

## Annex D

# Summary of the Joint Working Party recommendations

### Part-time appointments

1. It is recommended that the option of carrying out part-time sittings in a more concentrated way should be made generally available, and not restricted only to those returning to the profession following a career break.
2. It is recommended that further consideration should be given to the concept of permanent part-time appointments with flexible sitting arrangements/working hours, including to the High Court Bench.
3. It is recommended that consideration should be given to whether in fact the requirement for part-time service is essential.
4. It is recommended that wherever possible arrangements should be made to allow sittings in blocks of one or two days rather than several weeks at a time.

### Employed lawyers

5. It is recommended that the ban on the appointment of lawyers serving in the Government Legal Service and the Crown Prosecution Service should be lifted.
6. It is recommended that experience of advocacy should no longer be an essential element in higher or other court appointments.
7. It is recommended that employed lawyers should be permitted to apply for 'Employed Silk' where the appointment is awarded to those who have achieved a high standard of excellence in an employed capacity.

### The role of the Lord Chancellor's Department

8. It is recommended that a detailed and structured investigation into the factors that inhibit applications for judicial appointments and silk from female and ethnic minority lawyers should be conducted.

9. It is recommended that the Lord Chancellor's Department make wider use of positive action measures, in order to give practical assistance to those candidates from under-represented groups who have the requisite ability and talent and who are seeking judicial appointment.
10. It is recommended that the Lord Chancellor's Department monitor, analyse and publish the key determinants affecting applicants' chances of success in being appointed.
11. It is further recommended that the Lord Chancellor's Department collate and publish this information, together with monitoring statistics relating to all applications, interviews and appointments, disaggregated by gender, ethnicity (using the standard classifications promoted by the CRE), and by profession, on an annual basis.
12. It is recommended that the Lord Chancellor employ the considerable weight and authority of his office to encourage the practice of fair instruction of Counsel by government agencies and private practice operating in the areas of publicly funded work.
13. It is recommended that the Lord Chancellor's Department asks judges to assist women and ethnic minority practitioners by participating in mentoring or marshalling schemes.
14. It is recommended that the scope for progression to the Circuit Bench from other judicial appointments is more clearly defined in future and that steps are taken to ensure greater awareness of the possibilities for career development of this sort.
15. It is recommended that consideration be given to removing the requirement for many High Court Judges to spend up to three months of the year away from home on circuit, because of its likely indirectly discriminatory impact on female practitioners.

### The application stage

16. It is recommended that income/earnings should be removed altogether from the list of relevant considerations and that the issue of active practice, if it continues to be considered relevant, is posed as a direct question.
17. It is recommended that all vacancies are advertised and that job descriptions and person specifications are developed for **all** judicial appointments, reflecting measurable, bias-free selection criteria that test suitability for selection and appointment.
18. It is recommended that aptitude tests based upon these selection criteria should be freely available to all lawyers, in both branches of the profession for potential applicants.
19. It is further recommended other career-planning assistance such as regular judicial appointments 'career fairs' or events, booklets or videos are made available for prospective applicants.

20. It is recommended that introductory courses perhaps taking the form of Judicial Studies Board ‘taster’ sessions should be available to potential applicants.
21. It is recommended that consideration should be given to establishing a (very much more) swift procedure for assessing the merits of individual applications.
22. It is recommended that the system of consultation should be fundamentally changed.
23. It is recommended that applicants should be required to supply the names of two appropriate referees, from a broad list of appointed categories, who are directly familiar with the nature and quality of their work.
24. It is recommended that those invited to provide references are guided to provide comments that are objective, confined to the selection criteria and are justifiable or verifiable.
25. It is recommended that the present standard application form is revised.
26. If the consultations process is to continue it is recommended that full training (including briefing on equal opportunities issues) should be given to all consultees.

### **The selection stage**

27. It is recommended that consideration should be given to the adoption of assessment centre-style methods of selection for prospective judges.
28. It is recommended that after a full screening of application forms, to evaluate how closely candidates match the selection criteria, short-listed applicants should be invited to attend an assessment centre over several consecutive days where they would be expected to take part in extended tests, interviews and group observation to test their aptitude.
29. It is recommended that legal knowledge tests should be introduced as well as tests to assess court management skills and the ability to write and extemporise. These tests could be incorporated into the assessment centre programme.
30. It is further recommended that awareness and competence in dealing with equal opportunities issues should also be fully assessed.
31. It is recommended that these tests should be extended across the board to include deputy High Court Judge appointments.
32. It is recommended that recruitment and selection training, to include interview skills and equal opportunities awareness, should be compulsory for all members of any interview panel.

### The selection criteria

- 33.** There are no published criteria for High Court and appellate posts. It is recommended that this anomaly is to be put right.
- 34.** Consultees are not in a position to know whether an applicant was instructed by the client to take a particular line on a given occasion; the omission of this point from the existing guidance for consultees is criticised and its inclusion is recommended.
- 35.** It is recommended that authority and sound judgement be redefined.
- 36.** It is recommended that tests are designed to assess the applicant's:
- ability to write and extemporise lucidly, and the other abilities, identified above as the core of what is understood by sound judgement;
  - court management skills – the core of what is understood by the notion of authority.
- 37.** It is recommended that “fairness” is called impartiality.
- 38.** It is recommended that “commitment” is replaced by the phrase “conscientiousness and diligence”.
- 39.** The addition of the following criteria is recommended:  
 “the habit of self-discipline and self-criticism, incertitude that one’s own views are incontestable [and own]” (Justice Frankfurter); and ability to “purge [one’s] mind not only of partiality to persons, but of partiality to arguments, a much more subtle matter” (Lord MacMillan). These qualities could be called open-mindedness for short.

### Appointment, Appraisal and Evaluation

- 40.** It is recommended that detailed feedback based on the selection criteria, should be offered to all unsuccessful candidates.
- 41.** It is recommended that consideration should also be given to the possibility of a formal confidential appeals procedure for those who believe that they may have been treated unfairly by the appointments process.
- 42.** It is recommended that all judicial appointments should be subject to appraisal and evaluation.