Summary of the JDF Qualifying Test Research Project (2022 – 2023)

Executive Summary

We believe in, and play our part in supporting the creation of, a judiciary that better reflects the diversity in society. We make every effort to ensure our selection processes are fair, robust and free from bias and we work closely with members of the Judicial Diversity Forum (JDF) to encourage people to consider an application for judicial office, whatever their personal or professional characteristics. We have made significant progress on the diversity of applications and recommendations for appointment over recent years. But there is still more work to be done, and we remain concerned by the lower progression rates observed for some underrepresented groups in selection exercises, particularly at the shortlisting stage.

We continually look to improve and refine our selection processes and as part of this we have completed a two-year research project with our JDF partner organisations focusing on the outcomes and experiences of candidates from underrepresented groups at the Qualifying Test (QT) stage of JAC legal exercises. This work was significantly informed by the 2021 JAC "Deep Dive" statistical analysis, which found that the QT was the part of the judicial selection process for legal exercises where we saw the greatest decreases in representation of "target group"[1] candidates, in particular ethnic minority candidates and non-barristers. This research was designed to increase our understanding of barriers faced by some candidate groups and assist with identifying further actions that can be taken by the JAC and JDF partners to help reduce the observed differences in success rates at the QT.

Acting on the findings of this research project, JDF partners have agreed a collective programme of further work for 2024, which aims to remove barriers for groups with lower success rates at the qualifying test. This document can be found at page 8. We will monitor these actions to see the impact on QT outcomes for underrepresented groups. The concentrated work over a two-year period described in this document demonstrates the JDF's commitment to taking action when barriers to judicial diversity are identified.

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[1] The JAC's four "target groups" are women, people from an ethnic minority background, disabled people and solicitors. Data has shown that these groups are underrepresented in the judiciary.

The Qualifying Test – Background

The qualifying test (QT) is the first stage of the JAC's selection process for various legal selection exercises – particularly those attracting a large field of applicants without previous judicial experience. The QT assesses candidates against the five competencies which make up the assessment framework for most judicial roles. These are Exercising Judgement (EJ), Possessing and Building Knowledge (PBK), Assimilating and Clarifying Information (ACI), Working and Communicating with Others (WCO) and Managing Work Efficiently (MWE). It is comprised of two online test components, marked automatically, which candidates must sit in their own time on a specified day. The two components are:

- The Situational Judgement Test (SJT) – a set of 20 questions which place the candidate in the role of a judge facing a challenging situation. Candidates must choose the 'most appropriate' and 'least appropriate' action to take from 5 possible answers. Assesses EJ, WCO and MWE.
- The Critical Analysis Test (CAT) – candidates are given a short text to read before the test, such as an excerpt from a speech or judgment. They are then asked 20 multiple choice questions which test their understanding of the content, with 4 options provided for each question. Assesses PBK and ACI.

Qualifying tests and their associated marking schedules are drafted by existing judges who hold positions relevant to the vacancy being recruited to. Materials for QTs undergo a quality assurance process, which includes being reviewed by the JAC's Advisory Group and being trialled on a "Dry Run" QT.

The JAC uses the QT for these selection exercises primarily due to the high numbers of applications received in proportion to the number of vacancies available. These exercises are highly competitive, and the JAC regularly receives a volume of applications more than 10 times greater than number of vacancies. For example, a typical Deputy District Judge selection exercise receives over 2,000 applications for approximately 200 roles. The QT in its current format is the product of multiple iterations of development and independent review, including by independent organisational psychologists Work Psychology Group in 2018. This review found that the JAC follows a best practice approach in its development of shortlisting materials for the QT but suggested some adjustments to strengthen fairness and validity of the shortlisting approach further, which were adopted. While the differential QT outcomes for ethnic minority and non-barrister candidates are a concern, there is no clear evidence that a different first-stage shortlisting tool (such as a paper sift of applications) would result in improved outcomes for these groups. Additionally, the JAC uses similar QTs for non-legal tribunal member selection exercises and these do not result in lower progression rates for ethnic minority candidates – which suggests that the tool itself is not inherently biased against candidates of a particular ethnicity, but that there may be differences in the skills and experiences in the pools of candidates applying. The QT thus provides the most effective means to shortlist candidates fairly and efficiently, according to merit, with the resources available, but as this project demonstrates the JAC is fully committed to taking action to reduce any remaining barriers to progression at the QT stage that exist.

Further information about qualifying tests, including a link to the JAC's Practice Qualifying Test Tool, can be found here.

Overview of research project

A working group comprised of Judicial Diversity Forum member organisations – chaired by the JAC – was formed in 2021 to support the work ("the JDF QT working group"), and it was agreed to split the research into two phases:

- **Phase one:** desk-based quantitative research analysing the performance of target groups in qualifying tests and on individual questions within the QT. Drawing on further candidate monitoring data to provide further insight into factors influencing performance on the test. Led by the JAC.
- **Phase two:** qualitative research using surveys and interviews to provide a more comprehensive understanding of successful and unsuccessful candidate profiles from JAC target groups. Work led by JDF members working in partnership.

Research Phase One – Quantitative Research (analysis of JAC applications and QT performance data)

Phase One of the research was conducted in spring and summer of 2022 by the JAC. This phase brought together data from legal qualifying tests that took place between April 2019 and February 2022, comprising approximately 13,000 test attempts. The data included:

- Candidate data for the individuals taking each test (specifically, sex, ethnicity, disability, professional background, socio-economic background, age and amount of post-qualification experience).
- Data regarding candidate outcomes on each QT and candidates' scores for each component (SJT and CAT).
- Question-level data showing how each candidate performed on individual questions on the QT.

The data was analysed to gain a deeper understanding of the disparities identified in QTs for legal exercises. This included considering which specific candidate characteristics, component of the QT (SJT or CAT), legal role type, and individual test questions resulted in the greatest disparities. One caveat to note is that other potential drivers of success beyond candidates' characteristics, such as the number of prior attempts, methods of preparation for the QT and specific type of legal experience held, were not controlled for in this analysis. These factors would be explored further in the qualitative second phase of the research project.

Key findings – Phase One

The quantitative analysis of candidates' performance in the tests produced the following findings, which were shared with the JDF QT working group in September 2022:

- There is a significant disparity in the success rates of ethnic minority candidates at the QT when compared with white candidates. Within the ethnic minority category there is some variation, with black candidates having particularly low success rates, while candidates with mixed ethnicity have success rates equal to white candidates.
- There is no disparity in progression rates for ethnic minority candidates on the QT for non-legal exercises - these are very similar in style but only have a SJT rather than two components.

- Women have success rates equal to men and disabled candidates have success rates equal to non-disabled candidates. Therefore, no disparity was identified for these two target groups at the QT.
- Solicitor and Chartered Institute of Legal Executives (CILEX) candidates were found to have significantly lower success rates when compared to barrister candidates.
- The CAT is the component mostly contributing to lower success rates for ethnic minority candidates. While there is also an attainment gap on the SJT between ethnic minority and white candidates, this is consistently smaller in magnitude.
- For non-barrister candidates, compared to barristers, there is an attainment gap on both components of similar magnitude.
- Age and amount of post-qualification experience do not affect candidates' likelihood of progressing at the QT, but socioeconomic factors such as having attended a private school and/or having a parent who attended university are associated with slightly higher success rates.

As a result, the JAC committed to several actions to address some of the findings from Phase One. These included:

- Commissioning of a piece of work with external organisational psychologists Work Psychology Group (WPG) to find ways to improve the JAC CAT, with a particular focus on Equality Diversity and Inclusion (ED&I). As a secondary research question, WPG provided an independent review of the psychometric test market related to Critical Analysis, to assess the appropriateness and feasibility of any equality-tested alternative to the CAT. Following this, new guidance was created to assist the drafting of CATs, incorporating best practice ED&I principles as suggested by WPG. This was completed in winter 2022/23.
- Creation of an enhanced SJT question bank, detailing against each individual question the extent of any disparity seen for the relevant groups in previous uses in JAC QTs. This bank would then be used by the teams drafting and selecting questions for all subsequent SJTs. This was completed in autumn 2022.
- A further thematic analysis of performance on SJT questions based on subject matter, to assist with the drafting of future questions. This was completed in summer 2023.
- Publication of an online QT practice tool, allowing candidates to familiarise themselves with the format and question-style of the QT. This was completed in summer 2022.
- Continued monitoring of outcomes for target groups after each QT to identify trends and the impact of any changes in policy. Monitoring is ongoing.
- Moving to a 60/40 weighting of QT scores in favour of the SJT, to better reflect the balance of competencies tested, motivated by modelling showing the positive impact this would have on target group progression. This was completed in spring 2023.

Since the introduction of the enhanced SJT question bank, we have seen a clear improvement in non-barrister performance at the SJT. For the other changes, it is too early to assess the impact at this stage. We will continue to regularly monitor and analyse QT results to establish whether these changes, and further changes adopted in response to Phase Two, are having the desired effect.

The improved understanding provided by the quantitative first phase helped to shape the methodology and survey content used in Phase Two.

Research Phase Two – Qualitative Research (Survey and Interviews)

At the end of 2022 the JDF QT working group agreed to commission WPG to facilitate the qualitative second phase of research. The project would have three stages:
1) A light touch review of the research literature to inform the development of a theoretical framework to underpin the research.
2) The design and implementation of a survey to a representative sample of former candidates.
3) The design and facilitation of structured interviews with former candidates from the groups in which research shows there has been lower success rates (i.e., candidates from ethnic minority backgrounds and non-barrister background candidates).

The working group would meet at regular intervals, to provide input and assistance at each stage of the project.

A sample of 4,000 former candidates were invited to complete a survey in March 2023. Just over 1,000 responses were received, with positive response rates for all relevant candidate subgroups. This included 334 responses from ethnic minority candidates (191 Asian, 77 black, 51 mixed ethnicity and 15 other ethnicity) and 781 responses from non-barrister candidates.

28 of the respondents then completed follow-up research interviews with WPG in May 2023, to provide a more in-depth understanding of the issues. Each interview lasted approximately 45 minutes. For both stages of the research, the sample of candidates was chosen to ensure a high number of responses from ethnic minority and non-barrister candidates. For the follow-up interviews, the final sample of 28 was chosen to ensure representation from all 5 of the ethnicity categories monitored (white, black, Asian, mixed, other), from a diverse range of legal backgrounds[2], and with a mixture of success rates at JAC qualifying tests.

Questions for both the survey and interviews were drafted by WPG with support from the QT working group. The questions focused on five stages of the candidate QT process, beginning with probing candidates' backgrounds, legal experience and motivation to apply for a judicial role, before moving onto questions about how they prepared for the QT, their experiences taking the QT, and their reflections having received their outcomes and any feedback.

Key findings – Phase 2

WPG analysed transcripts of the interviews against the research framework, alongside supporting analysis from the survey responses, and reported their findings to the JDF working group in September 2023. These can be summarised as follows:
Communication:
- Some candidates interviewed felt the QT to be a guarded process, with a lack of transparency and/or effective communication about what is being tested and how best to prepare. Candidates had misconceptions and misunderstandings about the QT and relevant resources.

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[2] Barristers, chartered legal executives, and solicitors from private practice firms, Government Legal Department, Crown Prosecution Service and practicing in-house in commerce and industry.

- There was also evidence that better communicating the competitive nature of QTs would help candidates to manage their own expectations and remain motivated to reapply after not being shortlisted the first time.

Resources:
- Candidates tended to have mixed or negative views about the effectiveness of various resources, and initiatives such as those run by JDF organisations, in terms of their ability to help them improve their performance at the QT. However, survey results, compared against QT outcomes, showed that some preparation methods were associated with significant increases in performance, and that undertaking any preparation activity (from a list of options provided) led to candidates feeling more prepared for the test.
- There is a perception among non-barristers that they are disadvantaged compared to barristers in the amount of support they receive from their informal and professional support networks in relation to judicial applications more generally, and in relation to taking a qualifying test.

Process:
- Candidates interviewed generally had more positive views about the CAT than the SJT. Candidates felt the SJT was difficult to prepare for and confusing in what it aimed to test. Non-barristers felt the SJT advantaged barristers and perceived that barristers' day-to-day experiences in courts and tribunals would better equip them to answer the questions. Some candidates expressed the belief that questions were drafted "by barristers for barristers", leading to a test which advantaged candidates from a barrister background. The survey results, compared with QT outcomes, found some evidence that more time spent in a court or tribunal environment for a candidates' day job led to a small increase in performance on the SJT.

Feedback:
- Some candidates were confused by the scoring method, which is provided with their outcome.
- Candidates from the interviews who read the QT feedback report published after their test said that it helped them to manage their expectations and better understand the pass rate and competitive nature of the QT. However, some candidates interviewed were not aware that feedback reports were available.
- Perceptions of unfairness in the QT made some candidates less inclined to engage in the application process in the future. Additionally, some candidates felt unmotivated to re-apply having spent significant time preparing but ultimately being unsuccessful.

Overall:
- There were limited clear findings in relation to different QT experiences based on ethnicity, meaning it has been difficult to suggest actions to improve outcomes specifically for ethnic minority candidates. Further analysis of the detailed legal backgrounds of candidates, in particular black candidates (whose progression rates are the lowest), may yield further insight into what makes some ethnic minority candidates successful at the QT.

Next steps

WPG provided a range of practical suggestions of steps that JDF partners could take to address the above findings. There was found to be no 'silver bullet' likely to help overcome the disparities in success rates for ethnic minority and non-barrister candidates, but there

was evidence that a joined-up approach, encompassing the range of actions suggested, may have a significant impact. The suggestions were considered in detail by the QT working group and have resulted in the creation of a new joint QT work programme - a coordinated set of actions for the JDF to take forward, focusing on removing barriers for groups with lower success rates, as identified by the research. The work programme was agreed by the JDF in November 2023 and can be found below, in the next section. By implementing this work programme, the JDF aims to make a significant positive difference to the progression rates of target group candidates at the QT stage of shortlisting, and to increase candidate confidence in the fairness of the judicial selection process.

JDF Qualifying Test Work Programme

Having reflected upon the findings and practical considerations from the qualitative second phase of research into JAC qualifying tests, members of the JDF Qualifying Test (QT) Working Group have agreed to commit to a collective JDF work programme in response. We have grouped the areas of work for each organisation in this programme into four key areas, which align with the findings of the research: communication, resources, process and feedback.

The QT Working Group will meet regularly over the course of 2024 to report back on progress against each strand, share resources and ensure a joined-up approach to the programme. We aim to complete the majority of actions by the end of 2024, whilst continuing our wider work to improve judicial diversity. Progress on the work, and subsequent monitoring of the impact on the progression rates of underrepresented groups at the QT, will be reported on in the JDF's 2025 action plan.

Communication:
- **All:** Ensure that all facilitators delivering JDF outreach events and/or initiatives are briefed to be able to dispel misconceptions around the QT and signpost to further information and resources on the JAC website. This will include, for example, at Pre-Application Judicial Education (PAJE) workshops, The Law Society's Becoming a Judge scheme and at application seminars for particular roles using QTs in the application process.
- **JAC:** Ensure links to the QT information and resources are prominent on the JAC website and exercise information pages, to maximise candidate engagement.
- **All:** Explore barriers faced by black candidates at the QT and provide targeted support and guidance where appropriate for this group. For example, the JAC will analyse questions from the SJT question bank on which black candidates have historically performed worse.
- **All:** Improve communication to candidates around the competitive nature of QTs to manage expectations of success. Review language used in resources and by event facilitators to normalise the idea of reapplication and emphasise that most candidates do not "fail" the tests, rather they will more often fall below the cut-off line for spaces available in the next stage of the selection process. This is a message that can be particularly emphasised in application seminars and the PAJE workshop focused on the appointments process.
- **JAC:** Include the pass rate from the previous exercise on the exercise information page ahead of a QT and review the language used on outcome emails.

- **JAC:** Ensure clear information about the competencies the QT is testing appears on all relevant website pages. Where appropriate, provide a case study of a judge from a non-traditional background who has been involved in the drafting of QT test materials.

Resources:
- **Legal professions**: Consider additional support that could be provided to individuals considering applying for a judicial appointment, especially those who are not self-employed barristers. Develop guidance for employers around how to support their employees in judicial applications.
- **All:** Review resources for prospective judicial candidates to ensure they include mention of the QT where relevant, and signpost to further information and resources on the JAC website. For example, in resources provided by CILEX's Judicial Development Programme, the BarTalk newsletter which advertises JAC vacancies to barristers, and in materials being prepared for in-person Solicitor Judges Network events for 2024.
- **JAC:** Review the current QT section of the JAC website and look for opportunities to provide more information to candidates about the nature of the QT, how it is drafted and what it aims to test. Explore the feasibility of adding a QT section to the existing online guide for preparing for judicial selection exercises.
- **JAC:** Create one central website page (or section of the online guide) which summarises all suggested ways of preparing for an upcoming QT, with links where appropriate (i.e., to sign up for a dry run, to the Practice QT Tool, etc.).
- **JAC:** Provide answers to the questions on the Practice QT Tool.
- **All:** Encourage more individuals from diverse backgrounds to be mentors/facilitators on JDF initiatives (Judicial Mentoring Scheme, Judicial Work Shadowing Scheme and specific mentor programmes run by the legal professions) in order to increase visible role models and provide better matching with candidates of the same backgrounds where required.

Process:
- **JAC:** Make adjustments to the QT user experience to aid candidates' understanding of the process, including signposting the competencies tested by each section of the QT, and supplementing the guidance provided to candidates with the pre-reading in advance of the test.

- **JAC:** Review the balance of questions set outside of an immediate court/tribunal setting, alongside analysis of non-barrister performance on such questions, and consider committing to ensure that questions of this type feature on every test.
- **JO:** Review the process by which drafting judges are provided for JAC QTs, in order to ensure judges from diverse ethnic and legal backgrounds are available to draft new questions.

Feedback:
- **JAC:** Provide candidates with their rank against other candidates in their outcome email, to improve comprehension of their performance.
- **JAC:** Ensure that all candidates are provided a link to the feedback report when it is published, and that the report includes information about how to apply for the next exercise if candidates have been unsuccessful.