JAC
JUDICIAL APPOINTMENTS COMMISSION

DIVERSITY UPDATE

January 2024

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 underrepresented in the judiciary: women, ethnic minority individuals, disabled individuals, and solicitors. However, all protected characteristics, as defined in the Equality Act 2010, are considered when carrying out equality measures.

Our statutory purpose is the independent selection of candidates for judicial appointment on merit from a diverse field. Diversity is at the forefront of our strategy, and one of our strategic aims is to attract well-evidenced applications for judicial office from the widest range of high calibre candidates, supporting greater judicial diversity.

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.

Recent highlights

- Data from the *Diversity of the Judiciary* combined statistical report, published annually by the Judicial Diversity Forum (JDF), demonstrates that since its inception in 2006, the JAC has overseen, on average, positive steps towards increased diversity in applications and appointments across all groups. 18% of new entrants to the judiciary in 2022-23 were from an ethnic minority background, and ethnic minority candidates were recommended for appointment in JAC legal selection exercises in 2022-23 in line with their representation in the eligible pool.

- We have completed the JDF's qualitative research into the JAC Qualifying Test (QT) – the second phase of a wider two-year research project to further explore the differential outcomes observed for target group candidates at the QT stage in legal exercises. This project has provided evidence that will assist all JDF partners in further tailoring and targeting outreach and support activities and will support the JAC in its continual review and improvement of its selection tools. Work is underway to implement a joint QT work programme, which sets out actions the Forum will take in response to the findings of the research. These aim to increase candidate confidence in the judicial selection process and underline the JDF's commitment to work together to remove barriers for target group candidates.

- The Targeted Outreach and Research Team continues to support underrepresented candidates. As of December 2023, the programme has received 747 applications, of which, following sifts by former JAC Commissioners, 396 candidates are taking part in the programme and receiving support from a Targeted Outreach Team Commissioner and/or a judicial guide.

- In January 2024 the JDF published its 2024 action plan which sets out the activities that JDF partners will undertake in the next year and how the impact of each initiative will be measured. In 2023, following the adoption of a theory of change methodology to the 2023 action plan, the JDF worked to develop and strengthen its approach to evaluation and has delivered a number of joint initiatives to deliver against its strategic priorities. Work is underway to scope out a statistical modelling work strand to support the JDF's assessment of progress against indicators of success.

- The JAC website continues to be enhanced with resources to support individuals considering applying for judicial posts, including our selection day guidance document published in October 2023 and our example role play interactive video which launched on our website in August 2023.

1. Targeted outreach and support for potential applicants from underrepresented groups

New activity

- The Targeted Outreach and Research Team continues to support underrepresented candidates. Since April 2023, the JAC has:
  - Expanded the Targeted Outreach programme to include all legal roles, with streamlined ways of working to support a wider pool of candidates.
  - Varied the routes of support for candidates.
  - Continued to track and improve outcomes for candidates with regular data analysis and feedback to wider stakeholders.
  - Launched new online resources on the JAC website to help candidates understand and better prepare for the JAC selection exercise process.

- The Judicial Guide Scheme launched in 2021 to provide additional support to candidates specifically with the JAC selection exercise process in mind, and is overseen by HHJ Nigel Lickley KC, Director of Training. Accredited training is provided by the JAC, with 164 accredited judicial guides to date. In 2023 the team ran two training sessions, supported by the Lady Chief Justice and the Senior President of the Tribunals. A further three smaller bespoke sessions were also run in December 2023.

- The Judicial Guide handbook launched in October 2023, which provides judicial guides with comprehensive information on the role of a judicial guide and guidance on supporting candidates. We also established the Judicial Guide Forum which offers networking opportunities and a forum for judicial guides to share experiences and best practice for supporting candidates.

- The Targeted Outreach and Research team have increased levels of stakeholder engagement, working closely with the Lady Chief Justice, the Courts and Tribunals Judiciary and Judicial College to increase the number of stakeholder referrals to the Targeted Outreach programme.

- The JAC continues to support the delivery and development of the Pre-Application Judicial Education (PAJE) programme. There is evidence to show that the programme has successfully targeted underrepresented groups and that PAJE attendance correlates with improved success rates in judicial exercises.

- In 2023 we worked with our JDF partners to refresh the PAJE programme material to ensure that it continues to be a relevant and useful resource to prospective judicial candidates. The PAJE programme is continuing to trial a return to in-person workshops and adopted this approach for the 2023 Autumn/Winter round of workshops in November-December 2023. The option of in-person attendance has received positive feedback from candidates and will inform the future approach of the programme.

Ongoing activity

- Since September 2020, the Targeted Outreach and Research Team has engaged with, and provided advice and guidance to, potential candidates from underrepresented backgrounds. The programme supports candidates in all legal selection exercises.

- Monitoring and evaluation has been embedded within the programme and we use data from the JAC digital platform to track candidate performance through every stage of selection exercises. Analysis of the programme has shown that:

    - Female ethnic minority solicitors on the Targeted Outreach programme (3 of 4 target groups) were appointed at rates more than twice higher than the comparator group of candidates with those characteristics over the last three years.
    - Candidates from a black ethnic minority background on the Targeted Outreach programme were appointed at rates almost twice higher than the comparator group of candidates with those characteristics over the last three years.
    - Ethnic minority solicitors on the Targeted Outreach programme were also appointed at rates almost twice higher than the comparator group of candidates with those characteristics over the last three years.

- As of December 2023, the programme has received 747 applications, of which, following sifts by former JAC Commissioners, 396 candidates are taking part in the programme and receiving support from a Targeted Outreach Team Commissioner and/or a judicial guide. Of accepted candidates, 69% are women, 62% are from an ethnic minority background, 19% declared a disability and 64% are solicitors.

- The Judicial Guide Scheme within the Targeted Outreach programme is co-badged with the judiciary, allowing the team to streamline routes of support for candidates. To date, over 200 candidates have received support from a member of the judiciary as part of the Scheme.

- The JAC is committed to encouraging individuals from non-traditional backgrounds to apply for judicial posts. We continue to deliver our extensive programme of outreach activities to ensure that candidates from a wide range of backgrounds can engage with current and future selection processes. In the 2023 calendar year, the JAC spoke at 47 stakeholder events with a focus on encouraging individuals from underrepresented backgrounds to consider applying to judicial roles.

2. Fair and non-discriminatory selection processes

New activity

- We have increased the guidance and support available to candidates on our website on how to draft their self-assessment, and provided some examples that can assist candidates in drafting more evidence-based self-assessments and to better reflect their skills in a competency-based assessment.

- We have analysed the candidate survey responses across all exercises which completed selection days in 2022 to assess whether there are any additional themes that the JAC needs to address from candidate feedback. The evaluation told us that candidates appreciate the support and professionalism of the JAC staff and panel members, and they largely have confidence in the selection day tools being used. Action is being taken in response to the evaluation where it was identified that further refinement to the selection process is required, for example providing updated guidance to candidates on how to prepare for the JAC selection process.

- The JAC website continues to be enhanced with resources to support individuals considering applying for judicial posts, such as our selection day guidance document published in October 2023. Following the positive candidate and stakeholder feedback on the practice QT tool launched in 2022, we launched an example role play video on our website in August 2023 to add to the suite of candidate support materials. This tool allows users to interact with the video and builds upon the existing written guidance to assist candidates in preparing for their selection days.

Ongoing activity

- The JAC applies quality assurance checks throughout the selection process to ensure proper procedures are followed, standards are maintained, and all stages of recruitment are free from bias. All protected characteristics, as defined in the Equality Act 2010, are considered when carrying out equality measures. Other characteristics, such as socio-economic background and professional background, are also considered to ensure that the JAC selection process is open and fair.

- Selection exercise materials are developed in line with independent expert advice and are reviewed throughout their development for possible unfairness. This includes:

  - assigning a JAC Commissioner to each exercise to oversee quality assurance and fair selection;
  - All selection exercise materials are reviewed by staff and the JAC Advisory Group to ensure that selection materials do not unfairly advantage or disadvantage any candidate on the basis of their protected characteristics or background;
  - testing all assessment materials with mock candidates and then adjusting the content and timing.

- The selection process itself is also carefully monitored by us, including:

  - Monitoring and analysis of progression of target groups at key points in the selection process;
  - Briefing panel members on fair selection before each stage of a selection exercise;
  - Conducting observations of all elements of the selection process to ensure consistency and the use of fair selection principles across panels.

- Since September 2021, the JAC has monitored the ethnic diversity of panels for each selection exercise, encompassing both lay and judicial panel members. We work closely with the Judicial Office to ensure we convene balanced panels across each exercise, aiming for ethnic diversity in line with the latest ONS data on ethnicity in the population of England and Wales (Census 2021, ONS).

- 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 298[1] judges comprise 140 women (47%), 44 ethnic minority judges (15%), and 142 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 increased the diversity of our cadre of lay panel members through tailored outreach. 72% of our lay panel members are female and we achieve a gender mix on almost every panel convened. 20% of our lay panel members are ethnic minority and 15% of lay panel members declared a disability. To improve transparency in this area, a breakdown of panel diversity data is now included in our Annual Report, following the first formal publication of this data in 2022.

- Following the implementation of the revised approach to Statutory Consultation in September 2022, we are collecting data to complete an evaluation of the revised approach after a full two-year cycle of exercises.

- Reasonable adjustments are considered at all stages of the process for candidates with physical, sensory, and mental health disabilities, and long-term health conditions.

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[1] This figure represents the number of judges who have given consent to share their data.

- 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 regarding ethnicity or gender at 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 and continues to monitor and evaluate the impact of the equal merit approach. For exercises reporting in the 2022/23 period, as a result of using EMP, 184 candidates were advanced to the next stage of the process at the shortlisting stage, and 25 candidates were recommended at the selection day stage.

- We have continued to build and develop our digital platform to provide an improved candidate experience, an enhanced level of accessibility, and to allow us to conduct more in-depth data collection and analysis.

3. Working with others to break down barriers

New activity

- The JDF published an update to the Forum's priorities and actions in January 2024. During 2023, the Forum worked collectively to further strengthen its strategic approach, including identifying gaps where further action may be required. The 2024 action plan provides an update to this approach and outlines the activities that JDF partners will undertake in the next year to deliver against these four outcomes and how the impact of each initiative will be measured and evaluated.

- We completed our work with JDF partners to better understand target group performance and experiences across JAC qualifying tests. This research built upon the findings of the JAC's deep dive analysis conducted in 2018 which found that the QT stage of the selection process is where we see the steepest drop-off rate of our target group candidates in legal exercises. The quantitative first phase of the research analysed QT data stored on the JAC's digital platform to provide further insight into the differential performance of our target groups. Following this, the JDF commissioned organisational psychologists, Work Psychology Group (WPG), to deliver the second qualitative phase of the research in 2023. The JAC led this research in partnership with WPG and JDF members to build our understanding of the differences in profile between successful and unsuccessful candidates at the QT. This involved issuing a survey to former candidates with recent experience of the QT and conducting in-depth follow-up interviews with target group candidates to better understand experiences of the test. Work is underway to implement a joint QT work programme, which sets out actions the Forum will take in response to the findings of the research. These aim to increase candidate confidence in the judicial selection process and underline the JDF's commitment to work together to remove barriers for target group candidates.

- A JDF working group has commissioned statistical analysis to improve our ability to measure current progress across the different stages towards the judiciary to understand how different characteristics can act as a predictor of success throughout the talent pipeline. In doing so we can better track and help to increase diversity across the judiciary by knowing where to target interventions. This work will link to the JDF's ongoing priority to establish a more nuanced model of seniority for the legal professions.

- The JAC continues to work alongside the Judicial Office and the Foreign and Commonwealth Office to support and engage with judicial appointments bodies and judicial office holders from other jurisdictions, including international engagement. We have hosted a number of international visits including from the Supreme Court of Korea and the Judicial Appointment Commission of Indonesia. We have provided insight to the British Embassy in Ukraine and their efforts to aid in judicial reform there. Information has also been shared with Dubai, Brazil and Chile regarding best practice in judicial selection.

Ongoing activity

- The JAC chairs the JDF, which brings together leaders of the Ministry of Justice, Judiciary, Legal Services Board, and the 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.

- We have continued to work with the Ministry of Justice and His 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.

- Following a review of social mobility data, the JDF Statistical Working Group is working to achieve further alignment in collection and reporting for 2024, with the aim of enhancing the data and analysis on social mobility in Combined Statistics reports from 2025.

- The JAC regularly 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.

- The JAC continues to highlight stories from under-represented and non-traditional candidate groups, specifically with our social media series 'Pathways to the Judiciary'. We are continuing to work with the Judicial Office on expanding the network of judicial office holders who can contribute to the series, with the aim of encouraging candidates from different professional backgrounds and under-represented groups to pursue a role in the judiciary.

4. Diversity data 2022-2023: Applications and outcomes

- This section presents diversity data relating to JAC applications and outcomes. All figures are taken from the Judicial Diversity Forum's annual Combined Statistical Reports. The most recent report, published in July 2023, can be found here. After summarising the key statistics from the report, a selection of statistical insights are included, which provide further analysis and context around these figures

Lawyers in the eligible pool for legal exercises

- The 'eligible pool' comprises all those lawyers who meet the minimum statutory criteria for judicial appointment (typically, at least 5 years of post-qualification legal experience). Data from the Bar Standards Board and Solicitors Regulation Authority shows that diversity in the eligible pool is increasing. However, applications for judicial appointment tend to come from more lawyers with more experience than is required by statute. The average amount of post-qualification legal experience held by applicants to roles requiring 5+ years' experience was over 17 years for 2022-2023 selection exercises. Diversity in the more experienced and senior levels of the legal professions remains lower. This is explored in the time series data in sections 1 and 2 of the statistical insights chapter.

Legal exercises

- **Women** were recommended for appointment in legal selection exercises in 2022-23 in line with their representation in the eligible pool and had a recommendation rate from application slightly higher than male applicants.

- Across all legal exercises, women accounted for 51% of recommendations for appointment; this is slightly higher than the expected representation (50%) if

recommendations were in line with the overall eligible pool for 2022-23 exercises.

- Representation of women in the legal exercises remained stable throughout the selection process – women accounted for 50% of applications, 50% of those shortlisted and 51% of those recommended for appointment.

- The new intersectionality section of the report (Section 8.2) showed that once the impacts of being an ethnic minority or a solicitor have been accounted for, being a woman is associated with a 25% increase in the likelihood of appointment.

- **Ethnic minority** candidates were recommended for appointment in legal selection exercises in 2022-23 in line with their representation in the eligible pool.

- Across all legal exercises, ethnic minority candidates accounted for 16% of recommendations for appointment, which is the same as the expected representation (16%) if recommendations were in line with the overall eligible pool for 2022-23 exercises.

- Ethnic minority candidates continue to apply for judicial appointments in high numbers and their representation decreased throughout the selection process, particularly at shortlisting. Across all legal exercises in 2022-23, ethnic minority individuals accounted for 27% of applications, 18% of those shortlisted and 16% of those recommended for appointment.

- Across all legal exercises in 2022-2023, candidates who declared a **disability** represented 9% of applications and 9% of all recommendations made for judicial appointment. Disabled candidates were recommended for appointment at a slightly higher rate than candidates without a disability.

- No detailed eligible pool data is currently available on disability. 2022 statistics from the Bar Standards Board show that 7% of practitioners at the Bar who provided information on disability status disclosed a disability. 2021 data from the Solicitors Regulation Authority reported that 5% of lawyers declared they had a disability.

- 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 in recommendation rate between solicitors and barristers.

- Recommendation rates from application for solicitor candidates were significantly lower than for barrister candidates. Across all legal exercises in 2022-2023, there was a higher representation of solicitors (48%) than barristers (35%) among applications, but solicitors constituted a smaller percentage of recommendations (35%, compared to 50% for barristers).

- Candidates who were "ever" solicitors accounted for 44% of those recommended for appointment. In comparison, candidates who were "ever" barristers made up 56% of the recommendations for judicial appointment.

- Chartered Legal Executives constituted 1% of applications for legal exercises in 2022-2023. It is important to note that Chartered Legal Executives are only eligible to apply for a limited number of legal exercises.[2]

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 selection tools that are used to select judges in legal exercises.

- Non-legal exercises continue to see positive target group representation. For 2022-2023 exercises, a higher proportion of **women** and **ethnic minority** candidates were recommended in non-legal exercises than in legal exercises. Women accounted for 69% of recommendations for appointments to non-legal tribunals in this year. Across all non-legal exercises in 2022-2023, recommendation rates from applications were 4 percentage points higher for women than they were for men.

- Ethnic minority candidates constituted 19% of recommendations for non-legal tribunal posts. In non-legal exercises between 2020 and 2023, recommendation rates from application for Asian candidates, and candidates with "Other" ethnicity were individually equal to or greater than the rate of white candidates, while the rates for black and mixed ethnicity candidates were slightly lower.

- Across all 2022-2023 non-legal exercises, 11% of applications and 6% of those recommended for appointment declared themselves to have a **disability.** Each year the types of non-legal selection exercise included in the reporting year varies, and each may have significantly different representation of target groups in their respective eligible pools – something we are not able to analyse.

[2] In 2022-23 CILEX lawyers were eligible to apply for the following judicial posts: District Judge, District Judge (Magistrates' Courts), Deputy District Judge, Deputy District Judge (Magistrates' Courts), Judge of the First-tier Tribunal, Employment Judge, Road User Charging Adjudicator, Senior Coroners, Area Coroners and Assistant Coroners.

5. Statistical Insights from the 2023 Diversity of the Judiciary Report

This section presents some statistical insights from the 2023 report, which seek to go beyond the headline figures to provide further analysis and context.

Section 1 – Ethnic Minority Time Series

A headline result from the 2023 report was that ethnic minority candidates were recommended in JAC legal judicial selection exercises in line with their eligible pool representation. The following graph tracks how ethnic minority representation in JAC recommendations compares with representation in the eligible pool, as well as in judicial applications, and in the sitting judiciary, since 2014, illustrating trends in the system over time.
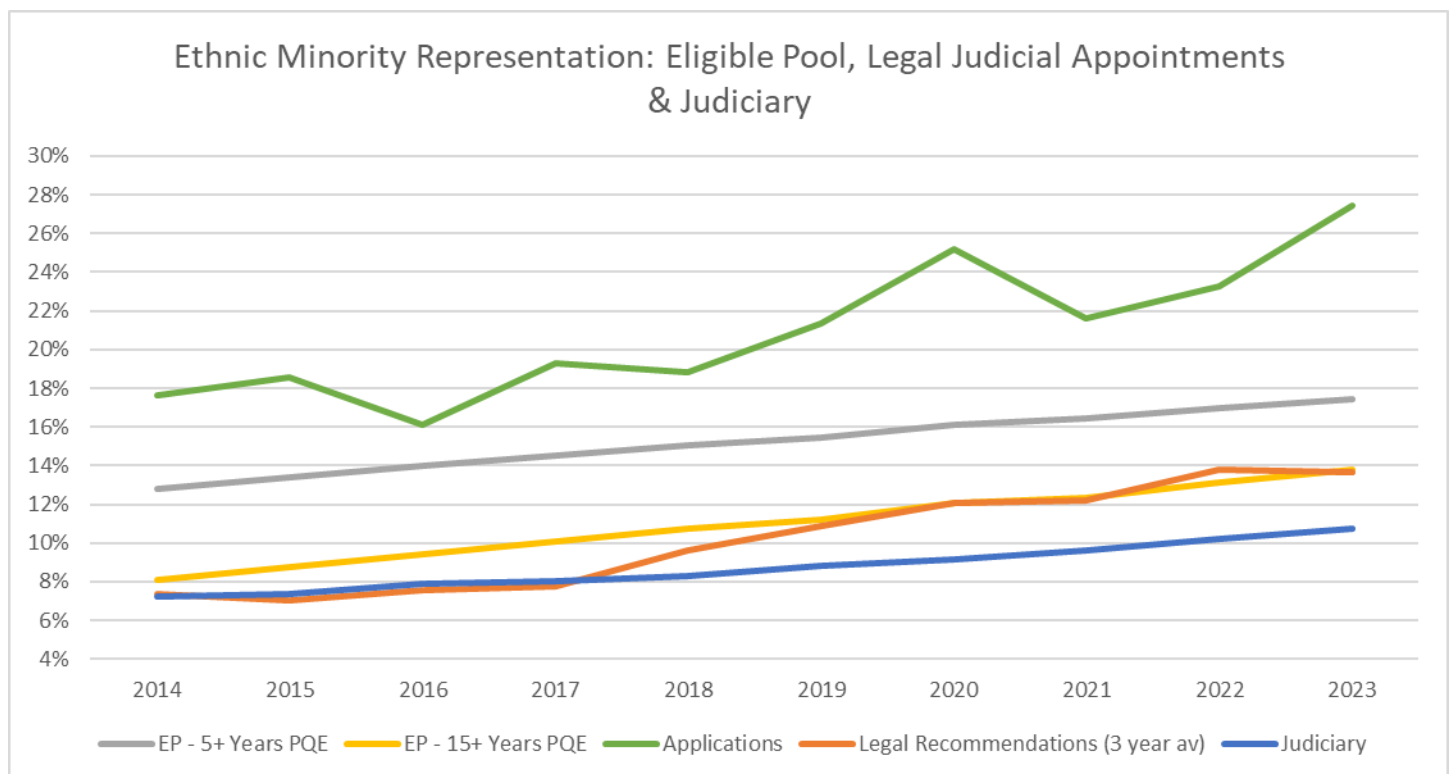
Here the **grey** line is the pool of lawyers eligible to apply for a legal judicial role (with 5+ years of post-qualification legal experience, abbreviated to PQE), while the **yellow** line is the more experienced pool of eligible lawyers (with 15+ years of PQE), from which applications generally come. The **green** line is year on year applications for judicial roles, the **orange** line is a rolling three-year average of recommendations for legal roles, and the **blue** line is the sitting judiciary. The graph shows:

- Ethnic minority representation in applications is consistently higher than in the pool of eligible lawyers – in particular, it is much higher than representation in the more experienced pool.
- Representation of ethnic minority lawyers in recommendations since 2019 has tracked very closely with representation in the pool of those with 15+ years' PQE.
- Ethnic minority representation in the judiciary has been increasing at a faster rate in recent years: 7.2% to 8.3% from 2014 to 2018; 8.8% to 10.8% from 2015 to 2023.
- The statistics report shows that progress for different ethnicities within the ethnic minority category is not uniform, and in particular black representation within the judiciary is not increasing in line with increases in the pool of eligible lawyers.

Considering recommendations for specific judicial roles, tab 2.5 of the downloadable tables for the 2023 report contains the following data, showing ethnic minority representation in recommendations for 6 roles before the JAC was established (1998 to 2006), since the JAC was established (2007 to 2023), and in the last three iterations of each selection exercise.

Role	Pre-JAC	Post-JAC established	Last 3 exercises
High Court Judge	2%	7%	17%
Circuit Judge	2%	6%	14%
Recorder	No data	10%	13%
District Judge	6%	10%	15%
District Judge (Magistrates' Court)	4%	11%	18%
Salaried Judge of the First-tier Tribunal	No data	13%	16%

Each of these roles shows a clear increase in the proportion of recommendations from an ethnic minority background in more recent selection exercises.

Section 2 – Female Time Series

We present the same time-series graph for female representation below.

Female Representation: Eligible Pool, Judicial Appointments & Judiciary
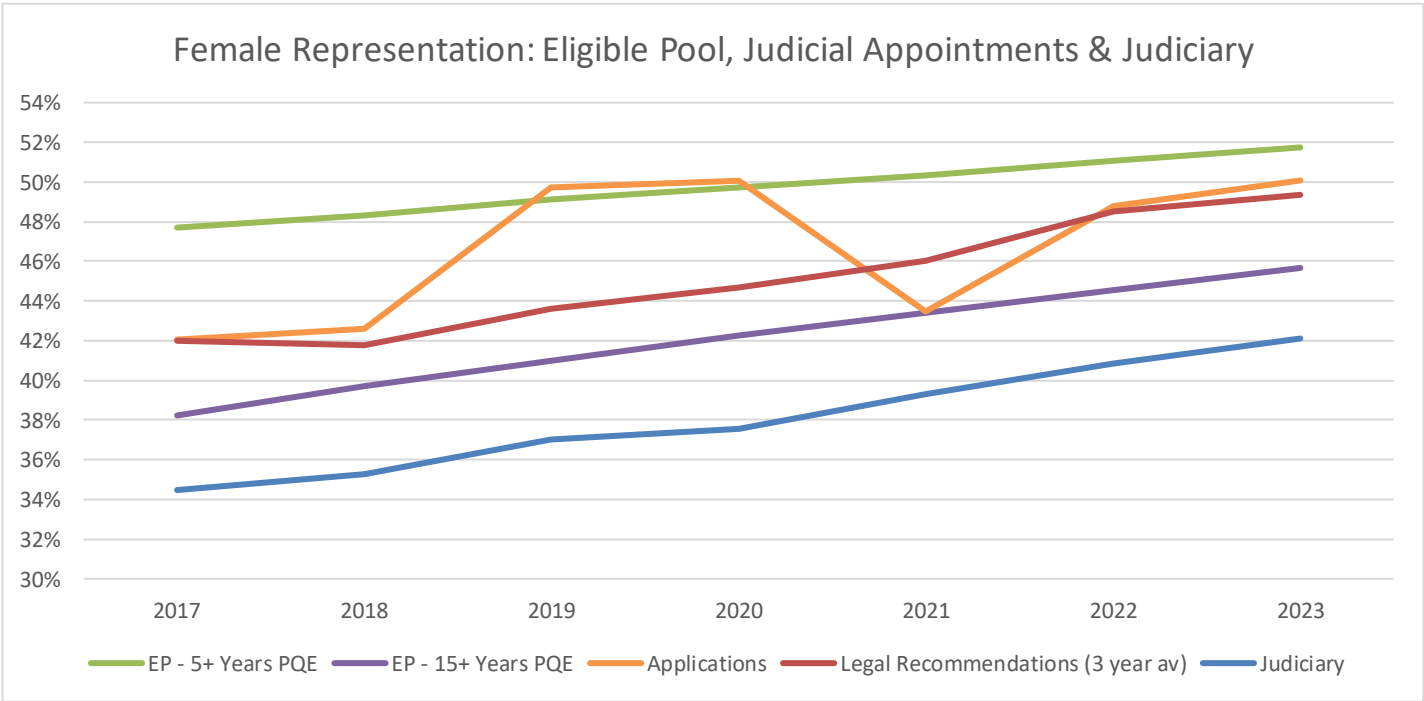
- Women have, since 2020, made up over 50% of lawyers with 5 or more years of post-qualification experience (PQE). They make up a higher proportion each year of lawyers with 15 or more years' PQE, with this figure at 46% in 2023.
- Female representation in JAC legal recommendations has been increasing steadily since 2017. In 2023 women made up 51% of recommendations for legal roles.
- Representation of women in the judiciary has increased steadily each year in the 2014-2023 period, from 31% in 2014 to 42.1% in 2023. More specifically, representation amongst court judges has increased from 24% to 37%, and representation amongst tribunal judges has increased from 43% to 52%.

Section 3 – Solicitor outcomes in exercises requiring previous judicial experience

Barrister-background candidates continue to perform better in selection exercises generally than solicitor-background candidates. However, looking at the last 3 years' outcomes for different roles has highlighted that solicitor-background candidates applying for roles which require previous judicial experience (PJE) have had approximately equal success rates to barrister-background candidates. This suggests that solicitors, once appointed to their first judicial role, do not appear to be disadvantaged by their professional background when applying for a more senior role.

Data appearing from exercises appearing in the 2021, 2022 and 2023 statistics tables shows:

- High Court Judge, s9(1) Authorisation, District Judge (Magistrates' Courts) and Salaried Employment Judge exercises (requiring PJE) in the 3-year window all saw solicitor-background candidates recommended at equal or higher rates than barrister-background candidates.
- Outcomes for solicitors in District Judge exercises were slightly lower than barristers, while Circuit Judge and Salaried First-tier Tribunal exercises were the exceptions, with solicitors having significantly lower recommendation rates than barristers.
- None of the roles requiring PJE saw significant solicitor drop-offs at the shortlisting stage, which are characteristic of other exercises such as Deputy District Judge and Recorder.

Section 4 – Other characteristics

The following results are taken from the data tables generating section 10 of the statistics report, focusing on legal exercises.

Education: 71% of candidates recommended for legal roles attended a UK State school. State school attendees made up 73% of applicants.

Sexual orientation: Candidates who declared themselves to be lesbian, gay, or bisexual represented 6% of applications and 7% of recommendations made for legal roles, resulting in a slightly higher recommendation rate from application (14%) compared to those who declared themselves to be heterosexual (12%).

Disability: Disabled candidates represented 7% of applications to legal exercises and 6% of recommendations, leading to a slightly lower recommendation rate from application than for non-disabled candidates (9% vs 11%).

Religion or belief: The majority of recommendations for legal roles in 2022/23 were for candidates who list their religion or belief as Christian (46%) or No Religion/Atheist (42%). Muslim (4%) and Sikh (2%) are the next biggest groups in recommendations. Recommendation rates (from application) for religion/belief categories with at least 100 applications ranged from 6% for Muslim and Jewish, to 15% for No Religion/Atheist.