

**NOTE OF A MEETING**

**BETWEEN THE JUDICIAL APPOINTMENTS COMMISSION (“the JAC”)**

**AND THE CHANCERY BAR ASSOCIATION (“the ChBA”)**

**On 14 January 2016, 3.30pm**

**Present:**

*JAC*

**JAC Chairman: Christopher Stephens (CS)**

**JAC Chief Executive: Nigel Reeder (NR)**

**JAC Policy Manager: Kelly Whittle (KW)**

*ChBA*

**Chair of ChBA: Penelope Reed QC (PR)**

**Vice-Chair of ChBA: Amanda Tipples QC (AJT).**

The ChBA met with the JAC further to its reports dated 25 September 2015 and 25 November 2015 in relation to the 2015 Recorder Competition.

Before the meeting CS had expressed his appreciation to the ChBA for the substantial amount of time and effort invested in preparing their reports. CS had also assured PR that, while the JAC remains committed to ensuring that it makes selections from as wide a field as possible, it is clear that there are some genuine concerns in relation to the 2015 Recorder Competition. CS said that, in respect of the points the ChBA’s two reports have highlighted, the JAC takes these concerns very seriously. CS explained to PR that he was very keen to engage with the Chancery Bar, and others, and understood that the ChBA wished to focus on moving forward. CS had explained that, in that context, he did not propose to address the series of detailed questions in the ChBA’s letter dated 28 September 2015, but was happy to discuss these at the meeting with a view to identifying a better way forward for future exercises.

In that context at the meeting there was a useful “round-table” discussion in relation to the two key issues:

1. How the qualifying tests should be formulated in the future; and
2. How the changes in the process are communicated to the members of the ChBA (and indeed other civil practitioners).

In relation to the matters that were discussed, the following points arose:

1. CS explained that the JAC are keen to find a solution and explained that there is no policy that Recorders sitting in crime, should only be selected from criminal practitioners, nor is there any policy that Recorders sitting in family, should only be selected from family practitioners.
2. CS said that the JAC are looking at all forms of qualifying test, and he took on board the ChBA's point that there was too much "black letter law" in the qualifying test for the post of recorder. PR and AJT both explained why, in their view, a test based on a hypothetical jurisdiction was appropriate and provided a "level playing field" to applicants from all professional backgrounds (this was the test they had both sat when they were appointed as recorders). They both emphasised that it was not necessary to answer technical questions on criminal law at the stage of a qualifying test in order to demonstrate that you could carry out the role of a recorder, and the reasons why that is so. Further, in relation to the training provided to civil practitioners who are appointed to sit as Recorders in crime this is the same in 2016 as it was in 2009 (when the qualifying test was a hypothetical jurisdiction), namely a one week residential training course, and two weeks of sitting in with a criminal judge, one week before the training course, and one week after the training course. In 2009 10 members of the ChBA (including AJT) were appointed as recorders sitting in crime (and they continue to sit as such, and many of them are also now section 9(1) judges).
3. NR said that the JAC would consult in relation to a new qualifying test, and that would include consulting the Chancery Bar<sup>1</sup>.
4. CS said that the ChBA would be invited to participate in the dry runs of any future qualifying tests, and it was an oversight on the part of the JAC that they had not been asked to participate in relation to the dry run for the 2015 Competition.
5. NR said it would be useful to have member of the ChBA on the JAC Advisory Group. The JAC Advisory Group is responsible for setting the tests. PR and AJT said they would be delighted to have one of the ChBA's members on this group<sup>2</sup>.
6. CS explained that, in relation to the provision of self-assessment and references, on the JAC's new computer system candidates should be able to work on their self-assessment well in advance of any competition (and therefore not have to complete it in short period of time). However, the JAC knew that there was still an issue as to whether such information should be provided at the same time as a candidate makes his or her application for a competition, or whether this can be left until after the qualifying test (cf applications to the foreign office).
7. PR and AJT said it would be very helpful if the new Chairman of the JAC (CS is retiring on 8 April 2016) could come and speak to the ChBA in order to explain the changes proposed to the future recorder selection process. This would be very important in order to communicate to our members that it was worth their while taking time to participate in any future competitions.

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<sup>1</sup> See the clarification provided by Nigel Reeder, CEO of the JAC on 16 March 2016, set out in the post-script to this Note.

<sup>2</sup> See the clarification provided by NR on 16 March 2016, set out in the post-script to this Note.

8. AJT gave the JAC a copy of the ChBA's analysis of the outcome of the 2015 Recorder Competition, and explained that it appears only 5 (8%) of the 64 Recorders appointed to sit in crime do not have any experience of criminal practice. AJT asked the JAC if the ChBA could be provided with information in relation to the professional background of the 1223 candidates who applied in the 2015 Competition, and the breakdown of those candidates who made it through (i) the qualifying test, and (ii) the second stage of shortlisting. NR said this information could be provided<sup>3</sup>.

At the end of the meeting AJT raised a separate point in relation to the provision of references, an issue that had arisen with one of our members in the recent section 9(4) competition for Deputy High Court Judges. She explained that in the application process, if someone sat as a civil recorder, they were required to provide a reference from the Designated Civil Judge (DCJ). However, because of the limited availability of sittings to civil recorders, it is often the case that a civil recorder may not sit at the same court twice and it is therefore likely that the DCJ will not know that person at all, or will not know that person well enough to provide the JAC a suitable or appropriate reference (which the JAC had identified as requiring the referee to speak to issues such as whether the candidate is "given the most complex cases", they "work efficiently" etc). In these circumstances, AJT explained that she did not expect an immediate answer, but asked the JAC to consider whether the DCJ should be a designated or set referee in future competitions for anyone who sits as a civil recorder in the circumstances she had identified.

The meeting concluded at 5.30pm.

**AJT**

**15 January 2016**

### **Post-script**

The JAC were invited to agree the contents of the Note set out above on 26 January 2016. The ChBA did not receive a substantive response to this request until 16 March 2016.

On 16 March 2016 Nigel Reeder, CEO of the JAC, informed AJT by email that he could see no difficulty generally with the Note, but he considered it would be helpful to provide "further clarification" in relation to the points identified at 3, 5 and 8 above.

3. *"...NR said the JAC would consult in relation to a new qualifying test, and that would include consulting the Chancery Bar..."*

On 16 March 2016 NR said:

"The JAC recognises the concerns expressed at our meeting. At present we do not have any indication of when the next Recorder exercise will be required. Given the JAC can be informed of requirements at short notice we do plan to consult key interested parties over the coming months and we would want to include the Chancery Bar in those discussions. However, those discussions will centre around the principles applied to

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<sup>3</sup> See the clarification provided by NR set out in the post-script to this Note.

the content of any tests. We would not normally consult widely on the specific content of tests, except with members of the JAC advisory group - the comments in relation to the Advisory Group mentioned below are relevant here.”

5. “...NR said it would be useful to have a member of the ChBA on the JAC Advisory Group. The JAC Advisory Group is responsible for setting tests. PR and AJT said they would be delighted to have one of the ChBA’s members on this group...”

On 16 March 2016 NR said:

“To clarify this point, the JAC Advisory Group is a quality assurance group. It reviews tests and provides views to the JAC. It is not responsible for setting tests; that remains the responsibility of the drafting judges and the JAC. In terms of a Chancery Bar member for the Advisory Group, the JAC invites the Bar Council to put forward members for the Advisory Group. In the first instance I would recommend that you approach the Bar Council who will want to ensure appropriate representation. It may be that the Bar Council will suggest to the JAC that its membership should be increased. In that event we would want to consider Advisory Group membership in the round and whether other bodies such as the Law Society should be invited to increase their representation. Clearly we would need to ensure the group does not become too large and unwieldy. I am sorry if this was not fully clear at the time.”

8. “...AJT asked the JAC if the ChBA could be provided with information in relation to the professional background of the 1223 candidates who applied in the 2015 Competition, and the breakdown of those candidates who made it through (i) the qualifying test, and (ii) the second stage of shortlisting. NR said this information could be provided...”

On 16 March 2016 NR said:

“This is another area where I consider clarification might be helpful. Our notes indicate that JAC agreed to consider the release of this data. Clearly we will need to ensure that the release of the data would not have any implications for candidate confidentiality or our duties as a producer of official statistics. I have therefore asked our statistical team to consider this and let me have their views as soon as possible. If I may, I will return to you on this point once I have their views.”

**AJT**

**16 March 2016**