

Judicial Appointments Commission (JAC) Diversity Update

April 2019

Background

Under the Constitutional Reform Act 2005, 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

The JAC has identified 4 target groups of people whom data shows are underrepresented in the judiciary: women, BAME people, disabled people and solicitors. However, all protected characteristics, as defined in the Equality Act 2010, are considered when carrying out equality measures.

Action on diversity

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

Current 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 LinkedIn
- The JAC has a busy programme of outreach activity, which includes supporting events run by our partners and stakeholders. Over the past 2 years the JAC has supported over 60 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 60 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

Activity underway/planned

- 3 pilots were undertaken in 2018 to trial enhanced approaches to feedback to help candidates understand why their application was unsuccessful and to assist with future applications. In one of the pilots, candidates who were identified as 'near-miss' were provided with individual feedback. These pilots will be evaluated in 2019 and will help inform the JAC's future approaches to feedback
- Building upon recent outreach events, we will be taking part in tailored workshops for potential candidates from different groups, for example the Crown Prosecution Service and legal academics, to support them in making their first application for judicial appointment

- We have been working with the Judicial Office on developing enhanced guidance for candidates on pathways into, and within, the judiciary, with an initial focus on routes into the High Court. This guidance will be used in our outreach activities from autumn 2019

2. Fair and non-discriminatory selection processes

Current activity

- A Commissioner is assigned to each exercise to oversee quality assurance and fair selection
- Each 3-person sift or selection panel comprises a lay Chair and an independent member alongside a judicial member. Several steps have been taken recently to increase diversity within our cadre of lay panel members. Positive action approaches, including targeted outreach, have been implemented as part of the recruitment process. The current gender balance of our lay panel members is good (67% 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 9% 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 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 are currently running an exercise to expand the membership of the Advisory Group with the particular aim of increasing diversity in terms of ethnicity, disability and professional background
- All JAC vacancy pages and assessment materials are reviewed to ensure that the content and tone are gender-neutral and do 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
- All online tests are marked automatically, and therefore name-blind
- 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
- The JAC follows its published process, assessing candidates against a bespoke competency framework for each exercise
- Official Statistics bulletins are published annually to record performance, including the diversity of selections. In 2017 the JAC introduced improved questions on professional

background to the diversity monitoring form. The new questions enable the JAC to record candidates' professional background more fully and accurately and to report on this more meaningfully in future annual official diversity statistics

- Where 2 or more candidates are assessed as being of equal merit, the JAC can select a candidate for the purpose of increasing judicial diversity using the equal merit provision (EMP). The EMP applies to the characteristics of gender and ethnicity, and is used at the final decision-making stage

Activity underway/planned

- We seek independent expert advice on our processes on a regular basis and most recently 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 a combined qualifying test for certain entry-level judicial positions, and exploring alternative approaches to role play
- We are taking forward name-blind sifting of paper applications. Following a recent pilot, we have extended this approach to all small exercises launching from April 2019, pending development of a new digital platform which will allow us to automate this for all exercises
- For more senior roles we are trialling a streamlined application process. For the current High Court competition, the current online application form has been replaced with an offline application by letter setting out suitability, with a brief, factual CV. For this competition as well as the current deputy 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. The new skills and abilities reflect the qualities previously required by the competency framework, but on a broader level. Candidates can develop the evidence they have acquired in a way that demonstrates their personal strengths and accomplishments overall, with fewer prescribed qualities. These changes were made in response to candidate and stakeholder feedback and are intended to make the process as open, flexible and accessible as possible. We will evaluate this approach in 2019 and consider whether to roll out to other competitions
- We are amending 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 will be including diversity monitoring questions from spring 2019 so we can analyse the responses given by candidates from our target groups
- A project to deliver enhanced panel assurance was delivered during the selection day stage of the current Recorder competition. Increased observations and data analyses were used to monitor candidates from target groups. Regular discussions were had with panel members about fair selection, consistency and the potential negative effects of unconscious bias. The project will be evaluated to help shape the approaches taken on future similar exercises
- In 2018 JAC statisticians began a 'deep dive' statistical analysis of candidate progression. This long-term project is designed to help us to better understand 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 Judicial Diversity Forum recently noted the volatility of the data and agreed to consider the analysis further once a larger and more stable dataset is available

3. Working with others to break down barriers

Current activity

- The JAC chairs the Judicial Diversity Forum (JDF), which brings together the Ministry of Justice (MoJ), Judiciary and legal professions to identify ways of improving 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 encouraging greater 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

Activity underway/planned

- The pre-application judicial education programme (PAJE), a joint initiative of the Judicial Diversity Forum will launch in late April. It will support underrepresented groups in better understanding how their legal experience has prepared them for judicial office. It will also give potential candidates an insight into the realities of judicial roles and offer an opportunity to address any perceptions they may have on barriers to judicial office. The online element will be available to all, providing information on a range of judicial roles and what skills are needed. The second element will take the form of judge-led workshops, with priority being given to underrepresented groups in allocating spaces
- We have been working with the MoJ and HM Courts & 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)
- We are working with JDF partners to develop fuller and more accurate data on the eligible pool of candidates across the legal professions and identify gaps where further research, particularly into the aspirations of potential candidates, could potentially be undertaken

4. Diversity data: 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:

- Of all QCs in 2017-18¹: 15.8% were women; 7.8% BAME; and 1.1% declared a disability
- Among partners in solicitor firms²: 33% of partners are female, 20% are BAME
- 8% of partners within large solicitor firms of 50+ people are BAME, and 29% are women
- 3% of solicitors overall reported a disability

Legal exercises

- **Women** continued to perform well in JAC exercises throughout 2017–18, and made up nearly half (47%) of candidates recommended for appointment. 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, the proportion of women recommended for the High Court has increased from 13% pre-JAC to 24% over the JAC period – and was 29% in 2017–18. Overall, women are progressing in line with their levels within the eligible pool
- **BAME candidates** continue to apply in high numbers – in many exercises above the level of the eligible pool - and made up 13% of recommendations overall. The percentage of BAME recommendations for legal roles in 2017-18 was 9%, an increase on the previous year (6%). The level of applications and recommendations for BAME candidates have increased across all main court roles since the JAC was established. For example, the proportion of BAME candidates recommended for the High Court has more than doubled, from 2% pre-JAC to 5% over the JAC period – and was 6% in 2017–18
- **Candidates declaring a disability** continue to be recommended in line with applications, at 7%. No eligible pool data is available on disability. The 2017 statistics from the Bar Standards Board and Solicitors Regulation Authority show 2.1% and 3% of the professions declared a disability respectively. The 2015 Labour Force survey found that 10% of the working age population are disabled
- **Solicitors** made up a fifth of recommendations overall (21%) in 2017-18, double the proportion in the previous year (10%). In 3 large salaried legal exercises (Salaried Judge of the First-tier Tribunal, District Judge (Civil) and District Judge (Magistrates' Court), solicitors accounted for almost half (45 to 48%) of recommended candidates

Non-legal exercises

- The JAC selects candidates for recommendation as non-legal members of tribunals and does so using the same selection tools and panels as those used to select judges in legal exercises. In non-legal exercises in 2017-18, BAME candidates progressed broadly in line with the high proportion of applications, representing over a fifth (22%) of recommended candidates. Well over half – 64% of those recommended for non-legal roles were women. Disabled candidates were recommended in line with applications

¹ www.barstandardsboard.org.uk/media/1975681/diversity_at_the_bar_2018.pdf

² <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page>