

Amanda Tipples QC
Chairman of the Chancery Bar Association

Sent by email only:
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18th June 2018

Thank you for your helpful letter of 3 May 2018. I very much appreciated the opportunity to hear your and Eason's insights with respect to the JAC appointments process when we met in December. As I explained at that meeting, the JAC must operate within the statutory framework of a fair, open and merit-based appointments system, and some additional constraints imposed upon our processes by the current professional environment. I then invited you and Eason, in that context, to suggest any improvements to our process which we could consider.

As a consequence, I read with interest the views and anecdotal comments set out in your letter. These will be fed into the Commission's consideration, alongside evidence from others, on how, within the framework set by Parliament, we might improve the process. You will see at Annex A our comments in response.

Last year the JAC received 5,125 applications and made 749 recommendations. We received 59 formal complaints over the year, all of which were fully investigated. We also survey the views of applicants about different stages of the process in exercises which showed ratings of good or excellent ranging between 64% and 84% across all respondents. Whilst individual and anecdotal feedback is important and informs how we seek continuous improvement, so too is this overall picture.

At your seminar on Judicial Appointments on Monday 25th June 2018 I am delighted that you will see the Vice-Chairman of the JAC, Lady Justice Anne Rafferty.

I copy this letter to the recipients of your letter.

Yours sincerely,

KAKKAR

Cc by email to:
Eason Rajah QC, Vice Chairman ChBA – easonrajah@tenoldsquare.com;
Francesca Compton, Administrator ChBA – admin@chba.org.uk

JAC response to 3rd May 2018 letter from Chancery Bar Association**1. Self- assessment**

The principle underpinning a self-assessment is the belief that past performance is a valuable indicator of future performance and that it gives an opportunity to demonstrate ability by way of a personal insight exclusive to the applicant. An opportunity for an applicant to set out how their skills and experience make them suitable for a role is common to virtually all other recruitment processes, and in our view, aligns with how we should deliver our statutory responsibilities. Other assessments, equally important and including independent assessments and statutory consultation, offer an account of how candidates are viewed by others.

Self-assessments also provide a structure for interview questions about the competency frameworks based on the 2014 Judicial Skills & Abilities Framework. These are used throughout courts and tribunals, for example by the Judicial College. Prior to each exercise, the panel, including JAC lay independent and judicial members, is guided on how to derive the optimum from the interview.

Our website offers help to those unfamiliar with self-assessments. Candidates are advised to avoid mere assertion but to provide specific examples aiming for testable evidence of the practical application of their skills and experience in the context of task, objective, action and outcome. We also offer guidance on providing examples of transferable skills and experience, precisely to guard against disadvantage to those whose experience might on the face of it appear less relevant. In common with most professional recruitment processes those who only provide assertions are less likely to succeed than they might hope.

Outreach events reinforce the guidance. Potential applicants can discuss any concerns with JAC staff and judicial colleagues. Women continue to progress well through competitions, as our most recent statistics show and there is no suggestion of self-assessment proving a difficulty. The picture is more mixed for BAME candidates, although they apply and succeed in greater numbers than was the case pre-JAC. We are analysing the drop-off between application and recommendation but we see no indication that self-assessment is a particular factor. Three expert external reviews of JAC selection tools (2013, 2015 & 2018) have confirmed that our approach is in line with good selection practice.

The latest Official Statistics Bulletin on Judicial Selection and Recommendations for Appointment, 1 April 2017 to 31 March 2018, is on the JAC website:

<https://www.judicialappointments.gov.uk/jac-official-statistics>

2. On-line testing

On-Line Testing is a shortlisting tool intended to offer applicants greater confidentiality as well as convenience in comparison to paper tests. However, technical problems on 17th April 2018 during the Deputy District Judge competition, despite extensive testing and a new supplier, were frustrating and regrettable. The cause was memory on one website server reaching capacity early on. We briefly took the system offline. Our suppliers rectified the problems and apologised.

While on the day of the test, and as you remark in your letter, there were several people who did not receive a response within a reasonable time frame, the JAC restored the test within two hours. We tried to re-contact all candidates who contacted us on the day. The vast majority of the 1,600 candidates completed the test on the day. Those affected by the problem had the chance to sit the remaining parts or re-take parts on other days, and did, successfully.

As far as we know we contacted everyone who told us of a problem. If the applicant in question did not receive a response we regret it and we apologise. The Senior Exercise Manager, Charlene Gordon (Charlene.gordon@judicialappointments.gov.uk) would be happy to discuss it with the applicant.

Nevertheless, we understand that experience and confidence in the overall process is affected by such technical problems. We are committed to doing all we can to ensure that these do not occur in the future.

3. Interview/Dates of tests/Selection Day

We discussed on 12 December 2017 your letter of 9 October.

We have reverted to a single track for all High Court applicants and key dates this year were announced well in advance. We are considering options which might extend the application window but your members would be well advised to continue building their portfolio of evidence as they go along rather than once they see a competition announced.

We know the time allocated to busy independent assessors is tight. Depending on the exercise, we allow between 2 and 3 weeks as we must balance assessors' concerns with the candidates' and the business area's need for a process that is as quick as possible. We are exploring whether the scope of their input might be changed, without affecting their and the panels' assessment of merit.

We rigorously test situational questions to ensure accessibility to all candidates, from practitioner to full-time judge. You write that 'it was found to be easier for full time judges' and we would welcome sight of your research, particularly as it is not borne out by performance: fee-paid to full-time judges were successful in a ratio of 2:1. Situational questions aim to assess approach rather than a rehearsal of fact or opinion. The panel expects candidates for the High Court to find out about its structures and ways of working as would any candidate in any professional application.

In respect of the particular interview you raised, this was investigated thoroughly. Independent of one another the Assigned Commissioner, a Lord Justice and senior staff member listened to a recording of it. They each described it as focussed and probing, as expected.

Qualifying tests are used on our largest exercises for fee-paid roles, often sought by 1,500-2,500. To protect the integrity of the tests, they are available for a limited time. We cannot offer 2,000 candidates full flexibility over when they take the test. Test dates are published as far in advance as possible, generally at least two months. The JAC has offered an alternative date to those with good reason unable to take the test on the first date, but to do further would risk the test's security.

We run over 1,500 interviews annually. Panels normally consist of a Judicial member, and 2 independent lay members, one in the chair. The Judicial member is usually nominated by the Judicial Office. After a thorough recruitment process we maintain a body of (currently 75) independent lay panellists.

We aim for a mix of skills and experience within a particular panel or across all panels. We do not know, at the point of identifying panellists, who might apply for the appointment(s) in play.

While we do not check before selection day whether a candidate has been previously interviewed by panellists, we name the panellists when inviting them to selection day so any concern can be expressed. All panel members are asked to declare any conflicts of interest.

4. Feedback

We know how disappointing it can be to read a rejection letter. Feedback has the potential to contribute to improved performance on a further application. The reality however is that in 2017-18 5,215 applicants meant individual tailored feedback for all was impossible.

Outcome letters informing candidates if they were successful or unsuccessful can only be issued once our post Selection Day process is complete. This includes seeking statutory consultation comments and conducting character checks; consideration of each potential appointee by the Selection and Character Committee; and then the Appropriate Authority accepts, rejects or seeks reconsideration (and perhaps requests more information). This is not a quick process. Feedback letters cannot go until the addressee knows the outcome, and sometimes the running of multiple competitions adds to the time it takes.

We have recently reviewed our approach to feedback, aiming to balance resources and the provision of constructive and timely feedback. As a result, we will be trialling a different process in two forthcoming selection exercises, for salaried Employment Judges of the Employment Tribunal and salaried judges in the Upper Tribunal, Immigration and Asylum Chamber. Enhanced general reports on the JAC website will provide data on the range of performance across the exercise, and we will provide individuals with an indication of their performance so they can see where they are relative to others. We hope this will mean more helpful feedback and earlier.

On the surface exercises can look similar whilst the requirements are very different. Performance can vary on the day. Different exercises have different cohorts and consequently different outcomes and feedback.

Reapplying is a feature of most competitive recruitment. Feedback and outreach events tell us that many senior judges were at least once disappointed. Sometimes familiarity with how things are run can reduce anxiety and make preparation more fruitful.

Thank you for acknowledging the constructive and helpful feedback after last year's Deputy High Court Judge competition. We have gone to considerable lengths to include more detail and advice in this year's feedback and we are always exploring how to improve even more. The primary drivers are fairness, openness and transparency. Applications must, where possible, provide to candidates from *all* professional backgrounds the chance to produce comparable evidence of skill, ability and merit. Even if the application stage could be streamlined, something we are exploring, it is a demanding process and is meant to be so. The Lord Chancellor must have confidence that the JAC's execution of its statutory duty puts him in the strongest position to appoint only the most meritorious candidates.

5. Amount of time involved in an application

The duration of exercises depends on factors including size (how many vacancies we are asked to fill) and the selection tools used. Typically for more senior roles there are two stages: application and selection day. In large exercises we need more tools to sift large numbers while avoiding steep cuts that might have adverse outcomes. Commissioning, designing, drafting and producing stages for each tool are quality assured through multiple sources. These include policy diversity and legal specialists, dry-runs with eligible candidates not applying, and through our independent Advisory Group. We must also factor in the availability of drafting judges, lead judges and judicial panellists, who may, like your members, also have court commitments set well in advance and which are extremely difficult if not impossible to unpick without wide-ranging unfairness.

We consistently emphasise in our outreach the time an application takes. We know talented candidates need to be encouraged and nurtured, and we make every possible effort to contribute in our joint effort with the judiciary and the professions.

6. Other points

2017 Recorder Competition – Allocation of circuits

Deployment is for the Judicial Office under the guidance of the Senior Presiding Judge. We provide as much information as possible to candidates at an early stage. Information on deployment was not available when the last Recorder exercise was launched, but provided as soon as possible

subsequently. Judicial Office has now ensured we are better informed and earlier and the application form for the upcoming Recorder exercise now reads: 'All assignments are subject to business needs. Candidates appointed to the XX may be assigned to any XX Chamber/Circuit throughout the course of their appointment. You are required to rank all XX Chambers/Circuits in order of preference on your application; 1 being your preferred choice and 7 being your least preferred.

The information page and application form explain that 'successful candidates should be flexible and be willing to travel to various hearing venues/courts as and when required to meet business need. These locations will be, as far as possible, near to candidates' homes and offices but on occasion they may be required to sit further afield.

Reserve lists

For some competitions, the JAC is asked to create reserve lists (per s94 CRA). We cannot create a list unless asked.

Independent Assessors

Applicants are invited to nominate assessors, professional or judicial. They must nominate people who can comment on their skills and experience and give examples. These assessments can provide evidence of skills and support good character. The JAC website helps with whom to choose, timing and confidentiality.

You highlight the consultation issued by QC Appointments and the comment that women may be more reluctant than men to approach assessors. Multiple sources of evidence are important in a robust selection process and references and/or external assessments are common practice. As I have explained, expert external review validates our good selection practice.