

Providing Statutory Consultation – Guidance

The Judicial Appointments Regulations 2013 impose a statutory duty on the Judicial Appointments Commission (JAC) to consult “a person who has held office for which a selection is to be made or has other relevant experience”. The JAC greatly values objective and evidence-based information from statutory consultees. Senior members of the judiciary are well-placed to provide evidence as to why a candidate might or might not be able to perform the judicial role for which they have applied.

Context and purpose

The JAC is required by statute to write to one of three Authorities (either the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) describing the selection process and giving reasons in any case where the JAC has not followed a recommendation made in statutory consultation.

The JAC has a statutory duty to select people for judicial appointment only on merit and who are of good character in line with section 63 of the Constitutional Reform Act 2005. Statutory consultation material can provide important insight into a candidate’s current and potential work performance and their character. Relevant statutory consultation material is considered thoroughly as part of the assessment process. It informs both the interview exercise and the overall assessment of the candidate against the merit-based selection criteria, when it is considered alongside the candidate’s self-assessment, independent assessment and performance at selection day.

The JAC, sitting as the Selection and Character Committee, is ultimately responsible for selecting and recommending candidates for judicial appointments. It is responsible for all character decisions. When making recommendations, it considers all relevant material available, including self-assessments, independent assessments, panel evaluation and statutory consultation.

Substance and process

For the statutory consultation process to be effective, statutory consultation responses must be objective, evidence-based and provide examples. Mere assertion or speculation will not be taken into account. Adverse conclusions will not be drawn if a candidate receives no statutory consultation feedback.

The Judicial Office will alert consultees to an impending consultation and specify the exact return date for responses. Where statutory consultation is undertaken, it will always be carried out ahead of selection day.

Statutory consultees will be notified about the post and the names of the candidates upon whom consultation is sought. The link to the Judicial Skills and Abilities Framework can be found here [<insert relevant link from information page>](#).

Drafting your response

leadership exercises only

Statutory consultees should have enough direct knowledge of a candidate's skills and abilities to comment on a candidate's potential for a leadership role. By way of example only, relevant aspects of leadership might include relationships with colleagues, ability to manage administration and building an effective team. This should be in addition to knowledge and evidence of the other skills and abilities. If the statutory consultee does not have enough direct knowledge of a candidate's skills and abilities to provide evidence-based comments, they must notify Judicial Office. Judicial Office will be able to assist the statutory consultee in seeking evidence from appropriate sub-consultees such as the candidate's relevant leadership judges who have enough direct knowledge of the candidate's skills and abilities. Please share this guidance and the Judicial Skills and Abilities Framework when seeking responses from sub-consultees. Should statutory consultees or sub-consultees wish to approach other judges for comments, they must first contact the relevant commissioning team in Judicial Office. Any information about candidates is confidential and must not be shared further. Please refer to the confidentiality section below for more information.

all other exercises

Statutory consultees should have enough direct knowledge of a candidate's skills and abilities to be able to comment on a candidate's potential for the judicial position for which they are applying. If the statutory consultee does not have enough direct knowledge of a candidate's skills and abilities to provide evidence-based comments, they must notify Judicial Office. Judicial Office will be able to assist the statutory consultee in seeking evidence from appropriate sub-consultees such as the candidate's relevant leadership judges who have enough direct knowledge of the candidate's skills and abilities. Please share this guidance and the Judicial Skills and Abilities Framework when seeking responses from sub-consultees. Should statutory consultees or sub-consultees wish to approach other judges for comments, they must first contact the relevant commissioning team in Judicial Office. Any information about candidates is confidential and must not be shared further. Please refer to the confidentiality section below for more information.

High Court exercises only

In addition, for High Court exercises, statutory consultees will be asked the following questions:

- Over the last two years, has this candidate delivered any judgments more than three months after the end of the hearing?
- How has this been dealt with?
- Has this been discussed with them? (If yes) What, if any, action has been taken?

These questions are asked in order to provide the panel with a picture of any issues relating to the production of timely judgements, which is an essential skill of a High Court Judge. These questions will also be asked to candidates as part of their application form

All statutory consultees are again reminded that the information they provide must be based on evidence with examples. Straightforward and clear explanations are requested.

As set out above, please make sure this guidance along with the Judicial Skills and Abilities Framework is shared with any sub-consultee when seeking responses.

Consultation responses should cover the following points in as much detail as possible:

- explain whether you know a candidate, in what context and whether you have provided an independent assessment. (Being an independent assessor does not prevent someone from providing statutory consultation comments but it should be clearly stated that they have provided an independent assessment).
- identify the candidate's key attributes, any strengths and any weaknesses, with examples and, wherever possible, by reference to the Judicial Skills and Abilities Framework.
- if the information comes from a third party, the source must be disclosed by name and the nature of the relationship between the third party and the candidate. This allows a direct approach in the event that further detail is required. Any direct approach to a third party will not be made without first consulting the statutory consultee/sub-consultee.
- indicate whether any concerns have been raised previously with the candidate and, if so, when and in what context. Please indicate whether there has been any consequential change and, if there has been, provide details.
- indicate whether the evidence provided suggests that the candidate is **selectable** or **not presently selectable**. If the candidate is not thought to be presently selectable, please provide clear reasons to explain that conclusion by reference to the evidence obtained either from direct or (identified) third party experience.

Selectable

Competent for the role. They would be able to manage the responsibilities and expectations of the role. No notable concerns regarding expertise, skills or behaviours.

Not presently selectable

Not currently suited through expertise, skills or behaviours for the role. Additional training or development might assist.

Please adhere to the timescale agreed to ensure comments can be considered during the selection days. Delays have a serious domino effect on the rest of the process.

Confidentiality

Personal information about candidates should be kept confidential and should not be disclosed directly or indirectly except where there is direct involvement in statutory consultation. Personal information is necessary for the JAC to fulfil its statutory

obligations under the Constitutional Reform Act 2005. The information remains confidential, stored and processed in accordance with the JAC [data protection policy](#).

How the JAC uses statutory consultation responses

Relevant statutory consultation material is considered thoroughly as part of the assessment process.

If negative comments are provided which are supported by evidence, there are a number of options at the JAC's discretion in which these can be addressed. In the majority of cases, statutory consultation comments are not shared with candidates. Instead the selection day panel will seek to explore any negative comments at the interview by asking tailored questions to the candidate. However, in cases where serious negative comments are made, further exploration may be necessary, which could include sharing the full comment with the candidate.

Examples

Please see below for anonymised examples of statutory consultation responses.

Example 1: well evidenced response

Consultee knowledge of the candidate

I have known the candidate for 10 years since I was first appointed as a judge. The candidate was and remains a judge. I have read some of their decisions. They also attend our training events. We have never sat together.

I have also obtained information about them from the following judges: Judge A, Judge B and Judge C.

Information gathered about the candidate from sub-consultees

The information obtained about the candidate does not offer a clear picture. They have lengthy experience as a (candidate's current role), having started in the same field, but little experience of long or complex appeals. Judge A and Judge C say that the candidate may have the intellect, but they are not confident that the candidate has in-depth jurisdiction knowledge in their desired speciality and would require quality time spent to build their expertise in this area. Judge B states that the candidate seems to take a casual approach in decisions which appear rushed and unimpressive. That is corroborated by other senior judges who say that the candidate's attention to detail is limited and the candidate tends to operate in generalisations and sweeping statements. One example provided was a poorly analysed written judgment delivered a day after conclusion of the trial where the applicant failed to identify core issues, inappropriately grouped evidence, and presented a sweeping conclusion which invited challenge on appeal. Judge B also says that the candidate has not shown an interest in sitting in the longer and more complicated cases because of their private practice and other interests and has generally declined to sit on cases lasting longer than a day.

There is little doubt that the candidate has the potential to be an engaging leader but there is a question about their ability to be a team player when things do not go their way. One colleague (D) described an in-house disagreement which took place a year ago and resulted in the candidate being unusually sharp and unwilling to compromise for a week. However, they state that the candidate appears to have improved since then but was unsure if this was a one-off occasion. Feedback from Judge C also indicated that earlier this year the candidate worked collaboratively with judicial colleagues and assumed a leadership role in developing regulations.

Based upon the evidence provided above, I would consider this candidate to be not presently selectable.

How the JAC selection day panel might assess the candidate using the above response

The candidate is categorised by the statutory consultee as being not presently selectable, with concerns identified in some areas, such as Legal Skills, Communication Skills and Effective Working. Enough evidence is provided to support the observations shared. The selection day panel will use this feedback to help inform their interview questions so that these areas can be explored further.

Example 2: responses lacking evidence

Response A

The candidate is currently a Deputy District Judge who sits regularly at my court and whom I knew as a barrister at my former chambers. I have also met them socially on occasion at work events. From my own experience I feel that the candidate has successfully handled complex Family cases and proven to be impressive outside their speciality in Civil cases. Following the JAC Guidance provided, I would assess them as a selectable candidate for the office.

How the JAC selection day panel might assess the candidate using the above response

The candidate is categorised by the statutory consultee as being selectable without being specific as to how. There is not enough evidence provided to consider against the judicial skills and abilities for the role. The selection day panel does not have enough supporting information from the consultee's response to probe at interview or for the statutory consultation response to contribute to their overall assessment.

Response B

I have no direct experience of the candidate's work but having looked into their work history I can see they were appraised at an early stage in their judicial career. After seeking comments from colleagues, I am told that the candidate demonstrates good authority and communication skills. One senior colleague stated that it was clear that the candidate possessed a sound knowledge of law and seemed well organised, however, there were some areas which needed improvement. I would assess this candidate as selectable.

How the JAC selection day panel might assess the candidate using the above response

The candidate is categorised by the statutory consultee as being selectable also noting that there are areas for improvement. However, the statements whilst being positive have not been evidenced. The consultee does not detail the areas where improvement might be needed, and no examples are provided to explain how the candidate's performance is impacted because of this. Judicial colleagues who have been approached for comment are not identified. The selection day panel does not have enough supporting information from the consultee's response to probe at interview or for the statutory consultation response to contribute to their overall assessment.