

DIVERSITY UPDATE

September 2020



Background

Under the Constitutional Reform Act 2005, the Judicial Appointments Commission'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

The JAC has identified four target groups of people whom data shows are underrepresented in the judiciary: women, black, Asian and minority ethnic (BAME) people, disabled people and solicitors. However, all protected characteristics, as defined in the Equality Act 2010, are considered when carrying out equality measures.

COVID-19: JAC Business continuity

In line with government advice, in mid-March 2020 we suspended all face-to-face selection activity. We are continuing with selection activity that can be completed remotely, in order to meet the needs of the courts and tribunals. This includes launching selection exercises, receiving applications, shortlisting and video interviews. In addition to this we are delivering remote outreach events, alongside our partners, to replace face-to-face sessions.

Diversity has been at the heart of our business continuity planning, and careful consideration has been given to ensuring there are no disproportionate negative impacts on candidates from our 4 target groups or any other protected characteristic group. Any candidate who is having difficulties completing any part of our remote processes as a result of COVID-19-related issues is encouraged to contact the JAC to explore potential alternative arrangements. We are being flexible wherever we can to ensure that we continue to attract strong, diverse candidates to apply.

Recent highlights

- the publication by the newly-strengthened Judicial Diversity Forum – which the JAC chairs - of a combined statistical report; the first of its kind. It brings together data on the diversity of the judiciary, judicial appointments and from the relevant legal professions (solicitors, barristers and legal executives). The report provides, in one place, data which offers a window into factors which impact upon judicial diversity and bring into focus where positive improvements have been made, and where more remains to be done

- the launch of three new initiatives:
 - The MoJ is funding a two-year pilot programme of targeted outreach and support activity by the JAC; a small and separate unit (from selection exercise assessments and decisions) within the JAC is tasked to engage with, and provide advice and guidance to potential BAME, women, disabled and solicitor candidates for specific senior court and tribunal roles
 - The JAC have undertaken targeted outreach to potential BAME applicants to a rolling recruitment programme of lay panel members, to increase the diversity of its cadre of lay panel members. This will support the introduction of an “exercise gateway test” (alongside gender) to ensure that panels, on aggregate, have ethnic diversity for each exercise to proceed. In parallel, Judicial Office are refreshing the pool of judges for deployment on JAC exercises. In relation to more senior exercises, the senior judiciary are committed to ensuring a greater proportion of BAME judges are made available to serve on selection panels
 - The JAC will carry out research and analysis, to supplement that done in the JDF Rapid Evidence Assessment (REA), into measures used in other common law jurisdictions with improved judicial diversity outcomes. This will include consultation and engagement with stakeholders on lessons for England and Wales.
- the extension of name-blind sifting from June 2020 for all selection exercises using a paper sift as a shortlisting method, means that all JAC shortlisting is now name-blind to further promote fair selection and diversity.
- 178 lawyers from under-represented groups allocated places on the Pre-application Judicial Education Programme (PAJE); due to COVID-19 recent judge-led discussion sessions have been delivered online instead of in physical groups
- expanded the diversity of membership of the JAC Advisory Group which reviews selection materials
- tailored communications approaches and messaging where necessary to reflect the challenging circumstances that many candidates and stakeholders are experiencing during the COVID-19 pandemic.

1. Targeted outreach and support for potential applicants from under-represented groups

New activity

- In response to the COVID-19 government advice, we have increased the amount of outreach activity delivered through remote channels. We have worked with partners to deliver a series of webinars, remote seminars, conferences and workshops to encourage and support candidates from underrepresented groups.
- From September 2020, a small, separate unit – comprising a JAC staff member and three former Commissioners – is tasked to engage with, and provide advice and guidance to, potential BAME, women, disabled and solicitor candidates for specific senior court and tribunal roles. This is a two-year pilot programme of targeted outreach and support activity funded by the MoJ.
- From autumn 2020, the JAC will commission academic research and analysis, to supplement that done in the JDF Rapid Evidence Assessment (REA), into measures used in other common law jurisdictions with improved judicial diversity outcomes. This will include consultation and engagement with stakeholders on lessons for England and Wales.
- Following three pilots, we have further developed our approach to candidate feedback. Candidates at the qualifying test stage are now being provided with their test scores and a published feedback report which provides further details on the test, pass-marks and the relative performance of candidates. 'Near-miss' candidates applying for fee-paid roles are offered individual feedback following selection day to help inform future applications, and all those applying for salaried roles invited to selection day will be offered individual feedback.
- We have worked with the Judicial Office to publish pen portraits of the most recent High Court Judge appointments. The pen portraits highlight pathways into, and within, the judiciary to assist candidates who are interested in a High Court role.
- We have worked with the Judicial Office and the City of London Law Society to deliver a pilot support programme to city solicitors who are interested in judicial appointment. The programme has involved a series of workshops alongside mentoring sessions with current judges. The programme will be evaluated later in the year.

Ongoing activity

- All vacancies are advertised on the JAC's website and promoted by stakeholders in the legal professions, the judiciary and by other non-legal representative bodies.
- Vacancies are also advertised in the JAC's monthly email newsletter: Judging Your Future, on Twitter and on LinkedIn.
- The JAC has a varied programme of outreach activity, which includes supporting events run by our partners and stakeholders. Over the year the JAC has supported approximately 40 such events, reaching large numbers of potential candidates across a range of different groups. Much of our outreach activity is targeted at under-represented groups.
- The JAC publishes articles in legal specialist media to inform potential candidates about joining the judiciary and forthcoming selection exercises.
- There are over 100 case studies and podcasts with successful candidates from a range of different backgrounds on the JAC website.
- The JAC website also includes information about competency based assessment, the "Am I Ready?" tools and other guidance to assist candidates with their application.

2. Fair and non-discriminatory selection processes

New activity

- From June 2020 the JAC began using name blind sifting for all exercises using a paper sift as a shortlisting method, to further promote fair selection and diversity. The candidate's name is automatically removed and replaced with a unique identifier. All online tests are marked name-blind.
- We have established of a Bank of Situational Judgement Tests for legal exercises which are closely analysed to assess how candidates perform in the questions, in particular the diversity of candidate progression from under-represented groups. This analysis helps the JAC to ensure that Situational Judgement Tests are effective and fair across all groups of candidates.
- We have undertaken targeted outreach to potential BAME applicants to a rolling recruitment programme of lay panel members, to increase the diversity of our cadre of lay panel members. This will support the introduction of an "exercise gateway test" (alongside gender) to ensure that panels, on aggregate, have ethnic diversity for each exercise to proceed.
- Judicial Office are refreshing the pool of judges for deployment on JAC exercises. In relation to more senior exercises, the senior judiciary are committed to ensuring a greater proportion of BAME judges are made available to serve on selection panels.
- In June 2020 the JAC held its largest ever online combined qualifying test for the Deputy District Judge (Civil) and Fee-paid First Tier Tribunal Judge and Employment Judge exercises. Combining the test in this way was designed to maximise the number of strong, diverse candidates who applied for these entry-level exercises.
- We have launched a new digital application platform which provides an improved candidate experience, an enhanced level of accessibility, and allows us to conduct more in-depth data collection and analysis.
- For more senior roles, in response to candidate and stakeholder feedback, we are now using a streamlined application process to make it as open, flexible and accessible as possible. For the High Court competition as well as the competitions under s9(1) and 9(4) of the Senior Courts Act, assessment is made against a concise set of required skills and abilities to be a High Court judge. Following positive feedback, elements of the new approach are now being rolled out to most leadership roles.

- We have introduced a new approach to quality assurance, which involves a new team of Quality Assurance Managers taking a lead in supporting fair selection during selection exercises.
- In addition to ongoing support and review, we have recently developed a new appraisal process whereby the performance of lay panel members is formally reviewed every 18 months to ensure skills and knowledge are refreshed in line with best practice.
- All selection materials are reviewed by staff and the JAC Advisory Group to ensure that the content is not inadvertently advantageous to candidates from a particular legal background, jurisdiction or practice area. There is a good representation of women and BAME individuals in the current membership of the Group, and there are representatives from across the legal professions (Law Society, Bar Council, CILEx) and judges from different levels across the courts and tribunals. We have recently recruited additional members to the Advisory Group with the particular aim of increasing diversity in terms of ethnicity, disability and professional background.

Ongoing activity

- Where two or more candidates are assessed as being of equal merit, the JAC will if possible select a candidate for the purpose of increasing judicial diversity using equal merit provisions (EMP). The selection applies where there is underrepresentation of protected characteristics in terms of gender and/or ethnicity. This applies at shortlisting and the final decision-making stage. In June 2019 the JAC extended its use of equal merit provisions to cover both the shortlisting stages and final decision-making stage of every exercise. The JAC is now making full use of the provisions within statute to encourage diversity.
- The JAC follows a published process, consistently assessing candidates against a bespoke competency framework or set of skills and abilities for each exercise.
- A Commissioner is assigned to each exercise to oversee quality assurance and fair selection.
- 70% of our lay panel members are female and we achieve a gender balance on almost every panel convened. Representation of BAME and disabled panel members has increased over the past couple of years (figures currently stand at 13% and 14% respectively).
- Panel members are briefed on fair selection before each stage of a selection exercise. This training is aimed at mitigating unconscious bias and covers different professional and judicial backgrounds, as well as the protected characteristics under the Equality Act 2010.
- All JAC vacancy pages and assessment materials are reviewed to ensure that the content and tone does not contain stereotypes, colloquialisms or language that may be off putting to different groups, and that role plays and scenarios feature a diverse range of characters.
- All assessment materials are tested through 'dry runs' with mock candidates, subsequently using analytics to identify any issues with qualifying test questions and making adjustments to the content and timing. Observations of live role plays, telephone assessments and interviews are carried out to ensure consistency and the use of fair selection principles across panels.
- Progression of target candidate groups is monitored at key stages in the selection process: post-application, after each stage of shortlisting and post-selection day.
- Equality impact assessments are carried out on all major changes to policies and the selection process to ensure that the changes will not have adverse effects on any particular group.
- Reasonable adjustments are considered at all stages of the process for candidates with physical, sensory and mental health disabilities, and long-term health conditions.

- In 2017 the JAC introduced improved questions on professional background to the diversity monitoring form. These questions enable the JAC to record candidates' professional background more fully, and in 2018 we began reporting on those candidates who have 'ever' been a solicitor in addition to those whose 'current legal role' is a solicitor.
- We seek independent expert advice on our processes on a regular basis and in 2018 commissioned Work Psychology Group (WPG) to undertake a review of shortlisting processes in large exercises, specifically focussing on differential progression of under-represented groups. The review, and the previous reviews in 2013 and 2015, endorsed JAC shortlisting processes and tools as being in line with best practice, and no explanation was found within the process for different progression rates between particular groups. The 2018 report provided recommendations for further improvement to ensure our selection tools fully assess the potential of candidates, particularly for entry level roles. We are taking forward the WPG recommendations through a 2-year forward programme of work which includes developing combined qualifying tests for certain entry level judicial positions, streamlining our approach to non-legal exercises and using pre-recorded alternative approaches to role play.
- We have amended our approach to how we collect feedback from candidates to ensure that we get the most useful information that can inform the continuous review and improvement of our selection processes. As part of the new approach we have introduced diversity monitoring questions so we can analyse the responses given by candidates from our target groups.
- In 2018 JAC statisticians began a 'deep dive' statistical analysis of candidate progression. This project examines the progression of certain target groups through selection exercises, using logistical regression to control for a range of factors such as professional background, age and pre-qualification experience. The JDF will consider the analysis further in late 2020 once a larger and more stable dataset is available.

3. Working with others to break down barriers

New activity

- In September 2020 the Judicial Diversity Forum published a [combined statistical report](#) – the first of its kind. It brings together data on the diversity of the judiciary, judicial appointments and data from the relevant legal professions (solicitors, barristers and legal executives). The report provides, in one place, data which offers a window into factors which impact upon judicial diversity and bring into focus where positive improvements have been made, and where more remains to be done.
- Alongside the combined statistical report, the JDF published a narrative which draws out the report's key findings and an action plan summarising the wide range of actions that its members are undertaking, either collectively or individually to help increase judicial diversity.
- The pre-application judicial education programme (PAJE), a joint initiative of the JDF launched in April 2019. The programme seeks to provide potential candidates from underrepresented groups with in-depth education and training on all aspects of judge-craft. The programme consists of online training videos/modules and judge-led discussion groups to help applicants develop the skills and competencies needed. 178 candidates have already engaged in the programme through judge-led discussion group courses, with a further 94 to participate in virtual judge-led discussion group courses this Autumn/Winter 2020.
- In 2019 the aims and membership of the JDF were strengthened to ensure greater focus and collaboration in the area of judicial diversity. The JDF, under its new format, has begun to explore the development of a common approach to monitoring and evaluation to better assess the impact of diversity initiatives. A rapid evidence assessment (REA) has been commissioned to provide a consolidated evidence base about judicial diversity initiatives that are currently being delivered by JDF member organisations.
- We have been working with the Ministry of Justice and Her Majesty's Courts and Tribunal Service on the availability of flexible working for judicial vacancies. The JAC position is that it should be available by default, unless there are good and specific reasons why it is not practicable. We have seen a gradual shift toward this, and it is something that we will continue to focus on.
- We are supportive of the steps being taken within the Judiciary on appraisal and development, particularly at the more senior levels, to help address potential barriers to progression within the judiciary (from a fee-paid to salaried position, or salaried to a more senior role).

Ongoing activity

- The JAC chairs the JDF, which brings together leaders of the Ministry of Justice, Judiciary, Legal Services Board and legal professions to provide strategic direction to activities aimed at encouraging greater judicial diversity. The Forum challenges structural barriers to appointment, analyses and addresses the reasons behind differential progression, uses evidence to generate ideas, resolves issues of common concern and supports the coordination of agreed activities aimed at increasing judicial diversity. Forum members support each other's initiatives and undertake joint projects.
- The JAC speaks about the selection process at events run by the legal professions, the judiciary, Judicial Office and other groups. We also take part in roundtable discussions and workshops to discuss barriers to application and appointment, and we act upon stakeholder feedback as appropriate.
- We continue to work with the legal professions on the development of candidate support programmes for their members who are interested in judicial careers. These include the Judicial Office Deputy High Court Judge Support Programme and the CILEx Judicial Development Programme, the Law Society Pathways to Judicial Appointment project and the Bar Council's mentoring schemes.

4. Diversity data 2019-20: Applications and outcomes

- Note: the 'eligible pool' comprises all those lawyers who meet the minimum statutory criteria for judicial appointment. Data from the Bar Standards Board and Solicitors Regulation Authority shows that the diversity of more senior lawyers is less representative with regards gender, ethnicity and disability than the eligible pool. For example, at 1 April 2020:
 - Among QCs, 17% were women and 9% BAME (compared to 38% and 15% for barristers overall)
 - Among partners in solicitor firms, 32% were female and 15% BAME (compared to 52% and 18% for solicitors overall)
- Since the JAC was established, there has been a clear increase in the representation of women at both application and recommendation stages for all main court roles. For example, since the JAC was established women have comprised 35% of applicants and 38% of recommendations. In the pre JAC period women comprised 16% of applicants and 22% of recommendations.
- Overall, women are progressing in line with their levels within the eligible pool.

Legal exercises

- **Women** continued to perform well in JAC legal exercises throughout 2019-20, and made up nearly half (45%) of candidates recommended for appointment, in line with the previous year (48%)
 - 50% of applicants were women
 - 45% of candidates shortlisted were women
 - 45% of candidates recommended for appointment were women.
- **BAME** candidates continue to apply in high numbers – in many exercises above the level of the eligible pool - and made up 13% of recommendations for legal exercises.
- BAME representation among applicants exceeded the eligible pool for 13 of the 14 large legal exercises and was the same as the eligible pool for the High Court Judge exercise. The BAME recommendation rate was 5% (5% of BAME applicants were successful/recommended), compared to a recommendation rate of 13% for white applicants.

- BAME representation was lower among recommendations than in the eligible pool figure for 8 of the 14 large legal exercises. The proportion of BAME recommendations is roughly in line with BAME representation in the working age population (14% based on 2011 Census).
- Candidates declaring a **disability** accounted for 8% of applicants, 7% of those shortlisted and 7% of those recommended for appointment. No eligible pool data is currently available on disability. The 2018 statistics from the Bar Standards Board and Solicitors Regulation Authority show 6% and 3% of the professions declared a disability respectively. The 2020 Labour Force survey found that around 20% of the working age population are disabled.
- In order to improve the accuracy of reporting of **Solicitors**, from 2019 we have included analysis of applicants who have declared ever holding the role of solicitor as well as those who have a current legal role of solicitor. This enables the professional background of salaried judicial office holders to be measured more fully.
- The proportion of current solicitors that were recommended was 33% in 2019-20. Those who have ever been a solicitor accounted for 58% of applicants, 46% of those shortlisted and 41% of those recommended for appointment.

Non-legal exercises

- The JAC selects candidates for recommendation as non-legal members of tribunals and does so using the same selection tools and selection panels as those used to select judges in legal exercises.
- In non-legal exercises in 2019-20, the representation of BAME applicants was 18% of applicants, 20% of shortlisted candidates and 23% of those recommended for appointment.
- 41% of those recommended for non-legal roles were women – a higher proportion than among applicants (34% women).
- The representation of disabled applicants was slightly higher than for legal exercises, with disabled candidates accounting for 11% of applicants and 8% of recommendations.