

# **Bridge Group** research action equality

Report for the Judicial Diversity  
Forum

## **Strengthening the evaluation of JDF partners' diversity initiatives**

November 2022



# Introduction

1. The aim of the research for the Judicial Diversity Forum (JDF) is to engage with and collect each JDF member's views and experiences on the outcomes and impact of diversity and inclusion (D&I) interventions and initiatives. These views and experiences are used to suggest a high-level framework to the JDF on the design and evaluation of interventions and initiatives.
2. The JDF commissioned the Bridge Group to undertake this research. Most of the consultation and research produced to develop this report were carried out in January 2022. The Bridge Group is a non-profit consultancy that uses research to promote social equality. We do this by supporting organisations of all kinds with independent expertise, research and practical know-how to enable them to make real and lasting impact on socio-economic diversity and social equality.
3. This report starts by clarifying the context. Essential to evaluating outcomes and impact is a clear understanding of the intended aims of the interventions and initiatives. We also need to know whether activities have indeed been delivered and have reached the people they were intended to benefit. In a partnership, it is also helpful to clarify the extent to which activities (and their intended impact) run by the various member organisations complement each other and member organisations understand their own and each other's roles and responsibilities.
4. Where we report interviewees' perceptions, we generally do not seek to establish whether there is factual evidence for them. We do not seek in this report to evaluate the activities or to comment on what activities members should run. We comment on the processes involved in applying for the judiciary, only in relation to whether they facilitate the evaluation of relevant D&I measures, or could potentially do so.
5. We refer briefly to some points set out in the JDF's draft 'Principles of design and evaluation of interventions and initiatives'.
6. We make recommendations for a design and evaluation framework. Included in an appendix are further views from those interviewed about the process of applying for the judiciary and working within it.

## Findings from interviews

7. This report starts by exploring whether some of the preconditions for effective evaluation of diversity and inclusion (D&I) activity are in place. These include a clear understanding of the intended aims of the interventions and initiatives and shared awareness of related roles and responsibilities within member organisations and across the JDF.
8. Member organisations of the JDF are:
  - > Bar Council (BC)
  - > Chartered Institute of Legal Executives (CILEX)
  - > Judicial Appointments Commission (JAC)
  - > Judicial Office (JO)
  - > Law Society (LS)
  - > Legal Services Board (LSB)
  - > Ministry of Justice (MoJ).

### **Diversity and inclusion aims for the JDF and its member organisations**

9. Most members of the JDF have their own D&I activity, independently of the JDF. This activity collectively reflects a range of approaches to D&I, types of responsibility for it and expectations of progress. At least one organisation reports monthly on milestones, while an interviewee from another spoke in terms of substantial progress being "at least generational".
10. In general, the professional bodies' D&I aims prioritise progression within their profession, over entry to it, though they do also proactively support access. This reflects their awareness of the inverse relationship between diversity and seniority. For most members, progression to the judiciary is therefore only one aspect of their D&I activity. Professional bodies' D&I is characterised by researching an issue, developing targeted toolkits, guides, programmes and other mechanisms to help address this and then encouraging implementation by their members. Issues include those of a cultural and structural nature.

11. The Lord Chancellor has a statutory duty to promote diversity in the Judiciary, as do the Lord Chief Justice and chair of the Judicial Appointments Commission (JAC). The Ministry of Justice (MoJ), as sponsoring department for the Judicial Appointments Commission (JAC) looks after the resourcing, 'mechanics' and efficient running of its operations. The JAC is however operationally fully independent. The Courts and Tribunals Judiciary (the Judiciary) has its own Judicial Diversity and Inclusion Strategy.<sup>1</sup> The Legal Services Board (LSB) is an oversight body for the regulation of legal services with a focus on the interests of consumers with a statutory duty to encourage an independent, strong, diverse and effective legal profession.
12. While individual JDF members take varying approaches to D&I within their own organisations, they collectively agree the JDF's terms of reference. These state the group's purpose as follows: "The JDF brings together leaders from organisations from across the legal sector to identify and implement ways of improving judicial diversity." We note that this purpose does not explicitly state that it will effect a change in judicial diversity. However, one of the objectives suggests an intention to do so, in identifying the current primary focus as "overseeing the development, delivery and efficacy" of the Pre-Application Judicial Education programme (PAJE), the combined statistical report and the evidence base on the impact of programmes.
13. **Most interviewees expressed the view that the aims for the JDF are not clearly defined** and they asked for collective clarification of a common aim, a theory of change and key indicators of progress, including specific outcomes throughout the pipeline, gateway and beyond:
- "There is no stated aim. This is getting in the way of things."*
- "[We need a] consistency of understanding of what we want to achieve."*
- "We need to develop a theory of change and aims [... and] how to reach that."*
14. The majority of interviewees perceive the JDF's approach as not being strategically cohesive. It is described as "meandering", with many disparate interventions. However, it is possible that this perception is at least partly attributable to the large number of interventions and to the presence of members' broader D&I activities in the background.

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<sup>1</sup> <https://www.judiciary.uk/announcements/judicial-diversity-and-inclusion-strategy-2020-2025-launched/>

*"There are lots of disparate interventions without evidence of what works."*

*"Too much of what is done is a list of worthy-sounding initiatives."*

## Roles and responsibilities

15. The JDF Action Plan collates individual organisations' efforts under aims relating to attraction, application support, selection and retention. While many activities are run in parallel by individual JDF members, some are collaborative or mutually helpful. The flagship PAJE programme involves multiple partners, including the MoJ which provides central coordination and tracking. The statistical reports produced by the MoJ are likely to be helpful to all members. However, it is unclear from the Action Plan what specific change the actions are expected to effect and this is reflected in the update on the Action Plan.<sup>2</sup> The latter generally records the implementation of actions, but not their impact or intended impact.

16. **There is a perception that the implementation of actions is not coordinated and that there is insufficient collaboration between members.** (We observe that here too, it is possible that members' 'background' D&I activity may be confusing matters: it is not always clear what contributes to judicial diversity, particularly when the contribution is indirect, for example encouraging diversity at senior levels of the legal professions.)

*"The other thing is joining it all up [...] Everyone does their own thing – it is disjointed."*

*"More needs to be done on checking in with each other. There needs to be an increase in collaboration. Most of the barriers to progress will be common across all JDF members. Collaboration across the members is what is conspicuously absent."*

## Where is the problem? Pipeline vs gateway

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<sup>2</sup> <https://judicialappointments.gov.uk/wp-content/uploads/2021/12/JDF-progress-against-2020-21-action-plan.pdf>

17. Further to the lack of clarity about aims, there is disagreement about the main cause of the lack of diversity in the judiciary. This is relevant to a discussion of evaluation, because we first need to identify an issue accurately, in order to assess whether it is being addressed. One perspective is that a narrow range of people apply, producing a pipeline issue:

*"The applicant pool is so narrow [by the time you reach any judicial appointment] that D&I issues are already fighting an uphill battle."*

18. The inverse relationship between seniority and diversity in some areas of the legal professions is well established.<sup>3</sup> But a counterpoint is the relatively diverse profile of the memberships of the professional bodies and evidence that those who apply to the judiciary present a relatively diverse pool. While the application data is complex and variable, the MoJ's statistical reports show that applicants tend to be more diverse than those who are successfully appointed.<sup>4</sup>

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<sup>3</sup> Data from the Solicitors Regulation Authority (SRA) from all SRA-regulated firms shows little difference in socio-economic background between solicitors and partners. See <https://www.sra.org.uk/solicitors/resources/diversity-toolkit/law-firm-diversity-tool/>. However, there are differences in more specific parts of the 'pipeline' See for example: Bridge Group. Socio-economic diversity and progression to partner in the law. 2021. <https://www.thebridgegroup.org.uk/news/partner-law> This study found that, across a group of ten leading London law firms, the percentage of currently employed solicitors who attended independent/fee-paying schools falls from associate to senior associate level, it then rises with increasing seniority, from 39% of senior associates to 53% of partners. It takes employees from lower socio-economic backgrounds a year and a half longer on average to reach partner than their colleagues from higher socio-economic backgrounds. See too Bar Standards Board: Diversity at the bar 2020. 2021. <https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> This reports that 13.8% of pupils attended an independent school, while 23.3% of QCs did so. This data comes with the caveat of a high number of non-responses (on average, 44% across all levels).

<sup>4</sup> For example, *Statistical analysis of candidate progression through judicial selection tools 1 April 2015 to 31 March 2021*. See <https://www.gov.uk/government/statistics/ad-hoc-analysis-of-judicial-diversity-statistics-2021/statistical-analysis-of-candidate-progression-through-judicial-selection-tools-1-april-2015-to-31-march-2021>

19. We note that solicitors are also less successful in the judicial application process.<sup>5</sup> Being a solicitor is not a protected characteristic, but since solicitors and legal executives are more diverse than barristers in terms of gender and (for solicitors) ethnicity,<sup>6</sup> there is an argument that recruiting more non-barristers to the judiciary will help to diversify it.
20. There is a perception that, despite the evidence in the MoJ's statistical reports, the 'pipeline narrative' informs the collective JDF assumption that diverse membership of the professional bodies will in itself make for a more diverse judiciary. This reinforces the importance of using evidence to identify issues and providing greater clarity of JDF aims.
21. **External evidence suggests that, for the judiciary to become more diverse, the pipeline, the gateway and the post-gateway are important.**<sup>7</sup>

## The nature of D&I initiatives in the JDF Action plan

22. We briefly describe the nature of D&I initiatives in the Action Plan, as this informs the type of evaluation that is likely to be helpful.

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<sup>5</sup> The numbers for legal executives and other non-barrister professions are too small to make robust calculations of success rates.

<sup>6</sup> We understand that data on social background is not collected in a sufficiently consistent way to allow comparisons across the professions. With this caveat, we note that legal executives appear to be particularly diverse in terms of socio-economic background.

<sup>7</sup> See for example the Bridge Group's 2018 report on entry to a group of leading law firms and 2021 report on progression to partner.

Socio-economic background and early career progression in the law. 2018.  
<https://www.thebridgegroup.org.uk/research-2018>

Socio-economic diversity and progression to partner in the law. 2021  
<https://www.thebridgegroup.org.uk/news/partner-law>

See too the 2020 reports on the financial services and real estate sectors:  
<https://www.thebridgegroup.org.uk/research>



23. In line with the 'co-production' recommended in the JDF's draft 'Principles' document, some interviewees reported that they run focus groups and other forms of consultation with those whom the initiatives are designed to benefit. This informs the design of the initiatives and ongoing improvements to them.
24. Across the JDF Action plan, there is a balance between research to gather information and evidence, and actions to effect change. While research is usually the pre-requisite of actions to effect change, it tends to be easier to evaluate the latter.
25. There are more initiatives in the Action Plan relating to the pipeline than to the gateway. This reflects the imbalance of responsibility: while all members can contribute to outreach, responsibility for selection rests with the operationally independent JAC. The MoJ does however play a role in relation to statutory requirements (for example, salaried part-time working and barriers for certain legal professionals), while the Judiciary contributes to ensuring ethnic, gender, professional and cognitive diversity in selection panels. The Judiciary is also responsible for maintaining an inclusive culture in the judiciary and retention.
26. The most robust way of evaluating pipeline initiatives is by using data from the gateway. Gateway data – data about applications to the judiciary and the outcomes of those applications – needs to be available in some detail, in order to be useful. Detail includes disaggregating data by applicants' personal and background characteristics, their professional background and any participation in D&I initiatives.
27. Separately, gateway data can be used to monitor the application process and the impact of D&I initiatives focused on that.

## **Implementing planned D&I actions**

28. This section assesses the extent to which planned D&I actions have indeed been implemented. This is relevant to a discussion of evaluation in that implementation of activities is a pre-requisite of their being evaluated.

29. As has already been noted in the JDF's update on progress against the 2020-2021 Action Plan,<sup>8</sup> **there has been significant progress in implementing the actions planned.**<sup>9</sup> This is despite difficulties: the BC and the LS can encourage members to adopt good practice, but have no power to enforce it. The BC's D&I team is very small, with limited capacity to support implementation, so promotes itself as "a resource and a centre of expertise". The LS, as a larger organisation, has more resource for D&I, including an Evaluation Manager. Law Society colleagues noted that their D&I team reports through to the Law Society's Board and that the whole organisation contributes to D&I.
30. Another difficulty is that members of the professional bodies have variable resources for D&I: while for example the inns of court and large law firms may have some resource, smaller firms are less likely to, while many self-employed barristers support D&I in their own time.
31. Despite this, the action plan and interviewees report progress on D&I initiatives. There are concrete achievements amongst the professional bodies, for example:
- > BC, CILEX and LS: over 40 law firms and other organisations have signed the 'Women in Law' pledge to set targets for women in senior roles<sup>10</sup>
  - > LS: the 'Legally disabled' scheme demonstrates evidence of impact in terms of, for example, staff networks and structures in member firms<sup>11</sup>
  - > BC: 60 chambers are collaborating to offer and fund 25 internships between them for the '10,000 Black interns' scheme.<sup>12</sup>

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<sup>8</sup> <https://judicialappointments.gov.uk/wp-content/uploads/2021/12/JDF-progress-against-2020-21-action-plan.pdf>

<sup>9</sup> While none of the interviewees mentioned the restrictions imposed by the Covid-19 pandemic, it is evident that outreach had to be adjusted. It is likely that other adjustments were required for other measures too. Successfully implementing planned actions in this context is laudable.

<sup>10</sup> <https://www.lawsociety.org.uk/en/campaigns/women-in-leadership-in-law/tools/the-women-in-law-pledge>

<sup>11</sup> <https://www.lawsociety.org.uk/topics/lawyers-with-disabilities/legally-disabled-two-years-on>

<sup>12</sup> <https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/race/10000-black-interns.html>

32. The JAC has implemented a number of measures to promote a fair selection process, for example, it has introduced name-blind shortlisting, reviewed its selection materials for bias and applied equal merit provision. The JAC continues to provide support for selection panels on fair process and to undertake research and statistical analysis. The Judiciary and the JAC collaborate to ensure ethnic, gender, professional and cognitive diversity and gender balance on selection panels.
33. The Judiciary has implemented actions such as a judicial careers portal, Judicial Workplace Guidance and a Workplace Adjustments Passport, and a leadership hub.<sup>13</sup> The Judicial Workshadowing & Mentoring Scheme pairs eligible lawyers who are female or from a Black, Asian or minority ethnic background, lawyers who attended a (non-fee paying) state school and lawyers who were the first generation in their family to attend university, with judges who provide confidential advice, support and guidance with their application to the Judiciary. Since August 2021 over 2950 individuals (lawyers, serving judicial office holders and those seeking tribunal non-legal member roles) have signed up for application seminars run by the Judiciary.

### **Impact measures do not directly track progression to the judiciary**

34. Most interviewees could describe evaluation processes for their own D&I initiatives, or those run within their organisation. Some spoke of reporting regularly to senior colleagues on short-term and longer-term objectives and of progress being monitored carefully. As noted above, some schemes have targets. However, these targets are generally not reflected in the Action plan or its update.
35. The professional bodies cited forms of evaluating D&I initiatives that they use themselves within their organisation or encourage their membership to use. However, they are less able to extend these forms of evaluation to schemes intended directly to support progression to the judiciary. Although

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<sup>13</sup> The Judicial Diversity and Inclusion Strategy Update 2021 gives more detail on all the actions being taken. <https://www.judiciary.uk/wp-content/uploads/2021/11/Judicial-Diversity-Inclusion-Update-2021-v2.pdf>

progression to the judiciary is the key aim of the JDF, most interviewees noted that progress against it was not being measured. Interviewees from the professional bodies said that **they could not measure progress, due to lack of data.**

36. It is common for schemes that support progression to the judiciary proactively to gather feedback from participants; and this feedback is generally very positive. Participants in the joint Pre-Application Judicial Education Programme (PAJE) Programme are also invited to complete a survey after they complete the course and one year later.<sup>14</sup> In addition, the MoJ analyses the success rate of participants applying for the judiciary. However, this is available only in aggregate, limiting its usefulness. As PAJE is a new programme, the reporting is still developing and will need to be refined to reflect experience and requirements from JDF members. This is covered in more detail below.
37. There are points to consider in evaluating such schemes. Evaluation needs to accommodate the potential time lag between participants' completing the intervention and applying to the judiciary. In addition, evaluation needs to recognise that enabling participants to make an informed decision *not* to apply either in the short-term, until they can better demonstrate skills and abilities, or at all is a legitimate outcome.
38. All interviewees expressed a clear desire for robust evaluation of D&I measures, including those supporting progression to the judiciary. This is underpinned by a sincere commitment to achieving progress - and also the wish to use resources effectively.

*"We have an interest in doing evaluation better. A framework for evaluation would be really helpful."*

*"We can't waste resources on things that aren't working."*

*["We are] quite reflective – we're willing to look in depth – we buy into the principle of evaluation and we want to ensure we're using resources most effectively."*

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<sup>14</sup> The gap before follow-up is intended to reflect the longer-term nature of preparing for and undertaking the judicial application process. See the following section for more information.

## **Pre-Application Judicial Education Programme (PAJE): a case study**

39. This report uses the PAJE Programme as a case study of an outreach programme, as it is a large programme involving most JDF members.<sup>15</sup> PAJE also provides the best example found of active evaluation, with collaborative efforts to establish metrics and review progress. However, the programme is relatively new (it started in 2019), which limits the amount of data available. It is likely that the factors and issues involved in evaluating PAJE arise in similar programmes.
40. The flagship PAJE programme is a collaboration between CILEX, the Bar Council, the Law Society, the Ministry of Justice, the Judiciary/Judicial Office and the Judicial Appointments Commission. The MoJ webpage states that the programme “supports talented lawyers from underrepresented groups to feel more equipped, confident and prepared when considering applying for a future judicial role” and that it “offers participants from all legal backgrounds the opportunity to develop their understanding of the role and skills required of a judge”.
41. The MoJ funds and project manages PAJE with strong support from all other JDF members; this includes reporting on uptake and evaluation. Management of the programme involves a cross-organisation working group which reviews evaluation requirements and the design of the annual survey. Implementation involves all partners and requires them to contribute significant resources to planning and delivery, for example, the discussion groups are led by judges.

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<sup>15</sup> References to the evaluation of PAJE in this report were correct at the time of the January 2022 fieldwork. Since the fieldwork was conducted, a further evaluation of PAJE has been completed, and the programme has been approved for a further year. The latest evaluation shows that PAJE participants are more likely to be successful in judicial selection exercises application than those with similar characteristics who had not undertaken the programme. The evaluation addressed some of the problems identified in this report, including: inclusion of protected characteristics of each participant, inclusion of success rate of participants in judicial exercises compared to non-participants and inclusion of data analysing success by professional background.

42. Individual partners run other support programmes too, such as: CILEX's Judicial Development Programme;<sup>16</sup> the Targeted Outreach and Support run by the JAC with the Judiciary and funded by the MoJ; and the Judicial Application Seminars, Judicial Work Shadowing Scheme and Judicial Mentoring Scheme run by the Judiciary/JO. In addition, the LS has a Solicitor Judges Division to support aspiring and sitting solicitor judges and also delivers regular judicial interview workshops and a free judicial support scheme for lawyers from Black, Asian and minority ethnic backgrounds. However, we focus here on PAJE as a common programme.
43. Informal feedback from participants appears to be the longest-standing method of evaluation. Interviewees from two professional bodies reported feedback from participants that PAJE helps them to understand the application process and what it requires. This is very positive.
44. In December 2020, the JDF agreed to evaluate the PAJE programme through analysing the following:<sup>17</sup>
- i. short-term outcomes via Overall Feedback Survey – once participants have completed a judge-led discussion group course
  - ii. longer-term outcomes via the PAJE Annual Survey – a year later follow-up with participants who have completed a judge-led discussion group course
  - iii. the impact of the course though analysing participant outcomes via the JAC appointment process data.
45. The MoJ reported on this to the JDF in November 2021. Findings are positive in terms of uptake and the diversity of participants. However, while the data shows what proportion met each diversity characteristic, it does not show how many did not meet any diversity characteristic.<sup>18</sup> Analysis of survey

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<sup>16</sup> [https://www.cilex.org.uk/membership/career\\_progression/cilex-judges/about\\_the\\_judicial\\_development\\_programme](https://www.cilex.org.uk/membership/career_progression/cilex-judges/about_the_judicial_development_programme)

<sup>17</sup> This material is quoted from the Pre-Application Judicial Education (PAJE) programme evaluation – summary and full evaluation report. November 2021. MoJ / PAJE Working Group.

<sup>18</sup> While lawyers who are female, ethnically diverse, disabled or from a non-barrister profession are preferenced for a place on the judge-led discussion groups, any spare PAJE places can be filled by lawyers meeting none of these criteria. Since PAJE is relatively resource-intensive (in terms of both funding

responses include some positive messages, with half the participants (52%) reporting that after completing PAJE they were 'highly likely/much more likely' to apply for a judicial appointment.

46. The paper also reports that one year later, over half the survey respondents (34 out of 60) had applied for a judicial role. Given the newness of the programme and its small size, the analysis provides limited evaluation to date. Analysis of first year participants' outcomes via the JAC appointment process data suggests that PAJE applicants are less likely than the general applicant pool to be successful in their applications for the judiciary. However, this finding comes with the caveat that the analysis did not control for factors such as years of experience. The analysis also does not appear to control for ethnicity or professional background, both of which are associated with less likelihood of success. Since the PAJE applicant pool is more diverse than the general applicant pool, it is possible that its lower success rate reflects that diversity, but the evidence is not available to confirm this.<sup>19</sup> These caveats mean that the analysis above is not sufficiently robust and reliable to indicate whether PAJE applicants are more or less likely than the general applicant pool to be successful in their applications for the judiciary – but it is a very useful first step.
47. One further problem with the data – and thus a further caveat to the initial analysis of JAC data – is that respondents may have attended a PAJE course (for which they must apply) or merely accessed the open-access resources available from PAJE online. That confusion over data is being resolved, but may have had an impact on the first year's figures.<sup>20</sup> Overall it is clear that it is too early to draw conclusions from limited PAJE data, but the MoJ and other stakeholders working on PAJE must ensure that their evaluation processes anticipate fully the type of analysis that will be applied to the data

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and contributions of time), we recommend reporting on the profile of participants, with the aim of filling all places with participants meeting at least one diversity characteristic.

<sup>19</sup> It should also be noted that applicants to PAJE are assessed in the first instance for diversity; they are not assessed for their suitability for judicial appointment.

<sup>20</sup> The JAC has amended the category so that PAJE participants can indicate whether they have only reviewed the online resources or have also completed a discussion group course. Reviewing the online resources is a pre-condition of applying for a place on a discussion group course.

to assess whether the programme is helping to increase applicants' chance of success.

48. The evaluation does not include data for the success rate of comparators (for example, ethnically diverse solicitors who have participated in PAJE vs ethnically diverse solicitors who have not). Obtaining data in this level of detail is essential for a robust analysis of impact.
49. All data collected from PAJE is shared with the professional bodies. However, the current limitations of the data mean that it does not enable professional bodies to assess whether participating in PAJE makes their members more or less likely to apply to the Judiciary.<sup>21</sup>

### Broader data issues

50. More generally, the professional bodies do not receive data about why participants in other D&I initiatives and who apply to the judiciary are successful or unsuccessful, and whether there are common shortcomings. The professional bodies observe that not knowing what the problems are makes it hard to provide relevant and effective outreach and support. The JAC is currently working towards identifying points within the selection process where candidates of under-represented groups have most difficulties.

*"We're flying blind [...] we're guessing at what is holding them back."*

*"They share the data, but haven't been measuring the right things."*

*"It's about effective data-sharing. [...] JAC can give us data to help [us] gauge the impact of programmes."*

51. We acknowledge that resource will be required to establish mechanisms to provide quantitative data in the appropriate level of detail. It is likely that the JAC will also need to obtain candidates' permission to share their data. Within these constraints, there will need to be an ongoing process of members' collectively reassessing what data is required, and negotiating what is practicable. Establishing mechanisms to share qualitative insights will also require resource (see too the Appendix).

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<sup>21</sup> The data shared through the Pupillage Gateway may be a possible model for the detail of data required.



52. Not having this data means that the JDF will not be able to assess the extent to which activities are contributing to the intended outcomes. Nor will it be possible to implement a theory of change model in a meaningful way.
53. Furthermore, the MoJ reported that they need to be able to demonstrate the impact of PAJE, in order to make the case for ongoing funding and in-kind input for the programme. This echoes comments from other JDF members contributing to this and similar programmes.

### **The selection process for the judiciary: varying success rates**

54. To achieve progression to the judiciary, lawyers must pass successfully through the selection process. This process is therefore key to achieving a more diverse judiciary. This is reflected in the JDF Action Plan and it is evident that progress has been made against this plan in gathering evidence. As already noted, the MoJ publishes extensive data on the diversity of the judiciary and the success rate of applicants for the judiciary by gender, ethnicity, disability and professional background.<sup>22</sup> Also as noted, this data shows that applicants from a Black, Asian or minority ethnic background or who are solicitors are generally less likely to be successful.
55. Some data tables include calculations of intersecting characteristics and the narrative report summarises key points. It notes, for example, that applicants who are solicitors and are from an ethnically diverse background are even less likely to be successful. Extensive as this data is, it is insufficiently detailed to indicate why applicants with some characteristics have disproportionately low or high rates of success. We understand that the JAC is currently undertaking further research on this question and has presented initial findings to the JDF.
56. The MoJ notes trends in the data over time and data is used to evaluate the PAJE and Targeted Outreach initiatives.

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<sup>22</sup> <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2021-statistics>

## Targets

57. The JDF Action Plan includes some targets for inputs – which actions will be implemented – but not targets for their impact. **There is widespread support among interviewees for impact targets**, or at least milestones, throughout the journey to the judiciary. This includes support from some JDF officials specifically for targets for judicial appointments, for example one interviewee commented that *"[We need to have] appointments where diversity is proportionate to the applicant pool."* However, there is also the perspective that targets for appointments could compromise the principle of appointment on merit.

58. We acknowledge that the word 'target' can have a range of meanings. We use the term 'impact target' to describe what is intended to happen as the result of an action taken. We consider impact targets to be an essential component of evaluation. In this report, we note two broad categories of impact targets:

- > 'Soft' impact targets: these comprise self-reported changes in attitudes, ambition and/or understanding; and are normally gathered from participants via surveys, focus groups or similar. At least some JDF members measure soft impact, but it is not clear whether they have used these measures to formulate impact targets.
- > 'Hard' impact targets: these comprise changes in behaviour or concrete outcomes. Interviews with JDF members and scrutiny of the Action Plan did not indicate that any members were using hard targets. It is likely that the limitations of the available data preclude this, at least in relation to applications to the judiciary and outcomes. As already noted, the JDF does not have any collective hard targets. However, at least one member holds data that could inform some hard targets, and it is likely that others do too, for example for diversity at senior levels in each profession and in the judiciary.<sup>23</sup>

59. We observe that targets need to be based on a common understanding of what the JDF is working towards and the speed of progress. As noted earlier,

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<sup>23</sup> The LS confirms that it has data which could be used for hard targets, for example relating to the ethnicity and gender of partners in private practice, disaggregated by size of firm.

most interviewees expressed the view that the aims for the JDF are not clearly defined and they asked for collective clarification. The Recommendations section below proposes a set of goals to clarify that common understanding and outlines how they could be used to develop targets. We also note that goals and targets need to be reviewed regularly to maintain their relevance.

# Recommendations for a design and evaluation framework

This section reflects the Bridge Group's views on how the JDF should design and evaluate D&I measures to support a more diverse judiciary.

## Existing JDF plans

- i. The JDF's proposed 'Principles of design and evaluation of interventions and initiatives' is sound and complements the framework below.
- ii. To promote shared understanding of the purpose of activities in relation to the aims below, we recommend developing a theory of change, identifying key stages in the pipeline and gateway.
- iii. To facilitate coordination of purpose, we recommend reconfiguring the JDF Action plan. Rather than grouping initiatives by responsible organisation, we recommend grouping initiatives by their aim: the difference each activity is intended to make. Thus, for example, all programmes similar to PAJE would be grouped together.
- iv. In order to facilitate this process, the JDF may wish temporarily to reduce the number of activities on the Action plan, retaining those activities that contribute most clearly to and directly target agreed stages in the JDF's core aim of a more diverse judiciary, and in line with the available data on diversity gaps.
- v. To facilitate focus, we recommend agreeing targets for inputs and impact. Impact targets should relate clearly to the JDF's core aim. Targets may be collective for the group of initiatives and/or individual for each programme, or each contributor to the programme. Details follow below.

## The framework and targets: introduction and examples

- i. Each point on the framework below represents a goal. These reflect a desired action or outcomes relating to the JDF's core aim of a more diverse judiciary.
- ii. The goals are, as requested, at a high level. This makes them flexible, so that they can be adapted to different stages within the pipeline, gateway and the judiciary itself. The second goal is particularly broad and could be adapted to various stages of the journey to the judiciary. This goal could be disaggregated as 'Participants in D&I outreach and support programmes are subsequently more likely than their comparators to:'
  - a. ... enter the profession (relevant, for example, to the CILEX bursary scheme and the SQE)
  - b. ... progress to more senior roles within the profession (for example, the Women in law pledge)
  - c. ... apply to the judiciary (for example, PAJE)
  - d. ... be retained within the judiciary (for example, the Judiciary's actions to support and develop the career potential of existing judges).
- iii. Each goal can be used to formulate a more specific impact target for an action (or set of actions).
  - a. Impact targets should be 'SMART', where possible and appropriate.<sup>24</sup> The two core elements of this are a number and a date.
  - b. To measure progress, we strongly recommend agreeing numerical impact targets, where data is available. This helps to inform the scale and planning of activities. It can also help to focus implementation on the desired result.
  - c. The current baseline normally informs the impact target.
  - d. Where data is not yet available, then impact targets can be relative ('more diverse'), but this is less helpful in the longer term to robust evaluation.
  - e. Many of the goals imply a numerical impact target through comparison with a reference point ('the success rate for X is the same as the success rate for Y').

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<sup>24</sup> SMART targets are normally specific, measurable, achievable, relevant and time-bound. (This definition may vary.)

- f. An impact target could adopt an easier reference point than the goal, for example, for goal viii: 'By [insert date], at each level of the judiciary, the profile of judges reflects the profile of senior members of the legal professions.'
- g. Targets may be collective for the group of initiatives and/or individual for each programme, or each contributor to the programme. Percentage increases may be helpful for collective targets (for example, 'By [insert date], each of the professional bodies will increase the proportion of ethnically diverse lawyers at senior levels by 20%').

## High-level framework

Detailed data is available to all JDF members to allow them to monitor and evaluate progress against the goals below.<sup>25</sup>

- i. All participants on D&I outreach and support programmes have the intended diversity characteristic and/or are from the intended underrepresented group.
- ii. Participants in D&I outreach and support programmes are subsequently more likely than their comparators to take the action the programme is intended to support. 'Comparators' means here their peers with similar professional and personal characteristics who did not participate in the programme.
- iii. Participants in D&I outreach and support programmes are subsequently more likely than their comparators to be successful in the action the programme is intended to support.
- iv. The success rate of participants in D&I outreach and support programmes in taking that action is (at a minimum) the same as the average success rate (across all participants).

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<sup>25</sup> The first four goals can be applied at points across the professional pipeline and gateway. We acknowledge that providing this data has resource implications. It will also require the consent of outreach participants and applicants to the judiciary to share their data. Detailed data is also required to inform the choice of activities themselves, but that is outside the scope of this work.

- v. In applying to the judiciary (including judges applying for a more senior role), those applying from each professional background reflect (at a minimum) the eligible pool in terms of diversity characteristics.
- vi. In applying to the judiciary, the success rate for each diversity group is (at a minimum) the same as the average success rate across all applicants from that professional background.
- vii. In applying to the judiciary, the success rate for solicitors, legal executives and other non-barrister legal professionals (or for judges with that background) is the same as that of barristers.
- viii. At each level of the judiciary, the judiciary better reflects the society it serves.<sup>26</sup>
- ix. Within the judiciary, the retention rate for judges with the background of solicitor, legal executive or other non-barrister role is the same as that of judges who are (or were) barristers.

Similar principles apply to different types of measures, for example those implemented within law firms and chambers. In some cases, comparators may more appropriately comprise similar organisations where the same measure was not implemented.

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<sup>26</sup> This reflects the JAC's objective: '*We believe the judiciary should better reflect the society it serves.*' See <https://judicialappointments.gov.uk/>

# Appendix

- A. We include here comments from some interviewees about the assessment process for applications to the judiciary and other matters. While some of these comments do not relate directly to evaluation, they do relate to it indirectly: they have the potential to either facilitate or hinder evaluation processes and the ongoing improvement of D&I activity.

## Using application outcomes data to evaluate and inform pipeline activities

- B. The JDF Action Plan aims for selection processes to be open and fair. We do not comment on whether that is the case, rather we comment on the apparent impact of selection processes and the associated data on evaluating D&I activities and informing their ongoing improvement, as perceived by some interviewees.
- C. Interviewees from the professional bodies said that they do not receive sufficiently detailed data to properly evaluate programme impact. More broadly, they perceive that the assessment process is not sufficiently transparent for them to understand the measures by which applicants are assessed.

*"So much of the process involves qualitative judgement of candidates."*

- D. This means that the professional bodies do not know what support and professional development to provide to their members aspiring to the judiciary, to improve their chances of success. They want the JAC to be clearer about how they assess applicants' suitability.

*"What are the differentials from a qualitative perspective? The JAC should provide this information."*

*"Not knowing why [applicants succeed or do not succeed], what the problems are, makes it hard to do relevant, effective outreach and support."*

- E. Some suggested that there are also unintended barriers within the selection process for some applicants.



*"Barriers in the selection process must be addressed. [...] All our work [...] doesn't seem to be making a dent in our figures."*

*"[We have] a part to play, but the recruitment process has to be fit for purpose."*

F. This is relevant to evaluation, in that however good a D&I measure may be, it cannot be effective if there is an unintended barrier within the gateway. Such barriers make it difficult to evaluate D&I measure robustly. We therefore briefly explore two perceived barriers.

G. While the frameworks do not stipulate the professional background of barrister (or, for lower-tier roles, court experience), there is a perception among the majority of interviewees that it is easier for barristers to demonstrate the relevant competencies and their 'fit' for court appointments.

*"The Skills and Abilities Framework [...] doesn't indicate that it favours barristers over solicitors, but that seems to be what happens."*

H. There is a perception that applicants need to *"look like a barrister and sound like a barrister"*. The LS reported feedback from some members who successfully applied for the judiciary that their 'extra-curricular' experience was valued over their core experience as a solicitor. The LS perceives that solicitors' skills are not being weighed appropriately.

I. Interviewees from professional bodies raised the broader question of what defines merit – and how this relates to diversity.<sup>27</sup>

*"Collectively we need to understand what good looks like. Does the process mean that [some groups] perform better than others?"*

*"What does 'good' look like?"*

*"We need to unlock the idea that a diverse judiciary is in everyone's best interest across the whole sector."*

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<sup>27</sup> We do not have detailed information about this point. We note that the question of what constitutes merit has arisen within much of the Bridge Group's work with employers. See for example our 2020 reports on progression to partner in the law and on financial services at <https://www.thebridgegroup.org.uk/research>. In such cases, we have recommended reviewing concepts of merit to identify where norms or assumptions may be affected by background or other factors not directly relevant to performance in the role.

- J. As already noted, the JAC has implemented a number of measures to promote a fair selection process, for example, it has introduced name-blind shortlisting, reviewed its selection materials for bias and applied equal merit provision. The JAC continues to provide support for selection panels on fair process and to undertake research and statistical analysis. The Judiciary and the JAC collaborate to ensure ethnic diversity and gender balance on selection panels. These are important developments, but they may not necessarily address the points in this section raised by interviewees.
- K. We recommend that further work includes exploring how selection panels apply the relatively broad competency criteria, and how they assess the relevance of applicants' experience. We also recommend making selection panels feedback available to the relevant professional body, if applicants grant permission to do so.

### **Other barriers to a diverse judiciary**

- L. As with many other professions, the impact of D&I measures relating to attraction, support and selection to the judiciary may be diminished by actual or perceived barriers within the profession itself. There is broad agreement across most members that the JDF should consider the legal professional's whole career – not just the point of transition into the judiciary.
- M. While the public view attaches considerable prestige to the role of judge, some interviewees expressed the view that it was not an attractive career path and that this was likely to discourage some lawyers from applying. While many lawyers taking up judicial roles are likely to experience a significant reduction in salary, issues relating to career progression emerged from interviews as more important.
- N. In addition, some interviewees pointed to barriers relating to eligibility and/or requirements for entry to the judiciary. Legal executives are currently eligible for only eight judicial offices and these are for the district courts, first-tier tribunals and two specialist adjudicator positions.<sup>28</sup> Given that CILEX has a very diverse membership, particularly in terms of gender and socio-economic

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<sup>28</sup> The Ministry of Justice has been reviewing this restriction and is preparing advice for the Lord Chancellor to expand the number of judicial offices for which CILEX lawyers are eligible.

background, removing these restrictions is likely to help boost judicial diversity: *"They are [currently] missing a quick-win opportunity."* While solicitors are eligible for all application processes, they tend to enter the judiciary at a lower tier and gather court experience before applying for higher appointments.

O. It is evident from the statistics published by the MoJ that judges from a non-barrister background remain concentrated at the lower levels of the judiciary and in tribunals. Judges from a solicitor background do apply for higher appointments, but, where numbers are sufficient to make meaningful comparisons, their success rate is lower.

P. There are perceptions that the culture of the judiciary can discourage legal professionals from applying and/or staying:

*"The culture and working practices within the judiciary need to support diversity."*

Q. The Judiciary's Judicial Diversity and Inclusion Strategy, published in 2020, sets out four core objectives:

- > creating an environment in which there is greater responsibility for and reporting on progress in achieving diversity and inclusion
- > supporting and building a more inclusive and respectful culture and working environment within the judiciary
- > supporting and developing the career potential of existing judges
- > supporting greater understanding of judicial roles and achieving greater diversity in the pool of applicants for judicial roles.

R. The Judiciary is implementing actions such as a judicial careers portal, Judicial Workplace Guidance and a Workplace Adjustments Passport, and a leadership hub. The Judiciary has also developed a Judicial Health and Wellbeing Strategy.<sup>29</sup>

S. Such actions are likely to require time to have an impact. It is not clear how the Judiciary intends to monitor the impact of these actions. We recommend that the Judiciary set targets for retention and progression.

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<sup>29</sup> The Judicial Diversity and Inclusion Strategy Update 2021 gives more detail on all the actions being taken. <https://www.judiciary.uk/wp-content/uploads/2021/11/Judicial-Diversity-Inclusion-Update-2021-v2.pdf>

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