

## **Foreword**

In October 1997 I announced that I intended in future to present an Annual Report to Parliament on the operation of the judicial appointments system in England and Wales. I am now pleased to present this, the first such report, which covers the period 1 April 1998 to 31 March 1999. For the reasons given below, I regard this as a valuable and important initiative.

The independence and integrity of the judiciary, and of the judicial appointments process itself, are essential elements within our constitution. The quality of the judiciary in this country is excellent and its integrity, though taken for granted, of the highest order. It is essential in the public interest that the judicial appointments system should continue to provide a high quality judiciary of both moral and intellectual distinction. It is also essential that there is public confidence in the judicial appointments system as a process for selecting the best candidates for judicial office, on their merits, irrespective of extraneous factors. Public confidence in the appointments process is not only desirable in its own right, but also helps to sustain the authority of the judiciary in carrying out its important constitutional functions. So I hope that this report will help to make the public better informed and in so doing strengthen public confidence in the appointments system.

The judicial appointments system is sometimes criticised for secrecy. While it must be accepted that some matters are confidential because they involve the personal details of applicants, I am committed to an open and accessible appointments system which is better understood by the public and in which everyone who is eligible has a fair chance to secure appointment.

The publication of this report is a tangible example, not only of my commitment to the openness of, and my accountability for, the judicial appointments process, but also of this Government's programme of modernisation and reform. This last year has been a time of unprecedented change for our justice system with a substantive programme of co-ordinated reforms designed to secure effective access to rights for every citizen in this country. Among our many recent initiatives and accomplishments are the implementation of the 'Woolf reforms' in the civil justice system the passage of the Human Rights Act, providing for the incorporation of the European Convention of

Human Rights into domestic law from October 2000, and my Department's work on modernising the justice system through the provisions of the Access to Justice Act and in other ways. These changes and reforms mean that it is vital that we continue to appoint judges of the highest calibre. Our procedures for the selection, appointment, training and appraisal of both the lay and professional judiciary must be continually reviewed to ensure that the best candidates are encouraged to apply and are appointed.

Appointments are made on merit but I can only appoint the judiciary from those who are ready and willing to do the job. I want to see more applications from those who are currently under-represented on the Bench, such as women, members of the ethnic minority communities and people with disabilities. My policies are designed to encourage all eligible candidates to apply.

This report gives details of my judicial appointments policies and procedures and the changes I have introduced. The information contained in the report gives an indication of the scale of the operation both in terms of the variety of appointments made and the numbers of applicants and vacancies filled. I take my responsibility for the appointment of judges very seriously and I intend to continue the process of modernisation of the appointments process. In the meantime I hope that this inaugural report will help to increase understanding of the judicial appointments process, as well as chronicling the reforms which I have introduced and the operation of the system during the period under review.

**The Right Honourable the Lord Irvine of Lairg**

*October 1999*

# Introduction

- 1.1 This chapter briefly summarises the main principles and features of the judicial appointments system. Chapter 2 deals with changes to the system made by the Lord Chancellor. Chapter 3 contains a detailed account about the full range of professional judicial appointments. Similar accounts of Queen's Counsel and lay magistrate appointments follow in Chapter 4 and Chapter 5 respectively. Details of the other work of the Judicial Group in the Lord Chancellor's Department are in Chapter 6.

## The Judicial Appointments System

### Administration

- 1.2 The Lord Chancellor has personal responsibility for the appointment, or for advising The Queen on the appointment, of all members of the professional judiciary in England and Wales and Northern Ireland, including some office holders whose jurisdiction extends also to Scotland. The most senior appointments are made by The Queen on the recommendation of the Prime Minister, although here too the advice of the Lord Chancellor is sought.
- 1.3 The administration of the judicial appointments system in England and Wales is carried out on the Lord Chancellor's behalf by staff of the Judicial Group in the Lord Chancellor's Department (LCD). The Judicial Group's function is to fulfil the following strategic objective:
- to provide a merit-based system for the appointment of judges and magistrates, which is open to all who are qualified to hold office, and to ensure that the system is fair, transparent and efficient.*
- 1.4 The Group is responsible for the administration of all appointments to the professional judiciary, the lay magistracy (excluding those within the Duchy of Lancaster – that is Lancashire, Greater Manchester and Merseyside, where, for historical reasons, magistrates are appointed by the Chancellor of the Duchy of Lancaster) and appointments as Queen's Counsel, the senior advocates who deal with the most important and complex legal cases.

## Judicial Appointments

### General Principles

- 1.5 The Lord Chancellor may only appoint (or recommend for appointment) to judicial office those who meet the statutory qualifications as laid down in the legislation passed by Parliament governing the appointment in question. In addition, there are a number of other principles which he applies when selecting candidates. These are that:
- appointment is strictly on merit;
  - part-time service is normally a pre-requisite for appointment to full-time office; and
  - significant weight is attached to the independent views of members of the professional legal community as to the suitability of individuals for appointment.
- 1.6 The general principles are treated more fully in the following paragraphs.

### Appointment on merit

- 1.7 The Lord Chancellor's policy is to appoint, on merit, those candidates with the necessary professional qualifications who appear to him to be best suited for the purpose. He seeks to operate appointments procedures which both ensure and reflect the principle of equality of opportunity. The following paragraphs outline the basic procedures which contribute to the openness, fairness and effectiveness of the system and some of the specific measures which the Lord Chancellor has taken in order to promote and strengthen the principle of equal opportunities in relation to judicial appointments in furtherance of that objective.

### Eligibility for judicial office

- 1.8 The Lord Chancellor may only consider for judicial office candidates who meet minimum statutory qualifications for appointment. These qualifications vary for each office but in general require candidates to have a number of years' experience (usually seven or ten) as a lawyer, whether as a barrister or a solicitor. Full details of the statutory qualifications for each office are available from the Judicial Group.

### Equal Opportunities

- 1.9 The Lord Chancellor's essential aim is to ensure and oversee appointment processes that recognise diversity and promote equality. This means that he appoints on merit those who appear to him to be the best qualified regardless of gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability, except where the disability prevents the fulfilment of the physical requirements of the office. Judicial appointments will always be made on merit, based on assessments against the detailed criteria for the post, but without prejudice to this overriding principle the Lord Chancellor has encouraged women and ethnic minority practitioners to apply in order to increase the numbers from those groups in the judiciary. For example, he gave keynote speeches at the Woman Lawyer Conference in April 1998, the Disability Law Conference in

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February 1999 and the Ethnic Minority Lawyers' Conference, which he addressed for the second time, in March 1999. He also spoke to ethnic minority law students in May 1998, encouraging them to see themselves as potential judges of the future. Officials from Judicial Group welcome invitations to talk to groups of lawyers about judicial appointments. In the year under review, they attended a number of meetings and conferences organised by both branches of the legal profession to provide information and encourage applications. The Lord Chancellor also wrote to all Heads of barristers' Chambers seeking their assistance in encouraging suitably qualified ethnic minority practitioners to apply for judicial office. In May 1998, he increased the resources available within the Judicial Group to allow a team of officials to be established to concentrate on equal opportunity issues.

- 1.10** To support the principle of equality of opportunity, the requirements for appointment are, wherever possible, applied flexibly to take account of unusual career paths. For example, in 1998 the facility for "block sittings" (see paragraph 2.3) was introduced for newly appointed part-time judges in a number of jurisdictions; and the normal upper age limits for appointment are wherever possible applied flexibly in the light of an individual's circumstances. There is also recognition, within the procedures, of the factors that might affect the development of an individual's professional practice (e.g. a career break).
- 1.11** In 1998/99 the Lord Chancellor continued to support pilot mentoring and appraisal schemes for those serving as Deputy District Judges on the Wales and Chester Circuit. These schemes were introduced as a means of encouraging the development of Deputy District Judges and to maintain the quality of the comments received by the Lord Chancellor about their sittings. The Lord Chancellor introduced a work-shadowing scheme for potential Assistant Recorders and Deputy District Judges (see paragraph 2.4). Officials in the Department continued to provide secretarial support to the Joint Working Group on Equal Opportunities in Judicial Appointments and Silk (see paragraph 2.12).
- 1.12** Detailed guidance is provided to all those involved in the various stages of the selection process regarding their responsibilities to assess candidates against the specific criteria for appointment. The Lord Chancellor regards this as crucial to providing equality of opportunity for all candidates. Under the guidance which he has introduced, he pays no regard to unsubstantiated allegations of misconduct about candidates which are received in consultations with members of the professional community or to comments that are not relevant to the candidate's skills and aptitudes as a potential member of the judiciary.
- 1.13** The Lord Chancellor also encourages people with disabilities to apply for judicial office. He is keen to foster a positive environment to enable more disabled lawyers to sit judicially. If the circumstances make it appropriate, practical working arrangements for any individual will be

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discussed and wherever possible changes can and will be made. The Lord Chancellor's commitment to eliminate discrimination in the appointments process has been demonstrated in the appointment of the first blind and partially sighted lay magistrates (see paragraph 5.13).

- 1.14 The Lord Chancellor personally considers complaints from individuals who feel that they have been unfairly treated in the judicial appointments process, and keeps the system under review in the light of experience with a view to promoting and ensuring equality of opportunity for all candidates.

### Women and ethnic minorities: statistics

- 1.15 The formal recording of the ethnic origin of applicants for judicial office did not begin until October 1991. Since that time applicants and part-time judges whose appointments have been renewed have been invited to complete a voluntary questionnaire about their ethnic origin in accordance with the following categories: White; West Indian; Black African; Chinese; Indian, Pakistani, Bangladeshi, Sri-Lankan or African Asian; and Other. There is no obligation to complete the questionnaire and as there has been no full survey of all serving members of the judiciary, the information on the ethnic origin of the judiciary is therefore incomplete. For statistical purposes, the ethnic origins of holders of judicial appointment and applicants are recorded as: White, Black, Asian and Other.

- 1.16 Women and members of the ethnic minorities are, as yet, a small proportion of the professional judiciary as a whole but that is, at least in part, a reflection of the number of women and ethnic minority practitioners in the legal profession with the appropriate years of experience. Direct comparisons between the total numbers of currently practising solicitors and barristers with the numbers of judges in post are therefore misleading. While applicants for part-time appointments are required to have a certain number of years' legal practice (e.g. seven years for Deputy District Judges or ten years for Assistant Recorders) in fact applicants have many more years of experience. The average length of practice for Assistant Recorder applicants since 1996 for example has been approximately 20 years. A comparison between the numbers of serving Assistant Recorders and practising lawyers with at least 20 years' experience is therefore much more representative:

	Total	Male	%	Female	%	White	%	Ethnic minority origin	%
	367	301	82	66	18	356	97	11	3
	3125	2765	88	360	12	2997*	96	128	4
	16303	14875	91	1428	9	not available	-	not available	-

\* includes those for whom the ethnic origin is unknown

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- 1.17 Comparisons are further complicated by the dates at which these figures were compiled (solicitors as at July 1998, barristers as at May 1999) but it is clear that the proportion of women serving as Assistant Recorders is appreciably greater than the proportion in the profession at the relevant level of experience. The proportion of ethnic minority barristers is a little higher than those serving as Assistant Recorders but it should be noted that the proportion of ethnic minority Assistant Recorders in May 1999, when the barrister figures were compiled, was 3.5%. That proportion also compares well with the limited information available about solicitors. Although there are no exact figures available for ethnic minority solicitors, The Law Society have said that as at December 1998, 0.97% of solicitors with more than 15 years' post-qualified experience were known to be of ethnic minority origin (the ethnic origin of 16.2% of such solicitors was unknown). In addition, there were as at June 1999 approximately 3,800 solicitors of ethnic minority origin (approximately 5%) but 80% of those were of less than 10 years' admission.
- 1.18 As more women and members of the ethnic minorities have entered the profession their numbers in the judiciary continue to show a steady increase and it is hoped that many will be promoted in due course to the higher levels of the judiciary. There is, however, no room for complacency and continuing efforts will be made to encourage applications from all eligible candidates, especially those currently under-represented on the Bench, and to identify and develop good candidates who already hold an appointment.

### **Part-time service**

- 1.19 Before being considered for a full-time judicial post candidates must usually have prior experience in a part-time capacity in a similar post. This means that lawyers are appointed initially to part-time posts, such as Assistant Recorder or Deputy District Judge. In such posts they are required to meet a minimum judicial sitting commitment of, say, 20 days a year, but they also continue to practise as barristers or solicitors. After a period they will be eligible for appointment to the appropriate full-time equivalent. In this way the Lord Chancellor can be satisfied that they are competent and suitable for appointment on a permanent basis. Part-time judicial office holders are also an important resource to the court service in the efficient administration of justice.

### **Applications**

- 1.20 Openness is the key to the modern judicial appointments process. This means openness in terms of providing information about the system and being open to public scrutiny, but also in terms of how the procedures work. That is why in recent years increasing emphasis has been placed on open competition and selection procedures where all candidates are given an equal chance to demonstrate that they meet the criteria for appointment. All but the most senior appointments are now made through open advertised competition procedures.
- 1.21 For all full-time and part-time judicial appointments up to and including the level of Circuit Judge (except for Recordership, which is achieved on promotion from Assistant Recordership) it is

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necessary to apply in writing to be considered for appointment. Judicial posts are advertised in some national newspapers (including the ethnic minority press) and/or legal journals or (where eligibility is narrowly restricted) by some other appropriate means. The advertisements invite prospective applicants to contact the Judicial Group for an application pack which includes the application form, a job description and details of the criteria for appointment.

**1.22** Those interested in an appointment complete an application form to be submitted by a given date. All candidates have the opportunity to explain in that form how they feel they meet the criteria for appointment. Applications are welcome from any suitably qualified members of the legal profession. It is now only the most senior appointments, to posts above the High Court, which are in any event invariably filled on promotion, which are made by invitation only. And, under the reforms introduced by Lord Irvine, applications are now sought for appointment to the High Court (see paragraph 3.9) although the Lord Chancellor reserves the right to appoint those who have not made an application.

**Consultations about candidates for judicial office**

**1.23** The Lord Chancellor regards the knowledge, experience, and judgment of the professional legal community (serving judges and members of the legal profession) as the best available source of informed assessments of the suitability of applicants for judicial appointment. Widespread consultation is undertaken on all candidates. For many competitions a list of all those who are approached for assessments is included in the application pack sent to candidates. In most competitions relevant serving members of the judiciary, including those at senior levels, senior members of both branches of the profession and others, as appropriate, are automatically approached to obtain their views about the qualities of the applicants. These comments are usually collected in writing but are sometimes collected at meetings. Consultees are provided with a list of candidates and are given guidance on the criteria required for appointment. The method of assessment varies slightly for each competition but in general the consultees are asked to state how well in their view a candidate demonstrates the criteria for appointment which in outline are:

- |                                     |                                     |
|-------------------------------------|-------------------------------------|
| legal knowledge and experience      | integrity                           |
| intellectual and analytical ability | fairness                            |
| sound judgment                      | understanding of people and society |
| decisiveness                        | sound temperament                   |
| communication skills                | courtesy and humanity               |
| authority                           | commitment to public service.       |

**1.24** An example of the criteria with definitions as provided to applicants is given in Annex A.

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- 1.25** Consultees are asked for a marking in relation to each of the criteria on a scale which rises from 5 to 1 - 5 being awarded to those candidates seen not to have demonstrated the criteria and seen not, therefore, to be fitted for appointment and 1 awarded to those candidates who are believed strongly to demonstrate the criteria and to be well fitted for appointment. Consultees are also asked to state in which capacity they know the applicant. Each candidate is also invited to give the names of up to three judges or members of the profession who are familiar with the candidate's work and can comment on his or her suitability for appointment.
- 1.26** In addition regular consultations are undertaken with senior members of the judiciary about appointments to the Court of Appeal or the House of Lords and comments are sought from the serving judiciary and members of the profession about candidates for appointment to the Circuit Bench, serving Assistant Recorders who may be eligible for full Recordership and serving Recorders whose term of office is due for renewal (see Chapter 3).
- 1.27** The Lord Chancellor is aware that there is inevitably an element of subjective judgment in the consultation process, but that is true of all personnel work. The consultation process provides a disciplined and structured framework within which judgments are made. It is, in effect, similar to the system of taking-up references for any job, except that the scale of the judicial appointments system is greater than for most recruitment exercises. For example, during the Assistant Recorder competition, some 5,000 comments were received from nearly 1,900 people on the 800 applicants. Every effort is made to make the system as objective as possible. No one person's view about a candidate, whether negative or positive, and however eminent that person, is decisive in itself. Comments are collected on a confidential basis but under the changes made by Lord Irvine any allegation of professional misconduct made about a candidate during the course of consultation must be specific and will be disclosed to that candidate. If a consultee does not allow an allegation he or she has made about a candidate to be disclosed to that candidate, or any comments are made of a discriminatory nature, the Lord Chancellor excludes such comments from his considerations.

### **Shortlisting and Interviews**

- 1.28** For all full-time and part-time appointments up to and including the level of Circuit Judge, except Recordership, selected applicants are asked to attend a formal interview. Each interview panel consists of a serving judge, a senior official in the Judicial Group and a specially selected and trained lay interviewer (see paragraph 1.30). Following the Lord Chancellor's direction, lay and judicial members of the panels now join the officials from the Judicial Group in considering each candidate's application form and the results of the consultations, in the light of the criteria for appointment, before deciding which candidates to invite for interview. As the figures in Chapter 3 and Annex Findicate, the numbers of applicants for each post generally exceed the numbers of vacancies available by a considerable margin; the shortlisting process serves to identify the more

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promising candidates, but there are still many more candidates invited for interview than are eventually appointed. The panels further test the criteria during the interview.

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**1.29** The successful candidates, then, are those who best demonstrate that they meet the criteria during the whole of the selection procedure. First in their application forms, next in the light of the information obtained in the consultation process and finally in the interview. The Lord Chancellor personally considers the applications of each candidate interviewed, in the light of all the information by then available to him, before he takes final decisions.

**Lay interviewers**

**1.30** The inclusion of a lay (i.e. non-legal) person on each sifting and interview panel is a principal feature of the judicial appointments procedure. Their role is to play a full part in the assessment of candidates and to exercise their personal judgment in assessing the extent to which candidates possess the qualities required for appointment; they bring to this process something of the perspective of the lay court user and of the public. Lay interviewers have been used in the appointments procedure for Circuit Judges and District Judges since the introduction of new procedures at these levels in September 1994, and their involvement has been progressively extended to cover all appointments where candidates are interviewed. Shortly after the General Election in May 1997, the Lord Chancellor decided that lay interviewers should be involved in the selection of candidates for interview as well as in the interviews themselves.

**1.31** Currently all lay interviewers are appointed from among the membership of Advisory Committees on Justices of the Peace. Those chosen are those who are felt to demonstrate well developed skills of assessing people; sufficient knowledge of the judicial system to carry credibility; understanding of the impact of the judicial system on all types of court user; and credibility with the profession and with individual candidates. Those selected are invited to join the panel for an initial period of three years. Once appointed, lay interviewers undertake the sifting and interviewing duties as required.

**LAY INTERVIEWERS IN POST AT 31 MARCH 1999**

<b>Total</b>	<b>Men</b>	<b>Women</b>	<b>White</b>	<b>Black</b>	<b>Aslan</b>	<b>Other</b>
50	20	30	46	1	3	0

**1.32** For the purposes of appointing 600 members of the newly constituted Appeals Service (formerly the Independent Tribunal Service) to hear appeals relating to social security benefits, further lay interviewers were required on a short term basis only. The Chairmen of Advisory Committees in the South East of England were asked in December 1998 to identify suitable individuals and 69 people were nominated. 30 were appointed, 9 of whom were women. These are not included in the table above.

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### **Feedback to unsuccessful applicants**

- 1.33** Consistent with the openness of the selection procedures, staff of the Judicial Group are always willing to provide feedback and advice to unsuccessful applicants. That includes explaining, on a non-attributed basis, the tenor of the assessments received and, if the candidate was interviewed, how he or she fared at that interview and how performance might be improved. Feedback can be provided over the telephone or in meetings.

### **Career interviews**

- 1.34** Staff of the Judicial Group are also available to discuss with individuals their career aspirations and development, again either in face to face meetings or over the telephone.

### **Judicial Training**

- 1.35** There is a close link between the judicial appointments system and the arrangements made for judicial training, not least because newly appointed part-time office-holders are increasingly required to undertake 'induction training' before being able to sit (see paragraph 1.37). This accordingly very often constitutes the final part of the appointment process for successful candidates.
- 1.36** The Judicial Studies Board (JSB) is a non-departmental public body funded by the Lord Chancellor's Department. It was set up in 1979 to provide training for judges in the criminal jurisdiction. In 1985 its role was extended to cover the provision of training in the civil and family jurisdictions and the supervision of training magistrates, and judicial chairmen and members of tribunals. It is chaired and directed by senior judges but includes lay magistrates, lawyers, administrators and academics who sit on the Board. It has five executive committees (respectively Criminal, Civil, Family, Magisterial and Tribunals) and an advisory committee (the Equal Treatment Advisory Committee - ETAC). ETAC operates in four working groups, one of which is concerned exclusively with race and ethnic minority issues. The other working groups are concerned with gender and sexual orientation; litigants in person and children; and disability.
- 1.37** One of the main activities of the JSB is to run induction courses to give newly appointed part-time judges training in the skills required. No newly appointed Assistant Recorder, Deputy District Judge or Acting Stipendiary Magistrate (see Chapter 3) can sit as a judge without first having attended an induction course run by the JSB. The courses are residential and last for four or five days. They are very intensive and concentrate on the practical aspects of sitting as a judge and running a court. Emphasis is placed on practical exercises such as, if appropriate, sentencing, directions to the jury and summing up. The newly appointed office-holders must also sit in for at least a week with an experienced judge before sitting unaccompanied and, if they are to hear criminal cases, they must also visit local prisons and the Probation Service.

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**1.38** The JSB Annual Report for 1998/99 was published in June 1999. For further information, contact:

Judicial Studies Board  
9th Floor  
Millbank Tower  
London  
SW1P 4QU

Tel: 020 7217 4763/4/5  
email: [jsboard@compuserve.com](mailto:jsboard@compuserve.com)

## **2 Recent Changes**

- 2.1** The Lord Chancellor has introduced many changes to the judicial appointments process, with a view to improving its openness, flexibility and fairness. Details of a number of these changes are provided elsewhere in this Report. This chapter briefly summarises some of them.
- 2.2** The main changes include an end to the system of making appointments to the High Court Bench by invitation only. Applications were invited by public advertisement for all vacancies which arose after 1 October 1998 and four applicants were appointed. A further advertisement will appear in due course. All with ambitions for appointment to the High Court Bench can now be assured that their claims will be properly considered. The Lord Chancellor has also appointed the first solicitors as deputy (i.e. part-time) High Court Judges.
- 2.3** To ensure appropriate flexibility in part-time sitting arrangements, the Lord Chancellor has introduced a facility for 'block sittings' under which it is now possible for those who have had a career break for family reasons to apply to undertake their sittings as Assistant Recorders, or in certain tribunals, in concentrated blocks, rather than having their sittings spread over a number of years as usual. That gives those who have taken a career break the chance to 'catch up' with those who have not. The Lord Chancellor has also increased the normal upper age limit for appointment as an Assistant Recorder from 50 to 53 which serves to widen the pool of potential applicants. For all appointments, where possible, age limits are applied flexibly to provide opportunities for those who become lawyers later than usual or who have taken a career break.

### **Work Shadowing**

- 2.4** In March a work shadowing scheme was introduced to allow practitioners the chance to find out what it would be like to sit judicially before deciding whether or not to apply for appointment as an Assistant Recorder or a Deputy District Judge. Shadowers have the opportunity to observe Circuit and/or District Judges in court and in exercising their other main duties. It is too early to comment on the effectiveness of the scheme yet but the Lord Chancellor sees it as playing an important part in the area of equal opportunities. The system will be monitored and an evaluation will be conducted in late 1999. It is hoped that, in due course, the scheme can be extended to all part-time appointments.

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### **Published Information**

**2.5** As part of the Lord Chancellor's commitment to an open appointments system he believes it is important that everyone should have access to information about the way in which the system operates and the qualities and skills sought in a potential judge. A revised booklet on judicial appointments was published in March which gives general details about the Lord Chancellor's policies and procedures for professional judicial appointments and the qualifications and requirements for each of the main appointments. Copies of the booklet have been distributed to the Bar Council and The Law Society and can be obtained from the Judicial Group. The information is also available on the Lord Chancellor's Department website at: [www.open.gov.uk/lcd](http://www.open.gov.uk/lcd). More detailed information about individual appointments can be obtained from the Judicial Group.

### **Other changes to the appointments system**

**2.6** Other changes not mentioned elsewhere in this chapter include:

- District Judges are now considered for appointment to civil Circuit Judge posts without first becoming Recorders.
- Guidance is provided on the application of the criteria for appointment to all those involved in the assessment process.
- The Lord Chancellor requires assessments of candidates obtained in consultations with members of the professional community to be specifically related to the criteria for appointment and where appropriate seeks further particulars from those who have commented. He is not concerned with irrelevant comments or with assessments that are not substantiated.
- Any allegation of misconduct or serious criticism about a candidate must be specific and will be disclosed to the candidate to give them an opportunity to comment.
- The Lord Chancellor investigates any claim of discrimination in the judicial appointments process.
- Judicial and lay members are involved in the selection of candidates for interview, as well as in the interviews themselves.
- Additional judicial and lay interviewers have been appointed.
- The Lord Chancellor has spoken directly to female and ethnic minority practitioners encouraging them to apply for judicial appointment.
- The Lord Chancellor has written to Heads of barristers' Chambers seeking their assistance in encouraging suitably qualified ethnic minority practitioners to apply for Queen's Counsel and judicial office.

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- The Lord Chancellor has made it absolutely clear that homosexuality is not a bar to appointment.

### **Other changes that have affected the judiciary**

**2.7** Although not directly applicable to judicial appointments, there have been other changes that have affected the judiciary last year. These include the renaming of the Industrial Tribunals as the Employment Tribunals and, in October 1998, the renaming of the Official Referees' Court as the Technology and Construction Court. The latter was changed as a means of describing more readily the nature of the work of the court which hears construction cases and matters involving disputes about computer hardware and software and other technical and scientific issues. The judges previously called Official Referees are now known as Judges of the Technology and Construction Court.

**2.8** An additional major change was the introduction of the new Civil Procedure Rules on 26 April 1999. These rules were introduced following Lord Woolf's recommendations on the reform of the civil justice system ('the Woolf reforms'). The changes include greater case management by judges; an increase in the number of cases able to benefit from the low-cost, low complexity of the small claims system; new fast and multi-tracks to ensure cases are dealt with in proportion to the issues at stake and the value of the claim; and other measures to encourage parties to settle their dispute at the earliest possible stage. Although these rules did not come into force until the 1999/2000 financial year, Judicial Group have had to consider the effect of the reforms on the appointment of civil judges, especially to the District Bench (see paragraph 3.82). In addition, 31 Circuit Judges were appointed as Designated Civil Judges, a new group of Judges created to oversee the management of the civil justice system within the courts for which they are responsible (see paragraph 3.53).

### **Administrative changes**

**2.9** As part of a reorganisation of the Lord Chancellor's Department, the Judicial Group was expanded in 1998/99. The many changes in the justice system mean that there is an increasing need to bring together work on medium to long-term issues affecting the structure and numbers of the judiciary. A new Division (Judicial Policy Division) was established in the Judicial Group at the beginning of March to do this and to give the Group the capacity to contribute more effectively to policy formulation and implementation in the Department as a whole. The creation of the new Division will enable the Department to concentrate on the many issues facing the judiciary as a result of the major changes currently taking place in the fields of criminal, civil and family law, as well as continuing to support the Lord Chancellor in making appointments. One of the areas which the new Division will need to address is how judicial structures, roles and deployment arrangements are best fitted for future changes.

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- 2.10** A new Judicial Correspondence Unit was established to improve the handling of complaints about judicial conduct by transferring responsibility for all casework to a single dedicated team (see paragraph 6.3). At the same time the Lord Chancellor introduced a new protocol for the handling of complaints about the personal conduct of the judiciary. Following a transfer of resources authorised by the Lord Chancellor, a team of officials has been established to dedicate more time to developing measures to ensure equal opportunities in judicial appointments. In September 1998 Michael Huebner returned to LCD Headquarters as Director of Judicial Group after three years as Chief Executive of the Court Service. He succeeded Robin Holmes who retired after six years as Head of the Group.
- 2.11** Details of the Judicial Group as re-structured in the light of the changes mentioned above, together with information on staffing and expenditure, are given in Annex B.

### **Looking ahead**

- 2.12** Equality of opportunity for all suitably qualified candidates within the judicial appointments system remains the priority for the Lord Chancellor. The Department has commissioned Dr. Kate Malleson and Dr. Fareda Banda to undertake research to help identify the reasons why those who are currently under-represented on the Bench, particularly women and members of the ethnic minorities, might be disinclined to apply for appointment. The Lord Chancellor is also considering the recently completed report of the Joint Working Group on Equal Opportunities in Judicial Appointments and Silk, which comprises members of both branches of the legal profession and of associations representing women and ethnic minority lawyers. The group was established at the instigation of the Bar to consider and propose action to increase the number of applications for judicial appointment and silk from women and black and Asian lawyers; to consider and propose possible changes to the appointments procedures to be considered by the Lord Chancellor; and where appropriate, to advise and assist in the implementation of action. The Lord Chancellor agreed to officials of the Judicial Group taking part in the discussions and providing the secretariat.
- 2.13** Consideration is also being given to how to ensure that all good candidates have an equal chance of interview, including those such as ethnic minority practitioners, women who have taken career breaks, or lawyers who may not have been constantly in private practice, who are likely not to have had the same exposure to senior judges as other practitioners and may therefore receive little comment on their suitability from the consultations (see paragraph 1.23).
- 2.14** The Lord Chancellor is mindful of the fact that from time to time some groups or individuals have expressed concerns that the procedures for appointments to judicial office and Queen's Counsel may not facilitate fair and equal treatment of all candidates. He is also aware that the findings of the Macpherson Report on the inquiry into the death of Stephen Lawrence and the forthcoming

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incorporation of the European Convention on Human Rights strengthen the need for procedures which guard against discrimination, however unconscious or unintended, and provide for genuine equality of opportunity. Therefore, in addition to the improvements outlined above, the Lord Chancellor has decided to commission an independent assessment of the procedures for appointing judges and Queen's Counsel to see whether there is scope for further development.

**2.15** He has asked Sir Leonard Peach, until recently the Commissioner for Public Appointments, and currently Commissioner for Public Appointments in Northern Ireland and a Civil Service Commissioner, to carry out a scrutiny of the procedures under the following terms of reference:

To provide a report to the Lord Chancellor on the operation of the appointments procedures in relation to all Judicial and Queen's Counsel appointments and in particular to advise on:

- the appropriateness and effectiveness of a) the criteria and b) the procedures for selecting the best candidates;
- the extent to which candidates are assessed objectively against the criteria for appointment;
- the existence of safeguards in the procedures against discrimination on the grounds of race or gender;

**2.16** Sir Leonard Peach will also make recommendations, as appropriate, to the Lord Chancellor for further developments in the selection procedures for all Judicial and Queen's Counsel appointments.

**2.17** The scrutiny will cover all professional judicial appointments, both those made by the Lord Chancellor and those on which he advises The Queen. This includes appointment to the High Court and above, the Circuit and District Bench and tribunal appointments. The main focus of the scrutiny will be, as set out in the terms of reference, the procedures (the 'how' it is done, rather than the 'by whom') for appointment of judges and Queen's Counsel. The Lord Chancellor's role to appoint or recommend for appointment will continue as will the involvement of serving members of the judiciary and senior members of the legal profession in the assessment of candidates. Those who support the Lord Chancellor in his responsibilities for judicial appointments and Queen's Counsel will continue to be civil servants.

**2.18** Sir Leonard Peach anticipates that he will report his findings to the Lord Chancellor in the last quarter of this year. His conclusions and recommendations will be made public.

**2.19** Action is also being taken to develop the competence of successful candidates after they have been appointed. As mentioned elsewhere, pilot appraisal and mentoring schemes operate for District Judges on the Wales and Chester Circuit and it is hoped they will be extended.

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- 2.20** Shortly after taking up office the Lord Chancellor announced that the Government proposed to consult on the merits of establishing a Judicial Appointments Commission. Informal consultation was conducted but in October 1997 the Lord Chancellor announced that, in the light of other substantial priorities facing his Department and the pressure on resources, he would not proceed with work on a possible Commission. He said that he would concentrate instead on making the changes he considered most urgent in the existing judicial appointments system to improve its openness, flexibility and effectiveness. These are described in this Report. He has not ruled out consultation on a Commission in this Parliament, but will give further consideration in the light of the findings of Sir Leonard Peach.
- 2.21** As far as proposals for particular offices are concerned, revised procedures for deputy High Court Judge appointments are under consideration. The Lord Chancellor has already appointed the first solicitors, direct from the profession, to act as deputy High Court Judges.
- 2.22** A consultation paper issued on 1 April 1998 found widespread support for the unification of the Metropolitan and Provincial Stipendiary Magistrates into a national bench with a single judicial head. This unification is to be achieved by the Access to Justice Act 1999. In addition Stipendiary Magistrates are to be given a new title of District Judge (Magistrates' Court). Unification will lead to greater flexibility in deployment and give Stipendiary Magistrates a national identity with a proper judicial title.