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Response to the Commission for Judicial Appointments consultation paper dated 4 October 2005: Women in the legal professions and the judicial appointments process

1. The Association welcomes the work of the Commission and the recognition of many of the factors causing the high attrition rate in the legal profession.

2. The Association acknowledges that it is not appropriate that our Association seeks to tell the professions how to organise themselves. Nevertheless, as our members are drawn from the ranks of solicitors and barristers, the experiences of our members may be helpful.

3. We agree that continuing discussions with female members of the professions (paragraph 6 of the consultation paper) should continue to establish whether steps taken to redress problems are successful.

Background

4. The Association recognises that different considerations apply as between barristers and solicitors. So far as the Bar is concerned, there has been a strong tradition of aspiration to judicial appointment, at least so far as men are concerned. Judicial appointment is considered to be an acceptable career step. There is an expectation that many barristers will seek appointment. So far as solicitors are concerned, however, the picture is generally very different. The larger firms of solicitors are businesses who make a profit

by selling legal services. Contentious business represents a very small percentage of such firms' turnover. The work of the courts and judicial appointment are not matters of great interest to the senior or managing partners in such firms. Such firms do not generally consider judicial appointment of one of their partners or employees to be a matter of prestige. Rather, such appointment is viewed negatively, as time spent on judicial work represents a loss of revenue.

5. It is common in many firms of solicitors to find that partners ands employees alike take the view that, even to express an interest in judicial appointment, carries the risk of career blight. Anecdotal evidence suggests that the behaviour of many firms towards those who seek judicial appointment is such that such fears are justified. The Association suggests that attitudes will change only if firms of solicitors see benefit from appointment of one of their number. It is unlikely that rates of pay for judges paid on a fee-paid basis will be increased significantly, and certainly not to a level which reflects the actual loss of earnings which arises when a solicitor sits on a fee-paid basis. In any event, loss of income is not the only concern. Solicitors are even more concerned about the unavailability of a fee earner to deal with clients or undertake other fee-earning work. It is puzzling that firms are slow to recognise that one benefit is that appointment assists staff retention, because it represents an easy and very acceptable exit route for the more senior members of the firm which in turn enables a firm to promote younger solicitors.

6. If even one of the major firms made a virtue out of appointment of one of its members, and if this were seen by clients to be admirable and affected their approach to choice of solicitor, then other firms might quickly follow suit.

7. Clients' attitudes are a significant driver. Once clients begin to question the lack of senior solicitors who are women and/or from ethnic minority backgrounds and/or disabled, firms will begin to change their approach. If there is no demand from clients, attitudes within the profession are unlikely to change, except perhaps in the long term. Within the private sector, we shall eventually see more women within client organisations participating in the decision which firm to instruct. That may lead firms to change their approach to recruitment and promotion to partnership. The Association considers that there are opportunities for public sector clients to help to influence firms' behaviour and attitudes.

8. We welcome bullet point paragraph 16. The most significant factor in attracting women, whether barristers or solicitors, to apply for appointment will be the introduction of a fair and truly independent appointment system in which merit, properly defined and applied,

is the criterion for appointment. Currently, potential applicants believe that appointment is dependent upon visibility to senior judiciary and that the latter influence the appointment process. Until those beliefs are dispelled, many women will be deterred from applying. It is to be hoped that the new Commission will inspire confidence and that this in turn will result in greater numbers of women applying.

9. The current approach to the appointment of Deputy High Court judges and to the issue of tickets for section 9 work and authorisation to undertake specialist court work (whether at District or Circuit judge level) should be reviewed urgently. These should be the subject of independent, fair and transparent appointment procedures.

Suggestion 1

10. Firms steps are required. All government and publicly-funded bodies obtaining legal services from the private sector should require providers to disclose not only their equal opportunities' policies, but also evidence that these are implemented. Information as to age and background of lawyers at all levels should be required. If there is disproportion eg in the number of female assistants/associates in relation to the number of male partners, explanation should be called for.

11. Information from those who leave, when and why should be provided. If this information disclosed, for example, that lawyers had been required to waive rights under the Working Time Regulations, justification should be called for.

12. Ultimately all firms/chambers providing legal services to government/public organisations (eg Health Trusts, Education Authorities) should expect to have their equal opportunities' policies and their effectiveness audited, (in the same way that environmental practices are audited for industrial providers), with the sanction that instructions would be refused or withdrawn if there were evidence of poor practice.

13. A change in culture across many professions/ businesses is necessary and will take time. Naming and shaming those with poor working practices/high drop out rates, is justified.

Suggestion 2

14. The Law Society and the Bar Council should actively promote more flexible policies on partnership or tenancy and actively monitor firms and chambers to establish whether their working practices penalise women. Firms and chambers might usefully be required to provide, for example, regular returns regarding the positions and status of practitioners

and their fee incomes or profit shares. There should be provision to discipline firms where direct, indirect or institutional discrimination was apparent from such returns.

15. However, it should be recognised that, in recent years, the Law Society has not enjoyed significant influence over the larger firms of solicitors, which have generally taken the view that they know better than the Law Society how to recruit, promote and retain staff. It is unlikely that, as matters stand at present, the Law Society's views would carry significant weight. The Society is however undergoing change and it is to be hoped that in future any advice it might give as to treatment of staff might carry more weight.

Suggestion 3

16. Yes but see answer to suggestion 2 above.

Suggestion 4

17. The Association welcomes the measures which have been introduced for limited days' sitting. It considers that it is likely that there are many more opportunities for ways in which flexible sitting could be achieved than is currently considered to be possible. This requires a critical review of the work of the courts to understand the extent of work which could be undertaken in a more flexible way.

Suggestion 5

18. The working arrangements for the High Court judiciary are archaic, London-dominated, and a positive deterrent to many of both sexes, particularly if their homes and practices have been based out of London. Taking a High Court appointment can mean being away from home for 10 months per year. This is unjustified and could be remedied without difficulty.

19. At more junior levels, the inability to apply specifically for posts at a particular court or court group is seen as a deterrent to many women, who may feel concerned about turning down an offer of appointment which is not convenient to their homes. There is a perception that if a post is turned down, another will not be offered with a consequential concern that further application for appointment will be blighted. There is no reason why invitations to apply for appointment should not be more geographically specific, particularly at more junior levels.

Suggestion 6

20. Steps should be taken to find out what happens to the women who leave. Do they move to occupations where they continue to gain appropriate experience and use their legal training and skills, whilst not in formal practice as such? There might, for example, be those who go on to take up posts in human resource departments, management or, education. If so, the qualification requirements for appointment could be altered to include "equivalent experience" to that gained in practice.

Suggestion 8

21. The Association recognises that judicial views on return to practice are divided. The Association is sceptical of the case against permitting return to practice in certain circumstances, but not persuaded that to permit return to practice would contribute significantly to diversity.

22. Given the attitudes currently displayed by firms to those who seek appointment, the possibility of a return to practice may not assist women solicitors. However, firms may consider it beneficial to admit or readmit a former judge to partnership or employment.

Suggestion 9

23. Provided they have qualified as a solicitor or barrister, government and local government lawyers, and other lawyers who are employed in commerce and industry, should be eligible and encouraged to apply for part time posts. Their employment contracts should make provision for fulfilling sitting commitments. The constitutional difficulty with regard to CPS lawyers is recognised, but it should be noted that this is not always a difficulty in foreign jurisdictions. "Time off" for sitting could be protected by employment legislation – in the same way as it is for eg jury service.

Suggestion 10

24. Aspirational targets often appear nebulous. Quotas would be invidious and unwelcome. They cast a long shadow over those who are appointed.

Suggestion 11

25. Raising the status of tribunals is a positive step. Tribunal judges should be positively encouraged to sit part time in other jurisdictions with a possible view to full time appointment in due course. Focussed induction training may assist – see below.

Other suggestions

26. The inability to specialise in the early stages of a judicial career is becoming a deterrent to many practitioners to the detriment of the judiciary. The profession has become much more specialised in recent years. The work of the judiciary does not currently reflect this.

27. The approach to appointment should include greater sensitivity to current experience, in so far as that is possible within the constraints of the work to be undertaken. The Association is aware of cases where individuals who specialise in eg family, property or planning are deterred by the prospect of applying to sit as deputy District Judges or Recorders when the jurisdiction is either very general, or exclusively crime. A fear that a person will not be able to tackle the work in an unfamiliar field is a real deterrent. Appropriate training should be given to successful applicants. This includes more focused induction courses and suitable refresher training. This would help reassure potential applicants that legal and forensic skills can be readily adapted with training and that they will gain confidence to tackle unfamiliar areas. The present Recorder criminal induction course, for example, is devised on the basis that one size fits all. Induction courses for those who wish to undertake family work are in the same position. This can be very daunting for the practitioner who has not practised in crime or family. Women are less likely than men to believe that they can bluff heir way through. If possible, subject to operational constraints, appointments should be made so that a candidate begins by undertaking work in a familiar field before being launched into unfamiliar fields.

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