



FLAC Submission to the Judicial Appointments Commission's Consultation on the Judicial Selection Statement November 2025

Introduction

FLAC¹ welcomes the opportunity to make a submission to the Judicial Appointments Commission ('the JAC') regarding their Judicial Selection Statement ('the Statement').

We note the consultation documents which include 'indicative'/draft versions of both elements of the Statement, a "*Statement of Selection Procedures*" and a "*Statement of Requisite Knowledge, Skills and Attributes*," as well as a report/review of the JAC's work to date². We also note the consultation questions which seek our views and feedback on the draft statements and "*any specific changes or additions that should be considered.*"

The Need to Promote Judicial Diversity

In 2014, FLAC highlighted that:

"It is essential to our democracy that the public have confidence in the courts and the judiciary, [and] that they believe that the judges ...are broadly representative of Irish society, and that they are alert to and have an understanding of the social issues of the day and an appreciation of the growing cultural diversity and changing nature of our society.

¹ **FLAC (Free Legal Advice Centres)** is an independent legal, human rights and equality organisation, which works in a number of different ways to promote equal access to justice:

In 2024, our Telephone Information and Referral Line received over 53,000 calls. FLAC also provides Phone Legal Advice Clinics.

Our independent law centre provides targeted legal services for the Traveller and Roma communities, and also undertakes public interest litigation (i.e. cases which may have an impact beyond the individual). It mainly provides representation in areas which are not covered by the current scheme of civil legal aid, namely housing, social welfare and discrimination.

FLAC also operates PILA (the Public Interest Law Alliance) which facilitates NGOs to obtain legal assistance from private lawyers via its pro bono referral scheme.

FLAC makes policy recommendations in relation to areas of law that most impact on people living poverty and disadvantage, including equality and anti-discrimination law, social welfare law, credit and debt law, housing law, human rights law, and access to justice. This includes policy reports and submissions to national and international bodies, including Oireachtas Committees and human rights monitoring bodies.

² JAC (2025), [Selection Process Report for January to July 2025](#).

...sections of society may lose confidence in the justice system if they feel people of their gender, ethnicity or other characteristics are seriously underrepresented in the judiciary.”³

In 2023, Cahillane highlighted that “[f]or a long time, the Irish judiciary was one of the most homogeneous groups in the State, comprising mostly white, male, upper/middle-class members... [and] there is still some way to go in order to achieve an appropriate balance and diversity on the bench”:

“...there has certainly been a great improvement in the number of women judges. Socio-economic diversity is a different story. A recent study on elite formation found that while private schools make up only 7% of the entire number of second-level schools in Ireland, 74% of superior court judges have attended these schools...”⁴

FLAC would also highlight that (as far as we can tell) there are no members of the judiciary who are black, members of the Traveller community or from other minority ethnic or migrant communities. We would also note only a very small number of people with disabilities have been appointed to the judiciary.

The lack of judicial diversity is closely linked to the financial and social inaccessibility of the legal professions and professional legal education.⁵ The process of achieving a judiciary which meaningfully reflects the diversity of the population begins with access to the legal classroom and legal professions, and in ensuring that a legal career is (and is presented as) a meaningful option for students. The work of the Legal Services Regulatory Authority in this regard is particularly notable.⁶ By extension, judicial diversity is also dependent on diversity amongst the legal professions, in particular Senior Counsel, and any diversity requirements in the relevant selection processes

The JAC’s Judicial Diversity Obligations

The draft Judicial Selection Statement regularly refers to the obligation of the JAC to make appointments on the basis of “*merit*” (which is undefined) without also referencing the concomitant specific legal obligation to promote judicial diversity. Section 39(2) of the JAC Act 2023 states that:

“...where the function of selection and recommendation of persons for appointment to judicial office in the State falls to be performed, account shall be taken, to the extent

³ FLAC (2014), [Preliminary Submission on the Review of Procedures for Appointment as a Judge](#), p.2.

⁴ Laura Cahillane (2023), [Diversity, the Merit principle, and the Judicial Appointments Commission Bill](#) (Trinity College Dublin School of Law, Legal Research Paper Series, Paper No.03/2023).

⁵ FLAC (2018), [Submission to Legal Services Regulatory Authority on the Legal Practitioners Education and Training Review](#).

⁶ LSRA (2019), [Legal Practitioner Education and Training: Report of the Independent Review Team](#).

feasible and practicable, of the objectives that the membership of the judiciary in each court should—

- (a) comprise equal numbers of male and female members,
- (b) reflect the diversity of the population of the State as a whole...

In addition, under section 42(1) of the Irish Human Rights and Equality Commission Act 2014 the JAC is required to “*in the performance of its functions, have regard to the need to— (a) eliminate discrimination, (b) promote equality of opportunity... and (c) protect the human rights of its members, staff and the persons to whom it provides services.*” This obligation should be referenced in the Judicial Selection Statement. The Employment Equality Acts 1998 to 2021 contains a prohibition on direct and indirect discrimination on nine discriminatory grounds in the context of access to employment. The employment equality legislation also contains a requirement to provide reasonable accommodation for people with disabilities and a number of ‘positive action’ provisions allowing for proactive measures to promote equality⁷.

The JAC is required to publish a “*diversity statement*” by the end of 2026 which:

“...shall set out the manner in which the Commission undertakes to give effect to the objective, set out in section 39(2)(b), that membership of the judiciary in each court in the State should reflect the diversity of the population of the State as a whole, and shall include procedures in place to achieve the objective, to the extent feasible and practicable, of improving the diversity of applicants and persons recommended for appointment and for nomination for appointment or election to judicial office including the procedures in place to assist in removing barriers faced by persons within the population as a whole that are under-represented in judicial office.”⁸

⁷ Section 24(1) of the Employment Equality Acts states: “*This Act is without prejudice to any measures— (a) maintained or adopted with a view to ensuring full equality in practice between men and women in their employments, and (b) providing for specific advantages so as—(i) to make it easier for an under-represented sex to pursue a vocational activity, or (ii) to prevent or compensate for disadvantages in professional careers.*”

Section 33 states: “(1) *Nothing in this Part or Part II shall prevent the taking of such measures as are specified in subsection (2) in order to facilitate the integration into employment, either generally or in particular areas or a particular workplace, of—(a) persons who have attained the age of 50 years, (b) persons with a disability or any class or description of such persons, or (c) members of the traveller community. (2) The measures mentioned in subsection (1) are those intended to reduce or eliminate the effects of discrimination against any of the persons referred to in paragraphs (a) to (c) of that subsection. (3) Nothing in this Part or Part II shall render unlawful the provision, by or on behalf of the State, of training or work experience for a disadvantaged group of persons if the Minister certifies that, in the absence of the provision in question, it is unlikely that that disadvantaged group would receive similar training or work experience. Savings and exceptions related to the family, age or disability.*”

⁸ Section 28 of the JAC Act 2023.

Views and Feedback on the Draft Statements & Observations on the JAC's Work to Date

Underemphasis on Diversity

The report on the JAC's work to date suggests that it has adopted a disappointingly restrictive approach to (and interpretation of) its diversity obligations:

"Under s. 39(1) of the 2023 Act, the Commission is obliged to carry out its function based on merit. The Commission considered the factors identified at s. 39(2) of the 2023 Act at the point of shortlisting and selection of nomination for government. The Commission then finalised the list of candidates to be recommended to the Government."⁹

It would be helpful to receive more detail about the consideration of the factors identified at section 39(2) at the point of shortlisting and selection, and how this consideration operated. It also appears to be the case that the consideration of the factors identified at section 39(2) did not take place prior to the point of shortlisting and that the marking system of applicants did not contain any element relevant to these factors. Again, clarification of these issues would be welcome. FLAC submits that the JAC's obligations under section 39(2) of the 2023 Act (as well as its equality and non-discrimination obligations) should animate all parts of the judicial selection process.

The draft Statement does not append the application form. As a result, the extent to which the form requires or allows for information to be furnished that is relevant to the factors under section 39(2) is not known. The 2023 Act appears to allow for diversity to be considered a part of "*merit*" to hold judicial office. However, the assessment process relies on the concepts of "*knowledge*", "*skills*" and "*attributes*". These can be defined and interpreted to incorporate diversity.

Comparative research undertaken by Cahillane and Lynch shows that the measures to promote/ensure diversity are a feature of judicial selection processes in other comparable jurisdictions:

"There are... differences to be seen in approaches to diversity, with Northern Ireland and Canada actively incorporating diversity strategies in their appointment processes to reflect the demographic makeup of the community, and Scotland also has a strong focus on promoting diversity, with specific measures in place to encourage applications from underrepresented groups. In England and Wales there are also efforts to promote diversity, but the approach may not be as systematic as in the other jurisdictions."¹⁰

⁹ JAC (2025), [Selection Process Report for January to July 2025](#), p.4.

¹⁰ Laura Cahillane and Carol Lynch (2024), [Judicial Selection Procedures in Ireland](#), p.56.

Applicants for judicial office in Canada are given the opportunity to “*self-identify diversity characteristics*” at the beginning of the application process:

“The questionnaire for Federal Judicial Appointments gives applicants the opportunity ‘to highlight their accomplishments and experiences in their responses, including how they live and interact with their local and broader communities, and how their experiences have shaped them’. In their assessment of candidates, the [Judicial Advisory Committee] endeavours to create a pool of candidates that is gender-balanced and reflective of Canada’s diversity. The language used promotes ‘more respectful and inclusive language for individuals to self-identify diversity characteristics’.”¹¹

Cahillane and Lynch recommend that the JAC should consider a “*tipping-point policy*”:

“...whereby candidates on equal points may be differentiated on the basis of characteristics necessary to achieve the goals of equality, diversity, and language needs.

...it would be important to apply this at the short-listing stage as well as the interview stage of the selection process. Because the device allows for prioritisation of candidates from underrepresented groups when qualifications are otherwise equal, this could be a key factor in enhancing the diversity of the judiciary, allowing it to reflect the community it serves.”¹²

Overemphasis on References & Referees

The process to date (and as suggested in the draft Statement) places a heavy emphasis and weighting on references and referees. In particular, it refers to “*reliable references*”. The requirement to provide three references is comparatively onerous. It requires a reference from a judge, senior legal practitioner, legal academic or person of similar standing. Decision-makers from quasi-judicial bodies are not included in this list. This could potentially exclude or deter applications from practitioners who practice primarily in such tribunals.

Transparency

It is desirable that the selection process would be as transparent as possible and that applicants would know the marking and weighting for the assessment of knowledge, skills and attributes. It is also desirable that the marking system would encompass the factors set out in section 39(2).

The documents do not commit to any specific weighting or marking system for use in the selection process or the publication of same. This would be extremely useful in allowing

¹¹ *ibid* at p.48.

¹² *ibid* at p.82.

applicants to understand the application process and how to engage with it. It is also important from a transparency perspective and to ensure that the application questions and how they are weighted align with the requirements of the 2023 Act and Judicial Selection Statement

It would be preferable that the JAC would provide individual feedback. The absence of same could deter applicants from diverse backgrounds from applying for a judgeship after an initial failed application.

Knowledge of Minority Communities & Access to Justice

The draft Statement of Requisite Knowledge, Skills and Attributes requires prospective judges to be aware of the needs of lay litigants/litigants in person and of the needs of court users who are from minority communities. It requires judges to have an *“appropriate awareness of the practical considerations that affect the experience of lay participants in the court system, whether as a party to proceedings, as a witness or otherwise,”* and an *“appropriate awareness of the diversity of the population of the State as a whole and of any matters arising from such diversity that may require special consideration in proceedings before a court.”* It also requires judges to embody a *“commitment to the fair and impartial application of the law and to access to justice.”*

It would be preferable if the Statement contained more details about the *“appropriate awareness of the diversity of the population of the State as a whole and of any matters arising from such diversity that may require special consideration in proceedings before a court.”* It would be helpful to identify elements of diversity (such as would be contained in an Equal Treatment Bench Book), including but not limited to people with disabilities, children, vulnerable adults, people with literacy and/or language issues, Travellers, Roma, and people from minority ethnic and migrant communities.

The documents do not mention a requirement of familiarity with the Equal Treatment Bench Book or a requirement to apply it. There is also no requirement in the documents for familiarity with the criminal and civil legal aid systems.

Decision-Making Skills & Experience

It is somewhat surprising that the Statement of Requisite Knowledge, Skills and Attributes does not reference decision-making skill and experience. The absence of such requirements may be unfavourable to potential applicants who have experience as decision-makers in quasi-judicial bodies.

Timing of Eligibility Determinations

It is unusual that the documents refer to eligibility checks being “*carried out toward the end of the selection process*” which may be after an interview. This could be quite unfair to applicants given the amount of work involved in the application process.

Reasonable Accommodation

Along with our concerns in relation to diversity, FLAC is concerned by the lack of any references to accessibility and reasonable accommodation in the Statement.

While the “*health*” requirements referred to in the documents are a requirement of the 2023 Act, they could be perceived as exclusionary and could deter applications from people with disabilities. This should be counterbalanced by a strong emphasis on reasonable accommodation in the documents having regard to the obligation in the Employment Equality Acts to provide reasonable accommodation for employees with disabilities, which extends to this process and to the employment of Judges.

Similarly, requirements to practice in any court or on any circuit may be potentially exclusionary for people with certain disabilities and are not family-friendly.

Recommendations

FLAC recommends:

- **The Judicial Selection Statement should explicitly refer to the JAC’s judicial diversity, equality and non-discrimination obligations and set out how they are applied in practice.**
- **The Statement should clearly state that membership of a minority group or community is a desirable attribute for a holder of judicial office and diversity should be part of the JAC’s working definition of merit. The JAC should pro-actively encourage members of minority groups/communities to apply for judicial office.**
- **The Statement should clearly state that reasonable accommodations will be provided to applicants for judicial office with disabilities and commit to engaging with such applicants about the nature of the accommodations to be provided.**
- **The Statement should put in place procedures to ensure judicial diversity, including by:**
 - **Including in the application form a section allowing applicants for judicial office to highlight ‘diversity characteristics’ such as gender, race, membership of the Traveller community, disability, family status, disability and disadvantaged socio-economic status,**

- requiring the JAC to consider diversity characteristics at all stages of the selection process, and
- adopting a Tipping-Point Policy “*whereby candidates on equal points may be differentiated on the basis of characteristics necessary to achieve the goals of equality, diversity, and language needs.*”
- The required amount of referees should be reduced. The Statement should explicitly refer to potential references from quasi-judicial decision-makers.
- The Statement should commit to providing individual feedback to unsuccessful applicants.
- The Statement should require familiarity with the Equal Treatment Bench Book and to apply it.
- The Equal Treatment Bench Book, if available, should be referred to in the Statement and it should be made publicly available so applicants may familiarise themselves with it (and because this would be of general benefit).
- If not available, an Equal Treatment Bench Book (along the lines of the Equal Treatment Bench book in Northern Ireland and the UK) should be developed in consultation with relevant stakeholders.
- The Statement should require familiarity with the criminal and civil legal aid systems.
- The Statement should require decision-making skill and experience from applicants.
- The JAC should commit, in the Statement, to publishing the weighting and marking systems used in the selection process.
- The application form should be annexed to the Statement.
- The Statement should provide that eligibility checks are conducted at the start of the selection process.
- The JAC should undertake a public consultation on its Diversity Statement and engage with the LRSA, IHREC, Disabled Persons Organisations, Family Rights Organisations, Traveller Organisations, LGBT Organisations and bodies such as FLAC in drafting that document.