

**17 July 2025**

**R (on the application of Katie Thomas) v. THE JUDICIAL APPOINTMENTS  
COMMISSION**

**Appeal No: CA-2023-002474**

**Neutral Citation Number: [2025] EWCA Civ 912**

**JUDGMENT SUMMARY**

**Important note for press and public: this summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at:  
[www.judiciary.uk](http://www.judiciary.uk), <https://caselaw.nationalarchives.gov.uk>**

1. In these Judicial Review proceedings, District Judge Katie Thomas (the claimant) challenged the fairness of the process of consultation used by the Judicial Appointments Commission (the JAC) in undertaking a selection exercise for the appointment of circuit judges. Her concern related to the usage that the Selection and Character Committee of the JAC (the Committee) had made of the negative consultation response received from the Deputy Senior Presiding Judge (the Consultee). That response drew on material that had been provided to the Consultee by leadership judges with knowledge of the claimant’s work in accordance with guidance provided by the JAC (sub-consultees).

2. The selection panel which interviewed the claimant recommended to the Committee that the claimant should be appointed as a circuit judge. The Committee decided, however, that the claimant was not appointable in either jurisdiction because it reduced the claimant's grade for "Working and Communicating with Others" from C (selectable) to D (not presently selectable).
3. The claimant contended that: (i) a statutory consultee was not entitled to seek contributions from sub-consultees, (ii) the JAC should not rely on negative comments from a consultee unless it has first asked that consultee's consent to disclosing them to the candidate so that their response could be taken into account, and (iii) the JAC should be obliged in any event to inform candidates in advance that sub-consultees might be asked for the views about them.
4. The Court of Appeal (Sir Geoffrey Vos, Master of the Rolls, Lord Justice Underhill, Vice-President of the Court of Appeal (Civil Division), and Lady Justice Nicola Davies) decided that, as a matter of law, the JAC was entitled to seek and rely upon comments about candidates from sub-consultees approached by the Consultee.
5. Secondly, the Court of Appeal decided that the JAC's practice of **not** seeking consent from the consultee to disclose negative consultation material to the candidate "absent some exceptional set of circumstances" was an inappropriate fetter on its discretion. It should, instead, decide whenever it was provided with negative consultation material between (at least) the following five lawful options:
  - i) disregarding the negative material;

- ii) exploring the negative material at interview without making the candidate aware of it or making any direct reference to it;
  - iii) putting the gist of the negative material to the candidate, whilst preserving the confidentiality of the consultee and sub-consultees;
  - iv) seeking the consent of the consultee to disclose the negative material for the candidate's comments and then doing so, if consent were granted; and
  - v) even if such consent were refused, deciding to put the negative material to the candidate.
6. On the facts, the Court of Appeal was unable to decide whether the JAC had actually made unfair use of the negative consultation material without seeing that material. The claimant had only applied for disclosure of that material at the hearing, which was far too late. Her application was, therefore, refused. But the Court of Appeal commented that it was not inappropriate for the Committee to decide to change the grading recommended by the panel, and that the evidence that the Court had seen did **not** support the proposition that the process adopted by the JAC in this case was, in fact, unfair.
7. The Court of Appeal further remarked that the JAC's feedback letters to the claimant after the competition concluded caused her justifiable confusion. The JAC's confusing letters did not support the claimant's substantive claims, but were very unfortunate indeed. What had actually occurred could and should have been explained to the claimant long before the JAC's evidence was filed after the claimant had been granted permission to apply for Judicial Review.

8. Accordingly, whilst the Court of Appeal refused to quash the JAC's decision in respect of the claimant, it said it would make three declarations that:

- i) Section 139(5) of the Constitutional Reform Act 2005 does not preclude disclosure of information given by one identified or identifiable individual (A) about another (B) where any of the circumstances specified under section 139(4) apply.
- ii) Where the JAC is considering whether to disclose such information, or the gist of it, to B for the purposes of its functions under Part 4 of the Constitutional Reform Act 2005 (or regulations or rules under it), it would be an unlawful fetter on the exercise of its discretion to proceed on the basis that such disclosure should only occur "in some exceptional circumstances".
- iii) The conduct of a fair selection process under section 88 of the Constitutional Reform Act 2005 requires that the JAC should inform prospective candidates of the classes of person from whom opinions or information about them may be sought.

END