

Response of the Chancery Bar Association to:
Modernising Judicial Terms Consultation

Introduction

1. The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of over 1,200 members handling the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.
2. Chancery work is that which is traditionally dealt with by the Chancery Division of the High Court of Justice, which sits in London and in regional centres outside London. The Chancery Division attracts high profile, complex and, increasingly, international disputes. The Companies Court itself deals with some 12,000 cases each year.
3. Our members offer specialist expertise in advocacy, mediation and advisory work including across the whole spectrum of company, financial and business law. As advocates members are instructed in all courts in England and Wales, as well as abroad.
4. A number of our members sit as part time Judges at all levels of courts and tribunals and our members are likely candidates for such positions.

The Association's Principal Concern: New Tenure for Fee-Paid Judges

5. The Association is very concerned about – and opposes – the suggestion that Fee-Paid appointments should be limited by a fixed tenure. We are opposed to any fixed tenure. If, however, there is to be a fixed tenure we believe it should be longer than the suggested time. In summary:
 - a) The proposal will reduce (not increase) the pool of suitably qualified applicants.

- b) The proposal is likely to reduce (not increase) judicial diversity.
- c) If there is to be a fixed period it should be longer, say ten years.

Reducing the pool of suitably Qualified applicants

6. The rationale of the proposal is that, in restricting the term to four years, applicants will be given a “clearer career path”. However, the reality is that applicants will now be applying for posts that will last only four years, with no certainty of whether they will obtain a further post at the expiry of that term. We do not believe that this can be described as a career path.
7. We also believe that only a few applicants apply with the fixed intention of embarking on a judicial career, and so only a few will be attracted to this suggested “career path”. Reasons for applying differ but will include (i) a desire to give public service (ii) an extra ‘limb’ to a person’s practice and (iii) to supplement independent income.
8. The application process is (rightly) rigorous and somewhat daunting. It is not embarked upon lightly and involves a significant commitment of time. Many fear the potential embarrassment of being rejected.
9. We consequentially consider to be likely that a number of potential applicants will be put off – rather than attracted – by the knowledge that success in the application process will lead to a term of only four years. We anyway doubt that significant numbers of suitably qualified persons will be attracted to applying for such limited posts. We do not think this will be altered by reference to a career path, both because it cannot properly be considered as a career path and because many applicants may not be seeking a career path.
10. In addition if appointments are limited in time it will be very difficult for appointees to acquire specialist tickets (such as the Chancery or private law family tickets that DDJs can acquire) or for Recorders who are initially appointed to crime or family to be able to broaden their jurisdiction to civil cases.

Therefore, the proposal will reduce (not increase) the pool of suitably qualified applicants.

Reducing Judicial Diversity

11. This will be particularly so for applicants who have other personal commitments and so whose time is disproportionately affected by the application process. It will therefore tend to affect women more than men.
12. Therefore, the proposal is likely to reduce judicial diversity. We strongly disagree with the statement in the consultation that it will lead to an increase in judicial diversity.

Ten Year period

13. If the Ministry of Justice intends nevertheless to make all new fee-paid positions time limited, we strongly suggest that the time period is longer, in order to make the positions more attractive and so to increase the pool of persons likely to apply for them.
14. We also point out:
 - The huge resources that will be expended and lost in the repeated recruitment and application processes, together with the significant training for successful candidates, involved in contracts that are then terminated after only four years. This applies to all fixed period appointments, but especially when the fixed term is so limited.
 - The loss of experience and skills gained from sitting, and the inability to gain those skills over time. We feel strongly that a high turnover, short term, bench will be a weak bench.
15. We suggest a period of ten years.

Extending the Fixed Period to existing office holders

16. We also consider that extending the fixed period to existing office holders, who were offered permanent positions would be seriously unfair and that this perception of unfairness would have serious consequences in seeking to recruit new, and retain existing, judges.

17. Even ignoring unfairness, the proposal would lead to the effective dismissal (over time) of all the current part time office holders. That would clearly have huge implications upon the retention of significant experience and expertise and upon the need to recruit new office holders to fill their positions.

Other Issues

Leadership Positions

18. We have no comment to make regarding this proposal.

Guaranteed Days

19. We again question how this proposal can be said to promote judicial diversity, given that it will inevitably affect the attractiveness of the position to potential applicants.

Travel Expenses

20. We have no comment to make regarding this proposal.

Notice Periods

21. We agree with this proposal.

Richard Dew & Helen Evans
On behalf of the Chancery Bar Association
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