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DIVERSITY IN THE JUDICIARY – LECTURE

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Background

Diversity is a hot topic. Diversity in the legal profession and the judiciary is, as an issue, getting warmer by the day. Previous Lord Chancellors have acknowledged the lack of diversity in the judiciary. We have recently seen government ministers speaking out about the lack of diversity in the professions from whence the judiciary emanates. Harriet Harman speaking at a Law Society event on 12th March of this year encouraged more professionalism in the recruiting policies of solicitors firms. She encouraged the Top 100 firms to publish their diversity data. Bridget Prentice has been more outspoken, chiding the top firms for their failure to publish diversity statistics, having been invited to do so by the DCA (MoJ). There have been rumblings about some form of penalty for failure to do so.

Diversity in the judiciary, or rather the lack of it, is something that has been raised as an issue from time to time since the early nineties. Lord Taylor, the then Lord Chief Justice in 1992 in the Richard Dimbleby lecture entitled The Judiciary in the Nineties" said this: "The present imbalance between male and female, white and black in the judiciary is obvious... I have no doubt that the balance will be redressed in the next few years". In the same year, a committee of Justice, chaired by Professor Robert Stevens examined the judiciary and recommended the introduction of "positive action" and a commission for appointing judges in order to open up the opportunities for women and those from minority ethnic backgrounds. In 1994, The Lord Chancellor, Lord Mackay, argued for what is called the "trickle up" effect – justifying the poor statistics, as being due to the lack of diverse pool to chose from. With the increasing numbers of women and BME practitioners coming into the profession, the figures (such as they were) would correct themselves. Even Lord Irvine, his successor, relied on the same theory to explain the unrepresentative figures. In 1996 the Parliamentary Home Affairs Select Committee looked at the judicial appointments process. In 1999 the Lord Chancellors Department started producing statistics on application and appointment rates. In the same year, the Lord Chancellor appointed Sir Leonard Peach to conduct an independent appraisal of the appointment process of the judiciary and Queens Counsel. There was criticism that his recommendations did not go far enough. However, from the report, came the appointment of the commissioner for judicial appointments who kept a watching brief over judicial appointments and appointments to Silk. During the lifetime of his appointment, the commissioner was very critical about the lack of transparency in

the process of appointment. In the same year, the Home Affairs Select Committee looked at the question of judicial appointments again and questioned the slow pace of change. Some changes were made at that stage including the advertising of most positions and interviews for those below high court level. I will deal with the more recent changes made by government, later on in the talk.

Recently government ministers have spoken out about the lack of diversity in the professions from whence the judiciary emanates. Harriet Harman speaking at a Law Society event on 12th March of this year encouraged more professionalism in the recruiting policies of solicitors' firms. She encouraged the Top 100 firms to publish their diversity data. Bridget Prentice has been more outspoken, chiding the top firms for their failure to publish diversity statistics, having been invited to do so by the DCA (MoJ). There have been rumblings about some form of penalty for failure to do so.

Apart from criticising previous Lord Chancellors for the lack of diversity, there has never been any legal challenge to the unrepresentative nature of the judiciary. There have been suggestions in the past, namely by Geoffrey Bindman that the previous judicial appointments system could violate both the Race Relations and Sex Discrimination Acts. This prompted Lord Mackay to seek counsel's opinion, which was to the effect that the process was not discriminatory. This was never tested in court though.

Karon Monaghan, a well known discrimination practitioner at Matrix chambers has argued that the then recruitment practices for the senior judiciary would be open to challenge for being directly and indirectly discriminatory under those acts due to the adoption of relevant European directives, first on the basis that the requirement of previous experience in the court below – all appointments being from the pool in the level below – is discriminatory because there are no or few ethnic minority and female judges to enable appointments to be made. This requirement excludes those who would be otherwise qualified. This argument however depends on whether it is accepted that there are those who would be otherwise qualified, possessing the necessary qualifications and experience for the post. The second requirement of needing to be known by the very senior judiciary, disadvantages women and BME practitioners, she argues. Those people tend to be outside the traditional judicial networks and do the kind of work, which might not expose them to the senior judges. This second argument was a valid one, but with the change in the system of obtaining references, it may not be so pertinent. Neither argument has been tested in court.

The process of appointing judges to the Court of Appeal has undergone some change with the advent of the JAC, but it is not clear if the system will be further formalised. The new Supreme Court will have its own judicial appointments commission.

The statistics

I mentioned that it was only in 1999 that statistics on application and appointment began. Let us look for a moment at what the statistics show. I am going to take the years 2001 and the most recent statistics to 1st April 2007.

The percentage of women in the judiciary was as follows:
2001 – one woman head of division out of four, none in the House of Lords. 2007 no head of division, but one woman in the HoL 8.3%. Court of Appeal judges: 2001 –

6.1%, 2007 - 8.1%; High court judges 2001 - 8.1%, 2007 – 9.3%; Circuit judges 2001 – 7.9%, 2007 11.4%; recorders 2001 -12.3%, 2007 – 15.1%; District judges 2001- 16.4%, 2007- 22.4%; Deputy district judges 2001 – 19.9%, 2007 – 28.1%; District judges (MC) 2001 – 17.3%, 2007 – 23.7%; deputy district judges (MC) 2001 21.6%, 2007 24.85%.

The percentage of those from black and minority ethnic backgrounds was:
High court and above: 2001 – nil, 2007 0.9% (LD); circuit judge: 2001- 0.7%, 2007 1.4%; recorders 2001- 2.6%, 2007 – 4.4%; district judges 2001 - 1.6%, 2007 – 3.1%; deputy district judges 2001- 1.2%, 2007 3.85%; district judges magistrates courts 2001 - 2.0%, 2007 5.1%; deputy district judges magistrates courts 2001- 5.6%, 2007 – **3.5%** . To put this in some context, minorities formed 7.9% of the population nationally in 2001 census and in the National Statistics Office 2006 estimate of the population in mid 2004, 14.7% of the population was "non white british".

Whilst there has been some increase in the number of those from black and minority ethnic backgrounds, it also has been woefully slow. More worrying is that there has been a decrease in the percentage of BME deputy district judges from 2001 to 2007.

Since my appointment in October 2004, there have been about 30 new high court judges appointed of which two have been women and none from a BME background. As noted by Lady Justice Arden in her address to the Chancery Bar Association in January of this year, since October 2005 no woman has been appointed to the High Court bench.

Can we take any comfort that things to come will change? Figures published in the press claimed an increase in the number of female and BME appointments. In March 2007, the DCA published its final report on the judicial appointment process and dealt with the 2005/6 figures, the last before the JAC came into being. Of 337 judicial office holders from the 32 competitions held, 137 (41%) were female and 48 (14%) were BME. Vera Baird, when a junior minister in the DCA welcomed the increase. Whilst welcome, what the headlines did not reveal, was that a significant contribution to the rise were the fee- paid appointments. If one looks at the aggregate diversity table of the seven exercises set out in the JAC's first annual report the figures also look promising: 40.61% of the eligible applicants being women and 8.53% BME. 45.71% women short-listed, 4.57% BME. Of the recommendations accepted by the Lord Chancellor, 48.27% were women and 5.17% BME. 41.37% of those were solicitors and 51.72% barristers. What these figures do not show is that out of the 62 vacancies, 59 were for tribunals and only three for specialist circuit judges. These are promising figures so far as women are concerned, but these figures mask the fact that there is little progress in terms of diversity in the higher tiers of the judiciary from at least circuit judge and above and arguably from recorder level and above.

For example let us look at the recent JAC competitions at high court and circuit judge level. In the high court competition, of the eligible applicants 14.58% (21) were women and 2.08 (3) were BME. Of those short-listed, 22.81(13) were women and 1.75(1) BME. Of those on the Section 94 list, the list from which appointments will be made – 14.29% (3/18) are women and no-one from BME background. Dealing the other diversity statistics available for this competition, 5.5% (8) of applicants declared themselves as being disabled; 7.02% (4) were short-listed and none found themselves on the section 94 list. Barristers formed 76.19% of the final list with salaried post holders accounting for 23.81% and no solicitors.

In the circuit judge competition, of the eligible applicants, 24% (73) were women, 7% (21) BME. Of those short listed, 25% (38) were women, 5%(8) BME. Of those on the section 94 list, 31% (32) were women, 3% (3) BME. A welcome increase in relation to the percentage of women applying and those on the section 94 list, but a disappointing decrease in the percentage of those from BME backgrounds applying and those on the section 94 list. Dealing with other statistics available for this competition – 5% (15) of the eligible applicants were disabled, 5% (7) of those short-listed and 6% (6) of those appointed to the section 94 list. Barristers formed 85% of the final section 94 list, salaried judicial post holders 9% and solicitors 6%.

One piece of research into the economic analysis of judicial diversity by Vidal and Lever (2006), has focussed on promotions from the high court to the court of appeal. They studied data on 285 high court judges between 1985 and 2005. They found that 58% of what was termed the "traditional group" (private education or state education followed by Oxbridge and a leading London set of chambers) are predicted to be promoted compared with 19% for the "non traditional group" ex- circuit judges or state educated not followed by Oxbridge and a leading London set). Both youth and a civil/public law specialism were positively associated with promotion and those from the non traditional group were older at promotion and disproportionately specialised in family and crime.

Looking at those recent figures and the research, there is cold comfort for BME practitioners generally and little comfort for women, so far as the higher judiciary is concerned.

Baroness Prashar, chair of the Judicial Appointments Commission in a speech at the Centre for Crime and Justice in March 2007, said this: "It is futile to concentrate on the diversity of the judiciary when the problems are linked with the diversity of the legal profession as well. As the legal profession remains unrepresentative, our ability to change the diversity profile of the judiciary overnight will be limited, particularly at the highest level." Baroness Prashar is right to point out that the pool of applicants will be very much influenced by the diversity of the professions, but it is to be hoped that the remark does not mean that the JAC will be content to rely on that reason alone for any explanation as to slow progress so far as judicial diversity is concerned. For reasons, which will be discussed later in the talk, there is a case for the JAC to play a prominent role in the promotion of diversity apart from the usual diversity initiatives which have been undertaken in the past and which are currently being undertaken.

Without getting bogged down into the further statistical detail, as a general trend, it can be seen that more women than ever are graduating in law, their results, on average, being even better than men. There is a healthy increase in those obtaining their practising certificates. There is some increase in those getting partnerships. However, you only have to look at the attrition rates to see that women are not reaping the same rewards and advancements as men in the solicitors' profession. A similar picture pertains at the Bar. It is no surprise therefore, looking at the two professions that the figures for the judiciary, the senior judiciary in particular are disappointing. Women in academia fare no better, according to studies done by Clare McGlynn on the status of women lawyers in the UK.

Lady Justice Arden in the same talk, pointed to the Equal Opportunities Commission report, which highlighted that there are 78 "missing women" amongst the 194 senior judges. The report concluded that it will take about 40 years for women to reach an equal number to that of men on the bench. The surprising thing,

said Lady Justice Arden, is that there has been this notable lack of progress for women, at a time when there is considerable pressure for diversity in the profession and on the bench. She notes that appointment has to be on merit, but that merit should take into account the different, but equal kinds of contributions that women can make.
This observation leads me to the question of:

What is diversity and why do we need it?

When we talk about diversity – what do we mean? We tend to think about gender and race. One only has to look at anti-discrimination legislation to see that there are other factors at play- religion, sexual orientation, disability, age etc. Some argue that you should throw into the mix both class and education. Others say that to cast the net too wide would be to throw up too many targets and to get outside the generally understood indicators of diversity. Do we, asks Alan Paterson, who has written about the Scottish Judicial Appointments Board, need to extend it to such attributes as attitudes, values and cultures? Lady Justice Arden when giving judgement in the case of Denton v Mayor and Burgess of the London Borough of Southwark 2007 EWCA Civ 623(para 21) quoted Abella J of the Supreme Court of Canada saying " every decision maker who walks into a courtroom.. is armed not only with the relevant legal texts, but with a set of ... experiences that are thoroughly embedded" Whilst our judiciary is not very diverse in the traditional and visible sense, it is comprised of individuals who bring their different life experiences to the job. Of course it is arguable that those from similar backgrounds will bring a similar set of experiences to bear, but one must not treat judges as an amorphous body, unable as individuals to think outside some kind of "establishment box".

I move on to consider the next question, which is, why do we need diversity, given that it is said, that we have a judiciary which is highly respected both at home and abroad? If diversity is desirable, then should some forms of diversity take precedence over others? A more interesting question, which has been considered in some depth by commentators both here and abroad, (Kate Malleson in particular) is whether the notion of a more representative judiciary can be reconciled with the principle of judicial impartiality. I will deal with that later, when I consider what is called the "Impact theory".

First of all, how do we measure what having a more diverse judiciary means? Do we measure it by the demographics of our society? Do we want a judiciary to be representative of the society it serves or merely reflective of that society? It does not take much to realise that the former, if applied literally, would be difficult to achieve. The general consensus is that it is the latter aim, which is desirable. Dealing with the former, Mr Justice Kirby, the well known Australian high court judge said: " I know of no serious observer who contends that the judiciary should be representative of all the many minorities in society. But many informed judges now consider that it is desirable that different voices should be heard in the market place of judicial ideas" Sir Sidney Kentridge, when addressing the issue of diversity in a court of final appeal, with particular reference to the Constitutional Court said: " For my part I do not understand the call for a court to be representative. We are never told what sort of representation is contemplated or how it is to be achieved. The concept of representativeness may be quickly discarded. A more fruitful concept is diversity. Diversity in a final court of appeal is in my view a good in itself. This does not mean that a woman judge on the panel or a judge from a different ethnic background will necessarily decide a case differently from a white male judge. But their presence could enrich the court"

Most commentators tend to accept that the use of the term "reflective" means broadly to correspond to the wider community in terms of gender and ethnic make up.

What then is the justification for a more diverse (reflective of society) judiciary? Writing on the topic yields the following main justifications:

Enhancing democratic legitimacy.

By being reflective of society, the courts are given legitimacy. Members of society are more likely to respect and trust courts whose judges include people like themselves. It increases accountability and thus public confidence. As Justice Atkin from the Supreme Court of Queensland put it at an IBA conference, "the public will have faith that the court will be impartial and be able to recognise and eliminate unconscious bias." Another Australian Judge the Hon Justice Gaudron in a speech launching the Australia Women Lawyers in 1998 said "The argument for, and ultimately the justification for, a diverse judiciary is that it better serves the interest of justice for all members of society"

The equity principle. This says that it is wrong in a democratic society, in which we are all equal citizens, for authority to be wielded by such an unrepresentative section of the population.

The impact theory – that it will improve the decision making of the judiciary. There is a lack of consensus on this. There are those who are firmly of the view that women and men see the world differently and that women, by bringing a feminine perspective to bear, can play a major role in improving the quality of the system and judicial decision- making. Chief Justice Beverly McLachlin of Canada, Lady Cosgrove, the first female high court judge in Scotland are in this camp.

Justice Van Heerden of the South Africa Supreme Court of Appeal, believes that women bring a different face and set of morals to the sentencing process. Justice Atkin feels that there are powerful arguments based in psychology and sociology that the different experiences in men and women inevitably mean slightly different approaches to judicial decision making which will enhance its legitimacy.

Chief Justice Sian Elias of New Zealand is in no doubt that " the experiences and perspectives of women are distinct and are essential for judging in modern conditions" ("Changing our world" International Association of women judges conference, May 2006). She notes what she calls Kate Malleson's scepticism of the emphasis on the difference women will make to judgements on the bench. However, she believes in the difference that women and other diverse members can make in the shift of attitudes of judges and the change in legal culture. Women and people from minority groups, she says, bring their life experiences with them and are more likely to realise how often claimed objectivity is marred by unconscious biases. As she explained, she herself has had moments in cases where she has had a heightened insight into the disadvantage of those before the court, which her male colleagues had not noticed.

Baroness Hale has approached the question with some caution, but as she set out in 2003 in the Cambridge Law Journal, a generally more diverse bench with a wider range of backgrounds and experiences and perspectives on life might well be expected to bring about some collective change in empathy and understanding for the diverse backgrounds and experience of those whose cases come before the

courts.

As was been pointed out by Chief Justice Elias, men themselves have in the past justified discrimination against women on the basis that they are different. Citing the matrimonial property legislation based on the presumption of equal sharing in the early 70's, she pointed to how the decisions of many judges were clearly influenced by their own personal values, and how transparent their hostility to the new legislation representing the values of the times was.

Johnson and Fuentes-Rohwer argue that judicial diversity enriches the decision-making process, because as judges interact with one another, they affect each other's views of particular cases or of the law. Deliberation is bound to sharpen legal analysis especially in appellate courts ("A principled approach to the quest for racial diversity on the judiciary." UC Davis Legal studies research paper no 33 Feb 2005).

A friend, experienced in diversity matters has used the following analogy – " if you add red to two pots of blue, you get quite a different colour. Any composite will tend to think in a certain way. Adding a different view, will release all from stereo-typical thinking and hopefully produce a new and fresh approach"

There have been studies in the United States, and to a very limited degree, in this country, on the effect of gender on decision- making. The results are largely inconclusive. Where there is some support for the effect of diversity, it is in the area where there is collective decision-making such as the appellate courts. Research by Songer and Crews-Meyer ("Does judge gender matter: Decision making in State Supreme courts", 2000 81 Social Science Quarterly 750) showed in relation to two areas of law not generally considered as being "women's issues", namely, obscenity and death penalty sentencing, that the women judges in state supreme courts tended to take more liberal decisions to uphold individuals rights. Of interest, is that the presence of a woman on the court tended to increase the probability that the male judges would adopt a similar position. There is other research conducted on female decision making in the federal appellate courts, which also tends to support this finding. ("Female Judges matter: Gender and Collegial Decision- making in the Federal Appellate courts, 2005 114 Yale Law Journal 1759)

Cameron and Cummings examined the effect of race, gender and ideological diversity among three judge panels on the US Courts of Appeal on all affirmative action cases from 1971 to 1999. They found that adding a single non-white judge to a 3- judge panel increased the probability that the two white judges would vote in favour of affirmative action by 15%.

However, whatever the studies may or may not show, there is a body of opinion which postulates why the impact theory cannot work. The argument is that the composition of the judiciary is irrelevant, because of the principle which guides all judges – namely that of judicial impartiality. The judge's background can have no bearing on the outcome of the case, as the judge has to decide the case without bias and without prejudice. The courts themselves, in the past, have rejected the notion that a judge's background could undermine the impartiality of the decision- making. It is noticeable however, that more recently, judges, certainly those from other jurisdictions, have been more willing to accept that judges bring to the courts their values and experiences and do not inhabit in court, some remote, detached and value- free sphere. However, given the many examples in history, in different jurisdictions, of decision- making which has patently been less than impartial, the impartiality argument has lost much of its attraction.

A different approach to the question of impartiality is that of Ifill, who argues that fair trial requirements need structural impartiality, in other words a judiciary made up of judges from diverse backgrounds and viewpoints, which would foster impartiality by diminishing the possibility that one viewpoint will dominate decision making. (S. Ifill: "Racial Diversity on the Bench: Beyond Role Models and Public Confidence" 57 Washington and Lee Law Review 405 Spring 2000). Research already cited, would tend to support that approach. Interestingly, the same author questions how diversity is necessary for juries but not for judges. Judges just like juries should reflect the diversity of the community.

Other justifications include: **utilitarian** – diversity represents a sound use of human resources, as society cannot afford to lose the intellectual power and energy of so much of their population. Further it is argued that greater diversity enables women and BME practitioners to act as **role models** for new entrants to the profession.

Merit vs diversity

In this country, statute lays down that merit is the sole test for judicial appointment. How is merit defined? Is diversity an "add- on" or is it part of merit?

Baroness Prashar, in the same speech already cited, said this: "I am asked with rather frustrating regularity whether there is any tension between merit and diversity. I want to be clear here that we seek candidates on merit and merit alone. But at the same time our task is to seek out that merit wherever it can be found. We do this by encouraging more people to apply for judicial office - people who have the required qualities and abilities but who for all sorts of reasons have been put off applying in the past. Diversity in the field - merit in the selection.

I want to stress too that we do not select to targets and by law cannot discriminate positively in favour of any particular group or individual. We are driven by our duty to appoint on merit not by quotas or boxes to tick. But we recognise the need to measure our performance and we will be closely monitoring both the management and the outcomes of selection processes."

There are a number of issues, which arise out what Baroness Prashar has said. Let me deal with the first one she raises – the merit vs. diversity debate. This is one that has raged, not only in the legal profession, but elsewhere. In countries where affirmative action is carried out, there is often criticism that the better candidate did not get the job, at the expense of the need for a more representative body. There have been some in this country, both in the professions and the judiciary, both privately and publicly, who have expressed the concern that diversity should not be at the expense of merit.

In an article entitled "Dumbing down for diversity" Jonathan Karas QC argued amongst other things, that the language of diversity may undermine the rule of law, as the law provides a commonly accepted, objective code by which we can regulate our affairs; that the language of the "access lobby" potentially undermines this. The law, he argues, should be objectively understood and applicable regardless of the gender or ethnicity of the person applying or arguing it. He goes on to ask, if we are to approach the law on the basis that there were relevant differences to decision making and advocacy based on gender or ethnicity, why should litigants not demand that their cases be heard or their representations be conducted by people of a gender

or ethnicity they prefer. Why not have different laws for different ethnic groups? (Legal Week 5th April 2007, 21) Whilst no doubt intended to be controversial and to stimulate debate, his observations are a caricature of what is argued for. He fails to understand, that diversity as a concept, does not relate to specific cases, but to decision-making in general. Perhaps for a chancery practitioner, as he is, black letter law is central, but as anyone who regularly practices in the courts up and down the country knows, most of the work of the courts involves fact- finding, assessment of evidence and witnesses, exercise of judgement and discretion within the framework of the law. Juries in criminal trials, now drawn from all walks of society, are told to bring their collective experiences of life to bear on their decision- making – that is what we trumpet as the strength of our jury system. Why should the same not apply to judges?

The words of Baroness Prashar, seem to stress the Commission's desire to emphasise that it will not sacrifice quality in order to achieve greater diversity. Implicit in what she said, is that a quota system undermines the merit principle. If there are sufficient candidates of appropriate merit, does the quota system really offend the merit principle?

The issue of whether there is a tension between merit and diversity has not really been addressed. Baroness Prashar did not address it in her speech, although the JAC annual report asserts that diversity and merit are not incompatible. Perhaps this lacuna is because one needs to be clear as to what merit means? How should it be defined? Does it amount, in reality, to no more than competence? Is it a moving target, depending on the demands of the job in question? So far as judicial appointments are concerned, is or should diversity be part of merit? There has been little research or attention paid in this jurisdiction to the issue.

The Bar Council's response to the DCA's consultation paper on increasing diversity in the judiciary, did invite the government to make a positive statement that increasing diversity will enhance merit. The relevant experience of, or derived from, backgrounds, perspectives, cultures and other diverse circumstances, should, it said, be part of the strengths that a candidate offers and therefore properly considered in the assessment of merit. Diversity needs to be fed into the test of merit, so that an understanding of and ability to deal appropriately with diversity issues will count in a candidate's favour when assessing the application.

Erika Rackley in her article "Judicial Diversity, the woman judge and fairy tale endings" – (Vol. 27, March 2007 Legal Studies) argues that the Lord Chancellor's promotion of diversity on the one hand, while at the same time saying that selection is on merit, irrespective of gender, race, age, religion etc, is somewhat disingenuous. The fact that merit is the sole criterion makes the task of the JAC in increasing diversity, in her view, much more difficult. She goes on to suggest that despite the ongoing quest of the DCA(MoJ) to increase diversity within the judiciary, the current initiatives do not confront fully an underlying question, namely, what should a truly diverse judiciary look and be like, what sort of judiciary do we want? The inference to be drawn from her approach, is that we should be starting with a blank sheet of paper, rather than starting from the image of the judiciary that now exists. The starting point it is argued, is diversity itself, which compels us to create a space, in which difference is celebrated and valued in its own terms rather than increasing the number of "outsiders" into the traditional fold.

There is an interesting difference to be noted between the Northern Ireland Judicial

Appointments Commission and our JAC in relation to their duties. With regard to the former, it has a duty "to reflect the community and appoint on merit", suggesting that diversity is part of merit. With regard to our JAC, it has a duty "to appoint on merit" but only " to have regard to the need to encourage diversity in the range of persons available for selection for appointment", two completely different processes. Whilst one can see historical reasons for the need to reflect the community in Northern Ireland, there are surely, in our multicultural society, similar imperatives?

What can we learn from other jurisdictions?

Whilst many of the foreign jurisdictions have different systems – and many are more politicised than ours, there are interesting lessons to be learnt from their debates on diversity. The focus is on gender and race. That is because, to date, there is very little research on other aspects of diversity, such as religion, sexual orientation and disability.

I am going to deal with common law and civil law countries very generally and then spend a little time on the South African system, as I was asked to include some reference to it in the talk, given my connections there. While South Africa has its own unique problems, initiatives taken there deserve close attention and consideration to see if, and to what extent, some could be adopted and adapted here.

Common Law jurisdictions

In most jurisdictions, diversity in the judiciary is an issue. What is notable about the **USA,** (the system being highly politicised) is that it is the politicians, who are pressed to use their influence to ensure that the judiciary is more reflective of society. In California, Arnold Schwarzenegger has been criticised for the lack of diversity in some judicial appointments. The figures show that 70% of California's judiciary is white and 72% male whereas 67% of the prisoners were African/American or latino. Black americans and latinos are 42% of California's population. In New York, there has been debate about whether a new merit selection procedure, with the governor merely being an appointing officer rather than the selector, will improve the diversity of judges. The New York Bar plan for merit selection would require that the nominating commission be comprised of both men and women who reflect the cultural, racial and ethnic diversity of the areas from which they are drawn and that they nominate judicial candidates who reflect the diversity of the community – a far cry from our system.

Much research has been done in the US on the impact of the nominating commissions, looking at the claims that they promote judicial accountability and independence. They focus on two aspects – the diversity of the commissions themselves and the extent to which they produce a more diverse judiciary. However the studies have been inconclusive, largely because of their narrow ambit – i.e concentrating on a particular court or state. Research on the second aspect, shows that formerly such commissions were overwhelmingly white and male but latterly, the increase in women has been significant. The same cannot be said for ethnic minorities. One study correlated the two aspects and found evidence that diverse commissions attracted a more diverse body of applicants and nominated a more diverse pool for appointment (K Esterling and S Anderson. "Diversity and Judicial Merit Selection process: A statistical report" Research on judicial selection 1999)

Apart from the nominating commissions, most states have task forces and commissions to look at the issue of race and gender bias in the judiciary. Despite significant increases in minority law student graduates, there has not been a

corresponding increase in minority judicial appointments. Recommendations covered education, training, greater information gathering on diversity, and policies to lower barriers to full participation in the legal system. Recommendations have been made for greater collaboration between the different players, including bar associations, the executive and the judiciary and also ensuring that there is better representation for women and those from minority ethnic backgrounds on the nominating commissions. The American Bar Association has a judicial caucus and promotes practitioners for judicial office as well as providing role models for aspirants. The National Centre for State Courts carries the information on the findings of the tasks forces and commissions on its website.

There has been much research in **Canada** on the subject. It has been addressed by the political leadership, the nominating commissions and the legal professions' associations. As in the US, some states are more pro-active than others. Ontario has been particularly radical. The four main criteria for appointment are professional excellence, community awareness, personal characteristics and demographics. The last criterion requires the judiciary to be reasonably representative of the population it serves. This requires overcoming the under-representation of women, visible, cultural and racial minorities and persons with a disability. Studies looking at the progress of minorities, has found, much as in our jurisdiction, that there has been progress for women, but little for those of minority ethnic backgrounds.

Australia fares less well with regard to women and those from ethnic minority backgrounds. The figures for the higher judiciary, as here, are sad to behold. In late 2004, there were no female high court judges, Justice Gaudron the only woman, having retired. The figure for women on the federal courts is low. This is despite the Attorney-General, in 1993, publishing a paper on judicial appointments, highlighting the huge problem of the lack of diversity. Like this country, the number of women graduates is roughly equal to the number of men, but the women find themselves by and large in the poor end of the profession.

New Zealand has similar criteria for judicial selection to those of Ontario. They are legal ability, qualities of character, personal technical skills and reflection of society. The last criterion is defined as: "The quality of a person who is aware of, and sensitive to the diversity of modern New Zealand society. It is important that the judiciary comprise those with experience of the community of which the court is part and who clearly demonstrate their social awareness" However, as yet, the judiciary is not so comprised of those persons.

The 2005 report of the Commissioner for Judicial Appointments for **Northern Ireland** reveals that, as of June 2005, there were no female high court judges. Research was commissioned and undertaken at the University of Ulster in relation to judicial appointments and silk, which showed a similar picture to the research done here. The report suggested that rather than testing diversity under the criterion "understanding of people and society" – because the approach isolates the testing of diversity awareness to a stand alone issue as opposed to being incorporated into the assessment of each criteria or competency, the current criteria or competencies could be re-worded to take account of sensitivity to and understanding of diversity issues. This would allow a fuller assessment of a candidate's appreciation of the relationship between diversity, cultural issues and the conduct of the law. The corresponding competence in our jurisdiction reads " ability to treat everyone with respect and sensitivity whatever their background" As has been pointed in consultation, a judge may be able to treat someone with respect and sensitivity, but it does not necessarily follow that he/she will have an understanding of people and

society or and understanding of diversity issues.

The Judicial Appointments Board for **Scotland** was established in June 2002 and figures show that since its inception, the number of women applicants in particular has increased.

Civil law jurisdictions

Time does not allow an exposition of the system in civil law jurisdictions and thus I will just make some general comments. The position in civil law jurisdictions differs from that of common law ones. This is because there is a career judiciary, which is based on academic achievement initially – i.e. that recruitment is mainly by examination, after university. However, there is, in some jurisdictions, recruitment to he judiciary from the professions. Women fare well in the former process and less well in the latter "experience based" process. There are far higher percentages of women in the judiciary than in this country, but they are concentrated in the lower tiers of the judiciary. Once in the judiciary, the upward path for women is a difficult one in most countries. France and England have the highest ethnic minority populations in Europe, and France, like this country, has a serious under-representation of ethnic minority judges. Such is the concern about this state of affairs that a special task force was set up in 2004, to recommend policies to improve this perceived problem.

South Africa

There are four aspects in particular of the South African system that I wish to draw to your attention, which should give us some food for thought, but before that, let me give you a brief description of the Judicial Services Commission and its procedures. The Commission was set up in 1994. It has 23 permanent members, of which there are 3 judges, 5 members of the legal profession, 11 politicians including the minister of justice. Four further members are chosen by political process. The Chief Justice chairs the Commission. The President makes appointments to High Court and Supreme Court of Appeal on the advice of the JSC. The positions of Chief Justice, President of SCA and their deputies and the Constitutional Court are prerogative of the President as head of the National Executive, but he must consult with the JSC and in the case of the Chief Justice and Deputy Chief Justice with the leaders of all parties represented in the National Assembly. The President is given a list of nominees for the Constitutional Court, more names than the number of vacancies existing. Given this room for choice by the President, unlike with the High Court appointments, there is room for politically motivated appointments in the highest echelons. Most new appointees to the Constitutional Court have been black, whilst for the Supreme Court of Appeal, for which the JSC is the final decision-maker, it remains largely white, even though most of its members were appointed after 1994.

The South African system of appointment is more open than systems in other jurisdictions. Twice a year open interviews take place following widely distributed calls for applications. The first point to note, is that unlike here, candidates are nominated (with their consent) by bodies such as the Attorney General, the Bar Council, the Law Society, the law departments of universities, various societies such as the Black Lawyers Association, Advocates for Transformation, the National Democratic Lawyers Association. This support from the various and diverse bodies has been crucial in widening the pool of applicants and has been an important route for the entry of black and female candidates as well as attorneys and academics.

There is short-listing of the candidates and the views of the various relevant organisations are canvassed as to suitability. There is not the importance given to confidential references and candidates will be aware of what is said about them, often being discussed during the interviews. Warning is given well in advance of any adverse comments made.

The second aspect, is that from the beginning, the JSC decided to treat diversity as a component of competence, rather than as an independent requirement. Whilst rejecting a quota system to reflect the demographics of society, it has focussed on "representativeness" at an institutional level.

Explaining the role of diversity, the Commission has said:

" Diversity..... is not an independent requirement, superimposed upon the constitutional requirement of competence; properly understood it is a component of competence – the court will not be competent to do justice unless, as a collegiate whole, it can relate fully to the experience of all who seek its protection". (Guidelines for questioning candidates for nomination to the CC @ page 5). The court thus rejects the concept that representativeness needs to be race and gender, in direct percentage to the share in the population. However, as Kate Malleson points out, this does not resolve the issue of the potential conflict between competence and representativeness at an individual level. (Assessing performance of the JSC, 1999 116 SALJ 36)

There is also considerable emphasis on "potential", thus allowing those with less experience, but who have been identified as good judge material, to be appointed. This is particularly important for black applicants who have not had the same educational advantages as their white colleagues.

The third aspect is that the interviews of the short-listed candidates take place in public. Initially it was felt that this would put candidates off. Some candidates felt that the interviews were humiliating, but ten years on, it is accepted that the system has served to cultivate a sense of public accountability. Now, it is generally accepted to be a good thing. Guidelines have been drawn up in relation to interviewing. Restraint is important. Questions should be relevant to the criteria. Some commentators have been critical that the questions are not rigorous enough. There has also been criticism of the questioning about the personal and political lives of the applicants. Having had access to the interviews in 2005, it must be said that they vary. There is little consistency. It would appear that there is no general framework within which the questioning takes place. Nevertheless, at least one is able to assess the quality and fairness of the questioning and the quality of the applicants because of this transparency.

The fourth point is that the JSC has an important role in promoting diversity. In 1994 when it started, 2% of the judiciary (that is high court and above) was black. Ten years on, in 2003, 34% were black and just over 10% were female. In August 2007, President Thabo Mbeki said that government is to produce a white paper on transformation in the judiciary, opening up the matter for wider debate. However, in advance of this, the Chief Justice, with support from the government, (both financial and moral) has just launched a new initiative aimed at dealing with the current severe under-representation of women in the high court judiciary. Nineteen women were selected from over 300 applicants to participate in a novel programme, specially designed to expose them to various fields of judicial work. The participants, selected from the magistracy (like our district judges, but with greater powers) and

legal private practice, had to have 10 years or more experience. They underwent a three- month theoretical course and will undergo a further six- month practical judicial course at various high courts. Candidates will be marked on their work. If they pass the course requirements, they will be part of the pool available for the appointment of acting judges, from which, in practice, high court judges are chosen.

Looking at the course in more detail - the three- month theoretical course involved lectures on aspects of law, judgement writing, the approach to different jurisdictions in the High Court and sentencing. The candidates are given nine case studies and have to write judgements in each. The main focus is on judgement- writing skills. Those from the legal profession receive some payment to compensate for the time and income lost in practice. The six- month practical period and this is variable depending on the assessment of need, involves shadowing a judge and having a judge- mentor. During this period there is also theory consolidation, namely, revision of the work previously done in the theory sessions. The candidates are assessed at the end of the period. Much of the success of this project will depend on the government and the Chief Justice encouraging and persuading the Judge Presidents of the various provincial high courts to use this pool of candidates as acting judges, so that they can put in practice what they have learnt on the course in order to make them strong contenders in any high court competition.

What has been done in this country by way of initiatives in the recent past?

In brief - research was undertaken in 2006 on why women and ethnic minorities are under presented in the judiciary. The government has already implemented or undertaken to implement a number of measures in its efforts to improve diversity, such as salaried part time working, advertising of posts, interview assessment centres, changes in eligibility for job and return to practice and career breaks. However, it is to be noted that these changes apply to all ranks below that of High Court judge and therefore are of no assistance in resolving the under-representation in the senior judiciary.

There is now a Judicial Diversity strategy agreed between the MoJ, JAC and Judicial Office, the aims being to:

To promote judicial service and widen the range of people eligible; to encourage a wider range of applicant to ensure the widest possible choice for selection;
to promote diversity through fair and open processed solely on merit; to ensure culture and working environment encourages and supports a diverse judiciary and increases understanding of the communities served.
Measures of progress in relation to the responsibilities of each organisation are to be agreed.

The Judicial Office operates a work- shadowing scheme. It is currently in the process of being revised. The aim is to track the effectiveness of the scheme with follow up of those who come on the scheme. However, at present, demand is greater than availability of judges, so it takes time to get accepted on the scheme.

There are a group of circuit judges (45 of them) called community liaison judges, who act as a bridge between the courts and the community in which those courts are situated. Theirs is an important role in informing the public and its perception of the judiciary. Sadly, their make up is presently unrepresentative of that of the circuit bench.

The Bar Council has a number of initiatives and working parties which (inter alia) look at the issue of diversity and the question of access to the Bar and thereafter access to work. The new President of the Law Society has confirmed to me that diversity will be one of the key issues in his year of office. In both professions, there is still a long way to go.

What lessons can be learnt from the research and the experience of other countries?

From the information available world-wide, the following factors emerge as important in the promotion of diversity in the judiciary:

Politically- led initiatives; task forces; co-operation and participation by the judiciary in measures to improve diversity, such as mentoring and shadowing; co-operation by the professions; better dissemination of information in outreach programmes and workshops, appraisal schemes for incumbents, career breaks, flexible working and return to private practice. Add to this, the importance of the flexibility of selection criteria, the diversity of the members of the nominating commissions and the availability of role models.

Let us examine some of these and other ideas in no particular order of importance.

Political leadership. It is right to say that previous Lord Chancellors, especially the last one gave strong commitments to promoting diversity. As has been noted, significant changes have been made, but the results have been disappointing overall. In South Africa, it is not only the Minister of Justice who attends various functions of the judiciary or the legal professions, but not infrequently the President or the Deputy President, as a mark of their commitment to diversity and change in the legal profession and judiciary. I am not aware of such high- level involvement or interest by a Prime Minister in this country. It is too early to comment on whether the present Chancellor has the same interest in judicial diversity as his predecessor.

Government, as a user of legal services, needs to take the lead in ensuring fairness and equal opportunity for access to its legal work. The Bar- CPS agreement is a step in the right direction, but it will take a little time to see how successful it is in practice. The CPS itself, is a good example of how to promote diversity in the workplace. Other government legal departments will no doubt wish to learn from their experience. The LSC also needs to take a lead in promoting diversity, by ensuring equal access to work and by monitoring the working and briefing patterns of solicitors' firms on their panels. Government also has to work out how best to promote diversity over and above leading by example. Denouncing law firms for lack of diversity statistics, is, according to research done amongst the leading city firms of solicitors, not the best way to encourage action from within those ranks.

Involvement by the judiciary. In South Africa, the chief justice and deputy chief justice and Presidents of the high courts are more often than not present at events aimed at transformation and change. Our own Lord Chief Justice, in his speech on 12th September 2007 at the Commonwealth Law Conference in Nairobi, said this: "I believe that if we are to have a judiciary that has the confidence of the citizens, it is essential that this judiciary fairly represents all sections of society that in a position to provide candidates of the requisite ability. Our system of selection must encourage such candidates to come forward. It is also essential that it should, in

practice, be as easy for a woman both to become and to serve as a judge as it is for a man" Those are welcome words from the top and we look forward to them being repeated in this jurisdiction.

With the increased administrative role of our most senior judges, it is not possible for them to be everywhere, but there is a clear need for "buy in" by the judiciary itself, be it in the form of being available to be shadowed, to act as a mentor, volunteering to spread the message at a JAC road-show or just to encourage those practitioners, especially those from the under-represented groups, who would appear to have the potential to be judges. It is well known, that women in particular, are cautious about application, fearing that they may not be up to the job. Some minority ethnic practitioners similarly fear that, somehow, their background would count against them. They need reassurance and encouragement. It is heartening also to see that the LCJ is supportive of this approach. He said in the same speech: "We cannot, however, leave encouragement of diversity to the Appointments Commission. The Commission can properly expect help from all involved in the justice system in performing this duty" This sentiment is the key to the task of transforming the judiciary.

Perhaps it is time, if not for a task force, as in other countries, for a conference devoted to the subject, a conference open to representatives from all walks of society, so that there can be open debate and we can hear the views, not just of those in the profession, but of others, who as citizens have a legitimate interest in the issue. It may be sensible to pull together all the research and results of previous consultations before the conference.

Involvement by the professions

The judicial shadowing scheme has received an enthusiastic reception since its inception in 1999. It is growing. In order to cater for the demand, it seems to me, that it would make sense to extend the scheme by engaging the assistance of the professions. They could keep a list of approved recorders/deputy district judges and tribunal members who are willing to be shadowed by those interested in pursuing judicial appointment whether fee paid or salaried. There are some, who feel that they would rather shadow a practitioner, someone who is closer to the fears and concerns experienced by those thinking of dipping their toe into the judicial waters. It could even be a necessary part of part time sitting that once experienced, you are required to take "shadowers" from time to time.

The Bar may wish to give further consideration to the CPD points it awards for judicial shadowing – 2, whilst the Law Society awards 12. Any practitioner who has sat in a judicial capacity, can testify, that sitting is one of the best forms of learning about the craft of advocacy, the law and case management.

Greater support and encouragement needs to come from the Bar and its various professional associations, as in South Africa, to help promote those who are reluctant to apply. The Bar need to aggressively encourage involvement by women and BME practitioners in its affairs. It should be prepared to take some risks and use some imagination in appointments, rather than rolling out the usual suspects year after year. I can say this, because I was one of the usual suspects and despite my pleas that someone else should get a chance, it rarely happened. That is not to undermine the work done by those who give up their time for the Bar Council, but it is merely saying, that those people themselves should be prepared to say - "give someone else a turn". Perhaps thought should be given, if it has not already, to

representation for the AWB and Minorities committees on the Council?

Another area where there needs to be more critical focus, is on how the Bar, in practice, is carrying out its equal opportunities responsibilities. Having a Code is one thing, ensuring it is acted upon is another. There is room for co-ordination and co-operation between a number of Bar committees. For instance, whilst the newly appointed Quality Assurance Committee sits and waits in anticipation of judges referring poorly performing practitioners to it, thought might be given to whether the one poorly performing practitioner is part of a bigger problem, i.e lack of a good grounding in the chambers in which pupillage was done or shortcomings in the present chambers of the incumbent. Co-ordination with the committee responsible for overseeing pupillage would be beneficial. Co-ordination with the specialist bar associations and ATC would also been useful, to ensure that all chambers provide an approved course of advocacy or other specialist training, given by properly trained approved trainers. I have focussed on the Bar, because that is where I know, but I also know that the Law Society is ahead of the Bar in its work on diversity. Moreover, the city firms are now coming under pressure from their large corporate clients in relation to diversity.

Another identified need, is that more has to be done within the professions and the judiciary itself, to ensure that working practices and the workplace are compatible with equal opportunity policies and that there is no bar to progression. Access to quality work for those from the under-represented groups is a very important aspect of ensuring their career progression. I am pleased to see that this is being addressed in the Bar Standard's Board Consultation paper, which was released last week.

There is a need to inform school children and law students of the opportunities both in the professions and in the judiciary at an early stage. Given that the professions have increasing links with universities and schools, there is no reason (apart from considerations of time) why they should not seek to involve the judiciary in their events.

Decisions about sitting are often made many years into practice, which invariably affects the age profile of the judiciary. Whilst there is not a career judiciary in this country, there is no reason why consideration cannot be given to sitting in a fee- paid capacity in one's thirties.

However, whilst these ideas may help to increase the pool, it is, at the end of the day, the process of selection, which will be under the microscope. The JAC as a new body has a golden opportunity to develop a system of which we can be proud. I say develop a system, because the JAC did not start with a clean sheet of paper. It inherited the previous system of appointment from the DCA. The Commission got off to a rocky start and Jack Straw has very recently announced that there will be a review of its processes due to the length of time that appointments are taking.

What is not clear from the JAC's website or the annual report is what, if any, role diversity plays – is it part of the sole criterion of merit? I am told, by officials in the Commission that "awareness of diversity will always be an important factor in JAC selection procedures, but not exclusively under the general heading of "an ability to understand and deal fairly... It may be tested in the self-assessment, in role plays or at interviews." I am told that the diversity status of an applicant is not to be taken into account in the selection procedure. If this is so, then there needs to be a clearer exposition in the information provided, of how diversity fits into the selection procedures and competencies and how diversity is assessed and weighted. Are the

competencies sufficiently broad to ensure that all those who make good judges are caught? There has been limited consultation on the revised competencies, but it is arguable that consultation needs to be wider.

Kate Malleson, looking at the prospects for parity for women in the judiciary, argues that there have to be pro-active policies, which address the structural weaknesses such as the selection criteria. There has to be a conscious decision to promote the goal of parity for women in the judiciary. I am sure she would say the same about other under- represented groups in the judiciary. The JAC in her view needs to prioritise diversity. Many would agree with her.

It is interesting to note the observations of Carmel Rickard, a well known legal editor of the South African Sunday Times, who, when giving a talk on the SA JSC in Cambridge, remarked that she had found the DCA's consultation on judicial appointments rather puzzling - where it stated that the criterion for appointment would be remain merit, but that the government was committed to opening up the judiciary so that those from less traditional backgrounds could have a better shot, as she put it. It was the word "but" that confused her – inferring from it, that those people won't have the same qualities that make up merit, but that some way was being sought to ensure that they could get appointed without those virtues. She recommended the approach of the SA JSC to the JAC. She strongly advocated the opening up the commission and having like in SA a system of public interviews – "even if you change the system to the finest you can think of, but it operates behind closed doors, then you have lost the battle to persuade people that anything has changed at all. For a system involving interviews conducted in secret cannot be said to be transparent to all or to add to public confidence"

It is highly unlikely that such a system would find favour in this jurisdiction and would more than likely deter applicants. However, some form of accountability for what goes on behind closed doors would be useful. It would serve to inform the public and interested parties how the JAC approaches it task and what the important issues are. It is not enough to wait until an unsuccessful applicant makes a complaint about the process for this to be aired.

Apart from the importance of the criteria, research has also shown that the composition of nominating commissions is important. The composition of the JAC commissioners is, on the face of it, pretty diverse. But that is not enough. As far as I understand it, the Commissioners, save for the more senior appointments, do not conduct the interviews. We do not know the make- up of the various interviewing panels. We do not know the make- up of the various interviewing panels or the staff who do the sifting or are otherwise involved in the process. The figures at present are not readily available. What we do know is that most of the members of staff were carried over from the DCA, although there has been considerable staff movement since the Commission's inception.

What about diversity training in the JAC? Panel chairs receive diversity training from the Equalities and Diversity Commissioner. This training is said to be cascaded down to other members of the panels at the initial briefing before each selection and discussions take place about how the candidate's awareness of diversity will be tested. Some may question whether this is enough.

The annual report claims that the processes have been "equality proofed" This refers to a project jointly undertaken by the JAC staff and an external consultant. Whilst I have some information about this, having asked, there will need to be clear, publicly

documented and independent monitoring of the processes of the commission, so that measurements of success can be made.

The eligibility criteria and the routes to promotion are areas which have also come under fire. As already indicated, it has been suggested that the traditional routes to the higher courts are discriminatory. Baroness Hale has argued that there should be more academic appointments to the high court and above. (Equality and the Judiciary: why should we want more women judges, 2001 Public Law 489). She challenged those who say that you need to have been a practitioner in order properly to understand and have a feel of how the adversarial system works. There can be no doubt, that a familiarity with the courts processes is a huge advantage, but perhaps this is where the training, such as initiated in South Africa, of those with potential but lacking experience could come into play. What objections (save for financial perhaps) can there be to training academics, so that they could then form a pool of fee paid judges, leading to salaried appointment? However, when considering appointment to the House of Lords where points of law of general public importance are decided, is there really a tenable argument that the finest brains in the legal world can only come from the ranks of practitioners and not from those who taught those practitioners their law; that in order to give judgements on matters of law and interpretation you have to have been a practitioner?

One of the other ways that the issue of diversity can be tackled is by research. As noted by Professor Thomas, there is very little substantive research into the issue, regarding the question of where the problem lies or whether the composition of the judiciary affects the public's perception of the fairness of the courts. It would seem that the BSB consultation document envisages research being carried out by the Bar. This is welcome, because as Professor Thomas has pointed out, the Bar has lagged behind the Law Society in this regard.

What can you and I do?

Having set out the various suggestions as to what others can do – what can we, as individuals and groups do to promote diversity in the judiciary?

I am very keen to develop an idea of mentoring for life. Many organisations offer mentoring for people at different stages of their education, but I would like to see those from disadvantaged backgrounds having the support of a mentor from childhood to adulthood. They in their turn, once established, would become mentors. I am working with a number of people to see how this idea can be achieved.

Within schools, there needs to be greater encouragement of those who come from disadvantaged families. They may under-achieve at school without encouragement, but this under-achievement may mask a talented person. Once they are set back at school, however clever they are, it is difficult to regain the higher ground.

In academia, there needs to be greater support and encouragement for those wanting to go into the profession. I have heard many stories of law students who are put off by the career officers, particularly if they are from a BME background and particularly if they are thinking of going to the Bar.

Universities and those within them, can, within the context of their relationships with schools, encourage school children to consider the law as a profession. The government's recently expressed aim that every university should be affiliated to a school is a welcome one.

For those who are in the profession – support, encourage and nurture your young talent. Ensure that there is equal access to work. Work out how any disadvantages can be overcome.

In the judiciary, we need to encourage potential judges. We need to support, encourage and nurture our serving judges. For some, becoming part of an unfamiliar culture is daunting. We need to ensure that it is more welcoming.

There is clearly much to do, judging from the list above. The trickle-up theory has not worked. The various initiatives by the previous Lord Chancellors have not had the significant impact hoped for. Change takes time. But it is clear from the fact that the issue of diversity in the judiciary has been a live one for at least 15 years, that there is an imperative for the pace of change to speed up significantly.