



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

**THE RIGHT HON. THE LORD BURNETT OF MALDON**

A CHANGING JUDICIARY IN A MODERN AGE

TREASURER'S LECTURE 2019

18 FEBRUARY 2019

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## **(1) Introduction**

1. My subject this evening is judicial appointments. Specifically, how the judiciary is changing and has become more diverse and representative of the society it serves and why that matters. And why there is a need for the government, the Judicial Appointments Commission, the judiciary and the professions to continue in their collective efforts to make sure that the pool of applicants for judicial appointment represents the broadest spectrum of suitably qualified individuals from whom the best can be selected on merit. Promoting diversity and appointing on the basis of merit are mutually reinforcing because the wider the pool the greater the availability of talent, the greater the competition for places and the greater the quality of appointments.
2. The judiciary is made up of a surprisingly large number of individuals across all jurisdictions. Some are much more visible than others and, perhaps inevitably,

the focus of discussion tends to be on the more prominent and senior ranks of the judiciary. The Supreme Court has 12 members. In England and Wales, the senior judiciary is made up of a maximum of 152 people. That is the Lord Chief Justice, Master of the Rolls, three Heads of Division, 38 or 39 Court of Appeal judges together with a statutory complement of 108 High Court Judges. We are fewer at the moment because of unfilled vacancies in the High Court. But there are well over 600 Circuit Judges, more than 500 District Judges (civil, family and criminal) and almost 1600 Deputy High Court Judges, Recorders and Deputy District Judges, who sit as fee-paid judges in our various courts<sup>1</sup>. In the Tribunals there are roughly 400 salaried judges and 4400 fee-paid judges and members. Whilst most of the judges in the Tribunals are lawyers there are also doctors, surveyors and lay members of various sorts. By far the most numerous are the lay Magistracy numbering about 15,000, who are the first and last point of contact for many with the judiciary in crime and increasingly in family cases. 55% of magistrates are female and 12% declare themselves as from black or ethnic minority backgrounds<sup>2</sup>.

3. As we shall see, the progress made in achieving a diverse judiciary at the most senior levels has been slower than elsewhere. All concerned must continue to work to achieve a judiciary, including the senior judiciary, that is more closely

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<sup>1</sup> Judicial Diversity Statistics 2018 <https://www.judiciary.uk/publications/judicial-diversity-statistics-2018/>

<sup>2</sup> Ibid

representative of society in terms of both gender and ethnicity. Gender and ethnicity are visible characteristics in respect of which fairly reliable data are available. Less reliable data are available which tell of the socio-economic background of our judiciary at all levels, but it is of great concern that the legal profession appears to be over populated, particularly at the upper reaches, with people from economically privileged backgrounds. Social diversity matters too. The judiciary is working hard on that aspect of diversity also. There are other aspects of diversity that should not be overlooked. It took far too long following the decriminalisation of homosexual acts for openly gay judges to be appointed, indeed there was a policy in the Lord Chancellor's department against such appointments as recently as 1991 when Lord Mackay ended the practice.

4. Leaving aside the lay and non-legal members of the judiciary, the English system of appointing judges is to draw from the ranks of successful practitioners in the legal professions. That has been one of its strengths in producing a judiciary in which there is public confidence, and which has resulted in our judiciary enjoying an unrivalled international reputation for quality and independence. It is no accident that so many jurisdictions look to the retired judiciary of the United Kingdom to sit in international tribunals and courts and as appellate judges. But one consequence of operating that system is that we are largely reliant on the professions to produce the pool of senior lawyers willing to undertake public service as a judge, first in a fee-paid capacity and then as a salaried judge.

Diversity in the private sector legal profession in its senior ranks is essential for ensuring diversity in the judiciary although both academia and the public legal sector can and do provide talented candidates.

5. A second consequence of the way in which the judiciary in the United Kingdom is appointed is that the judges we appoint today, whether fee-paid or salaried, are likely to have completed their education over 20 years ago, sometimes rather more, and in the senior ranks much more. That is a particularly important factor to bear in mind when looking at diversity. There was a time when the gender balance in tertiary education was tilted firmly towards men. Significantly, the ethnic make-up of the country has changed substantially over time. The ethnic minority population of the United Kingdom stands at around 14% whereas in 1991 it was 5.5%<sup>3</sup>. The reality of worldwide migration is that there are substantial communities from some ethnic groups who have arrived only recently, but whose young people have not yet progressed through schools and universities into the ranks of the legal profession at a stage where appointment to the judiciary is feasible. A bare comparison between the proportion of ethnic minority judges and the current overall ethnic minority population will not take these factors into account.

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<sup>3</sup> See 1991-2011 census data <https://www.ons.gov.uk/census>

6. Increasing judicial diversity is not to change for change's sake. Increased diversity seeks to maintain and improve public confidence in the judiciary and thus to maintain accountability of the judiciary. It is reasonable to assume that the public will readily accept that the judiciary should be populated by educated and skilled lawyers. But confidence is likely to be higher if it is clear that the skilled and educated lawyers come from all sections of society and are not skewed towards, or against, any particular group. Furthermore, it is a role of the senior judiciary at the appellate level to develop the law and in doing so judges are often called upon to make decisions that are influenced by public policy. We are concerned with much more than the mere letter of the law. More generally, we make decisions which are heavily policy laden. The public is entitled to expect that collectively we bring to bear different experiences and outlooks when deciding these issues and do not have a monochrome view of social issues – and I assure you that we do not. Moreover, although individual cases by and large are decided or presided over by a single judge, the fact that the single judge is part of a body of judges known to be diverse is likely to provide confidence that, whatever the personal characteristics of the judge concerned, he or she forms part of a broadly representative judicial profession. Finally, and importantly, if the judiciary is not appointed from every corner of the legal professions, talented people will be missed and the overall quality of the judiciary will suffer.

7. A diverse judiciary is not an optional extra. It is a necessity and one which I, as Lord Chief Justice, along with the judiciary as a whole are working hard to achieve. But we cannot achieve it on our own. Success here, as in many other areas, is the product of many working together. The judiciary working with the government, the Law Society, the Inns of Court, the Bar Council and the Judicial Appointments Commission.
  
8. I shall look at what has been done – the progress that has been made – at what needs to be done and at what is being done to provide a judiciary fit for the 21<sup>st</sup> Century.

## **(2) How far we have travelled**

9. I start by considering how far we have travelled. In the 1960s, the great satirist Peter Cook mocked the judiciary. One of his characters famously complained that he

‘could have been a Judge, but [he] never had the Latin for the judgin’. [He] never had it, so [he’d] had it, as far as being a judge was concerned. . .’<sup>4</sup>

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<sup>4</sup> Peter Cook, *Beyond the Fringe*, 1961.

At the heart of great satire there is always a kernel of truth. In the 19<sup>th</sup> century the Bar was open to those with a university degree, a tiny group, and others with the means to study for the Bar, and Latin was needed. The senior judiciary was drawn exclusively from the upper ranks of the Bar. As the Advisory Panel on Judicial Diversity in 2010 noted, the Bar was drawn from a narrow group of ‘*well-educated middle-class white male barristers*’<sup>5</sup>. It is true enough that very talented bright individuals joined the legal profession who came from relatively modest circumstances and some made it to the top, even in the 19<sup>th</sup> century and before. But without expensive formal education and financial support it was very difficult to do so and so appointment to the judiciary was rarely a realistic option.

10. Success, one mark of ability or of merit, was not a necessary condition for appointment to the judiciary at that time. Appointment was a matter for the Lord Chancellor having taken soundings from the senior judiciary. Soundings may, and in very many cases, did result in judges of great ability being appointed. We could all list judicial giants of the 19<sup>th</sup> and early 20<sup>th</sup> centuries. But not always. Let me give you one example to highlight the problem. It is taken from Heuston’s *Lives of the Lord Chancellors*.

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<sup>5</sup> The Report of the Advisory Panel on Judicial Diversity 2010 (MOJ, 2010) (The Neuberger Report) (<https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/advisory-panel-judicial-diversity-2010.pdf>) at 14.

11. The Lord Chancellor was Lord Halsbury at the end of the 19<sup>th</sup> century. Lord Halsbury was in many ways a formidable Lord Chancellor. Our shelves continue to groan under the weight of Halsbury's Laws of England and Halsbury's Statutes even if we rarely consult them, if only because it is easier to use them on-line. Undoubted scholar though he was, some of his appointments to the bench were dreadful. He was said to appoint High Court and County Court judges with 'little or no legal training',<sup>6</sup> but who could call on the fact that they were known to him through party politics. There was a free-flow between politics, the Bar and the bench in those days. He appointed the Home Secretary's brother, Edward Ridley, to the High Court. He was an accomplished scholar, having been a fellow of All Souls College, Oxford, but by common consent an absolutely terrible judge. His appointment to the High Court bench in 1897 had been greeted with horror and *The Law Times* had written "no-one will believe that he would have been appointed to the High Court Bench but for his connections." His appointment had been described by *The Solicitors' Journal* as "a grave mistake" and Mr Justice Ridley's death [Sir Frederick Pollock](#) had written: "Sir E. Ridley, good scholar, Fellow of All Souls, successful ... as an Official Referee, and by general opinion of the Bar the worst High Court judge of our time, ill-tempered and grossly unfair." Lord Justice MacKinnon called Ridley "the worst judge I have appeared before", saying that "he had a perverse instinct for unfairness". Sir Edward may have had connections, but he was renowned for having no real

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<sup>6</sup> R. Heuston, *Lives of the Lord Chancellors (1885 – 1940)*, (Clarendon Press) (1964) at 36.



ability as a judge. More prosaically, where political connections did not act as a recommendation for appointment, Lord Halsbury appointed his relatives.<sup>7</sup> Happily, not all Lord Chancellors adopted such an approach.

12. We celebrate the centenary of Sex Disqualification (Removal) Act 1919 this year which allowed women to become lawyers. But it was not until 1945, 26 years after it came into force and 23 years after Dr Ivy Williams became the first woman to be called to the Bar by Inner Temple in 1922, that Sybil Campbell became the first woman to be appointed to a salaried judicial office, that of stipendiary magistrate.

13. It would be another twenty years before Dame Elizabeth Lane was appointed to the High Court in 1965. She had earlier been appointed to the County Court. It took another 33 years before Mrs Justice, now Baroness Butler-Sloss, was appointed a Lord Justice of Appeal in 1988. I was in my early years of practice and remember the paroxysms surrounding the question of what she should be called. It would be another six years before she was described informally as a Lady Justice of Appeal<sup>8</sup> (dealt with in a practice note, no less) and another nine years before the Courts Act 2003 put that description on a statutory footing. By

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<sup>7</sup> For an outline of the reaction to Ridley's appointment and Lord Halsbury's approach to appointments, see, Lord Toulson, *Judging Judicial Appointments*, Plymouth Law Review (2009) 1 at [3]-[9] <[http://www.pbs.plymouth.ac.uk/PLR/vol2/LJ\\_Toulson.pdf](http://www.pbs.plymouth.ac.uk/PLR/vol2/LJ_Toulson.pdf)>

<sup>8</sup> Practice Note (Mode of Address: Lord Justice Butler-Sloss) [1994] 1 FLR 866

then, Lady Butler-Sloss had become President of the Family Division in 1999. 2004 saw Lady Justice Hale appointed to the judicial committee of the House of Lords as Baroness Hale of Richmond. She moved with her colleagues to the Supreme Court in 2009 and in 2017 Lady Hale became the first female President of the Supreme Court.

14. The first hundred years of the 1919 Act's life have resulted in a pace of change that has been painfully and disappointingly slow. The same can be said of appointment of ethnic minority lawyers to the judiciary and especially the senior judiciary. Mrs Justice Dobbs, appointed in 2004, remains the first and only black High Court judge. Mr Justice, now Lord Justice, Singh was both the first Asian High Court judge in 2011 and Lord Justice of Appeal in 2017. Happily, others have followed him into the High Court, and the picture is better in other parts of the judiciary.

15. For various reasons, social, cultural, historical and educational, the structure and practices of the legal profession from which the judiciary is drawn have not resulted in the diversity that all would like to see. The number of female partners in the larger solicitors' firms and the number of female senior juniors and QCs at the Bar remains stubbornly low. For the last twenty years, the gender balance on entry to the legal profession has been pretty well equal. Yet the number of female partners in solicitors' firms does not seem to move beyond about a third and they are disproportionately in the smaller firms. About a third of senior

junior barristers over 15 years' practice are female. Only 15% of QCs are female, although the proportion is higher for younger QCs. The picture is even starker at the commercial and chancery Bars.<sup>9</sup> About 20% of practising solicitors are from ethnic minorities. But the partnership figures for ethnic minorities are striking. In one partner firms, 34% but in large firms the figure drops to 8%.<sup>10</sup>

16. For contextual purposes it is worth introducing comparative data to illustrate the broader societal challenge. 32% of Members of Parliament elected to the House of Commons in 2017 were women. That was an increase from 29% following in 2015 and 22% in 2010. It is a sobering thought that since 1918, only 489 women have been elected to the House of Commons. For the first time, the total number of women elected since 1918 has surpassed the current number of 442 men sitting in the House of Commons.<sup>11</sup> Only 8% of Members of Parliament are from ethnic minorities. They make up 7% of the Armed Forces (2.4% of officers), 8% of teachers in publicly funded schools (only 3.2% of head teachers) although by contrast, 41% of doctors.<sup>12</sup>

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<sup>9</sup> See G. Vos; [www.sra.org.uk/sra/equality-diversity/key-findings/law-firms-2017](http://www.sra.org.uk/sra/equality-diversity/key-findings/law-firms-2017); [https://www.barstandardsboard.org.uk/media/1916579/diversity\\_report\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1916579/diversity_report_2017.pdf); <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/queen's-counsel-statistics/>

<sup>10</sup> See <https://www.sra.org.uk/sra/equality-diversity/key-findings/law-firms-2017.page>

<sup>11</sup> [www.parliament.uk](http://www.parliament.uk) Women in Parliament and Government 20 July 2018

<sup>12</sup> Ethnic Minorities in Political and Public Life. House of Commons Library 28 July 2017

17. There is no doubt that the rate of progress on diversity in the judiciary has improved since the creation of the Judicial Appointments Commission. That progress can be seen through comparing the composition of the judiciary now and ten years ago.

18. By the end of 2009 there was one female Supreme Court justice out of twelve. Three Court of Appeal judges out of 38 were female, and 15 High Court judges out of 108.<sup>13</sup> The position now is that three of twelve of Supreme Court justices, including its President, are female. Nine of 39 Court of Appeal judges and 24 of 97 High Court judges are female. In 2009 there were no ethnic minority judges in the Supreme Court or Court of Appeal and only three in the High Court. By 2018 that position had not changed, but there is now one ethnic minority judge in the Court of Appeal.<sup>14</sup>

19. Last year's High Court competition delivered ten judges. Five were women, two were solicitors, two had been tribunal judges and two circuit judges. Four were educated at state schools. Seven new Court of Appeal judges were appointed. Three were women and five were educated at state schools. These are all highly visible appointments which show how things are changing.

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<sup>13</sup> See <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/advisory-panel-judicial-diversity-2010.pdf>

<sup>14</sup> [www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf](http://www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf)

20. More broadly in 2009, 20% of all judges in courts and 37% of tribunal judges were female. 4.5% of judges in courts and 10.5% of tribunal judges identified as from ethnic minorities.<sup>15</sup> By 2018, that picture had changed substantially. 29% of judges in courts and 46% of tribunal judges were female. Close to half of all judges in our courts who are under the age of 50 are female, and female judges outnumber male among tribunal judges at all age groups under 60.

21. Ethnic minority representation in the judiciary is now 7% of judges in courts and 11% in the tribunals. For judges in courts aged 40 or over, 98% of all judges, ethnic minority representation is only slightly below that of the working age general population in each age band, while ethnic minority representation among tribunal judges is higher than that of the working age general population at all age bands above 40.<sup>16</sup>

22. The detailed breakdown of gender and ethnic diversity amongst the judiciary repays close attention and can be found in the Judicial Diversity Statistics last published on 12 July 2018. So too does the analysis by the Judicial Appointments Commission of diversity in recent appointments published on 7 June 2018<sup>17</sup>.

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<sup>15</sup> Neuberger Report (2009) at 15.

<sup>16</sup> See <https://www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf>

<sup>17</sup> JAC Selection and Recommendations for Appointment statistics 2017-18  
[https://www.judicialappointments.gov.uk/sites/default/files/sync/about\\_the\\_jac/official\\_statistics/statistics-bulletin-jac-2017-18.pdf](https://www.judicialappointments.gov.uk/sites/default/files/sync/about_the_jac/official_statistics/statistics-bulletin-jac-2017-18.pdf)

### **(3) Where we are going and why**

23. Change is happening. That is a matter for quiet satisfaction because it has come about as a result of the efforts of very many people; but it is not a matter for complacency. As with the legal profession more needs to be done to secure the greater and more representative transition of female and ethnic minority judges into the senior judiciary. I will turn now to where we are going and why.

24. Our aim is for a judiciary that is more representative of society in general and to achieve this sooner rather than later. Change does not happen overnight nor, as the progress made in recent years shows, need it take many decades. It requires the nature of a problem to be identified and acknowledged. It calls for thought to understand what can be done to tackle the problem and to put in place effective measures to achieve that end.

25. In order to acknowledge the problem at the heart of this issue, it is necessary to understand the importance that diversity has in the delivery of justice. I want to return to three broad reasons why a properly diverse judiciary is an essential element of our justice system.

26. First, and most obviously, we live in a society based on consent. We live in an open and democratic society although our judiciary is not democratically accountable through the ballot box. Such an approach, as exists in some other countries, raises serious questions about the maintenance of judicial independence and impartiality. A judge who can be recalled from office, who holds it 'at pleasure' as our judiciary did until the Act of Settlement 1701, is a judge who is susceptible to the mood of the individual or individuals with the power of recall or re-election.

27. Our judiciary is accountable to the society it serves. The decisions we make have a profound impact on those they affect. We articulate, interpret, or develop the law, although our decisions are subject to Parliamentary correction. Our processes and decisions are open to public and media scrutiny. Public confidence, and particularly the broad consent of the public and others to abide by our decisions, rests on confidence rather than technical legal obligation. Institutions which are not seen to be open to and broadly represent all sections of society are institutions which risk the erosion of public confidence. In free societies, public institutions must be open to all with the necessary talent and expertise. If we are to maintain and enhance public confidence our judiciary must be one that is drawn from the widest pool. Consent will be put at risk if parts of society feel excluded from the principal institutions of the state. Both confidence and consent require a broadly diverse judiciary.

28. Judicial diversity does more than that though. It emphasises a fundamental feature of our society: that it is a just and fair one. Proper representation, as the suffragists well knew 100 years ago, confirms that you are a full member of society. It acknowledges that we are a society where all have an equal part to play according to their abilities. The judiciary, like all other public institutions, must ensure that it plays a positive role in securing justice in this broader societal sense. That it can truly make the law and its delivery, as Professor Fuller once put it, an act of shared governance;<sup>18</sup> shared by all in society.

29. Secondly, diversity improves the nature and quality of decision-making. It does so in two different ways. The first was aptly summed up by Lord Clarke of Stone-cum-Ebony. In 2009, when explaining the importance of a diverse merit-based judiciary, he said,

‘It is in everyone’s interest to have the widest possible pool of talent from which appointments can be drawn. To borrow a phrase it is better to be first in a field of many, than first in a field of one.’<sup>19</sup>

The reason, which I repeat, is this: the wider the pool the greater the availability of talent, the greater the competition for places and the greater the quality of

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<sup>18</sup> L. Fuller, *The Morality of Law*, (Yale, 1964).

<sup>19</sup> Lord Clarke, *Selecting Judges: Merit, Moral Courage, Judgment & Diversity*, *The High Court Quarterly Review* (Vol. 5, No. 2) (2009) 49 at [36].



appointments. Promoting diversity is a means to secure the continuous improvement of judicial quality, a point which also enhances public confidence in the judiciary.

30. All human beings can and do learn from the experiences and perspectives of others. The judiciary is no different. We learn from each other and from those we encounter. As with all our experiences that informs our decision-making. The broader our collective experience, the more we can learn from and teach our colleagues. We are better able to ensure that we do our best to help all litigants participate effectively in proceedings and to see that justice has been done fairly.

If I can borrow from the late Sir Henry Brooke,

‘ . . . for a judicial officer deciding a case in accordance with the law, in a reasonable time, and in accordance with the processes mandated by law, is only one part of the judicial task. Justice must also be delivered in a responsive manner, one that takes account of the social context, and the different perceptions of those who seek it.’<sup>20</sup>

The broader the range of experience the judiciary has, the better able it is to deliver justice in that way. A diverse judiciary helps build that experience and a

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<sup>20</sup> Cited in Sir Henry Brooke, *An address given at the Commonwealth Magistrates’ and Judges’ Association’s regional conference in Bermuda*, (20 August 2007).

broader understanding of society. It thus helps to improve the quality and accessibility of our justice system.

31. A diverse judiciary is one that is better able to broaden its understanding of society; to be and appear to be less remote from litigants. Very few of the ordinary citizens who appear in our courts and tribunals are happy to be there. Many are facing real difficulty in their lives and increasingly they appear without professional help. A diverse judiciary can help make the legal process less daunting for those who appear in the courts and tribunals.

32. Finally, greater diversity can make a difference to the nature and quality of decision-making at the appellate level. The common law is, as Sir John Laws put it in his Hamlyn lectures, catholic in its approach, by which he meant that it draws ‘*inspiration from many sources*’.<sup>21</sup> It was he said not ‘*dirigiste*’, but rather it is such that

‘Its principles are constantly renewed by the force of fresh examples. . . it is not and cannot be the creature of a single moment. . . it reflects and moderates the temper of the people as age succeeds age. It is especially fit for a democratic state, for it builds on the experience of ordinary struggles.’<sup>22</sup>

It evolves and its evolution draws on the experience of litigants and of the judges who apply and develop precedent. It is at the appellate level where the threads of

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<sup>21</sup> Sir John Laws, *The Common Law Constitution*, (CUP, 2014) at 58.

<sup>22</sup> *Ibid* at 7.

the common law are spun and re-spun. It is where the law is articulated and where policy decisions that underpin the law's choices are made. As Sir John noted, it is where the law of today is developed by the temper of contemporary society. In order to do that effectively we need to secure a properly diverse judiciary. We need to ensure that as society changes, the appellate judiciary draws from the experience of today's society. In that way we will ensure that the common law continues to evolve and draw its inspiration from many different sources, experiences, and perspectives.

33. An appellate court of three, five, seven or nine cannot hope to have a representative who shares the experiences of all sections of society. Nor should it be thought, at least in my experience of life, that all or even most men think in one way and women in another. Still less that the life experiences of one ethnic minority community have much in common with another. The point is that a breadth of experience stands a much greater chance of bringing to bear different attitudes and perspectives to the determination of a policy laden question.

#### **(4) A partnership to change the judiciary**

34. How then are we to continue to change the judiciary to fit the modern age? My starting point is that appointments must be on merit. As I said at the outset, promoting diversity and appointing on the basis of merit are mutually reinforcing.

Promoting diversity is the starting point of a virtuous circle in appointments. I am deeply sceptical of targets because, as has been seen in other areas of life, they are capable of distorting behaviour and might undermine the statutory merit principle. My experience of involvement in judicial appointments, including as Vice Chairman of the Judicial Appointments Commission until early 2017, makes me fairly certain that further external encouragement to the JAC to recommend for appointment diverse candidates is not what is needed. My scepticism about targets extends to principled opposition to quotas. They are not compatible with appointment on merit nor, ultimately, in sustaining public confidence in the judiciary. They would undermine the overall standing of the judiciary and fatally undermine the authority of judges who were known or thought to be “quota judges”. I suspect that there is barely a person in the country who would support the suggestion that a surgeon should be appointed by quota, rather than on his or her ability in the operating theatre. It is difficult to imagine anyone being comfortable being operated on by a “quota surgeon”. Judges at every level make important decisions that fundamentally affect the parties in the proceedings before them. Those parties are entitled to assume that the judges they appear before were the best available for appointment judged by reference to criteria which are objective and internationally recognised.

35. The key is to increase the available pool from which appointments are made.

That underpins the statutory duty placed on me and the Lord Chancellor, which

requires us to take such steps as we consider appropriate to promote judicial diversity.<sup>23</sup> Those statutory duties complement the duty imposed on the Judicial Appointments Commission to have regard to the need to encourage diversity in the range of persons available for selection for appointments<sup>24</sup>. The statutory duties imposed on the Lord Chief Justice and Lord Chancellor in 2013 coincided with the introduction of the equal merit provision<sup>25</sup>, which enables the Judicial Appointments Commission, having assessed two or more candidates for appointment as being of equal merit, to recommend for appointment the candidate or candidates who will increase diversity. These statutory provisions represent Parliament's clear indication that progress towards a more diverse judiciary should gather pace.

36. Before I outline a number of initiatives being taken to further those duties, may I make a general point?

37. None of us can help where we come from. We enter adult life with many important choices having been made for us. Whatever our natural talents, whether they have been nurtured during childhood and adolescence depends largely on family, friends and teachers. We then make our own choices initially

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<sup>23</sup> Constitutional Reform Act 2005, s.137A.

<sup>24</sup> Constitutional Reform Act 2005, s.64

<sup>25</sup> Constitutional Reform Act 2005, s.27 and s.63 as amended by the Crime and Courts Act 2013, Schedule 13, Part 2

with the help of those around us. Where, for example, to go to university, what to read, what career to follow? Those with influence over the choice of teenagers should encourage them to achieve their best. Students may choose a career at the Bar or as a solicitor because of the nature of the work, the professional culture, or the people with whom they will work. One hopes that choices are made on a true understanding, rather than myths. Later choices about whether to become a fee-paid or salaried judge may be made for similar reasons. Choices need to be made on a proper understanding of the facts. Decisions should not be made based on misconceptions. Until 2009 the view remained all too common that a career in the judiciary meant, as Professor Dame Hazel Genn put it, that you would be *'working in an old fashioned, fustian atmosphere, with old-fashioned, fustian colleagues.'*<sup>26</sup> That image no doubt played its part in diverting many talented individuals from choosing a career in the judiciary. The research conducted by Professor Genn coincided with my own appointment to the High Court in 2008 and before that I had been a fee-paid judge for ten years. That image was always a caricature, doubtfully representative of any part of the judiciary, but ridiculous when one reflects of the enormous variety of judicial roles and judges in our system.

38. The professional culture of the various parts of the judiciary is as far removed from that image now as can be imagined. At whatever level, the culture of the

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<sup>26</sup>Genn, *The Attractiveness of Senior Judicial Appointment to highly qualified practitioners*, (DJO) (2009) at 4, foreword by Lord Judge.

judiciary is collegiate. The work undertaken by judges is usually hard – some jurisdictions are coping with much increased volumes – but it is generally varied. Judges almost universally speak of how much they enjoy the work and the satisfaction of giving public service. That is not to underestimate the problems under which we labour and some of the morale sapping issues that surround us, particularly over the condition of much of the court estate, the systems and equipment we use and terms and conditions. But at last, the way in which the courts operate is embracing technology for the benefit of court users as well as judges and staff. Some of the neglect of decades is being made good. We want to seize the chance to use technology to bring in working practices that make it possible for more people to thrive in a legal and ultimately judicial career. New approaches to supporting judges and encouraging career development have been introduced. Proper appraisals, consistent with judicial independence, are being rolled out across the judiciary within the resources available to us. More flexible working practices are available. We recognise that making a judicial career more attractive is likely to encourage more applications and with more applications is likely to come a more diverse pool.

39. In his speech to the Chancery Bar Association conference in February this year, Sir Geoffrey Vos questioned whether the working practices and culture both in solicitors' offices and at the Bar, coupled with the way in which high value litigation is conducted, were themselves in part responsible for the low

proportion of women at the top of the professions. And we have heard in recent weeks of the sexism faced by some women at the criminal Bar from their colleagues.<sup>27</sup> I have little doubt that this is a significant feature which needs further investigation and consideration, both by the professions and the judiciary.

40. A handful of unnamed judges have been criticised. Any inappropriate conduct is likely to have been captured on a digital recording. This alleged behaviour should be called out and then it will be dealt with either by the leadership judges or within the formal, independent complaints procedure for which the Lord Chancellor and I are responsible. Judges must behave with courtesy and respect for all who appear in our courts and tribunals and there will be little tolerance of those few who do not.

41. I shall finish with an overview of some of what the judiciary is doing to increase the pool of talent for appointments. The starting point is something which Lady Justice Hallett, who chairs the Judicial Diversity Committee, identified while she was a Judicial Appointments Commissioner. She said this about the need to improve judicial diversity,

‘For the pace of change to accelerate we all – judges, lawyers, the JAC, society as a whole – have a part to play, to foster what Lord Neuberger described as a ‘wealth of aspiration’; a wealth of aspiration that is nurtured at all levels and is matched by a

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<sup>27</sup> <https://www.standard.co.uk/news/uk/dont-act-like-you-are-on-a-stag-do-and-stop-making-jokes-about-breasts-and-skirts-female-barrister-a4065586.html>



wealth of opportunity for all to succeed on the one and only true ground: merit.<sup>28</sup>

42. Both Dame Heather and Lord Neuberger were making a point to which I have long subscribed: we need to improve access to the legal professions. And the key to that is through working with schools and local communities to help foster aspiration across all sectors of society. To foster a common culture that on the one hand shows that the professions and the judiciary are open to all. To foster social mobility both as a means to drive greater socio-economic diversity in the judiciary, but also to drive greater diversity within it. The law has always been a career that has attracted intellectually able and curious individuals. We must do our best to ensure that we can foster aspiration and match it with opportunity.

43. This is important work which will not deliver immediate benefits. It is work that the professions and Inns of Court, educational charities and the government are also engaged in. I have been particularly keen to expand the judiciary's schools engagement programme. This is an important programme through which we are making it easier for schools to teach their pupils about the justice system, how it works and what being a judge involves. The more schools and local communities are involved, the more likely it is that bright children will be encouraged to consider a legal career. And here we see another aspect of the virtuous circle of

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<sup>28</sup> Lady Justice Hallett, *How the Judiciary is Changing*, in JAC, *Judicial Appointments – Balancing Independence, Accountability and Legitimacy* (2010) at 98

diversity. If they can see themselves, their parents and families reflected in the judiciary, in the judge taking part in the programme, it is easier for them to see themselves as future judges. Role models matter. Education matters.

44. Schools engagement is one way to increase future diversity. What about today?

How are we improving access to the judiciary for those in the profession? We are taking steps under the leadership of the Judicial Diversity Committee. It was established in 2013 to assist the Lord Chief Justice and the Senior President of Tribunals to encourage judicial diversity. It is the means by which we have devised a strategy for improvement, and through which we are monitoring and evaluating progress. Its main focus has been the promotion of gender, ethnic and socio-economic diversity in the judiciary. It has focused on judicial appointments, on mentoring and on career progression within the judiciary.

45. Career progression within the judiciary is an important factor in increasing diversity at the higher levels. The appointments process should recognise that in the ranks of both salaried and fee-paid judges are many individuals who have not been visible in the higher ranks of the professions, often because they have chosen a career path in the judiciary which is more readily compatible with family life, but who have demonstrated judicial ability. Lady Butler Sloss took an appointment as a registrar in the Family Division when aged only 37 for such

reasons<sup>29</sup> and was promoted to the High Court, the Court of Appeal and to Head of Division.

46. Let me give some examples of the Diversity Committee's work. In 2014 it established a judicial role models scheme. 90 judges were appointed to support judicial outreach events and to act as mentors for those who were considering applying for judicial office. They, and others, have taken part in numerous outreach events, including specific pre-application seminars, across the country since its establishment. These events have provided a forum for lawyers to discuss their aspirations with judges from a wide range of backgrounds and experience. The events have separately targeted female lawyers, ethnic minority lawyers, lawyers in the Government Legal Department and the Crown Prosecution Service. We regard these organisations as important, not least because they are more diverse than the private sector.

47. The Judicial Work Shadowing Scheme gives legal practitioners who are considering a career in judicial office an insight into the work of a judge. Shadowing can cover any aspect of a judge's work, both in and out of court.

48. The focus of the work has been myth busting; explaining what life as a judge is really like. The aim is to enable lawyers to make fully informed decisions about

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<sup>29</sup> <https://www.bbc.co.uk/news/uk-28211253>

whether and when to apply for judicial office and to help prepare for judicial appointment.

49. There is a further strand to the Outreach programme. There are now 95 Diversity and Community Relation judges across England and Wales. They are playing a crucial role in community engagement in our schools and universities, and in the wider community. They very often speak at outreach events, helping to explain life as a judge and also how lawyers can prepare their applications for judicial office.

50. In 2015 a formal judicial mentoring scheme was added to the Outreach programme. Again, this is focused on female and ethnic minority lawyers and lawyers from state school backgrounds. It helps those intending to apply for their first judicial office and judges who wish to advance to higher office.

51. In 2018, this was further complemented by the introduction of the Pre-Application Judicial Education Programme. It was an initiative of the Judicial Diversity Forum. That is made up of the Judiciary, the Ministry of Justice, the Judicial Appointments Commission, Bar Council, Law Society, and the Chartered Institute of Legal Executives. The Programme had my strong support, and that of David Gauke as Lord Chancellor and Lord Kakkar as Chairman of the Judicial Appointments Commission. It shows what we can achieve when we work

together. We each committed financial and human resources to make it work. Its aim is to provide an online environment for individuals thinking about judicial office to develop a greater understanding of the judicial role, the skills needed, and how their legal experience in practice has prepared them for appointment. For under-represented groups within the judiciary it also offers the ability to engage in a judge-led discussion session, which is intended to help break down preconceptions about judicial office. The judiciary and Judicial College are committing substantial time and resources to this initiative.

52. Finally, I mention the scheme which enables individuals to apply for a fixed-term appointment as a deputy High Court judge. It enables them to assess whether they wish to seek a salaried appointment. This was an initiative of Lord Thomas of Cymgiedd. By 2018, a total of 73 Deputy High Court judges had been appointed through this mechanism from the professions. A new competition is being run at the moment. Nine judges have now been appointed to the High Court from this pool of deputies and I hope that this pathway will provide further recruits in the High Court competition currently under way. This is an extremely important means through which eligible individuals can gain first-hand experience of the varied and interesting work done by High Court judges. The scheme is itself further underpinned by a support programme intended to help individuals from under-represented backgrounds in the judiciary gain an

understanding of the judicial role and how to prepare for the appointment process.

53. Concrete steps are being taken by the judiciary in support of my statutory duty.

In the past there was perhaps too great a reliance on the belief that time, and time alone would secure a diverse judiciary. We, the professions, the Government and the Judicial Appointments Commission, are working hard to the same end. Experience has shown that more than time is needed. Co-ordinate action will encourage suitably qualified individuals to apply, and to do so with appropriate support.

54. I want to leave you with a question, one for me and the judiciary as much and for the professions, the Government and the Judicial Appointments Commission. What more must we do to secure a broadly diverse judiciary, and as the source from which that is drawn, a properly diverse profession at its senior levels?

55. An important part of the answer is to work on the lack of social diversity at the top of the legal profession. It lies in changes to the working practices of the professions and the judiciary too, looking critically at the way in which litigation is conducted and harnessing technology to improve those practices. And the

culture across the legal professions must be supportive of all. It may lie in further and better outreach and support programmes. Whatever the answer, the responsibility lies on us all. As judges and lawyers we serve the administration of justice and rule of law on behalf of the people. Securing a properly diverse judiciary is an essential feature of any free, open and democratic society committed to the rule of law.