

Definitions and Measurement

Background to the Judicial Selection and Recommendations for Appointment Statistics bulletin

The Constitutional Reform Act 2005 (CRA) enshrined in law the independence of the judiciary and changed the way judges are appointed. As a result of the Act, the Judicial Appointments Commission (JAC) was set up on 3 April 2006 to make the appointments process clearer and more accountable. Under the CRA, the JAC's statutory duties are to:

- select candidates solely on merit
- select only people of good character
- have regard to the need to encourage diversity in the range of persons available for judicial selection

As part of its diversity strategy, the JAC has published the diversity profile of candidates at application, shortlisting and recommendation stage.

The first Official Statistics bulletin was [published](#) in February 2010. Prior to that, the diversity results of selection exercises were [published](#) online. The reason for publishing these data as Official Statistics was to improve users' confidence in the information, as the statistics are produced according to the UK Statistics Authority's [Code of Practice for Official Statistics](#).

This document accompanies the Official Statistics bulletin and provides users with detailed information on the concepts and methods used in compiling the bulletin. This document covers 3 areas:

1. background to the selection process
2. data sources
3. dissemination strategy

Background to the selection process

Including an exercise

A selection exercise is included in the Official Statistics bulletin on Judicial Selection and Recommendations for Appointment Statistics if recommendations are made by the Commission. In addition, since 2015–16 onward, this bulletin also includes senior exercises, for which the JAC has convened panels that have recommended candidates for appointment to senior posts.

The JAC makes recommendations to one of 3 Appropriate Authorities (the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) for acceptance. For the purpose of presenting information in the Official Statistics bulletin, the date of the report to the Appropriate Authority marks the point at which the JAC's involvement in the selection exercise is considered to have ended.

Those exercises for which recommendations have been approved or rejected by the Appropriate Authority within the financial year are included within the published annual statistics. In the event that a recommended candidate approved by the Appropriate Authority subsequently turns down the offer of a post, further recommendations may be made to fill the vacancy request. Where additional recommendations made from the same pool of candidates to fill the same vacancy request are accepted by the Appropriate Authority within the financial year, these will also be reported in addition to those made previously.

Should further recommendations be made from the same selection exercise after the end of the financial year, the further recommendations made after the end of the financial year will not be included within the annual statistics. In the event of 10 or more additional recommendations being made in any single selection exercise after the end of the financial year, the additional recommendations may be published in the following year's statistics bulletin.

The bulletin presents information on the outcome of selection exercises by the date of the report to the Appropriate Authority, in order to provide timely information. This has implications for revisions (see the section on revisions policy below).

The selection process

Applications

There are 3 stages within each selection exercise where the diversity of applicants is officially monitored:

- application
- shortlisting
- recommendation for appointment

In exercises prior to December 2012, candidates were screened to ensure they met the eligibility criteria when they first applied. Ineligible applicants did not continue through to the next stage of the selection process. For exercises that completed from October 2013, information regarding applicants relates to all candidates who applied for a particular post regardless of eligibility. This is due to improvements in data processing.

The number of candidates excluded because of eligibility concerns is generally low, largely confined to 'entry-level' roles and should, in most cases, make little substantive difference. Some caution should be taken when comparing the profile of applicants in exercises carried out at different times because of this difference.

Shortlisting

Shortlisting is the process used by the JAC to determine who is invited to attend a selection day. The main tools used, either together or separately, are currently:

1. an online qualifying test, more likely to be used when the volume of applications is large or
2. a paper sift, which considers candidates' self-assessment and other information (for example, independent assessments) and is more likely to be used for those exercises with a lesser number of applicants

These tools may be used in conjunction with other shortlisting tools, such as a telephone assessment or written scenario test.

On rare occasions, when applicant numbers are very low, no shortlisting process is undertaken and all eligible applicants are invited to attend a selection day, which will involve an interview and may also involve situational questioning, a presentation or role play.

Recommendations

The Commissioners of the JAC, sitting as the Selection and Character Committee, make selection decisions based on the panel's assessment, independent assessments, self-assessment and the result of statutory consultation with the judiciary. The Commission also assures themselves that candidates are of good character before making recommendations to the Appropriate Authority.

The Lord Chancellor, Lord Chief Justice or Senior President of Tribunals can reject a recommendation, although do so only on a very exceptional basis. In such a case, the JAC would make a further recommendation to the Appropriate Authority in line with legislation. If such recommendations occurred prior to the publication of the bulletin they would be included in the published statistics, unless it was immediately prior to publication making their inclusion impractical. If they occurred subsequent to the publication of the bulletin, then any amendment to the published statistics would be considered a revision (see the section on revisions policy below).

The JAC makes recommendations under section 87 of the Constitutional Reform Act 2005 (CRA). Recommendations are for a confirmed vacancy. If accepted by the Appropriate Authority, they are guaranteed to be offered appointment.

The JAC may also be asked to identify persons suitable for later selection under section 94 of the CRA. Those identified by the JAC are regarded as suitable for future appointment to specific roles if, and when, an appropriate vacancy arises. Those candidates are not guaranteed an offer of appointment. Candidates recommended under section 87 and 94 CRA are both treated as recommended candidates for the purpose of presenting the statistics in the bulletin.

In addition, if a vacancy is unexpectedly available for a post for which a selection exercise has recently been carried out, the JAC can make an additional recommendation using the results of that recent exercise. This is the case even if there are no candidates identified following a section 94 exercise for the specific location and/or jurisdiction. If such recommendations occurred prior to the end of the financial year to which the bulletin pertains, they would be included within the published statistics. If they occurred in the financial year subsequent to the period to which the bulletin pertains, then they would be presented within the subsequent bulletin.

In addition, on rare occasions and for operational reasons, it is planned that recommendations will be made to the Appropriate Authority through more than one report sent on different dates, such as where requirements for different jurisdictions are separately considered. Under those circumstances, the exercise will be considered to have been completed when the last report has been sent for that exercise. This means that the result of the exercise can be provided in a single, comprehensive presentation, rather than in stages, to support easier understanding for the users of the bulletin.

Figures presented refer to individual applicants on a headcount basis, as opposed to the number of applications, for example individuals may apply to both the Fee-paid Medical Members of the First-tier Tribunal (Mental Health) and the Mental Health Review Tribunal (Wales), which are two separate posts, run in a single selection exercise. Candidates may apply for both posts but would only participate in the exercise once.

While the JAC Annual Report and Accounts presents the number of applications for financial accounting reasons, this statistics bulletin counts the number of individuals within selection exercises for diversity purposes. As a result, the number of applications and the number of applicants within selection exercises may differ slightly. The same applies for recommendations. Furthermore, when counting recommendations, the number of people who were recommended is counted, rather than the number of full-time equivalent vacant posts to which the recommendations refer. So, if a recommendation is for one individual for a single part-time post, the recommendation counts as one person, not as a fraction of a post.

Senior judicial posts

The JAC is responsible for running selection exercises for posts up to and including the High Court. It also has statutory responsibilities to respond to requests from the Lord Chancellor to convene panels that recommend candidates for appointment to other senior posts. These include the Lord Chief Justice, Heads of Division, and Lord Justices of Appeal. The JAC provides the secretariat for these exercises and, in line with statute, at least two JAC Commissioners sit on each five-member panel.

While senior appointment selection panels are required to determine their own processes, selection exercises may include:

- an application (form or letter)
- independent assessments
- self-assessment
- non-statutory consultation (seeking feedback on candidates from the senior judiciary and others)
- a sift
- selection interviews

Quality assurance in the selection process

The JAC uses quality assurance checks throughout the selection process to ensure proper procedures are followed, standards are maintained and all stages of selection are free from bias. This includes:

- reviewing selection exercise materials, and observing dry-runs of role plays and interviews
- monitoring the progression of candidate groups at key stages in the selection process
- carrying out equality impact assessments on all significant changes to the selection process
- making reasonable adjustments for candidates who need them

Data sources

Candidate information

JARS (Judicial Appointments Recruitment System) is an administrative data system, introduced in January 2015, which stores candidate data, including diversity data collected using the Diversity Monitoring Form (which is part of the broader application form). The data are used to produce reports and to support statistical analysis. Completing the Diversity Monitoring Form is not compulsory. Where candidates complete the form, not all candidates make diversity declarations on some or all items within the form.

Declaration rates vary, and while coverage is consistently high overall (ranging from over 90% for gender and ethnicity, around 90% for professional background, social mobility and sexual orientation, and around 80% for religion), lower declaration rates have an impact on the certainty of representation of groups within diversity characteristics. Where declaration rates fall below a 60% threshold, the coverage is deemed insufficient to meaningfully consider representation. Affected diversity information (percentages and rates) may be withheld because of concerns about the effect of low declaration on meaningful interpretation of these data.

Any data recorded on JARS is subject to specific legislative provisions set out in the CRA, the Data Protection Act 1998 and Freedom of Information Act 2002. User access is strictly controlled and trail logs are kept for security checks and audit purposes.

Definitions of diversity characteristics

Diversity characteristics of applicants are collected by self-report from the Diversity Monitoring Form. The form includes information regarding age, ethnicity, disability, gender, sexual orientation, religious belief, professional legal background and socio-economic background. Consistent with previous years, sexual orientation and religion are presented in total across the whole financial year only, not by individual exercise.

As diversity characteristics are self-declared, they represent the perspective of the individuals themselves.

Gender is recorded as a binary male/female characteristic. This represents self-determined gender within a binary framework, acknowledging that a binary gender category does not fully encompass the increasingly understood non-binary complexity of gender.

Ethnicity is recorded on administrative systems using the 2011 Census definitions (18 categories). Due to the numbers involved at this level of granularity, it would not be meaningful to present ethnicity statistics in disaggregated form separately by exercise, and would pose serious disclosure risks. Accordingly, for statistical purposes, ethnicity is presented in aggregated form, collating non-white ethnicities together under the Black, Asian and Minority Ethnic (BAME) umbrella term. Those that have declared themselves white of any origin or nationality (including 'white other') are grouped together.

We acknowledge that aggregation of ethnicity to a binary category does not encapsulate the different lived-experience within these categories. The BAME group represents considerable diversity beyond that captured in the 18 categories, which does not coalesce into a single cohesive group. Neither does this approach capture differences in experiences of those within both BAME and white groups with a nationality or origin outside of the United Kingdom, or those from Gypsy/Traveller/Roma communities. However, it is necessary, from a statistical

perspective, to consider groups with sufficient numbers to make meaningful comparisons. The white/BAME binary comparison maintains consistency with previous JAC statistics and is widely used in other statistical publications.

Current legal role presents information from a question on the application form regarding the professional background of candidates. Options include, but are not limited to, 'solicitor', 'barrister', 'salaried judicial office-holder', 'CILEx' (Chartered Institute of Legal Executives) and 'other'. One known data quality concern relates to the professional background of candidates for more senior judicial exercises. The question which identifies solicitors and barristers asks for 'current legal role'.

Accordingly, those with a prior professional background as a solicitor or barrister that currently hold a judicial post will not be represented in the solicitor or barrister figures respectively. This is more likely to occur with more senior roles. Changes have been made to the questions asked on professional background which will enable us to report more comprehensively on the full professional background of candidates, in addition to their current legal role. This information is expected to be introduced in the 2018–19 statistics bulletin.

Disability is recorded as a binary characteristic of whether individuals have declared that they have or do not have a disability. Disability comes in many forms, and the impacts, needs and adjustments that may be required vary from individual to individual. In order to make statistical comparisons, sufficient numbers are required, and while simple binary categories do not reflect these differences, increasing granularity would substantially reduce the ability to conduct an analysis of these data.

Age is presented in groups that differ from common groupings used in other statistical publications. This is due to the nature of the data in relation to eligibility and experience, and reflects the distribution of ages of applicants. Age is recorded at the time of the close of applications. Accordingly, it is possible that age group distributions at the shortlist and recommendation stages may deviate slightly from the age groups presented. Such differences, if any, would be very small and non-material. Age is highly correlated with experience. Accordingly, it would be less meaningful and informative to conduct comparative analyses on outcomes based on those above and below a certain age. As such, although figures are broken down by age group, we do not conduct relative comparisons of rates of recommendation.

Social mobility is not a protected characteristic under the Equality Act 2010, however it is an important aspect of diversity. The JAC added questions on social mobility to the form in October 2015, in line with the Social Mobility and Child Poverty Commission's recommendation that government and employers should collect data on the social background of new and existing post holders. Collecting this data enables us to understand the diversity of our candidates and monitor our processes to ensure that they are fair. Due to the timing of the general election in 2017, and restrictions on new additions to statistical bulletins within the pre-election period, we were unable to include social mobility information within the 2016–17 bulletin. This information is released for exercises in 2017–18 onward. Information captures the type of school attended from ages 11 to 18, identifying whether candidates attended an independent/fee-paying school, went to a state school, or attended a school abroad. Further information also captures for candidates that attended university, whether either one or both parents went to university, neither went to university, or that the candidate did not attend university.

Sexual orientation is recorded by asking applicants to declare whether they identify as a gay male, a gay female/lesbian, bisexual, or heterosexual. This is collated for statistical purposes into a binary category, grouping gay, lesbian and bisexual individuals together, in comparison to heterosexual individuals, acknowledging this simplifies the diversity of sexual orientation, and does not capture all identities.

Consistent with the Equality Act 2010, this protected characteristic is distinct from and independent of gender identity. Accordingly, the familiar acronym LGBT is not appropriate for use when looking solely at sexual orientation as a protected characteristic. Sexual orientation figures are presented aggregated across all selection exercises conducted within the financial year. This best allows meaningful consideration of this characteristic, based on the numbers involved. For this reason, due regard under the Public Sector Equality Duty is best served by considering sexual orientation on an annual basis.

Religion is recorded with a range of options, including Buddhist, Christian (CofE, Roman Catholic and other Christian tradition, separately), Hindu, Jewish, Muslim, Sikh, other religions and no religion. Religion is presented grouped across the whole financial year, providing the recorded granularity as the information was declared. Historically, declaration rates had been considerably lower for characteristics presented grouped across the whole year, which had formed part of the rationale behind this decision. While declaration of religion continues to be lower than for other characteristics, it is above the threshold at which we would have concerns about representativeness and bias. It would not be statistically meaningful to present the full granularity of declared religions by selection exercise, given the very low numbers involved for many religions. To do so would require grouping up religions into simplified categories, which would result in a loss of important information on specific non-Christian religions. Now declaration rates for religion have improved, we will review the way in which religion information is published in future iterations.

The JAC relies on the information held in the JARS database for operational purposes, and so has a clear incentive to ensure that information is highly accurate. In addition, the data presented in the Official Statistics are also subject to quality assurance procedures to ensure internal consistency and consistency with paper records relating to the selection exercise.

Data relating to exercises that occurred prior to the release of this information as Official Statistics, presented as comparators against which to measure current results, may not have been subject to the same level of quality assurance.

A database of anonymised data has been developed from data extracted from the legacy database, Equitas. The data cover all exercises run by the JAC since its formation in 2006 up to 2015. The data will enable more detailed analysis to be made when comparing back to previous exercises. However, although as much data cleansing as possible took place, there are likely to be small anomalies occurring when compared to information published at the time. The database is stored within the secure MoJ network and access is restricted to a small number of staff.

Eligible pool

The eligible pool provides a context for the diversity statistics of different selection exercises. It presents the gender, ethnicity and professional background of everyone who meets the formal eligibility criteria and certain additional selection criteria for a post.

The data relating to the gender, ethnicity and professional background of the eligible pool is collated from a range of sources on the basis of the selection exercise eligibility criteria. With the exception of specialist posts, selection exercise eligibility criteria fall into 4 main categories:

1. statutory requirement of 5 years or more post qualification experience
2. statutory requirement of 7 years or more post qualification experience

3. statutory requirements of 5 or 7 or more years post qualification experience and subject to additional selection criteria. For salaried posts, additional criteria often includes that the Lord Chancellor expects that individuals must normally have served as a fee paid judicial office holder for at least 2 years or to have completed 30 sitting days in a fee paid capacity
4. no statutory eligibility criteria, for non-legal posts

For the first 2 categories (which are typically applied to fee-paid legal posts), data are supplied by the Law Society, the Bar Council and the Chartered Institute of Legal Executives (CILEx). The data include solicitors who appear on the roll and barristers who have been called to the Bar and have completed pupillage, and Fellows of CILEx. This includes information on the number of years individuals have been legally qualified, as well as their age, ethnicity, and gender.

The Black, Asian and minority ethnic (BAME) figures are consistent with the standard definition of BAME from the 18+1 2011 Census definitions. Those who do not complete the ethnicity question on the Diversity Monitoring Form are not counted as either white or BAME.

For the third category (which is typically applied to salaried legal posts), the data represent the information available on the composition of the pool of judicial office holders in England and Wales. Again, those who do not complete the ethnicity question are not counted as either white or BAME. Court judiciary and tribunal legal members are counted using the most up-to-date published data.

Eligible pool figures are not calculated for the fourth category, because there are no statutory eligibility criteria. In addition, bespoke eligible pool figures may be calculated where additional eligibility requirements or additional selection criteria apply. Disability, age, sexual orientation and religious belief data are not currently available on the potential candidates within the eligible pool.

Dissemination

Other published information

Data regarding the diversity of the judiciary in post is published annually by the [Judicial Office](#).

Users

Table 1: Users of the bulletin

User	Summary of main statistical needs
MoJ ministers and senior officials within MoJ, Judicial Office and Her Majesty's Court and Tribunal Service and within the JAC	Statistics are used to inform policy development, to monitor the impact of policy changes over time
MPs and House of Lords	Statistics are used to answer parliamentary questions
Candidates and member organisations (the Bar Council, The Law Society, Chartered Institute of Legal Executives) and other groupings, such as the Black Solicitors Network	Statistics are used to monitor the diversity profile of successful candidates and to assess the fairness of the selection process
Journalists, particularly in specialist legal publications such as the Law Gazette, but also wider media	Statistics are used to tell a coherent and accurate story on judicial diversity

Timeframe and publishing frequency of data

This bulletin is published annually to cover the period from 1 April to 31 March. The date of the next bulletin is Thursday 6 June 2019. The date of future bulletins is published on the Ministry of Justice statistics publication [schedule](#).

Revisions

The quality assured statistics in this bulletin are provisional and are therefore liable to revision. This could either be because of a late amendment to the database or because of a recommendation(s) made by the JAC after the initial report to the Appropriate Authority (see the section on Recommendations above).

The standard process for revising the published statistics to account for these late amendments is to publish them in the next edition of this bulletin if the revision accounts for an additional 10 or more recommendations being made. However, revisions that consist of less than 10 recommendations will not be published. This is because a comparison of the original presentation of the exercise and the revised presentation of the exercise could identify those candidates recommended since the publication of the bulletin. In accordance with the disclosure policy for these data, releasing information on exercises of less than 10 recommendations may constitute a threat to candidates' privacy (see section on confidentiality below).

Confidentiality and disclosure

So that candidates may not be personally identified, exercises with fewer than 10 recommendations are aggregated and presented grouped up separately for:

- smaller Court exercises (High Court and below)
- smaller Tribunals exercises
- senior judicial (above High Court) exercises

In larger exercises there may be cases where certain breakdowns presented do result in low numbers within that breakdown. It is considered that this is an acceptable risk to confidentiality; the candidates' anonymity is still protected because the process of application itself is confidential and applicants can come from a wide range of areas within the legal profession and judiciary. Therefore, even if there is only one candidate with a particular characteristic it should not be possible to identify that person. By contrast, smaller exercises for more specialised posts sometimes accept applicants from a very narrow pool of eligibility, increasing the risk of a particular person being identified in the statistical results. This risk is mitigated by aggregating such exercises together.

Methodology

Relative Rate Index (RRI)

The RRI is an increasingly adopted metric of disparity in outcomes, utilising a pre-existing statistical approach to comparison of the relative difference in rates between two groups. The RRI gives a simple, standardised, comparable measure of disparity between groups, independent of variation in the overall rates of recommendation. This means this measure gives a clear and simple indication of the level of disparity in the rates of recommendation, facilitating straightforward direct comparisons across different time periods.

The RRI is the rate of recommendation for one group divided by the rate for another group within a diversity characteristic, thus creating a single standardised ratio measure of relative disparity in outcomes between those two groups. This is most suited to binary comparisons (such as: women/men, BAME/white, disabled/non-disabled). We have also used the RRI to compare outcomes for solicitors to barristers, the particular comparison of interest for professional background, while noting this does not account for outcomes of those from other professional backgrounds. As interpretation of the RRI is to see this value as the comparison of outcomes of a group of interest (the group as the numerator in the calculation) to a baseline group (the group as the denominator), it is logical that the baseline should be the historically overrepresented group.

An RRI value of 1 indicates no disparity (i.e. the recommendation rate of one group is precisely the same as the rate of the other group, so when dividing one by the other, a value of 1 is obtained). An RRI greater than 1 means the group of interest (women, BAME individuals, solicitors, people with disabilities) had a greater likelihood of being recommended for appointment than the baseline group, while an RRI less than 1 indicates the group of interest was less likely than the baseline to be recommended for appointment. As the RRI is the relative likelihood of the group of interested being recommended compared to the likelihood of the baseline group, a gender RRI of 1.5 for example would be interpreted as women being 1.5 times as likely (50% more likely) to be recommended than men. Similarly, a gender RRI of 0.5 would be interpreted as women being half as likely (50% less likely) to be recommended than men.

To further aid interpretation using the '4/5ths rule of thumb for adverse impact'^{1,2}, RRI values that fall within a range of 0.8 to 1.25 (the zone of parity) are not likely to indicate a disparity in outcomes resulting in adverse impact. This does not imply that an RRI falling outside of this range is indicative of the presence of an adverse impact. The nature of selection exercises inevitably results in low numbers. In some cases, the numbers are too low to calculate the RRI. However even where an RRI can be calculated, numbers within all selection exercises are low for making meaningful attributions of a potential disparity (which would need to consider the confidence intervals around the RRI in relation to the point of non-disparity), as the power to detect such a disparity is low due to the numbers of applicants involved in selection exercises. As such, caution should be used in considering whether an apparent difference in rates, as measured by an RRI falling outside the range of 0.8 to 1.25, could represent a meaningful disparity of outcomes.

RRI values falling within the zone of parity of 0.8 to 1.25 should not be considered evidence of a disparity.

¹ Dan Biddle. *Adverse Impact and Test Validation: A Practitioner's Guide to Valid and Defensible Employment Testing*. Aldershot, Hants, England: Gower Technical Press. pp. 2–5. ISBN 0-566-08778-2.

² *Toward a Coherent Test for Disparate Impact Discrimination*: Peresie, J.L. 2009
<http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1120&context=ilj>

Pre-release list

The bulletin is produced and handled by statisticians badged as members of the Government Statistical Group (GSG) within the Ministry of Justice (MoJ,) in conjunction with the JAC's analytical professional and production staff. Analytical clearance for the Official Statistics is provided by MoJ Chief Statistician, with formal final sign-off the responsibility of the Chief Executive of the JAC.

In addition, pre-release access to the provisional diversity statistics of up to 24 hours is granted to the following post-holders:

Ministry of Justice and judiciary

Lord Chancellor, the Lord Chief Justice, Senior President of Tribunals, Senior Presiding Judge, Director of Judicial Policy (MoJ) and policy officials from the Directorate of Judicial Policy (MOJ x3), Private Office of the Lord Chancellor (x1)

JAC

Chairman and Commissioners (x11), Head of Operations, Head of Finance and Digital Services, JAC Media Adviser