

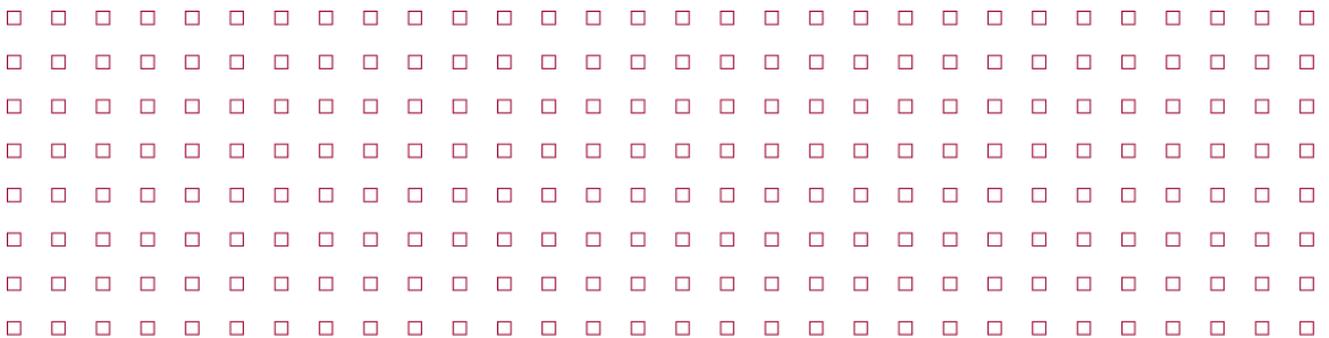


Ministry  
of Justice

# Triennial Review

## Judicial Appointments Commission

January 2015





# **Triennial Review**

Judicial Appointments Commission

This information is also available at: [www.justice.gov.uk](http://www.justice.gov.uk)



## Contents

Executive Summary	3
Findings and Recommendations	4
Introduction	5
Stage One findings	10
Stage Two findings	23
Statement from Peer Reviewer	43
Conclusion	46
ANNEX A: Corporate Governance in Central Government Departments	47
ANNEX B: Project Governance	65
ANNEX C: Judicial Appointments Commission Triennial Review 2014	66
Terms of Reference	68
Questions	71
ANNEX D: List of respondents to the call for evidence and other consulted stakeholders	73

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## Executive Summary

The Judicial Appointments Commission (JAC) is an Executive Non-Departmental Public Body (NDPB) which works with the Ministry of Justice (MoJ) and other partners to uphold the rule of law by delivering an efficient, fair and effective justice system in which the public has confidence. Since its establishment in 2006 under the Constitutional Reform Act 2005, the JAC has established itself as a universally respected part of the constitutional landscape, bolstering judicial independence and supporting the business of the courts and tribunals.

The JAC selects candidates for judicial office in courts and tribunals in England and Wales, and for tribunals whose jurisdiction extends to Scotland and Northern Ireland. It selects on merit, through fair and open competitions, from the widest range of eligible candidates. As of 2014/15, it has a budget of £4.85m and has around 65 staff.

The JAC has statutory duties under the Constitutional Reform Act 2005 to:

- Select persons of good character
- Select solely on merit
- Have regard to the need to encourage diversity in the range of persons available for selection for appointments

Since its establishment the JAC has been subject to a significant level of public interest in how its model works, including post-legislative scrutiny of the Constitutional Reform Act 2005, Government consultations, Parliamentary inquiries and academic analysis. Broadly, this scrutiny has reinforced the constitutional importance of an independent appointments process and the broad support for the current model of delivery through the JAC. This Review reinforces these findings.

In particular, this Review finds that the JAC plays an important role in upholding the rule of law, through the fair appointment of the most meritorious candidates to judicial posts, and should continue to deliver its function independently of the Executive, and the Judiciary, as an NDPB. It also finds that the JAC has strong corporate governance and accountability which has allowed it to both dramatically improve its performance and efficiency and foster a mature and appropriate relationship with the MoJ as its sponsoring department.

In addition to following the guidance on Triennial Reviews, this Review takes the opportunity to reflect on the evolution of the JAC and highlight areas where the JAC may continue to evolve. In particular, it recognises the JAC's appetite for continual improvement and recommends that the MoJ explore the potential to clarify and expand its functions in relation to rule of law, senior appointments, international and Overseas Territorial appointments and appointments which are not constitutionally judicial, but judicial in nature. The review also recommends that the JAC explores the development of a charging model to support those wider market initiatives.

The MoJ is pleased to see that an organisation so critical to the rule of law continues to perform and enjoy the confidence of the Executive, the Judiciary, Parliament and the JAC's stakeholders.

## Findings and Recommendations

The findings and recommendations of this Review are as follows:

### Stage One Recommendations

<b>Recommendation 1:</b> The function of the JAC, namely the open and merit-based selection of candidates for judicial office, is critical to upholding the rule of law and supporting judicial independence, and must remain.
<b>Recommendation 2:</b> The JAC, MoJ and the judiciary should explore options to clarify and expand the JAC’s functions in terms of senior appointments, promoting international rule of law, international and Overseas Territorial appointments, and appointments which are not constitutionally judicial, but judicial in nature.
<b>Recommendation 3:</b> The JAC should continue to operate as a NDPB which provides the appropriate balance of independence and accountability consistent with its important constitutional role.

### Stage Two Findings

<b>Finding 4:</b> The JAC has delivered improved value for money in regards to its economy and efficiency since 2009/10. There is less evidence to enable evaluation of the effectiveness of appointees and the JAC should, in consultation with relevant stakeholders, try to develop performance metrics to help it assess the quality of appointees.
<b>Finding 5:</b> The JAC satisfies the good governance requirements.
<b>Finding 6:</b> The JAC should consult stakeholders on the appetite for an open annual meeting.
<b>Finding 7:</b> The MoJ should consider clarifying the rules for Commissioners regarding post-tenure employment/appointments.
<b>Finding 8:</b> The JAC and MoJ should explore the potential for the JAC to develop a charging model, following full consultation with National Audit Office and Her Majesty’s Treasury on final models and accountability.

## Introduction

### Public Bodies Reform Agenda

1. The Public Bodies Reform Agenda is led by the Cabinet Office, using HM Treasury rules and standards.<sup>1</sup> In 2010, over 900 bodies were subject to a cross-Government review undertaken by all departments. This included all Non-Departmental Public Bodies, along with a number of Non-Ministerial Departments and public corporations. This Triennial Review process was then established in 2011 to ensure that all remaining NDPBs were regularly reviewed to consistent standards.
2. As sponsoring body, the Ministry of Justice (MoJ) conducted the Triennial Review of the Judicial Appointments Commission (JAC).

### Scope and Purpose of Triennial Reviews

3. The Cabinet Office has identified two principal aims for Triennial Reviews:
  - to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (stage one); and
  - Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).
4. All reviews are to be conducted in line with the following principles:
  - Proportionate: not overly bureaucratic; appropriate for the size and nature of the NDPB.
  - Timely: completed quickly to minimise disruption and reduce uncertainty.
  - Challenging: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
  - Inclusive: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
  - Transparent: all reviews should be announced and reports should be published.
  - Value for Money: conducted to ensure value for money for the taxpayer.

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<sup>1</sup> For example, as outlined at Annex 7 of *Managing Public Money*.

## Process and Methodology

5. This Review has been completed in accordance with Cabinet Office guidance which outlines a two-stage process.<sup>2</sup>

### *Stage One*

6. Cabinet Office guidance requires that the first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.
7. When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by local government or the voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.
8. In many cases, some delivery options can be quickly rejected. However, for each function under consideration, the review should identify all viable delivery options and undertake a fuller assessment of these options. Where appropriate, this should include a cost and benefits analysis. If one of the delivery options is the NDPB option, this must also include an assessment against the government's 'three tests':
  - Is this a technical function (which needs external expertise to deliver)?
  - Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
  - Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?
9. In accordance with the above, Stage 1 of this review concluded that there is an ongoing need for the JAC and that it should continue to exist as an Executive NDPB. Accordingly, the review conducted the Stage 2 assessment.

### *Stage Two*

10. Stage 2 of the review considered the performance and corporate governance arrangements for the JAC. The MOJ and the JAC completed a joint review of the control and governance arrangements in place for the Commission in accordance with the information below, which is taken from the Cabinet Office guidance. This included requirements in relation to openness, transparency and accountability.

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<sup>2</sup> ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf))

11. Good corporate governance is central to the effective operation of all public bodies and therefore examination of the governance arrangements for the JAC should be a central part of this review. This should be led by the sponsoring Department, working closely with the Chair and Chief Executive who have key responsibilities for ensuring that strong and robust corporate governance arrangements are in place. As a minimum, the controls, processes and safeguards in place should be assessed against the principles and policies set out below. These reflect best practice in the public and private sectors and, in particular, draw from the principles and approach set out in the Corporate Governance in Central Government Departments: Code of Good Practice. It also draws on the Cabinet Office’s Guidance on reviews of Non Departmental Public Bodies as set out in **Annex A**. This is summarised at Table 1.

**Table 1: Principles of good governance**

Principle		Descriptor
<b>Accountability</b>	Statutory Accountability	The public body complies with all applicable statutes and regulations and other relevant statements of best practice.
	Accountability for Public Money	The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.
	Ministerial Accountability	The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.
<b>Roles and Responsibilities</b>	Role of the Sponsoring Department	The departmental board ensures that there are robust governance arrangements with the board of each arm’s length body. These arrangements set out the terms of their relationships, and explain how they will be put in place to promote high performance and safeguard propriety and regularity. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.
	Role of the Board	The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance.  The board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.  There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.
	Role of the Chair	The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.

Principle		Descriptor
	Role of the CEO	The CEO is responsible for leadership of the NDPB and for ensuring its overall effectiveness.
	Role of the CEO	The CEO is responsible for leadership of the NDPB and for ensuring its overall effectiveness.
	Role of Board Members	As part of their role, non-executive board members provide independent and constructive challenge.
<b>Effective Financial Management</b>	The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.	
<b>Communication and Engagement</b>	The public body is open, transparent, accountable and responsive.	
<b>Conduct and Behaviour</b>	The board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.	

12. The Department and NDPB will need to identify as part of the review any areas of non-compliance with the principles and explain why an alternative approach has been adopted and how this approach contributes to good corporate governance. This is known as the “comply or explain” approach, the standard approach to corporate governance in the UK. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

### The MoJ Approach

13. To ensure consistency of approach to the programme of MoJ Triennial Reviews, guidance was issued for use by all the review teams. The guidance was based on that issued by the Cabinet Office and was developed to the particular needs of the Department.

14. The review has been governed by a Project Board, robustly examined by a Challenge Group and quality assured by an Independent Reviewer. The composition of these groups is at **Annex B**.

### Call for Evidence and existing evidence

15. A written ministerial statement was made in both Houses of Parliament on 25 March 2014 confirming the start of the call for evidence which ran until 30 April 2014.

16. The Call for Evidence was published as a public consultation open to all respondents, via the MoJ websites. Relevant stakeholders were invited to submit evidence both in writing and in person.

17. The Call for Evidence received eight responses and is attached at **Annex C**, with a list of respondents at **Annex D**. **Annex D** also lists other consulted stakeholders.

18. Recognising the limited response to the Call for Evidence, the review also drew on the findings and evidence of other reviews examining the JAC, including:
- The MoJ consultation on *The Governance of Britain: Judicial Appointments*, 2008;
  - The Government's post legislative scrutiny of the Constitutional Reform Act 2005, 2010;
  - The *Report of the Advisory Panel on Judicial Diversity*, 2010;
  - The MoJ consultation on *Appointments and Diversity: A judiciary for the 21<sup>st</sup> Century*, 2011; and
  - The Lords Constitution Committee Inquiry on Judicial Appointments, 2012.

## Stage One findings

### Functions of the JAC

19. As outlined above, the JAC was established as an Executive NDPB under the Constitutional Reform Act 2005. It is an independent Commission, comprising 15 Commissioners of lay, judicial and professional background, which selects candidates for judicial office in courts and tribunals in England and Wales, and for tribunals whose jurisdiction extends to Scotland and Northern Ireland. It does not run exercises for the UK Supreme Court, as discussed at 66.
20. The JAC has statutory duties under the Constitutional Reform Act 2005 to:
- Select persons of good character
  - Select solely on merit
  - Have regard to the need to encourage diversity in the range of persons available for selection for appointments.
21. The JAC runs selection exercises independent of the MoJ, putting recommendations to the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals for their approval. While the process of running selection exercises is independent of ministerial control, it is important to recognise that the JAC remains accountable to the Lord Chancellor and the MoJ's Principal Accounting Officer for the expenditure of public money as allocated to it by the MoJ. This accountability is provided through the Lord Chancellor's and MoJ's appropriate influence and control over aspects of the JAC's governance, including for example, financial reporting requirements, the JAC's Business Plan and efficiency plans.
- The 2012 Lords Constitution Committee Inquiry on Judicial Appointments explained: Judicial independence does not require that no-one be held accountable for the operation of the appointments process or perhaps even, in exceptional cases, for individual appointments.... The Lord Chancellor's role in the appointments process is justified as necessary to secure accountability to Parliament through the usual convention of individual ministerial responsibility. – Lords Constitution Committee<sup>3</sup>*
22. The JAC's governance arrangements are discussed in detail in the Stage 2 findings. The JAC is also subject to oversight by the Judicial Appointments and Conduct Ombudsman (JACO), set out at 101.
23. In running selection exercises, the JAC supports the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals who have split responsibility for all judicial appointments as set out in the Constitutional Reform Act 2005 (as amended by Crime and Courts Act 2013). This independent appointments process is critical to the provision of judges and therefore also indirectly supports the Lord Chief Justice and Senior President of Tribunals who are constitutionally responsible for the deployment

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<sup>3</sup> Pages 11-12.

of judges to courts and tribunals. Additionally, the JAC supports the MoJ in delivering its objectives outlined in its Departmental Improvement Plan 2014, particularly to “serve the public by upholding the rule of law, and by delivering an efficient, fair and effective justice system in which the public has confidence”.

**Box 1: A typical selection exercise**

The JAC selects candidates for judicial office on merit, through fair and open competition from the widest range of eligible candidates. Its process is transparent and it publishes the selection processes in advance of exercises, both through its website and individual selection exercise materials. It has a group of independent panel members (59), who were appointed through open competition and who sit on the selection panels alongside a member of the judiciary. This helps to ensure an independent view is taken on each candidate.

Shortlisting is conducted through an online multiple choice test for larger exercises (generally in excess of 200 applicants), and a paper sift using self assessment and references for smaller exercises. The highest ranked candidates from shortlisting are invited to selection day (at a ratio of 2 to 3 per vacancy) where they are typically assessed by one judicial member and two independent members. Selection days usually consists of a role play for entry level (fee-paid) positions, a presentation or scenario test for more senior posts, followed by a panel interview with competency and situational judgement questions. Statutory consultees are asked for views before selection day for smaller exercises, including leadership posts, and after selection day for larger exercises – these views are then considered as part of the process in determining which candidates should be recommended to the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals for appointment.

24. The JAC has set a series of strategic objectives that embrace both its statutory duties and its aspirations for change. These strategic objectives have remained largely constant over the last three years. They are agreed on an annual basis with the Lord Chancellor. In 2013/14 the JAC’s objectives were to:

- deliver the selection exercise programme, agreed with the MoJ and HMCTS, recommending high quality candidates, solely on merit, to the Lord Chancellor (or, as since set out in the Judicial Appointments Regulations 2013, the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals where appropriate);
- deliver its diversity duty by encouraging a diverse range of eligible applicants;
- deliver change in the form of faster, more economical and more candidate-focused processes;
- deliver an effective operating model for the JAC with a structure adapted to provide value for money; and
- deliver, in association with the MoJ, a new IT system which will enable and support new processes and structures.

25. The JAC has performed strongly against these objectives. Since 2010/11 the JAC has increased the number of selection exercises it delivers in accordance with its increased remit and greater number of judicial vacancies. In this context it has also increased the number of candidates per process, reduced the time taken to run a

selection exercise<sup>4</sup>, reduced the cost per selection exercise and reduced its overall spend and headcount. The JAC has also made inroads into increasing diversity, for example, increasing the recommendations of women and Black And Minority Ethnic (BAME) for all main court roles,<sup>5</sup> The JAC's performance against these statutory and business objectives is discussed in greater detail in the Stage Two findings.

### Could the JAC be abolished?

26. An independent judiciary and the efficient and effective administration of justice are both fundamental elements of the rule of law.
27. Judges must be available to meet the business requirements of the courts and tribunals – and therefore available to deliver justice – in an independent manner which demonstrates integrity in the practice of law and captures public confidence. As outlined in the MoJ's 2008 consultation *The Governance of Britain: Judicial Appointments*:

*Judicial independence is vitally important to the rule of law, and in particular to public confidence in judges as a means of upholding the law. This in turn brings social and economic benefits. It enables people to be assured that when their rights are infringed, or when others' duties need to be enforced, the appropriate action will be taken.... The need to secure judicial independence must therefore be one of the fundamental principles underpinning any system of judicial appointments. – MoJ<sup>6</sup>*

28. The JAC outlined in its evidence:

*If sufficient judges were not in place, this would lead to delays and inefficiencies and could prevent justice being provided in a timely manner. – JAC*

29. An independent, fair, open and timely judicial appointments process which captures the widest range of eligible candidates therefore plays an important role in how the rule of law is maintained.
30. The evidence gathered by this review, as well as other reviews and reports over the life of the JAC, confirm that the JAC carries out an effective constitutional role in upholding judicial independence and the application of the administration of justice. The JAC has established itself as part of the constitutional landscape of England and Wales. As academics on the Arts and Humanities Research Council research project on *The Politics of Judicial Independence in Britain's Changing Constitution* (Graham Gee, Robert Hazel, Kate Malleson and Patrick O'Brien) stated in their submission,
- ... our research [which included 160 interviews with judges, politicians, civil servants and practitioners] suggests that after a series of teething troubles between 2006-2010, the JAC now occupies a secure place on the institutional landscape and enjoys confidence of key stakeholders. – Gee and others*

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<sup>4</sup> It should be noted that others, such as statutory consultees, have a role in the timeliness of the appointments processes.

<sup>5</sup> Including High Court, Circuit Judge, District Judge (Magistrates' Courts), District Judge (Civil), Deputy District Judge (Magistrates' Courts), Deputy District Judge (Civil). Detailed diversity statistics are discussed at paragraphs 114 to 116.

<sup>6</sup> Paragraph 2.5.

31. Through the Constitutional Reform Act 2005, Parliament asserted that the appointment of individuals to the ‘third branch of the state’ be merit based, and that the process be conducted in a modern, open and transparent way by of an independent Judicial Appointment Commission. This was reinforced through the Crime and Courts Act 2013, which provided that there must be regard for the need to encourage diversity, from the widest pool possible, for selection for appointments. There is no evidence to suggest that these principles are no longer valid. Indeed, in his submission to this review, the Lord Chief Justice, Lord Thomas of Cwmgiedd, discussed Parliament’s most recent reconsideration of the JAC through the passage of the Crime and Courts Bill, pointing out that:

*...the clear conclusion of Parliament is that the JAC’s functions must continue to be delivered.* – Lord Chief Justice

32. While the evidence this review received has been from those perhaps most likely to support the JAC in its current form, the principle of an independent judicial appointments process is a core pillar of a democratic system.<sup>7</sup>

**Recommendation 1:** The function of the JAC, namely the open and merit based selection of candidates for judicial office, is critical to upholding the rule of law and supporting judicial independence, and must remain.

### Additional functions

33. When examining whether the functions of the JAC should continue to be delivered, this review found that there may be scope to expand the functions of the JAC in some areas, as outlined below.

#### *Senior appointments*

34. As outlined in the Constitutional Reform Act 2005, the JAC is responsible for selection exercises for appointments to the High Court and plays a role in selection exercises for Court of Appeal judges, Heads of Division and the Lord Chief Justice (outlined at Box 2). During face-to-face consultation the anomaly of the JAC not playing a part in the Senior President of Tribunals appointment process was highlighted by stakeholders.

#### **Box 2: Senior appointments processes**

##### *High Court*

When a vacancy arises in the High Court, the Lord Chancellor must advise the JAC of that vacancy. The JAC must determine and apply the selection process and make a selection accordingly, consulting the Lord Chief Justice and another person who has held the office for which a selection is to be made or has other relevant experience. The JAC must submit a report to the Lord Chancellor containing a recommendation. The Lord Chancellor must then accept or reject the recommendation, or require the JAC to reconsider.

##### *Court of Appeal*

When a vacancy arises in the Court of Appeal the Lord Chancellor must consult the Lord Chief Justice before making a request to the JAC to convene a panel to make a selection.

<sup>7</sup> For example through the Lords Constitution Committee Inquiry into Judicial Appointments, 2012.

The Panel consists of: the Lord Chief Justice (or their nominee, providing they are a Head of Division or a Lord Justice of Appeal) as Chair, and a Head of Division or Lord Justice of Appeal (designated by the Lord Chief Justice), the Chair of the JAC (or their nominee), a lay member of the JAC (designated by the Chair of the JAC or their nominee), and a member designated by the Lord Chief Justice after consulting the Chair of the JAC or their nominee. The panel determines the process it will follow; makes a selection and reports to the Lord Chancellor, who can then accept the selection, reject it, or require the panel to reconsider.

*Head of Division and Lord Chief Justice*

As with Court of Appeal exercises, when a Head of Division or Lord Chief Justice vacancy arises the selection process is determined by the selection panel. Assuming there have been no disqualifications (for example if they hold the office for which a selection is being made), the Panel consists of: the Lord Chief Justice or their nominee, the most senior England and Wales Supreme Court judge (or their nominee), the Chair of the JAC (or their nominee), a lay member of the JAC (designated by the Chair of the JAC and a person designated by the Lord Chief Justice after consultation with the Chair of the JAC.

35. Unlike the processes outlined at Box 2, appointment of the Senior President of Tribunals can follow two paths, either:

- The Lord Chancellor seeks the agreement of the Lord Chief Justice, the Lord Chief Justice of Northern Ireland and the Lord President of the Court of Session on a person; or
- The Lord Chancellor can request the JAC to convene a panel consisting of the Lord Chief Justice (or his nominee), a person designated by the Lord Chief Justice, the Chair of the JAC or their nominee, a lay member of the JAC designated by the Chair of the JAC and a person designated by the Lord Chief Justice to run a selection exercise similar to that outlined at Box 2. There are also requirements to consult the Lord President of the Court of Session, the Lord Chief Justice of Northern Ireland, the Judicial Appointments Board Scotland (JABS) and the Northern Ireland Judicial Appointments Commission (NIJAC) on panel membership.

36. Given this anomaly, there may be scope to explore a process which is more consistent with other senior appointments. The last Senior President of Tribunals appointment process was successfully carried out using the second path (consistent with the last Lord Chief Justice appointment process (outlined at Box 2)). This suggests that that Senior President of Tribunals appointment process should be formalised to follow this model as a matter of course in the future.

*Chamber Presidents of the Upper Tribunal*

37. The JAC selects Chamber Presidents of the First-tier Tribunal, but has no statutory role in respect of Chamber Presidents of the Upper Tribunal. Under Schedule 4 of the Tribunals, Courts and Enforcement Act 2007 (TCEA), Chamber Presidents of the Upper Tribunal are appointed by the Lord Chancellor, in consultation with Senior President of Tribunals. Chamber Presidents of the Upper Tribunal are akin to Heads of Division in the courts and it would be beneficial if the appointments process was modernised to be more consistent with those processes, reflecting accepted principles of merit, transparency and diversity. Reforms to this process will require amendments to the TCEA in the new Parliament.

*Senior Presiding Judge*

38. The Senior Presiding Judge and Deputy Senior Presiding Judge posts do not fall in the JAC remit. They are issues of deployment rather than appointment and therefore within the constitutional remit of the Lord Chief Justice. Evidence from Gee and others highlights, however, the importance of the Senior Presiding Judge post as a key leadership role, arguing for a selection exercise more consistent with Heads of Division:

*The Senior Presiding Judge is currently chosen by the Lord Chief Justice, with the concurrence of the Lord Chancellor. The appointment falls outside any of the processes managed by the JAC. Yet, the Senior Presiding Judge is one of the most important leadership roles in the judiciary. Appointment to this role should be through the same JAC-run process as that for Heads of Division, with the final say lying with the Lord Chancellor.*

39. Consideration could therefore be given to ensuring that principles that are applied to judicial appointments, such as transparency and the open application of merit, are applied in those cases.

*International rule of law*

40. The JAC is regarded as a world leading model for judicial appointments and engages widely with judicial and other delegations from other jurisdictions, on the importance of an independent judicial appointments process to support judicial independence and the rule of law. In recent years the JAC Chairman has met with delegations from India, Nigeria, Japan, Albania, Singapore, Malaysia, South Africa, Australia, Argentina and Zambia to discuss and promote best practice in judicial selection and the challenges involved in developing an independent selection exercise. There may be scope for this function to be more formally recognised through the JAC's governance documents, namely the Framework Agreement and in the JAC's participation in events like the Global Law Summit.

*International and Overseas Territorial appointments*

41. The JAC currently does not have a role in UK judicial nominations to international courts. In March 2014, Christopher Stephens, Chair of the JAC, provided evidence to the House of Commons Justice Committee that he would welcome discussions about how the JAC could support HMG in selecting candidates to put forward to international courts to help develop better consistency between domestic and international judicial appointment processes.
42. The JAC does though currently support the Foreign and Commonwealth Office (FCO) and British Overseas Territories for some judicial appointments processes. The MoJ, FCO, JAC, devolved administrations, Northern Ireland Judicial Appointments Commission, Judicial Appointments Board Scotland and judiciary are also working together to explore how a more consistent approach can be taken to HMG nominations to international courts and tribunals. These would look to utilise the JAC's skills and expertise, targets the right pool of candidates with the right skills, drive high-quality judgecraft in international courts and integrate these appointments into a domestic judicial career structure.

*Appointments of a judicial nature*

43. The JAC has been approached by non-government regulatory or adjudicatory bodies, such as the General Medical Council and Solicitors Regulatory Authority, to conduct or

support selection exercises for posts which exercise judicial type functions. Consideration should be given as to whether the JAC should have the authority to conduct and charge for such exercises, focusing particularly on: the scope of the activity and whether it should be confined to regulatory or adjudicatory posts, the propriety of such activity, the maintenance of the JAC's independence under such arrangements, the need to protect and prioritise the JAC's public functions and the continued delivery of public value for money.

**Recommendation 2:** The JAC, MoJ and the judiciary should explore options to clarify and expand the JAC's functions in terms of senior appointments, promoting international rule of law, international and Overseas Territorial appointments, and appointments which are not constitutionally judicial, but judicial in nature.

### Could the functions of the JAC be delivered in another way?

44. A key part of the triennial review process is to consider whether the functions of the JAC could be delivered in another way. The review team has analysed several alternative models, heavily based upon statutory requirements of the CRA 2005. This analysis is set out below. However, nothing in the evidence received suggested that an alternative delivery model would be better than the current position.
45. Given the importance of an independent judicial appointments process in upholding the rule of law – which is a unique statutory function of judicial public bodies - it is essential that any body performing judicial appointment functions must both:
- be able to make appointments independent of external influence; and support the continued actual and perceived independence of the judiciary; and
  - have minimal delivery risk in order to support the continued appointment of judges and administration of justice.
46. These two requirements form the basis for testing whether alternative models could be used for delivering judicial appointments functions.

#### *Could the functions be moved out of Central Government?*

##### Independence

47. Much of the evidence provided suggested that judicial independence would be compromised if judicial appointments were delivered through the private or voluntary sector. In his submission, the Lord Chief Justice stated:
- ...it would not be appropriate for any private or third sector organisation to be involved in the function of judicial appointments... The risk of conflicts of interest is significant.* – Lord Chief Justice
48. We believe that the JAC operating as a non-government body poses an increased risk – or at least the increased risk of a perception – that judicial independence will be compromised. For example, acting in the interest of its shareholders, beneficiaries and/or in accordance with a non-government body's other objectives, could fall into conflict with the principle of an independent merit based judicial appointments process. For example, directors of companies have statutory and fiduciary duties to act in the interests of shareholders and the company itself must act consistently with its objectives. Directors of charities also act under fiduciary duties and the charity itself

must act within its charitable mission which may not fully align with the constitutional framework. This has the potential risk of resulting in a body appointing judges that is less likely to make independent judicial decisions.

49. Even if conflicts of interests could legally and operationally be resolved, there would still remain a significant risk that the public perception of judicial independence and impartiality – incumbent with its status as the third branch of the State – would be compromised by a body not acting solely in the interests of the public.

#### *Delivery*

50. Some evidence provided suggested that there would be a significant delivery risk if the private and voluntary sector, or local government, were to administer judicial appointments. Risks centre on stretched lines of accountability and distance from government partners, organisational uncertainty and jurisdictional complexity.
51. Judicial appointments also rely on a strong understanding of the justice system and close working relationship between the MoJ, HMCTS and Judicial Office which reflects each other's constitutional roles in the recruitment and appointment of the judiciary. As outlined by the Lord Chief Justice in his submission:

*...the recruitment of a diverse and talented judiciary requires a sophisticated understanding of the role of judges at all levels in the courts and tribunals across England and Wales, as well as a strong understanding of the justice system itself. – Lord Chief Justice*

52. In its submission, the JAC explained its relationship with other Government bodies:

*Her Majesty's Courts and Tribunals Service identifies the vacancies needed, the Lord Chancellor issues a vacancy request, the JAC selects and recommends candidates to one of the three authorities (either the Lord Chancellor, the Lord Chief Justice or Senior President of Tribunals), and once these are accepted, Judicial Office processes the appointment. – JAC*

53. Similarly, it is essential for the JAC to have a strong working relationship with the Welsh Government as outlined in the Welsh Government's submission:

*In exercises to recruit members of tribunals where the statutory provision is for appointments to be made by the Lord Chancellor, the recruitment is led by the JAC in consultation with the Welsh Government. In exercises to recruit members of tribunals where the statutory provision is for appointments to be made by the Welsh Ministers, the recruitment is led by the Welsh Government in consultation with the JAC.- Welsh Government*

54. While there are clearly precedents of private and voluntary sector organisations providing functions previously delivered by the public sector, these have not been of a constitutional nature or relied on the close and sensitive working relationship between other bodies with constitutional functions. The delivery of judicial appointments through a non-government body could risk disrupting this delicate balance.
55. Moving functions to the **private or voluntary sector** is often considered as a route to improving performance and efficiency. There are also bodies providing functions analogous to the JAC such as recruitment consultants and executive search agencies. However, as discussed at Box 3 (page 19) the JAC currently performs well compared to private sector comparators (as far as comparisons can be made), mitigating the

argument that outsourcing the function would improve efficiency. Furthermore, given the absence of a competitive market for judicial appointment processes, there would be no market pressures to drive further efficiencies.

56. Transferring the appointment of judges into the private or voluntary sector could stretch and compromise the line of accountability for delivery of services with public money from the provider to the Lord Chancellor and ultimately to Parliament. Accountability for delivery would be solely contractual, with limited legal or practical remedy for under- or non-performance. This level of risk is far greater than if the function remained in the public sector, subject to the accountability to the Lord Chancellor through a number of governance checks.
57. Additionally, as with any attempt to move a critical public function into the private sector, any attempt to move the JAC's functions into the private sector would have significant up-front legal costs to both bolster the lines of accountability and to protect the highest levels of propriety in the procurement. While other public functions may be of a nature and scale that costs could be recovered through new private sector efficiencies, given the JAC's strong performance in reducing overheads by 32%, from £8.247m in 2010/11 to £5.590m in 2013/14, it is unclear how quickly those up-front costs could be recovered if it were to be moved into the private sector.
58. An alternative model might be for judicial appointments to be delivered through a devolved **local government model**. However, this would give rise to potential jurisdictional issues, particularly as the appointments the JAC supports have reach across England and Wales and in some cases Scotland and Northern Ireland, rather than a particular local government area. A devolved appointments process could lead to fragmentation and inconsistency in quality and process between local areas, which in turn would introduce inconsistency to an England and Wales-wide justice system. That would present significant and unnecessary delivery challenges, including stretched lines of accountability and fewer opportunities to achieve economies of scale across the piece e.g. through large scale appointment exercises where a significant number of judges of a particular jurisdiction are needed across several areas (as discussed at paragraphs 47 to 49).
59. Evidence submitted to the review suggests that the risks to judicial independence and the continued appointment of judges are perceived to be too high for judicial selection exercises to be delivered outside of central government. As the Bar Council emphasised that "the JAC's role is too important to be delivered by a voluntary/private sector or other body". This of course does not preclude the JAC from using external service providers. As outlined in its evidence, the JAC "...consider opportunities to outsource certain functions to external companies, where they are able to provide expert services that represent value for money."

**Box 3: Private sector comparisons**

The closest private sector comparison that could be made to the JAC is to recruitment consultants, who traditionally charge clients around 30% of the starting salary for an individual post. If looking at the 2012/13 data, where the JAC made 597 recommendations for appointments, it would have resulted in the equivalent private sector cost of £15.765m for the year. This compares to the full cost of the JAC in 2012/13, including soft charges of £6.724m. This is based on the assumption that an annual equivalent salary is taken for fee-paid posts – working 200 days per year. Any comparison should be mindful of the differences in the work carried out by the JAC and private sector companies, as outlined below:

Activity	Typical private sector headhunter	JAC
Advertising	✓	✓
Sift of CVs/Application forms	✓	In some instances
Qualifying Test	In some instances	In some instances
Initial discussion with potential candidates	✓	✗
Full interview of candidates, can sometimes involve role-play/scenario questions	✗	✓
Selection decision	✗	✓
Outreach to diverse groups	✗	✓

*Could the functions be brought in-house? Could delivery be by a new Executive Agency?*

60. One alternative delivery option is to consider bringing the JAC's functions in-house to be delivered by the MoJ. The evidence submitted is very clear that amending the CRA 2005 and bringing the JAC's function in-house would significantly compromise actual and perceived independence of the judiciary. Bringing the selection exercise for judicial appointments within MoJ would increase ministerial control over the process, significantly increasing the risk that those processes, and the ultimate appointment of judicial office holders, could be used for political purposes. As the JAC outlined in its submission:

*...the JAC was created in order to ensure the independence of judicial recruitment from the executive, providing greater transparency and enhancing public confidence. It would not be appropriate for MoJ or one of its agencies to deliver this function. – JAC*

61. Even if the risk for political interference could be mitigated and managed in an MoJ-run process, there is still a risk that the appointments process is no longer perceived to be independent. As the Chartered Institute of Legal Executives (CILEx) outlined in its submission:

*In a modern democratic society it is no longer acceptable for judicial appointments to be in the hands of a government minister or department. The judiciary often adjudicates on the lawfulness of actions of the Executive. The judicial appointments system must be, and be seen to be, independent of government. – CILEx*

62. This is supported by the President and Vice-President of the Supreme Court, Lord Neuberger and Lady Hale:

*We hope... there is no question of the responsibility for judicial appointments being taken back "in-house".* – President and Vice-President of the Supreme Court

63. A decision to bring the functions of a body in-house and operate them as part of the core department sometimes reflects concern over the body's performance or accountability. No such concerns exist as regards the JAC, either in regards to governance or financial maturity and accountability, and a decision to bring judicial appointments closer to or within the core department would undermine judicial independence. The current level of accountability is sufficient to provide a high degree of confidence in the JAC. This is reflected in the most recent 2014 Risk Assessment carried out by MoJ.

*Could the JAC be merged with another body?*

64. There are a number of bodies which, on first blush, could be considered potential merger partners for the JAC. Further consideration reveals that any such merger is not straightforward, raising jurisdictional and functional challenges.
65. There are two other judicial appointments bodies in the UK – the Judicial Appointments Board for Scotland (JABS) and the Northern Ireland Judicial Appointments Commission (NIJAC). The JABS runs selection processes for judicial offices in Scottish courts and is an NDPB of the Scottish Government with its function and composition provided in the Judiciary and Courts (Scotland) Act 2008. The NIJAC runs selection exercises for judicial offices in Northern Irish courts and is an independent public body of the Northern Ireland Executive, with its function and composition provided in the Justice (Northern Ireland) Acts 2002 & 2004 and Northern Ireland Act 2009. The separation of these bodies recognises the devolved responsibilities of each jurisdiction and the relationship between the judiciary and each responsible Executive. Any changes would have a significant impact on these arrangements and rely on broad political support in all parliaments.
66. UK-wide appointments are limited to those made to the UK Supreme Court. There is no standing organisation responsible for them and when a vacancy becomes available, an ad-hoc commission is convened under the Constitutional Reform Act 2005, on which each of the judicial appointment bodies is represented. There is, therefore, no existing UK-wide model that the JAC could be subsumed into. Furthermore, there is no evidence in any inquiry to suggest there is an appetite to amend these arrangements with a view to create a cross-jurisdictional appointments body and questionable practical benefits of such a merger. Any steps to create such a body would have a significant impact on existing devolution responsibilities and would be dependent upon broad political support in all parliaments. The JAC recognises that it will need to be responsive to any future changes that may emerge from the implementation of recommendations by the Silk and Smith Commissions.
67. Judicial appointments could be perceived as akin to public appointments (as in the appointments made to Public Bodies). With the exception of some public appointments relating to NHS Trusts that are made by NHS Trusts Development Authority (an Executive Agency), there is no other independent body which runs selection exercises for public appointments. Rather, departments which sponsor public bodies are responsible for running fair and open competitions for those

appointments meaning there is no suitable body with which to merge functions. As the Lord Chief Justice outlined in his submission to the review,

*...we can identify no comparable body with which the JAC could sensibly be merged... without detrimentally affecting its primary role, compromising independence and that of its Commissioners. – Lord Chief Justice*

### **Is it right to continue delivery through an NDPB?**

68. The Cabinet Office guidance provides three tests as to whether a function should be delivered by an NDPB. If one of these is answered in the affirmative, the function must be delivered by an NDPB.

*Is this a technical function (which needs external expertise to deliver)?*

69. No. While the JAC has significant expertise in delivering selection exercises for judicial appointments, it is not of a technical nature.

*Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?*

70. Yes. This is a vital part of the criteria for the judicial appointments process which is heavily underpinned by the statutory arrangements. Judicial appointments must be made free of political influence, as outlined in MoJ's 2008 consultation *The Governance of Britain: Judicial Appointments*:

*One of the most important ways of securing judicial independence is to ensure that the appointments process does not result in politically biased judges, or judges who are, or feel, beholden to the appointing body or person, or to any individual or organisation. This in turn helps to ensure that the judges who are appointed are able to act independently, free from political or other improper pressure, in office. – MoJ<sup>8</sup>*

71. While ultimately the Lord Chancellor is responsible for making senior judicial appointments within the statutory framework, an open, merit based selection exercise run by an independent body, which makes recommendations to the Lord Chancellor, assures that these appointments are not made for political purposes. Legislation provides for the judiciary through the Lord Chief Justice and Senior President of Tribunals to authorise the other judicial appointments having been recommended through the JAC's objective processes, ensuring they too are independent.

*Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?*

72. No. The JAC function is not to establish facts or figures independently from Ministers for statistical or scientific reasons.

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<sup>8</sup> Paragraph 2.9

## Conclusion

73. As demonstrated, alternative models for the delivery of judicial appointments functions are either jurisdictionally impossible, or carry too great a risk to judicial independence and efficient and effective delivery of appointments. This finding is reinforced through the Cabinet Office’s “three tests” which find, in particular, that judicial appointments need to be, and seen to be, delivered with absolute political impartiality.

74. This Review has found that the JAC should continue to operate as an NDPB which recognises the right balance between independence of and accountability to the Lord Chancellor. This reinforces the position outlined in the MoJ’s 2008 consultation, *The Governance of Britain: Judicial Appointments*:

*When considered against the previous arrangements, the creation of the Judicial Appointments Commission – a Non Departmental Public Body – provides more independence, transparency, and accountability through its clear and public appointments processes and its arm’s length relationship with its sponsoring Department, the Ministry of Justice. This is a significant improvement over the position that prevailed during the previous decade, in which the power to select and appoint judges rested solely and directly in the hands of Ministers. - MoJ<sup>9</sup>*

75. This conclusion also echoes the findings found in the Lord’s Constitution Committee Report on Judicial Appointments in 2012:

*...a broad consensus appears to have been reached that, in general terms, the model of recommendations for appointments being made by an independent commission is the right one. - Lords Constitution Committee<sup>10</sup>*

More recently, the Arts and Humanities Research Council project on The Politics of Judicial Independence in Britain’s Changing Constitution has found:

*None of our [160] interviewees suggested that there was any need to reconsider the JAC’s NDPB status. – Gee and others*

**Recommendation 3:** The JAC should continue to operate as an NDPB which provides the appropriate balance of independence and accountability consistent with its important constitutional role.

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<sup>9</sup> Paragraph 4.10

<sup>10</sup> Page 8.

## Stage Two findings

### Value for money and performance

76. The JAC has demonstrated strong performance against value for money considerations particularly since 2010. The National Audit Office uses three criteria to assess the value for money of government spending: economy, efficiency and effectiveness.<sup>11</sup> In the context of the JAC, this could include:

- Economy: minimising the resources used or required by the JAC to deliver its functions, including budget, staff and accommodation;
- Efficiency: achieving greater output from the JAC's functions and/or with fewer resources, including cost per application and cost per recommendation; and
- Effectiveness: achieving the intended results of the JAC's functions, including the:
  - delivery and timeliness of appointments;
  - integrity of the appointments process;
  - merit and quality of appointed judges; and
  - diversity of applicants and appointments.

77. The JAC has improved its performance against these criteria as well as against its strategic objectives as outlined below.

#### *Economy*

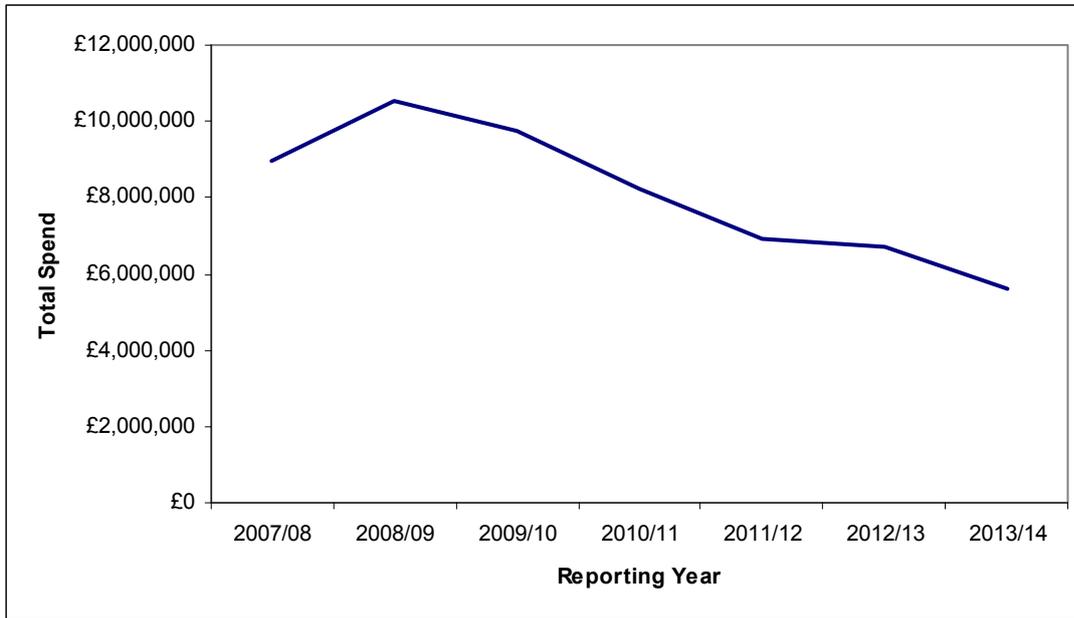
78. The JAC has significantly improved its economic performance since 2010. As part of 2010 Spending Review, the MoJ was asked to realise savings of 33%. The JAC supported the MoJ in delivering these savings, reducing its budget and resource spend by 32%, from £8.247m in 2010/11 to £5.590m in 2013/14. Figure 1 demonstrates how the JAC has reduced its costs over time.

79. The meeting of this target is a good indicator of the current 'health' of the JAC's relationship with the MoJ over its financial management. This is supported by MoJ's most recent assessment of the JAC's status as an NDPB which resulted in the JAC gaining Level 1 status. This recognises the high degree of independence essential to the operation of the Commission and the limited and specific nature of its work. Also taken into account is the active engagement with the MoJ and the degree of financial maturity and accountability along with the full range of transactional services from MoJ Shared Services which mean that the JAC poses a low risk to the Department.

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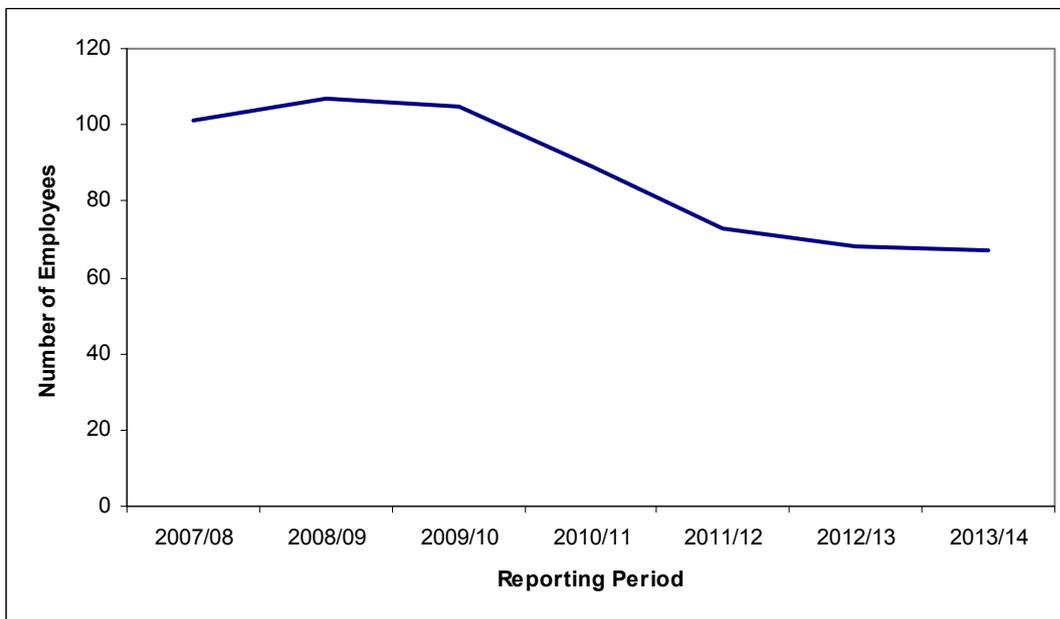
<sup>11</sup> <http://www.nao.org.uk/successful-commissioning/general-principles/value-for-money/assessing-value-for-money/>

**Figure 1: JAC total spend 2007/08 to 2013/14**



80. The JAC has driven down cost by reducing its headcount by around a third in the same period, from 105 employees to 67, as outlined at Figure 2 below.

**Figure 2: JAC headcount (FTE) 2007/08 to 2013/14**



81. As the JAC has realised greater economies of scale, since 2010 it has reduced its SCS headcount from 5 to 2, and Band A headcount from 16 to 10 and now has 70% of staff performing frontline functions. The JAC has plans to reduce to 1 SCS and 8 Band A staff by March 2015.

82. The JAC has also driven economies through utilising shared accommodation and services with MoJ. An outline of the services and facilities provided by the sponsoring department is set out below. While this has helped drive down costs, sharing

accommodation and services does risk the perception of JAC independence. As outlined by the President and Vice-President of the UK Supreme Court in their evidence:

*Whilst we understand the financial reasons for the JAC moving from its separate accommodation, to be housed within the Ministry of Justice, this does have the potential to undermine the perceptions of independence. – President and Vice-President of the UK Supreme Court.*

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**Services and facilities provided by sponsoring department (non-cash)**

	2013/14 £000	2012/13 £000
Legal and Judicial Services Group	-	-
Commercial Group	887	1,422
Human Resources Directorate	11	12
E-Delivery Group	417	278
Information operations	21	24
Communications	4	7
Transforming Justice	-	1
Shared services	48	49
Procurement	-	6
<b>Total</b>	<b>1,388</b>	<b>1,799</b>

The recharge information from MoJ does not provide for the legal advice received through the Legal and Judicial Services Group, and has not been incorporated as agreed with MoJ. The charge for the Commercial Group reduced in the year as a result of the shrinking MoJ estate and the move to the main MoJ offices at 102 Petty France. There was an increase in the E-Delivery Group recharge due to a different basis of charging.

83. Recognising this risk, the JAC took a number of steps to distinguish itself from the MoJ when it moved into 102 Petty France. As it outlined in its evidence:

*Before the relocation, some concerns were expressed about the potential impact on perceptions of the independence of the JAC. Accordingly, it was agreed to provide a separate reception and waiting area for JAC candidates with JAC signage and dedicated interview rooms. It was also agreed that the JAC back office would be located in a discrete area which could not be accessed by staff from other organisations in the building. The new accommodation provides a much improved environment for staff and visitors, and to date the arrangements are working well. - JAC*

84. This review is satisfied that the JAC has appropriately balanced the need to drive and realise savings and maintain its actual and perceived independence from the MoJ.

85. While it is helpful to compare NDPBs of a similar size (in terms of finance and headcount), this has significant limitations, namely because NDPBs perform different functions and have different financial models, staff profiles, status and governance. Despite this, high-level comparisons can be made between the JAC and the Law Commission, showing the JAC has appropriate overhead costs. In 2013/14, the Law

Commission had a RDEL budget of £3.10m (compared to the JAC’s £4.91m), headcount of 54.69 (compared to the JAC’s 67.72), it shares accommodation and services with MoJ and works closely with both the MoJ and judiciary.<sup>12</sup>

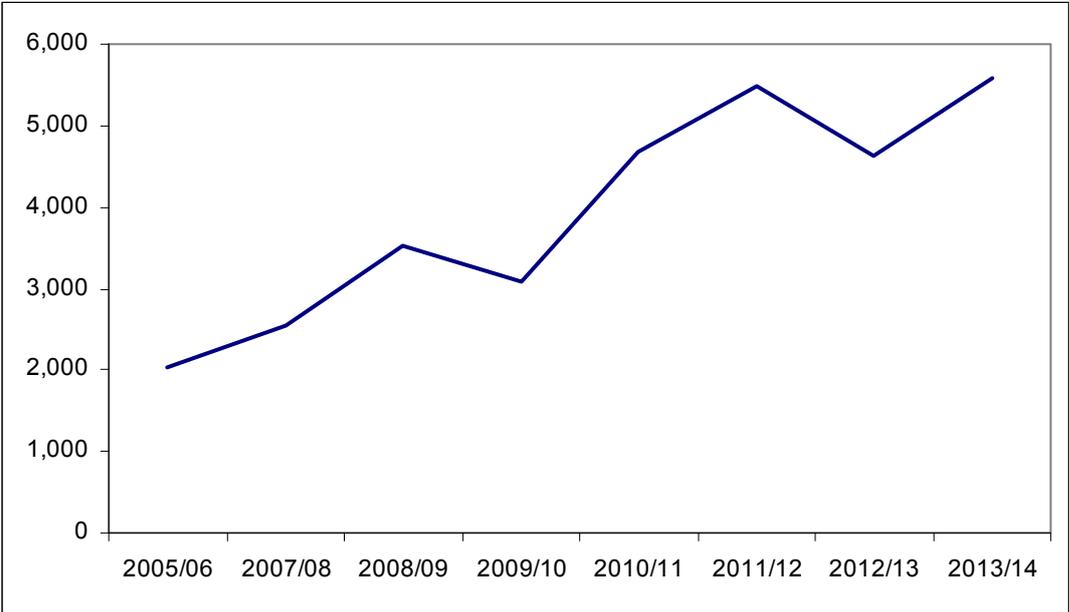
86. As discussed at paragraph 65, there are very few bodies which perform a similar function to the JAC with the Northern Ireland Judicial Appointments Commission (NIJAC) and Judicial Appointments Board for Scotland (JABS) being the only live comparators. The JAC, is significantly larger than the NIJAC and JABS in terms of budget (£4.85m for 2013/14) and business (4,637 applications in 2013/14). In 2012/13 NIJAC spent £1.31m, processing 154 applications and JABS spent £0.29m, processing 94 applications.<sup>13</sup> Given its size, the JAC can achieve greater economies of scale than its counterparts, making any comparison in terms of *economy* and value for money problematic.

*Efficiency*

87. Over time, the JAC has processed more applications for judicial posts and delivered more recommendations to the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals per year, and done so more efficiently.

88. Figure 3 demonstrate the number of applications the JAC has processed each year since 2005/6, noting the considerable increase from 3,084 in 2009/10 to 5,591 in 2013/14 in the context of a continually reducing year-on-year budget.

**Figure 3: Number of applications processed per year 2005/06 to 2013/14**

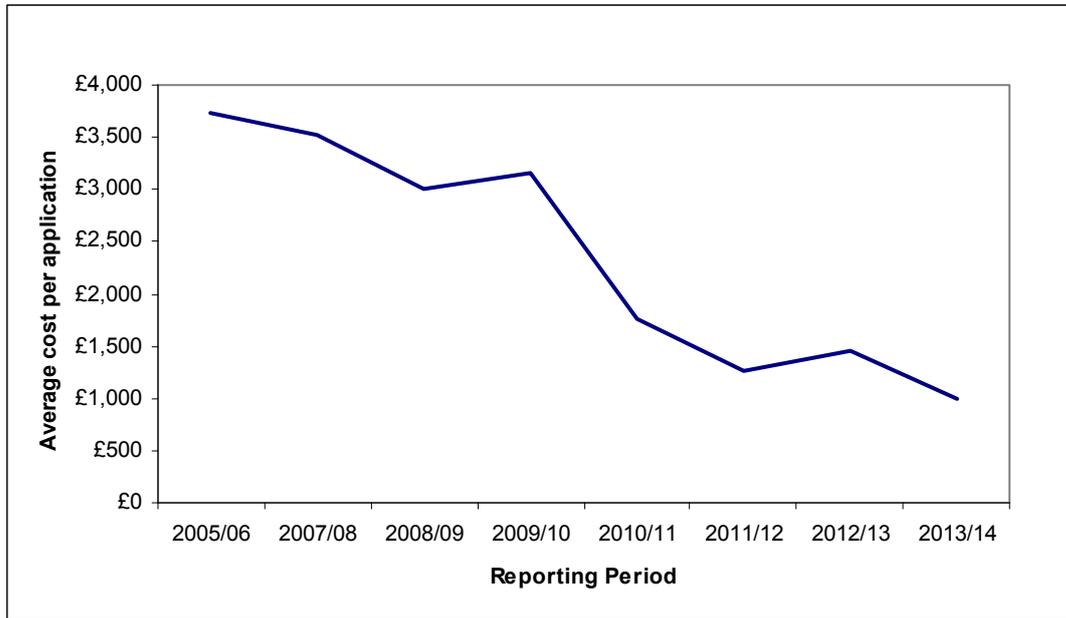


89. While processing more applications, the JAC has been able to considerably reduce the cost per application. Figure 4 shows how the JAC has made efficiencies from a cost of £3,740 per application in 2005/6 to £1,000 in 2013/14, with the largest reductions taking place since 2009/10.

<sup>12</sup> <http://lawcommission.justice.gov.uk/publications/annual-reports.htm>

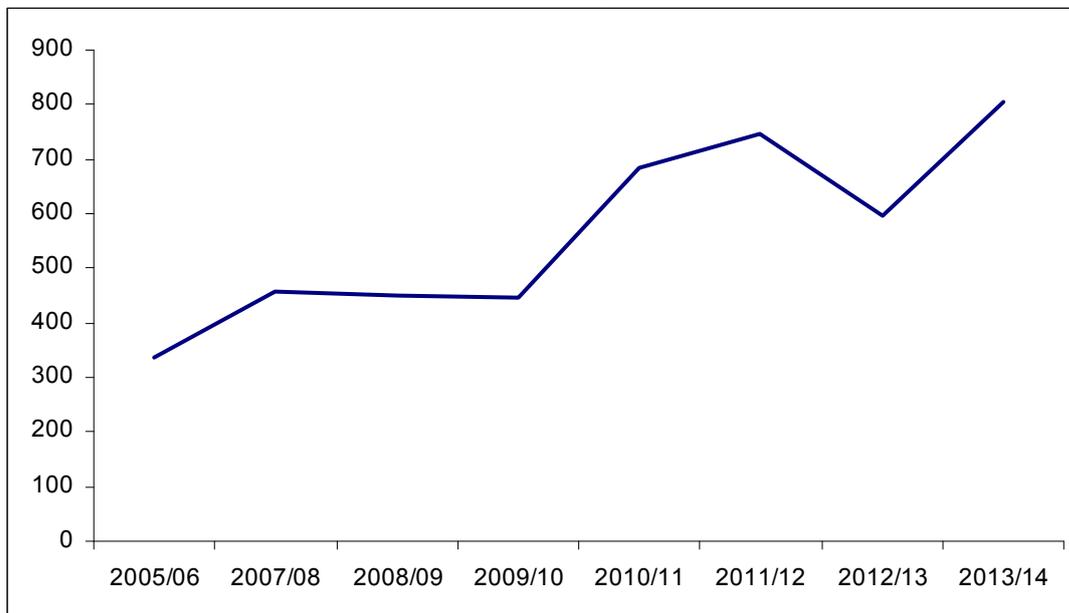
<sup>13</sup> 2012/3 was the most recent available data to compare.

**Figure 4: Average cost per application 2005/06 to 2013/14**

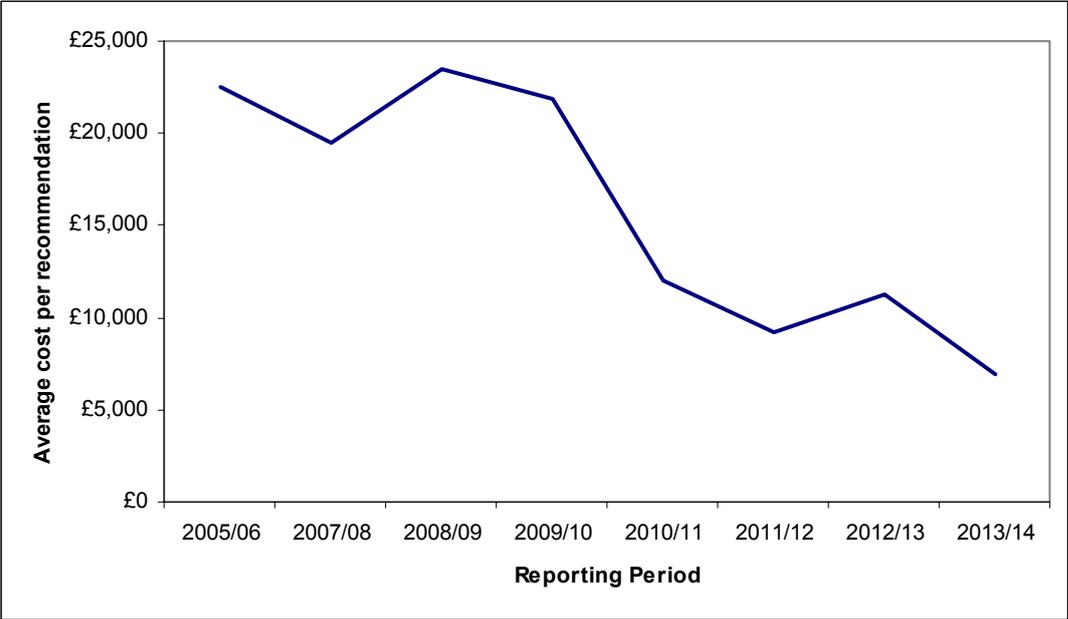


90. Similarly, the JAC has made more recommendations each year, and reduced the cost per recommendation from £22,475 in 2005/6 to £6,935 in 2013/14. Since 2009/10 the JAC has reduced the cost per recommendation by almost 70%. This is illustrated in figures 5 and 6.

**Figure 5: Number of recommendations per year 2005/06 to 2013/14**



**Figure 6: Average cost per recommendation 2005/06 to 2013/14**



- 91. The JAC has been able to drive efficiencies at all stages of the selection exercise. As outlined in its evidence, the JAC has been able to deliver these efficiencies through a range of measures including by: reducing paid advertising; moving to online testing; and procuring new, better value, contracts which have reduced, for example, the costs of actors for roleplays.
- 92. Bearing in mind the limitations of comparing the JAC with the NIJAC and JABS outlined above (particularly in terms of overhead costs per process), a high-level comparison of cost per application and recommendation can be made. In 2012/13 NIJAC’s average cost per recommendation was £56,883, and per application, £8,495. In the same year, JABS’s average cost per recommendation was £26,430, and per application £3,093. The JAC performs favourably, also in comparison to private sector head hunters as outlined at Box 3, driving efficiencies through economies of scale and delivering strong value for money for the taxpayer.
- 93. These figures, particularly the improved efficiency over time, demonstrate the JAC has both improved its efficiency and is taking advantage of economies of scale. The evidence gathered through this Review suggests the JAC continue to scrutinise its operation with a view to driving greater efficiencies in the future supported by its change programme. The JAC and MoJ are also interested to explore a more commercial model for the JAC where it provides and charges private bodies to subsidise its core functions. This is discussed at paragraph 144.

*Effectiveness*

- 94. While achieving savings and efficiencies is commendable, it is critical that this does not compromise the quality of the service provided by the JAC or the broader public constitutional function which it provides. The JAC’s effectiveness can be tested against: delivery and timeliness of appointments, integrity of appointments process, merit and quality of appointed judges and diversity of applicants and appointments. It is difficult to identify clear measures of effectiveness in the same way that economy

and efficiency can be measured, however a combination of qualitative and quantitative data when read together shows the JAC is very effective at delivering its function.

Delivery and timeliness of appointments

95. As discussed in the Stage 1 findings, it is of critical constitutional importance that judges are appointed to the courts and tribunals in a timely manner to support the administration of justice and rule of law.
96. As outlined at paragraph 97 the end-to-end appointments process is administered through a partnership between the JAC, HMCTS and the Judicial Office. No single party involved in the process controls it in its entirety. The JAC is responsible for certain aspects and plans jointly with HMCTS and the Judicial Office. Demand for JAC services is forecast by a complement group of judges and HMCTS representatives which determines forthcoming vacancies. While the JAC is responsible for the selection exercise, HMCTS and Judicial Office have roles in considering aspects of the selection criteria, identifying judges to assist in the JAC processes. The Judicial Office undertakes the appointments process post-JAC recommendation including deployment decisions, with the judiciary. All of these bodies, in addition to statutory consultees (usually a judicial office holder but can sometimes involve Ministers), have a bearing on the time taken to run appointments processes.
97. Given this, in 2012 the JAC initiated a joint project with senior judiciary, Judicial Office and HMCTS to improve the end-to-end appointments process, developing a 20-week process model. Before the JAC and partners started measuring the end-to-end process in 2012, estimates indicated that previously it took between 24 and 76 weeks to run a selection exercise; an unacceptable and unpredictable time span in which to respond promptly to, and meet operational needs to plug, the supply gap. Under the end-to-end project, the JAC and its partners have addressed a number of systemic causes of delay, and delivered internal process efficiencies. Since 2011/12, the JAC and its partners have produced quality-assured statistics to measure improvements, showing that the end-to-end appointment time average has been cut by around a third, from 30 weeks in 2011/12 to 21 weeks in 2013/14. Latest indicative figures are that they have hit the 20 week target for 2014/15.
98. These statistics have been reinforced through stakeholder feedback gathered through the review. For example, in its submission, the Welsh Government commented:
- In summary, the Welsh Government's view is the JAC plays a vital role for devolved tribunals in Wales by providing timely and robust mechanisms for the recruitment, selection and appointment of tribunal members – Welsh Government*
99. The JAC provided evidence that there were a number of statutory provisions relating to appointments which had the potential to create minor inefficiencies in the continuing work to drive down the end-to-end process time. These primarily related to judicial office holders being required to retire from office before taking up a new office, rather than simply being appointed. These issues will continue to be considered as part of the provisions work.

Integrity of appointments process

100. Given the constitutional importance of independence in the JAC's selection exercise, it is important to measure the actual and perceived integrity of its processes. None of the evidence gathered in this review indicated problems with the integrity of the JAC or

its processes. The lay, practitioner and judicial balance of membership of the Commission, that was amended in the wake of the Crime and Courts Act 2013, provides a high and acknowledged degree of reassurance in this regard.

101. At the time of the Constitutional Reform Act 2005, Parliament recognised the need for an independent checking mechanism to be put in place, legislating that the Board be comprised of a balance of judicial, professional and lay Commissioners (discussed in greater detail at paragraph 130). It also created the Judicial Appointments and Conduct Ombudsman (JACO), charging it with investigating complaints about the judicial appointments process and:
- making suggestions to the Lord Chancellor and the Judicial Appointments Commission (JAC) on how to proceed when an applicant for selection has been adversely affected by JAC process or when an applicant has been selected for appointment by maladministration<sup>14</sup>;
  - recommending changes to procedure in order to prevent the same issues from happening again;
  - proposing that compensation be paid if JACO believe a complainant has suffered because of any maladministration (i.e. mismanagement).
102. Over time, the JAC has maintained a strong record on integrity. Since 2007/08 the number of complaints made and upheld, or partially upheld by the JACO in every year have remained at 0.2% or lower of all applications processed by the JAC.<sup>15</sup> Even with such a low number, the JAC has demonstrated a commitment to responding to complaints and making appropriate improvements, by:
- having a dedicated Complaints Manager, separate to the Selection Exercise teams, who investigates all complaints and considers any lessons to be learned;
  - working with colleagues to consider changes to process or policy where appropriate;
  - analysing complaints to ensure there is no disparity within particular groups (by gender, professional background, ethnicity);
  - annually reporting to the Commission on complaints;
  - conducting closedown reviews after all exercises with Judicial Office and HMCTS and the Commissioner responsible for quality assurance for the exercise; and
  - seeking anonymous feedback from all candidates after shortlisting and selection day
103. Furthermore there have only been two instances where there has been judicial review of the JAC's actions, neither of which were upheld. However, one further candidate sought to take his case to an Employment Tribunal but was unsuccessful and there were two further attempts at Judicial Review, including a group action (4 candidates) but neither were granted leave for a full hearing.

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<sup>14</sup> s 99 of the Constitutional Reform Act 2005

<sup>15</sup> JACO annual report

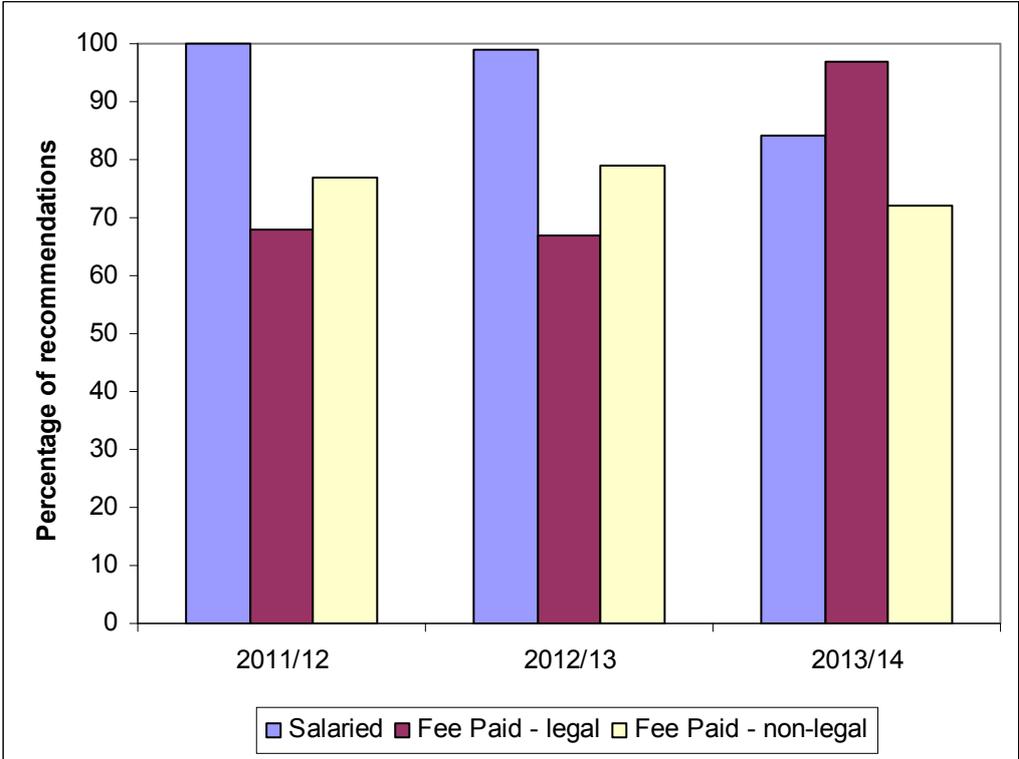
104. In terms of applicant experience of the JAC, anonymous feedback collected in 2013/14 showed that 92% of candidates who responded rated the customer service they received from the JAC during the overall selection exercise as good or excellent, with 85% rating their particular selection exercise as good or excellent. These results, in addition to the JACO data suggest that the JAC effectively performs with the integrity expected of such a constitutionally important function.
105. Feedback from candidates, including complaints, has also helped the JAC to develop its processes and improve the candidate experience. Examples include:
- Agreeing all marking schedules should be released following a candidate's request to review a decision to withhold a qualifying test marking schedule. This has enabled candidates to understand how they fared in the test and to better prepare for future applications, whilst increasing the transparency of JAC processes.
  - Informing the JAC's decision to deliver qualifying tests online following complaints about the lack of privacy, and the inconvenience and cost of travelling when they were staged under exam conditions in centres around the country.
  - Additional information being provided to candidates explaining in detail what is required of them when completing self-assessments, and the feedback provided to candidates following selection days has been reviewed, with guidance issued to staff to improve quality.

Merit and quality of appointed judges

106. Reflecting the JAC's duties under the Constitutional Reform Act 2005, the ultimate goal of the judicial appointments process is that the most meritorious candidates are appointed to judicial posts. The JAC's performance against this goal is difficult to measure for a number of reasons, namely that:
- There are constitutional barriers to assessing the quality of judges given the importance of judicial independence:
    - judges are independent of the executive government, making executive evaluation of judicial performance inappropriate, and
    - judges are independent of each other, making judicial evaluation of peer performance inappropriate. While there are appraisal systems in place for most tribunals' offices and in the courts for Deputy District Judges, this is not a broad enough base to contribute to any assessment of the quality of judges selected.
  - Assessing the quality of judges is inherently complex with no supporting independent metrics.
  - There are upstream factors which affect the JAC, including the quality of the pool of eligible candidates which is ongoing to strengthen this pool through outreach to groups that would not normally apply.
107. Despite these barriers, there is some evidence which indicates that the JAC is effectively selecting high quality judges and contributing to a high quality judiciary. When making recommendations to the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals, the JAC makes an assessment as to whether candidates are Outstanding, Strong or Selectable.

- 108. The Judiciary are moving towards a culture of appraisal (by fellow Judges) and this may enable the JAC to develop more evidence around the quality of appointments made.
- 109. While these categories are self-defined and applied by the JAC, these assessments give an indication at the quality of judges appointed through the JAC process. As outlined at Figure 7, the vast majority of recommendations made by the JAC from 2011/12 to 2013/14 are of candidates who were assessed as Strong or Outstanding.

**Figure 7: Percentage of recommendations made to candidates assessed as strong or outstanding**



- 110. This data suggests that the pool from which the JAC makes its selections does not limit the number of good quality appointments made.
- 111. It is difficult to identify metrics that provide an objective assessment in respect of the quality of the appointed judges. Clearly all those appointed have reached the stringent standards set by the selection Commission. Consideration can be given to the number of complaints made and upheld to the Judicial Conduct and Investigations Office (JCIO). While the JAC process can be understood to contribute to a high-quality judiciary, drawing a causal link between the JCIO statistics and the JAC process is problematic as:

- The JCIO hear complaints across the entire judiciary of England and Wales, including magistrates which the JAC does not appoint;
- The judiciary is comprised of judges who have and have not been subject to a JAC selection exercise to obtain their office;

- The JAC has no influence over judicial conduct except so far as it can consider individual's past conduct in a selection exercise; and
- The issues around the complexity of assessing conduct more broadly as discussed at paragraph 112.

112. With these limitations in mind, a tenuous link may be made with JAC processes and the quality of the judiciary as measured by complaint levels. In 2013/14 the JCIO found 58 of 2,018 complaints made required formal sanction. This is a low number bearing in mind this covers around 39,600 members of the full and part time judiciary, tribunal members and magistrates covered by the JCIO. However, this relates to instances where the office holder was found to have behaved badly rather than the instances where he or she may have made the wrong decision, as these matters fall outside of the JCIO's remit. It is difficult to find suitable metrics to enable an objective evaluation of the effectiveness of appointees. This is something that the JAC should, in consultation with relevant stakeholders, try to develop performance metrics to help it assess the quality of appointees.

113. Evidence gathered over the review reinforces the assessment that the JAC is contributing to the development of a meritorious and high-quality judiciary. For example:

*The Commission also has a strong record of engagement with stakeholders like the Law Society. The Society has been vigilant in monitoring the selection processes to ensure fairness between individual applicants and has worked in partnership in promoting opportunities for judicial appointments to the profession. We do not have concerns about the quality of the individuals being appointed. The Law Society*

#### Diversity of applicants and appointments

114. Under the Crime and Courts Act 2013, the JAC must have regard to the need to encourage diversity when running judicial selection exercises. The JAC's statutory duty arises out of the Constitutional Reform Act 2005. The Crime and Courts Act 2013 simply extended this to the Lord Chancellor and the Lord Chief Justice. The JAC defines its diversity objective as follows; diversity involves two main elements: firstly, ensuring that the judiciary adequately represents those with protected characteristics; and secondly, ensuring that judicial office holders are drawn from a wide range of legal professions.

115. In accordance with this provision, the JAC has developed a three-pronged strategy for improving diversity:

- Firstly, ensuring JAC practices are assessed for impacts on the nine characteristics protected under the Equalities Act 2010 (age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation). This has included:
  - introducing three equality checkpoints during the selection process (post application, post short listing & post application) where the diversity of the process is monitored providing an opportunity to highlight concerns, or to suspend the exercise if deemed necessary;
  - since 1 July 2014, applying the Equal Merit Provision introduced in the Crime and Courts Act 2013 to allow diversity (in respect of gender or

- ethnicity) to be taken into account for appointments when two or more applicants are of equal merit; and
  - establishing a JAC Advisory Group to examine various aspects of the selection process (for example qualifying tests and role plays) to ensure the process does not cause bias to one particular group.
  - Secondly, targeting advertising and outreach activities to reach all parts of the legal profession, particularly those parts of the profession that are more diverse.
  - Thirdly, working with key partners to break down barriers, increasing the diversity of the eligible pool, encouraging and supporting applications for appointment, enabling flexible working in judicial posts, and providing judicial career management including training and appraisal. This has included engaging:
    - with the Black Solicitors Network, the Society of Asian Lawyers, Lawyers with Disabilities, Crown Prosecution Service, Government Legal Services and Interlaw; and
    - through the Diversity Forum which brings together the MoJ, Judicial Office, judiciary, and representatives from the three professions (solicitors, barristers and legal executives) to research barriers to diversity and develop a priority action plan.
116. When assessing whether the JAC has effectively contributed to judicial diversity through these measures, it is important to appreciate the systemic issues which impact on diversity and the limited scope the JAC has to drive greater diversity. Most notably, the diversity of the pool of candidates available for selection by the JAC is limited by that of the legal profession. For example, among senior lawyers only around 12% of QCs and 27% of partners are women, while just 5% of QCs and 8% of partners are from an ethnic minority background (Diversity League Table 2013). The JAC effectiveness at driving greater diversity should therefore be assessed in this wider context.
117. The detail is available from a number of published sources but a high level summary of the key changes follows:
- Since the creation of the JAC, recommendations for women and BAME have improved for all main courts roles (High Court, Circuit Judge, District Judge (Magistrates' Courts), District Judge (Civil), Deputy District Judge (Magistrates' Courts), Deputy District Judge (Civil)). Of 4021 recommendations made by the JAC between April 2006 and June 2014 1668 (41%) were for the appointment of women. There are now 21 women in the High Court out of 108 judges, the highest to date.
  - There are 8 women in the Court of Appeal (out of 38 Justices).
  - Overall, for legal and non-legal roles, the JAC has selected 1668 women out of 4021 selections (41%) and 45% of all JAC selections for fee-paid legal roles have been women (37% for salaried legal roles).
  - In tribunals, for legal posts the proportion of women judges is higher than their level in the eligible pools (49% compared to a range between 32% and 44%). For BAME judges the proportion is similar to the eligible pools, 7% compared to pools ranging between 7% and 10%.

- Overall, the JAC has selected 398 BAME candidates out of 4021. Around 6% of the Courts judiciary are now from BAME backgrounds.

118. While these statistics and comments are encouraging in terms of diversity, some stakeholders still retain some concerns:

*We are concerned, however, by the relatively slow progress in increasing diversity... change in the make-up of the judiciary has been slower than expected and has largely been in the lower ranks, with the upper ranks remaining substantially untouched. We trace this relatively slow progress in part to the combined effect of excessive judicial influence under JAC-run processes together with the limited scope for ministerial leadership on the diversity agenda – Gee and others*

*Throughout its existence the Judicial Appointments Commission has been criticised for not generating a more diverse judiciary, more reflective of society in general. The Law Society itself finds it disappointing that there have not been more solicitors appointed to the senior judiciary. –The Law Society*

119. Evidence from Gee and others suggested that there is too great a judicial influence over judicial appointments, impinging on efforts to improve diversity. Gee and others made a number of suggestions to address this issue, including:

- increasing lay membership of the board from 5 (of 14) to 50%;
- increasing the length of tenure of lay members from 2-3 years to 5 years in line with their judicial counterparts;
- requiring the Lord Chief Justice and the Senior President of Tribunals to provide details in their annual reports on the number of occasions where they used the power to reject or request reconsideration of a JAC recommendation; and
- allowing the Lord Chancellor to be presented with a short-list for senior appointments to the High Court and above (rather than a single recommendation).

120. While consideration of these suggestions is out of the scope of this review, no other evidence submitted to this inquiry or others suggested that the judiciary had undue influence over judicial appointments. The MoJ believes the current balance in terms of lay and judicial representation on the Commission is satisfactory. To clarify the issue of tenure, less senior judicial appointments are for three years and the most recent senior judicial appointment was made for three years and there is an expectation to continue this for future appointments to bring consistency.

121. Evidence gathered reached consensus that diversity is a more complex and wider reaching issue than the JAC can directly affect. In its evidence, The Law Society itself recognises the challenge the JAC faces:

*The Law Society recognises, however, that there are a number of difficulties facing the Commission in achieving this aim. With respect to solicitors, in particular, there are a number of cultural and practical difficulties which discourage solicitors from applying, together with a perception, which can only have been reinforced by the record of appointments to the High Court, that there is an in-built advantage for barristers....Not all of these problems are within the control of the Judicial Appointments Commission. – The Law Society*

122. In its evidence, the JAC outlined its ambitions to drive further improvements in diversity:

*However, we want to see further progress in increasing diversity, particularly at the more senior levels. The JAC cannot do this alone, and works closely with professional bodies, the MoJ and the judiciary to increase the diversity of the eligible pool and encourage and support applications from diverse candidates. One way we do this is through chairmanship of the Diversity Forum, the only place where all these partners come together with the aim of identifying areas for collective action. We are currently working with the senior judiciary and the three bodies representing each branch of the legal profession to improve the collection of data on disability, so that we are better able to assess the progress of disabled candidates. – JAC*

123. Since providing written evidence, the JAC has also launched a project more closely analysing the professions and their gender and ethnic make-up to most strategically target candidate attraction efforts.

124. Stakeholders have welcomed this response as a means of generating wider efforts to improve diversity:

*CILEx has worked closely with the Judicial Appointments Commission (JAC) since its inception in 2006. CILEx sits on the Judicial Diversity Forum together with other stakeholders and has actively participated in the JAC's programme of action, stakeholder engagement, development of judicial work shadowing and areas of relevant research. The introduction of the JAC has led to a more open, transparent and accountable system. Importantly, the JAC overtime has fostered the confidence of the relevant stakeholders, judges and ministers. These have been important accomplishments. – CILEx*

#### *Value for Money conclusion*

125. From the available evidence it is clear that the JAC is performing strongly against all criteria for value for money – it is achieving strong economies, driving a more efficient process and effectively delivering its service. In fulfilling its sponsorship role the MoJ undertakes regular performance reviews with the JAC to test, challenge and develop a good understanding of the issues that the JAC faces and the action it takes to resolve these. This level of engagement is a factor that has contributed to the JAC being assessed as level 1 (low risk) in the annual impact assessment of risk posed by Arms Length Bodies to the MoJ

126. This review welcomes the JAC's ambition to drive even further value for money through continuous improvement and implementation of its change programme which it outlined in its evidence:

*The JAC is mid-way through an internal change programme, which aligns with the MoJ's wider Transforming Justice agenda to deliver a more effective and less costly justice system...The programme comprises five separate but linked projects: implementing the Crime and Courts Act 2013 and subordinate regulations; speeding up the end-to-end appointments process; reviewing and improving the reliability of our selection processes; procuring and developing a new IT system to support each of the other change projects and better achieve our objectives; and reviewing the JAC's organisational structure to ensure optimal performance when all other change projects are complete, which will be by summer 2015. – JAC*

**Finding 4:** The JAC has delivered improved value for money in regards to its economy and efficiency since 2009/10. There is less evidence to enable evaluation of the effectiveness of appointees and the JAC should, in consultation with relevant stakeholders, try to develop performance metrics to help it assess the quality of appointees.

## Assessment against Good Corporate Governance

127. When assessed against the *Corporate Governance in Central Government* Departments: *Code of Good Practice* requirements for good corporate governance the JAC performs strongly.

128. Below is a summary of the detailed good governance evaluation at Annex A. Of the 66 elements in the good governance framework the JAC fully complies in all but four cases, these are also discussed in greater detail below. This review is satisfied that non-compliance with these elements is proportionate and appropriate in the circumstances. These are discussed in detail below.

### *Governance summary*

129. The JAC complies with accountability and financial management requirements. It:

- complies with all applicable statutes and regulations, and relevant statements of best practice, including the Constitutional Reform Act 2005, Data Protection Act 1998, the Freedom of Information Act 2000 and Managing Public Money rules;
- has an Accounting Officer, the Chief Executive, who is personally responsible and accountable to the Chief Accounting Officer and to Parliament for the use of public money and stewardship of assets;
- has a minister, the Lord Chancellor, who is ultimately accountable to Parliament and the public for the overall performance of the public body;
- has effective systems of financial management and internal control through annual reporting, the Audit and Risk Committee of the Board and MoJ and external audit. The JAC shall comply with the requirements placed on the Department by the Efficiency and Reform Group/Treasury as though they were addressed directly to it, unless there is an overriding policy reason for not doing so.

130. The MoJ, JAC, the Commission Board and its members have clear and robust roles and responsibilities, outlined below:

- The MoJ ensures that there are robust governance arrangements with the Board through, including through the Framework Agreement.
- The MoJ sponsor team provides appropriate oversight, scrutiny, support and assistance to the JAC, including regular monthly meetings at senior levels on engagement and business planning and six monthly finance and performance review meetings hosted by the sponsorship team and MoJ Corporate Finance. The JAC was assessed earlier this year as having achieved a Level 1 status recognising the high degree of independence essential to the operation of the Commission and the specific nature of its work. This status was agreed by the MoJ's Departmental Board.

- The Board provides strategic leadership, direction, support and guidance and has collective responsibility for the overall performance endorsing and overseeing the recent change programme.
- The Board and its committees have an appropriate balance of skills, experience, independence and knowledge in accordance with the requirements of the Constitutional Reform Act 2005. For example among their current cadre of Lay Commissioners they have a former Permanent Secretary with experience and skills of overseeing a large Government Department and public accountability regulations.
- There is a clear division of roles and responsibilities between non-executive and executives, with no one individual holding unchallenged decision-making powers. The Commissioners Code of conduct outlines their respective roles and responsibilities and how they differ from the Chief Executive's role.
- The Chair provides effective leadership of the Board and ensures its overall effectiveness, through appropriate review and evaluation. The Chair is held to account, and subject to annual performance reviews, by the sponsor Director General. Both the Lord Chancellor and the Lord Chief Justice feed into this process. The Chairman also conducts regular and annual reviews of performance with the Commissioners.
- Non-executive Board members, which includes Commissioners from judicial, professional and lay backgrounds, provide independent and constructive challenge. Commissioners provide this challenge at meetings of the Board in respect of policy and strategic issues, and at meetings of the Selection and Character Committee in respect of recommendations for judicial appointment. Each selection exercise is also assigned an individual Commissioner to quality assure the process and report to the Selection and Character Committee.

131. The JAC is open, transparent, accountable and responsive, satisfying stakeholder, marketing and PR requirements. This is particularly notable, given the MoJ's 2008 consultation *The Governance of Britain: Judicial Appointments*, which recognised:

*The previous appointments system was criticised for a lack of transparency, and the reforms under the [Constitutional Reform Act 2005] were designed to improve the openness and transparency of the system. Openness and transparency should relate both to judicial appointments themselves and to appointments to the selecting body itself – the Judicial Appointments Commission. - MoJ<sup>16</sup>*

132. The JAC Board and staff work to the highest personal and professional standards.

**Finding 5:** The JAC satisfies the good governance requirements.

#### *Remuneration committee*

133. The JAC does not comply with the requirement of having a remuneration committee of the Board. This review is satisfied that this is disproportionate given such a committee would only examine the remuneration of two members of staff. This

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<sup>16</sup> Paragraph 2.18

review is satisfied that the following checks which the JAC currently adopts are proportionate and effective in the circumstances:

- Senior staff members are employed on terms and conditions that are aligned with MoJ's (Senior Civil Servant terms).
- The JAC adopts the MoJ pay and reward structure, including senior staff salary scales.
- A Moderation Committee consisting to the Chair, a Commissioner and a senior MoJ representative determines senior staff performance and whether non-consolidated bonuses are appropriate. The Chief Executive attends the committee except where his performance is being assessed.
- Senior staff salaries are published (within bands) on the MoJ website.

#### *Open Board or annual meetings*

134. The JAC does not comply with the requirement to consider holding open board meetings or open annual meetings given discussion relates to the personal information of candidates. It does however make information publically available and consult stakeholder on its activities, as outlined below:

- Board agendas have been published from June 2014.
- Minutes of Board meetings dating back to 2009 are available on the JAC website. Minutes of Audit and Risk Committee meetings are also published on the website.
- The JAC has a long and short list of stakeholders which it meets, and reviews the frequency, channels and timing of meetings annually.
- The JAC consults the public on significant policy changes (such as the equal merit provision where the consultation for which was run online on citizenspace). Project leads engage relevant stakeholders on individual pieces of work.
- Stakeholders receive a twice-yearly news update and a link to the business plan and Annual Report, which publishes performance data
- The JAC issues news releases to cover announcements and key activity. News and developments are also tweeted via @becomeajudge.
- The JAC publishes:
  - Official Statistics twice a year on the diversity of its applications and selections;
  - public data, including the responses to requests for information under the Freedom of Information Act; and
  - expenses and the register of gifts and hospitality (these were published quarterly but with agreement from MoJ that has been reduced to annually from 2014).

135. This review is satisfied that it is not appropriate for the JAC to have open Board meetings. There may however be potential to hold annual open meetings where non-sensitive issues can be discussed with a broader audience. The Review recommends the JAC explore this option with its stakeholder, testing if there is an appetite for such a meeting in addition to the other consultation activity outlined above.

**Finding 6:** The JAC should consult stakeholders on the appetite for an open annual meeting.

*Annual evaluation of Board and member performance*

136. The JAC partly complies with the requirement to conduct annual evaluations of the performance of the Board and its committees and of the Chair and individual board members. While the JAC has conducted reviews of the Board and its committees, these have not been annual due to sustained commissioner turn-over since 2011. This review is satisfied that this has been a proportionate and appropriate approach in the circumstances. The most recent reviews are outlined below:

- The Board was reviewed in 2012/3, and improvements were made in two areas as a result: refinement of the Commissioner induction process, and clarification of the quality assurance role of Assigned Commissioner on each selection exercise.
- The Audit and Risk Committee was last evaluated at the end of 2012/13 using the NAO Audit Committee Self Assessment Checklist. The committee complied with the checklist, with only minor recommendations for changes which were implemented in 2013/14. The checklist has been designed to help Audit Committees assess how well they apply good practice. The Audit Committee Handbook highlights 5 good practice principles which aim to answer the following questions

Principle 1: The Role of the Audit Committee

- Does the Audit Committee effectively support the Board and the Accounting Officer by reviewing the completeness of assurances to satisfy their needs, and by reviewing the reliability and integrity of these assurances?

Principle 2: Membership, Independence, Objectivity and Understanding

- Is the Audit Committee suitably independent and objective, and does each member have a good understanding of the objectives, priorities and risks of the organisation, and of their role on the Audit Committee?

Principle 3: Skills

- Does the Audit Committee contain or have at its disposal an appropriate mix of skills to perform its functions well?

Principle 4: Scope of Work

- Is the scope of the Audit Committee suitably defined, and does it encompass all the assurance needs of the Board and Accounting Officer?

Principle 5: Communication

- Does the Committee engage effectively with financial and performance reporting issues, and with the work of internal and external audit? And does the Audit Committee communicate effectively with the Accounting Officer, the Board, and other stakeholders?

- The Committee was satisfied that the JAC are following good practice, although some areas of the Checklist were inappropriate for an organisation of the JAC's size. The Checklist highlighted some areas of best practice that were missing from the current meetings such as declarations of conflicts of interest, the use of appointment letters and the seeking of any other business agenda items in

advance of meetings. In response to this the Committee added conflicts of interest declarations to the agenda and sought AOB from attendees in advance of the Quarter 4 meeting. The Committee have also suggested to the Board Secretariat that appointment letters should be used for new members of the Committee in the future.

- The Selection and Character Committee was last reviewed in 2012, resulting in a change from all Commissions attending every meeting, to around eight attending on a rotating basis to manage time commitments, minimise cost of Commissioner time and streamline decision making.

137. The next evaluation of the Board and its committees is scheduled for winter 2014 when the latest tranche of commissioners have been in post for several months.

138. The JAC fully complies with the requirements to conduct annual evaluations of the Chair and Board members, as outlined below:

- As previously mentioned the Chair is annually reviewed in line with civil service performance management systems by the relevant MoJ Director General, encompassing 360 feedback from key stakeholders including the Lord Chancellor and Lord Chief Justice. The last was completed in November 2013 and the next due for November 2014.
- Board members are reviewed at mid-year and end-of-year by the Chair, who also completes an annual evaluation incorporating feedback from staff and other Board members.

#### *Post-tenure employment/appointment of members*

139. The JAC partly complies with the requirement to have rules in place for Board members and senior staff on the acceptance of appointments or employment after resignation or retirement. While the rules for staff are set out in JAC Code of Conduct, there are no clear rules for Commissioners. This review recommends the MoJ consider clarifying this for commissioners in the context of the terms and conditions of their appointment, potentially in line with those in the Code of Conduct.

**Finding 7:** The MoJ should consider clarifying the rules for Commissioners regarding post-tenure employment/appointments.

#### *Reporting requirements*

140. In March 2014, Commissioner Dame Valerie Strachan, Chair of the Audit and Risk committee, suggested to the House of Commons Justice Committee, that there may be scope to simplify the reporting arrangements in place for the JAC or for small arm's length bodies more generally.<sup>17</sup> As explained at Annex A, the JAC is subject to reporting requirements outlined in a number guidance documents across government, including Managing Public Money, the Financial Reporting Manual and Corporate Governance in Central Government Departments.

<sup>17</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-judicial-appointments-commission/oral/7287.pdf>

141. These guidance documents are largely designed for large government departments, and while, although, they encourage smaller organisations to take a proportionate approach to these requirements, evidence submitted by the JAC suggests “proportionality” is often left to the body itself to determine. This has led to instances where the JAC has erred on the side of caution and committed unnecessary resource to governance work, for example in the development of its Governance Statement which the NAO subsequently found was too long for an organisation of the JAC’s size.
142. An assessment of the adequacy and appropriateness of corporate guidance for small organisations is out the scope of this review, however, we encourage the Cabinet Office, HM Treasury, NAO and sponsoring organisations such as the MoJ to bear in mind the principle of proportionality when issuing guidance and requests to arm’s length bodies.
143. In a similar vein, the JAC has suggested that some corporate returns it provides to the MoJ could be reviewed with proportionality and streamlining in mind. While again out of scope, this review encourages the MoJ to continue to examine the most appropriate and proportionate approach to reporting. It should be noted that if the JAC were to take on additional appointment functions its reporting requirements would need to be re-assessed.

*Accountability for public money – a charging model*

144. The JAC receives an annual budget allocation from the MoJ which covers administrative overheads and all section processes. It has consistently delivered on its efficiency plans, particularly since the 2010 Spending Review (39%). In response to continued fiscal pressure further work should be done to move the JAC to a more commercial finance model where the MoJ funds the overheads and the JAC charges Government departments, such as the Home Office for Asylum and Immigration Tribunal appointments, and other quasi-judicial bodies outlined above for selection exercises. Such an assessment would need to consider whether such an approach would be value for money, examining the:
- appropriateness of cost-recovery or over-recovery of costs;
  - overheads of the model and transaction costs;
  - projected efficiencies and savings in such a model;
  - impact on other government departments; and
  - if charging for non-judicial appointments (as outlined above), the appropriate balance on incentives to ensure statutory appointments functions continue to be prioritised.

**Finding 8** The JAC and MoJ should explore the potential for the JAC to develop a charging model, following full consultation with NAO and HMT on final models and accountability.

## Statement from Peer Reviewer

### Introduction

145. The Triennial Review is a Cabinet Office mandated process for reviewing the function of Non-Departmental Public Bodies (NDPBs).
146. The Triennial Review Stage 2 process commenced with a desk assessment of corporate governance and control to ensure that the JAC is complying with good governance principles. As part of the Stage 2 process I was asked take on the role as Peer Reviewer to comment on the outcome of the desk assessment as well as make my own observations on the controls and corporate governance arrangements within the JAC. This report sets out my findings.

### Methodology

147. As Peer Reviewer, I was provided with copies of key documentation relating to the desk assessment along with background information on the JAC and copies of the Stage 1 report. I also received a draft of the Stage 2 report.
148. As part of my evidence gathering process I met with the JAC Chairman (Christopher Stephens) and the JAC Chief Executive (Nigel Reeder).

### Findings

#### *Statutory Accountability*

149. The evidence provided supports a conclusion that the JAC complies with all applicable statutes and regulations, and other relevant statements of best practice.

#### *Accountability for Public Money*

150. The evidence provided supports a conclusion that the JAC's Accounting Officer complies with the required provisions in terms of accountability for public money.

#### *Ministerial Accountability*

151. The JAC has confirmed that they comply with all the required provisions in terms of Ministerial Accountability.

#### *Role of the Board*

152. The JAC has confirmed that they comply with almost all the required provisions of good corporate governance in terms of the role of the Board. I would support its assertion that the JAC does not need a remuneration committee as its staff terms and conditions are aligned to those of the Ministry of Justice.

#### *Role of the Chair & Commissioners*

153. The JAC has confirmed that they meet all the requirements in terms of the appointment and role of the Chair and Commissioners.

154. The Stage 2 report recommends that the JAC clarifies the rules for Commissioners regarding post-tenure employment/appointments. I agree that this seems a reasonable expectation.

#### *Effective Financial Management*

155. The JAC has confirmed that it has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.

#### *Communications*

156. The JAC has confirmed that they operate in an open, transparent and accountable manner. Although the JAC do not hold open annual general meetings, given the overall level of transparency and the nature of the business, I do not think that this is a necessity. Nevertheless, the Stage 2 report recommends that the JAC consult its stakeholders on the appetite for an open annual meeting.

#### *Conduct and Behaviour*

157. The JAC has confirmed that they have the necessary safeguards in place to ensure that the board and staff work to the highest personal and professional standards.

#### *Leadership*

158. The JAC has appropriate Codes of Conduct for staff and Commissioners.

### **Conclusions on Corporate Governance**

159. The JAC has delivered some impressive results since 2010 in terms of improved efficiency: reducing its overall budget by almost one third. The JAC now has significantly fewer senior staff involved in its operation. It is expected that by the end of this financial year there will be only one Senior Civil Servant (SCS) and the number of staff graded at Band A (the level immediately below the SCS) will have been reduced from a peak of 27 to 8.

160. The increase in the number of applications being processed is a testament to work that the JAC has done in meeting its statutory duty to attract a diverse group of applicants.

161. At the same time as increasing the cost effectiveness of its operation the JAC has delivered significant improvements in the time taken to make appointments.

162. It is commendable that the level of complaints made and upheld or partially upheld is less than 0.25% of all applications processed.

163. It is noted that since the creation of the JAC that recommendations for selection of women and BAME candidates have improved for all main courts. However, the JAC has acknowledge that this is a complex area and that continued efforts will be required to maintain progress.

164. Based on the evidence presented I feel able to endorse the findings of the Stage 2 report, namely that the JAC:

- has delivered strong value for money in regard to its economy, efficiency and effectiveness, particularly since 2009/10, and
- satisfies the good governance requirements.

### **Additional Findings**

165. The Stage 2 report contains some additional findings on the potential to expand the role of the JAC and to consider the potential for a charging model. In my view each of these recommendations have merit and are worthy of further exploration.

**Carole A Oatway**

**26<sup>th</sup> September 2014**

## Conclusion

166. The review concluded that the JAC is a strong performing NDPB that should continue to deliver its functions as an NDPB. The review recognises that the JAC has delivered improvements in its performance and is a leaner and more effective organisation than when it was created. The JAC continues to utilise technology to improve performance and the experience of users and the recommendations and findings are directed at underpinning the JAC's strengths and giving consideration to extending its remit in a number of key areas.

## ANNEX A: Corporate Governance in Central Government Departments

Principle/Supporting Provisions	Comply or Explain
<b>ACCOUNTABILITY</b>	
<b>Statutory Accountability</b>	
<b>PRINCIPLE: The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.</b>	
The public body must comply with all statutory and administrative requirements on the use of public funds. This includes the principles and policies set out in the HMT publication "Managing Public Money" and Cabinet Office/HM Treasury spending controls.	Comply. Budget allocations are provided for purposes only intended by Parliament, and spend is strictly reviewed and monitored by the Head of Finance and Performance, to ensure compliance with "Managing Public Money". NAO scrutiny provides added assurance. The allocation from the MoJ is strictly adhered to, and monthly spend information provided to MoJ.
The public body must operate within the limits of its statutory authority and in accordance with any delegated authorities agreed with the sponsoring department.	Comply. The JAC operates within its statutory authority as provided in the Constitutional Reform Act 2005 (CRA) (as amended). Further detail is provided in the Framework Document agreed with the MoJ. MoJ provides financial delegations that are adhered to, for both the overall allocation, and for specific types of spend.
The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000. It should have a comprehensive Publication Scheme. It should proactively release information that is of legitimate public interest where this is consistent with the provisions of the Act.	Comply. The JAC complies fully with the requirements of the FOIA which are detailed on the JAC website, including the Publication Scheme based on the Information Commissioner's model scheme for NDPBs. The JAC regularly publishes data in respect of its activities, including Official Statistics bulletins. All other requests for information are met within the statutory deadline and there have been no applications to the Information Commissioner for at least 5 years.
The public body must be compliant with Data Protection legislation.	Comply. The JAC is considered to be a Data Controller for the purposes of the DPA. The JAC complies with all requirements, but release of personal information relating to judicial selection is exempt from release within the DPA, Schedule 7, para 3. There are additional restrictions under s139 CRA.
The public body should be subject to the Public Records Acts 1958 and 1967.	Comply. A Record Retention Schedule has been agreed with MoJ and National Archives (TNA); while the JAC holds no records of sufficient importance to be transferred to TNA, procedures are in place for appropriate secure retention of relevant hard and soft copy documents.

Principle/Supporting Provisions	Comply or Explain
<b>Accountability for Public Money</b>	
<b>PRINCIPLE: The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.</b>	
There should be a formally designated Accounting Officer for the public body. This is usually the most senior official (normally the Chief Executive).	Comply. The Chief Executive is the formally designated Accounting Officer.
The role, responsibilities and accountability of the Accounting Officer should be clearly defined and understood. The Accounting Officer should have received appropriate training and induction. The public body should be compliant with the requirements set out in "Managing Public Money", relevant Accounting Officer letters and other directions. In particular, the Accounting Officer of the NDPB has a responsibility to provide evidence-based assurances required by the Principal Accounting Officer (PAO). The PAO requires these to satisfy him or herself that the Accounting Office responsibilities are being appropriately discharged. This includes, without reservation, appropriate access of the PAO's internal audit service into the NDPB.	Comply. The Accounting Officer, on appointment, received a formal letter from the then PAO on 15 October 2010, setting out his responsibilities, and also attended a training course 'An Introduction to Public Accountability for Chief Executives' on 18 January 2011. The AO's responsibilities are also detailed in the Framework Document. The JAC is fully compliant with the requirements set out in "Managing Public Money", as updated by DAO letters (which have limited impact on the JAC).  The PAO's internal audit service provides the internal audit function for the JAC.
The public body should establish appropriate arrangements to ensure that public funds: - are properly safeguarded; - used economically, efficiently and effectively; - used in accordance with the statutory or other authorities that govern their use; and - deliver value for money for the Exchequer as a whole.	Comply. Each year, the Accounting Officer accepts responsibility for funds allocated to the JAC, from the MoJ. The appropriate arrangements are set out within the JAC's Financial Management Guide, and the use of JAC's funds are subject to External Audit (through the NAO) and Internal Audit (through the MoJ) scrutiny, to ensure that appropriate arrangements are in place and operate effectively. The JAC's Audit and Risk Committee oversees the arrangements on behalf of the Board.
The public body's annual accounts should be laid before Parliament. The Comptroller and Auditor General should be the external auditor for the body.	Comply. The JAC's annual accounts, contained within the Annual Report, are laid before Parliament each year. The C&AG is the external auditor for the JAC.

Principle/Supporting Provisions	Comply or Explain
<b>Ministerial Accountability</b>	
<b>PRINCIPLE: The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.</b>	
The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body.	Comply. The Minister and sponsoring department exercise the appropriate level of scrutiny and oversight of the public body, through regular meetings with the Chair. The Minister is accountable to the Parliament for the activities and performance of the JAC.
Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments.	Comply. Appointments to the board is made in line with the statutory requirements and with the Code of Practice issued by the Commissioner. Appointments are made in under the Constitutional reform Act 2005 (CRA) as amended by the Crime and Courts Act 2013 and sets out the composition of the board members of the JAC.
The Minister will normally appoint the Chair and all non-executive board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory.	Comply. The Minister is consulted on the appointment of the Chair and the non executive board members of the JAC and may suggest candidates he considers suitable to apply for the role. He then makes a recommendation to the Prime Minister who in turn is appointed by HM the Queen. He is able to remove individuals whose performance or conduct is unsatisfactory by making that recommendation to the Queen.
The Minister should be consulted on the appointment of the Chief Executive and will normally approve the terms and conditions of employment.	Comply. The Commission appoints the Chief Executive, with the approval of the Minister and will approve the terms of appointment of employment.
The Minister should meet the Chair and/or Chief Executive on a regular basis.	Comply. The Minister has an annual meeting with the Chair when they discuss topical issues as well as the performance of the JAC.

Principle/Supporting Provisions	Comply or Explain
<p>A range of appropriate controls and safeguards should be in place to ensure that the Minister is consulted on key issues and can be properly held to account. These will normally include:</p> <ul style="list-style-type: none"> <li>- a requirement for the public body to consult the Minister on the corporate and/or operational business plan</li> <li>- a requirement for the exercise of particular functions to be subject to guidance or approval from the Minister</li> <li>- a general or specific power of Ministerial direction over the public body</li> <li>- a requirement for the Minister to be consulted by the public body on key financial decisions. This should include proposals by the public body to: (i) acquire or dispose of land, property or other assets; (ii) form subsidiary companies or bodies corporate; and (iii) borrow money; and</li> <li>- a power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs.</li> </ul>	<p>Comply. There are a range of controls and safeguards in place. The sponsorship team provide scrutiny and comments on the JAC's Business Plans, which is sent to the Minister for comments/approval. The MoJ monitors the JAC's activities on a continuing basis ensuring it is relevant and proportionate to the risks posed to the MoJ by the JAC's business; assess once a year the performance of the Chairman against the objectives for each year; consult the Minister for approval or guidance on any issue of relevance, like for example the process for appointing Judge's at High Court level and above as well as the more routine issues like JAC's Business Plans and their Annual Report.</p>
<p>There should be a requirement to inform Parliament of the activities of the public body through publication of an annual report.</p>	<p>Comply. The JAC publish their Annual Report after affording the sponsorship team the opportunity to comment and the Lord Chancellor has agreed to its publication.</p>

Principle/Supporting Provisions	Comply or Explain
<b>ROLES AND RESPONSIBILITIES</b>	
<b><u>Role of the Sponsoring Department</u></b>	
<p><b>PRINCIPLE: The departmental board ensures that there are robust governance arrangements with the board of each arm's length body. These arrangements set out the terms of their relationship and explain how they will be put in place to promote high performance and safeguard propriety and regularity.</b></p> <p><b>There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.</b></p>	
<p>The departmental board's regular agenda should include scrutiny of the performance of the public body. The departmental board should establish appropriate systems and processes to ensure that there are effective arrangements in place for governance, risk management and internal control in the public body.</p>	<p>The departmental board's agenda includes the scrutiny of the performance of all the public body's under the MoJ's responsibilities. Measures are in place to cover effective governance arrangements as well as risk managements and internal control in the JAC. Both MoJ through the Chief Accounting Officer and the JAC through their Chief Executive have responsibilities in this regard.</p>
<p>There should be a Framework Document in place which sets out clearly the aims, objectives and functions of the public body and the respective roles and responsibilities of the Minister, the sponsoring department and the public body. This should follow relevant Cabinet Office and HM Treasury guidance. The Framework Document should be published. It should be accessible and understood by the sponsoring department, all board members and by the senior management team in the public body. It should be regularly reviewed and updated.</p>	<p>Comply. There is a Framework document agreed with JAC and MoJ. It sets out the aims and objectives, governance together with the Minister's, MoJ's and JAC's respective responsibilities. The document will normally be reviewed by the MoJ and the JAC every 3 years, immediately after the Triennial Review of the JAC's status. The next document review will take place in this later year. It is signed by the Director General on behalf of the Lord Chancellor and the Chairman of the JAC. A copy of the document is laid before Parliament and published on the JAC's website.</p>
<p>There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.</p>	<p>Comply. The sponsorship team in Judicial Policy, Pay and Pensions Directorate in the MoJ is the primary contact for the JAC. Their role is clearly defined in the Framework Document.</p>
<p>There should be regular and ongoing dialogue between the sponsoring department and the public body. Senior officials from the sponsoring department may as appropriate attend board and/or committee meetings. There might also be regular meetings between relevant professionals in the sponsoring department and the public body.</p>	<p>Comply. The sponsorship team have regular monthly meetings with their counterparts in the JAC. There is on going dialogue as and when needed. The Deputy Director has regular meetings with the Chief Executive and there are six monthly performance review meetings held to examine the financial allocations and performance generally.</p>

Principle/Supporting Provisions	Comply or Explain
<b>Role of the Board</b>	
<p><b>PRINCIPLE: The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance.</b></p> <p><b>The board and its committees have an appropriate balance of skills, experience, independence and knowledge.</b></p> <p><b>There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.</b></p>	
<p>The board of the public body should:</p> <ul style="list-style-type: none"> <li>- meet regularly;</li> <li>- retain effective control over the body; and</li> <li>- effectively monitor the senior management team.</li> </ul>	<p>Comply. The Commission Board meets nine times a year, on the second Thursday of each month except in January, April and August. The Board provides overall strategic direction, approves significant policy changes, and ensures that the JAC fulfils its statutory duties. It also ensures that effective systems and arrangements are in place to provide assurance on risk management, governance and internal control, including through the Audit and Risk Committee. The Board effectively monitors the senior management team who report at each Board meeting, and whose performance is assessed by a Moderation Committee of which the Chairman and another Commissioner are members. The responsibilities of the Commission are set out at paragraph 3.8 of the Framework Document (revised 2012).</p>
<p>The size of the board should be appropriate.</p>	<p>Comply. The Commission comprises 15 Commissioners including the Chairman. Membership is prescribed in the Constitutional Reform Act 2005 (CRA), as amended by the Judicial Appointments Regulations 2013, and ensures a balance of lay members, legal practitioners, and judges from courts and tribunals. Commission membership was reviewed by the MoJ in 2012. Some changes were made under the Regulations to enable the Commission to become more representative of the roles the JAC selects for and those who are eligible to apply for them. The Regulations also make it possible to change the number of Commissioners by secondary rather than primary legislation, with the agreement of the Lord Chief Justice, although no change to the size of the Commission was considered appropriate at that time.</p>

Principle/Supporting Provisions	Comply or Explain
<p>Board members should be drawn from a wide range of diverse backgrounds.</p>	<p>Comply. The Regulations specify the composition of the Commission so that it has a breadth of knowledge and expertise. It must comprise: six lay members (including the Chair); two differently qualified legal professionals (barrister, solicitor or Fellow of the Chartered Institute of Legal Executives); a lay magistrate or lay Tribunal member; two Tribunal judges, one senior; a District Judge; a Circuit Judge; a High Court judge; and a Court of Appeal judge. One must also have special knowledge of Wales (currently Professor Noel Lloyd). The MoJ recruitment process is designed to identify Commissioners with a range of experience; the current lay members have backgrounds in academia, the military, the senior civil service, the arts and recruitment. There are currently eight women and seven men, and two Commissioners from a BAME background.</p>
<p>The board should establish a framework of strategic control (or scheme of delegated or reserved powers). This should specify which matters are specifically reserved for the collective decision of the board. This framework must be understood by all board members and by the senior management team. It should be regularly reviewed and refreshed.</p>	<p>Comply. The responsibilities of the Commission are set out in the Constitutional Reform Act 2006 (as amended), and at paragraph 3.8 of the Framework Document, which was agreed in 2006 between the Lord Chancellor and JAC Chairman, and updated in 2012. The relevant Assistant Director keeps the Document under review and proposes amendments to the Commission as appropriate. Further detail on the role of the Board is set out in the Commissioners' induction manual. The Board provides strategic direction and makes decisions regarding matters of policy, while the Executive makes decisions regarding implementation, in some instances requiring approval of the Chairman or 'assigned' Commissioner (a Commissioner is assigned to each selection exercise to provide a quality assurance function and report to the Selection and Character Committee and/or Board). The Selection Exercise Process Guide sets out the detail of the selection policy approved by the Commission Board.</p>
<p>The Board should establish formal procedural and financial regulations to govern the conduct of its business.</p>	<p>Comply. The conduct of Board business is governed by measures set out in the Framework Document and the Code of Conduct for Commissioners. The Board has an assurance role regarding financial management, but has delegated this to the Audit and Risk Committee.</p>

Principle/Supporting Provisions	Comply or Explain
<p>The Board should establish appropriate arrangements to ensure that it has access to all such relevant information, advice and resources as is necessary to enable it to carry out its role effectively.</p>	<p>Comply. The standing items at each Board meeting include separate oral reports by the Chairman and Chief Executive, and Chairs of the Audit and Risk Committee and working groups as appropriate. There is also a standing item for Commissioners to consider the JAC’s Management Information Pack, and to probe the information provided with the Chief Executive and Director of Operations. All Board papers include information on risks, presentation and handling, and any financial and diversity implications, to enable the Board to make informed decisions and carry out its role effectively. The Board is supported by the Commissioners’ Secretariat, which ensures it is provided with all resources needed.</p>
<p>The Board should make a senior executive responsible for ensuring that appropriate advice is given to it on all financial matters.</p>	<p>Comply. As set out at paragraph 3.20 of the Framework Document (revised 2012), the Chief Executive is responsible for: ‘[...]ensuring that financial considerations are taken fully into account by the Commission at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed; and taking action as set out in paragraph 3.7.5 of Managing Public Money if the Commission, or its Chairman, is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical.’ While the Chief Executive has overall responsibility for providing advice on financial matters, in practice this function is exercised through the Head of Finance. All Board papers include information on any financial implications, and are approved by the Chief Executive before circulation to Commissioners.</p>
<p>The Board should make a senior executive responsible for ensuring that Board procedures are followed and that all applicable statutes and regulations and other relevant statements of best practice are complied with.</p>	<p>Comply. The Chief Executive has overall responsibility for ensuring that the Board procedures are followed and that all the applicable statutes and regulations and other relevant statements of best practice are complied with, in practice this function is exercised through the Head of Secretariat.</p>

Principle/Supporting Provisions	Comply or Explain
<p>The Board should establish a remuneration committee to make recommendations on the remuneration of top executives. Information on senior salaries should be published. The board should ensure that the body's rules for recruitment and management of staff provide for appointment and advancement on merit.</p>	<p>Explain. Within the JAC, the most senior level of staff employed are deemed equivalent to Senior Civil Service Pay Band 1, and there are only two staff members at this level. It has therefore not been considered necessary to establish a remuneration committee. Senior staff employed by the JAC have terms and conditions that are in line with staff employed by the MoJ. JAC adopts the MoJ pay and reward structure, including salary scales for senior staff. To determine senior staff performance (and whether non-consolidated bonuses are appropriate), in line with good practice, the JAC has established a Moderation Committee consisting of the Chair of the JAC, a Commissioner and a representative from MoJ. The Chief Executive attends the Committee except where his performance is being assessed. Senior staff salaries are published (within bands) on the MoJ website. As an accredited NDPB, the JAC follows the Civil Service Recruitment Principles, which require appointment on merit on the basis of fair and open competition. Our recruitment policy aligns closely with that of the MoJ. We have tailored our processes to meet the business needs of the JAC and our status as public servants. When promoting staff, we also adopt the principle of fair and open competition. Annually the board adopts the HR strategy for the coming year, which includes details on recruitment.</p>
<p>The Chief Executive should be accountable to the Board for the ultimate performance of the public body and for the implementation of the Board's policies. He or she should be responsible for the day-to-day management of the public body and should have line responsibility for all aspects of executive management.</p>	<p>Comply. The Chief Executive's responsibilities as Accounting Officer (AO) are set out at paragraph 3.12 of the Framework Document (revised 2012): '[...] As AO, the Chief Executive is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the JAC.[...]'.  Responsibilities to the Commission are set out at paragraph 3.20: 'The Chief Executive is responsible for:</p> <ul style="list-style-type: none"> <li>• advising the Commission on the discharge of the JAC's responsibilities as set out in this document, the founding legislation or in any other relevant instructions and guidance that may be issued from time to time;</li> <li>• advising the Commission on the JAC's performance against its aims and objectives;</li> <li>• assisting the Commission in the development of and oversight of the JAC's strategic direction[...]'.</li> </ul>

Principle/Supporting Provisions	Comply or Explain
<p>There should be an annual evaluation of the performance of the board and its committees and of the Chair and individual board members.</p>	<p>Comply in part. Board evaluations take place but to date it has not been considered appropriate for these to be annual, mainly due to sustained Commissioner turnover since 2011. The last evaluation of Board performance took place towards the end of 2012/13 and improvements were made in two areas as a result. The next evaluation is scheduled for autumn 2014, when the latest tranche of seven new Commissioners will have been in post for several months.</p> <p>All Commissioners are members of the Selection and Character Committee (SCC). Arrangements were reviewed in 2012, from which point around eight Commissioners have been allocated to each SCC meeting in rotation (and representing a balance of judicial, lay and other Commissioners), in order to reduce time commitments and streamline decision-making. An evaluation of these arrangements, and of the wider performance of the SCC, is planned for autumn 2014.</p> <p>The last evaluation of Audit and Risk Committee performance took place at the end of 2012/13, using the NAO Audit Committee self-assessment checklist. Compliance with the checklist was found to be good with only minor recommendations for change, which were implemented in 2013/14. The next evaluation is scheduled for autumn 2014, when new members will have been in post for several months.</p> <p>The relevant MoJ Director General carries out an annual evaluation of the Chairman, for which he seeks 360 degree feedback; the last was completed in November 2013. The Chairman carries out mid-year and end-of year review meetings with each Board member, and completes an annual evaluation, informed by feedback from staff and fellow Board members.</p>

Principle/Supporting Provisions	Comply or Explain
<b>Role of the Chair</b>	
<b>PRINCIPLE: The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.</b>	
The board should be led by a non-executive Chair.	Comply. Under the CRA, those 'employed in the civil service of the State' cannot be appointed as Commissioners. The Chair must be a lay member.
There should be a formal, rigorous and transparent process for the appointment of the Chair. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Chair should have a clearly defined role in the appointment of non-executive board members.	Comply. The Chair is appointed through fair and open competition. This is compliant with the Code of Practice issued by the Commissioner for Public Appointments. He has a clearly defined role in the appointment of non-executive board members.
<p>The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include:</p> <ul style="list-style-type: none"> <li>- representing the public body in discussions with Ministers;</li> <li>- advising the sponsoring Department and Ministers about board appointments and the performance of individual non-executive board members;</li> <li>- ensuring that non-executive board members have a proper knowledge and understanding of their corporate role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members performance;</li> <li>- ensuring that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers;</li> <li>- ensuring that the board carries out its business efficiently and effectively;</li> <li>- representing the views of the board to the general public; and</li> <li>- developing an effective working relationship with the Chief Executive and other senior staff.</li> </ul>	Comply. The Terms of Appointment clearly sets out all of this information.
The roles of Chair and Chief Executive should be held by different individuals.	Comply. The CRA provides separate specific arrangements for the appointment of a Chairman and Chief Executive.

Principle/Supporting Provisions	Comply or Explain
<b>Role of Non-Executive Board Members</b>	
<b>PRINCIPLE: As part of their role, non-executive board members provide independent and constructive challenge.</b>	
There should be a majority of non-executive members on the board.	Comply. All Board members are non-executive.
There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.	Comply. All non-executive members of the board are appointed through fair and open competition. This is compliant with the Code of Practice issued by the Commissioner for Public Appointments.
<p>The duties, role and responsibilities, terms of office and remuneration of non-executive board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The corporate responsibilities of non-executive board members (including the Chair) will normally include:</p> <ul style="list-style-type: none"> <li>- establishing the strategic direction of the public body (within a policy and resources framework agreed with Ministers);</li> <li>- overseeing the development and implementation of strategies, plans and priorities;</li> <li>- overseeing the development and review of key performance targets, including financial targets;</li> <li>- ensuring that the public body complies with all statutory and administrative requirements on the use of public funds;</li> <li>- ensuring that the board operates within the limits of its statutory authority and any delegated authority agreed with the sponsoring department; ensuring that high standard of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way; and</li> <li>- representing the board at meetings and events as required.</li> </ul>	Comply. The Terms of Appointment clearly sets out all of this information.
All non-executive Board members must be properly independent of management.	Comply. See above.
All non-executive board members must allocate sufficient time to the board to discharge their responsibilities effectively. Details of board attendance should be published (with an accompanying narrative as appropriate).	Comply. Under their terms and conditions, Commissioners are expected to dedicate between 17 and 28 days to JAC activities each year. In practice, time commitment is towards the upper end of this bracket. Board attendance is published in the Annual Report.

Principle/Supporting Provisions	Comply or Explain
<p>There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.</p>	<p>Comply. Each Commissioner receives a comprehensive induction manual, and a face-to-face induction session covering all main elements and led by the Chairman. Visits to courts and tribunals and observations of recruitment processes are encouraged and facilitated, and each new Commissioner shadows an existing Commissioner on the first selection exercise to which they are assigned for 'quality assurance'.</p>

Principle/Supporting Provisions	Comply or Explain
<b>EFFECTIVE FINANCIAL MANAGEMENT</b>	
<b>PRINCIPLE: The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.</b>	
<b>Annual Reporting</b>	
The body must publish on a timely basis an objective, balanced and understandable annual report. The report must comply with HM Treasury guidance.	Comply. An annual report is laid before Parliament before the Summer recess. This is in accordance with the CRA, and the accounts section complies with HM Treasury guidance – the Financial Reporting Manual.
<b>Internal Controls</b>	
The public body must have taken steps to ensure that effective systems of risk management are established as part of the systems of internal control.	Comply. The JAC has a Risk Management Policy and Framework in place, which is updated yearly, and approved by the Audit and Risk Committee. This follows the principles as set out in HM Treasury's Orange Book.
The public body must have taken steps to ensure that an effective internal audit function is established as part of the systems of internal control. This should operate to Government Internal Audit Standards and in accordance with Cabinet Office guidance.	Comply. The JAC uses the MoJ Internal Audit function, through the shared services agenda, to provide the JAC with a service that is maintained in accordance with Public Sector Internal Audit Standards.
There must be appropriate financial delegations in place. These should be understood by the sponsoring department, by board members, by the senior management team and by relevant staff across the public body. Effective systems should be in place to ensure compliance with these delegations. These should be regularly reviewed.	Comply. The JAC AO receives financial delegations from the MoJ. There are further delegations within the JAC from the Accounting Officer to the Director of Operations. These internal delegations are updated quarterly. Details are set out fully in the JAC's Financial Management Guide; these are understood by all parties, and effective systems are in place to ensure compliance.
There must be effective anti-fraud and anti-corruption measures in place.	Comply. The JAC has an anti-fraud policy in place, which is updated annually, and approved through the Audit and Risk Committee. This policy includes whistle-blowing arrangements and a fraud 'response plan'.
There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules. The public body should proactively publish information on expenses claimed by board members and senior staff.	Comply. The full rules for claiming expenses are provided in JAC guidance published on the intranet. This is based on MoJ rules, and has been approved by HM Revenue and Customs. A summary of expenses claimed by JAC Commissioners and senior staff is published in the Annual Report.
The annual report should include a statement on the effectiveness of the body's systems of internal control.	Comply. This is now referred to as the Governance Statement. This is in accordance with the requirement in Managing Public Money (Annex 3.1), and NAO fact sheet – 'Governance Statements: good practice observations from our audits guidance'.

Principle/Supporting Provisions	Comply or Explain
<b><u>Audit Committee</u></b>	
<p>The board should establish an audit (or audit and risk) committee with responsibility for the independent review of the systems of internal control and of the external audit process.</p>	<p>Comply. The Committee meets 4 times a year after each quarter, with an additional meeting to approve the annual accounts section of the Annual Report. There are 3 Commissioner members and an independent member. Internal and external auditors attend Committee meetings as well as JAC officials, including the Accounting Officer.</p>
<b><u>External Auditors</u></b>	
<p>The body should have taken steps to ensure that an objective and professional relationship is maintained with the external auditors.</p>	<p>Comply. A strong relationship with regular contact is maintained with the external auditors, which ensures that any matters arising are resolved quickly and successfully.</p>

Principle/Supporting Provisions	Comply or Explain
<b>COMMUNICATIONS</b>	
<b>PRINCIPLE: The Public Body is open, transparent, accountable and responsive.</b>	
<b><u>Communications with Stakeholders</u></b>	
<p>The public body should have identified its key stakeholders. It should establish clear and effective channels of communication with these stakeholders.</p>	<p>Comply. The JAC has a long and short list of stakeholders setting out frequency of meetings which it reviews on an annual basis. As well as regular face-to-face meetings, these stakeholders receive a twice-yearly news update and a link to the business plan and Annual Report. In addition individual project leads have a list of stakeholders for their individual pieces of work and have developed appropriate engagement strategies which include identifying channels and timing of communications.</p>
<b><u>Communications with the Public</u></b>	
<p>The public body should make an explicit commitment to openness in all its activities. It should engage and consult with the public on issues of real public interest or concern. This might be via new media. It should publish details of senior staff and boards members together with appropriate contact details.</p>	<p>Comply. The JAC issues news releases to cover announcements and key activity. It consults with stakeholders and the general public on significant policy changes (such as the equal merit provision - the consultation for which was run online on <i>citizenspace</i>). News and developments are also tweeted via @becomeajudge. The JAC website has the names and contact details of senior staff, the press team and also the JAC candidate helpline. It also lists the 15 Commissioners and includes brief biographical details and a picture of each (and contact details for the Chairman's office).</p>
<p>The public body should consider holding open board meetings or an annual open meeting.</p>	<p>Explain. Given the sensitive nature of its work, the AO does not consider it would be feasible to hold open public meetings. However the JAC does make a considerable degree of information available publicly as explained elsewhere in this section.</p>
<p>The public body should proactively publish agendas and minutes of board meetings.</p>	<p>Comply. Minutes of Board meetings dating back to 2009 are available on the JAC website. Board agendas have been published from June 2014.</p>
<p>The public body should proactively publish performance data.</p>	<p>Comply. The JAC publishes Official Statistics twice a year on the diversity of its applications and selections. Other performance data is published in the Annual Report.</p>
<p>In accordance with transparency best practice, public bodies should consider publishing their spend data over £500. By regularly publishing such data and by opening their books for public scrutiny, public bodies can demonstrate their commitment to openness and transparency and to making themselves more accountable to the public.</p>	<p>Comply. The JAC has a section on its website for public data, including the responses to requests for information under the Freedom of Information Act. This section also includes expenses (see above) and the register of gifts and hospitality; these were published quarterly but with agreement from MoJ that has been reduced to annually from 2014. Minutes of Audit and Risk Committee meetings are also published on the website.</p>

Principle/Supporting Provisions	Comply or Explain
<p>The public body should establish effective correspondence handling and complaint procedures. These should make it simple for members of the public to contact the public body and to make complaints. Complaints should be taken seriously. Where appropriate, complaints should be subject to investigation by the Parliamentary Ombudsman. The public body should monitor and report on its performance in handling correspondence.</p>	<p>Comply. The JAC complaints process is clearly signposted on the website and the process explained in an accessible way. Complainants may take complaints to the Judicial Appointments and Conduct Ombudsman (JACO), as provided under the CRA. The details of complaints are shown in the JACO Annual Report but are also included (anonymised) in the JAC Annual Report. The JAC Board considers complaints on a twice-yearly basis.</p>
<b>Marketing and PR</b>	
<p>The public body must comply with the Government's conventions on publicity and advertising. These conventions must be understood by board members, senior managers and all staff in press, communication and marketing teams.</p>	<p>Comply. The JAC communications function is run by communications professionals who are members of both the Chartered Institute of Public Relations and the Government Communications Service, and adhere to the required code of conduct and follow the propriety guidance on use of public funds for marketing and communications activity. The Head of Communications ensures staff fully understand the rules and regularly provides refresher sessions to help staff ensure they fully comply.</p>
<p>Appropriate rules and restrictions must be in place limiting the use of marketing and PR consultants.</p>	<p>Comply. A formal exemption is sought before committing to any advertising, marketing or communications spend, including events. The exemption request is submitted using the MoJ communications directorate business case template, including as much detail as possible about the proposed spend.</p>
<p>The public body should put robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying. This includes restrictions on board members and staff attending Party Conferences in a professional capacity.</p>	<p>Comply. Cabinet Office guidance for activity during election 'purdah' periods - both in terms of activity or attendance at meetings - is followed and is prominently placed on the JAC intranet for all staff to read.</p>

Principle/Supporting Provisions	Comply or Explain
<b>CONDUCT AND BEHAVIOUR</b>	
<b>PRINCIPLE: The board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.</b>	
<b><u>Conduct</u></b>	
A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.	Comply. A Code of Conduct is in place which is referred to in Commissioners' terms and conditions of employment and is sent to each Commissioner on appointment or reappointment.
The public body has adopted a Code of Conduct for staff. This is based on the Cabinet Office model Code. All staff should be aware of the provisions of the Code. The Code should form part of the terms and conditions of employment.	Comply. A Code of Conduct is in place and is referred to in staff terms and conditions.
There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members and senior staff. This is regularly updated.	Comply. For Board members, rules and procedures for managing conflicts of interest are covered in their terms and conditions, as well as separately in more detailed guidance to cover interests in respect of candidates for selection. For staff the relevant rules and procedures are set out on the JAC Intranet <a href="http://intranet.justice.gsi.gov.uk/jac/1254.htm">http://intranet.justice.gsi.gov.uk/jac/1254.htm</a> .  The Register of Interests for Board members and senior staff is updated every six months, and a copy can be obtained from the JAC Secretariat.
There are clear rules and guidelines in place on political activity for board members and staff. There are effective systems in place to ensure compliance with any restrictions.	Comply. For staff this is covered in their Code of Conduct (Para 3.23) which sets out the rules applicable for each level of activity and who they should inform about activity. For Board members, this is also covered in their terms and conditions. If any declarations are made, staff or Board members are reminded of the rules to ensure that they are compliant.
There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are effectively enforced.	Comply in part. Rules are set out in the Code of Conduct for staff and are enforced. [We are not aware of any rules in place for Commissioners.]
<b><u>Leadership</u></b>	
Board members and senior staff should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct.	Comply. The standards expected are set out in Codes of Conduct for staff and Commissioners.

## ANNEX B: Project Governance

<b>Project Team</b>	<b>Project Board</b>	<b>Challenge Group</b>
Responsible for the day to day running of the project	Joins-up across MoJ and helps form the finding and recommendations	Rigorously tests and challenges the assumptions and recommendations
Briana Jurgeit	Abigail Plenty/Helen Whitehouse – Chair, SRO	Alison Wedge – Chair, MoJ
Charles McCall	Cheryl Wright - ALB Governance	Tony Bellringer – Cabinet Office
Daphne McKenzie	Francoise Balfe – Comms	Elenor Murray – National Audit Office
	Michael Kron – Legal	Sue Street – MoJ Non-Executive Director
	Kay Kotecha – Finance	Sheridan Greenland – Judicial Office
	Project Team	Kerry Bloomfield - HMCTS

Independent Reviewer

Carol Oatway - Criminal Injury and Compensation Authority

**ANNEX C: Judicial Appointments Commission Triennial Review  
2014**



Ministry  
of Justice

# Judicial Appointments Commission Triennial Review 2014

## **Call for Evidence**

25 March 2014

# Terms of Reference

## TRIENNIAL REVIEW PROGRAMME

The landscape for public bodies is undergoing significant reform to increase transparency and accountability, to cut out duplication of activity, and to discontinue activities which are no longer needed. The reform programme includes the requirement for Non-Departmental Public Bodies (NDPBs) to undergo Triennial Reviews. The periodic review of our NDPBs is one of the ways that the Government intends to ensure that we maintain a lean, but effective, public sector.

Triennial Reviews are expected to take between 3 – 6 months and are carried out by the Sponsor Department of the respective bodies. The Ministry of Justice is the sponsor Department for the Judicial Appointments Commission.

## PURPOSE OF THE REVIEW

As custodians of the public purse, whether paid by the professions or directly from public funds, it is important that we deliver an efficient and effective service to the public. The periodic review of our NDPBs is one of the ways that the Government intends to ensure that we maintain a lean, but effective public sector. A Triennial Review is a Cabinet Office mandated process for reviewing the functions of NDPBs, the appropriateness of the body's delivery mechanism and its governance arrangements.

The Cabinet Office has identified two principal aims for Triennial Reviews:

- To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.

## FUNCTIONS OF THE JUDICIAL APPOINTMENTS COMMISSION

The Judicial Appointments Commission is an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland. It was established on 3 April 2006 as one of the major changes brought about by the *Constitutional Reform Act 2005*, which also reformed the office of Lord Chancellor and established the Lord Chief Justice as head of the judiciary of England and Wales.

The JAC recommends candidates for appointment as puisne judges of the High Court and to all judicial offices listed in Schedule 14 of the Constitutional Reform Act 2005. It selects candidates for judicial office through fair and open competition, and has the statutory duties to: select candidates solely on merit; select only people of good character; and have regard to the need to encourage diversity in the range of persons available for selection.

## TIMELINE

The Triennial Review commences on 25 March 2014 and is expected to take six months to complete. The conclusions of the review will be announced in both Houses of Parliament and a copy of the final report will be published on the Justice website.

## CALL FOR EVIDENCE

In order to review the continuing need for the functions and the form of the Judicial Appointments Commission, and its statutory powers to perform these functions, the review team is seeking evidence from a wide range of bodies in response to the two principle aims stated by Cabinet Office (as detailed above).

The review team would particularly welcome hearing from stakeholders of the Judicial Appointments Commission. Submissions can be made in writing using the following contact details:

By Post: Judicial Appointments Commission Triennial Review  
Post Point 2.53  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

By email: [JACTriennialReview@justice.gsi.gov.uk](mailto:JACTriennialReview@justice.gsi.gov.uk)  
All submissions must be received by **Wednesday, 30 April 2014.**

## CONFIDENTIALITY

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## USEFUL LINKS

- **Cabinet Office page on Triennial Reviews (including guidance)**  
*<https://www.gov.uk/government/collections/triennial-review-reports>*
- **Judicial Appointments Commission website**  
*<http://jac.judiciary.gov.uk/>*
- **Judicial Appointments Commission Framework Document**  
*[http://jac.judiciary.gov.uk/static/documents/JAC\\_Framework\\_Oct\\_2012\\_final.doc](http://jac.judiciary.gov.uk/static/documents/JAC_Framework_Oct_2012_final.doc)*
- **Judicial Appointments Commission Business Plan 2013-15**  
*<http://jac.judiciary.gov.uk/about-jac/business-plan.htm>*
- **Judicial Appointments Commission Annual Report 2012-13**  
*<http://jac.judiciary.gov.uk/about-jac/167.htm>*
- **Constitutional Reform Act 2005**  
*<http://www.legislation.gov.uk/ukpga/2005/4/contents>*
- **Crime and Courts Act 2013**  
*<http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>*

# Questions

## INTRODUCTION

The questions that follow are intended to frame the Judicial Appointments Commission (JAC) Triennial Review Call for Evidence. The questions presume an understanding of the functions, form and purpose of the JAC.

### 1. THE FUNCTION OF THE JAC

#### 1.1 Is there a continuing need for the function of the JAC: the independent selection of candidates for judicial office?

*Points to consider:*

- *Why does the function need to continue?*
- *How does this contribute to the core business of the Ministry of Justice?*
- *How does this contribute to wider Government policy objectives?*
- *Is there a demand for the function or activity from users?*
- *Is providing the function a justifiable use of taxpayers' money?*
- *What would be the cost and effects of not delivering the function?*

### 2. HOW SHOULD THIS FUNCTION BE DELIVERED?

#### 2.1 Should the function of the JAC continue to be delivered by a Non-Departmental Public Body?

*Points to consider:*

- *Is the JAC's function:*
  - a) *a technical function that needs external expertise to deliver;*
  - b) *a function that needs to be, and be seen to be, delivered with absolute political impartiality – such as certain regulatory or funding functions; or*
  - c) *a function that needs to be delivered independently of Ministers to establish facts or figures with integrity?*
- *Are the freedoms and flexibilities inherent in the NDPB model being used to deliver the function?*
- *Does the JAC have the right powers and levers to fulfil its functions?*
- *How well is the JAC currently delivering the function?*

#### 2.2 Should the JAC be merged with another body in order to deliver its function?

*Points to consider:*

- *Are there any other areas of central government (including other arm's length bodies) delivering similar or complementary functions?*

- *Does the function duplicate work undertaken elsewhere?*
- *Could the function be merged with those of another public body?*
- *Should the JAC take on any other functions?*

**2.3 Should the function of the JAC be delivered in-house by the Ministry of Justice?**

*Points to consider:*

- *Why does the function need to be delivered at arms length from Ministers?*
- *Could the function be delivered more efficiently or effectively by the parent Department or by an Agency of the parent Department?*
- *What would be the cost and benefits of bringing the function in-house?*

**2.4 Should the function of the JAC move out of Central Government?**

**Points to consider:**

- *Could the function be delivered – either wholly or through a joint venture – by local government, by the voluntary sector or by the private sector?*
- *Is there an existing provider in the local government, voluntary or private sector that could deliver this function? Can the function be privatised or delivered under contract by the voluntary or private sector?*
- *Could the function be delivered by a mutual, Community Interest Company or social enterprise?*
- *What are the risks and benefits of moving the function out of central government?*

**2.5 Are there any other possible delivery options?**

**OTHER**

**3.1 Do you have any additional comments you would like to submit as evidence to the review?**

## **ANNEX D: List of respondents to the call for evidence and other consulted stakeholders**

Constitution Committee

CILEx

Graham Gee; Robert Hazel; Kate Malleson; Patrick O'Brien – joint response

Law Society

Welsh Government

The Bar Council

Judicial Executive Board (JEB)

Judicial Appointments Commission

UK Supreme Court





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