



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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LORD CHIEF JUSTICE OF ENGLAND AND WALES

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Introduction

1. Thank you very much for your kind invitation. I am delighted to use the occasion of a sitting of the Court of Appeal Criminal Division here in Leeds, to speak to you about diversity in the judiciary and to participate again in a Temple Women's forum, and to hear your views.
2. There are three key messages I wish to emphasise:
 - a. First, our system of justice in England and Wales can and must appoint to the judiciary the best lawyers whatever their race, gender, social background or previous legal career. Such diversity is the hallmark of justice itself.
 - b. Second, diversity can be achieved more quickly in England and Wales by the vigorous pursuit of a variety of initiatives led by the judiciary but working closely with the leaders of the professions and the Judicial Appointments Commission.
 - c. Third the selection process for the judiciary of England and Wales must ensure the best are appointed by operating on an entirely level playing field.

3. Lady Justice Hallett, chair of the Diversity Committee of the Judges' Council and I take these three messages as a basis for the development of what I might call our "mission statement". On each of these messages we must deliver.
4. Let me turn to that explanation in a little more detail.

Justice and Diversity

5. I am sure I do not need to tell any of you here how important diversity is to us all and particularly to the judiciary. I have said this before. I will continue to say it, as there is much to be done, and done now. As Head of the Judiciary of England and Wales, I have a particular responsibility to show leadership on this issue. I do so, not just because I have an express statutory duty to promote diversity; but because I believe strongly that it is imperative to improve the diversity of the judiciary. The judiciary must be truly open to everyone of the requisite ability. I simply do not accept that this is an issue where we should be content to sit back and just wait for things happen. Whatever views there are on the extent of judicial activism in developing the law, robust judicial activism is entirely right in building a diverse judiciary.
6. Diversity is important, not just to public confidence in justice. It is inherent in justice itself because it represents both fairness and equality of opportunity. Furthermore, unless we embrace the whole of our society, we do not recruit all the potential judges who ought to be appointed and who will bring to the work of a judge their skills and their expertise. We simply did not attract enough women and we did not attract enough people from Black, Asian and minority ethnic communities. We are changing that through our aim that everyone

should have a fair and proper opportunity to apply. As I shall explain, the Judicial Appointments Commission selects people on merit irrespective of background, but merit and improved diversity are entirely compatible. We need to do more to ensure that there is a level playing field and every applicant has the same fair opportunity when applying for judicial appointment to show that he or she has the potential to be an excellent judge.

Where are we now? What is the judiciary doing?

7. Next I want to turn to say something very briefly about where we are and the vigorous steps we are taking.
8. The position in the senior judiciary has greatly changed in the past 10 years. In 2005 there were two female judges in the Court of Appeal, but now we have eight. In the High Court in 2005 there were 10 women, and now there are 21. There has been a steady increase in the number of female Circuit Judges to one in five; and more than half of all judges in courts and tribunals under 40 years of age are women (it is about 55 per cent).
9. But what of the two main entry level positions so crucial for the future: that is Recorders and Deputy District Judge? I cannot say anything in relation to the current criminal and family Recorder competition, as the appointments, although about to be announced, have not yet been announced. As to Deputy District Judges, there has been a particular increase in the proportion of women among them from about 25% to 37% in the past 10 years. This is very important because of the curtailment of the opportunity of being appointed a Civil Recorder.

10. Whilst those improvements have been made, I have no doubt whatsoever that much more not only needs to be done, but it can be done; not just to increase the number of women in the judiciary, but also to see improvement in the representation of BAME judges.
11. So what are we doing to widen the pool? We have now an active Diversity Committee of the Judges' Council bringing together within the judiciary different strands of work to make certain we are doing things in a coordinated way. I have been incredibly fortunate that Dame Heather Hallett was persuaded to chair the group and to drive it forward; she demonstrates the leadership which is needed on this important issue, combined with enormous enthusiasm and a wealth of practical experience. We are supported by the Judicial Office, particularly Joanne Peel, Malcolm Watts and Nita Gajiparia; Nita last year won the Inclusive Employment Award across the entire Civil Service. We also work closely with the professions and with academics.
12. With judicial diversity it seems to me it is too easy to say "we should do this, we should do that", but the Diversity Committee actually measures what it does by concrete achievements. If you were a civil servant one might ask: "are we delivering?". No doubt that is a question academics ask themselves as well in this university. We decided that if we do not deliver according to a plan we will get nowhere. So the Diversity Committee agreed a plan, and we have now reached a number of distinct achievements; we feel we are on the road to delivery.
13. First, in October 2014 over 90 judges were appointed as judicial role models, to support various outreach events as speakers, to network with potential applicants, and to act as mentors. They are responsible

for mentoring lawyers seeking their first judicial appointments and judges who are seeking to progress to higher office.

14. Second, we have engaged in outreach events. I am very grateful to the judges who have taken part, going to Cardiff, Bristol, Manchester, Portsmouth, Birmingham and London, and of course here in Leeds where Iyiola Solanke led a very successful event hosted by the School of Law this time last year. We particularly directed our events at women, BAME lawyers, academics and employed lawyers, including those within the Government Legal Service (GLS) and Crown Prosecution Service (CPS). It is important that we look to both the CPS and to the GLS because they have achieved much greater diversity among their lawyers; there is no reason why many of them should not successfully apply to the judiciary. We are going to monitor carefully whether we are getting our presentations right and whether applicants are getting what they need from outreach events.
15. Third, on 26 February this year we went live with a formal judicial mentoring scheme. It is seeking to target and help the same groups of people, particularly those from non-traditional backgrounds who are applying for their first judicial appointment. You might happen to be a barrister in a set of chambers where you can talk to people who have been judges; but that is not available to everyone, so I regard mentoring schemes as very, very important. We have had 65 applications so far, and of those 50 have come from women. It is also important in helping those who wish to advance their career within the judiciary; an area in which more work plainly needs to be done.
16. Fourth, we have now completed the appointments of 112 Diversity and Community Relations Judges. This is a way of targeting a wider and younger group, by engaging with the community, schools and universities. We want to help them to understand that the judiciary

has changed from its stereotypical image, and to encourage people, who might not otherwise have done so, to think of a legal career, and becoming a judge.

17. Fifth, we are now running the judicial work shadowing scheme more effectively. This is, I must emphasise, for those that want to be judges and not for those who want to put something impressive on their CV. Our capacity is limited and so we are now strict in trying to ensure those who apply for this really do intend to apply for a judicial post.
18. Sixth, we are trying to ensure that flexible working is used to help under-represented groups.
19. Seventh and finally, we introduced a new route to the High Court. Historically, judges have been appointed to the High Court by first undertaking a part-time role in the judiciary, usually as a Recorder. I did so myself. It became apparent that this route was not suitable for all and meant that it was difficult for some, for instance, a legal academic or a senior lawyer in a City law firm, to aspire to become a High Court judge. That has now changed and, relying on provisions in the Senior Courts Act, in the recent competition for deputy High Court Judges the requirement for prior judicial experience was removed. We have thereby opened up the competition to a wider range of applicants. Successful candidates will then be given any necessary training in the relevant jurisdiction before sitting as a deputy High Court Judge; when the time comes, they can compete on a level playing field for appointment as a judge of the High Court.

The achievement of a level playing field

20. However, whatever steps we may take to widen the pool of applicants and encourage them all to apply will not realise the goal of a more diverse judiciary unless we can ensure that those who apply for appointment are competing on a level playing field. The Judicial Appointments Commission has done much, but we are not satisfied that we have done enough and perceptions plainly remain that the playing field is not level. What therefore needs to be done?
21. Earlier this year, before the competition for deputy High Court Judges launched, we introduced an intensive support programme for candidates. The scheme gave practical support to potential applicants from non-traditional backgrounds. It was targeted at those people whom we hope will be in a position within two to three years to become High Court Judges, but who might never have thought of becoming a judge. The mentoring has taken place. There were about 250 applications from a wide variety of backgrounds, from which we selected 30. We provided mentoring, work shadowing and an applications process workshop. The competition for deputy High Court judges is now underway. When the results are known early next year, we will carefully analyse what has happened and what lessons we can learn.
22. There are, I believe, many extremely able women and BAME practitioners at the Bar. They are achieving real success in their profession, which is regarded as the traditional route to the judiciary, and I would warmly welcome their appointment, particularly to the senior judiciary, in the very near future. However the numbers reaching the top of the professions, and the numbers seeking to become judges, are not enough. We simply cannot let that stand in the way of a diverse judiciary or let it be used as an excuse.

23. There are in fact many other types of lawyers and legal academics who will make excellent judges, but who have not followed that traditional career path. We must therefore ensure that for those individuals, there is a proper emphasis on selection of the assessment of potential to be an excellent judge and an assessment of transferable skills.
24. To continue making progress on this issue, we must be tenacious in examining the system we currently use; this will no doubt include looking at the use of what is known as the tipping point provision (on which I hope we will soon have data), and also being alert to concerns about unconscious bias.

Conclusion: how can you help?

25. I have already mentioned the vital role the leaders of the profession play. But I want to hear ideas from all of you rather than just telling you what we are doing. We need your help as much as the help we are getting from the leaders of the profession. I shall therefore listen with great interest to the panel discussion that follows, and try to do my best to answer any questions you may have. I believe that together we can achieve the aim of a judiciary which is more diverse, without in any way diluting the very high quality demonstrated by our existing judges.

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