

3 May 2018

Professor Lord Ajay Kakkar
Chairman
Judicial Appointments Commission
1st Floor
Zone A
102 Petty France
London
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By First Class post and email to jaas@judicialappointments.gov.uk

Dear Lord Kakkar

I write further to our letter dated 9 October 2017 and the subsequent meeting between the JAC and the Chancery Bar Association on 12 December 2017.

During the course of our meeting we identified a number of concerns in relation to the process of selection of High Court Judges. Our concerns were based on anecdotal evidence we had received, and we were particularly concerned that the process had unintentionally become counter-productive and, in particular, was unattractive to women and BAME candidates.

In the light of our concerns you invited the Chancery Bar Association to set out what we thought a good process should look like and to identify what might make the process or processes more attractive to candidates. We explained that we could not devise a system because, as an Association, we do not know all the other considerations which affect the JAC. However, we indicated we would come up with a “wish list” of points we would like to see taken into account in relation to the JAC’s selection processes. The purpose of this letter is to set out our thoughts in this regard.

However, before doing so it is important to mention that in January 2018 The Chancellor of the High Court, Sir Geoffrey Vos, told our members that they should “*positively consider the judiciary as a central career aspiration*”. The Chancellor said this to us at our Association’s Annual Conference in January 2018:

“so, can I encourage all of you that are successful practitioners at any level in the Business and Property Courts to readjust your horizons, and to positively consider the judiciary as a central career aspiration. Also, I am not suggesting that it will be easy to get on the Bench.”

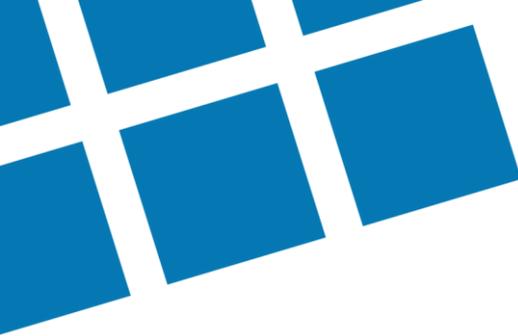
CHANCERY BAR



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It should not be. I know also there are frustrations about the applications process, with which we are actively trying to address. But I should also say that it is not enough to apply to be a deputy judge and then rest on your laurels. We need full time judges for the Business and Property Courts of the very highest calibre if we are to maintain a system that supports a high quality legal profession. The two have a symbiotic relationship. One cannot exist without the other.”

We are very conscious of The Chancellor’s message and what he said to us at our Conference. Indeed, there are many of our members who would like to become judges, and many have applied for a judicial role, whether as a Deputy District Judge, Recorder, Circuit Judge, Deputy High Court Judge or High Court Judge. However, it is very common to hear that, if a candidate is unsuccessful, they are not prepared to re-apply because they are put off by the application process or exasperated by the amount of time involved. They simply cannot face going through the process again. Others do not bother to apply based on what they have heard about the application process from others, particularly as they regard the time and energy involved in making an application to be out of all proportion to the chance of their application actually being successful.

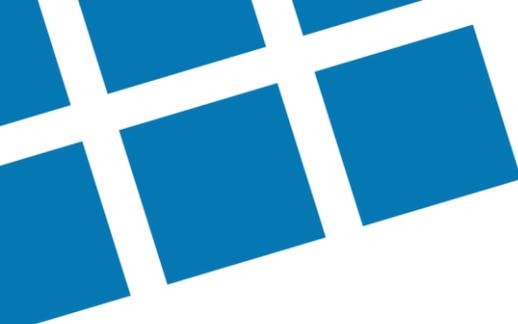
Further, the perception amongst the senior members of the Chancery Bar is that making an application for the High Court Bench is “an ordeal” (see the ChBA’s response at Question 5 to the Call for Evidence by the Review Body on Senior Salaries for its Major Review of the judicial salary structure - <http://www.chba.org.uk/for-members/library/consultation-responses/chba-judicial-salaries-evidence-response/view>).

Therefore, in order to progress matters we sought feedback from our members in relation to the JAC’s selection processes earlier this year. The responses we received were, in the main, referable to the 2017 Recorder Competition, as that is what a larger proportion of our members have had the most recent experience of. However, important points also emerged, by reference to the competition to appoint Deputy High Court Judges (under section 9(4)) and a recent competition to appoint Circuit Judges. There is also the feedback referred to in our letter dated 9 October 2017.

It seems to us that, based on the feedback we have received and in terms of our “wish list”, the areas where, as an Association, we would like to see improvements to selection processes are as follows:

1. Self-assessment.
2. On-line testing.
3. Interview/Selection Day.
4. Feedback.
5. Amount of time involved in an application.

We deal with these points in turn below.



1. Self-Assessment

Application form

In our letter dated 9 October 2017 we identified that some of our members remain concerned about the process of self-assessment. We are aware that this is an established part of the rubric of the JAC's selection processes. However, we question (i) the extent to which this is appropriate, and (ii) the weight which the JAC places on a candidate's own assessment of his or her ability. The reason we question this is because of the feedback, and concerns, set out below.

The problem with providing self-assessment on the application form was clearly identified in the following feedback from one of our members:

"I personally find this type of form a pain and not terribly honest. It is not (at least in my view!) "evidence" based as it claims – and it feels like an invitation to write barely justified self-propaganda in accordance with some fairly arbitrary criteria.

I also feel that the way the JAC expect the form to be completed might be unfair to those who are not well versed in the civil service application process. My wife is a senior civil servant so I had considerable foreknowledge of how I would be expected to complete the form. However, I do know a surprising number of very talented people who have failed to pass this stage of the recorder and section 9 processes – and therefore wonder whether the form really does the candidates justice."

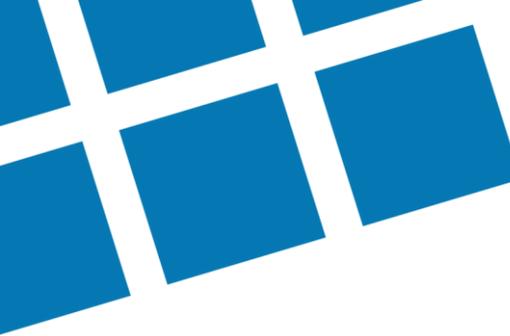
Likewise, in the context of the 2017 Recorder Competition, one of our members said this:

"Then there is the self-assessment itself. I find this a very strange concept. Those that are modest may find it harder than those that are more self-confident. It is a well-known trait that women are more likely to feel that they do not "measure up", compared to men. It seems to me that this is not a very reliable or objective method for comparing candidates against the competencies. It depends upon how they view themselves, and moreover may well depend on happenstance - do they happen to have a really good example that neatly demonstrates the competency? Women who have returned to practice from a maternity career break may be more at a disadvantage here as they may have fewer years to draw on and still be in the process of building back up their career. They may have the skills and competencies in spades, but not a wealth of stand-out examples..."

We appreciate that the information provided by candidates on the application form is the first stage by which candidates need to identify the reasons why they have the skills to be a judge. However, some candidates fail to do themselves justice by reference to self-assessment. For example:

- (a) they may simply be too modest in what they have done or achieved and, as a result, are marked down because they have failed to "blow their own trumpet" as well as others who may have less relevant experience; or



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- (b) they may fail to identify from their own experience, which experience or examples is most relevant to the competency framework for the judicial role in question.

Indeed, based on the anecdotal evidence we have received, we understand that candidates who (at their own considerable expense) engage consultants to advise or assist them with completing the self-assessment in the application form (and interview training in due course) often fare better in the application process than those who have not done so.

The danger of self-assessment is therefore that some candidates with the skills to be a judge are lost from the application process by dint of their own modesty or inexperience in this type of form-filling and this, it seems to us, is a matter of real concern. Further, in the light of the feedback received, we are concerned that self-assessment is an area where, in particular, women and BAME candidates may be disadvantaged.

Interview

We have listed some of the concerns our members have identified in relation to self-assessment above. There is then a further point as to how a candidate's self-assessment is taken into account, and probed or tested in the application process.

One of our members made this point:

“The competencies evidenced by SOAR examples are expressly required on two occasions (the application form and the interview) but are also demonstrated by a third: the role-play where the candidate spends twenty minutes being observed as a judge. What is the justification for so great an emphasis on SOAR examples? Are the interview SOAR examples more important than the application form SOAR examples and/or the role-play exercise?”

Further, one of our members reached the selection day in a recent competition for a judicial role, but the application was ultimately unsuccessful. In terms of feedback the candidate was told that on the application form “strong to outstanding examples” of self-assessment had been provided. Furthermore, the candidate's style of presentation and clarity of thought was specifically praised. However, the candidate was then criticized in relation to the “evidence” provided at interview. This was because the candidate was told that the evidence provided at interview was inadequate in relation to the competencies because, amongst other things, the candidate had failed to provide:

- (a) enough detail in relation to exercising judgment;
- (b) sufficient evidence, together with up-to-date examples, in relation to working and communicating with others; and
- (c) convincing information in relation to improving efficiency.





The candidate was told that sufficient evidence of possessing and building knowledge and assimilating and clarifying information had been provided. The candidate was then told by the JAC that:

“in preparation for any future application, you should consider examples that relate to as many of the behaviours within each competency as is possible, and demonstrate why and how you acted to achieve the required outcome which clearly demonstrate the transferability of skills. You might also find it useful to consider applying for a fee paid position to gain judicial experience”.

This particular feedback provided to one of our members gives rise to the following concerns in relation to the application process itself, namely:

“... the longest para [of the feedback] contains the heaviest of the critical remarks. I do not question its accuracy in terms of describing what I said, but I apparently 'passed' on two of the five self-assessment areas: 'You gave sufficient evidence of possessing and building knowledge and assimilating and clarifying information.' The other three - exercising judgement; working and communicating with others; and managing work efficiently - I was unable to provide satisfactory recent examples of. However, what is striking about this and about [the next para of the feedback] is the emphasis on examples and on the SOAR (Situation; Objective; Action; Result) template for those examples. The selection exercise rubric is clear about this, and I had followed it very carefully on my self-assessment application form: hence the comment at para 3 that I had provided 'strong to outstanding examples'.

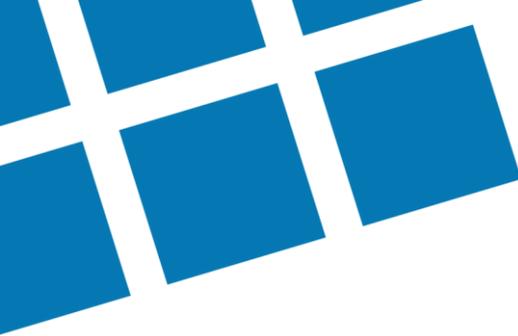
However, what [this feedback] suggest[s] is that the same exercise has to be addressed twice.

First, in the application form under the self-assessment headings, examples have to be given across the five required competences.

And second, at the interview, there need to be given yet more examples of the same five competencies. More importantly, failure to provide those further examples appears to matter more than (a) the initial examples on the form and (b) the ability to act as a judge at the role-play hearing - which itself involves exercising judgement, working and communicating with others, and managing work efficiently! And the role-play hearing is done in real time, under significant pressure, and is observed and assessed by the panel.

[The feedback] again highlights the importance which the JAC attaches to SOAR examples for testing and evaluating the performance of competing candidates. As the letter shows, a major part of the interview is given over to questions from the lay members of the three person panel asking for more examples of particular competencies...

Re-reading the feedback letter, it reflects a process which assigns an over-arching importance to the amassing of pithy SOAR examples which can be explained to and absorbed by the two lay members of the panel. This trivializes what being a judge is about. There were no questions at my interview (either for the [salaried] post or for the [fee-paid]



post) which sought to go deeper with the examples I had produced on the application form. Nor were there questions about the non self-assessment sections on the application form - i.e. main career developments, which in my case included.... The comment at the end of the letter - 'you might also find it useful to consider applying for a fee-paid position to gain judicial experience' - was inspired either by the JAC official himself or by the panel. While it is hard to believe that little or no attention was given to what I had said in the application form, no attempt was made to follow up and explore matters contained within the form about my career and experience...' (emphasis added).

This feedback adds to our concerns about self-assessment and the weight that is attached to it in the application process. This is particularly so in the light of the point made above that self-assessment as a process may work against under-represented categories of applicant, such as women or BAME candidates.

2. On-line testing

It is obvious that the operation of on-line qualifying tests for any competitions should be completely reliable, and proceed without any technical issues at all.

As one of our members put it in relation to the 2017 Recorder Competition:

“The technical problems with stages 1 and 2 were time-wasting, upsetting, and undermined confidence in the process – and what might happen at stages 3 and 4.”

In the light of the technical problems with the 2017 Recorder Competition, we understood that the JAC had changed the provider in relation to on-line testing and that there would be extensive “stress testing” in relation to on-line qualifying tests where a large number of candidates were anticipated. It was therefore very disappointing to be recently contacted by some of our members who experienced significant technical issues in relation to the 2018 Deputy District Judge Competition.

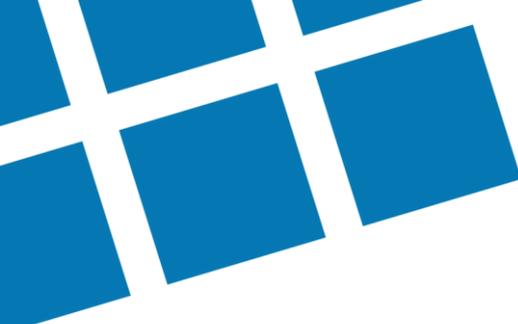
For example, I received the following email from one of our members:

“I am taking part in the current DDJ competition. The online written test took place on Tuesday. The test was meant to be available from 07:00 to 21:00. It was in 3 parts - 40, 30 and 40 minutes long - each part to be submitted within the time allowed or submitted automatically if the clock on each part ran down to zero. A telephone number and email address were given for the “JAC helpdesk” should technical issues be encountered during the test.

Part 1 was technically fine. As I marked my multiple choice answers a reassuring green bar flashed up telling me each had been saved and on submission of the whole the “Qualifying test finished” message flashed up as the instructions had led me to expect.

I had a break and commenced Part 2 at around 08:50.





As I was marking up the answers a less than reassuring red bar flashed up telling me that there had been an issue with the save function, although every now and again the green bar flashed up saying that something had been saved. I answered all the questions and called the helpdesk number at c.9.16 - recorded message telling me that the opening hours of the JAC were 09:00 to 17:00. I sent an email at 09:18, briefly summarising the position. I then pressed the “Submit” button and received an error message. I tried calling the helpdesk again a couple of times - same recorded message. I emailed again at 09:21 explaining what had happened and asking whether I should go on to Part 3. In the absence of any response I tried to access Part 3 and was told that access was denied. I recorded that in an email at 9.26.

At that point I came in to Chambers hopeful that I might receive some sort of response in the meanwhile.

At 11:05 the following arrived from the JAC email address of John Kane:

“Deputy District Judge – Online qualifying test

Dear candidate

We’re sorry that some candidates have experienced difficulties due to the website server. This problem is being fixed urgently.

We advise that if you’re in the test, to log out and log back in after noon (12pm) today.

To ensure all candidates have opportunity to complete the test, it will stay open until 11pm.

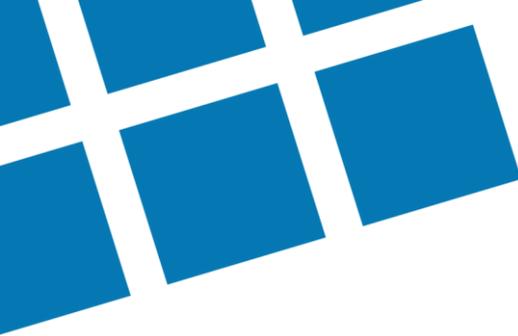
If you have started the test, we advise that you take a screen shot of your answers and email it to DDJ090@judicialappointments.gov.uk”

I emailed John Kane [after 11am] attaching the earlier email string ... and asking what I should do.

In the absence of any reply I logged back in in the afternoon and was able to access Part 3 which went smoothly (at least from a technical point of view).

The experience was decidedly unsatisfactory.”

The candidate in question did not take a screen shot of the answers provided to Part 2 as it did not occur to the candidate that that was a necessary or an appropriate step in the event of such technical failures arising. Further, the candidate has asked for confirmation from the JAC as to whether the answers submitted in response to Part 2 of the test have in fact been received. No response has been received to this request. However, when the candidate now logs into their account there is apparently



a button which says “Test Received” but, in the light of the experience set out above, the candidate has no confidence at all that the answers provided to Part 2 of the test were in fact received by the JAC in their final completed form. The candidate has heard nothing further from the JAC confirming what the position actually is which they also find “pretty unsatisfactory”.

Technical issues such as these inevitably cause of a huge amount of upset for those participating in the JAC’s competitions and that in turn destroys confidence in the whole selection process. It seems to us that it is imperative they are eradicated from any future competitions involving on-line testing.

3. Oral Assessments / Interview / Selection Day

There are a number of points that arise here, namely:

- (a) the manner which interviews are conducted;
- (b) the dates on which qualifying tests and interviews/selection days take place; and
- (c) the membership of the panel at an assessment day.

Conduct of interview

We identified our concerns in relation to the interview process for the 2017 High Court Judge Competition in our letter dated 9 October 2017. Those concerns were based on feedback received from our members and we discussed them at our meeting in December 2017. We do not repeat them again here. However, we would be interested to hear what steps have been taken to address them.

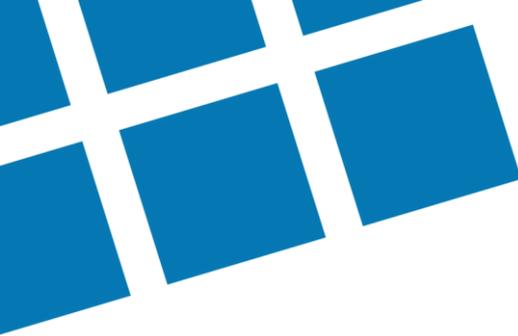
Dates of qualifying tests and selection days

There is, and remains, a real concern in relation to the JAC’s lack of flexibility over dates for candidates to participate in qualifying tests and/or attend at selection days. It is inevitable that some candidates may have professional commitments in their diary which have been booked many months in advance (such as a hearing in the Court of Appeal), and such commitments have the potential to clash with an on-line test or an interview. It is therefore very disappointing to learn that candidates have been forced to drop out of a competition because the JAC is unable to accommodate this situation arising.

This is demonstrated by the feedback received from one of our members, namely:

“The only thing that was disappointing was, again, the JAC’s management of the process. It was made very clear that the time allotted for the first assessment was not moveable. I was able (albeit immediately before a hearing in the [Court] in [City]) to make the time I was allotted. But I heard afterwards of at least one person who had to drop out at that stage because they had a prior court commitment. It seems a shame that there was not a better process for diarising this assessment and, in particular, for allowing people to swap times.”





We would be grateful if this issue could be addressed so that candidates are not forced to withdraw from a competition for judicial appointment by dint of lack of flexibility in relation to the administrative process.

Constitution of the panel

We received this feedback from one of the more senior members of our Association, which it seems to us is a matter of potential concern:

“I haven’t had feedback yet on the Recorder competition but there is one thing that troubled me and I don’t know whether you think it is something I should be concerned about. I had the same lay Chair for the selection days for both the deputy High Court Judge competition and the recent Recorder one. I remember feeling a little disheartened on the day to see him again because obviously he didn’t take to me the first time....

... I have no doubt that he would have recognised me as my self-assessment would have been familiar to him. Of course there were two others on the panel but it might have been difficult for the chair to change his mind about me and I wonder whether it is fair... But as The Chancellor has said, we have an obligation to become judges...it’s just [the JAC] don’t make it very easy for us.”

We are obviously concerned that the situation identified above does, to the candidate at least, appear to be unfair. We would be interested to know what steps are taken by the JAC to try and ensure that the members of the panel interviewing/assessing a candidate on a selection day, do not comprise any people who may have interviewed/assessed a candidate (whether or not that candidate was successful) on a different occasion. Further, if a candidate is assessed in two different competitions by a panel which includes the same person twice (i) when is this likely to happen, and (ii) what steps do the JAC take to ensure this will not appear unfair to candidate?

4. Feedback

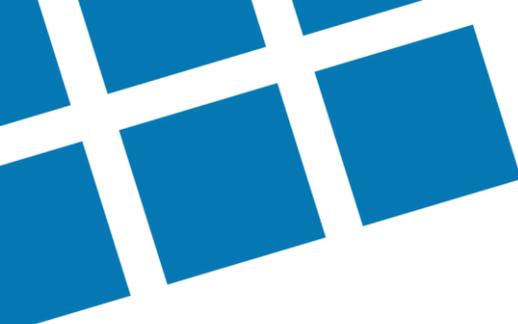
Delay

Participation in a competition for judicial appointment is a time-consuming process. The provision of personalised feedback to candidates who have got through to the selection days for any competition, but are ultimately unsuccessful, is therefore essential. However, in order to be meaningful any such feedback needs to be provided on a timely basis. This is because memories fade and feedback provided months after the selection day may make little or no sense to the candidate in question.

The importance of this is illustrated by one of our members, who said this:

“The value of the feedback process is significantly undermined by the length of time between the interview and the date of feedback. Explanations that the JAC is under pressure are not good enough when delays are (a) acknowledged by the JAC and (b) repeated from one





competition to the next. Without a good feedback process, unsuccessful candidates will be discouraged from re-applying. That is particularly so when the time and cost of applying are so great. In 2017 the time I spent pursuing two unsuccessful applications was between 4 and 5 weeks. That involved completing application forms; preparatory reading; a judicial selection interview training exercise (which cost £1,000); judicial shadowing; and attendance at JAC interviews. The current JAC rubric inviting potential candidates to apply informs them to leave enough time to fill in the application form because, if they have not applied before, it may take them 'several hours' (!!) to deal with the self-assessment sections and provide their best examples. It took me two weeks... [JAC Officials appear to] have little understanding of the demands of the form or of the pressure and cost that completing it involves for those in private sector legal practice."

Another one of our members said this in relation to the feedback received in mid-February 2018 (six months after the candidate had been interviewed in August 2017):

"... it's difficult to make a great deal of sense of it so long after the event. I have no recollection of what inappropriate language may have been used by the barrister that would have warranted challenge, nor can I now remember what the issues in the exercise were so as to identify what they think went right and what went wrong. It may be that it has to be read with the general feedback about the final stage of the competition that is usually published. As far as I can see, it hasn't been published yet."

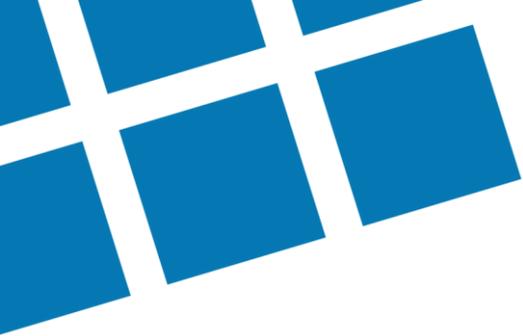
Content of feedback

In our letter dated 9 October 2017 we explained that the personalised feedback provided to candidates for the Deputy High Court Judge (section 9(4)) competition was constructive and helpful. The members of the Association who contacted us considered that, in the face of the fierce competition for this role, they could understand and accept why their application had not been successful. Further, the feedback constructively identified how their application could be strengthened. In this context, they did not feel discouraged and were content to re-apply in the next competition.

However, it is a different story in relation to the High Court Judge competition. In October 2017 the JAC held an event in the Royal Courts of Justice in advance of the 2017 High Court Judge Competition. The judge who spoke at that event was the recently appointed, Mr Justice Choudhury. In his opening remarks he informed the audience that his first application to be a High Court Judge was unsuccessful and said that, although he was not one to trumpet "his failures", the JAC were keen he should share this information with the audience. From that it appeared that the JAC were keen to communicate to potential candidates that, if a candidate's first application to be a High Court Judge is unsuccessful, then it is possible to re-apply for such a post and succeed.

There are two problems with this amongst our members, who are potential candidates for the role of High Court Judge in the Business & Property Courts (Chancery Division). First, they regard the application process to become a High Court Judge as "an ordeal". This is both in terms of the time involved and what is likely to happen at the interview/selection day.





Second, they are likely to apply only once. This is because, in the event they are unsuccessful, it is unlikely they will be able to face going through the process again. This is particularly so if, in terms of feedback, a candidate receives a letter which informs him or her that they are “not exceptional”. This is because if a candidate does not meet the JAC’s exceptional criteria in one competition to be a High Court Judge, it is difficult to see how such criteria will be met in any future competitions. This type of feedback can therefore be devastating to candidates (particularly when a number of the posts available for High Court Judges are not filled) and is hardly likely to encourage a candidate who does have the ability to be High Court Judge but, for example, has not fared very well in the interview process, to re-apply in a future competition.

This, it seems to us is something that needs to be carefully considered as, based on the anecdotal evidence of which we are aware, the feedback letters provided in relation to the High Court Judge competitions are alienating candidates, and therefore reducing the pool from which High Court Judges in the Business & Property Courts can be appointed.

Consistency of feedback

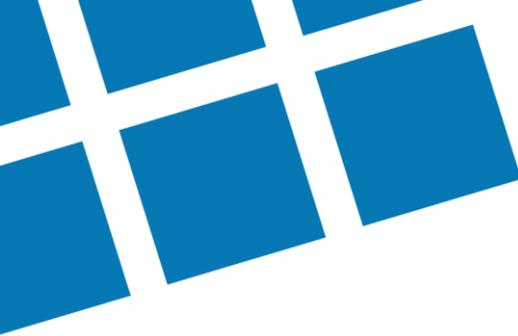
Further, there is an issue about consistency of feedback here as well. We are aware of one member who applied for appointment as Deputy High Court Judge (section 9(4)) and was unsuccessful, and then applied for civil-only Circuit Judge appointment, which was also unsuccessful. The candidate’s self-assessment was very similar in respect of each application. The feedback provided to the candidate in respect of the section 9(4) competition was that the competencies to sit as a Deputy High Court Judge had been fulfilled, but in the face of a very competitive field there were stronger candidates who had been successful and appointed. However, in respect of the Circuit Judge competition, the feedback provided was that the candidate was not appointable and did not have any of the competencies to sit as a Circuit Judge. This was because the candidate was told that examples of self-assessment provided on the form were not developed in interview, and other examples provided in interview were apparently mundane.

To receive such conflicting feedback is confusing to say the least. This is because it is hard to see that a candidate can fulfil the competencies to be a Deputy High Court Judge but, based on very similar evidence, does not have the requisite ability to be appointable as a Circuit Judge.

5. Amount of time involved in an application

We think it is really important to emphasise that, as matters stand, any application for judicial appointment takes a vast amount of time. This is because each and every stage of the selection process is inevitably time-consuming, and this will be even more so for candidates who are unfamiliar with the JAC’s selection processes.

The fact that an application takes an enormous amount of time presents a real challenge for candidates who are self-employed and even more so if, on top of their practice, potential candidates have family or caring responsibilities. Further, in the light of the feedback we have received, and set out above, there is concern amongst our members that the JAC do not have a “proper understanding” of the challenge that the “sheer time that the application takes” presents for the self-employed.



In this context, one of our members made this important observation in relation to the difference in perception at the Bar between an application to become a QC and an application for judicial appointment:

“Silk gives access to the best work, potentially greater remuneration and status. If a senior practitioner hasn’t taken silk, there can be an unspoken feeling that he or she “hasn’t made it”. The incentives to keep on applying are powerful. By contrast, nobody thinks a QC who hasn’t become a judge has under achieved, and the general difficulties of taking a step down in pay and work flexibility etc will be for many candidates things they have had to weigh carefully before thinking of applying. The JAC need to work hard to encourage and nurture applicants. The weighing exercise may otherwise be very different second time round [in the event the candidate’s first application has failed].”

Other points

There are some other points which have arisen out of the feedback we have received that we would like to raise with the JAC.

2017 Recorder Competition – Allocation of circuits to successful candidates

There is, regrettably, a real sense of grievance in relation to the manner in which some of the new recorders have been allocated to a circuit. This is particularly so, as the application form did not contain any indication that, if appointed, a recorder could be allocated to any circuit whatsoever, irrespective of the consequence this would have on the candidate in question. The fact that this can happen needs to be made clear on the application form, so that all candidates are made fully aware of this when they submit their application.

The situation in relation to the 2017 Recorder Competition was explained by one of our members in these terms:

“The JAC form had the following in it:

“Please indicate below the circuit(s) in which you ARE willing to work, including your order of preference. You should be aware that you may be deployed to ANY circuit(s) that you tick. Please therefore consider carefully how you complete this section.”

Candidates could put a number by each box ticked to show an order of preference. What the form failed to do was to indicate that the appointment could be made to any Circuit nor did it give candidates an opportunity to explain their “preference”.

Once recommendations were accepted from the JAC, the Judicial Office then assigned candidates to Circuits and a letter was then sent out offering the candidates an appointment tied to a specific Circuit. The letter said “Whilst the senior judiciary have endeavoured to match the successful candidates to vacancies in their preferred Circuit where possible, unfortunately in some cases they have been unable to accommodate preferences. You should





consider the offer of appointment on that basis, bearing in mind that if you accept this offer, you should not expect to be able to transfer your sittings to another Circuit subsequently.”

(In my situation I had not ticked the box for Northern Circuit as being one in which I was willing to work but was allocated it in any event. That meant the form was misleading.)

It was also not fit for purpose. The allocation of Circuits, if it were to be in any way fair or to support diversity, ought to take into account the reasons for the stated preferences of candidates. For some candidates, preference might simply be a question of not wanting to travel long distances, for others it may be a result of specific commitments such as childcare arrangements: i.e. motivations borne less of preference but more of necessity. Not only did the form fail to warn candidates that they would be considered for Circuits they did not tick, the allocation on this occasion cannot have taken relevant matters into account in respect of the allocation because the forms did not ask for the necessary information to be provided.

The form therefore should have:

- (a) warned candidates that they could be allocated to any Circuit;*
- (b) asked candidates to list all Circuits in order of preference;*
- (c) asked the candidates to set out any matters which ought to be taken into consideration by the Judicial Office when allocating a Circuit.”*

We would be grateful if, in future competitions, the application form is up-dated so that candidates are given accurate information as to which circuit they may be allocated to in the event their application is successful. Therefore, if the position is that a successful candidate may be allocated to any circuit whatsoever, then we ask that that is made clear on the application form, so that candidates are aware of this in advance.

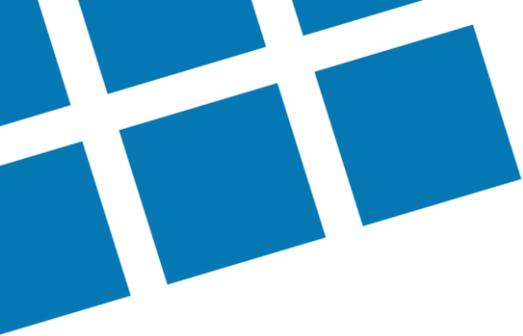
However, if this really is to be the case, then we are very concerned that that will make the role of recorder unattractive to many candidates. This will be particularly so in the case of anyone with family or caring responsibilities, as such candidates may not be able to make arrangements to be allocated to a circuit the other side of the country to where their home is. This would give rise to obvious diversity issues, which we would have thought need to be addressed.

Reserve lists

We are concerned that in relation to the 2017 Recorder Competition some of our members were informed:

“Of the candidates who attended a selection day, it is unfortunate that, on this occasion, some who were considered worthy of appointment by the panel could not be recommended by the Commission to the Lord Chief Justice for appointment. This is due to the strength of the competition with other candidates providing stronger evidence against the competencies.”





We understand that there will be another recorder competition in the near future. However, even though a candidate was appointable, that person will have to re-apply in the next competition. This, it seems to us, is an enormous waste of resources, given the time and effort involved at the JAC in running these large competitions, and also on the part of the candidates who participate.

We wonder what, if anything, can be done to compile reserve lists, so that candidates who are appointable for the role in question, do not have to go through the entire process again. Indeed, we are aware of candidates in this position who will not re-apply because of the time and effort involved, coupled with the perception that the selection process is inherently uncertain.

Independent Assessors (references)

Finally we note a point which has been identified by QC Appointments in their consultation paper dated April 2018 entitled “List of cases and assessors”: <http://www.qcappointments.org/wp-content/uploads/2018/04/Listing-of-Cases-and-Assessors-April-2018.pdf>.

Paragraph 19 of the consultation paper says this:

*“... The evidence from QCA’s research is that women tend to be more reluctant than men to approach assessors, particularly judicial assessors, to ask if they are willing to provide an assessment. The consequence is that, in general, women may be less adept than men at avoiding potentially unsupportive assessments. The present approach may thus **both** increase the risk of inappropriate recommendations for appointment, by causing the assessments on some applicants to be undeservedly favourable **and** indirectly discriminate against women, as women are less likely to take the opportunity to screen assessors in this way.”*

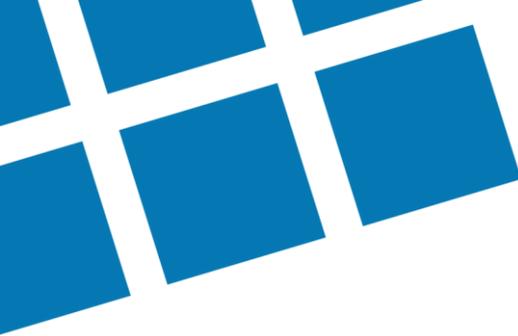
We would be interested to know whether this an issue the JAC has considered in relation to assessments provided in support of judicial applications and, if so, what steps the JAC is taking with regard to it.

The way forward

We appreciate that we have raised a number of important issues, which will take you some time to consider. We look forward to hearing from you once you have had an opportunity to do so. If you wish to meet with us to discuss these matters further, then we will be very happy to fix up another meeting at a convenient time.

We are holding a seminar for our members on Judicial Appointments on Monday 25 June 2018 from 5.30pm to 7pm at the IDRC. The event will be chaired by Mr Justice Henry Carr, and the speakers will be Mr Justice Zacaroli, Mrs Justice Jefford, Professor Noel Lloyd CBE and Lord Justice Newey. The purpose of the event is for the recently appointed judges (Jefford J and Zacaroli J) to explain what motivated them to apply for judicial appointment and their “tips” in relation to the application process and, from the JAC side, for Professor Lloyd and Lord Justice Newey (who were on this year’s interview panel for High Court Judges) to explain what the JAC is looking for and what a good





application looks like. It would obviously be helpful to receive a response from the JAC to this letter in advance of that event on 25 June 2018.

Finally, in the light of The Chancellor's speech to our Annual Conference, we have copied him into this letter so that he is aware of the issues that we have raised with you on behalf of the Chancery Bar Association.

Yours sincerely

Signed electronically: *Amanda Tipples*

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