

Judicial Diversity and the Appointment of Deputy District Judges

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with Nigel Balmer and Andrew Lane

Initial Research Findings
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Initial Findings

These are initial findings presented to the Commission for Judicial Appointments in time for its final annual report. Time constraints associated with this have meant that there was not sufficient time available for the Department for Constitutional Affairs to comment on this report prior to publication. The authors welcome comments from DCA and all other interested parties, prior to any further publications based on this research.

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Executive Summary

This study provides the first comprehensive and systematic examination of a judicial selection process in England and Wales. The research set out to identify factors that may be contributing to a lack of diversity in appointments to the post of Deputy District Judge, and it adopted a systematic approach to this issue that has not been used to examine the judicial appointments process in this country before.

It explored which of a wide range of background characteristics of DDJ applicants are most predictive of appointment success, to what extent the specific stages of the appointment process impact adversely on women and black and minority ethnic candidates in relation to other candidate background characteristics, and whether black and minority ethnic lawyers perceive any disadvantage in the selection system.

The Pool of applicants

- A basic requirement for increasing diversity is that there be diverse applicants in sufficient numbers in the pool of applicants in order to produce any significant changes in the diversity of the actual judicial appointments. There was greater basic diversity in the pool of applicants for DDJ Civil posts than DDJ Magistrates' Court posts. However, the basic categorisation of applicants as "white males" and "non white males" provides only the most limited understanding of diversity.
- There was greater gender diversity in the pool of applicants for DDJ Civil posts, than Magistrates' Court posts, and the percentage of women applying had increased in the most recent Civil competition. But in all competitions the percentage of women in the pool of applicants was below their representation in the legal profession.
- The proportion of BME lawyers applying for DDJ posts in all four competitions was either equal to or greater than their representation in the legal profession. In the 2004-05 Magistrates' Court competition, the proportion of BME applicants sharply increased. BME applicants were equally divided between barristers and solicitors, 60% of BME applicants were under 40 years of age, over half of all BME applicants were only recently eligible to apply for a DDJ post (7-10 years qualified), and the majority of BME applicants were Asian, which generally reflects the greater proportion of Asians in the legal profession.
- Solicitors are consistently under-represented and barristers consistently over-represented in the pool of applicants for both Civil and Magistrates' Court competitions in comparison to their representation in the legal profession, but the largest differences are in the Magistrates' Court competitions. While there are much higher percentages of BME solicitors (both women and men) compared to BME barristers in the legal profession, this difference is generally not reflected in BME applicants for DDJ posts, where barristers are over-represented.
- Applicants for DDJ posts are getting younger in progressive years across both Magistrates and Civil competitions, and applicants with only 7-10 years practice are increasingly applying for both DDJ Civil and Magistrates' Court appointments. Only a small proportion of applicants had a declared disability or health issue, and the number of those applying for DDJ posts that were disabled or had a health issue fell in the most recent competitions.

- The overwhelming majority of applicants for all DDJ positions had degrees from academic institutions outside of the top 12 law faculties. In all four competitions, those in the £50,000 - £99,999 income bracket made up the single largest group of applicants. The overwhelming majority of applicants for all DDJ posts had not been employed by either a magic circle firm or leading chambers, and did not hold a prior judicial appointment.
- Most applicants for all DDJ posts are currently in private practice, although applicants for DDJ Magistrates' Court posts are increasingly likely to be in some type of non-private practice. Applicants for DDJ Magistrates' Court competitions overwhelmingly come from a criminal practitioner background, while those applying for DDJ Civil posts have a much more varied practice background.

The importance of Sift

- The research highlighted the need to recognise how crucial the Sift stage of the selection process is. Much attention has been focused previously on the Assessment Centre, but for the vast majority of applicants the Assessment Centre is not relevant as they have already been rejected at the Sift stage. The importance of the Sift stage raises questions about how the application form is used at this stage and who carries out the Sift.
- Women were significantly more likely than men to be invited to an Assessment Centre. Barristers were also significantly more likely than solicitors to be invited, as were those with a prior appointment, those with litigation experience and those earning more than £100,000 annually. Younger applicants were more successful in gaining an invitation to the Assessment Centre, with invitations decreasing as age increased. There was, however, no significant difference in success rates at Sift between white and BME applicants when candidates for all four competitions were considered together.
- The study also explored the impact of Sift on diversity by examining whether there were any clear marking patterns based on gender and ethnicity. In three out of the four DDJ competitions, black and minority ethnic applicants had lower mean total Sift scores than white applicants. In both competitions in 2004-05 BME applicants scored lower than white applicants on almost every individual competency. In contrast, women applying for all DDJ posts had higher mean Sift total scores than male applicants, and also had higher mean scores than male applicants for almost every individual competency and in every competition.
- Over 30 different individuals were involved in sifting DDJ applications in these two years. Sifters included a reasonably balanced mix of men and women, although there has only been one non-white sifter taking part in decisions affecting over 1700 applicants. Research in the United States has found evidence that diverse panels attracted more diverse applicants and selected more diverse nominees for appointment.

Assessment Centre

- The Assessment Centre impacts on far fewer applicants for DDJ posts than Sift, and has previously been examined in some detail by others. This research focused on analysing the candidate background factors most determinant of success at the Assessment Centre, the consistency of Assessment Centre scores in determining appointment, whether Sift scores were good predictors of Assessment Centre scores, and whether there was evidence that Assessment Centre marking adversely affected women and minorities.
- One clear-cut rule applied to all appointment decisions: if a candidate received a “2” as a final score in any of the eight competences then that candidate was not appointed. This apparently hard and fast rule on a “2” constituting a disqualification for appointment meant that in every competition there were candidates appointed to a DDJ post who had scored lower overall at the Assessment Centre than other candidates who were not appointed. The application of such a hard and fast rule could give rise to some concerns about the fairness of the system.
- Certain individual competency scores emerged as more predictive of appointment success than others. Managing Self was one of the most predictive competences in all the four competitions. Showing Authority was highly predictive of appointment success in both of the Magistrates’ Court competitions. Resolving and Deciding was the most predictive competency in the Civil competitions. Developing Knowledge was the least predictive competency.
- The results also indicated that Sift scores (both total and individual competency scores) were not necessarily a good predictor of candidates’ subsequent performance at the Assessment Centre. This suggests that the Self-Assessment questions on the application form may not necessarily be the most effective means of judging competences.
- Women have higher average scores than men in the vast majority of competences in all competitions. There were no consistent patterns of marking for BME candidates across all the competitions, but in the Magistrates’ Court competition in 2004-05 the average total score for BME candidates was over four points lower than the total score for white candidates, and BME candidates had lower scores in all of the eight competences marked at that Assessment Centre.
- In the 2004-05 competitions, there was a balanced mix of men and women among the Assessors in the DDJ Civil competition, although almost twice as many men as women were Assessors in the Magistrates’ Court competition. The greatest imbalance was in terms of the ethnicity of the Assessors in both competitions, with only one minority Assessor out of 23 Assessors in the Civil competition and no minority Assessors among the 11 Assessors taking part in the in the Magistrates’ Court competition.

Diversity of appointments

- Deputy District Judges are at a basic level increasingly diverse, with “non white males” increasing in representation at this level of the judiciary as a result of these four competitions. In the most recent DDJ Civil competition, “non white male” appointees exceeded white male appointees
- However, women, not minorities, account for this increase in appointment of “non white males”. While women increased their representation over the two years examined in this research, appointments of BME lawyers fell despite increasing numbers of BME lawyers applying to be Deputy District Judges.
- Among those minorities appointed, Asians, not Blacks or other minorities, accounted for the majority of appointments. This reflects similar findings in research conducted in the United States, which showed that when “non white males” make great strides in gaining judicial appointments, women tend to account for most of the increase in appointments, and that certain minority groups were more successful at gaining appointment than others.
- From 2003 to 2005 there was also a reduced number of both applications from and appointments of lawyers with a declared disability or health issue.
- Barristers are particularly successful compared to solicitors in the DDJ appointment process. They begin by being over-represented in the pool of applicants for all competitions, and do increasingly better than solicitors in the appointment process. The under-representation of solicitors among appointments to DDJ posts is greater for Magistrates’ Court posts than for Civil.
- However, not all barristers are successful. White male barristers and white female barristers were the only candidates to have increasing success from application to appointment in all four DDJ competitions. BME female barristers did particularly poorly across both competitions in both years, making no appointments in any competition. Male BME barristers had some success in the two Civil competitions, but no BME male barristers were appointed in either of the Magistrates’ Court competitions.
- There was an unusual reversal of diversity trends in one of the four competitions, the DDJ Magistrates’ Court competition in 2004-05. In this one competition, the percentage of women appointed fell in relation to the percentage of women who applied. The single largest group of BME applicants for any judicial competition applied to this competition, but this competition produced only one BME appointment, the lowest number of BME appointees in any of the four DDJ competitions examined in this research. This competition was also the only DDJ competition in the study that did not appoint a single applicant with a declared disability or health issue.
- The tendency for younger applicants to succeed over older applicants is the one consistent trend found across all the DDJ competitions at both Sift and appointment. And while both women and minorities make up the majority of the younger applicants for DDJ posts, by appointment it is the younger women, not the younger minorities, which accounted for most of these lower age group appointments.

- Income is the only other consistent background factor with a strong relationship to success at each stage of the appointment process, with DDJ appointees coming disproportionately from the highest income earners.
- The overwhelming majority of Deputy District Judges appointed in these four competitions held degrees from universities outside the top 12 universities and had not been employed at any of the magic circle firms or leading chambers. This contrasts with senior judges who are overwhelmingly from Oxbridge and the other top 12 universities.

The minority perspective

- Even though black and minority lawyers are applying for DDJ posts generally in proportion to their representation in the legal profession, this is not producing any significant numbers of appointments. This suggests that a much larger pool of black and minority ethnic lawyers may need to apply in order for the proportion of Deputy District Judges from a black and minority ethnic background to substantially increase.
- A small qualitative study was conducted with black and minority ethnic solicitors, the single largest group of minority lawyers in the legal profession in England and Wales, to explore their views of the DDJ application process. No previous research on diversity and judicial appointments has included this critical group.
- The DDJ application form was criticised for being overly long and lacking clarity. There was also more generally a suspicion that there was an underlying agenda in the application form questions. Application form questions felt to be most likely to disadvantage BME candidates were questions on nationality, consultees, educational qualifications, decorations/honours, and career history.
- The Self-Assessment Section was criticised for its lack of openness about what is required in this section, the lack of scope for answers outside of a narrow legal experience, and the restrictive timescale attached to experiences that can be cited in this section. It was also felt there should be a separate Self-Assessment question devoted solely to diversity.
- The black and minority ethnic lawyers were uncomfortable with the requirement that the Ethnic Origin Monitoring form be sent in with the application form to the same competition office. There was suspicion about how the form would be used and the potential for it to be used in a discriminatory way against minority applicants. It was recommended that ethnicity monitoring should be done by a separate, independent body.
- There were only two judicial appointments initiatives that the minority solicitors had any awareness of (the creation of the Judicial Appointments Commission and the judicial work shadowing scheme), suggesting that there may be a lack of awareness of judicial diversity initiatives among members of one of the main target groups. However, this group was generally predisposed to believe that the JAC would improve the chances of appointment for under-represented groups in the judiciary.
- Most of this group of minority solicitors felt that getting appointed is more about “who you know than what you know”, that white lawyers are better connected for judicial appointments than ethnic minority lawyers, and that the appointment process favours barristers over solicitors.

- The main deterrents to applying for judicial office were the culture and attitude of the judiciary, the lack of other women or minorities and not being in a high profile practice.
- Direct contact and encouragement to apply, the appointment of women and minorities to the senior judiciary, more information about the application process and official appointment targets for women and minorities would do most to encourage this group of solicitors to apply for a judicial post.
- Given the very small number of participants these initial impressions highlight the need for a comprehensive survey of the attitudes of legal professionals to determine whether these attitudes are shared more widely by other BME solicitors or other groups under-represented in the pool of judicial applicants.

Conclusion

The research revealed a mixed message about diversity among Deputy District Judges. Women are doing particularly well in increasingly applying for and in gaining appointment as Deputy District Judges, but minorities are not, and this corresponds to similar diversity patterns in other jurisdictions. One of the main aims of this research was to identify factors that may be contributing to a lack of diversity in DDJ appointments, and in terms of ethnicity the research has shown that the size of the pool of black and minority ethnic applicants is critical. In addition, the research also highlighted the key importance of the Sift stage and the need to look more closely at the basis for Sift decisions and the make up of Sift panels.

The specific findings of the research on the appointment of Deputy District Judges and the framework established by this research are designed to provide a clearer understanding of the impact of the appointments process on the diversity of Deputy District Judges. It is hoped these findings will assist the Judicial Appointments Commission in achieving its objective of encouraging greater diversity among applicants for judicial office.

Chapter 1: Introduction

Deputy District Judge appointments study

This study represents the first systematic examination of the judicial appointments process in England and Wales. While a substantial amount of empirical work has been carried out in other jurisdictions examining the effect of the judicial selection system on the success of women and ethnic minority candidates in attaining positions in the judiciary¹, there is virtually no substantive research on the factors affecting diversity in the selection of judges in England and Wales². Prior to this no independent researchers have been permitted access to the entire set of applicant files for a judicial competition, including original application forms and all relevant assessment information recorded in making judicial appointment decisions. It is hoped that this research on the selection of Deputy District Judges will serve as the first step in establishing a solid framework for the comprehensive examination and monitoring of judicial appointments in England and Wales in future.

In examining the appointment of Deputy District Judges to both Civil and Magistrates' Courts from 2003 to 2005, this research explores the success of all candidates at each specific stage of the appointment process: at application, Sift, the Assessment Centre and appointment. The research also examines a broad range of background characteristics of all applicants: gender, ethnicity, professional background, age, years in practice, income, education, prior appointment, current legal career, former legal positions, practice specialisation and consultees³. This represents a significant departure from any previous attempts to examine diversity in judicial appointments in England and Wales, which have been confined to statistical presentations of the number of appointments by gender, ethnicity and profession type and often examining these characteristics in isolation from each other.

¹ See for instance M. Hurwitz and D. Lanier "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts" *State Politics and Policy Quarterly* volume 3, issue 4 (Winter 2003); H. Glick and C. Emmert, "Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges", 70 *Judicature* 228 (1987); N. Alozie "Black Representation on State Judiciaries, 69 *Social Science Quarterly* 979 (1988), "Distribution of Women and Minority Judges: The Effect of Judicial Selection Methods", 71 *Social Science Quarterly* 315 (1990), "Selection Methods and the Recruitment of Women to State Courts of Last Resort", 77 *Social Science Quarterly* 110 (1996); M.L. Henry *The Success of Women and Minorities in Achieving Judicial Office* (1985); K. Tokarz "Women Judges and Merit Selection Under the Missouri Plan", 64 *Washington University Law Quarterly* 903 (1986); G. Brown *Characteristics of Elected versus Merit-Selected New York City Judges, 1992-1997* (1998).

² For discussion on the wider context to judicial diversity issues and research see C. Thomas *Judicial Diversity in the UK and Other Jurisdictions: A Review of Research, Policies and Practices* CJA (2005)

³ "Consultees" is the term used in the DDJ application process to describe those who provide references for applicants. While this information was collected by the research team, it is not covered in this Initial Findings report.

Deputy District Judges

This research covers appointment to the most junior level of the professional judiciary in England and Wales. Deputy District Judges, both Civil and Magistrates' Court posts, are part-time fee paid judicial positions. In general their jurisdiction is the same as that of a District Judge.

Deputy District Judges (Magistrates' Courts) sit on a fee-paid basis in the Magistrates' Courts for a minimum of 15 days a year. They deal with the same types of cases as lay magistrates, but they can assist in particular by hearing the lengthier and more complex matters. They can sit alone or with lay magistrates. Their main activities include preparing for trial and case management, presiding over court proceedings, deciding cases, sentencing, enforcement of orders and hearing appeals. There are currently 167 Deputy District Judges (Magistrates' Courts) in post, and the overwhelming majority are white (94%) and male (77%)⁴. Almost two-thirds (63%) of all DDJ (magistrates' Court) posts are held by solicitors.

Deputy District Judges (Civil) sit on a fee-paid basis in the County Courts and District Registries of the High Court for between 15 and 50 days a year. On appointment Deputy District Judges are assigned to a particular court Region and may sit at any of the County Courts or District Registries in that Region. Much of the work is in chambers and deals primary with civil and family law. They have the power to try actions in a county court below a specified financial limit, and can act as arbitrators in arbitrations, which are a substantial and important part of the work of the county courts. They have unlimited jurisdiction in matrimonial cases, such as divorce settlements, and deal with nearly all the preliminary stages in civil and family proceedings and pre-trial reviews. Some also determine cases involving children, particularly those under the Children Act 1989. They deal with a large volume of all contested civil litigation to final order in England and Wales. There are currently 795 Deputy District Judges (Civil) in post, and the overwhelming majority are white (96%) and male (75%)⁵. Solicitors hold the vast majority of DDJ (Civil) posts (84%).

⁴ See *Women in the Judiciary* Official DCA Judicial Statistics (as of 1 October 2005) www.dca.gsi.gov.uk/judicial/womjudfr.htm and *Judicial Statistics: Ethnic Minorities in the Judiciary* (as of 1 October 2005) Department for Constitutional Affairs at www.dca.gov.uk/judicial/ethmin.htm.

⁵ *ibid.*

The research brief

This study was commissioned by the Commission for Judicial Appointments (CJA) in order to identifying any factors that may be contributing to a lack of diversity in appointments to the position of Deputy District Judge. In part this research was designed to assist the CJA in conducting an audit of appointments of Deputy District Judges (Magistrates' Courts) in 2004-05 at the request of the Secretary of State for Constitutional Affairs. The audit arose from concerns raised by the Secretary of State that the procedures in this one competition or their execution may have resulted in unintentional bias against candidates from black and other ethnic minority backgrounds. However, the scope of the research extended beyond this one DDJ competition to encompass three additional competitions: the previous DDJ Magistrates' Court competition in 2003-04, as well as the DDJ Civil competitions in 2003-04 and 2004-05.

The original research specification outlined two key questions for the research:

- whether candidates for Deputy District Judge who are ethnic minorities, female and/or from specific professional backgrounds are in gross terms less likely to be appointed than white/male candidates, and
- if so, whether there are significant differences in merit indicators that would explain appointment decisions.

However, the scope of the research was extended to answer a much more far-reaching question:

- Are other candidate background factors beyond gender, ethnicity and profession type more significant determinants of success for DDJ posts?
- If so, which background factors are most determinant of success at each stage of the selection process?

The extension of the scope of the research reflects findings of other diversity research, which have demonstrated that a more complete understanding of the impact of processes and policies on ethnic groups requires an examination of the *relative* impact of ethnicity in relation to other individual background characteristics (such as education, age or income)⁶. The use of such a multivariate approach to understanding judicial diversity is what singles this research out from all other work in the scope of its approach.

⁶ For a discussion of this see Thomas (2005) *supra* note 2.

In order to answer these questions the research comprised several distinct phases, using several methods of data collection and analysis. The first data collection phase involved the verification of DDJ candidate background data held by DCA and a limited single issue analysis of candidate background. The second stage involved the collection of much more extensive candidate background data from original application forms and data collection from DCA records of Sift and Assessment Centre decisions. This provided the basis for the multivariate analysis of success rates and candidate scores at both Sift and the Assessment Centre based on a wide range of candidate background characteristics. Finally, although questions of under-represented groups' attitudes to the judicial appointments process was not part of the original research brief, the scope of the study was broadened to encompass a limited qualitative study of minority lawyers' views of the DDJ application process, as well as judicial appointments more generally. This part of the study involved two small focus groups conducted with black and minority ethnic solicitors.

The report

This Report is structured around the key stages of the DDJ appointments process, and contains seven substantive chapters. Chapter two outlines the scope of the research project and the methodologies used in the analysis. Chapter three examines the first key factor affecting diversity among Deputy District Judges, the pool of applicants, and explores the composition of the applicant pool in relation to a wide range of background characteristics. Chapter four examines the first and arguably the most crucial decision-making stage of the DDJ appointment process, Sift, examining the applicant background characteristics that are most predictive of success at this stage as well as how Sift decisions are made. Chapter five examines the second and final decision-making stage, the Assessment Centre, analysing which applicant background characteristics are most predictive of success at the Assessment Centre and the relationship between marks received at the Assessment Centre and candidate background. Chapter six explores the overall diversity of the DDJ appointments made in the four competitions covered in the study. Chapter seven examines the DDJ application process from the perspective of minority lawyers. Finally, chapter eight summarises the results and explores the significance of the research findings for both the new Judicial Appointments Commission and the future of judicial studies in this country.

Chapter 2: Approach and Methodology

Objectives and scope

The research had three broad objectives:

- To identify factors which may be contributing to a lack of diversity in DDJ appointments.
- To establish the first comprehensive analysis of a judicial appointments process in England and Wales.
- To create benchmarks for assessing and monitoring future judicial appointments.

The first objective addresses the main questions the research was designed to answer. The research covers all applicants for the post of Deputy District Judge in two separate years (2003-04 and 2004-05), where there were four separate competitions: one DDJ Magistrates Courts' competition in each year and one DDJ Civil competition in each year. These four competitions encompassed 1751 applicants. The two Magistrates' Court competitions had the largest numbers of applicants, 483 and 490 in 2003-04 and 2004-05 respectively, while the Civil competitions had 349 and 429 applicants in 2003-04 and 2004-05 respectively. For the analysis of these DDJ competitions to explore the relative success of specific groups, it was necessary to encompass all applicants, not simply examine ethnic minority and female candidates in isolation. Only by examining those who have been successful as well as unsuccessful in gaining an appointment can the factors affecting judicial appointment success be understood.

Complexity of diversity

The research also needed to take into consideration the complexity of "diversity". Previous research in other jurisdictions⁷ on the ability of women and ethnic minorities to attain judicial posts found that success rates were different for women than for ethnic minorities, and that there were distinct differences in success rates between different ethnic groups. In addition, other studies of diversity in the wider justice system have demonstrated that understanding bias requires a more complex examination of diversity beyond ethnicity alone. For instance, a study examining

⁷ Hurwitz and Lanier (2003) supra note 1.

discrimination in jury service⁸ found that social class exerted greater influence than ethnicity in explaining disproportionate jury representation. These previous studies suggest that any analysis of the success of ethnic minorities and women in gaining judicial appointment needs to explore a wider range of candidate characteristics in order to determine what factors are most likely to lead to success or failure in the appointment process.

Applicant background

The concern over the lack of judicial diversity in England and Wales extends beyond questions of gender and ethnicity to the concern that judges are drawn from a very narrow social group. This goes to the heart of the diversity issue, as it raises questions about the “connectiveness” between judges and the wider society, their understanding of social issues, and ultimately the relationship between judicial judgements and the society to which they apply. While little systematic examination has been made of the background of judges in this country, a recent survey by the Sutton Trust showed that the overwhelming majority of senior judges in England and Wales are privately educated and hold Oxbridge degrees, and that this position has changed little over the past 15 years⁹.

The status of ethnic minorities and women within the legal profession as a whole is also a crucially important issue for judicial diversity, as it is from this pool that candidates for judicial appointment must be drawn in England and Wales. Ethnic minorities appear to be represented in the legal profession generally in proportion to their representation in the general population (10.7% of the Bar, 7.9% of solicitors compared with ethnic minority population of 9% in England and 7.9% in England and Wales). Women, however, remain under-represented in the profession, comprising 32% of the Bar and 39.7% of solicitors (compared with 51.1% of the population generally).¹⁰ However, the demographics of the legal profession are not static, and

⁸ See H. Fukurai, 'Race, Social Class, and Jury Participation: New Dimensions for Evaluating Discrimination in Jury Service and Jury Selection', *Journal of Criminal Justice*, Vol.24, No.1, pp.71-88, 1996, which found that ethnic minority jurors with low incomes and less prestigious occupations were the most under-represented groups of jurors, but African-Americans and Hispanics with higher income and prestige jobs were actually over-represented on juries.

⁹ *The Educational Backgrounds of the UK's Top Solicitors, Barristers and Judges* Sutton Trust Briefing Note (2005). The survey looked at the educational background of judges in the High Court and above through to the law lords, and it found that there has been a very small shift in the university background of judges. In 1989, 88% of senior judges had been to Oxbridge, compared with 81% in 2004. The picture is very similar for school background: three quarters of senior judges serving in 2004 had been educated at private fee-paying schools, and half of the present senior judiciary went to boarding schools.

¹⁰ See *Law Society Annual Report 2004* and *Bar Council Annual Report 2004*. Also see gender and ethnicity statistics from Census 2001 at www.nationalstatistics.gov.uk.

there are substantially more minorities and women among the more recently qualified and those in training in both branches of the legal profession¹¹.

DDJ appointment process

Each of the four DDJ competitions covered in the study was run separately as a national competition. All competitions followed the same general advertisement and selection procedure. Advertisements were placed in some national newspapers and/or legal journals inviting applications for appointment. All four competitions followed the same basic stages:

1. Application
2. Sift
3. Assessment Centre
4. Appointment

However, some procedural changes were introduced into the Sift and Assessment Centres between 2003-04 and 2004-05, or were used in one type of DDJ competition in one year but not the other DDJ competition in the same year. In some instances this meant that it was not possible to compare results for a particular issue between competitions or between years. These are detailed below in the relevant chapters.

Eligibility

The eligibility requirements at the time of the four competitions were the same for all DDJ applicants¹²:

- 7 years general qualification (rights of audience in any class of proceedings in county or magistrates' court); solicitors had to be on the Roll of Solicitors
- UK, Ireland or Commonwealth nationality (or dual with one of these)
- Age: there is no lower age limit; retirement age is 65 and appointees would be expected to serve in the first instance for five years

For DDJ Magistrates' Court applicants there are a limited number of appointments for Crown Prosecution Service, Government Legal Services, Serious Fraud Office and

¹¹ See *Key Facts on the Solicitors' Profession 2005* Law Society Fact Sheet series (2005); *Number of Pupils by Ethnic Group and Gender as of December 2004* Bar Council (2005); *Number of Barristers in Self-Employed Practice by Ethnic Group and Gender as of December 2004* Bar Council (2005); *Number of Barristers in Employed Practice by Ethnic Group and Gender as of December 2004* Bar Council (2005).

¹² In July 2005 the Lord Chancellor announced that he would legislate to enable Fellows of the Institute of Legal Executives and registered Patent Agents and Trade Mark Attorneys to apply for appointment for appropriate judicial posts, including the District Bench.

Public Defender lawyers based on the limitations about which cases such applicants would be allowed to hear¹³.

Application

The competitions were publicly advertised, and interested persons had to request an Application Form from DCA's Judicial Competitions Division. The Application Form is almost identical for both the DDJ Magistrates' Court posts and DDJ Civil posts, but there is separate Guidance to the application form for the two types of posts. The Application Form requests information on nationality, education, legal qualifications, legal affiliations, legal career, income, prior appointment, consultees, "character" issues and health, and requires applicants to complete a self-assessment section covering certain competences. It also includes three monitoring forms: Ethnic Origin, Publicity and Disability Monitoring questionnaires. These are voluntary and must be returned with the application form to the DCA Judicial Competitions Division.

Sift

After all applications are in, the first stage of the DDJ selection process is the Sift. In many respects this is the most important stage of the selection process for applicants, as it is at this stage that the vast majority of applicants will be rejected. At Sift, all applicants are assessed primarily on their answers to the Self-Assessment questions in their application form. Applications are sifted by a 3-person panel comprising a District Judge, a lay person and a senior DCA official. Each sifter reviews each application and marks each candidate on a scale of 0 to 5 for each Self-Assessment competency. Sifters then compare the marks they have given for each candidate and agree final scores for each competency. These are then used to arrive at a final total aggregate Sift score. Based on these Sift scores, decisions are made about which applicants will progress and be invited to the Assessment Centre. All applicants are then informed in writing if they have been invited to the Assessment Centre or not. There is no appeal, although candidates can request feedback on why their application failed and can make a complaint about the way their application was handled¹⁴.

¹³ CPS lawyers cannot sit on any case that is CPS prosecuted; GLS lawyers cannot hear any cases that involve their own department; Public Defender lawyers cannot sit on any case that involves the public defender service; and SFO lawyers are ineligible to sit on any case involving a SFO prosecution.

¹⁴ During these four competitions, complaints could be made to the CJA. However, after April 2006 any complaints regarding judicial appointments will be made to the new Judicial Appointments Commission.

Assessment Centre

The next stage is the Assessment Centre, where a much smaller number of candidates (who have passed the Sift stage) take part in a day-long evaluation involving role plays, a technical paper exam and an interview. Panels of assessors mark invitees' performances at the Assessment Centre based on the eight key competences. Assessors include judges¹⁵, lay members and DCA officials. Different combinations of competences are assessed in each exercise (based on a scale of 0 to 5). The various scores in each competency are ultimately translated into a single score for each competency (again on a scale of 0 to 5), and these in turn produce a total combined Assessment Centre score from the eight competences, in which the maximum total is 40. Unlike the eight competences, the technical paper is marked out of 100. When all invitees have completed the Assessment Centre stage final decisions are made on appointment based on the results of the Assessment Centre.

Framework for analysis

The following outlines all data gathered by the research team and contained in the research database for all candidates in each individual DDJ competition between 2003 and 2005 where this data was available. There are three main sets of data: personal background information for all candidates, Sift data for all candidates, and further data only for those candidates who were invited to the Assessment Centres. Tables 1 to 3 below show the specific information the research team collected in these three datasets. In almost all instances the personal background information on candidates collected by the research team corresponds to specific questions asked of applicants on the application form¹⁶. The assumption was made that if this information was requested on the application form then in some way it was likely to be considered relevant to making an appointment decision.

¹⁵ These are mostly District Judges, but can include Deputy District Judges as well.

¹⁶ Litigation experience and employment in magic circle or leading chambers was not specifically for on the application form, but in almost all instances this information was clear from answers given to other questions on the application form. These two background characteristics have been the subject of previous research on judicial appointments and were therefore included to allow for comparisons to be made.

Table 1. Personal background information collected on all applicants

Gender
Ethnicity
Nationality (at birth, current and dual)
Profession type (barrister or solicitor)
Age
Education (university attended, degree type, degree year, degree class)
Disability
Income
Legal career: current position (in private practice or other positions)
Legal career: any former employment (other than private practice)
Practice specialisations (13 categories)
Years in practice
Litigation experience
Prior appointment
Type of prior appointment
Employment in leading firms of chambers
Membership of specialist legal associations
Character issues
Status of Consultees
Consultee relationship to applicant

Table 2. Sift information collected on all applicants

Total Sift score
Individual competency scores at Sift
Whether candidate met required standard at Sift
Whether candidate had necessary legal skills and experience at Sift
Whether candidate was diversity aware at Sift
Composition of Sift panels
Whether any marks were changed at Sift
Changed Sift scores

Table 3. Assessment Centre information collected for all invitees

Total Assessment Centre score
Individual competences totals
Individual competences scores
Composition of Assessor panels
Whether any scores were changed
Changed Assessment Centre score total

Methodology

This study examined which candidate background characteristics were most predictive of success at each stage of the appointment process in each individual DDJ competition. The most comprehensive analysis of the data involved a multi-level logistic regression analysis based on a wide range of candidate background factors and encompassing all applicants for all four competitions. In order to examine which candidate background factors had the greatest impact on success at each stage of the appointment process, it is necessary to analyse the data using techniques that make it possible to quantify the effect of one factor on another while holding all other observable factors constant. Logistic regression analysis is able to do this, and estimates the effect of all the hypothesised factors jointly, taking into account their interdependencies. For example, whether candidates are barristers or solicitors may appear to have a very large impact upon success, and barristers and solicitors may also have very different age profiles. The analytical model used in this study contains both age and profession type and therefore allows an assessment of the impact of profession type while controlling for age. Such analysis may find that there is little difference in success between profession types once age is controlled for, or that differences in success between age groups are fully explained by profession type.

This methodological approach allows the analysis to control for such relationships and better interpret the data. It is this multivariate approach that provides the first comprehensive analysis of successful and unsuccessful applicants for judicial posts in England and Wales, and importantly provides a deeper understanding of the relative impact of ethnicity and gender on appointment decisions.

Additional data analysis explored the consistency of decision-making based on Sift scores and Assessment Centre scores, whether there were any differences in Sift and Assessment Centre marks based on gender and ethnicity, and to what extent Sift scores were good predictors of candidate success at the subsequent Assessment Centre.

In addition to the statistical analysis carried out in this study, some limited qualitative research was conducted with black and minority ethnic solicitors. This small amount of qualitative work was designed to explore whether the DDJ application form itself may act as a deterrent to minority lawyers applying for DDJ posts. The application form is a crucial element of the appointment process, as the content of applicants' answers on the form is what determines whether they will progress beyond the key stage of the selection process (Sift). While the number of individuals who participated in this part of the research was very limited, this was the first time such judicial appointments research has been conducted with black and minority ethnic solicitors¹⁷. Black and minority ethnic solicitors make up the single largest group of minority lawyers and are therefore the largest group of potential minority applicants for judicial posts.

Data gathering

Background data for all applicants for judicial posts are held by DCA in the Equitas database. At the outset of the research project the research team was provided with a copy of the Equitas database for all the DDJ applicants in the four competitions. Further data were gathered by the research team from the competition files held by DCA for all applicants for the DDJ posts. The main source of background information for candidates was the candidate application form. Information on the subsequent progress of each candidate was gathered from information recorded in the applicant's competition file. Information on the marks received by candidates was gathered from DCA competition documents in the applicants' competition files which recorded the process of assessment of each candidate at Sift and at the Assessment Centre.

¹⁷ The only other previous exploration of lawyers' attitudes to applying for judicial office did not include black and minority ethnic solicitors. K. Maleson and F. Banda *Factors Affecting the Decision to Apply for Silk and Judicial Office* DCA Research Series No. 2/2000 (2000)

Data collection was done in two phases. In phase one, run from June to August 2005, the research team reviewed all applicant files and carried out a limited preliminary statistical analysis of applicants and appointees. Preliminary analysis in phase one suggested that no clear bias appeared to be operating at either Sift or the Assessment Centre in relation to gender, ethnicity or profession, but prior appointment was highly significant in determining success for all candidates in all competitions. However, the research team cautioned about drawing too many conclusions from this preliminary analysis. First, the prior appointment finding was based on unverified data supplied by DCA, and that if this data proved invalid (which it did), the findings in phase one might also not be reliable. In addition, the multi-level regression analysis (the main methodology used in the study) had not been carried out in phase one, as it required all data to be collected and verified first. In phase two, run between September and December 2005, the research team verified data, collected additional background data on applicants, collected data on marks given at Sift and the Assessment Centre, and also collected qualitative information about minority lawyers' attitudes to the appointments process. Only then was the main analysis carried out.

The competitions

The following table presents a breakdown of the numbers of applicants in each competition.

Table 4. Number of applicants by DDJ post and competition year.

<i>competition</i>	<i>applicants</i>	<i>DDJ Mag</i>	<i>DDJ Civil</i>	<i>2003-04</i>	<i>2004-05</i>
DDJ (Magistrates) 2003-04	483	483		483	
DDJ (Magistrates) 2004-05	490	490			490
DDJ (Civil) 2003-04	349		349	349	
DDJ (Civil) 2004-5	429		429		429
<i>total</i>	1751	973	778	832	919

Table 5 below shows the number of candidates involved at each stage of the selection process in the four competitions.

Table 5. Numbers of candidates at each stage of the DDJ selection process

<i>Competition</i>	<i>Applied</i>	<i>Invited to Assessment Centre</i>	<i>Appointed</i>
DDJ (Magistrates) 2003-04	483	54	27
DDJ (Magistrates) 2004-05	490	90	28
DDJ (Civil) 2003-04	349	128	41
DDJ (Civil) 2004-5	429	134	55
<i>total</i>	1751	406	151

In all competitions there were a number of candidates who were not considered in the analysis. This was either a result of an application not being considered at Sift by the DCA competition team because the candidate withdrew before Sift, was disqualified or deemed ineligible, or because an applicant's file was missing and the research team was therefore not able to either verify or collect data for that applicant. The following table presents a breakdown of those not considered in the study's analysis.

Table 6. Number of applicants included in the analysis in each competition.

<i>Competition</i>	<i>Applicants</i>	<i>Withdrew, disqualified or ineligible</i>	<i>File missing</i>	<i>Total</i>
DDJ (Magistrates) 2003-04	483	4	2	477
DDJ (Magistrates) 2004-05	490	9	3	478
DDJ (Civil) 2003-04	349	9	2	338
DDJ (Civil) 2004-5	429	8	7	414
<i>total</i>	1751	30	14	1707

The numbers not included in each competition and in total across the four competitions are small and would therefore not have been likely to significantly affect the analysis.

Data verification

Earlier evidence had indicated that errors might exist in the DCA data¹⁸, therefore a sample of candidate files was used to verify vital information in the Equitas dataset

¹⁸ Diversity statistics published in Annex G of DCA's 2004 Consultation Paper *Increasing Diversity in the Judiciary* DCA CP 25/04 contain errors. Table 8 has what is probably a typographical error: the percentage of males obtaining an interview for Deputy District Judges (Magistrates) should read 59.1% (not 9.1%). But the figures for the total number of applicants for the DDJ (Magistrates' Courts) position in 2002-03 do not add up across tables. Table 8 (Gender) has the total number of DDJs (Magistrates'

supplied to the research team by DCA. Key appointments data requiring verification included:

1. Applicant Status

- Did the candidate get through the Sift process and receive an invitation to the Assessment Centre?
- Following attendance at Assessment Centre was the candidate appointed?

2. Applicant Ethnicity

Applicant status

The DCA database provided to the research team contained a high level of error in relation to candidate status, and as a result these data were unusable. As candidate status (ie, whether an applicant was successful at Sift and was invited to the Assessment Centre, and if so whether that candidate was ultimately appointed) constituted the foundation variable for all the analysis, this required that each of the 1751 competition files had to be reviewed by the research team and each candidate's appointment status re-entered into the team's own database based on original records.

Applicant Ethnicity

In addition to the application form, DDJ candidates are asked to voluntarily complete an Ethnic Origin Monitoring Form (EMF). DCA retains these in separate policy files, and copies of the original EMFs were provided to the research team. A cross-check on a sample of the original EMFs and the ethnic group designation of candidates in the DCA Equitas database revealed a high level of error in the ethnicity designation of candidates in the DCA database. As ethnicity was one of the main variables being examined in the study, the errors in the DCA database required that the research team examine all original Ethnic Origin Monitoring forms and record the correct ethnic group for each candidate into the team's own database. Table 7 below shows the percentage error rate for ethnicity in the Equitas database provided to the research team.

Courts) as 482, while Table 38 (ethnicity) has the total as 349. This last figure in fact corresponds to the total number of DDJs (family division) in Table 8.

Table 7. Ethnicity error rate in Equitas DDJ applicant database

<i>DDJ Competition</i>	<i>number of applicants</i>	<i>Ethnicity errors in Equitas database</i>	
		<i>no.</i>	<i>%</i>
Magistrates 2003-04	483	116	24%
Civil 2003-04	349	50	14%
Magistrates 2004-05	490	112	23%
Civil 2004-05	429	36	8%

It should be pointed out that the ethnicity errors in the Equitas database supplied to the research team do not necessarily mean that all of DCA's published statistics on ethnicity in DDJ appointments also contain this level of error. It may simply be that the DDJ database provided to the research team had this level of error in the ethnicity data. Certainly some separate data provided to the research team by DCA (for instance, tables showing the ethnicity of invitees to the Assessment Centres and the ethnicity of appointees) corresponded more closely to the verified data on ethnicity gathered by the research team. Even though it was not possible for the research team to determine how all DCA statistics on ethnicity in DDJ appointments were calculated, it was possible to compare DCA's published statistics on ethnicity in the four DDJ competitions in question with the ethnicity statistics verified by the research team from the original Ethnic Origin Monitoring forms completed by applicants.

Table 8 below shows the differences in the number of applicants where ethnicity is unknown between DCA's published statistics and the verified statistics on ethnicity for the four DDJ competitions. DCA published statistics are those found in the relevant *Judicial Appointments Annual Reports*.

Table 8. Differences between published and verified statistics on unknown ethnicity in DDJ competitions

<i>Number of Candidates where Ethnicity Unknown</i>		
<i>DDJ Competition</i>	<i>DCA Published Statistics¹⁹</i>	<i>Verified Statistics by DDJ research team</i>
Magistrates 2003-04		
Applicants	33	82
Interviewees	4	6
Appointees	3	2
Civil 2003-04		
Applicants	11	18
Interviewees	3	4
Appointees	1	2
Magistrates 2004-05		
Applicants	13	43
Interviewees	0	6
Appointees	0	3
Civil 2004-05		
Applicants	17	31
Interviewees	1	7
Appointees	1	5

While in almost all instances the research team found greater numbers of applicants where ethnicity was unknown in comparison to DCA's published statistics for these four DDJ competitions, the greatest discrepancy exists in the Magistrates 2003-04 competition. Table 9 below shows the number and percentage of applicants in each competition where no ethnicity data was found by the research team based on examination of original Ethnic Origin Monitoring forms.

¹⁹ For DCA published statistics on ethnicity of applicants, interviewees and appointees for the DDJ (Civil) and (Magistrates' Court) 2003-04 competitions see Annex C Tables 10 and 13 respectively in *Judicial Appointments Annual Report 2002-03* Department for Constitutional Affairs (2004). For DCA published statistics on ethnicity of applicants, interviewees and appointees for the DDJ (Civil) 2004-05 competition see Table 14 in Part Two of *Judicial Appointments Annual Report 2003-04* Department for Constitutional Affairs (2005). For DCA published statistics on ethnicity of applicants, interviewees and appointees for the DDJ (Magistrates' Court) 2004-05 competition see Annex F Table 14 in *Judicial Appointments Annual Report 2004-05* Department for Constitutional Affairs (2006)

Table 9. Number and percentage of applicants where ethnicity is unknown

<i>DDJ Competition</i>	<i>number of applicants</i>	<i>no ethnicity data available</i> <i>no.</i>	<i>no ethnicity data available</i> <i>%</i>
Magistrates 2003-04	483	83	17.2%
Civil 2003-04	349	18	5.2%
Magistrates 2004-05	490	43	8.8%
Civil 2004-05	429	31	7.2%

In three of the four competitions, the percentage of applicants where ethnicity was unknown is lower than unknown ethnicity levels for the legal profession (12%)²⁰, which suggests that in these three competitions the proportion of applicants who did not complete the Ethnic Origin Monitoring form when applying is within a predictable range for voluntary non-disclosure. However, the proportion of applicants where ethnicity is unknown in the first competition (Magistrates' Court competition 2003-04) appears unusually high. The lack of ethnicity data for the pool of applicants in this one competition means that caution needs to be exercised in drawing conclusions about the impact of ethnicity in this one competition.

Competition files

After examining all the DDJ files provided to the research team in Phase One, there were 26 files that could not be located²¹. The DCA Judicial Competitions Division subsequently began a large-scale "data cleansing" exercise of judicial application files, and 12 of the files were subsequently located and made available to the research team²². In total these missing files represented only 0.8% of all applicants in the four competitions combined, and they therefore were not likely to have any significant impact on the analysis of applicants. In the course of examining all 1751

²⁰ See Table ? which is based on reported Law Society and Bar Council ethnicity data.

²¹ In some cases this meant that a specific competition file was missing from a candidate's personal file, while in other cases a candidate's personal file was missing.

²² At the completion of all data collection there remained 14 DDJ applicant files that the research team had not seen. Half of these were from the DDJ Civil 2004-05 competition, and this accounted for 1.6% of all applicants in this competition. Six of these seven missing files belonged to the smaller group of 134 candidates that were invited to the Assessment Centre, and this constituted 4.5% of all invitees to the Assessment Centre in that competition. They were all unsuccessful at gaining an appointment, and they therefore constituted 7.6% of all invitees that were unsuccessful in gaining an appointment in that competition. The remaining seven missing files included: two candidates from the Civil 2003-04 competition that were invited to the Assessment Centre but not appointed; two candidates from the Magistrates Court 2003-04 competition that were not invited to the Assessment Centre and three from the Magistrates' Court 2004-05 competition that were also not invited to the Assessment Centre.

applicant files again in Phase Two, 11 files that had been seen by the research team in Phase One could not be located in this period, and therefore no additional data collection was possible in Phase Two for these applicants²³. Again, however, the relatively small number of applicants involved meant that this was not likely to significantly affect the overall results.²⁴

Reporting stage

This report presents the first findings of our research. It provides an initial insight into the extent to which gender and ethnicity affect appointment success *in relation to* a wide range of other candidate background characteristics, and in this respect it establishes the first comprehensive analysis of a judicial appointments process in England and Wales. However, not all the data collected by the research team have been analysed and presented in this report. Information collected which has not been incorporated into this analysis includes: consultee information, Sift and Assessment Centre markings of individual panels, the relationship between panel marks and success rates for specific under-represented groups. The research team will publish further reports on these subjects when there is adequate time to analyse all the data gathered.

Previous analysis of the DDJ selection methods

The DDJ competitions (both Civil and Magistrates' Court) run in 2003-04 were the first judicial appointments competitions run by DCA to use an Assessment Centre. As these two Assessment Centres were pilots for this new approach, consultants reviewed the operation of these centres for DCA, and subsequently reviewed the DDJ Civil competition in 2004-05 for DCA²⁵. In addition, in August 2005 DCA commissioned research on the impact of this same Assessment Centre (DDJ Civil 2004-05 competition) on the ethnic and gender diversity of those appointed. The CJA have also conducted audits of DDJ competitions and reviewed the operation of the Assessment Centre in these competitions²⁶.

²³ This means that there was no verified background data available for 14 applicants across all the four DDJ competitions, and there were 11 other applicants where data was not available only for the specific issues where data collection occurred in Phase Two (Sift and Assessment Centre marking information, prior appointment, legal career details, employment in leading firms or chambers, and consultees).

²⁴ Details of the missing files have been provided to the DCA Judicial Competitions Division and the CJA.

²⁵ These reviews were conducted by consultants, Human Assets ("The Lord Chancellor's Department Deputy District Judge Competitions Evaluation" February 2003, and "DDJ (Civil) Competition Statistical Evaluation Report" April 2004).

²⁶ *Commissioners' report on their observations of the competitions for the appointment of Deputy District Judge (Magistrates' Court) and Deputy District Judge (Civil)* CJA (April 2003) and *Commissioners' report on the Deputy District Judge pilot assessment centre* CJA (03) 2-03.

While there will necessarily be some overlap between the analysis we have conducted of the DDJ appointment process and these reports, our research has attempted not to replicate this work and has taken a substantially different approach. This research represents a significant departure from other analyses of diversity in judicial appointments in England and Wales. Previous work has been confined to examining gender and ethnicity (and occasionally profession type), often in isolation from one another. This research places gender, ethnicity and profession type into a larger pool of candidate background factors and examines which factors are most influential in determining success or failure in the DDJ selection process. Moreover, this research looks in detail at the two earlier, and in many respects more crucial stages of the appointment process: application and Sift. While the Assessment Centre clearly plays a role in appointment, the fate of the overwhelming number of applicants rests earlier on in the selection process where they are assessed on the information they provide in the application form, and either rejected (the vast majority) or invited to the Assessment Centre. Therefore, this research provides both a different focus and analytical approach to understanding the impact of the appointment process on diversity than previous work on DDJ or any other judicial appointments.

Chapter 3. The Pool of Applicants

Diversity and the importance of the applicant pool

Who applies for judicial positions is the first key factor affecting diversity. If sufficient numbers of diverse applicants do not apply for judicial appointments then, despite any number of changes made to the actual selection process, it will be impossible to significantly increase appointments from among members of under-represented groups. This chapter focuses on the composition of the pool of applicants for DDJ posts, and examines these pools using a far wider range of background factors than has been used before in examining judicial selection. This chapter explores the composition of the applicant pool not just in relation to the proportion of women, minorities and barristers and solicitors applying, but also in relation to education, income, age, disability and various legal career factors.

The chapter also explores whether differences exist in the pool of applicants for the DDJ Magistrates' Court competitions compared to the DDJ Civil competitions, as well as how the pool of applicants for DDJ posts is changing from one year to the next. Such analysis of change can help to reveal the extent to which government diversity initiatives are having an impact on attracting a greater diversity of candidates to apply for judicial posts. More broadly, understanding the pool of applicants in such depth establishes the basis for understanding how the actual judicial selection process affects diversity, as invitations to the Assessment Centre and appointments can only come from the pool of those who apply.

The information in this chapter provides the foundation for much of the subsequent analysis by profiling the pool of applicants in the four DDJ competitions covered in the research based on a wide range of both individual and combined background characteristics. Table 10 below outlines the background variables of DDJ applicants examined in the research.

Table 10. DDJ applicant background characteristics

- White Males and “Non White Males”
- Gender
- Ethnicity
- Profession Type
- Disability
- Academic Background
- Income
- Age at Application
- Years in Practice
- Current legal position
- Former legal employment
- Practice specialisation
- Employment in leading firms/chambers
- Prior Appointment

Relevance of diversity in the legal profession

Beyond the analysis of candidate background, this chapter also highlights the importance of considering ethnicity and gender diversity in relation to ethnic and gender representation within the legal profession itself. As the legal profession exclusively provides the pool of potential applicants for all ordinary judicial posts in this country, the diversity of the legal profession itself provides the context in which the diversity of judicial appointments needs to be assessed. Table 11 below provides a breakdown of gender and ethnicity in the combined legal profession (defined here as all solicitors with practising certificates and all self-employed and employed barristers).

Table 11. Gender and ethnicity in the legal profession

Group in legal profession	% representation in the profession	% representation where ethnicity is known
Solicitors	87.1%	
Barristers	12.9%	
Males	60.5%	
Females	39.5%	
White	79.7%	90.4%
BME	8.4%	9.6%
Unknown	11.9%	
White Males		55.7%
“Non White males”		44.3%
White Males	49.1%	55.7%
White Females	30.6%	34.7%
BME Males	4%	4.6%
BME Females	4.4%	5%
Unknown Males	7.5%	
Unknown Females	4.4%	
Male Solicitors	51.8%	
Female Solicitors	35.3%	
Male Barristers	8.7%	
Female Barristers	4.2%	
White Solicitors	69.8%	79.2%
White Barristers	9.9%	11.2%
BME Solicitors	7.2%	8.2%
BME Barristers	1.2%	1.4%
Unknown Solicitors	10.1%	
Unknown Barristers	1.8%	
White male solicitors	42.1%	47.8%
White female solicitors	27.7%	31.4%
White male barristers	7.0%	7.9%
BME female solicitors	3.9%	4.4%
BME male solicitors	3.3%	3.7%
White female barristers	2.9%	3.3%
BME male barristers	0.7%	0.8%
BME female barristers	0.5%	0.6%

Source: Bar Council Employed Bar and Self-Employed Bar Statistics December 2004; Minority Ethnic Group Solicitors 2004 Law Society Fact Sheet Information Series

Diversity of DDJ applicants

White Males and “Non White Males”

Other studies of judicial diversity have looked, initially, at diversity at its most basic level: white males and all others (referred to as “non white males”)²⁷.

Figure 1. Basic diversity of DDJ applicants in four competitions

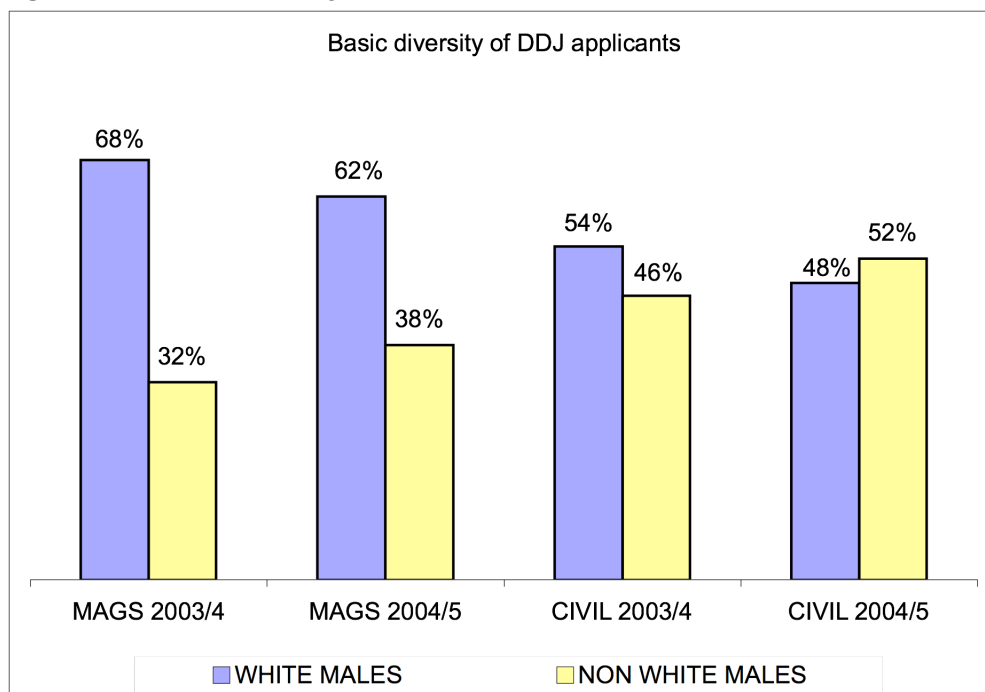


Figure 1 suggests that **there is a much greater basic diversity in applicants for DDJ Civil posts than DDJ Magistrates’ Court posts, and among the most recent Civil applicants “non white males” have exceeded white males.** In addition, there has been an increase in diversity of applicants from 2003-04 to 2004-05 across both types of competitions, although this is only a limited increase for Magistrates’ Court applicants. In relation to diversity in the legal profession, applicants for DDJ Civil posts have a higher level of diversity (46-52%) than found in the legal profession (44%), but “non white males” are under-represented among the applicant pool for DDJ Magistrates’ Court posts (32-38%).

²⁷ Hurwitz and Lanier (2003) supra note 1.

Gender, Ethnicity and the Legal Professions

The basic categorisation of applicants as white males and “non white males” provides only the most limited understanding of diversity. The more complex the cross analysis of candidate background variables, the clearer the picture is of the levels of application among different under-represented groups.

Gender

Men comprise 60.5% and women 39.5% of the combined legal profession of barristers and solicitors.

Figure 2. Gender of applicants in four DDJ competitions

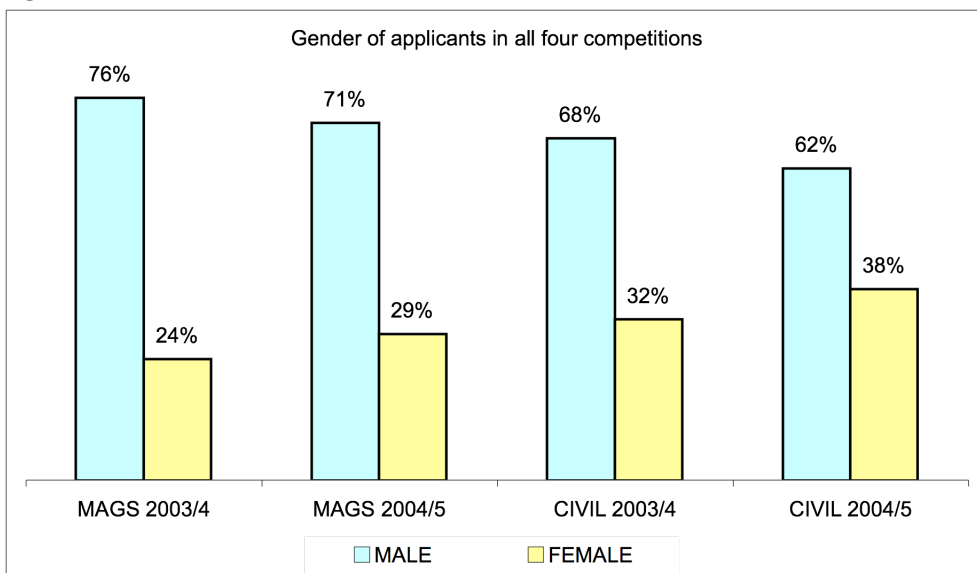
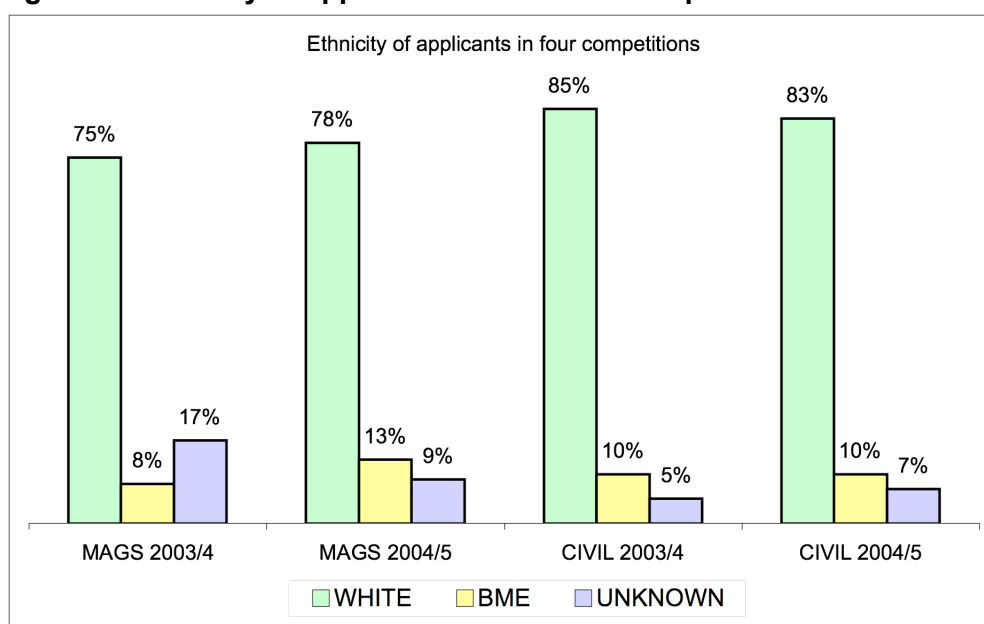


Figure 2 shows the proportion of male and female applicants and appointees in all four competitions. Women appear to have a preference for DDJ Civil posts, and men a preference for Magistrates’ Court posts. While the percentage of women applying for all DDJ posts is lower than the percentage of women in the legal profession, this is most markedly the case for DDJ Magistrates’ Court posts. **The proportion of women increased in both Civil and Magistrates’ Court competitions from 2003-04 to 2004-05, and the proportion of women applying for DDJ Civil posts in 2004-05 (38%) is only just below the proportion of women in the legal profession (39.5%).**

Ethnicity

BME lawyers make up 8.4% of the combined legal profession, with 79.7% of the profession being white (and 11.9% ethnicity unknown).

Figure 3. Ethnicity of applicants in four DDJ competitions



There are not large numbers of applicants among BME lawyers, and as a result the use of percentages here can be misleading and must be interpreted with caution. Although some general trends can be discerned at the application level using percentages, a clearer picture emerges when the actual number of applicants is also known.

Figure 3 shows the ethnic background of applicants in each of the four DDJ competitions. In three of the four competitions, the percentage of applicants where ethnicity was unknown is lower than in the legal profession generally (12%). This suggests that in all but the Magistrates 2003-04 competition, where the ethnicity of 17% of applicants is unknown, the proportion of applicants who did not complete the Ethnic Origin Monitoring form when applying is within a predictable range.

White applicants are over-represented in both Civil competitions, but are closer to their representation in the legal profession in the Magistrates' Courts competitions. The percentage of BME applicants is consistent in both Civil competitions (10%) and just above their representation in the legal profession (8%). In the Magistrates' Court competitions, the proportion of BME applicants increased in the more recent

competition (2004-05) from 8% to 13% and exceeded their representation in the legal profession. However, the large number of applicants where ethnicity is unknown in the DDJ Magistrates' Court 2003-04 competition makes this conclusion less reliable.

Given the variable levels of missing ethnicity data in the four competitions, it may be more useful to consider ethnicity in terms of the group of applicants where ethnicity is known and compare this with comparable ethnicity figures for the legal profession (White lawyers 90.4% and BME lawyers 9.6%). This allows for direct comparisons between competitions, irrespective of the number of candidates who did not complete the Ethnic Origin Monitoring form or where the forms are missing. Table 12 below shows that **the proportion of BME lawyers applying for DDJ posts in three of the four competitions closely reflects their representation in the legal profession. In one competition, the most recent Magistrates' Court competition (2004-05), there appears to be a substantial increase in applications from BME lawyers.**

Table 12. Known ethnicity of DDJ applicants

	White	BME	Total
Mags 2003-04	90% (357)	10% (39)	396
Mags 2004-05	85% (375)	15% (64)	439
Civil 2003-04	90% (286)	10% (32)	318
Civil 2004-05	90% (342)	10% (39)	381

There are too few ethnic minority applicants in each individual competition to make a further analysis of ethnicity meaningful on an individual competition basis. However, Table 13 below provides a more detailed look at the ethnicity of all minority applicants for DDJ posts in the four competitions combined²⁸.

²⁸ The total number of minority applicants in Table? (146) is less than the number of minority applicants in Table? (174) due to applications by the same individuals in different competitions.

Table 13. Ethnic group of applicants in all competitions combined²⁹

<i>Ethnic group</i>	<i>number</i>	<i>%</i>
Asian	85	58%
Black	33	23%
Other	19	13%
Mixed	7	5%
Chinese	2	1%
<i>total</i>	146	100%

The composition of the pool of minority applicants in the four competitions combined generally reflects the greater proportion of Asians in the legal profession. Asians are the single largest group of BME barristers (44.3%) and are the single largest group of BME solicitors (56.7%). Blacks comprise 28.8% of all BME barristers and 17.1% of all BME solicitors.

²⁹ The way ethnicity information was collected in the DDJ competitions meant that it was not possible to provide a more detailed breakdown of black and minority ethnic groups for all the competitions. In 2003-04 the Ethnic Origin Monitoring forms only contained six basic ethnicity categories (White, Asian, Black African, Black Caribbean, Chinese, Other). In 2004-5 a more detailed ethnicity form was used, providing 21 possible classifications relating more closely to the 16 ethnicity categories used in the 2001 census.

Profession type

Solicitors make up 87% and barristers 13% of the combined legal profession. (Here solicitors are defined as those with practising certificates, and barristers as the combined employed and self-employed bar.)

Figure 4. Legal profession type of applicants in four DDJ competitions

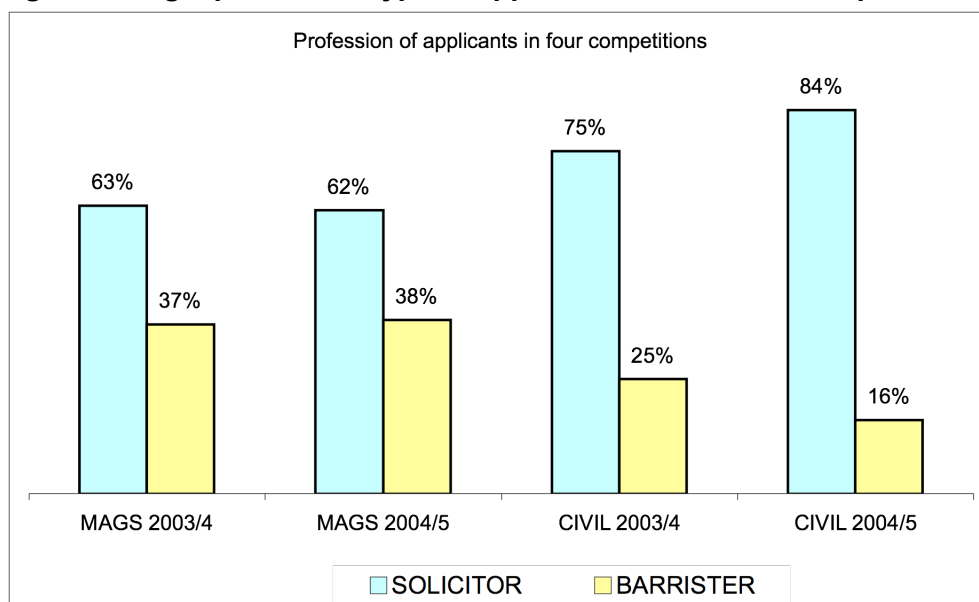


Figure 4 shows that **solicitors are consistently under-represented in the pool of applicants in comparison to their representation in the legal profession. Their lowest level of representation is in the Magistrates' Court competitions** (62% and 63% in comparison with 87% of the profession). They appear to have a preference for Civil posts and are increasingly applying for these DDJ positions. Applicants for the Civil 2004-05 competition (84% solicitors and 16% barristers) come closest to reflecting the relative proportion of solicitors and barristers in the profession. This reflects similar trends in gender representation in the pool of applicants, where male and female applicants for the most recent DDJ Civil competition come closest to reflecting the gender make-up of the profession.

Gender, ethnicity and profession

The single variable analysis on gender, ethnicity and profession type presented above shows that women are under-represented as applicants in comparison to their representation in the legal profession, that barristers were over-represented as applicants in all four competitions, and that black and minority ethnic lawyers are generally closely represented among applicants in relation to their representation in

the legal profession. To provide a clearer picture of the pool of applicants in relation to their key diversity elements, the following results look in more detail at DDJ applicants by cross analysing both gender, ethnicity and profession, and relate these results to representation in the legal profession.

Gender and Profession

Male solicitors make up the majority of the legal profession (51.8%), followed by female solicitors (35.3%), male barristers (8.7%) and female barristers (4.2%).

Figure 5. Gender and profession of DDJ applicants

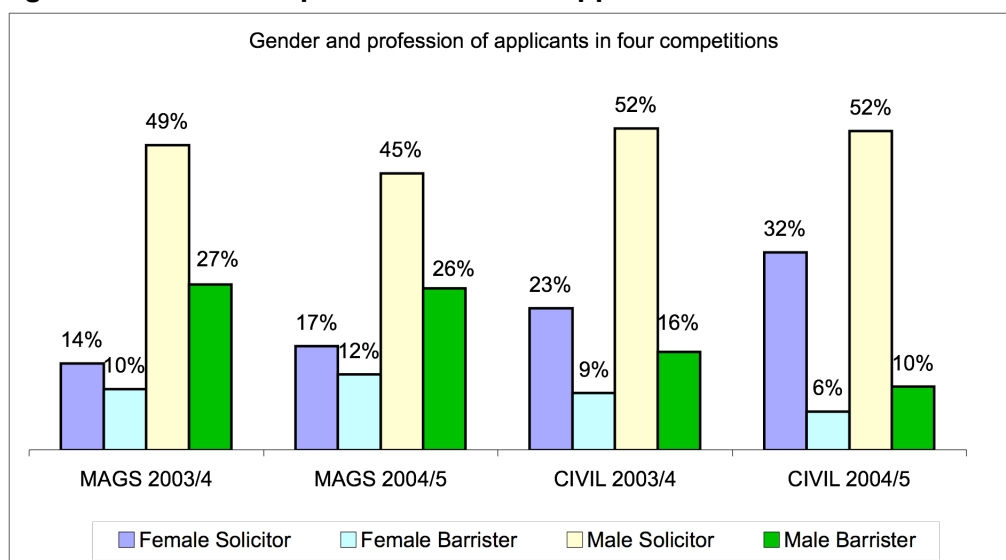


Figure 5 shows that, overall, male barristers are over-represented in all competitions as applicants in relation to their representation in the legal profession (9%), but this is especially marked in Magistrates' Court competitions and their applications appear to be decreasing for Civil posts. Although numerically male solicitors make up the single largest group of applicants in all competitions, they are under-represented among applicants for Magistrates' Court posts in relation to their representation in the legal profession (52%), and this under-representation appears to be increasing. Female solicitors are under-represented in all competitions in relation to their representation in the legal profession (35%), and this is most consistent in the two Magistrates' Court competitions; however, they are increasingly applying for both types of DDJ posts. Female barristers are over-represented as applicants in relation to their representation in the legal profession (4%), especially in the pool of applicants for DDJ Magistrates' Court posts. They are increasingly applying for

Magistrates' Court posts, but applications from them for Civil posts fell from 2003-2005.

Ethnicity and Profession

White solicitors make up 70% of the legal profession, white barristers 10%, black and minority ethnic (BME) solicitors 7% and BME barristers 1%.

Figure 6. Ethnicity and profession of DDJ applicants

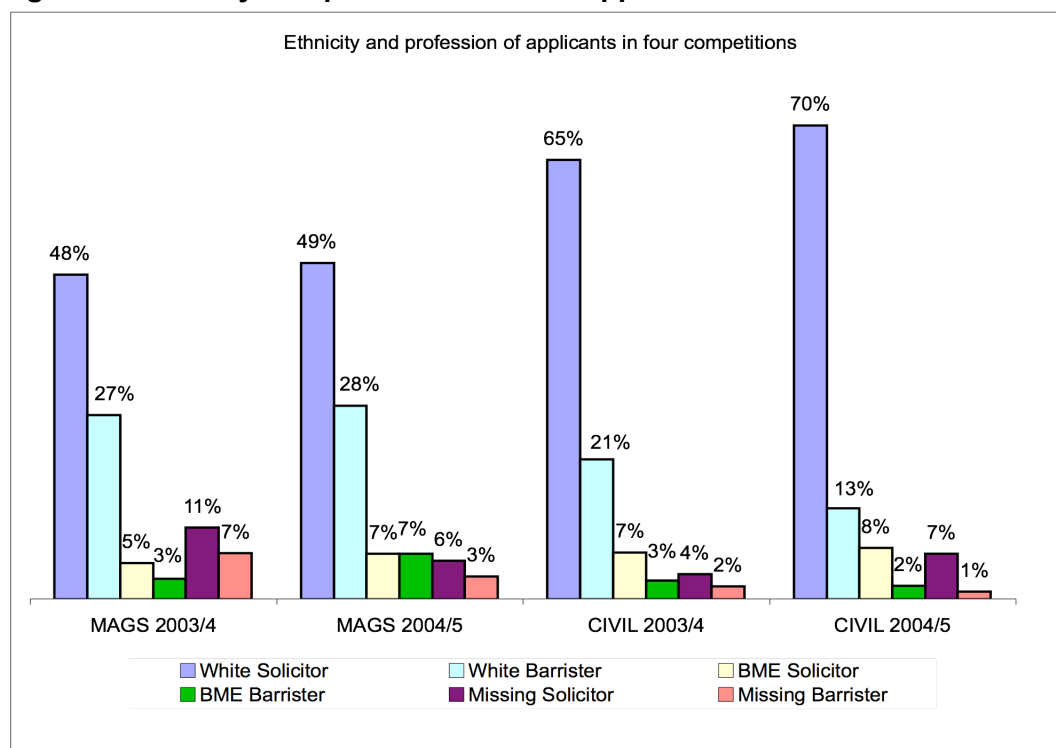


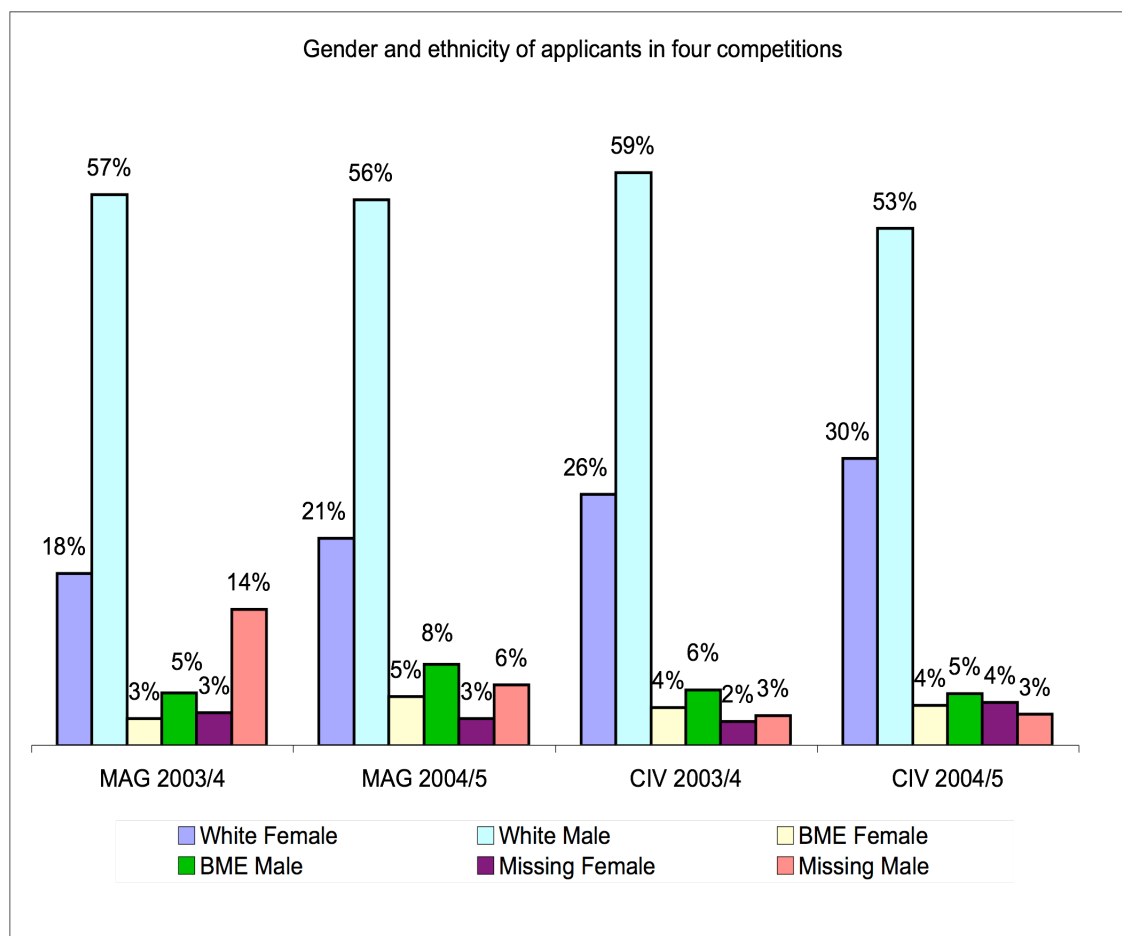
Figure 6³⁰ above shows that BME solicitors are applying generally in proportion to their representation in the legal profession. In the recent Magistrates' Court competition in 2004-05 BME barristers applied in excess of their representation in the legal profession. While white solicitors make up the largest group of applicants in all DDJ competitions, they are under-represented among applicants for DDJ Magistrates' Court posts in relation to their representation in the legal profession, while white barristers are over-represented in all competitions in relation to their representation in the legal profession, and especially so in Magistrates' Court competitions.

³⁰ Missing ethnicity data in the DDJ Magistrates' Court competition in 2003-04 makes results less reliable for this one competition.

Ethnicity and Gender

White males make up 49% of the legal profession, white females 31%, BME females 4.4% and BME males 4%.

Figure 7. Ethnicity and gender of DDJ applicants



While white males are the largest group in the legal profession, they are over-represented in the pool of applicants in all DDJ competitions (53-59%). White females are the second largest group in the legal profession but are under-represented in relation to their representation in the legal profession in all competitions, although this under-representation is most pronounced in the DDJ Magistrates' Court competitions. **There are more black and minority ethnic women than men in the legal profession, but this is not reflected in the pool of applicants for DDJ posts.** Black and minority ethnic women are applying for DDJ posts generally in proportion to their representation in the legal profession, while BME males are over-represented in relation to their representation in the legal profession in all competitions. (Figure 7 also indicates that male applicants account for almost all of the applicants where ethnicity information is missing.)

Gender, ethnicity and profession combined

While male solicitors make up 42% of the legal profession, white female solicitors 28%, white male barristers 7%, BME female solicitors 4%, BME male solicitors 3%, White female barristers 3%, BME male barristers 0.7% and BME female barrister 0.5%.

Figure 8. Gender, ethnicity and profession in Magistrates' Court applicants

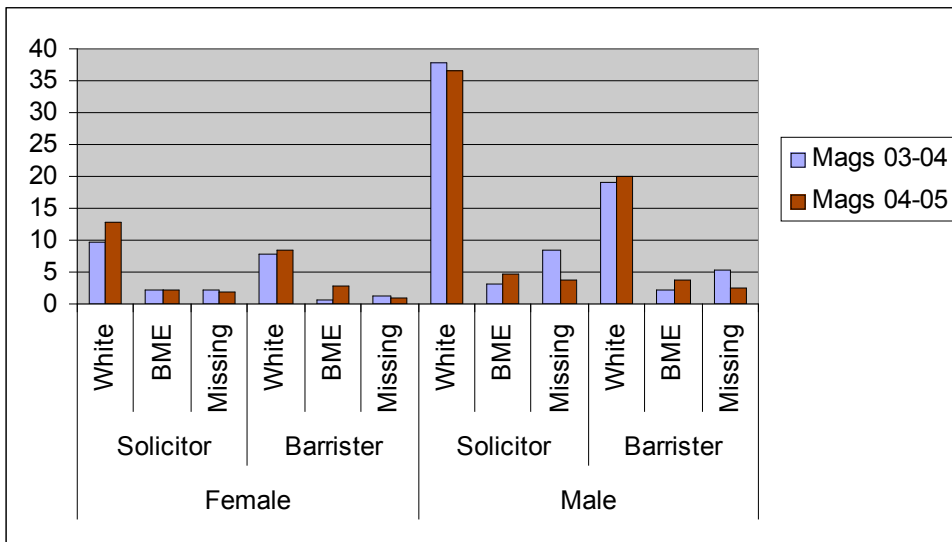


Figure 9. Gender, ethnicity and profession in Civil applicants

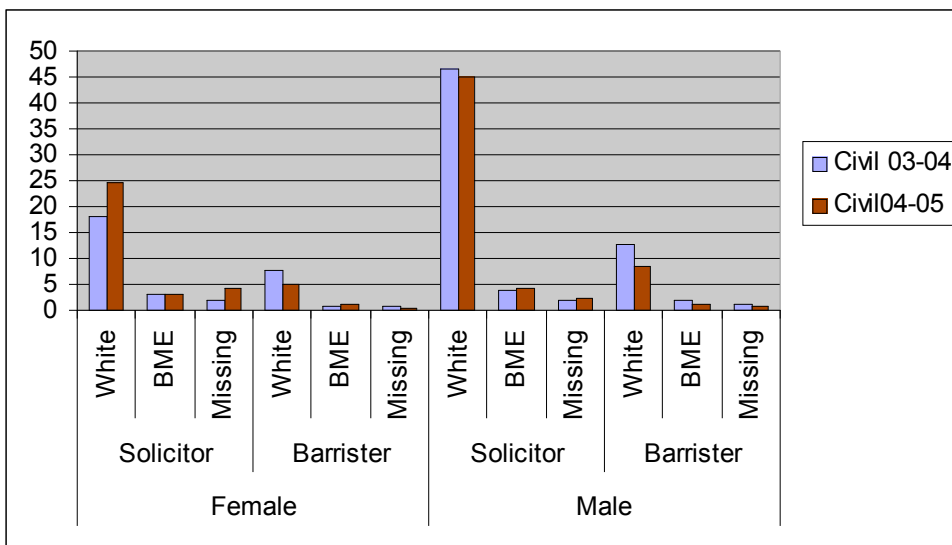


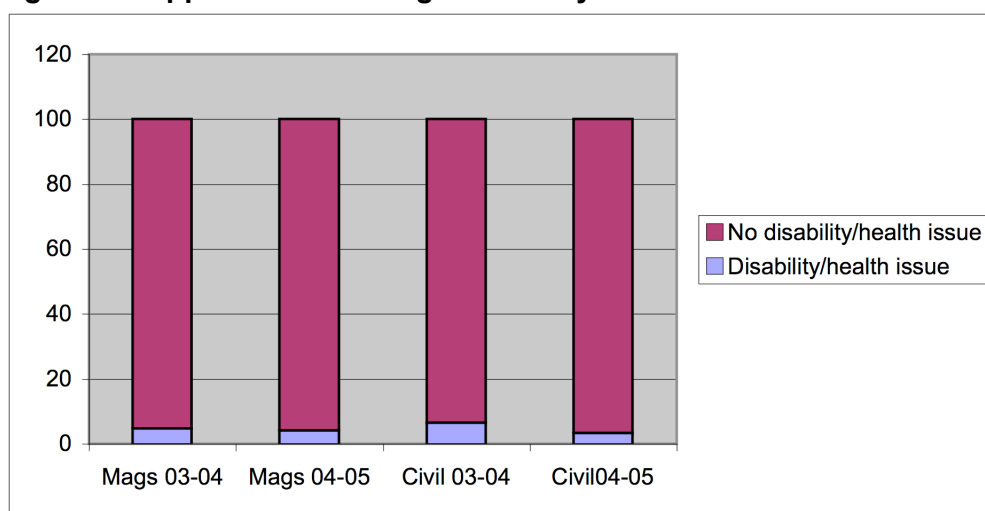
Figure 8 shows that in the Magistrates' Court competitions, all parts of the legal profession are increasingly applying for these posts except BME female solicitors and white male solicitors. Figure 9 shows that in the DDJ Civil competitions, the only members of the legal profession that are increasingly applying are white female solicitors and BME male solicitors.

While there are much higher percentages of BME solicitors (both women and men) compared to BME barristers in the legal profession, this difference is generally not reflected in applicants for DDJ posts. BME male and female barristers in most cases are over-represented among DDJ applicants in relation to their representation in the legal profession.

Disability/Health Issue³¹

The application form for Deputy District Judge asks applicants to declare any disability or health issue that may affect their ability to act as a judge. On the 2003-04 DDJ application form the question read: *"Applicants should declare any illness which might prevent them from properly carrying out the duties of appointment. If you are aware of any health matter that could adversely affect your performance in judicial office, please provide details below."* In 2004-05 a line was added to this question which read: *"Please also give details of any practical measures we could put in place to assist you if you [sic] to be appointed"*.

Figure 10. Applicants declaring a disability or health issue



³¹ The remaining background characteristics of applicants have not at this stage been analysed in relation to representation in the legal profession (where this is known).

Figure 10 shows that there was little change in the rate of applications for Magistrates' Court posts by those declaring a disability or health issue on the application form from 2003-04 to 2004-05 (4.8% compared to 4.1%), while there was some decrease in the rate of applications for DDJ Civil posts (6.5% in 2003-04 and 3.4% in 2004-05). However, given the very small number of applicants who declared a disability or health issue, it can be misleading to speak of percentage change from one year to the next. Table 14 below shows the actual number of applicants declaring a health or disability issue in each competition, and shows **the drop in the number declaring a disability of health issue was from 46 in the first year to 34 in the second year** examined in the study.

Table 14. Numbers of DDJ applicants with disability or health issue

<i>Competition</i>	<i>Number of applicants declaring disability or health issue</i>
DDJ Magistrates' Court 2003-04	23
DDJ Magistrate' Court 2004-05	20
DDJ Civil 2003-04	23
DDJ Civil 2004-05	14

Academic background

Figure 11. Higher education background of applicants in DDJ competitions

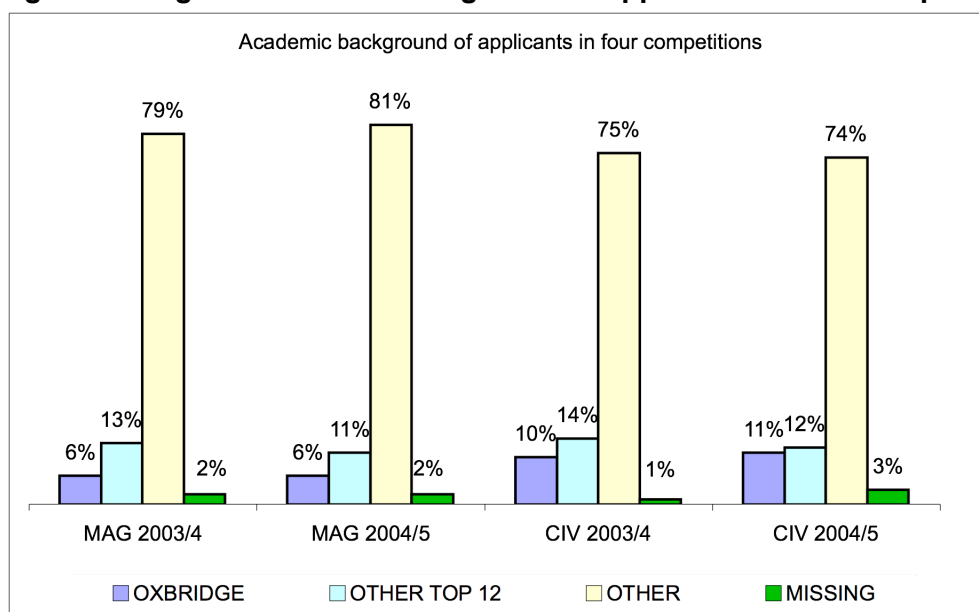
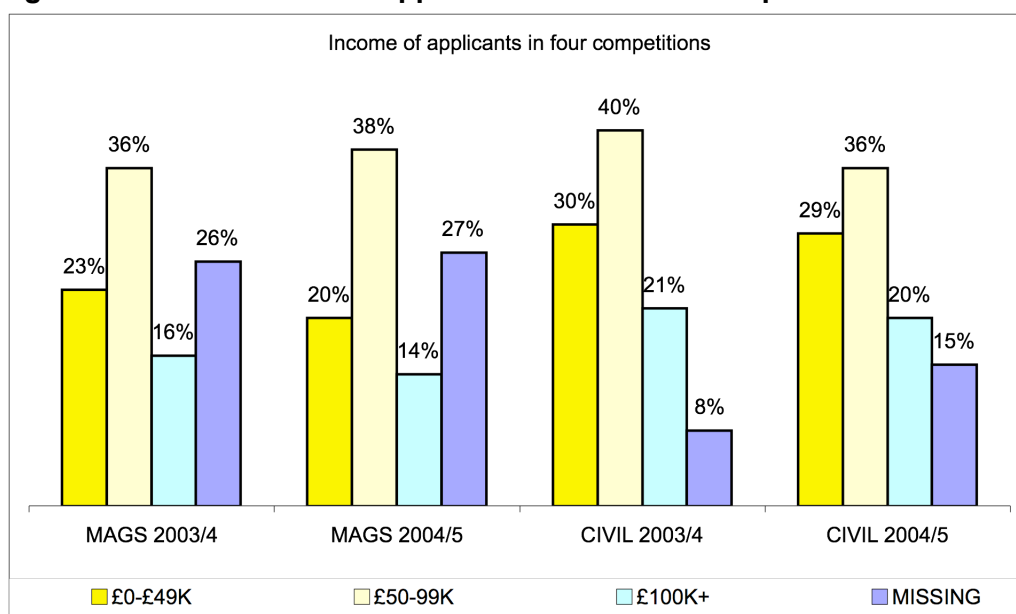


Figure 11 shows the academic institutions where applicants for all four competitions gained their qualifications. The distinctions are drawn between Oxford and Cambridge, the remaining top 12 law faculties in the United Kingdom³² and all other academic institutions. A higher percentage of applicants for DDJ Civil posts (23-24%) have degrees from Oxbridge and other top 12 law faculties than applicants for DDJ Magistrates' Court posts (17-19%). However, **the overwhelming majority of applicants for all DDJ positions have degrees from academic institutions outside of the top 12 law faculties.** It is suspected that this presents a fundamentally different applicant profile than the profile of applicants for higher judicial posts. This is based on research by the Sutton Trust³³ on the educational background of senior judges in England and Wales showing that over 80% of higher-ranking judges have Oxbridge degrees, although no similar research has been conducted on *applicants* for these senior posts.

Income

Figure 12. Income levels of applicants in four DDJ competitions



The DDJ application form asks candidates to provide details of per annum income for the last three years. The analysis categorised candidates into three income groups (less than £50, 000; £50,000-£99,999; £100,000 and above) based on candidates' highest declared income level. Figure 12 shows that the proportion of applicants in

³² University College London, King's College London, Nottingham, London School of Economics, Durham, the School of Oriental and African Studies, Manchester, Warwick, Bristol and Edinburgh.

³³ Sutton Trust Briefing Note (2005) supra note 9.

the three income groups is remarkably constant from one year to the next. A higher percentage of applicants (26-27%) did not declare their income in the Magistrates' Court competitions in comparison to applicants in the Civil competitions (8-15%), and this makes comparisons between Magistrates' Court competitions and Civil competitions somewhat problematic. **In all four competitions, those in the £50,000 - £99,999 income bracket made up to single largest group of applicants**, and there is a fairly consistent percentage of applicants in this income bracket across the four competitions (36-40%).

Age

Figure 13. Age of applicants in DDJ Magistrates' Court competitions

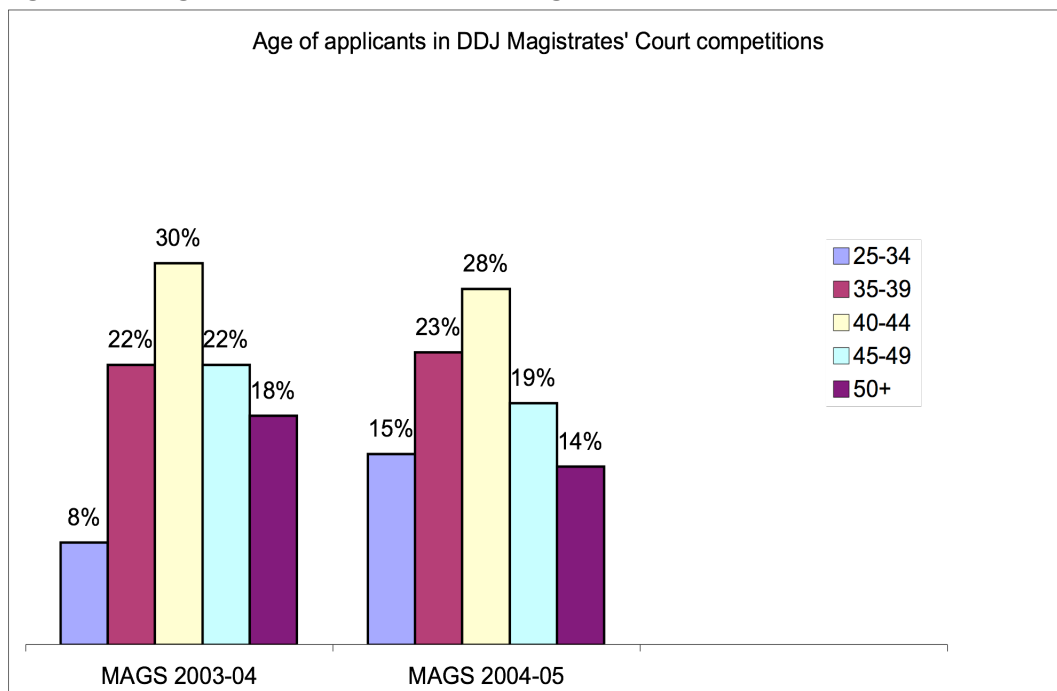
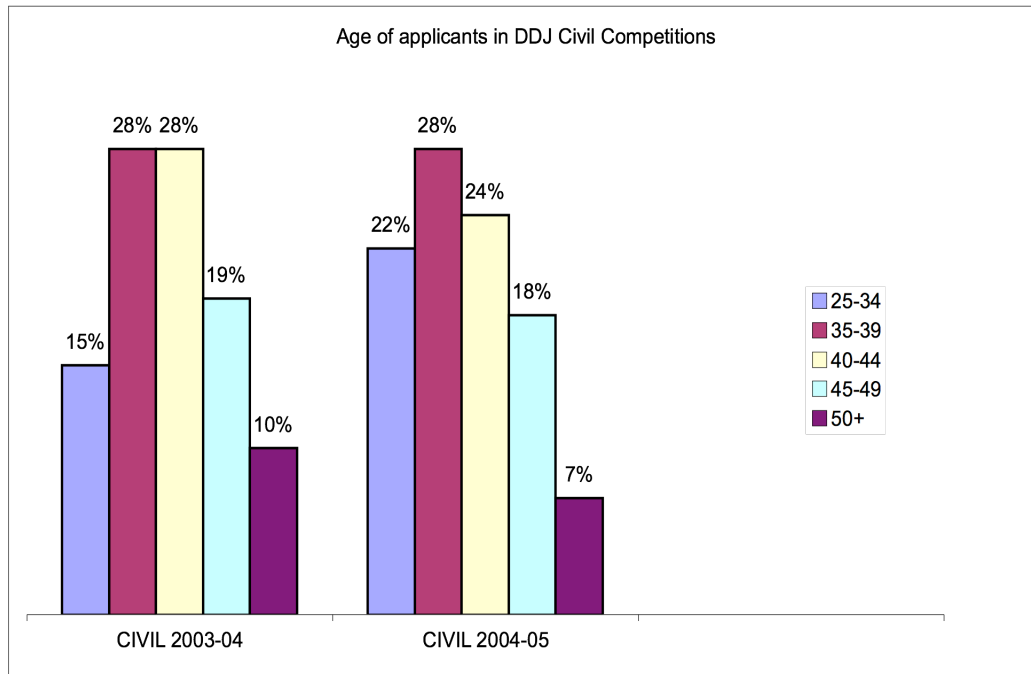


Figure 14. Age of applicants in DDJ Civil competitions



Figures 13 and 14 indicate that **applicants for DDJ posts are getting younger in progressive years across both Magistrates and Civil competitions.** Magistrates' Court competitions have higher percentages of applicants over 50 years of age than Civil competitions, and a lower percentage of the youngest applicants (25-34 years of age) than Civil competitions. The single largest age group for Magistrates' Court posts is the 40-44 year age group, while the single largest age group for Civil posts is the 35-39 year age group.

Years in practice

Figure 15. Years in practice of DDJ applicants

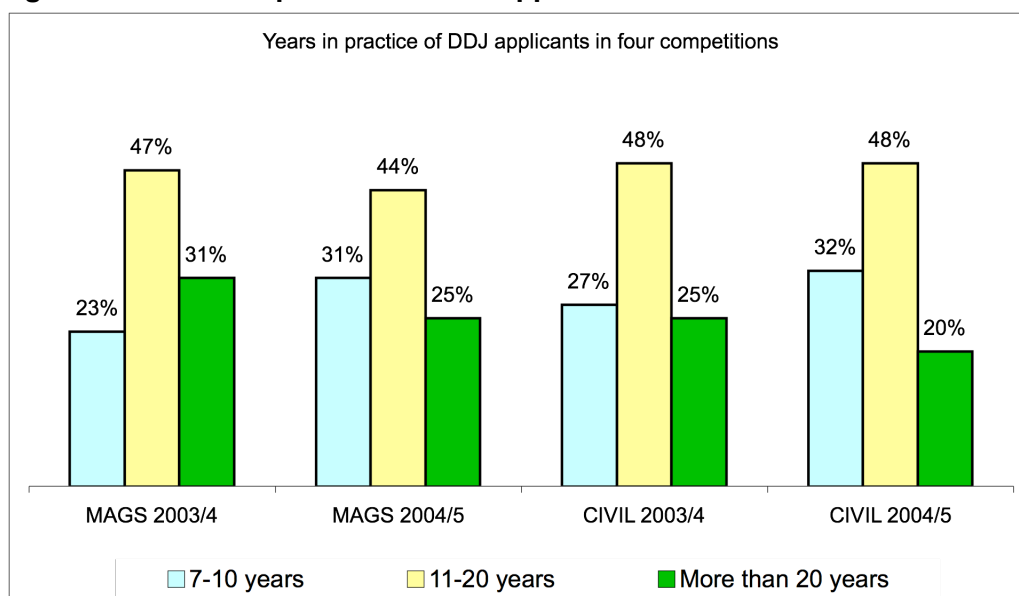


Figure 15 shows the years in practice of applicants in each of the four competitions. While the single largest group of applicants for all competitions has been in practice for between 11-20 years, **applicants with 7-10 years practice are increasingly applying for both DDJ Civil and Magistrates' Court appointments.** As applicants' years in practice will in most cases be closely related to applicant age, this finding is not surprising given the earlier finding of the decreasing age of applicants. The percentage of applicants with only 7-10 years practice increased from 23% to 31% for Magistrates' Courts' posts from 2003-04 and 2004-05. The percentage of applicants with only 7-10 years practice increased from 27% to 32% for DDJ Civil posts from 2003-04 to 2004-05.

This increase in applicants earlier in their career and the demographics of the legal profession together suggest that lowering the eligibility requirement from a minimum of seven to five years in practice may serve to increase the diversity of applicants for DDJ posts, as there are increasing numbers of women and minorities entering both branches of the legal professions. While 30% of the Bar are women, a higher percentage of women have qualified more recently (48% of those called to the Bar in 2003-04 were women). While 40% of practising solicitors are women, over 50% of those issued practising certificates in the last 10 years were women and 57% of those admitted as practising solicitors in 2003-04 were women. In addition, while 8%

of solicitors are from a BME background, 17% of new admissions and 18% of trainee solicitors have a BME background.

Type of Firm/Chambers

Figure 16. Employment in magic circle firms or leading chambers

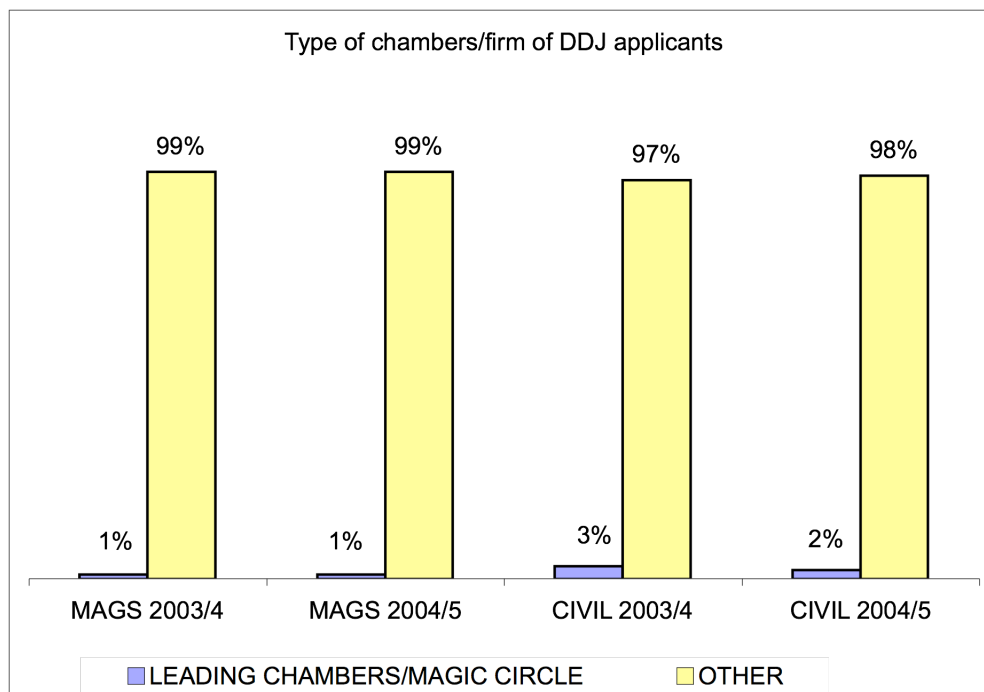


Figure 16 shows the proportion of applicants who have been employed at some point in their legal career by either a “magic circle” firm³⁴ or one of the leading barristers chambers. We have adopted the same list as the Sutton Trust in its recent study on the educational background of senior judges and senior partners in leading law practices³⁵. The figure shows that **almost all applicants for all DDJ posts have not been employed by either a magic circle firm or leading chambers**. No BME applicant was or had been employed by one of the leading chambers or magic circle firms.

It is suspected that the results for DDJ applicants present a somewhat different picture than that of applicants for higher judicial posts given the results of the Sutton

³⁴ This term is loosely used to refer to the highest earning, elite law firms in the UK.

³⁵ The magic circle firms used here are Allen & Overy, Slaughter and May, Clifford Chance, Linklaters and Freshfields Bruckhaus Deringer. The leading chambers are those recommended for commercial law by Chambers and Partners and The Legal 500 and included: 20 Essex Court, 7 King’s Bench Walk, Blackstone Chambers, Brick Court Chambers, Fountain Court Chambers, One Essex Court and Quadrant Chambers (formerly 4 Essex Court), 3 Essex Court, Essex Court and 3 Verulam Buildings.

Trust study³⁶, although no similar research has been conducted on *applicants* for these posts.

Prior appointment

Figure 17. Prior judicial appointment of DDJ applicants

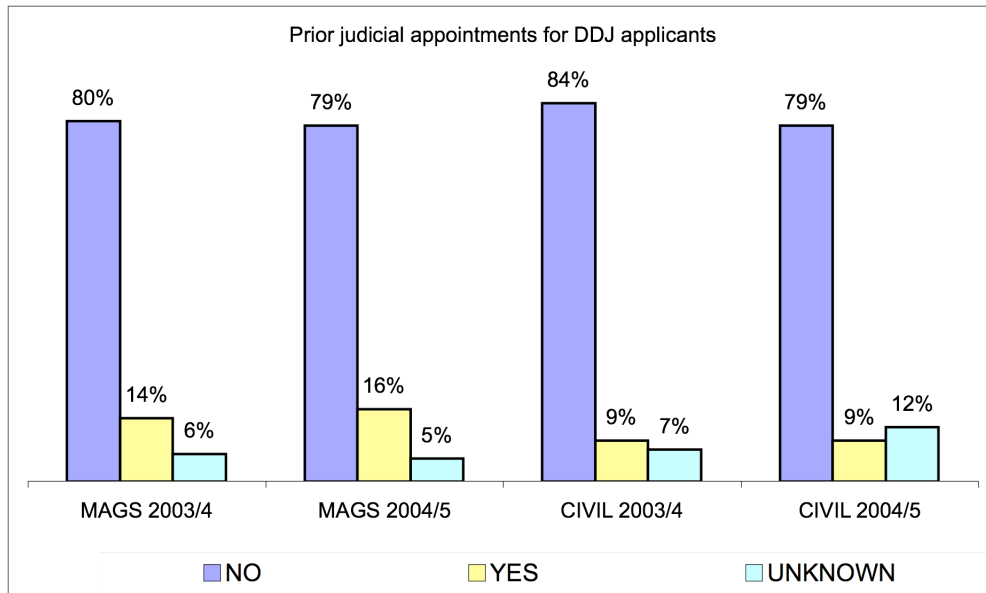


Figure 17 shows the percentage of applicants with a prior judicial appointment, either at the time of application or previously. **The overwhelming majority of applicants for DDJ posts in all four competitions did not hold a prior judicial appointment.** It also shows that applicants for DDJ Magistrates' Court posts were more likely to have a prior judicial appointment than those applicants for DDJ Civil posts.

³⁶ Sutton Trust Briefing Note (2005) supra note 9.

Current Legal Career

Figure 18. DDJ applicants in private and non-private practice

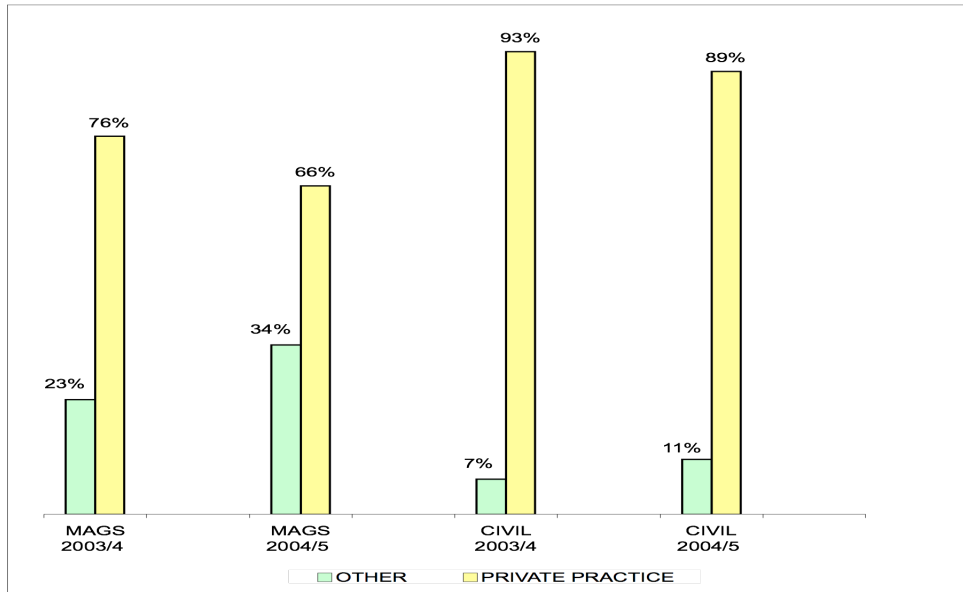
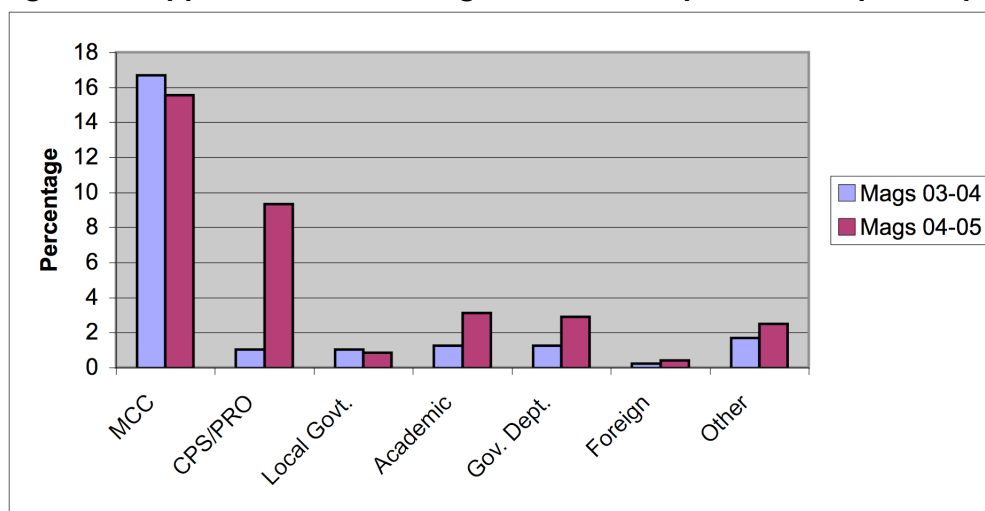


Figure 18 above shows that the overwhelming majority of applicants for all DDJ posts are currently in private practice. **Applicants for DDJ Magistrates' Court posts are more likely to be in some type of non-private practice than applicants for DDJ Civil posts, and this is increasingly the case from 2003-04 to 2004-05.** Figure 19 below shows that **the overwhelming majority of applicants for Magistrates' Court posts who are not in private practice are either Magistrates Court Clerks or, more recently, CPS prosecutors.**

Figure 19. Applicants for DDJ Magistrates' Court posts not in private practice



Previous Non-Private Practice Experience

The overwhelming majority of applicants for both types of DDJ posts have an exclusively private practice background, and as with current practice, those that have any non-private practice background are more likely to apply for Magistrates' Court posts than Civil posts. Figures 20 and 21 below show the type of non-private practice experience applicants have in relation to the type of DDJ post.

Figure 20. Magistrates' Court applicants with non-private practice experience

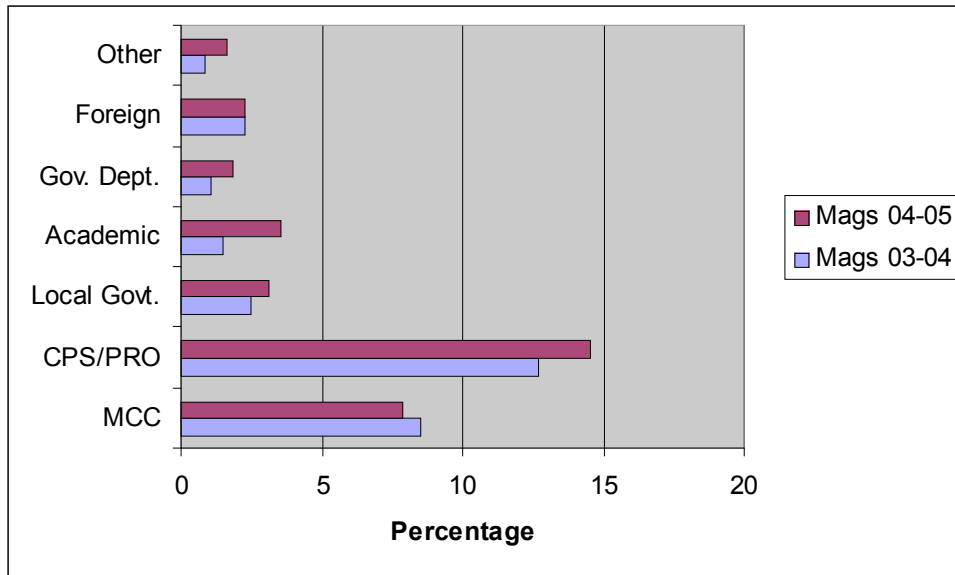


Figure 21. DDJ Civil applicants with previous non-private practice experience

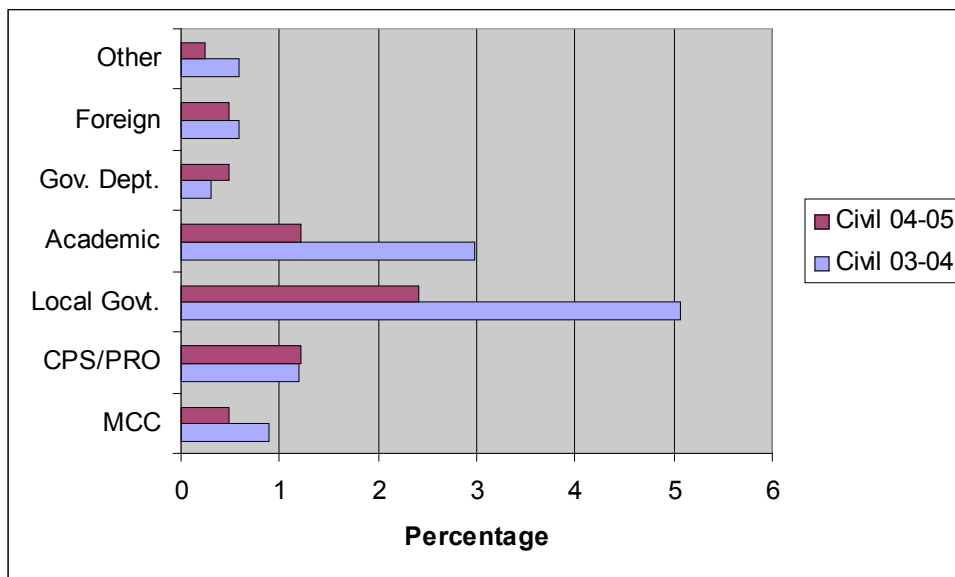


Figure 20 shows that **most applicants for DDJ Magistrates' Court posts who have worked in non-private practice prior to applying tend to be former prosecutors or former Magistrates' Court Clerks.** Figure 21 shows that **among**

the small number of applicants for DDJ Civil posts who have previously worked in non-private practice, the most prevalent groups are former local government lawyers or academics, but that both are decreasing in the pool of applicants from one year to the next.

Practice Type/Specialisation

The DDJ application form asks candidates to indicate the types of legal practice they specialise in, and candidates can chose more than one practice specialisation. The application form provides 68 possible practice categories for candidates to choose from, and this list has been reclassified into 12 broad practice types for analysis purposes.

Figure 22. Practice specialisation of DDJ Magistrates' Court applicants

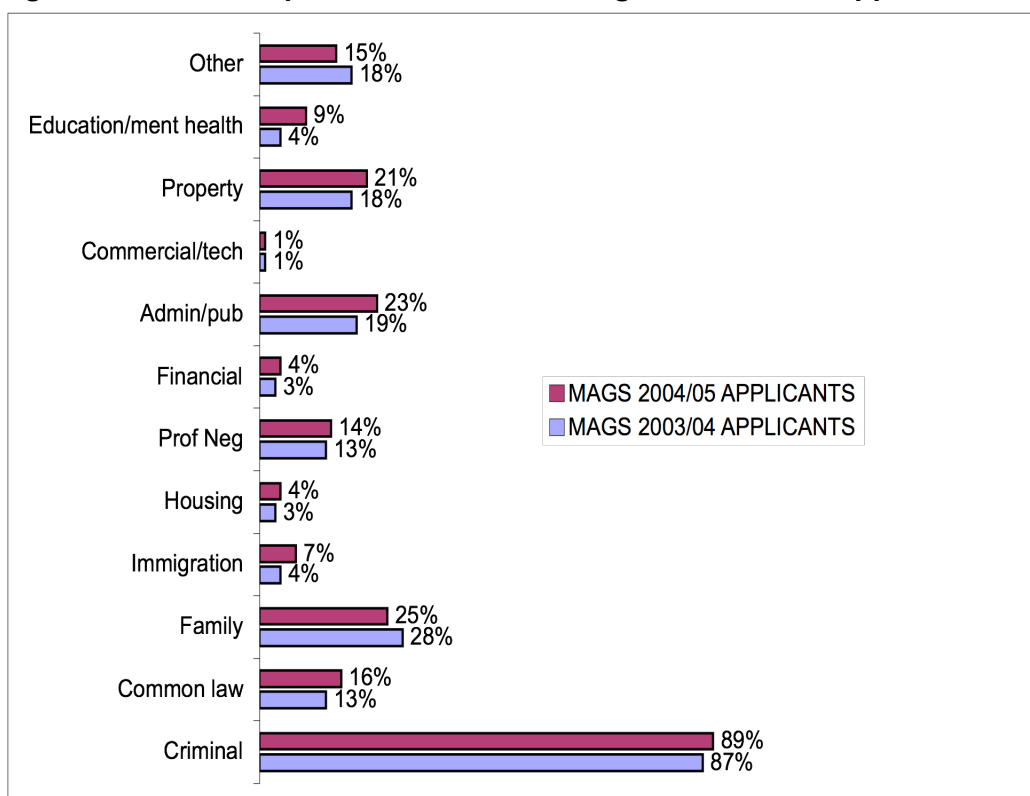
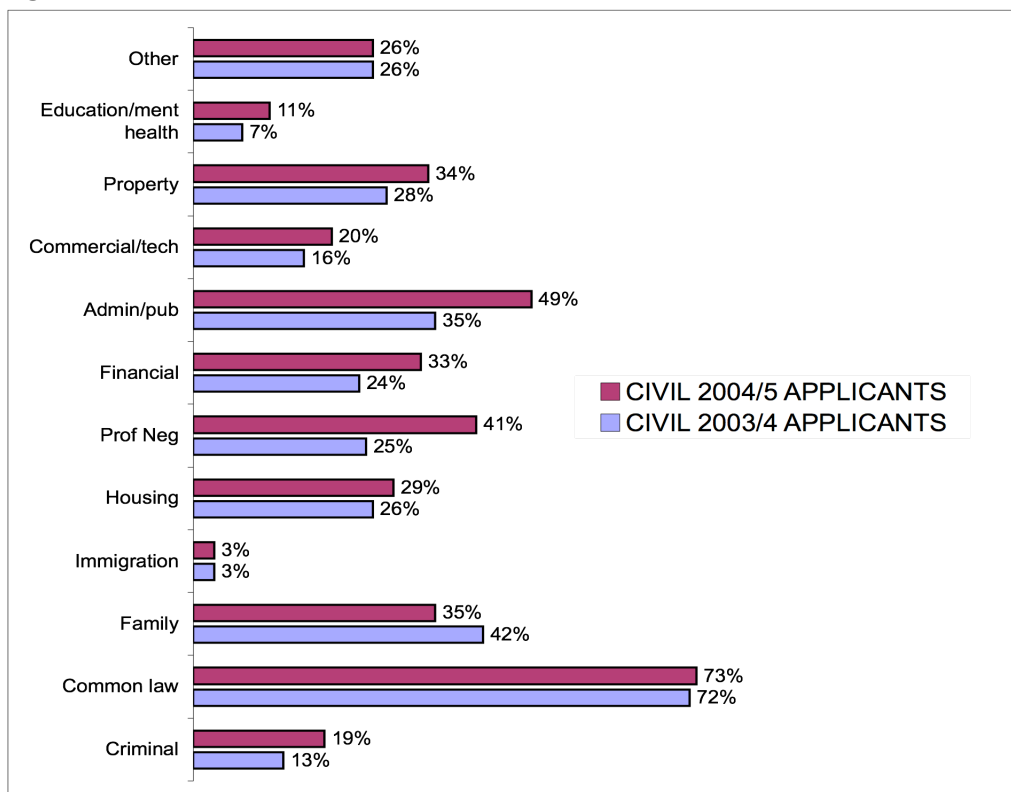


Figure 22 above shows that **applicants for DDJ Magistrates' Court competitions overwhelmingly come from a criminal practitioner background**. This is not surprising, given the nature of the work of a DDJ in the Magistrates' Court. The next most prevalent practice specialisations for these applicants, but by some distance, is family law and administrative/public law.

Figure 23 below shows that, unlike applicants for DDJ Magistrates' Court posts, **those applying for DDJ Civil posts have a much more varied practice background**. Even though the highest percentage of all Civil applicants are involved in common law practice, there are also substantial percentages involved in administrative/public law, family, professional negligence, property and housing law. This again generally reflects the nature of the cases that come before a DDJ in the county courts.

Figure 23. Practice specialisation of DDJ Civil applicants



Changes in the pool of applicants from 2003-04 to 2004-05

Among all DDJ applicants in each competition year, there were clearly more women, minorities and younger applicants coming forward to apply to be Deputy District Judges in 2004-05 than 2003-04, although there were fewer applicants who specified a health issue or were registered disabled. The proportion of female applicants rose dramatically from 2003-04 to 2004-05 (from 27% in the first year to 67% in the next). Those describing themselves as coming from a black or minority ethnic background rose by 2.3% between 2003-04 and 2004-05, and a higher percentage also had some previous or current form of non-British nationality compared with the previous years' applicants. More applicants in 2004-05 (31.4%) had been in practice for only 7 to 10 years than in the previous year (24.8%).

The proportion of the youngest age group of applicants (25-34 year olds) increased for both the Magistrates' Court and Civil competitions, while the proportion of applicants in the oldest age group (50+) fell for both types of DDJ posts from 2003/04 – 2004/05. There was some increase in applications for both Magistrate' Court and Civil posts among those currently not in private practice, although the majority of applicants for both posts continued to be in private practice. For all other background factors there were no substantial changes in the applicant pool from 2003-04 to 2004-05.

There was a very significant relationship between gender and age for applicants. Essentially the younger the group the larger proportion of women applicants. Similarly, there were a larger percentage of BME applicants among the younger age groups than the older age groups. Income was surprisingly similar between age groups. The youngest group was most likely to have been employed at some point at a leading chambers or magic circle firm, although the numbers were very small³⁷. There was little difference between age groups for the proportion of other nationalities, profession type and litigation experience. Differences in academic qualifications were modest. Prior appointments were less likely for 25-34 year olds, particularly when compared to the oldest age group, which is not surprising given the years in practice eligibility requirements for most appointments.

Background of black and minority ethnic applicants

This section provides a more detailed look at the background of BME lawyers who have applied for DDJ posts, by considering the profession type, age, gender,

³⁷ Only 8 of 225 in the 25 to 34 year old group, and 18 of 1257 in all other age groups.

disability, years in practice, academic institution, income, practice background and practice specialisation of these applicants. Once any analysis of the position of black and minority ethnic lawyers moves beyond the combined pool of applicants, numbers usually become too small to speak in terms of percentages without presenting a potentially misleading picture. As numbers become smaller a single individual can account for a large percentage increase or decrease, which might incorrectly suggest a substantive change. Table 15 below shows the background of the combined pools of black and minority ethnic applicants in all four DDJ competitions, and presents both percentages and actual numbers for the greatest clarity.

Table 15. Background characteristics of all BME applicants 2003-2005

		number	%
Gender	Female	61	41.8%
	Male	85	58.2%
Profession Type	Solicitor	93	63.7%
	Barrister	53	58.2%
Years in practice	7 - 10 years	75	51.4%
	10 - 20 years	61	41.8%
	20+ years	10	6.8%
Age	25-34	35	24.0%
	35-39	50	34.2%
	40-44	37	25.3%
	45-49	12	8.2%
	50+	12	8.2%
Academic institution	Oxbridge	4	2.7%
	Other top 12 faculty	10	6.8%
	Other	130	89.0%
	unknown	2	1.4%
Income	unknown	46	31.5%
	£0 - £49k	34	23.3%
	£50k - £99k	49	33.6%
	£100k+	17	11.6%
Current practice	Private practice	107	73.3%
	other	39	26.7%
Disability/ health issue	No	140	95.9%
	Yes	6	4.1%
Magic circle/leading chambers	Yes	0	0%
	No	146	100%

More BME applicants were men (58%) than women (42%); this indicates an under-representation of BME women in relation to their representation in the legal profession where BME women make up 5% of the combined legal profession

compared to BME men who make up 4% of the combined profession. **Almost twice as many BME applicants were solicitors (64%) than barristers (36%), which is to be expected given the fact that there are more BME solicitors than barristers in the legal profession. However, as there are almost seven times as many BME solicitors (8.2%) than BME barristers (1.4%) in the profession, it might be expected that a higher proportion of the applicants would be BME solicitors.**

The majority of BME applicants (51%) had less than 10 years in practice, and only a very small percent had been in practice for more than 20 years (7%). Almost all BME applicants (84%) were under 45, with the single largest group being 35-39 years old at the time of applying (34%). The overwhelming majority of BME applicants (89%) had qualifications from a non-top 12 university. Most BME applicants (73%) were currently in private practice, although among those not in private practice Magistrates' Court Clerks were the single largest group (9.6%). Among BME candidates who had worked outside of private practice in the past, the single largest group (9%) had worked for the Crown Prosecution Service. **The single most prevalent practice specialisation among BME applicants is criminal practice (59%), followed by administrative/public law (34%), common law (31%) and family law (26%).** No BME applicants came from one of the magic circle firms or one of the leading chambers.

Summary

There is a much greater basic diversity in applicants for DDJ Civil posts than DDJ Magistrates' Court posts, and among the most recent Civil applicants "non white males" have exceeded white males. However, the basic categorisation of applicants as white males and "non white males" provides only the most limited understanding of diversity. The research provided a more complex cross analysis of candidate background variables to present a clearer picture of the diversity of the pool of applicants.

The proportion of women increased in both Civil and Magistrates' Court competitions from one year to the next, and while they generally are not applying in proportion to their representation in the legal profession in the most recent DDJ Civil competition (2004-05) the proportion of female applicants was only just below the proportion of women in the legal profession.

Solicitors are consistently under-represented in the pool of applicants in comparison to their representation in the legal profession, and barristers are over-represented in the applicant pool in relation to their representation in the profession in all the competitions. Solicitors are particularly under-represented in the Magistrates' Court competitions.

The percentage of BME lawyers applying for DDJ posts in three of the four competitions closely reflects their representation in the legal profession. In one competition, the most recent Magistrates' Court competition (2004-05), there was a substantial increase in applications from BME lawyers. The majority of BME applicants were Asian, which generally reflects the greater proportion of Asians in the legal profession compared to other ethnic minority groups. More BME applicants were solicitors than barristers, which is to be expected given the fact that there are more BME solicitors than barristers in the legal profession. However, given the much greater proportions of BME solicitors in the legal profession it might be expected that a higher proportion of the applicants would be BME solicitors not BME barristers. There are more black and minority ethnic women than men in the legal profession, but this is also not reflected in the pool of applicants for DDJ posts. Almost two-thirds of all BME applicants were under 40 years of age, and over half were only recently eligible to apply for a DDJ post (7-10 years qualified).

White male solicitors and white female solicitors appear to favour DDJ Civil competitions over DDJ Magistrates' Court competitions, while white male barristers appear to favour DDJ Magistrates' Court Competitions.

Only a small proportion of applicants have a declared disability or health issue, and the number of these applicants fell from one year to the next. Applicants are getting younger in both the Magistrates and Civil competitions, and applicants with only 7-10 years practice are increasingly applying for both types of DDJ posts. The single largest age group for Magistrates' Court posts is the 40-44 year age group, while the single largest age group for Civil posts is the 35-39 year age group. In all four competitions, those in the £50,000 - £99,999 income bracket made up the single largest group of applicants.

The overwhelming majority of applicants for all DDJ positions did not have degrees from one of the top 12 law faculties, had not been employed by either a Magic Circle firm or leading chambers, and did not hold a prior judicial appointment. The majority

of applicants for all DDJ posts are currently in private practice, overwhelmingly so for DDJ Civil applicants, but applicants for DDJ Magistrates' Court posts are increasingly likely to be in some type of non-private practice.

Most applicants for all DDJ posts are currently in private practice. Applicants for DDJ Magistrates' Court posts are more likely to be in some type of non-private practice than applicants for DDJ Civil posts, and this is increasingly the case from 2003-04 to 2004-05. The overwhelming majority of applicants for Magistrates' Court posts who are not in private practice are either Magistrates Court Clerks or, more recently, CPS prosecutors. Most applicants for DDJ Magistrates' Court posts who have worked in non-private practice prior to applying tend to be former prosecutors or former Magistrates' Court Clerks. Among the small number of applicants for DDJ Civil posts who have previously worked in non-private practice, most were former local government lawyers or academics, but both are decreasing in the pool of applicants from one year to the next.

There are distinct differences in the practice specialisations of applicants for DDJ Magistrates' court posts than Civil posts, which is not surprising given the differences in the nature of the legal work done by the two different types of Deputy District Judges. Magistrates' Court applicants come overwhelmingly from a criminal practitioner background. The next most prevalent practice specialisations, but by some distance, is family law and administrative/public law. In contrast, those applying for Civil posts have a much more varied practice background. The largest number are involved in common law practice, followed by administrative/public law, family, professional negligence, property and housing.

Chapter 4. Getting through Sift

The importance of Sift

Sift is arguably the most crucial stage of the DDJ appointment process. The decisions made at Sift have the greatest impact on the largest number of applicants. For the vast majority of applicants, Sift is the end of the appointment process; they are not invited to the Assessment Centre and their application is rejected.

For those applicants who succeed at Sift and are invited to the Assessment Centre, their odds of appointment have substantially increased. In the Magistrates Court 2004-05 competition, for example, each applicant had only a one in six chance of getting through Sift and being invited to the Assessment Centre, while each invitee to the Assessment Centre had a one in three chance of succeeding at the Assessment Centre and being appointed. More practically, the Assessment Centre affords each candidate the chance to demonstrate his or her ability and potential to decision-makers, while at Sift applicants are judged solely on the content of their written application³⁸.

Given its importance in the appointment process, there are a number of key issues to consider in relation to Sift: what evidence is used to reach Sift decisions (the application form), how does Sift operate (marking of competences) and who are the decision-makers (background of “sifters”). This chapter explores this crucial stage of the DDJ appointment process by analysing which candidate background characteristics are most predictive of success at Sift, and by examining how consistent Sift decision-making is. It specifically explores whether there are clear rules consistently applied at Sift and whether the Sift marking scheme adversely affects under-represented groups.

How Sift operates

All applicants are required to demonstrate specific competences at Sift. These competences are judged and marked based on the written answers candidates provide in the Self-Assessment section of the DDJ application form. Each candidate receives a score of 0 to 5 for each Self-Assessment competency. The marking is done individually by “sifters” who are either judges, lay people or DCA officials. Each Sifter records marks for each candidate for each competency on a Sift form. This form also includes details of the candidate’s name, whether he or she is a barrister or

³⁸ In 2003-04 Sift also took applicants’ references into consideration; see discussion below for details.

solicitor, practice details and whether he or she has a prior judicial appointment. In most cases three Sifters separately marked each applicant on the required competences. These three sets of scores are then compared by the panel members, and the panel determines final competency scores for each candidate. These scores are then added together to produce a total aggregate Sift score for each candidate. Once this process is completed for all applicants in a competition, a Sift Panel (made up of a judge, lay person and DCA official) then determines which applicants will be rejected and which will be invited to the Assessment Centre, based on final Sift scores.

Changes to Sift

In the competitions covered in this research, changes were made to the specific ways Sift operated both from one competition year to the next and between competitions in the same year. These differences mean that caution needs to be exercised in drawing too many comparisons between Sifts, and as a result any analysis of Sift procedure or outcomes in this chapter is presented on an individual competition basis.

In both of the DDJ Civil and Magistrates' Court competitions in 2003-04, at Sift candidates were marked on 8 competences based on written answers to the Self-Assessment questions on the Application Form: Managing Workload (MW), Investigating and Analysing (IA), Resolving and Deciding (RD), Building Relationships (BR), Communicating (C), Showing Authority (SA), Managing Self (MS), and Developing Knowledge (DK). In the 2003-04 competitions, Sifters also had to record whether they considered the candidate "diversity aware" and whether the candidate had the required legal skills and expertise to be a DDJ. In deciding which candidates would be invited to the Assessment Centre, as well as the Self-Assessment answers given on the application form, the Sift panel also considered recommendations and assessments provided by applicants' consultees.

In 2004-05, a number of changes to the Sift process were introduced. First, the number of competences marked at Sift was reduced from 8 to the following 5: Investigating and Analysing, Resolving and Deciding, Building Relationships, Showing Authority, and Developing Knowledge. Applicants were still required to answer Self-Assessment questions on the three remaining competences (Managing Workload, Communicating and Managing Self), but the Application Form indicated that these competences would only be assessed if a candidate succeeded at Sift and

was invited to the Assessment Centre. In addition, the process of obtaining and using evaluations from candidates' consultees at the Sift stage was dropped, and consultees were only asked for assessments later in the selection process if a candidate was invited to the Assessment Centre. In addition, in 2004-05 Sift no longer recorded whether a candidate was "diversity aware". The extent to which Sifters considered other material in the candidate's application form in reaching a Sift decision appears to have varied between different competitions, although it was not possible to assess this because there was no record on the Sift form to indicate what if any other information on the application form was taken into consideration in reaching a Sift decision.

One further change to Sift was introduced to only one of the competitions in 2004-05. In the DDJ Civil competition that year, sifting took place in two stages: an initial Pre-Sift of all applications by DCA competition personnel followed by the actual Sift stage. In this competition, each application form was only seen and marked by a single pre-Sifter. Even though there were three pre-sifters carrying out this work, 70% of all Pre-Sift scores (254 out of 364) in this competition were made by one pre-sifter. This procedural change placed a substantial amount of decision-making responsibility on one individual at this crucial stage of the appointment process, although the Pre-Sift decisions were open to review by the final Sift Panel. The guidance notes for applicants for the Magistrates' Court competition in the same year indicated that a similar pre-sift stage would be used for this competition. However, it appears that this did not occur, and the research team also understands that the most recent DDJ competitions (2005-06) have not adopted this single pre-sifter approach.

The Sifters

In the course of the four competitions covered by this research, over 30 different "sifters" took part in some aspect of the Sift decision-making process. Sifters are drawn from the judiciary (mostly District Judges), DCA competition officials, and lay members. Among the group of Sifters there was a fairly balanced mix of men and women, but there has only been one non-white sifter (an Asian District Judge) among the sifters responsible for decisions affecting over 1700 applications in these four competitions. Research in the United States has examined the role of diversity

on judicial selection panels³⁹, and one study,⁴⁰ which examined the effects of the gender and racial diversity of judicial selection panels on the gender and racial diversity of both applicants and nominees for judicial office, found evidence that diverse panels attracted more diverse applicants and selected more diverse nominees for appointment. While our research has collected data on the diversity of sifters and Sift panels, and the scores given to candidates by each Sift group, there has not been sufficient time in this initial report to look more closely at the impact of the composition of Sift panels on the diversity of those selected or rejected at Sift.

Candidate characteristics predictive of success at Sift

The main part of the analysis of Sift examined which specific combination of candidate background characteristics provided the strongest predictors of whether candidates would succeed in getting through Sift to receive an invitation to the Assessment Centre. The analytical approach adopted in this section involved fitting a stepwise binary logistic regression model, predicting whether applicants succeeded at each stage or not on the basis of a range of factors (see Table 16 below). Examining all candidate background characteristics simultaneously allowed the analysis to assess the impact of each candidate background characteristic while controlling for other potentially confounding background characteristics. It allowed examination of which candidate background characteristics are most influential, while ensuring that observed differences are not simply a consequence of their relationship with other characteristics. It is this analytical approach that provides the first comprehensive analysis of the judicial appointments process in England and Wales, and provides a deeper understanding of the relative impact of any one candidate background characteristic on appointment success.

³⁹ A. Ashman and J. Alfini *The Key to Judicial Merit Selection: The Nominating Process* (1974); B. Henschen, R. Moog and S. Davis "Judicial Nominating Commissions: A National Profile" 73 *Judicature* 328 (1990)

⁴⁰ K. Esterling and S. Andersen " Diversity and Judicial Merit Selection Process: A Statistical Report" *Research on Judicial Selection* (1999)

Table 16. Candidate characteristics in the logistic regression model

Variable	Levels
Nationality (at birth, current, dual)	British, Other
Gender	Female, Male
Ethnicity	White, BME, Missing
Profession type	Solicitor, Barrister
Magic Circle/Leading Chambers	No, Yes
Litigation Experience	No, Yes, Missing
Years in Practice	7-10, 10-20, 20+
Age Group	25-34, 35-39, 40-44, 45-49, 50+
Academic	Oxbridge, Top 12, Other, Missing
Prior appointment	No, Yes, Missing
Income	Under £50k, 50k-99k, 100k+, Missing
Character Question	No, Yes
Health/Disability Issue	No, Yes
Current Career	Private practice, various other
Former Career	Private practice, various other
Practice type	Various types

The first part of this multivariate analysis examined all candidates from all four competitions. This factored into the analysis those candidates who had applied to more than one competition. Where there are only small numbers of applicants with a particular background characteristic, applications by the same individual in several of the DDJ competitions could exaggerate the impact of this characteristic. This was relevant for ethnicity, where there are small numbers of applicants in any one competition. The approach used here ensured that any multiple applications by candidates did not obscure the true impact of any one factor on success in the application process. Each competition was also analysed separately using the regression model, and these results are also presented below.

All DDJ applicants combined

When analysing the Sift results for all candidates⁴¹ in all four DDJ competitions combined, gender had a significant impact upon success in being invited to the Assessment Centres, with women applicants significantly more likely than male applicants to be invited. Barristers were also significantly more likely than solicitors to be invited, as were those with a prior appointment, those with litigation experience and those earning more than £100,000 annually. Younger applicants were also more successful in gaining an invitation to the Assessment Centre, with invitations decreasing as age increased. There was, however, no significant difference in success rates at Sift between white and BME applicants when candidates for all four competitions were considered together.

⁴¹ See Appendix A for regression analysis results

One particularly curious finding did emerge from the analysis of Sift success. In addition to the above findings, it also emerged that there was a consistently high level of success at Sift for those candidates that answered yes to what is referred to as a “character question” on the DDJ Application Form⁴². Here, applicants are required to state whether they have been convicted of any offence, fined for any financial irregularity, disciplined for any professional misconduct, or been involved in any other issues that may be of relevance to being appointed as a judge. This finding appears to be explained by the fact that the vast majority of these positive answers relate to declarations of a speeding conviction, filing a late VAT or tax return or having a complaint made against an applicant or their firm even where no action was deemed necessary. It may simply be in the nature of busy, self employed, high earning lawyers that they may be likely to find themselves in one or more of these positions at some point in their career after at least seven years in practice.

Not all of these same background characteristics of applicants were found to be predictive of Sift success in each of the four competitions, and in some cases other characteristics were more predictive of success. The specific results for each individual competition are summarised below⁴³.

Magistrates’ Court competition 2003-04⁴⁴

Of 480 applicants for the DDJ Magistrates’ Courts competition in 2003-2004, 54 (11%) were invited to the Assessment Centre. Male applicants were significantly less likely to be invited to an Assessment Centre than female applicants. In percentage terms, 17% of female applicants were invited to Assessment Centres, compared to 10% of male applicants. Barristers were significantly more likely than solicitors to be invited to an Assessment Centre, with 15% invited compared with 9% of solicitors. For age, the likelihood of being invited peaked for 40-44 year olds (15% being invited), and this age group was significantly more likely to be invited than 25-34 year old applicants, where only one applicant (3%) was invited. There was also a relatively small percentage of those aged over 50 years invited (8%). Ethnicity was not a significant factor in success at Sift in this competition.

⁴² See Section 4 on the DDJ Application Form

⁴³ Appendix A contains tables showing the final step of the binary logistic regression models predicting success at Sift for each of the four competitions.

⁴⁴ See Appendix A for regression analysis results

Current and former government department employees both appeared more likely to be invited, and significantly more likely in the case of former central government lawyers (who have often gone into private practice by the time they apply), although numbers were very small in both cases. Former CPS/prosecutors were less likely to be invited to the Assessment Centre, with only 5% invited compared to 12% among other candidates. Those applicants from criminal, education, mental health and financial fields were all more likely to be invited, with statistically significant differences in the case of those practicing education, mental health and financial law⁴⁵. Those practising common law and particularly family law were less likely to be invited, with only 5% of family practitioners invited and 6.5% of common law practitioners invited. In addition, those answering 'yes' to at least one character question were also significantly more likely than other respondents to be invited, with 23.5% being invited compared to 9% for other applicants.

The remaining background characteristics did not have a significant impact upon invitation, in some cases despite some sizeable differences between characteristics. In some cases, this was due to the small numbers of candidates with a particular characteristic, while in other cases this may have been due to strong similarities between characteristics (e.g., age and years in practice). For example, of twelve former local government employees, seven former academics and eleven candidates formerly working in foreign jurisdictions, none were invited to Assessment Centres. In addition, there were increases in invitation for those practising immigration and reductions for those practising in the housing or property law fields as well as current and former magistrates court clerks. Similarly, high percentages of invitation were observed for Oxbridge (21%) and other top twelve faculty (16%) graduates and those earning in excess of £100,000 (17%). However, none of these characteristics reached significance in the analytical model.

Magistrates' Court competition 2004-05⁴⁶

Of 482 applicants for the DDJ Magistrates' Court competition in 2004-05, 90 (19%) were invited to an assessment centre. Those without litigation experience were significantly less likely to be invited to the Assessment Centre, with only 7% invited compared to 21% of those with litigation experience. Those with 10 to 20 years in practice were most likely to be invited to the Assessment Centre, while those with

⁴⁵ In percentage terms, 12% of those specialising in criminal, 22% in education/mental health and 25% in financial fields were invited to an Assessment Centre.

⁴⁶ See Appendix A for regression analysis results

most years of experience (20 or more) were least likely to be invited, and significantly less likely than the least experienced applicants (7 to 10 years qualified)⁴⁷. Those specialising in common law and property had a reduced likelihood of being invited to the Assessment Centre, with a significant reduction in the case of property. For common law, 10.5% were invited, with 7% for property. As in the previous year's Magistrate's Court competition, those answering yes to a character question were highly significantly more likely to be invited to the Assessment Centre, with 26% invited compared to 14% of other candidates.

Applicants with any form of non-British nationality (current, at birth or dual) were less likely to be invited to the Assessment Centre, although not significantly so. In percentage terms, applicants with exclusively British nationality were invited 19% of the time, compared to 11% invited for those with any form of non-British nationality. While this is likely to impact on some BME candidates, not all candidates with non-British nationality in this competition came from a BME background. There were a number of other candidate characteristics, which while they did not result in a statistically significant difference in the likelihood of being invited to the Assessment Centre, did result in higher or lower rates of invitation. For example, barristers were again more likely than solicitors to be invited (23% vs. 16%), while older candidates were again less likely to be invited⁴⁸. Success rates were also affected by disability and whether a candidate was currently or previously in some type of non-private practice: only 2 of 20 candidates with a declared health/disability issue were invited; only 7% of current Magistrates Court Clerks were invited; and only 1 of 14 former local government lawyers and none of the 9 former government department lawyers and 11 former foreign jurisdiction lawyers were invited.

Civil 2003-04 competition⁴⁹

Of 336 applicants for DDJ Civil posts in 2003-2004, 128 (38%) were invited to the Assessment Centre. As with the other DDJ competition in 2003-2004 (Magistrates' Court), male applicants were significantly less likely to be invited to the Assessment Centre than female applicants: 47% of female applicants were invited to Assessment Centres, compared to 34% of male applicants. Again, barristers were also significantly more likely than solicitors to be invited to the Assessment Centre, with 50% invited, compared with 34% of solicitors. **The highest income earners**

⁴⁷ Overall, 19% of those with 7-10 years, 23% of those with 10-20 years and 11.5% of those with more than 20 years of experience were invited to an Assessment Centre.

⁴⁸ 13% for 45-59 year olds and 12% for 50+ year olds

⁴⁹ See Appendix A for regression analysis results

(£100,000 or more per annum) were most likely to be invited (56% were invited), and far more likely than all other groups. Among practice types, those specialising in education and mental health were significantly more likely to be invited to the Assessment Centre than candidates from any other practice specialisation.

There were other candidate characteristics that resulted in higher or lower rates of invitation to the Assessment Centre, but they were not statistically significant (in most cases due to small numbers of candidates with those characteristics). There were high percentages of invitations for a small number of candidates who had worked either in a magic circle firm or a leading chambers (54.5%, 7 of 11), candidates with a prior appointment (51%, 15 of 29), former local government lawyers (59%, 10 of 17), former academics (60%, 6 of 10), and those with qualifications from other top 12 universities outside of Oxford and Cambridge (54%). In contrast, there were lower percentages of invitations for 45-49 year olds (28%) and those aged 50 or more (29%), as well as a small number of candidates specialising in immigration (22%, 2 of 7).

Civil 2004-05 competition⁵⁰

Of 413 applicants for DDJ Civil posts in 2004-2005, 135 (33%) were invited to the Assessment Centre. Despite not quite producing a significant difference (at the 5% level) ethnicity could not be removed from the model without a significant change in deviance. Black and minority ethnic applicants were (but not quite significantly) less likely than white applicants to be invited to this Assessment Centre. In percentage terms, 34.5% of white and 23% of black and minority ethnic applicants were invited.

Prior appointment had a large, significant impact upon invitations to the Assessment Centre, with those with prior appointments significantly more likely to be invited than those without. Overall, 47% of those with a prior appointment were invited compared to 31% for those without a prior appointment. Barristers were again significantly more likely to be invited than solicitors, with 49% of barristers invited compared to 29% of solicitors. The likelihood of being invited peaked for those with 10-20 years of experience, with the largest difference between 10-20 and 20+ years. Overall, 30% of those with 7-10 years, 38% of those with 10-20 years and 24.1% of those with 20+ years of experience were invited to an Assessment Centre.

⁵⁰ See Appendix A for regression analysis results

Academics and those practising immigration were considerably less likely to be invited to the Assessment Centre. However, due to the relative rarity of candidates in either of these groups, both marginally failed to reach statistical significance: 18% of current academics (3 of 17) and 14% of those specialising in immigration (2 of 14) were invited. Other candidate characteristics that produced higher or lower rates of invitation despite not resulting in statistical significance included income, current and former legal career and character. Invitations increased with income, with 25% of those earning up to £49,999, 32% of those earning £50,000-£99,999 and 41.5% of those earning more than £100,000 invited. A very small number of current Magistrates Court Clerks (3 of 5) and former Magistrates Court Clerks (1 of 2) as well as former CPS/prosecutors (3 of 5) had high levels of invitation. In contrast, none of the eleven former government department lawyers were invited. A relatively small percentage of those answering yes to a character question were invited (24%).

Variation in competency marks at Sift

The analysis showed that there were differences between competition years in the range of Sift marks given for individual competences. In both Sifts in 2003-04, scoring a “2” on any of the Self-Assessment competences was rare. Only 62 of 450 applicants (14%) scored a “2” in any competency in the Sift for the Magistrates’ Court 2003-2004 competition and even fewer, 27 of 314 (8.5%), scored a “2” on any competency in the Civil 2003-2004 competition. In contrast, scoring a “2” on a competency was far more common at Sift in 2004-05, with 365 of 450 (81%) scoring at least one “2” in the Magistrates’ Court 2004-05 competition and 329 of 420 (78%) scoring at least one “2” in the Civil 2004-05 competition.

Consistency of Sift decision-making and marking

The analysis next examined the consistency of Sift decision-making, and looked specifically at whether clear patterns of decision-making existed at the Sift stage and the extent to which those patterns were consistently followed. Statistical analysis was carried out based on final Sift scores, as well as scores on individual competences marked at Sift.

The change in the number of competences marked at Sift from 2003-04 to 2004-05 meant that the maximum overall Sift scores in the two years were substantially different. With 8 competences marked (on a scale of 0 to 5) in 2003-04, the maximum Sift score possible that year in both the Magistrates’ Court and Civil

competitions was 40. The reduction in the number of competences marked in 2004-05 from eight to five meant that the maximum overall Sift score in 2004-05 was 25.

In all competitions there were clear general patterns of decision-making at Sift based on Sift scores. There were a few inconsistencies in the Sift decisions in most competitions, which meant that in all but one of the competitions (Civil 2003-04) there were candidates invited to the Assessment Centre who had lower total Sift scores than candidates that were not invited to the Assessment Centre. The following analysis indicates the extent to which such decisions can be attributed to a specific rule or clear pattern of decision making on the part of the Sift Panels.

Magistrates' Court 2003-04

With the exception of 5 candidates, those scoring 31 or more were invited to the Assessment Centre, and those scoring less than 31 were not. Table 17 highlights the specific instances where the Sift decisions differ from this general Sift pattern.

Table 17. Magistrates' Court 2003-04: Assessment Centre invitations by total Sift score

Sift score (total)	Invited to Assessment Centre		No. of Candidates
	No	Yes	
15	1	0	1
17	2	0	2
18	3	0	3
19	2	0	2
20	2	0	2
21	10	0	10
22	10	0	10
23	11	1	12
24	41	0	41
25	56	0	56
26	65	0	65
27	56	0	56
28	52	0	52
29	44	0	44
30	40	0	40
31	1	31	32
32	3	17	20
33	0	2	2
Total	399	51	450

The three candidates scoring 32 and failing to be invited all scored “4”s across the board, and the candidate scoring 31 and failing to be invited scored seven “4”s and a “3” (for Managing Self). In contrast, the candidate scoring 23 and being invited scored seven “3”s and a “2” (for Managing Self). There do not appear to be any clear factors which account for why one candidate who scored 8 points below the cut off point for all applicants was invited to the Assessment Centre in this one competition.

Civil 2003-04 competition

With the exception of one candidate, those scoring 29 or more were invited and those scoring less than 29 were not. Table 18 highlights the specific instance where the Sift decision did not fit this pattern.

Table 18. Assessment Centre invitations by total Sift score (Civil 2003-04)

Sift score (total)	Invited to Assessment Centre		Total no. Candidates
	No	Yes	
19	1	0	1
20	1	0	1
21	3	0	3
22	4	0	4
23	7	0	7
24	21	0	21
25	37	0	37
26	37	0	37
27	36	0	36
28	41	0	41
29	1	42	43
30	0	34	34
31	0	22	22
32	0	16	16
33	0	5	5
34	0	3	3
Total	189	122	311

In this competition, the Sift panel rules appear clear and consistently applied, with the possible exception of one candidate, who had a Sift score of 29 (a combination of “3”s and “4”s in the eight competences) but was not invited to the Assessment Centre.

Magistrates' Court 2004-05

Invitations to the DDJ Magistrates' Court 2004-05 Assessment Centres generally corresponded to whether or not candidates scored a "2" in any competency, although there were 10 candidates where the Sift decision did not correspond to this pattern. Table 19 highlights the specific instances where the Sift decisions do not appear to be consistent.

Table 19. Assessment Centre invitations by total Sift score (Magistrates' 2004-05)

Sift score (total)	Invited to Assessment Centre		Total no. Candidates
	No	Yes	
6	5	0	5
7	4	0	4
8	11	0	11
9	21	0	21
10	36	0	36
11	57	0	57
12	62	0	62
13	63	0	63
14	64	0	64
15	24	27	51
16	15	25	40
17	3	19	22
18	0	10	10
19	1	7	8
22	0	1	1
Total	366	89	455

The main cut off score at Sift in this competition was 15, with no applicant scoring below this total being invited to the Assessment Centre. However, there were eight candidates who scored 15 or above who did not score a "2" on any competency but were not invited to the Assessment Centre: (one who scored 17, five who scored 16 and two who scored 15). There were 71 other candidates in exactly the same situation as these eight that were invited to the Assessment Centre.

There was also one candidate who scored 19, the second highest Sift score overall, but was not invited. This candidate scored a "2" in one of the competences (IA=4, RD=5, BR=4, **SA=2**, DK=4), but the overall Sift score was four points higher than the cut off point for invitations.

Civil 2004-2005

With the exception of 8 candidates, those scoring less than 15 were not invited and those scoring over 15 were invited. It is not instantly apparent how the Sift decisions were made for those scoring 15. In this competition (unlike the Magistrates' Court competition in the same year), scoring a "2" in any of the competences marked at Sift did not appear to determine whether an individual was invited to the Assessment Centre.

Table 20. Assessment Centre invitations by total Sift score (Civil 2004-05)

Sift score (total)	Invited to Assessment Centre		no. of applicants
	No	Yes	
6	3	0	3
7	5	0	5
8	9	0	9
9	19	0	19
10	23	0	23
11	31	0	31
12	46	0	46
13	55	1	56
14	53	1	54
15	27	16	43
16	4	33	37
17	2	32	34
18	0	27	27
19	0	16	16
20	1	7	8
21	0	1	1
Total	278	134	412

The candidate scoring 13 and yet still being invited to the Assessment Centre scored four 2's (IA = 5, RD = 2, BR = 2, SA = 2, DK = 2). The candidate scoring 14 and being invited scored two 2's (IA = 3, RD = 4, BR = 2, SA = 2, DK = 3). In contrast, there was one candidate who scored a 20 (7 points above the lowest scoring invitee), did not score a "2" in any competency, and yet was not invited to the Assessment Centre. In addition, there were four candidates who scored 16 but failed to be invited to the Assessment Centre. Two of these candidates did not score a "2" in any competency, their total Sift score was three points above the main cut off point, and yet they were not invited to the Assessment Centre. The two other candidates who scored 17 but were not invited to the Assessment Centre did score at least one "2" in a competency.

Reasons for exceptions to Sift decision-making patterns

The above analysis is designed to highlight those cases that are exceptions to otherwise consistent patterns of Sift decision-making. This analysis of the consistency of Sift decision-making is based solely on data recorded on the Sift form found in each candidate's competition file. In almost all cases, there was no clear indication in a candidate's file whether that file had been reviewed by the Sift Panel, or what level of review had taken place. In instances where Pre-Sift or Sift marks had been changed prior to a final Sift decision, it was not clear what the grounds were for the change or who had made the change. In some instances the changes to Sift marks were substantial enough to affect whether the applicant was invited to the Assessment Centre or not. Without this information, it was not possible for the research team to take any other factors into consideration in the analysis of the consistency of Sift decisions.

Sift scores and diversity

The following section examines the extent to which the Sift stage may have adversely impacted women and minorities. The analysis examined whether there were any clear marking patterns based on gender and ethnicity, in relation first to total Sift scores and next to individual competences scores at Sift. In Tables 21 to 22 below the highest total scores are highlighted.

Table 21. Final Sift scores by ethnicity

Competition	White Applicants	BME Applicants
	<i>Mean Total Sift Score</i>	<i>Mean Total Sift Score</i>
<i>Magistrates' 2003-04</i>	27.01	27.18
<i>Civil 2003-04</i>	27.67	27.41
<i>Magistrates' 2004-05</i>	13.05	12.75
<i>Civil 2004-05</i>	14.00	13.08

Table 21 above shows that in three out of the four DDJ competitions, black and minority ethnic applicants had lower mean total Sift scores than white applicants, but that **the DDJ Civil competition in 2004-05 stands out with the greatest difference in total Sift score based on ethnicity. In this one competition, the**

mean total Sift score for black and minority ethnic applicants was almost a full point lower than the mean Sift total score for white applicants.

Table 22. Final Sift scores by gender

Competition	Female Applicants	Male Applicants
	<i>Mean Total Sift Score</i>	<i>Mean Total Sift Score</i>
<i>Magistrates' 2003-04</i>	27.64	26.67
<i>Civil 2003-04</i>	28.06	27.39
<i>Magistrates' 2004-05</i>	13.28	12.84
<i>Civil 2004-05</i>	14.14	13.64

Table 22 above shows that women applicants for all DDJ posts had higher mean Sift total scores than male applicants in all the DDJ competitions, regardless of the year in question or the type of DDJ post.

Individual competency scores by gender and ethnicity

It was also possible to examine the mean scores for each competency marked at Sift in each competition according to ethnicity and gender. In Tables 23 and 24 below the highest mean Sift scores are highlighted.

Table 23. Mean individual competency scores at Sift by ethnicity

Competition and Competences	White Applicants	BME Applicants
	<i>Mean competency score at Sift</i>	<i>Mean competency score at Sift</i>
Magistrates' 2003-04		
Managing Workload	3.49	3.37
Investigating & Analysing	3.41	3.39
Resolving & Deciding	3.32	3.39
Building Relationships	3.43	3.50
Communicating	3.31	3.26
Showing Authority	3.30	3.37
Managing Self	3.34	3.39
Developing Knowledge	3.39	3.50
Civil 2003-04		
Managing Workload	3.68	3.74
Investigating & Analysing	3.52	3.44
Resolving & Deciding	3.39	3.22
Building Relationships	3.41	3.41
Communicating	3.38	3.26
Showing Authority	3.34	3.26
Managing Self	3.43	3.44
Developing Knowledge	3.51	3.63
Magistrates' 2004-05		
Investigating & Analysing	2.62	2.52
Resolving & Deciding	2.61	2.49
Building Relationships	2.79	2.75
Showing Authority	2.32	2.23
Developing Knowledge	2.71	2.75
Civil 2004-05		
Investigating & Analysing	3.00	2.80
Resolving & Deciding	2.84	2.28
Building Relationships	2.81	2.55
Showing Authority	2.48	2.45
Developing Knowledge	2.88	3.00

There was a mixed picture in the DDJ competitions in 2003-04 regarding ethnicity and Sift competences scores. BME applicants scored higher on some competences than white applicants but lower in other competences in each competition that year, and these differed in some cases also by type of DDJ post. However, in both DDJ competitions in 2004-05 (when the number of competences marked at Sift was reduced) BME applicants scored lower than white applicants on every competency except for Developing Knowledge. Across the four competitions, BME candidates scored lower than white candidates in Investigating and Analysing in all four competitions, and scored lower in Showing Authority in three of the four competitions.

Table 24. Mean individual competency scores at Sift by gender

Competition and Competences	Female Applicants	Male Applicants
	<i>Mean competency score at Sift</i>	<i>Mean competency score at Sift</i>
Magistrates' 2003-04		
Managing Workload	3.55	3.46
Investigating & Analysing	3.45	3.38
Resolving & Deciding	3.31	3.30
Building Relationships	3.54	3.38
Communicating	3.43	3.24
Showing Authority	3.44	3.25
Managing Self	3.42	3.30
Developing Knowledge	3.50	3.35
Civil 2003-04		
Managing Workload	3.69	3.67
Investigating & Analysing	3.50	3.53
Resolving & Deciding	3.45	3.33
Building Relationships	3.50	3.36
Communicating	3.49	3.30
Showing Authority	3.45	3.27
Managing Self	3.44	3.42
Developing Knowledge	3.55	3.50
Magistrates' 2004-05		
Investigating & Analysing	2.60	2.60
Resolving & Deciding	2.60	2.58
Building Relationships	2.82	2.74
Showing Authority	2.41	2.26
Developing Knowledge	2.85	2.65
Civil 2004-05		
Investigating & Analysing	3.04	2.93
Resolving & Deciding	2.75	2.76
Building Relationships	2.91	2.69
Showing Authority	2.58	2.38
Developing Knowledge	2.86	2.88

Women applicants for DDJ posts had higher mean scores than male applicants for individual competences marked at Sift for almost every competency and in every competition. In the three out of 26 instances where male candidates had higher mean Sift scores than women in a competency, the differences in the mean scores were minimal. In both Magistrates' Court competitions, women had higher mean Sift scores than men in all competences.

Summary

For the vast majority of the pool of applicants for DDJ posts, Sift is the end of the appointment process; they are not invited to the Assessment Centre and their application is rejected. This makes Sift arguably the most important stage of the selection process. What evidence is used to reach Sift decisions, how Sift operates and who are the Sift decision-makers are all important factors to consider in assessing the impact of this stage on the diversity of DDJ appointments. The research analysed which candidate background characteristics are most predictive of success at Sift, whether there were clear rules consistently applied at Sift and whether the Sift marking scheme adversely affected under-represented groups.

First, the analysis combined all candidates for the four DDJ competitions and examined all candidates background characteristics simultaneously. This allowed the analysis to examine which candidate background characteristics are most influential in gaining an invitation to the assessment centre, while ensuring that any differences are not simply a consequence of one background characteristic's relationship to another background characteristic.

The results showed that several candidate background characteristics consistently made it more likely that a candidate would be invited to an Assessment Centre. Women applicants were significantly more likely than male applicants to be invited. Barristers were also significantly more likely than solicitors to be invited, as were those with a prior appointment, those with litigation experience and those earning more than £100,000 annually. Younger applicants were more successful in gaining an invitation to the Assessment Centre, with invitations decreasing as age increased. There was no significant difference in success rates at Sift between white and BME applicants when candidates for all four competitions were considered together.

There were, however, some distinct trends found at Sift for the two different types of DDJ post and some specific differences in individual competitions. In Magistrates' Court competitions barristers and younger applicants were more likely to be invited to the Assessment Centre than solicitors and older applicants, as were those who answered yes to a character question. Candidates who had worked as Magistrates Court Clerks or as CPS (or other) prosecutors, as well as those specialising in common law practice were also less likely to be invited to the Assessment Centre in both years for the Magistrates' Court posts. For DDJ Civil applicants, high income

earners, barristers and those with a prior judicial appointment were more likely to be invited to the Assessment Centre in both years, while those applicants specialising in immigration were least likely to be invited.

While ethnicity was not a factor affecting success at Sift for the four competitions combined, it was a significant factor in one competition. In the most recent DDJ Civil competition (2004-05) black and minority ethnic applicants were less likely to be invited to the Assessment Centre than white applicants. In the Magistrates' Court competition in the same year, applicants with any form of non-British nationality (past, present or dual) were also less likely to be invited to the Assessment Centre than applicants with only British nationality. This affected some black and minority ethnic applicants in this competition but not all, and not all non-British nationality applicants were BME applicants.

The Sift form seen by each sifter prior to marking each candidate includes information on: whether applicants are barristers or solicitors, whether they hold a prior appointment, whether they are currently or were previously in non-private practice, and what their practice specialisations are. It is also obvious in most cases whether the applicant is a woman or man, as the candidate's name is also on the Sift form. The analysis has shown that gender, profession type, prior appointment, type of practice and practice specialisation were all significant factors in predicting whether applicants would be invited to the Assessment Centre or not in some or all the DDJ competitions. This may raise questions about whether, in order to ensure that the process clearly appears objective, it might be more desirable not to include any candidate background information on the Sift form.

An analysis of scores obtained by candidates at Sift and how they relate to candidates gaining an invitation to the Assessment Centre indicated that there were some clear general patterns of decision-making at Sift based on Sift scores. There were a few inconsistencies in the Sift results, which meant that in all but one of the competitions (Civil 2003-04) candidates were invited to the Assessment Centre who had lower total Sift scores than candidates that were not invited to the Assessment Centre. This analysis of the consistency of Sift decision-making is based solely on data recorded on the Sift form found in each candidate's competition file. In almost all cases, there was no clear indication in a candidate's file whether that file had been reviewed by the Sift Panel, or what level of review had taken place. In instances where Pre-Sift or Sift marks had been changed prior to a final Sift decision, it was not

clear what the grounds were for the change or who had made the change. In some instances the changes to Sift marks were substantial enough to affect whether the applicant was invited to the Assessment Centre or not. Without this information, it was not possible for the research team to take any other factors into consideration in the analysis of the consistency of Sift decisions.

In order to explore the impact of Sift on diversity, the analysis examined whether there were any clear marking patterns based on gender and ethnicity, in relation first to total Sift scores and next to individual competences scores at Sift. In three out of the four DDJ competitions, black and minority ethnic applicants had lower mean *total* Sift scores than white applicants. However, the DDJ Civil competition in 2004-05 stood out, with the mean Sift score for black and minority ethnic applicants almost a full point lower than the mean Sift score for white applicants. In both DDJ competitions in 2004-05 BME applicants scored lower than white applicants on every individual competency except for Developing Knowledge. Women applying for all DDJ posts had higher mean Sift *total* scores than male applicants, regardless of the year in question or the type of DDJ post. Women applicants also had higher mean scores than male applicants for the individual competences marked at Sift for almost every competency and in every competition.

The introduction of a Pre-Sift stage to the DDJ Civil competition in 2004-05 resulted in 70% of all scores in this competition being made by a single pre-sifter. This procedural change placed a substantial amount of decision-making responsibility on one individual at this crucial stage of the appointment process, and while there is no suggestion of any irregularity involved, such a process in itself may not be best suited to create the appearance of fairness of process. However, subsequent DDJ competitions do not appear to have adopted this approach to Sift decision-making.

Over 30 different individuals were involved in sifting DDJ applications in these two years. Sifters included a reasonably balanced mix of men and women, although there has only been one non-white sifter taking part in decisions affecting over 1700 applicants. Research in the United States has found evidence that diverse panels attracted more diverse applicants and selected more diverse nominees for appointment. Even though the research team has collected the relevant data here to examine this issue, it has not been possible in the time available for this Initial Report to examine the impact of the composition of Sift panels on the diversity of those selected or rejected at Sift.

Chapter 5. Performance at the Assessment Centre

The Assessment Centre following Sift is the final stage of evaluation prior to appointment. While it is still obviously an important stage of the selection process, it affects a far smaller proportion of applicants than Sift. Unlike Sift where there are large numbers of candidates vying for a limited number of invitations to the Assessment Centre, at the Assessment Centre the smaller number of invitees are competing for a relatively larger number of DDJ posts. Candidates who reached the Assessment Centre in these four DDJ competitions had either a one-in-two or one-in-three chance of being appointed.

How the Assessment Centre operates

Those who are successful at Sift are invited to a one day evaluation at an Assessment Centre. There all candidates must complete a range of exercises, including role plays, a written examination (technical paper) and an interview. In each of these exercises candidates are assessed according to individual competences. There are eight competences assessed in total: Managing Workload (MW), Investigating and Analysing (IA), Resolving and Deciding (RD), Building Relationships (BR), Communicating (C), Showing Authority (SA), Managing Self (MS), Developing Knowledge (DK). Different combinations of competences are assessed in each exercise at the Assessment Centre.

Candidates receive marks on a scale of 0 to 5 for each competency, while the technical paper is given marks out of 100. This means that by the end of the Assessment Centre, each candidate will have a series of marks for each individual competency, and the Assessment Centre Panel must determine an overall score for each competency⁵¹. Once a candidate has received a single, final score for each of the eight competences (on a scale of 0 to 5), these are used to produce a total *combined* Assessment Centre score, where the maximum possible total is 40. This final total Assessment Centre score is used to decide which candidates to recommend for appointment as Deputy District Judge.

⁵¹ This does not necessarily always appear to be done by taking the average of the scores received in each exercise for each competency, yet it was not always clear from the Assessment Centre records how a final competency score was arrived at.

Approach to Assessment Centre analysis

The two Deputy District Judge competitions in 2003-04 served as pilots for the Assessment Centre system for the Department for Constitutional Affairs. As a result, not only were changes made to the system between 2003-04 and 2004-05, but the methods used at the Assessment Centre and the appointment outcomes have previously been examined in some detail by consultants, as well as others, on behalf of the Department for Constitutional Affairs⁵². Therefore, the focus this research has placed on the Assessment Centre is to consider which candidate background characteristics were most predictive of success at the Assessment Centre, the effect and consistency of Assessment Centre scores in determining which candidates ultimately gain appointment as Deputy District Judges, the extent to which Sift scores were good predictors of success at the Assessment Centre, and whether Assessment Centre marking adversely affected under-represented groups.

The Assessors

In the course of the four Assessment Centres covered by this research, over 30 different “Assessors” took part in one or more of the Assessment Centres. Like Sifters, Assessors are drawn from the judiciary (mostly District Judges), DCA competition officials, and lay members. In the two most recent DDJ competitions, 33 assessors took part in the selection of candidates at the Assessment Centres. Table 25 below shows the gender and ethnicity mix of Assessors in the two most recent DDJ competitions.

Table 25. Gender and ethnicity of Assessors in 2004-05 competitions

Assessors	<i>DDJ Magistrates Court 2004-05</i>	<i>DDJ Civil 2004-05</i>	<i>2004-05 competitions combined</i>
<i>Total number of assessors</i>	11	23	34
Women	4	12	16
Men	7	11	18
White	11	22	33
BME	0	1	1

⁵² See notes 25 and 26.

There was a balanced mix of men and women among the Assessors in the DDJ Civil competitions, but almost twice as many men were Assessors as women in the Magistrates' Court competition. The greatest imbalance was in terms of the ethnicity of the Assessors in both competitions, with only one minority Assessor out of 23 Assessors in the Civil competition and no minority Assessors among the 11 Assessors taking part in the Magistrates' Court Assessment Centre. As discussed earlier in the relation to Sift, research in the United States has examined the effects of gender and racial diversity within judicial selection panels on the gender and racial diversity of both applicants and nominees for judicial office, and found evidence that diverse panels attracted more diverse applicants and selected more diverse nominees for appointment. While our research has collected data on the diversity of Assessors and Assessor Panels and the marks assigned to candidates by each Assessor Panel, there has not been sufficient time available in preparing this Initial Report to look more closely at the impact of the composition of Assessor Panels on the diversity of those appointed following the Assessment Centre.

Candidate characteristics predictive of success at the Assessment Centre

This section examines the success of candidates who attended an Assessment Centre based on a wide range of candidate background characteristics. In all competitions, the numbers of candidates progressing from the Assessment Centre to appointment were small, and therefore caution should be exercised in drawing too many inferences from percentage results here. Actual numbers have been provided in this section in order to present as accurate a picture as possible.

All competitions combined

Among the total of 406 candidates who attended an Assessment Centre in the four DDJ competitions covered by this research, 151 were appointed. Age had a significant impact on appointment, with the highest rates of success found for 25-34 year olds and with success decreasing as age increased. While no other background characteristics reached statistical significance for appointment (partly due to the small numbers involved), income came close with higher appointment success for the highest earners (£100,000 or more per annum). Therefore, **the one single characteristic that appears to be predictive of success at each stage of the DDJ appointment process across both Civil and Magistrates' Court competitions and in both competition years is age, followed by income.** There were, however, some significant differences between individual competitions.

Magistrates' Court 2003-04 competition

Of 54 candidates attending the Assessment Centre in this competition, 27 (50%) were appointed. Both age and years in practice seemed to be related to success. While those in practice for 7-10 years and 10-20 years had similar percentages of successful candidates (60% and 61% respectively), success fell for a smaller group of candidates with twenty or more years in practice (15% or only 2 of 11 candidates successful). Similarly for age, success fell as age increased, with 62% of 35-39 year olds, 59% of 40-44 year olds, 27% of 45-49 and 29% of those over 50 years old successful. The only 25-34 year old candidate was also successful. There were also generally higher rates of success among a small number candidates with Oxbridge qualifications (67%, 4 of 6 successful) and other top 12 qualifications (70%, 7 of 10 successful). Those not currently in private practice had a slightly lower level of success (27%, 3 of 11 appointed) than those in private practice, and this included the small number of current Magistrates Court Clerks (29%, 2 of 7 appointed). None of the candidates specialising in family, immigration, education and mental health law were successful, while only 18% of the administrative/public law practitioners were appointed. In addition, those answering 'yes' to a character question had a relatively high success rate (62%, 10 of 16 appointed).

Magistrates' Court 2004-05 competition

Of 90 candidates attending the Assessment Centre, 28 (31%) were appointed. Only one of ten (10%) black and minority ethnic candidates was appointed compared to 33% of white candidates. In contrast with the previous year's DDJ Magistrates' Court competition, there were lower levels of success for candidates with qualifications from both Oxbridge (17%, 1 of 6 appointed) and other top 12 law faculties (18%, 2 of 11 appointed) compared to 33% (23 of 69 appointed) for those with degrees from other institutions. Only one of ten (10%) non-criminal practitioners was appointed, and there were also lower levels of success for those candidates specialising in areas of law involving professional practice issues (18%, 2 of 9), property (14%, 1 of 7), housing (0 of 4) and other (0 of 5) legal fields.

Civil 2003-04 competition

Of 128 candidates attending the Assessment Centre in this competition, 41 (32%) were appointed. Success was related to profession type (as it did at Sift in this competition), with a greater proportion of barristers (43%) appointed compared to solicitors (27%). Again, age of candidate also seemed to have some influence, with the largest single group of appointments (60%) coming from the youngest age group

(25-34 year olds), and none of those over 50 years of age being appointed. Success also seemed to increase as candidates' per annum income increased, with 24% appointed of those earning less than £50,000, 36% for those earning £50,000-£99,999 and 44% for those earning £100,000 or more. Common law practitioners had the highest level of success, with 47% appointed compared to those specialising in the professional practice area (23% appointed), commercial and technical (24%), property (21%) and education/mental health law (14%, 2 of 14 candidates appointed). As with the DDJ Magistrates' Court competition this year, those answering 'yes' to a character question had a high success rate (64%, 9 of 14 appointed).

Civil 2004-05 competition

Of 134 candidates attending the Assessment Centre in this competition, 56 (42%) were appointed. There was some difference in success between male and female applicants, with 49% of female and 37% male candidates appointed. Success also appeared to be related to the age of candidates. The youngest age group again made up the single largest group of appointments, and success generally decreased as age increased: 58% of 25-34 year olds were appointed, 43% of 35-39 years, 41% of 40-44 years, 21% of 45-49 years and 30% of those over 50 years of age were appointed. Elsewhere, only two of eleven (18%) of those not currently in private practice were successful. Only one of ten (10%) non-criminal practitioners was appointed, while there were relatively high percentages of appointees from among those in criminal practice (56%, 10 of 18) and family practitioners (57%, 27 of 47) compared to 34% for other candidates. There were also low levels of success for the small numbers of candidates with no litigation experience (11%, 1 of 9 appointed), which may relate to the high levels of appointments among those in criminal practice. Unlike appointments made in 2003-04, no Assessment Centre candidates answering 'yes' to a character question in this competition were appointed.

Consistency of appointment decisions based on Assessment Centre scores

The following section provides an analysis of the consistency of markings made by the Assessment Centre Panels in each of the four DDJ competitions from 2003 to 2005. Initial analysis revealed that in all four competitions one clear-cut rule applied to appointment decisions: if a candidate received a “2” as a final score in any of the eight competences then that candidate was not appointed. This apparently hard and fast rule on a “2” constituting a disqualification for appointment meant that in every competition there were candidates appointed who had scored lower overall at the Assessment Centre than other candidates who were not appointed.

The lowest mark for an appointment in any of the four competitions was 24. This occurred in two competitions, the earlier Magistrates Court competition in 2003-04 and the more recent Civil competition in 2004-05. Given the no “2” rule, this meant that the minimum scores possible here for appointment were eight “3”s. In the other two competitions the minimum overall score for appointment was 25, requiring a candidate to score at least one “4” in one of the eight competences in order to be appointed. In all four competitions combined, there was only one instance in which a candidate scored above the pass mark, did not score any “2”s but was not appointed.

Magistrates' Court 2003-04

There appeared to be a clear appointment rule following the Assessment Centre in this competition, and it was consistently applied. If Assessment Centre candidates did not score a "2" then they were appointed, and if they did they were not appointed. Table 26 below shows that the minimum overall score required for appointment was 24, but with the no "2" rule in operation this meant that 17 candidates who scored 24 or above did not get appointed as they had scored at least one "2". This resulted in a handful of candidates being appointed with lower Assessment Centre scores than some candidates that were not appointed.

Table 26. Appointments by total Assessment Centre score (Magistrates' 2003-04)

Total AC Score	Appointment		No. of Invitees
	No	Yes	
19	1	0	1
20	2	0	2
21	4	0	4
22	2	0	2
24	5	1	6
25	6	2	8
26	4	2	6
27	2	1	3
28	0	1	1
29	0	4	4
30	0	7	7
31	0	1	1
32	0	2	2
33	0	3	3
34	0	1	1
35	0	2	2
Total	26	27	53

Magistrates' Court 2004-05

There appeared to be a clear rule in this competition, and it was consistently applied. If a candidate scored 24 in total (all "3"s) or a "2" then they were not appointed; if candidates did not score a "2" in any competency, and scored 25 or above then they were appointed. As Table 27 below shows, there were two relatively high scoring candidates (scoring 25 and 28 respectively) who failed to get appointed. In both instances they each scored a "2" in one of the eight competences.

Table 27. Appointments by total Assessment Centre score (Magistrates' 2004-05)

Total AC Score	Appointment		No. of Invitees
	No	Yes	
11	1	0	1
16	1	0	1
17	1	0	1
18	6	0	6
19	4	0	4
20	12	0	12
21	12	0	12
22	8	0	8
23	5	0	5
24	9	0	9
25	1	4	5
26	0	8	8
27	0	3	3
28	1	2	3
29	0	3	3
30	0	3	3
31	0	3	3
32	0	1	1
36	0	1	1
Total	61	28	89

Civil 2003-04

There appeared to be a clear appointment rule following the Assessment Centre in this competition, and it was consistently applied. In almost all instances, if Assessment Centre candidates did not score a “2” then they were appointed, and if they did they were not appointed. However, this rule was not strictly adhered to in this competition, with one candidate scoring a total of 27 points, two points above the cut off point for appointment, and no “2”s but failing to be appointed. There were also 16 candidates with overall scores of 26 or more that were not appointed, but in all instances these candidates scored a “2” in a one of the competences.

Table 28. Appointments by total Assessment Centre score (Civil 2003-04)

Total AC Score	Appointment		No. of Invitees
	No	Yes	
15	3	0	3
16	2	0	2
17	3	0	3
18	6	0	6
19	8	0	8
20	2	0	2
21	9	0	9
22	16	0	16
23	7	0	7
24	9	0	9
25	3	3	6
26	9	0	9
27	5	7	12
28	3	5	8
29	0	10	10
30	0	1	1
31	0	7	7
32	0	3	3
35	0	3	3
36	0	1	1
37	0	1	1
Total	85	41	126

Civil 2004-05

There appeared to be a clear appointment rule following the Assessment Centre in this competition, and it was consistently applied. Again, if candidates did not score a “2” then they were appointed and if they did then they were not appointed. All those scoring a total of 24 (all “3”s) or higher and no “2”s were appointed. Table 29 below shows, the operation of the no “2” rule meant that there were six candidates with overall Assessment Centre scores of between 25 and 27 (up to 3 points higher than the cut off score) that were not appointed; in all instances these candidates scored a “2” in one of the eight competences.

Table 29. Appointments by total Assessment Centre score (Civil 2004-05)

Total AC Score	Appointment		No. of Invitees
	No	Yes	
12	1	0	1
13	1	0	1
15	3	0	3
17	6	0	6
18	5	0	5
19	8	0	8
20	14	0	14
21	9	0	9
22	7	0	7
23	13	0	13
24	3	5	8
25	2	3	5
26	3	11	14
27	1	11	12
28	0	2	2
29	0	9	9
30	0	4	4
31	0	5	5
32	0	1	1
33	0	1	1
34	0	3	3
36	0	1	1
Total	76	56	132

Assessment Centre exercises and appointment

This section examines the relationship between candidate success at gaining appointment and scores received at the Assessment Centre for the eight competences and the technical paper. A logistic regression model was used to examine the ability of the technical paper score and the eight competency scores from the Assessment Centre scores to predict candidate success.

Technical Paper

The first part of the analysis revealed that the technical paper had little to no impact on success in the Magistrates' Court competitions in both 2003-04 and 2004-05. In the 2003-04 competition, the technical paper had no impact on candidate success, and while the technical paper score did at least vaguely increase with success in 2004-05 it did not have a significant impact upon success in that competition either. However, in the two Civil competitions, the technical paper score did have more of a relationship to candidate success than it did in the Magistrates' Court competitions. The results of the analysis of technical paper scores is presented in Appendix B.

Competency scores as predictors of success

The analysis next examined the eight individual competency scores. Certain competences appear to have a significant impact on appointment success, as they are more predictive of appointment than others. Managing Self is consistently one of the most predictive competences in all the DDJ competitions. Showing Authority is also highly predictive of appointment success in three of the four competitions, and is the most predictive competency in the two Magistrates' Court competitions. Resolving and Deciding is the most predictive competency in the two Civil competitions. In contrast, Developing Knowledge is the least predictive competency across all four competitions. (Appendix C provides details of the percentage of correct predictions of appointment in each competition based on each of the eight competences scores.)

Sift scores as predictors of Assessment Centre success

Assessment Centre success is based on scoring well on the same competences that are scored at Sift. It could, therefore, be expected that those invitees to the Assessment Centre who scored highly at Sift would also score highly at the Assessment Centre. This section examines whether there is positive relationship between Sift scores and those same scores at the Assessment Centre.

Total Sift scores and total Assessment Centre scores

The analysis first examined what relationship, if any, existed between candidates' total Sift score and their total score from the Assessment Centre. The analysis found no consistent relationship between final Sift scores and final Assessment Centre scores. In the Magistrates' Court 2003-04 competition, there was little evidence of any positive relationship between total Sift scores and total Assessment Centre scores. Of the two major sift scores (31 and 32), those candidates with a score of 31 had a mean Assessment Centre score of 27.1, while those with the higher total Sift score of 32 had a lower mean Assessment Centre score of 25.8. That same year in the DDJ Civil competition, there was a fairly weak positive correlation between total Sift scores and total Assessment Centre scores, with mean Assessment Centre scores generally increasing in relation to increased Sift scores. In the 2004-05 Magistrates' Court competition there was some limited evidence of an overall positive relationship between Sift total scores and Assessment Centre total scores, but in the DDJ Civil competition that year there was no evidence of any positive relationship between total Sift scores and total Assessment Centre scores. (The details of the relationships for each of the four competitions are presented in Appendix D).

Competency scores at Sift and the Assessment Centre

The analysis then examined what, if any, relationship there was between individual competency scores at Sift and scores for the same competences at the Assessment Centre. It showed that in most cases, there was either little or no positive relationship. In both of the 2003-04 competitions, there was no relationship between Sift scores and Assessment Centre scores for 6 of the 8 competences. There was only a weak positive relationship between Sift scores and Assessment Centre scores for Communicating and Managing Self. In both of the 2004-05 DDJ competitions, where the number of competences marked at Sift was reduced to 5, there was no positive relationship between Sift scores for Resolving and Deciding, Building Relationships and Developing Knowledge and Assessment Centre scores for these same competences. The only positive relationship found was between Sift and Assessment Centre scores for Investigating and Analysing in the Magistrates' Court 2004-05 competition, and a weak positive relationship between Sift and Assessment Centre scores for Showing Authority in the DDJ Civil competition in 2004-05. One factor that came into play here was that, in many cases, there was little opportunity for any relationship to form between Sift and Assessment Centre competency scores because there was a lack of variation in Sift scores. For instance, with some competences in some competitions almost all the scores were there same.

Diversity and Assessment Centre scores

The following section examines whether any consistent patterns of marking emerge based on the gender and ethnicity of candidates on either total Assessment Centre scores or individual competences scores at the Assessment Centre. The highest total scores are highlighted in the tables below.

Table 30. Final Assessment Centre scores and ethnicity

Competition	White Invitees to the Assessment Centre	BME Invitees to the Assessment Centre
	<i>Mean Total Assessment Centre Score</i>	<i>Mean Total Assessment Centre Score</i>
<i>Magistrates' 2003-04</i>	26.88	28.25
<i>Civil 2003-04</i>	24.50	24.08
<i>Magistrates' 2004-05</i>	23.52	19.50
<i>Civil 2004-05</i>	23.54	24.75

Table 30 above shows that there is no clear pattern of final Assessment Centre scores based on ethnicity. Black and minority ethnic candidates had higher mean total Assessment Centre scores than white candidates in two competitions (Magistrates' Court 2003-04 and Civil 2004-05), but lower mean total scores than white candidates in the two other competitions. The one result of note here is that in the Magistrates' Court 2004-05 competition the mean Assessment Centre score for black and minority ethnic candidates was very substantially lower than the mean score for white candidates (over 4 points lower).

Table 31. Final Assessment Centre scores and Gender

Competition	Female Invitees to the Assessment Centre	Male Invitees to the Assessment Centre
	<i>Mean Total Assessment Centre Score</i>	<i>Mean Total Assessment Centre Score</i>
<i>Magistrates' 2003-04</i>	27.05	26.65
<i>Civil 2003-04</i>	24.73	24.37
<i>Magistrates' 2004-05</i>	23.42	23.08
<i>Civil 2004-05</i>	24.84	22.95

Table 31 above shows that in all of the four DDJ competitions, women had higher mean Assessment Centre scores than men. This mirrors the Sift score results, where women also had higher mean total scores than men in all four of the DDJ competitions. In the Civil 2004-05 competition, the mean total score for women was almost two points higher (1.89) than the mean score for men.

Table 32. Ethnicity and competency scores at Assessment Centres

Competition and Competences	White invitees to the Assessment Centre	BME Invitees to the Assessment Centre
	<i>mean competency score at the Assessment Centre</i>	<i>mean competency score at the Assessment Centre</i>
Magistrates' 2003-04		
Managing Workload	3.63	4.00
Investigating & Analysing	3.33	3.25
Resolving & Deciding	3.30	3.00
Building Relationships	3.21	3.25
Communicating	3.12	3.00
Showing Authority	3.33	3.75
Managing Self	3.40	3.25
Developing Knowledge	3.58	4.75
Civil 2003-04		
Managing Workload	3.30	3.15
Investigating & Analysing	2.96	3.08
Resolving & Deciding	2.58	2.54
Building Relationships	3.11	3.69
Communicating	2.94	2.77
Showing Authority	3.03	2.62
Managing Self	3.16	2.92
Developing Knowledge	3.42	3.31
Magistrates' 2004-05		
Managing Workload	3.04	2.70
Investigating & Analysing	2.86	2.10
Resolving & Deciding	2.78	1.90
Building Relationships	2.89	2.60
Communicating	2.85	2.20
Showing Authority	2.81	2.30
Managing Self	2.96	2.60
Developing Knowledge	3.33	3.10
Civil 2004-05		
Managing Workload	2.98	2.88
Investigating & Analysing	2.84	2.88
Resolving & Deciding	2.57	2.88
Building Relationships	2.89	3.25
Communicating	2.86	3.25
Showing Authority	2.99	3.25
Managing Self	3.16	3.25
Developing Knowledge	3.25	3.13

Table 32 above shows that there is no clear pattern of marking toward BME candidates for each of the eight competences across all of the four DDJ competitions. However, differences do emerge in specific competitions. While there are no real discernable patterns of marking either for or against black and minority ethnic candidates in either of the two competitions in 2003-04, **in the Magistrates' Court competition in 2004-05 black and minority ethnic candidates had lower mean scores than white candidates in all eight competences.** In contrast, in the DDJ Civil competition in the same year, black and minority ethnic candidates had higher mean scores than white candidates in 6 out of the 8 competences. The one competency where black and minority ethnic candidates scored higher than white candidates in three of the four competitions (except Magistrates' Court 2004-05) was in Building Relationships.

Table 33. Gender and competency scores at Assessment Centres

Competition and Competences	Female invitees to the Assessment Centre	Male invitees to the Assessment Centre
	<i>mean competency score at the Assessment Centre</i>	<i>mean competency score at the Assessment Centre</i>
Magistrates' 2003-04		
Managing Workload	3.42	3.79
Investigating & Analysing	3.26	3.29
Resolving & Deciding	3.21	3.26
Building Relationships	3.42	3.03
Communicating	3.16	3.06
Showing Authority	3.47	3.26
Managing Self	3.42	3.32
Developing Knowledge	3.68	3.62
Civil 2003-04		
Managing Workload	3.24	3.29
Investigating & Analysing	2.92	3.04
Resolving & Deciding	2.57	2.60
Building Relationships	3.31	3.07
Communicating	2.98	2.89
Showing Authority	3.08	2.95
Managing Self	3.16	3.13
Developing Knowledge	3.47	3.40
Magistrates' 2004-05		
Managing Workload	3.00	3.02
Investigating & Analysing	2.81	2.79
Resolving & Deciding	2.65	2.73
Building Relationships	2.85	2.87
Communicating	2.88	2.76
Showing Authority	2.77	2.79
Managing Self	3.04	2.89
Developing Knowledge	3.42	3.22
Civil 2004-05		
Managing Workload	3.05	2.93
Investigating & Analysing	2.96	2.79
Resolving & Deciding	2.69	2.55
Building Relationships	3.13	2.78
Communicating	3.02	2.83
Showing Authority	3.27	2.83
Managing Self	3.31	3.09
Developing Knowledge	3.40	3.13

Table 33 above shows that in both competitions in 2003-04 the exact same pattern of marking occurred in relation to gender: men had higher mean scores in both competitions for Managing Workload, Investigating and Analysing, and Resolving and Deciding, while women had higher mean scores in both competitions that year for Building Relationships, Communicating, Showing Authority, Managing Self, and Developing Knowledge. In 2004-05, however, no similar pattern occurred in the two competitions. Men and women were evenly balanced in the Magistrates' Court competition that year; in four of the eight competences women had higher mean scores than men and in the four other competences men had higher mean scores than women, and there was little difference between their mean scores in most cases. However, in the DDJ Civil competition that year, women had higher mean scores than men in every competency at the Assessment Centre.

Summary

The Assessment Centre impacts on far fewer applicants for DDJ posts than Sift, although it clearly affects final appointment decisions. As the DDJ Assessment Centres in the 2003-04 competitions served as pilots for the assessment centre process and have been examined in some detail by others, this research focused instead on analysing the candidate background factors most determinant of success at the Assessment Centre, the consistency of Assessment Centre scores in determining appointment, whether Sift scores were good predictors of Assessment Centre scores, and whether there was evidence that Assessment Centre marking adversely affected women or minorities.

One clear-cut rule applied to all appointment decisions: if a candidate received a "2" as a final score in any of the eight competences then that candidate was not appointed. This hard and fast rule on a "2" resulting in disqualification for appointment meant that in every competition there were candidates appointed to a DDJ post who had scored lower overall at the Assessment Centre than other candidates who were not appointed.

Final scores for the eight individual competences are arrived at by a variety of exercises, including role plays, an interview and a technical paper. Our analysis of Assessment Centre marking was based solely on data recorded in the Assessment Centre forms found in each candidate's competition file. In some cases, the final

individual competency score awarded to a candidate did not appear to be determined by taking the average of the scores received in each exercise for each competency. However, it was not always clear from the Assessment Centre records how the final competency score was arrived at. In other instances a competency score had been changed prior to a final appointment decision, and in some cases these decisions affected whether a candidate was appointed or not but it was not clear what the grounds were for the change or who had made the change. Without this information, it was not possible for the research team to take any other factors into consideration in the analysis.

The technical paper had little to no predictive value in terms of the ultimate decision about appointment in the Magistrates' Court competitions, although in the Civil competitions the technical paper scores had more predictive value. Certain individual competency scores at the Assessment Centres emerged as more predictive of appointment success than others. Managing Self was one of the most predictive competences in all the four competitions, and Showing Authority was highly predictive of appointment success in three of the four competitions, including both of the Magistrates' Court competitions. The Resolving and Deciding competency was the most predictive competency in the two Civil competitions. Developing Knowledge was the least predictive of all the competences.

The results indicate that Sift scores were not necessarily a good predictor of candidates' subsequent performance at the Assessment Centre. There was no consistent relationship found between candidates' total scores at Sift and their subsequent total scores at the Assessment Centres. There was also little to no positive correlation between scores for individual competences at Sift and Assessment Centre scores for the same competences. As there is greater scope for candidates to demonstrate competences at the Assessment Centre than Sift, this find suggests that the Self-Assessment questions on the application form may not necessarily be the most effective means of demonstrating or judging competences.

Analysis of whether there were any marking differences according to gender and ethnicity revealed that women have higher average scores than men in the vast majority of competences in all competitions, with the exception of the Magistrates' Court 2004-05 competition where the scores were more evenly divided. Analysis of markings for BME candidates revealed that there were no consistent patterns of marking for BME candidates across all the competitions, but that the Magistrates'

Court competition in 2004-05 was also unusual in the particularly low marks for BME candidates in that one competition. BME candidates had a substantially lower mean total Assessment Centre score than white candidates – over 4 points lower (19.50 compared to 23.52), and BME candidates had lower scores in all of the eight competences marked at the Assessment Centre. In the Civil competition in the same year, BME candidates fared much better, with a higher mean total Assessment Centre score than whites (24.75 compared to 23.54) and higher mean scores in six out of the eight competences.

There were differences in the composition of the Assessor Panels at these two Assessment Centres in 2004-05. At the Magistrates' Court competition, there were fewer number of Assessors overall, a smaller proportion of women Assessors and no minority Assessors compared to the Civil competition Assessment Centre that year. There has not been sufficient time available in this Initial Report to explore what, if any, impact these differences may have made to outcomes.

Chapter 6. Diversity of DDJ Appointees

Ultimately, only a fraction of those who apply for DDJ posts are appointed. For DDJ Magistrates' Court posts only 5% of all applicants are appointed, and only 12% of all applicants for DDJ Civil posts are appointed. This chapter looks in more detail at the background of those appointed and the impact of these appointments on the diversity of Deputy District Judges.

The number of appointments made in any one competition is small (just under 30 for each Magistrates' Court competition and from 40-55 for the Civil competitions), and therefore caution needs to be exercised in drawing too many conclusions from any one competition. However, there were a total of 151 appointments made in the four DDJ competitions examined in this study, and this makes it possible to look for general trends in appointments either from one year to the next or in the two different types of DDJ posts.

Diversity appointment trends from 2003-04 to 2004-05

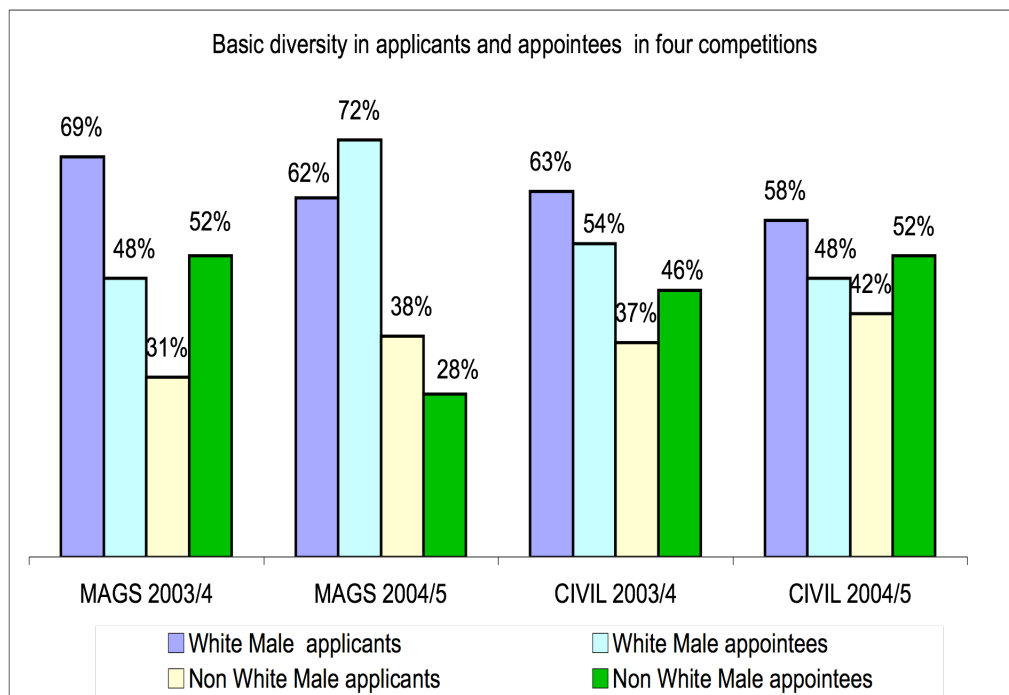
From 2003-04 to 2004-05, the percentage of women appointees increased significantly from 40% of all appointees in 2003-04 to 59% of all appointees in 2004-05. In contrast, the proportion of appointees from a black or minority ethnic background fell from 11% in 2003-04 to 7% in following year. In numeric terms this meant a difference between 7 appointments made in 2003-04 and 5 made in 2004-05. The same number of BME appointments (4) was made in the Civil 2004-05 competition compared with the Civil competition the previous year. The fact that only one BME candidate was appointed in the Magistrates' Court competition in 2004-05 accounts for the overall drop in BME appointments from the previous year (where 3 BME candidates were appointed as DDJs for the Magistrates' Court). A similar proportion of appointees (5% compared to 4% the previous year) had some form of prior or current non-British nationality. A smaller proportion of appointees (1% compared to 4% the previous year) specified a health issue or were registered disabled (constituting 1 appointee this year compared to 3 the previous year). The age of appointees also fell, with the most common age group among appointees in 2004-05 being the 35-39 year olds, compared to the 40-44 year old age group the previous year

Characteristics of DDJ appointees

This section explores the background characteristics of appointees, examines how the appointees compare to applicants and invitees to the Assessment Centre, and also explores the extent to which appointees reflect the current diversity demographics of the legal profession.

White Males v “Non White Males”

Figure 24. White Males and “Non White Males” as applicants and appointees



Results show that, **at the most basic level, the appointment process is increasingly producing more diverse appointments among Deputy District Judges.** Figure 24 above shows that “non white males” are increasing in representation as DDJs as a result of these competitions, with the exception of the Magistrates’ Court competition in 2004-05. Among all DDJs currently in post⁵³, 74% are white males, while only 54% of all appointees in these four competitions were white males. If not for the unusual results of the Magistrates’ Court competition in 2004-05, the percentage of “non white males” appointed between 2003 and 2005 would have equalled the percentage of white males appointed. **In the most recent**

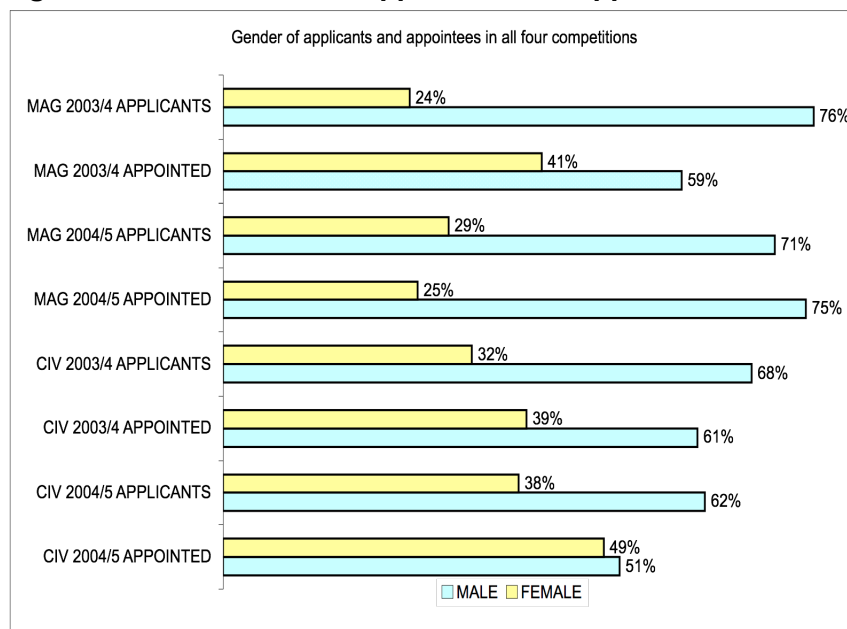
⁵³ As of 1 October 2005, see DCA statistics supra note 4

DDJ Civil competition, “non white male” appointees exceeded white male appointees.

However, as judicial diversity research in other jurisdictions has revealed, considering diversity only in such simplistic terms is likely to obscure the true picture of diversity trends in the appointment process. Further analysis of the extent to which “non white males” were succeeding in the appointment process indicated distinct differences in success among the various under-represented groups, reinforcing the need for any analysis of judicial diversity to disaggregate “diversity”. The following profiles explore the nature of DDJ appointments in a more detailed way in order to determine whether the success of “non white male” in the appointment process here is also attributable to the success of women instead of minorities.

Gender, Ethnicity and the Legal Professions

Figure 25. Gender of DDJ applicants and appointees



In three of the four competitions, the percentage of women appointed exceeded the percentage of women who applied, and these percentages reached or exceeded women’s representation in the legal profession (49% in Civil 2004-05; 39% in Civil 2003-04, and 41% in Magistrates’ 2003-04). However, in the more recent Magistrates’ Court competition (2004-05) the percentage of women appointees fell in relation to the percentage of women who applied and was greatly

below their presentation in the legal profession. This result is a further indication of the unusual reversal of diversity trends in this one competition.

Ethnicity

The numbers of black and minority ethnic appointments are extremely small even when combining all four competitions (12 in total for all four competitions), and therefore only general observations could be made about trends in the appointment of BME candidates. Table 34 below shows the distribution of both white and BME lawyers appointed in each competition where ethnicity is known.

Table 34. Appointees where ethnicity known by DDJ competition

Competition	White appointees		Black & Minority Ethnic appointees		Total no. of appointments where ethnicity known
	No.	%	No.	%	
Mags 2003-04	22	88%	3	12%	25
Mags 2004-05	24	96%	1	4%	25
Civil 2003-04	35	90%	4	10%	39
Civil 2004-05	46	92%	4	8%	50
total	127	91%	12	9%	139

Twice as many appointments of BME candidates were made in the DDJ Civil competitions (8) than the Magistrates' Court competitions (4). By appointment, white lawyers had exceeded their representation in the legal profession in all competitions, while the percentage of BME lawyers appointed fell in the two most recent competitions (Civil and Magistrates 2004-05) to below their representation in the profession. In percentage terms, BME candidates had decreased success in both types of DDJ posts (Magistrates' Court and Civil) from 2003-04 to 2004-05. **In actual numbers, there was no change in the number of BME appointments in the two DDJ Civil competitions (4 appointed in each), however the failure of BME applicants in the Magistrates 2004-05 competition (with only 1 appointment) marked a change from the previous year's Magistrates' Court competition where there had been 3 BME appointments. This result seems particularly surprising as the Magistrates' Court 2004-05 competition had the largest pool of BME applicants (64) of any of the four competitions, but produced the least BME appointments.**

Although numbers of BME appointees are small, it is possible to look in more detail at the background of these appointees (Table 35 below). **The majority of BME appointees were Asian, and this generally reflects the greater proportion of Asian lawyers in the legal profession.**

Table 35. Ethnic group of BME appointees

Ethnic Group	number	%
Asian	7	58%
Black	2	17%
Caribbean	2	17%
Other	1	8%
Black African	1	8%
<i>Total</i>	12	100%

Table 36 below shows that there were five times as many solicitors appointed than barristers from among BME candidates, and there were more BME men appointed than women. There were equal numbers of male and female solicitors appointed, and there were two male barristers but no female barristers appointed. **Almost all appointments of BME women were in the Civil competitions (4 of 5), while the BME male appointments were more evenly spread across Civil and Magistrates' Court posts (4 Civil and 3 Magistrates' Court appointments).**

There were a high proportion of BME appointees from the higher income brackets. A third of BME appointees had some form of non-UK nationality, and most were only recently eligible to apply for a DDJ post.

Table 36. Background characteristics of all BME DDJ appointees 2003-2005

		<i>number</i>	<i>%</i>
Gender	Female	5	42%
	Male	7	58%
Profession Type	Solicitor	10	83%
	Barrister	2	17%
Years in practice	7 - 10 years	8	67%
	10 - 20 years	3	25%
	20+ years	1	8%
Age	25-34	4	33%
	35-39	4	33%
	40-44	4	33%
	45-49	0	0%
	50+	0	0%
Academic institution	Oxbridge	1	8%
	Other top 12 faculty	1	8%
	Other	10	83%
	unknown	0	0%
Income	unknown	4	33%
	£0 - £49k	2	17%
	£50k - £99k	2	17%
	£100k+	4	33%
Current practice	Private practice	10	83%
	other	2	17%
Disability/ health issue	No	11	92%
	Yes	1	8%
Magic circle/leading chambers	Yes	0	0%
	No	12	100%
Non-UK nationality (past, present, dual)	Yes	4	33%
	No	8	67%

Profession type

By appointment, the under-representation of solicitors and consequent over-representation of barristers had increased in all four competitions. **Barristers begin by being over-represented in the pool of applicants for all competitions, and do increasingly better than solicitors in the appointment process.** The under-representation of solicitors among appointments to DDJ posts is greater for Magistrates' Court posts than for Civil.

Gender, Ethnicity & Profession

Figures 26 to 29 below show a more detailed breakdown of the gender, ethnicity and profession type of all applicants, invitees to assessment centre and appointees in each individual DDJ competition in 2003-40 and 2004-05. These figures not only illustrate each group's success throughout each stage of the application process, but also allow a more detailed assessment of each subgroup's representation as appointees in relation to their representation in the legal profession.

White male barristers and white female barristers were the only candidates to have increasing success from application to appointment in all four DDJ competitions. White male solicitors, while comprising the single largest group of applicants in all four competitions, did progressively worse in all competitions, decreasing their representation from application to the Assessment Centre and to appointment.

Female black and minority ethnic barristers did particularly poorly across both competitions in both years, making no appointments in any competition. Male BME barristers had some success in the two Civil competitions (3 appointments in total). No BME male barristers or BME female barristers were appointed in any Magistrates' Court competitions.

In the most recent (2004-05) competitions for both types of appointment, white female solicitors fared much better in DDJ Civil appointments than DDJ Magistrates' Court appointments. White female solicitors made up 33% of Civil appointments in 2004-05 compared with only 11% of Magistrates' Court appointments in the same year.

Both male and female BME solicitors had improved success in the Civil competitions from 2003-04 to 2004-05, but had decreasing success in the

Magistrates' Court competitions in these two years. Beyond that the number of BME appointments is too small to draw any conclusions. This final point indicates that where there are such small numbers of appointments among minority lawyers, at a certain point continuing to disaggregate diversity will not produce reliable results.

Figure 26. Gender, profession and ethnicity (Magistrates' 2003-04)

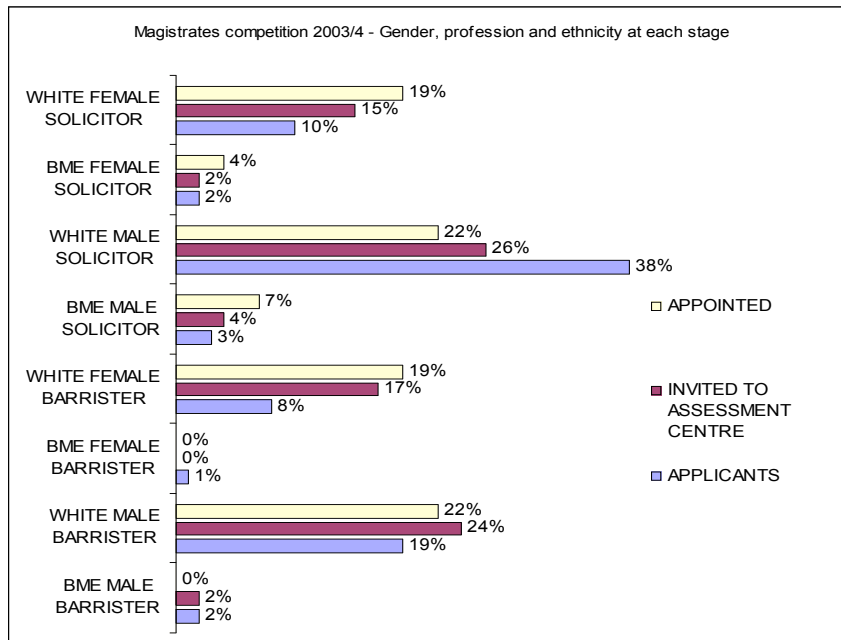


Figure 27. Gender, profession and ethnicity (Magistrates' 2004-05)

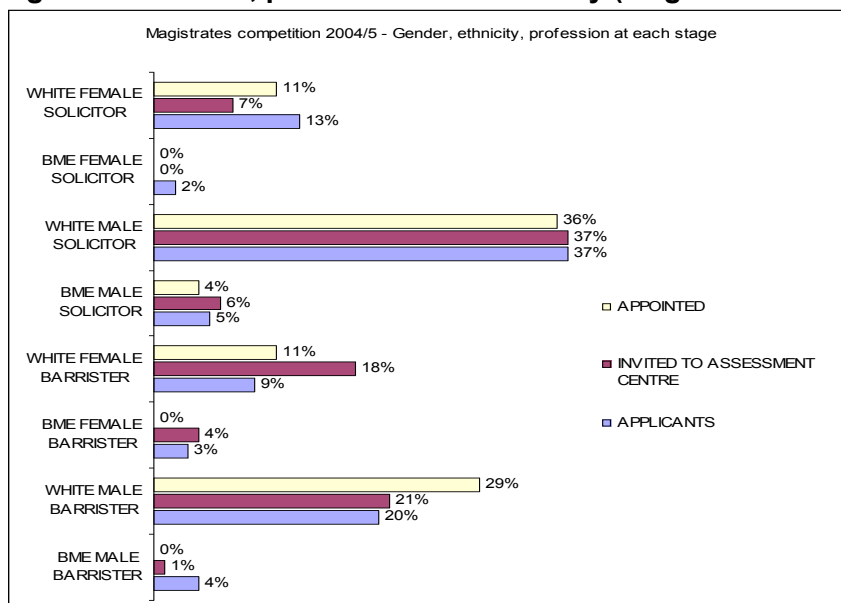


Figure 28. Gender, profession and ethnicity (Civil 2003-04)

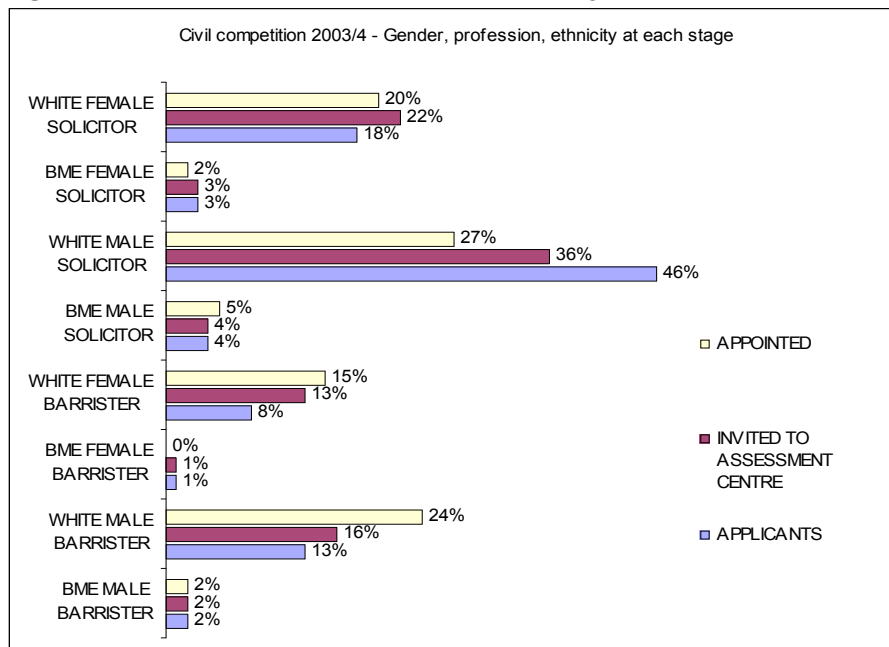
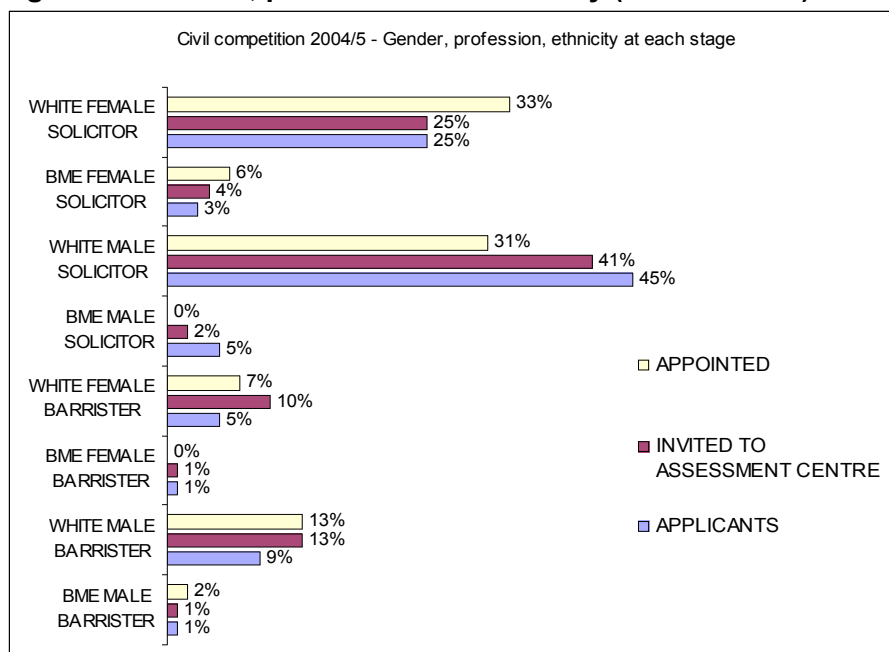


Figure 29. Gender, profession and ethnicity (Civil 2004-05)



Disability

Although the number of **appointments made in each competition among those declaring a disability or health issue was very small, there were more appointments made in 2003-04 for both types of DDJ posts compared to 2004-05** (5 in the first year and only 1 in the second).

Table 37. Appointment & Sift outcomes for applicants with disability/health issue

<i>Competition</i>	<i>Applicants declaring disability or health issue</i>	<i>Invited to the Assessment Centre</i>		<i>Appointment</i>	
		<i>YES</i>	<i>NO</i>	<i>YES</i>	<i>NO</i>
DDJ Magistrates 2003-04	23	3 (13%)	20 (87%)	1	2
DDJ Magistrates 2004-05	20	2 (10%)	18 (90%)	0	2
DDJ Civil 2003-04	23	8 (35%)	15 (65%)	4	4
DDJ Civil 2004-05	14	4 (29%)	10 (71%)	1	3
<i>total</i>	80	17 (21%)	62 (79%)	6	11

Age

Unlike any of the key characteristics most often considered in relation to diversity and the judiciary (gender, ethnicity, profession type and, more recently, disability) the one characteristic that proved to be significant for all candidates was age (closely followed by income). **The tendency for younger applicants to succeed over older applicants appears to be the single consistent and significant trend across all DDJ competitions at both Sift and the Assessment Centre.** In both Civil and Magistrates' Court competitions, those in the age groups 35-39 and 40-44 were disproportionately invited to attend the Assessment Centre and disproportionately likely to be appointed in comparison to candidates in higher age groups. This trend toward appointments being made disproportionately from among younger age groups continued from 2003-04 to 2004-05 and increased in the 2004-05 Magistrates' Court competition.

Figures 30 and 31 below show the age profiles of applicants, those invited to attend the Assessment Centre, and those appointed in both Magistrates' Court competitions.

Figure 30. Age profiles at each selection stage (Magistrates' 2003-04)

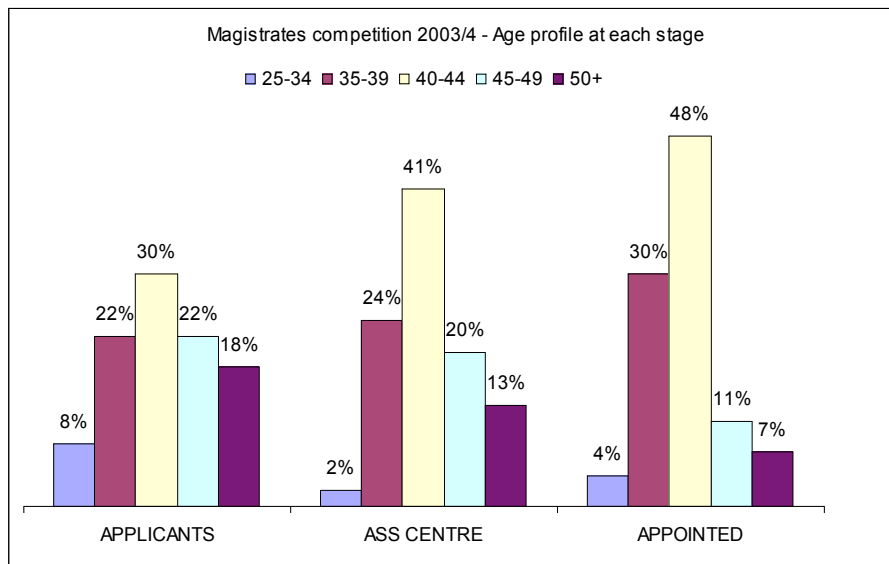
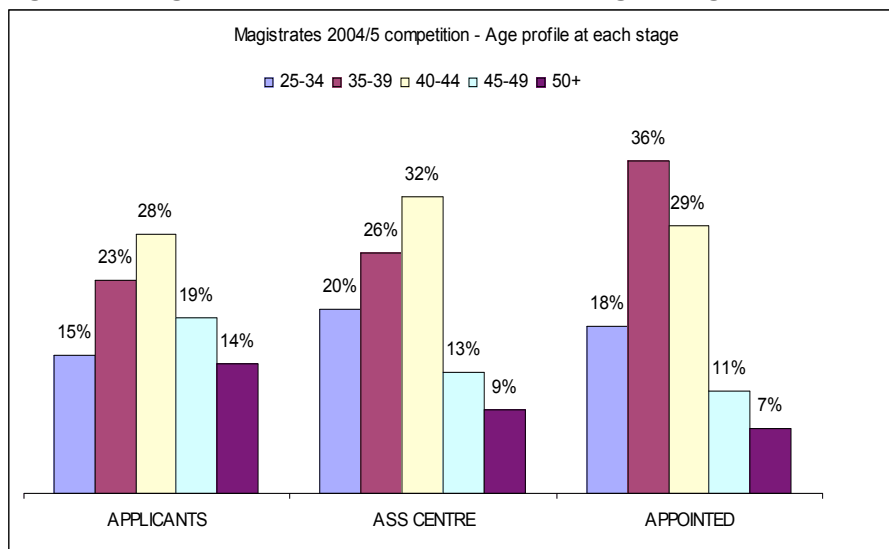


Figure 31. Age profiles at each selection stage (Magistrates' 2004-05)



In the Magistrates' Court competition in 2003-04 applicants in the age groups 35-39 and 40-44 had increasing success throughout the competitions. Conversely, those aged 45-49 comprised 22% of applicants but only 11% of appointments made were in this age group. The attrition was even greater for those aged over 50, with only 7% of appointments coming from this age group even though it comprised 18% of applicants.

This trend toward appointments being made disproportionately from among younger age groups continued and increased in the 2004-05 Magistrates' Court competition. The proportion of applications from the youngest age group of

candidates (25-34) was higher in 2004-05 than in 2003-04, and these youngest candidates were also disproportionately successful in being invited to the Assessment Centre and being appointed. While the increasing success of younger applicants found in the DDJ Magistrates' Court competitions is mirrored in the DDJ Civil competitions (Tables 32 and 33 below), **more of the youngest appointees (25-34 year olds) are DDJ Civil appointments than DDJ Magistrates' Court appointments.**

Figure 32. Age profiles at each selection stage (Civil 2003-04)

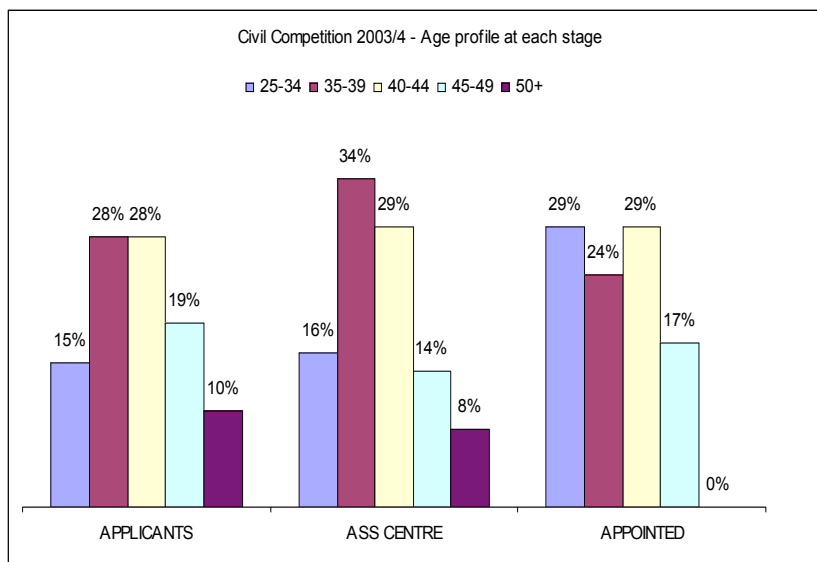
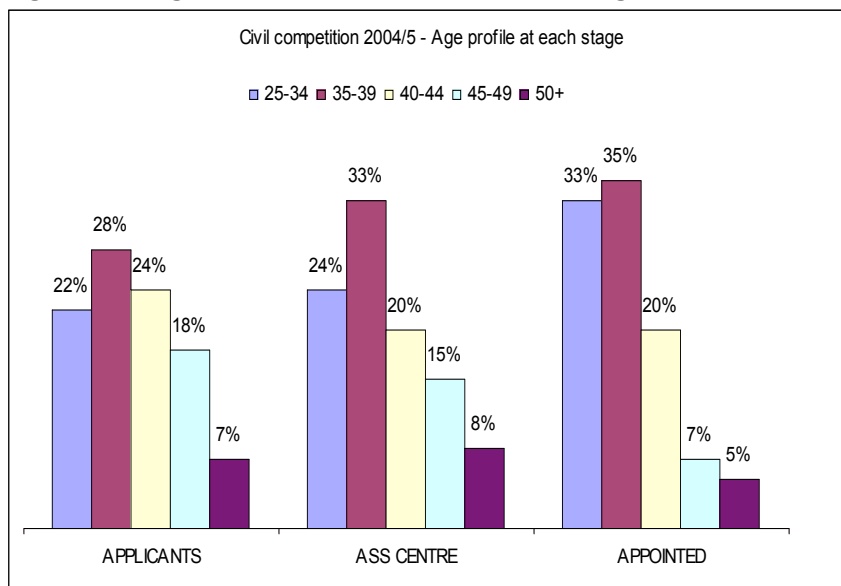


Figure 33. Age profiles at each selection stage (Civil 2004-05)



In the 2003-04 Civil competition younger candidates were disproportionately invited to the Assessment Centre and appointed in comparison with the age profile of

applicants to the competition. The success rate for the youngest candidates (25-34) was very high, with 60% of those under 35 invited to the Assessment Centre being appointed, as compared with 23% of those aged 35-39, 32% of those aged 40-44, and none of those aged 50 or more. The tendency for appointments to be disproportionately made from among younger applicants was repeated in the 2004-05 competition, with the two youngest age groups disproportionately likely to be invited to the Assessment Centre and then appointed. In all age groups over 39 the proportion of applicants appointed was lower than the proportion applying.

Age related to other candidate background characteristics

As age is the one background characteristic predictive of success at each stage of the selection process for Deputy District Judge, the research looked in more detail at the background of these younger applicants and appointees to see how if at all age affected diversity among both applicants and appointees⁵⁴.

While women and minorities make up the majority of the younger applicants for DDJ posts, by appointment it is the younger women, not necessarily the younger minorities, which account for most of these younger appointments.

The largest proportion of female appointees were in the 35-39 age group, but there were more men than women appointees among the youngest age group (25-34). This may indicate greater ambition at an earlier age among male than female lawyers, which would reflect findings of recent research into judicial ambitions in European jurisdictions⁵⁵. All BME appointees were under 45, and were evenly spread across the three youngest age groups. A higher percentage of the younger appointees were barristers, and a much larger proportion of older appointees were solicitors. The greatest percentage of appointees with qualifications from one of the top 12 universities were older appointees, suggesting that a top 12 qualification is becoming increasingly less prevalent among DDJ appointees, given the increasingly younger profile of appointees. The single highest percentage of top income earners

⁵⁴ The figures showing the relationship between age and other characteristics of the 151 appointees in the four DDJ competitions combined are found in Appendix E

⁵⁵ L. de Groot-van-Leeuwen "De rechterlijke macht in Nederland; samenstelling en opvattingen van de zittende en staande magistratuur" *Gouda Quint* (1991). L. de Groot-van-Leeuwen, S. van Rossum and K. Schuyt "De aanloop tot de rechterlijke macht; verslag van een enquête onder raio's" *Trema* no. 5a 107-124 (1996); *Encuesta a una Muestra Nacional de Jueces y Magistrados: Sexto Barómetro de Opinión de la Judicatura Española* Consejo General del Poder Judicial (Julio 2003); Information provided by M. Civinini, Italian Higher Council for the Judiciary (*Consiglio Superiore della Magistratura*) and Laetitia Brunin Assistant Secretary General to the Chief Justice of the French Supreme Court (*Cour de cassation*).

appointed are 45 to 49 years of age, although there were as many top income earners as low income earners in the youngest age groups.

Years in practice

Years in practice is almost inevitably closely related to age. In all competitions, candidates with 11-20 years practice had increasing success from application to appointment, while those with more than 20 years practice had decreasing success from application to appointment in all the competitions. Data from both the Law Society and Bar Council indicate that the proportion of women and minorities among new entrants into the legal profession is steadily increasing. Given this increase in applications from and appointments of lawyers early in their career and the changing demographics of the legal profession, these research findings suggest that lowering the eligibility requirement from a minimum of seven to five years in practice may lead to a further increase in the diversity of Deputy District Judges.

Income

Income is second only to age as the most predictive factor in candidate success across all DDJ competitions. In all four competitions the percentage of candidates in the highest income bracket (£100,000 and above per annum) increased from application to appointment, while the percentage of those in the lowest income bracket (up to £49,999) decreased from application to appointment. This is an interesting and perhaps unexpected finding of the research, and suggests the need to examine this issue in relation to all judicial appointments, in order to understand the extent to which the income divide does or does not affect appointments to the middle and highest levels of the judiciary.

Academic background

In three out of four of the competitions (all except the 2004-05 Magistrates' Court competition), the percentage of Oxbridge candidates increased from application to appointment, and the percentage of those with degrees from all the top 12 combined (Oxbridge plus the remaining top 12) also increased. While the results do indicate some greater success in the appointment process for those from top 12 universities, the overwhelming majority of appointments are from non-elite universities. These findings, taken in conjunction with the recent Sutton Trust study⁵⁶ on the educational background of senior judges in England and Wales, suggest that judges at the

⁵⁶ Sutton Trust Briefing Note (2005) supra note 9.

highest levels of the judiciary are overwhelming those with degrees from elite universities, while judges at the most junior level of the judiciary are overwhelming those with non-elite university qualifications.

Leading firms/chambers

The overwhelming majority of appointees for all DDJ posts have not been employed by either a “magic circle” firm or leading chambers. This suggests that not just women and minorities, but those from non-elite universities and outside the elite firms and chambers are clustered at the junior levels of the judiciary.

Prior appointment

There was some very marginal increase in success of those with prior appointments in the two Magistrates’ court competitions, but little to no difference in success in the two Civil competitions, and the overwhelming majority of DDJ appointees do not have a prior judicial appointment.

Current Legal Career

The overwhelming majority of appointees are currently in private practice, and the proportion of those in private practice increased from application to appointment in all competitions. Magistrates’ Court competitions have a higher proportion of applicants from a non-private practice background, but this group of applicants have less success in gaining appointment than those in private practice in both Magistrates’ Court competitions.

Practice Specialisation

There is an overwhelming dominance of criminal practitioners in both the pool of applicants and appointees for both Magistrates’ Court competitions. In almost all cases those with other specialisations have decreasing success from application to appointment. The clear indication here is that, in most instances candidates need to be criminal law practitioners to be appointed to DDJ Magistrates’ Court posts. In contrast, appointees to DDJ Civil posts have a much more varied legal practice background. Most Civil applicants are in common law related practice, although this group has a decreased success rate from application to appointment, while those with the next most prevalent practice specialisation (family law) are the only applicants who have increased success from application to appointment.

Summary

The small number of appointments made in any one competition means that caution needs to be exercised in drawing too many conclusions from any one competition or in only looking at percentage changes without indicating what these percentages mean in terms of actual numbers of appointments. However, by considering multiple competitions, the research was able to see if there were any general trends in the DDJ appointments made between 2003 and 2005 and whether these contributed in any substantive way to increasing the diversity of Deputy District Judges.

Deputy District Judges are at a basic level increasingly diverse, with “non white males” increasing in representation at this level of the judiciary as a result of these four competitions. In the most recent DDJ Civil competition, “non white male” appointees exceeded white male appointees.

However, women, not minorities, overwhelmingly account for this increase in appointment of “non white males”. While women increased their representation over the two years examined in this research, appointments of BME lawyers fell despite increasing numbers of BME lawyers applying to be Deputy District Judges. Among those minorities appointed, Asians, not Blacks or other minorities, accounted for the majority of appointments. This reflects similar findings in research conducted in the United States⁵⁷, which showed that while “non white males” had made great strides in gaining judicial appointments, women accounted for most of the increase in appointments, and that certain minority groups were more successful at gaining appointment than others.

Barristers are particularly successful compared to solicitors in the DDJ appointment process. They begin by being over-represented in the pool of applicants for all competitions, and do increasingly better than solicitors in the appointment process. The under-representation of solicitors among appointments to DDJ posts is greater for Magistrates’ Court posts than for Civil.

However, not all barristers are successful. White male barristers and white female barristers were the only candidates to have increasing success from application to appointment in all four DDJ competitions. BME female barristers did particularly poorly across both competitions in both years, making no appointments in any competition. Male BME barristers had some success in the two Civil competitions (3

⁵⁷ See Hurwitz and Lanier (2003) *supra* note 1.

appointments in total), but no BME male barristers were appointed in either of the Magistrates' Court competitions. White male solicitors, while comprising the single largest group of applicants in all four competitions, did progressively worse in all competitions.

There was an unusual reversal of diversity trends in one of the four competitions - the DDJ Magistrates' Court competition in 2004-05. In this one competition, the percentage of women appointed fell in relation to the percentage of women who applied, and was greatly below their representation in the legal profession. BME applicants fared particularly badly in this competition. The single largest group of BME applicants for any judicial competition applied to this competition (64 applicants representing 15% of all applicants), but this competition produced only one BME appointment, the lowest number of BME appointees in any of the four DDJ competitions. This competition was also the only DDJ competition in the study that did not appoint a single applicant with a declared disability or health issue, and had the lowest number of applicants and invitees to the Assessment Centre with a declared disability or health issue.

The tendency for younger applicants to succeed over older applicants is the one consistent trend across all the DDJ competitions at both Sift and appointment. There was a very significant relationship between gender and age at appointment, and while both women and minorities make up the majority of the younger applicants for DDJ posts, by appointment it is the younger women, not the younger minorities, which account for most of these lower age group appointments. BME appointees were all under 45, and were evenly spread across the three younger age groups. The largest proportion of women appointees was between 35-39 years of age. However, there were more men than women appointees in the youngest age group (25-34), perhaps reflecting a tendency found in other jurisdictions for men to demonstrate greater judicial ambition at an earlier age than women.

The overwhelming majority of Deputy District Judges appointed in these four competitions held degrees from universities outside the top 12 universities and had not been employed at any of the magic circle firms or leading chambers. This contrasts with senior judges who, a recent study revealed, are overwhelmingly from Oxbridge and the other top 12 universities. However, DDJ appointees tend to be high income earners, with higher income second only to lower age as the candidate

background factor most predictive of success at both Sift and appointment in all four DDJ competitions combined.

DDJ Magistrates' Court competitions are almost exclusively the domain of the criminal practitioner. DDJ Civil competitions have a much more mixed pool of applicants, and this is reflected in the mixed practice specialisations of appointees. Common law specialisation is the most prevalent practice background of appointees for DDJ Civil posts, although those with a family law specialisation are the only ones that do progressively well in the selection process. These differences may simply reflect the needs of the particular type of DDJ post. However, the specialised legal backgrounds of appointees do raise questions about the extent to which the selection process is able to recognise and assess the potential of applicants from a non-criminal background in DDJ Magistrates' Court competitions, and those from a non-common law or family law background in DDJ Civil competitions.

Chapter 7: Minority Views of the Appointment Process

Black and minority ethnic perspectives

Even though black and minority lawyers are applying for DDJ posts generally in proportion to their representation in the legal profession, this is not producing any significant numbers of appointments. This suggests that a much larger pool of black and minority ethnic lawyers need to apply in order for the proportion of Deputy District Judges from a black and minority ethnic background to substantially increase. This contrasts with the position of white women, where the proportion applying for DDJ posts is actually lower than the proportion in the legal profession. But while significant numbers are applying and being appointed in substantial numbers, the proportion of white women appointed in almost all the competitions examined in this study exceeded their representation in the profession.

In order to assess whether the application process itself may be acting as a deterrent to minority lawyers applying for DDJ posts in any substantial numbers, the research team invited two groups of black and minority ethnic solicitors to share their views of the DDJ application process and specifically the application form with the research team. It should be stressed that these were small discussion groups (5-6 participants each)⁵⁸, and the research was designed to be exploratory. Just over half had considered applying for a judicial post at some point, but none had in fact ever applied.

The semi-structured discussions were recorded and the views of the participants are summarised in this chapter. The solicitors also agreed to complete a brief questionnaire exploring their awareness of existing government judicial diversity initiatives, their views of the fairness of the judicial appointment process in general, and those factors that were most likely to either deter or encourage them to apply for a judicial post. Given the small number of participants the findings of the survey are useful primarily in gaining some sense of their reactions to the questions posed.

⁵⁸ Each group did, however, include a wide variety of practice specialisations, years in practice, type of firm and ethnic background. All participants lived and/or worked within the Greater London area. Their legal backgrounds covered a wide range of private practice (criminal, commercial, legal aid work, construction, immigration and property) as well as government, charity and professional regulatory agencies (covering fields such as education, health care, housing and employment). The participants were closely divided between those just under 7 years qualified and those qualified for 7 years or more. Two thirds of the participants were women, and two thirds had litigation experience.

It was especially useful to explore the views of this group of lawyers. The only previous research into lawyers' attitudes to applying for a judicial position, conducted in 2000 by Malleson and Banda⁵⁹ and also based on very small numbers of participants, did not include any black and minority ethnic solicitors. BME solicitors constitute the single largest group of minority lawyers in the legal profession in England and Wales (8.2% in comparison to black and minority ethnic barristers who comprise only 1.4% of the legal profession). If minority members of the legal profession are to gain judicial appointment in any significant numbers in future this group constitutes the largest single pool of potential applicants, and their views of the process are crucial to understanding the lack of progress in increasing ethnic diversity in the judiciary.

Minority views of the DDJ application process

In advance of the discussion sessions, the participants were sent copies of the most up to date documents related to applying for a DDJ post. These materials included:

- DDJ Magistrates' Court Application Form 2005-06
- DDJ Magistrates' Court Guide to Application 2005-06
- DDJ Civil Application Form 2005-06
- DDJ Civil Guide to Application Form 2005-06

The application forms for the DDJ Civil and the DDJ Magistrates' Court positions are almost identical, but there are some differences in the content of the two guides to the applications forms. Participants were asked to read through the application form and guidance most relevant to them. They were also provided with four general questions, which they were asked to consider for discussion at the sessions.

Table 38. Pre-Session questions for minority solicitors

1. If you were interested in applying for a judicial post:
 - Would you know where to go to find out more information?
 - Is there anyone you know whom you could consult?
2. What strikes you as the most important section of the Application Form?
3. To what extent does the application form:
 - Make it clear what aspects of your background will be assessed in deciding whether to invite you to the Assessment Centre?
 - Provide scope for you to demonstrate your strengths and abilities?
 - Enable you to demonstrate your potential?
4. Is there anything about the application form that might deter you from applying?

⁵⁹ supra note 17

DDJ application form

There was some substantial criticism of the DDJ application form. The comments of the black and minority ethnic solicitors reveal a distinct unease with both a number of specific questions on the application form and an underlying sense that there is a specific type of person that the appointment panels are looking for, and that for a variety of reasons black and minority ethnic solicitors usually do not fit this profile. It was also felt that a number of questions on the application form disadvantage black and minority ethnic candidates (whether solicitors or barristers), and that other questions disadvantage solicitors over barristers (regardless of ethnic origin). There was also a general view that the application form lacks clarity and is not “user-friendly”, issues that are likely to affect the willingness to apply regardless of gender, ethnicity or profession type.

Attitudes to applying for a judicial position

Most participants did not know where to go to get information if they were interested in applying for a judicial post. Most were uncertain which government department was responsible, although some did remember seeing DCA mentioned in *Gazette* appointment adverts. All said they would ask the Law Society if they wanted to know. Some would also check the internet. Participants were generally not sure if it was the DCA website they should go to or not.

The general view was that the nature of an applicant’s legal practice dictated whether a potential applicant knew a judge whom he or she could consult about the application. All participants agreed that this primarily limited itself to solicitors with recent litigation experience, as it was only in those circumstances that an applicant might know a judge. In this respect, not having a litigation background was felt to be a serious disadvantage. The only other participants who knew a judge they could consult, knew the judges outside of their work environment (for instance as a family friend or neighbour).

Participants also felt that one of the biggest problems for people in private practice in terms of such applications was that filling out an application form of any kind and having an interview for a position was extremely rare. If an applicant had their own legal practice this would be particularly problematic, as they would not have been in a situation where they had been interviewed for a very long time.

Initial impressions of the DDJ application form

The most recent version of the DDJ (Magistrates' Court) application form is 28 pages, and has a Guidance document of 44 pages. The DDJ (Civil) application form is 30 pages and has a Guidance document of 46 pages. There are only minor differences in the two application forms (where this may have any relevance to the views expressed by the participants this is indicated in the relevant sections below).

The first criticism of the DDJ application form was of its length: that is was overly long taking into consideration both the application form and the related guidance document, and this resulted in the form being off-putting. The length of the application form also contributed to a criticism of the form's lack of a clarity, especially that the numbering on the guidance document did not correspond to the numbering on the application form, and that it should in order to make it readable and that this is what is expected in their own working environments.

Table 39. Impressions of the DDJ application form

"Over the last 10-15 years I've never seen such a long application form."

"It's 77 pages with the guidance – this is not acceptable."

"It's all too boring. It's huge, it's like a book. I refuse to even look at it. That was my first reaction."

"An initial application for a judicial position should not be more than 4 or 5 pages."

"The form needs to go along with the guidance. You know how they do it with the divorce petition – each number on the form corresponds to the number in the guidance."

"They're clearly not human resource specialists are they?"

"Someone needs to sort out the application form and decide what is the most important part, and remove what is in effect a waste of time, instead of asking all applicants to go through all these things when they lack the most essential requirements."

These criticisms led to suggestions that there should be a 2-stage application process, possibly a test in the first stage, only then followed by a more detailed application form only for those who had passed the first hurdle.

Table 40. Suggestions for two-stage application process

“Do you think that after reading this application form you can tell whether someone can draft or write or comprehend the law? There are other ways to judge that. It could be an examination; it could be a test.”

“Break the process into two stages, an initial stage with a short application. Something initially to screen applicants at the first hurdle, after that then go into these kind of details about nationality etc after this first stage.”

“Those who are successful at this [first] stage could then be asked to complete the more detailed elements about experience back 20-30 years. Those who apply to be judges are not going to be college leavers, so then they would understand if only the more hardcore questions are asked of them at the outset.”

There was also more generally a suspicion that there was an underlying agenda in the application form questions. In some cases this reflected the participants’ previous experience of selection processes, which had led them to believe that invisible discrimination exists in the process.

Table 41. Suspicions of invisible discrimination in the application process

“You don’t know what they’re thinking in the back of their mind when they ask you some of these questions.”

“We don’t know what they’re trying to get at, or what they want us to say.”

“I did apply for a public position, and I was interviewed and short-listed. But to be honest I felt there was an invisible discrimination existing in the selection process. It’s in-built; you can’t see it. As a result I decided not to pursue it any further.”

Beyond these wider concerns expressed over the DDJ application form, there were a number of specific questions on the form that came in for criticism. There was a general belief that a number of questions disadvantage black and minority ethnic candidates (whether solicitors or barristers), and that other questions disadvantage solicitors over barristers (regardless of ethnic origin). Those felt to be most likely to disadvantage BME candidates were questions on nationality, consultees, educational qualifications, decorations/honours, and career (training) history. Those felt to disadvantage solicitors over barristers included character questions.

Decorations/Honours

This question appears on the first page of the application form in Part A. Section 1 (Personal Details).

Table 42. Concerns over decorations/honours question

“This is the first thing I saw. How many people have decoration or honours? This struck me as saying this is the type of person we’re really looking for, people who already have decorations or honours. Take it out! It’s so irrelevant, or should be irrelevant to judicial appointments.”

“It’s right there at the start. You’ve barely filled in your surname, first name and title and you think ‘ah ha, what they really want is someone who’s in the club’. If someone wants to say they are a Sir or something they can put it in their title. It makes me sick.”

“Well it hardly inspires belief that they want to encourage diversity. There should be equality in the process.”

Nationality

This question appears on page 2 of the Application Form. It reads: *“Please state you nationality at birth. Please state your present nationality. Do you hold dual nationality? (if yes, provide details)”*. The general consensus was that this question was only going to disadvantage a minority applicant, particularly the question about dual nationality.

Table 43. Criticism of nationality question

“Do you hold a dual nationality? What’s the relevance of that? Because if I’ve already said what my nationality is, then what’s the relevance of that question? Would having dual nationality prevent me from applying the law and being independent? What is the relevance of this question?”

“I ticked that too as a problem question. Please state present nationality – that is sufficient. If I say I was African at birth but being in Britain for more than 20 or 30 years I’m now British, that may trigger some questions in some close-minded person’s mind – she may not be so capable of applying British law.”

“Well if I have the right to be here, and I’m practising as a lawyer and I qualify what relevance is my dual nationality to the whole process.”

“It makes me suspicious. And that question almost inevitably is going to apply to a minority lawyer.”

Career History

This appears in Section 2 of the application form under the heading of Professional Career and states: *“Please outline your professional career below. Legal applicants should provide details of legal training, with dates of pupillage and names and addresses of pupil-masters and/or dates of articles/legal contracts and names and addresses of principals and firms or other organisations (such as local authorities) with whom articles were undertaken.”* Participants felt that specific aspects of this question would disadvantage BME applicants, while in other respects the disadvantage would be for someone who did not have litigation experience. More generally, there was confusion over whether this question was asking for practising career details or training details.

Table 44. Perception of disadvantage in career history question

“It says details of training contracts – well some of the firms we [minority solicitors] trained with are not likely to even be in existence any more for a start. And with all the legal aid changes, some of the firms I’ve work with the crime department is no more. So when I start putting down details here, how could I ever track the people I worked with? Someone who trained or worked at Slaughter and May, they probably have a standard reference or human resources department.”

“At the very beginning, this intro part is a bit confusing. It says career history. When you think about this, it means your actual practising carer. But the statement seems to place the emphasis on legal training. So we might think if I didn’t have my training in a big city firm then it could be a disadvantage. As for myself, I have nothing to put under training because I was trained in a different jurisdiction.”

“I would break this section into 2: one for professional legal training, one career history. Or just a post-qualification section.”

“I think it’s ok if you’re a criminal lawyer because we litigate all the time. I think we would be in a better position than this lady for instance who doesn’t go to court in the course of her work. And when you think what a DDJ does, we appear before them all the time, so we at least have some idea what they do.”

Judicial/Professional Appointments

This question asks: *“Do you now hold, or have you ever held, any judicial appointments”*. After requesting full details of any judicial appointments, a further section reads: *“Please detail any other professional appointments”*. This question was felt to be confusing, off-putting and created a sense of inadequacy as it implied that an applicant should already have held a judicial post. There was an overall consensus that questions on the application form should specify whether a particular qualification is mandatory or desirable.

Table 45. Concerns over Judicial Appointment question

“When you come to this section and it asks if you now hold or have held a judicial appointment – the implication is that you should have had some grounding or there’s something that you should have done before, and that this is the next step. That’s what I would get from that.”

“Does this mean that the application is designed for people who are already judges? It’s just not clear. It’s confusing. If it’s really designed to encourage people to come and apply this won’t do it.”

“This will be really off-putting if applying for a DDJ appointment. It would make me think that I would need to have judicial experience before I apply, but then how do I do this?”

“I’ve seen some forms that specify whether it is essential or desirable. So rather than putting us off it could indicate that it is not compulsory.”

Some of the confusion here may arise because the application form appears to have evolved into a generic application form for different judicial posts, and as a result sometimes refers to information that is not relevant for DDJ applicants.

Further and Higher Education and Qualifications

Section 3 of the DDJ application form requires applicants to provide the following information: *“Colleges and/or universities attended (if any). Degrees/ diplomas/ certificates awarded (applicants should include any qualification obtained other than at college or university). Please state class of degree.”* This section was felt to not only lack clarity but also to present specific disadvantages for BME lawyers. In addition, the requirement to state class of degree was felt not only to be irrelevant, but it also aroused suspicion about the possible underlying reasons why this was being asked.

Table 46. Perception of minority disadvantage in Qualifications question

“This section is likely to disadvantage ethnic minority solicitors over other groups. If you’re looking at a group of people who came through the system in the late 70s early 80s, then ... people weren’t that well off. They were just struggling to get through, getting into polytechnics. So they will be discriminated against, it will hold them back no matter how much they have progressed and got over the hurdles they had to get over.”

“The thing I think might be an issue is if you have a degree from a local university versus Oxbridge. I think having a local degree is probably a disadvantage.”

“Ethnic minority lawyers may have trouble getting a training contract and they just want to qualify, because financially they will be more likely to be paying off their debts from university. Someone else from a higher university is more likely to have gone on and done a Masters and will have those things to put on a form like this and will be more relevant and perhaps push them that bit further ahead.”

“And if someone has an overseas qualification that’s even more of a disadvantage, because they have nothing to compare it to.”

“The form doesn’t make it clear what they want here. It seems to refer to academia. But it says qualifications other than college or university: what do they mean? What other things are they looking for? I don’t think they want my cake making certificate.”

In addition, there was unease about the requirement to state class of degree and what this implied in terms of how candidates would be assessed.

Table 47. Unease with Class of Degree question

“I’ve read somewhere where they say it’s now much more important the experience of the candidate post-qualification. Yet here we have this question on the application form and were back to the same issue.”

“Yes we’re back here again. We’re talking about people who are 35-40 and this is just not relevant.”

“I do have a problem with this. We’ve done this. We’ve done 20 years – judge us on our practical experience once we’ve qualified. My degree was 20 years ago. It’s so irrelevant.”

“What is the point of that to this application? Having asked the question, you think it implies some importance.”

“And this is where I think that kind of criteria is nebulous, they can use it against you: ‘we threw this application out because this other one had a first class degree from Oxford’.”

“Certainly out of 200 people if there are 20 with 2:1s and others have 2:2s, they will make preferences for the 2:1s. You see it all the time with the adverts for the Magic Circle. If you don’t have a 2:1 don’t bother applying. So there’s another obstructionist element.”

Consultation

Section 5 of the application form states: *“You should nominate at least three and no more than six people who have recent and frequent or substantial knowledge of your work/experience and can comment on your suitability for appointment. These could be members of your profession or business, which may include judges. Please state their full names, title and address, and how they know you and your work.”* This section was widely felt to disadvantage and deter minority applicants, primarily because it mentions judges and few participants felt they knew any judges sufficiently well to ask them to be a consultee. In addition, there was a widespread unease with this section of the application form as it was felt to highlight a cultural gulf between minority lawyers and the judiciary, as well as a general lack of confidence in the judiciary’s willingness to support black and minority ethnic candidates.

Table 48. Perception of disadvantage in Consultee question

“This again is off putting because it refers to who you know who knows your work and it refers to a judge again – and I don’t know any. Well, I see judges in court and of course I could ask them, but I don’t know them in any depth. I would feel at a disadvantage here.”

“It says our profession, our colleagues, but you feel that someone who could include judges here would be at an advantage. I don’t come across them in my daily work.”

“I don’t know any [judges]. And I don’t go out of my way to try and start networking. I just don’t have that kind of time and my work doesn’t bring me into that sphere.”

“Very few judges will be willing to give you a reference. It depends, if someone is going to be in pub and shooting the breeze with them, that’s different. But not everyone will be able to do this. And mostly they are people of a different world. They’re reserved and they wouldn’t like to give references to the likes of us.”

“I wanted to make an application for Higher Rights. I had been an advocate since 1996. I have won 97% of my cases. I wrote to about 20-25 judges before whom I have appeared more than 5 times. Only two wrote back to me. All others refused. One gave me the reference. So given that experience, I have no confidence in this section. It is meaningless.”

“Is this like the Higher Rights form where they specifically say the more senior the person you name the more it adds to you application? You can’t tell that from the application.”

“The assumption built in is that you don’t have to put down a judge’s name but you should, and if you can’t then this makes you feel at a disadvantage. In my case I wouldn’t give any judges as references because I don’t have any contact with them.”

Character

There are seven separate questions in Section 4 of the application form requiring applicants to disclose information about cautions or convictions, financial insolvency, VAT or tax penalties, actions for professional negligence, and disciplinary processes by professional bodies to which applicants may have been party. The participants felt that questions to do with practice complaints disadvantage solicitors over barristers.

Table 49. Perception of solicitor disadvantage in Character question

“There is a structure in relation to criminal work where the client is always ours not the barristers. So if a complaint is ever going to be made it’s going to come to us, so barristers are much less likely to have a complaint against them. Even if they want to complain about that barrister the complaint comes to the firm.”

“If they complain to the Law Society it’s going to be our name. So we’re much more likely to be on the frontline. I think they’re more aware of the Law Society than the Bar Council, so they’re much more likely to write a letter to the Law Society. And if they went to a Citizens Advice Bureau they’d tell them to make a complaint to the Law Society not the Bar Council.”

Section 7: Self Assessment

All the participants identified the Self-Assessment section⁶⁰ as the most important part of the form. However, there was criticism of the form’s comprehensibility, especially its placement within the application form (at the end) given its importance. There was further criticism of the lack of openness about what is required in this section, the lack of scope for answers outside of a narrow legal experience, and the restrictive time frame attached to experiences that can be cited in this section. In addition, participants generally felt that the Self-Assessment questions now excluded at Sift (but still on the application form and requiring answers) were in fact some of the most important questions that should be considered at Sift. There was also a strong view that there should be a separate Self-Assessment question devoted solely to diversity, not questions on other subjects that only allow limited exploration of diversity along with other issues.

⁶⁰ The Self-Assessment section is Section 7 on the most recent version of the DDJ Civil application form but is Section 6 in the most recent version of the DDJ Magistrates’ Court application form.

Table 50. Perception of disadvantage in Self-Assessment section

“There is a real problem that this [Self-Assessment section] is at the end. This is what is going to get you through to the next stage. But where does it say that? It’s buried somewhere, it’s on page 13 of the guidance. If it’s that important it needs to say this up front.”

“The title given to it, Self Assessment, is misleading. It should be Skills & Experience, or something to that effect.”

“The section is quite secretive – usually when you have a section like this in a form they give you an example. But that’s not done here. And I’m wondering about what examples do they want, because clearly this is the section where they want to see that you have the skills and competency or something that can be developed, you have the basic skills.”

“The application has the general feel about it that it’s geared towards barristers or solicitors in big firms, not the usual background from ethnic minorities. It’s not inviting for ethnic minorities. I like those application forms that give you scope for talking about voluntary work or school governorships, questions that say ‘draw on your life experience outside of work’.”

“Those kinds of experiences are the ones that help you know when you had to check yourself and you needed to be independent. You need people with wide experience to be judges.”

“You see that it says they are interested only in your experience over just the last three years. Well for someone like me that means I’ll have to wait another two years, because I’ve only just come back into work. It should say somewhere that you can refer to things before three years.”

“I would have to draw on external sources of experience (non-legal) in order to demonstrate my experience and potential.”

“I have to say my experience will look very boring and very stifling because I’m from a small firm. I wouldn’t have enough to put in here because I’m from a small firm. People from big city firms get paid to do work experience. So these people could put down a lot more experience that I could. So in this section, they could put forward much more colourful and varied examples than I ever would.”

“We should be able to supplement our answers here through our practical experience not our legal experience.”

Specific Self-Assessment Questions

Integrity and Independence/ Managing Self

On the Civil 2005-06 form this question reads: *“Give the best example from within the past 2 years of a situation when your professional detachment has been tested.”* In a more recent version of the Magistrates Court 2005-06 application form the title of this question has changed from “Managing Self” to “Demonstrating Integrity and Independence”, but the question remains the same. This question is one of the competences that is no longer marked at Sift, however applicants must still provide an answer to this question on the application form but the application form states: *“The following competences will be tested at the Assessment Centre only”*

There was strong, widespread criticism of this question. It was felt to be vague and poorly worded, and that the specific question asked did not in fact correspond to what the guidance notes indicated was required in answering this question.

Table 51. Examples of confusion over Managing Self question

“Do pages 39-42 cover just Managing Self? There are a hundred and one things in there, and a hundred and one different concepts. I’m sorry but there just are. And boiling that down to your one best example of showing detachment is just ridiculous. And it has to fit in that box.”

“Isn’t ‘conscious and best effort to maintain high standards and quality of output’ entirely different to ‘remaining detached’ and ‘operating effectively in an autonomous situation’?”

“What they’re really trying to ask is: can you make good decisions without be swayed and influenced or over-emotional and all the rest of it. So why don’t they just say that?”

In addition, the participants felt that this Self-Assessment question in particular provided more scope for answers from people with a specific type of current legal background, particularly criminal litigation.

Table 52. How Managing Self question could favour certain applicants

“This question is limiting success to certain specialities. For instance, if I do residential conveyancing there is no detachment – you buy and you sell. But if I was a criminal lawyer, then yes there would be that detachment. So the question is very limiting.”

“It’s providing more opportunities for people with certain legal practice backgrounds. It’s focussed too much on those with a criminal litigation background for [DDJ] Magistrates’ Court positions, and family law for [DDJ] Civil court.”

“If I was answering this question I’d write the truth, and it would probably get my form thrown out immediately. When I chose my areas of specialisation I chose not to work in emotive areas of the law. I didn’t chose criminal or family where I would get too involved, I chose something where I couldn’t get too emotionally involved, where I could go home and spend time with my family. I made a conscious decision to be in a practice where this situation doesn’t arise. But I’m being totally honest and in fact showing that I am being extremely detached. But this answer isn’t good enough.”

“Thinking back to criminal practice days, then clients were sent to prison for 10 years, and I could get upset and perhaps not show detachment. But that’s it – criminal, family, immigration – these are the three areas where this issue will arise where you can really get emotionally involved.”

“The question says: give the best example ... within the past two years”. Well we all might have trained in criminal, but for many of us this was many years ago, 15 years ago. I think it should be since your career.”

There was also strong criticism of the idea put forward in this question and the accompanying guidance that judges should be “detached”. The participants felt that there was an important distinction between “independence” (which was required for judicial office) and “detachment” (which was not desirable).

Table 53. Why “detachment” is not appropriate for the judiciary

“We’re all professionals, so it should be on really, really rare occasions that the issue of professional detachment should arise.”

“Detached is the wrong phraseology. It’s about can you remain independent, and can you stand back from the situation. Because if you think about being a judge, do you really want to detach yourself completely from a situation? That’s probably what they do too often; they’re so detached they have no idea about real life.”

“That’s one of the criticisms of the judiciary: the ivory tower.”

“I think you should get rid of the detached part. Independence is a better word. ... If I’m completely detached anyone can turn around and say ‘because you’ve made a detached decision you’ve made a very irrational decision’ and challenge that decision and might succeed. So the active word there should be ‘independence’.”

“Isn’t detachment a criticism of the judiciary: that they are so removed from the world

and from such a narrow social group that they are distanced from reality?”

“Isn’t that the whole point of trying to increase ethnic minorities in the judiciary, to recognise more what is going on in society? That the bench as a whole will have a greater reflection of society?”

The participants concluded that it would be more useful to change the question so that it would be practice type neutral. This would provide a wider range of people with a wider range of experience to actually demonstrate their ability to manage themselves.

Table 54. Suggestions on how to pose question on independence

“I think the question has to be rewritten. If I was writing this form, there are several questions that you may want to ask. But for me this question really is about your ability to maintain judicial independence and not be influenced by external forces. So why shoe-horn it into something about detachment. Just ask the question: How capable are you of maintaining independence and not being influenced by external forces?”

“If the question said: Show examples of where you have exercised independence in your professional life in dealing with difficult situations. I’d go – ah, this is an application for a judge, they want to see that I’m independent and can exercise good judgement and not be swayed and I won’t be biased. Answer question. Easy. Without even looking at the guidance, something will come to mind.”

“Even then your field will limit you, but at some point they have to ask that question about independence and impartiality. They don’t have to limit it to your professional life, but it could be like other job applications that say: in your work/ private/ professional/charity/voluntary life give an example of any situation.”

“That would be good – to broaden it this way means they will be picking more rounded people.”

There was confusion over the status of the competences in the Self-Assessment section that are tested at the Assessment Centre only⁶¹, as well as a widespread view that the wrong questions were being excluded at Sift.

⁶¹ On the current DDJ (Civil) application form these are: Managing Workload, Communicating and Managing Self. On the current DDJ (Magistrates’ Court) application form these are: Managing Workload, Communicating, Demonstrating Integrity and Independence (ie, Managing Self), and Developing Knowledge.

Table 55. Criticisms of questions tested only at Assessment Centre

“If they’re not using these sections to decide if you’re invited to the Assessment Centre, why are they asking this here? What’s the point?”

“If they’re going to test this at the Assessment Centre why is this here? It makes you think.”

“One of the most important questions in terms of appointing judges [Impartiality] isn’t looked at in deciding who gets invited to the Assessment Centre. That seems wrong. This is an A-star top competency for this position.”

“Especially as there are other questions here that get marked that are a waste of time. Some are repeated. There’s Building Relationships and then a question about give a specific example of how you’ve built that relationship with the person. Can’t they boil the questions down a bit into one homogeneous question about Communicating and Relationships?”

Developing Knowledge Question

The part of this question which relates to keeping up with the law was generally felt to be uninspiring, and the part of the question that asks about keeping up with society in general raised suspicions among some participants.

Table 56. Criticisms of Developing Knowledge question

“What steps do you take to keep up with law? Wow! Well as a busy lawyer I went to a conference yesterday, but whenever I can I keep up with the law – that’s my job! This supposes you write down things like an automaton – I read x, I do this... It’s just not very inspiring because no one really keeps track of what they do. The only time they do is when they complete these kind of forms, because the reality is that if you’re a busy successful professional you don’t have time to think that’s what you’re doing.”

“Then when it goes on to ask you to show how this has made an impact on your work, this is the kind of question you can only make something up for if you’re honest.”

“Sorry, I don’t like these “society in general” type questions. I want to know what it is that they want me to be talking about. I don’t want some airy fairy ‘society in general’, because I don’t want to talk about something they don’t want to hear about.”

“If the way you keep in touch with society in general is ways that involve any kind of political activism – it depends on where you views are coming from. The newspapers, and even down to the radio programmes and TV programmes you watch, there’s a way of categorising that. So it’s too broad. I don’t like it. If I want to get in the door, I want to know what they want to know.”

“As you’re wanting to be a judge, they want to know what your affiliations are. What are the sort of things you’re looking at and whether you’re able to be independent when those sort of things come up. I think they’re looking for all sorts of things but it would be helpful if they could narrow it down. It needs to be more structured.”

Other Self-Assessment Questions

Questions on Building Relationships, Communicating, Investigating and Analysing, Resolving and Deciding, and Managing Workload were felt to be much more straight forward, with much clearer guidance. Some of the Self-Assessment questions are clearly felt to provide more scope than others for these solicitors to demonstrate their skills and some are clearer than others. For instance, referring to the guidance notes for the Building Relationships question one participant stated:

“It starts off with ‘values diversity, shows empathy’. So you get the steer on what this question is. I understand what they want from this question and why they’re asking me why it’s important. Also the things under this question [in the Guidance] actually seem to relate to the question. Some of the others – I sometimes struggle to see how the things [in the Guidance] relate to the subheading. But this one seems to make sense.”

The participants also felt strongly that the application form needed to include a Self-Assessment question devoted solely to diversity.

Table 57. Suggestions for separate diversity question

“We need a diversity question which covers ... cultural issues, the disabled, all the rest of it, because if you’re a judge all these people are going to be coming in front of you. So they need to pin you down on your exposure to diversity issues and your understanding. And it’s no good shoe-horning it into Developing Knowledge, because you don’t “develop knowledge” of diversity – well you can, but over arching is that you want a judge who is in touch with what it means that we live in a diverse society.”

“The guidance says this Developing Knowledge question is about multicultural Britain. But given the box and the 300 words, you’re not going to be saying much about it, given that you also have to say something about keeping up with the law, the court service, everything.”

“I was in the Employment Tribunal earlier this year [and] one of the employees objected to the make-up of the tribunal because it was an all-white tribunal and it was a racial discrimination claim. And the chair said: ‘oh, no it’s no problem, the rules have changed now, we just have to have diversity training and I can assure you that we all have had diversity training’. Here you want to question people about how diversity has affected how you live, how have you become closely involved in that. Not just attending a course for an hour or a day. You could include your own background, but you need actual experiences.”

Ethnic Origin Monitoring Questionnaire

The DDJ Application Form also includes an Ethnic Monitoring form, which every applicant is requested to complete and return with the Application Form. The form states:

“The Secretary of State and Lord Chancellor is committed to progressing Equality and Diversity and wishes to monitor our selection process to ensure that it is fair and non discriminatory. We would therefore appreciate it if all applicants could complete this ethnicity monitoring form which is based on the categories used in the 2001 census. The information will be confidential and stored in accordance with the data protection regulation. The data will be analysed anonymously, not identifying any individual and reports will be produced to assist us in assessing the effectiveness and fairness of the selection procedures. We would welcome your support in helping us to do this by completing the form. The data will not be available to selection panels and is collected only for post selection monitoring purposes.”

The current version of the Ethnic Origin Monitoring form includes 21 possible ethnicity boxes to tick, and at the bottom of the page the applicant is asked to print his or her name and date the form. This form is part of the actual application form when it is submitted.

There was a strong consensus among the minority lawyers that they were uncomfortable with the Ethnic Origin form being sent in with the application form to the same competition office. There was suspicion about how the form would be used and the potential for it to be used in a discriminatory way against minority applicants. This suspicion was based on prior experience of completing such forms and a perception about how the information has been used in the past by other selection bodies.

Table 58. Concerns about the Ethnic Origin Monitoring form

“I think page 28 [Ethnic Monitoring Form] is rubbish.”

“Is it optional? Do you have a choice?”

“I’m really uncomfortable completing this.”

“It’s a double edged sword.”

“It feels discouraging.”

“It’s a way to discriminate.”

“But why do you need this? The requirement that you be a British citizen is enough. They say they treat everyone equally so there should be no need for this form.”

“It’s our experience about what these forms are being used for in reality. It’s for a hidden agenda.”

“There is something that always bothers me: this Ethnic Origins Monitoring Form. I know that in most cases people are anxious to ensure that black people, Asians and other ethnicity minorities in general are well represented in every sector of society. However, my difficulty with that is that if I have said to you I am British why do you

want to know if I'm of African decent or any other decent? I'm purely British or African or whatever. It makes me uncomfortable in this setting."

"When I was applying for training contracts, big city firms would ask these questions: are you black or white, African, Caribbean or Asian? And once you say what you are, they write back to say to you: 'goodbye, we are not recruiting until 2010 and if you want to wait that's fine'. And at the end of the year you get their report, and it says: 'look 20 ethnic minority candidates were interested in this position'. But if you look at it you see that there was only one position and it went to a white person. If you just want it for statistics, ok. But how do I know that these questions are not being asked because they really just wanted to show that black people applied, and that they think whether they got accepted or not isn't relevant."

"At the end of the day you hire me because you feel I can do the job, not because you're trying to fill some statistics to make sure black people are represented. I will never gain the respect of my fellow judges if I'm just there because they need more black faces to be seen."

The overwhelming consensus was that requesting this information should be a separate part of the application process, and such ethnicity forms should be sent to a separate, preferably independent, body for independent monitoring purposes.

Table 59. Suggestions for ethnicity reporting for applicants

"They say this will be separated and will not be seen by the selection panel, but how do I know. I would be comfortable if the form is sent in in a self addressed envelope to a separate address."

"It needs more explanation about why it's being used."

"If this is for monitoring purposes, it should not be part of the application. It should be sent to a separate address. You should then get a receipt saying its been received and detailing how it will be used. All they need is a reference number."

"Why don't they have certain sheets at the front that get taken away, with unique identification number."

"It's a really good idea about having the Ethnicity Form detached and sending it off somewhere else to a different place. It doesn't personally bother me but I think it's the best solution."

"You have to be seen to be fair if they want to attract people from a wide range of backgrounds to apply."

Attitudes to the appointments process and diversity policies

In addition to discussing the specific requirements of the DDJ application process, the black and minority ethnic solicitors attending the sessions also completed a short questionnaire (see Appendix F) prior to the session discussions. The questionnaire explored their awareness of existing government judicial diversity initiatives, their views of the fairness of the judicial appointment process in general, and those factors that were most likely to either deter or encourage them to apply for a judicial post. Given the small number of participants the findings are useful primarily in gaining some sense of their reactions to the questions posed.

Awareness of judicial diversity initiatives

There were only two judicial appointments policy initiatives that these minority solicitors had any awareness of: the creation of the Judicial Appointments Commission and the judicial work shadowing scheme. This suggests that there is a lack of awareness of judicial diversity initiatives among members of one of the main target groups.

Views of the fairness of the appointment process

The black and minority ethnic solicitors who participated had not yet made up their minds or were predisposed at present to believe that the JAC will improve the chances of appointment for under-represented groups in the judiciary. However, other views expressed reinforced the negative views of the appointments process found by Malleson and Banda in 2000⁶². The strongest beliefs expressed by this group were that getting appointed is more about who you know than what you know, that white lawyers are better connected for judicial appointments than ethnic minority lawyers, and that the appointment process favours barristers over solicitors. These were closely followed by the view that the appointment process favours those with Oxbridge degrees and those with litigation experience.

Deterrents to applying

For the minority solicitors who participated in the study, the practicalities of judicial office (sitting part-time and balancing judicial and family responsibilities) were not seen as a deterrent to applying for judicial office. Two-thirds of the participants were women, who are more likely to be expected to be concerned with these employment related issues. For the minority solicitors taking part, the main deterrents to applying

⁶² Supra note 17.

for judicial office were their perception of the judiciary itself (culture and attitude of the judiciary), the lack of representation these solicitors see in the judiciary (lack of other women or minorities) and the professional elitism they associate with judicial appointments (not being in a high profile practice).

Encouraging minority applications

For this group of black and minority solicitors, direct contact and encouragement to apply, the appointment of numbers of women and minorities to the senior judiciary, more information about the application process and official appointment targets for women and minorities would do most to encourage them to apply for a judicial post.

Summary

Even though black and minority lawyers are applying for DDJ posts generally in proportion to their representation in the legal profession, this is not producing significant numbers of appointments. This suggests that a much larger pool of black and minority ethnic lawyers may need to apply in order for the proportion of Deputy District Judges from a black and minority ethnic background to substantially increase.

In order to assess whether the application process itself may be acting as a deterrent to minority lawyers applying for DDJ posts, the research team invited two groups of black and minority ethnic solicitors to share their views of the application process with the research team. BME solicitors constitute the single largest group of minority lawyers in the legal profession in England and Wales. If minority members of the legal profession are to gain judicial appointment in any significant numbers in the future this group constitutes the largest single pool of potential applicants, and their views of the process are crucial to understanding the lack of progress in increasing ethnic diversity in the judiciary.

Two discussion sessions were designed to explore their views of the DDJ application process and specifically the application form. There was some substantial criticism of the DDJ application form. The comments of the black and minority ethnic solicitors revealed a distinct unease with both a number of specific questions on the application form and an underlying sense that there is a specific type of person that the appointment panels are looking for, and that for a variety of reasons black and minority ethnic solicitors usually do not fit this profile. It was also felt that a number of questions on the application form disadvantage black and minority ethnic candidates (whether solicitors or barristers), and that other questions disadvantage solicitors

over barristers (regardless of ethnic origin). There was also a general view that that the application form lacks clarity and is not “user-friendly”, issues that are likely to affect the willingness to apply regardless of gender, ethnicity or profession type.

The general view was that the nature of an applicant’s legal practice dictated whether a potential applicant knew a judge whom he or she could consult about the application. All participants agreed that, for solicitors, this primarily limited itself to solicitors with recent litigation experience, as it was only in those circumstances that a solicitor might know a judge. In this respect, not having a litigation background was felt to be a serious disadvantage.

The length of the DDJ application was off-putting and resulted in a lack of a clarity. It was suggested that there should be a 2-stage application process, possibly a test in the first stage, only then followed by a more detailed application form only for those who had passed the entrance test. There was also more generally a suspicion that there was an underlying agenda in the application form questions. In some cases this reflected the participants’ previous experience of selection processes, which had led them to believe that invisible discrimination exists in the process.

A number of specific questions on the form were felt to be most likely to disadvantage BME candidates (regardless of whether they were solicitors or barristers), including questions on nationality, consultees, educational qualifications, decorations/honours, and career (training) history. Those felt to disadvantage solicitors over barristers (regardless of ethnicity) included character questions.

All the participants identified the Self-Assessment section as the most important part of the form, but its placement at the end of the application meant that its importance was not immediately clear. The Self-Assessment section was criticised for a lack of openness about what is required in this section, the lack of scope for answers outside of a narrow legal experience, and the restrictive time frame attached to experiences that can be cited in this section. Participants generally felt that the Self-Assessment questions now excluded at Sift (but still on the application form and requiring answers) were in fact some of the most important questions that should be considered at Sift. There was also a strong view that there should be a separate Self-Assessment question devoted solely to diversity, not questions on other subjects that only allow limited exploration of diversity along with other issues.

Minority lawyers were uncomfortable with the Ethnic Origin Monitoring form being sent in with the application form to the same competition office. There was suspicion about how the form would be used and the potential for it to be used in a discriminatory way against minority applicants. This suspicion was based on prior experience of completing such forms and a perception about how the information has been used in the past by other selection bodies. The consensus was that requesting this information should be a separate part of the application process, and such ethnicity forms should be sent to a separate, preferably independent, body for independent monitoring purposes.

The participants also agreed to complete a questionnaire exploring their awareness of existing government judicial diversity initiatives, their views of the fairness of the judicial appointment process in general, and those factors that were most likely to either deter or encourage them to apply for a judicial post. Given the small number of participants the findings are useful primarily in gaining some sense of their reactions to the questions posed.

Among the black and minority ethnic solicitors who participated there were only two judicial appointments policy initiatives that they had any awareness of: the creation of the JAC and the judicial work shadowing scheme. This suggests a lack of awareness of judicial diversity initiatives among members of one of the main target groups for increasing diversity. However, this group was generally predisposed to believe that the JAC would improve the chances of appointment for under-represented groups in the judiciary.

Most of this group of minority solicitors felt that getting appointed is more about who you know than what you know, that white lawyers are better connected for judicial appointments than ethnic minority lawyers, and that the appointment process favours barristers over solicitors. However, the practicalities of judicial office (sitting part-time and balancing judicial and family responsibilities) were not seen as a deterrent to applying for judicial office; the main deterrents for them were their perception of the judiciary itself (culture and attitude of the judiciary), the lack of representation these solicitors see in the judiciary (lack of other women or minorities) and the professional elitism they associate with judicial appointments (not being in a high profile practice). Direct contact and encouragement to apply, the appointment of numbers of women and minorities to the senior judiciary, more information about the application process

and official appointment targets for women and minorities would do most to encourage this group of black and minority ethnic solicitors to apply for a judicial post.

Chapter 8: Summary and Discussion

This study provides the first comprehensive and systematic examination of a judicial selection process in England and Wales. The research set out to identify factors that may be contributing to a lack of diversity in appointments to the post of Deputy District Judge, and it adopted a systematic approach to this issue that has not been used to examine the judicial appointments process in this country before. It explored which of a wide range of background characteristics of DDJ applicants are most predictive of success, to what extent the specific stages of the appointment process impact adversely on women and black and minority ethnic candidates in relation to other candidate background characteristics, and whether black and minority ethnic lawyers perceive any direct or indirect disadvantage in the selection system.

This chapter summarises the key initial findings of the research and attempts to explain these findings. It highlights what can be understood about diversity and DDJ appointments from the four competitions covered in the study. It also considers the implications of the findings for the future monitoring of judicial appointments in England and Wales, for the development of policies to fulfil the Judicial Appointments Commission's requirement to encourage diversity among applicants, and for the conduct and oversight of the appointment process for other judicial positions. Finally, this chapter considers what further findings may emerge from this research based on further analysis of existing data, and what consequences this research has for future research on judicial diversity in this country.

The Pool of applicants

A basic requirement for increasing diversity is that there be diverse applicants in sufficient numbers in the pool of applicants in order to produce any significant changes in the diversity of the actual judicial appointments. The research examined the pools of applicants for the four DDJ competitions using a far wider range of background factors than used before in examining judicial appointments. This was done in order to assess: the extent to which the representation of women and minorities in the pool of applicants is influenced by other background factors, what differences exist in the pool of applicants for the DDJ Magistrates' Court competitions compared to the DDJ Civil competitions, and how the pool of applicants for DDJ posts is changing from one year to the next.

There was greater basic diversity in the pool of applicants for DDJ Civil posts than DDJ Magistrates' Court posts. However, the basic categorisation of applicants as "white males" and "non white males" provides only the most limited understanding of diversity. The research provided a more complex analysis of candidate background variables to present a clearer picture of diversity in the DDJ applicant pool. There was greater gender diversity in the pool of applicants for DDJ Civil posts, than Magistrates' Court posts and the percentage of women applying had increased in the most recent Civil competition. But in all competitions the percentage of women in the pool of applicants was below their representation in the legal profession.

The proportion of BME lawyers applying for DDJ posts in all four competitions was either equal to or greater than their representation in the legal profession. In the Magistrates' Court competitions, the proportion of BME applicants sharply increased in the more recent competition (2004-05), but remained fairly static in the Civil competition. BME applicants were equally divided between barristers and solicitors, 60% of BME applicants were under 40 years of age, over half of all BME applicants were only recently eligible to apply for a DDJ post (7-10 years qualified), and the majority of BME applicants were Asian – which generally reflects the greater proportion of Asians in the legal profession.

Solicitors are consistently under-represented and barristers consistently over-represented in the pool of applicants for both Civil and Magistrates' Court competitions in comparison to their representation in the legal profession, but the largest differences are in the Magistrates' Court competitions. White male and white female solicitors appear to favour DDJ Civil competitions over DDJ Magistrates' Court competitions, while white male barristers appear to favour DDJ Magistrates' Court Competitions.

While there are much higher percentages of BME solicitors (both women and men) compared to BME barristers in the legal profession, this difference is generally not reflected in BME applicants for DDJ posts, where barristers appear to be over-represented among BME applicants in relation to their representation in the legal profession. This is particularly the case with BME applicants for DDJ Magistrates' Court posts, whereas there were higher proportions of solicitors among BME applicants for DDJ Civil posts.

Applicants for DDJ posts are getting younger in progressive years across both Magistrates and Civil competitions. The single largest age group for Magistrates' Court posts was the 40-44 year age group, while the single largest age group for Civil posts was the 35-39 year age group. While the single largest group of applicants for all competitions had been in practice for between 11-20 years, applicants with 7-10 years practice are increasingly applying for both DDJ Civil and Magistrates' Court appointments. Only a small proportion of applicants had a declared disability or health issue, and the number of those applying for DDJ posts that were disabled or had a health issue fell in the most recent competition.

The overwhelming majority of applicants for all DDJ positions had degrees from academic institutions outside of the top 12 law faculties. A higher percentage of applicants for DDJ Civil posts had degrees from Oxbridge and other top 12 law faculties than applicants for DDJ Magistrates' Court posts, but they were still very much in the minority among applicants. In all four competitions, those in the £50,000 - £99,999 income bracket made up the single largest group of applicants.

The overwhelming majority of applicants for all DDJ posts had not been employed by either a magic circle firm or leading chambers. No BME applicant was or had been employed by one of the leading chambers or magic circle firms. The overwhelming majority of applicants for DDJ posts in all four competitions did not hold a prior judicial appointment, but applicants for DDJ Magistrates' Court posts were more likely to have a prior judicial appointment than applicants for DDJ Civil posts.

Most applicants for all DDJ posts are currently in private practice, although applicants for DDJ Magistrates' Court posts are increasingly likely to be in some type of non-private practice. Applicants for DDJ Magistrates' Court competitions overwhelmingly come from a criminal practitioner background, while those applying for DDJ Civil posts have a much more varied practice background. The highest percentage of all DDJ Civil applicants are involved in common law practice, followed by administrative/public law, family, professional negligence, property and housing.

The importance of Sift

The research highlighted the need to recognise how crucial the Sift stage of the selection process is. Much attention has been focused previously on the Assessment Centre, but for the vast majority of applicants the Assessment Centre is not relevant; they have already been rejected at the Sift stage and are no longer

candidates for appointment. The importance of the Sift stage raises questions about how the application form is used at this stage and who carries out the Sift, how diverse the sifters are and how well equipped they are for this important stage of the selection process.

Several background characteristics consistently made it more likely that a candidate would be invited to an Assessment Centre. Women were significantly more likely than men to be invited to an Assessment Centre. Barristers were also significantly more likely than solicitors to be invited, as were those with a prior appointment, those with litigation experience and those earning more than £100,000 annually. Younger applicants were more successful in gaining an invitation to the Assessment Centre, with invitations decreasing as age increased. There was, however, no significant difference in success rates at Sift between white and BME applicants when candidates for all four competitions were considered together. Applicants specialising in certain practice areas were also more successful than others depending on the type of DDJ post. in the two types of competitions. Information on whether an applicant is a barrister or solicitor, prior appointment and practice background is highlighted on Sift forms which Sifters see when they are marking applicants, and the research findings raise questions about whether this information should be detailed in this way at this stage of the Sift process.

An analysis of scores obtained by candidates at Sift and how they relate to gaining an invitation to the Assessment Centre indicated that there were generally clear patterns of decision-making at Sift based on Sift scores, although there were a few inconsistencies in the Sift results in most of the competitions. In all but one of the competitions (Civil 2003-04) there were candidates invited to the Assessment Centre who had lower total Sift scores than candidates who were not invited to the Assessment Centre.

The study also explored the impact of Sift on diversity by examining whether there were any clear marking patterns based on gender and ethnicity, in relation first to total Sift scores and next to individual competences scores at Sift. In three out of the four DDJ competitions, black and minority ethnic applicants had lower mean *total* Sift scores than white applicants. However, the DDJ Civil competition in 2004-05 stood out, with the mean Sift score for black and minority ethnic applicants almost a full point lower than the mean Sift score for white applicants. In both DDJ competitions in 2004-05 BME applicants scored lower than white applicants on every individual

competency except for Developing Knowledge. Women applying for all DDJ posts had higher mean Sift total scores than male applicants, regardless of the year in question or the type of DDJ post. Women applicants also had higher mean scores than male applicants for the individual competences marked at Sift for almost every competency and in every competition.

In most cases it was not possible to determine from a candidate's file whether that file had been reviewed by the Sift Panel, or what level of review had taken place. In instances where Sift marks had been changed prior to a final Sift decision, it was unclear who had made the change and on what grounds. In some instances the changes to marks were substantial enough to affect whether the applicant was invited to the Assessment Centre or not. These findings suggest that Sift forms may need to be revised to allow Sifters to record this information and provide a more complete record of the decision made at this crucial stage of the selection process.

The heavy reliance on the application form at Sift means that the content of candidates' application forms, particularly the Self-Assessment section, is crucial. Where answers to Self Assessment questions have a tendency to be uniform either in style, content or both, this may indicate a problem with the question's ability to offer scope for informative answers. In addition, it may also possibly suggest a similarity of advice provided to applicants, for instance through companies that now exist to assist individuals in applying and interviewing for judicial appointments.

Over 30 different individuals were involved in sifting DDJ applications in these two years. Sifters included a reasonably balanced mix of men and women, although there has only been one non-white sifter taking part in decisions affecting over 1700 applicants. Research in the United States has found evidence that diverse panels attracted more diverse applicants and selected more diverse nominees for appointment. Even though the research team has collected the relevant data here to examine this issue, it has not been possible in the time available for this Initial Report to examine the impact of the composition of Sift panels on the diversity of those selected or rejected at Sift.

Assessment Centre

The Assessment Centre impacts on far fewer applicants for DDJ posts than Sift, and its processes and outcomes have previously been examined in some detail by others. Therefore, this research focused on analysing the candidate background

factors most determinant of success at the Assessment Centre, the consistency of Assessment Centre scores in determining appointment, whether Sift scores were good predictors of Assessment Centre scores, and whether there was evidence that Assessment Centre marking adversely affected women and minorities.

One clear-cut rule applied to all appointment decisions: if a candidate received a “2” as a final score in any of the eight competences then that candidate was not appointed. This apparently hard and fast rule on a “2” constituting a disqualification for appointment meant that in every competition there were candidates appointed to a DDJ post who had scored lower overall at the Assessment Centre than other candidates who were not appointed. There was one instance in which a candidate scored above the pass mark, did not score any “2”s but was not appointed. The application of such a hard and fast rule could give rise to some concerns about the fairness of the system. It seems inevitable that assessors will necessarily be aware of this rule, and will know that the awarding of a “2” for any final competency score will necessarily eliminate any candidate from appointment regardless of their overall performance. An alternative system, which does not provide such an absolute means of eliminating any one candidate, would be to set a minimum total score required for appointment and require that all those at the cut off point be considered on a case by case basis, regardless of the incidence of a “2” score on a competency. Details would then be recorded in the candidate’s file indicating the reason to appoint or reject and the names of those Assessors participating in this decision.

The technical paper had little to no predictive value in terms of the ultimate decision about appointment in the Magistrates’ Court competitions, although in the Civil competitions the technical paper scores had more predictive value. Others have previously recommended that consideration should be given to using the technical paper as a qualification to apply for DDJ posts, and BME solicitors who took part in the qualitative part of the study also suggested this. Experience in a number of European judiciaries also indicates that knowledge-based assessment methods such as an initial technical paper can affect diversity levels in the judiciary⁶³. While the use of a technical paper as a first qualification for application has been considered by DCA, it appears to have been rejected due to cost-implications. It may be worth exploring whether the cost of setting a technical paper for 400 candidates would exceed the cost of data entry of information from approximately 400 applications, data monitoring of this information and the cost of conducting Sift for 400 candidates.

⁶³ see discussion in Thomas (2005) supra note 2.

Certain individual competency scores emerged as more predictive of appointment success than others. Managing Self was one of the most predictive competences in all the four competitions, and Showing Authority was highly predictive of appointment success in three of the four competitions, including both of the Magistrates' Court competitions. The Resolving and Deciding competency was the most predictive competency in the two Civil competitions. Developing Knowledge was the least predictive of all the competences, and there was little variation in Developing Knowledge scores at the Assessment Centre, suggesting that the way this competency is marked or measured may need to be reviewed.

The results also indicated that Sift scores (both total and individual competency scores) were not necessarily a good predictor of candidates' subsequent performance at the Assessment Centre. In most of the competitions, there was little to no positive relationship between competency marks at Sift and the same competency marks at the Assessment Centre. This suggests that the Self-Assessment questions on the application form may not necessarily be the most effective means of judging competences, and that there may be grounds for reviewing the Self-Assessment questions on the application form.

Women have higher average scores than men in the vast majority of competences in all competitions, with the exception of the Magistrates' Court 2004-05 competition where the scores were more evenly divided. There were no consistent patterns of marking for BME candidates across all the competitions, but the Magistrates' Court competition in 2004-05 was also unusual in the particularly low marks for BME candidates in that one competition. The mean total score for BME candidates was over four points lower than the mean total score for white candidates, and BME candidates had lower scores in all of the eight competences marked at the Assessment Centre.

In the 2004-05 competitions, there was a balanced mix of men and women among the Assessors in the DDJ Civil competition, although almost twice as many men as women were Assessors in the Magistrates' Court competition. The greatest imbalance was in terms of the ethnicity of the Assessors in both competitions, with only one minority Assessor out of 23 Assessors in the Civil competition and no minority Assessors among the 11 Assessors taking part in the Assessment Centre in the Magistrates Court competition. This research has collected data on the diversity

of Assessors and Assessor Panels as well as the marks assigned to candidates by each Assessor Panel. However, there has not been sufficient time available in this Initial Report to look more closely at the impact of the composition of Assessor Panels on the diversity of those appointed following the Assessment Centre.

Diversity of appointments

The research set out to determine if other candidate background factors beyond gender, ethnicity and profession type are more significant determinants of success for DDJ posts, and if so which background factors are most determinant of success in the selection process.

The small number of appointments made in any one competition means that caution needs to be exercised in drawing too many conclusions from any one competition or in only looking at percentage changes without indicating what these percentages mean in terms of actual numbers of appointments. However, by considering multiple competitions, the research was able to see if there were any general trends in the DDJ appointments made between 2003 and 2005 and whether these contributed in any substantive way to increasing the diversity of Deputy District Judges.

Deputy District Judges are at a basic level increasingly diverse, with “non white males” increasing in representation at this level of the judiciary as a result of these four competitions. However, women, not minorities, account for this increase in appointment of “non white males”. While women increased their representation over the two years examined in this research, appointments of BME lawyers fell despite increasing numbers of BME lawyers applying to be Deputy District Judges. Among those minorities appointed, Asians, not Blacks or other minorities, accounted for the majority of appointments. This reflects similar findings in research conducted in the United States⁶⁴, which showed that while “non white males” had made great strides in gaining judicial appointments, women accounted for most of the increase in appointments, and that certain minority groups were more successful at gaining appointment than others. From 2003 to 2005 there was also a reduced number of both applications from and appointments of lawyers with a declared disability or health issue.

⁶⁴ See Hurwitz and Lanier (2001 and 2003) supra note 1.

Barristers are particularly successful compared to solicitors in the DDJ appointment process. They begin by being over-represented in the pool of applicants for all competitions, and do increasingly better than solicitors in the appointment process. The under-representation of solicitors among appointments to DDJ posts is greater for Magistrates' Court posts than for Civil. However, not all barristers are successful.

White male barristers and white female barristers were the only candidates to have increasing success from application to appointment in all four DDJ competitions. BME female barristers did particularly poorly across both competitions in both years, making no appointments in any competition. Male BME barristers had some success in the two Civil competitions (3 appointments in total), but no BME male barristers were appointed in either of the Magistrates' Court competitions. White male solicitors, while comprising the single largest group of applicants in all four competitions, did progressively worse in all competitions.

There was an unusual reversal of diversity trends in one of the four competitions, the DDJ Magistrates' Court competition in 2004-05. In this one competition, the percentage of women appointed fell in relation to the percentage of women who applied, and was greatly below their representation in the legal profession. BME applicants fared particularly badly in this competition. The single largest group of BME applicants for any judicial competition applied to this competition (64 applicants representing 15% of all applicants), but this competition produced only one BME appointment, the lowest number of BME appointees in any of the four DDJ competitions examined in this research. This competition was also the only DDJ competition in the study that did not appoint a single applicant with a declared disability or health issue, and had the lowest number of applicants and invitees to the Assessment Centre with a declared disability or health issue.

The tendency for younger applicants to succeed over older applicants is the one consistent trend found across all the DDJ competitions at both Sift and appointment. There was a very significant relationship between gender and age at appointment, and while both women and minorities make up the majority of the younger applicants for DDJ posts, by appointment it is the younger women, not the younger minorities, which accounted for most of these lower age group appointments. BME appointees were all under 45, and were evenly spread across the three younger age groups. The largest proportion of women appointees was between 35-39 years of age. However, there were more men than women appointees in the youngest age group

(25-34), perhaps reflecting a tendency found in other jurisdictions for men to demonstrate greater judicial ambition at an earlier age than women.

Older candidates (50 years of age or older) were consistently less likely to be invited to an Assessment Centre and be appointed than younger candidates. As there are more women and minorities among the younger age groups in both branches of the legal profession, an increase in younger appointees as Deputy District Judges may ultimately lead to an increase in diversity. However, such a clearly lower success rate among the oldest applicants may give rise to some concerns on age discrimination grounds.

DDJ appointees tend to be high income earners, with higher income second only to lower age as the candidate background factor most predictive of success at both Sift and appointment in all four DDJ competitions combined. The overwhelming majority of Deputy District Judges appointed in these four competitions held degrees from universities outside the top 12 universities and had not been employed at any of the magic circle firms or leading chambers. This contrasts with senior judges who are overwhelmingly from Oxbridge and the other top 12 universities. The use of this research framework for monitoring all judicial appointments would reveal the extent to which the academic divide does or does not affect appointments to the middle levels of the judiciary.

Those applying and appointed to DDJ Magistrates' Court posts are almost exclusively criminal practitioners, and although there is a wider mix of practice specialisation in the DDJ Civil competitions, most appointees are common law practitioners although those with a family law specialisation are the only ones that do progressively well in the selection process. These specialisations hardly seem surprising given the specific types of legal work carried out by the two different types of Deputy District Judge. However, the specialised legal backgrounds of appointees do raise questions about the extent to which the selection process is able to recognise and assess the potential of applicants from a non-criminal background in DDJ Magistrates' Court competitions, and those from a non-common law or family law background in DDJ Civil competitions.

The minority perspective

Even though black and minority lawyers are applying for DDJ posts generally in proportion to their representation in the legal profession, this is not producing any

significant numbers of appointments. This suggests that a much larger pool of black and minority ethnic lawyers may need to apply in order for the proportion of Deputy District Judges from a black and minority ethnic background to substantially increase. Black and minority ethnic solicitors constitute the single largest group of minority lawyers in the legal profession in England and Wales. If minority members of the legal profession are to gain judicial appointment in any significant numbers in the future this group constitutes the largest single pool of potential applicants, and their views of the process are crucial to understanding the lack of progress in increasing ethnic diversity in the judiciary.

A small qualitative study was conducted with black and minority ethnic solicitors, exploring their views of the DDJ application process. The DDJ application form was criticised for being overly long and lacking clarity, which led to suggestions that there should be a 2-stage application process: a test in the first stage, only then followed by a more detailed application form only for those who had passed the entrance test. There was also more generally a suspicion that there was an underlying agenda in the application form questions. In some cases this reflected the participants' previous experience of selection processes, which had led them to believe that invisible discrimination exists in the process. Application form questions felt to be most likely to disadvantage BME candidates were questions on nationality, consultees, educational qualifications, decorations/honours, and career history.

The Self-Assessment Section was criticised for its lack of openness about what is required in this section, the lack of scope for answers outside of a narrow legal experience, and the restrictive timescale attached to experiences that can be cited in this section. It was also felt that the wrong Self-Assessment questions were now being excluded at Sift, and that there should be a separate Self-Assessment question devoted solely to diversity. These black and minority ethnic lawyers were also uncomfortable with the requirement that the Ethnic Origin Monitoring form be sent in with the application form to the same competition office. There was suspicion about how the form would be used and the potential for it to be used in a discriminatory way against minority applicants. The consensus was that requesting this information should be a completely separate part of the application process, and that ethnicity monitoring should be done by a separate, independent body.

The small group of black and minority ethnic solicitors also agreed to complete a short questionnaire exploring their awareness of existing government judicial

diversity initiatives, their views of the fairness of the judicial appointment process in general, and those factors that were most likely to either deter or encourage them to apply for a judicial post. Earlier work by Malleson and Banda on attitudes to the judicial appointments process had not included this key diversity group, and given the small number of participants the findings are useful primarily in gaining some sense of their reactions to the questions posed.

There were only two judicial appointments initiatives that these minority solicitors had any awareness of (the creation of the Judicial Appointments Commission and the judicial work shadowing scheme), suggesting that there may be a lack of awareness of judicial diversity initiatives among members of one of the main target groups. However, this group was generally predisposed to believe that the JAC would improve the chances of appointment for under-represented groups in the judiciary.

Most of this group of minority solicitors felt that getting appointed is more about “who you know than what you know”, that white lawyers are better connected for judicial appointments than ethnic minority lawyers, and that the appointment process favours barristers over solicitors. However, sitting part-time and balancing judicial and family responsibilities were not seen as a deterrent to applying for judicial office. The main deterrents were the culture and attitude of the judiciary, the lack of other women or minorities and not being in a high profile practice. Direct contact and encouragement to apply, the appointment of women and minorities to the senior judiciary, more information about the application process and official appointment targets for women and minorities would do most to encourage this group of solicitors to apply for a judicial post.

Given the very small number of participants these initial impressions highlight the need for a comprehensive survey of the attitudes of legal professionals to determine whether these attitudes are shared more widely by other BME solicitors or other groups under-represented in the pool of judicial applicants.

Implications for future judicial appointments and research

The following explores what implications the research may have for other judicial posts, given that these results relate to the lower tier of the ordinary judiciary, and what implications the findings may have for the work of the new Judicial Appointments Commission. It also considers the study’s impact on future research on the judicial appointments process in England and Wales.

The Judicial Appointments Commission

Reporting and Monitoring

Some jurisdictions have been more successful than others at bringing about an improvement in the representation of women and ethnic minorities in the judiciary. However, distinct differences exist between women and ethnic minorities' ability to gain appointment to the bench in most jurisdictions⁶⁵. The "prestige theory" of judicial appointments⁶⁶ asserts that "non white males" (women and minorities) are most likely to attain judicial office in less prestigious courts. The clear indication is that women gain ground quicker in the judiciary than do ethnic minorities, and that the door has to be pushed much harder to open the judiciary to greater minority representation in comparison to greater gender equality. The research findings confirm a similar trend in Deputy District Judge appointments in this country.

This also highlights an important distinction that needs to be made about the way diversity statistics are reported. When numbers of applicants or appointees are small, it can be very misleading to discuss diversity in percentage terms. For instance, women are actually under-represented in the DDJ appointment process in terms of their representation in the legal profession, while black and minority ethnic lawyers appear to be well represented in relation to their proportions in the legal profession. But in terms of actual numbers of appointments, women are clearly and substantially increasing their numbers as Deputy District Judges, while minorities are not.

In spite of women's quicker progress into the judiciary in most jurisdictions, the reality is that the door to senior judicial appointment remains shut to most women even in jurisdictions such as Italy, France, Spain and The Netherlands⁶⁷ where in many cases women now comprise over half of all judges or new appointments to the judiciary. The DDJ research has provided the foundation for further analysis and monitoring of women's ability to progress in the legal profession in England and Wales. It establishes baseline indicators of women's ability to gain appointment at the most junior level of the ordinary judiciary, and provides the analytical framework for assessing women's success at gaining entry into any higher levels of the judiciary.

⁶⁵ See discussion of this in Thomas (2005) supra note 2.

⁶⁶ Hurwitz and Lanier (2003) supra note 1.

⁶⁷ See studies supra note 57.

The prestige theory of judicial appointments is demonstrated in England and Wales for both minorities and women, with appointments concentrated in the lowest levels of the judiciary⁶⁸. One important aspect of the judicial profession affecting judicial diversity is not just the extent to which diverse applicants are appointed, but also the extent to which the profession is seen as providing equal opportunities for career progression. There was some marginal increase in success of those with prior appointments in the two Magistrates' court competitions, but little to no difference in success in the two Civil competitions. In addition, being a Deputy District Judge is in most instances a necessary stepping-stone to appointment as a District Judge, and given the changing nature of DDJ appointments it is perhaps not surprising that there are currently fewer women and minorities in post as District Judges compared to Deputy District Judges. The most recent DCA statistics indicate that minorities make up 6% of Deputy District Judges but only 3% of District Judges, and women 24% of Deputy District Judges but 20% of District Judges. This highlights the need for career progression monitoring of the judiciary as a whole, in order to understand what effect improvements in diversity at one level of the judiciary may have on judicial diversity further up the judicial hierarchy over time.

The findings of the Sutton Trust study⁶⁹ taken in combination with the DDJ research have also revealed a higher education divide between the higher and lower levels of the judiciary, where those with degrees from Oxbridge and other top 12 law faculties are clearly over-represented at the top of the judiciary while the overwhelming majority of those at the lower level of the professional judiciary do not have degrees from these elite universities. Monitoring of this issue on progressively higher levels of the judiciary would reveal the extent to which such an educational divide exists within other levels of the judiciary

Despite the substantial amount of research from other jurisdictions on the issue of women and minorities in the judiciary, there has been virtually no research on the wider aspects of judicial diversity, such as religion, disability, or sexual orientation. There has been a small amount of research in the United States and the Netherlands on religious affiliation of judicial appointees, both suggesting that minority religions are poorly represented in the judiciary⁷⁰. However, all other aspects of diversity

⁶⁸ See DCA statistics *supra* note 4.

⁶⁹ Sutton Trust Briefing Note (2005) *supra* note 9

⁷⁰ Glick and Emmert (1987) *supra* note 1

remain largely unexplored. The DDJ research has been able to provide some information on how applicants with declared health issues or disabilities fared compared to those without such issues or disabilities. The results indicate only a very small proportion of applicants or appointees fall into this category, and that the numbers of appointments in this group fell from 2003-04 to 2004-05. The research was not able to provide information on the relative success of applicants based on religion or sexual orientation, as this information was not requested by the competitions and therefore not available in the applicant files.

The Lord Chancellor has recently adopted a Disability Action Plan as part of the DCA judicial diversity strategy. The DDJ research findings reinforce the need to continue to use this type of analytical framework for the monitoring of all judicial appointments. This would enable the JAC to determine the extent to which the decrease in DDJ applications and appointments from candidates declaring a disability or health issue is a wider trend, not just in subsequent DDJ appointments, but at other levels of the judiciary. This framework would also provide a means for assessing the success of the Disability Action Plan.

Recruitment Implications

The reactions of black and minority solicitors to questions about what would be most likely to encourage them to apply for judicial office suggested that direct contact and encouragement to apply could be effective with these potential applicants. The history of the “tap on the shoulder” as a means of recruitment has been problematic and a serious cause for concern in England and Wales in the past. However, the methods employed in other jurisdictions to increase applications for judicial office from members of under-represented groups have clearly involved direct encouragement of individuals to apply. In Canada and the United States significant energies are devoted to outreach programmes by appointments commissions in order to inform eligible lawyers about the process and to actively encourage applications from those with non-traditional legal backgrounds for judicial appointment (sectors of the profession where many women and ethnic minority lawyers are found). These jurisdictions consider active recruitment to be an essential aspect of the work of the commission that is free from the inherent inequalities of the tap on the shoulder, primarily because the encouragement to apply is always followed by a rigorous post-application process using an evidence-based assessment of all the candidates.

However, views expressed by the small groups of black and minority ethnic solicitors in this study suggested that devoting energies to minority recruitment could be counterproductive if minority appointments are not forthcoming. This particular group of lawyers were sceptical about processes that encourage minorities to apply and collect data on the ethnicity of applicants, yet do not ultimately result in any noticeable numbers of minority appointments. It would therefore not be surprising if the findings from the analysis of the DDJ Magistrates' Court 2004-05 competition, which had the highest level of minority application and the lowest level of minority appointments, only reinforced such suspicions among black and minority lawyers.

Diversity and Merit

The question of the relationship between diversity and merit remains unresolved in England and Wales. This is a particularly sensitive aspect of the appointment process, but one that will have to be addressed on some level by the JAC in carrying out its statutory duty to promote diversity. A number of other jurisdictions that have succeeded in increasing diversity on the bench have incorporated diversity specifically into the criteria for appointment. In Ontario and in a number of American states, the need for the bench to reflect the demographic make up of the specific jurisdictions is one of the key appointment criteria. The minority lawyers who took part in this research felt the application form should include a specific self-assessment question on diversity, reflecting its importance in relation to competence for judicial office. Further qualitative research would enable the JAC to determine the extent to which this reflects the views of other potential applicants.

The JAC will also have to consider how the concept of merit may operate through informal eligibility requirements for judges (such as previous judicial experience or educational qualifications from elite faculties) in ways that may be tied to conceptions of merit about who is qualified to be a judge and are requirements that may inevitably limit diversity among judges. The research findings on the greater likelihood of barristers being selected at Sift and appointed compared to solicitors coupled with the greater number of minority solicitors compared to barristers may be one example of how conceptions of merit may limit diversity.

Research implications

There remains a large gap in information and understanding of judicial appointments in this country. In the past the existence of a highly secret appointment process in this country has meant that the very foundations of the judiciary have not been open

to scrutiny. As a result, the judiciary and academia in this country have made little contribution to the field of judicial studies. This research demonstrates the growing openness of the appointments process and represents a positive development for judicial studies in this country.

This research has also highlighted the importance of adopting a comprehensive framework for assessing diversity in the judicial appointments process. Without a more complete picture of the background of applicants, future efforts to encourage more diverse applicants and to monitor the impact of the judicial appointments process on diversity will be limited. An approach to diversity that lacks more detailed information on candidates than ethnicity and gender also fails to understand the complexity of diversity and its strengths in fostering fairness in the judicial system. The factors that place one individual in a position of advantage or disadvantage are varied and complex and can interact with ethnicity and gender in often complex ways. The introduction of a new judicial appointments system in England and Wales provides a unique opportunity to establish such a framework as a vital tool in analysing and monitoring the judicial appointments process and its impact on diversity in the future. The findings of this research suggest several specific next steps.

These initial findings highlight the need to complete those elements of the DDJ research that could not be completed in time for this report. This includes analysis of data already collected by the research team, looking specifically at the impact of consultees and the impact of the composition of Sift and Assessor Panels on the diversity of DDJ appointments, as well as the planned larger scale survey of legal professionals in cooperation with the Law Society and Bar Council, based on the questionnaire trialed by the research team with the small groups of minority solicitors.

In order to establish whether the decreased success of black and minority ethnic candidates in gaining appointment in the 2004-05 DDJ Magistrates' Court competition and at sift in the DDJ Civil 2004-05 competition were isolated cases or indicative of an emerging trend, a similar analysis to that carried out here should be conducted with the next two DDJ Magistrates' Court and DDJ Civil competitions (2005-06).

In order to establish whether certain background characteristics of judicial applicants are most likely to lead to appointment across all judicial posts or whether certain characteristics are associated with specific judicial posts, the research carried out

with DDJ appointments should be repeated for the most recent appointments for all judicial posts. The results of such further research would provide the foundation for a judicial appointments monitoring system, and would enable the JAC to determine the relative importance of candidate background characteristics and how this affects judicial diversity at all levels of the judiciary.

Conclusion

The research revealed a mixed message about diversity among Deputy District Judges. Women are doing particularly well in increasingly applying for and in gaining appointment as Deputy District Judges, but minorities are not, and this corresponds to similar diversity patterns in other jurisdictions. One of the main aims of this research was to identify factors that may be contributing to a lack of diversity in DDJ appointments, and in terms of ethnicity the research has shown that the size of the pool of black and minority ethnic applicants is critical. In addition, the research also highlighted the key importance of the Sift stage and the need to look more closely at the basis for Sift decisions and the make up of Sift panels. The lack of correlation between Sift and Assessment Centre scores, and the concerns expressed by minority solicitors about the disadvantage to minority applications in certain questions on the application form, suggests the need to review the application form⁷¹. In contrast, the numbers of minority candidates that actually reach the Assessment Centre is small for all DDJ competitions, and there was no indication (with the exception of one competition) that ethnic minorities were adversely affected by the Assessment Centre process. Finally, while the small groups of minority lawyers who participated in the research generally felt they would be disadvantaged in the appointment process, they were inclined to believe that the creation of the Judicial Appointments Commission was likely to improve the judicial appointment prospects of under-represented groups. This should be a significant benefit to the JAC in fulfilling its requirement to encourage diversity in the range of people available for selection for appointment. It is also hoped that the specific findings of the research on the appointment of Deputy District Judges and the framework established by this research will assist the JAC in achieving this objective.

⁷¹ The incidence of database errors found in Equitas and missing files also suggest the need to consider moving to some form of computer-readable application form.

Appendices

Appendix A

Table A1. Multilevel binary logistic regression output for success in being invited to an assessment centre (statistically significant predictors are in bold).

Covariate	Levels	Coefficient	SE
Constant		-2.35	0.42
Nationality	British	0.00	-
	Other	-0.18	0.31
Gender	Female	0.00	-
	Male	-0.51	0.15
Ethnicity	White	0.00	-
	BME	-0.32	0.23
	Missing	-0.64	0.26
Profession type	Solicitor	0.00	-
	Barrister	0.51	0.14
Top Bar/Magic Circle	No	0.00	-
	Yes	0.30	0.43
Years in practice	0-10 years	0.00	-
	10-20 years	0.25	0.18
	20+ years	-0.23	0.25
Age	25-34	0.00	-
	35-39	-0.10	0.22
	40-44	-0.19	0.23
	45-49	-0.44	0.27
	50+	-0.43	0.32
Academic institution	Oxbridge	0.00	-
	Top12	-0.14	0.27
	Other	-0.36	0.23
	Missing/unknown	0.62	0.45
Prior appointment	No	0.00	-
	Yes	0.65	0.19
	Missing	0.36	0.34
Income	£0-£49k	0.00	-
	50k-99k	0.21	0.17
	100k+	0.76	0.20
	Missing	0.09	0.21
Character question	No	0.00	-
	Yes	0.53	0.17
Health issue/disability	No	0.00	-
	Yes	-0.11	0.32
Litigation experience	No	0.00	-
	Yes	0.58	0.26

The following Tables show the final step of the backward stepwise logistic regression model, indicating which background characteristics were significant in predicting success or failure at Sift, for each of the four DDJ competitions.

Table A2. Final step of binary logistic regression model predicting invitation to the Assessment Centre for the 2003-04 DDJ Magistrates' Court competition⁷²

Predictor	Level	B	S.E.	Wald	df	P	e ^B
Constant		-4.44	1.22	13.30	1	<0.001	0.01
Gender	Male	-0.97	0.35	7.50	1	0.006	0.38
Profession type	Barrister	0.95	0.33	8.13	1	0.004	2.60
Age group	25-34			5.83	4	0.212	
	35-39	1.90	1.12	2.87	1	0.090	6.67
	40-44	2.20	1.11	3.95	1	0.047	9.03
	45-49	1.72	1.13	2.33	1	0.127	5.59
	50+	1.41	1.15	1.50	1	0.221	4.10
Character question	Yes	1.14	0.38	9.05	1	0.003	3.12
Current - Government Department		1.99	1.07	3.48	1	0.062	7.31
Former - CPS/prosecutor		-1.44	0.65	4.90	1	0.027	0.24
Former - Government Department		2.33	1.14	4.20	1	0.040	10.30
Practice type - Criminal		1.02	0.58	3.04	1	0.081	2.77
Practice type - Common Law		-1.12	0.64	3.13	1	0.077	0.32
Practice type - Family		-1.34	0.47	8.35	1	0.004	0.26
Practice type - Financial		2.22	0.82	7.37	1	0.007	9.23
Practice type - Education/Mental		1.63	0.70	5.49	1	0.019	5.12

Table A3. Final step of binary logistic regression model predicting invitation to the Assessment Centre for the 2003-04 DDJ Civil competition

Predictor	Level	B	S.E.	Wald	Df	P	e ^B
Constant		-0.70	0.46	2.31	1	0.129	0.49
Gender	Male	-0.64	0.26	5.97	1	0.015	0.53
Profession type	Barrister	0.56	0.28	4.08	1	0.043	1.75
Income	Missing			12.39	3	0.006	
	£0k - £49k	0.24	0.48	0.25	1	0.616	1.27
	£50k - £99k	0.15	0.48	0.09	1	0.759	1.16
	£100k+	1.18	0.51	5.40	1	0.020	3.24
Current - Other		1.96	1.18	2.77	1	0.096	7.13
Practice type - Education/Mental		1.03	0.45	5.30	1	0.021	2.81

⁷² Such a large number of independent variables and relatively few candidates can result in extremely high parameter estimates, standard errors or lack of model convergence (e.g. when too many combinations of variables result in cells with no cases). As number of candidates could not be increased, problem independent variables were eliminated.

Table A4. Final step of binary logistic regression model predicting invitation to the Assessment Centre for the 2004-05 DDJ Magistrates' Court competition

Predictor	Level	B	S.E.	Wald	df	P	e ^B
Constant		-1.70	0.71	5.74	1	0.017	0.18
Nationality	Non-British	-0.90	0.57	2.53	1	0.111	0.41
Litigation experience	Missing			4.22	2	0.122	
	No	-0.65	0.81	0.64	1	0.424	0.52
	Yes	0.36	0.67	0.29	1	0.589	1.43
Years in Practice	0 to 10			8.94	2	0.011	
	10 to 20	0.21	0.28	0.52	1	0.469	1.23
	20+	-0.85	0.38	4.94	1	0.026	0.43
Character question	Yes	1.08	0.26	17.44	1	<0.001	2.96
Practice	Common Law	-0.74	0.42	3.11	1	0.078	0.48
Practice	Property	-1.06	0.44	5.87	1	0.015	0.35
Practice	Other	-0.92	0.50	3.36	1	0.067	0.40

Table A5. Final step of binary logistic regression model predicting invitation to the Assessment Centre for the 2004-05 DDJ Civil competition

Predictor	Level	B	S.E.	Wald	df	P	e ^B
Constant		-0.55	0.38	2.11	1	0.146	0.58
Ethnicity	White			4.54	2	0.103	
	BME	-0.72	0.44	2.73	1	0.099	0.49
	Missing	-0.68	0.46	2.19	1	0.139	0.51
Profession type	Barrister	0.93	0.29	10.17	1	0.001	2.54
Years in practice	0 to 10			8.44	2	0.015	
	10 to 20	0.31	0.25	1.54	1	0.215	1.37
	20+	-0.62	0.34	3.25	1	0.071	0.54
Academic	Oxbridge			7.00	3	0.072	
	Top 12	-0.69	0.48	2.01	1	0.156	0.50
	Other	-0.37	0.36	1.10	1	0.294	0.69
	Missing	1.18	0.74	2.51	1	0.113	3.25
Prior appointment	No			8.00	2	0.018	
	Yes	1.08	0.39	7.92	1	0.005	2.96
	Missing	0.01	0.37	0.00	1	0.980	1.01
Current - Academic		-1.17	0.67	3.02	1	0.082	0.31
Practice type - Immigration		-1.39	0.84	2.71	1	0.100	0.25

Appendix B

Table B1. Binary logistic regression output predicting appointment by technical paper score.

	<i>B</i>	<i>S.E.</i>	<i>Wald</i>	<i>df</i>	<i>Sig.</i>	<i>Exp(B)</i>
M34 tech paper	-.015	.023	.422	1	.516	.985
Constant	.891	1.343	.441	1	.507	2.438
M45 tech paper	.038	.026	2.160	1	.142	1.039
Constant	-3.110	1.617	3.698	1	.054	.045
C34 tech paper	.070	.022	10.404	1	.001	1.073
Constant	-5.190	1.423	13.303	1	.000	.006
C45 tech paper	.044	.018	5.802	1	.016	1.045
Constant	-3.010	1.144	6.926	1	.008	.049

Appendix C

Table C1. Percentage correct predictions of success at Assessment Centre for each competency (DDJ Magistrates' Court 2003-04)

Competency	Percentage correct predictions of success
Managing Workload	71.7
Investigating & Analysing	66.0
Resolving & Deciding	69.8
Building Relationships	60.4
Communicating	66.0
Showing Authority	73.6
Managing Self	73.6
Developing Knowledge	66.0

Table C2. Percentage correct predictions of success at Assessment Centre for each competency (DDJ Magistrates' Court 2004-05)

Competency	Percentage correct predictions of success
Managing Workload	78.7
Investigating & Analysing	80.9
Resolving & Deciding	76.4
Building Relationships	77.5
Communicating	78.7
Showing Authority	83.1
Managing Self	80.9
Developing Knowledge	68.5

Table C3. Percentage correct predictions of success at Assessment Centre for each competency (DDJ Civil 2003-04)

Competency	Percentage correct predictions of success
Managing Workload	74.6
Investigating & Analysing	77.8
Resolving & Deciding	82.5
Building Relationships	72.2
Communicating	81.0
Showing Authority	75.4
Managing Self	81.7
Developing Knowledge	68.3

Table C4. Percentage correct predictions of success at Assessment Centre for each competency (DDJ Civil 2004-05)

Competency	Percentage correct predictions of success
Managing Workload	65.9
Investigating & Analysing	71.2
Resolving & Deciding	88.6
Building Relationships	72.7
Communicating	72.7
Showing Authority	75.0
Managing Self	80.3
Developing Knowledge	67.7

Appendix D

Table D1. Correlation between Sift and Assessment Centre Scores in DDJ Magistrates' Court 2003-04 competition

	SIFT SCORE			Total
	31.00	32.00	33.00	
ASSESSMENT CENTRE SCORE 19	1	0	0	1
20	2	0	0	2
21	1	3	0	4
22	1	1	0	2
24	2	3	0	5
25	4	4	0	8
26	3	2	0	5
27	3	0	0	3
28	1	0	0	1
29	3	0	1	4
30	5	1	1	7
31	1	0	0	1
32	0	1	0	1
33	2	1	0	3
34	0	1	0	1
35	2	0	0	2
Total	31	17	2	50

Table D2. Correlation between Sift and Assessment Centre Scores in DDJ Civil 2003-04 competition

Sift score	Number of candidates	Mean AC score
29	40	23.1
30	34	24.5
31	22	24.7
32	16	25.8
33	5	26.4
34	3	30.0

Table D3. Correlation between Sift and Assessment Centre Scores in DDJ Magistrates' Court 2004-05 competition

Sift score	Number of candidates	Mean AC score
15	26	22.0
16	25	23.8
17	19	22.6
18	10	23.3
19	7	24.3
22	1	(31, one score only)

Table D4. Correlation between Sift and Assessment Centre Scores in DDJ Civil 2004-05 competition

Sift score	Number of candidates	Mean AC score
13	1	19 (one score only)
14	1	15 (one score only)
15	16	24.0
16	33	24.4
17	31	23.2
18	25	24.1
19	16	23.6
20	7	23.4
21	1	20 (one score only)

Appendix E

Table E1. All DDJ appointees 2003 – 2005 profiled by age and other background characteristics

		AGE GROUP					Total
		25-34	35-39	40-44	45-49	50+	
GENDER	Female	15	24	17	5	0	61
		41.7%	51.1%	38.6%	29.4%	.0%	40.4%
	Male	21	23	27	12	7	90
		58.3%	48.9%	61.4%	70.6%	100.0%	59.6%
Total		36	47	44	17	7	151
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
ETHNICITY	White	30	39	36	16	6	127
		83.3%	83.0%	81.8%	94.1%	85.7%	84.1%
	BME	4	4	4	0	0	12
		11.1%	8.5%	9.1%	.0%	.0%	7.9%
	Missing	2	4	4	1	1	12
		5.6%	8.5%	9.1%	5.9%	14.3%	7.9%
Total		36	47	44	17	7	151
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Profession Type	Solicitor	21	27	32	11	5	96
		58.3%	57.4%	72.7%	64.7%	71.4%	63.6%
	Barrister	15	20	12	6	2	55
		41.7%	42.6%	27.3%	35.3%	28.6%	36.4%
Total		36	47	44	17	7	151
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Education	Oxbridge	6	4	6	3	2	21
		16.7%	8.5%	13.6%	17.6%	28.6%	13.9%
	Other Top 12	4	5	5	4	2	20
		11.1%	10.6%	11.4%	23.5%	28.6%	13.2%
	Other	25	36	33	10	3	107
		69.4%	76.6%	75.0%	58.8%	42.9%	70.9%
	unknown	1	2	0	0	0	3
		2.8%	4.3%	.0%	.0%	.0%	2.0%
Total		36	47	44	17	7	151
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
INCOME	Unknown	5	8	7	1	0	21
		13.9%	17.0%	15.9%	5.9%	.0%	13.9%
	£0 - £49k	10	9	11	1	0	31
		27.8%	19.1%	25.0%	5.9%	.0%	20.5%
	£50k - £99k	12	18	15	5	4	54
		33.3%	38.3%	34.1%	29.4%	57.1%	35.8%
	£100k+	9	12	11	10	3	45
		25.0%	25.5%	25.0%	58.8%	42.9%	29.8%
Total		36	47	44	17	7	151
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%