

From the President



The Law Society

Rt Hon Jack Straw MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
Selborne House
54 Victoria Street
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Dear Jack

The Law Society is extremely keen to work with the Ministry of Justice and the Judicial Appointments Commission to promote the Government's aim of ensuring greater diversity in the judiciary and reducing barriers to appointment. We believe that one way of furthering this aim would be to reduce the current restrictions on lawyers from the Crown Prosecution Service (CPS) seeking judicial appointment.

The Society welcomed the Government's decision in 2003 to relax the restrictions on CPS lawyers holding part-time judicial office, which had prevented Government lawyers from sitting in jurisdictions where the state was habitually a party. The 2003 changes mean that Government lawyers are now eligible to apply for certain judicial positions provided there is no conflict with their own Department's work.

We are however concerned by the disproportionately adverse impact of the current restrictions on CPS lawyers who are seeking a fee-paid judicial appointment in the criminal courts. Although CPS lawyers are eligible to sit as Deputy District Judges in criminal cases not involving their own Department, in practice most prosecutions are brought by the CPS. Accordingly the opportunities for CPS lawyers are very limited. This appears to be confirmed by the fact that to date only two CPS lawyers have been appointed as part-time District Judges and none as full time District Judges. The only alternative for CPS lawyers wishing to pursue a judicial career is to apply to sit on tribunals or as Recorders in civil work. While this may be an attractive option for some, the existing restrictions prevent many CPS lawyers from putting the expertise they have acquired during their careers to use in the arena for which they are best qualified.

We entirely agree that criminal trials must be conducted by an independent and impartial tribunal under Article 6 of the European Convention of Human Rights (ECHR). We recognise that there are concerns about the risk of perceived or actual

bias if CPS lawyers were to sit on cases in which their own Department was prosecuting. We believe however that these concerns need not necessarily preclude CPS lawyers sitting part-time in the criminal courts. Clearly there will may a case for specific guidance - upon which stakeholders including the Law Society should be consulted about any arrangements which may be needed to minimise the scope for a perception of bias when CPS employees sit as part time judges. Judicial office holders are appointed on the basis of their integrity and impartiality and are required to perform their duties in accordance with the judicial oath. The revised guide to Judicial Conduct offers assistance to judges in order to identify potential conflicts of interests and take appropriate action in order to maintain judicial independence.

It is difficult to see why there should be a sharp distinction – in terms of perceived bias – between CPS employees and advocates in private practice regularly instructed by the CPS. It could be argued that there is at least as great a risk that an advocate in private practice dependent on the CPS for work will be perceived as lacking independence as there is with a CPS employee protected by all the arrangements to ensure fair treatment of Government employees.

The removal of the barrier for CPS lawyers seeking judicial appointment would also help to achieve greater diversity in the judiciary, since the CPS employs higher proportions of women and BME lawyers than are to be found in private practice. Out of the 3,155 lawyers currently employed by the CPS 54.5% are women and 15.1% are from Black and Minority Ethnic backgrounds. By restricting the range of judicial appointments open to CPS lawyers, the Government is missing out on one of the most diverse pools the legal profession can offer.

We would welcome the opportunity to discuss this further.

Yours sincerely

Andrew Holroyd OBE
President