



## **ChBA Seminar: Judicial Appointments**

**Monday 25 June 2018, 5.30pm -7pm**

**IDRC, 70 Fleet Street**

This event was chaired by Mr Justice Henry Carr. The speakers were (i) Mr Justice Zacaroli and Mrs Justice Jefford, who explained what motivated them to apply for judicial appointment and shared their tips in relation to the application process; (ii) Dame Valerie Strachan DCB (a JAC commissioner) and Lord Justice Newey, who provided the JAC's perspective on an application, together with tips as to how to make a good application.

The event was also attended by Lady Justice Rafferty, Vice-Chairman of the JAC, as a guest.

This event was for **anyone** interested or potentially interested in a fee-paid or salaried judicial role, whether now or at any time in the future. The purpose of the event was to provide insight as to:

- (i) why being a judge might be of interest as a career, and to motivate those interested or potentially interested to apply, whether now or in the future; and
- (ii) how potential candidates can put themselves in the best position to make a successful application.

The event was also open to members of COMBAR and TECBAR.

### **Summary of talks**

**Mr Justice Zacaroli** said there were too many factors to answer the question about what motivated him to apply for judicial appointment. He said the role is a fantastic opportunity; it is hard work, but one can control one's own time. The work is challenging, interesting, and varied. There is a wide range of specialisms. There are not many careers with an opportunity for change of course midway through. One can make a difference, contribute development of the law, and interact with a wide variety of people.

He said that there were three points where judicial appointment scores over practising the bar. First, at the bar, opening a fresh set of papers is great, but come back to them again and again is less fun. As a judge, one is in and out of most cases quickly. Secondly, one is "spoon-fed" the law, which is thoroughly tested by counsel. Making a decision on that basis, with limited and refined material, is more fun than open-ended research. He gave, by way of example, a tax issue he had had to decide,



which he would not have dealt with in his practice. Thirdly, in practice, one needs to prepare for all potential questions. As a judge, one spends less time on things that don't matter.

His tips in relation to the application process were:

- Get the application form right. Spend the necessary time on it. Do not treat the application form like a CV or an entry for a legal directory.
- Get help, for example from people who help executives apply for senior positions. They can help applicants match their career history to the competencies.
- Use the SOAR structure (situation, objective, action, result) for every example. Consider how it demonstrates the competency.
- Examples drawn from advisory work (rather than advocacy) may demonstrate some competencies better.
- Applicants may find the “HR” style interviewed more difficult than the role-play.

**Mrs Justice Jefford** described her own route. As senior junior counsel, enjoying her work, she had no inclination to become a full-time judge. However, others in chambers encouraged her to apply to be a recorder, which she duly did and was then appointed. As a recorder, she found herself outside of her comfort zone, and was initially terrified. This confirmed her view that she did not want to become a full-time judge. However, “terrifying” became “challenging/interesting”. Building on her experience as a recorder, she applied for what is known as a “serious sex ticket” in order to fulfil her public duty to try such cases, particularly as few women were in a position to do so. She realised on a personal level that being a full-time judge was indeed what she wanted to do.

She spoke with enthusiasm about the variety of the work, the opportunity to shape the law and have an impact, and the engagement with people. She described how she had once decided an important point of principle, on which there was no authority at all: former colleagues said how glad they were that the point had now been answered.

She said was a privilege it was to be able to embark on a new job, and to be entrusted with matters of importance for private individuals and the public. And, she had fallen back in love with the law.

Her tips in respect of the application process were:

- The form is extremely demanding, but you have to do something similar for silk or panel applications. It becomes easier. One must get into the right mindset.

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- Familiarise yourself with the competencies, get some ideas about good examples together, and talk it through with someone, perhaps a professional consultant.
  - If you can, look at the forms of others, to see good examples of competencies.
  - Keep track of your work before you make the application, and make notes of good examples of the competencies.
  - The word limit may seem impossible, but the point is to keep it simple and understandable for somebody without the time to understand the full background to what you are telling them. This is important because the panel comprises lay members as well as judges.
  - Go through the examples with somebody. What is your short point you are trying to make?
  - Blow your own trumpet: don't say "we", focus on your own actions (ie put examples in the first person and not the third).
  - At interview, don't make things sound too easy. What did you need to do to achieve the result you are describing?

**Lord Justice Newey** spoke from the perspective of an interview panelist (including in competitions for the recent positions of High Court Judge, the Chief Master, and the specialist judge in Leeds). He began by plugging being a judge. He explained that high-quality judges were obviously good for all concerned. Notwithstanding what, at the bar, may be perceived to be the financial disadvantage, it was rare to find a judge who wanted to go back to private practice. Most prefer judging, which is more interesting and more satisfying, with a greater variety of cases and law. Making decisions, rather than being "a gun for hire", is pleasing. He said it was easier to work out what he thought, than to advocate a party's position. He said that sitting part-time is not the same experience as being a full-time judge.

He said that the application process was an unfamiliar experience, with many people having nothing comparable since pupillage.

His tips were:

- Remember to provide examples (rather than simply making assertions). How does the example satisfy the competency? Candidates should focus on each competency individually.
- The application process may seem difficult but this application process is familiar to the wider world.
- Outside help isn't necessary: but do try to find some time to focus on the application.

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- When nominating an independent assessor, try to find somebody who knows you well, but who is independent. A friend might be considered to be trying to help you, and an “elevated” independent referee is not much use if they do not know you.
  - At interview, be well prepared, even though you may have other (fee paying) work to do. Set aside the time, to ensure that you do not have regrets later. If there is a presentation, this is one part you certainly can prepare for. Remind yourself of the competencies, and what fits in where.
  - Most panel decisions are by consensus between the lawyers and the lay members.
  - Needless to say, panels are conscious of gender disparity on the bench and are understanding if (for example) an applicant may have had time off for parental leave. Panel members are very conscious not to discriminate.
  - No judicial experience is necessary, but it is better to have sat in a judicial capacity before, and to have sample judgments. You will need to persuade the panel that you can prepare judgments on time.
  - While it is hard to get a part-time position, it can be a useful stepping stone to a full-time position.
  - Prepare for the process by thinking several years ahead (ie start building a portfolio of evidence to show that you have the skills required).
  - In Lord Justice’s Newey’s view, an ideal candidate would be:
    - A very good lawyer
    - Someone with existing knowledge relevant to the relevant division of the High Court, or the ability to master such knowledge.
    - Someone capable of writing clear, well-reasoned judgments.
    - Someone who can prepare judgments on time, and stay on top of the workload.
    - Someone who is fair-minded, and who shows empathy.
    - Someone who behaves judiciously, with authority, but who listens to litigants and gives them an opportunity to put their case.

**Dame Valerie Strachan DCB** spoke from the perspective of a (lay) JAC commissioner. She chaired the High Court Judge competition in 2016 and 2017. She also supervised a recent deputy High Court Judge competition.



She recognised that the application form is daunting, and that the language of competencies and behaviours is countercultural for barristers. As a civil servant, she similarly had not had to interview for a position since the very beginning of her career, and she recognised the countercultural aspect. But the process is designed to be as fair as possible to all. She indicated that here may be some changes in the future.

Her tips were:

- “Blowing one’s own trumpet” is only advisable in the sense of giving evidence about what you, personally, have done. Don’t refer to what “we” or “my team” did.
- She repeated the importance of the S O A R model, with quantification of success if possible.
- End on a positive note.
- Don’t include reference to legal directories.
- Read the application through carefully – does it make sense? Are there any typos? Are there any missing words?
- Ask a friend or mentor to quality control your application. How does it strike a layperson?
- Choose an independent assessor who can give an honest and independent assessment of you.
- Think strategically. Don’t just decide to “have a pop at this”. You could spend years preparing and collecting samples.
- The selection day for the High Court judge position involves a situational question, in which you have to get to grips with the law and give judgment. The judgment you give must be understandable by a litigant in person.
- At the interview, make sure you impress both the laypersons and the judges on the panel. Do not ignore the lay members.

Poor example: “*I have a wide-ranging practice in X area. This includes Y law with particular experience of Z. Recent cases include: A v B, C v D & E v F.*” This is assertion, and therefore a poor example.

Better example: “*Sitting as X type of judge in Y case, a criminal case against a physically disabled man defending himself. I allowed him to address the jury seated from counsel’s row. I put him at his ease by explaining rules of evidence/procedure, and balanced letting him have a fair say with keeping within the allotted timetable. Despite being convicted he thanked me for ensuring he had a fair trial.*”



**Mr Justice Henry Carr** emphasised that it was a privilege to be doing the job. He gave a further reason, which was the fantastic group of people that an applicant would be joining. In the Rolls Building, it is a very sociable environment. As for the form, he said, be careful, but do not take six months over it. As with any advocacy exercise, ask yourself who am I addressing? How will it go down? And give examples.

## Questions

**During questions**, the following additional points were made by panel members:

- The form is the best way to give your examples. Examples can come from sitting or practice.
- In response to the question: “*Why does the JAC consider self-assessment the best way to select candidates?*” the panel responded:
  - The purpose of self-assessment is to put the applicant in the driving seat.
  - Mr Justice Carr advised that on a personal level, he had previously queried the use of self-assessment forms but having sat on the interview panel for Deputy High Court Judges, by the end of the 10-day process, he found the form a helpful structure. Without a self-assessment, there would have to be something else.
  - A follow-up question from the speaker was that the example provided by the panel illustrating what might be a good response was too obvious. Mrs Justice Jefford said that often scenarios which might appear perfectly obvious to some are not obvious to everyone.
  - Lord Justice Newey whilst he understood the problems with self-assessment could not think of anything better. Self-assessment was only one element of many in arriving at the final decision.
- What may seem as obviously “right thing to do” to you is not necessarily obvious to the panel, so make sure you explain what you did and why.
- It is difficult to choose the right independent assessor. There is no magic to it, just choose the best option. So, for example:
  - Dame Valerie advised that the natural person for a part-time judge to approach would be the Presider, but if the Presider was unlikely to have seen enough of the candidate’s work then someone who had seen the candidate exhibiting the necessary skills might be better. For example, a candidate who had sat as a school governor might approach the Head.

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- Head of Chambers might be a viable option though the risk of being viewed as selecting “a friend in chambers” might trigger queries about independence.
  - An instructing solicitor can be an assessor, provide that person is able to provide the best evidence about you (Dame Valerie cautioned that is not just the warmth but the *substance* of what is said).
  - During the “statutory consultation” phase, the list of proposed candidates may be canvassed (for example) among members of the judiciary, for their comments. But don’t worry if you are not well known.
  - There are similarities with the silk application process. However, there is no time limit for the examples you may give (ie it is not limited to the last three years, although if the examples are very old the panel might draw its own conclusions about the reasons).

### **Concluding remarks**

**Amanda Tipples QC** thanked the panel.

She also noted that the Bar Council is soon to be launching a program for people who may be interested in judicial applications called “Pre-Judicial Application Education”. This is the brainchild of Robin Allen QC, Chair of the Bar Council’s Equality & Diversity and Social Mobility Committee. This scheme will be launched later this year, or early 2019.

Finally, she reminded all present of the CLIPS scheme, and the continuing need for volunteers.

### **For information – Forthcoming exercises**

High Court Judge - launching October/November 2018

Deputy High Court Judge (s.9(4)) – due to launch early 2019

Deputy Chancery Master and full-time Chancery Masters – due to launch early 2019

Deputy District Judge – Magistrates Court – launch expected Autumn 2018 (30 vacancies)

**Amanda Tipples QC**

**Laurie Scher**

**28 June 2018**

**(up-dated 28 August 2018)**