

## Definitions and Measurement

### Background to the Judicial Selection and Recommendations for Appointment Statistics bulletin

The Judicial Appointments Commission (JAC) was established in 2006 to maintain and strengthen judicial independence by taking responsibility for selecting candidates for judicial office and making the appointments process clearer and more accountable.

An important goal for the JAC is to increase the diversity of those recommended to 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 selection exercises were [published](#) online. The reason for publishing this data as Official Statistics was to improve users' confidence in the information, as the statistics are produced according to the UK Statistics [Code of Practice for Official Statistics](#).

This document accompanies the Official Statistics bulletin and provides users with detailed information on the concepts and methods used in compiling the bulletin. This document covers 3 areas:

1. background to the selection process
2. data sources
3. dissemination strategy

## **Background to the selection process**

### **Including an exercise**

A selection 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 3 Appropriate Authorities (the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) for acceptance. For the purpose of presenting information in the Official Statistics bulletin, the date of the report to the Appropriate Authority marks the point at which the JAC's involvement in the selection exercise is considered to have ended. Following the report to the Appropriate Authority, a meeting is conducted within the JAC to review the selection exercise, called the closedown meeting.

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

### **Applications**

There are 3 stages in each selection exercise when the diversity of applicants is officially recorded: application, shortlisting and recommendation for appointment.

In exercises prior to December 2012, candidates were screened to ensure they met the eligibility criteria when they first applied. Ineligible applicants did not continue through to the next stage of the selection process. Only eligible applicants were reported on in the bulletin.

From January 2013, candidates were screened against the eligibility criteria later in the process. As a result, a full list of applicants who met the eligibility criteria was 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.

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

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, 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 main 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.

These tools may be used in conjunction with other shortlisting tools, such as a telephone assessment or written case study.

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, which may involve an interview, situational questioning, a presentation or role play.

## **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 (see the section on revisions policy below).

The JAC makes recommendations under section 87 of the Constitutional Reform Act 2005 (CRA). Recommendations are for a confirmed vacancy. If accepted by the Appropriate Authority, they are guaranteed to be offered appointment.

The JAC may also be asked to identify persons suitable for later selection under section 94 of the CRA. Those identified by the JAC are regarded as suitable for future appointment to specific roles, if, and when, an appropriate vacancy arises. Those candidates are not guaranteed an offer of appointment. Candidates recommended under section 87 and 94 CRA are

both treated as recommended candidates for the purpose of presenting the statistics in the bulletin.

In addition, if a vacancy is unexpectedly available for a post for which a selection 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 identified following a section 94 exercise 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 (see the section on revisions policy below).

In addition, on rare occasions and for operational reasons, it is planned that recommendations will be made to the Appropriate Authority through more than one report sent on different dates, such as 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 that 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.

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.

### **Senior judicial posts**

The JAC is responsible for running selection exercises for posts up to and including the High Court. It also has statutory responsibilities to respond to requests from the Lord Chancellor to convene panels that recommend candidates for appointment to other senior posts. These include Lord Chief Justice, Heads of Division, and Lord Justices of Appeal. The JAC provides the secretariat for these exercises, and at least two JAC Commissioners sit on each five-member panel.

While senior appointment selection panels are required to determine their own processes, selection exercises may include:

- an application (form or letter)
- references
- self-assessment
- non-statutory consultation (seeking feedback on candidates from the senior judiciary and others)
- a sift
- selection interviews

## **Data Sources**

### **Candidate information**

In January 2015 the JAC launched a new website and business application into live service to replace the legacy system, Equitas. The new application is known as JARS (Judicial Appointments Recruitment System).

In developing JARS, the JAC followed Government Digital Service design principles using open source software, agile project methodology and cloud hosting. The open source software enabled the JAC to develop the system to its specific requirements and to be able make future changes quickly and at low cost. JARS is cloud hosted through a secure MoJ approved provider and has been accredited for live service by MoJ Security personnel. All candidate data is stored in JARS.

JARS stores diversity data collected using the Diversity Monitoring Form, which is part of the broader application form. The data are used to produce reports and to support statistical analysis. Completing the Diversity 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 JARS is subject to specific legislative provisions set out in the CRA, 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 Diversity Monitoring Form includes information regarding age, ethnicity, disability, gender, sexual orientation, religious belief, professional legal background and social-economic background. Of the information collected, results are presented within the bulletin by age, ethnicity, disability, gender and professional legal background. Data is additionally published regarding sexual orientation and religious belief but not by individual exercise due to the sensitive nature of these items and because of the lower response rate for these questions. This will be periodically reviewed and response rates monitored to assess whether more detailed information can be provided for future exercises.

The JAC relies on the information held in the JARS database for operational purposes, and so has a clear incentive to ensure that information is highly accurate. In addition, the data presented in the Official Statistics are also subject to quality assurance procedures to ensure internal consistency and consistency with paper records relating to the selection 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 relates to the professional background of candidates for more senior judicial exercises. The application form includes a question regarding the professional background of candidates. 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 chartered legal executive 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 in one role before moving to another, such as a solicitor before qualifying as a barrister, or vice versa.

A database of anonymised data has been developed from data extracted from the legacy database, Equitas. The data covers all exercises run by the JAC since its formation in 2006 up to 2015. The data will enable more detailed analysis to be made when comparing back to previous exercises. However, although as much data cleansing as possible took place there are likely to be small anomalies occurring when compared to information published at the time. The database is stored within the secure MoJ network and access is restricted to a small number of staff.

### **Eligible pool**

The eligible pool provides a context for the diversity statistics of different selection 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 4 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. For salaried posts, this additional criteria is 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 2 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, Asian and minority ethnic (BAME) figures include 'any other' ethnic group. Those who do not complete the ethnicity question on the Diversity Monitoring Form 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, because there are no law-related eligibility criteria. 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, such as 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 annually to cover the period from April to March. The date of the next bulletin is June 2017 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 (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 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.

We are currently reviewing the disclosure policy; please send any views to [statistics.enquiries@justice.gsi.gov.uk](mailto:statistics.enquiries@justice.gsi.gov.uk) with the subject line 'JAC statistics disclosure policy'

### **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:

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

JAC:

Chairman and Commissioners, Chief Executive, Communications, Head of Operations, Head of Policy and Change, Head of Digital and IT, Head of Equality and Diversity, Chairman's Private Secretary