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Select Committee on the Constitution

7th Report of Session 2017–19

Judicial Appointments: follow-up

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Select Committee on the Constitution

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Evidence is published online at <http://www.parliament.uk/judicial-appointments-follow-up> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The legal system in the United Kingdom is world-renowned. At its heart is a judiciary embodying the principles of independence, fairness and integrity, and an unwavering commitment to the rule of law. The responsibility of the judiciary is to ensure the fair administration of justice; the birthright of every citizen.

Beyond its impact on the lives of every citizen, the administration of justice makes a significant contribution to the economy and standing of the UK as a whole. English law is the most commonly used law in international business and dispute resolution, and this pre-eminence is built on the impartiality, integrity and depth of experience of the judiciary.

To maintain the high quality of our legal system, the brightest and most able candidates must be attracted to put themselves forward for judicial appointment, and after they have been appointed, to continue in office. Unfortunately we have found that a number of factors have damaged judicial morale and the attractiveness of judicial office. We are seriously concerned about difficulties of recruitment, particularly to the High Court.

In our 2012 report on *Judicial Appointments* we explored the appointment of judges in England and Wales and Justices of the Supreme Court, raised concerns about the lack of diversity at the bench, and made a number of recommendations to improve the judicial appointments process. While there has been some improvement in the diversity of the judiciary since that report, it has been limited. We recognise that it may take time for recent legal changes and initiatives to deliver a more diverse judiciary that is reflective of the community it serves.

In this follow-up report we draw attention to three broad themes: the reduced attractiveness of judicial office, its impact on recruitment, and continuing concerns about the lack of diversity in the judiciary. We examine a number of factors including judicial salaries, pensions, working conditions, court infrastructure and administration, as well as the constitutional responsibility of the Lord Chancellor to uphold the independence of the judiciary. We consider opportunities to improve diversity, and to increase the number of potential recruits to the judiciary, by addressing issues that restrict applications from solicitors, legal executives and lawyers currently employed by the government and the Crown Prosecution Service.

The high quality of our judicial system is a valued national asset, and we must do everything possible to maintain it.

Judicial Appointments: follow-up

CHAPTER 1: INTRODUCTION

1. In March 2012, we published a report on *Judicial Appointments*.¹ It examined who should be responsible for the appointment of judges in England and Wales and Justices of the Supreme Court; and what should be the substantive criteria governing those appointments. It set out concerns about the lack of diversity on the bench and made a number of recommendations to improve the judicial appointments process.
2. Five years on, we have conducted a short follow-up inquiry to examine the progress that has been made. We were pleased to note that a number of our recommendations had been implemented, primarily through the Crime and Courts Act 2013,² including:
 - the power to request reconsideration or reject nominations should be transferred from the Lord Chancellor to the Lord Chief Justice in relation to appointments below the High Court;³
 - the duty in section 64 of the Constitutional Reform Act 2005 to encourage diversity in the range of persons available for selection for appointments should be extended to the Lord Chancellor and the Lord Chief Justice;⁴
 - there should be a greater emphasis within the judiciary on judicial careers, making it easier to move between different courts and tribunals and to seek promotions;⁵ and
 - the “tipping provision” in section 159 of the Equality Act 2010 should be used as part of the appointments process.⁶

These changes are discussed further in Chapter 4.

3. During this follow-up inquiry attention was drawn to a fresh problem of recruitment to the judiciary arising from diminished morale among serving judges and, for potential applicants, the reduced attractiveness of a judicial appointment. In particular, we heard alarming evidence that insufficient candidates of the requisite quality have been applying for appointment to the High Court. The issue of diversity on the judicial bench was addressed in our report in 2012, but remains a problem. This follow-up inquiry focused on these areas of concern.
4. As part of this short follow-up inquiry we held evidence sessions with the Judicial Appointments Commission, the Law Society, the Bar Council, the Chartered Institute of Legal Executives and a solicitor who had applied for judicial office, Anna Nice. We also took evidence on these issues from the

1 Constitution Committee, *Judicial Appointments* (25th Report, Session 2010–12, HL Paper 272)

2 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’, 30 October 2013: <https://jac.judiciary.gov.uk/news/changes-under-crime-and-courts-act-2013-start-take-effect> [accessed 26 October 2017]

3 Constitution Committee, *Judicial Appointments*, para 34

4 *Ibid.*, para 111

5 *Ibid.*, para 180

6 *Ibid.*, para 101

Lord Chancellor, the Lord Chief Justice, and the President and Deputy President of Supreme Court as part of our annual evidence sessions.⁷ We are very grateful for their contributions to our work.

⁷ The annual evidence sessions were held in March 2017. Since that time, the holders of all four of those offices have changed.

CHAPTER 2: THE ATTRACTIVENESS OF JUDICIAL CAREERS

Introduction

5. The legal system in the UK is world-renowned. The high-quality justice it delivers is a significant contributor both to society and the UK economy.⁸ The obvious public interest in the quality of the administration of justice within the UK requires no elaboration. Its quality is underlined, however, by its impact overseas. “English law is the most commonly used law in international business and dispute resolution” and it encourages people to come from all over the world to litigate in our courts.⁹ “This pre-eminence is built on the impartiality, integrity and depth of experience of the judiciary.”¹⁰ As Sir Geoffrey Vos, Chancellor of the High Court, said in a lecture in June 2017, one of the “unique selling points that we have in the UK is the independence of our judiciary.”¹¹
6. It is essential for maintaining the high quality of our legal system that we retain the best judges in our judiciary and attract the brightest and most able candidates to put themselves forward for judicial appointment. A career in public service can be a significant motivation for potential applicants. As Lord Justice Burnett, then Vice-Chairman of the Judicial Appointments Commission, now Lord Chief Justice of England and Wales, told us: “Certainly, at the High Court level nobody applies for the job unless they have a sense of public duty.”¹²
7. The public interest demands that the high quality of our judicial system should be maintained. However, we heard that in recent years judicial office had become significantly more demanding and, simultaneously, less attractive.¹³ Our follow-up inquiry found a number of explanations for this, including salary and pensions, working conditions, as well as increasing demands made on judges, and damage to the relationship between the judiciary and the government. We examine these issues below.
8. Concerns about the attractiveness of judicial careers were supported by data from the Judicial Attitudes Survey (JAS),¹⁴ which reported that the proportion of judges in 2016 who said they would leave the judiciary if it was

8 The total turnover of the UK legal services sector in 2015 was £32.1bn. Law Society, *Key Economic Statistics for the Legal Sector*, March 2017: <http://www.lawsociety.org.uk/news/documents/legal-sector-economic-stats/> [accessed 26 October 2017]

9 TheCityUK, *UK Legal Services 2016*, July 2016, p 17: <https://www.thecityuk.com/assets/2016/Reports-PDF/UK-Legal-services-2016.pdf> [accessed 26 October 2017]. See also, annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 1](#) (Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales)

10 TheCityUK, *UK Legal Services 2016*, July 2016, p 17

11 Sir Geoffrey Vos, Chancellor of the High Court, Lecture to the Faculty of Advocates, ‘The UK Jurisdictions After 2019’, 20 June 2017: <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/chc-speech-faculty-of-advocates.pdf> [accessed 26 October 2017]

12 [Q 2](#) (Lord Justice Burnett, Vice-Chairman of the Judicial Appointments Commission)

13 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury, President of the Supreme Court) and [Q 2](#) (Lord Justice Burnett)

14 The Judicial Attitudes Survey was conducted by the Judicial Institute of University College London in 2014 and 2016. The survey sought the views of serving salaried judges in England and Wales, Scotland, Northern Ireland and the UK non-devolved tribunals, including both full-time salaried and part-time salaried judges. The figures quoted in this report relate solely to judges in the England and Wales Courts and UK tribunals. The response rate for this group to the 2016 survey was 99%.

a viable option had almost doubled from 2014 (from 23% to 42%).¹⁵ The JAS asked judges if they were considering leaving the judiciary in the next five years other than by reaching compulsory retirement age. Of those judges who would not reach compulsory retirement age in the next five years, over a third (36%) said they were considering leaving (an increase of 5 percentage points since 2014), and almost a quarter (23%) were undecided.¹⁶ Table 1 shows the factors that a majority of judges said would make them more likely to leave the judiciary early.

Table 1: Factors promoting early departures

What factors would make you more likely to leave the judiciary early	2016 JAS
Limits on pay awards	68%
Reduction in pension benefits	68%
Increase in workload	57%
Further demands for out of hours work	54%
Stressful working conditions	54%
Reduction in administrative support	51%

Source: UCL Judicial Institute, 2016 UK Judicial Attitude Survey, 7 February 2017, p 74: <https://www.judiciary.gov.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf> [accessed 26 October 2017]

9. These concerns were relevant to both retaining current judges and for the appeal of the judiciary to new applicants.

Pay and pensions

10. In our 2012 report we noted that one of the challenges of recruiting to the bench was the salary of judges compared to senior barristers and highly-paid City solicitors.¹⁷ In this inquiry, we heard that the £180,000 salary for a High Court judge was “a good salary as far as the public sector is concerned”¹⁸ and that for those working in smaller private practices, lower courts and tribunals, and for those working outside of London, the salary of a judge can be appealing. Robert Bourns, then President of the Law Society, commented: “the financial remuneration that is available to the judiciary [at the level below the High Court], with pension support as well, can be attractive to practitioners.”¹⁹
11. However, despite this, we heard that the difference in remuneration between a legal career in the public sector and private practice remained a significant issue affecting the recruitment of new judges and the retention of serving judges. Lord Thomas of Cwmgiedd, then Lord Chief Justice, told us that “there is obviously across government, and particularly in the legal sector, an issue with pay.”²⁰ Robin Allen QC, Chairman of the Equality and Diversity

15 UCL Judicial Institute, 2016 UK Judicial Attitude Survey, 7 February 2017: <https://www.judiciary.gov.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf> [accessed 26 October 2017]

16 UCL Judicial Institute, 2016 UK Judicial Attitude Survey, p 74

17 Constitution Committee, *Judicial Appointments*, para 121

18 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP, Lord Chancellor)

19 [Q 22](#) (Robert Bourns, President, Law Society of England and Wales)

20 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 7](#) (Lord Thomas of Cwmgiedd)

and Social Mobility Committee at the Bar Council of England and Wales, said there was an expectation “that there will be difficulties, particularly in the High Court posts in the commercial end of practice, simply because of the disparity between earnings at the commercial Bar and the earnings that barristers will give up in order to become judges of the High Court.”²¹

12. Embarking on a judicial career requires some candidates to accept a significant decrease in salary; this has long been the case for the highest-earning lawyers.²² However, as the Senior Salaries Review Body (SSRB) stated in their 2017 annual report:

“while people are motivated to become judges for a range of reasons and tend to accept that a commitment to public service as a judge may involve moving to a lower salary on appointment, pay and wider reward are nevertheless important in influencing individual decisions to apply for judicial posts. Senior judges, in particular, accept that they may see a significant drop in salary from their previous work. However, recent changes to terms and conditions, especially judicial pensions, appear to have made the posts less attractive.”²³

13. On judicial pay, the 2016 JAS found that 78% of all judges said they had experienced a loss of net earnings over the last two years.²⁴ Additionally, 63% of judges said that the judicial salary was affecting their morale and 82% said that it was affecting the morale of judges they worked with.²⁵ The survey also found that 62% of judges said the change in pensions had affected them personally²⁶ and 74% felt that their pay and pension entitlement combined did not adequately reflect the work they had done and would do before retirement.²⁷ Furthermore, 61% of judges said the change in pensions had affected their morale and 88% said it had affected the morale of judges they worked with.²⁸

14. The then Lord Chancellor, Liz Truss MP, acknowledged:

“we need to make sure that the real feelings of value the Government have for judges right across the country are understood and communicated properly and effectively. It is partly about salary, remuneration and pensions, and that is one of the reasons I have asked the Senior Salaries Review Body to conduct a major review of it.”²⁹

15. The SSRB review of judicial pay will examine “whether the current judicial salary structure is fit for purpose, evaluate roles carried out by all judicial office holders, consider the growth of leadership roles within the judiciary, and advise on the positions and level of pay required to recruit, retain and

21 [Q 21](#) (Robin Allen QC, Chairman, Bar Council Equality and Diversity and Social Mobility Committee, Bar Council of England and Wales)

22 Constitution Committee, *Judicial Appointments*, para 121

23 Review Body on Senior Salaries, *Thirty-Ninth Annual Report on Senior Salaries 2017*, Cm 9455, July 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629679/SSRB_2017_report_Print.pdf [accessed 26 October 2017]

24 UCL Judicial Institute, *2016 UK Judicial Attitude Survey*, p 37

25 *Ibid.*

26 *Ibid.*, p 41

27 *Ibid.*, p 47

28 *Ibid.*, p 42

29 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP)

motivate high calibre office holders at all levels of the judiciary.”³⁰ It is due to be completed by June 2018.

16. **We recognise the growing disparity in pay between the private and public sectors, particularly at the senior levels of the judiciary. Without wishing to pre-empt the Senior Salaries Review Body’s review, we note that, given the restraints on public sector pay, it is unlikely judicial pay will increase in a way that significantly reduces this difference. The Government should address the other issues which undermine the attractiveness of the judiciary as a career path, which we consider later in this report.**
17. Beyond the questions relating to judicial salaries, “the whole issue of judges’ pensions has been very concerning indeed”³¹ and “there is a problem in pensions where the circuit bench feels that it has been unjustly treated.”³²
18. Changes were made to judicial pensions in 2015 as part of the Government’s reforms to public sector pensions. As the SSRB’s 2017 annual report explained, most salaried judicial office holders are members of either the 1993 Judicial Pension Scheme or the 2015 Judicial Pension Scheme.³³ The 1993 scheme gives a final-salary pension, while the 2015 scheme is based on career average earnings, in line with other public sector schemes.³⁴ Judges who were within 10 years of the normal retirement age (65) on 1 April 2012 were able to remain on the more generous 1993 scheme. Judges who were aged between 51.5 and 55 years on 1 April 2012 were allowed to defer joining the 2015 scheme for a period of time. New judges, and those younger than 51.5 years old, could only join the 2015 scheme.
19. In short, newly appointed judges who had recently given up successful careers in the legal professions on the basis that their pension arrangements would be governed by the 1993 Judicial Pension Scheme found that, without their agreement, they were forced into the much less valuable 2015 scheme. This represented a significant personal detriment at the outset of their judicial careers. It also constituted a breach of the principle of security of tenure. Beyond the judges directly affected, the judiciary as a whole was disturbed and angered by the changes.
20. The pension changes have resulted in ongoing litigation between judges and the Government. In January 2017 an employment tribunal upheld a claim by 210 judges that they suffered an unjustified loss to their pensions, purely because they were younger, when the 2015 Judicial Pension Scheme was introduced.³⁵ The tribunal decided that, as older judges were allowed to stay in the 1993 scheme until retirement, or for an interim period, this

30 Letter from the Chair of the SSRB Judicial Sub-Committee, Office of Manpower Economics, 13 December 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581470/SSRB_JSC_CHAIR_TO_JUDICIARY_ON_MAJOR_REVIEW_13_DEC_2016_FINAL.pdf [accessed 27 October 2017]

31 **Q 23** (Robin Allen QC)

32 Annual oral evidence taken on 22 March 2017 (Session 2016–17) **Q 7** (Lord Thomas of Cwmgiedd)

33 Membership of either pension scheme was not mandatory.

34 Review Body on Senior Salaries 2017, *Thirty-Ninth Annual Report on Senior Salaries 2017*

35 *Ms V McCloud and Others Mr N Mostyn and Others v The Lord Chancellor and Secretary of State for Justice and Ministry of Justice*, Case No: 2201483/2015 & Others, 2202075/2015 & Others: https://assets.publishing.service.gov.uk/media/58e3a79640f0b606e30000ad/Ms_V_McCloud_and_others_v_The_Lord_Chancellor_and_Others_221483-2015_others_Judgment_and_reasons.pdf [accessed 26 October 2017]

was unlawful discrimination against younger judges.³⁶ The Government is appealing the judgment.³⁷

21. There has also been litigation between judges and the Government regarding pensions for those serving in a fee-paid capacity. In *O'Brien v Ministry of Justice*, the claimant argued that he was entitled to a pension in respect of his fee-paid judicial work as a recorder on the same basis, adjusted *pro rata temporis*, as that paid to salaried judges who had done the same or similar work. The then Department for Constitutional Affairs told him that he was not entitled to a judicial pension since the office of recorder was not a qualifying judicial office under the relevant UK legislation and because, under European law, he was an office-holder rather than a worker. The Supreme Court found that recorders were in an employment relationship within the meaning of EU law concerning part-time work and must be treated as “workers” for the purposes of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000. The Supreme Court concluded that no objective justification had been shown in this case for departing from the basic principle of paying a part-time worker the same as a full-time worker calculated on a *pro rata temporis* basis.³⁸ As a result, the Government made the Judicial Pensions (Fee-Paid Judges) Regulations 2017,³⁹ which the minister said would “establish a pension scheme for eligible fee-paid judges that mirrors the existing pension scheme for salaried judges established by the Judicial Pensions and Retirement Act 1993.”⁴⁰
22. Robin Allen QC said that such litigation “conveys a terrible message”⁴¹ and that it “does not seem right to me—and I do not think it seems right to anyone on the Bar—that there should be litigation between judges and the Government, except very rarely about very rare things. Collective litigation like this gives a very bad impression.”⁴²
23. **We do not comment on the economic circumstances in which the Government made changes to the arrangements for judicial pensions. However, we are deeply concerned that the sense of grievance created by the pensions issue has damaged morale throughout the judiciary and will have reduced the appeal of a judicial career to those who might otherwise have been thinking of one.**

Working conditions and resources

24. The judiciary’s working conditions were raised as an area of concern. Robin Allen QC told us that “the whole maintenance of the judicial system is absolutely creaking”⁴³ and that the “working conditions are a deterrent” to

36 Review Body on Senior Salaries, *Thirty-Ninth Annual Report on Senior Salaries 2017*

37 Review Body on Senior Salaries, *Thirty-Ninth Annual Report on Senior Salaries 2017* and Ministry of Justice, *Fee-Paid Judicial Pension Scheme Regulations: Response to consultation*, 27 February 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595798/fpjps-consultation-response.pdf [accessed 26 October 2017]

38 *O'Brien (Appellant) v Ministry of Justice (Formerly the Department for Constitutional Affairs) (Respondent)* [2013] UKSC 6 on appeal from [2008] EWCA Civ 1448, 6 February 2013: <https://www.supremecourt.uk/cases/docs/uksc-2009-0123-press-summary.pdf> [accessed 26 October 2017]

39 The Judicial Pensions (Fee-Paid Judges) Regulations 2017 (*SI 2017/522*)

40 House of Commons First Delegated Legislation Committee, *Draft Judicial Pensions (Fee-Paid Judges) Regulations 2017*, 27 March 2017, [col 1](#) [The Parliamentary Under-Secretary of State for Justice, Dr Phillip Lee]

41 [Q 23](#) (Robin Allen QC)

42 [Q 24](#) (Robin Allen QC)

43 [Q 22](#) (Robin Allen QC)

those thinking of applying to the judiciary.⁴⁴ The 2016 JAS found that 76% of judges felt their working conditions had deteriorated since 2014.⁴⁵ Forty-three per cent said that the maintenance of their building was poor and 31% said that the physical quality of the building as a whole was poor.⁴⁶

25. Lord Thomas of Cwmgiedd, then Lord Chief Justice, told us about the “general dilapidated state of the court estate”, with “buckets in every area”. He explained that “in the Leeds court, the plaster has been falling off the wall for years” and he noted that “there is nothing more demoralising than going to a building that is dilapidated.”⁴⁷ He cited his experience sitting in the Court of Appeal in Winchester where “the roof leaks, they had buckets in the corridor and the heating does not work all the time.”⁴⁸
26. Robin Allen QC said that the judicial estate was in many places “very tatty” and illustrated the conditions he experienced whilst sitting as a recorder in inner London:

“my retiring room has no windows, the court has no windows, and the size of the retiring room is about twice the size of a post box. That is not the case in every court; there are some modern courts that are excellent. However, you experience that and you think, ‘Do I want to commit myself to a life living quite like that?’”⁴⁹
27. He observed that “in many courts, catering facilities have been withdrawn” and this caused practical difficulties, as judges “cannot just go out in the middle of the day and mix with defendants and witnesses; it would be completely inappropriate for them to do that.”⁵⁰
28. We heard that there were considerable problems with staff resourcing across the judicial estate, administrative burdens facing judges and IT. On court administration, Lord Neuberger of Abbotsbury, then President of the Supreme Court, said that “a judge’s life has become more demanding over the past 20 years—and probably even more over the past 40 years—than before in terms of administrative responsibility and the pressure of work.”⁵¹ Lord Thomas reported that a professor specialising in court administration had told him “that there is an endemic problem in that people do not understand the resources necessary to run a court system until it falls over.”⁵²
29. Lord Thomas explained that “the Ministry of Justice is under resourced ... There was a programme, which has been happening probably since I became involved in leadership, of gradually running down people with experience. They have all gone, with one or two exceptions ... The problem is that the ministry simply does not have enough money to have a proper staff to do the work.”⁵³ He continued, “a lot of the staff at HMCTS are retained on short-term contracts, and if you ask any district judge—district judges bear the brunt of the problems—there are real difficulties in their files being properly

44 *Ibid.*

45 UCL Judicial Institute, *2016 UK Judicial Attitude Survey*, p 13

46 *Ibid.*, p 17

47 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 6](#) (Lord Thomas of Cwmgiedd)

48 *Ibid.*

49 [Q 22](#) (Robin Allen QC)

50 *Ibid.*

51 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury)

52 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 3](#) (Lord Thomas of Cwmgiedd)

53 *Ibid.*

put together.”⁵⁴ These views were reflected in the 2016 JAS, which found that 42% of judges said the amount of administrative support was poor and 64% said the morale of court staff was poor.⁵⁵

30. Lord Thomas also explained that there were “inevitable problems with rolling IT out and there are some that have occurred as a result of the extreme difficulty in dealing with an IT system that had not been modernised for 15 years.”⁵⁶ However he told us that “that is coming [and] it is on track.”⁵⁷
31. The then Lord Chancellor, Liz Truss MP, acknowledged that the government needed “to look at the conditions in courts. Are they pleasant places to work? On working practices, do judges have enough support? Some judges tell me they feel quite overwhelmed by the amount of work. Some judges are working in very difficult environments.”⁵⁸ She explained that:

“one thing we are doing in the Prisons and Courts Bill is giving more support from case officers so that judges have to do less of the administrative work and more of their time is freed up. The figures I have shown you are pretty poor; they will not be turned round in a year; this is like turning round an oil tanker. One of the reasons we have set out the Ministry of Justice’s strategy for the next 10 years is to look to the long term about how we genuinely shift this and make sure that judges feel valued and have a clear career path.”⁵⁹
32. Although the Prisons and Courts Bill did not complete its passage through Parliament, due to the 2017 general election, the Government announced its intention to bring forward a new Courts Bill to “reform our courts and tribunal system to improve access to justice, making better use of technology and modernising working practices.”⁶⁰
33. In September 2016 the then Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals published a joint paper entitled *Transforming our Justice System* which set out their aim “to modernise and upgrade our justice system so that it works even better for everyone.”⁶¹ The paper set out the need for “radical change” and the need “to have modern IT and processes and to be located in buildings which are fit for purpose.”⁶² Lord Neuberger told us that there was “substantial expenditure” on “improving the courts physically and introducing what one hopes will be a very effective IT system.”⁶³ The Lord Chief Justice’s 2017 report stated that “the Courts and Tribunals Modernisation Programme continues apace and well on

54 *Ibid.*

55 UCL Judicial Institute, *2016 UK Judicial Attitude Survey*, February 2017 pp 16–17

56 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 6](#) (Lord Thomas of Cwmgiedd)

57 *Ibid.*

58 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP)

59 *Ibid.*

60 Prime Minister’s Office, *The Queen’s speech and associated background briefing, on the occasion of the opening of Parliament on 21 June 2017*, p 40: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf [accessed 26 October 2017]

61 Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, *Transforming Our Justice System*, September 2016, p 3: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf [accessed 26 October 2017]

62 *Ibid.*, p 3

63 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury)

track with the £1bn investment provided.”⁶⁴ Lord Neuberger said that such investment and modernisation will “probably have a significant effect on the working conditions of judges.”⁶⁵

34. **We are concerned about the working conditions of the judiciary and the detrimental effect they may be having on retaining and recruiting judges. The dilapidated state of some courts coupled with administrative burdens, under-resourcing of staff and IT shortcomings all need to be addressed.**
35. **We are pleased that the Government has said that it is committed to addressing these problems, both in partnership with the senior judiciary, and ultimately through legislation. However, a considerable investment of funds and political energy will be needed to achieve the required improvements both in the immediate future and long-term.**

Returning to practice after a judicial career

36. There is a long-standing convention which prevents full-time judges from returning to private practice after retiring from the bench. The convention is based on the belief that one of the strengths of our judicial system is that those who accept judicial appointment have already enjoyed successful careers in the law, and, with some real understanding of the responsibilities, (usually after sitting as part-time judges) are fully committed to full-time judicial office for the long term. This process underpins the collegiate atmosphere of mutual support and assistance among the judges and retains the benefit of long-term judicial experience for the judiciary. It has worked well for many years.
37. We were however told that the convention operates as a disincentive and that it is “extremely influential”⁶⁶ in deterring potential applicants. We explored whether judges should be able to return to practice on leaving the judiciary, particularly given that part-time judges may continue to practise whilst sitting on the bench. Robin Allen QC told us that “part-time judges who are not salaried do continue in practice. If that is the case, then it seems very difficult to suggest that they cannot do it once they become salaried and then stop being salaried and retire from that post. I know it is controversial but that is my view. It is the Bar Council’s view too.”⁶⁷ Robert Bourns from the Law Society concurred.⁶⁸
38. **We recognise that the concept of judges returning to practice law is controversial. We invite the Lord Chancellor and the Lord Chief Justice to examine the continuing value of the convention, and in particular, whether it serves to operate as a significant disincentive to applications for full-time judicial appointment.**

Retirement

39. The Judicial Pensions and Retirement Act 1993 introduced a retirement age of 70 for all judges. The rationale was to create consistency in the judicial retirement system. However, any judge first appointed to judicial office

64 Judiciary of England and Wales, *The Lord Chief Justice’s Report 2017*, p 7: <https://www.judiciary.gov.uk/wp-content/uploads/2017/09/lcj-report-2017-final.pdf> [accessed 26 October 2017]

65 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury)

66 [Q 23](#) (Robert Bourns)

67 [Q 23](#) (Robin Allen QC)

68 “I share that view”. [Q 23](#) (Robert Bourns)

before 31 March 1995 was not required to retire until reaching 75; a number of serving judges remain subject to this higher retirement age.⁶⁹

40. In our 2012 report we concluded: “we do not agree that there should be a uniform retirement age across the whole of the judiciary. There should be differential retirement ages: of 75 for Court of Appeal judges and Supreme Court Justices and 70 for all other judges.”⁷⁰ This recommendation was not implemented. The Government said in its response:

“The current retirement age seeks to strike a balance between retaining the experience of the senior judiciary, while ensuring that high quality applicants can attain the highest judicial offices. We do not consider that the current retirement age compromises the quality of the judiciary at the highest levels, or works disadvantageously against those following less traditional career paths.”⁷¹

41. Baroness Hale of Richmond, then Deputy President (now President) of the Supreme Court explained that the retirement age caused practical problems for the Supreme Court: it would have “nine vacancies over the next three years because some of us have the privilege of being able to continue until we are 75 and others are having to retire at 70, even though they are still at the height of their powers, which is a great shame.”⁷²

42. Lord Kakkar, chairman of the Judicial Appointments Commission (JAC), told us:

“On the one side, clearly having a fixed retirement age provides the opportunity to ensure that there are not questions about performance or health of judges as they become very old and potentially not able to perform. On the other side of the argument, quite clearly a large number of talented people are retiring at 70 when, with all the challenges facing the judiciary, there may be a strong argument for them to remain on the Bench and continue to serve. The argument put against that is that, if one does that, one blocks a number of potential positions for an increased period of time and the ability to drive forward diversity through new appointments is diminished.”⁷³

43. Lord Neuberger said it was “a bit quaint that the retirement age used to be 75 and has been reduced to 70 at a time when retirement ages everywhere else are generally going up, or there are no retirement ages ... To have a sensible judicial career, one would therefore be well-advised to increase the retirement age to 75. I have been in favour of that for some time.”⁷⁴

44. However, Lord Thomas said that there was a need “to be very careful about the retirement age. It is a very complicated subject.”⁷⁵ He told us:

69 Constitution Committee, *Judicial Appointments*, para 190

70 *Ibid.*, para 197

71 Ministry of Justice, *Government response to the House of Lords Constitution Committee’s Report: Judicial Appointments*, Cm 8358, May 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217334/judicial-appointments-gov-response.pdf [accessed 26 October 2017]

72 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 9](#) (Baroness Hale of Richmond, Deputy President of the Supreme Court)

73 [Q 4](#) (Lord Kakkar, Chairman, Judicial Appointments Commission)

74 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 9](#) (Lord Neuberger of Abbotsbury)

75 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 4](#) (Lord Thomas of Cwmgiedd)

“my experience has been that from time to time when you cross a certain age threshold your faculties may not be as good as they were a year or two before. The problem with the judiciary is that you cannot say to someone, ‘You’ve got to go now’, so we need to be very cautious.”⁷⁶

45. **Given the difficulties in recruiting judges, which we address in the next chapter, the Lord Chancellor, with the Heads of the Judiciary in England and Wales, Scotland and Northern Ireland and the President of the Supreme Court, should reflect on whether the current fixed retirement age throughout the judiciary continues to be appropriate. Consideration should also be given to whether a higher retirement age would be appropriate at the senior levels of the judiciary, given that most judges do not reach the higher ranks until later in their careers.**

Relationship with the Government

46. The 2016 Judicial Attitudes Survey revealed low levels of morale amongst the judiciary, and in particular found that only 2% felt valued by the Government.⁷⁷ Robin Allen QC told us that there was “a general concern about the relationship between the [Ministry of Justice] and judges.”⁷⁸ He explained that there was “a real concern about, essentially, a relationship between potential judges and what they are getting into if they give up practice and become if not employees then officers under the purview of the Ministry of Justice. That is a major concern.”⁷⁹
47. The then Lord Chancellor, Liz Truss MP, said she was “extremely concerned about ... judicial morale, recruitment and retention, because to have a strong, independent judiciary we need people who feel they are valued by the Government and society. If you look at the figures, they are not brilliant.”⁸⁰
48. The relationship between the judiciary and the Government was not helped by the furore around the case of *R (Miller) v Secretary of State for Exiting the European Union* regarding the invoking of Article 50 of the Treaty on European Union.⁸¹ There was sharp criticism of the judges involved from some sections of the media, with one newspaper referring to them as “enemies of the people.”⁸² Lord Thomas told us that it was:

“the only time in the whole of my judicial career that I have had to ask the police to give us a measure of advice and protection in relation to the emotions that were being stirred up. It is very wrong that judges should feel it. I have done a number of cases involving al-Qaeda. I dealt with the airline bombers’ plot and some other very serious cases, and I have never had that problem before.”⁸³

76 *Ibid.*

77 UCL Judicial Institute, *2016 UK Judicial Attitude Survey*, February 2017 p 9

78 [Q 23](#) (Robin Allen QC)

79 [Q 21](#) (Robin Allen QC)

80 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 1](#) (Elizabeth Truss MP)

81 *R (Miller) v Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) and *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5 On appeals from: [2016] EWHC 2768 (Admin) and [2016] NIQB 85

82 James Slack, ‘Enemies of the people: fury over ‘out of touch’ judges who have ‘declared war on democracy’ by defying 17.4m Brexit voters and who could trigger constitutional crisis’, *Mail Online*, (4 November 2016): <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html> [accessed 26 October 2017]

83 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 4](#) (Lord Thomas of Cwmgiedd)

He added that “the circuit judges were very concerned and wrote to the Lord Chancellor because litigants in person were coming and saying, ‘You’re an enemy of the people’.”⁸⁴

49. Lord Neuberger explained that “The Lord Chancellor has a particular duty to speak up when the Lord Chief Justice and the President of the Supreme Court are hampered by the fact that they have been or are to be involved in the case and therefore cannot speak up.”⁸⁵ Section 3(1) of the Constitutional Reform Act 2005 (CRA) states that “The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary”;⁸⁶ and section 3(6)(a) requires the Lord Chancellor to have regard to the need to defend that independence.⁸⁷
50. In our 2014 report, *The Office of the Lord Chancellor*, we noted that:
- “The Lord Chancellor has an additional duty, expressed in the oath of office, to “defend” that independence. As the rest of section 3 (of the CRA) sets out ... this defence includes preventing undue Government influence on judicial decisions (including undue ministerial criticism of judicial decisions), ensuring adequate resources for the judiciary to exercise their functions and having regard to the public interest.”⁸⁸
51. We found that it was “clear from the evidence of the current Lord Chancellor and of the Ministry of Justice, as well as of former Lord Chancellors, that the importance of judicial independence and the Lord Chancellor’s central role in upholding it are well understood in Government.”⁸⁹ We concluded that “judicial independence is a vital element of the United Kingdom’s uncodified constitution. That its defence is a core part of the Lord Chancellor’s role is uncontested.”⁹⁰
52. The defence of judicial independence is fundamental to the rule of law. We were concerned that it was seen to be challenged by unjustified media criticism following the *Miller* judgment. We raised our concerns with the then Lord Chancellor, Liz Truss MP, who told us:
- “Where perhaps I might respectfully disagree with some who have asked me to condemn what the press are writing, is that I think it is dangerous for a government Minister to say this is an acceptable headline and this is not. I am a huge believer in the independence of the judiciary; I am also a very strong believer in a free press and the value it has in our society.”⁹¹
53. However, the then Lord Chief Justice disagreed with the position Liz Truss took: “I regret to have to criticise her as severely as I have, but to my mind she is completely and absolutely wrong about this, as I have said, and I am very disappointed ... she has taken a position that is constitutionally absolutely

84 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 3](#) (Lord Thomas of Cwmgiedd)

85 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 7](#) (Lord Neuberger of Abbotsbury)

86 Constitutional Reform Act 2005, [Section 3\(1\)](#)

87 Constitutional Reform Act 2005, [Section 3\(6\)\(a\)](#)

88 Constitution Committee, *The Office of the Lord Chancellor* (6th Report of Session 2014–15, HL Paper 75), para 26

89 *Ibid.*, para 31

90 *Ibid.*, para 32

91 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 3](#) (Elizabeth Truss MP)

wrong.”⁹² Lord Thomas pointed out the importance of upholding the duty to protect the independence of the judiciary and stated that “it really is absolutely essential that we have a Lord Chancellor who understands her constitutional duty.”⁹³ Lord Neuberger agreed with Lord Thomas,⁹⁴ and explained:

“It is not an issue of freedom of expression. If, as has been said, newspapers had the right under freedom of expression to be critical of the judiciary—indeed, many would say that they were worse than critical and in fact abusive—surely freedom of expression entitles the Lord Chancellor to correct and criticise what they say, and in my view section 1 of the Constitutional Reform Act means that she has a duty to do so.”⁹⁵

54. Liz Truss MP believed “the way to protect independence in the long term is to make the positive case and rebut criticism by explaining to the public why the process is independent and how it works, rather than trying to say that people should not be able to express that criticism, however unfounded it might be.”⁹⁶ However, Lord Thomas, although accepting that “criticism is very healthy”, said that “there is a difference between criticism and abuse which I do not think is understood.”⁹⁷ He continued that “it is not understood either how absolutely essential it is that we are protected, because we have to act, as our oath requires us, without fear or favour, affection or ill will.”⁹⁸
55. The new Lord Chancellor, David Lidington MP, in his swearing-in speech in June 2017, stated that “the freedoms and protections that we all enjoy are of course built on a principle that is much more important than the seals and the symbols of office—the rule of law itself. That principle, together with the independence of the judiciary, form the very bedrock of a free and democratic society.” He continued: “I am determined I will be resolute and unflinching as Lord Chancellor in upholding the rule of law and defending the independence of the judiciary.”⁹⁹
56. **It is imperative that the independence of the judiciary is protected and that it is well-understood by the public. This does not impinge on the right of the free press to challenge or to criticise court judgments.**
57. **However, there is a difference between criticism and abuse; between challenging the content of a judgment and attacking the character and integrity of the judge handing down that judgment. In such cases, the Lord Chancellor’s constitutional duty is clear—as stated in the oath of office, the Lord Chancellor must defend the independence of the judiciary. Should members of the judiciary suffer such personal attacks in future, we expect any person holding the office of Lord**

92 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 4](#) (Lord Thomas of Cwmgiedd)

93 *Ibid.*

94 “I agree with what the Lord Chief Justice said.” Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 7](#) (Lord Neuberger of Abbotsbury)

95 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 7](#) (Lord Neuberger of Abbotsbury)

96 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 3](#) (Elizabeth Truss MP)

97 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 4](#) (Lord Thomas of Cwmgiedd)

98 *Ibid.*

99 David Lidington MP, Speech at his Lord Chancellor swearing-in ceremony, 19 June 2017: <https://www.gov.uk/government/speeches/lord-chancellor-swearing-in-speech-david-lidington> [accessed 26 October 2017]

Chancellor to take a proactive stance in defending them publicly, as they are unable to defend themselves.

58. **We welcome the new Lord Chancellor's commitment to be "resolute and unflinching" in defending the independence of the judiciary.**

CHAPTER 3: RECRUITMENT

59. In the previous chapter we addressed issues affecting the current members of the judiciary. While these factors are deterring potential applicants, there are additional challenges affecting the recruitment of new judges. As the Lord Chief Justice's 2017 report noted "Significant difficulties remain in recruitment to the judiciary, in particular to the senior levels."¹⁰⁰ In this chapter, we focus on specific problems affecting recruitment and appointment to the bench.
60. Lord Kakkar, chairman of the Judicial Appointments Commission, explained the difficulties in filling judicial posts being experienced by the JAC. He said that there was "a worrying trend in our inability to fill certain important vacancies"¹⁰¹ and that the number of unfilled vacancies was likely to rise as the JAC had to fill a significant number of judicial posts during 2017 and 2018—equating to around 20 to 25 per cent of the total number of district, circuit and high court judges. He warned that "if one looks at the trend in the two previous years, there could be a serious shortfall in our ability to nominate candidates to fill those positions."¹⁰² The then Lord Chancellor acknowledged that "not having enough people coming forward to be judges" was "one of the biggest threats" to the judiciary."¹⁰³
61. Lord Kakkar told us that "in the 2015 High Court exercise we were unable to fill one vacancy. In the 2016 exercise, we were unable to fill six vacancies. At the moment, we are in the process of running a competition to fill 25 High Court positions."¹⁰⁴ The SSRB noted in its 2017 annual report that "this year, there has been an unprecedented number of unfilled vacancies in the High Court ... Currently, a further exercise is being run to appoint 25 judges. This has been accompanied by a significant increase in the number of early retirements in the High Court."¹⁰⁵ The SSRB continued that "for the High Court, the evidence now shows a definite problem with recruitment and with early retirement" and "this was sufficiently serious that the SSRB was considering making a recommendation outside the 1 per cent pay norm."¹⁰⁶ However, before they reported, the Ministry of Justice notified the SSRB "of the government's own decision to put in place a new allowance worth 11 per cent of pay for some judges in the High Court in England and Wales."¹⁰⁷
62. Since our evidence session with the JAC in March 2017, appointments for only 13 of the 25 vacancies for the High Court have been announced.¹⁰⁸ It is expected that further appointments will be announced in the coming months.¹⁰⁹

100 Judiciary of England and Wales, *The Lord Chief Justice's Report*, p 10

101 Q 2 (Lord Kakkar)

102 *Ibid.*

103 Annual oral evidence taken on 1 March 2017 (Session 2016–17) Q 3 (Elizabeth Truss MP)

104 Q 2

105 Review Body on Senior Salaries, *Thirty-Ninth Annual Report on Senior Salaries 2017*, para 1.53

106 *Ibid.*, para 1.54

107 *Ibid.*

108 Judicial Appointments Commission, 'High Court judge selection to launch on 12 January 2017', 19 December 2016: <https://jac.judiciary.gov.uk/news/high-court-judge-selection-launch-12-january-2017> [accessed 26 October 2017]; Judicial Appointments Commission, 'High Court Judges', 2017: <https://jac.judiciary.gov.uk/high-court-judges> [accessed 26 October 2017]

109 Judicial Appointments Commission, 'High Court Judges', 2017

63. We also heard from the JAC about recruitment at circuit judge level, which is the “workhorse ... of the courts judiciary system.”¹¹⁰ Lord Justice Burnett said:

“the JAC ran into problems in recruiting circuit judges last year. The request was for 55 circuit judges, and, from memory, only 44 were selected for appointment. Another circuit judge competition is going to open within the next month or so. The final numbers being sought have not been identified, but it is going to be very many more than the 55 we were seeking last year.”¹¹¹

64. Since our evidence session with the JAC, there was a recruitment competition to fill 116.5 circuit judge¹¹² and 83.5 district judge¹¹³ vacancies across England and Wales. The outcomes of both competitions will be announced in the coming months.¹¹⁴
65. At recorder level, the latest figures showed a significant and welcome increase in applications since 2015.¹¹⁵ Indeed it appears to have led to the JAC application system experiencing a technical failure during the recent process which affected almost 2,500 candidates.¹¹⁶
66. Lord Kakkar told us “one thing we are very clear about is that we will not drop the quality bar that is set for appointment to the judiciary. If we do not have quality candidates available to us, we will not be able to make the nominations and those positions will go unfilled.”¹¹⁷ Lord Thomas concurred:

“Lord Kakkar has been to visit virtually every level of the judiciary, and when he said, “I’m not compromising on quality”, there was universal approval and universal relief, because once you compromise on it it is a downward trajectory. It would be fatal to the High Court Bench if we were to do that, but fatal also to the District Bench and to the tribunals and the Circuit Bench. We simply cannot.”¹¹⁸

67. **We are seriously concerned about recruitment to the bench. However we also agree unequivocally with the Judicial Appointments Commission that the threshold for appointment should not be lowered in order to fill judicial vacancies. It is essential that the high quality of the judiciary, and by extension the legal system in the UK, is not compromised.**

110 Q 2 (Lord Justice Burnett)

111 *Ibid.*

112 Judicial Appointments Commission, ‘Circuit Judge Information page’, 23 March 2017: <https://jac.judiciary.gov.uk/052-circuit-judge-2017-information-page> [accessed 26 October 2017]

113 Judicial Appointments Commission, ‘Vacancies: District Judge’, July 2017: <https://jac.judiciary.gov.uk/vacancies/062> [accessed 26 October 2017]

114 *Ibid.*

115 The JAC said the near-2,500 applications was an unprecedented number—it had 1,250 for the last recorder competition in 2015: Legal Futures, ‘Chaos as judicial appointments website crashes with 2,500 would-be recorders trying to take test’, 16 February 2017: <http://www.legalfutures.co.uk/latest-news/chaos-judicial-appointments-website-crashes-2500-recorders-trying-take-test> [accessed 26 October 2017]

116 Judicial Appointments Commission, *Annual Report and Accounts: 1 April 2016 to 31 March 2017*, 6 July 2017, p 5: https://jac.judiciary.gov.uk/sites/default/files/sync/about_the_jac/annual-report-2016-17.pdf [accessed 26 October 2017]

117 Q 2 (Lord Kakkar)

118 Annual oral evidence taken on 22 March 2017 (Session 2016–17) Q 9 (Lord Thomas of Cwmgiedd)

Encouraging a wider range of candidates to apply

68. Traditionally, appointments to the judiciary generally tended to come from the Bar and, as a result, the pool of potential candidates tended to be narrow. As such, there is a large underrepresentation in judicial posts from solicitors, government lawyers, chartered legal executives and academics. In our 2012 report we concluded that “the JAC, the Lord Chancellor and the Lord Chief Justice must encourage applications from lawyers other than barristers. There should be no sense that not having been a member of the Bar makes an individual unworthy of appointment or less meritorious.”¹¹⁹

69. In its response, the Government said:

“the Ministry of Justice is committed to supporting the cultural change required among legal professionals, and to ensuring that no unreasonable restrictions are placed upon potential candidates for judicial office. Working together with the members of the Judicial Diversity Taskforce, the Ministry of Justice will consider initiatives that would support the resolution of these concerns.”¹²⁰

70. In the following sections we consider further the means to encourage a greater number of applications from more diverse sections of legal practice.

Solicitors

71. Lord Kakkar told us that the JAC “see the numbers of solicitor applications as important, because this reflects the fact that our pool of those with a legal professional background is becoming more diverse.”¹²¹ However, despite the assurances from the Government in 2012 to consider supportive initiatives for solicitors and to ensure there were no unreasonable restrictions placed on them, we heard that in the intervening five years “the number of applications from solicitors has remained broadly static.”¹²² Liz Truss MP said that “although there has been a long standing attempt to get more solicitors to apply for judicial positions, we have not been successful with them getting through the process.”¹²³

72. We heard that the culture of the legal profession as a whole, and of law firms in particular, may deter solicitors from applying for judicial office. It was suggested that the low success rate was dissuading solicitors from applying for the judiciary—we consider this issue later in the chapter.

73. We heard that the Bar remained the traditional route into the judiciary in the eyes of much of the legal profession. As Lord Neuberger told us “there is still an in-built assumption that it will tend to be a barrister, not a solicitor, who becomes a High Court judge, but that is changing ... people on the whole do not think of solicitors—and solicitors do not think of themselves—as becoming High Court judges.”¹²⁴ Anna Nice, a solicitor who gave evidence in a personal capacity, explained:

119 Constitution Committee, *Judicial Appointments*, para 119

120 Ministry of Justice, *Government response to the House of Lords Constitution Committee’s Report: Judicial Appointments*, para 27

121 [Q 3](#) (Lord Kakkar)

122 [Q 3](#) (Lord Justice Burnett)

123 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP)

124 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury)

“That whole ethos at the Bar—that applying for a deputy district judge or a recorder post is something you should think about doing—is in many chambers, and supportive chambers particularly, completely the norm. That is not the same for solicitors. That acceptance that it is an appropriate thing to do, that you will need time to do it, that there are people around who will talk to you about the process and encourage you is all just very natural in sets of chambers, probably from the beginning.”¹²⁵

74. She told us about her experience in applying for a circuit judge role and the lack of encouragement she received from her solicitor counterparts, and said that “it was members of the Bar who encouraged me to apply in the end. I had no encouragement from solicitors whatsoever; it was two barristers that I instructed.”¹²⁶

75. In our 2012 report we concluded:

“we are not convinced that either the Law Society or the partners of most of the large firms are sufficiently committed to the encouragement of solicitors applying to become judges. The promotion of judicial diversity will be greatly enhanced if solicitors are able to take time off to hold part-time fee-paid judicial posts whilst continuing to practise. We consider it essential in the public interest that this change be made. This will require a significant cultural change within firms and the solicitors’ profession as a whole.”¹²⁷

76. In its response the Government said that “a degree of cultural change within the solicitors’ profession needs to take place, to more actively encourage those who might want to apply for judicial office.”¹²⁸

77. We heard that the nature of solicitors’ partnerships, compared to self-employment, meant that solicitors found it difficult openly to pursue judicial aspirations as it could result in being marginalised within their firm. Lord Neuberger said that “if their partners discover they have applied to become a part-time judge, it may not always lead them to be frozen out but it can lead them to being effectively reduced in importance in the firm because of the way in which solicitors work.”¹²⁹ This is in clear contrast to barristers’ chambers where a judicial appointment is regarded as routine. Baroness Hale, explained that:

“it is the difference between practising in partnership and practising as sole practitioners. If a barrister, as a sole practitioner, takes time away from his practice to do some part-time judging, nobody else in chambers loses any money, whereas if a partner in a big firm of solicitors takes time away from his practice to do so, his partners may well lose money. It is a fact of life, so one has to think of ways in which that could be got round.”¹³⁰

78. Additionally, the nature of promotion opportunities in law firms often meant that solicitors who may be ready for judicial appointment were, at the same

125 [Q 12](#) (Anna Nice)

126 *Ibid.*

127 Constitution Committee, *Judicial Appointments*, para 125

128 Ministry of Justice, *Government response to the House of Lords Constitution Committee’s Report: Judicial Appointments*

129 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Lord Neuberger of Abbotsbury)

130 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 10](#) (Baroness Hale of Richmond)

time, pursuing partnership prospects within their firm. Lord Justice Burnett explained:

“The reality is that those applying particularly for part-time appointment are likely to do so in their 40s, which is a time when most professionals are at the height of their earning power and thus it is not necessarily welcome to the partners of a big law practice to see somebody devoting time elsewhere and to sense that his or her ambitions are moving in a different direction.”¹³¹

79. Anna Nice drew attention to the practical difficulties faced by small law firms in accommodating the process of appointment. She said:

“I discussed the prospect of applying with my firm. I am a solicitor in a firm of then five partners. It is a fairly small firm and it would have made quite a big impact ... It is very difficult, particularly for small firms, suddenly to start looking for a new partner—which is a pretty senior appointment—and particularly if they cannot tell the people they are interviewing why the other partner is leaving. That is something you would really want to know if you were applying for a role as a partner in a firm—why the changes are happening and what is going on—and you cannot tell them. There is all that silence and uncertainty.”¹³²

Government lawyers

80. Crown Prosecution Service (CPS) and government lawyers may apply for roles if they satisfy the judicial appointment eligibility conditions, and have a relevant legal qualification and legal experience. However, for most salaried roles, there is an expectation that candidates will have previous judicial experience, which government lawyers can find difficult to gain.
81. In our 2012 report we suggested individuals must not be prevented from becoming judges because of their status as government lawyers and concluded that “it is in the public interest that high quality candidates are not discouraged from applying to join the [Government Legal Department] or CPS because of a potential lack of career progression to the judiciary.”¹³³
82. The Government responded:
- “the Ministry of Justice notes the observation ... Although we are not currently minded to relax operational restrictions relating to the appointments of members of the [Government Legal Department] or CPS to judicial office, through the Judicial Diversity Taskforce and co-ordinating with the JAC Outreach programme, those opportunities where members are eligible to apply will be promoted across the employed legal profession.”¹³⁴
83. However, during our follow up inquiry, we were told about the perceived conflict that arises when someone who is “employed to prosecute” is then “working on behalf of the Crown”¹³⁵ to adjudicate independently, and this is a current barrier to CPS and government lawyers becoming judges.

131 [Q 3](#) (Lord Justice Burnett)

132 [Q 17](#) (Anna Nice)

133 Constitution Committee, *Judicial Appointments*, para 132

134 Ministry of Justice, *Government response to the House of Lords Constitution Committee’s Report: Judicial Appointments*, para 27

135 [Q 23](#) (Robert Bourns)

84. Lord Thomas explained the problems with working in both capacities:

“If I may take the analogy of Europe, many judges on the continent may be a prosecutor for three or four years. Then they become a judge and then they become a prosecutor again. There is nothing wrong in that system, but you can only do one job at one time. If we assume that I was trying a case and one of the counsel was from the CPS, fine. But suppose you were in front of someone and he said, ‘I spend my time prosecuting. I am the judge in this case. My full-time employers are the Crown’. There is a real problem. That is certainly the consistent advice from independent counsel that the judiciary has received over the years, and some of the people who have advised have been of very significant eminence.”¹³⁶

85. However, Robin Allen QC told us that if “perceptions of bias” were “managed sensibly” there is a “cohort of potential judicial resource that could be tapped in appropriate cases.”¹³⁷ Robert Bourns said that “the Crown Prosecution Service employ a lot of barristers and solicitors at a senior level, with a great deal of relevant experience. They are not appointable. They cannot apply. It is not only a good population of practitioners; it is also a very diverse population. People ought to apply their minds to the issues around whether or not they should be encouraged to apply, or allowed to apply.”¹³⁸

86. We heard that statistics on the career paths of applicants were not available as data on the background of candidates were not collected. Lord Thomas explained:

“if you are the appointing body, you are not necessarily so interested in collecting data. I can tell you how many solicitors and barristers, although I do not have the figures here, have applied. What I cannot tell you is their origins, because no one collected that information. We started to collect that last year and we will have figures that we will publish soon.”¹³⁹

87. Given the diverse and largely untapped group of government lawyers who may be suitable for judicial appointment, we explored what could be done to allow them to gain relevant judicial experience without risking perceived or actual conflicts of interest. Lord Thomas told us:

“we have said that we will try to encourage into the criminal recorderships people who have all this outstanding potential, but we must then make certain that we take exactly the same attitude to recruitment to the District Bench and to the Tribunals from the CPS. Many of them are now starting to work in the Tribunals so that they can do something that is compatible with their prosecutorial function.”¹⁴⁰

88. **We recognise the concerns about potential conflicts of interest if serving government and CPS lawyers undertake judicial work. However, these lawyers are an important potential source of recruits to the judiciary—and the CPS in particular has an ethnically diverse workforce which remains largely untapped.**

136 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 11](#) (Lord Thomas of Cwmgiedd)

137 [Q 24](#) (Robin Allen QC)

138 [Q 23](#) (Robert Bourns)

139 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 9](#) (Lord Thomas of Cwmgiedd)

140 *Ibid.*

89. **We welcome the opportunity for government lawyers to gain judicial experience, particularly in tribunals. We encourage the Lord Chancellor and the Lord Chief Justice to consider whether there are other ways in which CPS and government lawyers can gain relevant judicial experience without compromising the public perception of the independence and impartiality of the judiciary. This might involve, for example, allowing government lawyers to sit to try cases when they are either geographically removed from their normal place of work or when the subject matter lies outside their usual areas of work.**

Chartered legal executives

90. Chartered legal executives are legally qualified individuals who usually practise in one area of law. They follow a different training path to the traditional solicitor qualification; their prescribed routes are set out by the Chartered Institute of Legal Executives (CILEx).¹⁴¹
91. We heard that, at present, chartered legal executives were “only able to apply for district judge positions and below”, under the Tribunals, Courts and Enforcement Act 2007, and so were unable to serve as circuit judges or higher.¹⁴² As a result, many CILEx applicants were discouraged from applying for judicial appointment. Millicent Grant, then Vice-President (now President) of CILEx explained that chartered legal executives “cannot go beyond district judges, so they are less likely to apply, because if they stay within a firm and are employed, the potential for them to progress within the profession is much greater.”¹⁴³ She added that “if a chartered legal executive has been invited to enter the judicial profession, then it would be more attractive to them if they knew they could then move up.”¹⁴⁴
92. Robin Allen QC suggested that “for somebody who has come through CILEx and taken full-time judicial appointment, that judicial appointment might itself be considered a basis for further progression within the legal system. I do not see there is any reason why that could not happen.”¹⁴⁵ CILEx recommended “that the eligibility of Chartered Legal Executives for judicial positions be the same as those for solicitors and barristers” as “this would avoid a situation whereby a solicitor or barrister has the opportunity of entering the judiciary at any level, but a Chartered Legal Executive must start in the lower rungs.”¹⁴⁶
93. Millicent Grant added that there were perceptions of unconscious bias against chartered legal executives when it came to judicial appointments:

“quite often, when discussions of lawyers are taking place, the mention is of solicitors and barristers, and chartered legal executives are often an add-on, if they are mentioned at all. That indicates that there is an unconscious bias against including them as lawyers, and in consideration. That needs to be addressed, because when I see that happen, I think, ‘You are saying the right things and it is genuine’, but our members’

141 CILEx Law School, ‘What is a legal executive?’: http://www.cilexlawschool.ac.uk/Prospective_Students/Qualify_as_a_legal_executive/What_is_a_legal_executive [accessed 26 October 2017]

142 [Q 21](#) (Millicent Grant, Vice-President, CILEx)

143 [Q 24](#)

144 [Q 29](#)

145 [Q 30](#) (Robin Allen QC)

146 Written evidence from CILEx ([JDA0001](#))

perception is that, ‘You are saying that but when you talk about lawyers you do not include us’. They think that is how their experience will be if they join the judiciary.”¹⁴⁷

94. As with government lawyers, chartered legal executives are a diverse group of potential applicants for judicial office. Millicent Grant said that “our profession incorporates a lot of people who come from a diverse background, who have developed skills just by the route by which they have qualified.”¹⁴⁸ We explore diversity in greater detail in the next chapter.
95. **We see no reason why chartered legal executives who demonstrate the requisite attributes are unable to achieve promotion beyond the district bench. We encourage the Lord Chancellor, in consultation with the Lord Chief Justice, to reconsider this.**

Academics

96. Lord Neuberger drew attention to the pool of potential candidates in academia who could be considered for the judiciary: “one thing that we have been doing is to cast the net more widely. The Supreme Court is quite limited in who it can look for. There is obviously the academic world and practising lawyers.”¹⁴⁹ Lady Hale added:

“clearly, some previous judicial experience is desirable, but of course there are lots of different ways in which you can get previous judicial experience ... I was an academic lawyer for a great deal of my career ... Most people are still going to have come through the normal channels, but with 12 justices and so many vacancies there is room for a greater variety of all sorts. Diversity has many dimensions.”¹⁵⁰

Increasing the success rate of applicants

97. There is a low success rate of applicants for judicial office from non-barrister backgrounds. Liz Truss MP said that “34% of applicants to be High Court judges were solicitors. Only 9% of those were shortlisted and only 4% were successful.”¹⁵¹ Figures published since she gave evidence showed that between 1 April 2016 and 31 March 2017, solicitors represented 43% (746) of applicants to legal exercises, but just 10% (14) of the successful candidates.¹⁵² Figure 1 illustrates the current legal role representation at each stage, for exercises completed between 1 April 2016 and 31 March 2017.

147 [Q 26](#) (Millicent Grant)

148 [Q 29](#)

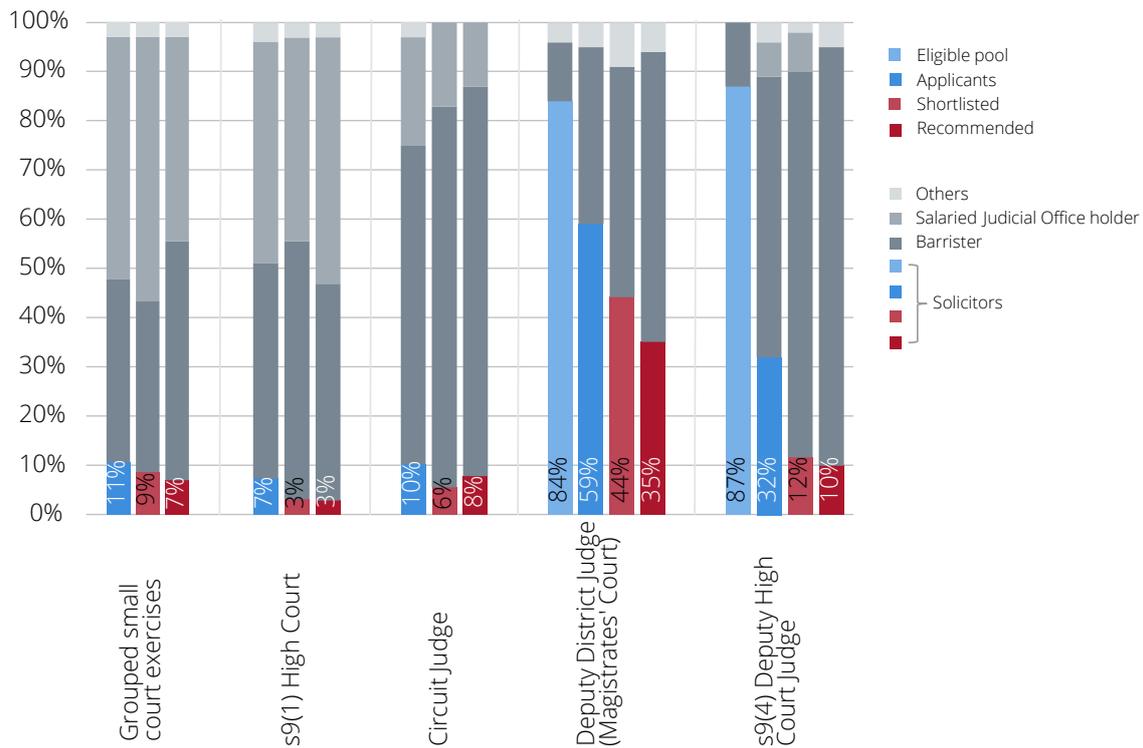
149 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 9](#) (Baroness Hale of Richmond)

150 *Ibid.*

151 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP)

152 Judicial Appointments Commission, *Judicial Selection and Recommendations for Appointment: Official Statistics, 1 April 2016 to 31 March 2017*, p 10: https://jac.judiciary.gov.uk/sites/default/files/sync/about_the_jac/official_statistics/statisticsbulletin-jac-2016-17.pdf [accessed 26 October 2017]

Figure 1: Current legal role representation at each stage, for exercises completed between 1 April 2016 and 31 March 2017 (legal posts)



Source: *Judicial Appointments Commission, Judicial Selection and Recommendations for Appointment: Official Statistics, 1 April 2016 to 31 March 2017, Figure 8: https://jac.judiciary.gov.uk/sites/default/files/sync/about_the_jac/official_statistics/statisticsbulletin-jac-2016-17.pdf [accessed 26 October 2017]*

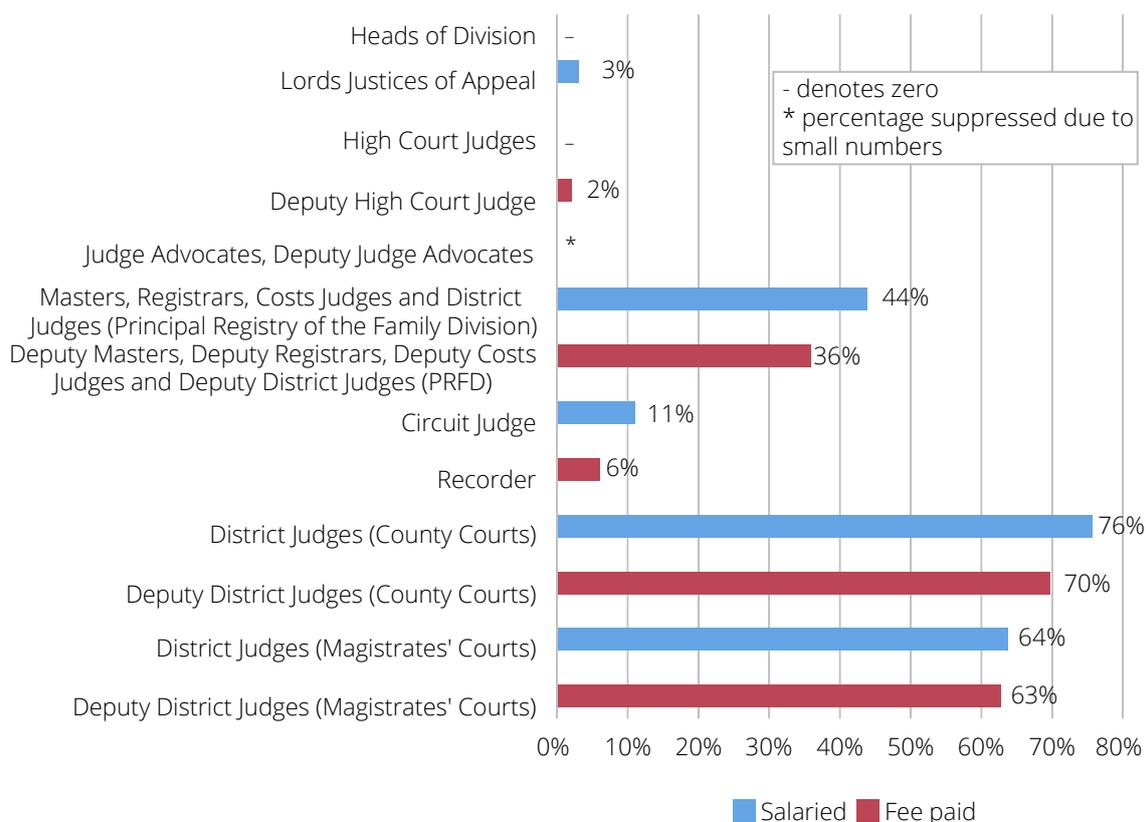
98. Between 1 April 2014 and 1 April 2017 the proportion of judges with a non-barrister background in the courts decreased from 37% to 34%.¹⁵³ In the tribunals, the proportion of judges with a non-barrister background was almost unchanged: 67% in 2015 and 66% in 2017.¹⁵⁴
99. As Figure 2 illustrates, there was better representation from those from non-barrister backgrounds in the lower courts than at the higher ranks of the judiciary. Virtually all candidates who declared their background as non-barristers were formerly solicitors.¹⁵⁵

153 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*: <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2017/> and <https://www.judiciary.gov.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-1.pdf> [accessed 26 October 2017]

154 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*

155 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*, p 8

Figure 2: The percentage of court judges whose profession is non-barrister, 1 April 2017



Source: Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*, p 8

100. There have only ever been two former solicitors who have been appointed to the Court of Appeal.¹⁵⁶ Of the 13 High Court judges announced recently, only two were solicitors when appointed,¹⁵⁷ and of the 21 appointments for deputy high court judges, only two were solicitors at the point of application.¹⁵⁸
101. We heard that success rates were also low for chartered legal executives. Millicent Grant said that “between 2010 and 2015, 202 CILEx members applied for judicial posts. Twenty-two were shortlisted and only the two were appointed.”¹⁵⁹

Why are the success rates low?

102. In our 2012 report we raised concerns about the preferential treatment of barristers for judicial appointment. We said that “we consider that it is the capacity to be a good judge, not the capacity to be a good barrister, which is essential to merit.”¹⁶⁰ Despite efforts to address this issue, progress has been slow. Robert Bourns, then President of the Law Society, told us “we are trying to make sure our candidates are better prepared, but there

156 Judicial Appointments Commission, ‘Gary Hickinbottom’: <https://jac.judiciary.gov.uk/case-study/gary-hickinbottom-high-court-queens-bench-division> [accessed 26 October 2017]

157 Judicial Appointments Commission, ‘High Court Judges’: <https://jac.judiciary.gov.uk/high-court-judges> [accessed 26 October 2017]

158 The Law Society, ‘New deputy high court judges congratulated’: <https://www.lawsociety.org.uk/news/press-releases/new-deputy-high-court-judges-congratulated/> [accessed 26 October 2017]

159 Q 29 (Millicent Grant)

160 Constitution Committee, *Judicial Appointments*, para 84

is a perception that experience at the Bar is regarded as better than other experience. I am not going to repeat the point but our candidates have had a similar experience of the mechanics of the most recent round. We have received quite a lot of complaints about that.”¹⁶¹

103. A number of reasons were suggested for the low success rate among legal professionals. Liz Truss MP said that “people with perhaps less courtroom experience might be disadvantaged compared with someone with courtroom experience, even though they are of equal judicial aptitude.”¹⁶²

104. Robert Bourns suggested that solicitors were “not used to being interviewed or going into a selection process.”¹⁶³ There was also a different culture between solicitors and barristers when it came to failure to be appointed to the judiciary. He explained:

“That disappointment in the solicitor population can mean that they do not then repeat the process. At the Bar, people are much more used to both personally and in the environment speaking to colleagues: “You applied in this round, you were not successful. Do not worry about it; you will surely prevail next time around”. I understand that people can apply three or four times before they are finally appointed.”¹⁶⁴

105. He suggested that solicitors were “not presenting well in the final interview stages,” and that there may be a subconscious bias whereby the appointment panel recruit in their own image: “What I pick up is that there are perhaps, at that point, perceptions within the appointing panel as to what a member of the judiciary might look like in the broadest sense in terms of their experience and skills. That is the concern people have.”¹⁶⁵

106. Lord Thomas suggested that “the problem in the past has been that we have tended to assess people for appointment as deputies [deputy county court judges] on the basis of the skill they have in an area rather than looking for potential.”¹⁶⁶

107. Robin Allen discussed the low progression rate through the judicial application process for some groups, particularly Black, Asian and Minority Ethnic (BAME) candidates:

“the statistics on success rates from BAME applicants in recorder competitions showed that there was a significant decrease from application through the first stages and then through to appointment in the rates of success. We were very concerned at that and asked the JAC what it thought was going on. There was the barriers research that JAC introduced, and it was suggested that some BAME applicants across the entire profession were ‘not ready for appointment’. That is a euphemism, but what it is a euphemism for we have never quite got to grips with. But we thought we had to address this and see how we could make applicants for judicial posts—whether solicitor, barrister or CILEx member—ready for appointment.”¹⁶⁷

161 [Q 31](#) (Robert Bourns)

162 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 8](#) (Elizabeth Truss MP)

163 [Q 25](#)

164 [Q 28](#)

165 *Ibid.*

166 Annual oral evidence taken on 22 March 2017 (Session 2016–17) [Q 11](#) (Lord Thomas of Cwmgiedd)

167 [Q 26](#) (Robin Allen QC)

What is being done?

108. Lord Justice Burnett said that a “vast amount of work” had been done by the JAC and others to encourage more solicitors to consider applying for judicial roles.¹⁶⁸ Lord Kakkar said the JAC was working “to ensure that there are tools and professional development opportunities available earlier in an individual legal professional’s career to help them think about eventual judicial appointment and develop themselves over a period of time to make a successful application.”¹⁶⁹
109. Millicent Grant told us that CILEx was launching a judicial development programme, organising an annual “judicial awareness day” and supporting their members who expressed an interest in applying for judicial posts.¹⁷⁰
110. Robert Bourns said that when he admitted new solicitors to the roll, he told them that “one of the things they should think about, as well as being members of the Bar, is the potential for judicial appointment.”¹⁷¹ He explained that he “mention[s] it at what is effectively day one” of their legal careers and that “the whole way through we should be encouraging people to consider their options. They are many and various, and judicial appointment is one of them.”¹⁷² He explained the Law Society’s initiatives to encourage applications from under-represented legal professions:
- “We have had sessions across England and Wales inviting people to consider judicial appointment. We invite them. Those are open meetings. They do not have to pay for them. They do hear from members of the judiciary, frequently solicitor judges. We have also been very pleased to receive support from the very senior members of the judiciary.”¹⁷³
111. Robin Allen QC emphasised the importance of pre-application judicial education:
- “Within the Judicial Diversity Forum ... we have put forward proposals for pre-application judicial education ... We have developed a curriculum, which we hope will be capable of being delivered ... some time in the course of the next 18 months, if we get sufficient support. The curriculum will look at judgecraft, job framework, judicial ethics, resilience, and equality and diversity. The idea is that whatever walk of life you might have been in within the legal profession as a whole, whether a solicitor or CILEx member or a barrister in one area or another, you can go through a programme that will help prepare you for application.”¹⁷⁴
112. **We welcome the outreach work undertaken by the Judicial Appointments Commission and the professional bodies to ensure that there are development opportunities and tools available to assist potential applicants for judicial roles.**
113. **However, we are concerned about the disparities that remain between the number of solicitors and chartered legal executives applying for**

168 [Q 3](#) (Lord Justice Burnett)

169 [Q 3](#) (Lord Kakkar)

170 [Q 26](#) (Millicent Grant)

171 [Q 25](#) (Robert Bourns)

172 *Ibid.*

173 *Ibid.*

174 [Q 26](#) (Robin Allen QC)

judicial roles and the number being recommended for appointment. Non-barrister applicants may still perceive that those with advocacy experience are preferred as candidates, and that this is in part responsible for the low application rate. A significant cultural shift is required to address this.

114. **We encourage the JAC to collect data on the reasons why applicants are not successful. We recommend that the Lord Chancellor, the senior judiciary, and all professional bodies work with law firms to encourage a cultural change within the solicitors' profession in general, and within law firms in particular, to provide better support for solicitors applying for judicial positions.**

“Reserve lists”

115. We heard about the use of section 94 lists under the Constitutional Reform Act 2005¹⁷⁵ (also known as “reserve lists”) in the judicial appointments process.¹⁷⁶ Successful candidates may be placed on “reserve lists” and offered judicial posts when they arise. The lists are reviewed after 12 months and will normally be closed after a year or two, depending on business needs and forthcoming exercises,¹⁷⁷ after which individuals who have not yet been offered or taken a position will have to re-apply. The JAC state that “after this length of time there may be a wider pool of eligible candidates”¹⁷⁸ and as such they would be concerned that they would not be “fulfilling [their] statutory duty to recommend the most meritorious candidates by relying solely on a previous section 94 list.”¹⁷⁹
116. **We agree with the Judicial Appointments Commission that their responsibility is to recommend appointment of the most meritorious candidates from the eligible pool, provided that the candidates themselves meet the required standards. The use of “reserve lists” identifying appointable candidates to fill unanticipated vacancies is obviously sensible, but each new competition must identify the most meritorious candidates, and may produce better candidates than those on the “reserve list”.**

175 Judicial Appointments Commission, ‘Selection for future appointments’: <https://jac.judiciary.gov.uk/selection-future-appointments> [accessed 26 October 2017]

176 Q 11 (Anna Nice)

177 Judicial Appointments Commission, ‘Selection for future appointments’

178 *Ibid.*

179 *Ibid.*

CHAPTER 4: DIVERSITY

Diversity in the judiciary

117. In our 2012 report we recognised that “diverse courts are better equipped to carry out the role of adjudicating than courts that are not diverse and that the public will have greater trust and confidence in a more diverse judiciary.”¹⁸⁰ Five years later Robin Allen QC, chairman of the Equality and Diversity and Social Mobility Committee at the Bar Council of England and Wales, told us he was “appalled at the lack of progress we have made towards a really diverse judiciary.”¹⁸¹ There was “a potential crisis of legitimacy of the judiciary unless this is addressed. We cannot go forward in a diverse Britain without a diverse judiciary. We really cannot. It is noticed. It is significant. It is increasingly important. We really have to address it.”¹⁸²
118. Indeed, a JUSTICE working party on judicial diversity recently concluded “a senior judiciary that so markedly does not reflect the ethnic, gender or social composition of the nation is a serious constitutional issue. Much more must be done to strengthen diversity for reasons of legitimacy, quality and fairness.”¹⁸³

Ethnicity

119. Figures published by the judiciary show that between 1 April 2014 and 1 April 2017 there was almost no change in the percentage of BAME court judges, tribunal judges and non-legal members of tribunals.¹⁸⁴ Figures from the 2016 Judicial Attitudes Survey suggest that 39% of BAME judges who were not due to reach compulsory retirement age in the next five years were nonetheless considering leaving the judiciary in the next five years. This compared to 35% of white judges.¹⁸⁵

180 Constitution Committee, *Judicial Appointments*, para 17

181 Q 34 (Robin Allen QC)

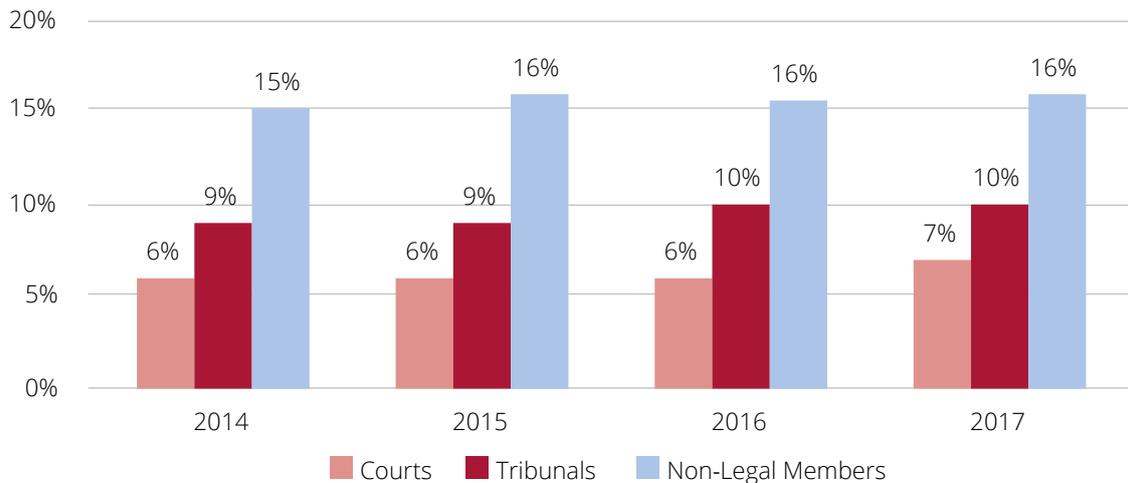
182 *Ibid.*

183 JUSTICE, *Increasing Judicial Diversity*, April 2017: <https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/04/JUSTICE-Increasing-judicial-diversity-report-2017-web.pdf> [accessed 26 October 2017]

184 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*, July 2017, p 7: <https://www.judiciary.gov.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-1.pdf> [accessed 26 October 2017]

185 UCL Judicial Institute, *2016 UK Judicial Attitude Survey*, p 78

Figure 3: BAME representation among court and tribunal judges and non-legal members 2014 to 2017



Source: Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*, July 2017

120. Figure 4 sets out the percentage of court judges that identify as BAME as of 1 April 2017. At the higher ranks of the judiciary there were very few BAME judges (and in some cases, none at all). Robin Allen QC told us:

“we have no or very few obvious role models of successful BAME judges. There are none in the Court of Appeal, none in the Supreme Court and a very limited number now—depending on how you assess it, about two—in the High Court. There are some chilling factors at work here.”¹⁸⁶

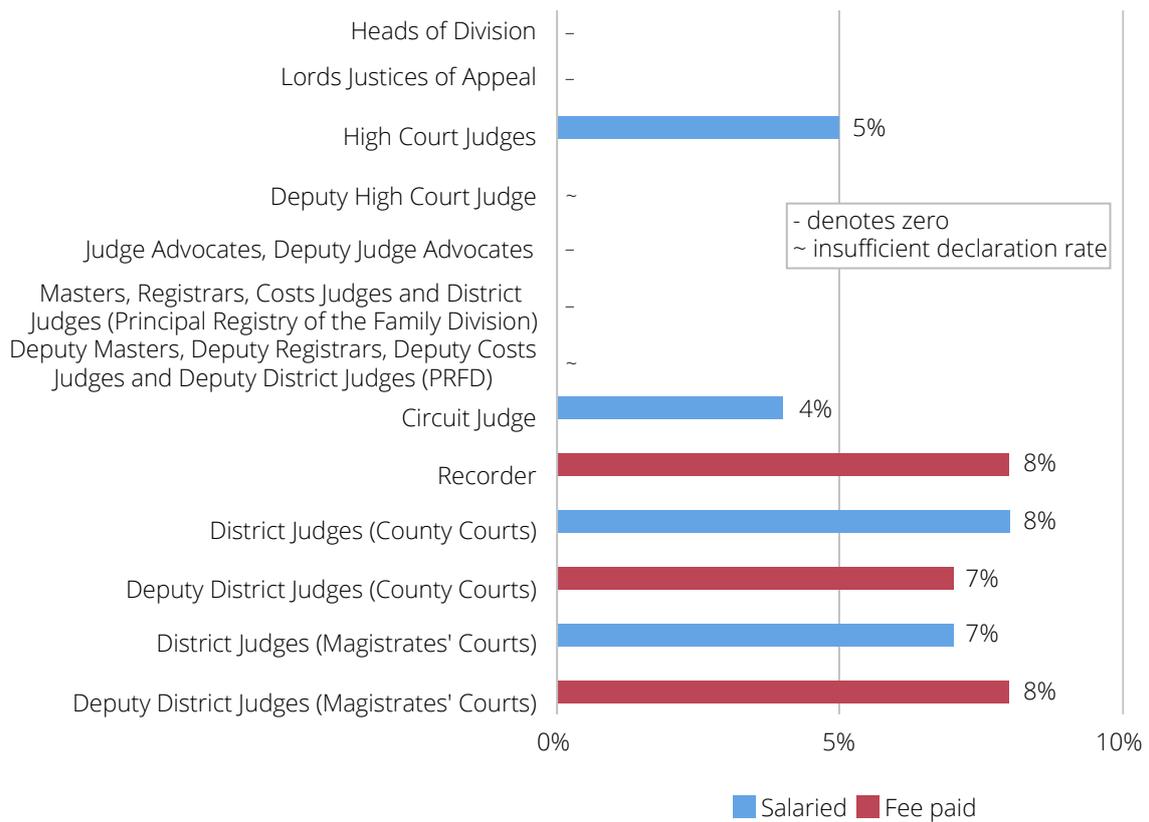
121. Since our evidence session, Mr Justice Singh has become the first BAME Lord Justice of Appeal.¹⁸⁷ Figures published in July 2017 showed that there were four BAME High Court judges.¹⁸⁸

186 Q 34 (Robin Allen QC)

187 Law Society, ‘Law Society hails first woman to preside over Supreme Court’, 21 July 2017: <https://www.lawsociety.org.uk/news/press-releases/law-society-hails-first-woman-to-preside-over-supreme-court/> [accessed 26 October 2017]

188 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*, July 2017, p 5

Figure 4: BAME representation among court judges, 1 April 2017



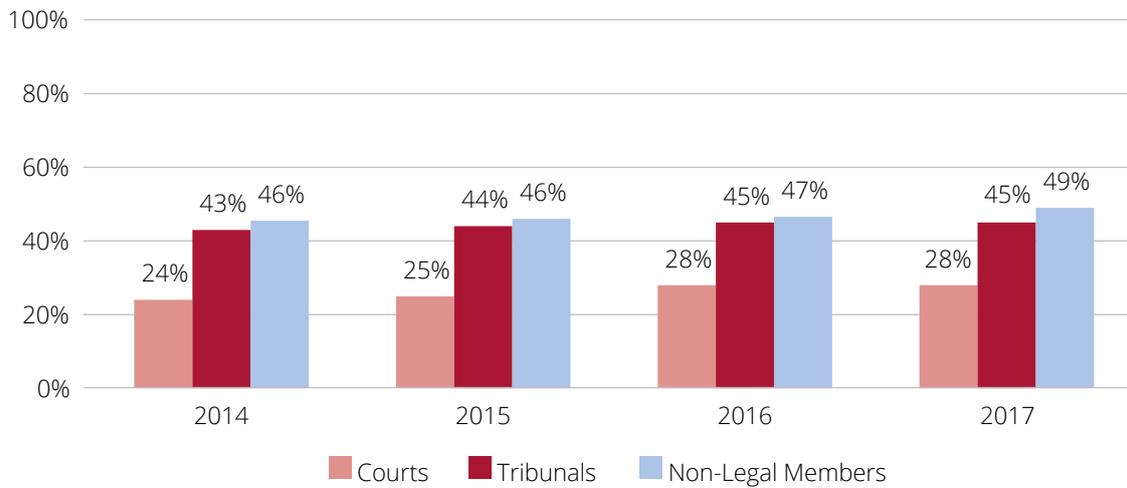
Source: Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017, July 2017*

Gender

122. In the period from 1 April 2014 to 1 April 2017 the percentage of female judges increased from 18% to 24% in the Court of Appeal; from 18% to 22% in the High Court and from 24% to 28% in the courts as a whole.¹⁸⁹ However, as Figure 5 illustrates, progress from 2014 to 2017 has been limited.

¹⁸⁹ Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017*

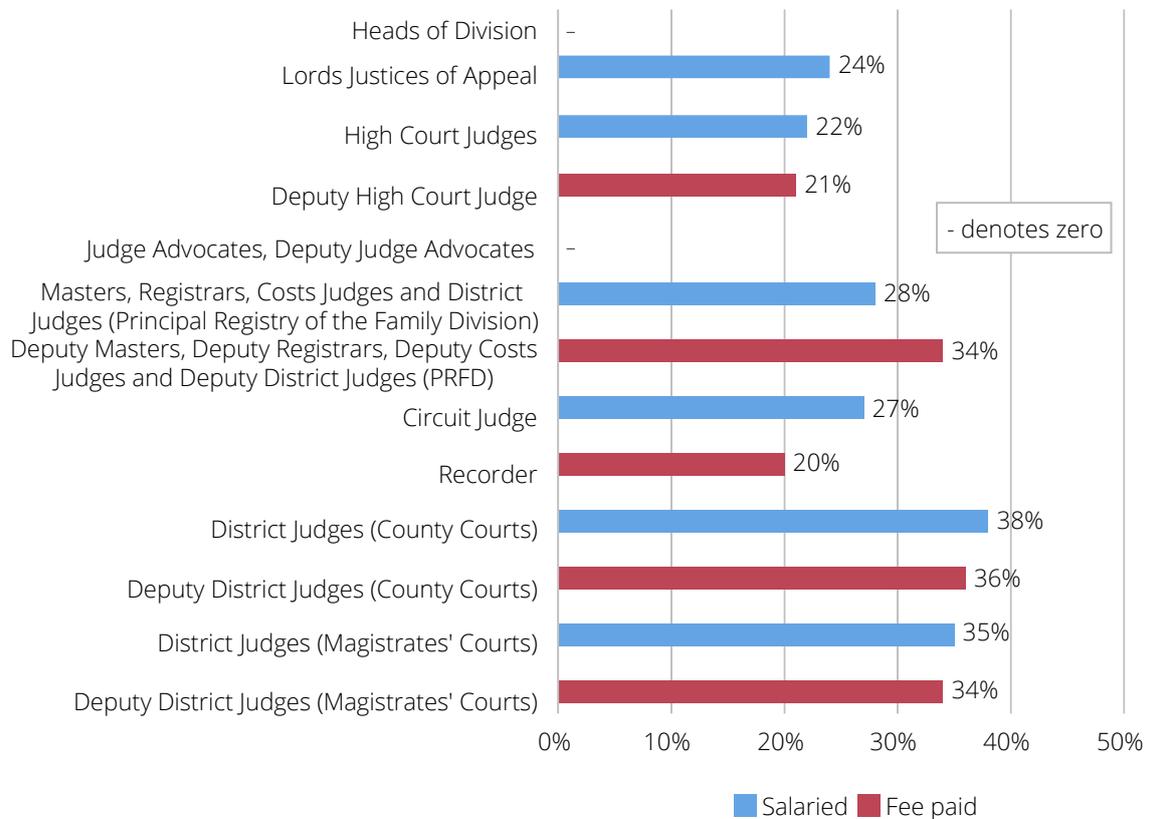
Figure 5: Female representation among court and tribunal judges and non-legal members, 1 April 2014 to 1 April 2017



Source: Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017, July 2017*

123. Figure 6 shows the representation of women across the judiciary and, in particular, their under-representation at the higher ranks of the judiciary.

Figure 6: Female representation at each court judge role, 1 April 2017



Source: Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Statistics 2017, July 2017*

124. Since these figures were released, the former Deputy President of the Supreme Court, Baroness Hale of Richmond, was appointed President of the

Supreme Court¹⁹⁰ and Lady Justice Black was appointed the second woman to sit on the Supreme Court.¹⁹¹

125. Despite these recent appointments, women remain underrepresented in judicial positions, particularly at higher levels. Robin Allen QC said “there is an underlying really profound problem about the difficulties that women face having a career in the law generally.”¹⁹² He told us that, as chair of the Bar Council Equality and Diversity and Social Mobility Committee, he commissioned a “momentum measures report to see when, within the Bar, we could expect an equal profession of men and women. I regret to say, on current trends, the answer is never.”¹⁹³ He added:

“At the moment, at pupillage, starting in practice, we have probably more than 50% of women getting through pupillage and into chambers. Starting out in practice women do really well at the moment and we have probably got equality. However, somewhere between late 30s and early 40s women leave the Bar or go into part-time positions. Their careers are stalling around about then. It is directly associated—and we know this, because we analyse people who change their status at the Bar—with caring responsibilities.”¹⁹⁴

126. Millicent Grant said that women might be put off a judicial career by the underrepresentation of women in the judiciary and stated that “They may feel that they are not welcome. They may not have the flexibility in the profession that they need for their life circumstances.”¹⁹⁵

Social mobility

127. When discussing judicial diversity with the then Lord Chancellor, Liz Truss said she “would add to your list social mobility, because we also see very few state school-educated judges get through to a senior level.”¹⁹⁶ She explained:

“One of the things I am working on with the Law Society and organisations such as the City of London Law Society is a working group that looks at social mobility and the solicitors’ profession. I am also talking about this with the Bar Council because we need to look systematically at every point in the process and what is potentially holding people back from progressing.”¹⁹⁷

128. Research published by the Sutton Trust in February 2016 found that nearly three quarters (74%) of the top judiciary were educated at independent schools and the same proportion (74%) studied at Oxford or Cambridge universities. The Sutton Trust concluded that “barristers and solicitors disproportionately herald from the same schools and universities.”¹⁹⁸

190 The Supreme Court, ‘Lady Hale appointed next President of Supreme Court, alongside three new Justices’, July 2017: <https://www.supremecourt.uk/news/lady-hale-appointed-next-president-of-supreme-court-alongside-three-new-justices.html> [accessed 26 October 2017]

191 *Ibid.*

192 [Q 33](#) (Robin Allen QC)

193 *Ibid.*

194 *Ibid.*

195 [Q 33](#) (Millicent Grant)

196 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 9](#) (Elizabeth Truss MP)

197 *Ibid.*

198 The Sutton Trust, *Leading People 2016: The educational backgrounds of the UK professional elite, February 2016*, p 2: http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf [accessed 26 October 2017]

Improving diversity

129. A number of legal measures and other initiatives have been introduced to improve diversity in the judiciary. We consider them below.

Judicial Diversity Forum and Judicial Diversity Committee

130. In 2010 the Judicial Diversity Taskforce was established to oversee implementation of the recommendations in the report of the Advisory Panel on Judicial Diversity.¹⁹⁹ In June 2015 the Taskforce published its final annual progress report, outlining the progress it had made in completing the advisory panel's recommendations. It concluded:

“significant progress has been made over the last five years towards increasing judicial diversity. This progress has been driven by a fundamental shift in our approach to improving diversity, and supported by new ways of working collaboratively across the judiciary, government, the legal professions and the Judicial Appointments Commission. We have refined the selection and recommendation process for judicial appointments. We are continuing to improve data collection and management, and to develop systems to monitor and evaluate progress. We are also continuing our work to encourage new entrants to the judiciary, develop mentoring and appraisal schemes, modernise judicial culture and update terms and conditions of appointment.”²⁰⁰

The oversight function of the Taskforce was subsequently transferred to the Judicial Diversity Forum, which comprises most of the parties who were in the Taskforce.²⁰¹

131. The JAC chairs the Diversity Forum, which brings together organisations to identify ways of improving judicial diversity.²⁰² Lord Kakkar told us that the Diversity Forum “represents an important opportunity for the different bodies, many of whom have a much more influential locus in driving the opportunity for increasing the diversity of the pool of potential applicants to come together.”²⁰³
132. The Judicial Diversity Committee was set up in 2013 to support the Lord Chief Justice by bringing together all the different aspects of diversity work in the judiciary.²⁰⁴ The committee consists of representatives from all jurisdictions in the courts and tribunals who are responsible for and committed to increasing diversity and who are active in diversity work.²⁰⁵

199 Judicial Diversity Taskforce, *Improving Judicial Diversity: Progress towards delivery of the ‘Report of the Advisory Panel on Judicial Diversity 2010’*, June 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438207/judicial-diversity-taskforce-annual-report-2014.pdf [accessed 26 October 2017]

200 *Ibid.*, p 5

201 *Ibid.*

202 Judicial Appointments Commission, ‘Judicial Diversity Forum’: <https://jac.judiciary.gov.uk/judicial-diversity-forum> [accessed 26 October 2017]

203 Q 7 (Lord Kakkar)

204 Lord Chief Justice of England and Wales and Senior President of Tribunals, *Judicial Diversity Committee of the Judges’ Council*, April 2017: <https://www.judiciary.gov.uk/wp-content/uploads/2017/04/judicial-diversity-committee-progress-report-16-17-1.pdf> [accessed 26 October 2017]

205 *Ibid.*

Statutory duty

133. In our 2012 report we recommended that the duty in section 64 of the Constitutional Reform Act 2005 to encourage diversity in the range of persons available for selection for appointments should be extended to the Lord Chancellor and the Lord Chief Justice.²⁰⁶ This was brought about by the Crime and Courts Act 2013: the Lord Chancellor and Lord Chief Justice are now required to take such steps as they consider appropriate for the purpose of encouraging judicial diversity.²⁰⁷

Selection panels

134. In our 2012 report we said it was “important that selection panels include a mixture of judicial and lay representation” and that selection panels “should themselves be gender, and wherever possible, ethnically diverse.”²⁰⁸ We recommended that “lay persons must sit on every selection panel so that the judiciary are not solely responsible for the appointments made.”²⁰⁹
135. We are pleased that the Crime and Courts Act 2013 now requires that there must be an odd number of members for selection panels for senior judicial roles and those making nominations to the panels must have regard to the desirability of more diversity among panel members. There must be a lay chair for the most senior appointments—President of the Supreme Court and Lord Chief Justice—and a better balance of lay and judicial influence in these decisions.²¹⁰
136. Lord Kakkar told us that the JAC now had “65 lay panel members, of whom 62% are female; 6% are BAME; 3% are disabled; and we also have two Welsh-speaking panellists ... We have 108 judges in the pool, and, of them, 35% are female, 8% are BAME and 42% are solicitors.”²¹¹

Equal merit provision

137. In our 2012 report we recommended that the “tipping provision” in section 159 of the Equality Act 2010 should be used as part of the appointments process.²¹² We are pleased that the Crime and Courts Act 2013 clarifies that where two persons are of equal merit, a candidate may be selected on the basis of improving diversity.²¹³
138. Lord Justice Burnett explained:

“Both Lord Kakkar and I have sat on selection committees that have applied [the equal merit provision] ... its application does not cause us very much difficulty, because once one has come to the conclusion that two or three candidates are in truth of equal merit, in the sense that there is no easy way to choose between them—each of them would be

206 Constitution Committee, *Judicial Appointments*, para 111

207 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’, October 2013: <https://jac.judiciary.gov.uk/news/changes-under-crime-and-courts-act-2013-start-take-effect> [accessed 26 October 2017]

208 Constitution Committee, *Judicial Appointments*, para 67

209 *Ibid.*

210 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’

211 Q 9 (Lord Kakkar)

212 Constitution Committee, *Judicial Appointments*, para 101

213 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’

as well able to do the job as the other—then we are told the ethnicity and gender of the candidates, and if one of the candidates is from the underrepresented group that is the recommendation we make.”²¹⁴

139. He added that the equal merit provision “has been applied now, I think, 21 times. It has been applied in a large number of competitions, even though the numbers of judges who have been appointed using the provision remain relatively small.”²¹⁵ Since our evidence session with the JAC, new figures show that between 1 April 2016 and 31 March 2017, 12 recommendations were made following application of the equal merit provision; 10 of these were women and two were BAME candidates. There were also 12 occasions when the policy was considered but not applied, due to equal diversity characteristics of the candidates.²¹⁶

Diversity training and outreach

140. In our 2012 report we encouraged the use of diversity training, recommending that “all those involved in the appointments process must be required to undertake diversity training.”²¹⁷ Lord Kakkar told us that efforts were being taken to ensure all “lay panel members receive diversity training”²¹⁸ and that judges had “their own particular diversity training as part of judicial appointment.”²¹⁹
141. We heard about the outreach work undertaken by members of the judiciary. Lord Neuberger said:

“we have a duty to go out and encourage people to apply, and we have been doing so. For instance, in relation to the recent competition, Lady Hale and I agreed that she would take steps to go out and talk to likely possible applicants, and to make herself available to be talked to.”²²⁰

142. Liz Truss MP said that she “was very pleased recently that, on the launch of the Supreme Court competition, Lord Neuberger came out and talked in public.”²²¹

Flexible working and deployment

143. Another recommendation we made in 2012 to assist judicial diversity was “that the Senior Courts Act 1981 should be amended to remove the limits on the number of individuals able to serve as High Court and Court of Appeal judges at any given time, to enable some appointments to be made on a part-time basis. We regard this as the minimum change necessary. For the number of women within the judiciary to increase significantly, there needs to be a commitment to flexible working and the taking of career breaks which we believe is currently lacking.”²²²

214 [Q 10](#) (Lord Justice Burnett)

215 *Ibid.*

216 Judicial Appointments Commission, *Judicial Selection and Recommendations for Appointment: Official Statistics, 1 April 2016 to 31 March 2017*, p 6

217 Constitution Committee, *Judicial Appointments*, para 88

218 [Q 9](#) (Lord Kakkar)

219 [Q 10](#) (Lord Kakkar)

220 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 9](#) (Lord Neuberger of Abbotsbury)

221 Annual oral evidence taken on 1 March 2017 (Session 2016–17) [Q 3](#) (Elizabeth Truss MP)

222 Constitution Committee, *Judicial Appointments*, para 117

144. Robert Bourns said: “There may be a need for the courts to be managed in a way that feels more contemporary in terms of the listing and when people sit.”²²³ Robin Allen QC said:

“unquestionably, the pressure within the system makes it very difficult to manage caring responsibilities at the same time as keeping on with full-time practice. That is causing people to change the way their practice runs, partly to leave the Bar and to go into part-time practice and so on. They are not seeing the next step of going into the judiciary as a real option. We are trying to encourage better opportunities for part-time working, because we think that will help, and more understanding from the judicial system that people have lives outside court and accommodating that at the same time.”²²⁴

145. We are pleased to note that, since our 2012 report, the Crime and Courts Act 2013 has made flexible working available in the High Court and above, and that opportunities to work flexibly are now clearly highlighted in each JAC selection process.²²⁵ Lord Neuberger told us: “Legislation that was initiated in this House, with our support, now enables us to have part-time members of the court. That is made clear in the material that we put out in relation to the [Supreme Court] competition. Indeed, we issued some guidance on part-time working in the job information pack.”²²⁶
146. In our 2012 report we said that “there should be a greater emphasis within the judiciary on judicial careers, making it easier to move between different courts and tribunals and to seek promotions.”²²⁷ We are therefore pleased that the Crime and Courts Act 2013 introduced flexible deployment so judges can more easily move between working in the courts and tribunals.²²⁸ As we noted in paragraph 32, the forthcoming Courts Bill, mentioned in the 2017 Queen’s Speech, is due to contain a provision to enable “judges to be deployed more flexibly to improve the opportunities for career progression.”²²⁹

Conclusion

147. Robin Allen QC told us that diversity “will not be remedied without real positive action by all the players involved” and that “we cannot go forward in a diverse Britain without a diverse judiciary.”²³⁰ **While there has been some improvement in the diversity of the judiciary since our last report, it has been limited.**
148. **We welcome the changes made to address diversity since our 2012 report. These should make high-level judicial posts a viable option for a wider pool of potential applicants and encourage diversity within the wider judiciary.**

223 [Q 33](#) (Robert Bourns)

224 [Q 33](#) (Robin Allen QC)

225 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’

226 Annual oral evidence taken on 29 March 2017 (Session 2016–17) [Q 9](#) (Lord Neuberger of Abbotsbury)

227 Constitution Committee, *Judicial Appointments*, para 180

228 Judicial Appointments Commission, ‘Changes under the Crime and Courts Act 2013 start to take effect’

229 Prime Minister’s Office, ‘The Queen’s speech and associated background briefing, on the occasion of the opening of Parliament on 21 June 2017’, p 40

230 [Q 34](#) (Robin Allen QC)

149. **We applaud the increased emphasis on diversity training for the judiciary and professional development opportunities for potential applicants. We encourage greater emphasis on pre-application education and mentoring for applicants, especially those who belong to groups that are underrepresented in the judiciary. We also welcome the efforts being made by professional bodies to encourage applicants from a wider range of professional backgrounds for judicial roles.**
150. **We recognise that it may take more time for recent legal changes and initiatives by the sector to deliver greater diversity. We therefore encourage the Lord Chancellor and Lord Chief Justice, the Judicial Appointments Commission and the legal professions to monitor progress closely and to continue to look for new ways to improve and encourage diversity on the bench.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The attractiveness of judicial careers

1. We recognise the growing disparity in pay between the private and public sectors, particularly at the senior levels of the judiciary. Without wishing to pre-empt the Senior Salaries Review Body's review, we note that, given the restraints on public sector pay, it is unlikely judicial pay will increase in a way that significantly reduces this difference. The Government should address the other issues which undermine the attractiveness of the judiciary as a career path, which we consider later in this report. (Paragraph 16)
2. We do not comment on the economic circumstances in which the Government made changes to the arrangements for judicial pensions. However, we are deeply concerned that the sense of grievance created by the pensions issue has damaged morale throughout the judiciary and will have reduced the appeal of a judicial career to those who might otherwise have been thinking of one. (Paragraph 23)
3. We are concerned about the working conditions of the judiciary and the detrimental effect they may be having on retaining and recruiting judges. The dilapidated state of some courts coupled with administrative burdens, under-resourcing of staff and IT shortcomings all need to be addressed. (Paragraph 34)
4. We are pleased that the Government has said that it is committed to addressing these problems, both in partnership with the senior judiciary, and ultimately through legislation. However, a considerable investment of funds and political energy will be needed to achieve the required improvements both in the immediate future and long-term. (Paragraph 35)
5. We recognise that the concept of judges returning to practice law is controversial. We invite the Lord Chancellor and the Lord Chief Justice to examine the continuing value of the convention, and in particular, whether it serves to operate as a significant disincentive to applications for full-time judicial appointment. (Paragraph 38)
6. Given the difficulties in recruiting judges, which we address in the next chapter, the Lord Chancellor, with the Heads of the Judiciary in England and Wales, Scotland and Northern Ireland and the President of the Supreme Court, should reflect on whether the current fixed retirement age throughout the judiciary continues to be appropriate. Consideration should also be given to whether a higher retirement age would be appropriate at the senior levels of the judiciary, given that most judges do not reach the higher ranks until later in their careers. (Paragraph 45)
7. It is imperative that the independence of the judiciary is protected and that it is well-understood by the public. This does not impinge on the right of the free press to challenge or to criticise court judgments. (Paragraph 56)
8. However, there is a difference between criticism and abuse; between challenging the content of a judgment and attacking the character and integrity of the judge handing down that judgment. In such cases, the Lord Chancellor's constitutional duty is clear—as stated in the oath of office, the Lord Chancellor must defend the independence of the judiciary. Should members of the judiciary suffer such personal attacks in future, we

expect any person holding the office of Lord Chancellor to take a proactive stance in defending them publicly, as they are unable to defend themselves. (Paragraph 57)

9. We welcome the new Lord Chancellor's commitment to be "resolute and unflinching" in defending the independence of the judiciary. (Paragraph 58)
10. We are seriously concerned about recruitment to the bench. However we also agree unequivocally with the Judicial Appointments Commission that the threshold for appointment should not be lowered in order to fill judicial vacancies. It is essential that the high quality of the judiciary, and by extension the legal system in the UK, is not compromised. (Paragraph 67)

Recruitment

11. We recognise the concerns about potential conflicts of interest if serving government and CPS lawyers undertake judicial work. However, these lawyers are an important potential source of recruits to the judiciary—and the CPS in particular has an ethnically diverse workforce which remains largely untapped. (Paragraph 88)
12. We welcome the opportunity for government lawyers to gain judicial experience, particularly in tribunals. We encourage the Lord Chancellor and the Lord Chief Justice to consider whether there are other ways in which CPS and government lawyers can gain relevant judicial experience without compromising the public perception of the independence and impartiality of the judiciary. This might involve, for example, allowing government lawyers to sit to try cases when they are either geographically removed from their normal place of work or when the subject matter lies outside their usual areas of work. (Paragraph 89)
13. We see no reason why chartered legal executives who demonstrate the requisite attributes are unable to achieve promotion beyond the district bench. We encourage the Lord Chancellor, in consultation with the Lord Chief Justice, to reconsider this. (Paragraph 95)
14. We welcome the outreach work undertaken by the Judicial Appointments Commission and the professional bodies to ensure that there are development opportunities and tools available to assist potential applicants for judicial roles. (Paragraph 112)
15. However, we are concerned about the disparities that remain between the number of solicitors and chartered legal executives applying for judicial roles and the number being recommended for appointment. Non-barrister applicants may still perceive that those with advocacy experience are preferred as candidates, and that this is in part responsible for the low application rate. A significant cultural shift is required to address this. (Paragraph 113)
16. We encourage the JAC to collect data on the reasons why applicants are not successful. We recommend that the Lord Chancellor, the senior judiciary, and all professional bodies work with law firms to encourage a cultural change within the solicitors' profession in general, and within law firms in particular, to provide better support for solicitors applying for judicial positions. (Paragraph 114)
17. We agree with the Judicial Appointments Commission that their responsibility is to recommend appointment of the most meritorious candidates from the

eligible pool, provided that the candidates themselves meet the required standards. The use of “reserve lists” identifying appointable candidates to fill unanticipated vacancies is obviously sensible, but each new competition must identify the most meritorious candidates, and may produce better candidates than those on the “reserve list”. (Paragraph 116)

Diversity

18. While there has been some improvement in the diversity of the judiciary since our last report, it has been limited. (Paragraph 147)
19. We welcome the changes made to address diversity since our 2012 report. These should make high-level judicial posts a viable option for a wider pool of potential applicants and encourage diversity within the wider judiciary. (Paragraph 148)
20. We applaud the increased emphasis on diversity training for the judiciary and professional development opportunities for potential applicants. We encourage greater emphasis on pre-application education and mentoring for applicants, especially those who belong to groups that are underrepresented in the judiciary. We also welcome the efforts being made by professional bodies to encourage applicants from a wider range of professional backgrounds for judicial roles. (Paragraph 149)
21. We recognise that it may take more time for recent legal changes and initiatives by the sector to deliver greater diversity. We therefore encourage the Lord Chancellor and Lord Chief Justice, the Judicial Appointments Commission and the legal professions to monitor progress closely and to continue to look for new ways to improve and encourage diversity on the bench. (Paragraph 150)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
 Lord Brennan*
 Baroness Corston†
 Baroness Dean of Thornton Le Fylde*
 Baroness Drake†
 Lord Dunlop†
 Lord Hunt of Wirral
 Lord Judge
 Lord Lang of Monkton (Chairman until 2 May 2017)*
 Lord MacLennan of Rogart
 Lord MacGregor of Pulham Market
 Lord Morgan
 Lord Norton of Louth
 Lord Pannick
 Baroness Taylor of Bolton (Chairman since 22 June 2017)

* Member of the Committee until 2 May 2017

† Member of the Committee since 22 June 2017

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple
 Lord Brennan
Practising barrister (Queen's Counsel)
 Baroness Corston
No relevant interests
 Baroness Dean of Thornton-le-Fylde
*Member of the Business Oversight Board (BOB), The Law Society
 Chair, Remuneration Committee, The Law Society*
 Baroness Drake
Lay member, Employment Appeal Tribunal
 Lord Dunlop
No relevant interests
 Lord Hunt of Wirral
*Partner DAC Beachcroft LLP
 Co-Chair, All Party Parliamentary Group on Legal and Constitutional
 Affairs*
 Lord Judge
Former Lord Chief Justice of England and Wales (2008–2013)
 Lord Lang of Monkton
No relevant interests
 Lord MacGregor of Pulham Market
No relevant interests
 Lord MacLennan of Rogart
No relevant interests
 Lord Morgan
No relevant interests

Lord Norton of Louth

No relevant interests

Lord Pannick

Practising Queen's Counsel

Baroness Taylor of Bolton (Chairman)

No relevant interests

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Legal Advisers

Professor Mark Elliott, Professor of Public Law at the University of Cambridge

No relevant interests

Professor Stephen Tierney, Professor of Constitutional Theory at the University of Edinburgh

Member, Judicial Appointments Board of Scotland.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/judicial-appointments-follow-up> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence.

The Committee's Judicial Appointments: follow-up report draws on annual evidence taken during the Session 2016–17. The annual oral evidence sessions are published separately online at: <http://www.parliament.uk/hlconstitution>

Oral evidence in chronological order

Rt Hon. Professor Lord Kakkar, Chairman, Judicial Appointments Commission	QQ 1–10
Lord Justice Burnett, Vice-Chairman, Judicial Appointments Commission	QQ 1–10
Anna Nice, Solicitor	QQ 11–20
Robert Bourns, President, The Law Society of England and Wales	QQ 21–34
Robin Allen QC, Chairman, Bar Council Equality and Diversity and Social Mobility Committee, Bar Council of England and Wales	QQ 21–34
* Millicent Grant, Vice-President, Chartered Institute of Legal Executives (CILEx)	QQ 21–34

Alphabetical list of all witnesses

Robin Allen QC, Chairman, Bar Council Equality and Diversity and Social Mobility Committee, Bar Council of England and Wales	QQ 21–34
Robert Bourns, President, The Law Society of England and Wales	QQ 21–34
Lord Justice Burnett, Vice-Chairman, Judicial Appointments Commission	QQ 1–10
* Millicent Grant, Vice-President, Chartered Institute of Legal Executives (CILEx)	QQ 21–34 JDA0001
Rt Hon. Professor Lord Kakkar, Chairman, Judicial Appointments Commission	QQ 1–10
Anna Nice, Solicitor	QQ 11–20