or a qualified member of the Institute of Legal Executives.
<b>Presiding Judge</b>	A High Court Judge nominated by the Lord Chief Justice to have general responsibility for the judicial administration of a circuit, normally for a period of four years. Each circuit has two Presiding Judges, except for the South Eastern Circuit which has three.
<b>Rights of audience</b>	The right to act as an advocate in court in either a criminal or a civil case. Under the Courts and Legal Services Act 1990 eligibility for judicial appointments depends on the length of time an individual has possessed the relevant rights of audience – the <b>statutory qualification</b> .
<b>Salaried part-time judicial appointment</b>	The arrangement under which individuals may be appointed to permanent judicial office, but working reduced hours and receiving a commensurately reduced salary. Unlike holders of <b>fee-paid judicial office</b> , salaried part-time judges are not permitted to continue in legal practice after appointment.
<b>Self-assessment</b>	The section of the judicial appointments application form in which applicants are asked to give details and examples of their recent experiences and achievements to demonstrate their capabilities against each of the <b>criteria for appointment</b> (or the <b>competency framework</b> , as appropriate).
<b>Stakeholders</b>	Those individuals and groups with a significant interest in an issue. Where judicial diversity is concerned, stakeholders include the judiciary, the public (including litigants), the various branches of the legal profession and groups representing women, minority ethnic, disabled and other minority lawyers.
<b>Statutory qualifications</b>	The basic eligibility requirements for appointment to judicial office. These are laid down by Acts of Parliament and vary from one judicial post to another, but in general they refer to the length of time which has elapsed since an individual qualified as a barrister or a solicitor ( <b>rights of audience</b> ).
<b>Statutory retirement age</b>	The maximum age at which a holder of judicial office must retire, which is laid down by Act of Parliament. There is a statutory retirement age of 70 for judges appointed since 31 March 1995 (Judicial Pensions and Retirement Act 1993).
<b>Work-shadowing scheme</b>	The arrangement whereby a potential applicant for judicial appointment may sit in with a judge for up to five days to gain an insight into what it is like to sit judicially.

# Annex A: Judicial diversity in other jurisdictions

*Annex prepared by Dr Cheryl Thomas, Director, The Jury Diversity Project, University of Birmingham School of Law.*

This annex presents information about the state of judicial diversity in a number of other jurisdictions. No one country has exactly the same legal, political and social profile as the United Kingdom. However, the countries presented below provide different combinations of factors which are important to consider when comparing judicial diversity across jurisdictions. These factors include the nature of the judicial system, the legal system, the political system, the constitutional system, and the nature of ethnic diversity in each jurisdiction.

## Canada

### *Federal courts*

In 1980, just over 3 per cent of federally appointed judges were women, but by June 2003 this had risen to 26 per cent. This increase is the result of various initiatives, but not formal, mandated policies. In 1985 the federal Minister of Justice announced a new judicial appointments process which recognised that “the judiciary should represent a broad cross-section of Canadian Society. To achieve this, the appointment of women and individuals from cultural and ethnic minorities should be encouraged”.<sup>45</sup> Consequently, specific efforts were made to appoint more women. Today, for example, the advisory committees that assess candidates for federal appointment are encouraged to respect diversity and give due consideration to all legal experience, including non-mainstream legal experience. Sensitivity to gender and racial equality issues are also recognised as important.

### *Provincial courts*

The Province of Ontario has taken a more active approach to increasing gender equality on the Bench. In 1988, the province established a Judicial Appointments Advisory Committee as a three-year pilot project. When the committee started its work, only 4 per cent of provincially appointed judges in Ontario were women. The Committee adopted a policy of advertising extensively for vacant positions and explicitly noting in the advertisements that the Committee was seeking candidates who would reflect the diversity of Ontario’s people. The Committee also contacted community organisations that were in touch with lawyers from sectors of society that in the past were under-represented on the bench. Such organisations were asked to encourage these lawyers to apply for appointment.

In pursuing its objective the Committee did not adopt a numerical quota, but demographic considerations were included in the assessment criteria used by the Committee in making recommendations for appointment. The criteria recognised that “the provincial judiciary should be reasonably representative of the population it serves. This requires overcoming the serious under-representation of women and

<sup>45</sup> *A New Judicial Appointments Process*, Canadian Ministry of Justice (Ottawa, 1985).

## Annex A: Judicial diversity in other jurisdictions

several ethnic and racial minorities.”<sup>46</sup> Value was also attached to professional experience outside a traditional legal office (e.g. in social agencies and policy development), and it was recognised that a great deal of relevant courtroom experience was not absolutely necessary. The Attorney General of Ontario also became personally involved in encouraging women to apply for judicial positions, stating that if possible at least 50 per cent of new judicial appointments should be women. He wrote to all women lawyers in Ontario who had been at the bar for 10 years or more to encourage them to consider applying for the judiciary. Within two years (September 1990), nine of the 28 judges (32 per cent) appointed pursuant to the Committee’s recommendations were women. In the next two years (October 1990-June 1992), of the 39 judges appointed 18 (46 per cent) were women.<sup>47</sup>

No data was available on the position of ethnic minorities in the judiciary in Canada at either the federal or provincial level, and despite some improvement in the position of women in the judiciary at the federal and provincial level over the last decade, criticisms remain about the nature of the appointment process and its impact on judicial diversity.<sup>48</sup> The Canadian Bar Association’s Aboriginal Law Section is currently advocating for permanent aboriginal representation on Canada’s Supreme Court, a move that may require amending the law that allocates seats geographically. The proposal is designed to make the Supreme Court’s composition reflect the three founding elements of Canada’s legal system: English common law, French civil law, and traditional aboriginal law.<sup>49</sup>

### *Professional associations*

In 1991, the Canadian Bar Association established a Task Force on Gender Equality to address the status of women in the legal profession. The Task Force’s report identified many examples of unequal treatment of the sexes in many aspects of the legal profession. Recommendations aimed at increasing the number of women on the bench included that:

- the federal Minister of Justice adopt an affirmative action policy for the appointment of women and minority women similar to that adopted in Ontario;
- the federal and provincial governments take all possible steps to eradicate from the judicial appointments process discrimination against women and minority women and have as their respective long-term goals a federal and provincial judiciary which reflects Canadian diversity.<sup>50</sup>

At the provincial level, the Canadian Association of Provincial Court Judges includes most of the over 1,000 provincial and territorial judges in Canada. The CAPCJ’s Equality and Diversity Committee liaises with other organisations and monitors developments and issues in the area of equality and diversity which may impact the work of provincial court judges.<sup>51</sup>

<sup>46</sup> *Interim Report*, Judicial Appointments Advisory Committee (Toronto, 1990).

<sup>47</sup> Data obtained from the speech given by the Right Hon. Beverley McLachlin, P.C., Chief Justice of Canada, at a seminar to the Association of Women Barristers, 2 July 2003.

<sup>48</sup> “Let’s try democracy when choosing top judges” *Globe and Mail*, 3 March 2004.

<sup>49</sup> “Appoint Natives Ottawa Urged” *Toronto Star*, 3 August 2004.

<sup>50</sup> Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa, 1993).

<sup>51</sup> Canadian Association of Provincial Court Judges ([www.acjnet.org](http://www.acjnet.org)).

## Australia

### *Approach to the issue of diversity*

Over the last decade there have been continuing calls for the appointment of more women to the Australian Bench. In 1993 the Attorney-General released a discussion paper on judicial appointments in which he stated that “the fact that men of Anglo-Saxon or Celtic background hold nearly 90 per cent of all federal judicial offices indicates some bias in the selection process, or at least a failure of the process to identify suitable female and persons of different ethnic backgrounds as candidates”.<sup>52</sup> The next year, the Australian Law Reform Commission issued a report which addressed in part the issue of the under-representation of women in the Australian judiciary.<sup>53</sup> It reported that over 90 per cent of all federal judicial offices were held by men. There was one woman High Court judge, only four women among the 34 Federal Court judges (11 per cent), and seven women out of the 52 Family Court judges (13 per cent). In the state and territorial courts, there were only six women among the 144 State and Territory Supreme Court judges (4 per cent), and none among the Supreme Court judges in Victoria, Tasmania or Western Australia. The ALRC made three main recommendations related to the need for more women judges:

- *An advisory commission should be established to advise the Attorney-General on suitable candidates for judicial office.* Increased consultation would be likely to identify candidates who may not otherwise have been identified and will promote a judiciary more reflective of the diversity of Australian society. The membership of the advisory commission should reflect the ethnic and cultural makeup of the community and there should be a balance of women and men on it.
- *Federal judges should be able to be appointed on either a full-time or part-time basis.* This would enable women and men to take proper account of their family responsibilities
- *Selection criteria for judicial appointment should be identified and publicised.*

In its 1994 report, the ALRC also found that while women made up 50 per cent of law school graduates and 25 per cent of the legal profession as a whole, they were leaving the profession at a much higher rate than men, and were clustered in the lower ranks of the profession. The Commission attributed this to discrimination, sexual harassment, and structural and cultural barriers. It recommended that lawyers’ professional associations take a more active role in changing the work practices and culture of the profession.

The Australian Institute for Judicial Administration currently holds statistics on the number of women in the judiciary. The following tables provide details at both the federal and state/territorial levels and are valid as of 16 September 2004. Comparing these current statistics to those from 1994, the position of women in the federal judiciary has shown only limited improvement. The situation for women on the High Court has actually worsened as there are now no women judges on the High Court.

<sup>52</sup> Australian Attorney-General’s Department, *Judicial appointments – procedure and criteria*, AGPS Canberra 1993.

<sup>53</sup> Australian Law Reform Commission 69, Chapter 9.

## Annex A: Judicial diversity in other jurisdictions

The position of women on the Federal Court has only marginally increased (from 11 per cent to 13 per cent), while the greatest increase has been on the Family Court Bench where the percentage of women judges has risen from 13 per cent in 1994 to 30 per cent in 2004. At the state and territorial court level, the percentage of women Supreme Court judges has increased from 4 per cent in 1994 to 15 per cent today. Tasmania is now the only state not to have a woman on the Supreme Court, while the Australian Capital Territory has no women on the Supreme Court and Court of Appeal combined.

### Women serving on Federal, State and Territorial Courts, Australia, September 2004

Jurisdiction	Judges and magistrates (totals)	Judges and magistrates (women)	%
<b>Commonwealth</b>			
High Court	7	0	0
Federal Court	47	6	13
Family Court	51	15	30
Federal Magistrates Service	22	5	23
<b>Total</b>	<b>127</b>	<b>26</b>	<b>20</b>
<b>Northern Territory</b>			
Supreme Court	6	1	17
Magistrates	9	1	11
<b>Total</b>	<b>15</b>	<b>2</b>	<b>13</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	24	7	29
District Court	36	5	14
Magistrates	73	14	19
<b>Total</b>	<b>133</b>	<b>26</b>	<b>19</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	47	5	10
Land & Environment	7	1	14
District Court	79	17	21
Industrial Relations Comm.	12	3	25
Magistrates	134	38	28
<b>Total</b>	<b>279</b>	<b>64</b>	<b>25</b>

**Women serving on Federal, State and Territorial Courts, Australia,  
September 2004 (continued)**

Jurisdiction	Judges and magistrates (totals)	Judges and magistrates (women)	%
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	0	0
Magistrates	10	4	40
<b>Total</b>	<b>14</b>	<b>4</b>	<b>29</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	32	3	9
County Court	62	18	29
Magistrates	101	28	28
<b>Total</b>	<b>195</b>	<b>49</b>	<b>25</b>
<b>Tasmania</b>			
Supreme Court	6	0	0
Magistrates	12	2	17
<b>Total</b>	<b>18</b>	<b>2</b>	<b>11</b>
<b>South Australia</b>			
Supreme Court	13	2	15
District Court	18	2	11
Magistrates	38	8	21
<b>Total</b>	<b>69</b>	<b>12</b>	<b>17</b>
<b>Western Australia</b>			
Supreme Court	18	4	22
District Court	22	6	27
Magistrates	38	8	21
<b>Total</b>	<b>78</b>	<b>18</b>	<b>23</b>
<b>Total in all state/territorial courts</b>	<b>754</b>	<b>172</b>	<b>23</b>

Source: Australian Institute for Judicial Administration ([www.ajia.org.au/JudgesMagistrates.htm](http://www.ajia.org.au/JudgesMagistrates.htm))

### *Professional associations*

In 1999 the Australian Women Lawyers Association issued a public criticism of the virtual absence of women judges in the higher federal courts. It called for a more open appointments process, which was supported by various groups, including solicitors groups such as the Law Institute of Victoria.<sup>54</sup>

## New Zealand

### *Approach to the issue of diversity*

Despite recent government reviews of both the system of judicial administration and the judicial appointment process, the New Zealand government has not directly addressed the issue of women and minorities in the judiciary. A November 2002 report to the Attorney-General on judicial administration<sup>55</sup> recommended changes to administration of the appointment of judicial officers, but did not mention the position of women or minorities in the New Zealand judiciary. In the July 2004 government consultation paper: *Appointing Judges: A Judicial Appointments Commission for New Zealand?*<sup>56</sup> the issue of judicial diversity was also not incorporated into this process.

Under the present judicial selection system, the suitability of prospective candidates is determined by four criteria, one of which relates to diversity: legal ability, qualities of character, personal technical skills, reflection of society. The criterion “reflection of society” appears to recognise a positive relationship between judges and diversity, and in its 2004 consultation paper on judicial appointments the government explains this as: “The quality of being a person who is aware of, and sensitive to the diversity of modern New Zealand society. It is very important that the judiciary comprise those with experience of the community of which the court is part and who clearly demonstrate their social awareness”.

The Maori comprise nine per cent of New Zealand’s 4 million population, and the unique aspects of Maori law have led to a separate Maori Land Court in New Zealand. Judges on the Maori Land Court are appointed by Governor-General on the advice of the Minister of Maori Affairs. While the requirements for appointment are that “a person must not be appointed a judge unless the person is suitable, having regard to their knowledge and experience of te reo Maori, tikanga Maori, and the Treaty of Waitangi”,<sup>57</sup> there is no formal requirement that any of the eight judges be Maori.

No official government data was available on women and ethnic minorities currently on the New Zealand courts. At present there are five Maori women judges in New Zealand, including the current Chief justice of the newly created New Zealand Supreme Court, and three of the eight judges on the Maori Land Court are Maori women. In addition, at present over half of all law graduates and admissions to the bar are women.<sup>58</sup>

<sup>54</sup> “Solicitors Support Call for More Women Judges” Law Institute of Victoria, 25 March 1999.

<sup>55</sup> *Judicial Administration Issues*, Chen Palmer and Partners 2003.

<sup>56</sup> New Zealand Ministry of Justice, April 2004.

<sup>57</sup> Section 7(2A) Te Ture Whenua Maori Act 1993.

<sup>58</sup> “Maori women in the judiciary” Hon Parekura Horomia, 22 March 2004.

## United States

Judicial diversity has been the subject of policy debate, study and reform in the United States for over 25 years at both the federal and state court level.

### *Federal courts*

Within a month of taking office in 1977, President Carter issued an executive order establishing the United States Circuit Judge Nominating Commission, specifically requiring the inclusion of both men and women as well as members of minority groups on these “merit commissions” for federal court appointments. The introduction of the commissions (eventually for both federal circuit and district court judgeships) was controversial, but by the end of the Carter administration there was a marked increase in the number of both women and minority nominees for federal judicial positions, and one-half of the judges chosen under the new system were female, black or Hispanic.<sup>59</sup> The Carter commission system was abolished by President Reagan in the 1980s, but in the 1990s President Clinton adopted and broadened the Carter approach to affirmative action for federal court staffing by appointing women and minorities to more than 60 per cent of all new judgeships. The following presents a demographic overview of the current Federal judiciary (encompassing the US Supreme Court, all Circuit and District Courts and the International Trade Court):<sup>60</sup>

### **Percentage breakdown of the US Federal Judiciary in terms of gender and race**

Gender	%
Men	74.1
Women	22.4
Race	%
White	78.6
African-American	10.6
Hispanic	6.5
Asian-American	0.8
Arab-American	0.2
Native American	0

Source: [www.allianceforjustice.org/judicial/judicial\\_selection\\_resources/selection\\_database](http://www.allianceforjustice.org/judicial/judicial_selection_resources/selection_database)

<sup>59</sup> *The Judicial Process* (7th ed), H. Abraham, p.29-31.

<sup>60</sup> 3.5 per cent of the seats on the federal bench are currently vacant.

### *State courts*

There are four categories of state court judges: supreme court, intermediate appellate court, general jurisdiction trial court, and limited jurisdiction trial court judges. The method of judicial selection varies by state (and sometimes within states by judicial position) but consists of five general processes: legislative appointment; executive appointment with confirmation, usually by the legislature; judicial appointment; partisan popular election; and non-partisan popular election. Additionally, in some states judges initially are screened by a nominating commission, subsequently appointed by a governor, and seek another term of office by running against their record in a non-popular election. A bare majority of the states and the District of Columbia use the combination of nomination, appointment, and retention election to some extent. An almost equally used method is either non-partisan popular election or partisan popular election. The merits and limitations of each of the five basic selection processes are the subject of continuing debate, including debate around which process achieves a more independent judiciary and produces greater judicial diversity.

More than 20 task forces and commissions on racial and ethnic bias have been convened at the state level in the last decade in recognition of the continuing concerns over this issue.<sup>61</sup> The task forces and commissions collect data, assess bias and recommend strategies for alleviating bias in the judicial system, including racial and ethnic bias in judicial selection. Representatives from these organisations have formed the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the State Courts, which meets annually.<sup>62</sup>

There is no single source that can be used to examine the composition of the entire state court bench on the basis of age, race, ethnicity, gender, or other background characteristics, such as professional experience or education. Not all judges report all or any of this information to organisations that compile directories of judges. And there is no directory that includes all four types of state courts. Furthermore, no effort has been made to chart the trends in the makeup of judges over time.<sup>63</sup> Based on available data from the 50 states, however, less than half (22) have any ethnic minority representation on the state's highest court. Women comprise 25 per cent of the judiciary (319 of a total of 1298 judges) on all state courts of last resort (COLR) and intermediate appellate courts (IAC) combined. This breaks down to 28 per cent on all state courts of last resort (97 women out of 346 COLR judges), and 23 per cent on all state intermediate courts of appeal (222 women out of 952 IAC judges). New York, Washington, Ohio and Wisconsin are currently the only states with a female majority in the highest state court, and no state intermediate appeals courts have female majorities. There are 34 female state Chief Justices and Chief Judges, 12 female Presiding Judges, and one female Senior Judge. New Mexico has the first woman Hispanic Chief Justice in the nation.

<sup>61</sup> The National Center for State Courts has compiled an electronic database of the main findings and recommendations of the various commissions and task forces.

<sup>62</sup> [www.ncsconline.org](http://www.ncsconline.org)

<sup>63</sup> [www.ncsconline.org/WC/FAQs/JudRolFAQ.htm](http://www.ncsconline.org/WC/FAQs/JudRolFAQ.htm)

### *Professional associations*

The American Bar Association has a formal 'Judicial Diversity Initiative'. This involves the ABA's Judicial Division, whose 'Goal One' advocates 'increasing minority membership, including membership in each of the six Conferences'. The ABA Judicial Division Standing Committee on Minorities in the Judiciary is responsible for implementing ABA and Judicial Division diversity initiatives, and its stated mission is to "promote full and equal participation by minorities in the judiciary and the ABA Judicial Division" by:

- assisting in identifying minority individuals for leadership positions
- assisting in identifying minority individuals for committee positions
- assisting in identifying minority speakers for educational programs
- providing information about minorities in the judiciary
- assisting with outreach and partnership efforts with minority bar associations.

### **Civil law countries**

Most continental European judiciaries include significantly more women in the profession than the judiciary in the United Kingdom. The experience of civil law countries is often overlooked because their judicial systems are not considered analogous to the UK common law system, usually being described as a 'career judiciary' (meaning a civil service-style judiciary where all judges are recruited by examination directly from university and progress up through a structured career system). However, no European civil law judicial system fits this narrow definition, and almost all employ some form of lateral recruitment of judges amongst experienced legal professionals much later in their careers, which is similar to the appointment process in England and Wales. In addition, the extent to which judicial diversity impacts on the fairness of the judicial system is a concern for the United Kingdom and all other European countries bound by the requirements of the European Convention on Human Rights.

### **France**

France and the UK have the largest ethnic minority populations in Europe, and both share a similar post-colonial, post-war immigrant based minority population. The French are currently examining how best to improve judicial diversity from both a gender and ethnicity perspective (see below). A significant proportion (25 per cent) of the French judiciary are now appointed after substantial experience in the legal profession (i.e. under similar conditions found in common law judiciaries).

### *Direct recruitment of experienced professionals*

The French have several special recruitment channels for those entering the judiciary at a later stage of their careers, which more closely approximates the appointment process in England and Wales. Direct recruitment of senior judges (to the Court of Appeal and Court of Cassation) is open to individuals with 15 years of professional experience in the legal, economic and political fields, who are 50 years of age or older. Direct recruitment of judges just below this level (senior positions in First Instance Courts) is open to individuals with 10 years of professional experience (as above), who are 35 years of age or older. There is also direct recruitment of entry-level judges from among experienced professionals; the requirements here are either 8 or more years legal experience in private practice, in elected local government or as a lay judge, or civil servants and other state employees who are 45 years of age or older.

At present there exists no data on the percentage of ethnic minority judges in France. However, a special task force (*observatoire des carrières de la justice*) has been created to examine the status of the judicial career in France (as well as all other professions involved in judicial matters). The observatoire has been specifically directed to recommend policies to improve judicial careers from a gender perspective, and it is anticipated that it will also address the issue of ethnic diversity in the judiciary. The task force is due to issue its report at the end of 2004.

In France, judges and prosecutors are both referred to as ‘magistrates’ (*magistrature*) and form the same professional group, with judges and prosecutors able to transfer between the two positions. The following table shows the representation of women in the French *Magistrature* as of January 2004.<sup>64</sup>

#### **Women in the French *Magistrature***

Professional group	Women %
<b><i>Magistrature</i> (judges and prosecutors combined)</b>	53
<b>Judges</b>	57
<b>Prosecutors</b>	40

### **Italy**

Similar to France, judges and prosecutors in Italy belong to the same professional group, known as magistrates (*Magistratura*). The vast majority of Italian magistrates are appointed through the traditional civil law system of direct recruitment after university via a combined written and oral examination.

There are a significant proportion of women in the Italian judicial system. In 1998 women made up 33 per cent of the combined profession of judges and magistrates, and today this figure has risen to an estimated 38 per cent of the 9100 magistrates.<sup>65</sup> More women apply to be magistrates, and more women are successful applicants to the entry level of the judiciary. The following table shows that this has been an increasing trend since 1995.

<sup>64</sup> Data provided by Anne Boigeol, L’Institut d’Histoire du Temps Present.

<sup>65</sup> Data provided by Professor Carlo Guarnieri, Dipartimento di Organizzazione e Sistema Politico, University of Bologna.

### Female applicants and appointments to the Italian *Magistratura* 1995-2002

Year	Female applicants to the <i>Magistratura</i>	Female appointees to the <i>Magistratura</i>
1995 (1st)	7,516 of 12,821 (58%)	145 of 254 (57%)
1995 (2nd)	7,510 of 12,780 (58%)	165 of 296 (56%)
1997	10,060 of 16,727 (60%)	141 of 268 (53%)
1998	15,719 of 25,534 (62%)	188 of 358 (53%)
2000	17,168 of 26,706 (64%)	196 of 311 (63%)
2002 <sup>66</sup>	16,421 of 25,109 (65%)	259 of 412 (63%)

Source: Data provided by Professor Carlo Guarnieri, Dipartimento di Organizzazione e Sistema Politico, University of Bologna.

### Germany

Unlike in France and Italy, in Germany judges and public prosecutors do not belong to the same organisation. However, they share a common legal education and training leading to the 'qualification for judgeship'. This qualification is a necessary requirement to serve in all legal professions and the higher ranks of the civil service, and consequently these legal professionals tend to identify themselves as part of one legal professional group known as *Juristen*. There is also some lateral mobility among judges, public prosecutors, private attorneys and government officials. Appointment to the German judiciary at either the federal or *Länder* (regional) level depends on marks obtained in examinations and performance during a lengthy training period. Selection for regional level courts is made by the *Land* Ministry of Justice where candidates apply, and most German regions operate 'soft' quota regulations in respect of women. Judicial appointees are under a probationary period ranging from three to five years, and can be moved from one position to another and required to undergo further evaluation before finally becoming life-tenure judges.<sup>67</sup>

In 1960 just 2.6 per cent of the judiciary were women and 2 per cent of lawyers were women. In recent years, the proportion of woman in the legal profession has been rising, despite the limited number of judicial appointments made in these years. As of 2003, women represented 30.1 per cent of judges (6291 of the 20,901 judicial positions in Germany), 33.0 per cent of public prosecutors and 27.9 per cent of lawyers. Women lawyers are also generally less specialised and the highest proportion of specialists are in the financially less rewarding field of family law.<sup>68</sup>

<sup>66</sup> Results of the written examination only.

<sup>67</sup> *The Power of Judges*, C.A. Thomas (ed) 2002.

<sup>68</sup> Data provided by Ulrike Schultz, Fern Universitaet in Hagen.

### The Netherlands

The Dutch judicial system is a hybrid of the common law and civil law systems. Half of all judges are recruited under the traditional civil law system directly from university, but the other half are recruited under the more traditional common law system – from legal professionals at a later stage in their careers. Under this latter appointment process, lawyers with at least 6 years legal experience either at the Bar, in government, university or business may apply for judicial appointment. For appointment to a first instance court, candidates must be 30 years of age or older, and for appointment to an appeals court position candidates must be 35 years of age or older. These individuals undergo one year of training, under the direction of the Foundation Study Centre for the Judiciary, prior to undertaking their judicial duties. In recent years the government has expressed concerns about achieving diversity in the judiciary, and in 2002 major reforms in the recruitment and training of judges were introduced.<sup>69</sup>

<sup>69</sup> “Minister’s speech on the occasion of handing over control to the Council for the Administration of Justice”, 18 January 2002 ([www.justitie.nl](http://www.justitie.nl))

# Annex B: Diversity in other professions

## Architects

### *The current position*

- Women comprise 11 per cent of Royal British Architects chartered architects. The number of women entering architecture courses rose from 27 per cent in 1990-01 to 39 per cent in 2002-03.
- In July 2003 the Royal Institute of British Architects published the results of research into the drop-out rate of women from architectural practice. The report found that a combination of factors, including poor employment practice, difficulties in maintaining skills and professional networks during career breaks, and paternalistic attitudes, caused women to leave the profession.
- The research found that women's career paths slowed after childbirth, and inflexible working arrangements, including long hours and a lack of transparency in relation to pay and promotion, were the main reasons for women with children leaving the profession.
- The report also stressed that many of these factors would apply equally to men leaving the profession.

### *What is being done*

- Following the findings of the research report, RIBA undertook to make recommendations to its members, produce online guidance on employment law and to highlight best practice flexible working to employers.
- Within a framework in which "equal opportunities is now everyone's business", RIBA action on equal opportunities is guided and co-ordinated by its equality forum, *Architects for Change*. Within the next five years, *Architects for Change* seek to address several particular issues:
  - **education:** to encourage a more representative entry of women and ethnic minorities in education, reduce their drop-out rates and support recognition of diversity in architectural education.
  - **profession:** equal pay and career progression opportunities for women and minority ethnic architects; fair working conditions and pay for students; to demonstrate that family friendly working and humane working hours can make business sense.
  - **disability:** research and monitor those with disabilities in architecture; ensure correct allocation of grants and funds to support those with disabilities who are studying architecture or working in the profession.
  - **information:** provide information that will support RIBA members in their commitment to good equal opportunities policies and action.

### Doctors

#### *The current position*

- In research into retaining women in the profession, for doctors wishing to work in hospitals and take the surgical route careers were impeded by a break or a deviation from the standard career path. Part-time working was considered to be more typical of general practice.
- There was a lack of advice about careers in medicine, both at school and post-graduate, and little advice about how to develop a medical career once in the profession.
- The very long hours worked in medicine placed pressures on both sexes.

#### *What is being done*

- The British Medical Association has committed itself to the elimination of unlawful discrimination and the removal of barriers to careers throughout the medical profession.
- The Association's Equal Opportunities Committee has produced reports and guidance on equality issues, e.g. *Dealing with Discrimination: A guide for BMA members* and an internet resource for doctors with disabilities.
- In June 2004 the Equal Opportunities Committee published a report *Career Barriers in Medicine: Doctors' experiences*, which explored how doctors of minority ethnic groups, women doctors, disabled doctors and gay, lesbian and bisexual doctors experienced career barriers and discrimination, and illustrated the broad consequences of this for the medical profession as a whole. The report identified some the key issues that needed to be addressed and put forward suggested approaches for further discussion.
- The EOC is also currently working on a number of other projects which address issues of equality and discrimination, e.g. the production of anti-discriminatory language guidelines and guidance on ethnicity monitoring.
- The BMA is involved with other professional stakeholders to address many of the issues relating to equality and diversity within the medical profession.

## Surveyors

### *The current position*

- Women make up about 11 per cent of the membership of the Royal Institution of Chartered Surveyors.
- Research in 2002 found that few women were considering leaving the profession. It was noted that the career barriers for women surveyors were pay discrimination based on their gender; age discrimination; the prevalence of traditional male values in the working environment; lack of role models; poor work/life balance in terms of the need for career breaks and childcare issues.
- The profession also recognises that ethnic minorities are under-represented in this area of the professional services sector.

### *What is being done*

- A page on the RICS website offers guidance to employers on retaining women; it makes the business case for keeping good staff and moving to new ways of working, and provides links to (e.g.) Department of Trade and Industry material on work/life balance, Opportunity Now and Investors in People.
- In April 2003 a workshop was held in Birmingham to encourage Afro-Caribbean pupils to consider surveying as a viable career option.

## Annex C: Statutory qualifications and requirements

Statutory provisions specify minimum eligibility qualifications for each judicial office. The provisions governing the qualifications for judicial appointment were revised by the Courts and Legal Services Act 1990. The statutory requirements for the specific offices should be read in conjunction with this section on statutory qualifications. The six types of qualifications set out in the Act are listed and defined below:

- **Magistrates' Courts qualification:** a right of audience in relation to all proceedings in Magistrates' Courts;
- **County Court qualification:** a right of audience in relation to all proceedings in County Courts;
- **Crown Court qualification:** a right of audience in relation to all proceedings in the Crown Court;
- **General qualification:** a right of audience in relation to all proceedings in any part of the Supreme Court, or all proceedings in County Courts or Magistrates' Courts;
- **High Court qualification:** a right of audience in relation to all proceedings in the High Court;
- **Supreme Court qualification:** a right of audience in relation to all proceedings in the Supreme Court.

A solicitor is regarded as having acquired all such qualifications on admission and a barrister when he or she was called to the Bar. Solicitors and barristers are regarded as continuing to hold their qualifications even if they do not practise. If, after being admitted as a solicitor, and having their name entered on the Roll of solicitors, that person's name is later removed from the Roll, the period during which their name does not appear on the Roll will not count for the purposes of calculating whether that person has held the relevant qualification for the requisite period of time.

### Statutory requirements for individual judicial appointments

- **Lords of Appeal in Ordinary**  
To have been the holder for not less than two years of one or more of the high judicial offices described in the Appellate Jurisdiction Act 1876: this is, in effect, to be a judge of one of the superior courts in England and Wales, Scotland or Northern Ireland. A person who has, for not less than 15 years, held a Supreme Court qualification, or been a solicitor entitled to appear in the Court of Session or the High Court of Justiciary, or been a practising member of the Bar in Northern Ireland, is also qualified (s.6 of the Appellate Jurisdiction Act 1876 as amended by sch. 10 to the Courts and Legal Services Act 1990).

- **The Heads of Division (the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor).**  
To be qualified for appointment as a Lord Justice of Appeal (see below) or to be a judge of the High Court (s.10 Supreme Court Act 1981)
- **Lords Justices of Appeal**  
Ten year High Court qualification or to be a judge of the High Court (s.10 Supreme Court Act 1981 as amended by s.71 of the Courts and Legal Services Act 1990)
- **High Court Judges**  
Ten year High Court qualification or to have been a Circuit Judge for at least two years
- **Deputy High Court Judges**  
As for High Court Judges
- **Circuit Judges**  
Ten year Crown Court or ten year County Court qualification, (or to be a Recorder, or to be the holder of one of a number of other judicial offices of at least three years' standing in a full-time capacity. (The other judicial offices in question are: Social Security Commissioner; President or Chairman of the Appeals Service; President or Chairman of the Employment Tribunal; President or Member of the Immigration Appeal Tribunal; Member of the Lands Tribunal; President of Pensions Appeal Tribunals; President or Chairman of Value Added Tax Tribunals; Special Commissioner of Income Tax; Coroner; Master or Registrar of the Supreme Court; Registrar of Criminal Appeals; District Judge or District Judge of the Principal Registry of the Family Division; and District Judge (Magistrates' Courts).)
- **Recorders**  
Ten year Crown Court or ten year County Court qualification.
- **District Judges (Civil) and Deputy District Judges (Civil)**  
Seven year general qualification.
- **District Judges (Magistrates' Courts) and Deputy District Judges (Magistrates' Courts)**  
Seven year general qualification.
- **Masters and Registrars of the Supreme Court, including Deputy Masters and Registrars**  
Seven year general qualification.

- **Tribunals**

There is a wide range of tribunals; the following is a list of the most frequently made appointments of legal members to tribunals

- *Agricultural Land Tribunals*

Chairmen and Deputy Chairmen – seven year general qualification

- *The Appeals Service*

The President – ten year general qualification or to be an advocate or solicitor in Scotland of at least ten years' standing.

Regional and Full-time Chairmen – to have a general qualification or to be an advocate or solicitor in Scotland.

Fee-paid Chairmen – to have a general qualification or to be an advocate or solicitor in Scotland.

- *Care Standards Tribunal*

The President – seven year general qualification.

Legal members (*fee-paid*) – seven year general qualification

- *Combined Tax Tribunal*

*The office of Presiding Commissioner of Income Tax and the office of President of the VAT and Duties Tribunal* – ten year general qualification, or to be an advocate or solicitor in Scotland (or a barrister or solicitor in Northern Ireland) of at least ten years' standing.

*The Special Commissioners of Income Tax* – ten year qualification; or to be an advocate or solicitor in Scotland (or a barrister or solicitor in Northern Ireland) of at least 10 years' standing.

*Chairmen of the VAT and Duties tribunals* – seven year general qualification; or to be a barrister or solicitor in Northern Ireland of at least seven years' standing. (It is usual for candidates who have been appointed as either a deputy or Special Commissioner or a full or fee-paid Chairman to be appointed to the other jurisdiction – a ten year general qualification applies to the combined post.

- *Employment Tribunals (England and Wales)*

The President (*full-time*) and Chairmen (*full-time and fee-paid*) – seven year general qualification; or to be an advocate or a solicitor in Scotland of at least seven years' standing; or to be a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

- *Immigration Appeal Tribunal*  
The President (*full-time*) and legal members (*full-time and fee-paid*) – seven year general qualification or to be an advocate or solicitor in Scotland of at least seven years’ standing (or a barrister or solicitor in Northern Ireland of not less than seven years’ standing) or to hold such legal and other experience as appears to the Lord Chancellor to make him or her suited for appointment.
- *Immigration Adjudicators*  
The Chief Immigration Adjudicator (*full-time*) and Immigration Adjudicators (*full-time and fee-paid*) – seven year general qualification, or to be an advocate or solicitor in Scotland of at least seven years’ standing (or a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing) or to hold such legal and other experience as appears to the Lord Chancellor to make him or her suited for appointment as an Adjudicator.
- *Lands Tribunal*  
President (*full-time*) – to have held a judicial office under the Crown, or to hold a seven year general qualification, or to be a barrister in Northern Ireland of at least seven years’ standing.  
  
Legal members – seven year general qualification or to be a barrister or solicitor in Northern Ireland of at least seven years’ standing.
- *Mental Health Review Tribunals*  
Regional Chairmen – to have such legal experience as the Lord Chancellor considers suitable. In practice this means a seven year general qualification.  
  
Legal Members – to have such legal experience as the Lord Chancellor considers suitable. In practice this means a seven year general qualification combined usually with some relevant experience such as working with people with psychiatric disorders or knowledge of medical matters.
- *Pensions Appeal Tribunal*  
Seven year general qualification, or to be an advocate or solicitor in Scotland or barrister or solicitor in Northern Ireland, of at least seven years’ standing.
- *Rent Assessment Panels*  
Lawyer Chairmen – at least a seven year general qualification.
- *Social Security and Child Support Commissioners*  
Commissioners (*full-time*) – ten year general qualification, or to be an advocate or solicitor in Scotland of at least ten years’ standing.  
  
Deputy Commissioners (*fee-paid*) – ten year general qualification, or to be an advocate or solicitor in Scotland of at least ten years’ standing or to be a barrister or solicitor in Northern Ireland of at least ten years’ standing.
- *Special Educational Needs and Disability Tribunal*  
The President (*fee-paid*) and Chairmen (*fee-paid*) – seven year general qualification

- **Judge Advocate General**

Ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or being an advocate in Scotland of at least 10 years' standing, or a solicitor who has been entitled to appear in the Court of Session and the High Court of Justiciary for at least 10 years, a member of the Bar of Northern Ireland of at least 10 years' standing, Vice Judge Advocate General or Assistant Judge Advocate General. The necessary statutory qualifications for appointment as Vice Judge Advocate General or Assistant Judge Advocate General are similar, though with seven years substituted for ten years. The statutory requirements for fee-paid posts are also similar, though this time with five years substituted.

# Annex D: Generic competences framework

## GENERIC COMPETENCES FRAMEWORK

JUDGEMENT	PROFESSIONALISM	PEOPLE SKILLS
<p><b>Investigating and Analysing</b> <i>Logically analyses arguments and explores the information available (verbal/written)</i></p> <ol style="list-style-type: none"> <li>1. Accurately analyses and assimilates information and arguments</li> <li>2. Focuses on salient pieces of information e.g. facts, points of contention</li> <li>3. Identifies the real issues; is not lost in detail</li> <li>4. Recalls and refers back to important facts</li> <li>5. Ensures information is complete; follows up inaccuracies and contradictions</li> </ol> <p><b>Resolving and Deciding</b> <i>Applies judgement to reach solutions and make incisive, fair and legally sound decisions</i></p> <ol style="list-style-type: none"> <li>1. Takes an objective and impartial view</li> <li>2. Is confident to take a decision when the solution is unclear or may be unpopular</li> <li>3. Makes informed decisions expeditiously; e.g. knowing when to reserve judgements or adjourn</li> <li>4. Recognises the impact of the case and actions taken on those involved e.g. victims, families, parties, corporations, case law/law reform</li> <li>5. Takes a pragmatic approach (within the legal framework)</li> </ol>	<p><b>Demonstrating Technical Knowledge &amp; Expertise</b> <i>Has acquired in-depth legal or related relevant knowledge of the jurisdiction applied for (see appropriate job specification) or the potential to acquire it</i></p> <ol style="list-style-type: none"> <li>1. Has comprehensive legal knowledge and experience, or other relevant knowledge and experience as appropriate to the particular post</li> <li>2. Demonstrates up-to-date knowledge</li> <li>3. Has attained a high level of achievement in his/her chosen professional arena or in field of expertise/area of law</li> <li>4. Broadens and extends knowledge e.g. learns new areas of law, clarifies uncertainty</li> </ol> <p><b>Demonstrating Integrity and Independence</b> <i>Shows commitment by applying themselves to provide a highly professional service</i></p> <ol style="list-style-type: none"> <li>1. Is conscientious; invests effort to maintain high standards and quality of output proportionate to the nature of the work</li> <li>2. Remains detached; manages own reactions and emotions to ensure consistent application of the law</li> <li>3. Operates effectively in a situation which demands autonomy and self sufficiency</li> <li>4. Actively maintains judicial independence and is not influenced by external forces</li> </ol> <p><b>Showing Authority</b> <i>Keeps effective control of proceedings showing self assurance when influencing others and handling difficult situations</i></p> <ol style="list-style-type: none"> <li>1. Identifies and manages hostility by exerting control at appropriate times</li> <li>2. Steers an appropriate line between informality and maintaining control</li> <li>3. Takes charge without intimidating others</li> <li>4. Is firm when challenged, and asserts authority when necessary</li> <li>5. Maintains patience to remain courteous and professional.</li> <li>6. Directs parties to concentrate on relevant points and take a logical path through the facts and key issues</li> </ol> <p><b>Developing Knowledge</b> <i>Is open to developing an awareness of social issues, enhancing their legal knowledge and understanding of the court service</i></p> <ol style="list-style-type: none"> <li>1. Seeks to be up-to-date in relevant legal areas</li> <li>2. Learns about other cultures and diversity issues</li> <li>3. Recognises how business pressures on the court service can affect court administration and judges' work without affecting judicial independence or quality of the process</li> <li>4. Asks for others' help and advice when necessary</li> <li>5. Broadens and extends knowledge e.g. learns new areas of law, clarifies uncertainty</li> <li>6. Uses past experiences to learn and improve</li> </ol> <p><b>Managing Workload</b> <i>Works effectively and efficiently, preparing and planning to make the best use of time</i></p> <ol style="list-style-type: none"> <li>1. Makes appropriate investigations into time needs and can challenge others' estimates</li> <li>2. Maintains pace to work within time limits (where appropriate)</li> <li>3. Prepares for cases in advance e.g. reads files, checks lists</li> <li>4. Works quickly with significant amounts of information</li> <li>5. Is flexible; juggles workload and copes with the quantity and variety of work</li> <li>6. Clearly documents and records information e.g. orders, file notes etc.</li> </ol>	<p><b>Communicating</b> <i>Takes steps to ensure people understand the proceedings, orders and decisions</i></p> <ol style="list-style-type: none"> <li>1. Clearly explains an order or decision, the reasons for it, and implications of actions taken</li> <li>2. Ensures others understand their options and / or the future progress of the case</li> <li>3. Summarises and confirms information to ensure own and others' understanding</li> <li>4. Keeps others (colleagues, staff, litigants etc.) informed, sharing knowledge and information as appropriate</li> <li>5. Varies style of communication to converse clearly with a variety of people from all backgrounds and cultures</li> </ol> <p><b>Building Positive Relationships</b> <i>Shows sensitivity to the diversity and needs of litigants, witnesses, advocates, staff and colleagues</i></p> <ol style="list-style-type: none"> <li>1. Openly treats people with respect and in a fair and equal manner</li> <li>2. Listens attentively and shows interest</li> <li>3. Gives others an opportunity to air their views, comments and concerns</li> <li>4. Shows an appreciation of other cultures and the needs of individuals from diverse backgrounds</li> <li>5. Understands people's situations and aspects of everyday life e.g. general household expenditure, public transport</li> <li>6. Is aware of people's concerns and anxieties; recognises other's perspectives and priorities</li> <li>7. Works co-operatively and constructively in partnership with colleagues and staff</li> </ol>

# Annex E: List of questions for response

**We would welcome responses to the following questions set out in this consultation paper. For details of how to respond, please see *pages 5-6*.**

1. Do you consider that this consultation paper reflects an adequate understanding of the issues and asks the appropriate questions?
2. Are there any other views or comments relevant to increasing judicial diversity that you would like to draw to DCA's attention? If so, what are they?
3. Do you agree that DCA should proceed with the proposals for change outlined in paragraph 2.9?
4. Do you support the suggestions in paragraph 2.10? If so, which measures do you consider would be most effective and why?
5. Do you have any other suggestions for ways to inform and prepare people for judicial appointment?
6. Do you agree that DCA should consider how to target lawyers early on in their career to raise awareness about becoming a judge?
7. Do you consider that the measures suggested in paragraph 2.11 would help to raise awareness?
8. Do you have any other suggestions for raising awareness about the judiciary among young and potential lawyers, if considered to be worthwhile?
9. Do you consider that the current statutory requirements provide the right starting point for identifying suitable candidates for judicial appointment, and if so why?
10. If you support the retention of the current statutory requirements, do you consider the current time periods of seven and 10 years to be the right ones? If not, what alternative periods do you consider should be adopted?
11. Alternatively, do you consider there to be an argument for changing the statutory requirements?
12. If so, what should be the standard which lawyers must meet before being eligible for judicial office?
13. Do you consider that the fee-paid sitting requirement is a factor which inhibits judicial diversity? If so, why?
14. If you are a lawyer, does the fee-paid service requirement mean that you are unable to pursue a judicial career? If so, why?
15. Is it justifiable that solicitors firms are able to prohibit employees from sitting as a fee-paid judge?

16. Do you consider that a more diverse range of people would be encouraged to apply for judicial office if the fee-paid service requirement was relaxed, made optional or abandoned? Why?
17. If you consider that this policy is no longer necessary or appropriate, are you content that the approach outlined in paragraph 3.10 (i.e. that no direct appointments would be made other than as a result of success through an open competition) provides a sufficiently clear and open means of making direct appointments? If not, how else should direct appointments be made?
18. Do you consider that the legal professional bodies, DCA and/or the judiciary could do more to help people who are not in practice to pursue judicial appointment?
19. If so, what additional help should be available and from whom?
20. Would the availability of a wider range of support options encourage a more diverse range of applicants? If so, who would benefit and why?
21. If you are a lawyer and are not currently practising, has any aspect of the current judicial system deterred you from seeking appointment?
22. What measures would assist you with being able to make an application for judicial appointment?
23. Do you think that the idea of a formal scheme to assist those who have stopped practising for a time is a good idea in principle?
24. What specific problems do you think it would address?
25. If the fee-paid sitting requirement was removed, would a formal scheme be necessary?
26. Are there any other ways of opening up the appointments process which you think DCA should consider to encourage a more diverse range of applicants?
27. If you are a lawyer, would the existence of an intensive sittings scheme encourage you to consider pursuing judicial office? If so, why?
28. Would this be more or less beneficial than the other proposals for access to judicial appointments in this paper? If so, why?
29. If it would not encourage you to apply, why not?
30. What else might encourage you to apply for judicial office?
31. Do you consider that the assessment centre approach should be extended to full-time appointments?
32. Do you consider that the appointments process would be enhanced if selection/search agencies were used to support DCA in securing and processing applications? Would this be likely to identify and attract a wide range of high calibre candidates?

## Annex E: List of questions for response

33. Do you consider that these proposals represent an improvement on the current approach? If so, how?
34. If not, how else do you consider that the process could be improved?
35. Does there remain a case for automatic consultation? In what circumstances?
36. If you disagree that consultation should continue to be part of the appointments process, how else could DCA establish a candidate's track record and previous, proven experience?
37. Do you consider that consultation assessments should be used in making decisions at sift or at interview?
38. Should the use of consultation assessments be further restricted; for example, only to establish whether there is a reason not to appoint someone who has been identified by the process as meeting the required standards?
39. Do you consider that the appointments process would be improved by changing the constitution of panels, for example, so that they were chaired by the independent member or by the judicial member? If so, what would be the benefits?
40. If there were to be a different chair person, do you think that there should be a continuing role for DCA involvement?
41. If so, what should be the role for DCA?
42. If you do not consider that the DCA official should remain on the panel, would you be content for panels to consist of only two members (e.g. the lay member in the chair, supported by the judicial member)?
43. If not, what other form of constitution would you suggest and why?
44. Do you consider that there are any more improvements which should be made to the judicial appointments processes before the Judicial Appointments Commission is established? If so, what?
45. If you do consider that changes should be made, why do you think that it is important for this to be done *prior* to the setting up of the Judicial Appointments Commission?
46. With regard to publicity for events and the appointments process generally, in what other ways do you consider that DCA should raise awareness about the system among disabled lawyers?
47. Do you consider that it would be helpful to establish a single point of contact for disabled applicants and judges to deal with a wider range of enquiries as well as the appointments process?
48. Is there anything else that you consider DCA (or the legal professions) should be doing to encourage and assist disabled lawyers who wish to seek judicial appointment and disabled judges?

49. Do you consider that there are judicial working practices which have an adverse impact on judicial diversity? If so, what are they? What might be done to manage them?
50. Do you support the introduction of any of the options listed in the paragraph above? If so, which ones and why?
51. Do you foresee any difficulties with implementing any of the options? If so, which ones and why?
52. Do you consider that an increased range of flexible working options would encourage a more diverse range of applicants for appointment? If so, who would benefit and why?
53. If you are a judge, would you be in favour of any of these options? If so, which ones and why?
54. Are there any other flexible working arrangements which you would like the Department to consider?
55. If you are a lawyer, would the availability of any of these flexible working options encourage you to apply for judicial office? If so, which ones and why?
56. Are there any other flexible working arrangements which you would like DCA to consider?
57. Do you consider that the preclusion of return to practice acts as a significant deterrent to those who might otherwise consider a judicial career? If so, why?
58. If you are a judge, how would you have viewed the option to return to practice when you were considering applying for appointment?
59. Would you welcome now the opportunity to return to practice?
60. If you are a lawyer, would the removal of the preclusion policy encourage you to apply for judicial office? If so, why?
61. If not, why not?
62. Do you have any concerns about the potential removal of this policy?
63. Do you consider that there is a perception that lawyers must have followed a particular career path in order to be in contention for appointment to the High Court?
64. If so, do you consider that this might be one of the reasons why the senior judiciary is not more diverse? How might this issue be addressed?
65. Are there other factors which inhibit diversity in senior judicial ranks that you consider need to be addressed?

## Annex E: List of questions for response

66. Do you consider that increased awareness of the availability of opportunities to progress from one rank to another would act as an incentive for individuals when deciding whether to seek judicial office?
67. If you are a judge, do you favour the establishment of a support structure to offer mentoring and career advice?
68. If you are a lawyer, would the ability to progress through the judicial ranks and/or the availability of a support structure be a factor in encouraging you to apply for appointment?
69. Do you agree that the problems described above act to deter people from entering the profession, and/or cause them to leave it?
70. If so, how do you consider the problem should be tackled and by whom?
71. In particular, what responsibilities do the legal professions and DCA have in addressing this issue?
72. Are there other problems or difficulties which impact on diversity and which you consider need to be addressed?
73. Do you think that the route of articulated clerkships, whereby attendance at university was not necessary to become a solicitor, should be reintroduced?
74. What do you consider the respective branches of the profession should be doing to promote the possibility of judicial appointment as a career option for lawyers?
75. Which of these measures do you consider should be their priority?
76. Do you agree that it would be helpful to do more work fully to understand the demographics of the legal profession?
77. If so, are there any specific issues which you consider should be covered as part of this work?
78. How best can stakeholders be involved in the continuing improvement process?

## Questions from Regulatory Impact Assessment (*Annex F*)

79. What is your view of the proposals under option 1 (set out in more detail in the main body of the consultation paper), and how has your experience affected your view of the appointments process? If you have not pursued an application for a judicial appointment, please let us know if any of the above, in your view, were contributing factors.
80. If you disagree with any aspects of our analysis of the benefits of the three options we would be interested to hear from you. Please set out supporting reasons with your response.
81. If you disagree with our analysis above, we would be interested to hear from you. Please set out supporting reasons with your response.
82. As a member of the legal profession, what do you perceive to be the potential costs for all the options? Please set out supporting reasons with your comments.
83. We would be grateful for stakeholders' views on the above analysis of options 1, 2 and 3. How will factors in the appointment process or working practices specifically affect individuals on the basis of gender, ethnicity or disability?
84. What do you consider the costs may be of releasing a partner or fee-earner to serve in judicial office? Do you regard this as a burden to business, and if so, in what way?

# Annex F: Regulatory impact assessment

## Partial Regulatory Impact Assessment – incorporating both Race Impact and Judicial Impact Assessments

### 1. Title and subject of proposal

*Increasing the Diversity of the Judiciary: A Consultation Paper*

### 2. Purpose and intended effect of measure

#### *i. The objective*

The judiciary of England and Wales does not reflect the diversity of society today. The objective of this project is to consider how this situation can be improved while continuing to make judicial appointments based solely on merit. It is looking to identify the barriers that deter able candidates from wishing to become judges, and to find ways of solving or minimising these problems.

The Department for Constitutional Affairs (DCA) has already worked with stakeholder groups to identify the key areas which need to be addressed. This consultation paper is the next step in that process. It will only be following this consultation that DCA will be able to identify priorities for future work and put forward specific policy options for addressing this issue.

The DCA will publish a summary of responses to the consultation paper and details of the programme of work that will be implemented as a result. This RIA will be revised to reflect that programme of work and the revised version will be published with the summary of responses to this consultation. There will therefore be further opportunity for comment on the RIA at that stage.

The stakeholder input to this consultation will be used to inform work to encourage a wider range of lawyers to apply for judicial office.

#### *ii. The background*

DCA's manifesto emphasises the need for a diverse judiciary, which more accurately reflects the diversity of the nation. It recognises the Government's responsibility to change over time the make-up of those who hold judicial office in England and Wales. That is why the Government has decided to set up an independent Judicial Appointments Commission which may open up the bench to candidates who might in the past not have thought it worth applying and will provide the opportunity to establish better transparency and accountability in the selection process. This is an important step forward, but it is currently expected that the Commission will not be in operation before April 2006. As such, the Government believes that it should work to improve judicial diversity in advance of the Commission coming into being. In addition, there are a range of issues which are, and will continue to be, the responsibility of the Government (or the professions) and it is important that these are addressed as quickly as possible.

Any action proposed by DCA will be addressed only to those areas identified as presenting difficulties and proposed solutions will be proportionate to the problem to be resolved.

### *iii. Risk assessment*

With respect to the current extent of diversity of the judiciary, there are only 14 judges out of 162 in the High Court and above who are women and only one of minority ethnic origin. Overall, the judiciary is composed only of 25 per cent of women and 7 per cent of individuals from a minority ethnic background. By comparison, the 2001 population census showed that 51 per cent of the general population were women, and the labour force survey in the same year showed that women represented 44 per cent of the working age labour force. The census also showed that 7.9 per cent of the population identified themselves as being members of an minority ethnic group.

#### **Trends in applications and appointments to the judiciary from women and ethnic minorities, 1998-2003**

<b>Applications</b>	<b>1998-99 %</b>	<b>2002-03 %</b>
Women	24.6	29.5
Ethnic minorities	5.1	8.7
<b>Appointments</b>	<b>1998-99 %</b>	<b>2002-03 %</b>
Women	23.5	30.7
Ethnic minorities	5.4	8.9

DCA publishes details of judicial appointments which it currently monitors by gender and race. The most recent statistics are available at <http://www.dca.gov.uk/statistics/judjust.htm>

If the government does not take appropriate action to try and improve these figures, there may be the following risks:

- *loss of public confidence in the judiciary:* Society must have confidence that the judiciary has a real understanding of the problems facing people from all sectors of society with whom they come in to contact;
- *loss of applications from talented lawyers from all backgrounds: in fairness to all potential applicants, the system must be one which is capable of appointing the most talented and able lawyers, regardless of their background or circumstances;*
- *non-compliance with equality legislation.*

### *iv. Whom it affects*

- Indirectly
  - the public, in respect of their confidence in the judiciary and the judicial system as a whole
- Directly
  - existing and prospective legal professionals from all quarters
  - the various governing bodies of the legal profession, such as The Law Society, the Bar Council and the Institute of Legal Executives, in respect of responsibilities that may arise in order to affect the aims of the project
  - the Judiciary

## 3. Options

### **Defining the Change in terms of the Judiciary**

Any policy proposals developed as a result of the consultation exercise may have an effect on the judiciary in respect of issues such as opportunities for career progression and working practice. The following is a judicial impact assessment defining the potential change for the judiciary if the options for change listed below are taken forward:

- **Case load**

This proposal does not have any impact on the caseload of a judicial office holder. For example it does not create any new categories of cases; change the nature of existing cases; have any impact on the appeals process; or change the volume of an existing type of case.
- **Direct impact**

The judiciary may be directly affected by possible changes to judicial working practice. Any changes to judicial working practice will be to effect flexible working arrangements to enable more people to apply to the judiciary and taking into account other commitments they have, such as child caring.

Successful initiatives have already been introduced and include salaried part-time working, which was introduced in 2001 for new District Judge and tribunal appointments. As a result, around 40 judges now work on a flexible basis, sitting between two and four days a week. Given its success and positive effect, the scheme has been extended. The Department announced that from 1 April 2005, all new and existing salaried appointments below High Court level will be suitable for part-time sitting unless the nature of the office or business needs dictate otherwise.

- **Indirect impact**

If the DCA's Work Shadowing Scheme is extended, or a new mentoring scheme introduced, this will increase the number of lawyers wishing to take part and may therefore impact on demand for judicial time. However, participation in existing and/or new schemes is and will remain voluntary.

- **Timing and Location**

Any changes that occur as a result of the consultation exercise and any subsequent work will be likely to have the same impact across all circuits. Consideration will be given to the effect of regional factors that may need to be taken into account when implementing any changes.

- **Views of the Judiciary**

The Department has worked closely with the Judiciary from the start of this project. The Lord Chief Justice appointed Mrs Justice Hallett as the senior liaison judge on diversity. She is a member of the senior steering group which is responsible for overseeing this consultation process.

Members of the judiciary were also invited to the series of seminars with stakeholders to discuss the issues to be contained within the consultation paper. In addition, further discussions about the draft paper were held with the Council of Circuit Judges and the Association of District Judges.

- **Support Implications**

- As part of the consultation the Department will be seeking views on what can be done, including the support required, to encourage lawyers from non-traditional backgrounds to apply to the judiciary. Appointment will however continue to be made on merit alone.
- The potential training implications of any proposals under consideration following the consultation exercise will be discussed fully with the Judicial Studies Board before those proposals are finalised.
- The paper is consulting on what other support requirements a judicial office holder may need in order to do their work effectively. Any proposals put forward in relation to this will be assessed to see if they impose any additional burdens on the Court Service.
- It is not envisaged that any changes will affect the balance of work in the courts.

- **Recruitment**

- The implications for recruitment are significant. The primary purpose of the project is to seek ways to increase the number of applicants for judicial appointment. However as stated above appointment will remain to be strictly on merit.

- **Other issues affecting the judiciary**

The consultation paper asks for views on existing judicial working practices and how these may act as a deterrent to those wishing to apply for judicial office. Dependent on the responses to the paper, issues may arise which will affect the judiciary in this respect; however full judicial impact assessments will be done in relation to any subsequent policies that may be proposed.

- **Development of plans**  
DCA will, following consultation, continue to develop this impact assessment. This will include formulating and setting out specific options for action and development.

It is contended that action may be required in all the areas listed below. The series of focus groups held with stakeholders confirmed that these different areas were cumulative in contributing to a lack of diversity in the judiciary.

### The Options

The first three options in this section summarises the proposals in the consultation paper. The fourth option covers the implications of taking no action to increase judicial diversity. It should be noted that options 1-3 are not mutually exclusive. It may well be that action is taken in respect of all three areas:

#### **Option 1: Addressing potential barriers to becoming a judge and in judicial working practice.**

- i. Addressing policies and judicial practices, which may pose potential barriers to judicial appointment for those in under-represented groups in the judiciary.
- ii. Providing alternative methods by which applicants can demonstrate suitability for appointment on merit.
- iii. Providing additional measures within the appointment process to enable academics; specialist practitioners; employed barristers or government legal professionals to apply for judicial office.

79. What is your view of the proposals under option 1 (set out in more detail in the main body of the consultation paper), and how has your experience affected your view of the appointments process? If you have not pursued an application for a judicial appointment, please let us know if any of the above, in your view, were contributing factors.

#### **Option 2: Education and awareness of the career opportunities offered by the judiciary.**

To consider whether the legal professions have sufficient awareness and understanding of judicial appointment opportunities and to review what more can be done to create understanding and awareness of the potential benefits and career opportunities:

- i. Creation of an effective communication and outreach programme to encourage applicants for judicial appointment.

### Option 3: Creating a long-term strategy

It is recognised that the programme of work which results from this consultation process should not be a one-off exercise. There will be a continuing need for the judicial system to be monitored to ensure that it can be further modified as necessary in the light of future developments.

- i. Creation of a mechanism for maintaining a continuous programme of improvements in judicial diversity

### Option 4: Do nothing

- The legal profession is in itself made up of diverse groups, with the numbers entering the legal profession to be representative of society. However this does not translate through to the judiciary; by the time lawyers are considering whether to apply for judicial office, the diversity of the applicants has greatly reduced. As a result, although there is a small ‘trickle up’ effect, it is not in itself sufficient to bring about sufficient changes in judicial diversity. As such, taking no action will result in the judiciary continuing to be unrepresentative of society as a whole.
- In respect of social impacts, there are significant financial implications for those wanting to enter the legal profession. Many able individuals are put off or prevented from pursuing a career in law because of restricted financial resources. If the professions do not address this issue, it may result in certain sectors of society being excluded from the legal profession altogether. This in time will affect the pool of applicants available for judicial appointment and the judiciary will not be reflective of those from such backgrounds.

## 4. Benefits

Detailed below are the overall benefits of Options 1, 2 and 3 which the department, after initial consultation with stakeholders, considers to be the best way forward in addressing the issue of increasing judicial diversity.

### Options 1, 2 and 3

- *Economic* – Neither of the three options has any potential short or long term impact on the economy. The aim of this policy is to create the framework for a judiciary that reflects the diversity of society today.
- *Environmental* – There are no environmental factors in relation to any of the options and therefore this is not applicable.
- *Social* – For all three options (1, 2 and 3) the main benefit is the social impact of the proposals. Society has become and is becoming increasingly diverse. The three options are designed to ensure that the judiciary also becomes diverse in line with societal trends. This is consistent with departmental and governmental policy.

In particular, there are the following considerations:

- Public confidence in the judiciary will be increased if it can be seen to be reflective of society and therefore that judgements are being made against a background of knowledge and understanding of different community needs, issues and problems.
- More lawyers from a wide range of backgrounds will be more likely to seek judicial office if they have confidence that the system is fair and genuinely open to all individuals who can demonstrate the relevant skills and experience to the required standard.
- Individuals may also be encouraged to apply if the structure of judicial offices are more compatible with other (personal) commitments.

80. If you disagree with any aspect of our analysis of the benefits of the three options, we would be interested to hear from you. Please set out supporting reasons with your response.

### **Option 4: Do nothing**

*Economic:* As detailed above these proposals are concerned with social impact and do not have any economic factors attached. There are no economic benefits to maintaining the current composition of the judiciary, their working practices or the appointments process.

*Environmental:* As stated above environmental factors are not applicable to these proposals.

*Social:* If the situation remains unchanged the judiciary will not be reflective of the society of England and Wales, which they serve. The potential exists for the judiciary to be seen to be out of touch and lacking in understanding of societal issues and demands.

There may also be a potential lack of confidence from those of diverse backgrounds both in terms of individuals who may come in contact with the legal system and those from differing backgrounds who might wish to apply for judicial appointment but may be deterred and feel a lack of confidence in their ability to succeed.

81. If you disagree with our analysis above, we would be interested to hear from you. Please set out supporting reasons with your response.

## 5. Costs

- Economic

### Options 1, 2 and 3

There will not be a cost to the economy (see above) but implementation may mean some costs are incurred by the public sector, in this case DCA and also by the legal professions.

- If successful there should be a resultant rise in the number of applications for judicial appointment. The costs therefore would relate to administrative costs in the processing of these increased applications.
- The intention is also to have a more focused and increased communication and outreach strategy, which would incur publicity, administration and labour costs.
- Costs relating to the implementation of any subsequent policy.
- Although members of the legal profession have to pay a fee to attend pre-judicial application training courses by their respective professional bodies, the bodies themselves may incur additional developmental costs, if demand for training increases. Additionally the professional bodies may have to underwrite costs if these courses fail to attract participants in sufficient numbers.
- The legal profession may be required to assess the extent of its responsibility in respect of increasing funding to those entering the legal profession.
- Cost to solicitors firms – there may be reluctance on the part of solicitors firms to release partners or fee-earners to sit as fee paid judges. This is especially pertinent in respect of the smaller two/three partner solicitor firms, where they will lose income on the days that the partner is sitting. The exercise will be consulting on this and on possible solutions, to reduce this cost burden.

82. As a member of the legal profession, what do you perceive to be the potential costs for all the options? Please set out supporting reasons with your comments.

- *Environmental* – For reasons explained in Section 4 this does not apply to any of the four options.
- *Social* – Option 4 – Do Nothing. As we have explained in section 4, there are no benefits to be gained from doing nothing. To do nothing means that the judiciary continues to be unreflective of the people likely to come before them. The costs of this are a potential loss of confidence in the effectiveness of the judiciary in their ability to understand the issues of society in regard to the cases that come before them.

### 6. Equity and fairness

#### Options 1, 2 and 3

We have already identified that the legal profession is generally representative of various minority groups. This is not the case for the judiciary, where minority groups are not adequately represented. From informal consultation with a wide cross section of stakeholders we have identified that barriers and deterrents do exist for people on the basis of ethnicity, gender and disability, in seeking judicial appointment.

The department is seeking to increase equity and fairness, in line with its duty to promote equality, by removing or reducing the various barriers and deterrents that are preventing able candidates from diverse backgrounds from applying to the judiciary. The aim of this exercise is to widen the pool of applicants for judicial office.

Options 1, 2 and 3 have been formulated based on the feedback and input from stakeholders, as the key issues to be addressed. The department considers that options 1, 2 and 3 present a package of proposals that will serve to increase equity and fairness for minority groups and promote equality of opportunity.

We believe that members of the legal professions will have greater opportunity to become a judge if they wish to do so (and if they can demonstrate the relevant skills and experience to the required standard), if a combination of these options are taken forward. A wider number of able candidates will feel confident in applying for judicial appointment, with the knowledge that they will receive the appropriate level of support in the form of, for example, flexible working practices.

DCA also considers that by removing potential barriers to minority groups that there will also be a beneficial impact on relations between people of different ethnic backgrounds. This will increase confidence in the judiciary by promoting good relations between people of different racial backgrounds, especially for individuals who may come into contact with the courts.

83. We would be grateful for stakeholders' views on the above analysis of options 1, 2 and 3. How will factors in the appointment process or working practices specifically affect individuals on the basis of gender, ethnicity or disability?

#### Social inclusion

The exercise will be consulting on the issue of socio-economic exclusion to consider the effects the following have in respect of a person applying for judicial appointment;

- financial burdens that an individual has to incur in order to qualify
- educational background
- professional background

### *Minority inclusion*

For the purposes of this project diversity includes;

- gender
- ethnicity and
- disability

There will be examination of both specific and crossover issues, which affect these groups preventing them from applying for judicial appointment. The focus group events have already provided a good indication of what these issues are but the consultation paper will it is envisaged provide comprehensive data of all perspectives, from which the diversity strategy can then be fully drawn.

[Although the paper considers future work that might be needed to address other aspects of diversity in the judiciary they do not form part of the subject of this consultation].

### *Merit as benchmark*

The governing principle of merit based appointments is to remain the sole criteria for appointment, in any work that is done to increase judicial diversity. The outcome of the project is to see what measures can be done to enable the widening of the applicant pool.

There is no intention currently to increase the number of judicial posts available. Therefore if the eventual diversity strategy is successful there will be an increase in competition for the number of judicial office posts available.

## **7. Early/informal consultation**

Consultation has already taken place with stakeholders, who included academics, representatives from a wide-range of interests groups of the legal profession and members from various branches of the judiciary.

- Academics were consulted on existing work, research and projects that have taken place in this regard.
- A series of focus group events culminating in a conference was held with stakeholders to give as much detail as possible about the issues in respect of judicial diversity; and to seek their views and input to ensure that the consultation paper comprehensively covers all issues.
- A steering group has been formed with a representative from the judiciary, the President of The Law Society and the Chair of the Bar Council, to ensure engagement and oversight from all quarters. They have all seen initial copies of the consultation paper and have had chance to comment on the drafting.

### 8. Small firms impact test

This impact assessment has identified that small solicitor firms may be affected if partners or fee-earners of such firms wish to sit as judges. However this has always been the position for small solicitor firms. One of the reasons that such individuals do not apply for judicial office is that it may mean a loss of income for the firm on the days they sit judicially. The individual is paid a sitting fee and the paper seeks views on the merits of having the fee for judicial office paid directly to the firm, as opposed to the individual, as happens at present.

84. What do you consider the costs may be of releasing a partner or fee-earner to serve in judicial office? Do you regard this as a burden to business, and if so, in what way?

### 9. Competition assessment

Not applicable to this particular initiative. Completion of the filter shows no impact on competition.

### 10. Enforcement and sanctions

The consultation paper does not outline a specific proposal for enforcement.

However any subsequent recommendations may require enforcement by the DCA and possibly the legal professions. In respect of the legal professions, this project is being taken forward with a wide range of interested parties and with the full support of the Bar Council and The Law Society.

### 11. Monitoring and review

The paper seeks views on how best monitoring can take place in the future. The Department will ensure that any changes implemented, as a result of the consultation paper will be fully evaluated as to their effects on judicial diversity. It will be important to ensure that the project is not seen as simply a 'one-off' exercise; the judicial system will need to be continually monitored to ensure that it keeps pace with future developments. The Department has for a number of years worked with a wide range of stakeholders with an interest in judicial diversity and is committed to maintaining this approach. The project already has and will continue as part of the consultation exercise to seek views on how best to ensure that stakeholders are able to contribute to the continuing process of increasing judicial diversity.

One option would be to establish a co-ordinated body, which could be charged with tracking and assessing improvements across the legal profession. However, it is recognised that it would be important to ensure that any such group had a focused remit, with members being willing to participate in taking any necessary action.

## 12. Consultation

### i. *Within government*

Court Service • Legal services • Home Office • Northern Ireland Court Service • Scottish Executive Justice Department • Law Officers • Crown Prosecution Service

### ii. *Public consultation*

To take place in October 2004 for 12 weeks. The Consultation Paper will be widely distributed amongst all stakeholders, courts and the general public. A series of roadshow events, which will be publicised, have been organised across England and Wales to enable maximum engagement and response to the paper.

## 13. Summary and recommendation

1. The lack of judicial diversity is mainly caused by a lack of diversity in the pool from which the applicants are drawn. Work already undertaken, most notably with stakeholder focus groups, has shown that the best way forward is a combination of options which will comprehensively address the issue and allow for real change. The options are summarised below:
  - i. Addressing policies and judicial practices, which pose potential barriers to judicial appointment for those in under-represented groups in the judiciary and
  - ii. Providing alternative methods by which applicants can demonstrate suitability for appointment on merit and
  - iii. Providing additional measures within the appointment process to enable academics; specialist practitioners; employed barristers or government legal professionals to apply for judicial office and
  - iv. Creation of a strategy for oversight of diversity matters in the future, to ensure improvements in judicial diversity are continued and
  - v. Creation of an effective communication and outreach programme to encourage applicants for judicial appointment.
  
2. A public consultation is necessary and is proportionate to the importance of the proposed project. Any subsequent policy is intended to encapsulate all relevant needs in order to encourage as wide a range of applicants for judicial appointment as possible. Consultation is therefore an essential means of gathering views on what the problems are and how they should be solved. This will allow for effective prioritisation of the work that needs to be done; for the issue to be comprehensively addressed and for the successful delivery of the objective, namely the move towards a judiciary that is reflective of the diversity of society today.

# Annex G: Statistics

## Gender

DCA does not hold complete figures on gender for judiciary in post before 1992. However, *Table 1* shows the numbers of women in the posts of High Court Judge, Circuit Judge, Recorder and Stipendiary Magistrate (now known as District Judge (Magistrates' Courts)) during various years between 1950 and 1987. *Table 2* shows figures for women in post for all judicial posts in the Courts from 1992 until 2004. Full historical figures for the number of women in tribunal posts are not available. However, *Table 3* shows the numbers in full-time and fee-paid legal tribunal posts in 2002-2003.

**Table 1: Female High Court and Circuit Judges, Recorders and Stipendiary Magistrates in post, 1950-1987**

Year		High Court	Circuit Judges	Recorders	Stipendiary Magistrates
1950	Male	33	60	121	41
	Female	0	0	0	1
	Female %	0	0	0	2.4
1960	Male	48	74	101	42
	Female	0	0	0	1
	Female %	0	0	0	2.3
1970	Male	72	102	111	43
	Female	1	1	1	2
	Female %	1.4	1.0	0.9	4.4
1980	Male	70	297	404	49
	Female	3	7	14	2
	Female %	4.1	2.3	3.4	3.9
1981	Male	74	322	425	51
	Female	3	10	22	3
	Female %	3.9	2.9	4.9	5.6
1982	Male	72	323	450	52
	Female	3	10	22	4
	Female %	4.0	3.0	4.7	7.1
1983	Male	74	337	451	54
	Female	3	12	20	4
	Female %	3.9	3.4	4.3	6.9

**Table 1: Female High Court and Circuit Judges, Recorders and Stipendiary Magistrates in post, 1950-1987 (continued)**

Year		High Court	Circuit Judges	Recorders	Stipendiary Magistrates
1984	Male	74	337	441	55
	Female	3	12	20	4
	Female %	3.9	3.4	4.3	6.8
1985	Male	74	349	411	55
	Female	3	12	21	5
	Female %	3.9	3.3	4.8	8.3
1986	Male	74	361	549	55
	Female	3	15	26	5
	Female %	3.9	4.0	4.5	8.3
1987	Male	76	374	535	58
	Female	3	16	23	8
	Female %	3.8	4.1	4.1	12.1

Source: DCA Judicial Statistics

**Table 2: Women judges in post (courts only) 1992-2004**

Year		Lords of Appeal in Ordinary	Heads of Division	Lord Justices of Appeal	High Court Judges	Circuit Judges	Recorders & Assistant Recorders	District Judges	Deputy District Judges	District Judges (Magistrates Court)/ Stipendiary Magistrates	Deputy District Judges (Magistrates Court)/Acting Stipendiary Magistrates	Total
1992	Male	10	n/k	26	79	460	1,172	241	N/K	71	n/k	2,059
	Female	0	n/k	1	4	24	89	17	N/K	9	n/k	144
	Female %	0	n/k	3.7	4.8	5.0	7.1	6.6	N/K	11.3	n/k	6.5
1993	Male	10	n/k	28	89	465	1153	257	658	70	n/k	2,730
	Female	0	n/k	1	4	25	89	20	89	9	n/k	237
	Female %	0	n/k	3.5	4.3	5.1	7.7	7.2	11.9	11.4	n/k	8.0
1994	Male	10	5	28	89	485	1,155	270	639	75	n/k	2,756
	Female	0	0	1	6	29	102	29	84	10	n/k	261
	Female %	0	0	3.5	6.3	5.6	8.8	9.7	11.6	11.8	n/k	8.7
1995	Male	12	5	31	89	488	1,139	289	623	79	n/k	2,755
	Female	0	0	1	7	29	106	33	98	13	n/k	287
	Female %	0	0	3.1	7.3	5.6	9.3	10.3	13.6	14.1	n/k	9.4
1996	Male	11	5	34	89	526	1,132	300	602	77	n/k	2,776
	Female	0	0	1	7	28	122	36	79	15	n/k	288
	Female %	0	0	2.9	7.3	5.1	10.8	10.7	11.6	16.3	n/k	9.4
1997	Male	12	5	34	89	522	1,121	297	618	78	n/k	2,776
	Female	0	0	1	8	30	128	38	72	14	n/k	291
	Female %	0	0	2.9	8.3	5.4	10.3	11.3	10.4	15.2	n/k	9.5
1998	Male	12	5	34	92	525	1,128	330	655	80	88	2,949
	Female	0	0	1	7	36	141	52	90	13	19	359
	Female %	0	0	2.9	7.1	6.4	12.5	13.6	12.1	14.0	17.8	10.9

**Table 2: Women judges in post (courts only) 1992-2004 (continued)**

Year		Lords of Appeal in Ordinary	Heads of Division	Lord Justices of Appeal	High Court Judges	Circuit Judges	Recorders & Assistant Recorders	District Judges	Deputy District Judges	District Judges (Magistrates Court)/ Stipendiary Magistrates	Deputy District Judges (Magistrates Court)/Acting Stipendiary Magistrates	Total
1999	Male	12	4	34	91	521	1,195	348	651	84	109	3,049
	Female	0	1	1	8	38	157	54	115	14	22	410
	Female %	0	20	2.9	8.1	6.8	13.1	13.4	15.0	14.3	16.8	11.9
2000	Male	12	4	33	96	531	1,173	351	603	78	124	3,005
	Female	0	1	2	8	43	162	67	145	15	30	473
	Female %	0	20	5.7	7.7	7.5	12.1	16.0	19.4	16.1	19.5	13.6
2001	Male	12	4	33	97	525	1,197	352	611	82	133	3,046
	Female	0	1	2	8	44	164	67	150	16	33	485
	Female %	0	20	5.7	7.6	7.7	12.1	16	19.7	16.3	19.9	13.7
2002	Male	12	4	33	99	548	1,164	354	621	83	126	3,044
	Female	0	1	2	6	56	162	80	154	20	30	511
	Female %	0	20	5.7	5.7	9.3	12.2	18.4	19.9	19.4	19.2	14.4
2003	Male	12	4	33	101	563	921	347	624	82	137	2,824
	Female	0	1	3	6	59	151	79	161	22	39	521
	Female %	0	20	9.1	5.6	9.5	14.1	18.5	20.5	21.2	22.2	15.6
2004	Male	11	4	35	98	560	1,186	350	603	100	135	3,082
	Female	1	1	2	9	63	180	81	179	24	38	578
	Female %	8.3	20	5.4	8.4	10.1	13.2	18.8	22.9	19.4	22.0	15.8

Source: DCA Judicial Statistics

**Table 3: Women in tribunal posts (legal posts) 2002-03**

	President/Full time chairmen		Free paid legal posts etc.	
	Male	Female	Male	Female
<b>No.</b>	630	98	1,671	724
<b>%</b>	86.5	13.5	69.8	30.2

Source: *Judicial Appointments Annual Report 2002/2003*

Alongside these figures, we need to consider the number of women that apply, are interviewed and are appointed each year. Tables 4-8 show numbers of women who applied, were interviewed and were appointed for main competitions from 1998-99 to 2002-03. Statistics for the main competitions held in each year are shown. Not all tribunals competitions are shown in the tables, due to the large number of different competitions which are held each year. The main tribunals competitions, for which statistics are held, are included in the tables.

**Table 4: Applications, interviews and appointments to judicial office by gender, 1998-99**

		High Court <sup>1</sup>	Circuit Judges	Recorders <sup>4</sup>	Assistant Recorders	District Judges (including family division)	Deputy District Judges (including family division)	Stipendiary Magistrates	Acting Stipendiary Magistrates	Full time Chairmen of the Employment Tribunals	Part time Chairmen of the Employment Tribunals	Full time Immigration Adjudicators	Full time Chairmen of the Independent Tribunals Services	Part time legal members of Mental Health Review Tribunals
<b>Applications</b>	<b>Male</b>	<b>80</b>	<b>129</b>	<b>147<sup>2</sup></b>	<b>661</b>	<b>297</b>	<b>340</b>	<b>44</b>	<b>217</b>	<b>35</b>	<b>129</b>	<b>24</b>	<b>79</b>	<b>107</b>
	%	92.0	89.0	85.5	82.6	82.5	75.6	83.0	78.3	85.4	64.5	70.6	67.0	61.5
	<b>Female</b>	<b>7</b>	<b>16</b>	<b>25</b>	<b>139</b>	<b>63</b>	<b>110</b>	<b>9</b>	<b>60</b>	<b>6</b>	<b>71</b>	<b>10</b>	<b>39</b>	<b>67</b>
	%	8.0	11.0	14.5	17.4	17.5	24.4	17.0	21.7	14.6	35.5	29.4	33.1	38.5
<b>Interviews</b>	<b>Male</b>	<b>n/a</b>	<b>37</b>	<b>n/a</b>	<b>244</b>	<b>104</b>	<b>163</b>	<b>15</b>	<b>118</b>	<b>13</b>	<b>54</b>	<b>16</b>	<b>20</b>	<b>29</b>
	%		84.1		84.1	80.0	71.2	79.0	80.8	18.7	66.7	72.7	60.6	53.7
	<b>Female</b>	<b>n/a</b>	<b>7</b>	<b>n/a</b>	<b>46</b>	<b>26</b>	<b>66</b>	<b>4</b>	<b>28</b>	<b>2</b>	<b>27</b>	<b>6</b>	<b>13</b>	<b>25</b>
	%		15.9		15.7	20.0	28.8	21.1	19.2	13.3	33.3	27.3	39.4	46.3
<b>Appointments</b>	<b>Male</b>	<b>7</b>	<b>13</b>	<b>78</b>	<b>114</b>	<b>35</b>	<b>68</b>	<b>5</b>	<b>54</b>	<b>5</b>	<b>16</b>	<b>9</b>	<b>8</b>	<b>16</b>
	%	100	86.7	78.8	83.8	81.4	68.0	71.4	81.8	83.3	69.6	69.2	53.3	61.5
	<b>Female</b>	<b>0</b>	<b>2</b>	<b>21</b>	<b>22</b>	<b>3</b>	<b>32</b>	<b>2</b>	<b>12</b>	<b>1</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>10</b>
	%	0.0	13.3	21.2	16.2	18.6	32.0	28.6	18.2	6.7	30.4	30.7	46.7	38.5

Source: DCA Judicial Appointments Annual Report 1998-1999

<sup>1</sup> In 1998-99, the Lord Chancellor invited applications for appointment to the High Court for the first time. Of those appointed, four had applied to be considered for appointment and three were invited to accept appointment. There were no interviews.

<sup>2</sup> Before the abolition of the post of Assistant Recorder in 2000, Recorders were chosen from the ranks of Assistant Recorders. The figures for applications for the 1998-99 competition are therefore the number who were eligible for consideration for promotion.

**Table 5: Applications, interviews and appointments to judicial office by gender, 1999-2000**

		Circuit Judges	Recorders <sup>3</sup>	Assistant Recorders	District Judges (including PRFD)	Deputy District Judges (including PRFD)	Acting Provincial Stipendiary Magistrates	Full time Chairman of the Employment Tribunals	Part time Immigration Adjudicators	Part time Chairmen of the Special Educational Needs Tribunal
<b>Applications</b>	<b>Male</b>	<b>164</b>	<b>86</b>	<b>610</b>	<b>166</b>	<b>328</b>	<b>170</b>	<b>43</b>	<b>79</b>	<b>67</b>
	%	91.6	86.9	81.9	78.7	64.4	83.3	84.3	67.0	53.2
	<b>Female</b>	<b>15</b>	<b>13</b>	<b>135</b>	<b>45</b>	<b>181</b>	<b>34</b>	<b>8</b>	<b>39</b>	<b>59</b>
	%	8.4	13.1	18.1	21.3	35.6	16.7	15.7	33.1	46.8
<b>Interviews</b>	<b>Male</b>	<b>71</b>	<b>n/a</b>	<b>212</b>	<b>64</b>	<b>153</b>	<b>94</b>	<b>18</b>	<b>53</b>	<b>25</b>
	%	88.8		80.6	75.3	58.2	81.7	85.7	71.6	43.9
	<b>Female</b>	<b>9</b>	<b>n/a</b>	<b>51</b>	<b>21</b>	<b>110</b>	<b>21</b>	<b>3</b>	<b>21</b>	<b>32</b>
	%	11.3		19.4	24.7	41.3	18.3	15.7	28.4	56.1
<b>Appointments</b>	<b>Male</b>	<b>28</b>	<b>47</b>	<b>92</b>	<b>17</b>	<b>86</b>	<b>30</b>	<b>9</b>	<b>36</b>	<b>10</b>
	%	90.3	83.9	81.4	63.0	68.8	71.4	90.0	72.0	83.3
	<b>Female</b>	<b>3</b>	<b>9</b>	<b>21</b>	<b>10</b>	<b>39</b>	<b>12</b>	<b>1</b>	<b>14</b>	<b>2</b>
	%	9.7	16.1	18.5	37.0	31.2	28.6	10.0	28.0	16.7

Source: DCA Judicial Appointments Annual Report 1999-2000

<sup>3</sup> Before the abolition of the post of Assistant Recorder in 2000, Recorders were chosen from the ranks of Assistant Recorders. The figures for applications for the 1999-2000 competition are therefore the number who were eligible for consideration for promotion.

**Table 6: Applications, interviews and appointments to judicial office by gender, 2000-01**

		High Court	Circuit Judges	Recorders	District Judges	Deputy District Judges	District Judge (Magistrates) <sup>4</sup>	Part time Legal Members of the Appeals Service	Full time Chairmen of the Employment Tribunals	Part time Employment Tribunal Chairmen	Full time Immigration on Adjudicators	Part time Immigration on Adjudicators
<b>Applications</b>	<b>Male</b>	<b>53</b>	<b>194</b>	<b>567</b>	<b>154</b>	<b>241</b>	<b>46</b>	<b>77</b>	<b>26</b>	<b>171</b>	<b>52</b>	<b>139</b>
	%	89.8	86.6	82.5	79.4	73.0	78.0	60.6	83.9	77.0	67.5	70.9
	<b>Female</b>	<b>6</b>	<b>30</b>	<b>120</b>	<b>40</b>	<b>89</b>	<b>13</b>	<b>50</b>	<b>5</b>	<b>51</b>	<b>25</b>	<b>57</b>
	%	10.2	13.4	17.5	20.6	27.0	22.0	39.4	16.1	23.0	32.5	29.1
<b>Interviews</b>	<b>Male</b>	<b>n/a</b>	<b>133</b>	<b>220</b>	<b>67</b>	<b>122</b>	<b>22</b>	<b>71</b>	<b>13</b>	<b>84</b>	<b>42</b>	<b>122</b>
	%		87.5	80.9	79.2	71.3	78.6	60.7	76.5	75.7	67.7	70.1
	<b>Female</b>	<b>n/a</b>	<b>19</b>	<b>52</b>	<b>20</b>	<b>49</b>	<b>6</b>	<b>46</b>	<b>4</b>	<b>27</b>	<b>20</b>	<b>52</b>
	%		12.5	19.1	20.8	28.7	21.4	39.3	23.5	24.3	32.3	29.9
<b>Appointments</b>	<b>Male</b>	<b>12</b>	<b>55</b>	<b>79</b>	<b>15</b>	<b>31</b>	<b>6</b>	<b>26</b>	<b>8</b>	<b>33</b>	<b>32</b>	<b>67</b>
	%	100	76.4	87.8	68.2	66.0	75.0	55.3	88.9	75.0	71.1	66.3
	<b>Female</b>	<b>0</b>	<b>17</b>	<b>11</b>	<b>7</b>	<b>16</b>	<b>2</b>	<b>21</b>	<b>1</b>	<b>11</b>	<b>13</b>	<b>34</b>
	%	0	23.6	12.2	31.8	34.0	25.0	44.7	11.1	25.0	28.9	33.7

Source: DCA Judicial Appointments Annual Report 2000-2001

<sup>4</sup> On 31 August 2000 Stipendiary Magistrates and Acting Stipendiary Magistrates were renamed District Judges (Magistrates' Courts) and Deputy District Judges (Magistrates' Courts)

**Table 7: Applications, interviews and appointments to judicial office by gender, 2001-02**

		High Court <sup>5</sup>	Circuit Judges	Recorders	Deputy District Judges (including family division)	District Judges (Magistrates courts)/ stipendiary magistrates	Part time Legal Member of the Appeals Tribunal	Part time Chairmen of the Employment Tribunals	Full time Chairmen of the Employment Tribunals	Part time Immigration Adjudicators
<b>Applications</b>	<b>Male</b>		<b>203</b>	<b>445</b>	<b>209</b>	<b>80</b>	<b>86</b>	<b>101</b>	<b>28</b>	<b>180</b>
	%		87.9	82.4	66.8	84.2	60.6	70.6	82.4	64.3
	<b>Female</b>		<b>28</b>	<b>95</b>	<b>104</b>	<b>15</b>	<b>56</b>	<b>42</b>	<b>6</b>	<b>100</b>
	%		12.1	17.6	33.2	16.8	39.4	29.4	17.7	35.7
<b>Interviews</b>	<b>Male</b>		<b>114</b>	<b>291</b>	<b>128</b>	<b>30</b>	<b>44</b>	<b>57</b>	<b>21</b>	<b>127</b>
	%		87.0	80.8	68.1	73.2	54.3	70.4	87.5	62.9
	<b>Female</b>		<b>17</b>	<b>69</b>	<b>60</b>	<b>11</b>	<b>37</b>	<b>24</b>	<b>3</b>	<b>75</b>
	%		13.0	19.2	31.9	26.8	45.7	29.6	12.5	37.1
<b>Appointments</b>	<b>Male</b>	<b>9</b>	<b>15</b>	<b>78</b>	<b>26</b>	<b>5</b>	<b>22</b>	<b>25</b>	<b>10</b>	<b>72</b>
	%	100	75.0	79.6	65.0	62.5	59.5	69.4	83.3	60.0
	<b>Female</b>	<b>0</b>	<b>5</b>	<b>20</b>	<b>1</b>	<b>3</b>	<b>15</b>	<b>11</b>	<b>2</b>	<b>48</b>
	%	0	25.0	20.4	35.0	37.5	40.5	30.6	16.7	40.0

Source: DCA Judicial Appointments Annual Report 2001-2002

<sup>5</sup> In 1998-99, the Lord Chancellor invited applications for appointment to the High Court for the first time. Of those appointed, four had applied to be considered for appointment and three were invited to accept appointment. There were no interviews.

**Table 8: Applications, interviews and appointments to judicial office by gender, 2002-03**

		High Court <sup>6</sup>	Recorders <sup>7</sup>	District Judges (including family division)	Deputy District Judges (including family division)	Deputy District Judges (magistrates courts)	Full time Immigration Adjudicator	Chairman of the Employment Tribunals (full time)	Chairman of the Employment Tribunals (part time)	Mental Health Review Tribunal (part time Legal Members)	Part time Legally Qualified Member of the Appeal Tribunals
<b>Applications</b>	<b>Male</b>		<b>483</b>	<b>191</b>	<b>234</b>	<b>369</b>	<b>122</b>	<b>17</b>	<b>111</b>	<b>84</b>	<b>46</b>
	%		82.0	79.3	67.1	76.6	72.2	77.3	68.9	55.3	67.7
	<b>Female</b>		<b>106</b>	<b>50</b>	<b>115</b>	<b>113</b>	<b>47</b>	<b>5</b>	<b>50</b>	<b>68</b>	<b>22</b>
	%		18.0	20.6	33.0	23.4	27.8	22.7	31.1	44.7	32.4
<b>Interviews</b>	<b>Male</b>		<b>315</b>	<b>66</b>	<b>75</b>	<b>34</b>	<b>93</b>	<b>14</b>	<b>54</b>	<b>36</b>	<b>23</b>
	%		83.8	81.5	9.1	64.2	73.2	77.8	71.1	50.7	65.7
	<b>Female</b>		<b>61</b>	<b>15</b>	<b>52</b>	<b>19</b>	<b>34</b>	<b>4</b>	<b>22</b>	<b>35</b>	<b>12</b>
	%		16.2	18.5	41.0	35.9	76.8	22.2	29.0	49.3	34.3
<b>Appointments</b>	<b>Male</b>	<b>5</b>	<b>81</b>	<b>14</b>	<b>26</b>	<b>16</b>	<b>46</b>	<b>8</b>	<b>26</b>	<b>30</b>	<b>13</b>
	%	83.3	87.1	93.3	61.9	59.3	71.9	80.0	70.3	56.6	56.5
	<b>Female</b>	<b>1</b>	<b>12</b>	<b>1</b>	<b>16</b>	<b>11</b>	<b>18</b>	<b>2</b>	<b>11</b>	<b>23</b>	<b>10</b>
	%	16.7	12.9	6.7	38.1	40.7	28.1	20.0	29.7	43.4	43.5

Source: DCA Judicial Appointments Annual Report 2000-2001

<sup>6</sup> As the 2000 recruitment exercise for the High Court was only completed in July 2001, the then Lord Chancellor decided not to launch a further exercise in 2002 but to make appointments from the list of the identified as appointable in 2000. Additionally, as Circuit Judges, Recorders and Deputy High Court Judges were invited to submit expressions of interest and Lord Irvine reserved the right to consult on those who had not made an application.

<sup>7</sup> The competition referred to as the 2002-3 Recorder competition was held between April 2001 and July 2002 to fill vacancies arising from April 2002. The recorder competition which was suspended in April 2002 would have been for appointments to be made in 2003.

**Table 9: Trends in representation of women in the solicitors' profession, 1960-2003**

Year	Women as % of solicitors on the Roll <sup>8</sup>	Women as % of solicitors with practising certificate
1960	2.8	2.3
1961	3.0	2.2
1962	3.1	2.2
1963	3.1	2.4
1964	3.2	2.6
1965	3.4	2.6
1966	3.5	2.6
1967	3.7	2.8
1968	3.9	3.0
1969	4.1	3.1
1970	4.5	3.3
1971	4.8	3.6
1972	5.2	4.5
1973	5.6	4.7
1974	6.1	5.4
1975	6.7	5.9
1976	7.5	6.8
1977	8.3	7.3
1978	9.4	8.8
1979	10.4	10.3
1980	11.8	10.9
1981	13.0	12.4
1982	13.9	12.5
1983	15.0	11.9
1984	16.2	11.5
1985	17.4	14.4
1986	18.6	15.5
1987	19.9	18.0
1988	21.2	19.8
1989	21.0	20.7

<sup>8</sup> All solicitors must be on the Roll, a register of all persons qualified as solicitors. Solicitors wishing to practise as such must obtain a practising certificate annually from the Law Society.

**Table 9: Trends for representation of women in the solicitors' profession, 1960-2003 (continued)**

Year	Women as % of solicitors on the Roll <sup>8</sup>	Women as % of solicitors with practising certificate
1990	24.0	23.2
1991	26.5	24.8
1992	28.2	26.3
1993	29.0	27.6
1994	30.6	28.9
1995	31.8	30.1
1996	33.1	31.4
1997	34.4	32.7
1998	35.4	33.9
1999	36.5	35.1
2000	37.5	36.3
2001	38.5	37.4
2002	39.5	38.6
2003	40.6	39.7

Source: The Law Society's REGIS database

Table 9 shows that there has been a huge shift in the number of female solicitors in the last 40 years – from under 3 per cent to over 40 per cent of solicitors on the Roll in 2003 – which is disproportionate to the numbers of women appointed to the judiciary (Tables 4-8). The number of women entering the profession is even higher, as shown in the next table.

**Table 10: Women admitted to the Roll of Solicitors, 1989-2003**

Year	Total no. of entrants	% of female entrants
1989-90	3,792	46.6
1990-91	4,265	47.5
1991-92	4,464	48.9
1992-93	4,417	51.1
1993-94	4,801	52.5
1994-95	4,695	52.5
1995-96	4,620	52.3
1996-97	5,417	52.2
1997-98	5,685	51.0
1998-99	6,237	52.6
1999-00	6,056	53.1
2000-01	6,218	54.7
2001-02	6,646	55.6
2002-03	6,924	56.8

Source: *The Law Society*

Since 1992-93, women have accounted for more than half the number of entrants to the solicitors' profession. By 2002-03 the figure had risen to 56.8 per cent.

**Table 11: Percentage of women in the barristers' profession, 1997 and 2003**

Year	Women as % of total practising barristers
1997	25.4
2003	32.0

Source: *Bar Council*

**Table 12: Women called to the Bar, 1970-2003**

Year	Men		Women	
	No.	%	No.	%
1970	858	92	77	8
1971	862	88	117	12
1972	918	91	93	9
1973	809	89	104	11
1974	629	85	112	15
1975	890	88	112	12
1976	691	81	166	19
1977	668	79	175	21
1978	727	76	227	24
1979	686	77	210	23
1980	617	72	245	28
1981	664	73	240	27
1982	647	69	289	31
1983	737	70	315	30
1984	614	68	288	32
1985	663	70	282	30
1986	634	68	303	32
1987	560	63	327	37
1988	659	63	388	37
1989	628	62	383	38
1990	507	60	339	40
1991	674	58	483	42
1992	785	59	555	41
1993	908	57	676	43
1994	816	57	629	43
1995	901	57	694	43
1996	1,034	61	651	39
1997	910	57	698	43
1998	795	52	728	48
1999	769	55	624	45
2000	757	54	648	46
2001	753	50	741	50
2002	688	51	654	49
2003	737	49	765	51

Source: Bar Council

**Table 13: Average age and years in practice of applicants for judicial appointment, 2000 to 2003**

Year		Average age	Average no. of years in practice
2000-01	Applications	50.6	23.2
	Interviews	50.2	22.3
	Appointments	50.2	21.0
2001-02	Applications	50.1	22.7
	Interviews	50.8	23.1
	Appointments	50.8	22.1
2002-03	Applications	50.5	22.3
	Interviews	50.5	22.9
	Appointments	49.2	21.9

Source: *Judicial Appointments Annual Reports*

**Table 14: Average age of those applying and appointed to judicial appointment, 2001-02**

Competition	Average no. of years in practice of applicants	Average no. of years in practice of those appointed
Recorder in Training	18	17.5
Deputy District Judge (County Court)	16	17
Part time legal member of the Appeals Tribunal	16.5	16
Part-time Chairmen of the Employment Tribunals	19	19
Part-time Immigration Adjudicators	19	19

Source: *Judicial Appointments Annual Report 2001-2002*

**Table 15: Length of service of women in the legal profession, 2002-03**

Call or admission	Women barristers %	Women solicitors %
Over 10 years	21	24
Over 15 years	17	19
Over 20 years	14	14
Between 10-19 years	29	37
Between 10-29 years	24	28
Between 15-29 years	20	23
Between 20-29 years	18	17

Source: *Judicial Appointments Annual Report 2002-2003*

## Bar Council Exit Survey 1988-1998

The Bar Council undertook an exit survey covering the years 1988 to 1998 to ascertain how many barristers left the profession each year, and ascertain the reasons why. The results are shown in *Table 16*. The Bar Council has launched a further survey for the years 1998-2004, though the results are not yet available.

**Table 16: People who enter practice at some time by year of call<sup>9</sup>, 1988-1998**

Year of Call	Men	Women	Total	Women as % of total
1988	308	151	459	32.9
1989	311	156	467	33.4
1990	333	195	528	36.9
1991	315	189	504	37.5
1992	373	195	568	34.3
1993	390	234	624	37.5
1994	346	235	581	40.4
1995	331	206	537	38.4
1996	289	165	454	36.3
1997	190	96	286	33.6
1998	19	9	28	32.1
<b>Total</b>	<b>3,205</b>	<b>1,831</b>	<b>5,036</b>	<b>36.4</b>

Source: Bar Council

*Table 16* shows those who have practised at some time, identified by their year of call, going back to 1988. It includes those still in practice and those who have left practice by gender. By adding these up it is possible to calculate the proportion of women who entered tenancy from each year of call.

The average proportion of women entering tenancy during the whole period is 36.4 per cent. It is expected that the proportion of women leaving the bar would be similar. However, the figures in *Table 16* show that the average proportion who have left is 46.6 per cent. The average proportion of women who have left the independent Bar is significantly greater than those entering tenancy in these years of call.

<sup>9</sup> Number calculated in February 1999 by adding those in practice to the number in each call year who have left practice.

**Table 17: Numbers leaving the Bar within each call year, 1988-98**

Year of call	No. of male leavers	No. of female leavers	Total no.	Women as % of total
1988	48	40	88	45.5
1989	33	33	66	50.0
1990	36	29	65	44.6
1991	27	35	62	56.5
1992	34	33	67	49.3
1993	32	20	52	38.5
1994	28	26	54	48.1
1995	19	11	30	36.7
1996	4	4	8	50.0
1997	3	0	3	0
1998	0	0	0	0
<b>Total</b>	<b>264</b>	<b>231</b>	<b>495</b>	<b>46.6</b>

Source: Bar Council

Table 17 shows the number of years between call and leaving by gender for call years 1988 to 1994. While it does not show a definite pattern it does suggest that the second to sixth years after call are those where most departures occur.

**Table 18: Number of years between call and leaving the Bar, by gender, for call years 1988 to 1994**

Call Year		Number of years called before leaving										
		< 1	1	2	3	4	5	6	7	8	9	10+
1988	Male	8	6	9	7	1	3	5	1	2	2	4
	Female	6	6	2	5	4	4	3	2	1	3	5
1989	Male		1	13	1	1	5	4	4	1	3	
	Female		2	7	4	1	5	2	3	3	5	1
1990	Male		2	5	5	6	4	6	5	3		
	Female			4	5	2	3	4	8	3		
1991	Male			6	7	6	4	10	6			
	Female		2	6	5	7	7	5	3			
1992	Male	1	2	5	6	4	10	6				
	Female			7	7	4	7	8				
1993	Male		2	4	11	9	5	1				
	Female		1	3	6	5	5					
1994	Male	2	2	7	9	8						
	Female		4	11	7	4						

Source: Bar Council

**Table 19: Years of call at time of leaving practice at the Bar, for all leavers 1988-98**

No. of years call	Men left practice	% of total male leavers	Women left practice	% of total female leavers	Total leavers by years call
< 1	12	1.5	5	1.1	17
1	22	2.8	20	4.6	42
2	70	8.8	57	13.0	126
3	64	7.9	53	12.1	116
4	58	7.3	52	11.9	110
5	59	7.4	38	8.7	97
6	52	6.6	38	8.7	89
7	33	4.2	28	6.4	60
8	19	2.4	16	3.7	35
9	24	3.0	20	4.6	40
10	31	3.9	18	4.1	51
11	20	2.5	11	2.5	34
12	18	2.3	11	2.5	30
13	17	2.1	6	1.4	23
14	25	3.1	11	2.5	36
15	15	1.9	11	2.5	26
> 15	255	32.1	43	9.8	300
<b>Total</b>	<b>794</b>	<b>-</b>	<b>438</b>	<b>-</b>	<b>1,232</b>

Source: Bar Council

For both men and women, the significant departure years are between the second year of call and the sixth, which for most will have been in the first five years of practice. The difference is that the 303 men who left between years two and six represent 38.2 per cent of the 794 men who left the Bar at that stage, whilst the 230 women leaving between two and six years call are 54.3 per cent of the female leavers. By contrast, only 9.8 per cent of women leave after 15 years or more, compared with 32.1 per cent of men.

In conclusion, the survey found that the key time at which barristers leave the profession was between two and six years call. Some 38.2 per cent of male leavers and 54.5 per cent of female leavers left in this time. Critically, 90.2 per cent of women leavers had left the profession by the time they reached 15 years call, compared to 67.9 per cent of male leavers.

This survey showed less information about where the leavers went to and why they left the profession. It did show, however, that the proportion of men and women who left to enter employment during this period was similar – 29.9 per cent of men and 34.2 per cent of women. It is hoped that the new exit survey recently launched by the Bar Council will provide some further insight into this.

Research undertaken by the Law Society into the reasons why women decide to leave and return to the solicitors' profession, June 2003

**Table 20: Importance of factors in decision to become a solicitor**

	Proportion of leavers rating factor as important or very important %	Proportion of returners rating factor as important or very important %	% difference between returners and leavers
<b>Intrinsic interest in job</b>	78	81	-3
<b>Suited to personal talents</b>	78	76	2
<b>Availability of jobs</b>	59	67	-8
<b>Opportunity to use degree</b>	63	67	-4
<b>Security of employment</b>	69	64	5
<b>Long term salary prospects</b>	68	65	3
<b>Prospects for promotion</b>	64	60	4
<b>Quality of training offered</b>	65	60	5
<b>Status</b>	54	51	3
<b>Value to community</b>	53	51	2
<b>Opportunity for early responsibility</b>	51	48	3
<b>Independence and flexibility</b>	49	46	3
<b>People working with</b>	55	45	10
<b>Starting salaries offered</b>	31	29	2
<b>Opportunity to travel</b>	6	11	-5
<b>Opportunity for career breaks</b>	8	11	-3
<b>Impact on social life</b>	12	6	6

Source: *The Law Society*

**Table 21: Deterrents to returning to work as a solicitor**

Deterrent	% of leavers
Difficulties in balancing work & home	67
Loss of confidence in own ability as a solicitor	34
Need for retraining	32
Poor career prospects	27
Poor salaries	26
Difficulties finding a job	26
Difficulties in finding / financing satisfactory childcare	19
Lack of support from home environment	14
None of the above	14

Source: *The Law Society*

Base = 214

Women returners and leavers were asked why they had decided to leave the profession. Over half of each group (59 per cent of leavers and 56 per cent of returners) said that they left for child related reasons. A higher proportion of leavers had left the legal profession because they did not enjoy their job (13 per cent compared to 3 per cent of returners). A higher proportion of returners took their last career break to try another job, 15 per cent compared to 11 per cent of leavers. 34 per cent of leavers said that they intended to leave the profession on a permanent basis, 34 per cent said they did intend to return at some stage and 36 per cent were undecided. Over two thirds of leavers said that the difficulties in balancing work and home acted as a deterrent to returning. Half of the leavers said that the feeling that there would be misgivings by potential employers and colleagues about home responsibilities interfering with their duties acted as a deterrent. 50 per cent also said that they felt that there would be a general lack of support to those returning to the profession.

**Table 22: Deterrents to returning to practice as a solicitor**

Deterrent	% of leavers
Professions attitudes towards returning women	44
Type of work available to you	43
Changes in the law that might have occurred in field of law	39
Anticipated problems dealing with general changes in the profession	30
Other solicitors have better prospects, pay and status	27
Anticipated problems dealing with new technology	11
None of the above	22

Source: *The Law Society*

Base = 214

**Table 23: Deterrents in relation to attitudes of potential employers and colleagues**

Deterrent	% of leavers
A feeling that they would have misgivings about home responsibilities	50
Feeling there would be general lack of support to those returning to the profession	50
Anticipated lack of confidence from colleagues	25
Lack of flexibility	4
Strong male bias in profession	2
Lack of work available	2
None of the above	37

Source: *The Law Society*

Base = 214

**Table 24: Reasons for returners wanting to return as a solicitor after their most recent career break**

Reason	%
Returned for financial reasons	40
Had always planned to return	19
Long term career aspirations	19
Enjoyed working in law	17
Enjoyed working generally	12
Returned because they had trained had qualified in law	9
Returned because they were bored and needed stimulation	9
Returned for the stability and security of job	2
Asked to return by previous firm	2

Source: *The Law Society*

**Table 25: Judges in post known to be from minority ethnic backgrounds, 1992-2003 (courts)**

Year	Circuit Judges		Recorders		Assistant Recorders		Stipendiary Magistrates/ District Judges (Magistrates' Courts) <sup>1</sup>		Acting Stipendiary/ Magistrates Deputy District Judges (Magistrates' Courts)		District Judges		Deputy District Judges		% of known ethnic minorities of total judiciary (courts)
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
1992	2	0.4	8	1.0	12	2.5	1	1.3	0	0.0	0	0.0	0	0.0	1.0
1993	3	0.6	11	1.3	9	1.8	1	0.6	0	0.0	1	0.4	6	0.8	1.0
1994	1	0.2	4	0.2	7	1.5	0	0.0	2	2.2	1	0.3	7	1.0	0.7
1995	5	1.0	12	1.4	10	2.3	1	1.1	3	3.0	2	0.6	12	1.7	1.4
1996	5	0.9	14	1.6	11	2.9	2	2.2	2	2.4	2	0.6	13	1.9	1.6
1997	5	0.9	14	1.5	13	3.1	2	2.2	3	3.5	4	1.1	13	1.9	1.7
1998	5	0.9	13	1.5	11	3.0	2	2.2	3	3.7	4	1.1	12	1.6	1.6
1999	5	0.9	13	1.5	14	3.5	2	2.2	4	4.2	5	1.3	12	1.6	1.7
2000	6	1.1	14	1.6	22	4.6	2	2.1	7	4.8	7	1.7	13	1.7	2.1
2001	6	1.1	37	2.7	n/a		2	2.0	10	6.0	8	1.9	12	1.6	2.1
2002	7	1.6	39	2.9	n/a		3	2.9	9	5.8	12	2.8	12	1.6	2.3
2003	5	0.8	40	3.7	n/a		3	2.9	11	6.3	12	2.8	15	1.9	2.6

Source: DCA

<sup>1</sup> On 31 August 2000 Stipendiary Magistrates and Acting Stipendiary Magistrates were renamed District Judges (Magistrates' Courts) and Deputy District Judges (Magistrates' Courts) respectively.

<sup>2</sup> On 12 April 2000 the Lord Chancellor announced that no useful purpose was served by having the separate offices of Assistant Recorder and Recorder. From that date all appointments have been direct to Recorder and existing Assistant Recorders became Recorders.

The figures show those judges who had either completed an ethnic origin survey on appointment or were known to the Department to be from an ethnic minority background.

Full historical figures are not available for tribunal posts. However, the numbers of those from minority ethnic backgrounds in tribunals posts in 2003 is recorded in Table 26 below.

**Table 26: Tribunal members from minority ethnic backgrounds, 2003**

	Total	No. from ethnic minorities	
		No.	%
<b>Presidents/full time chairmen</b>	413	30	7.3
<b>Fee paid legal members etc.</b>	2,395	123	5.1
<b>Total</b>	2,808	153	5.5

Source: *Judicial Appointments Annual Report 2002-2003*

As stated earlier, these statistics are not entirely reliable as ethnic monitoring for judicial appointments was first introduced only in the early 1990s. The practice was to request ethnicity details for applicants for judicial appointment and part-time judges when their appointment was renewed. The method was to record this data in what was known as the '4+1' categories – White, Black, Asian and Other. In 2003, Lord Irvine gave approval to move to a new method of classification which was consistent with the 2001 Census – the '16 +1' self-classification framework. An ethnic origin survey was sent to all serving members of the judiciary and all new applicants were asked to complete a form in accordance with the new categories. As the result of this better method of classification, a comparative study was made of the members of the judiciary from ethnic minorities as of 31 March 2003. The percentage of minority ethnic post holders of the whole judiciary (including non-legal members of tribunals) is 6.9 per cent as opposed to 5.5 per cent using the old classification categories. It must be emphasised that this revised figure is a result of better statistical information rather than a real increase in diversity. Also, it is important to note that these figures include non-legal members of tribunals, who are not included in the remit of this paper. As we have seen, tribunals were recorded in the *2002-03 Judicial Appointments Annual Report* as having a higher percentage of post holders from ethnic minorities. The statistics in *Table 27* are reflective of the data collected from the survey for the ethnicity of postholders in the courts. The total percentage is a clear increase on the figures previously collated using the '4 +1' categories, as stated above this is likely to be due to the collation of better statistical information rather than a real increase in diversity.

**Table 27: Percentages of judges in post (courts) from minority ethnic backgrounds, March 2003**

Post	Ethnic Minority %
Lord of Appeal in Ordinary	0
Lord Justices of Appeal	0
High Court Judges	0
Circuit Judges	2.2
Recorders	4.0
District Judges	3.4
Deputy District Judges	2.4
District Judges (Magistrates' Court)	4.7
Deputy District Judges (Magistrates' Court)	6.0
<b>TOTAL</b>	3.4

Source: *Judicial Appointments Annual Report 2002-2003*

Of course, we need to consider the statistics for the number of minority ethnic postholders alongside the numbers who apply, are interviewed and appointed each year. *Tables 28-31* below show the numbers of minority ethnic lawyers who applied, were interviewed and were appointed for main competitions from 1998-99 to 2002-03. Statistics for the main competitions held in each year are shown. Not all tribunals competitions are shown in the tables, due to the large number of different competitions which are held each year. The main tribunals competitions, for which statistics are held, are included in the tables.

**Table 28: Applications, interviews and appointments to judicial office by ethnic background, 1998-99**

		High Court Judges <sup>3</sup>	Circuit Judges	Recorders <sup>4</sup>	Assistant Recorders	District Judges (including PRFD)	Deputy District Judges (including PRFD)	Stipendiary Magistrates	Acting Stipendiary Magistrates	Full time Chairmen of the Employment Tribunals	Part time Chairmen of the Employment Tribunals	Full time Immigration Adjudicators	Full time Chairmen of the Independent Tribunals Services	Part time legal members of Mental Health Review Tribunals
Applications	White	66	143	167	745	349	436	52	256	39	186	27	114	158
	%	75.7	98.6	97.1	93.1	97.0	96.9	98.1	92.4	95.1	93.0	79.4	96.6	90.8
	Ethnic minority	3	2	5	44	11	13	1	15	2	14	5	4	11
	%	3.4	1.4	2.9	5.5	3.1	2.9	1.9	5.4	4.9	7.0	14.71	3.4	6.3
	Not known	18	0	0	11	0	1	0	6	0	0	2	0	5
	%	20.7	0.0	0.0	1.4	0.0	0.2	0.0	2.2	0.0	5.0	5.88	0.0	2.9
Interviews	White	n/a	43	n/a	278	125	224	19	133	13	77	14	33	48
	%		97.7		95.9	96.2	96.8	100	91.1	86.7	95.1	82.4	100	88.9
	Ethnic minority	n/a	1	n/a	11	5	4	0	9	2	4	2	0	5
	%		2.3		3.8	3.9	1.8	0.0	6.7	13.3	4.9	11.8	0.0	9.3
	Not known	n/a	0	n/a	1	0	1	0	4	0	0	1	0	1
	%		0.0		0.3	0.0	0.4	0.0	2.7	0.0	0.0	5.9	0.0	1.9
Appointments	White	7	14	99	129	40	98	7	60	4	22	12	15	24
	%	100.0	93.3	100	94.9	93.0	98	100	90.9	66.7	95.7	85.7	100	92.3
	Ethnic minority	0	1	0	6	3	1	0	4	2	1	1	0	2
	%	0.0	6.7	0.0	4.4	7.0	1.0	0.0	6.1	33.3	4.4	7.1	0.0	7.7
	Not known	0	0	0	1	0	1	0	2	0	0	1	0	0
	%	0.0	0.0	0.0	0.7		1	0.0	3.0	0.0	0.0	7.1	0.0	0.0

Source: DCA Judicial Appointments Annual Report 1998-1999

<sup>3</sup> In 1998-99, the Lord Chancellor invited applications for appointment to the High Court for the first time. Of those appointed, four had applied to be considered for appointment and three were invited to accept appointment. There were no interviews.

<sup>4</sup> Before the abolition of the post of Assistant Recorder in 2000, Recorders were chosen from the ranks of Assistant Recorders. The figures for applications for the 1998-99 competition are therefore the number who were eligible for consideration for promotion.

**Table 29: Applications, interviews and appointments to judicial office by ethnic background, 1999-2000**

		Circuit Judges	Recorders <sup>5</sup>	Assistant Recorders	District Judges (including PRFD)	Deputy District Judges (including PRFD)	Acting Provincial Stipendiary Magistrates	Full Time Chairman of the Employment Tribunals	Part Time Immigration Adjudicators	Part Time Chairmen of the Special Educational Needs Tribunal
<b>Applications</b>	<b>White</b> %	<b>173</b> 96.7	<b>68</b> 68.7	<b>674</b> 90.5	<b>194</b> 92.0	<b>454</b> 89.2	<b>188</b> 92.2	<b>50</b> 98.0	<b>91</b> 77.1	<b>113</b> 89.7
	<b>Ethnic minority</b> %	<b>4</b> 2.2	<b>5</b> 5.1	<b>48</b> 6.4	<b>9</b> 4.3	<b>20</b> 3.9	<b>8</b> 3.9	<b>1</b> 2.0	<b>17</b> 14.4	<b>8</b> 6.4
	<b>Not known</b> %	<b>2</b> 1.1	<b>26</b> 26.7	<b>23</b> 3.1	<b>8</b> 3.8	<b>35</b> 6.9	<b>8</b> 3.9	<b>0</b> 0.0	<b>10</b> 8.5	<b>5</b> 4.0
<b>Interviews</b>	<b>White</b> %	<b>78</b> 97.5	<b>n/a</b>	<b>245</b> 93.2	<b>77</b> 90.6	<b>245</b> 93.2	<b>37</b> 94.9	<b>21</b> 100	<b>61</b> 82.4	<b>49</b> 86.0
	<b>Ethnic minority</b> %	<b>0</b> 0.0	<b>n/a</b>	<b>13</b> 4.9	<b>4</b> 4.7	<b>6</b> 2.3	<b>1</b> 2.6	<b>0</b> 0	<b>7</b> 9.5	<b>5</b> 8.8
	<b>Not known</b> %	<b>2.0</b> 2.5	<b>n/a</b>	<b>5.0</b> 1.9	<b>4.0</b> 4.7	<b>12.0</b> 4.6	<b>1.0</b> 2.6	<b>0.0</b> 0.0	<b>6.0</b> 8.1	<b>3.0</b> 5.3
<b>Appointments</b>	<b>White</b> %	<b>29</b> 93.6	<b>39</b> 69.6	<b>104</b> 92.0	<b>26</b> 96.3	<b>116</b> 92.8	<b>13</b> 100	<b>10</b> 100	<b>44</b> 88	<b>11</b> 91.7
	<b>Ethnic minority</b> %	<b>0</b> 0.0	<b>2</b> 3.6	<b>6</b> 5.3	<b>1</b> 3.7	<b>2</b> 1.6	<b>0</b> 0.0	<b>0</b> 0.0	<b>4</b> 8.0	<b>1</b> 8.3
	<b>Not known</b> %	<b>2</b> 6.5	<b>15</b> 26.8	<b>3</b> 2.7	<b>0</b> 0.0	<b>7</b> 5.6	<b>0</b> 0.0	<b>0</b> 0.0	<b>2</b> 4	<b>0</b> 0.0

Source: DCA

<sup>5</sup> Before the abolition of the post of Assistant Recorder in 2000, Recorders were chosen from the ranks of Assistant Recorders. The figures for applications for the 1999-2000 competition are therefore the number who were eligible for consideration for promotion.

**Table 30: Applications, interviews and appointments to judicial office by ethnic background, 2000-01**

		High court Judges	Circuit Judges	Recorders	District Judges	Deputy District Judges	District Judge (Magistrates Courts)	Part Time Legal Members of The Appeals Service	Full Time Chairmen of the Employment Tribunals	Part Time Employment Tribunal Chairmen	Full Time Immigration Adjudicators	Part Time Immigration Adjudicators
Applications	White %	59 100.0	199 88.8	641 93.3	187 96.4	299 90.6	56 94.9	118 92.9	31 100.0	192 86.5	63 81.8	165 84.2
	Ethnic minority %	0 100.0	5 2.2	36 5.2	7 3.6	17 5.2	2 3.4	7 5.5	0 0.0	15 6.8	12 15.6	27 13.8
	Not known %	0 100.0	20 8.9	10 1.5	0 0.0	14 4.2	1 1.7	2 1.6	0 0.0	15 6.8	2 2.6	4 2.0
Interviews	White %	n/a	137 90.1	252 92.7	90 93.8	154 90.1	27 96.4	108 92.3	17 100.0	102 91.9	52 83.9	145 83.3
	Ethnic minority %	n/a	3 2.0	16 5.9	6 6.3	8 4.7	1 3.6	7 6.0	0 0.0	6 5.4	8 12.9	25 14.4
	Not known %	n/a	12 7.9	4 1.5	0 0.0	9 5.3	0 0.0	2 1.7	0 0.0	3 2.7	2 3.2	4 2.3
Appointments	White %	19 0.0	68 94.4	84 93.3	20 90.9	42 89.4	8 100.0	45 95.7	9 100.0	41 93.2	40 88.9	87 86.1
	Ethnic minority %	0 0.0	0 0.0	4 4.4	2 9.1	3 6.4	0 0.0	2 4.3	0 0.0	1 2.3	5 11.1	11 10.9
	Not known %	0 0.0	4 5.6	2 2.2	0 0.0	2 4.3	0 0.0	0 0.0	0 0.0	2 4.5	0 0.0	3 3.0

Source: DCA

**Table 31: Applications, interviews and appointments to judicial office by ethnic background, 2001-02**

		High Court <sup>6</sup>	Circuit Judge	Recorders	Deputy District Judges (including family division)	District Judges (Magistrates Courts)/ Stipendiary Magistrates	Part time Legal Member of The Appeals Service	Part Time Chairmen of the Employment Tribunals	Full Time Chairmen of the Employment Tribunals	Part Time Immigration Adjudicators
<b>Applications</b>	<b>White %</b>		<b>202</b> 87.5	<b>493</b> 91.3	<b>279</b> 89.1	<b>89</b> 93.7	<b>118</b> 83.1	<b>125</b> 87.4	<b>32</b> 94.1	<b>225</b> 80.6
	<b>Ethnic minority %</b>	<b>n/a</b>	<b>7</b> 3.0	<b>34</b> 6.3	<b>27</b> 8.6	<b>4</b> 4.21	<b>2</b> 1.4	<b>16</b> 11.2	<b>2</b> 5.9	<b>48</b> 17.1
	<b>Not known %</b>	<b>n/a</b>	<b>22</b> 9.5	<b>13</b> 2.4	<b>7</b> 2.2	<b>2</b> 2.1	<b>22</b> 15.5	<b>2</b> 1.4	<b>0</b> 0.0	<b>7</b> 2.5
<b>Interviews</b>	<b>White %</b>	<b>n/a</b>	<b>115</b> 87.8	<b>341</b> 94.7	<b>169</b> 90.0	<b>40</b> 97.6	<b>69</b> 85.2	<b>69</b> 85.2	<b>22</b> 91.7	<b>159</b> 78.7
	<b>Ethnic minority %</b>	<b>n/a</b>	<b>3</b> 2.3	<b>12</b> 3.33	<b>16</b> 8.5	<b>0</b> 0.0	<b>2</b> 2.5	<b>10</b> 12.4	<b>2</b> 8.3	<b>36</b> 17.8
	<b>Not known %</b>	<b>n/a</b>	<b>13</b> 9.9	<b>7</b> 1.94	<b>3</b> 1.6	<b>1</b> 2.4	<b>10</b> 12.4	<b>2</b> 2.5	<b>0</b> 0.0	<b>7</b> 3.5
<b>Appointments</b>	<b>White %</b>	<b>9</b> 100	<b>19</b> 95	<b>97</b> 99.0	<b>37</b> 92.5	<b>8</b> 100	<b>34</b> 91.9	<b>30</b> 83.3	<b>11</b> 91.7	<b>101</b> 84.2
	<b>Ethnic minority %</b>	<b>0</b> 0.0	<b>0</b> 0.0	<b>1</b> 1.02	<b>2</b> 5.0	<b>0</b> 0.0	<b>0</b> 0.0	<b>5</b> 13.9	<b>1</b> 8.3	<b>15</b> 12.5
	<b>Not known %</b>	<b>0</b> 0.0	<b>1</b> 5.0	<b>0</b> 0.0	<b>1</b> 2.5	<b>0</b> 0.0	<b>3</b> 8.1	<b>1</b> 2.8	<b>0</b> 0.0	<b>4</b> 3.3

Source: DCA

<sup>6</sup> In 1998-99, the Lord Chancellor invited applications for appointment to the High Court for the first time. Of those appointed, four had applied to be considered for appointment and three were invited to accept appointment. There were no interviews.

**Table 32: Applications, interviews and appointments to judicial office by ethnic background, 2002-03**

		High Court <sup>7</sup>	Recorders <sup>8</sup>	District Judges (including family division)	Deputy District Judges (Magistrates Courts)	Full time Immigration Adjudicator	Chairman of the Employment Tribunals (full time)	Chairmen of the Employment Tribunals (part time)	Mental Health Review Tribunal (part time Legal Members)	Part Time Chairmen of the Special Educational Needs Tribunal	Part Time Legally Qualified Member of the Appeal Tribunals
Applications	White %	n/a	538 91.3	216 89.7	304 87.1	409 84.9	144 85.2	22 100	149 92.6	137 90.1	66 97.1
	Ethnic minority %	n/a	38 6.5	5 2.1	34 9.7	40 8.3	15 8.9	0 0.0	11 6.8	9 5.9	2 2.9
	Not known %	n/a	13 2.2	20 8.3	11 3.2	33 6.9	10 5.9	0 0.0	1 0.6	6 4.0	0 0.0
Interviews	White %	n/a	343 91.2	73 90.1	109 85.8	44 83.0	107 84.3	18 100	71 93.4	65 91.6	34 97.1
	Ethnic minority %	n/a	25 6.7	1 1.2	15 11.8	5 9.4	10 7.9	0 0.0	5 6.6	2 2.8	1 2.9
	Not known %	n/a	8 2.1	7 8.6	3 2.4	4 7.6	10 7.9	0 0.0	0 0.0	4 5.6	0 0.0
Appointments	White %	6 100.0	87 93.6	15 100	37 88.1	21 77.8	52 81.3	10 100	32 86.5	48 90.6	22 95.7
	Ethnic minority %	0 0.0	6 6.5	0 0.0	4 9.5	3 11.1	6 9.4	0 0.0	4 10.8	1 1.9	1 4.4
	Not known %	0 0.0	0 0.0	0 0.0	1 2.4	3 11.1	6 9.4	0 0.0	1 2.7	4 7.6	0 0.0

Source: DCA

<sup>7</sup> As the 2000 recruitment exercise for the High Court was only completed in July 2001, the then Lord Chancellor decided not to launch a further exercise in 2002 but to make appointments from the list of the identified as appointable in 2000. Additionally, as Circuit Judges, Recorders and Deputy High Court Judges were invited to submit expressions of interest and Lord Irvine reserved the right to consult on those who had not made an application.

<sup>8</sup> The competition referred to as the 2002-3 Recorder competition was held between April 2001 and July 2002 to fill vacancies arising from April 2002. The recorder competition which was suspended in April 2002 would have been for appointments to be made in 2003.

**Table 33: Solicitors from minority ethnic backgrounds with practising certificates, 1990-2003**

Year	Total % of solicitors from ethnic minorities with practising certificate
1990	Just over 1
1991	Just over 1
1992	Not available
1993	3.1
1994	3.4
1995	3.8
1996	4.0
1997	4.5
1998	4.9
1999	5.5
2000	6.1
2001	6.6
2002	7.0
2003	7.9

Source: *The Law Society*

**Table 34: Percentage of minority ethnic entrants to the solicitors' profession, 1994-2003**

Year	% of those admitted to the Roll of solicitors who are from minority ethnic backgrounds
1994	15.5
1995	11.4
1996	14.9
1997	15.8
1998	16.6
1999	19.0
2000	17.0
2001	16.4
2002	17.3
2003	17.3

Source: *The Law Society*

**Table 35: Percentage of barristers from minority ethnic backgrounds, 1997 and 2003**

Year	% of barristers from ethnic minorities
1997	6.6
2003	10.7

Source: Bar Council

**Table 36: Percentage of those called to the Bar from minority ethnic backgrounds by years of call**

Call	White		Ethnic minority		No data	
	No.	%	No.	%	No.	%
10 years call and over	6,356	86.2	569	7.7	453	6.1
15 years call and over	4,516	86.9	346	6.7	334	6.4
20 years call and over	3,683	87.5	225	6.1	237	6.4
30 years call and over	1,236	87.7	76	5.4	98	7.0
Between 10 and 19 years call	3,135	84.8	344	9.3	216	5.8
Between 10 and 29 years call	5,120	85.8	493	8.3	355	6.0
Between 15 and 29 years call	3,280	86.6	270	7.1	236	6.2
Between 20 and 29 years call	1,985	87.3	149	6.6	139	6.1

Source: Bar Council

## Other statistics

**Table 37: Work shadowing applicants, 1999-2004**

Period Covered	Total no of applicants	Male	Female	Barrister	Solicitor	White	Ethnic origin
1999-00	53	33	20	30	23	48	5
2000-01	85	56	29	31	54	79	6
2001-02	78	43	35	34	44	73	5
2002-03	77	32	45	16	61	63	14
2003-04	99	58	41	30	69	84	15
April-July 2004	75	46	29	17	58	63	12
<b>Total</b>	<b>467</b>	<b>268</b>	<b>199</b>	<b>158</b>	<b>309</b>	<b>410</b>	<b>57</b>
<b>Total %</b>		57.4	42.6	33.8	66.2	87.8	12.2

Source: DCA

There has been a considerable increase in the number of applications to the DCA's Work Shadowing Scheme, particularly from women and ethnic minorities, since it was re-launched in March 2004. Some 75 people applied to the Scheme in the four months immediately after its relaunch, a large increase when it is considered that only 99 applied during the previous 12 months. Of these 75, 38.6 per cent were women and 16 per cent were of minority ethnic origin.

## Movement between the ranks

**Table 38: Full-time judicial office holders appointed to the Circuit Bench, 1991-2005**

	Number of appointments made to the Circuit Bench	Number of those who held full-time judicial office	
		No.	%
1991-92	55	6	10.9
1992-93	47	5	10.0
1993-94	60	6	10.0
1994-95	32	7	21.9
1995-96	53	4	7.6
1996-97	38	1	2.6
1997-98	24	1	4.2
1998-99	36	1	2.8
1999-00	29	1	3.5
2000-01	47	6	12.8
2001-02	68	6	8.8
2002-03	62	9	14.5
2003-04	No competition	–	–
2004-05	59	12	20.3
<b>Total</b>	<b>421</b>	<b>38</b>	<b>9.0</b>

Source: DCA

Table 38 above shows the number of full-time judicial office holders who have been appointed to the Circuit Bench in recent years. These postholders have held a variety of full-time judicial positions, for example, District Judges, Taxing Masters, President of Tribunals, Chairmen of Tribunals and Stipendiary Magistrates, now known as District Judges (Magistrates) Court. The table does not show any particular steady increase in the numbers appointed over the last few years: the percentage of appointments has fluctuated considerably, between 2 per cent and over 20 per cent.

**Table 39: Circuit Judges promoted to the High Court Bench, 1989-2004**

	Number of appointments made to the High Court Bench	Number of Circuit Judges appointed to the High Court Bench	
		No.	%
1989-90	10	0	0.0
1990-91	6	3	50.0
1991-92	6	1	16.7
1992-93	13	1	7.4
1993-94	23	5	21.7
1994-95	9	1	11.1
1995-96	12	0	0.0
1996-97	10	2	20.0
1997-98	9	0	0.0
1998-99	7	0	0.0
1999-00	8	1	12.5
2000-01	19	3	15.8
2001-02	9	3	33.3
2002-03	6	0	0.0
2003-04	11	3	27.0

Source: DCA

### Comparative statistics for the professions for applicants, interviews, appointments and judges in post from solicitors and barristers

**Table 40: Judges in post (Lord Justices of Appeal and below) as at 1 July 2004 (courts)**

Year	Barrister %	Solicitor %
Lord Justices of Appeal	100	0.0
High Court Judge	99.1	0.9
Circuit Judge	85.7	14.3
Recorders (including Recorders in Training)	90.2	9.8
District Judge (including PRFD)	6.3	93.7
District Judge (Magistrates Court)	33.1	66.9
Deputy District Judge (including PRFD)	14.5	85.4
Deputy District Judge(Magistrates Court)	38.2	61.9

Source: DCA

**Table 41: Applications for judicial office from solicitors and barristers, 1998-2003**

Year	Total	Barrister	Solicitor	QC	Other <sup>1</sup>
1998-99	3,719	1,111 29.9%	1,892 50.9%	128 3.4%	588 15.8%
1999-00	2,376	913 38.4%	1,108 46.6%	78 3.3%	277 11.6%
2000-01	3,639	1,311 36.0%	1,386 38.1%	131 3.6%	811 22.3%
2001-02	4,225	1,087 25.7%	1,371 32.4%	132 3.1%	1,685 39.9%
2002-03	3,449	966 32.1%	1,418 41.0%	68 1.9%	1,000 28.9%

Source: DCA

**Table 42: Solicitors and barristers interviewed for judicial office, 1998-2003**

Year	Total	Barrister	Solicitor	QC	Other <sup>1</sup>
1998-99	1,423	438 30.8%	701 49.3%	65 4.7%	219 15.4%
1999-00	1,095	402 36.7%	502 45.8%	55 5.0%	136 12.4%
2000-01	1,821	641 35.2%	671 36.8%	95 5.3%	414 22.7%
2001-02	2,204	631 28.6%	690 31.3%	116 5.3%	767 34.8%
2002-03	1,598	496 31.0%	519 31.5%	42 2.6%	541 33.6%

Source: DCA

<sup>1</sup> The 'Other' category will mostly include those applying, interviewed or appointed as non legal members of tribunals.

**Table 43: Solicitors and barristers appointed to judicial office, 1998-2003**

Year	Total	Barrister	Solicitor	QC	Other
1998-99	634	235 37.5%	294 46.4%	36 5.7%	69 10.9%
1999-00	453	172 38.0%	211 46.6%	27 6.0%	43 9.5%
2000-01	753	237 31.5%	277 36.8%	53 7.0%	186 24.7%
2001-02	915	224 24.5%	274 29.9%	37 4.0%	380 4.5%
2002-03	697	181 26.0%	193 27.7%	45 6.5%	278 39.9%

Source: DCA

These figures are for all judicial posts (including tribunals and non-legal members of tribunals). There has traditionally been a greater percentage of solicitors applying for posts than barristers. This is likely to be due to the large number of legal posts in tribunals, combined with the number of Deputy District Judge posts. Solicitors are more likely to apply for these posts than barristers, who tend to be more likely to apply for Recordship as a first-time appointment. However, the gap between the numbers appointed from each profession has narrowed over the last few years. The tables reveal that the percentage of QCs appointed tends to be higher than the percentage who apply. There was a considerable drop in the number of QC applications in 2002-03 – probably as a result of the suspension of the main Circuit Bench and Recorder competitions.

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October 2004  
DCA 52/04

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