

DIVERSITY UPDATE

December 2021



Background

Under the Constitutional Reform Act 2005, the Judicial Appointments Commission's (JAC) 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 individuals, individuals with disabilities, and solicitors. However, all protected characteristics, as defined in the Equality Act 2010, are considered when carrying out equality measures.

The JAC diversity update is a biannual publication that reports on ongoing progress and new activity undertaken by the JAC in line with the JAC's diversity strategy. The strategy has three key strands: outreach; fair and non-discriminatory selection processes; and working with others to break down barriers.

COVID-19: JAC business continuity

In line with government advice, between mid-March 2020 and September 2021 all face-to-face selection activity was suspended and undertaken remotely, in order to continue to meet the needs of the courts and tribunals. This included launching selection exercises, receiving applications, shortlisting and video interviews. In addition to this we delivered 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 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.

The safety and well-being of candidates, panel members and staff remains a priority to us, alongside the business need. Where restrictions have allowed, we have returned to some face-to-face selection activity, and have kept candidates informed if government guidance has necessitated changes. We will continue to review and seek feedback on our approach.

Recent highlights

- In April 2021, we completed a full evaluation of our remote assessment processes, which indicated positive candidate feedback and showed no disproportionate negative impacts on the diversity of applicants applying or progressing through our selection exercises.

- In July 2021 our Chairman, Lord Kakkar announced to the Justice Select Committee that we would be launching a comprehensive, independent review of the statutory consultation process with the findings expected in the New Year.
- Also, in July 2021, the second Combined Statistical Report was published. This provides a picture not only of the diversity of today's judiciary, but also of the process by which judges are recruited and the diversity of the pool from which much of that judiciary is drawn. This year's report included enhanced ethnicity data and new intersectional data to help all those involved in judicial careers better understand the progression of candidates from a wide variety of backgrounds and inform our efforts to tailor and target our support.
- In December 2021, we published a report of the 'deep dive' statistical analysis that we commissioned in 2018 to examine the differences in success rates for target group candidates in selection exercises. This new, exploratory analysis is another of our contributions to support efforts across the legal sector to try and speed up the pace of change.
- We have successfully increased the diversity of our cadre of lay panel members through targeted outreach. 70% of our lay panel members are now female, 18% are from Black, Asian and minority ethnic backgrounds, and 16% have declared a disability. We achieve a gender balance on almost every panel convened.
- From September 2021, the Targeted Outreach and Research team is also now monitoring the ethnic diversity of panels for each selection exercise, including both lay and judicial panel members. We are supporting selection exercise teams to convene panels across each exercise with ethnic diversity in line with the Black, Asian and ethnic minority working age population (14%), as set out in the most recent Census data currently available (2011).
- In September 2021 the Targeted Outreach Team celebrated the completion of the first year of the pilot programme of targeted outreach for key court and tribunal roles, in which we identify and work with specific eligible candidates from under-represented target groups. Since launch, the programme has received 278 applications, with 136 of those applicants receiving support from a Targeted Outreach Team Commissioner. The Team's candidate guidance was published for the benefit of all current and potential applicants, following 89% positive feedback on its value in the pilot programme.
- In June 2021 we launched our 'Pathways to the judiciary' case study series, sharing inspirational stories from judges who have taken non-traditional routes to the judiciary.
- We have continued to grow our online candidate resources including launching a candidate guidance pack in November 2021, as well as updating our 'Am I ready' tests and creating new video and written support for candidates considering non-legal roles.
- As part of our ongoing response to COVID-19, the JAC has continued its outreach work to ensure candidates are kept informed of upcoming opportunities and can learn more about judicial careers. We're also continuing to offer flexibility in our reasonable adjustments for candidates facing personal or professional pressures as a result of the pandemic.

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

New activity

- In April 2021, we completed a full evaluation of the introduction of remote assessment necessitated by the COVID-19 period. The evaluation showed that the new remote assessment process has not led to any disproportionate negative impacts on the diversity of applicants applying or progressing through selection exercises. We are continuing to monitor and evaluate to inform our longer-term approach.
 - We have worked with stakeholders to highlight different routes to the judiciary, to encourage applications from eligible candidates. In June and July 2021, we launched our series 'Pathways to the judiciary' which shared a number of inspirational stories from judges who took a variety of non-traditional routes into their current judicial careers. In celebrating these stories, we demonstrated the different routes into the judiciary and encouraged candidates from non-traditional backgrounds and under-represented groups to pursue a role in the judiciary.
 - We have worked with 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.
 - The Targeted Outreach Team celebrated its first year of operation in September 2021. Following the launch of the pilot's self-referral programme in November 2020, the team commissioned and trialed a guidance pack with the pilot programme, providing information on the JAC selection exercises, with top tips for success and generic anonymised examples of most stages of the selection exercise process. 89% of applicants agreed that the Guidance Pack is useful.
- Following the positive feedback, the guidance pack was published on 11 November as part of the suite of resources available on the JAC website, to benefit all JAC applicants and ensure that candidates from all backgrounds have access to the latest support and information.
- Our commitment to remote outreach activity has enabled us to reach new audiences over the past few months. Our outreach activity has included presentations to in-house legal teams at the Law Society's in-house lawyers conference, lawyers with regulatory and disciplinary backgrounds through a presentation to the Association of Regulatory and Disciplinary Lawyers, and those with intellectual property expertise through presenting at an event hosted by the Intellectual Property Office and IP Inclusive. We have also shared our experiences with international audiences, including speaking to delegates at a Venice Commission conference.
 - In November 2021 the JAC supported an initial evaluation of the Pre-Application Judicial Education Programme (PAJE) by providing data on the application numbers and progression of PAJE candidates through JAC selection processes. This data was considered by the JDF alongside evidence collated from surveying PAJE participants and other accompanying data collated by the programme and will be used to enable the programme to be further enhanced and targeted.

Ongoing activity

- Since September 2020 the Targeted Outreach and Research Team, a separate unit within the JAC, has been tasked to engage with, and provide advice and guidance to, potential candidates from underrepresented backgrounds for specific senior court and tribunal roles. The pilot focusses specifically on senior salaried roles, and their main fee-paid pipelines, which remain particularly under-represented in terms of ethnicity (and to a lesser extent gender, professional background, and disability). These roles are High Court, Deputy High Court, Circuit Judge, Recorder and Upper Tribunal. Priority is given to the group(s) with lowest level of representation and these candidates will be encouraged to apply when they are ready.
- In year one of the pilot programme, the team received 278 applications, of which 136 applicants were accepted. 69% of applicants taking part in the programme are women, 68% from a of Black, Asian and minority ethnic background, 52% are from a solicitor professional background and 16% have declared a disability. The annual survey concluded that 96% of successful candidates agreed or strongly agreed that their conversation with a Commissioner was tailored and useful, while 93% of successful candidates agreed or strongly agreed that following their consultation with a Commissioner they felt more informed and confident about making a judicial application.
- The judicial guide scheme has proven to be a very successful initiative, with support from both the courts and tribunals judiciary. Currently, there are over 180 volunteers to support applicants, with over 72 matches with senior members of the judiciary. Notably, 92% of the applicants that have been matched with a guide confirmed that the support they received made them feel more confident and informed about making a judicial application.
- Since the beginning of the 2021 calendar year, the JAC have spoken at 40 stakeholder events with a focus on outreach targeted at encouraging individuals from underrepresented backgrounds to consider applying to judicial roles.
- The JAC has continued to support the Pre-Application Judicial Education Programme through presenting an overview of the selection process and competency framework to all cohorts completing the Autumn/Winter programme.
- The new JAC website continues to be enhanced, following its launch in late 2020. This includes the Am I Ready self-assessment tools, that have recently been updated and relaunched on our website, and which allow for potential candidates to get a sense of whether they meet the eligibility, suitability and character requirements for a legal role in the judiciary.
- We are continuing to offer 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.

2. Fair and non-discriminatory selection processes

New activity

- 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 enhanced standardisation and allowed panel members to consistently differentiate between candidates.
- Our Chairman, Lord Kakkar announced a review of the operation of statutory consultation at the Justice Select Committee hearing in July. The review will make sure we use statutory consultation in the most appropriate way and allow us to reassure candidates that we are using it in a fair and clear way in line with our statutory responsibilities. The review is being externally and independently conducted by Work Psychology Group (WPG) and will be completed in early 2022.
- In 2018 we commissioned Ministry of Justice statisticians to undertake a 'deep dive' statistical analysis to control for the effect of selected factors in relation to the progression of different groups through JAC processes, in order to try and understand the differences in success for target groups. The formal report was published in December 2021. The report shows that gender is not a significant factor in progression through the judicial application process, and overall women and men have similar success rates through all selection tools. In legal exercises the report shows that success rates for Black, Asian and minority ethnic candidates and solicitor candidates were lower, even when other significant factors were held constant. These disparities were seen across all selection tools – including those conducted face-to-face and online tests which are marked automatically. However, no difference in success rates was seen for Black, Asian and minority ethnic candidates in non-legal exercises to select lay or specialist tribunal members, which use the same selection tools, and the same rigorous equality-assurance measures. This suggests that the types of professional pools from which candidates are drawn may be playing a part in the observed disparities. The JAC will work with partners to better understand some of the key issues raised by the deep dive and will use qualitative and quantitative research tools to review target group performance across JAC qualifying tests.
- We have increased the diversity of our cadre of lay panel members through targeted outreach. 70% of our lay panel members are female and we achieve a gender mix on almost every panel convened. Representation of Black, Asian and minority ethnic and disabled panel members has increased over the past couple of years (figures currently stand at 18% and 16% respectively) and will be closely monitored and evaluated in the next 12 months.
- From September 2021, the Targeted Outreach and Research team is also now monitoring the ethnic diversity of panels for each selection exercise, including both lay and judicial panel members. We are supporting selection exercise teams to convene panels across each exercise with ethnic diversity in line with the Black, Asian and ethnic minority working age population (14%), as set out in the most recent Census data currently available (2011).
- The Judicial Office has refreshed the pool of judges for deployment on JAC exercises to support our shared commitment to achieving both ethnic and gender diversity across our shortlisting and selection panels. The pool of 285 judges comprises 140

women (49%), 37 judges from Black, Asian or minority ethnic backgrounds (12%) and 138 solicitor judges (48%). The pool will be considered alongside the JAC's own cadre of lay panel members to ensure ethnic and gender diversity across our panels.

- We have evaluated the introduction of the Skills and Abilities framework in

leadership exercises introduced in 2019. Overall, the evaluation suggested a positive reaction from candidates and stakeholders with no negative impact on the diversity of candidates applying or progressing through each stage of the exercises.

Ongoing activity

- We have continued 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 underpinned by user research and feedback.
- 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 continuing to trial the use of non-courtroom-based scenarios for situational questions in some exercises.
- 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 of Black, Asian and minority ethnic 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.
- 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.
- 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. The JAC are currently undertaking a review of the fair selection training and will consider improvements that can be made for future selection exercises.
- Progression of target candidate groups are 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.
- 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). When two or more candidates in a selection exercise are judged as being of equal merit, we can give priority to one or more candidates from underrepresented groups through our equal merit approach. This approach can be used where there is underrepresentation on the basis of ethnicity or gender. 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.

- A Commissioner is assigned to each exercise to oversee quality assurance and fair selection.
- 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 have been exploring the use of non-live video assessments. Now that we have completed this programme of work following the WPG review, and have implemented our diverse panels policy, we have addressed all of the recommendations (that did not require statutory change) that were included within the 2017 JUSTICE report on judicial diversity.

- 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.

3. Working with others to break down barriers

New activity

- In July 2021 the Combined Statistical Report was published by the Judicial Diversity Forum. This provides a picture not only of the diversity of today's judiciary, but also of the process by which judges are recruited and the diversity of the pool from which much of that judiciary is drawn. This is the second combined statistical report, following the publication of the flagship report in September 2020. As with the 2020 report, the updated 2021 version 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. The 2021 report builds upon its predecessor and includes enhanced data on ethnicity and intersectionality.
- The JDF will soon publish its 2021/2022 action plan summarising the new and ongoing activity that Forum members will be engaged in over the coming year. The action plan will provide an update on work to deliver the JDF's commitment to create a common monitoring and evaluation framework which the JDF will collaborate on together, with the support of the Bridge Group. The framework will enable future activity planning and prioritisation to measure impact more fully.
- A JDF rapid evidence assessment (REA) was commissioned by the Ministry of Justice (MoJ) in 2020 to provide an up-to-date evidence base on barriers to judicial appointment, current diversity initiatives and their evaluation. The REA report was approved by the Forum and is in the final stages of peer review prior to publication.
- 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 outreach approaches and the JAC can continue to review and improve this shortlisting tool. This project is under way and initial findings are due in Spring 2021.
- We commissioned the National Centre for Social Research (NatCen) in June 2021, to research, evaluate and engage with international stakeholders on measures used successfully by other common law jurisdictions to improve judicial diversity. This will help the JAC and JDF partners better understand how these might be used in England and Wales. The project is currently underway, with expected completion in Summer 2022.

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 several 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 CILEx Judicial Development Programme, the Law Society Pathways to Judicial Appointment project and the Bar Council's mentoring schemes.
- The JAC continues to regularly research and approach new stakeholders, including those that are directly focused on our target groups, as part of exercise-specific outreach campaigns, as well as more generally.
- The JAC has continued to highlight stories from under-represented and non-traditional candidate groups, specifically with our June and July social media series 'Pathways to the judiciary'. In celebrating these stories, we demonstrated the variety of routes into the judiciary and encouraged candidates from different professional backgrounds and underrepresented groups to pursue a role in the judiciary. We are currently creating further social media case study series. We are continuing to work with Judicial Office on expanding the network of judicial office holders who can contribute to the series.
- We have continued to work 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 promote.

4. Diversity data 2020-2021: 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 to gender, ethnicity and disability than the eligible pool. For example, at 1 April 2021:
 - Among Queen's Counsel, 18% were women and 10% were from Black, Asian and minority ethnic backgrounds (compared to 39% and 15% for barristers overall respectively).
 - Among partners in solicitor firms, 33% were female and 16% were from Black, Asian and minority ethnic backgrounds (compared to 52% and 18% for solicitors overall respectively).

Legal exercises

- For judicial selection exercises during 2020-21, the statistics show that overall, there was no statistically significant difference in recommendation rates from the eligible pool for women or Black, Asian and minority ethnic candidates relative to men and White candidates respectively, though this does vary within specific exercises. However, recommendation rates from application for solicitor candidates were significantly lower than for barrister candidates.
- **Women** continued to perform well in JAC legal exercises throughout 2020-2021 and made up nearly half (44%) of candidates recommended for appointment, in line with the previous year (45%).
- 43% of applicants were women, 42% of candidates shortlisted were women, and 44% of candidates recommended for appointment were women.
- Since the JAC was established, overall, 35% of applicants and 38% of recommendations have been women. In the 8-year period pre-JAC women comprised 16% of applicants and 22% of recommendations.
- Overall, women are progressing in line with their levels within the eligible pool.
- **Black, Asian and minority ethnic** candidates continue to apply in high numbers – in many exercises above the level of the eligible pool - and made up 14% of recommendations for legal exercises.
- 22% of applicants were from Black, Asian and minority ethnic backgrounds, 15% of candidates shortlisted were from Black, Asian and minority ethnic backgrounds, and 14% of candidates recommended for appointment were from Black, Asian and minority ethnic backgrounds.
- Black, Asian, and minority ethnic candidate recommendations are lower for more senior exercises. However, in 2021, for 4 of the 5 roles requiring previous judicial experience, representation among recommendation was higher than the eligible pool.
- When considering the **intersection of gender and ethnicity** across all legal exercises between April 2018 and April 2021, Black, Asian and minority ethnic men accounted for 11% of applications and 6% of recommendations. Black, Asian and minority ethnic women accounted for 13% of applications and 6% of recommendations. White women accounted for 36% of applications and 39% of recommendations. White men accounted for the remaining 40% of applications and 49% of recommendations.
- Candidates declaring a **disability** accounted for 7% of applicants and 4% 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.

- 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. However, we still see a disparity of recommendations between solicitors and barristers.
- Candidates who were 'ever' solicitors accounted for 40% of applicants and 28% of those recommended for appointment (this is down from last year from 58% and 41% respectively). Candidates who were current solicitors accounted for 28% of applicants and 15% of those recommended for appointment (also down from 52% and 33% respectively last year).
- In non-legal exercises the representation of disabled applicants was higher than for legal exercises, with disabled candidates accounting for 24% of applicants and 15% of recommendations.
- Diversity data 2021-22 will be available alongside the combined statistical report, due summer 2022.

Non-legal exercises

- The JAC selects candidates for recommendation as non-legal members of tribunals and does so using the same selection panels and the same types of selection tool that are used to select judges in legal exercises.
- Across all non-legal exercises in 2020-2021, 70% of recommendations were women and 27% were from Black, Asian and minority ethnic backgrounds. In non-legal exercises between 2018 and 2021, 17% of recommendations were from Asian backgrounds, 4% were from Black backgrounds, 3% were from Mixed ethnic backgrounds and 1% were from Other ethnic backgrounds.
- Across all non-legal exercises in 2020-2021, recommendation rates from application were 18% higher for women than they were for men. In non-legal exercises between 2018 and 2021, recommendation rates for Asian candidates were 23% higher than for White candidates and rates for Black, Asian and minority ethnic men and women, and White women, were all higher than for White men.