



JUDICIARY OF
ENGLAND AND WALES



Section 9(1) protocol

General Introduction

1. This protocol concerns the process by which authorisations for Recorders and Circuit Judges to sit as judges of the High Court under section 9(1) of the Senior Courts Act 1981 should take place.
2. Authorisations under section 9(1) are the responsibility of the Lord Chief Justice. However he has delegated responsibility for them to the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court for their respective Divisions of the High Court under the terms of the Constitutional Reform Act 2005 (the "CRA").
3. The Lord Chief Justice or his delegate is required to seek the concurrence of the Judicial Appointments Commission (JAC) and to consult the Lord Chancellor before making an authorisation under section 9(1).
4. A person needs to be authorised under section 9(1) to enable the Head of Division to request them to sit where the needs of the Division require it.
5. It is expected that the majority of authorisations will occur as part of large-scale expression of interest exercises, organised on a division-by-division basis. These typically occur at intervals of one year to eighteen months, but timing will be at the discretion of the Head of Division and in part will depend on the business need. However there may be a need for authorisations to be made in the periods between the large-scale exercises.

Advertising the process

6. When an exercise is launched it will be advertised to all those eligible for authorisation i.e. all Circuit Judges and Recorders. The exercise will be publicised widely via a number of sources. These will differ depending on Division but could include:
 - The Circuit secretariats and Presiding Judges
 - Liaison or Supervisory Judges
 - Directly to Circuit Judges and Recorders (where feasible)
 - Appropriate publications such as *Counsel* magazine
 - Interested organisations such as the Law Society and local Law Societies
 - Specialist Bar Associations

The qualities

7. Expressions of Interest will be made with reference to the agreed qualities and abilities required of a deputy High Court Judge. The advertisement will set these out. They are:
 - the ability to deal with cases that would otherwise be dealt with by High Court Judges, by reference to the current requirements for selecting candidates for the High Court Bench. [Attached at Appendix A];
 - expertise and legal knowledge in the relevant field;
 - an established reputation for sound judgment (i.e. analysis and independent decision making);
 - an efficient and vigorous approach to the conduct of all proceedings;
 - a fair and balanced approach to litigants and court users, showing sensitivity to the diverse needs and backgrounds of all who appear in court, including court staff.
8. These qualities may be tailored to take into account the specialist work of each Division.
9. Applicants will need to demonstrate evidence against the agreed qualities and any other specific job requirements and experience required for the role, but also the ability to work at the required level immediately.
10. The expression of interest itself should be made on a form common to all three Divisions.

The authorisation process

11. The authorisation processes for each Division are set out in detail in Appendix B to this protocol.
12. Authorisations will be made on the basis of individual merit whilst taking into account the business need and the need for the preservation of public confidence in the court system.

Concurrence of the JAC and consultation with the Lord Chancellor

13. The JAC's preferred role would be to determine whether the proposed authorisations are a product of a fair and open process i.e. the process set out in this protocol rather than to concur with individual decisions. Meanwhile, this protocol has been agreed to give structure to the process.
14. Details of the selection process and the self-assessments including the judicial endorsement of the Chancery Supervising Judge, Presiding Judge, judge-in-charge of a specialist jurisdiction or Family Division Liaison Judge as appropriate, will be conveyed to the Commission at the recommendation stage. Once concurrence has been obtained, the Head of Division will write to the Lord Chancellor to consult him in accordance with the 1981 Act.
15. Once concurrence with the JAC is obtained and consultation with the Lord Chancellor is undertaken it remains the sole responsibility of the Head of Division to make the authorisation.

Appendix A

High Court Qualities and Abilities

Applicants for this selection exercise will be assessed against the following qualities and abilities:

1. Outstanding Intellectual Capacity

- High level of legal expertise
- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles and the ability, where appropriate, to master unfamiliar areas of law.

2. Personal Qualities

- Integrity and independence of mind
- Sound judgement
- Decisiveness
- Objectivity
- Ability and willingness to learn and develop professionally.

3. Ability to Understand and Deal Fairly

- An awareness of the diversity of the communities which the courts and tribunals serve and an understanding of differing needs
- Commitment to justice, independence, public service and fair treatment
- Willingness to listen with patience and courtesy.

4. Authority and Communication Skills

- Ability to express and explain clearly and succinctly to all concerned matters of procedure and judgement
- Ability to inspire respect and confidence
- Ability to maintain authority when challenged.

5. Efficiency

- Ability to work at speed and under pressure
- Ability to organise time effectively and produce clear reasoned judgments expeditiously
- Ability to work constructively with others including (leadership and managerial skills where appropriate).

Appendix B

The Chancery Division

1. Applicants are invited to apply to the Chancery Supervising Judge for the relevant Circuit. For the South Eastern Circuit applications are to be made to an identified puisne judge nominated by the Chancellor and identified in the advertising process.
2. Applicants are normally expected to have the support of at least one High Court Judge of the Chancery Division or specialist Chancery Circuit judge. In addition applicants may also provide up to two references of their choice which the Chancellor of the High Court may or may not take up.
3. Applicants should provide details of their sitting pattern in the last two years listing when, where and for how long they have sat as a Circuit Judge or Recorder.
4. Those judges designated as points of contact make recommendations to the Chancellor of the High Court from the field of applicants who have expressed interest to them. They should make extended enquiries of other judges as appropriate. Their recommendations form the first, but not the only, basis of the final decision of the Chancellor of the High Court.
5. The Chancellor considers each application individually with reference to the applicant's written application. In addition to the views submitted to him from the High Court Judges of the Chancery Division and specialist Chancery Supervisory Judges, it is open to the Chancellor to seek additional views from appropriate judges, for example judges of the High Court or Court of Appeal, should further evidence be required against the qualities sought.
6. The Chancellor seeks the concurrence of the Judicial Appointments Commission, providing the information referred to in paragraph 14 of the protocol and consults the Lord Chancellor in writing. Once concurrence is obtained and consultation undertaken the Chancellor is able to make the authorisation.

The Queen's Bench Division

7. Applicants are invited to apply to their Presiding Judge or to the Judge-in-Charge of a relevant specialist jurisdiction in the Royal Courts of Justice.
8. Applicants may provide up to two references of their choice which the President of the Queen's Bench Division may or may not take up.
9. Applicants should provide details of their sitting pattern in the last two years listing when, where and for how long they have sat as a Circuit Judge or Recorder.
10. The Presiding Judges or Judges-in-Charge make recommendations to the President of the Queen's Bench Division from the field of applicants who have expressed interest to them. They should make extended enquiries of other judges as appropriate. Their recommendations form the first, but not the only, basis of the final decision of the President of the Queen's Bench Division.
11. The President considers each application individually with reference to the applicant's written application. In addition to the views submitted to him from Presiding Judges and others, it is open to the Head of Division to seek additional

views from appropriate judges, for example judges of the High Court or Court of Appeal, should further evidence be required against the qualities sought.

12. Selection on merit may mean that the PQBD may authorise an outstanding applicant despite the fact that they lack civil experience but otherwise have demonstrated evidence of being the best candidate under consideration.
13. The President seeks the concurrence of the Judicial Appointments Commission, providing the information referred to in paragraph 14 of the protocol and consults the Lord Chancellor in writing. Once concurrence is obtained and consultation undertaken the President is able to make the authorisation.

The Family Division

14. Family Division Liaison Judges, having identified a need for authorisations to be made on their circuit, will invite eligible applicants to apply. Applications should be made through the relevant Circuit secretariat for the FDLJ's consideration.
15. Applicants should provide details of their sitting pattern in the last two years listing when, where and for how long they have sat as a circuit judge or recorder.
16. Applicants may also provide up to two references of their choice which the President of the Family Division may or may not take up.
17. The FDLJs make recommendations to the President of the Family Division from the field of applicants who have expressed interest to them. They should make extended enquiries of other judges as appropriate. Their recommendations form the first, but not the only, basis of the final decision of the President of the Family Division.
18. The President of the Family Division considers each candidate individually with reference to the applicant's written application. In addition to the views submitted to him from FDLJs, it is open to the President of the Family Division to seek additional views from appropriate judges, for example judges of the High Court or Court of Appeal, should further evidence be required against the qualities sought.
19. The President seeks the concurrence of the Judicial Appointments Commission, providing the information referred to in paragraph 14 of the protocol and consults the Lord Chancellor in writing. Once concurrence is obtained and consultation undertaken the President is able to make the authorisation.