Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission

Irish Human Rights and Equality Commission

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Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
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Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014* (the '2014 Act'). In accordance with its founding legislation, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report its views on any implications for human rights or, equality.[1]

The Commission welcomes the opportunity to provide the Minister for Justice with initial observations on the General Scheme of the *Judicial Appointments Commission Bill 2020* (the 'General Scheme'). The Commission remains available to assist the Minister if further observations on the proposed legislation are required.

An independent and diverse judiciary

An independent and diverse judiciary are fundamental components of a functioning democracy.

Judicial independence is a cornerstone of the rule of law and access to justice.[2] Independence of the judiciary is an essential element for an individual's perception of the judiciary and confidence in the judicial system.[3] Perceptions about the independence of a judiciary can affect an individual's decision to:

> "bring cases to court, to refrain from legal action or, if available, to use other methods of dispute resolution".[4]

Interference with judicial independence and attempts at influencing judges can severely undermine the protection and recognition of human rights.[5] In this respect, the process

[1] Section 10(2)(c) of the Irish Human Rights and Equality Commission Act 2014.
[2] Fundamental Rights Agency, Fundamental Rights Report 2020 (June 2020) page 201
[3] In a 2019 Eurobarometer survey, 94% of respondents thought that the independence of judges was essential or important. See European Commission, Rule of Law: Special Eurobarometer 489 (July 2019).
[4] Frans van Dijk, Perceptions of the Independence of Judges in Europe: Congruence of Society and Judiciary (2021) Palgrave Macmillan, page 14.
[5] Council of Europe Commissioner on Human Rights, The independence of judges and the judiciary under threat (03 September 2019) Press release.

and procedures in place for the selection and appointment of judges are key factors in ensuring the independence of the judiciary.[6]

Furthermore, from a rule of law perspective, a judiciary should be representative of the diversity nature of society.[7] A diverse judiciary envisages a judiciary that reflects society as a whole, in terms of age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status.

There are a number of rationales presented for why this is important, including:

- Democratic legitimacy: A diverse judiciary will better represent society as a whole, and in particular court users;
- Equal opportunity and fairness: The presence of judges from diverse backgrounds is important for showing equal opportunity in the process of judicial appointments and for demonstrating that the process is fair, merit-based, and non-discriminatory;
- Public confidence and trust: A lack of diversity, in terms of age, civil status, disability, family status, gender, ethnicity including membership of the Traveller community, religious belief, sexual orientation and socio-economic status in the judiciary can call into question the objectivity and accessibility of the system;
- Role models: Judges from marginalised demographic groups, currently under-represented on the judiciary, including women and other groups protected under equality legislation, can serve as inspiration for those with similar backgrounds to seek and obtain judicial office; and
- Broader range of perspectives: Judges from diverse backgrounds can make a difference due to their different life experiences, values and attitudes.[8]

Background to proposed legislation

The constitutionally protected role of the judicial appointments process means that any legislative mechanism for the appointment of judges can only be advisory in nature and cannot have the final say in judicial appointments.[9] At present, in cases of judicial

[6] United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy (24 March 2009) A/HRC/11/41, para 95.
[7] United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul (29 April 2011) A/HRC/17/30.
[8] See overview in Dermot Feenan, Women Judges: Gendering Judging, Justifying Diversity (2008) 35 (4) Journal of Law and Society 490; Rosemary Hunter, More than just a different face? Judicial diversity and decision-making (2015) 68 Current Legal Problems 119; Laura Cahillane, Judicial Diversity in Ireland (2016) 6(1) Irish Journal of Legal Studies 1; JUSTICE, Increasing Judicial Diversity (2017).
[9] The President of Ireland is responsible, under the Constitution, for appointments to judicial office (Article 35.1 of the Constitution).This power may only be exercised by the President on the advice of the Government (Article 13.9 of the Constitution).

vacancy, the Judicial Appointments Advisory Board (the 'JAAB'), established pursuant to Part IV of the *Court and Court Officers Act 1995*, is responsible for receiving applications from practicing lawyers (but not sitting judges seeking promotion) and providing the Minister for Justice with a list of at least seven names suitable for appointment to judicial office.

In December 2013, the Minister for Justice announced a consultation process on the system of judicial appointments, including the role of the JAAB. In 2017, the Government introduced the *Judicial Appointments Commission Bill 2017* (the 'Bill'). The Bill provided for a Judicial Appointments Commission of 13 members to be chaired by a lay member and include the Chief Justice, the President of the Court of Appeal, the President of the High Court, the Attorney General, a practising barrister, a practising solicitor, and six lay members. The Bill was subject to prolonged discussion in the Houses of the Oireachtas, and there were a significant number of amendments proposed to the Bill. The Bill was passed by the Dáil in May 2018, and by the Seanad in December 2019. The Bill, as amended by the Seanad, was returned to the Dáil, and it lapsed with the dissolution of the Dáil and Seanad in January 2020. The 2020 Programme for Government contained a commitment to enact the Bill within the first six months of Government. In December 2020, the Minister for Justice published the General Scheme, announcing that she has secured Government approval for the drafting of the Bill.

The key elements of the General Scheme can be summarised as follows:

- The Judicial Appointments Commission (the 'JAC') will be made up of 9 members - lay members (4), members of judiciary (4) and the Attorney General (1) (in a non-voting capacity) (Head 9);
- The JAC shall select and recommend persons to the Minister for appointment to judicial office (Head 11);
- Decisions to recommend persons for appointment to judicial office shall be on the basis of merit (Head 6) and shall have regard to the following objectives: that the membership of the judiciary should comprise equal numbers of men and women; that the membership of the judiciary should (to the extent feasible and practicable) reflect the diversity within the population as a whole; and that the membership of the judiciary should include persons with a proficiency in the Irish language (Head 6);
- Legal academics will be eligible to be appointed to the judiciary (Head 38(1));

- Serving judges who wish to be considered for promotion to a higher judicial position must also apply to the JAC (Head 43(1));
- That, where there is a vacancy, or the Minister anticipates a vacancy, the Minister shall request the JAC provide the (unranked) names of five persons (plus an additional three names for each additional vacancy), and a statement of the name of each eligible person who made an application(Head 44); and
- That in advising the President in relation to a judicial appointment, the Government shall firstly consider for appointment those names recommended by JAC (Head 51).

Relevant Human Rights and Equality Standards

Judicial independence and impartiality

The constitutionality of judicial appointments by the executive was considered in Beades v Ireland.[10]

Haughton J stated that:

> "the mere fact that a person is appointed to office, or a judge to the presidency of a court, on the nomination and advice of the executive does not mean that such judge is not independent".[11]

Haughton J noted in particular that Art.35.2 of the Constitution states that;

> "All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law".

Haughton J held that this Constitutional mandate was in line with the first of the *UN's Bangalore Principles on Judicial Conduct, 2002*.

Article 6(1) of the *European Convention on Human Rights* (the 'ECHR') provides for the right to a fair and public hearing "by an independent and impartial tribunal". The appointment of judges by the executive will not contravene the independence of the judiciary guaranteed by Article 6 of the ECHR, provided that the appointees are free from influence or pressure when carrying out their adjudicatory role.[12] In Filippini v San Marino, the European Court of Human Rights (the 'ECtHR') found that political

[10] [2016] IEHC 302; upheld on appeal [2018] IECA 64.
[11] [2016] IEHC 302, para.62.
[12] *Campbell and Fell v United Kingdom* App nos 7819/77 and 7878/77 ECtHR, 28 June 1984; *Urban v Poland* App No 23614/08, ECtHR, 30 November 2010; *Fruni v Slovakia* App No 8014/07, ECtHR 21 June 2011; *Maktouf v Bosnia-Herzegovina* App nos. 2312/08 and 34179/08, ECtHR 18 July 2013 [GC].

sympathies, while they may play a part in the appointment of judges, could not in themselves give rise to legitimate doubts as to their independence and impartiality.[13] Further, in Ástráðsson v Iceland,[14] the Grand Chamber found a violation of Article 6 wherein the participation of a judge whose appointment had been undermined by grave irregularities was found to have impaired the very essence of the right to a fair trial. The ECtHR noted that:

> "the process of appointment of judges may be open to undue influence and finds it therefore calls for strict scrutiny".[15]

The ECtHR's jurisprudence places a high emphasis on independence and impartiality.[16] However, it does not exclude the possibility of executive appointment, such as is provided for in the *Constitution of Ireland*.

Article 47 of the *Charter of Fundamental Rights of the European Union* ('the Charter') provides, that everyone is entitled to a fair and public hearing:

> "by an independent and impartial tribunal previously established by law."

Article 19(1) subparagraph 2 of the *Treaty on the European Union* ('TEU') provides:

> "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law".

In A.K. (Independence of the Disciplinary Chamber of the Supreme Court)[17] the Court of Justice of the European Union (the 'CJEU') considered the Polish law which reduced the age of retirement for judges. In its judgment, the CJEU considered the role of a judicial council in the appointment process.

[13] App no 10526/02, ECtHR 6 August 2003.
[14] App no 26374/18, ECtHR 1 December 2020 [GC].
[15] App no 26374/18, ECtHR 1 December 2020 [GC], para.226.
[16] In a series of upcoming cases, the ECtHR will consider the compatibility of Polish judicial reforms with Article 6 of the ECHR see; *Żurek v Poland* (App no 39650/18), *Xero Flor v Poland* (App no 4907/18), *Reckowicz v Poland* (App no 43447/19, 49868/19, 57511/19, *Advance Pharma v Poland* (App no 1469/20.
[17] (C-585/18) Judgment of 19 November 2019 [GC].

The CJEU held:

> "The participation of such a body, in the context of a process for the appointment of judges, may, in principle, be such as to contribute to making that process more objective … In particular, the fact of subjecting the very possibility for the President of the Republic to appoint a judge to the Sąd Najwyższy (Supreme Court) to the existence of a favourable opinion of the KRS [National Council of the Judiciary] is capable of objectively circumscribing the President of the Republic's discretion in exercising the powers of his office.
>
> However, that is only the case provided, inter alia, that that body is itself sufficiently independent of the legislature and executive and of the authority to which it is required to deliver such an appointment proposal".[18]

It is of note that the Polish National Council of the Judiciary included members from both chambers of the Polish Parliament, raising questions as to its independence from the legislature.

The CJEU ultimately held:

> "Article 47 of the Charter [...] must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provision. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law".[19]

The CJEU first interpreted and applied the term 'established by law' to comprehensively review a judicial appointment procedure in March 2020 in Simpson

[18] (C-585/18) Judgment of 19 November 2019 [GC], paras.137-138.
[19] (C-585/18) Judgment of 19 November 2019 [GC], para.171.

and HG v European Commission.[20] This decision did not directly concern a national judicial appointment, but rather an irregularity affecting the procedure for appointing a judge to the (former) EU Civil Service Tribunal. However, conclusions as to the application of EU law on national judicial appointments can be extrapolated from its reasoning.

In Simpson v HG, citing both A.K. and the ECtHR decision in Ástráðsson, the CJEU found:

> "An irregularity committed during the appointment of judges within the judicial system entails an infringement of first sentence of the second paragraph of Article 47 of the Charter particularly when that irregularity is of such a kind of such a gravity as to create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process and thus give rise to a reasonable doubt in the minds of individuals as to the independence and the impartiality of the judge or judges concerned, which is the case when what is at issue are fundamental rules forming an integral part of the establishment and functioning of that judicial system".[21]

As with the ECHR, the *EU Charter* places a heavy emphasis on the importance of independence,[22] but does not appear to prohibit appointment by the executive,

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[20] (C-542/18 and C-543/18), judgement of 26 March 2020 [GC].

[21] (C-542/18 and C-543/18), judgement of 26 March 2020 [GC], para.75.

[22] In December 2020, Advocate General Hogan in Repubblika v Prime Minister, C-896/19) following the decisions in AK and Simpson and HG, held EU law does not preclude the executive from playing a role in the appointment of members of national judiciary, however Article 19(1) TEU, read in light of Article 47 of the EU Charter, is applicable when a national court is assessing the validity of a procedure for the appointment of judges. Advocate General Hogan continued:

> "Neither EU law nor, for that matter, the ECHR impose any fixed, a priori form of institutional guarantees designed to ensure the independence of judges. What is important, however, is that, first, judges must be free from any relationship of subordination or hierarchical control by either the executive or the legislature and, second, judges must enjoy actual guarantees designed to shield them from such external pressures. In these circumstances, it is only if one of these aspects of the procedure for the appointment of judges were to present a defect of such a kind and of such gravity as to create a real risk that other branches of the State – in particular the executive – could exercise undue discretion via an appointment which was contrary to law, thereby undermining the integrity of the outcome of the appointment process (and thus giving rise in turn to a reasonable doubt in the minds of individuals as to the independence and the impartiality of the judge or judges concerned), that the appointment procedure in question might be contrary to Article 19(1) TEU."

provided that there is no risk that the executive could exert control or influence of the judge once appointed.

The UN Human Rights Committee has described the obligations relating to independence of the judiciary arising under Article 14 of the *International Covenant on Civil and Political Rights* (the 'ICCPR') as follows:

> "The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature".[23]

The principle of equality and non-discrimination: Gender balance and diversity

Article 40.1 of the Constitution and Article 14 of the ECHR guarantee respectively; equality under the law and the right to enjoy rights and freedoms without discrimination.[24] Article 21 of the Charter places an obligation on the State to ensure any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

The United Nations Human Rights Council's Special Rapporteur on the Independence of Judges and Lawyers (UN Special Rapporteur) has recommended that:

> "States should enact appropriate measures to ensure a gender perspective in the composition of a council and promote gender parity within judicial bodies, in

[23] United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007.

[24] Article 2(1) of the ICCPR requires States to respect and ensure the rights under the Covenant without distinction.

particular, through a reduction in gender-based barriers to promotion and career advancement that persist within the justice sector".[25]

In its report on the Independence of the Judicial System, the Venice Commission noted:

> "Diversity within the judiciary will enable the public to trust and accept the judiciary as a whole. While the judiciary is not representative, it should be open and access should be provided to all qualified persons in all sectors of society".[26]

The European Network of Councils for the Judiciary (the 'ENCJ')[27] issued its *Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary 2012*.

In similar terms, it recommends greater diversity as follows:

> "Diversity in the range of persons available for selection for appointment should be encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas per se, adding that any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit".[28]

The Latimer House Principles, approved by the Commonwealth Parliamentary Association and cited by the EU, provide guidance on judicial appointments in common law systems.

The Principles include:

> "Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination".[29]

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[25] United Nations Human Rights Committee, Report of the Special Rapporteur on the Independence of Judges and Lawyers (2 May 2018) A/HRC/38/38, para.110

[26] Council of Europe, European Commission for Democracy Through Law, 'Report on the Independence of the Judicial System Part I: The Independence of Judges' (16 March 2010) CDL-AD (2010)004, para.26.

[27] The ENCJ is a network of the institutions which support the independent delivery of justice of the EU member states. The Irish member is the Courts Service.

[28] European Network of Councils for the Judiciary, 'Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary' (11 May 2014), para.8

[29] The Commonwealth Parliamentary Association, 'Commonwealth (Latimer House) Principles on the Three Branches of Government' (2008), para.11.

Observations on the General Scheme

The judicial independence and equality issues arising under the General Scheme are considered below in respect of: membership of the JAC, selection procedures and processes, receipt by Government of JAC recommendations and gender balance and diversity. However, as a preliminary matter, the ongoing constitutional role of government in relation to judicial appointments is considered.

The Government's constitutional role

The JAC, once established, will function in the context of the Government's constitutional role to advise the President on judicial appointments.

In this respect it is understood that the JAAB deliberately provided large lists of unranked candidates to Government on foot of legal advice that limiting the number of candidates might be unlawful.[30] It is unfortunate that this legal concern was not addressed at the time of the passing of the *Courts and Court Officers Act 1995* and indeed may be indicative of the chilling effect that the government's constitutional role can have on a body such as JAAB.

The approach taken by JAAB may be a lesson on the risks that arise if the JAC does not have sufficient statutory guidance in the carrying out of its functions. In this respect, the Government's constitutional role makes it much more likely that the JAC will be cautious in its approach.

The Commission recommends that the Bill should include as much detail as possible in respect of the role of the JAC and the parameters in which it is to operate. The full legal ramifications of those parameters and any potential constitutional limits can be considered within the legislative process, rather than being the subject of unpublished legal advice at a later stage.

The Judicial Appointments Commission (the 'JAC')

Per Head 9 of the Bill, the composition of the JAC shall be:

- the Chief Justice (who will also be the ex officio chair);

[30] Carroll-MacNeill The Politics of Judicial Selection in Ireland (Four Courts Press, 2016), pp.127-128; Byrne, McCutcheon, Cahillane and Roche-Cagney, Byrne and McCutcheon on the Irish Legal System 7th ed, (Bloomsbury Professional, 2021), para.4.119; Judicial Appointments Advisory Board Annual Report 2002, pages 23-24.

- the President of the Court of appointment;
- two further judges nominated by the Judicial Council, one of whom will be a former barrister and one of whom will be a former solicitor;
- four lay persons, to include a lay person who is a member of IHREC; and
- the Attorney General (in a non-voting capacity).

Head 11(2) provides that:

> "subject to this Act, the JAC shall be independent in the performance of its functions".

Head 14 provides that lay persons shall be selected and appointed through the Public Appointments Service ('PAS') and in selecting members, PAS shall have regard to the objective that lay members should comprise an equal number of women and men, and should reflect the diversity of the population as a whole. Head 17 provides for the cessation and disqualification of membership where members, or the Director are nominated as a member of the Seanad, Dáil, European Parliament, or local authority. Heads 20-24 deal with cessation, disqualification and removal of both judicial and lay members of the JAC.

It is clear from the human rights standards cited above that bodies established to appoint members of the judiciary should be independent from the executive. In particular, the UN Special Rapporteur observed (in 2018):

> "In order to guarantee the independence of the judiciary, international and regional standards recommend that decisions on the appointment and promotion of judges be taken by a judicial council or an equivalent body independent of the legislative and executive branches of power. International and regional mechanisms have made similar recommendations".[31]

In similar terms, the Council of Europe Committee of Ministers has also stressed the importance of the independent functioning of an authority established to appoint members of the judiciary, recommending that:

> "The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to

[31] United Nations Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers , A/HRC/38/38 (2 May 2018), paras.48-49.

guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary [...] should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice".[32]

The Attorney General

Accordingly, the rationale for the presence of the Attorney General on the JAC is unclear. While the Attorney General does not have a vote, their membership could mean that they can exercise influence over the decision-making of the JAC. The Attorney General is the Government's chief legal adviser, and arguably this provides a means of executive involvement in the JAC's proceedings. This is particularly so, given that the Attorney General also sits at cabinet (again, in a non-decision-voting role), including at cabinet meetings where decisions on judicial appointments are made. The JAC will be subject to an ultimate constitutional veto by the executive in any event. To include the Attorney General on the JAC presents the obvious risk of 'double-counting' the view from the executive. Independence from the executive and legislature was the precise issue in the A.K. case before the CJEU. Given the primacy of EU law, this is an issue of particular concern.

The Commission recommends that proposed legislation be revised to remove the Attorney General from membership of the JAC, to ensure independence from the executive.

[32] Council of Europe Committee of Ministers, Recommendation. 'Judges: Independence, Efficiency and Responsibilities' CM/Rec (2010)12, paras.46 – 47.

Members of the judiciary

The JAC will be made up of four members of the judiciary (one of whom will be the Chief Justice and the other the President of the Appointing Court). The two other judicial members will be nominated by the Judicial Council. The remaining members include the Attorney General and four lay members.

International guidance recommends that to ensure independence of such bodies, at least half of the members should be judges chosen by their peers. [33] The *Council of European Charter on the Statute of Judge* (the 'ECSJ') provides;

> "In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary." [34]

Furthermore, in relation to the need for a diverse composition of members on such bodies; the Venice Commission observed;

> "The mere existence of a high judicial council cannot automatically exclude political considerations in the appointment process. In Ireland, although there is a judicial appointments commission, political considerations may still determine which of rival candidates, all approved by the commission, is or are actually appointed by the Minister of Justice (and the commission has no role in relation to promotions).
>
> [...]
>
> A balance needs to be struck between judicial independence and self-administration on the one side and the necessary accountability of the judiciary on the other side in order to avoid negative effects of corporatism within the judiciary. In this context, it is necessary to ensure that disciplinary procedures against judges are carried out effectively and are not marred by undue peer

[33] ibid.
[34] Council of Europe, European Charter on the Statute for Judges (10 July 1998) para.1.3.

restraint. One way to achieve this goal is to establish a judicial council with a balanced composition of its members".[35]

Accordingly, further consideration should be given to increasing the number of members of the judiciary to the JAC, or removing the Attorney General, to even the numbers. Also as is required for the appointment of lay members, the Judicial Council, in nominating judges to the JAC should endeavour to reflect the need to achieve gender balance, and diversity on the JAC.

The Commission recommends that members of the judiciary should be increased to at least half of those who sit on the JAC.

The Commission recommends that the nomination or, appointment of judicial members to the JAC be revised to require gender balance and, as far as practicable, reflect the diversity of population in terms of age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status.

Lay members

Heads 14 and 15 provide for the selection of lay persons by PAS. Mixed membership on the JAC is extremely important in terms of avoiding the perception of self-interest, self-protection and cronyism and ensuring the JAC reflects the diversity of the population. However, robust safeguards should be in place to ensure that such appointments are independent and free from pressure from the executive, or from subordination to other political parties.[36]

Currently, the selection process as provided under the General Scheme lacks sufficient details. In this regard, guidance could be drawn from the legislation underpinning other

[35] Council of Europe, European Commission for Democracy Through Law, 'Judicial Appointments' Opinion 403/2006 (22 June 2007) CDL-AD (2007)028, para.27.

[36] Council of Europe Consultative Council of European Judges Opinion No 10: Council for the Judiciary in the Service of Society (23 November 2007), para.30. Opinion No. 10 on 'the Council of the Judiciary in the Service of Society; finding:" A mixed composition would present the advantages both of avoiding the perception of self-interest, self-protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy. However, even when membership is mixed, the functioning of the Council for the Judiciary shall allow no concession at all to the interplay of parliamentary majorities and pressure from the executive, and be free from any subordination to political party consideration, so that it may safeguard the values and fundamental principles of justice".

independent statutory bodies, such as the *Irish Human Rights and Equality Commission Act, 2014* (the '2014 Act') and the *Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015*. For example, section 13 of the 2014 Act (which deals with appointment of members) provides for specific and detailed steps required by PAS in the selection of its members. For instance, PAS is required to appoint members of the selection panel from persons who have specific and relevant experience and expertise.[37] The 2014 Act further provides that of the members on the selection panel, one shall be nominated by the Director of the European Union Agency for Fundamental Rights. Also, section 13(7) explicitly states that a vacancy on the Commission shall be advertised publicly.

The Commission recommends that Heads 14 and 15 be revised to provide for more detail on the process of selection for members to be appointed to the JAC. In this the statutory procedures for the appointment of members provided for under the 2014 Act and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 are instructive.

The Commission recommends that the proposed legislation explicitly requires that all vacancies are advertised in a public and accessible manner.

The General Scheme provides that the appointment of lay persons (other than the lay person nominated by IHREC) shall be for a period of 3 years. It further provides that such persons may be reappointed by the Minister for one further period of 3 years, without the need for a recommendation.[38]

The Policing Authority and IHREC have explicit provisions preventing re-appointment after serving 2 consecutive terms of office or serving maximum number of years.[39] No similar provisions exist in respect of the JAC. It is further noted that no similar time-

[37] Section 37(5) of the IHREC Act 2014, states; " The Service shall appoint the members of the selection panel from amongst persons who, in the opinion of the Service, have relevant experience of, and expertise in relation to, matters connected with any or all of the following:
(a) human rights matters or law;
(b) equality matters or law;
(c) public sector administration and reform;
(d) board management and corporate governance."

[38] Head 12 of the General Scheme. It is noted that limitations are fixed for the Director under Head 34.

[39] See for example section 12 of the Irish Human Rights and Equality Commission Act, 2014 and section 62 E of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015.

limits are required for judges nominated by the Judicial Council, or for the lay member nominated by IHREC.

The Commission recommends that the General Scheme be revised to include time-limits and rules relating to reappointment of all lay members and members nominated by the Judicial Council.

Recusals

Heads 52(1) and 48(4) of the General Scheme provide for recusal in the case of decisions on judicial appointments and appointment as Chief Justice or as President of one of the other Superior Courts. A formal requirement of recusal is to be welcomed but must be robust in practice to ensure transparency and independence.

The Commission welcomes the formal requirement for recusals in cases of decision on judicial appointments, but recommends that robust practices be put in place to ensure transparency and independence.

Selection procedures and processes for the JAC

The General Scheme provides for requirements relating to processes and criteria for the selection of judicial appointments. These are left largely to the discretion of the JAC and its Procedures Committee and are not defined in the General Scheme. Head 56 sets out a non-exhaustive list of criteria to which JAC must have regard. That list includes the need for comprehensive procedures, including interviews and other selection tests and the objective of gender balance and diversity.

Again, the lesson of the JAAB is that the constitutional role of Government can have a chilling effect on how far a body such as JAC is likely to go of its own accord. It may be that the first Procedures Committee of the JAC takes a comprehensive approach and sets out detailed statements (as per Head 55) which provide great comfort that the problems with the current system will be resolved. However, they may not and it is only with substantial statutory guidance that it can be ensured that they will.

Practice in other common law jurisdictions makes it clear that interviews and judicial skills tests, such as role play and legal case study exercises, are a regular part of the

judicial selection process.[40] In this respect, the Bill could mandate an interview and skills test for each applicant, unless there is good reason not to have one. A mandatory requirement of this type would appear particularly useful given that Head 47 requires the JAC to provide the Minister with supporting documentation relating to each eligible person including:

> "the records and results of any interview or test conducted or held by the Commission in respect of that person".

The Commission recommends that proposed legislation include detailed and specific statutory guidance on the selection process and criteria for the selection of judicial appointments, including the provision of mandatory interviews and judicial skills exercise for each applicants, unless there is good reason not to.

In the preparation of statements on selection procedures and requisite skills and attributes, Head 55(5) provides the Committee shall consult with the President of the relevant court and:

> "may request submissions or observations from any person it considers appropriate."

Public consultation is important and therefore should form a mandatory part of this process. This is particularly important where the General Scheme gives JAC a specific statutory role in terms of ensuring gender balance and diversity, in relation to judicial appointments. Therefore, meaningful engagement with marginalised groups and groups normally underrepresented on the judiciary would assist in the identification of structural barriers to judicial appointments for these groups.

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[40] In England and Wales the website of the Judicial Appointments Commission's (the 'JAC') indicates that interviews are standard and that role play, situational questions, strategic leadership questions and a presentation are also possible elements of the selection process. In 2018 the Commission undertook a review of its shortlisting tools having regard to its diversity mandate. See Kerrin & Flaxman Review of JAC Shortlisting Tools – Summary Report and Conclusions July 2018. The Judicial Appointments Board for Scotland (the 'JABS') is responsible for adopting its own selection processes and these include interview, legal case study exercises and presentations, see: http://www.judicialappointments.scot/process/interview. The Northern Ireland Judicial Appointments Commission (the 'NIJAC') website indicates that it uses shortlisting interviews, final interview, situational judgment exercises and role play. In Ontario, the Judicial Appointments Advisory Committee (the 'JAAC') interviews candidates. Judicial Appointments Advisory Committee (Ontario) Annual Report for 2017 page16; Courts of Justice Act RSO 1990, s.43(11) (as inserted by the Courts of Justice Statute Law Amendment Act 1994 c.12).

The Commission recommends that Head 55(5) be revised to ensure that public consultation is a mandatory requirement when developing public statements under Head 55.

Recommendations based on merit

Head 6 states that any decision to recommend a person for a judicial appointment shall be based on merit. 'Merit' is not defined. Under Head 41, the candidate is required to display probity in their prior career and be suitable on the grounds of character and temperament. Head 55 which provides that the Procedure Committee publish statements on the selection procedure and requisite skills and attributes, defines requisite skills and attributes as:

> "competencies, personal attributes and characteristics that a person must possess in order that he or, she may be considered suitable for selection".

Head 57 provides for certain matters that the Procedure Committee should have regard to when preparing the statement of skills and attributes, including for example independence and legal knowledge.

In relation to selection procedures, the UN Special Rapporteur observed (in 2018):

> "The procedure for the selection, appointment and promotion of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, independence and impartiality".[41]

The UN Special Rapporteur's final recommendations on judicial appointments included:

> "The procedure for the selection and appointment of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, sense of independence and impartiality. Competitive

[41] United Nations Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers (2 May 2018) A/HRC/38/38, paras.48-49.

examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process".[42]

The Commonwealth Office of Civil and Criminal Justice Reform, in its Model Law on Judicial Service Commissions, provides guidance in this regard:

1) In selecting applicants for judicial office the Commission is to have regard to:
    a) professional qualification and experience;
    b) intellectual capacity;
    c) integrity;
    d) independence;
    e) objectivity;
    f) authority;
    g) communication skills;
    h) efficiency; and
    i) ability to understand and deal fairly with all persons and communities served by the courts.
2) In addition to the qualities referred to in subsection (1) the Commission is to give consideration to the desirability that judicial officers should broadly reflect the diversity of the community in terms of gender, ethnicity, religion and regional or social groupings.[43]

The meaning of Heads 6, 41 and 55(7) are dependent on context and lack sufficient detail to ensure that the selection, appointment and promotion of judges will be based on objective criteria. If the JAC is to identify the necessary skills, then clear statutory guidance allows the Oireachtas to reach a consensus on what those skills are. Certainly it may be appropriate for the JAC to have some leeway, but more guidance is necessary if this goal is to be certain of being achieved. In this regard, the Commonwealth Office of Civil and Criminal Justice Reform's Model Law on Judicial Service Commissions may be of assistance.

The Commission recommends that the General Scheme be revised to ensure that the procedure for the selection and appointment of judges is based on objective criteria and has regard to the following characteristics:

[42] United Nations Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers (2 May 2018) A/HRC/38/38, paras 97-99.
[43] The Commonwealth Office of Civil and Criminal Justice, 'Model Law on Judicial Service Commissions' (2018).

- **professional qualification and experience;**
- **intellectual capacity;**
- **integrity; independence;**
- **objectivity; authority;**
- **communication skills; efficiency;**
- **ability to understand and deal fairly with all persons and communities served by the courts; and**
- **diversity in terms of age, civil status, disability, family status, gender, ethnicity including membership of the Traveller community, religious belief, sexual orientation and socio-economic status.**

Receipt by government of JAC recommendations

The General Scheme proposes that there will be five names given to the Government, which is down from seven under the JAAB system. The constitutional basis for this limitation is not clear. If a limitation on the number of names is unlawful (as JAAB seems to have assumed it to be), then any limited number is unlawful. If, it is lawful to have a statutory scheme which makes recommendations to the Government which it is under no constitutional obligation to follow, then there is no reason why that number cannot be one or two.

This is particularly so, having regard to the international standards, and the EU Charter standards set out above. These standards seek to minimise the influence of the executive branch in deciding on judicial appointments. Ireland has a constitutional system of near absolute executive discretion. This makes it all the more important that any advisory system has as little influence from the executive as possible.

It is of particular note that Council of Europe Group of States Against Corruption's ('GRECO') core criticism of the JAAB process is the large number of names presented. Of particular note, GRECO in their fourth evaluation round for Ireland considered Ireland's system of judicial appointments.

The GRECO evaluation team found that:

> "The current appointments are susceptible to political lobbying and favouritism once the lengthy lists of candidates of at least seven names, but often more (sometimes up to 20 names and in extreme cases more than that) without any order of priority has been submitted to the government. … GRECO recommends that the current system for selection, recruitment, promotion and transfers of

> judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers".[44]

In the three compliance reports since the Fourth Evaluation round, in June 2017,[45] July 2018[46] and November 2020,[47] GRECO found that Ireland had not implemented this recommendation. In the July 2018 compliance report, GRECO elaborated on the nature of the concerns of executive influence:

> "it is noteworthy that the perception of a "politicised" recruitment system was not aimed at the pre-selection procedure carried out by JAAB, but rather at the fact that the JAAB, a body of the judiciary, had to produce a list of candidates (at least seven) without priority and sometimes much longer lists without any order of priority to the government for its final appointment. Consequently, the potential risk of political lobbying and favouritism referred to in the Report, was in the second stage, i.e. once the list of candidates had been established and handed to the government for decision".[48]

It is clear from this finding that GRECO will require a new Judicial Appointments Commission system to present a substantially smaller number of options to the Government in order for GRECO to be satisfied that this recommendation has been complied with.

The UN Special Rapporteur has also highlighted the importance of the executive following recommendations from independent appointment bodies in practice:

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[44] Council of Europe Group of States Against Corruption, 'Fourth Evaluation Round' (21 November 2014) Greco Eval IV Rep (2014) 3E, para.132. This recommendation was included as recommendation vii in the concluding section of the evaluation.

[45] Council of Europe Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors –Compliance Report Ireland (29 June 2017) GrecoRC4 (2017)7.

[46] Council of Europe Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors –Interim Compliance Report Ireland (5 July 2018) GrecoRC4 (2018)8.

[47] Council of Europe Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors – Second Interim Compliance Report Ireland (18 November 2020) GrecoRC4 (2020)8.

[48] Council of Europe Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors –Interim Compliance Report Ireland (5 July 2018) GrecoRC4 (2018)8, para.33

> "The Special Rapporteur considers that the involvement of the legislative or executive branches of power in judicial appointments may lead to the politicization of judicial appointments. In cases in which judges are formally appointed by the Head of State, the Government or the legislative branch, the appointment should be made on the basis of the recommendation of the judicial council that the relevant appointing authorities follow in practice".[49]

By comparison, other common law jurisdictions involve either one or two candidates being presented to the executive, with them ranked if there are two.[50] If the Government wishes to ignore that recommendation, there are, in some jurisdictions, mechanisms for having a further recommendation provided.[51] Reducing the number of names given and ranking them, as long as it does not purport to exclude Government's constitutional advisory role, will be in compliance with the Constitution.[52]

The reference in Head 47 that details of the records and results of interview be provided to the Minister for Justice does give a degree of transparency to the process and is to be welcomed. However, this will not of itself address the concerns about the large number of names to be given. Having regard to the need for transparency as it relates to the independence of the judiciary and ultimately the right to fair trial, it would be more effective to have a shorter list, ranked, with reasons for the recommendation

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[49] United Nations Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers (2 May 2018) A/HRC/38/38, paras 97-99.

[50] In the UK, the Commission puts forward one name to the Minister for Justice who either approves the recommendation or provides a reasoned request that a new process of appointment be engaged. Only one person may be selected for each recommendation. The Lord Chancellor (or appropriate authority, depending on the specific office) is under an obligation to consult with certain office holders, but then, once presented with the recommendation, the Lord Chancellor may accept it. If it is not accepted the Lord Chancellor may either reject the recommendation or direct the Commission to reconsider. The Lord Chancellor may only reject or require reconsideration once each and is then required to accept the recommendation. See Judicial Appointments Commission Regulations 2013 (UK) reg.32.
In Scotland, the Scottish Ministers are not permitted to appoint a person to judicial office if that person has not been recommended by the JABS. If the Scottish Ministers do not accept a recommendation, they are required to give notice to the JABS which must include reasons. The JABS then must reconsider its recommendation and make a further recommendation but is permitted to recommend the same person. See Judiciary And Courts (Scotland) Act 2008, s.11. Finally, Judges in Ontario are appointed by the Lieutenant Governor on the recommendation of the Attorney General. In Ontario, the JAAC gives the Attorney General a ranked list of at least two names, with reasons given for each recommendation. The Attorney General is not permitted to appoint a candidate who was not recommended by the JAAC, but may reject the recommendations and ask for a fresh list. Courts of Justice Act RSO 1990, s.42-43 (as inserted by the Courts of Justice Statute Law Amendment Act 1994 c.12).

[51] ibid.

[52] Cahillane 'Judicial Appointments in Ireland: the Potential for Reform' in Cahillane, Gallen and Hickey (eds) Judges, Politics and the Irish Constitution (Manchester University Press, 2017).

given. If this is expressly provided for in the Bill, it will ensure that the JAC is mandated to follow through on the selection process to the fullest extent. It is for Government to take the recommendation or not, but the ambiguity under the current multi-name unranked system is a significant part of the reason why the current system is not considered to meet international standards. Based on the experience of JAAB, it seems unlikely that JAC will not do this of its own accord.

The Commission recommends that if JAC is to have a meaningful role in providing an independent process, then the number of candidates that are recommended to Government should be significantly reduced. The lesson of JAAB is that this will not be done by the JAC itself. A clear statutory position needs to be taken.

Gender balance and diversity

The provision in Head 6(1) of the General Scheme that there should be an equal balance of men and women on the judiciary and that the membership should reflect the diversity within the population as a whole is welcome and consistent with the aims of international practice discussed above. Also, the general scheme requires diversity and gender balance to be taken into account the appointment of lay members to the JAC (Head 14). As this is a clear statutory obligation, it is to be expected that the JAC will follow it. Active steps to ensure diversity have been taken by other common law jurisdictions and are therefore instructive.[53]

Diversity

The General Scheme does not define what is meant by 'diversity'. To ensure meaningful engagement with the concept of diversity, it is suggested that it be explicitly defined

[53] In the UK, the Commission's duties include selecting candidates, with regard to the need to encourage diversity in the range of people available for selection. In Scotland, the JABS has also undertaken significant work to encourage diversity in applications, which again is in contrast with JAAB where being known to a member of the JAAB was a key determinant in whether a candidate was likely to be appointed. See - Carroll-MacNeill The Politics of Judicial Selection in Ireland (Four Courts Press, 2016). In Northern Ireland**,** the NIJAC is also required by law to engage in a programme of action which is designed to ensure that those appointed to judicial office are reflective of the community in Northern Ireland. Justice (Northern Ireland) Act 2002, Schedule 3, paras.6 (2) & (3) (as inserted by the Northern Ireland Act 2009). In Ontario, the JAAC conducts the selection process in accordance with criteria that it sets itself, but which must include professional excellence, community awareness and the desirability of reflecting the diversity of Ontario Society in judicial appointments. The JAAC has published a list of the elements of professional excellence and community awareness as well as the personal characteristics required which include: commitment to public service, awareness of social problems; ability to listen, patience, compassion and empathy. See Judicial Appointments Advisory Committee (Ontario) Annual Report for 2017 pages 13-14.

and that under-represented groups are named within proposed legislation.[54] The concept of diversity should at a minimum include - age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status. It should also recognise and seek to address diversity within these specified groups, such as for example, disabled women, or women from the Traveller community.

The Commission recommends that the proposed legislation define the term diversity, and at a minimum, make reference to the following equality grounds - age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status.

Published statements on diversity and gender balance

Head 55 currently makes provision for published statements on selection procedures and skills. However, no similar requirement exists in relation to gender balance or diversity. Having regard to the need to have clear statutory guidance in the context of judicial appointment processes, it would be appropriate for the JAC to publish statements on how it will pursue the objective of improving diversity, bearing under-represented and marginalised groups, as cited above. If statements (whether from the Procedures Committee or the JAC as a whole) were to include details of diversity and inclusion measures, this would give a clear statutory mandate for ongoing work in this area. This could also be a requirement of the JAC's annual report (Head 28).

The Commission recommends that the proposed legislation require that the JAC and/or the Procedures Committee publish statements on how they will pursue the objectives of improving diversity in terms of age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status.

Data collection and reporting

Head 60 provides that the Procedure's Committee shall monitor and review the implementation of the Act including:

[54] See Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2018.

"the diversity among candidates for judicial appointment".

Head 60(4) provides that the Procedure Committee shall make a report to the JAC and the JAC, having considered the report, shall submit the report and recommendations to the Minister for consideration. The General Scheme does not require publication of the reviews carried out under Head 60.[55] The General Scheme provides that the review:

> "shall be conducted 2 years after the commencement of this section and thereafter, from time to time as the Commission so requests".

Given one of the core aims of the General Scheme is to improve diversity in the judiciary, the General Scheme should provide for an explicit on-going obligation on the JAC to collect and publicly report on data concerning both the candidates and appointments to the judiciary. Such data should be disaggregated by equality grounds - including age, civil status, disability, family status, gender, race, religious belief, sexual orientation, membership of the Traveller community and socio-economic status.

The Commission recommends that proposed legislation require the JAC to collect and publish disaggregated equality data in relation to both candidates and appointments to the judiciary.

Legal academics

Head 38 seeks to amend the *Courts (Supplemental Provisions) Act 1961,* providing that legal academics shall be eligible for judicial appointment. In order to be eligible, it is proposed that legal academics must have at least 12 years' standing, hold a permanent position at a specified university and must have at least four years continuous practice experience as either a barrister or a solicitor.

The introduction of a wider pool of individuals to the judiciary is welcome, to achieve greater diversity within the judiciary. It is not clear, however, why the provision is drafted in such a restrictive manner. In particular, it is unclear why legal academics must hold a permanent position or why they are required to have at least 4 years practice experience as either a barrister or solicitor. The UK provides for a more inclusive

[55] It is noted that Head 5 which mandates a review of the legislation 5 years after the establishment day requires the Minister to make a report to each House of the Oireachtas of his or her finding from said review and that the Minister "shall have regard to the most recent report and recommendations submitted to him or her under Head 60".

approach.[56] In the UK, in additional to holding a relevant legal qualifications, legal academics and other relevant legal professionals can establish PQE through 'law related work'.[57]

Law related actives include:

- The carrying-out of judicial functions of any court or tribunal;
- Acting as an arbitrator;
- Practice or employment as a lawyer;
- Advising persons involved in proceedings for the resolution of issues arising under the law;
- Acting as mediator in connection with attempts to resolve issues that are, or if not resolve could be, the subject of proceedings;
- Drafting documents intended to affect persons' rights or obligation;
- Teaching or researching law; and
- Any activity that, in the relevant decision-maker's opinion, is of a broadly similar nature to those listed above.[58]

The Commission recommends the removal of the requirements that legal academics must hold permanent positions and have four years post qualification as a solicitor or a barrister.

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[56] The explanatory note to the Tribunals, Courts and Enforcement Act 2007 states that the 2007 Act implements the main recommendations contained in a number of reports, including the consultation paper, "Increasing Diversity in the Judiciary", published by the Department of Constitutional Affairs (now the Ministry of Justice) in October 2004 (para 3). The explanatory note provides
"A consultation paper, Increasing Diversity in the Judiciary, published by the Department for Constitutional Affairs (now the Ministry of Justice) in October 2004, invited views as to whether these statutory eligibility requirements constituted an obstacle to greater diversity in the judiciary. Responses to consultation indicated that the eligibility requirements were considered an obstacle to greater diversity in several respects. First, because they depended on possession of rights of audience before the courts, they helped to foster the (inaccurate) perception that advocacy experience was a requirement for judicial appointment, deterring eligible individuals from applying. Second, they excluded entirely members of certain legal professional groups (for example, legal executives) who might possess the skills, knowledge and experience needed to perform well in judicial office, and who also tended to be drawn from a wider range of backgrounds than barristers and solicitors. It was also argued that the existing requirements were unsatisfactory in that someone who qualified as a barrister or a solicitor but who then did no more legal work of any kind still became eligible for judicial appointment on the seventh anniversary of their qualification. Finally, respondents considered that the periods of time for which a qualification must have been held were too long, disadvantaging those who had joined the profession later in life but whose career paths might nevertheless render them fitted for consideration."
Accessible at
https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/UnitedKingdom/tribunalscourtsenforcementact-explanatorynotes.pdf

[57] Section 50-52 of the Tribunals, Courts and Enforcement Act 2007. See also Judicial Appointments Commission, Eligibility for legally qualified candidates at https://judicialappointments.gov.uk/eligibility-for-llegally-qualified-candidates/

[58] Section 52 of the Tribunal, Courts and Enforcement Act 2007 (UK) accessible at https://www.legislation.gov.uk/ukpga/2007/15/section/52



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