

Judicial Diversity Forum Officials (JDFO) Paper

Title: Evaluation of the JAC's revised approach to the operation of statutory consultation

Prepared by: Judicial Appointments Commission (JAC)

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Summary

1. This paper sets out the evaluation undertaken on the revised approach to the operation of statutory consultation, which was introduced in September 2022. The revised approach saw several changes made to the operation of statutory consultation, including requests to the Appropriate Authority to dispense with statutory consultation for some exercises, in exercises where it is retained, requesting statutory consultation before selection days, and revising, strengthening and publishing the guidance provided from the JAC to the statutory consultees.
2. The JAC committed to evaluate the revised approach after a full two-year cycle of exercises. The evaluation covered a sample of legal selection exercises launched between September 2022 and completed by December 2024 focusing on the return rates, timing, quality, and consistency of statutory consultation comments in exercises where it has been retained; whether the revised approach has impacted the progression rates for JAC's four target groups (women, ethnic minority candidates, disabled candidates, and solicitors); and stakeholder perceptions of the process.
3. The evaluation aligns to priority area 2.19 of the [Judicial Diversity Forum – Priorities and Actions for 2025](#), by 'ensuring selection processes are fair, and do not specifically deter candidates from underrepresented groups'.
4. The evaluation found:
 - Overall, the revised approach to the operation of statutory consultation is working well
 - From the introduction of the revised approach to August 2025, 14,453 applications were received for completed legal exercises. 82% of these applications were for roles where statutory consultation was waived

- For roles where statutory consultation was retained, 45 out of 51 required previous judicial experience
- Return rates on statutory consultation comments for individual exercises have improved or stayed the same for most exercises when compared to the comparator
- 78% of candidates received some evidence-based comments from the exercises evaluated
- Requests to waive statutory consultation for relevant exercises have been successful
- The Lady Chief Justice, previous Lord Chancellor, and JAC Panel Chairs all commented on seeing improvements with the consistency and quality of the comments as well as welcoming waiving statutory consultation for some exercises, which is working well
- No specific evidence that the statutory consultation process has negative impacts on the JAC's four target groups (women, ethnic minority candidates, disabled candidates, and solicitors) or any other group

Background

5. The Judicial Appointments Regulations 2013 impose a statutory duty on the JAC to consult "a person who has held office for which a selection is to be made or has other relevant experience" (Regulation 30). Statutory consultation is undertaken unless the JAC Chair and the Appropriate Authority (Lord Chancellor, Lady Chief Justice, or Senior President of Tribunals) agree in advance to waive it.
6. In 2022, a review into the JAC's approach to the operation of statutory consultation was conducted by Work Psychology Group¹. The review was commissioned to ensure that statutory consultation was being used proportionately, effectively, and in line with the JAC's statutory responsibilities. The review highlighted a number of important positive findings on how the process of statutory consultation was being undertaken, including that:
 - Overall, the process of arranging and conducting statutory consultation is consistent for all candidates involved in a particular exercise

¹ [WPG-Review-of-Statutory-Consultation-Final-Report_publication.pdf](https://www.judicialappointmentscommission.gov.uk/wp-content/uploads/2022/09/WPG-Review-of-Statutory-Consultation-Final-Report_publication.pdf)

- There is no direct evidence that the statutory consultation process impacts disproportionately on recommendations for appointment for any group
- Recognition of the notable importance placed on the need for statutory consultation comments to be evidence-based and evidence of efforts by the JAC and the judiciary to improve the evidence base of the statutory consultation
- Statutory consultation comments received before a selection day can support the selection panel when assessing candidates

7. WPG also made some important findings about how the approach taken to statutory consultation can be improved, including:

- Addressing the absence of (or very limited) statutory consultation information on some candidates [in some exercises]
- Dealing with inconsistency in the approach used by statutory consultees in collating information on candidates
- Further improve the objectivity and evidence base of statutory consultation feedback across exercises
- Allow statutory consultees to have sufficient time to provide comments
- Providing specific guidance and communication to candidates on how evidence is collated, weighted, and used in the process
- Reviewing the need for confidentiality of comments

8. In response to the review, the JAC adopted a revised approach to the operation of statutory consultation, announced by the Board in March 2022. The following principles apply to any legal² exercise launched after September 2022:

- A request be made to dispense with statutory consultation from the relevant Appropriate Authority in certain circumstances, taking into consideration the size and nature (fee-paid or salaried) of the exercise, the likelihood that comments will be available for a significant proportion of the candidate pool and when statutory consultation could be sought.

² It is already established practice that statutory consultation is sought to be waived in non-legal exercises because it is unlikely that the statutory consultee will have relevant information on a vast majority of candidates in the pool.

- Where statutory consultation is retained, it is sought prior to selection day.
- The guidance provided by the JAC to statutory consultees on how to provide consultation comments is revised, strengthened, and published.
- Judicial Office provide centralised support to statutory consultees.

The Evaluation

9. Between September 2022, when the revised approach was introduced, and August 2025, a total of 14,453 applications were received for all complete legal exercises. For exercises where statutory consultation was retained, 2,601 applications were received. Where statutory consultation was waived, 11,852 applications were received – 82% of applications were for roles where statutory consultation was waived.
10. There have been 65 completed legal exercises since the revised approach was introduced and August 2025, with 51 exercises retaining and 14 exercises waiving statutory consultation ([Annex A](#)). While statutory consultation has been retained on the majority of exercises, this was due to the Commission and/or the Appropriate Authority believing the consultee or sub-consultees could provide relevant information on potential candidates.
11. For roles where statutory consultation was retained, 45 out of the 51 required previous judicial experience. This provides the same opportunities for candidates to be known to the consultee or sub-consultees regardless of professional background as they are required to be a sitting judge with a minimum number of sitting days.
12. Where a statutory consultee was consulted, no feedback was received for 166 of the 1,100 candidates invited to interview. The nil responses are spread across ethnic minority, women, and solicitor candidates in line with their representation at selection days.
13. Where candidates did receive a nil response, this was mainly due to candidates being a newly appointed judicial office holder or because the candidate was not known to the statutory consultee or sub-consultee. This shows that the vast majority of those we consult on are known by either the consultee or sub-consultee and receive some feedback during statutory consultation. If a candidate does receive a nil response no

adverse conclusions are drawn from this which is reiterated to all panel members during every selection exercise.

14. The evaluation also reviewed in more detail the statutory consultation process for the below nine exercises. All these exercises were launched and finalised between September 2022 and December 2024:

- 00125 High Court
- 00131 Deputy High Court Judge
- 00168 s9(1) authorisation to act as a High Court Judge
- 00129 Salaried Judge of the First-tier Tribunal
- 00117 a combined exercise for Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunal
- 00132 Salaried Judge of the Employment Tribunal
- 00115 District Judge
- 00171 Circuit Judge
- 00185 District Judge (Magistrates' Court)

15. Return rates of statutory consultation comments across the evaluated exercises averaged at 83%, slightly higher than the 80% for the relevant comparator exercises which used the previous statutory consultation process. Two of the evaluated exercises experienced a minor decline in comment return rate by 3-4%, with a third exercise experiencing a more significant drop in return rates. However, this was linked to the timing of the request which was sent before the summer judicial vacation. While selection exercise teams aim to avoid such periods, constraints in scheduling sometimes make it unavoidable; in these cases, teams give Judicial Office advance notice and extend response deadlines as much as possible.

16. Comments were requested for 572 candidates across the evaluated exercises and the comments assessed for evidence quality using a four-point scale. Overall, 78% of comments had some evidence with 57% of comments being mainly or fully evidence-based. More senior roles such as High Court and s9(1) authorisations received the highest proportion of well-evidenced feedback. Approximately 17% of comments referred to Independent Assessments, which were generally evidence-based. While referring to Independent Assessments as part of statutory consultation comments can risk duplication of views — especially when candidates nominate leadership judges as

assessors — panels are careful to consider all evidence holistically and weigh its source appropriately.

17. As part of the revised approach, the Commission consider requests to dispense with the requirement for statutory consultation comments in an exercise. The basis for doing this include:

- the size and nature (fee-paid or salaried) of the exercise
- the likelihood that consultees will have relevant information on the suitability of candidates for the role and for a significant proportion of the candidate pool
- the timing of when any statutory consultation could be sought.

18. The combined Fee-paid Judge of the First-tier Tribunal and Fee-paid Judge of the Employment Tribunal (England and Wales) exercise was the first large-scale fee-paid selection exercise to run without statutory consultation. The exercise met the vacancy request of 200, without the need to request statutory consultation comments on the 360 candidates invited to selection days, saving significant time for the JAC and judiciary.

19. The comparator of this exercise which did have statutory consultation requested under the previous approach, only received comments on 10% of candidates requested. This shows that the revised approach of seeking a waiver on statutory consultation for fee-paid exercises has been effective, leading to a speedier process overall, less burden on judicial time whilst still ensuring that only those who are appointable on merit are successful due to the robustness of the JAC's other selection processes.

Stakeholder perception

20. As part of the evaluation, all members of the Judicial Diversity Forum (JDF) were consulted as well as officials at Judicial Office. The Lady Chief Justice also sought feedback from the Senior President of Tribunals, Master of the Rolls, Heads of Division and Senior Presiding Judge to understand how the statutory consultation process is working in their jurisdictions, as the relevant named statutory consultees on many exercises.

21. The Lady Chief Justice, in her response, commented that there had been improvements made in the consultation returns, and that comments have become more evidence-based, including referring to specific judgments. The Lady Chief Justice also noted that

the waiving of statutory consultation on a case-by-case basis, and especially for large fee-paid exercises, was working well with other processes ensuring a robust evidence base when deciding on who to recommend for judicial appointment.

22. Comments from the previous Lord Chancellor confirmed that statutory consultation continues to be appropriate for salaried exercises, and that the revised approach had led to more consistency and has reduced the bureaucratic burden on the JAC and other bodies. She noted that two years is a limited period to see if any changes have occurred as a result of this but highlighted that the trends visible before 2022 of increased numbers of women and to a lesser extent ethnic minorities joining the judiciary have continued. However, the previous Lord Chancellor also noted that statutory consultation continues, at times, to be criticised in the media and by members of the legal professions. The previous Lord Chancellor advised that she would be grateful if the JAC gave consideration to how statutory consultation is communicated, including with legal professionals, and also consider if it would be appropriate to seek waivers to statutory consultation for a wider range of exercises.
23. To address the first point raised, the JAC will shortly launch a new website which will provide better support to all candidates with clearer information on the selection process and improved navigation to facilitate easy access to information. As part of this, we have reviewed the information that is provided on the website in relation to statutory consultation and will be adding to this to ensure there is clearer guidance on the statutory consultation process. In addition, we will be updating guidance issued to statutory consultees and guidance provided on the information page of each exercise, all of which is available for candidates to view. We will also update guidance issued to JAC Panel members to ensure they are clear on the process and are using statutory consultation comments appropriately and fairly during their assessments.
24. With regards to waiving statutory consultation for a wider range of exercises, the JAC Board agreed to continue with the current process, which is to consider requests to waive statutory consultation for all exercises on a case-by-case basis, giving consideration to whether the exercise is fee-paid or salaried, the likelihood that consultees will have relevant information on the suitability of candidates for the role and for a significant proportion of the candidate pool, and the timing of when any statutory consultation could be sought.

25. The JAC notes that feedback from The Law Society and The Bar Council raised concerns around the diversity in the judiciary, and the role that statutory consultation plays with this. The 2022 evaluation by WPG found that there is no evidence that the statutory consultation process impacts disproportionately on recommendations for appointment for any group, and the evaluation into the revised approach continues to support this.

26. The JAC continues to be deeply committed to greater judicial diversity, with part of the JACs strategic aims for 2024 to 2027 being to support the achievement of greater judicial diversity. The JAC has implemented a range of measures in support of increasing judicial diversity and have seen steady progress over recent years for applications and recommendations across all diversity categories. As mentioned above, statutory consultation nil returns are not disproportionately impacting specific groups and is predominantly retained for roles that require previous judicial experience.

27. However, it is noted that it is not possible to determine exactly how statutory consultation directly impacts on the progression of candidates from the JAC's four target groups because statutory consultation is considered as part of the selection process and not as a standalone decision. We also recognise there are still concerns around the perception of statutory consultation. **We therefore seek the views of JDF partners on what the JAC can do to improve these perceptions, and to help the JAC identify any groups from the legal professions where perceptions of unfairness remain.** For example, assisting the JAC to publicise information and guidance on the statutory consultation process.

Evaluation Conclusions

28. The JAC believes the revised approach to statutory consultation ensures a proportionate approach to statutory consultation by ensuring only exercises where the consultee or sub-consultees are likely to know the candidates retain the consultation. Statutory consultation has been waived for most fee-paid roles, and those that require no previous judicial experience. The number of applications subject to statutory consultation are a small portion of the overall number of applications which means statutory consultation is undertaken on a small number of the overall candidates that apply for judicial roles.

29. Since the revised approach was implemented, there have been improvements in both the consistency and quality of the comments received through statutory consultation.

This reflects the clearer guidance issued to consultees, contributing to a fairer and more evidence-based selection process. The JAC recognises that the effectiveness of statutory consultation depends not only on the integrity of the comments received, but also on the clarity of expectations set for consultees. To that end, the JAC remains committed to continuous improvement by actively liaising with consultees and issuing clear, practical guidance.

30. The JAC is also committed to transparency and to continue improving perceptions of the statutory consultation process among candidates and wider stakeholders. The JAC will continue to engage proactively with stakeholders — including JDF partners — in this regard.

Judicial Review

31. In July 2025, in a case brought against the JAC, the Court of Appeal found that the JAC's use of statutory consultation including the practice of consulting sub-consultees was lawful³. However, the Judicial Review identified areas in which the statutory consultation process could also be improved. This includes making it clear to candidates that sub-consultees may be consulted, as well as giving due consideration to five different options in the handling of negative comments received as part of the statutory consultation process.

32. The five options identified by the Court of Appeal that are lawfully available to the JAC when handling statutory consultation comments are as follows:

- (i) disregarding the material
- (ii) seeking to explore the material at interview without making the candidate aware of it or making any direct reference to it
- (iii) putting the gist of the material to the candidate, whilst preserving the confidentiality of the consultee and sub-consultees
- (iv) seeking the consent of the consultee to disclose the material for the candidate's comments and then doing so, if consent were granted
- (v) even if such consent were refused, deciding to put the material to the candidate under section 139(4)(b) of the Constitutional Reform Act 2005

³ [Thomas Approved Judgments](#)

33. As mentioned above, as part of the evaluation into the revised approach of statutory consultation, the JAC is currently reviewing and updating all guidance documents on statutory consultation. The areas of improvement identified by the Court of Appeal will be incorporated into these guidance updates. This includes making it clear to candidates that sub-consultees may be consulted when, for example, the statutory consultee does not have enough direct knowledge of a candidate's skills and abilities to provide evidence-based comments.
34. The JAC welcomes the Court of Appeal's judgment that the use of statutory consultation and the practice of consulting sub-consultees was lawful. It also welcomes the opportunity to improve our guidance and process to ensure that statutory consultation continues to be fair for all.

Next Steps

35. A paper to the JAC Board will be presented in December 2025 with an executive summary of this evaluation. This will include changes detailed above because of the Court of Appeal judgment. After this the executive summary will be published on the JAC website, and a news article will also be published on the JAC website and social media accounts announcing the executive summary in addition to the publication and use of the updated guidance material.

Annex A

Exercises where statutory consultation has been waived.

Exercise Number	Exercise name	Launched	Applications
00117	Fee-paid FtT and Employment Tribunal	21 March 2023	2,146
00120	Deputy District Judge	18 October 2022	2,719
00123	Judge of UT and FtT Tax	9 May 2023	48
00133	Deputy District Judge (Magistrates Court)	8 March 2023	635
00162	Recorder	15 June 2023	1,134
00169	Deputy Judges UT Immigration and Asylum Chamber	22 June 2023	267
00175	Deputy Insolvency Companies Court Judge	27 September 2023	31
00184	Deputy District Judge	19 March 2024	2,715
00188	Deputy Chancery Master	23 January 2024	25
00189	Deputy Assistant Judge Advocate General	30 April 2024	154
00200	Judge of FtT Property	28 May 2024	79
00203	Fee-paid Judge of FtT	18 June 2024	1,846
00221	Deputy Chair Agricultural Land Tribunal for Wales	22 May 2024	31
00242	Fee-paid Appointed Person, Appeal Tribunal, Trademarks and Registered and Unregistered Design	26 November 2024	22