



The Bar Council

Bar Council response to the Judicial Appointments Commission consultation on the potential expansion of its Equal Merit Provision

18 September 2026

About us

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar

- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

This is the response of the Bar Council to the Judicial Appointments Commission (JAC) consultation on the potential expansion of its Equal Merit Provision (EMP). We support the adoption of lawful positive action measures to encourage a more diverse judiciary. On this basis, we have answered the consultation questions below:

Question 1. In light of evidence demonstrating underrepresentation of disabled people in the judiciary, to what extent would expanding EMP to disability support the JAC's statutory duty to encourage diversity in the range of people available for judicial appointment?

We believe that extending EMP to disabled applicants would support the JAC's statutory duty to encourage diversity in the range of people available for judicial appointment.

Question 2. To what extent do you consider extending EMP to disability to be a proportionate measure to address underrepresentation within the judiciary?

The figures that JAC identify establish underrepresentation of Disabled people in the judiciary and support the proportionality of extending EMP.

Question 3. What further evidence, if any, would strengthen the case that extending the EMP is a proportionate response to underrepresentation?

We note 68% of judges provide information on whether or not they have a disability.¹ We also note 8% of judges in the courts and 15% of judges in the tribunals declare a disability. Further improvements with respect to the disclosure rates for disability by members of the Judiciary may strengthen evidence of under-representation and the need for positive action measures, including use of the EMP.

References

¹ [Diversity of the Judiciary and Legal Professions 2025](#) (Section 10 – Other Characteristics)

Question 4. To what extent would extending EMP to disability enhance confidence in the JAC's selection process?

We note that the JAC has successfully applied the EMP to sex and ethnicity since June 2015 (more than 10 years). We expect extending the EMP to disability will increase confidence in judicial selection processes by facilitating the tackling of underrepresentation of Disabled people.

Question 5. Are there any risks or mitigations you would highlight in relation to expansion of EMP to disability?

Detailed information should be made available on how any organisation intends to apply the EMP in any specific recruitment/application exercise. We note that the JAC already publishes clear information about when and how the EMP is applied with respect to sex and ethnicity on its website.² This information explains steps taken in advance of a selection process (ie data analysis to evidence underrepresentation) and that information about evidence and process is communicated to applicants when EMP is to be applied to an exercise. We would highlight that the EMP is a provision to be specifically applied where the need for it exists rather than a policy. We also note that its use should be reviewed at regular intervals to demonstrate that it remains required and is operating appropriately. This would ensure that the JAC has the relevant data to explain the basis for applying the EMP if asked by an applicant.

The JAC outline clearly the approach taken at (i) shortlisting; and (ii) final decision. In our view the JAC adopts good practice here. Transparency is an essential part of mitigating risk. We do not believe that JAC needs to provide any more information with respect to disability, than it does already on sex and ethnicity.

References

² <https://judicialappointments.gov.uk/about-us/equal-merit/>

Question 6. On what basis should expansion be adopted? E.g. only at shortlisting; at both shortlisting stage and the selection stage; no expansion.

We would support application at shortlisting and selection based on the process outlined on the JAC website³.

Contact

Sam Mercer – Head of Policy: Equality, Diversity and Social Responsibility

SMercer@barcouncil.org.uk

References

³ <https://judicialappointments.gov.uk/about-us/equal-merit/>