

Speech by Baroness Prashar at the JSB continuation seminar

Wednesday, 20 September 2006

Introduction

- 1. Good afternoon ladies and gentlemen. I am delighted to be here. I think Frances Kirkham may have been involved in the decision to invite me here today. So thank you for the invitation and thank you Frances. As you will know, Frances is one of the Commissioners of the Judicial Appointments Commission: Charles Newman, another commissioner, is also here today. So I hope you have already had opportunities to talk to them about the JAC.**

- 2. I am aware that this is day three of your course, and this is the last session before the close. So I shall be focused! I will focus on the role of the Commission and its membership; why the Judicial Appointments Commission (the JAC) was established; where we started from and our progress so far and our future plans. In reading the programme I see that the purpose of this particular session is to familiarise you with the new regime. I will do my best to do that and leave some time for questions and discussion at the end.**

What we do

3. The Commission was launched on 3 April 2006. Our primary task is to select judges and tribunal members.

Under the Constitutional Reform Act 2005 we have very specific duties in the selection of judges and tribunal members, both legal and non-legal – a task previously undertaken by the DCA. Our statutory responsibilities are:

one: to select candidates solely on merit;

two: to select only people of good character;

three: to have regard to the need to encourage applications from a wider range of candidates.

The role of the Commission is to select, and make a recommendation to the Lord Chancellor. For each vacancy the Commissioners will select one candidate to recommend for appointment by the Lord Chancellor. The Lord Chancellor can reject that recommendation but he is required to provide his reasons to the Commission. For the first time in 700 years, the Lord Chancellor will no longer have the sole power to select which judge to appoint.

Who we are

4. There are fifteen Commissioners, including myself and, with the exception of three Commissioners who were selected by the Judges'

Council, we were recruited and appointed through open competition. Membership of the Commission is drawn from the judiciary, the legal profession and includes five lay people - a little misleading to call them lay, as they are all highly distinguished in their respective fields. The Commissioners are appointed in their own right and are not representatives of the professions that they may come from. It is this diverse make up of the Commission which means that each member is able to bring knowledge, expertise and above all independence of mind - resulting in real breadth for the Commission as a whole.

Our Priorities

5. At the outset the Commission identified three priorities for action

one: defining merit: that is - what makes a good judge;

two: to refine and improve effective and fair methods for assessing merit,

three: how best to encourage a wide range of applicants

6. Why did we set these priorities? It was clear that we were inheriting a burdensome and time-consuming process – the result of a well-intentioned but over-complex response to criticisms of the original process by Ministers, the judiciary and the Commission for Judicial Appointments. The framework against which applicants were assessed had grown to 9 competencies, defined through no less

than 50 supporting behaviours. Candidates were expected to demonstrate these in their application so very lengthy guidance and application forms were produced. These were regularly criticised as over-complex, time-consuming to complete and hard to follow. A large part of the outreach work has had to be devoted to explaining how to manage the application process.

7. Assessors also found it difficult to use the existing framework. There is a risk that with such a complicated matrix of behaviours, assessors simply resort to ticking boxes, rather than making a sound assessment of the suitability of the candidates. I am not suggesting that the quality of judges appointed under the current process is anything other than good, but I am saying that I believe the process needed refining and was dissuading some people from applying.
8. Another major criticism of the old system was the way in which candidates were identified as potential applicants. There was a general perception that the system didn't reach out to applicants; that you had to be already in a favoured position to consider applying.
9. This was particularly so in the case of selection for the High Court. Criticisms of the 'tap on the shoulder' approach had already led to reforms in the 2005 competition: instead of entry being by either application or nomination, all candidates were required to apply and

the consultation process was streamlined to provide more focussed feedback and assist those candidates who were not visible to the usual consultation community. Nevertheless questions remained as to whether the selection framework adequately described 'merit' in relation to High Court appointments and how that could be assessed, and whether the widest pool of applicants was being reached.

JAC and where we fit in

10. I will say a little more about our plans for improvement later but first let me explain that the JAC does not do its work in isolation. We have of course to work with the Lord Chancellor and Lord Chief Justice. We are neither the beginning nor the end of an appointment process, and I think it is important for those who have an interest to understand this. Before we are involved there is a period during which the Courts or the Tribunals identify what new appointments they may need in the coming period. This involves consultation with the senior Judiciary and then the request comes to the JAC to set about the selection exercise.

11. We cannot start our work until all of this has been done, and at present that can take several months. Then the Commission undertakes its work, concluding with a recommendation to the Lord Chancellor. If he accepts the recommendation there are then various further stages including training and possibly a period of notice before someone can take up appointment. So we are middle part of

an overall process which can take a considerable amount of time. We need to work in close partnership with both the Lord Chancellor and the Lord Chief Justice to ensure that there are no delays and that process runs smoothly.

Current workload

12. We have not simply been thinking about improvements. We have also had to run the programme of selection exercises that we inherited under the transitional arrangements. Now we are getting ready to launch our own selection exercises. It is a big programme. We will be launching the High Court selection exercise at the end of October as well as others before Christmas such as the District Judge (Magistrates Court) exercise.

13. We have a team of officials who organise the running of these exercises. And the Commissioners have been personally involved in many developments. For example, during this interim period I have personally looked at the application forms and other parts of the process for each of the exercises. I have got to know the process very well and indeed we have made adjustments for each exercise as our ideas have developed.

14. My aim has been to create a less cumbersome process, picking up points along the way rather than waiting for all the improvements that will take place later this year from 31 October when we

implement all the changes which we have been deliberating about over the last six months. Some of those changes are already visible. For example our new advertisements. They are in colour, more direct, more open and use straightforward language. You may have already seen them. They are being received well. In fact I heard from a solicitor only last week that he thought it was eye catching – both visually and in its message – and he described it as a huge improvement. I am very pleased with this positive feedback. We want to encourage all those concerned to give their comments – as we want to improve and change as we go along.

15. I have also been out and about - meeting judges; visiting courts; the Bar Council, the Law Society, Presidents of Tribunals; overseas delegations (including from India, Philippines and Australia); and various groups such as the Young Solicitors and the Black Solicitors network. A common theme has been to discuss how the Commission can make a difference, and what part we can all play.

16. So we have been listening and learning. And on my visits and otherwise I hear that there are a number of barriers to entering the judiciary. Most of them are mythical: that you have to be an advocate; that you have to be known to the senior judiciary; that you have to be from a certain educational background. I am told that applicants with parental responsibilities think the arrangements are inflexible and the travelling a deterrent. There are many who have

simply not seen themselves, for a variety of reasons, as embarking on a judicial career.

17. That is a real problem – something we need to rectify. We need to dispel some of those myths. But we cannot do it alone. We are very keen to learn from you and encourage you to help us. I would be very interested to hear your views on the ways in which we can encourage eligible candidates to apply.

18. Many of you will also still be members of chambers or of firms. We can only attract a wider range of applicants if the legal profession itself continues its successful work in drawing in more disabled people, women and people from the ethnic minorities.

19. One of our key statutory requirements is to widen the range of applicants. I am often asked if there is a tension between that requirement and the other key statutory requirement to appoint on merit. Let me be clear: merit is our bedrock and we will not depart from it when making recommendations. There will be no leaning towards skewed outcomes in the name of diversity. Merit and diversity are not incompatible. Our job is to reach out in new ways to attract suitable candidates, who for various reasons are put off from applying at present. Then we have to make sure that there is no bias in our processes that disadvantages any particular group whether

they are ethnic minorities, women, or people with disabilities, or white middle aged males.

20. Reaching out therefore is crucial – our advertising campaign, our website and our e-newsletter which reaches 2700 subscribers – are all part of this effort.

Progress to date on our priorities

21. Let me now turn to the progress we have made on the priorities the Commission set earlier this year on defining merit; and refining and improving effective and fair methods for assessing merit.

22. We have agreed five core qualities which we believe make a good judge, amplified by 14 supporting abilities. Currently we are consulting key interested parties and in the light of their comments these will be refined. Core elements of our selection process have also been agreed. In the future, a candidate wishing to apply will find:

- advertisements;
- events and information designed to stimulate applications from a wide range of candidates;
- a much streamlined application form (reduced from 29 pages to 9 pages);

- candidates will be assessed against a new set of qualities far fewer than at present;

23. All candidates will be asked to nominate referees to support their application; and the Commission will also nominate referees they will approach for further information about a candidate from a list which will be made available to candidates. Referees will then be asked to complete a simpler form (based on the reduced number of qualities).

24. All candidates will either have been formally interviewed or have participated in a discussion with a panel of assessors. Some may go through assessment centres or participate in other forms of role-play. The assessment centre is an important tool for applicants at entry level such as Deputy District Judges, where there is no track record in an existing judicial office.

25. We will be launching a selection for the High Court in October and we will be using some of the elements that I have just described. It will be a simple process but designed to provide a rigorous and fair assessment. It is also intended to be proportionate to the level of appointment.

Summary

26. To sum up, we have succeeded in defining merit, that is what makes a good judge, refining processes for selection, and developing a strategy for widening the pool. We are about to embark on the implementation phase. We shall of course be monitoring clearly how these processes work, and improve and change them as we go along. But we rely on you to give us feedback and comments. This is our endeavour in which we cannot succeed alone. We need your co-operation.

27. So thank you again for giving me the opportunity to speak to you. I am very happy to take any questions or comments which you may have.