

**JUDICIAL APPOINTMENTS COMMISSION (JAC) MEETING
13 FEBRUARY 2014
DRAFT MINUTES OF MEETING**

PRESENT Commissioners	Staff
Christopher Stephens (Chairman) Julia Macur (Vice Chairman) David Bean Martin Forde Noel Lloyd Alexandra Marks Andrew Ridgway Christopher Simmonds Valerie Strachan Alan Wilkie Commissioners Designate – in attendance Debra van Gene Emily Jackson Katharine Rainsford Board Guest : Bob Ayling (for item 4 only)	Chief Executive Director of Operations Assistant Director, Change Programme (items 5 and 6) Policy Officer (item 9) Assistant Director, Selection Process Review (for item 10) Assistant Director, Finance (items 11 & 14) Private Secretary to the Chairman Board Secretary

1. Apologies and matters arising

1.1 Apologies were received from Commissioner Designate Lucy Scott-Moncrieff. Commissioners David Bean and Alexandra Marks were present for items 4, 5 and 6 only.

1.2 The Chairman welcomed the new Commissioners Designate, Emily Jackson, Katharine Rainsford, and Debra van Gene and new Commissioner Christopher Simmonds to the Board and introductions were made.

1.3 Commissioners confirmed that they had no personal interest in any matters to be discussed on the agenda.

1.4 The minutes of the 12 December meeting were agreed and the Board Action Register noted.

2. Chairman's Report

2.1 The Chairman provided an update on his activities since his last report at the December meeting. He had met Sir Jeremy Sullivan, Senior President of Tribunals and also Lord Justice Gross, the Senior Presiding Judge. He had held a trilateral discussion on judicial diversity with the Lord Chief Justice and the Permanent Secretary.

2.2 In addition he had met Nicholas Lavender QC, the new Chairman of the Bar Council, with Martin Forde and Nigel Reeder. He had attended a two day conference entitled "Is Judicial Independence Changing in a Changing World?" at St George's, Windsor, and chaired the Diversity Forum meeting attended by Shailesh Vara, Minister for Courts and Legal Aid.

2.3 In the remainder of the month the Chairman would be attending the Tribunals' Judicial Executive Board meeting and would shortly be appearing before the Justice Select Committee on 5 March together with David Bean and Valerie Strachan.

3. Chief Executive's Report

3.1 The Chief Executive provided an oral update confirming that the bid for 2014/15 funds had been submitted to the Ministry of Justice and that he had been advised that allocations would be subject to final approval by 16 February.

3.2 He confirmed that a feature for the Law Society Gazette entitled 'Judicial diversity: minority interest' which the Chairman had contributed to would shortly be published, and an article on the JAC Change Programme for Benchmark magazine would also feature at the end of the month or early March. He reported that staff had attended and spoken at three candidate seminars held in Bristol, Leeds and London.

3.3 The Chief Executive also reported that following the Work Psychology Group Report and their presentation to the Commission that a workshop in March to develop the ideas further was being arranged as part of the Commissioners' Annual Strategic event. Work was also underway in developing the 'Am I ready' test.

3.4 He also informed Commissioners that the JAC Security Policy would be amended with effect from 1 April 2014 in line with revised Cabinet Office policy on Protective Markings and, also from April, the JAC would be revising its policy with regards to panel preparation.

3.5 Lastly, the Chief Executive informed the Commission that the Ministry of Justice was

expected to commence the first Triennial Review of the JAC this spring, as part of the Government's commitment to reviewing non-departmental public bodies.

4. Board Guest: Robert Ayling, Independent Chairman of Her Majesty's Courts and Tribunals Service (HMCTS)

4.1 The Chairman welcomed Robert Ayling, Independent Chairman of HMCTS to the meeting and introductions were made.

4.2 Robert Ayling began by providing a brief overview of his role, the challenges faced by HMCTS in terms of financial constraints and the changes underway in terms of rationalisation of the courts and staff restructuring. He also outlined the need for investment, improving IT, and accessibility of the courts.

4.3 The Chairman opened up the discussion and there followed debate on common aims such as the collaborative work that was being undertaken between HMCTS, the Judicial Office and the JAC, whereby efforts were being focused on reducing the end-to-end length of the appointments process; with positive results already being realised. There was some discussion with regards to the issues around judicial vacancy forecasting and timely receipt of Vacancy Request notices and he explained some of the challenges behind those.

4.4 There was also a general discussion on the changing role of judges and the increasing requirement for them to have more Leadership and Management skills.

4.5 The Chairman thanked Robert Ayling for making the time to come and meet with the Commission and take part in a most valuable discussion.

5. Application of Equal Merit Provision

5.1 The Assistant Director, Change Programme, presented a paper which set out the proposed policy on the Application of the Equal Merit Provision. The paper had been informed by legal advice received from Counsel and also by in-house lawyers. It also incorporated responses to the JAC consultation and previous discussions held by the Commission Board.

5.2 The Commission considered three specific points which had been raised by Counsel. The first point related to the information which the JAC should provide regarding application of the provision. It was agreed that it would not be appropriate to inform candidates whether the provision had been applied in their individual case or exercise. However information on

application of the provision would be included in the six-monthly Official Statistics. It would be made clear in the policy that the JAC would not, as a matter of course release information on its application in individual exercises.

5.3 It next discussed the second point made, which related to whether under-representation within the judiciary would be measured by a comparison with society as a whole, rather than by a comparison with the eligible pool. The Commission considered this point and agreed that Office of National Statistics (ONS) Census data would be used to measure under-representation, but that eligible pool data would be used in the event that ONS data was not available. The Commission also stated that it would rely on candidates' own self-declaration. The Assistant Director agreed to monitor this last aspect and would report back to the Commission.

5.4 The Commission then discussed the third suggestion by Counsel that to address the diversity of a sub-group of the judiciary, the size of that sub-group would need to be meaningful. The Commission recognised the limitations when dealing with a group that is small in number and agreed that it would make clear in the individual selection exercise material which definition would be applied.

5.5 Commissioners also commented and suggested some changes to the draft policy which the Assistant Director would incorporate.

5.6 Finally, it was agreed that the Chairman would write to the Lord Chancellor and Lord Chief Justice to invite any final comments. The final policy would come back to the Commission at its next meeting in March for agreement to publish, with a view to the policy being in force by 1 April.

6. Policy for selection of persons under section 9(1) to act as Deputy Judges of the High Court

6.1 The Assistant Director, Change Programme introduced a paper setting out the proposed policy on the selection of persons under section 9(1) of the Senior Courts Act (SCA) 1981.

6.2 The Commission discussed the draft policy which had been developed in consultation with representatives from Judicial Office, Her Majesty's Courts and Tribunal Service and the JAC policy and selection exercise teams.

6.3 The Commission was pleased with the progress that had been made for the JAC to run the process to recommend judges to a pool from which authorisations to hear cases at High Court level would be made, and recognised this as a key part of the implementation of the new legislative provisions. It also recognised the importance of achieving a workable policy and agreed that the wording of the policy would include reference to regular review.

6.4 It was agreed that the Chairman would write to the Lord Chief Justice on the above terms to inform him of the intended publication of the policy on the JAC website.

7. Good Character – approach to use of a mobile phone

7.1 The Private Secretary presented a paper inviting the Commission to review its approach to the 'character' issue of use of a handheld phone while driving.

7.2 The issue had arisen due to a decision pending on a candidate considered by the Selection and Character Committee (SCC) on 30 January and a further decision which was due to be considered at an SCC meeting following the Board meeting.

7.3 The Commission discussed whether it wished to maintain the approach originally taken at an SCC meeting held in December that a candidate should be rejected if they had penalty points remaining on their driver's licence for use of a handheld phone while driving. The Commission debated the issue at length and noted that the published guidance allowed a degree of discretion on whether the use of a handheld phone should be treated in the same way as other motoring offences such as speeding. In coming to a decision the Commission agreed that while they should continue to take into account the nature and seriousness of offences, they did not wish to apply any additional weighting to particular offences which attract penalty points on a driving licence. The use of a handheld phone while driving should not, therefore, be treated as a more serious matter than speeding unless the specific circumstances of the offence dictated otherwise.

7.4 In light of this discussion, the Commission agreed to take their revised policy into account when considering the 'character' issues of the particular candidates concerned at a further SCC meeting to be convened later that day.

8. Commissioners as Applicants

8.1 The Board Secretary presented a paper inviting the Commission to review the current policy on JAC Commissioners applying for judicial office. The previous Commission had agreed the policy in December 2006 whereby a serving Commissioner would be invited to

resign if they applied for a JAC-run selection exercise.

8.2 The Chairman made it clear that he was not expecting the Commission to make a final decision at this point; simply to consider the matter. The Commission then discussed the options at length: whether to remain with the current policy, or consider removing the restriction imposed upon a Commissioner that they must resign, but require them to 'stand aside' from all JAC involvement for the duration and outcome of an application.

8.3 The Commission debated this at some length and the general view was that while there were positive benefits in allowing a Commissioner to apply for a judicial appointment, the Commission favoured the current policy, not least to maintain public confidence in the impartiality and integrity of the appointments system.

8.4 The Commission also discussed whether the policy should be extended to Commissioners applying for non-JAC selection exercises for posts above the High Court. Their preliminary view was that the same principles should apply to those roles. One way of minimising discouragement of judges from joining the Commission was discussed, namely to bring the terms of the senior judicial Commissioners in line with other Commissioners at around three years, rather than the current five years. The Chairman agreed to raise the issues with the Lord Chancellor and the Lord Chief Justice.

9. Rehabilitation of Offenders Act – Exemption

9.1 The Policy Officer presented a paper on seeking an exemption from the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, which provided an update following legal advice.

9.2 The Commission had raised concerns regarding whether the amended 1975 Exceptions Order inhibited the Commission's ability to discharge its statutory obligation in respect of character, in that candidates for judicial posts would no longer be required to disclose all previous convictions.

9.3 The Commission debated the issue at some length, noting that if the Commission wished to pursue an exemption it would be required to persuade the Lord Chancellor that this would be a worthwhile and proportionate response to their concerns.

9.4 In discussing these issues, it agreed, on balance, that it would seek a limited exemption to enable the JAC to request disclosure of convictions for offences of fraud, theft and dishonesty.

9.5 The Chairman would write to the Lord Chancellor with this request.

10. Personalised Candidate Feedback

10.1 The Assistant Director, Selection Process Review, presented a paper to the Commission which proposed to carry out a pilot in providing and improving the level of personalised feedback to candidates who are rejected following a small sift.

10.2 The Commission discussed the proposal and noted that it was intended that the pilot would be conducted across three forthcoming exercises where it was anticipated that the number of candidates rejected at shortlisting would be between five and 30. It also noted there would be a further opportunity to consider the more wide-ranging points on this issue at the March Strategic event and on this basis endorsed proceeding with the proposed pilot.

11. Business Plan 2014/15

11.1 The Assistant Director, Finance, presented the draft Business Plan for 2014/15 to the Commission. The business plan had been discussed at the Audit and Risk Committee and incorporated comments from the Ministry of Justice.

11.2 The Commission noted the content of the plan and requested the inclusion of reference to the JAC assisting others in selections to offices not listed under Schedule 14 to the Constitutional Reform Act.

11.3. The Assistant Director, Finance noted this and invited Commissioners to provide any further comments on the text to him by 21 February. Subject to those changes, a further draft would then be prepared for the Chairman's approval with a final version being sent to the Lord Chancellor seeking approval prior to publication and circulating to key stakeholders.

12. Selection Exercise Programme 2014/15

12.1 The Director of Operations presented to the Commission an early draft of the 2014/15 Selection Exercise Programme for information.

12.2 The Commission noted the programme as currently set out and also noted that further changes and additions would be made to it in due course.

13. Report back from Working Groups

13.1 Noel Lloyd, Chair of the Judicial Appointments Recruitment System (JARS) IT project provided an oral report on the status of the project. He confirmed that the project was running as scheduled, and it had been agreed to move from the 'Discovery' to the 'Alpha' phase. He reported that the programme risks were being managed successfully.

13.2 There would be a dedicated session on the JARS project at the next Panel Members event being held on 4 March.

13.3 Valerie Strachan, Chair of the Audit and Risk Committee, provided an oral report to the Commission on the work of the Committee which had last met on 16 January and reviewed the Management Information Plan, Corporate Risk Register and the draft JAC Business Plan. It had also discussed the proposed Assurance Statement, the Quarterly Accounts, and progress towards the implementation of audit recommendations, had reviewed Board Performance and JAC robustness and had received oral updates on Internal and External Audit activities.

13.4 Sarah Gane, Director of Operations, provided an oral report on the work of the Advisory Group which had last met on 22 January and had discussed the situational scenario and technical questions for Chief Chancery Master and feedback reports for the Salaried Judge Health, Education, and Social Care (Special Educational Needs and Disability) and Deputy and Salaried Judge of the Upper Tribunal, Administrative Appeals Chamber. It had also received updates on the selection process review and the new IT system.

14. Management Information Pack

14.1 The Commission noted the content of the Management Information Pack. It also agreed that the Chief Executive and Assistant Director, Finance would discuss management information more fully at the next meeting.

Date of next meeting

The Chairman confirmed that the next Board meeting would be held on Thursday 13 March which would also be the Commission's Annual Strategic event to be held on 13 and 14 March.