

Institution: University College London
Unit of Assessment: 20 – Law
Title of case study: Improving judicial selection and training in the UK and abroad
1. Summary of the impact (indicative maximum 100 words)

Judicial studies is a new research field in the UK and operates in the highly confidential arena of judicial policy and practice, where the impact of research in producing change is often not publicly stated. But pioneering empirical work by UCL’s Judicial Institute (UCLJI) and Centre for International Courts and Tribunals (CICT) has had tangible and acknowledged impacts on judicial selection and training policies and practices in the UK, Europe and at the international court level. The research impacts include:

- Improved fairness of judicial selection practices;
- Reduced barriers to judicial diversity;
- Improved data collection on judicial appointments;
- Improved education and training for judges and aspiring judges;
- Improved government, judicial and public understanding of the barriers to judicial diversity.

2. Underpinning research (indicative maximum 500 words)
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Judicial selection and diversity

In 2008, the Judicial Executive Board of England and Wales commissioned Professor Hazel Genn (Co-Director, UCLJI) to identify factors attracting and deterring senior barristers and solicitors from applying for appointment to the High Court. Initiated by the Lord Chief Justice to inform the outreach strategy of the Judicial Office and the Judicial Appointments Commission’s review of its appointment procedures, this is the only research of its kind in the UK. The study [a], involving interviews with serving judiciary and practitioners, revealed that:

- Key attractions of High Court appointment include intellectual challenge, opportunity to shape the law, prestige and commitment to public service;
- Key deterrents disproportionately affecting women and primary carers were the requirement for High Court judges to spend several weeks in courts out of London every year, the lack of flexibility and isolation of the role.

Prompted by concerns over the slow progress toward increasing diversity in the English and Welsh judiciary, in 2009 the Lord Chancellor’s Advisory Panel on Judicial Diversity commissioned Professor Cheryl Thomas (Co-Director, UCLJI) to conduct research analysing the effectiveness of judicial diversity strategies in other jurisdictions with those in the UK. This study [b] found that:

- Other jurisdictions had implemented more pro-active strategies to address diversity;
- Strategies are most successful when directed at specific judicial levels;
- The Judicial Appointments Commission’s unique rules work against increasing diversity;
- Judicial diversity data in England and Wales were deficient and unreliable.

In 2008–09, the UCL CICT was funded by the AHRC to conduct research on judicial selection in the International Court of Justice (ICJ) and International Criminal Court (ICC). The team was led by Professor Philippe Sands, Director of CICT, and included researchers from CICT and Queen Mary University. Using interviews, case studies and survey data, the study [c] found that:

- Selection of international court judges is often controlled by small groups of diplomats, civil servants, lawyers and academics.
- This politicises the process, works against the selection of the most highly qualified candidates and undermines judicial independence.

Judicial education and training

England and Wales: In 2006 the Judicial Studies Board (JSB), as part of their Training Strategy Review, commissioned Genn to undertake an empirical study of the training needs of the English judiciary and to develop a *Framework of Judicial Abilities and Qualities* (JAQ) to support the JSB’s strategic objective to improve standards and integrate diversity issues into the design and delivery of training. The study involved focus group discussions and individual interviews with over 500

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District, Circuit and High Court judges. The 2006 report [d] identified the challenges faced by the judiciary, their development needs and training preferences. Key findings were that:

- There should be a greater emphasis on judicial skills development and the use of problem-based participative learning;
- Training in cross-jurisdictional judgecraft skills should be made available;
- Training should be more flexible and better geared to judges' individual needs.

From this, Genn developed a JAQ, which was distributed for consultation to the judiciary and key interested parties (including the Judicial Executive Board, Bar Council and Law Society), and after receiving wide approval was published by the JSB in 2008.

Scotland: Following the England & Wales study, in 2007 Genn was commissioned to conduct similar research for the Scottish Judicial Studies Committee (JSC). This involved observing judicial training and discussion groups with 90 serving judiciary at all levels (comprising one-third of the Scottish judiciary). The final report was published in August 2008 [f].

Europe: As part of the JSB 2006–09 review of judicial training, Thomas was commissioned to conduct a review of judicial training and education in 12 other jurisdictions. This involved surveys and interviews with training leaders and judges in 9 European jurisdictions plus Australia, the US and Canada. The report [e] identified how training structures and evaluation approaches in jurisdictions affected training methods, content and barriers. Based on this report, in 2009 Thomas was commissioned to help design the framework for the European Commission *Menu for Justice* Project. From 2009-13 the Project assessed judicial education and training gaps in the 27 member states and created a database of national reports.

3. References to the research (indicative maximum of six references)

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| <p>[a] H. Genn <i>The Attractiveness of Senior Judicial Appointments to Highly Qualified Practitioners</i>, Judicial Office for England and Wales (December 2008)
http://www.judiciary.gov.uk/Resources/JCO/Documents/News%20Release/report-sen-jud-appt.pdf</p> <p>[b] C. Thomas <i>Understanding Judicial Diversity</i>, Research Report for the Advisory Panel on Judicial Diversity (2009) ISBN: 978-0-9926795-1-4. Available on request and at http://www.ucl.ac.uk/laws/judicial-institute/publications.html</p> <p>[c] R. Mackenzie, K. Malleson, P. Martin and P. Sands <i>Selecting International Judges: Principle, Process, and Politics</i>, Oxford University Press (2010). Hardcopy book available on request.
http://ukcatalogue.oup.com/product/9780199580569.do</p> <p>[d] H. Genn, <i>Learning Needs Analysis of the Circuit and District Bench</i>, Judicial Studies Board, June 2006. Confidential summary report prepared for the judiciary available on request.</p> <p>[e] C. Thomas, <i>Review of Judicial Education and Training in Other Jurisdictions</i>, Judicial Studies Board (2007) ISBN: 978-0-9926795-3-8. Available on request and at http://www.ucl.ac.uk/laws/judicial-institute/publications.html</p> <p>[f] H. Genn and R. Williams, <i>Judicial Learning Needs Analysis for the Judicial Studies Committee for Scotland</i>, Judicial Studies Committee for Scotland, August 2008. Confidential report available on request.</p> |
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Research grants:

Grant Holder: Professor Hazel Genn; **Title:** Attractiveness of Senior Judicial Appointments; **Sponsor:** Judicial Office; **Period of grant:** 12/07–10/08; **Value:** £10,000. Led to output [a].

Grant Holder: Professor Cheryl Thomas; **Title:** Review of Judicial Diversity; **Sponsor:** Ministry of Justice; **Period of grant:** 06/09–02/10; **Value:** £9,000. Led to output [b].

Grant holder: Professor Philippe Sands; **Grant Title:** Process and legitimacy in the nomination, election and appointment of international judges; **Sponsor:** AHRC Research Grant (Ref No. 119189); **Period of grant:** 1/9/06–28/2/09; **Value** : £260,445. Led to output [c].

4. Details of the impact (indicative maximum 750 words)

Empirical research by UCL Laws has influenced fair and meritorious selection of judges and judicial professionalism, both of which are critical ambitions for legal systems. Our research has been used by the judiciary, judicial nominating bodies, policy advisory bodies, judicial training bodies, Ministry of Justice, UK Parliament, European Commission and International Criminal Court. Although much research on the judiciary is inherently highly confidential, the impact of our research has been publicly acknowledged by these bodies, as summarised below.

Informing selection and supporting increased judicial diversity:

In England and Wales, the new judicial appointments system introduced in 2006 raised expectations of greater diversity in appointments, but progress has been slow. By pinpointing barriers to diversity, research commissioned from UCL Laws has had the following impacts:

- Genn's senior practitioners' study [a] resulted in better-informed outreach work by the Judicial Appointments Commission (JAC) and senior judiciary. It identified messages that needed to be communicated to under-represented groups such as women, minorities and solicitors. The study's finding that the requirement to go on circuit and lack of flexible working was for some highly qualified practitioners an absolute block on application to the High Court, has led to greater emphasis on allowing flexibility regarding circuit requirements and contributed to the introduction of legislative provision for flexible working for the High Court introduced in April 2013 [13]. Judicial Statistics show a significant increase in women appointed to the High Court from 10 in 2008 (9%) to 18 in 2013 (17%) [5].
- Thomas's recommendation for improved diversity data collection was implemented by the JAC and Ministry of Justice in 2010, supporting the evaluation of changes in JAC practice and enabling more reliable assessment of progress toward diversity (Recommendation 8 in [1]);
- Thomas's research findings on diversity influenced the recommendations of the House of Lords Select Committee on the Constitution's 2011 investigation into Judicial Appointments [3], including shortlists (at 36), merit (at 70, 73, 95), and membership of the JAC and selection committees (at 155) to improve selection processes and produce more diverse appointments;
- In 2011, UCLJI created a Judicial Skills CPD course for lawyers considering applying for judicial appointment [12]. The Judicial Diversity Taskforce relied on this in its 2011 Progress Report [14, p. 26, 28] and 2012 Progress Report [2, p. 24, 25] as the main evidence that Recommendation 14 [1, para. 71] and Recommendation 16 [1, para. 81] of the Neuberger Panel had been fulfilled.

At the international court level, our research has also influenced judicial selection procedures:

- Findings and principles from the CICT study were used by the Advisory Committee on Nominations of Judges of the International Criminal Court in 2011 in drawing up its operating procedures [4] and in 2013 in reviewing the processes used by different member states for screening potential appointees prior to selection [15].

Influencing judicial education and training in the UK and Europe:

Genn's judicial training needs research with the judiciary of England & Wales [c] and Scotland [f] and Thomas's research on practices in 12 other jurisdictions [e] led to wide-ranging changes in the design and delivery of judicial training [6, p. 7], including:

- In 2008 the JSB implemented a new training strategy based on Genn's judicial training needs research [7, p. 8] ensuring training is better adapted to the development needs of the judiciary. Responses to Genn's recommendations include more use of participative learning, modular options in continuation training, and a new cross-jurisdictional course *The Craft of Judging*, introduced in 2010 [7, p. 8] and reviewed favourably in the press in 2012 [11]. Since 2008, the framework of judicial abilities and qualities (JAQ), which Genn drafted from her research findings, has been used as the basis for the development of all judicial training in England and Wales [8, p. 3] and has been adopted abroad [8].

Genn's judicial training needs research and recommendations for change in Scotland [f] were accepted and implemented [9, p. i, iii] and led to the:

- Development of a new training programme [9, p. 2] and the establishment of the Judicial Institute for Scotland (JIS) in 2012 costing over £900,000, which has transformed the approach and facilities for judicial education. In 2013 the JIS commissioned the UCLJI to review and

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evaluate the quality of the training introduced in response to the 2008 report (to be completed by 2015) [16].

Thomas's review of judicial diversity strategies in other jurisdictions:

- Highlighted the need for greater exposure of lawyers to the work of judges before applying for appointment and led to the Neuberger Panel recommendations that judicial skills training be offered to lawyers interested in applying for a judicial post [1, para. 71, 81] and the establishment of the UCLJI CPD course *Understanding Judging* [2, 12].

Thomas's review of judicial education and training in 12 jurisdictions:

- Contributed to the framework and deliverables for all four Workpackages in the European Commission "Menu for Justice" Project. From 2009–13 this Project assessed the key gaps in legal and judicial education and produced a database of national reports for all twenty-seven European member states [10].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 1) *The Report of the Advisory Panel on Judicial Diversity* (2010) http://www.equality-ne.co.uk/downloads/759_advisory-panel-judicial-diversity-2010.pdf
- 2) *Improving Judicial Diversity: Progress towards delivery of the "Report of the Advisory Panel on Judicial Diversity 2010"*, (2012) Annual Report of the Judicial Diversity Taskforce: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217305/judicial-diversity-taskforce-annual-report-2012.pdf.
- 3) *Judicial Appointments: Report of the House of Lords Select Committee on the Constitution*, 25th Report of Session 2010–12 (28 March 2012): <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf>.
- 4) *Report of the Bureau on the establishment of an Advisory Committee on nominations of judges to the International Criminal Court*, ICC Assembly of States Parties, Tenth Session, 12–21 December 2011: http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-36-ENG.pdf.
- 5) Courts Diversity Statistics 2012–13, Judicial Office of England and Wales <http://www.judiciary.gov.uk/Resources/JCO/Documents/Stats/courts-diversity-stats-2012-13.xls>
- 6) Judicial Studies Board Annual Report 2006–7 http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/jsb_annual_report_2007.pdf
- 7) Judicial Studies Board Annual Report 2008–09 http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/jsb_annual_report_2009.pdf
- 8) Judicial Studies Board, *Framework of Judicial Abilities and Qualities*, October 2008: http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/framework_AandQ_081008.pdf. Adapted for use by the Judicial College of Victoria, Australia in 2008 entitled *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers*: <http://www.judicialcollege.vic.edu.au/sites/default/files/2009JCVFramework-JCVsite.pdf>
- 9) Judicial Studies Committee for Scotland Annual Report for Year to 31 March 2009 <http://www.scotland-judiciary.org.uk/Upload/Documents/JSCAnnualReport2009.pdf>
- 10) Thomas served as sole UK representative on the European Commission Menu for Justice Project. All 4 Workpackage reports for the UK are available on request. For information on the Project see: <https://www.academic-projects.eu/menuforjustice/default.aspx>
- 11) Joshua Rozenberg "Wigs off, Hats on at the Judicial College" *Guardian*, 8 February 2012 <http://www.theguardian.com/law/2012/feb/08/behind-scenes-judicial-college>
- 12) Owen Bowcott, "Fancy being a judge? Try it for a weekend first" *Guardian*, 19 August 2011 <http://bit.ly/HZQk3t>
- 13) Catherine Baksi, "Flexible working targets more women judges" *Law Society Gazette*, 12 October 2013 <http://bit.ly/1fg0NGr>
- 14) *Improving Judicial Diversity: Progress towards delivery of the "Report of the Advisory Panel on Judicial Diversity 2010"*, (2011) Annual Report of the Judicial Diversity Taskforce: <http://bit.ly/1di3G9D>
- 15) Corroborated by Legal Officer, Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court.
- 16) Statement provided by the Director of the Judicial Institute for Scotland.