

## Justice Committee

Oral evidence: [Judicial diversity](#), HC 335

Tuesday 29 June 2021

Ordered by the House of Commons to be published on Tuesday 29 June 2021.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Paula Barker; Angela Crawley; Janet Daby; Maria Eagle; Laura Farris; Dr Kieran Mullan; Andy Slaughter.

Questions 1 - 89

### Witnesses

**I:** Lord Kakkar, Chair, Judicial Appointments Commission; Sarah Lee, Solicitor and Judicial Appointments Commissioner and ; Richard Jarvis, Chief Executive, Judicial Appointments Commission.



## Examination of witnesses

Witnesses: Lord Kakkar, Sarah Lee and Richard Jarvis.

**Chair:** Good afternoon to those who are watching and also to our witnesses. I am delighted to see you all here. Welcome to this session of the Justice Committee where we are hearing evidence on judicial diversity from the Judicial Appointments Commission. I welcome our three witnesses from the commission. I will come to you in a moment, but, first, we have to go through the normal process of the Members declaring their interests. I am a non-practising barrister.

**Laura Farris:** I am a practising barrister.

**Maria Eagle:** Chair, I am a non-practising solicitor.

Q1 **Chair:** Andy Slaughter will be joining us fairly shortly, if he has not already. He is a non-practising barrister. That is everything on the record. Lord Kakkar, Ms Lee, and Mr Jarvis, welcome to the Committee. Lord Kakkar and I have known each other since he was appointed. You gave evidence probably last year, was it?

**Lord Kakkar:** I did indeed, Chair, and at a pre-appointment scrutiny hearing, which you kindly chaired.

Q2 **Chair:** Yes, that is right. Thanks for coming back. Ms Lee, it is nice to see you.

Lord Kakkar, you are chair of the Judicial Appointments Commission. Ms Lee, I think you are the Judicial Appointments Commissioner.

**Sarah Lee:** That is right.

Q3 **Chair:** And you are a solicitor.

**Sarah Lee:** Yes, a solicitor.

Q4 **Chair:** Mr Jarvis, you are the chief executive of the Judicial Appointments Commission.

**Richard Jarvis:** Yes.

Q5 **Chair:** Let me start by looking at the background as to where we are with the commission itself and some of the issues that we are interested in. It is 15 years since the conception of the Judicial Appointments Commission, so I think you are perhaps the third or possibly fourth chair, Lord Kakkar.

**Lord Kakkar:** The third chair.

Q6 **Chair:** Looking at some of the material that we have seen published, your own reports and so on, some progress has been made on issues of diversity. Obviously, diversity is more than one thing. There is a question of diversity in terms of gender, ethnicity and also socioeconomic



## HOUSE OF COMMONS

background. The material we have seems to suggest progress in some areas, but, in a nutshell, has it been too slow? Is there a suggestion, which seems to be supported by a number of well-documented sources, that there is still a long way to go? What is your assessment?

**Lord Kakkar:** Thank you very much indeed, Chair. I am most grateful for the opportunity to come to the Committee and for Members having made the time available this afternoon. I would echo your own sentiment that there has been progress on the question of diversity for many of the target groups that are of interest to the judicial appointments system, but I would also agree that there is more to be done.

Looking at some of the key headline points on progress over the past 15 years, we have seen a clear increase in representation of women both in application and recommendation at all stages in both the courts' and tribunals' exercises over the lifespan of the JAC. Since the commission was established, 35% of applicants and 38% of recommendations have been women. In the eight-year period prior to establishment of the JAC 16% of applicants and 22% of recommendations were women. For the 2020 set of statistics—our most recent—45% of all candidates recommended for appointment in legal exercises were women, and 41% of those recommended in non-legal exercises were women. So, overall, there is good progress in that regard.

When we look at those from the minority communities in application and recommendation, it has increased across all exercises when we compare the period of the existence of the JAC to the pre-JAC period. Since the JAC was established, 16% of applicants and 11% of recommendations have been from minority communities. In the eight-year period prior to the establishment of the JAC, those figures were 3.5% and 4% respectively. In 2020, minority candidates made up 12% of all recommendations for legal roles and 23% of all recommendations for non-legal roles.

This is in line with the definition of the eligible pool for most large exercises. Has that had an impact on the composition of the judiciary? If we look at the question of the courts' judiciary in its composition in 2006, 18% of judges were women. In the 2020 figures, it is 32%. For those from minority communities, it was 3.8% in 2006 and 8% now in 2020.

Q7 **Chair:** Can I just pause one second, Lord Kakkar? It is not to interrupt you; it is to tell our technicians that those who are hearing or participating remotely are having some difficulty picking up the sound. It is certainly not your fault as the witness, but we need to turn up the volumes generally so that everybody in the room can hear.

**Lord Kakkar:** I apologise.

**Chair:** You are not the person who is running the tech, so that is fine. Shall we try, and people can raise their hand if it is bad?



## HOUSE OF COMMONS

**Lord Kakkar:** If you cannot hear me, please let me know. If there is anything you would like me to repeat, of course I can do that, but I do not want to bore you.

The reality is that in addition to this progress, which is the evidence of what has been achieved during the past 15 years, we have done a large amount, which I am sure we will discuss, in trying to drive forward the diversity agenda, mobilise different participants in what is a very complex ecosystem that extends through the professional career of somebody prior to seeking judicial appointment, the judicial appointments process and then their service as a judge. Those who have quite rightly interrogated the work of the JAC, including JUSTICE in its most recent report, recognise the fact that we are making progress and that much of what we have done and initiated in recent years is having an impact.

The other very important point to understand is that the processes that the JAC adopts are not static. We subject them to regular independent review, and we will discuss in a moment, I hope, the nature of those processes, how they are reviewed and how they are modified. The commission board is reassured that at every stage of the process for our competitions we apply the most up-to-date and appropriately validated tools.

That does not mean that we stop looking at them. One of the interesting initiatives that we have just established is to undertake a study of judicial appointment systems in other common-law jurisdictions. We would like to see how the question of diversity has been achieved in those jurisdictions and whether there is more that we can learn for our own judicial appointments process and the tools that we use in how we continue to take this forward.

In the same period, we have also had an increase in demand on the services of the JAC. The volume of appointments has more than trebled since I came for my pre-appointment scrutiny hearing.

In 2016-17, the commission received 2,199 applications and made 290 selections. In 2019, that had increased to 8,148 applications and we made 979 selections. Last year, despite having to convert the whole appointments process very rapidly to an online platform using Teams, we were able to make 869 recommendations to fulfil the requirements that were made of us so that the appointment process was not an impediment to the work of the courts but, rather, we delivered the judges that were asked of us.

Q8 **Chair:** That is helpful. There is a lot of statistics. I am very grateful to you for that. I want to go back to one or two points. You are right about people recognising progress, but it comes from a low base, does it not?

**Lord Kakkar:** It does indeed—a very low base. I think that was one of the reasons why there was such interest in appointing an independent judicial appointments commission.



Q9 **Chair:** That was part of the idea, was it not? The professions themselves are not diverse in mathematical terms. Again, the pool from which you draw has probably changed, particularly in relation to gender even more than ethnicity in those 15 years or so.

**Lord Kakkar:** Yes. The thing that I have learned in this job is that what I like to describe as the ecosystem that allows us to make judicial appointments is very complicated. You are right to identify the fact that diversity and progression in the professions is an important element. We ultimately have been instructed by Parliament. We are custodians of a statutory scheme for appointment that is based on merit. That scheme determines that there is a certain amount of experience required for certain roles. For many of those roles—those that require post-qualification experience—that experience is principally achieved as part of a professional career.

What is striking, Chair, is the point that you kindly made about gender, where we have seen progress over the past 15 years and to a lesser extent with ethnic minorities. That is because the demographic of the eligible pool of lawyers passing through their professional careers has changed substantially in the case of gender but not so much in the case of ethnic minorities, and that is something that we are very determined to address.

Q10 **Chair:** Okay; that is helpful. I would be interested to take that a little further. We can do a fairly easy statistical breakdown on gender and ethnicity. Do you break it down further between various minority groups?

**Lord Kakkar:** We do not at the moment.

Q11 **Chair:** Would that not be a useful thing to do?

**Lord Kakkar:** Yes, I think it would be a very sensible thing to do. We are starting to explore how we might do that. What we can publish and how we can aggregate statistics is governed by national statistical advice, and where groups are too small to allow, potentially, identification of individuals we are not permitted to publish those data. When we have sufficient data aggregated over a number of years, which we hope to have very shortly, we propose to provide more granular understanding within that broad BAME classification. I think that would be a useful thing to do.

Q12 **Chair:** Maybe it is something to raise with those who deal with the national datasets, in a sense, if you are talking about the Bar or high-profile appointments. A level of identification is almost inevitable to some degree for a High Court judge or a circuit judge.

**Lord Kakkar:** It is absolutely.

Q13 **Chair:** Maybe it is not your doing but a counsel of perfection, which does not always help in this case.



**Lord Kakkar:** I would like to reassure the Committee that we have those robust conversations. I am a great believer, from my professional background as a surgeon, in the importance of being able to publish data, and, therefore, it is something that we would strongly support.

I would also make the observation that the purpose in describing these groups is to help us define the eligible pool of potential applicants and then compare the composition of the eligible pool, the success of the pool in terms of judicial appointment and then judicial progression. We require the professions, ourselves in the appointments process and the judiciary to collect data in exactly the same way, and that is something I might like to talk about in a moment with regard to the Judicial Diversity Forum.

Q14 **Chair:** I am sure we will come back to that, but thanks for flagging that up. We do not have data in the same way for socioeconomic backgrounds.

**Lord Kakkar:** No, but if I may give you what we have been able to collect, again, in the Judicial Diversity Forum we are at the moment trying to agree a standardised set of data that will allow us to ask and address the question of social mobility in judicial appointment to be collected in the same way across the professions, in our appointment process and by the judiciary. As to social mobility, which is one of the target groups of judicial appointment, across all legal exercises, those who attended a state school, which is data that we are able to collect, were 73% of applicants and 71% of recommendations. The success rate for recommendation for those from state school was 11% and from fee-paying schools, as best we can tell, 14%.

Q15 **Chair:** Thank you very much. Talking about success rates, one of the things that strikes us in the data is that it appears that BAME—black, Asian, and other minority ethnic—candidates are less successful in the process than white candidates. There is a divergence between the percentage applying and the percentage being appointed at the end of the process. How can one account for that?

**Lord Kakkar:** That is something that we look at regularly. It is something that we have tested in looking at every stage of our process for every selection exercise. We do that using external advisers to the extent that, whether it is the pre-qualifying test and individual questions in that test, the sift stage, the situational questions and so on, those are all examined. We are reassured, and have had that examination on a regular basis, that none of the processes and questions that we apply are in any way disadvantageous to candidates from any group.

In addition, the advisory group is made up of representatives of the professions and different backgrounds, which looks at every question as part of every competition exercise for the JAC. We find that the greatest drop-off is early on, at the qualifying test stage. It can happen at later stages as well, but it does not happen in non-legal competitions.



Q16 **Chair:** What do you mean by non-legal competitions?

**Lord Kakkar:** Lay members of the tribunals.

Q17 **Chair:** You appoint lay members of the tribunals as well as the tribunals.

**Lord Kakkar:** Lay members of the tribunals—those who do not come from a legal professional background. If you look at non-legal roles for the tribunals—in a moment I will bring Sarah in as well—there is no disparity in progression between candidates from different groups. If you look at legal exercises, as you rightly identified, Chair, there is. Those legal exercises tend to be the ones associated with a specified degree of post-qualification experience—professional experience. We need to look at the complexity of factors coming together that drive this potential disparity. I will ask Sarah to come in, but, if I may, I will say a few words about that. We can maybe come to how we are looking at those questions and the potential barriers that, from our own research and other research, have been identified as potential factors for some of the issues that we see.

Q18 **Chair:** Ms Lee, do come in. I am also interested in your take as somebody who has come from the private practice sector on the way the process is working compared with what a big firm of solicitors, for example, might do.

**Sarah Lee:** Thank you for inviting me to do that. As explained, we have done quite a lot of analysis of the data, and the data tells us a certain amount, but there is clearly further work that we need to do to understand what the reasons are behind the less successful rates for certain pools of candidates, particularly at the early stages. Those are the stages where we have introduced name-blind sifting so that no personal characteristics are known. It is trying to understand what the reasons are behind that, particularly when you compare them to the non-legal exercises where exactly the same tools are being used.

We have the advisory group, which has been mentioned, which is a diverse group drawn from all areas of the profession. It includes legal academics and members from the legal executive grouping from very different diverse professional backgrounds, so that they can look at whether any of the tools that we use have language or try to focus on particular things that give an unfair advantage to particular groups of candidates. That is not throwing up the answer to us.

One of the things that we need to look at is the preparedness for application and the support that can be given to those who are thinking about judicial office, in understanding the processes and the tools that we use and how they can demonstrate the skills that we are looking for, and so that they can understand exactly how one is assessing them, how one might prepare and how one might use transferable examples.

We are doing a lot of support work, which I am sure we will come on to, to try to make sure that the playing field is as level as it can be, but it is



a complex situation and it involves all parts of the legal profession, the judiciary and the JAC to work on it to try to find the answer to the problem.

**Q19 Chair:** My colleagues will probably pick into some of that detail in a moment. There is one final thing I want to ask Mr Jarvis. Lord Kakkar referred to the considerable volume of increase in the workload and the number of competitions that are run and appointments that must be made. As chief executive, Mr Jarvis, have you had any increase in resources provided to you to meet that increase in demand and workload, or have you had to manage with what you have?

**Richard Jarvis:** Thank you, Chair. We have had an increase in resources. The Ministry of Justice has provided with us with increased resources to meet this workload. Our budget has nearly doubled, but, as Lord Kakkar has said, that is against the background of an increase in volume of appointments over the period of three to four times what it was four or five years ago. The MOJ has provided us with the resources that we have required, and part of that budget increase has funded a new digital platform that the JAC now uses for applications, which has been very successful and been absolutely essential in the year that we have just had as we have had to move to fully remote assessment for all of our exercises in the past 12 months.

**Q20 Chair:** Your professional career has involved a number of other public sector appointments, bodies and so forth. Are there any distinct differences either in the challenges or the approaches that you find in relation to judicial appointments as opposed to those who are dealing with the Civil Service Commission or some of the others?

**Richard Jarvis:** The approach in this country to the judiciary is that it is drawn from highly experienced lawyers mid or late career often. When talking about diversity, it is very much an issue as to what the pool of applicants and the pipeline for applicants looks like. My guess is that much of the work that we are all doing—the professions as well—will take some time to bear fruit. That is perhaps one of the differences in other appointments areas in which I have been involved, where such things start much earlier in the career.

**Q21 Chair:** Going back, Lord Taylor, when he was Lord Chief Justice 29 years or so ago, talked about the lack of diversity being an issue. I suppose the problem is how many years one waits for it to bear fruit when, obviously, one wants to have a judiciary—one does not seek mathematical exact representatives—that is closer to the nature of the country that it has to deal with. Do you have any thoughts on that?

**Lord Kakkar:** Chair, I completely share your sentiment that that is the objective. Members of the Committee will be well aware of our two statutory duties: to appoint on merit and to ensure the most diverse potential pool of applicants. So we do everything we possibly can within



the definition of the statutory scheme for judicial appointment to achieve those objectives.

We can discuss some of the initiatives: the way that we go about that; the way that we have developed and modified our processes over time; the way that we conduct outreach; and the way that we have initiated schemes to help candidates prepare to seek judicial appointment. Ultimately, what limits our capacity to move beyond what we are doing at the moment is the nature of the statutory scheme delivered to us under the Constitutional Reform Act 2005.

**Chair:** I think some colleagues want to pursue that. Laura Farris.

Q22 **Laura Farris:** Thank you very much for appearing before us this afternoon. I want to ask about two areas: the appeal courts and the pipeline. I think it is right to say that until 2017 Baroness Hale was the only woman who had ever sat in the Supreme Court. In 2016, she wrote quite a famous article where she said that she would say to her colleagues in the Supreme Court, “Quadrangle, quadrangle, quadrangle: it is the only world you have ever known.” What she meant by that is that all of them were white men who had been at a public school—quadrangle; had been to an Oxbridge college—quadrangle; and had been trained at the Bar. To what extent do you think that is still a true statement of the composition of our Supreme Court?

**Lord Kakkar:** I must first say that the JAC does not have statutory responsibility for appointment to the Supreme Court.

Q23 **Laura Farris:** No, but you provide the pipeline to the Supreme Court.

**Lord Kakkar:** Yes, absolutely, but I just wanted to make that clear for the record so that we are not trespassing on an appointments commission that is established by the Supreme Court itself. I have served on that appointments commission. There is progress being made. If you see, for instance, the last recommendation that was made by the ad hoc commission for appointment for a Supreme Court Justice, it was Lady Rose—Vivien Rose—who was a Government Legal Service lawyer coming from a different background with a different experience.

The reality of the situation is that one has to look at the demographic across the different decades of age and ask the question: 30 or 40 years ago, who was going to read law; who was establishing themselves in a legal professional career?

Q24 **Laura Farris:** Can I just stop you there? I think that is a good point, but the truth is we did not get above one woman until four years ago. One of Baroness Hale’s points is that we did not compare well to the US Supreme Court, which has always had a much more diverse base. Why do you think that we have struggled relative to a comparative jurisdiction?



## HOUSE OF COMMONS

**Lord Kakkar:** Ultimately, as we have heard, there are a number of complex reasons.

Q25 **Laura Farris:** But, for example, the same issue would apply in America. More women would have been housewives for longer; they have their own racial issues there. Nobody would deny it. Where do you think we can draw inspiration from them and where do you think there are lessons to be learnt?

**Lord Kakkar:** We can draw inspiration by applying measures across the entirety of the ecosystem to encourage people from all backgrounds to progress in their careers, and to have the opportunity to be properly exposed to and prepared to start their judicial career in terms of first application, by having a pathway for judicial progression of the career, and then ensuring that people are encouraged and developed along both their legal professional careers and judicial careers to seek higher and higher judicial appointment.

Q26 **Laura Farris:** On that point, could I ask you a little bit about ethnicity? I think it is right to say there has never been anyone on the Supreme Court who has not been white.

**Lord Kakkar:** That is correct.

Q27 **Laura Farris:** In the Court of Appeal, there has only ever been one person to date who is non-white. He is my former colleague, actually—Rabinder Singh.

**Lord Kakkar:** Yes.

Q28 **Laura Farris:** We can probably drill down a bit more into that. Rabinder is a Sikh. There has never been a black or Muslim appeal court judge in this country, and yet when you look at the QCs in England and Wales there is actually quite a diverse base of QCs. What do you think is the problem when you have these very high-level barristers who are quite diverse, yet they are not reaching the High Court or the appeal courts? Why is that happening?

**Lord Kakkar:** I think that part of it is because, regrettably, people do not apply. Sometimes, they do, and they may not have been in a position, let us say, to demonstrate the skills that an appointments commission is looking for—without talking about individual candidates. The appointments process will set a series of criteria for High Court and deputy High Court judicial appointment.

My own personal view is that the most important way that we are going to bring on the candidates that you describe is by encouraging individuals to seek fee-paid judicial appointment—deputy High Court appointment—to expose themselves to judicial work, establish that they themselves like that work and are good at it and can demonstrate in the work that they do that they have the skills to seek salaried judicial appointment. We have put in a huge amount of effort, working with the judiciary and the



Lord Chancellor in recent years, to ensure that we have vacancy requests for deputy High Court judges, that those are filled with the strongest candidates appointed on merit—

**Q29 Laura Farris:** Of course. Perhaps this question goes to Mr Jarvis. If you have a non-white silk from a top set—and there are a number—is the issue that they are not putting themselves forward for consideration or that they do put themselves forward but they compare less favourably to other people?

**Lord Kakkar:** Richard, do you want to answer?

**Laura Farris:** Either of you. I am just interested to know.

**Richard Jarvis:** Regarding diversity at the Bar and among QCs, I think 9% of all QCs are from an ethnic minority. Last year, in the High Court exercise, 6% of recommendations were from ethnic minorities. There is a difference. I think it may be a combination of both. That compares with pre-JAC where the appointment rate for the High Court and above was 2%. With the JAC it has been 6%. It is back to the issue that there is progress and candidates are successful with the JAC process, but that progress is relatively slow.

**Q30 Laura Farris:** I have a final question on the pipeline. Does the JAC have any role or involvement with some of the diversity issues at the Bar—for example, the very high rate of attrition for women after they have children partly because of the structure of payment and earnings, where it becomes a difficult career to sustain? Do you work with the Bar Council to look at maternity measures, and do you look at the panel of silks and the way that they assess candidates who have had a career break making the application into silk? We have to be realistic; for most of the High Court judges and up, it tends to be barrister, QC, deputy High Court judge, High Court judge, appellate judge. That is probably the most standard pathway. Do you look at the blockages that occur further down and do you do something active to try to address them, or do you just leave that to the Bar Council?

**Lord Kakkar:** No, we do engage with all of the partners. One of the things I did, and have done, as chair of the JAC is to reconstitute the Judicial Diversity Forum in such a way that the membership now is: the Lord Chancellor; the Lord Chief Justice; myself as chair of the JAC; the president of the Law Society; the chair of the Bar Council; the president of the Chartered Institute of Legal Executives, CILEX; and the chair of the Legal Services Board. It now provides a forum to do something, which I think, regrettably, the constitutional format inadvertently created as unhelpful. That is that there is no single place in our complex ecosystem to sit down and bring together all the levers that have the capacity to drive change to address the issues that you raise.

We now have that forum, in addition to the principals meeting together senior officials from all of those organisations meet together regularly. They look at barriers. They look at questions. For the first time last year,



they achieved publication of a combined set of statistics that look at statistics from the professions and professional progression, statistics from the judicial appointments process and statistics from the judiciary itself. We will publish another round of those statistics next month.

Q31 **Laura Farris:** What is their purpose?

**Lord Kakkar:** The purpose is to achieve exactly what you hope we are doing, which is to identify where the barriers are and identify interventions that can be discussed across that group and taken forward by individual partners for application. That is something that did not exist previously.

Q32 **Chair:** Is there anything in the statutory remit that would prevent the JAC, were it so minded and funded to do so, from being much more proactive in going out and seeking people from the various unrepresented groups? In the same way as we have legal headhunters, big firms of solicitors, sets of chambers, is there anything to reach out and say, "We want more women and more people from this background"?

**Lord Kakkar:** We have been proactive. We sought funding from the Ministry of Justice and received it, and we have created an outreach programme that is led by three former commissioners completely independently of the JAC process. It is targeted to help those from the target groups, first, to have a conversation with them to try to persuade them to seek judicial appointment, and then to go through the process with them and give individual candidates the confidence to come forward and seek judicial appointment, and do it in a way where the skills that they clearly obviously have can be presented to an appointments process that is fair and transparent and therefore can achieve a successful appointment on merit.

**Chair:** Dr Mullan wants to come in on this point, and then I will go to Maria Eagle.

Q33 **Dr Mullan:** It is important for you to have the opportunity to state from what you have told us that you have not found any evidence of direct discrimination in the work that you do.

**Lord Kakkar:** Absolutely. We look very carefully at all stages of our processes, and, basically, in those analyses, we have heard about the advisory group, we have heard about the independent review by experts of each element of the appointment process, and we are absolutely reassured that there is no discrimination in them. We continue to undertake that—I am sure we will come on to discuss some of the issues that have been raised about elements of the process—and we will continue to interrogate all of those very carefully. Ultimately, of course, the duty of the commission is to appoint on merit. We have to ensure that we are making a recommendation for the best candidates to serve as judges in our country, but we have a duty also to candidates—applicants.



The JAC finds itself in a difficult position. The reality is that, this year, we are going to be asked to make over 1,000 recommendations to judicial appointment. We expect probably to look at 7,000 or 8,000 candidates. The vast majority of candidates who apply to the JAC will always be disappointed. We have to ensure that in creating that disappointment for a particular exercise we still retain their interest and commitment to seek judicial office potentially when they are further developed, when they can do better in a further competition and so on. So I do take exceedingly seriously any anxieties or concerns that are raised by candidates and applicants.

Indeed, at our last meeting in the Judicial Diversity Forum, I was very grateful for the intervention by the president of the Law Society and the chair of the Bar Council raising specific concerns about their professional members that we are in a position to address. That is why I think, increasingly, the forum will become the important vehicle for driving forward diversity.

**Chair:** Maria Eagle.

Q34 **Maria Eagle:** Thank you, Chair. How frequently has the Judicial Diversity Forum met in the last year?

**Lord Kakkar:** Richard will give us the date. It met a couple of weeks ago. It meets twice a year.

Q35 **Maria Eagle:** Once?

**Lord Kakkar:** Sorry?

**Maria Eagle:** How frequently—was the question?

**Lord Kakkar:** The principals meet twice a year. That is the Lord Chief Justice, the Lord Chancellor, all of us coming together. Richard, could you remind us how often the officials' group meets?

**Richard Jarvis:** I think we have met six times in the last year.

Q36 **Maria Eagle:** With two meetings a year, it is not exactly an urgent priority then. I have been listening carefully to what you have had to say. You sound a little complacent to me. It seems to me that you have had 15 years to make a real change in the diversity of judicial appointments; yet you seem today to be effectively saying that it is as good as it can be. You said, "We do do everything we possibly can." When it has been put to you that BAME people who apply consistently do worse in terms of appointments, you have basically said, "Oh well, we appoint on merit." You seem to be blaming those who do not get through the process for their failure, and that is why you have come across as complacent to me. Is that really the best that you can do?

**Lord Kakkar:** I would like, if I may—

Q37 **Maria Eagle:** How long will it be before the senior judiciary are 50-50



## HOUSE OF COMMONS

women and men at the current rate of progress?

**Lord Kakkar:** First, I apologise if I have given that impression. That is not my view at all. I have been chair of the JAC now for five years. In each of the years, we have looked at what we do and brought forward what I believe to be important initiatives to drive change. I think it would be wrong and I would like to correct it, but there is no suggestion that if candidates do not get over the line it is a failing of particular groups. That is not the case at all. All I can say to you is that, when we look at our tools, which we do very carefully, we are reassured that they are not discriminatory. That is the analysis that we receive and that we look at very carefully as a board.

Q38 **Maria Eagle:** At the current rate of progress, when will the senior judiciary be 50% women?

**Lord Kakkar:** I cannot give you an answer to that because it depends on a variety of different factors.

Q39 **Maria Eagle:** You can give me an answer because it is at the current rate of progress, so that ought to be mathematical. You can drop us a line if you can find an answer.

**Chair:** Is the current rate of progress acceptable?

**Lord Kakkar:** What I can say is that, if you look, for instance, at success in recent years in regard to gender for High Court appointment, we are seeing substantial progress. I have chaired personally or served as assigned commissioner personally for the last two exercises for the High Court, and I can say that there are some exceedingly impressive candidates who have been appointed. I suspect that there will be substantial and rapid progress for those candidates through the High Court to the Court of Appeal.

Q40 **Maria Eagle:** I am absolutely sure that you appoint some exceptional candidates, but when do you think we will see a representative number of black, Asian, and other minority-ethnic judges in the senior judiciary? The point of these questions is that outcomes are important. That is the business you are in. When will we see a proper representative number of BAME applicants and judges in the senior judiciary?

**Lord Kakkar:** We will see that when we are able to bring candidates through the professions into the first judicial posts and then through their service through the judiciary so that they can seek the most senior appointments.

Q41 **Maria Eagle:** No dates. What initiatives have you led to increase the diversity of the judiciary from lower socioeconomic backgrounds and those with other protected characteristics?

**Sarah Lee:** Could I come in here to talk a little more about the Judicial Diversity Forum? There is in fact an 11-page action plan that came out of the last deep statistical analysis that was done. There are some very



concrete actions that are set out there, which will be assessed, and the effectiveness of those measures will be assessed as they are carried forward. They are actions that are being taken by the JAC, members of the profession and the judiciary.

Q42 **Maria Eagle:** When will the action plan be fully implemented?

**Sarah Lee:** It is in the process of being implemented now. As I mentioned, we will then assess what has been achieved. Can I talk a little about the solicitors' profession, because there has been quite a lot of focus on the Bar? Solicitors are another under-represented group in the judiciary, and the solicitors' profession, by and large, has been more diverse than the Bar. Nevertheless, at the senior levels of the solicitors' profession, again there is still anxiety about the pace of change, and there are not enough diverse partners within many law firms.

The actions being taken are co-ordinated actions, and that is where the action plan looks at what the professions are doing, working with the firms both collectively and individually so that the eligible pool of experienced lawyers can apply and are supported so that they are successful in their applications, because they can demonstrate their transferable skills and that they have the skills, competencies and abilities to do the job that they are applying for.

It is complicated. I am sorry if any of us comes across as complacent because, absolutely, that is not my experience of being a commissioner. I think there is more work that can be done, and that is why the action plan is useful, but we also need to assess whether those interventions are working and we are doing something that has concrete outcomes.

Q43 **Maria Eagle:** Thank you. Mr Jarvis, you are an outcomes-based organisation. Your role is to produce outcomes. When are we going to see greater improvement than we have seen so far? You have been trying to do the job for 15 years, and things have not improved enough. When will we see some real improvements?

**Richard Jarvis:** Well, as Lord Kakkar has said, we are part of an ecosystem that involves the legal professions and the judiciary, and, together, we are working to improve outcomes. Outcomes have improved and we have taken specific initiatives, as have the professions and as have the judiciary. Progress is being made. We want to work harder to be able to evaluate what works well in this area. We are doing targeted outreach. We have almost 100 potential candidates being supported by that team now. We are working with the other JDF partners on something called the pre-appointment judicial education programme, again, specifically targeted at under-represented groups. I think 200 potential applicants have gone through that curriculum this year. Our staff and commissioners attend at least one specific outreach event every week to explain about judicial appointments and to encourage lawyers from diverse groups to prepare themselves and put in applications.



My experience of the JAC is that it is wholly committed to trying to do its part to improve the diversity of the judiciary within the statutory framework that has been given, which is to appoint on merit.

**Q44 Maria Eagle:** I am glad that you are wholly committed. I appreciate that. I am not trying to say that nothing that you have done has been helpful. I am expressing frustration about the fact that you have had 15 years and things are not much better than they were before. You are not able or willing to tell me by when we will have representative numbers of women and BAME people successfully appointed.

You are an outcomes-based business, and you are not achieving the outcomes. You do not seem to have any target dates by which you are going to achieve them. We could be sitting here another 100 years and you could be telling me the same thing, by which time I would judge that your organisation had failed. That is what is frustrating me.

I wonder, finally, Chair, whether or not any of our panel would like to tell me whether they believe that having targets for results—targets for outcomes—would assist you in your work?

**Chair:** What do people think about that?

**Lord Kakkar:** Chair, I do not think that targets are the correct approach. We have a statutory obligation to appoint on merit. There has been broad discussion about whether targets could be used and should be used, but there are a number of reasons why it is considered inappropriate. However, I would say that we have been deeply committed and we are committed to outcomes. We are committed to delivering our statutory duties. They are to appoint on merit—that is what Parliament asks of us—and to ensure the most diverse pool that we are able to attract is seeking judicial appointment. You raise a fair question about whether this particular approach as defined in the statutory scheme is the approach that should be taken, but it is the approach at the moment that statute demands.

**Q45 Maria Eagle:** This is the last point from me, Chair. I am afraid that it seems to me that you appear to be saying that the reason why we do not have appropriate representation is because the candidates are not sufficiently meritorious. I think that completely ignores any concept or understanding of discrimination and indirect discrimination and structural problems. I am afraid that you still sound complacent to me. That is all from me. Thank you, Chair.

**Lord Kakkar:** May I, Chair, answer that? Again, I wish to apologise to the Member because that is not what I am saying and I am not expressing myself very well. We have said that there are a number of reasons why the appointments process cannot be considered in itself distinct from the rest of the ecosystem around us—the professional experience and development of candidates and the skills and experience that they are able to present to the appointments process. We are trying to address all of those.



## HOUSE OF COMMONS

You have heard about our outreach programme. We have now about 100 candidates who are being supported, specifically targeted, to help them in the judicial appointments process. We have the PAJE programme working with our partners in the legal professions, which is providing greater support. There are a number of initiatives that we hope we will be able to take forward as we look at an analysis of how other common-law jurisdictions are doing judicial appointments.

We are not complacent at all. All I am saying is that, within the framework at the moment, of course there is more that we can do. That is why we look at everything on a regular basis. That is why we are going to initiate some further reviews of what we are doing.

We are always open to receiving advice and further guidance on how we might improve our processes and systems, but I cannot accept that we are discriminatory and that we have failed to put effort and attention on a regular basis in trying to achieve what we all want to do, which is to have a greater diversity in the judiciary in terms of gender, minority-ethnic candidates, disability and social mobility.

**Chair:** Okay. We have two more questions on the topic with Dr Mullan and Ms Farris. We will then move on to Paula Barker, who will take on the next topic of questions.

Q46 **Dr Mullan:** I would like to give you an opportunity to clarify this. It is in fact distinctly not your objective to seek to create a 50-50 judiciary or entirely reflective judiciary. Your objective is to increase the pool of people from which you can appoint and make them more reflective. You do not have that as an objective. It is not something you seek to do to make it 50-50.

**Lord Kakkar:** That is quite right. Our second statutory duty is with regard to the pool of candidates, and we put a huge amount of outreach activity into trying to achieve the most diverse pool of applicants possible. What we have learnt is that, in attracting a diverse pool of candidates, we need to ensure that that diverse pool of candidates has the same opportunity to develop themselves so that they can successfully achieve judicial appointment. That is our duty and that is what we propose to do as currently defined in the statute.

**Chair:** Some of the microphones are still quite low for some folks, I gather. You may have to holler a bit.

Q47 **Laura Farris:** I have one quick clarification point. I was not suggesting that there was discrimination. You talked about the statutory scheme that you operate under. It is fair to say that there are senior members of the judiciary who have said that they think that talent has been missed. In fact, one of the things we had as background reading was Lord Neuberger's 2014 Rainbow Lecture on this where he says exactly that. I read it in preparation.

When the Supreme Court says that it thinks talent is being missed, could



you say what you think is the problem with the current statutory scheme that is causing that? What could Parliament do that would stop talent being missed?

**Lord Kakkar:** The scheme works differently for the Supreme Court, which I think is what Lord Neuberger was referring to.

Q48 **Laura Farris:** No, he was just a Supreme Court Justice talking about the judiciary in general.

**Lord Kakkar:** The most important thing that the original Act failed to achieve, which I think we are now finally able to do, is to bring together the senior judiciary, the Lord Chancellor, and the appointments process with the leadership of the professions, because it is a continuum across that, with action clearly targeted—and I absolutely agree, as we have heard from Sarah, not only targeted but with measurable outcomes—that needs to be adopted.

When I was first appointed chair of the JAC, there was no communication on a regular basis at a senior level between any of these groups. Prior to the 2005 Act the responsibility for judicial appointment lay with the Lord Chancellor. All the levers—the capacity to communicate with the senior leadership of the professions, to interact with the senior political leadership of the justice system, and to interact with the senior judiciary—were in the hands of the Lord Chancellor. We have tried now to reconstitute that. We established the Judicial Diversity Forum last year. We published our first set of data. I know that they are only data, but they have stimulated an action plan that the partners are now applying.

It was said that we only meet twice a year. That is to bring together the Lord Chancellor, the Lord Chief Justice and the leadership of the professions. But the officials' group meets far more regularly than that in driving forward action from those meetings and to get agreement, and to provide the warrant card that allows everybody, all actors in the system, to go out and try to make things happen.

I believe that that is the single most important action. It did not require statutory change. It is something that we have been able to configure by negotiating with all of the parties, understanding broadly what influences the appointments process and therefore whom we needed to bring together, and we are trying to push that forward as effectively as we possibly can.

**Chair:** Paula Barker.

Q49 **Paula Barker:** Thank you, Chair. I would like to move on to the judicial career pathways. I would be interested to understand what our witnesses think is the key experience required to be a good judge.

**Sarah Lee:** Shall I address that one? There is no set route into or within the judiciary. There is, of course, a range of roles throughout the courts and the tribunals. We need to look at all of those different roles. There



## HOUSE OF COMMONS

are fee-paid roles and there are salaried roles. Increasingly, we see a number of practitioners taking on a number of fee-paid roles. There is undoubtedly more flexibility in the approach that people take to judicial career pathways than perhaps has historically been understood.

As to the roles, there are certain levels of post-qualification experience that are required for certain roles, and particularly for salaried roles, previous judicial experience is needed, which is why fee-paid roles are a very good way of getting judicial experience to then be able to apply for the more senior roles.

As I said, there is no set route in. What the JAC is very much trying to do with its partners is to be clearer about the different routes in, the different roles that are available, the ability to take on fee-paid roles while continuing to be a practitioner, to support candidates to understand those different routes, and to understand how the application process works and how their transferable skills can be used to demonstrate what is needed..

Coming back to solicitors, we have done a lot of work with the Law Society and other organisations to try to reach out to some of those areas of the profession where there are more diverse candidates—the in-house community and the Government Legal Department—and, as I say, to explain to people that there is no set route in, but often previous judicial experience is needed, and therefore to be aware of the different fee-paid roles that are out there.

**Q50 Paula Barker:** The Law Society has noted that the number of non-barristers in the judiciary has actually regressed. Why are so few non-barristers appointed to senior judicial posts? I understand what you are saying that you are trying to encourage people, but what is the actual reason why there are so few non-barristers appointed?

**Sarah Lee:** I think the number of solicitors appointed has increased. The statistic that was given at the beginning was that 41% of recommendations overall were for solicitor roles. This is why one has to work with all of the different players within the system because it is giving fee-paid judges the opportunities and the experience to be able to apply for other more senior roles. That is why we all need to work together so that we can absolutely understand the ways through the different routes and the different roles both in the tribunals and in the courts' systems.

**Q51 Paula Barker:** What is it that people are not understanding then?

**Sarah Lee:** Sorry?

**Q52 Paula Barker:** You talked about bridging the gap in what people need to understand to take on these roles. Why are people not understanding? What do you need to do as an organisation to bridge that gap?



**Lord Kakkar:** We have created the PAJE programme, which I spoke about a moment ago—Pre-Application Judicial Education. We have the targeted outreach programme. We engage regularly with partners. Our partners—the Law Society, the Bar Council and CILEX—engage with their membership. We provide JAC staff for those engagement events and outreach events. We have an extensive amount of material on our website that we continue to update to help candidates in the appointment process.

As part of the JDF, we now have a programme looking at the effectiveness of everything that we do with regard to the questions that you are putting and what our partners do to determine what elements of that activity are useful and help candidates, and what activities do not and need to be replaced by something better. We are very determined to assist candidates in every way that we possibly can.

Q53 **Paula Barker:** When was the targeted outreach programme set up?

**Lord Kakkar:** Richard?

**Richard Jarvis:** We announced it just after the publication of the combined statistics in September. It was fully up and running by November.

Q54 **Paula Barker:** How many candidates have been through it so far?

**Richard Jarvis:** At the moment on the targeted outreach I think we are working with 90 candidates. They have received support and discussion with our former commissioners and a number are now being helped by volunteer judges as guides to support them as they prepare to make applications for judicial appointment. I think a small number of them have already made applications, but it is early days. It is a pilot that the Ministry of Justice agreed to fund for two years, so we will evaluate it fully after that period.

On the point about understanding what leads to candidates being successful or otherwise, one piece of work we are doing through the JDF with our legal profession partners is some qualitative research at the shortlisting and qualifying test stage, where sometimes we see the largest drop-off of solicitors and ethnic minority candidates, to try to understand what determines the success or otherwise of candidates at that stage. We are doing some qualitative work with the professions to see what that will mean in targeting all of our work in support of those candidates.

Q55 **Paula Barker:** Mr Jarvis, you are saying that it is a two-year pilot and currently there are about 90 candidates. Is the cohort expected to be in the pilot for two years or hopefully to have gained success within a shorter timescale than two years? What sort of milestones or objectives have been set as a result of the pilot?



## HOUSE OF COMMONS

**Richard Jarvis:** Our aim is that candidates who are supported make applications and they progress them ideally to appointment, or certainly that they have improved progression through the process compared with their previous experience. The outcomes for this pilot will be the number of candidates who have successfully applied for judicial appointment and have been supported. We will look at that in evaluating the pilot.

Q56 **Paula Barker:** Do you have any targets set that would indicate what you believe a successful number would be over a two-year period?

**Richard Jarvis:** We have not set any targets for it. We will evaluate the effectiveness of the approach in terms of the numbers of candidates from that cohort who succeed.

Q57 **Paula Barker:** What work has been done on promoting alternative judicial career pathways, perhaps from the more diverse pool of tribunal and district judges?

**Sarah Lee:** We have tried to promote role models and case studies of those who have taken an alternative route both in applying for their first roles and their route through the judiciary. We have been doing a lot of work on our website and social media so that people can see the alternative ways in which they can become a judge and navigate through the judicial system. A lot of work on that is going on.

Q58 **Paula Barker:** Why is it that candidates from under-represented groups are less successful in applications for senior roles such as deputy High Court judges or recorders?

**Lord Kakkar:** For first application to those roles?

**Paula Barker:** Yes.

**Lord Kakkar:** I think that comes back to the work we are doing with the professions. As you have heard from Mr Jarvis, we have the outreach programme that deals with applications for recorder, deputy High Court judge and so on. For broader fee-paid roles, we have the pre-application judicial education programme, which is strongly supported by the professions; indeed, they drive it. We are trying to provide as much support for candidates in that regard from the targeted groups as we possibly can. Ultimately, fee-paid appointment is determined as much by professional experience of candidates and what they have been exposed to as part of their professional careers. We look very carefully at how we can help candidates demonstrate they have the transferable skills from whatever area of legal practice they have been in to succeed in the appointments process.

Another approach on which we are placing particular emphasis—Richard may be able to say more about it—is our view with regard to lawyers who come from different backgrounds, for example the Government Legal Service, where there is substantial diversity, and recently we have



started to make more progress. I do not know whether Richard can add something about that.

**Richard Jarvis:** Only to say that that is an area where we have put in a lot of effort in terms of our outreach work. Indeed, a number of the candidates going through both the PAJE and the targeted outreach programmes are from the Government Legal Service as well.

**Sarah Lee:** In helping to support candidates who are not successful on their first application, we have also increased the feedback we are giving, particularly if they have come very close to being appointed, so that they can understand how they can improve their applications next time and how they can improve their approach to the role. We hope that that will also have some beneficial outcomes.

Q59 **Chair:** Is there scope for mentoring or something more systematic of that kind?

**Sarah Lee:** There is mentoring and judicial shadowing, and they are in the action plan we have developed to support people throughout their applications.

**Lord Kakkar:** So much of what we are talking about is not solely in the hands of the JAC, but we need the support of the judiciary, the MOJ in terms of funding and the professions in having the exposure to candidates. I know there is criticism about the Judicial Diversity Forum, but it has been a really important initiative to bring everyone together in the leadership in all of those positions, because we are now able to have those conversations and an action plan, and for each of the players in this to be held to account by the broader forum.

The point about outcomes is absolutely correct, and the action plan and forum define and measure those outcomes. I really do hope that by bringing together what was previously in the hands of the Lord Chancellor we now have the capacity and opportunity properly to co-ordinate initiatives and actions to help candidates, who should rightfully be helped, to achieve successful judicial appointment.

**Paula Barker:** Thank you, Chair. I have nothing further.

Q60 **Dr Mullan:** I want to pick up the JAC and its work within the JDF. I think Ms Eagle helpfully pointed out that a meeting twice a year is perhaps not a frequency that necessarily drives accountability as quickly as one might like. I think that all of us who are involved in meetings and progress see that a frequency of twice a year does not really achieve momentum. Would it be possible to consider, or has the JDF considered, meeting more frequently?

**Lord Kakkar:** Perhaps I should lay out the JDF properly because I have not explained it effectively, for which I apologise. The main group of principals—the Lord Chancellor, Lord Chief Justice, myself, president of the Law Society, chair of the Bar Council, president of CILEX and chair of



## HOUSE OF COMMONS

the Legal Services Board, which is the super-regulator of the legal professions—comes together twice a year. The officials meet more frequently than that. They are, quite frankly, the chief executives of the organisations who are doing the work on a regular and continuous basis to drive this forward.

I take the point that we could ask the principals to come together more frequently, but I would not like the Committee to think that those are the only meetings we have. Every term I have bilateral meetings with the Lord Chief Justice about diversity matters. I meet with the Lord Chancellor and Lord Chief Justice every term on top of the meetings in the Judicial Diversity Forum as a minimum to discuss diversity issues. I meet individually with the chair of the Bar Council, president of the Law Society, CILEX and so on, and I have regular meetings with the chair of the Legal Services Board, so it is not as if it is just a sit-down together around the table and nothing further.

Of course, there is also ongoing interaction among other commission board members, our senior officials and representatives of all those organisations. There is a very large volume of interaction and activity to try to achieve the objective of bringing everyone together and those levers together so that we can drive change.

**Q61 Dr Mullan:** You have talked quite effectively about the complexity of the situation in which you are working and that you are just one player in the ecosystem, but, even if it is outside your remit, what would be the one or two specific things that you think could be done to improve the diversity of the judiciary?

**Lord Kakkar:** The first thing that is partly in our remit and not outside it is to give real force and power to the construct of the Judicial Diversity Forum so that we really could mandate the changes. Of course, we have to act lawfully; we have to be within the definition of the statutory scheme, but if we could bring more power and force to that—it is difficult for us to mandate certain changes because the JAC cannot mandate it in terms of what happens in the professions or the judiciary—I think we could have real impact.

**Q62 Dr Mullan:** What would be the issues you would be looking to mandate?

**Lord Kakkar:** In terms of the professions, it would be very helpful to us to ensure that we could drive forward schemes that help the development of colleagues in the professions who are looking to seek judicial appointment.

In the judiciary, the one thing I would do is have regular judicial appraisal. It requires a huge amount of resource. This was a question put to me at my pre-appointment hearing. I was asked whether I was enthusiastic about it. Indeed I am, because I believe that judicial appointment should proceed on the basis that, as candidates come into a fee-paid role, they are supported in their professional development to be



successful in achieving their first fee-paid judicial office. Thereafter, they are appraised on a regular basis so that their performance as judges becomes the principal evidence-based element in a portfolio that is then used for their further progression through their judicial careers.

I believe we should start looking very early in the lives of legal professionals so that they might develop some kind of electronic portfolio, as we have in medicine in postgraduate training. They could start to accumulate the evidence that demonstrates they have the skills to become a judge so that, when they seek that first judicial appointment, that portfolio is there, it is broadly based and it can be used by an appointments commission in an objective fashion.

**Q63 Dr Mullan:** One way in which we might better understand how you prioritise the work that you do is to talk about budgets. You have the primary role of making appointments on merit and seeking to diversify the pool of applicants. Roughly, how do you divide up the resources that you have?

**Lord Kakkar:** I think that question is for Mr Jarvis.

**Richard Jarvis:** The majority of our resources goes into our operational delivery—that is, the main statutory role to recruit and appoint judges. We now have a team within the JAC of some 12 people, so perhaps 15% of our staff work solely on our diversity and engagement strategy. In addition, we have received funding for the target outreach and research programme.

**Q64 Dr Mullan:** How does that compare with the historical position? What would have been the number of staff a few years ago?

**Richard Jarvis:** I think the size of our diversity engagement team has doubled in the time that I have been in post. I think we are devoting at least twice as much resource as when I joined the organisation.

**Q65 Dr Mullan:** We have discussed targets. I assure you there is a diversity of views on the Committee about the appropriateness of using targets. In place of targets, how do you make it more tangible in how you are held to account and how we make a judgment on whether you are performing as you should be?

**Lord Kakkar:** I think that is a very good question. We should be held to account. The way we do it is by publishing the combined statistics, which will allow this Committee and others to look at statistics in the professions, our own statistics and those in the judiciary. In addition, we have undertaken a much more granular look at our statistics. It has taken time because we have had to use appropriate statistical methodology that has large enough sample sizes for the different questions we want to ask. That will provide a very clear view of where we have succeeded and where we continue to fall short. Those will be published later this year.



In addition to that, we have initiated some new qualitative research to look at the factors that are driving success for certain candidates and failure for others. Those will be published and should be properly scrutinised. It is on that basis that I think this Committee and others can draw a determination of what the next steps should be. In answer to your question, I have given my views about the two things I would very much like to do. Other members of this Committee and others more broadly will have other views. The key is to have the opportunity to discuss them across the entire spectrum of leadership and individuals who have the power to act. That is what we have tried to create.

**Q66 Angela Crawley:** Turning to the issue of merit, we have covered this briefly. Everybody understands that the Constitutional Reform Act 2005 allows the Judicial Appointments Commission to appoint only on merit. However, we are aware of the equal merit provision. How would you respond to the concern expressed by JUSTICE in its latest update report on judicial diversity that “[merit] is too often used as an unconscious proxy for the characteristics, qualities and experience of the current cohort of judges,” and perhaps does not get us any further along in terms of expanding judicial diversity?

**Sarah Lee:** As I think we have explained, when assessing merit we do it by an objective, evidence-based assessment against the competencies, skills and abilities that are needed for the role. Those are looked at for each of the particular exercises for the role in question. We then develop the selection exercises used to test those skills and abilities. That is where the work of the advisory group is very important because that group is drawn from a very broad collection of practitioners from across the professions and different parts of the professions, and that is where we can try to make sure that it is absolutely fair.

Each vacancy request will set out very clearly what the competencies, skills and abilities are, so, again, it is a very open and transparent process. The tools are designed very specifically to allow candidates to be able to demonstrate those skills and abilities. There is no prescribed way in which candidates have to do that. We encourage candidates to think about the breadth of their experience and how they can demonstrate transferable skills. We talked about that earlier.

We try very much to work on all parts of our selection exercises to make sure that they are not unfair to particular parts of the profession or those from particular backgrounds. For example, we have some exercises that use disciplinary hearings perhaps as one of the role plays rather than a court-based exercise if it is for an initial fee-paid role, so it allows people to demonstrate their qualities and merit in as broad a way as possible.

The equal merit provision has been mentioned. We use that as we are allowed to do under the statutory provisions. If there are two or more candidates who are assessed to be of equal merit, we can look at what their particular characteristics are and whether those are under-represented in the judiciary as a whole, or for the particular part of the



## HOUSE OF COMMONS

judiciary that we are appointing to. We can therefore give priority to candidates who are under-represented if they are of equal merit. We have increased our use of the equal merit provision in recent years, so we now use it at both the shortlisting and recommendation stages. That is another tool we can use that we very much hope will drive diversity in the judiciary.

**Q67** **Angela Crawley:** In the most recent diversity update you talked about the extension of “equal merit provisions” to cover both the shortlisting stage and final decision-making stage of every decision, but how regularly are such provisions used to differentiate between equal candidates?

**Sarah Lee:** Since 2014 they have been used 286 times.

**Angela Crawley:** Thank you, Chair. No further questions from me.

**Q68** **Chair:** I suppose there is always a tension between experience and potential. That is probably true when you are appointing a partner to a firm or getting somebody into chambers and so on. How do you reconcile that within the merits test? Are you looking at merit in someone who has a proven track record as a practitioner, advocate or whatever, or are you also saying, “This person is really bright. They’re going to go a long way”? How do you reconcile that? Would the balance perhaps shift a little more in favour of the person with less track record but real potential to change some of the other issues we have been talking about? Could you reconcile that with the merits test in any way?

**Sarah Lee:** The merit test does not look at the level of qualification. There are certain eligibility criteria one needs that are set out for certain roles, but most candidates have far in excess of the level of qualification; but for skills and abilities we look for strong examples of how one can demonstrate those skills. That can be drawn from many different experiences. It is the quality of those examples one takes into account that demonstrates the ability to do the role and can be drawn from many different types of experience. I do not think that level of qualification of itself is an influencing factor.

**Q69** **Chair:** What about level of professional expertise—for example, the number of years’ call or admittance? You have to go past the statutory minimum obviously.

**Sarah Lee:** Undoubtedly, the longer you have been in the profession and the opportunities you have been given will allow you to draw on stronger examples.

**Chair:** I understand that.

**Lord Kakkar:** That is one of the reasons why we are looking at other common-law jurisdictions. One of the things in which we are very interested is understanding beyond the way we are able to at the moment whether there are other ways in which we might look at



potential so that it remains an objective assessment and something that we can apply fairly across all candidates.

Q70 **Chair:** Would that perhaps require some change to the statutory test on the back of this?

**Lord Kakkar:** As we always do when we decide to do something, we take legal advice. We would have to take legal advice to determine whether we could do it, but, as you have already heard, we do a number of things. We are exploring how other appointments systems might be looking at the questions you put.

**Chair:** That is helpful. Kieran, do you want to come back on that point?

Q71 **Dr Mullan:** Very quickly. Do you think the public would rather you appointed with more emphasis on proven experience or potential?

**Lord Kakkar:** I think the public want us to appoint on the basis of merit, setting a clear quality bar that I can reassure the Committee is not being diminished in any way.

Q72 **Laura Farris:** We have not talked at all about the money involved in being a judge. Not to be too indelicate, I think that if we are talking outside the criminal arena a lot of barristers and solicitors would say, "I can earn more in practice than I can being a judge." It is seen as something that they do not really want to do because they have to take such a big pay cut. I have to say that is a truth; I have heard it said. Do you think that that has an effect on somebody from, say, a lower socioeconomic background who thinks, "I've just become a QC and I will enjoy these years"? Do you think that in a way some of the people who come forward are not as diverse as you would like them to be, because some of those who might represent other groups are making preferences around their lifestyle, thinking, "I've worked for 20 years. I've got to this point and I'm going to enjoy the fruits of my labour in a different way"?

**Lord Kakkar:** My answer would be speculative, but certainly in some conversations that is very clearly said to us. We touched earlier on the question of social mobility. Sometimes there are needs when one has come through quite a difficult, challenging and demanding career to have some time to be able to earn professionally. We look at all these questions. Sometimes that is the reason that is given. When candidates of very high quality from targeted group backgrounds are approached, they sometimes give that as a reason. The JAC gives evidence regularly to the Senior Salaries Review Body and that evidence lays out some of the material that it uses to make recommendations on judicial salaries, terms and conditions and so on, but it is one part of this terribly complex system we are dealing with.

Q73 **Chair:** There may be some evidence to suggest that different minority groups may be less experienced in certain areas of practice, and also certain income levels have an impact on the willingness to apply for appointment and the sort of experience levels that might lead to



successful appointment or not.

**Lord Kakkar:** This is one of the reasons why it is so important that we have the combined statistical report for the professions, our appointments and the judiciary, because as we get more granular data, as we hope to do this year and in subsequent years, we can see there is a disparity in progression and representation in different areas of professional life. That may have an impact on both the capacity to be exposed to the necessary opportunities to demonstrate transferable skills and the whole question of remuneration and the financial implications of seeking judicial office.

**Chair:** Understood.

Q74 **Janet Daby:** In 2017 the Lammy review found significant racial bias in the justice system. How did the Lammy report affect the work of the JAC?

**Lord Kakkar:** It has affected us very importantly. I had the opportunity to meet Mr Lammy when I was appointed chair of the JAC. We have looked at his report very carefully and revisited it. It is to his credit that both the PAJE programme, the pre-appointment judicial education programme, and the targeted outreach—things he recommended as features of the appointment system—have been established. Therefore, his report provided us with the opportunity to drive this forward and bring together the various parties we need to work with for those initiatives.

I think those who have followed him, for instance the most recent JUSTICE update in 2020, recognise that we have made sufficient progress in certain areas, particularly with regard to the appointment of female candidates, but, as is always the case, there is more to do. I do not want to repeat everything I have said, but we are very deeply committed to doing that. There are reports, such as the JUSTICE report and Mr Lammy's report with their recommendations but also their broader descriptive, that play an important role in flavouring the way the Judicial Diversity Forum and all the partners look at the problems, try to assess them and establish objective evidence and clear action and potential solutions, and how we are now going about measuring all of that to drive change.

Q75 **Janet Daby:** Can you give your view of the recent negative attention in the press? Do you think there is an issue about public confidence now as a result of the continuing under-representation of minority groups in the senior judiciary?

**Lord Kakkar:** With regard to the press coverage, it must be of concern to everybody. There is a misunderstanding in the description of secret soundings. What we do is take statutory consultation in a very specific fashion. It is described on our website for applicants and candidates, but the reality is that we provide guidance to the named statutory consultee for each jurisdiction, which we are obliged to do in terms of consultation. That guidance is very clear as to how statutory consultation needs to be presented to us. It must be objective and evidence-based. Then we



## HOUSE OF COMMONS

provide advice to the panels who are looking at that statutory consultation on how they should go about using it.

I want to make the point that statutory consultation is only one element of a broad base of evidence, including independent assessors nominated by candidates looking at other submitted material depending on the exercise in question, qualifying tests, sifting, selection day tests, situational questions and so on. No single part of that evidence base is given additional weight. Statutory consultation does not carry greater weight above any other evidence that comes forward.

Once given, statutory consultation is read by all 15 commissioners for every candidate: seven lay, seven judicial and me as the independent chair. It is reviewed by at least two senior members of staff involved in a particular exercise and the panel. A lot of people look at the statutory consultation. If it is not evidence-based and does not meet our requirements, or testing it with regard to the other evidence base available to us does not resonate, the reality of the situation is that anyway it is not a super-weighted element of the evidence available to us and it can be put to one side.

I am deeply anxious about the impact recent press coverage has had on potential candidates and applicants. That is why as soon as it first came out we updated our website for applicants so that they could understand how statutory consultation works. As a result of our last Judicial Diversity Forum meeting, when I was able specifically to explore these issues with the president of the Law Society and chairman of the Bar Council, and they were able to express to the entire forum the anxiety of their professional members with regard to what had been said, I decided to initiate an independent review of statutory consultation. That review will basically look at how the framework currently works and what improvements might be made to the way that we seek and apply statutory consultation in the future.

We have looked at this before. We do not have any evidence that statutory consultation is working against different candidates and groups, but I believe we have a strong duty to look at this matter and that is what we will do, bringing in an independent group to look at the statutory consultation as currently applied.

Q76 **Janet Daby:** Can you say when that statutory consultation will begin and the general timescales of this?

**Lord Kakkar:** When will the review begin? Richard, could you take us through the process we are adopting?

**Richard Jarvis:** We hope to be able to appoint an independent external organisation to oversee the review and publish the terms of reference within the next couple of weeks. They will advise on the methodology they will need, but I hope we will be able to do that in a number of months.



Q77 **Janet Daby:** How do you decide what that independent group is? Do they come from a diverse background of experience?

**Richard Jarvis:** We will be using the Work Psychology Group, which has reviewed the JAC processes in the past. That is a diverse organisation that has extensive experience of senior recruitment in the medical and other sectors as well.

Q78 **Janet Daby:** In the media, there were very negative reports of bullying and discrimination in the judiciary, and obviously that might have an effect on judicial recruitment. Is that the sort of thing that will be covered by the review as well, taking on board the evidence of bullying, harassment and discrimination that people have experienced?

**Lord Kakkar:** No. This will look specifically at statutory consultation. I was very concerned that the description of secret soundings may cause anxiety among candidates and applicants, and have a chilling effect on the attractiveness for individuals from different backgrounds to seek judicial appointment.

Other issues were raised in terms of behaviours. Over time they have been described in different elements of that broad system: the professions, the judiciary and so on. Those matters are raised in the Judicial Diversity Forum because they can have an impact on candidates' views. Those are matters on which I hope the Judicial Diversity Forum will be able to take forward discussions with the appropriate partners so that, if ever anxieties and issues are raised, we can help the partners affected by them to address the issues.

Q79 **Janet Daby:** My only concern arising from that is that the emphasis is on the Diversity Forum putting right the wrong of the situation. We need to hear what you are doing to ensure that no bullying and discrimination takes place within the judiciary. It is about advocating for and empowering the diverse workforce.

**Chair:** Can you legally do that?

**Lord Kakkar:** I can reassure the Committee that there is no bullying or harassment in the judicial appointments process. We look at this very carefully. I am chairman of the Judicial Appointments Commission and I am not the supremo who can tell everybody in the judiciary, professions or anywhere else what to do. What I can do, though, as chair of a forum where all parties are represented, is to ensure that when these issues are raised we can have a discussion.

You are quite right. I do know from my own experience that when these issues are raised both the Lord Chancellor and the Lord Chief Justice take these matters very seriously, but it is for other elements of the ecosystem to deal with the questions you have put to me.

Q80 **Chair:** Is there some merit perhaps in trying to attract more mature applicants in terms of diversity? There was a debate about raising the



mandatory retirement age for the judiciary. One of the reasons the Lord Chancellor advanced was that some people take career breaks and so on, and it gives them a certain number of years in terms of both pension and earning the salary of a judge before they are obliged to retire. Might that be a good thing, particularly for women but perhaps for other groups as well?

**Lord Kakkar:** The question of the mandatory retirement age is not a matter for the JAC.

Q81 **Chair:** You do not control it, but I wonder whether there is anything you can do with that.

**Lord Kakkar:** Of course, we contributed to the consultation and our contribution to that is in the public domain. There is a concern that extending the mandatory retirement age may have an impact on diversity. Equally well, the point you make is a very good one and has been made to us previously. What we will continue to do is monitor very carefully the impact of this in achieving judicial diversity, but I am confident that we now have schemes in place—for example, our outreach programmes—such that, if we find a situation where more mature candidates suddenly have the opportunity to apply because they can offer a reasonable length of service, we will have programmes to help them develop themselves to be as successful as possible in seeking judicial appointment. Whatever happens, we will do what we can to ensure that the opportunity is maximised and it drives diversity.

**Chair:** I will now bring in Andy Slaughter and Dr Mullan.

Q82 **Andy Slaughter:** To go back to the end of your answers to Ms Daby's questions, I was not quite sure that I understood what you said. When you referred to press reports that alleged discrimination, you said you were concerned about the effect in the press reports that they might be discouraging. Should you not be concerned about the contents of the reports and whether they are justified? We are aware of the report in *The Times*, the anonymous letter copied to this Committee, matters raised in *Eastern Eye* and also the Judicial Support Network submission. There may be reasons why these things are anonymous, but we cannot dismiss them for that reason. Do you not think there is a body of evidence arising that suggests there may be discrimination and that may be a reason for discouraging applications from certain groups, and that is something about which you should be concerned?

**Lord Kakkar:** It is absolutely something I am concerned about. I did not express myself clearly. I apologise. It is something I am concerned about and that is why I have initiated the review of statutory consultation, because that is something the JAC is responsible for. These articles, letters and reports have suggested it is wanting in some way. In discussion with professional leaders, they have made that point to us and that is why we have initiated a review of statutory consultation.

Q83 **Andy Slaughter:** I understand that, but that was not exactly my point.



## HOUSE OF COMMONS

Why does it not go wider than that? These are accusations of bullying, if not within the professions, certainly of judicial bullying taking place, which obviously has direct implications of its own, but does it not also have implications for either maintaining the status quo or discouraging fresh blood into the profession and judiciary? Do you think that is beyond your remit, or do you believe you should not be concerned by that?

**Lord Kakkar:** We are concerned about that. Anything that has an impact on discouraging candidates from seeking judicial appointment is something about which we are concerned, of course. We look at all the barriers to judicial appointment. I do not wish to keep coming back to it. This is not to abdicate responsibility, but where those barriers lie outside the direct responsibility or control of the JAC we will raise concerns about them.

Q84 **Andy Slaughter:** Are you doing that? If so, with whom are you raising those concerns?

**Lord Kakkar:** We do. In the Judicial Diversity Forum we have discussions about that, which means that we have the capacity, and I have discussions on a regular basis with the senior judiciary.

Q85 **Andy Slaughter:** Do you not think you should be raising this in a formal way, whether with the Lord Chancellor or the Lord Chief Justice, saying that at least the matters should be looked into, because if they are true they are making your job a lot harder?

**Lord Kakkar:** They are being looked into and we are playing our part in that by looking into the question of statutory consultation.

Q86 **Andy Slaughter:** There is one other point the Chair touched on in relation to older members of the judiciary, if I may put it that way. Because the age is about to be raised from 72 to 75, we know that has an effect on reducing the number of women and BAME proportions within the judiciary. Again, that is putting matters backwards rather than forwards. Have you expressed your views on that? How would you see coping with that?

**Lord Kakkar:** We have. It is laid out in our response to the consultation that the Lord Chancellor initiated. I will make sure that the Committee receives a copy of that. It is in the public domain.

Q87 **Andy Slaughter:** Were you robustly against the increase in age?

**Lord Kakkar:** We recognised the rationale for it in terms of the need for judges at this moment in time. I know this Committee has had concerns about backlogs in the courts and so on, but we have also made the point that there is potential for impact on diversity and we would like to monitor that very carefully.

Q88 **Dr Mullan:** This point is not contained in our preparation for this session, so it may be something that is not at your fingertips. Do you look at sexual orientation as a diversity feature and monitor that at all?



## HOUSE OF COMMONS

**Lord Kakkar:** In terms of the targeted groups?

**Dr Mullan:** Yes.

**Richard Jarvis:** We do not, in part because of the development of other data. We do collect that data. It is something I do not have in front of me. Perhaps I could include that in the note to the Committee.

Q89 **Chair:** Perhaps you could update us on what you are doing on that. Thank you very much. We have covered a lot of ground. I am very grateful to all three of our witnesses for their time and evidence today. I hope it has enabled you to set out the issues fully and clearly.

**Lord Kakkar:** Thank you, Chair. I say to you and the rest of the Committee that I have been very grateful for this opportunity. It is very important for the JAC to meet the Justice Select Committee. I hope we can do it again in the future. In the meantime, if the Committee has any further questions, I hope the Committee will be interested in some of the things we have spoken about, some of the initiatives I have told you about and the reviews we are doing.

**Chair:** Thank you very much indeed.