

Kerri Sephton  
Department for Constitutional Affairs  
Legal and Judicial Services Group  
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6 November 2003

Dear Ms Sephton,

**RE: Constitutional Reform: a New Way of Appointing Judges**

Rights of Women is grateful for the opportunity to participate in the Department of Constitutional Affairs' consultation on the appointment of judges, and welcomes the review. Our answers to the questions asked in the paper follow an overview of our primary concerns relating to this paper.

**Overview**

We believe that meaningful access to and administration of justice is dependent on having a diverse and representative legal profession, at all levels. Women are underrepresented in the legal profession as a whole, and particularly at the higher levels, including among the judiciary. Women from disadvantaged or socially excluded backgrounds are seriously underrepresented within the profession, to the detriment of the justice system.

As a guiding principle, any future strategy on judicial appointments must be thoroughly equality proofed. This means checking the impact of proposals on people within the six equality strands: gender, ethnic background, disability, sexuality, age and religion. In the context of judicial appointments, we would also argue that the social and economic background of judicial applicants should be taken into account in measures intended to result in an appropriately diverse judiciary. Particular attention must therefore be paid to addressing obstacles facing Black women and women from minority ethnic communities, disabled women, lesbian, bisexual, transsexual and transgender women, older women and women experiencing social exclusion.

The strategy on judicial appointments must make positive steps to encourage women to ascend to the higher levels of the profession. This would include allowing family-friendly working hours, part-time working, and ensuring that

women did not suffer detriment in returning to the profession after time out to raise children or meet other care responsibilities. We welcome the proposal to have reserved seats for lawyers who have taken career breaks at Recorder and District Judge level.

All current and future members of the judiciary should receive compulsory equalities training relating to the strands identified above. There should also be mandatory training on key issues including domestic violence, sexual violence, homophobic and racial hate crimes, harassment and discrimination.

**Question 1. Do you prefer: i) an appointing commission; ii) a recommending commission or iii) a hybrid commission? What are your reasons?**

We prefer an appointing commission. Rights of Women as an overarching principle believe that the judiciary should be fully independent of the Executive branch of government, and believe that the appointing commission offers the best means of ensuring judicial independence. An appointing commission would minimise the possibility of political influence on judicial appointments, and would maximise transparency and accountability, which we consider of paramount importance.

This commission should be as diverse as possible, and it will be important that it is seen by the public as being independent of government.

**Question 4. Do you have a view as to any special arrangements that will need to be made by the Commission in dealing with senior appointments from among the existing judiciary?**

We believe that such appointments should also be dealt with by an appointing commission. This would ensure consistency, fairness and transparency in the appointments process, and would eliminate the need to run two systems in parallel, which would probably be at greater cost.

**Question 5. Do you agree that the Commission should not be involved in authorisations to allow judges who have retired before their compulsory retirement age to then sit part-time as deputies until they reach the compulsory age of retirement?**

We disagree, and think that the Commission should be involved in such authorisations. This would again ensure consistency of practice in appointments, and would also allow the Commission to work to achieve as diverse a bench as possible. The Commission should also be reviewing why appointments of this type are necessary – we are concerned that this type of appointment is impeding the diversification of the judiciary.

**Question 6. What arrangements should be made for the appointment of magistrates? In particular a) should there be a continuing role for local**

**Advisory Committees? and b) what role should there be for the Judicial Appointments Commission?**

Rights of Women is concerned that the magistracy is not currently representative, and we believe that measures should be taken to make it more diverse. Magistrates should be appointed by the Commission, with recommendations from the local Advisory Committees. Membership of these committees in turn should be representative of local communities, and they should analyse and publish data on applications received in terms of equal opportunities criteria. This would make the appointment process for magistrates much more transparent.

**Question 7. Do you agree that the appointment of coroners should be brought into line with that of other judicial office holders?**

We agree with this proposal, as it would help make judicial appointments consistent and fair.

**Question 8. Do you agree that tribunal appointments should be the responsibility of the Judicial Appointments Commission, under the arrangements discussed under paragraphs 68-69?**

We agree, as this will assist with accountability and transparency.

**Question 9. Do you agree that the Commission should not be involved in the allocation of responsibilities, as described above?**

We agree as we are concerned that this might place an undue strain on the body's resources.

**Question 10. Do you agree that there should be a separate body with a reviewing and complaints function once the Judicial Appointments Commission has been established?**

We agree that there should be an Ombudsman in place to independently review the work of the Commission, and to deal with complaints from applicants. Additionally we would like to see such a body undertake proactive reviews on appointment procedures at every level – for example conducting interviews with sample members of the profession to ascertain their experiences of the Commission.

**Question 11. What status should the Commission have? Should it be i) a Non-Departmental Public Body? ii) a Non-Departmental Public Body supported by an agency? iii) A Non-Ministerial Department? Or iv) should it have some other status – if so what?**

We believe that the Commission should be a Non-Departmental Public Body, as described in paragraph 79, as this would provide for the most effective separation of powers. We would emphasise that it is vital that the Commission have adequate financial and staff resources to undertake its

essential work. It should be part of the remit of the Parliamentary Select Committee responsible for scrutinising the Commission's work to ensure that such resources are available, and that any complaints about the Commission made by the Ombudsman and not addressed are dealt with.

**Question 12. Do you agree that the Commission should take on those functions which relate directly to the appointments process (paragraph 88) and that the Government should retain responsibility for policy relating to appointments (paragraphs 90-92)? If not, please provide views on which responsibilities should, and which should not pass to the Commission and why.**

We agree that the Commission should undertake the functions relating to the appointments process outlined in paragraph 88. The Commission should also take responsibility for some elements of policy relating to appointments, in particular matters relating to selection criteria for appointments. This would retain the independence from political interference essential in the new system. However, we agree that practical matters such as the numbers and locations of judges required should be the responsibility of the Department for Constitutional Affairs, although consultation with the Commission where this impacts on appointment would be essential.

**Question 13. Do you agree that the Commission should be tasked with establishing how best to encourage a career path for some members of the judiciary?**

Rights of Women believe that an effective way to ensure the development of a diverse and representative judiciary will be to undertake positive action programmes as well as effective monitoring of the career development of members of the judiciary. It will be particularly important that such measures are thoroughly equality proofed, as outlined in the 'overview' section above.

We would particularly like to see:

- a mentoring scheme for women entering and progressing through the profession, focussing on underrepresented groups;
- a trainee scheme for women considering making applications to join the judiciary, to give them work experience and practical help;
- positive action schemes to ensure that underrepresented groups are represented at every level of the profession;
- effective equality monitoring at every level of the profession, intended to identify obstacles to progress by individuals from underrepresented groups, and to form the basis of policy decisions on judicial appointments. Such monitoring should include equality breakdowns of all appointment processes, but also for example interviews and questionnaires to existing members of the profession;
- effective liaison between the Commission and groups representing legal professionals from underrepresented groups, and also with organisations representing law students, to ensure that these voices are heard;

- outreach work to the wider public to monitor public perceptions of judicial independence and diversity.

**Question 14. What other steps could be taken by the Commission to encourage diversity?**

As we recommended in our response to the Department for Constitutional Affairs' consultation paper on court working dress, Rights of Women believe that the Bar should be a modern, accessible and respected profession. Bringing court dress into the 21<sup>st</sup> century will greatly assist to that end. Court dress codes should be flexible enough to allow for appropriate cultural dress codes to be observable – for example, if a woman lawyer or judge needed to wear the chador or burqa, the court dress code should be able to accommodate this. Women in such roles in court should also allowed to wear either a skirt or trousers, as they so wish. We believe that the options we selected – the most informal in each case – would help to increase access to justice by making Courts less alien and intimidating environment. We find that this is particularly important for vulnerable witnesses and victims, many of whom call us for help and legal advice each year.

**Question 15. Should either i) the work of the Judicial Appointments Commission, or ii) a body overseeing the work of the Commission, have a role in advising the Secretary of State for Constitutional Affairs or the Lord Chief Justice on complaints and disciplinary matters?**

We believe that this matter should rest with the Lord Chief Justice in the first instance, but that the Ombudsman might have an advisory role if required.

**Question 16. Should the Commission have a role in an internal grievance procedure? If so, what should that role be?**

We think that the Ombudsman might be able initially to assist in drawing up an internal grievance procedure, although internal grievances should probably then be handled directly by the judge's employer.

**Question 17. Should the responsibility of the Secretary of State for protecting judicial independence be enshrined in statute?**

We believe that there should be such a statutory duty, but that it should be expressed so that it is clear that this does not amount to Executive control over the judiciary. Rather we would hope that this would be an indication of democratic commitment to the separation of powers.

**Question 18. Who should be responsible for appointing Commission members?**

We agree that the members of the Commission should be proposed by a recommending body, constituted as set out in paragraph 116. We would of course expect that such a body would itself be diverse and representative.

**Question 19. Should the Commission include judicial members, legally-qualified members and lay members as proposed? If so, how should the balance between the membership groups be struck? If not, how should the Commission be constituted?**

Rights of Women prefer a model where half of the panel are lay members, and half drawn from the legal profession and the judiciary. We believe that this offers the best opportunity for underrepresented groups to be part of the process of judicial appointments, which we see as essential to securing diversity.

**Question 20. Who should chair the Commission?**

We believe that the most important characteristic of the Chair will be their obvious integrity, with a commitment to making the judiciary a diverse and representative institution.

**Question 21. Should all Commission members be appointed following open competition? If not, should some members be nominated? If you think some members should be nominated, which bodies should be invited to provide nominations? Should these bodies be given a statutory right to have a member on the Commission?**

We favour open competition for all but three seats, which should initially be reserved for representatives of the Equal Opportunities Commission, the Disability Rights Commission, and the Commission for Racial Equality. These reserved seats would only be valid for as long as the Commissions exist, and should not devolve to the Single Equality Body automatically: they would be intended to ensure diversity issues were covered at the outset.

**Question 22. Do you have any views on the working arrangements for Commission members?**

As outlined in the 'overview' section above, we believe that the Commission should adopt flexible and family friendly working policies, including job sharing and flexible hours. This will be particularly important for female staff or Commission members. We would also encourage the Commission to provide workplace childcare facilities if required by staff or members.

### ***Background: Rights of Women***

Rights of Women is an industrial and provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights. We are a membership organisation and our activities include producing publications,

organising conferences and training courses, and doing policy and research work.

Please do not hesitate to contact me if you have any queries regarding our response. I look forward to seeing the results of the consultation process.

Yours sincerely,

Ranjit Kaur  
Director