

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

Three Surveys.... Same Answers?

The judicial appointments bodies in Northern Ireland (NIJAC), England & Wales (JAC), and Scotland (JABS) have all undertaken research surveys in recent years¹. How similar were these surveys and how similar – or how different – were the outcomes?

The **aims** were broadly similar: to understand more about what the potential applicant pool thought about judicial office, about the appointments process, and about factors which encouraged or discouraged applications for judicial office. The JAC had a very specific objective relating to focussing their existing commitment to outreach and communication more precisely, but shared the broader aims more generally.

Response rates were good (Scotland), very good (NI) and excellent (E&W), and the data gathered was substantial in all cases (with Scotland producing the highest total response):-

	Target group/number	Response rate	No of questionnaires received
Northern Ireland /NIJAC	All legal profession/3,609	31%	1,104
England & Wales/JAC	Structured sample from legal profession/6,250	35%	2,182
Scotland/JABS	All legal profession/12,114	19%	2,319 ²

¹ The NIJAC research was conducted in 2007 and published in 2008; it comprised a survey plus additional qualitative research. The JAC survey was conducted in 2008/09 and published in 2009, and had been preceded by qualitative research. The JABS research was conducted in 2009 and published in 2009; no qualitative research has yet been done.

² Owing to a routing error, the answers to one question numbered 564.

The content of the survey questionnaires was, overall, similar although some questions were framed in different ways, and the answers analysed in slightly different ways. Some questions appeared in one survey and not in others. Comparisons are general, therefore, and have to focus on areas where clear similarity and dissimilarity appear – and on findings rather than figures (as the figures cannot be compared directly).

Judicial Office – what appeals and what doesn't?

All three surveys asked about this, and came up with very similar results. The intrinsic intellectual/professional interest was the strongest feature in all three, closely followed by pension arrangements, the public service element of the role, job security, the change in career focus, salary and, to a slightly lesser degree, work-life balance and status/prestige. The pattern of response on factors which do not appeal was also similar in all three: the isolated nature of the role was, universally, the least appealing aspect; the other major disincentives in common were: loss of flexibility in planning work, travel/being based in different places/geographical location, and judicial establishment/culture. There were some differences, but not many. Disruption to private/personal life was a strong concern in Northern Ireland and Scotland but was not specifically queried in England & Wales, and there was a personal security question which played strongly in Northern Ireland and was not asked about in the other two surveys.

What would encourage more applications?

Reactions in all three surveys were very similar. More information – about the role, about the skills required and about the appointment process – was the strongest feature, with more training, more (or the possibility of) work-shadowing, mentoring and part-time working also featuring.

Positive and negative influences on success in appointment

All three pieces of research covered this area in some detail, looking at both biographical and work-related factors (although there was some variation in approach to questions and analysis). All three reports reveal a tendency for groups to perceive advantages to other groups and disadvantages to their own – “the grass is always greener.....” effect. For example, in all three surveys, women tend to seeing ‘being male’ as giving advantage in appointment, whereas men see ‘being male’ as largely neutral but ‘being female’ as an advantage. Similar, if sometimes slightly less pronounced effects are noted in other areas such as professional grouping and ethnicity. This is a widely observed feature in this kind of research, and is not unique to the legal profession!

Perhaps the most striking similarity in this area is the set of perceptions reported in all three surveys relating to social background and the importance of social 'networks'. All three reflect this quite strongly in varying ways, and in all three cases, these social factors are seen as negative if you are 'working class' and not 'in the right social networks' and positive if you are 'middle/upper class' and in 'the right social networks'.

There are also a couple of significant differences. In England & Wales, 'being a solicitor', as opposed to a barrister, was revealed as a marked negative in relation to perceived chances of success in appointment and, as such, has a bearing on whether people apply. Whilst there are some differences in perception between branches of the Scottish profession, this is not seen as such a significant issue. This may reflect the importance of 'court experience' in judicial appointments in all three jurisdictions, and the fact that, in Scotland, solicitors do litigate in a way that they do not in the English courts.

Another divergent finding relates to gender differences in work specialisation. In Northern Ireland, a key finding relates to a marked tendency for women to specialise (more often than men do) in child law and matrimonial law, while men specialise (more often than women do) in all other areas, markedly so in common and criminal law. Some of the possible implications arising from this difference were followed up in qualitative research, which established the concept of 'chick law'. In England & Wales the question was not asked. In Scotland, it was, but with a different result. Here, there was no significant gendering of legal specialisation, but men were more likely to identify a greater number of branches of the law in which they said they specialised, and women a fewer number.

The Appointments Process

Northern Ireland and England & Wales, both of which have had, and have deployed, more resources into communication and outreach, both asked more questions about awareness. All three looked at what might 'put people off' or otherwise. There are no major differences here, although both Northern Ireland and England & Wales reported more significant negative issues relating to 'consultation' and 'references' than in the Scottish survey (but both these jurisdictions have more extensive, statutory consultation arrangements which may produce a different effect).

Questions about perceptions held about the judicial appointments process were asked rather differently in each area. Scotland put a rather broad question about confidence in the outcome, England & Wales asked about perceptions of fairness, prejudice and whether people thought appointments were made on merit alone. Northern Ireland did not ask direct questions about this but drew conclusions from the answers and analysis of the other responses. Northern Ireland's conclusions are the most positive, and they have been communicating more strongly for a longer period than the other two. England & Wales looked at perceptions of fairness, prejudice and merit, among those

who had applied before the formation of the JAC, since then, and not at all. In England & Wales, opinion was divided on whether the process was seen as fair – 46% of those who had applied since 2006 thought not, and 21% of those who hadn't applied also thought not. Only 51% thought that selection was based on merit only, and 55% believed that there was prejudice within the selection process. This provides an interesting comparison with the 47% of Scottish respondents who said that they did not have confidence that the process here resulted in the appointment of the best candidate. In neither case is it surprising given the range of perceptions about what does and does not influence appointment.

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