

Select Committee on the Constitution

Corrected oral evidence: Judicial Appointments: follow-up inquiry

Wednesday 15 March 2017

10.30 am

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Members present: Lord Lang of Monkton (The Chairman); Lord Beith; Lord Brennan; Baroness Dean of Thornton-le-Fylde; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord MacLennan of Rogart; Lord Norton of Louth; Lord Pannick.

Evidence Session No. 2

Heard in Public

Questions 11 - 34

Witnesses

[I](#): Anna Nice, Solicitor.

[II](#): Robert Bourns, President, Law Society of England and Wales; Robin Allen QC, Chairman, Bar Council Equality and Diversity and Social Mobility Committee, Bar Council of England and Wales; Millicent Grant, Vice-President, Chartered Institute of Legal Executives.

Examination of Witness

Anna Nice.

Q11 The Chairman: Ms Nice, can I welcome you to the Constitution Committee to help us with our inquiry into judicial appointments? We are very grateful that you sent in quite a lot of detailed written evidence to us. We may go over some of that ground as a setting for this, and because we are recording this as one of our regular meetings. We have some questions to ask you, obviously, and so I will kick off, if I may, and just ask you to summarise briefly your experience applying for a circuit judge role.

Anna Nice: Yes. Very briefly, it was long, it was uncertain, and it was quite stressful. Putting a little more flesh on the bones, the competition was first announced in September 2013 for October 2013. At that point, I discussed the prospect of applying with my firm. I am a solicitor in a firm of then five partners. It is a fairly small firm and it would have made quite a big impact. They were accepting of my wishing to go forward, and I then did apply, but in fact the competition was delayed until January 2014. There was already quite a long delay built in at that point.

I applied for family and crime. At that point, I was sitting in crime as a recorder, but I am a family specialist, so I applied for both. I was shortlisted for a family post and attended situational questioning and interview in April 2014. At that point, I did not have family tickets. Although I was a specialist private law family practitioner, I did not have tickets to sit as a family practitioner and I had never done any public law family work. The situational questioning was predominantly in public law work; immediately I felt I was at something of a disadvantage.

Immediate appointments were notified in July 2014. I was not successful in an immediate appointment, but I was subsequently informed in September 2014 that I had been placed on a Section 94 list. That was a whole year from the first moment upon which I had discussed it with my partners. I was then asked informally whether I wished to be considered for a number of posts miles from my home. I was then recommended for an appointment in March 2015, and I was offered a post in Portsmouth, which unfortunately, for geographical reasons that the JAC knew about, I could not take up. I had to reject that post. The list closed in June 2015 and I was never appointed.

The Chairman: Thank you. You obviously would have tried to find out how the system worked and what the potential pitfalls might be before you applied.

Anna Nice: I sat on the JAC Advisory Group for the Law Society, so I knew full well what the process involved.

The Chairman: Did you know it would take that length of time?

Anna Nice: I did not know it would take quite so long, because of the delays in announcing and then the delays with getting to whether or not I

was on the list; it took two months from the immediate appointments to the list appointments for them to decide who that was going to be. There were gaps all along the process, which I had not anticipated. Effectively, my firm was in limbo from September 2013 through to June 2015 as to whether or not I would be disappearing off at relatively short notice to the bench.

The Chairman: Yes. You knew that the geographical areas were quite large.

Anna Nice: I did know that, and it is one of the great difficulties. I live south of Swindon, and I could very easily sit in a number of courts that are not all on the same circuit. I could easily sit in Bristol, which is on the Western Circuit, or Reading, which is on the South Eastern Circuit. I certainly could not sit in Penzance, which is on the Western Circuit, or Chelmsford, which is on the South Eastern Circuit.

The Chairman: You had made it clear to the authorities who would be making the appointment that that was the case. There seems to have been a mismatch somewhere within the organisation.

Anna Nice: That is one of the big issues, particularly for solicitors, for whom circuits really mean nothing. I would not mind which circuit I sat on; it really means absolutely nothing to me.

The Chairman: I am sorry to see that you do not think you would apply again, but you must have some thoughts about how the system could be improved. Have you done anything about that, by way of submitting suggestions?

Anna Nice: Yes. I sat on the JAC Advisory Group for a couple of years as the Law Society's representative. I applied to do that in the hope that I might be able to influence some of that process, ultimately relatively unsuccessfully. I wrote the letter I sent on to you to the Chair of the JAC. I wrote to Lady Justice Heather Hallett. I spoke to somebody at the Law Society who is meant to be responsible for promoting solicitors applying for judicial appointments and made some suggestions to them. As far as I know, nothing has happened with that. I have done the best I can, but I am also continuing to sit in family, which I love, and I am continuing to work full-time as a partner in my firm.

Q12 **Lord Pannick:** You say in your letter that the process particularly prejudices solicitors. Could you tell us something about that? Also, the point that you hint at in your letter but do not develop is that the testing itself prejudices solicitors. Can you say something about that as well?

Anna Nice: Yes. I realise that it is really a rather generalised statement to say that it prejudices all solicitors. Solicitors and barristers are obviously not a homogeneous group. All solicitors are not the same. At the time I wrote my letter in particular, the referee requirements were very difficult for solicitors, because they required judicial referees or barrister referees who knew how to write an appropriate reference. I

think that has now been improved; that was one of the things that I was hinting at in the letter I wrote in 2015, and I think that is now better.

Just as a general point, it is probably fair to say that most barristers who do contentious work know somebody who sits full-time and people who sit part-time: a pupil master, somebody they have been a junior for, or colleagues in chambers. I did not know anybody at all who sat full-time as a judge. I knew some part-time judges, and in fact it was members of the Bar who encouraged me to apply in the end. I had no encouragement from solicitors whatsoever; it was two barristers that I instructed.

That whole ethos at the Bar—that applying for a deputy district judge or a recorder post is something you should think about doing—is in many chambers, and supportive chambers particularly, completely the norm. That is not the same for solicitors. That acceptance that it is an appropriate thing to do, that you will need time to do it, that there are people around who will talk to you about the process and encourage you is all just very natural in sets of chambers, probably from the beginning. It was, as I say, barristers in that sort of chambers who encouraged me. Without them, there is no prospect that I would have applied.

Lord Pannick: That could be rectified, could it not, by some form of mentoring scheme, if it does not already exist? Those who are interested and who are solicitors could approach a nominated circuit judge in their area who would talk them through the process, show them around the courts and answer any questions. That sort of thing could answer that problem.

Anna Nice: It could, but it has not been. Of course it could, yes, and I was fortunate that I happened to be in touch with these two particular members of the Bar, who were excellent and incredibly helpful.

Lord Pannick: Did you not meet circuit judges, though, in your recorder experience?

Anna Nice: I am talking about the application to be a recorder. By the time I was applying to be appointed a circuit judge, yes, I did know some, but in crime and not in family. The other thing is that a good part of the testing—at the moment at least—seems to be done within a contentious area. If you are applying for crime, your situational questioning will be in crime. If you are a commercial solicitor, you will know absolutely nothing; you will start from a completely blank piece of paper.

The JAC's merit criteria say that you have to have the knowledge or the ability to acquire the knowledge. However, whether you have the ability to acquire the knowledge in two months, and then acquire 20 years' worth of knowledge such that you are sufficiently able to compete with those who have been doing the work that long, I very much doubt. I had something of that experience in family, because I do not do any public law. Most members of the Bar have done at least some contentious work in an early stage. Many solicitors have never done any.

Q13 Lord Judge: I had not appreciated that you were part of the Law Society's regulatory or connecting body with the JAC. What is the Law Society doing about the problem that faces solicitors who want judicial appointment?

Anna Nice: I do not really know, because I have resigned from that group. I was the Law Society's appointee to the Judicial Appointments Commission Advisory Group, the point of which was meant to be to encourage diversity. However, I got to the stage where I thought I was wasting my time. It is probably not the best place to go into it now.

Lord Judge: Ignoring personal matters—obviously, we do not want to know that—could you just give us some idea of why you felt you were wasting your time?

Anna Nice: First, the Law Society itself did not once contact me after appointing me to ask me for feedback on what I was doing as part of that group. Although I was the Law Society's representative, nobody from the Law Society seemed, frankly, remotely interested. For the first half of the time I was sitting, another gentleman, who was an employee of the Law Society, also attended that meeting. During that period, I understood why they were not asking me for feedback, because he was giving feedback. However, he left the Law Society, and after that, for about a year, nobody at the Law Society asked me once for my views and feedback from the JAC. I was the Law Society's appointee with no reference back to the Law Society, and attempts to contact people failed.

Within the JAC Advisory Group itself, at that time there were some discussions as to what the purpose of that group was. For example, we were being asked to vet testing for various different roles. I might be sent 100 pages of paperwork relating to an employment tribunal role. Frankly, I have nothing really to offer in respect of situational questioning for an employment tribunal role, and so I thought, "I am not sure that I am being a great deal of use".

Q14 Baroness Dean of Thornton-le-Fylde: When you were appointed as the nominee from the Law Society to the JAC, was there an arrangement with the Law Society that, one, they would give you a briefing on what the role was and, two, there would be feedback from you as to how you were getting on with representing the Law Society on the JAC?

Anna Nice: When I first started going along, there was another gentleman who was an employee of the Law Society who came too. He was not appointed, but I think he was interested and so he used to attend those meetings. I am not sure what his formal role was, but because he was an employee of the Law Society and he was the one who had appointed me, I think he would take the feedback, if ever he did, and I was never asked.

I worked on the basis that, because he had appointed me to the role for the Law Society and he was employed by the Law Society and he was attending the meetings, he would take the necessary feedback. He then left the Law Society, and I did not know who had taken over his role. It

was at that point that endeavours to contact whoever it was, failed. It was not until I eventually tendered my resignation that they found the person who was meant to be dealing with it, who apologised for never having got in touch with me.

Q15 Lord MacLennan of Rogart: Your letter to the Judicial Appointments Commission expressed a great deal of uncertainty about where and when the roles would arise. Would you explain the difficulties that you experienced?

Anna Nice: Yes. When I applied, the JAC advertised a number of roles on different circuits in different jurisdictions. It was advertising roles in family law and in crime on the Western Circuit and the South Eastern Circuit, and I thought, "That seems sensible. Those are circuits I could sit on in jurisdictions I could sit in, and therefore I shall apply". What it did not say was which courts those roles were based at. That is the difficulty that carries on throughout the whole process, because you are expected to commit to a circuit.

I imagine you all know where the circuits are. The South Eastern Circuit stretches from Reading in the west, over to Chelmsford, up to Norwich. That is a very big distance for somebody to be expected to sit in. The Western Circuit stretches from Swindon, to Penzance, to the Isle of Wight. Again, that is a very big expanse for somebody to be expected to sit in. You are not told when you apply where those roles might occur. It is possible that people would not apply or would defer applying if they knew that there was no prospect of being anywhere near where they live.

The fundamental question is, should people be expected to move to wherever the courts are? That is a very big question. Some people have made heroic efforts to do that, but there are many of us who cannot move our entire households. We have partners who work; some have children in schools, elderly parents and caring obligations. You cannot just uproot your whole life and move to Chelmsford from Wiltshire; I certainly could not.

When you are not told where the roles are, you just have to sort of wait and see what comes up and whether or not that role is going to be something you are at all interested in or able to do. I was asked, "Are you interested in this role in the Midlands?" "No". "Are you interested in this role in Chelmsford?" "No". I did want a role in the Western Circuit. They then did not ask me whether I was interested in Portsmouth and just sent off the paperwork saying, "You have been appointed". I 'phoned the JAC and said, "Where is the job?", and they said, "I do not know. You need to talk to the circuit administrator". When I rang the circuit administrator, they said it was in Portsmouth. That is the sort of uncertainty that I am talking about. In how many other fields would you expect people to apply for a job when they do not know where the job is going to be and when the job is going to come up?

Lord MacLennan of Rogart: Would this apply to deferred appointments?

Anna Nice: It is more of a problem with deferred appointments. With immediate appointments, there is some uncertainty about the timeframe. For example, my competition was announced in September and did not start until January. There was some uncertainty about that, and nobody knew exactly when the full-time appointments would be announced, which was not until July. Obviously, that is a reasonably tight timeframe. The particular issues are for the deferred list, because you just do not know. However, the uncertainty about location applies to both.

Q16 **Baroness Dean of Thornton-le-Fylde:** Can I just move away from that and look at the issues that have been covered in the press recently about the difficulty in filling the circuit judge vacancies? You have touched on some of them, but do you think remuneration is a factor? What other factors that you have not brought out this morning do you think could be the reason that they are having difficulty filling them?

Anna Nice: First, on remuneration, for me personally it was not an issue. I think you will have seen in my letter to the JAC that I said it was not something that stopped me from applying. It is difficult to make generalisations. My own personal experience is that all my friends and family are hardworking professionals and none earn anything like the circuit judge salary. For me, it is a lot of money. However, I appreciate that there are people earning £400,000, £500,000, £600,000 or £1 million per year for whom it is an enormous drop in salary. They may have financial commitments that mean they cannot apply. That did not apply to me, and I suspect that there is a reasonably sized pool of members of the Bar and solicitors for whom that is a generous salary. However, that is my personal view and I know that there are others who do not agree with that.

In terms of other difficulties, the biggest one really is to do with geography. My personal situation, as I say, is that I live in Wiltshire. I have a husband who works in Gloucester. We cannot afford a second home. The sort of job that we are talking about is incredibly stressful. Family law work or crime is hard work; it is emotionally draining. I do not want to live away from my family in rented accommodation all week, Sunday night through till Friday night, on my own, where I know absolutely nobody. I want to live with my family and have that support. There are people who do it, and good for them, but I and many others do not want to do that. Which mother wants to live away from her small children? Which partner wants to live away from their partner all week? I certainly did not. I do not think it is unreasonable for candidates to say, "I would like to work within a reasonable distance of my home". That is probably really one of the biggest issues.

One of the other points, which I think has come out of the judicial survey, is that full-time CJs have an incredibly stressful diet of work. For family full-timers, taking children away from their families is the most draconian thing that judges do these days. It is sort of a cliché that is bandied around at family conferences: now that the death penalty is no more, taking somebody's child away is the most draconian thing the state can do. You might be doing that day in, day out, week in, week out. I was

talking to a circuit judge the other day who said, "I walk down the street and I see nice families, and I think, 'Are you beating your kids behind closed doors?'" That kind of thing takes a toll. If you are not doing public law cases, you are doing private law cases with litigants in person. That is incredibly stressful as well. If you are doing crime, you have a large diet of historic sex cases. It is very draining, and that may be one reason why people do not want to do the job. It is hard work and it is stressful and it is lonely.

Q17 Lord MacGregor of Pulham Market: I would like to ask you a question from the point of view of solicitors' firms, which you touched on in your letter. You state in your letter that it would have been difficult for your firm to make the necessary arrangements, within the timeframe provided for by the appointments process, for you to take up a role as a circuit judge. Could you just elaborate on these difficulties, and do you have any suggestions as to how that appointments process might be made easier for firms?

Anna Nice: Yes. When you are sent your appointment letter, you are told that you must take up your role within six months, which of itself I do not think is particularly unreasonable. However, one of the difficulties is that that news is embargoed for most of that six months, because background checks are being done. You are told that you should not tell anybody just in case there are any issues with your appointment. I think barristers are allowed to tell their clerks, and I certainly would have been able to talk to my senior partner, but I could not talk to my clients.

I am a family law solicitor, and I have clients who have instructed me for 10, 12 years over pretty complicated ongoing scenarios; I cannot just hand them over in two or three weeks. I also have management responsibilities. Some solicitors, for example, are signatories to leases and all sorts of other office paraphernalia, particularly in a small firm. It is very difficult, particularly for small firms, suddenly to start looking for a new partner—which is a pretty senior appointment—and particularly if they cannot tell the people they are interviewing why the other partner is leaving. That is something you would really want to know if you were applying for a role as a partner in a firm—why the changes are happening and what is going on—and you cannot tell them. There is all that silence and uncertainty.

One way that it would be easier is if the news were made public more quickly, or at least you had the opportunity to make the news public more quickly. You might not want to tell everybody immediately, but you certainly might want to tell a few clients for example, tell your staff, and start to hand over and interview in an orderly way. Some partners in solicitors' firms have a year's notice period. Some firms release them, but others would be very unhappy about releasing them. If you have to take up an appointment within six months and you have a year's notice period, it does not work, does it?

Lord MacGregor of Pulham Market: Reading what you have said and listening to you, I just wonder whether it is inevitable that there are

going to be these difficulties, which you have so well described. Should we be more realistic and not expect that there is a large pool of solicitors to be tapped?

Anna Nice: That would be very sad. I would hope it could be made to work, because I love sitting. I think I do it reasonably well. It is extremely sad that it is so difficult, I think, for solicitors to do it. I would much prefer, instead of saying, "Okay, let us just lower our sights", to try to find a way of making our high sights work. That would be my preference. For example, why do they do circuit judge competitions every year and then have people fall off the list like I did?

From my point of view, that was a complete waste of time and resource. They had spent all that money going through the competition—interviewing me, testing me, reading all my paperwork—and I was not any less competent in June, when I fell off the list, than I was in May or in July after the list. I was still the same competent practitioner. Might it make more sense to have slightly less frequent competitions and perhaps put a bit more money towards them so that you can do a slightly different testing process? Maybe that could work better, but it is perhaps a bit above my pay grade as to how that could be made to work.

Lord Judge: I do not follow why you think that the location issue is confined to solicitors.

Anna Nice: I do not think it is, no.

Lord Judge: You kept emphasising it.

Anna Nice: Did I? Sorry.

Q18 **Lord Judge:** No, I understand that. Can I go back to something earlier, which has always troubled me, if the Committee will allow me to give evidence? How do we get the big City firms to recognise that sitting is a public duty, and that somebody who wishes to sit as a recorder, as you have done for some years and are doing again, is something that the firm has to allow for in the career of the partners?

Anna Nice: One of the difficulties is that if you want to apply to be a recorder, you have to apply in crime, in family, or in civil. My understanding is that there are very few civil recorderships ever available. The majority are in crime. If you have never done any crime and you are a partner in a big City firm, why would you want to be a recorder in crime? I did apply to be a recorder in crime. I would not do it again. It was grim, I have to say.

Lord Judge: Yet you enjoy it now.

Anna Nice: No, I enjoy family sitting now.

Lord Judge: Do you not do any criminal sitting at all?

Anna Nice: No, I do not do any crime any more. I was appointed in crime. It got a lot better, but it is a very big step from being honoured

and respected and a senior partner in a very big City firm, earning £1 million, to being frankly humiliated on a crime training course. Why would you want to do that? Yes, it is public duty, which is why I did it. However, I totally understand why people would not want to do it. If what you are hoping is that you will ultimately get City solicitors to apply to be High Court judges in a QBD, why are you asking them to be a recorder in crime?

Lord Judge: They can apply to become deputy High Court judges, but that is a separate discussion.

Anna Nice: It is a separate discussion, but that is one of the problems. Even members of the Bar who are family practitioners and had a crime ticket have scurried away from the traditional pathway of applying for a recordership as quickly as they can. It is difficult.

Q19 **Lord Norton of Louth:** We have dealt with the problems once you applied, but what about being encouraged in the first place as a solicitor to apply for the post? Is there much encouragement?

Anna Nice: There is a lot in the legal press about people being very keen for solicitors to apply. Very frequently I read an article in the *Law Society Gazette*, for example, or the *Solicitors Journal* about senior members of the judiciary saying they are very keen for solicitors to apply. There is that background going on. The Law Society has a solicitor judges division, but it does pretty much nothing. I receive emails from time to time from the Law Society offering courses, which they want people to pay for, as to how to prepare for the judicial process. However, in terms of personal encouragement, I received absolutely none as a solicitor. The only encouragement I received was from, as I said earlier, family and friends and two members of the Bar: a High Court judge who has been amazingly encouraging, and a barrister. That is where my encouragement came from. If I did non-contentious work, I would not know any barristers.

Lord Norton of Louth: The encouragement, in a sense, was passive. There was a notification out there, but there was nothing institutional that was encouraging you, approaching you, and saying, "Can you think about it?".

Anna Nice: No. One of the suggestions that I made when I talked to the Law Society representative eventually was why not, for example, go out to the annual conference of Resolution, the family law solicitors' organisation? Send somebody there and have a stand or a slot in the keynote speech to say, "You are all solicitors. You do this work really well. Have you thought about applying for judicial appointment? Here are two recorders. Here are two deputy district judges. Talk to us. See what you think". That kind of thing would be great.

I also suggested that the Law Society should get together 10 or 15 solicitor recorders and deputy district judges and talk to them. Hear what they have to say, because unless you talk to the people who have been

through it or who might go through it, you do not know why they are not applying or succeeding. It is all very well talking to people who are doing it already, members of the Bar, or members of the JAC, but do you not need to talk to the people who have tried and failed, or who have been to a conference the Law Society have run and then have not applied? Should you not be asking them, "Why did you not apply? You were interested enough to come to this conference". That sort of ground-level research could provide some interesting information that might then help to formulate a plan as to how one might go forward.

Q20 The Chairman: Do you think your four other partners have all been put off for life, or do you think some of them might be interested in applying, perhaps when their families have grown up?

Anna Nice: I do not think there is any prospect of their applying. One of them has now retired, but no, I doubt it. They have been very supportive of me, so I would not in any sense wish to be critical of them, but I think they have just watched me and thought, "Goodness me".

The Chairman: Thank you very much. I am afraid we have run out of time, but it has been very interesting and very helpful, so thank you very much, Ms Nice, for coming to give us evidence.

Examination of Witnesses

Witnesses: Robert Bourns, Robin Allen QC and Millicent Grant.

Q21 The Chairman: Thank for you very much Mr Allen, Mr Bourns, and Ms Grant for coming to give evidence to us. We very much appreciate it. I think you are fully aware of the inquiry we are conducting. Thank you for coming at short notice; we found a gap in our timetable, which gave us the chance to gather more evidence than we already had, and we do appreciate your being available. Just to set the scene, you know there are concerns it is proving difficult to recruit judges, exacerbated by unusual levels of early retirement, which I think goes right up as far as the Supreme Court. The Lord Chief Justice stated in his report last year, "The matter is now extremely urgent". We understand that next year the JAC will be running competitions seeking to recruit between 20% and 25% of the whole body of judges at the High Court, circuit and district judge level. Which areas do you think will give the JAC most difficulties in their recruitment process?

Robin Allen QC: We have not done research on this, but we expect that there will be difficulties, particularly in the High Court posts in the commercial end of practice, simply because of the disparity between earnings at the commercial Bar and the earnings that barristers will give up in order to become judges of the High Court. That is certainly one aspect of it.

The second aspect of it is the well-known feature of the judicial attitude survey, which you will have had evidence about already. It is much

discussed at the Bar and reflects a real concern about, essentially, a relationship between potential judges and what they are getting into if they give up practice and become if not employees then officers under the purview of the Ministry of Justice. That is a major concern. It is associated with all sorts of different issues about the working conditions that judges have, the way in which terms and conditions have been changed, and the pensions issue. Those are all really substantial points. Who would give up self-employed practice in order to go into a system that is very difficult to get out of?

The third point is a different one. There are some part-time opportunities to work in the High Court bench. It is not believed there are enough for that, and certainly the Bar thinks that there ought to be many more opportunities for that. Also, we have given evidence that it might include continuing at least the opportunity to work in self-employed practice at the same time as part-time employment. After all, Section 9 judges sit in the High Court and maintain their practice as well. Those are a series of different points, any one of which I can develop for you.

The Chairman: On the part-time point, are there certain areas where it is too sensitive to have somebody who is a part-time judge and is also, when not doing that, a practising barrister?

Robin Allen QC: Not in my view. After all, the judiciary works on a huge cohort of part-time judges, who are very responsible. It has done that for a very long time. I have no experience of that being a problem and have never heard any backchat suggesting it has been a problem at all.

Robert Bourns: The short answer to your question is that the most difficult area for recruitment will be at the most senior level of the judiciary, for fairly obvious reasons, the most obvious being that the pool for selection of candidates is likely to be smallest at that level. That would be our view of it.

Millicent Grant: I am here for the Chartered Institute of Legal Executives, and chartered legal executives are only able to apply for district judge positions and below, so I cannot really say where the difficulty will be. They are not able to apply for any senior positions, because there is a bar.

The Chairman: Thank you very much. After that opening round, let us go into more detail.

Q22 **Lord Brennan:** We have dealt with remuneration, but let us return to it for levels of appointment below the High Court bench. How important is it around the country, in London and outside of London, and what are the other factors that attract or deter applicants for appointment below a High Court level?

Robin Allen QC: You have to distinguish between salaried, essentially full-time posts and part-time posts. Nearly everybody goes into the full-time position through having done part-time work as a recorder, deputy district judge, or some other similar part-time post. The judicial estate is

in many places very poor indeed, and people see that. I myself am sitting as a recorder at the moment in inner London. My retiring room has no windows, the court has no windows, and the size of the retiring room is about twice the size of a post box. That is not the case in every court; there are some modern courts that are excellent. However, you experience that and you think, "Do I want to commit myself to a life living quite like that?"

Secondly, the whole maintenance of the judicial system is absolutely creaking. There is no doubt about it. There are part-time staff that come and go. There are issues and concerns about security. The estate in many places is very tatty generally. The working conditions are a deterrent. Why would you give up being in your own office and so on to commit yourself to that? There is also a sense that you have very little control over it. Another example of it, for instance, is this: in many courts, catering facilities have been withdrawn. Whereas previously judges' messes would have internal providers of lunch, that has been withdrawn. This is hugely depressing for judges. They cannot just go out in the middle of the day and mix with defendants and witnesses; it would be completely inappropriate for them to do that. They would have to de-robe at the least, and it could be embarrassing.

These are small but cumulative points that come together. They are a consequence, I am afraid, of financial constraints that have been imposed on the MoJ for a long time, and it is really at the limit. That is a major point that I would like to get over about a deterring factor for taking up positions below the High Court bench. There are probably some others that I could emphasise, but that is really the big message that this Committee needs to know: what you have read in the judicial attitude survey is a direct function of these constraints. Of course, pensions and pay are a factor, but we have made those points already.

Robert Bourns: I am obviously here on behalf of the Law Society. It is a very large population of practitioners. I am advised that the median salary within that body of practitioners is in the order of £31,000 a year. You are talking about remuneration at below High Court level. Actually, the financial remuneration that is available to the judiciary at that level, with pension support as well, can be attractive to practitioners.

While I absolutely accept everything that has been said by Robin Allen in relation to the environment in which people are being asked to work—and that environment goes beyond the physical, to the way in which the service itself is being maintained and developed—the opportunity of judicial appointment could be quite attractive to some practitioners at that level. There are other reasons why, and we might come to it later, solicitor practitioners are not as inclined to apply for judicial appointment as they might be. We might come to that at a later point in the discussion.

The Chairman: Ms Grant, as Vice-President of the Chartered Institute, do you receive a lot of complaints, or pick up an atmosphere of areas where there is great unhappiness?

Millicent Grant: In 2015, we canvassed the views of members on this issue. Remuneration was not something that came up, but they did mention that there were fewer female judges. Females were probably less inclined to apply, because they did not feel the environment would be welcoming to them. Also, the lack of flexibility came up. Because of our qualification route, many members are able to balance studying and working with their other outside commitments, and they think possibly that will not be the case if they become judges. Also, they do not really get a lot of support from their employers. They are very valued, quite often, where they work; they do a lot of the detailed work, and many employers are not willing to support them to enter the judiciary.

Q23 **Lord Pannick:** I was very interested in what Robin Allen said about the working conditions operating as a deterrent factor to people thinking of applying, I think you said, particularly in relation to the circuit bench. Is that also true at the level of the High Court, or is it not such a problem? In relation to circuit appointments, has the Bar, and indeed the Law Society, put these concerns to the Lord Chancellor, and, if so, what has been her response?

Robin Allen QC: Three points; I will take the last first, if I may. Not to my knowledge have we specifically, as it were, been an advocate on behalf of circuit judges; I do not think it is our role directly to do that. We can certainly inform the Lord Chancellor about that from our experience with members of the Bar who are part-time judges. We have some role to do that, but it is not our role to be an advocate generally on behalf of circuit judges about their conditions. In a sense, that is being picked up through the judicial attitude survey, in which circumstances of appointment are certainly a feature that you can pick up in the report itself. Lord Pannick, I am sorry; I have focused on your last point. What were your first two?

Lord Pannick: It was whether these problems about working conditions are also a deterrent at the High Court level.

Robin Allen QC: The answer is that there is a general concern about the relationship between the MoJ and judges. There is absolutely no doubt about that, at a series of different levels. The whole issue of judges' pensions has been very concerning indeed. The attitude from the MoJ seems to be, "We want to pay as little as possible and as little as we can get away with", rather than approaching it from the point of view of what is a fair pension, fairly applied for all judges.

I can give you some examples of this. There are various ways in which there has been, frankly, from my point of view, a rather petty and regrettable approach. For instance, in part-time judges' pension litigation, there have been numerous judges who have gone from part-time to being full-time, and have enjoyed doing that. If they did not claim the right to a pension in relation to that part-time service within three months of transposing, even though they may be a long way off retirement, the Ministry of Justice have said that they will not have had an entitlement to it. This is before the moratorium.

That may be a good point in strict law, but it conveys a terrible message. It suggests that the MoJ expects, or has expected in the past, part-time judges to sue them for the right to their pension for their part-time service on appointment as a full-time judge. That is not what judges want to do, as you can imagine. They do not want to be in litigation with the Ministry of Justice. They expect fair dealing over this. The issue about the new judges' pensions, which has been the subject of recent legislation, is another example of this. It is a sense that there is not fair dealing coming from Government towards judges' terms and conditions. That has been a big chill factor. There is no doubt about it at all.

The Chairman: We have already been made aware of that. You underline it, and we shall be following it up. Had you finished, Lord Pannick?

Lord Pannick: Can I just ask one other question? Many practitioners at the Bar, and I think solicitors also, are deterred from taking up full-time appointments because there is no way back.

Robin Allen QC: That is right.

Lord Pannick: What is the position of the Bar Council and the Law Society as to whether or not someone who has been a judge should be allowed to go back to professional practice?

Robin Allen QC: The position is precisely this: that there is not, within reason, any reason why ex-judges should not be able to go and practise. The rule that exists at present is in fact a restraint on trade. I know that is a view some Law Lords hold. I have had it put to me—I think in this room or, if not, over the road in the Supreme Court—that that is a view that is held. The reason I say that is because part-time judges who are not salaried do continue in practice. If that is the case, then it seems very difficult to suggest that they cannot do it once they become salaried and then stop being salaried and retire from that post. I know it is controversial but that is my view. It is the Bar Council's view too.

Robert Bourns: I share that view. Certainly, you are absolutely right, Lord Pannick. In talking to both solicitor judges and would-be potential applicants, the no-way back is extremely influential. If I may just broaden that out slightly with regard to people being concerned about the pool for selection of potential recruits, I have been very struck in my role as President of the Law Society, meeting different parts of the constituency, that we really ought to identify those pools and encourage people to come forward.

One of them would be army legal services. Also—and I know there are policy issues here, but I think it is worth broaching it—speaking to the DPP, the Crown Prosecution Service employ a lot of barristers and solicitors at a senior level, with a great deal of relevant experience. They are not appointable. They cannot apply. It is not only a good population of practitioners; it is also a very diverse population. People ought to apply

their minds to the issues around whether or not they should be encouraged to apply, or allowed to apply.

The Chairman: Is that a permanent situation?

Robert Bourns: Yes. The issue is that they have been employed to prosecute. They have been working on behalf of the Crown. Under those circumstances, it is not appropriate that they should move into a judicial role. That argument could be made in respect of other practitioners who may apply for appointment.

The Chairman: Do you wish to add anything on this point, Ms Grant?

Millicent Grant: No.

Q24 **Lord Beith:** I was about to slip in a question about employed solicitors and barristers in the Crown Prosecution Service, for the very reason that you have advanced—that they are a reasonably diverse range. There are a lot of married women, for example, who get to the point where they have a little more freedom and time to go for a part-time judicial appointment. That would involve, perhaps, geographical problems because they would have to do a certain area other than the one they were working for the Crown Prosecution Service and, perhaps, in a field different from that. Is that something the Law Society is pursuing?

Robert Bourns: Certainly, it is something that I have picked up. We had an open meeting with David Lammy, who is carrying out his own wider review. I had separately been to see the Crown Prosecution Service and Alison Saunders. There were members from the Crown Prosecution contributing to the discussion with David Lammy. There is a very obvious potential gain and benefit to examining that, and I am certainly pursuing that, yes.

Lord Beith: Can I assume that the Bar Council does not object, in principle, to exploring that?

Robin Allen QC: On the contrary, we positively agree with this. Indeed, we have just very recently discussed this at a general management committee of the Bar Council. There is a particular concern, inevitably, that there will be some judicial posts it would be inappropriate for an employee of the CPS to sit, for example as a Recorder in the Crown Court, because of perceptions of bias and so on, but we think that can be managed sensibly. We really do think that this is a cohort of potential judicial resource that could be tapped in appropriate cases.

Lord Beith: I will return, briefly, to the morale point that emerged with this figure of only 2% of judges feeling valued by Government. There are a lot of professions, particularly in the public sector, where people feel the Government are treating them unfairly and imposing restraints on them that other sectors are not getting, leaving them individually in a position where they do not enjoy the same pension rights as others working in the same area because of some quirk. Are you really advancing the argument that judges require some kind of special

protection from having this reaction to unhelpful government departments because of the nature of their work? Or are you saying that judges have been treated exceptionally badly by comparison with others?

Robin Allen QC: I have not done a survey as to whether they have been treated exceptionally badly. No. For me, there is a more profound point about this. Government often have to make very hard choices about allocation of public resources. I think all judges respect that. They respect it for very many reasons. Sometimes they have to deal with judicial reviews when exactly that point is raised up. I do not think that point is missed by them.

However, it is a fact that since the mid-noughties and right up until this year, there has been litigation by judges against Government. That is a really bad thing. It ought not to be the case that there have to be litigated disputes between judges and Government. Quite a lot of that has been successful litigation, which suggests that Government have not treated their judges according to law, in some way or another. It does not seem right to me—and I do not think it seems right to anyone on the Bar—that there should be litigation between judges and the Government, except very rarely about very rare things. Collective litigation like this gives a very bad impression. There is a public point about that.

Lord Beith: I would like to turn to Ms Grant, for a moment. I was quite struck by your description of the situation, which looks quite familiar, where partners in a small solicitors' office know perfectly well that the whole thing would collapse without the legal executives and so might not be very encouraging to CILEx members applying for judicial appointments. Is there anything you can do as an organisation to overcome that?

Millicent Grant: At the moment we are aiming to work on an executive level with the firms that employ chartered legal executives to try to get them to recognise the benefits of encouraging our members to apply for judicial posts. There are benefits to them as well as to our members.

One of the other things that would deter members from applying is the glass ceiling that I referred to earlier. They cannot go beyond district judges, so they are less likely to apply, because if they stay within a firm and are employed, the potential for them to progress within the profession is much greater. There is nothing to stop them. We have members in very senior positions.

Lord Beith: There are no ceilings—yes.

Q25 **Lord MacGregor of Pulham Market:** This is something on which I could follow up. This Committee noted in its 2012 report on judicial appointments that, "We are not convinced that either the Law Society or the partners of most of the large firms are sufficiently committed to the encouragement of solicitors" and, indeed, chartered legal executives, "applying to become judges". The JAC, in evidence to us earlier this month, indicated that this was still something that they continued to hear

a great deal about. To what extent is this the main factor between the disappointing entry levels of solicitors into particularly the higher levels of the judiciary, and what more can be done to overcome these criticisms?

Robert Bourns: Is that directed at me, Lord MacGregor?

Lord MacGregor of Pulham Market: I am just asking all the Panel for their views.

Robert Bourns: I would start by saying more can always be done. I would also add that it is very important that any response to this should not be done by way of initiative. It should be done by way of a sustained programme. I was only able to hear a very limited amount of the evidence that you heard earlier this morning. Where there are changes of personnel within the Law Society, which was referred to this morning, there is a risk that a programme of work can be disrupted. It is relevant today that it is auspicious I am here. This is the day when Sir Gary Hickinbottom will be sworn in as a member of the Court of Appeal. He is a solicitor who will be the most senior member of the judiciary from the solicitors' ranks.

Going to your question about we can do, I agree entirely with Ms Grant in relation to the benefits—as indeed Lord Hunt referred to on an earlier occasion—that the firm can achieve from a raft of different experiences that their personnel, whether they are partners or not, develop alongside their practice. I have been a great advocate for encouraging people to consider how their careers might progress. The other thing you bump into—certainly in the largest firms—is that people are retiring at a relatively young age. The combination of all those things tells me that, as a professional body, we should be ensuring that our members recognise judicial appointment among the range of options open to them as their career progresses. I have an expression that people in the Law Society are now well familiar with in terms of a line of sight. Then we need to equip people and encourage them to obtain relevant experience, so that when they come to apply, if that is what they choose to do, they can present their experience as relevant to issues around judgecraft.

There is a whole range of issues as to why a partner at the end of—or getting towards a senior position within his or her—career may not apply. They are not used to being interviewed or going into a selection process. The impact of failing on people's perhaps overly fragile sensitivities can be quite significant. I am sure members of the Committee have offered themselves for interview and have been surprised by the impact of disappointment. We need to help with that.

I did hear what was said earlier. We do have a solicitor judges division. I would be sorry to think that it was not doing what we intend it to do, which is to work with those who have already been appointed. We have a sustained programme. When I admit solicitors at the start of their careers, which I do about once a month, I always tell them now that this is not the end of the story in terms of admission. I tell them one of the things they should think about, as well as being members of the Bar, is

the potential for judicial appointment. I mention it at what is effectively day one, and the whole way through we should be encouraging people to consider their options. They are many and various, and judicial appointment is one of them.

We have had sessions across England and Wales inviting people to consider judicial appointment. We invite them. Those are open meetings. They do not have to pay for them. They do hear from members of the judiciary, frequently solicitor judges. We have also been very pleased to receive support from the very senior members of the judiciary. Sir Robin Knowles has been very good at this. Bill Blair has been very good at this. Indeed, the Lord Chief Justice himself has joined in with me—although the more appropriate way of referring to it is probably that I joined in with him—in writing to firms last year in order to encourage candidates to come forward. The response may not have been as great as we would have wanted it to be, but we did encourage people to come forward. We then engaged in programmes to prepare them for the selection process. That goes on. During my tenure as an officer at the Law Society we have had workshops attended by in excess of 1,500 solicitors, encouraging them and preparing them for application for judicial appointment. There is always more that can be done, and I do emphasise this. It should start early and it must be sustained. That is the message for the society.

Q26 Lord Hunt of Wirral: I am delighted to hear from the President about the sustained programme, but we are up against quite a lot of history here. When I became a partner in my present firm 49 years ago, there was no question of a solicitor becoming a judge. When the Master of the Rolls welcomed me 50 years ago as a solicitor, Lord Denning did not mention that as a possibility because it was not really on the cards.

Admittedly, I am history now, but we are facing a situation where for the older members of the profession this was not necessarily an option at the start of their careers. Now it is an option. I just wonder whether or not there is a way to get through to the individual solicitors, not through firms because firms probably have something of an interest in making sure their key earners stay well within the client programme. There will be, as the President says, a number of partners who are probably reaching a stage in their career in their 50s when applying to be a judge might be easier. We heard previously that it has become a cumbersome, rather bureaucratic process, and I wonder whether there is a way forward to get the whole process much more flexible, to accommodate the needs of the individual and to become much more encouraging to the solicitor, and, indeed, to the legal executive and the barrister to become a judge.

Millicent Grant: Thank you. I wanted to come back to what Lord MacGregor had asked about what professional membership bodies are doing for their members. We recognise that many of our members, even though they have a lot of experience, are not very confident because their qualification route has kept them in the office. They have gained a lot of skills and experience, and they are comparing themselves unfavourably—wrongly—with barristers and solicitors, and perceive that barristers and solicitors have a better opportunity to become a judge.

It would help if they had better work-shadowing opportunities, because work-shadowing opportunities are the scheme that is run and that our members can join after seven years' experience. However, they are eligible to apply for judicial roles after five years' experience. There is a disparity there that should be addressed.

CILEx is launching a judicial development programme in June. We have worked closely with community relation judges. Seventeen of them have indicated that they are willing to work with branches and will be supporting members who have indicated that they are interested in applying for judicial posts. Over 200 out of the 5,000 we have identified as eligible have indicated that they would be willing to do that. We will be improving communications by use of social media, e-shots, more articles in our magazine, and we will be having an annual judicial awareness day, where one of the judicial community relations judges will be delivering a taster course he has designed. From that we will be recruiting a cohort that will be trained by a trainer to apply, including having mock interviews for judicial posts. That is how we propose to support our members, and we will be increasing the level of support.

It is something that we have to do together, because, quite often, when discussions of lawyers are taking place, the mention is of solicitors and barristers, and chartered legal executives are often an add-on, if they are mentioned at all. That indicates that there is an unconscious bias against including them as lawyers, and in consideration. That needs to be addressed, because when I see that happen, I think, "You are saying the right things and it is genuine", but our members' perception is that, "You are saying that but when you talk about lawyers you do not include us". They think that is how their experience will be if they join the judiciary.

Robin Allen QC: Chairman, I wonder if I can contribute a little to this as well. There is no view at the Bar that they have, as a profession, a first claim on judicial appointment. The Bar Council supports applications from solicitors, and from CILEx members as well, for appropriate posts and is absolutely committed to recruitment on as wide a basis as possible.

There is clearly a diversity issue here, as I am sure the Committee is very well aware. In the Equality and Diversity and Social Mobility Committee of the Bar we came to this issue last year to see what we could do to help push this forward not just for the Bar but generally for the profession as a whole. You have had some indication of the output from an initiative that came from the Bar Council in the evidence you had from Sir Ian Burnett and Lord Kakkar, who were in front of you a fortnight ago. They will have mentioned to you that there has been some work going on on a cross-profession basis and, indeed, with all the significant players on pre-application judicial education. That may have been mentioned to you and some of you will know a little about it. But it may be helpful to tell you a bit more about it, because I think this is very significant, and I know that there are many others who think the same thing.

The driver, from our perspective, initially, was that the statistics on success rates from BAME applicants in recorder competitions showed that

there was a significant decrease from application through the first stages and then through to appointment in the rates of success. We were very concerned at that and asked the JAC what it thought was going on. There was the barriers research that JAC introduced, and it was suggested that some BAME applicants across the entire profession were “not ready for appointment”. That is a euphemism, but what it is a euphemism for we have never quite got to grips with. But we thought we had to address this and see how we could make applicants for judicial posts—whether solicitor, barrister or CILEx member—ready for appointment. Within the Judicial Diversity Forum, through the Bar Council, initially, with the great support—I say this immediately and firmly—of the Law Society and CILEx, we have put forward proposals for pre-application judicial education. This is really incredibly important. I will tell you where we have now got to.

We have developed a curriculum, which we hope will be capable of being delivered in the near future. It will not be this summer but it will be some time in the course of the next 18 months, if we get sufficient support. The curriculum will look at judgecraft, job framework, judicial ethics, resilience, and equality and diversity. The idea is that whatever walk of life you might have been in within the legal profession as a whole, whether a solicitor or CILEx member or a barrister in one area or another, you can go through a programme that will help prepare you for application. It will also, if you have not, for instance, been a litigation partner at a solicitor’s firm, help you to get ideas about what judges actually do. We think that will lead to a broader, better prepared cohort of applicants for judicial posts. The great extra benefit of this is that it is proposed that there can be some positive action measures in this training programme—reserved places for women or for BAME applicants to increase the cohort of really qualified applicants in due course.

This work is going on in the Judicial Diversity Forum, which brings together the Judicial Office, the MoJ, the Law Society, the Bar Council, CILEx and the JAC. I think I have mentioned everybody in that, but it really is all the players. It also includes the Judicial College. The content of this curriculum is being worked up at the moment. We have recently had meetings with the Judicial College about how we can take some of the work that is already done post-appointment and bring it and offer it pre-appointment. There is a lot of work going on there. We were delighted to see Lord Kakkar’s support for it last time. It is a bit of a slow burn, but we think it has the capacity to start changing the landscape.

The Chairman: Thank you. Do you want to follow up, Lord Hunt? Can I bring in Lord Brennan before you follow up?

Q27 Lord Brennan: What you said is very encouraging about promoting the idea of taking up judicial appointments within your respective parts of the profession, especially teaching people about resilience. You might put that into public life, not just the Bar. However, I am particularly interested in the Law Society for the High Court bench. The sustained programme is obviously far more important than an initiative, and I

recommend you to use role models. Lord Justice Hickinbottom and Lawrence Collins, who became a member of the Supreme Court, both came from major law firms. If the practice of retirement from such firms is still in the mid to late 50s, you have a pool you should be looking at.

Robert Bourns: Thank you, Lord Brennan. I was going to go back slightly to the point Lord Hunt made, which is the similar point of how you reach the individuals and how you reach beyond the firms. I have mentioned the solicitor judge population. We have very vigorous ethnic-minority lawyers, women lawyers, and in-house and junior lawyers divisions. They all have a programme of work. Certainly the junior lawyers have a population of nearly 70,000 students and those up to five years post-qualification. The average age of admission now is about 31 years of age, so they are reaching a population up to 36. That is where the biggest bulk of people are coming in to the profession—31—by the time they have gone through various training routes. In every strand of work within those divisions, we are reaching people and talking about judicial appointments.

On International Women's Day last week, for example, Alexandra Marks—who was a partner at Linklaters before she became a member of the judiciary and works incredibly hard to draw attention to the opportunity—was one of our panel members for a discussion at a very well-attended meeting. Tan Ikram, another solicitor judge who has followed what you might call an atypical route into the profession, works incredibly hard as a role model to the ethnic-minority lawyers' division—and so on. We are reaching individuals and we are reaching firms.

We made quite a thing of Sir Gary Hickinbottom's promotion and he insisted that the event should include presentations from three other solicitor judges before any more informal recognition of his achievement. We had, again, a very well-attended session, which included a presentation from a partner of Berwin Leighton Paisner who is sitting as a recorder and is one of three partners in that firm who is holding judicial appointment at this time. There is a mix of persuading or encouraging firms to recognise the benefit to them of having members of the judiciary within that population—the insights, perceptions and so on that are gained as a consequence of that—and reaching the individuals and encouraging them to recognise this as part of their career.

There is then the issue of public service and how people might apply their energies post-retirement. Then you do need to influence people to recognise this as something they might engage in.

The Chairman: Thank you very much. It has been a very useful question-and-answer bit.

Q28 **Baroness Dean of Thornton-le-Fylde:** The previous answers have answered part of what I am going to ask. Can I declare that I am a member of the business oversight board of the Law Society, so I know Mr Bourns reasonably well? In the period to March 2016, only 13% of the applications for judicial appointment were from solicitors. Let us assume

that the initiative you are talking about is going to be helpful. Even though it was low at 13%, only a third of them got through. Why is that? Why do you think so many were unsuccessful? What can be done to try to help make sure the success rate is higher?

Robert Bourns: Others may be better placed to answer that. The answers I pick up are anecdotal in terms of, "I was shortlisted and I was selected; I was not appointed". It is how people present themselves in interview and also some of the scenarios. It goes back to the preparation that should be provided to people before they get into the final stages of the selection process. Notwithstanding what was said by Robin, and there has been an element of joint work, I think that accounts for it—people are not presenting well in those final stages. What I pick up is that there are perhaps, at that point, perceptions within the appointing panel as to what a member of the judiciary might look like in the broadest sense in terms of their experience and skills. That is the concern people have.

Having said that, one of the things that becomes very clear—and it goes back, perhaps, to the resilience point—listening to the presentations that I have heard, is it is not unusual for people to have to make repeated applications before they are finally appointed. Going back to my earlier point about the impact of failure on somebody particularly getting towards the senior level in their firm or in their career, that disappointment in the solicitor population can mean that they do not then repeat the process. At the Bar, people are much more used to both personally and in the environment speaking to colleagues: "You applied this year, you were not successful. You applied in this round, you were not successful. Do not worry about it; you will surely prevail next time around". I understand that people can apply three or four times before they are finally appointed. That is not entirely unheard of. It may not have been the case with my eminent colleague to my right. Frankly, I do not know what the experience of the CILEx population would be, but solicitors would find it quite difficult to continue to volunteer for that process.

Baroness Dean of Thornton-le-Fylde: Is there also the impact of, if you look at the barrister cadre, probably having more involvement and connection? It would be more of a norm to them than it would be, perhaps, to a solicitor. Also solicitors are probably working in their relatively small practice. Some may argue that it is not really in the interest of the practice to encourage members to go forward. Therefore, very much, the individual solicitor who might want to look at judicial appointment looks more to the Law Society than they do to their own peer group. Does that not put a responsibility on the Law Society, perhaps, to be doing more?

Robert Bourns: I have said the Law Society could always do more. I accept that point. There is a real opportunity for the Law Society in a number of different respects to further enhance the relationship with the individual member of the society and what is done to support that individual as their career progresses. As to where the most difficulty lies

in terms of the relationship with your existing firm—whether that is most difficult in the largest firm or the smallest firm—there are pros and cons in both environments. I accept more could be done, and it must be sustained.

Baroness Dean of Thornton-le-Fylde: Is more being done? Is the intention to do more? Accepting more needs to be done, is more going to be done?

Robert Bourns: More is being done and, certainly, I picked up the point. There was a programme. It was disrupted by changes in personnel. We have identified somebody who has been taking this strand of work on and, yes, it is the very clear intention it should continue.

Q29 **Lord Judge:** For a long time I used to go around trying to encourage solicitors' firms to allow their younger partners to apply for appointment as recorders and so on, so that when they got to 50 to 55 and retired, they could retire to the High Court Bench and do the work there. More than one—a significant number of young people—said to me that applying to sit as a recorder when you were 40 years old did nothing for your prospects as a partner in a major city firm. Is that an experience you have heard of and, if it is, what can we do about it? These firms are individual firms and partnerships, and they all have to work together.

Robert Bourns: Yes, I absolutely recognise what you say. Firms do, in fact, provide allowances for individuals, including their partners, to spend time doing other things.

Lord Judge: I am told plenty of pro bono and all that is set aside, but sitting is very difficult.

Robert Bourns: Yes, and we do need to develop the discussion to say that this also brings benefit, both to the individual—because of the different insights they gather and experience, which will benefit their practice and therefore the practice of the firm—and to the firm. We need to do more about that. There is no doubt about that. It is interesting that the firm will then get to the position in practice—almost irrespective of the performance of the individual partner—when the time has come, for reasons around succession and the way in which the business of the firm is developing, for that individual to retire. Again, we should, as firms and as a profession, be helping people into retirement. I accept the sense of what you say.

Lord Judge: We heard, Ms Grant, your concern about some of the difficulties facing members of the chartered society. You referred to some of the difficulties that are presented to your members by their employers if they want to seek judicial appointment, or seek to start with part-time. Are there any other difficulties—any other barriers—that you want to raise with us, or have you raised with us the ones you had in mind?

Millicent Grant: I have raised most of them. One of the things is that entering the judiciary would represent a change in career but they can

only go so far. As I understand the discussion, you do not have the progression going through from junior judges to senior judges, and therefore those that are gaining experience at district judge level and below are not able to move through if they are chartered legal executives. If a chartered legal executive has been invited to enter the judicial profession, then it would be more attractive to them if they knew they could then move up.

Lord Judge: Forgive me interrupting, but do you mean as you could if you were a solicitor or a barrister? If you are a good district judge, you might apply for the circuit bench or go to a tribunal, and you are saying that route is shut to your members.

Millicent Grant: It is. They cannot go beyond district judge.

Lord Judge: Is that the case however well they do and whatever progress they make?

Millicent Grant: I think it is within statute that they cannot go beyond that.

Lord Judge: Sorry to have interrupted you.

Millicent Grant: That is fine. We know that we have two district judges that are chartered legal executives but we also know, anecdotally, that there are solicitors who enter the profession via the CILEx route, and possibly barristers as well, but do not want to admit it openly. That means that they are aware of the same kinds of reservations internally that our members are feeling, because once they have crossed that barrier they do not want to say, "This is how we entered the profession." However, if you want to make a really diverse judiciary, our profession incorporates a lot of people who come from a diverse background, who have developed skills just by the route by which they have qualified. We know that between 2010 and 2015, 202 CILEx members applied for judicial posts. Twenty-two were shortlisted and only the two were appointed.

One of the things that would be helpful, given that Lady Dean was asking what we could do about it, would be to find out exactly why they are not succeeding at various stages of the selection process. I do not think that analysis is built in to the process of review after a competition has taken place. If it is captured at the time when the applications are being processed of how people progress either by profession, or by females or black and minority ethnics, or by any of the diverse groups or age groups, that would be very useful, because we would know what we want to address when we are trying to improve the opportunities.

Q30 **Lord Beith:** Do you have the situation where successful and ambitious legal executives, who have probably got quite a lot of experience in specialised areas of law like immigration, for example, are facing a choice: "Do I go for a judicial appointment with what appears to be a low chance of success, or do I spend all my spare time raising my

qualification to become a solicitor?" It might be rather difficult to do both at the same time.

Millicent Grant: Yes, that has happened. I have spoken to someone who is a judge, who said he became a solicitor only because he wanted to be a judge. At the time he became a judge he was a chartered legal executive and could not progress. That is what he had to do.

The Chairman: Would either the Bar Council or the Law Society like to make a brief reaction?

Robert Bourns: All I would say about that is that it has been a frustration to me that I know, anecdotally, that a lot of my colleagues who qualified with me went to the Bar and some of them are now members of the judiciary. We lose sight of that and sight of them. If we are looking at the population of the judiciary who, in broad terms, came from other parts of the profession, then we do not gather that data. That is just a small frustration.

Robin Allen QC: The point that lies behind all this is that there are so-called judicial qualifications set down by statute, so progression from CILEx is more difficult. It might be a point for consideration that for somebody who has come through CILEx and taken full-time judicial appointment, that judicial appointment might itself be considered a basis for further progression within the legal system. I do not see there is any reason why that could not happen.

The Chairman: We have five questions left. Some aspects of them have been touched on, so it may not be necessary to have long answers to them, but I would like to get them all asked.

Q31 **Lord Norton of Louth:** Much of what you have stressed so far has been encouraging people from diverse backgrounds to apply, but is there a problem with the process? Is it not the case that the appointments process as it stands favours barristers over non-barristers? Should we be looking not just at encouraging applications but possibly at the process itself?

Robin Allen QC: I am not sure that I would agree with that premise—that the process favours barristers over non-barristers. The Judicial Appointments Commission has thought very carefully about the way in which the process should operate. Advertisements are widely spread out. You can register with the JAC as a potential candidate for judicial appointment.

That having been said, the current process for recorder appointments has been a complete disaster. I need to tell you this, because it is a matter of ongoing concern, not just to the Bar but to the Law Society as well. There were 2,000-plus applications for 100 posts in this current round. The first thing that did happen was that the online application form that you had to fill in had to be done, of all things, during half term. That was really a chill factor for a lot of women. We had a lot of correspondents

coming to us saying, "This cannot be right". But those that were keen to get through did try to.

The system then crashed. It was repeated last week, and I regret to say my current view is that it is going to have to be repeated again, because the information that we have received—and I think Robert Bourns will be able to confirm this from the Law Society as well—within the Bar is we have been told that you had a timed slot to do your online application. For instance, you might be told you were going to do your online application from 9 am, and you had to bid for a timeslot to do it. The email with the test programme that you had to fill in would be sent to you, and then you had a limited period of time to fill it in.

We know that there have been several occasions when the email was sent 10, 15 or 20 minutes in advance of the timeslot. You then do not realise that is happening. You log on at the commencement of the timeslot, and instead of having the full 70 minutes to fill it in, you have 70 minutes less 20 minutes because the email times itself and sets that out. It is a terrible problem. You will no doubt hear more about this in due course.

That is about mechanics. Everybody that I have spoken to about content says that this round for recorder applications is a great improvement. It will not be biased towards those that have pre-existing knowledge of crime or family; it will be testing for basic judicial skills, which are transferable across different areas of law.

Robert Bourns: Going to your point, we are trying to make sure our candidates are better prepared, but there is a perception that experience at the Bar is regarded as better than other experience. I am not going to repeat the point but our candidates have had a similar experience of the mechanics of the most recent round. We have received quite a lot of complaints about that.

Finally, in relation to the content, particularly in an environment where we know the courts are dealing with so many more litigants in person, it is important that whatever recruitment process is being put in place anticipates the skills that are going to be most useful in the judicial appointment from now on, rather than something that might have been historic. People ought to keep that in mind. In those circumstances, the skills that are developed by practitioners who have had to deal with clients from end to end may be seen to be particularly relevant to a judicial process that requires managing the case without representatives in court.

Q32 **Lord Judge:** Can I leap to the other end of the process? The applicant, whichever branch of the profession he or she comes from, is told, "You have been successful". Are there any particular features you want to draw to our attention that may lead a successful applicant to decide not to take up a judicial appointment? If there is no particular knowledge about it, that is fine and good. It may be that there is.

Robin Allen QC: I think I would be repeating the point. I have very limited experience. I can think of only one person I know who has chosen not to take up appointment. There is no structural issue that this Committee needs to engage with in relation to that.

Robert Bourns: I have nothing to add, thank you, Lord Judge.

Q33 **Baroness Dean of Thornton-le-Fylde:** Every year this question comes up, and it is about diversity and the number of women coming forward. We are continually assured that things are being done. We accept it is a slow process. We accept that it is better done incrementally rather than a big swing, but fewer women applied for circuit judge in 2015 than in previous years. A blip is understandable but from 31% to 14% is a hell of a drop in such a very short period. The proportion of recommendations for circuit posts has also declined, from 42% to 25%. That is driving the figures all in the wrong way and, if that continues, will not achieve what everybody, whether on that side of the table or this, wants to achieve with regard to diversity. Would you like to comment on that, please?

The Chairman: Ms Grant, would you like to start? You are billed as an equalities champion.

Millicent Grant: Yes. I also represent CILEx on the JAC diversity forum and the pre-application judicial education working party that it set up. CILEx has a very good diversity profile. Seventy-five per cent of its members are women, approximately a third of students are from black and minority ethnic groups, and we are very well represented with our members as regards social mobility.

With that diversity, and some of the things I mentioned before, women may be reluctant to enter the judicial profession, especially when they see that the number of women is falling. Even if they do not know why, if they see that fewer women are coming to the judiciary, that might be a detriment to them. They may feel that they are not welcome. They may not have the flexibility in the profession that they need for their life circumstances. They may want to feel that they are going to be made welcome, but may not feel that. There may be some who are changing careers, and it might not really appeal to them to be starting something like this at that stage, at that age.

For chartered legal executives thinking of feeding through from the more junior judicial roles, the age profile is very diverse as well, so you will have older chartered legal executives who can bring more life experience into the judiciary. We are capturing women, but as part of the whole of our membership, to feed them all the way through beyond district judge level. That is where I perceive the greatest need is: above that level.

Baroness Dean of Thornton-le-Fylde: Ms Grant, what proportion of your membership are women?

Millicent Grant: I am not sure, but I can send that information, if you like. It is fairly high.

The Chairman: Mr Allen, would you like to add anything on this?

Robin Allen QC: The first thing to say is that it may be that this particular year is a blip, but there is an underlying really profound problem about the difficulties that women face having a career in the law generally. We know that. One of the very first things I did when I took over the chair of this committee was to commission something called a momentum measures report to see when, within the Bar, we could expect an equal profession of men and women. I regret to say, on current trends, the answer is never.

Baroness Dean of Thornton-le-Fylde: That is my estimate too.

Robin Allen QC: That is where we are currently at and, indeed, the Bar Standards Board has recently repeated the exercise and come to a very similar conclusion. Underlying all that are some causes for hope and some grounds for analysing the problem as lying not necessarily within the structure of the profession itself but the way in which law is done, as far as the Bar is concerned.

At the moment, at pupillage, starting in practice, we have probably more than 50% of women getting through pupillage and into chambers. Starting out in practice women do really well at the moment and we have probably got equality. However, somewhere between late 30s and early 40s women leave the Bar or go into part-time positions. Their careers are stalling around about then. It is directly associated—and we know this, because we analyse people who change their status at the Bar—with caring responsibilities. Incidentally, there is no reason at all why men should not have equal caring responsibilities, and there is a lot of work being done to try to persuade male barristers to do this equally and chambers to have similar provisions for parental leave for men and women. I will leave that to one side. The difficulty is that carrying on in your profession when you have caring responsibilities is increasingly difficult.

I will give you a single example. A judge is under pressure to finish a case by the end of the week. There may be reasons for it. It is a recorder who has an appointment for a week; he has a criminal trial; he is not sitting next week; and he is gently encouraged to get it done during the week. For reasons that are not under the recorder's control, witnesses turn up late and the thing goes slower and slower. You are a female defence barrister or a female prosecutor. The judge says, "I think we will stay a little later than 4 pm", because they want to get through it; "I want to get to 4.30 pm or 5.00 pm". You are thinking that your childminder or parent is not going to be there, and the pressure becomes greater and greater at that point.

There are some things being suggested at the moment to try to address that. There should be rigid guidelines for judges to agree timings for cases, so that women—and indeed all carers, men and women—can be sure that the court day will stop at 4 pm or 4.30 pm and they can go back and take on their caring responsibilities and so on.

But, unquestionably, the pressure within the system makes it very difficult to manage caring responsibilities at the same time as keeping on with full-time practice. That is causing people to change the way their practice runs, partly to leave the Bar and to go into part-time practice and so on. They are not seeing the next step of going into the judiciary as a real option. We are trying to encourage better opportunities for part-time working, because we think that will help, and more understanding from the judicial system that people have lives outside court and accommodating that at the same time.

The Chairman: Mr Bourns, would you like to add anything?

Robert Bourns: I do not have a great deal to add. What I have been told is it is a perception around—or a reality of the experience of—the listing of cases and the way they are then managed and how that impacts on the capacity to work: for example, sit only during term times, or whatever it may be. This could be achievable, you would think, in a number of circumstances.

We have a very diverse population. We have an increasing influence of people working in an in-house environment, where, again, one of the incentives of work in-house is the belief that there is a greater capacity to work on a flexible basis, reflecting your own aspirations and the other demands on you and your other responsibilities. There may be a need for the courts to be managed in a way that feels more contemporary in terms of the listing and when people sit.

The Chairman: Lord Norton, I think your question has been touched on but do you want to ask it briefly?

Q34 **Lord Norton of Louth:** Yes. It is another process question. It relates to candidates from black and minority ethnic backgrounds when they apply for the level below the High Court. The JAC has admitted that there is a disproportionate failure rate from application to being successful. It has looked at that a number of times, but it concluded it has reasonable confidence that the processes it operates are not themselves responsible. Would you agree with that and, if not, what would explain this failure rate?

Millicent Grant: I have some comments on that. We do not have statistics from CILEx, but from my experience and as a tutor for adult education, it is very useful. It could be that the questions that they have to answer and what is being tested is biased towards a particular background, social group or life experience, based on tradition. It has been mentioned in our submissions here that perhaps we need to consider what we are measuring. Are we measuring what was needed for judges in the past, or are we measuring what is needed for judges in the future? That might be something to consider.

When I was a tutor, I had to assess the papers that were sent through, and I could not send them through for verification by CILEx until they passed. One of the things I noted was that many people for whom

English is not a first language may have a problem in adequately expressing themselves on paper. It may even be down to grammatical errors and things like that, but I could not pass it. Consequently, for the record, they would be failing quite often. They may understand something, but they cannot express themselves very well.

As there is no analysis of the applications of the type that I mentioned or suggested earlier, there is no way of telling whether they may be failing for that reason, or for any other reason. Without an analysis, it will be very difficult to identify why this is happening. I would suggest that that be included as part of the evaluation process.

Lord Norton of Louth: Ms Grant, do they get feedback on that so they can apply again at a later stage and address the sorts of concerns you have identified?

Millicent Grant: I do not know about judicial applications, but when I had to do the papers I had to do that, because I had to pass them through and get them through the exam. I had to tell them what was wrong—not give them the answer but just say, “Look at this”, and just give them some guidelines.

The Chairman: Is there anything from either of the other two on that?

Robin Allen QC: This is a hugely important question, and I regret that we are short of time when we get to it. I absolutely reject any suggestion that BAME lawyers are less competent to be judges than white lawyers, and I doubt very much that anyone else in the room would want to advance that argument.

If it is not a competency issue, it may be a qualification issue. That is why my committee puts so much effort into trying to work within the Judicial Diversity Forum to develop this pre-application judicial education. That is really critical. In due course, this will require some funding from the MoJ. Any support this Committee gives to this idea will be most welcome as a push in that direction.

What else may be at work is that the failure rates over the past have been quite a common theme and they are quite well known. Notwithstanding that we are a generation away from the passing of the Race Relations Act, we have no or very few obvious role models of successful BAME judges. There are none in the Court of Appeal, none in the Supreme Court and a very limited number now—depending on how you assess it, about two—in the High Court. There are some chilling factors at work here. Why would you have a go at this?

That may mean that the people applying are doing it for economic reasons rather than for reasons connected with having real professional skills that are at the right point to go forward. I cannot tell you that that is the case but that is my supposition. What I am absolutely clear on is that this will not be remedied without real positive action by all the players involved. I am also clear that there is a potential crisis of

legitimacy of the judiciary unless this is addressed. We cannot go forward in a diverse Britain without a diverse judiciary. We really cannot. It is noticed. It is significant. It is increasingly important. We really have to address it.

Lord Norton of Louth: Presumably, your initiative that you have identified is going to take some time to work itself through before we see people at the level that you are identifying.

Robin Allen QC: We have to get it going first of all. At the moment, we are working up the curriculum. Initially there was some reluctance about it but now the Judicial Diversity Forum has adopted it as a way forward. It will require some money from the MoJ to do it. It will then need to be delivered. We will have to get people to deliver it and we will have to work out a scheme to ensure that there can be some real positive action. Then we have to encourage people to get into it and go through it and take advantage of it. Personally, I am completely committed to this. I look back over my career, having worked in the field of equality now since the call in 1974, and I am appalled at the lack of progress we have made towards a really diverse judiciary.

The Chairman: Thank you. Do you have anything to add, Mr Bourns?

Robert Bourns: There are a whole host of factors in here. There are perceptions and support groups. If people are unsuccessful again, who do they fall back on? What do they do next? Do they come back and go in for more? It is very important to find those role models. I mentioned Tan Ikram earlier, who works very hard within the EMLD BME community. We have social mobility ambassadors, which we recruit year on year. If you were—and you would all be very welcome—to come through the front door of the Law Society's hall, you would see pictures of this year's social mobility ambassadors. Two of them are members of the judiciary and they demonstrate how you can achieve judicial appointment, notwithstanding an atypical route into the profession. We have just got to do so much more.

The Chairman: Thank you. I am glad we managed to find time to include that important subject and you have given us a very clear message on it. It has been a very productive session, and having the Bar Council, the Law Society and CILEx sitting alongside each other has added to the productivity. Can I thank you all very much indeed? Your answers have been extremely helpful and informative, and they have advanced our inquiry quite considerably.