

JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

FOURTH STUDY COMMISSION QUESTIONNAIRE 2023

ANSWERS OF THE UNITED KINGDOM

1.Appointment to Judicial Office

The appointment of criminal and civil judges in England and Wales, and some Tribunals with UK wide powers, is undertaken by the Judicial Appointments Commission which is an independent body governed by duties under the Constitutional Reform Act 2005. It's statutory duties are to select candidates solely on merit, to select people of good character having regard to the need to encourage diversity in the range of persons available for judicial selection. The aim is to attract applicants from a wide field.

The Judicial Appointments Commission runs selection exercises and makes recommendations for posts up to and including the High Court. It does not select magistrates or judicial office holders of the Supreme Court but in the case of the latter the Chairman of the Judicial Appointments Commission sits on the selection panel.

The recruitment process begins when the Ministry of Justice and His Majesty's Court and Tribunal Service asks the Judicial Appointments Commission to run a selection exercise in a vacancy request which sets out the number of posts available, jurisdiction, circuit or region. Some exercises might be generic rather than specific to a jurisdiction or location. The exercise is advertised, and applicants are invited to apply.

The usual process is then consideration of eligibility and good character. The candidate will be asked to name judicial office holders who can be approached to provide assessments of the candidate with the purpose being to ensure candidates are of good character and have the relevant capability for the role. There follows shortlisting which may include qualifying tests, and then an invitation to an

interview at a selection day when further tests and questions relevant to the type of post will be asked and information about the candidate's competence clarified. If the candidate is selected there is statutory consultation undertaken of senior judiciary before a selection decision is made.

Where two or more candidates are assessed of being of equal merit, the Judicial Appointments Commission select a candidate for the purpose of increasing judicial diversity using the equal merit provisions. The selection applies where there is under representation of protected characteristics in terms of gender and ethnicity. This applies at shortlisting and the final decision making process.

In Wales some judicial posts have a requirement that it is essential that the applicant can conduct cases through the medium of the Welsh language.

Once selected, candidates are recommended by the Judicial Appointments Commission to the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals for appointment. Any unsuccessful candidate will be entitled to receive feedback about why they were unsuccessful.

The Judicial Appointments Commission also participate at the request of the Lord Chancellor in the selection of senior judicial office holders such as the Lord Chief Justice, the High Court Heads of Division, the Senior President of Tribunals and Lord and Lady Justices of Appeal. Senior selection panels are chaired by the Lord Chief Justice and comprise five members including lay persons. Current office holders are disqualified from panels to identify their successors. Selection panels will assess candidates against selection and eligibility criterion.

In the Judicial Appointments Commission Diversity update 2023 there were identified four target groups of people data showed are underrepresented in the judiciary, namely, women, ethnic minority individuals, individuals with disabilities, and solicitors. There are various actions being taken to address these matters. Among them is Targeted Outreach Programme which links individuals with judges who act as guides in the process; an in depth pre application Judicial Education Programme to provide participants from underrepresented groups with in depth education and training in all aspects of judgecraft, online training modules, and judge led discussion groups; judicial shadowing; as well as judicial mentoring.

One way that the exercise system eliminates any bias is the use of blind shortlisting for all exercises using a paper sift as a shortlisting method to promote fair selection

and diversity. The candidate's name is automatically removed and replaced with a unique identifier. All online tests are marked name blind.

The Judicial Diversity Forum is chaired by the Judicial Appointments Commission and produces an annual report. The Judicial Appointments Commission works with statisticians to analyze candidate progression through exercises to highlight any obstacles or difficulties. The Judicial Appointments Commission maintains a system of diversity checkpoints at all key stages during every selection exercise.

Since the Judicial Appointments Commission is independent from government there is no political interference in the way UK judges are appointed.

The Guide to Judicial Conduct (March 2020) emphasises that there is a statutory prohibition on salaried judges undertaking any kind of political activity or having ties with a political party (Sch 1 of the House of Commons Disqualification Act 1975 and section 137 of the Constitutional Reform Act 2005). The Guide says that judges should avoid any appearance of political ties e.g. by attending political gatherings, political fundraising events, contribution to political parties, or speaking within political forums.

2. Promotion within the Judiciary

If a judge wishes to apply for a more senior role then the recruitment process as described above applies. The Judicial Appointments Commission advertises the role and the judge will need to apply. There is no progression without this process.

There are leadership judges such as a Designated Family Court judge who will have applied for the position and undergone the recruitment process. Once appointed part of their leadership role is to encourage a wider more diverse pool of talented judges to apply for judicial roles in areas for which they have responsibility and supporting their progress and development of those who are appointed in this area. There has been more recently an emphasis on these leadership judges and on all judges to promote a more respectful and inclusive working environment.

In order to make the promotion process more transparent there have been produced a series of charts showing career progression routes for judges and to offer a development profile for anyone who is already a judicial office holder. For example, how a circuit judge may progress to a senior circuit judge or to a High Court judge.

In the last few years there has been a shift to promote existing judges and not to have rigid walls around judicial posts and to recognize the value of career progression within all the levels of the judiciary, whether in the Courts or Tribunals and to promote suitable judges with the necessary skills from , for example, the Tribunal judiciary to the Court judiciary.

Political affiliation plays no part in promotion.

3.Workload in the Judiciary

A judge's terms and conditions of appointment will generally include a statement of the number of days per year required for judicial business. For example, a District Judge is required to spend 215 days to judicial business.

There are listing administrative staff in the Court or Tribunal centres whose job is to manage judges' lists. Whilst allocation of cases is a judicial function under the control of the most senior judge at the hearing centre, it is often delegated to the administrative staff. There is usually a close working relationship between the listing staff and judges.

If a judge is under pressure because of the need, for example, to complete a reserved judgment, or a pressing personal commitment, the first avenue to ask for less sitting would be to speak to the senior leadership judge. This is how most pressure problems are resolved.

Every judge is expected to comply with the Statement of Expected Behaviour issued in January 2023 which includes the building of effective working relationships with and support of judicial colleagues and staff.

Under the Constitutional Reform Act 2005 responsibility for the welfare of judges in England and Wales is conferred on the Lord Chief Justice, and on the Senior

President of Tribunals for tribunal judges under the Tribunals, Courts and Enforcement Act 2007.

There is a new emphasis on judicial health and wellbeing. In 2021 the first Judicial Health and Wellbeing Strategy was published. It offers a cohesive approach to judicial welfare by bringing all the existing judicial welfare elements together and it outlines a plan of action.

Stress management and building personal resilience is a regular feature of core judicial values. In the Judicial Wellbeing Survey 2021 completed by most judges the main cause of stress over the last 12 months was---41% non-work related issues; 34% Covid; and 24% judicial workload.

When asked about the help from colleagues when things get difficult ---47% of judicial office holders strongly agreed with the statement that colleagues could be relied upon; 44% agreed with this statement; and 12% neither agreed or disagreed.

In response to what stress support judges would like to see the most popular response was more opportunities for discussion with colleagues followed by more protected time.

Judicial HR has a number of initiatives to help with the welfare of judges including a judicial helpline, judicial assistance programme, some nominated welfare judges backed up by welfare and casework teams.

There is a bespoke support service available to salaried judges working in Crime, Family and Immigration because of their exposure to disturbing graphic material and evidence of traumatic events and horrific crimes.

If a judge cannot resolve a dispute about workload or feels unfairly treated when carrying out the judicial role, there is an independent mediation service available via Judicial HR welfare.

4. Removal from Judicial Office

Every judge will be provided with Terms and Conditions of appointment, and these will contain a clause relating to removal from office.

For example, under the Courts Act 1971 s17(4) a circuit judge may be removed from office by the Lord Chancellor, with the concurrence of the Lord Chief Justice, on grounds of incapacity or misbehaviour.

The Lord Chancellor and Lord Chief Justice exercise disciplinary powers under Constitutional Reform Act 2005 over all courts and tribunals, judges, coroners and magistrates. This includes the power to remove a judge from office.

The Judicial Conduct Investigation Office (JCIO) was established under the Constitutional Reform Act 2005 to assist in the handling of complaints. After a public consultation some two years ago, some changes to the processes of the JCIO have taken place in order to promote transparency.

The disciplinary system continues to be based on misconduct, serious misconduct and gross misconduct. Disciplinary panels make findings and recommendations on cases which have been considered by a nominated judge or investigating judge. The judge the subject of the investigation, is entitled to make representations to the panel, and if the panel recommends suspension or removal from office, on the panel's draft report. There is a right to an oral hearing before the panel and the judge may be accompanied by a judicial colleague who is there to give moral support. A judge also has the right to instruct at their expense legal representation during disciplinary proceedings.

The disciplinary panel does not sit in public but the detailed disciplinary statements used in the hearings, are published on the JCIO website for one year in the case of misconduct, and five years in the case of removal from office. It is considered that the disciplinary statements are an important source of information for the public and judiciary and improve understanding of disciplinary decisions.

The annual report of the JCIO contains information about the disciplinary cases such as the name of the judge who considered the case.

In cases of removal from office, there is an indefinite period of publication of disciplinary statements to allow individuals, such as journalists, who may have an interest in previously published information about office holders disciplinary record, to request a copy of a deleted statement from the website.

The Guide to Judicial Conduct (revised 2020) may be referred to in the disciplinary proceedings but the disciplinary panel is not obliged to follow it.

Ultimately the final decision to remove a judge from office is that of the Lord Chancellor and the Lord Chief Justice.

Once removed from office the ex-office holder is free to reapply to join the Bar or to the Law Society or any other work body and it will be for that body to determine whether to admit that person. There is no legal restriction as such.

The consequences of removal depend on the individual circumstances of the ex-judge. Clearly that person would not qualify to apply again to a judicial office as they would not meet the good character requirement for judicial office.

July 2023