

The JAC is not complacent and recognises there is more to do to increase judicial diversity. In 2015–16, 9% of JAC selections were BAME individuals; we want to improve that. We also want to see more candidates applying from different professional backgrounds, such as academia and the public sector.

Diversity is improving across the judiciary with faster progress in some areas than others. Last year, 45% of the JAC's recommended candidates were women. Recent statistics published by the Judicial Office show that 46% of tribunal judges are women and 12% are BAME. They also showed that the younger cohorts of judges are more diverse, a positive indicator for the future. We want the judiciary to reflect the society it serves and will continue to work with the government, judiciary and legal profession to ensure further progress is made.

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Cognitive biases: 15 more to think about

DECISION MAKING

By Leslie Cuthbert



In Lydia Seymour's article in the Spring 2014 edition of *Tribunals*, she explained about a key unconscious bias known as 'confirmation bias'. In the Autumn 2015 edition, I then described about the risks involved in being overconfident. However, these are only two of the many cognitive biases that exist. Here are 15 other common cognitive, or unconscious, biases that we are all prone to falling foul of whether as witness, party or decision-maker.

- 1) **Anchoring.** This involves people being over-reliant on the first piece of information that they receive. For example, if deciding how much money to award if initially given the sum of £10,000 the average amount awarded is likely to be higher than if the initial sum requested was £3,000.
- 2) **Availability heuristic.** People overestimate the importance of information that is available to them. We judge the probability of events by how quickly and easily examples come to mind. For example, are people with mental illness more likely to be the perpetrators or victims of violence? Because of media stories we are more likely to initially believe the former when in fact the latter is true statistically.
- 3) **Bandwagon effect (or herd effect).** The probability of one person adopting a belief increases based on the number of people who hold the belief. If other members of the tribunal speak first and are in agreement, the last person to speak may just go along with the view already expressed to fit in or look like they know what they are doing.
- 4) **Blind-spot bias.** Failing to recognise your own cognitive biases or considering yourself less biased than others is a bias in itself! For example, I have an appraisal which says I ask inappropriate questions, I believe it to be wrong preferring to focus on the fact that I've never received a complaint about my questioning.
- 5) **Choice supportive bias.** When you choose something you tend to feel positive about it even if that choice has flaws and you remember your choice as better than it actually was. For example, when a decision you have been involved in is overturned on appeal you are sure that the appeal body has not taken into account all of the factors you did and so your decision was the better one.
- 6) **Clustering illusion.** This is the tendency to see patterns in random events. For example, fluctuations in the stock market price of shares where we ignore differences in data but stress similarities.

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- 7) **Conservatism bias.** Where people favour prior evidence over new evidence or information that has emerged. Similar to cognitive dissonance whereby new evidence is discounted or discredited (see *Tribunals Autumn 2015*) this minimises new evidence in favour of our pre-existing way of looking at the world.
- 8) **Information bias.** The tendency to seek information when it does not affect action – more information is not always better. For example, asking an independent expert to prepare a report on an issue when two other reports already exist in respect of the same issue.
- 9) **Ostrich effect.** The decision to ignore dangerous or negative information by ‘burying one’s head in the sand’. There are plenty of examples you can think of yourself!
- 10) **Outcome bias.** Judging a decision based on the eventual outcome – rather than on the quality of the decision at the time it was made. This is similar to hindsight bias whereby the ‘correct’ choice at the time the decision was originally made appears obvious subsequently.
- 11) **Recency.** The tendency to weigh the latest information more heavily than older data. Therefore, if you have a run of recent cases with the same issue appearing within it, you are likely to conclude that this is an issue which is affecting other decision-makers within your tribunal.
- 12) **Salience or saliency bias.** Our tendency to focus on the most easily recognisable features of a person or behaviour. For example, when trying to explain someone’s behaviour we usually only have observable external information about that individual. This leads to these salient factors being more influential in determining the cause of the person’s behaviour.
- 13) **Selective perception.** Tied to cognitive dissonance, this is where we allow our expectations to influence how we perceive the world. For example, if we have the opinion that the advocate due before us is incompetent, from prior dealings with them, we are likely to focus our attention on their faults and miss any positive behaviours.
- 14) **Survivorship bias.** An error that comes from focusing only on surviving examples or past successes rather than on past failures, causing us to misjudge situations. For example, rather than focus on those cases you concluded which were upheld on appeal, study instead those cases where you were overturned.
- 15) **Zero-risk bias.** Sociologists have found that we love certainty – even if it’s counterproductive – hence we ignore probability and focus on the potential impact were the event to occur. We wish to entirely eliminate risks even when an alternative option might produce a greater reduction in risk overall. For example, choosing to keep the status quo rather than grant an application where there is a risk that things might go badly wrong which will not happen if the current situation is maintained. Of course, there is the possibility things will be even better but zero-risk bias makes us wish to eliminate risks completely.

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Unfortunately, there are many, many more biases but being forewarned means forearmed and if you bear these 15 in mind you will minimise the impact they have on your decision-making. Furthermore, if you sit with others you will have the benefit of their assisting you in spotting when cognitive biases may be affecting your decision-making just as they benefit from you identifying when they may be falling under the sway of one of their own biases.

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Sources: Brain Biases; Ethics Unwrapped; Explorable; Harvard Magazine; HowStuffWorks; LearnVest; Outcome bias in decision evaluation’, Journal of Personality and Social Psychology; Psychology Today; ‘The Bias Blind Spot: Perceptions of bias in self versus others’, Personality and Social Psychology Bulletin; ‘The Cognitive Effects of Mass Communication’, Theory and Research in Mass Communications; ‘The less-is-more effect: Predictions and tests’, Judgment and Decision-Making; The New York Times; The Wall Street Journal; Wikipedia; You Are Not So Smart; ZhurnalyWiki.