

DIVERSITY UPDATE

May 2021



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 4 target groups of people whom data shows are under-represented 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, since mid-March 2020 all face-to-face selection activity has been suspended. We are continuing with all selection activity 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.

We will be evaluating remote assessment, and reflecting on lessons learned, in order to inform our longer-term approaches. Any changes to our current arrangements, including the potential return to some face-to-face selection activity, will be carefully considered and clearly communicated to candidates in good time.

Recent highlights

- The JAC established the Targeted Outreach and Research Team in September 2020. On 9 November 2020 a self-referral programme launched encouraging eligible candidates from under-represented groups to apply for targeted support. Since the launch:
 - We received 156 applications with good representation across the JAC's target groups
 - Almost half of these applications have been successful, and candidates will receive targeted support, with tailored actions plans already compiled
 - A scheme has been set up matching suitable candidates to senior members of the judiciary to act as guides

- In December 2020 we completed a diversity impact assessment of remote working during the COVID-19 period which showed that the new remote selection process has not led to any disproportionate negative impacts on the diversity of applicants applying or progressing through selection exercises. Monitoring is ongoing and will feed into the broader evaluation of our remote assessment approaches.
- Our diversity impact assessment highlighted some positive findings in relation to our outreach activities, where through close partnership working and better use of technology, we have been able to reach wider audiences.
- The Judicial Diversity Forum (JDF) – which the JAC chairs – has now been operating in its new strengthened format for 12 months. The JDF has published an action plan, summarising new and ongoing initiatives to be delivered by partners individually or in partnership, aiming to speed up the pace of change on judicial diversity.
- The JDF have expanded the Pre-Application Judicial Education (PAJE) programme, increasing the number of places available on the judge-led workshop courses. All workshops continue to be delivered remotely in line with COVID-19 restrictions.
- Work is underway by the JDF to deliver a second combined statistical report in 2021, which will again bring together data on the diversity of the judiciary, judicial appointments and the relevant legal professions (barristers, solicitors, CILEx members). It will build upon the 2020 report with new areas of analysis.
- We have tailored communications approaches and messaging where necessary to reflect the challenging circumstances that many candidates and stakeholders are experiencing during the COVID-19 pandemic.
- We have offered flexibility by way of reasonable adjustments in what continues to be a very challenging time for many candidates, due to personal and/or professional pressures associated with COVID-19.



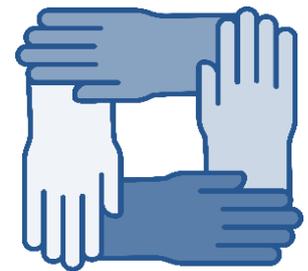
1. Targeted outreach and support for potential applicants from under-represented groups

New activity

- In December 2020 we completed a diversity impact assessment of remote working during the COVID-19 period which showed that the new remote selection process has not led to any disproportionate negative impacts on the diversity of applicants applying or progressing through selection exercises. Monitoring is ongoing and will feed into the broader evaluation of our remote assessment approaches.
- We are offering flexibility by way of reasonable adjustments in what continues to be a very challenging time for many candidates, due to personal and/or professional pressures associated with COVID-19.
- We have worked with stakeholders to highlight different routes to the judiciary, to encourage applications from eligible candidates.
- 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.

Ongoing activity

- Since September 2020, the Targeted Outreach and Research Team, a small, separate unit – comprising a JAC staff member and three former Commissioners – has been 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 Ministry of Justice (MoJ). The pilot focusses specifically on senior salaried roles, and their main fee-paid pipelines, which remain particularly under-represented for BAME (and to a lesser extent woman, solicitor and disabled) candidates: High Court; Deputy High Court; Circuit Judge; Recorder and Upper Tribunal. Priority is given to the group(s) with lowest outcomes and these candidates will be encouraged to apply when they are ready. Since launch, 156 applications have been received with good representation across the JAC’s target groups. Almost half of these applications have been referred for targeted support and tailored action plans have been created. A guide scheme has also been set up matching suitable candidates with senior members of the judiciary.
- In line with COVID-19 government advice, we have continued outreach activity remotely. Over the last 12 months the JAC has supported approximately 36 such events, reaching large numbers of potential candidates across a range of different groups. We have worked with our partners and stakeholders to deliver a series of webinars, remote seminars, conferences and workshops to encourage and support candidates from under-represented groups.
- 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 publishes articles in specialist media to inform potential candidates about joining the judiciary and forthcoming selection exercises.
- The JAC website features inspiring stories of successful candidates from a range of diverse backgrounds.
- The JAC website also includes guidance to assist candidates with their application, including information about competency-based assessment.



2. Fair and non-discriminatory selection processes

New activity

- We continue to build and develop our digital platform, launched in January 2020, to provide an improved candidate experience, an enhanced level of accessibility, and to allow us to conduct more in-depth data collection and analysis. The platform has been built in line with the Government Digital Service's Technology Code of Conduct and Service Standards, and development of the platform is under-pinned by user research and feedback.
- In 2021 a new pre-recorded roleplay was used at the selection day stage on one of the large fee-paid exercises run by the JAC; First-tier Tribunal and Employment Tribunal judge. The pre-recorded role play offered a more consistent candidate experience when compared with role plays using live actors.
- In March 2021, the government announced its intention to legislate to raise the Mandatory Retirement Age from the current age of 70. To ensure that candidates who would be otherwise eligible are not unfairly excluded, the JAC worked on transitional arrangements with MoJ. It is the Lord Chancellor's policy that the JAC and other bodies responsible for the appointment of judicial office holders should, for exercises commencing from the date of publication of the government response, consider applications from candidates who can offer a reasonable length of service before reaching the retirement age of 75 (rather than 70) following recommendation.
- For some salaried posts, the Lord Chancellor will place a requirement that candidates are expected to have previous judicial experience. Since the pandemic, where candidates have been unable to complete the minimum sitting days, the Selection and Character Committee has considered on a case by case basis whether to allow a candidate to achieve the required sitting days after the application stage in line with our published approach.
- We have increased the diversity of our cadre of lay panel members through targeted outreach. The Judicial Office is also refreshing the pool of judges for deployment on JAC exercises. This will support our commitment to achieve both ethnic and gender diversity across panels.

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 under-representation 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) and will be closely monitored and evaluated in the next 12 months.
- 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 roleplays, and scenarios feature a diverse range of characters. We are trialing the use of non-courtroom based scenarios for situational questions in some exercises.
- 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 roleplays 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.
- 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
- We seek independent expert advice on our processes on a regular basis and in 2018 commissioned the Work Psychology Group (WPG) to undertake a review of shortlisting processes in large exercises, specifically focusing 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 have delivered WPG recommendations, which include a combined qualifying test for entry level judicial positions, banks of situational questions for leadership roles, and using pre-recorded role play for the Fee-paid Judge of the First-tier Tribunal and Employment Tribunal exercise. In 2021/22 we will be exploring the use of non-live video assessments.
- 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 2021 once a larger and more stable dataset is available.
- Since March 2020, the JAC has conducted all selection activity online. To assist candidates and panel members we have increased our cadre of JAC Coordinators. They provide one-on-one technical support with candidates ahead of selection day, ensuring candidates are aware and comfortable in the functionality of MS Teams as well as providing support to the candidate and selection exercise panels on the day.

3. Working with others to break down barriers

New activity

- In September 2020 the JDF 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.
- In late 2020 the JAC launched a new website, designed in line with user research findings from diverse groups. The website contains enhanced candidate support materials, clearer signposting and is fully accessible.
- 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.
- Work is underway by the JDF to deliver a second combined statistical report in 2021, which will again bring together data on the diversity of the judiciary, judicial appointments and the relevant legal professions (barristers, solicitors, CILEx members). It will build upon the 2020 report with new areas of analysis.
- We are leading a new JDF research project into the qualifying test (QT) stage of selection exercises. This is because the QT stage is where we see the steepest drop-offs of target group candidates. The project will use a blended approach of quantitative and qualitative methods to better understand the factors influencing target group progression, so that JDF partners can better tailor their outreach approaches and that the JAC can continue to review and improve its shortlisting tools.
- The Targeted Outreach and Research team are preparing an international research project, to assess measures used by common-law jurisdictions to improve judicial diversity. Project commencement is expected in May 2021.



- 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.



The Bar Council



JUDICIARY OF
ENGLAND AND WALES

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)

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.
- 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.
- **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.

Diversity data 2020-21 will be available alongside the combined statistical report, due summer 2021.

