

Definitions and Measurement

Background to the Judicial Selection and Recommendations for Appointment Statistics bulletin

In 2006, the Judicial Appointments Commission (JAC) was formed to maintain and strengthen judicial independence by taking responsibility for selecting candidates for judicial office out of the hands of the Lord Chancellor and making the appointments process clearer and more accountable.

An important goal for the JAC has been to increase the diversity of those recommended to the judicial posts to create a judiciary that is more representative of the general population, in the context of judicial selection on merit, through fair and open competition.

As part of meeting that goal, the JAC has published the diversity profile of candidates at all stages of the recruitment process. The first Official Statistics bulletin was [published](#) in February 2010. Prior to that, the diversity results of recruitment exercises were [published](#) online. The move to publishing this data as Official Statistics was carried out to improve the confidence the users of this information that the statistics were produced according to the [Code of Practice](#).

This document accompanies the Official Statistics bulletin and provides users with detailed information on the concepts and methods used in compiling this bulletin. This document covers three areas:

1. Background to the selection process
2. Data sources
3. Dissemination strategy

Background to the Selection Process

Including an exercise

A recruitment exercise is included in the Official Statistics bulletin on Judicial Selection and Recommendations for Appointment Statistics if the outcome of the exercise is decided solely and entirely by the Commissioners of the JAC.

The JAC makes recommendations to one of three Appropriate Authorities (the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) for acceptance. The date of the report to the Appropriate Authority marks the point at which the JAC's involvement in the recruitment exercise is considered to have ended for the purpose of presenting information in the Official Statistics bulletin. Following this report, a meeting is conducted within the JAC to review the recruitment exercise, called the closedown meeting.

From June 2012, the bulletin presents information on the outcome of recruitment exercises by the date of the report to the Appropriate Authority. Prior to that, the bulletin presented information on the outcome of recruitment exercises by the date of the closedown meeting. The change was made to improve the timeliness with which the outcome of recruitment exercises was reported on. This has implications for revisions (see the section on revisions policy below).

There are three stages in each selection exercise when the diversity of applicants is officially recorded: application, shortlisting and recommendation for appointment.

Applications

In exercises prior to around December 2012, applicants were immediately screened to ensure they met the eligibility criteria. Ineligible applicants did not continue through to the next stage of the selection process, and eligible applicants only were reported on in the bulletin.

From January 2013, the process changed with the screening of candidates against the eligibility criteria, taking place later in the process. As a result, a full list of applicants who met the eligibility criteria is no longer available. For exercises that completed between January and September 2013, information regarding applicants relates to all applicants excluding those who were subsequently found to be ineligible.

Due to improvements in data processing, for exercises that completed from October 2013 information regarding applicants relates to all candidates who applied for a particular post regardless of eligibility.

Caution should be taken when comparing the profile of applicants in exercises carried out at different times because of this difference. Nonetheless, the number of candidates excluded because of eligibility concerns is generally low

and largely confined to “entry-level” roles and should, in most cases, make little substantive difference.

Shortlisting

Shortlisting is the process used by the JAC to determine who is invited to attend a selection day. The tools used, either together or separately, are currently:

1. an online qualifying test, more likely to be used when the volume of applications is large, or
2. a paper sift, which considers candidates' self-assessment and other information (for example references) and is more likely to be used for those exercises with a lesser number of applicants.

On rare occasions, when applicant numbers are very low, no shortlisting process is undertaken and all eligible applicants are invited to attend a selection day.

Recommendations

The Commissioners of the JAC, sitting as the Selection and Character Committee make selection decisions based on a report of the selection day, references, self-assessment and the result of statutory consultation with the judiciary. The Commission also needs to assure themselves that candidates are of good character before making recommendations to the Appropriate Authority. The Lord Chancellor, Lord Chief Justice or Senior President of Tribunals can reject a recommendation, although do so only on a very exceptional basis. In such a case, the JAC would make an additional recommendation to the Appropriate Authority in line with legislation. If such recommendations occurred prior to the publication of the bulletin they would be included in the published statistics, unless it was immediately prior to publication making their inclusion impractical. If they occurred subsequent to the publication of the bulletin, then any amendment to the published statistics would be considered a revision (please see the section on revisions policy below).

The JAC makes recommendations under two provisions of the Constitutional Reform Act 2005 (CRA). Those recommended under Section 87 are recommended for a confirmed vacancy to which, if accepted by the Appropriate Authority, they are guaranteed to be offered appointment.

Those recommended under Judicial Appointment Regulations¹ (the Regulations) are recommended on the basis that they have been identified by the JAC as suitable for future appointment to that role, if, and when, an appropriate vacancy arises. Those candidates are not guaranteed an offer of appointment. Candidates recommended under Section 87 and the Regulations are both considered as recommended candidates for the purpose of presenting the statistics in the bulletin.

¹ Regulation 36 of the Judicial Appointments and Discipline Regulations 2013 (SI 2013/192)

In addition, if a vacancy is unexpectedly available for a post for which a recruitment exercise has recently been carried out, the JAC can make an additional recommendation using the results of that recent exercise. This is the case even if there are no candidates recommended under the Regulations available for the specific location and/or jurisdiction. If such recommendations occurred prior to the publication of the bulletin they would be included in the published statistics unless it was immediately prior to publication making their inclusion impractical. If they occurred subsequent to the publication of the bulletin, then any amendment to the published statistics would be considered a revision (please see the section on revisions policy below).

In addition, on rare occasions, it is planned that recommendations will be made to the Appropriate Authority through more than one report sent on different dates, for operational reasons e.g. where requirements for different jurisdictions are separately considered. Under those circumstances, the exercise will be considered to have been completed when the last report has been sent for this exercise. This means that the result of the exercise can be provided in a single, comprehensive presentation, rather than in stages, to support easier understanding for the users of the bulletin.

Equal Merit provision

When counting recommendations, the number of people is counted rather than the number of full-time equivalent posts. So if a recommendation is for a single part-time post the recommendation counts as one person, not as a fraction of a post.

Data Sources

Candidate information

The computer database used by the JAC to support the selection process is called Equitas. It stores diversity data collected using the Monitoring Form, which is part of the broader application form. The data are used to produce reports and to support statistical analysis. Completing the Monitoring Form is not compulsory, and even where candidates do complete the form, not all candidates complete all items within the form. Completion rates vary from around 95 per cent for gender, to around 75 per cent for sexual orientation and religious belief. Items which experience lower completion rates may not be published because of concerns about the effect of low completion rates on data accuracy.

Any data recorded on Equitas is subject to specific legislative provisions set out in the Constitutional Reform Act 2005, the Data Protection Act 1998 and Freedom of Information Act 2001. User access is strictly controlled and trail logs are kept for security checks and audit purposes.

The Monitoring Form includes information regarding age, ethnicity, disability, gender, sexual orientation, religious belief and professional legal background. Of the information collected, results are presented regarding age, ethnicity, disability, gender and professional legal background. Data is additionally published regarding sexual orientation and religious belief but not by individual exercise because of the sensitive nature of these items and because of the lower response rate these questions have obtained. This is periodically reviewed.

The JAC relies on the information held in the Equitas database for operational purposes, and so have a clear incentive to ensure that information is maintained to a high standard of accuracy. In addition, the data presented in the Official Statistics is also subject to quality assurance procedures to ensure internal consistency and also consistency with paper records relating to the recruitment exercise.

Data relating to exercises that occurred prior to the release of this information as Official Statistics, presented as comparators against which to measure current results, may not have been subject to the same level of quality assurance.

One known problem with data quality regards the professional background of candidates for more senior judicial exercises. The application form includes a question regarding the professional background of candidates and options include solicitor, barrister and salaried judicial office-holder. Inevitably, some candidates may have a professional background of both solicitor and/or barrister and salaried judicial-office holder. However, the application form only allows respondents to tick one of the boxes, and, as a result, respondents may complete the form inconsistently. This is likely to lead to an under-counting of applicants with a professional background of solicitor, barrister, or CILEx among posts which attract applicants who are already in a salaried

judicial post. It also may not identify candidates who may have spent the majority of their professional life as a solicitor before moving to a barrister role, or vice versa.

Eligible Pool

The eligible pool provides a context for the diversity statistics of different recruitment exercises. It presents the gender, ethnicity and professional background of everyone who meets the formal eligibility criteria and additional selection criteria for a post.

The data relating to the gender, ethnicity and professional background of the eligible pool is collated from a range of sources on the basis of the selection exercise eligibility criteria. With the exception of specialist posts, selection exercise eligibility criteria fall into four main categories:

1. Statutory requirement of 5 years or more post qualification experience
2. Statutory requirement of 7 years or more post qualification experience
3. Statutory requirements of 5 or 7 or more years post qualification experience and subject to additional selection criteria, which for salaried posts are often that the Lord Chancellor expects that individuals must normally have served as a fee paid judicial office holder for at least 2 years or to have completed 30 sitting days in a fee paid capacity
4. No law-related eligibility criteria, for non-legal posts.

For the first two categories (which are typically applied to fee-paid legal posts) data is supplied by the Law Society, the Bar Council and the Chartered Institute of Legal Executives (CILEx). The data includes solicitors who appear on the roll and barristers who have been called to the Bar and have completed pupillage, and Fellows of CILEx. This includes information on the number of years individuals have been legally qualified, as well as their age, ethnicity, and gender. The Black and Minority Ethnic (BAME) figures include 'any other' ethnic group. Those who do not complete the ethnicity question are not counted as either white or BAME.

For the third category (which is typically applied to salaried legal posts) the data represents the information available on the composition of the pool of judicial office holders in England and Wales. Again, the BAME figures include 'any other' ethnic group and those who do not complete the ethnicity question are not counted as either white or BAME. Court judiciary and tribunal legal members are counted using the most up-to-date published [data](#).

Eligible pool figures are not calculated for the fourth category. In addition, bespoke eligible pool figures may be calculated where additional eligibility requirements or additional selection criteria apply. Disability, age, sexual orientation and religious belief data is not currently available on the potential candidates within the eligible pool.

Dissemination

Other published information

Data regarding the diversity of the judiciary in post is published annually by the [Judicial Office](#).

Users

Table 1: Users of the bulletin

User	Summary of main statistical needs
MoJ Ministers and senior officials within MoJ, Judicial Office and Her Majesty's Court and Tribunal Service and within the JAC.	Statistics are used to inform policy development, to monitor the impact of policy-changes over time.
MPs and House of Lords.	Statistics are used to answer parliamentary questions.
Candidates and member organisations (the Bar Council, the Law Society, Chartered Institute of Legal Executives) and other groupings e.g. the Black Solicitors Network.	Statistics are used to monitor the diversity profile of successful candidates and to assess the fairness of the selection process.
Journalists, particularly in specialist legal publications such as the Law Gazette, but also wider media.	Statistics are used to tell a coherent and accurate story on judicial diversity.

Timeframe and Publishing Frequency of Data

This bulletin is published bi-annually to cover the period from April to September and from October to March. The date of the next bulletin is announced on the JAC Official Statistics [webpage](#) and the date of future bulletins is published on the Ministry of Justice statistics publication [schedule](#).

Revisions

The quality assured statistics in this bulletin are provisional and are therefore liable to revision. This could either be because of a late amendment to the database or because of a recommendation(s) made by the JAC after the initial report to the Appropriate Authority (please see the section on Recommendations above). The standard process for revising the published statistics to account for these late amendments is to publish them in the next edition of this bulletin if the revision accounts for an additional 10 or more recommendations being made. However, revisions that consist of less than 10 recommendations will not be published. This is because a comparison of the original presentation of the exercise and the revised presentation of the exercise could identify those candidates recommended since the publication of the bulletin. Releasing information on exercises of less than 10 recommendations may constitute a threat to candidates' privacy (see section on confidentiality below).

Confidentiality

So that candidates may not be personally identified, exercises with less than 10 recommendations are amalgamated together and presented as Grouped exercises. Nonetheless, even in larger exercises there may be cases where

certain breakdowns presented do result in low numbers within that breakdown. It is considered that this is an acceptable risk to confidentiality; the candidates' anonymity is still protected because the process of application itself is confidential and applicants can come from a wide range of areas within the legal profession and judiciary. Therefore, even if there is only one candidate with a particular characteristic it should not be possible to identify that person. By contrast, smaller exercises for more specialised posts sometimes accept applicants from a very narrow pool of eligibility, increasing the risk of a particular person being identified in the statistical results.

Pre-release list

The bulletin is produced and handled by the Ministry of Justice (MoJ) and JAC's analytical professional and production staff. In addition, pre-release access to the provisional diversity statistics of up to 24 hours is granted to the following postholders:

Ministry of Justice and Judiciary:

The Lord Chancellor, the Lord Chief Justice, the Senior President of Tribunals, Judicial Policy (MoJ), Press Officer(s) (MoJ).

JAC:

The Chairman and Commissioners of the JAC, the Chief Executive of the JAC, Communications (JAC), Human Resources (JAC), Head of Operations (JAC) and the Head of Policy and Change (JAC).