

# Circuit judges sitting in Court of Appeal Criminal Division

## Policy document

## **Policy**

### **General Introduction**

The Lord Chief Justice and the Judicial Appointments Commission (JAC) are committed to selecting candidates for judicial office on merit, through fair and open competition, from the widest range of eligible candidates.

This policy defines the process for the selection of circuit judges to sit in the Court of Appeal Criminal Division (CACD) under section 9 of the Senior Courts Act 1981 (SCA), following the legislative changes introduced by the Crime and Courts Act 2013 (CCA)

The senior judiciary and the JAC have therefore agreed a process that allows for the selection and ongoing consideration of circuit judges suitable for authorisation to sit in the CACD. This will be achieved through a shared decision-making process.

### **Background to the Crime and Courts Act provisions**

The CCA received Royal Assent on 25 April 2013 and the relevant amendments to SCA and the CRA came into force on 1 October 2013. The CCA was introduced following a Ministry of Justice (MoJ) consultation on *Appointments and Diversity: A Judiciary for the 21<sup>st</sup> Century*<sup>1</sup> (May 2012) which was informed by a House of Lords Constitution Committee report on *Judicial Appointments*<sup>2</sup>. Whilst the amendment relating to the CACD was not specifically explored in the consultation paper, the arguments concerning the transparency of the process were thought to apply equally to section 9 requests for authorisations (or appointments) to sit as deputy high court judges, and circuit judges sitting in CACD. Both involve the authorisation of a judge to sit in a more senior court, and thereby providing him or her with a career-enhancing opportunity.

The MoJ consultation was also informed by the *Advisory Panel on Judicial Diversity report 2010*<sup>3</sup>. Recommendation 47 report stated that “selection processes for opportunities for career advancement should be open and transparent and based on assessment of suitability against published criteria”, and noted that the JAC’s concurrence requires the Commission to be satisfied that a proper process is in place.

### **Responsibility for requests for circuit judges to sit in the CACD**

A person requires authorisation under section 9 of the SCA to enable them to sit in the Court of Appeal Criminal Division. Requests under section 9 are the responsibility of the Lord Chief Justice<sup>4</sup>. Before requesting a circuit judge to sit in Court of Appeal Criminal Division, the Lord Chief Justice must also consult the Lord Chancellor.

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<sup>1</sup> <https://consult.justice.gov.uk/digital-communications/judicial-appointments-cp19-2011>

<sup>2</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/publications/previous-sessions/Session-2010-12/>

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217354/judicial-diversity-report-2010.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217354/judicial-diversity-report-2010.pdf)

<sup>4</sup> Or the Master of Rolls where the Lord Chief Justice (or his/her nominee) is unable to make the request or there is a vacancy in the office of Lord Chief Justice.

## How this policy will apply

1. The Commission will apply this policy from January 2015 onwards<sup>5</sup>.
2. The process to authorise circuit judges will usually take place on an annual basis.
3. An Expressions of Interest exercise will usually launch every autumn (subject to business need) through the judicial intranet. As part of the launch the Vice-President of the CACD will use the intranet and the Presiding Judges to alert all circuit judges to the process.
4. New authorisations will be made for a specified period, which will be stated in the materials and communications. It will also be set out on the JAC website.
5. Exercises to select circuit judges for authorisation will include the following elements:
  - a) Clear criteria
    - based on the Court of Appeal competency framework
  - b) Application material
    - Candidate self-assessment
  - c) A request to complete a diversity monitoring form
  - d) Supporting material
    - A statement on suitability from the relevant leadership judge (having had sight of the candidate's self-assessment)
  - e) Selection process
    - A panel comprised of the Vice-President of the CACD and a JAC Lay Commissioner will consider all the material and prepare a merit list
  - f) Consultation
    - Comments on the list of names to be sought by the Vice-President of the CACD from the relevant senior leadership judges. The comments will be shared with the JAC
  - g) Checks with the Judicial Conduct Investigations Office (JCIO)
  - h) Feedback
6. Section 159 of the Equality Act 2010 enables the panel to prefer a candidate who has a protected characteristic that is under-represented, if they are of equal merit to another candidate being considered for the same authorisation. This policy mirrors that applied by the JAC in relation to protected characteristics, in that the equal merit provision will only be applied in respect of race (White or BAME) and gender in cases of equal merit. The selection panel will therefore first agree a merit ranking of candidates, irrespective of diversity considerations. In the event that one or more candidates are considered to be of equal merit, the panel will then refer to the self-declared diversity characteristics of each candidate considered to be of equal merit and the candidate(s) with an underrepresented characteristic will be recommended to the Lord Chief Justice.

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<sup>5</sup> A draft of this policy was applied to the process used for authorisations made in December 2014.

7. The application of section 159 will only be considered where under-representation of diversity characteristics within the judiciary can be demonstrated. Published data showing the diversity of the judiciary at the Court of Appeal level, along with the 2011 Census, Detailed Characteristics, Office of National Statistics 2012 (or the latest updated population estimates), will be used<sup>6</sup>.
8. The Lord Chief Justice will send recommendations to the Commission to seek concurrence.
9. The Commission, sitting as the Selection and Character Committee, will provide concurrence based on all the evidence gathered by the selection process.
10. Following concurrence, it is for the Lord Chief Justice to consult with the Lord Chancellor before requesting candidates to sit in the CACD.
11. The Commission will use the anonymised data collected from the returned diversity monitoring forms to suggest what future actions may be considered for the purposes of increasing judicial diversity. Future actions need to be agreed between the Commission and the senior judiciary.
12. The policy will be subject to review.

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<sup>6</sup> The data will be drawn from an appropriate age range depending on the post-qualifying experience necessary, and the parts of the UK relevant to the eligibility of the individual post(s).