

judicial appointments feature

Rising status

Legal executives can now apply for certain judicial appointments. **Neil Rose** finds that the prospects for Fellows are bright, and profiles some of the posts that are available



The X-factor:
legal executives
have the talent and
experience to
become judges

principle of] widening the pool [of eligibility for appointment], but rather because there's an underestimated large pool of talent out there.

'I can say that from my own experience that the bedrock of many practices is experienced, long-serving legal executives, who have developed an incredible range of experience and often have high-level skills in their chosen fields, and it seems crazy to me that you're not tapping into that talent where it exists.'

In the post

Various posts are now open to those who have been Fellows for five years: deputy district judge (both civil and criminal), employment tribunal chairman, legally qualified member of the Asylum and Immigration Tribunal, First-tier tribunal chairman, parking adjudicator, and road user charging adjudicator. Two years down the line, they will be able to apply to become district judges.

Mr McGrady is keen to stress that judicial appointment is not just about DDJ posts – 'we want legal executives to look for the post that matches their specialism and where their experience would be of most use.' Mr Nally adds: 'If somebody is qualified into the tribunal world and start to get experience there, those skills are highly portable into the higher courts. It would be a grave mistake to consider tribunal appointments, at whatever level, to be inferior.'

So many should look at the First-tier Tribunal. It sounds innocuous – and indeed many lawyers will have no idea what it is because it is new – but actually it encompasses a wide range of opportunities. Key provisions of the 2007 Act should shortly come into force and create the Upper Tribunal and First-tier Tribunal, which will then take over the jurisdiction of a number of existing tribunals.

In the first stage of implementation, three chambers of the First-tier Tribunal will come into being: the social entitlement chamber (covering social security and child support, asylum

Legal executives will bring common sense and great experience of the wider world to the bench,' according to Judicial Appointments Commissioner Ed Nally. 'The overwhelming majority of legal executives operate with citizens at the sharp end of legal practice. That is not necessarily true of every barrister, or indeed solicitor, candidate.'

Undoubtedly the progression of legal executives to the bench is a milestone in the development of the profession, pushed by the previous Lord Chancellor, Lord Falconer, as part of his drive to improve judicial diversity. He told the Woman Lawyer Forum in March 2005: 'I will be looking closely at how we could make a broader range of people, with appropriate and measured experience, eligible for judicial appointment. Who am I

thinking of? I am thinking of ILEX-qualified legal executives.'

Despite some reservations among other interested parties, this eventually led to the Tribunal, Courts and Enforcement Act 2007, which enables legal executive judges, and the recent statutory instrument actually implementing the change. 'These are exciting times,' says ILEX Deputy Vice-President David McGrady, who chairs the Institute's judicial appointments working party. 'I am of a generation that never thought it would happen.'

Mr Nally, a former Law Society President and senior partner of Bolton firm Fieldings Porter, tells the Journal: 'I've never been sold on the argument that appropriately qualified legal executives weren't deserving of equal treatment for judicial appointment – not because I'm slavishly following [the

support, armed forces and criminal injuries compensation); the health education and social care chamber (mental health, special educational needs and disability, and care standards); and tax and duties.

The second stage, in April 2009, should see the lands chamber begin work, covering agricultural land and land registration, along with the general regulatory chamber, which covers several areas, including information rights, gambling, charity, and claims management standards.

Slaying the myths

But, without doubt, there are some hurdles to get over. For one thing, legal executives need the confidence to apply in the first place. In July, Mr Nally, along with Judicial Appointments Commission (JAC) chairwoman Baroness Prashar, attended a meeting in Leeds with legal executives interested in learning more about the appointments process. He says he could understand the reticence of those unsure whether to push themselves forward 'because it's brand new territory'.

But he adds: 'What we need are a few appointments who then become the champions and encouragement for others to put their names forward. The first ILEX judge or tribunal chair will start to deliver the message.'

Another issue is persuading your employer. 'It adds to the development of your staff,' says Mr McGrady. 'It's a very good way of expanding your fee-earners' knowledge and experience.' With his senior partner's hat on, Mr Nally says his firm has always encouraged staff to taken on judicial appointments. 'There's a certain amount of naked self-interest from our point of view,' he explains. 'It tends to keep people engage [and] it enhances their profile within the profession.'

Two-way flow

Leonie Rollason, a personal injury solicitor at trade union firm Thompsons who successfully applied to become a DDJ aged just 35 – and who is profiled in depth on page 16 – says: 'Getting support from your firm is probably a big stumbling block for a lot of solicitors and legal executives.'

'But while it does mean time away from the workplace, it also brings a lot of knowledge back to it. I understand the court processes much better and also see the impact poor work can have on a case from the court's perspective. For example, some practitioners don't always complete the allocation questionnaires as well as

they could, and seeing it from the other side you realise what an impact that can have and the time it can waste for the court.'

David McGrady reckons there needs to be an initiative from the top aimed at employers, in the same way that interest and involvement in pro bono work has been sparked and focused over the past decade by the establishment of the Attorney General's national pro bono committee.

'ILEX will be launching a campaign to encourage Fellows to shadow a member of the judiciary, either formally as part of the Ministry of Justice's work-shadowing scheme or informally using local contacts,' he continues. 'Closer scrutiny of the role of a judge should reassure and encourage more candidates to seek judicial office, but with a realistic assessment of their own abilities to fulfil the role.'

"The bedrock of many practices is experienced, long-serving legal executives. It seems crazy that you're not tapping into that talent"

Open to all

A common misconception that the JAC generally has to battle is that judicial appointments are just for litigators – linked to that is the fear that a lack of 'visibility', through not appearing in court, will count against a candidate. The JAC is looking for evidence of five core qualities and abilities, which do not mention advocacy or court experience at all, and Ms Rollason says that throughout the appointment process, applicants are being assessed as much for their 'judgecraft' as anything else – communication and decision-making skills, how to deal with difficult situations, equal treatment of parties, that sort of thing. 'If I hadn't had experience of dealing with lots of different clients, I wouldn't have been able to do it,' she says.

And that, obviously, is what legal executives are known for. 'We're more used to dealing with clients,' says David McGrady. 'We're not locked away in an ivory tower. We can't have lasted in our jobs as long as we have without those skills.'

One Fellow keen on an appointment, who prefers not to be named, says that, after 35 years in the law, 'I feel pretty well rounded in most subjects

broadly and in some specialities. I know people and how to handle them, and I know how to be even-handed. I'm a qualified lawyer and have felt no barrier to entry wherever I've been – and this should be no different.'

Ed Nally explains that judges themselves say the role is very different from being on the other side of the bench. 'We need to see from the practice profile of the candidate concerned that they have been used to marshalling complex information, dealing with lots of case management issues, organisation and efficiency skills, ideally quasi-judicial experience in an arbitral function or something of that nature. So we're looking for things that show that this person, if they aren't an advocate, has the skill sets to control advocates... We're looking for people who can make rational decisions and do so in a fair way.'

Again the First-tier Tribunal may be the place to look. Property lawyers could be perfect for its lands chamber, for example.

Best person for the job

A judicial appointment will not be for everyone, but there are real opportunities for those willing to go through the process – which can be lengthy – and also take the knock of having to apply two or three times to be successful, which is not uncommon. But it is clearly worth it. 'I really enjoy sitting,' says Ms Rollason. 'You get a real sense of privilege and satisfaction.'

And it is a good time to be seeking an appointment as well. The JAC is making progress with the age-old problems of women and ethnic minority lawyers winning through the process – and ILEX has higher proportions of both among its membership than the Law Society or Bar Council – although Mr Nally admits 'it is a slower process than anyone would wish'.

But the principles that are bringing about this change apply equally to legal executives competing for appointment against solicitors and barristers: 'What we're looking at is broadening candidacy, encouraging people to apply, making those appointments on merit and then factually showing that, say, women candidates are emerging. That gradually turns the juggernaut around.'

The first competition for which Fellows can apply looks set for December, when the JAC plans to advertise for employment tribunal members – the presiding judge is known to be very keen to see Fellows apply. So, fancy being a champion?

■ For more details, see www.judicialappointments.gov.uk

New deputy in town

Leonie Rollason, one of the new breed of deputy district judges, tells **Neil Rose** about the process of applying for the bench and what it's like being the one to make the decisions

THE APPOINTMENT last year of Leonie Rollason as a civil deputy district judge (DDJ) is evidence that the judicial appointments process is genuinely opening up. Ms Rollason, a solicitor in the personal injury department of national trade union firm Thompsons, was 35 and seven years qualified – then the minimum requirement – when she successfully applied.

When she saw the advertisement for DDJs, she says she was attracted by the opportunity to enjoy greater diversity in her legal work. Crucially, Thompsons was fully supportive – both her branch and team managers gave her references.

Ms Rollason applied in September 2006, and recalls that the application form was not simple to complete. 'It's quite a task, but then that's meant to sift out a lot of people at that stage.' In fact, she was later told that she should enjoy a sense of achievement simply for making it past the initial application stage.

The right approach

In January 2007 she was called to an assessment day to be held a few weeks later. (As of this year, there is now often a qualifying test to complete first, the passing of which automatically leads to being called to an assessment day.) 'It was a pretty gruelling day, but quite rightly so given the job you're applying for. But at no point did you feel totally out of your depth.'

The day was made up of a panel interview, role plays and written assessments. There is a lot of reading on the various areas of law to get to grips with in advance covering all areas that a DDJ could encounter, but Ms Rollason emphasises that applicants are not expected to be experts on all of them at this stage. 'They [the Judicial Appointments Commission] are not there to try and catch people out,' she explains. 'They made it very clear that they were not expecting you to regurgitate all of the law. It's more about your approach to things and how you deal with them on the day.' This reflects the emphasis placed on 'judgcraft' in the selection process.

Rollason: they were looking for the right person, not a font of legal knowledge



There was then something of a delay before hearing in September last year that she had been successfully appointed. The next task was to attend a week's residential course run by the Judicial Studies Board. There was a lot of reading material for the course and this time the DDJs were expected to have mastered it before arriving. 'It required a lot of preparation,' she recalls. 'I took time off from work to try and get to grips with it.'

The week was 'really full-on but comprehensive', and in fact she still refers to the material studied on the course. This was the part of the process where the law itself came to the forefront, as a DDJ can face a wide range of disputes – small claims, fast-track personal injury, housing, insolvency, consumer/contract, property and family (mainly ancillary relief). There were lectures and tutorial groups, where attendees would discuss what decisions they would make in various situations. She explains: 'The encouraging part was that on the first day they explained it was not a question of passing or failing the course. They stressed that we were already appointed to sit as a judge and the course would not change this. It was simply designed to give you the training you needed to do the job.'

Shadow play

The final stage of the process was shadowing a designated training judge. Two days occur before the residential course, and three more afterwards. 'It's a real experience being on the other side of the fence,'

she says. 'Those five days give you a much better sense of what you've let yourself in for and make sense of the whole application process. It hit home that they were looking for the right kind of person, rather than a font of legal knowledge.'

Once the training judge had signed her off, the training was complete and Ms Rollason was free to sit. DDJs have to sit for a minimum of 15 days a year and a maximum of 50. The first time she took her place on the bench was 'pretty nerve-wracking', she says. 'You realise that everyone in the room is looking at you for a decision and there is no one there to help you with that. I was glad that the first court I sat in was the same one where I had done my training days. All the other judges where I've sat have been really helpful and accommodating. The perception of the job is that you are very much on your own. But there are lots of people you can talk to who are willing to help.' There is also a mentoring scheme and ongoing training.

In the swing

The variety of work of a DDJ can mean the days are very different – there could be one long hearing in a personal injury case or dozens of housing repossession hearings that each take five to ten minutes. She only has the short time in the morning before the court sits to look over the papers. 'At the beginning that was quite daunting, but you soon get into the swing of getting to grips with the papers quickly and learning what the case is about.' The greater problem, she says, is that all the courts have different systems and it takes time to get used to them all.

When it comes to making her ruling, she does not go home and brood over it later. 'You make the right decision on the facts as you hear them at the time and then move on. It's part of the decision-making process.' And overall it has been a terrific experience. 'When you are working in practice, you have lots of ongoing cases, but when you finish sitting for the day, you go home with a feeling of achievement.'



Between the lines

Neil Rose talks to two adjudicators who help keep traffic moving

TWO OF THE MORE niche part-time judicial posts for which legal executives can now apply are those of a parking adjudicator and road user charging adjudicator (essentially the London congestion charge).

Anju Kaler became a parking adjudicator for London in 1999 (the role also encompasses bus lanes, moving traffic – such as box junctions – and London lorry ban appeals). At the time she was a freelance solicitor, mainly handling criminal advocacy, and was attracted by the opportunity to try her hand at something different. Also, she jokes, ‘two weeks before I saw the advert I had been unjustly issued with a parking ticket’.

She took up a second part-time appointment as an immigration judge in 2000 and continued to practise until three years ago. ‘It is one of those jobs that fits in quite well with other things,’ Ms Kaler reflects.

The commitment is very flexible – the only requirement is that adjudicators sit a minimum of 140 hours a year – although she usually spends a day a week at the office. The hearing centre is open from 8am to 8pm most weekdays, and 8am to 2pm on Saturdays. The service operates a computerised, paperless adjudication system, meaning it is a matter of finding a free computer to work at.

And it is certainly worth appealing. The most recent figures – for October 2007 to March 2008 – show that 43% of the 34,000 appeals received were not contested by the local authority, and a further 29% were upheld by the adjudicators. In all, around 1% of parking tickets are appealed.

Personal touch

The more interesting side of the work is the personal appeals that any recipient of a parking ticket can opt for, that punctuate adjudicators’ work throughout the day. Each usually lasts 15-20 minutes and they usually make an instant decision. ‘We try and do it

Revved up: people will travel hundreds of miles to challenge parking tickets

informally,’ Ms Kaler explains. ‘We have six hearing rooms and it is just like an office – we sit on opposite sides of the table. The relevant local authority is a party to the proceedings, but rarely attends. It usually makes written representations.’

It is at this point that the adjudicator’s people skills are really tested. ‘It means a lot to people, especially if they’ve made an effort to come here,’ she says. ‘They get very worked up. I’ve had people coming from Newcastle for their appeal because they feel so strongly about it.’

Ms Kaler says appellants often ask the adjudicator to take a common sense view – arguing, for example, that they could not do their job if they could not park where they did – ‘but I just can’t do that’. There is, she explains, ‘quite a lot of law’ in the area; enforcement and appeals are governed by statute and supplementary regulations, and adjudicators must make their decisions accordingly.

‘I enjoy it very much,’ Ms Kaler says. ‘It may seem a narrow field, but you tend to meet so many different people – not just the appellants, but the other adjudicators as well.’

User friendly

John Lane has been a road user charging adjudicator since the post came into being in February 2003 with the introduction of the congestion charge (the tribunal now also deals with cases arising out of the low emission zone). By day a solicitor and deputy justices’ clerk, he says he liked the idea of actually making the decision himself, rather than advising others who make the decision, as he does in the magistrates’ court.

The system works essentially like that of the parking adjudicators, although the work is less varied, Mr Lane says – essentially it is a matter of using or keeping a vehicle within the congestion charge area without paying. There are six grounds of appeal (such as the charge was paid but not recorded, or it was not payable) and in the six months to March 2008, 39% of appeals were not contested, and a further 6% upheld by the adjudicators.

‘I enjoy making the decisions,’ says Mr Lane. ‘And as a lawyer, I enjoy applying the law to the facts. I also enjoy meeting the public at the hearings.’ Like Ms Kaler, the role certainly tests his people skills, however. ‘I come from a criminal jurisdiction, where people get sent to prison and generally go quietly,’ he says. ‘With the congestion charge penalty, they can get really quite angry.’

Migrating to a new career

Former banking lawyer **Devin Gill**, the senior immigration judge in London, explains what life is like in the Asylum and Immigration Tribunal

My career in banking [law] was no longer giving me job satisfaction, so I entered a competition for part-time Immigration Adjudicators in 1995. I had no experience in immigration and didn't expect to be offered an interview, much less an appointment.

Even now I remember driving home after my first sitting day with a sense that I was contributing in a small but nevertheless important way to the life of each individual whose case I decided and to his or her experience of the administration of justice. From that day onwards I wanted to feel the satisfaction of doing work which had an important and direct bearing on the lives of people, and I resolved to work towards a full-time judicial career.

I hear four cases a day, typically asylum and human rights cases but also immigration appeals, including deportation and visitor appeals. Some immigration cases also raise human rights issues and more rarely discrimination issues. The beauty of this job is that there is no typical day. Sitting and writing up cases comprise the major part of the work, while my other duties include deciding applications for orders for reconsideration of the immigration judges’ decisions, permission to appeal to the Court of Appeal, adjournment requests and requests to call further evidence.

My advice to someone considering tribunal work is to familiarise yourself with the jurisdiction and do your research. Ask yourself why you are applying – you should be motivated for the right reasons.

Trials and tribulations

Nina Tempia says life as a deputy district judge in the magistrates' court is challenging but enjoyable – and she does not worry about locking people up if they deserve it

'I NEEDED A NEW challenge – as simple as that,' says Nina Tempia of her decision to apply for a deputy district judge (magistrates' court) post six years ago – the stipendiary magistrate as was. 'It was nothing to do with the state of the profession or legal aid. I wasn't a partner, and had no inclination either to become a partner or set up my own firm.'

The child of Italian immigrants, she was educated at an inner London comprehensive and had been a criminal defence solicitor in south London for several years – essentially not the type of person who would have considered applying in the past, let alone be seen as the right sort of candidate. 'From the application form I realised that being appointed a judge was going to be on merit and not on contacts,' she says. 'I think they are really trying to diversify. It is encouraging that a lot more people from different backgrounds are applying to sit.'

Supportive environment

That first day in court on the other side of the bench was nerve-wracking, Ms Tempia says, but throughout her time she has found great support from the other judges and the court legal advisers. 'I haven't met a full-time judge who hasn't been very encouraging. They probably remember what it was like for them.'

But not all courts offer the opportunity to meet the other judges, she explains. 'Some courts are very friendly and have dining rooms where they actively encourage the lay magistrates, full-time judges and deputies to meet and talk during lunch. Other courts do not have this and so it can be quite an isolating job at times.'

As with the civil equivalents, there is a good variety of work on offer. A DDJ could be overseeing a trial court, a traffic court, a day of remand work, or even a borough court, where local authority prosecutions take place. Ms Tempia says you need to get to court early to look at the papers, while the clerks are very good at warning in advance of any 'pernickity points of law' that may arise.

Have a go

From the outside, the thought of sending someone to jail seems quite daunting, but Ms Tempia says: 'It's not difficult at all if it's justified on the facts and the previous history of the individual. If you have any doubt about whether they meet the custody threshold, then you don't send them to prison.'

The solicitor, who by day works at south London practice Mackesys, says her time on the bench has made her a better lawyer because of the high-quality training she receives from the Judicial Studies Board



Custody: if you have any doubts, don't order it

and in practice she knows what judges are looking for. 'As a judge you want the advocate before you to know the law, know how to put an application together and be concise.'

The firm has also been very supportive and lets her take unpaid leave to sit, rather than requiring her to use holiday time.

Ms Tempia says she would recommend a judicial appointment to anyone. 'It's a great job and very interesting. It is difficult, though – you have to listen to everything properly for three hours at a stretch and then make your decision. But just have a go – there's nothing to lose.'

Working it out

Kerry Underwood walks through a day in the life of an employment tribunal chairman

4pm Receive papers – normally just application and defence (ET1 and ET3). Check that you can hear the case, eg that you do not know or act for either of the parties or have shares in the employer business. Consider issues. Research law. Locate relevant statute law.

Next day 9-9.30am Arrive at tribunal. Read file, including witness statements, interlocutory orders etc. Check witness list.

9.45am Discuss with lay members the likely issues. Check that members can hear the case – same considerations as for you. Check that one is TUC panel and one CBI panel – illegal tribunal otherwise!

10am Parties brought in. Introduce self and lay members. Have crib list of order of proceedings – generally claimant first in discrimination cases, employer first otherwise. Remember she who goes first goes last – in other words the person who opens the case closes it.

Hear case. Take careful notes. Ask questions – it is an inquisitorial procedure. Allow members to ask relevant questions. Be very patient and polite (not always easy!).

Some time later Retire to consider decision. If members and judge not agreed or finding issues difficult, consider reserving judgment, but only as a last resort. Much better if parties get the result

that day. Otherwise return when ready and give the decision. Best to reserve reasons in the first few cases. After that, give reasons *ex tempore* – that is, live. Not easy! This is tape-recorded, transcribed and sent to you.

Some days later Decision received to 'fair'; that is, to check, amend and eventually sign.

Alternate day Arrive at tribunal. Case due to hear has settled. Do paperwork on other matters. This involves reading the tribunal file, considering and making directions, witness orders and considering interlocutory applications, length of trial and listing, and whether case management discussion are necessary.

All the time Keep right up to date with the law. Keep crib sheets of the basics: basic award, maximum award, week's pay etc.

Are legal executives suitable?

Definitely. Employment tribunals mix highly complex and technical legal issues with frequently unrepresented parties and an employment judge has to be able to relate to everyone and not be stuck in an ivory tower.

Kerry Underwood is senior partner of Hertfordshire firm Underwoods and a former employment tribunal chairman. He still frequently appears before tribunals