Questionnaire

I. - Appointment of judges to the Supreme Court

1) Are open positions to judgeships at the Supreme Court publicised?

Each selection commission can determine its own process, but the practice since the Supreme Court of the United Kingdom came into existence is that vacancies for Justices are openly advertised.

2) Who can apply to judgeships at the Supreme Court (is there a ratio for candidates not already members of the judiciary)?

There are statutory criteria which govern eligibility for appointment.

Applicants must have held high judicial office for at least two years. (‘High judicial office’ is defined to include High Court Judges of England and Wales, and of Northern Ireland; Court of Appeal Judges of England and Wales, and of Northern Ireland; and Judges of the Court of Session.)

Alternatively, applicants must satisfy the judicial-appointment eligibility condition on a 15-year basis, or have been a qualifying practitioner for at least 15 years.

A person satisfies the judicial-appointment eligibility condition on a 15-year basis if he/she has been a solicitor of the senior courts of England and Wales, or barrister in England and Wales, for at least 15 years; and has been gaining experience in law during the post-qualification period.

A person is a qualifying practitioner if he/she is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary; or he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

The meaning of “gaining experience in law” is set out in section 52(2) to (5) of the Tribunals, Courts and Enforcement Act 2007 and relates to a period engaged in law-related activities.

There is no ratio of candidates from particular backgrounds.

3) How is conducted the selection of the Applicants to Supreme Court positions: which body is practically in charge of drawing up the list of candidates? What are the criteria for nomination on the list of candidates (age, seniority, qualifications, etc.)? Are those criteria publicized? Is there a hearing of the selected candidates? By whom?

An ad hoc selection commission is established to consider each vacancy for the Supreme Court. That selection commission invites applications, to include a CV, and copies of judgments or other written material. The selection commission is also required to consult a
number of senior judges and politicians. All applications and comments are then considered against a set of published criteria. The leading candidates are invited for an interview before a final decision is made.

4) Is the Supreme Court (through a specific body of the Supreme Court or in conjunction with other bodies?), and especially its President, involved in the selection process of Applicants? And in the appointment process of those who are selected (proposal, recommendation, requirement of approval, etc.)?

The ad hoc selection commission referred to above comprises the President and Deputy President of the Supreme Court along with a representative of the Judicial Appointments Commission in England and Wales, the Judicial Appointments Commission in Northern Ireland, and the Judicial Appointments Board in Scotland. At least one of those representatives must be a lay person ie not legally qualified.

5) Which State bodies (other than Councils for the Judiciary and Supreme Courts) are involved in the selection and appointment process of Supreme Court judges?

When a selection commission has completed its process a recommendation is made to the Lord Chancellor, in effect the Minister of Justice. The statutory regime provides for certain circumstances in which the Lord Chancellor can either reject a recommendation or invite a reconsideration. Once a recommendation has been accepted the Lord Chancellor notifies the recommendation to the Prime Minister who makes the formal recommendation to Her Majesty The Queen.

6) Is there transparency of the selection process (number of applicants, selection criteria…)? And of the appointment process (publicity of the list candidates, public hearing, etc.)?

The selection criteria are public. An Information Pack is publicly available (an example is attached) for anyone who is interested. We do not publish the number of applicants, those on the list, to be interviewed, or hold public hearings.

7) Who reaches the decision to appoint among the selected candidates? On which criteria (merit, representativeness of the society, professional experience, etc.)?

The overriding criteria, which is set out in the governing statute, is that selection must be on merit. In the light of that requirement the decision is taken by the selection commission.

8) Can the selection of an Applicant at the Supreme Court be appealed? By whom? To whom? And regarding the decision to appoint the selected candidate?

There is no route of appeal.

9) Who carries out the appointment (Head of State…)? May the appointing authority refuse to appoint?

Her Majesty The Queen, as Head of State, formally makes the appointment. In practice Her Majesty could not refuse to make the appointment.

10) Are you satisfied of the prevailing conditions in your country? Which modifications would you suggest?

Some aspects of the system for making judicial appointments are currently under review.
II. Appointment of judges to the Court of Justice of the European Union and to the European Court of Human Rights

1) What are the qualifications for the candidates (independence and impartiality, professional experience, legal training, linguistic abilities, ability to work in an international environment)?

EUROPEAN COURT OF JUSTICE (ECJ)

The following is the agreed eligibility criterion for the identification of the UK nominee to the ECJ:

Qualifications necessary for appointment to the ECJ

In accordance with Article 253 TFEU, judges of the Court of Justice are to be chosen from:

“persons whose independence is beyond doubt and who possess the qualifications required for the appointment to the highest judicial offices in their respective countries, or who are jurisconsults of recognised competence”.

Selection criteria

Taking the above qualifications into account, candidates will be expected to demonstrate the following qualities, which are essential for this post:

- Excellent understanding and experience of EU law, including the wider impact of the ECJ’s judgments on Member States;
- Good operational level of French;
- Excellent intellectual ability and drafting skills;
- Experience of legal practice;
- Good organisational and case management skills, including an ability to effectively delegate to, and work with, a support team at the Court;
- Excellent interpersonal skills including an ability to communicate effectively and persuasively with colleagues in the Court

EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)

Qualifications necessary for appointment to the ECtHR

In accordance with Article 21(1) of the European Convention on Human Rights, judges must be of high moral character and either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

Selection criteria
During the recent selection exercise to find the three candidates at a national level for election by the Council of Europe as the next judge at the ECtHR with respect to the UK, the key advertised criteria were:

- A proven and consistently high level of achievement in the areas of law in which candidates have been engaged, and experience relevant to the post
- The capacity to learn and understand quickly other legal, constitutional and political systems
- The ability to communicate effectively both orally and on paper, particularly in the role of judge rapporteur, and to work well in a chamber of international judges
- Commitment to the principles of the European Convention on Human Rights
- An operational working knowledge of French

2) How is selection of the candidates conducted on national level?

EUROPEAN COURT OF JUSTICE (ECJ)

In relation to the ECJ, the vacancy was advertised through the websites for the three territorial appointments bodies, Judicial Appointments Commission for England & Wales, Judicial Appointments Board for Scotland and Northern Ireland Judicial Appointments Commission. It was also advertised in the national and regional printed media.

The vacancy was open to anyone who was able to demonstrate compliance with the agreed eligibility criteria. A seven member independent selection panel has been appointed to consider the applications received in order to identify the preferred candidate. The preferred candidate will have been selected on merit, based upon the selection criteria.

The selection panel is chaired by the current lay chair of the Judicial Appointments Board for Scotland, Sir Muir Russell, with the other members being made up of two members of the senior UK judiciary, two senior Government legal advisors and two legal academics. The panel will consider all applications before making a recommendation to the Lord Chancellor, who in turn will formally advise the Foreign Secretary of the preferred candidate.

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

In November 2011, the ECtHR post was advertised in the UK national press as well as the daily press in Scotland and Northern Ireland. The post was also advertised on a wide number of websites, including the three territorial judicial appointment bodies, and specialist legal professional and academic websites.

The vacancy was open to anyone who met the advertised criteria. Applicants were required to submit evidence showing how they met the criteria, including a completed standard CV in the form stipulated by the Parliamentary Assembly of the Council of Europe (PACE). Additionally, applicants had to provide two referees and a completed character declaration.

A five person selection panel was convened to consider the applications. In recognition of the fact that the judge at the ECtHR represents the whole of the UK the panel had representatives from each of the major legal jurisdictions in the UK. The panel comprised two senior members of the judiciary, an independent member from one of the territorial judicial appointment bodies and two senior legal advisers from government departments.
In accordance with standard selection procedures, the selection panel sifted all of the applications and interviewed those applicants who had submitted the strongest applications and evidence against the criteria for the post.

The panel submitted a final report identifying a list of three candidates to the Justice Secretary and the Foreign Secretary. Once the list is agreed it is forwarded to PACE, which is responsible for electing one of the three candidates as the next judge at the ECtHR with respect to the UK.

3) What is the transparency of the selection / appointment process?

EUROPEAN COURT OF JUSTICE (ECJ)

The availability of the vacancy has been advertised and disseminated through the existing independent appointments organizations. The preferred candidate will have been appointed through fair and open competition and will be appointed on merit.

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

The selection process is fully open and transparent, conducted on the principles of fair and open competition. Selection for inclusion on the national list of three candidates is based on merit, however, it should be noted that PACE policies require countries to submit a gender balanced list. This means that in certain circumstances the list of three candidates may include a candidate who was not ranked in the first three by the selection panel but who is included in the interests of ensuring gender balance.

4) What is and should be the role of the Governments? Should a non-Government supported application be taken into consideration?

EUROPEAN COURT OF JUSTICE (ECJ)

The role of the Government is limited within the agreed process to the creation of the independent selection panel and agreeing its membership, and then to consider the name of the preferred candidate identified by the selection panel as the most meritorious of those who applied.

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

The role of the Government is limited to establishing the independent selection panel, and then to consider and endorse the list of three national candidates before it is forwarded to PACE.

5) Are the Presidents of the Supreme Courts consulted or otherwise involved?

EUROPEAN COURT OF JUSTICE (ECJ)

All of the Chief Justices of the UK, including the President of the UK Supreme Court, have been consulted on the membership of the selection panel and they will be consulted on the name of the preferred candidate as and when identified.

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

The President of the UK Supreme Court was not approached directly or consulted about the selection process. In order to ensure the major UK legal jurisdictions were all represented
the Lord Chief Justice of England and Wales, the President of the Council in Scotland and the Lord Chief Justice of Northern Ireland were asked to nominate members of the selection panel. Following receipt of the nominations, the selection panel was chaired by a Justice of the Supreme Court.

6) Is the European Courts or their Members involved in the process (officially/ unofficially)?

EUROPEAN COURT OF JUSTICE (ECJ)

As part of the preparation for the members of the selection panel it has been agreed that the existing UK judge to the ECJ, Sir Konrad Schiemann, will provide a background presentation on the work of the ECJ in order to assist the selection panel in identifying the most meritorious candidate for the post.

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

There was no involvement in the selection process by either the ECtHR or the current UK judge at the Court.

7) How could the Network be of help to the Committee set up under Article 255 of the Lisbon Treaty for nominations at the Court of Justice of the European Union (approval of the proposals)?

EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

Not applicable.