

**THE DEPARTMENT FOR CONSTITUTIONAL AFFAIRS**

**CONSTITUTIONAL REFORM:  
A NEW WAY OF APPOINTING JUDGES**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS**

**NOVEMBER 2003**

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5,000 members in the UK and abroad. Membership comprises solicitors, legal executives, academics and barristers whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

David Marshall	President, APIL
Colin Ettinger	Vice-President, APIL
Allan Gore QC	Treasurer, APIL

Any enquiries in respect of this response should be addressed, in the first instance, to:

Miles Burger  
Policy Research Officer  
APIL  
11 Castle Quay  
Nottingham  
NG7 1FW

Tel: 0115 958 0585

Fax: 0115 958 0885

E-mail: [miles.burger@apil.com](mailto:miles.burger@apil.com)

# A NEW WAY OF APPOINTING JUDGES

## Introduction

1. APIL welcomes this opportunity to respond to the Department for Constitutional Affairs (DCA) consultation paper on a new way of appointing judges. This paper should be considered in conjunction with APIL's response to the DCA consultation on *'the future of Queen's Counsel'* and *'a Supreme Court for the United Kingdom'*. In particular, this paper, combined with the further consultation on a new Supreme Court, deals with issues of great constitutional importance due to their focus on changes to the judiciary's relationship with the executive and the legislature.
2. In attempting to tackle these issues, it should be noted that many of the questions detailed in the DCA consultation are not necessarily aimed at claimant organisations such as APIL. As a result, we do not seek to answer all the questions, but will respond to those which are relevant to the victims of personal injury and to solicitors and barristers undertaking personal injury work.

## Options for change

### **Different models of Commission**

3. One of the primary issues concerning the establishment of a Judicial Appointments Commission (JAC) *"is the precise role it is charged with carrying out in the appointments system."*<sup>1</sup>

---

<sup>1</sup> Department for Constitutional Affairs Consultation Paper 'Constitutional reform: a new way of appointing judges' July 2003, page 13

4. As such the DCA proposes three main models:

- an Appointing Commission which would itself make those appointments which the Lord Chancellor currently makes personally and directly advise The Queen on appointments above that level without any ministerial involvement;
- a Recommending Commission which would make recommendations to a minister as to whom he or she should appoint (or recommend that The Queen appoints); or,
- a Hybrid Commission in which the Commission would act as an appointing commission in relation to the more junior appointments (for example, part-time judicial and tribunal appointments) and as a recommending commission in relation to more senior appointments.

### **Model 1: An Appointing Commission**

#### **Selection process**

5. As proposed by the DCA:

*“In this model, after running the appointment process and assessing the candidates, the Commission would itself make the decision whom to appoint, with no involvement by ministers at any stage. It would directly appoint candidates to those posts which the Lord Chancellor has directly made appointments to, and would recommend appointments directly to The Queen for posts above that level. Ministers would not be formally consulted about whom to appoint, although they would of course be informed of the outcome. The Commission would, in other words, take over the full powers of the Lord Chancellor and Prime Minister in this area.”*

6. APIL believes that the Judicial Appointments Commission should be wholly responsible for the recruitment, selection and promotion of the judiciary, and totally independent from the Government. As such, APIL supports the appointing commission model, as detailed above, because it best meets these requirements. Indeed it is envisaged that the Judicial Appointments Commission will be formulated in a similar fashion to other independent regulatory bodies, such as the Electoral Commission.

### **Constitutional issues**

7. APIL believes that having a commission which appoints judges without any ministerial involvement would remove any potential for allegations that particular judicial appointments were made according to a minister's direct personal preference or to party or other affiliation.
8. In addition APIL considers it necessary for the processes by which a decision is made to be set down in statute so that the commission enjoys the firmest of footings independent from government as well as providing maximum transparency and openness.
9. In respect of whether the commission appoints directly or by recommendation to The Queen, APIL feels that either option would ensure judicial independence. Thus APIL would support the option that causes the least amount of constitutional upheaval and delay.
10. If the current proposed scheme appears to work effectively, there should be further consultation on the possibility of standardising the judicial appointments process across the United Kingdom.

### **Promotions**

11. APIL believes that the judicial career structure should allow for promotion on merit and should also be flexible, allowing movement

between different levels of the judiciary.

12. A principle driver for the current constitutional reforms has been the need to increase diversity within the judiciary. APIL feels that the current appointment process, with judges being appointed in their fifties, has led to a judicial career being seen as a resting place for rather tired practitioners. In order for the judiciary to attract more diverse, and younger, people, there needs to be a transparent promotion structure in place. With such a visible career structure established, it will be much easier to attract candidates at the height of their powers (late 30s/early 40s).

13. In respect of the appointment of senior judges, for example to the Court of Appeal or to Head of Division, the DCA proposes that there should be some prior consultation with the relevant Secretary of State. APIL is strongly opposed to any political interference in the judicial appointments process, regardless of the seniority of the appointment, and such ministerial consultation would be decidedly contrary to the need for separation of powers. Moreover we see no reason in principle or practice why this level of appointment should be less dependent on open objective competition.

### **The Supreme Court**

14. APIL proposes (in our response to the DCA consultation – *Constitutional Reform: a Supreme Court for the United Kingdom*) that the appointment of judges to the newly proposed Supreme Court should be made by an independent Supreme Court Judicial Appointments Commission. Due to the fact that the Supreme Court would deal with both legal and constitutional issues for the UK (amalgamating the responsibilities of the judicial committee of the Privy Council and the appellate committee of the House of Lords, excepting Scottish criminal cases and commonwealth cases), any such

commission would have to contain representatives from all jurisdictions within the United Kingdom.

15. Rather than establish a completely new commission charged with the relatively small amount of appointments which would be necessary to accommodate the Supreme Court, an appointing commission could be drawn from the three commissions and boards (servicing England and Wales, Scotland and Northern Ireland) which deal with normal judicial appointments. This Supreme Court Judicial Appointments Commission would have the same basic structure as the normal commissions, with the same general composition.

16. For further details of APIL's views concerning a Supreme Court, please refer to APIL's response to the DCA consultation – *Constitutional Reform: a Supreme Court for the United Kingdom*.

## **Coroners**

17. APIL has strongly endorsed the removal of responsibility for coroners from local authority appointment. To this effect APIL has commented:

*"It is critical that a unified coronial service is introduced and APIL proposes replacement of the current system with a national coronial organisation comprising a full-time coroner for each region of England, Wales and Northern Ireland. The new coroner's department should be brought under the auspices of the Lord Chancellor's Department, with coroners appointed and financed by the LCD, not by local authorities."*<sup>2</sup>

18. APIL still feels these comments are pertinent, and would wish to see any new national coroners' department brought within the newly established Department for Constitutional Affairs (DCA).

---

<sup>2</sup> APIL response to 'Certifying and investigating deaths in England, Wales and Northern Ireland' November 2002

19. APIL considers including coroners in the remit of the Judicial Appointments Commission would be inappropriate as the role of a coroner, whilst judicial in the widest sense, is fundamentally different.

### **The status and organisation of the commission**

20. APIL agrees with the DCA in that *“the Commission will be established by legislation, and that it will have legal personality, rather than being a mere emanation of the Department for Constitutional Affairs”*.<sup>3</sup>

21. Of the three options detailed by the DCA, APIL considers the most appropriate legal structure for the new Judicial Appointments Commission to be that of a non-departmental public body. This means that the commission will be responsible for recruiting and employing its own staff. The commission would be independent of Government but would be sponsored by the Department for Constitutional Affairs and would look to the department for funding.

22. In terms of reporting to a select committee, APIL believes that this is inappropriate for the regional Judicial Appointments Commissions due to their diversity of structure and procedure. Accountability should be via their transparent procedures and structured complaints systems.

23. In addition, APIL believes that it is more appropriate that the highest level of judicial appointment needs the greatest scrutiny, due to the level of legal impact such appointments can have. As such we have proposed that the Supreme Court JAC should be answerable to an independent select committee, much the same as the Electoral Commission (please see APIL’s response paper)

---

<sup>3</sup> Department for Constitutional Affairs Consultation Paper ‘Constitutional reform: a new way of appointing judges’ July 2003, page 22

## **Other functions**

### **Policy relating to appointments**

24. The criteria for judicial appointment are designed to ensure that those appointed to judicial office are the most suitably qualified and able to perform their role in meeting the following objectives: to ensure the effective delivery of justice; and to improve the level of public confidence in the justice system.
25. In respect of who is eligible to be considered, as long as a candidate has met the initial qualification requirements, then all qualified lawyers should be equally eligible to apply for judicial posts whether in private practice, employed by a trade union, in government service, working in-house or as academics. This will allow for consistency across all judicial appointments. Different kinds of legal experience should not carry different weight in recruitment, or be indicative of a lack of impartiality.
26. APIL believe it is in the public interest to ensure that judges are able to make decisions based on the merits of a case, without reference to any personal bias. Whilst recognising that in reality individuals do have their own prejudices, we believe that as professionals, judges should be trusted to be able to set aside any bias, and not allow personal views to affect the overall outcome of a case.
27. Whilst fully endorsing the impartiality of judges, we do not agree that membership of lobbying organisations should automatically disqualify judges from hearing related types of cases. We believe that judges should be trusted to be able to set aside their personal thoughts and parties should not take issue merely with the point that a judge is a member of a group that may have interests in particular areas of law. Such restrictions amount to disqualifying judges with relevant experience from hearing cases in the very area of law in which they

have developed expertise. This is manifestly unjust to judges and would deprive litigants of experienced and well informed judges. Furthermore, it would consign judges with relevant experience to handling cases in the area of law where they have little or no current experience as practitioners, an illogical result.

28. APIL firmly believes that experienced lawyers should apply to become members of the judiciary to exercise their skill and expertise. It would be unsatisfactory if personal injury practitioners were deterred from doing this on the grounds that they come from a polarised practice, i.e. predominantly claimant or defence orientated. The reality of personal injury practice for many is that practitioners predominantly handle either claimant or defence work. To deal with any perception or danger of bias, we would suggest that judges continue to swear an oath of office.

29. In respect of the criteria for selection, which should be regularly reviewed, there should not be a focus solely on advocacy skills but also on inter-personal skills and skills in the management of time, personnel and cases and proven legal skills. This is not to discount current criteria which should still be considered. Qualities such as legal knowledge and experience, intellectual and analytical ability, sound judgement, decisiveness, communication and listening skills, authority and case management skills, integrity and independence, fairness and impartiality, understanding of people and society, maturity and sound judgment, patience and courtesy, and commitment, conscientiousness and diligence.

30. APIL believes, however, that for there to be legitimacy to the appointment of judges, the assessment of these criteria has to be an open and transparent process. The previous method of selection, that of secret consultation or 'secret soundings', amongst high ranking members of the judiciary, is neither open nor transparent.

31. We believe that the criteria adopted for the selection of judges should be set and defined. Further, the criteria should be published, tested publicly as to whether they are deemed to be appropriate, and systems should be established that allow scrutiny as to whether the criteria have been applied and assessed objectively.
32. In addition, the appointment process should incorporate standard good recruitment practice, including open competition for all judicial posts with objective and transparent criteria. APIL believes strongly that informal consultations, or 'secret soundings', to assess suitability for appointment should not take place. In view of this, APIL has declined to participate in any future secret soundings procedures.
33. We support, therefore, the use and expansion of assessment centres. We have been encouraged by past meetings with the Lord Chancellor's Department (LCD) (now the Department for Constitutional Affairs), and their piloting of such centres<sup>4</sup>. We should note, however, that assessment should focus on the wide range of skills (as mentioned above) required of a judge and just legal and advocacy skills. All judges, for example, should have excellent inter-personal skills and the ability to manage time, cases and personnel effectively.
34. APIL also feels that the recruitment process should be conducted as quickly as practicable to reduce disruption for all applicants and agrees that the current recruitment or selection procedures for certain appointments do not operate as efficiently as they could. Whilst APIL believes that informal consultation, such as 'secret soundings', are

---

<sup>4</sup> APIL met with the LCD Judicial Group – 5 September 2002: APIL took part in discussions with the Lord Chancellor's Department (now the Department of Constitutional Affairs) in relation to an assessment centre being piloted for three particular competitions; Deputy District Judge (civil); Deputy District Judge (magistrates) and Deputy Masters. The applicants were assessed under three categories: without consultation; with reference to consultees nominated by the candidates; and with reference to 'automatic' consultees. Activities included role play, a written test to establish level of legal knowledge, and interviews. There was a lay assessor, as well as assessors representing the legal system. APIL was encouraged by the quantifiable aspects proposed by the assessment centre, but expressed disapproval of the continuation of the use of consultations.

neither fair nor transparent, they also tend to be the lengthiest stage of the competition for judicial places. Removing secret soundings will, therefore, shorten the selection procedure and help to minimise the disruption caused to applicants. Furthermore, APIL endorses the gathering of references from referees appointed by the candidate in conjunction with a candidate performing successfully either in an interview or at an assessment centre.

35. Finally, APIL would like to stress that the overwhelming criterion for judicial appointment should always be merit.

### **Increasing Diversity**

36. APIL agrees with the DCA in that the judiciary is currently not reflective of the society it serves. We believe more can, and should be, done to enable the judiciary to be more reflective without reducing quality.

37. While the measures which would enhance diversity are outside of the remit of this particular response, APIL does have some preliminary suggestions. For example, we propose part time sittings of judicial posts. This should be organised so as to better accommodate the working practices of all. In addition, APIL members have suggested that steps should be taken to make the judiciary more attractive to younger professionals, potentially at the height of their powers. One possible alternative is that after qualifying as a solicitor, barrister or legal executive and gaining five years experience, a lawyer would either be promoted to the judiciary or apply to join a 'judge school'.

### **Training judges and magistrates**

38. APIL firmly believes that appropriate training should be provided to all those appointed to judicial positions. Training and performance monitoring should be conducted on a continuing basis during service. We believe there should be initial and ongoing training for judges.

39. Although we believe that the training programme for judges has developed well in the past few years, we would suggest incorporating further elements such as “customer service” training. We would also suggest the introduction of an ongoing appraisal system for judges, to ensure they continue to work effectively.
40. As well as a need for basic training, APIL strongly endorses the notion of specialist judges. The “twin evils” identified by Lord Woolf in his civil justice review, were cost and delay. Specialist judges go some way to resolving these problems and ensuring justice is done, since they clearly understand the issues and can make a sound judgment in view of the evidence before them.
41. Further, in fast track cases, it is imperative that the presiding judge has some experience of civil law in order to carry out his “case management” role. One must also bear in mind that the trial hearing is restricted to one day in fast track cases, and an experienced judge is essential in ensuring the trial progresses expediently.
42. Whilst fully endorsing specialist judges, we recognise and accept that this is not always possible or practical. Nor would we go so far as to say that practice within a particular field is a prerequisite to hearing a case of that nature. However, in such circumstances, we would suggest as a minimum, the requirement that judges undertake basic training programmes.
43. We would also advocate the introduction of a “ticket system”, whereby judges that have undertaken training in particular areas of law, are granted the right to hear cases of that nature. This system is already in place within family law and criminal law, and we certainly believe it should be extended to other areas of law.

44. In referring to the advantages of having specialist training in particular areas of law, APIL would like to take this opportunity to draw the DCA's attention to the College of Personal Injury Law (CPIL). CPIL is overseen by an independent academic quality council, which includes representatives from the Law Society, academia and the Bar Council. It provides accreditation for both barristers and solicitors but is open to such practitioners who work predominantly for the claimant only. CPIL does not, therefore, currently administer an accreditation scheme suitable to all personal injury practitioners. It has always been the intention, however, as confirmed with Lord Woolf in the early stages of CPIL's development, that CPIL should evolve into a neutral training and accreditation scheme for all personal injury practitioners, including judicial appointees.

45. The CPIL accreditation scheme is based on entry to CPIL on one of five levels as follows:

- Associate (for those least experienced and least qualified in personal injury law);
- Member (for those with up to 5 years post qualified experience)
- Litigator (for those with 5 to 10 years post qualified experience)
- Fellow (for highly experienced litigators with more than 10 years experience in practice)
- Senior Fellow (for those with more than 15 years experience and who have distinguished themselves through the years by their outstanding contribution to personal injury law and practice).

46. Practitioners must apply for membership of CPIL by application form. That form requires applicants to detail their experience and expertise in personal injury law and practice. This information is assessed by an independent CPIL panel, which decides whether the application for membership at a certain level should be accepted or rejected in accordance with objective criteria. An accreditation system for

personal injury judges using, or based on, CPIL would allow a “ticket system” to be operated where personal injury cases would be heard by judges with training in that field.

### **Preserving judicial independence**

47. APIL believes there should be complete separation between the legislature and judiciary and from the role of Lord Chancellor and the newly created role of Secretary of State for Constitutional Affairs (both roles are currently held by Lord Falconer).

48. With the Lord Chancellor sitting in the House of Lords and the Cabinet as well as acting as the most senior judicial figure, his role as preserver of judicial independence has recently become untenable.

49. APIL believes that whilst the role of protecting judicial independence both within and outside of government should be enshrined in statute and continue with the Secretary of State for Constitutional Affairs, the person filling the role should be a government minister and Member of Parliament (MP), rather than a senior judge and member of the House of Lords. The post holder would also need to sit in the Cabinet. The advantages of this arrangement would be that the Secretary of State for Constitutional Affairs would be accountable to the House of Commons, and the change would right the historical anomaly which meant that the previous Lord Chancellor was the only member of the Cabinet not to be accountable in this manner.

### **Membership**

#### **Membership groups in the Commission**

50. Commissions in other jurisdictions are mostly a combination of judges, practising lawyers, and lay people (often including those with experience of personnel management and appointments). APIL agrees

with the DCA in that the Judicial Appointments Commission for England and Wales should have the same basic composition of skills and professions.

51. APIL purposes that the Judicial Appointments Commission should be drawn from four groups as follows:

- The judiciary
- Qualified lawyers and legal academics
- Lay people with expertise in recruitment and training methods
- Lay people representing the community as a whole.

### **Balance of membership**

52. The key to establishing a successful, well-respected, independent commission is to get the balance of members right. It is imperative that there is a good balance of members from a reasonably wide range of different groups and backgrounds, so that no one section dominates and the commission can form a strong identity, distinct from the vested interests of the groups from which its members are drawn.

53. APIL disagrees with the DCA proposal that the commission should have 15 members, and that each of the three groups mentioned would be equally represented; thus there would be five members from the judiciary, five legally qualified members and five lay members. We agree that no one group should dominate the commission, but we feel that there should be the same number of lay members as legally qualified members. At the moment lay members only represent 33 per cent of the commission, whilst we propose that the lay members should constitute 50 per cent of the commission.

## **Tenure**

54. In order to ensure complete independence when it comes to appointing judges, APIL believes that the commissioners should be assured security of tenure. This would ideally mean that they serve for a pre-determined fixed length of time. Yet their contracts must be sufficiently protected to ensure they are not able to be removed from office for making a decision or recommendation that is contrary to the will of the executive or those who appointed them.
55. Admittedly there would be a need for some statutory provisions to allow for the removal of a commissioner should circumstances arise in which it was no longer appropriate from him to remain in office.

**Selected Questions in DCA Consultation Paper – Constitutional Reform:  
A New Way of Appointing Judges**

**Question 1:**

**Do you prefer:**

- i. An appointing commission?**
- ii. A recommending commission? or**
- iii. A hybrid commission?**

**What are your reasons?**

56. APIL believes that the Judicial Appointments Commission should be wholly responsible for the recruitment, selection and promotion of the judiciary, and totally independent from the Government. As such, APIL supports the appointing commission model, as detailed above, because it best meets these requirements. Indeed it is envisaged that the Judicial Appointments Commission will be formulated in a similar fashion to other independent regulatory bodies, such as the Electoral Commission.

57. APIL believes having a commission which appoints judges without any ministerial involvement (such as appointing commission) would remove any potential for allegations that particular judicial appointments were made according to a minister's direct personal preference or to party or other affiliation.

58. In respect of whether the Commission appoints directly or by recommendation to The Queen, APIL feels that either option would ensure judicial independence. Thus APIL would support the option that causes the least amount of constitutional upheaval and delay. (See *paragraph 3 – 10*)

**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?**

59. APIL believes that the same structure and methods can be effectively used by the Judicial Appointments Commission to deal with senior appointments from among the existing judiciary, as are used to appoint new members to the judiciary.

60. As with other appointments, however, the assessment of the relevant criteria has to be done in an open and transparent process. The previous method of selection, that of secret consultation or 'secret soundings', amongst high ranking members of the judiciary, is neither open nor transparent.

61. In respect of the appointment of senior judges, to the Court of Appeal or to Head of Division, the DCA proposes that there should be some prior consultation with the relevant Secretary of State. APIL is strongly opposed to any political interference in the judicial appointments process, regardless of the seniority of the appointment, and such ministerial consultation would be decidedly contrary to the need for separation of powers.

62. APIL believes that the judicial career structure should allow for promotion on merit and should also be flexible, allowing movement between differing levels of judicial post. (*See paragraph 11 – 13*)

**Question 7:**

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

63. APIL considers including coroners in the remit of the Judicial Appointments Commission would be inappropriate as the role of a

coroner, whilst judicial in the widest sense, is fundamentally different.  
(See paragraph 17 – 19)

**Question 11:**

**What formal 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?**

64. Of the three options detailed by the DCA, APIL considers the most appropriate legal structure for the new Judicial Appointments Commission to be that of a non-departmental public body. This means that the Commission will be responsible for recruiting and employing its own staff. The Commission would be independent of Government but would be sponsored by the Department for Constitutional Affairs and would look to the Department for funding.

65. In terms of reporting to a select committee, APIL feels that this is inappropriate for the regional Judicial Appointments Commissions due to their diversity of structure and procedure. Accountability will be via their transparent procedures and structured complaints systems. (See paragraph 20 – 23)

**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.**

66. The criteria for judicial appointment are designed to ensure that those appointed to judicial office are the most suitably qualified and able to

perform their role in meeting the following objectives: to ensure the effective delivery of justice; and to improve the level of public confidence in the justice system.

67. APIL feels that there are numerous improvements needed in the current criteria and process of judicial appointments. In summary, we would like to highlight the following points:

- Different kinds of legal experience should not carry different weight in recruitment, or be indicative of a lack of impartiality.
- The impartiality of judges is essential, but we strongly oppose the view that judges should be disqualified merely on the basis of membership of organisations such as APIL.
- To diminish accusations of bias, we would suggest judges continue to be required to swear an oath of office.
- The selection criteria for judicial appointments should be set and clearly defined.
- The appointment process should incorporate standard good recruitment practices, including open competition for all judicial posts with objective and transparent criteria.
- We strongly discourage the use of secret consultations in the appointment process, and would prefer to see the use of assessment centres encouraged and expanded.
- APIL also feels that the recruitment process should be conducted as quickly as practicable to reduce disruption for all applicants.
- Finally, APIL would like to stress that the overwhelming criterion for judicial appointment should always be merit. (*See paragraphs 24 – 35*)

**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?**

68. APIL agrees with the DCA in that the judiciary is currently not reflective of the society it serves. We believe more can, and should be, done to enable the judiciary to be more reflective without reducing quality.

69. While the measures which would enhance diversity are outside of the remit of this particular response, APIL does have some preliminary suggestions. For example, we propose more part time sittings. This should be organised so as to better accommodate the working practices of all. (See paragraphs 36 – 37)

**Question 14:**

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

70. In addition to our response to question 13, APIL members have suggested that steps should be taken to make the judiciary more attractive to younger professionals, potentially at the height of their powers. One possible alternative is that after qualifying as a solicitor, barrister or legal executive and gaining five years experience, a lawyer would either be promoted to the judiciary or apply to join a 'judge school'.

71. As mentioned above, APIL considers the measures which would enhance diversity as being outside of the remit of this particular response. (See paragraphs 36 – 37)

**Question 17:**

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

72. APIL feels that whilst the role of protecting judicial independence both within and outside of government should be enshrined in statute and continue with the Secretary of State for Constitutional Affairs, and the person filling the role should be a government minister and member of parliament (MP), rather than a senior judge and member of the House of Lords. The post holder would also sit in the Cabinet. The advantages of this arrangement would be that the Secretary of State for Constitutional Affairs would be accountable to the House of Commons, and the change would right the historical anomaly which meant that the previous Lord Chancellor was the only member of the Cabinet not to be accountable in this manner. *(See paragraphs 47 – 49)*

**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?**

73. Commissions in other jurisdictions are mostly a combination of judges, practising lawyers, and lay people (often including those with experience of personnel management and appointments). APIL agrees with the DCA in that the Judicial Appointments Commission for England and Wales should have the same basic composition of skills and professions.

74. APIL purposes that the Judicial Appointments Commission should be drawn from four groups as follows:

- The judiciary

- Qualified lawyers and legal academics
- Lay people with expertise in recruitment and training methods
- Lay people representing the community as a whole.

75. APIL, however, disagrees with the DCA proposal that the commission should have 15 members, and that each of the three groups mentioned would be equally represented; thus there would be five members from the judiciary, five legally qualified members and five lay members. We agree that no one group should dominate the commission, but we feel that there should be the same number of lay members as legally qualified members. At the moment lay members only represent 33 per cent of the commission, whilst we propose that the lay members should constitute 50 per cent of the commission. (*See paragraphs 50 – 53*)