Statistical analysis of candidate progression through judicial selection tools 1 April 2015 to 31 March 2021: Key findings and next steps

Background

We believe in, and support the creation of, a judiciary that better reflects the society it serves. We make every effort to ensure our selection processes are fair and free from bias and we make sure that support is available to help diverse candidates make strong applications. Despite the steady progress made on the diversity of applications and recommendations for appointment over recent years, the JAC is concerned by the drop-offs in progression rates for some underrepresented groups in selection exercises for some roles. As part of our continual review and improvement of our selection processes, 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 selection tools in order to try and understand the differences in success for target groups. Increasing judicial diversity is not something that can be achieved by one organisation alone, and 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.

Key findings

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. We however recognise that applications from women are lower than their numbers in the 'eligible pool' of lawyers for some legal exercises (where legal qualification is required) - particularly for more senior roles – and women are underrepresented in the judiciary as a whole, so women remain as one of the JAC's four target candidate groups.

In legal exercises the report shows that success rates for Black, Asian and minority ethnic (BAME) 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 BAME 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 warrants further investigation into the types of professional pools from which legally-qualified candidates are drawn and how this may be playing a part in the observed disparities.

This analysis is an important part of our programme of work to gather evidence in support of outreach activity and our delivery of fair and non-discriminatory selection processes. We keep our selection processes under continual review, and draw upon insight from a range of sources to develop and improve our approaches accordingly. The report provides some useful findings but given the limitations of the statistical data that have been highlighted by statisticians, it also raises further questions. We do not yet fully understand the differences in progression rates for target groups, but the evidence suggests that some legal candidates may need additional support to develop their careers and prepare for judicial appointment. We therefore want to work with partners to better understand some key issues, including:

- across recent years, JAC recommendations for BAME candidates have been broadly in line with numbers in the eligible pool of lawyers. In many legal exercises we receive applications from BAME candidates in excess of the eligible pool, but these candidates do not progress at the same rates as BAME candidates do in non-legal exercises.
- the most recent published statistics on legal roles that require judicial experience show little or no differential progression for BAME candidates, in contrast to those where legal post-qualification experience is the only eligibility requirement.
- no evidence of unfairness or bias has been identified in three extensive independent expert reviews of the selection process. Most recently, the 2018 review of JAC shortlisting tools by the independent Work Psychology Group (WPG) concluded these were in line with best practice and found no explanation within the selection process for different progression rates between particular groups.

Next steps
The JAC is committed to working individually and alongside its partners to make evidence-based improvements to selection tools and outreach activity to support increased judicial diversity. We publish a regular 'Diversity Update' detailing our ongoing and upcoming work in this area, and the Judicial Diversity Forum – which the JAC chairs – publishes an annual action plan setting out the initiatives being delivered across the legal sector.

In building upon the 'deep dive' analysis findings we have begun a further piece of work with our Judicial Diversity Forum partners to fill gaps in our collective understanding about the

differences in progression for some groups within legal exercises. We will be using blended quantitative and qualitive methods to examine the profile of legal candidates at the qualifying test stage – where the steepest drop-offs of target group candidates are seen - in more detail. We will be looking at aspects that purely statistical analyses such as the deep dive cannot cover, such as candidates' type of legal experience, their legal specialism and how they prepared for judicial application. Initial findings from this new research are due in early 2022.

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