

JANUARY 2020



JAC

**DIVERSITY
UPDATE**

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 four target groups of people whom data shows are underrepresented in the judiciary: women, black 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.

RECENT HIGHLIGHTS

- equal merit provisions extended to the shortlisting stages of selection exercises
- the extension of name-blind shortlisting, already used for online tests, to sifts of applications and independent assessments for smaller exercises
- alternative approach to live role play piloted at selection day
- new approach to candidate feedback to better inform and support future applications
- strengthened aims and membership of the Judicial Diversity Forum (JDF)
- almost 200 lawyers from under-represented groups allocated places on the pre-application judicial education programme (PAJE)
- expanded membership of the external JAC Advisory Group which reviews selection materials

ACTION ON DIVERSITY

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

NEW ACTIVITY

- Following three pilots, we have further developed our approach to candidate feedback. Unsuccessful candidates at the qualifying test stage are now being provided with an overall percentage score and signposted to a published feedback report which provides further details on the test and the relative performance of candidates. 'Near miss' candidates are receiving individual feedback following selection day to help inform future applications.
- Building upon recent outreach events, we have taken 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. Further workshops are planned for 2020.
- 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. Once completed, this guidance will be used in our outreach activities in 2020.
- 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 in 2020.

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 70 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.

ACTION ON DIVERSITY

2. Fair and non-discriminatory selection processes

NEW ACTIVITY

- In June 2019 the JAC extended its use of the equal merit provision 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.
- 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 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 are taking forward name-blind sifting of paper applications. Following a recent pilot we have extended this approach to all small exercises, and it will be automated for all exercises pending development of a new digital platform.
- 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, the 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 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. Following positive feedback, elements of the new approach are now being rolled out to most leadership roles.
- 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.

ACTION ON DIVERSITY

- A project to deliver enhanced panel assurance was implemented during the selection day stage of the 2018-19 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 was evaluated to help shape our 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 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 JDF has noted the volatility of the data and agreed to consider the analysis further once a larger and more stable dataset is available.
- 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.

ONGOING ACTIVITY

- Where 2 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). EMP applies to the underrepresented characteristics of gender and ethnicity.
- 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.
- 67% 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 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 have recently recruited additional members to the Advisory Group with the particular aim of increasing diversity in terms of ethnicity, disability and professional background.

ACTION ON DIVERSITY

- 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 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.

3. Working with others to break down barriers

NEW ACTIVITY

- The pre-application judicial education programme (PAJE), a joint initiative of the JDF launched in April 2019. It supports underrepresented groups in better understanding how their legal experience has prepared them for judicial office. It also gives potential candidates an insight into the realities of judicial roles and offers an opportunity to address any perceptions they may have on barriers to judicial office. The online element is available to all, providing information on a range of judicial roles and what skills are needed. The second element takes the form of judge-led workshops, with priority being given to underrepresented groups in allocating spaces. Almost 200 spaces have been allocated to lawyers from underrepresented groups for the first two rounds of discussion groups.

ACTION ON DIVERSITY

- In 2019 the aims and membership of the JDF have been 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.
- We are working with JDF partners to release a combined statistical report in September 2020 which will show the flow of underrepresented groups from the legal professions through JAC exercises and into the judiciary.
- We have been working with the Ministry of Justice 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).

ONGOING ACTIVITY

- The JAC chairs the 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.

ACTION ON DIVERSITY

4. Diversity data 2018-19: 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 2018-19 : 15.8% were women; 7.8% BAME; and 1.1% declared a disability.
 - Among partners in solicitor firms : 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 2018-19, and made up nearly half (48%) of candidates recommended for appointment, in line with the previous year 2017-18 (47%).
 - 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 33% 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.
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- **BAME** candidates continue to apply in high numbers – in many exercises above the level of the eligible pool - and made up 14% of recommendations, in line with the previous year (13% in 2017-18).
 - BAME representation among applicants exceeded the eligible pool for 5 of the 6 large legal exercises and was the same as the eligible pool for the High Court Judge exercise. The BAME recommendation level is 14%.
 - BAME representation was lower among recommendations than in the eligible pool figure for all 6 of the large legal exercises. The proportion of BAME recommendations is roughly in line with BAME representation in the working age population (16%).
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[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>

ACTION ON DIVERSITY

- Candidates declaring a disability accounted for 10% of applicants, 11% of those shortlisted and 10% of those recommended for appointment. No eligible pool data is available on disability. The 2018 statistics from the Bar Standards Board and Solicitors Regulation Authority show 5.9% and 4% of the professions declared a disability respectively. The 2015 Labour Force survey found that 10% of the working age population are disabled.

- In order to improve the accuracy of reporting of Solicitors, we included in 2019, for the first time, 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.
- Compared to last year, the proportion of recommended current solicitors has almost doubled – from 21% in 2017-18 to 41% in 2018-19.
- Those who have ever been a solicitor accounted for 62% of applicants, 51% of those shortlisted and 47% 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 panels as those used to select judges in legal exercises.
- In non-legal exercises in 2018-19, the representation of BAME applicants remained around 25% from application to shortlisting and recommendation for appointment.
- Well over half – 60% of those recommended for non-legal roles were women.
- The representation of disabled applicants was higher than for legal exercises. This was largely due to the non-legal Fee-paid Disability Tribunal Member exercise for which it was necessary for applicants to meet at least 1 of 4 eligibility requirements, which included having a disability or having direct experience of working with people with a disability.