

Continuous Improvement

An Analysis of Scotland's Judicial Appointments Process

Report for the Judicial Appointments Board for Scotland

October 2009



Document Control

Project Title: An Analysis of Scotland's Judicial Appointments Process

MVA Project Number: C3762200

Document Type: Final Report

Directory & File Name: G:\Contracts\Contracts Live\C37622_Judicial Appointments Survey\7 Reporting\Final Report\Final Report_Delivered.Doc

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Executive Summary

Background

This is the first survey in which the whole legal profession in Scotland has been asked for its views and perceptions of judicial office and its appointments process, although similar research has already been carried out in Northern Ireland¹ and England and Wales². The survey and report was commissioned by the Judicial Appointments Board for Scotland, working in partnership with the Faculty of Advocates and the Law Society of Scotland, and with the support of the Lord President.

For the Judicial Appointments Board (JAB), the research had two main aims. Firstly, it was intended to establish the current make-up of the population that is eligible to apply for judicial office, and of the population that is not yet eligible – ie those who will be able to apply in the future. This is important for the Board to be able to plan its work and assess its success.

Secondly, the research sought to identify those factors, which were perceived as either encouraging or discouraging to those who might consider applying. In this context, perceptions, whether reflected in reality or not, are critical since it is on perceptions that people base their decisions. In order to encourage applications from the highest quality candidates from any and all backgrounds, it is important for the Board to ensure that any misperceptions are identified and corrected. It is also important for all branches of the justice system to be able to consider how it should develop in the future (whether in the context of the appointments process, the conditions of service or other work-related factors, which may influence career choices in the legal profession).

Methodology

A mixed methods approach was employed, combining a postal survey and an online survey. The survey was issued to all members of the Law Society of Scotland (around 11,188 persons in all), all members of the faculty of Advocates (around 748, including all 454 practising members) and all full time Sheriffs and Senators of the College of Justice/Lord Commissioners of Justiciary (around 178 in total). Part time Sheriffs also received the questionnaire as a solicitor or advocate.

In total, 12,114 questionnaires were distributed and a total of 2,319 completed returns were received. This represents a 19% response rate, which is not atypical for surveys of busy professional groups.

All data were analysed using SPSS³, with frequency counts generated for all variables and cross-tabulations generated for each of the key questions so as to compare the responses of different diversity strands.

¹ Northern Ireland Judicial Appointments Commission: "Research into the barriers and disincentives to judicial office by QUB and NISRA", 2007/08

² Judicial Appointments Commission: "Barriers to Application for Judicial Appointment Research", 2009

³ Statistical Package for the Social Sciences

Who responded to the survey?

Overall, there was nothing unusual about the demographic characteristics of the achieved sample and, where comparisons have been possible, the sample is largely similar both to relevant aspects of the overall Scottish population and to the Law Society's membership. Further, the demographic characteristics are very similar to the sample achieved in the 2006 Law Society survey⁴.

Good response rates were achieved from each of the branches of the profession, and the overall sample reflects the proportions of each branch in the overall population. As a result, however, solicitors account for the majority of respondents. Therefore caution is required when interpreting the results at the total sample level, as aggregate results may not be reflective of the views of the other professional branches. For this reason, the sample was disaggregated to reflect the views of the different branches of the profession.

Although a routing error resulted in a lower response rate to question 24, the achieved sample size (n=564) was sufficient to facilitate analysis of this question. Further, the sample structure was found to be reassuringly similar to the overall sample in terms of professional group and demographic background.

Overall, the size and shape of the survey response is usable and useful, and the data gathered provides a reasonable sample of baseline data for the Board to be able to use in its future work.

Who is eligible for judicial appointment, and who applies?

The profile of those who were ten or more years qualified as a solicitor or advocate, or were a Sheriff or Sheriff Principal at any stage between June 2002 and the time of the survey, and who were therefore eligible for Judicial appointment, had some notable features when compared to those who were ineligible.

Most significantly, the eligible population consisted of a higher proportion of males, and has a slightly higher proportion of respondents who stated that their religion was Church of Scotland compared to both the ineligible population and the sample as a whole. The percentage of those who were eligible to apply for judicial office and who have significant caring responsibilities was higher for this group than it was for the ineligible candidates.

Among the eligible respondents, whether they had applied for judicial office or not, there was little difference between the profile of those who said that they had previously applied and those who said that they had not; this group is largely white British, heterosexual male, and without disabilities.

Judicial office – what attracts and what deters?

In general, more aspects attracted than deterred respondents, and these incentives appear to have had a stronger effect than deterrents. The highest among these encouraging factors for those who were eligible to apply was 'the intellectual and personal qualities needed to perform the duties of judicial office' (78%); other encouraging factors which featured strongly were pension arrangements (72%), the public service element of the role (71%), the change of career focus involved (62%), and the opportunity to experience a wider range of work (63%). Factors most likely to deter (in the 30%-40% range) included the geographical location or the need to work in different geographical locations, disruption to family life and (for some) a reduction in earnings.

⁴ The Law Society of Scotland: "Equality and Diversity in the Legal Profession in Scotland", 2006

Judicial appointments – what do respondents believe does influence successful appointment and what do they believe should influence it?

Overall, the data gathered suggests that there is a general tendency for work-related factors, which are seen as positively influential, to reflect the experience of the respondents. In addition, there was a view, held by 83% of respondents, that having transferable skills and potential should be important, but only 48% perceived it to be important currently. This view (that transferable skills and potential should be important) is held more by women than by men, by non-white ethnic groups, and by younger age-groups – but it is also held fairly evenly across the professional groups, including full-time judicial office-holders. In contrast, there is a less consistent pattern of opinion about whether experience of particular areas of the law is, or should be, influential (with slightly more people seeing civil and commercial law as among the more important areas). Much more significant was the belief that court experience which was relevant to the post applied for should influence successful appointments.

The vast majority of respondents did not believe that biographical factors should have any influence on the probability of appointment, although there was a range of suppositions about what actually does influence it. Again, perceptions seemed to reflect the backgrounds of respondents with contrary views emerging: for example, men saw being female as a positive influence and women saw being male as a positive influence. Being from a middle/upper class background was perceived by nearly half of the eligible respondents as having a positive effect on applications, while being from a working class background was seen as having a negative influence by around a third. In addition, 67% of eligible respondents believed that 'being in the right social networks' is a positive influence in appointment – although virtually none believed that it should be. In general, this view seems to be more frequently held by solicitors, women and younger members of the profession, with a very slight tendency amongst some other minority groups (although the numbers in these are not great enough to provide a statistically significant conclusion).

Being aged under 40 or over 60, having a mental health or communication impairment, and having caring responsibilities were considered by the eligible respondents to have a negative effect. Moreover, more than half of the eligible respondents felt that mental health and communication impairments should have a negative impact on applications. The issue of caring responsibilities also emerged as important in various ways: women saw this as being an issue of much greater concern than men (although some saw this as positive whilst others saw it as a negative); more interestingly, a significant minority of respondents suggested that part-time working and caring responsibilities should be considered as a negative factor in making appointments to a greater or lesser degree.

The judicial appointment process – what encourages and discourages applicants?

There were split views regarding the levels of confidence, both personally and within the profession, that the process results in the appointment of the most suitable people; a large minority (42%) stated that they were not confident whilst 58% were either neutral or positive about this. Those who were not confident tended to be older and advocates or solicitor advocates, while a greater proportion of women were also discouraged by this. Further, respondents who were discouraged by these factors were also more likely to have made an unsuccessful application to the Judicial Appointments Board. Given the perceptions about what affects appointments (see above), it is, perhaps unsurprising that a significant number do not view the current process as always producing the best appointments.

Summary

The use of a 'slate'⁵ in shrieval appointments did discourage some respondents (19%), but has no negative effect on 81% of the sample. Further, the requirement to fill in an application form, to identify referees, and to participate in an interview process had no negative effect on most respondents (all above 70%).

Having good references, being known professionally by the judiciary, and being in the right social networks were all considered by over half of the eligible respondents to have a positive affect on applications. Of these, respondents felt that only having good references should have a positive effect on decisions.

Nearly three quarters of respondents stated that they agree with the statement "*I would not consider applying for judicial office unless I had far in excess of the minimum experience required to do the job (currently 10 years for most offices, but 5 years for advocates in relation to senatorial appointment).*" This has a significant bearing on the pool of applicants who are actually likely to apply (see below).

What changes would encourage whom to apply in future?

Flexible working options were reported to encourage 72% of women and 37% of men. Women were also more likely than men to be encouraged by more judicial skills training, better guidance/training on the appointment process, and by work shadowing schemes. All of these possibilities were also seen as attractive to those who are not yet eligible to apply.

Conclusions

The research highlights the areas in which further progress can be made towards ensuring that the Judicial Appointments Board for Scotland is perceived to be encouraging diversity in the range of applicants. It has also highlighted those areas that will encourage future applications from the most deserving on merit, as well as identifying some of the current barriers towards achieving this ideal.

Through this survey, the Board has been provided with the data to enable it to take considerable steps forward in terms of understanding the diversity of both current eligible applicants, and those who will become eligible for appointment in the medium and long term. The survey has provided evidence in relation to diversity among the legal profession in Scotland, and whether that diversity is reflected in applicants for judicial office.

In particular, the characteristics of the population that is eligible to apply for judicial office, and the views of that population, suggest that the actual pool of applicants for any competition will tend to be older (in order to significantly exceed the experience requirement, as reported by respondents) and, therefore, skewed in terms of age, gender and (possibly) other characteristics such as ethnicity. Widening the pool of high quality applicants may, therefore, take longer than the overall population figures suggest.

The survey provides a building block for the consideration of practicable suggestions to increase the proportion of people from under-represented groups who apply for judicial office. Importantly, these suggestions can now be user-led and evidence-based, thanks to the information provided by the legal community in response to this survey.

⁵ The term 'slate' refers to the practice of advertising, selecting and recommending (in a ranked order) a group of candidates from which appointments are then made over a stipulated period. It has been used chiefly where it is anticipated that there will be a number of vacancies occurring for the same role during a year, most typically for the office of Sheriff or Part-time Sheriff.

1 Introduction

1.1 Research in Context

1.1.1 The Judicial Appointments Board for Scotland was created in 2002, on a non-statutory basis, and was the first such body in the UK. Since then, similar bodies have been set up in England and Wales and in Northern Ireland, and in 2009 the Scottish Board became a statutory body. Both in its pre-statutory and statutory roles, the Board has been given the responsibility to recommend suitable candidates for judicial office, solely on merit and on the basis of good character. In carrying out this function, it is required to 'have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for judicial office.'

1.1.2 In 2006, the Board convened a Diversity Working Group, which includes representatives of the Faculty of Advocates and the Law Society of Scotland. The Working Group has the following remit:

To assist the Judicial Appointments Board for Scotland in considering ways of recruiting a Judiciary which is as representative as possible of the communities it serves, through:

- identifying evidence in relation to diversity among the legal profession in Scotland, and analysing whether that diversity is reflected in applicants for judicial office;
- considering the gaps in that evidence and suggesting how they might be filled;
- making practicable suggestions for increasing the proportion of people from under-represented groups who apply for judicial office; and
- making a report to the Board covering the above issues.

1.1.3 The term 'diversity' may refer to the following: sex or marital status, race, disability, age, sexual orientation, language or social origin, or other personal attributes including beliefs or opinions such as religious beliefs or political opinions.⁶

1.1.4 In its initial work, the Working Group found that there were significant gaps in the existing data, and that some *prima facie* indications that, for example, women may be under-represented in term of applications and appointments to the judiciary. Without more extensive data it was not possible to be sure about whether this was so, or what the position might be for other minority groups. This research survey was commissioned by the Board, in partnership with the Faculty of Advocates and the Law Society of Scotland, to address that information gap (especially in relation to those who are eligible to apply for judicial office), and also to identify the factors which may encourage or discourage applications.

⁶ The definition of 'equal opportunities' in The Scotland Act 1998 also includes 'social origin'.

1 Introduction

1.1.5 The objectives for the research were as follows:

- to establish baseline data on diversity which is statistically robust for the practising legal profession, and for the proportion of that population which is eligible for judicial appointment and for judicial office holders in Scotland (with reference to age, gender, ethnicity, religion, sexual orientation, disability and occupation of parents); and
- to identify from all practising members of the legal profession and the judiciary any potential barriers which could be standing in the way of eligible candidates applying to become Sheriffs or Judges, whether due to the conditions of service of judicial office (real or perceived), or to aspects of the recruitment process (real or perceived), and to elicit views about the factors which do or would encourage eligible candidates to apply.

1.2 Methodology

1.2.1 A mixed methods design was adopted, combining a traditional postal survey approach with a parallel online survey option. This was preferred to ensure that the survey was as inclusive, and accessible to as wide an audience as possible, and to meet the different participation preferences of the wider target audience.

1.2.2 Provisions were also made for participation by those who had visual or communication impairments, whereby the participant could take part over the telephone. However, this offer was not taken up by any of the respondents.

1.2.3 Respondents returned their completed questionnaires directly to the independent research consultancy running the work.

1.2.4 Appropriate steps were taken to protect respondents' anonymity.

Questionnaire

1.2.5 The questionnaire was designed to collect data in relation to:

- professional background;
- attitudes to judicial office and the appointment process;
- thoughts about what *does* and *should* influence the outcomes of a successful application for judicial office; and
- demographic characteristics.

1.2.6 As well as collecting data on the six diversity strands, the demographic questions also considered elements such as marital status, caring responsibilities and parents' occupation (the last being used as a proxy indicator for social origin/class).

1.2.7 A copy of the survey questionnaire is attached to this report as Appendix A.

1 Introduction

1.3 Response Rate and Confidence Intervals

1.3.1 The survey was distributed to:

- all members of the Law Society of Scotland (around 11,188 persons in all);
- all members of the Faculty of Advocates (around 748, including all 454 practising members); and
- all full time Sheriffs and all Senators of the College of Justice/Lord Commissioners of Judiciary (around 178 in total). Part-time Sheriffs received the questionnaire as a solicitor or advocate.

1.3.2 In total, 12,114 questionnaires were distributed and a total of **2,319** completed returns were received. The majority of returns were paper-based questionnaires (n=2209, 95%) while only 5% (n=110) were online submissions. Overall, this represents a **19%** response rate – not untypical for surveys of professional groups.

1.3.3 The total sample (n=2,319) allows us to be 95% confident that, where 50% of those interviewed gave a particular response, the true figure would be in the region of 48% - 52% (ie providing a confidence interval of $\pm 2.04\%$).

1.3.4 Due to an error in the routing, many respondents were erroneously routed past Question 24 on the survey document. This was identified at an early stage, and a correction circulated. Although this ultimately resulted in a lower response rate to this question (n=564), the sample size was sufficient to facilitate aggregate, as well as some disaggregate analysis of the responses to this question. Further, the sample structure of those who responded to Q24 was checked against the overall sample and was found to be reassuringly similar in terms of professional group and demographic background.

1.4 Data Analysis

1.4.1 Descriptive statistics were generated for the sample as a whole, for specified branches of the profession, and for the six diversity strands (age, gender, ethnicity, religion, sexual orientation and disability). Frequency tables were produced for all questions as well as cross-tabulations for the key variables. Responses to attitudinal questions were also disaggregated by demographic and professional variables to identify any differences.

1.4.2 Comparison data provided by the Law Society of Scotland and the Faculty of Advocates regarding their membership structure shows that the achieved sample is largely representative of the demographic structure of the profession (see Chapter 2). Good response rates were also achieved from the various branches of the profession and were largely proportionate to the various professional groups (see Chapter 3). However, as solicitors make up the largest proportion of the profession, they also account for the largest branch of the profession in the sample. Therefore, caution should be taken when interpreting results at the total sample level, as aggregate results may not fully reflect the views of the other branches of the profession. For this reason, the sample is broken down to reflect the views of the different professional groups where appropriate.

1.5 Research Caveats

- 1.5.1 Although results have been disaggregated by the six diversity strands, some of the diversity groups have small sample sizes. In these cases, a number of categories have been grouped together (into “other”) to provide larger sample sub-groups. Where samples are not of a significant size (generally where n is less than 100) this is indicated in the report and caution should be used when interpreting the results. We would also caution against generalising these results too broadly.
- 1.5.2 Finally, the results of this survey provide only a snap-shot of the current profession and attitudinal position of those who responded. It may be necessary to repeat the survey in the future to keep the data contemporary and to provide any information regarding changes over time.

1.6 Report Presentation

- 1.6.1 The remainder of this report is set out as follows:

- Chapter 2 describes the demographic characteristics of those who took part;
- Chapter 3 describes the professional background and current working status of participants;
- Chapter 4 outlines the demographic and professional characteristics of those respondents that were qualified for 10 or more years; those who have applied for judicial office; and those who were offered judicial office, or placed on the slate or list of recommended candidates;
- Chapter 5 provides details of respondents attitudes to judicial office and the application process, as well as a number of potentially influencing factors;
- Chapter 6 outlines the issues that were reflected in respondents’ ‘other comments’; and
- Chapter 7 provides overall conclusions to the research.

Chapters 2 to 6 each start with a summary which draws out the key findings and comments.

2 Respondent Demographics

Summary

Overall, there is nothing unusual about the demographic characteristics of the achieved sample.

Where comparisons have been possible, the sample is largely similar to both the overall Scottish population and the Law Society membership.

Further, the demographic characteristics are very similar to the sample achieved in the 2006 Law Society survey. The testing and matching process described in this section provides assurance that the achieved sample is robust in terms of both size and shape.

2.1 Introduction

- 2.1.1 This chapter details the demographic characteristics of the achieved sample, as well as limited comparisons with the Scottish population (where this information is available), and with the achieved sample from the 2006 diversity survey undertaken by the Law Society⁷. It should be noted that the 2006 Law Society survey was only conducted with members of this organisation and does not, therefore, reflect the other branches of the legal profession.

2.2 Age

- 2.2.1 In total, 99% (n=2307) of respondents disclosed their age, a breakdown of which can be found in Table 2.1 below. As the table shows, the sample achieved here is broadly similar in terms of age breakdown to that achieved in the 2006 Law Society survey.

Table 2.1 Age of Respondents

Age	Number	Percentage (%)	2006 Law Society Sample (%)	
25 and under	145	6	Less than 25	6
26-35	557	24	25-35	34
36-45	586	26	36-45	26
46-55	637	28	46-55	23
56-65	328	14	56-65	9
66-72	32	1	66 and older	2
72 and older	22	1		
Total	2,307	100	N	2972

⁷ The Law Society of Scotland (2006) "Equality and Diversity in the Legal Profession in Scotland".

2.3 Gender

2.3.1 In total, 2299 respondents (93%) specified their gender, with 57% (n=1303) being male and 43% (n=996) being female. Table 2.2 provides a breakdown of gender by professional group, and compares this with the 2006 Law Society Survey and other population data. This shows that the sample achieved is broadly representative of the overall professional populations.

Table 2.2 Gender Comparisons

		Male (%)	Female (%)	N
2009 JAB Survey	Total sample	57	43	2,299
	Solicitors	53	47	1,893
	Advocates	77	23	142
	Judicial Office Holders	79	21	24
2006 Law Society Survey ⁸		50	50	2,993
Solicitors on Roll ⁹		54	46	12,537
Faculty of Advocates Membership ¹⁰		78	22	768
Practicing members of Faculty of Advocates ¹¹		76	24	454
Scottish Population - Census 2001		48	52	5,062,011

2.3.2 When asked, the majority of respondents (99%) stated that they lived and worked in a gender identity the same as that which they were assigned at birth.

2.3.3 In total, 1811 respondents stated whether they felt able to discuss their gender identity at work. Overall, 86% felt that they were able to discuss this, compared to only 9% who felt they could not, and 5% who stated they could with some people, but not all.

⁸ The Law Society of Scotland (2006) "Equality and Diversity in the Legal Profession in Scotland" Pg 11. Survey of Law Society members only, not representative of total legal profession.

⁹ Number on Roll as at 31/10/2008, provided by the Law Society for Scotland.

¹⁰ Membership details as at 02/02/2009, provided by the Faculty of Advocates.

¹¹ Membership details as at 02/02/2009, provided by the Faculty of Advocates.

2 Respondent Demographics

2.4 Sexual Orientation

- 2.4.1 Table 2.3 shows that, of the 98% of respondents who disclosed their sexual orientation, the majority (96%) were heterosexual. This is similar to the proportion reported in the 2006 Law Society survey (95%).

Table 2.3 Sexual Orientation of Respondents

Sexual Orientation	Number	Percentage (%)	2006 Law Society Sample (%)
Heterosexual / Straight	2186	96	95
Homosexual Man	52	2	2
Lesbian	6	<1	<1
Bi-sexual Man	9	<1	<1
Bi-sexual Woman	11	<1	<1
Other	2	<1	<1
Total	2266	100	n=3017

2.5 National Identity

- 2.5.1 Of the 99% (n=2304) of respondents who specified their national identity, the majority were either Scottish (73%) or British (22%). Table 2.4 displays the full range of national identities given.

Table 2.4 National Identity of Respondents

National Identity	Number	Percentage (%)
Scottish	1691	73
British	509	22
English	35	2
Welsh	5	<1
Irish	18	1
Other	46	2
Total	2,304	100

2.6 Ethnicity

- 2.6.1 Overall, 90% (n=2296) of respondents gave details of their ethnicity, the majority of whom (95%) were white British. Table 2.5 gives a full breakdown of respondents' ethnicities and shows that the achieved sample is very similar to that achieved by the 2006 Law Society survey and to the 2001 Scottish Census results.

Table 2.5 Ethnicity of Respondents

Ethnicity	Number	Percentage (%)	2006 Law Society Sample (%)	Census 2001 (%)
White British	2175	95	95	96
Other White Background	77	3	2	2
Indian	7	<1	<1	<1
Pakistani	14	1	<1	1
Chinese	2	<1	<1	<1
Mixed	14	1	<1	<1
Other Ethnic Background	7	<1	<1	<1
Total	2296	100	3017	5,062,011

2.7 Religion/Faith/Belief

- 2.7.1 Only 2% of respondents declined to indicate which, if any, religion, religious denomination, or body they belonged to or followed. Of those who did, over half (57%) stated that they held some form of Christian belief, whilst a further two fifths (40%) stated that they belonged to/followed no religion, faith or belief. Table 2.6 provides the full breakdown and shows that the achieved sample is very similar to that achieved in the 2006 Law Society Survey.

Table 2.6 Religion/Faith/Belief

Religion/Faith/Belief	Number	Percentage (%)	2006 Law Society Sample (%)	Census 2001 (%)
Church of Scotland	777	34	38	45
Roman Catholic	332	15	13	17
Other Christian	179	8	8	7
Buddhist	7	<1	<1	<1
Hindu	3	<1	<1	<1
Muslim	11	1	1	<1
Jewish	10	<1	1	1
Sikh	4	<1	<1	<1
Other	32	1	1	1
None	920	40	37	29
Total	2275	100	2933	4,783,950

2.8 Disability

2.8.1 Overall, 3% of respondents (n=66) stated that they had a disability. This compares to 2% of the sample achieved in the 2006 Law Society survey. Of those who declared a disability, 59 specified the nature of their disability, and Table 2.7 displays the disability classifications disclosed by respondents.

Table 2.7 Disability Classifications

Disability Type	Number	Percentage (%)
Visual Impairment	8	14
Communication Impairment	9	15
Mobility	12	20
Mental Health	5	9
Learning Impairment	5	9
Other	20	33
Total	59	100

2.9 Marital/Civil Partnership Status

2.9.1 The majority of respondents (98%) disclosed their marital/civil partnership status. Table 2.8 below provides a full breakdown of responses.

Table 2.8 Marital/Civil Partnership Status

Status	Number	Percentage (%)
Never been married or in a civil partnership	599	26
Married and living with a spouse <i>or</i> in a civil partnership and living with a civil partner	1537	67
Separated from most recent spouse/civil partner	62	3
Most recent marriage/civil partnership dissolved	73	3
Most recent spouse/civil partner deceased	9	1
Total	2280	100

2.10 Dependents

- 2.10.1 Overall, 31% (n=722) of respondents reported that they had significant caring responsibilities for one or more dependent. Table 2.9 shows that the majority of these respondents had significant caring responsibilities for a child.

Table 2.9 Significant Caring Responsibilities

Significant Caring Responsibility	Number	Percentage (%) of those with significant caring responsibilities*	Percentage of whole survey sample
For Children	610	84	26
For People Other Than Children	169	23	7

* Percentages do not add to 100% as the question permits multiple responses.

- 2.10.2 In total, 48% (n=1106) of respondents stated that they had one or more children. Table 2.10 shows the percentage of these respondents who said they had a child in each age group.

Table 2.10 Children's Age Groups

Child's Age Group	Number	Percentage (%)
Under 5 Years	331	30
5-11 Years	426	39
12-16 Years	379	34
17 Years And Over	426	39
Total	1106	142*

* Percentages do not add to 100% as the question permits multiple responses.

2.11 Parents' Occupations

- 2.11.1 Of the 98% of respondents who disclosed the occupations of their parents at the time they started their legal training, the greatest proportion had parents in professional employment.
- 2.11.2 Table 2.11 shows that, for respondents' fathers, the most typical occupations were those of a professional or managerial nature. Mothers were more typically involved in professional employment or full time parenting/caring. This is largely comparable with the sample achieved in the 2006 Law Society survey.

Table 2.11 Parents' Occupations

	Father		Mother		2006 Law Society Sample (%)	
	N	%	N	%	Father	Mother
Unemployed	18	<1	111	5	1	3
Unskilled	111	5	279	12	6	10
Skilled	312	14	326	14	18	16
Self-employed	281	12	121	5	n/a	n/a
Professional	796	35	641	28	38	29
Managerial	360	16	102	4	21	6
Executive	103	5	30	1	8	2
Legal	122	5	18	1	8	1
Full-time Parent / Carer	-	-	563	25	<1	33
Deceased	153	7	68	3	n/a	n/a
Not Known	16	<1	6	<1	n/a	n/a
Total	2272	100	2265	100	n=2972	n=2949

3 Professional Background

Summary

Overall, good response rates were achieved from each of the branches of the profession and the overall sample reflects the proportions of each branch in the overall population. As a result, however, solicitors accounted for the majority of respondents meaning that the aggregate data largely reflects their views. This has been taken into account in the analysis to pull out the different views of the various branches of the profession.

Only 6% of respondents had ever taken a career break, largely for maternity leave. Over half of the respondents work for 41 hours or more per week. Most worked in commercial law or with private clients.

Men seemed rather more likely to work in criminal law (22:14%), commercial law (48:38%) and private practice (32:24%) than women. However, there appear to be no areas which women were more likely to cite as their 'main areas of work', which may be partly explained by the fact that men generally seemed to claim more 'main areas' than women.

3.1 Current Status

- 3.1.1 All respondents were asked to provide details of their current working status, with the majority (82%, n=1906) stating that they were a solicitor. Table 3.1 provides a full breakdown of respondents' current professional status and outlines the response rate achieved within the various groups.

Table 3.1 Current Working Status

	Population	Sample Achieved	Response Rate (%)	Percentage of Sample (%)
A holder of a full-time judicial office	178	89	50	4
A holder of a part-time judicial office	n/a	73	-	3
An Advocate	768 ¹²	145	19	6
A Solicitor-Advocate	n/a	62	-	3
A Solicitor	11,188	1,906	17	82
None of these/Not specified	-	44	-	2
Total	12,134	2,319	19	100

- 3.1.2 Some of the part-time judicial office holders (n=15) also indicated their other status; three stated that they were both a holder of part-time judicial office and an advocate, two respondents stated that they were a holder of part-time judicial office and a solicitor-advocate, and ten respondents stated that they were both a holder of part-time judicial office

¹² The survey was distributed to all 768 members of the Faculty of Advocates, which includes 454 practising members and 314 non-practising members.

3 Professional Background

and a solicitor. These respondents have been categorised as part-time judicial office holders for all disaggregate analysis by professional status throughout the remainder of this report.

Geographical Location

- 3.1.3 As shown in Table 3.2, nearly half of all respondents worked in Lothian and Borders (n=1015; 46%), while a further 28% (n=619) normally worked in Glasgow and Strathkelvin.

Table 3.2 Geographical Areas of Work

	Number	Percentage of Cases (%)
Glasgow and Strathkelvin	619	28
Grampian, Highland and Islands	382	18
Lothian and Borders	1015	46
North Strathclyde	236	11
South Strathclyde, Dumfries and Galloway	256	12
Tayside, Central and Fife	369	17
Total Number of Cases	2187	132*

* Percentages do not add to 100% as the question permits multiple responses.

3.2 Professional Background

Solicitor Training

- 3.2.1 Of the 2308 respondents who described their professional background, 88% (n=2033) stated that they were qualified as a solicitor.
- 3.2.2 Of the 2033 respondents who stated they were qualified as a solicitor, 2026 detailed the age at which they had qualified. Table 3.3 shows that, of these respondents, 61% (1225) qualified as a solicitor when they were under 25.

Table 3.3 Age Qualified as a Solicitor

	Number	Percentage (%)
Under 25	1225	61
25 to 30	552	27
31 to 35	88	4
36 to 40	56	3
41 to 45	40	2
46 to 50	24	1
51 to 55	23	1
56 to retiral	18	1
Total	2026	100

3 Professional Background

- 3.2.3 Again, of the 2033 people who stated they were qualified as a solicitor, 2019 stated how many years' experience they had. Table 3.4 shows that 40% (n=808) of respondents had 21 years of post qualification experience, compared to 22% (n=432) who had 1 to 5 years of experience.

Table 3.4 Post-Qualification Experience: Solicitors

	Number	Percentage (%)
1 to 5	432	22
6 to 10	269	13
11 to 15	248	12
16 to 20	262	13
21 and above	808	40
Total	2019	100

- 3.2.4 Table 3.5 shows the number and percent of respondents who had acquired rights of audience in the higher courts as a solicitor advocate.

Table 3.5 Solicitors who have acquired Rights of Audience in the Higher Courts

	Yes (%)	No (%)	Number
Court of Session, House of Lords and Privy Council	3	97	1985
High Court of Judiciary and Privy Council	2	98	1936
Other Jurisdictions	1	99	1924

Scottish Bar

- 3.2.5 Overall, 9% (n=212) of respondents stated that they had been called to the Scottish Bar, of which, 41% (n=87) were called between the ages of 25 and 30 (see Table 3.6). Of those who also specified their gender (n=208), 75% (n=157) of those called to the Scottish bar were males and 25% (n=51) were females.

Table 3.6 Age called to the Scottish Bar

	Number	Percentage (%)
Under 25	13	6
25 to 30	87	41
31 to 35	60	28
36 to 40	23	11
41 to 45	20	9
46 to 50	6	3
51 to 55	2	1
56 to retiral	1	1
Total	212	100

3 Professional Background

- 3.2.6 Table 3.7 shows that there was a broad spread of responses regarding the years spent practising at the Scottish Bar, with 21% (n=45) of respondents having spent 1 to 5 years, 20% (n=43) of respondents having spent 6 to 10 years, and a further 20% (n=41) of respondents having spent 11 to 15 years at the Scottish Bar.

Table 3.7 Years of Practice at the Scottish Bar

	Number	Percentage (%)
1 to 5	45	21
6 to 10	43	20
11 to 15	41	20
16 to 20	32	15
21 and above	50	24
Total	211	100

Queen's Counsel

- 3.2.7 A total of 4% (n=88) of respondents said that they were a Queen's Counsel, representing a 49% response rate from this group (88 out of 180 replied). Overall, 84% (n=73) were male and 16% (n=14) were female.
- 3.2.8 Most were either aged 36 to 40 (36%, n=31), or 41 to 45 (35%, n=30) upon entry (see Table 3.8).

Table 3.8 Age at taking Silk

	Number	Percentage (%)
Under 31	-	-
31 to 35	1	1
36 to 40	31	36
41 to 45	30	35
46 to 50	15	18
51 to 55	4	5
56 to retiral	4	5
Total	85	100

3.3 Offices Held

- 3.3.1 Respondents were asked to detail any offices they had previously held, and/or currently held. Overall, only 273 respondents indicated that they had either previously or currently held at least one office. In 46% of cases (n=125), respondents held the office of Tribunal Chair/Judge, while in 32% of cases (n=87) respondents held the office of part-time Sheriff (or a temporary Sheriff pre-1999). All responses are detailed in Table 3.9.

Table 3.9 Offices Held Currently or Previously

	Number	Percentage of Cases (%)
Senator of the College of Justice	29	11
Sheriff Principal	10	4
Sheriff (Resident or Floating)	63	23
Part-time Sheriff (or a temporary Sheriff pre-1999)	87	32
Honorary Sheriff	29	11
Tribunal Chair/Judge	125	46
Tribunal Member	43	16
Re-employed Retired Judge	4	1
Temporary Judge	11	4
Temporary Sheriff Principal	7	3
Total Number of Cases	273	151*

* Percentages do not add to 100% as the question permits multiple responses.

3.4 Main Occupation

- 3.4.1 Of the 2256 respondents who specified their main occupation, almost half (47%, n=1058) were a solicitor or solicitor advocate in private practice. This is shown in Table 3.10 below.

Table 3.10 Main Occupation

	Number	Percentage (%)
Judicial Office	120	5
Advocate	133 ¹³	6
Advocate Depute	24	1
Solicitor or Solicitor Advocate in Private Practice	1058	47
Solicitor or Solicitor Advocate in Public Sector	253	11
Solicitor or Solicitor Advocate in Charitable Organisation	50	2
Solicitor or Solicitor Advocate in Commercial Organisation	490	22
Solicitor or Solicitor Advocate in Higher and Further Education	9	<1
Solicitor or Solicitor Advocate in Crown Office and Procurator Fiscal Service	71	3
Full-time parent or carer	9	<1
Other	39	2
Total	2256	100

¹³ Although 145 identified themselves as an Advocate previously, only 133 identified this as their main occupation.

3.5 Changes to Career Status

- 3.5.1 In total, 940 respondents indicated that their status had changed during their career. Of these respondents, 43% (n=405) changed their status from a solicitor in private practice to an employed/in-house solicitor. Table 3.11 provides a full breakdown of responses.

Table 3.11 Changes to Status

	Number	Percentage of Cases (%)
Solicitor to Solicitor Advocate	85	9
Solicitor to Advocate	148	16
Solicitor Advocate to Advocate	2	<1
Advocate to Advocate Depute	43	5
Advocate to Queen's Counsel	79	8
Solicitor Advocate to Queen's Counsel	4	<1
Solicitor Advocate to Advocate Depute	2	<1
Advocate to Solicitor Advocate	1	<1
Advocate to Solicitor	6	1
Other employment/profession to Solicitor	273	29
Other employment/profession to Advocate	24	3
Solicitor in private practice to employed/in-house Solicitor	405	43
Employed/in-house Solicitor to Solicitor in private practice	188	20
Total Number of Cases	940	134*

* Percentages do not add to 100% as this question permits multiple responses.

- 3.5.2 In total, 30% (n=686) of respondents reported that they had taken a break from full-time working. In 56% of these cases (n=383), respondents stated that they had taken a break from full-time working because of maternity (including a paid or unpaid break for that purpose). In 39% of these cases (n=267), respondents stated they took a break because of part-time working. Table 3.12 shows all the responses that were given.

Table 3.12 Taken a Break from Full-time Working

	Number	Percentage of Cases (%)
Part-time working	267	39
Maternity (including a paid or unpaid break for that purpose)	383	56
Paternity (including a paid or unpaid break for that purpose)	53	8
Other career break	228	33
Total Number of Cases	686	136*

* Percentages do not add to 100% as this question permits multiple responses.

3.6 Typical Work

- 3.6.1 Respondents were asked to indicate how many hours they worked per week. Table 3.13 shows that, of the 2292 respondents who answered the question, just over two thirds of respondents worked between 31-50 hours per week (67%, n= 1557).

Table 3.13 Typical Working Week

	Number	Percentage (%)
Less than 10	37	2
11 to 20	72	3
21 to 30	128	6
31 to 40	583	25
41 to 50	974	42
51 to 60	362	16
61 or more	136	6
Total	2292	100

- 3.6.2 Table 3.14 shows that, in 43% of cases (n=999), respondents reported that the area of work in which they spent the most time was commercial law, while in 28% of cases (n=655) the area of work where most time was spent was with a private client. These were the two main areas of work that respondents were involved in.

Table 3.14 Main Areas of Work

	Number	Percentage of Cases (%)
Criminal Law	426	19
Employment Law	313	14
Child, Family, Matrimonial Law	462	20
Commercial Law	999	43
Corporate Law	411	18
Personal Injury	450	20
Administrative/Public Law	404	18
Private Client	655	28
In-House Legal Advisor	326	14
Agricultural Law	28	1
Other	83	4
Total Number of Cases	2303	199*

* Percentages do not add to 100% as this question permits multiple responses.

- 3.6.3 When asked about the one area of work where most time was spent, 23% (n=515) of the 2207 respondents who answered indicated that they spent the most time in commercial law. A breakdown of all responses can be found in Table 3.15.

Table 3.15 Area Where Most Time Spent

	Number	Percentage (%)
Criminal law	254	11
Employment law	86	4
Child, Family, Matrimonial law	207	9
Commercial law	515	23
Corporate law	143	7
Personal injury	167	8
Administrative/Public law	141	6
Private Client	418	19
In-House Legal Advisor	199	9
Agricultural Law	16	1
Other	61	3
Total	2207	100

3.7 Gender and Working Practice

3.7.1 When gender and professional group are taken into consideration (see Vol 2, Table 2.22) the following may be detected:

- men appeared more likely to work in criminal law (22%:14%), commercial law (47%:38%) and private practice (32%:24%) than women; and
- there appear to be no areas which women were markedly more likely to cite as their 'main areas of work'. This may be at least partly explained by the fact that men generally claim to work in more areas than women.

3.7.2 When distinguishing advocates from solicitor-advocates and solicitors, some bigger gender differences appear in that:

- men did rather more activities than women but the differences were not quite so marked;
- women advocates were more likely (30%:13%) to work in child and family law than male advocates; and
- men advocates were more likely to work in commercial (56%:39%) and admin/public law (40%:30%) than women advocates; however, the opposite was true for solicitor-advocates, with women solicitor-advocates being more likely to work in commercial (53%:45%) and admin/public law (41%:20%) than men solicitor-advocates.

3.7.3 Among solicitors, fewer differences appear, although men may be slightly more likely to be working commercially (47%:39%) and a little more notably in private client work (35%:25%), compared to women.

4 Profile of Eligibility and Applications

Summary

The profile of those who were ten or more years qualified as a solicitor or an advocate, or were a Sheriff or Sheriff Principal at any stage between June 2002 and the time of the survey, and who were therefore eligible for Judicial appointment, had some notable features when compared to those who were ineligible, and when compared to the total sample.

Most significantly, the eligible population consisted of a higher proportion of males, and has a slightly higher proportion of respondents who stated that their religion was Church of Scotland compared to both the ineligible population and the sample as a whole. The percentage of those who were eligible to apply for Judicial office and who had significant caring responsibilities was higher than the percentage among ineligible candidates.

Among the eligible respondents, the profiles of those who said that they had previously applied were largely white British, heterosexual males, without disabilities. Within the eligible group, however, there is little difference between the profiles of those that have applied and those that have not.

4.1 Profile of Eligible Applicants

- 4.1.1 All respondents were asked to indicate whether they were ten or more years qualified as a solicitor or an advocate, or were a Sheriff or Sheriff Principal at any stage between June 2002 and the date of the survey (ie February/March 2009). This has been used as a proxy measure to indicate whether respondents were eligible to apply for judicial office or not. As such, respondents will be referred to as “eligible” or “ineligible” from this point onwards.
- 4.1.2 In total, 2303 respondents gave details of their eligibility for judicial appointment. Of these, 56% (n=1304) gave responses which indicated that they were eligible, while 999 respondents (43%) reported that they were not. The profiles of eligible and ineligible respondents are outlined in Table 4.1.
- 4.1.3 Particularly notable is the fact that 69% of men were eligible compared with 40% of women respondents. Although the numbers are very small, it is also interesting to note that only 23% of the ethnic minority respondents were eligible compared with 57% of those who reported that they were White British; although not tested, this may be age related, and proportions may change in the future as greater numbers of ethnic minority lawyers reach the eligibility level in terms of the number of years post-qualification. The lack of historical data also makes it difficult to draw any reliable conclusions.
- 4.1.4 Further, 67% of advocates responding were eligible, compared with 52% of solicitors. Also, 62% of Church of Scotland respondents were eligible; 53% of Roman Catholic respondents were eligible; 56% of Other Christians were eligible, and 53% of those declaring no faith were eligible.
- 4.1.5 In addition, a higher proportion of those with significant caring responsibilities were eligible (63%) compared to those who were not (33%).

Table 4.1 Profile of Eligible vs Ineligible Respondents¹⁴

		Eligible		Ineligible		Total Sample*	
		N	%	N	%	N	%
Professional Group	Full-time Judicial Office	81	6	8 ¹⁵	1	89	4
	Part-time Judicial Office	67	5	6 ¹⁶	1	73	3
	Advocate	97	7	47	5	145	6
	Solicitor-Advocate	46	4	16	2	62	3
	Solicitor	994	76	898	90	1906	82
	None of these	18	1	24	2	43	2
Gender	Male	896	69	402	41	1303	57
	Female	399	31	586	59	996	43
Sexual Orientation	Heterosexual	1221	96	950	97	2186	96
	Other	51	4	28	3	80	4
Ethnicity	White British	1246	96	914	93	2175	95
	White Other	37	3	39	4	77	3
	Other	10	1	34	3	44	2
Religion	Church of Scotland	484	38	286	29	777	34
	Roman Catholic	175	14	154	16	332	15
	Other Christian	101	8	78	8	179	7
	Other	28	2	39	4	67	4
	None	489	38	425	43	920	40
Disability	Yes	38	3	27	3	66	3
	No	1256	97	960	97	2231	97
Significant Caring Role	Yes	457	37	241	24	722	32
	No	813	63	744	76	1567	68

*Includes those who did not answer this question.

¹⁴ All data are from the questionnaire, no data has been taken from other sources.

¹⁵ It would not be expected that someone currently holding judicial office would give responses indicating that they were ineligible, however, we assume that these respondents did not consider themselves to fall into any of the four categories used to make the judgement, ie a solicitor, an advocate, a Sheriff or Sheriff Principal.

¹⁶ As above.

4.2 Profile of Applicants

- 4.2.1 Of those respondents who were eligible, 1293 respondents went on to specify whether or not they had applied for judicial office in an exercise run by the Judicial Appointments Board. Of these, 17% (n=215) had applied, whilst 83% (n=1078) had not. The profiles of those respondents who had and had not applied are outlined in Table 4.2.

Table 4.2 Eligible Respondents who Applied vs Not Applied for Judicial Office¹⁷

		Applied		Not Applied		Total Eligible Respondents	
		N	%	N	%	N	%
Professional Group	Full-time Judicial Office	47	22	32	3	81	6
	Part-time Judicial Office	38	18	28	3	67	5
	Advocate	22	10	73	7	97	7
	Solicitor-Advocate	9	4	36	3	46	4
	Solicitor	96	45	893	83	994	76
	None of these	3	1	15	1	18	1
Gender	Male	153	72	735	69	896	69
	Female	60	28	336	31	399	31
Sexual Orientation	Heterosexual	198	96	1012	96	1221	96
	Other	9	4	42	4	51	4
Ethnicity	White British	203	95	1033	97	1246	96
	White Other	8	4	28	2	37	3
	Other	3	1	7	1	10	1
Religion	Church of Scotland	62	29	416	39	484	38
	Roman Catholic	36	17	139	13	175	14
	Other Christian	19	9	82	8	101	8
	Other	4	2	24	2	28	2
	None	90	43	395	37	489	38
Disability	Yes	5	2	33	3	38	3
	No	209	98	1036	97	1256	97
Significant Caring Role	Yes	87	41	384	36	475	37
	No	126	59	680	64	813	63

¹⁷ All data are from the questionnaire, no data has been taken from other sources.

4 Profile of Eligibility and Applications

- 4.2.2 There were no real gender differences in the proportions of eligible respondents that had and had not applied, with 17% of eligible men and 15% of eligible women having applied. However, it would appear that eligible advocates were more likely to apply than eligible solicitors; 23% of eligible advocates had applied, compared to only 10% of eligible solicitors.
- 4.2.3 Of the eligible Church of Scotland respondents, only 13% had applied, whereas 21% of eligible Roman Catholics and 19% of eligible Other Christians had applied. Further, 18% of those with no belief had applied, and (from tiny numbers) 14% of those of Other faiths had.

4.3 Successful Applicants

- 4.3.1 Of those who had applied, 214 respondents indicated whether or not they had been offered judicial office, or placed on the slate¹⁸. In total, 35% (n=75) stated that their application had been successful.
- 4.3.2 Those who had been offered judicial office, or placed on the slate or on the list of recommended candidates, were most likely to be aged between 46 to 55 years old, with 68% (n=51) of those who have been offered judicial office, or placed on the slate as a result of application to the JAB being in this age group (see Figure 4.1).

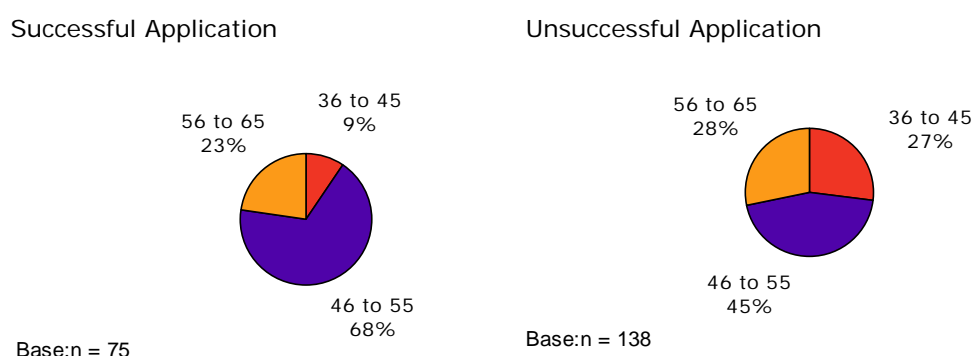


Figure 4.1 Age Group of Successful and Unsuccessful Applicants

Offer of Judicial Office

- 4.3.3 Overall, 77 respondents identified which Judicial office(s) they had been offered, a number of whom indicated more than one. In 68% of cases, (n=52), respondents were offered the office of part-time Sheriff; in 35% of cases (n=27) respondents were offered the office of Sheriff; and in 14% of cases (n=11) respondents were offered the office of Senator of the College of Justice.

¹⁸ The term 'slate' refers to the practice of advertising, selecting and recommending (in a ranked order) a group of candidates from which appointments are then made over a stipulated period. It has been used chiefly where it is anticipated that there will be a number of vacancies occurring for the same role during a year, most typically for the office of Sheriff or Part-time Sheriff.

4 Profile of Eligibility and Applications

- 4.3.4 Respondents who held judicial office also detailed how long they had held that office for. Overall, 78 respondents stated how long they had held judicial office for, with just over two thirds (68%, n=53) indicating that they had held judicial office for 0 to 4 years, and 23% (n=18) of respondents stating that they held judicial office for 5 to 9 years (see Table 4.3).

Table 4.3 Years Holding Judicial Office

	Number	Percent (%)
0 to 4 years	53	68
5 to 9 years	18	23
10 to 14 years	4	5
15 to 20 years	3	4
Total	78	100

- 4.3.5 Respondents who held judicial office detailed whether they would consider applying for another judicial office or higher judicial office in the future. Table 4.4 shows that, of the 81 people who answered the question, 41% (n=33) said that they would consider applying for another judicial office or higher judicial office in the future.

Table 4.4 Holding Judicial Office in the Future

	Number	Percent (%)
Yes	33	41
No	17	21
Undecided	26	32
Not Applicable	5	6
Total	81	100

5 Attitudes to Judicial Office and the appointments process, and other potentially influencing factors

Summary

The aspect which the largest proportion of eligible respondents (78%) felt would encourage them to apply for judicial office was 'the intellectual and personal qualities needed to perform the duties of judicial office'. There was, however, a split view within the total sample regarding levels of confidence, both personally and within the profession, that the process results in the appointment of the most suitable people; a large minority (42%) stated that they were not confident, while the remaining 58% were either neutral or positive about this.

'Having experience as a part time or temporary judicial office holder' and 'being Queen's Counsel' were the main aspects that eligible respondents felt currently have a positive effect on applications. Many respondents also felt that both of these aspects should have a positive effect on appointments. Further, court experience was seen as having a positive influence by a large majority of the sample.

Overall, the data gathered suggest a general tendency for both the work-related and biographical factors which respondents saw as being influential to reflect their experiences and backgrounds. Being from a middle/upper class background was perceived by nearly half of the eligible respondents as having a positive effect on applications. However, being aged under 40 or over 60, having a mental health or communication impairment, and having caring responsibilities were considered by the eligible respondents to have a negative effect. Most respondents felt that biographical aspects should have no influence on appointments; however, more than half of the eligible respondents felt that mental health and communication impairments should impact negatively on decisions.

More respondents believed that biographical influences did have an effect on outcomes than believed that they should have any effect, positive or negative. However, a small number did believe that they should have some effect; most notable of these is that 19% of respondents thought that having daily responsibility for the care of dependent children or adults should have a minor or major negative effect on appointment (which seems to be consistent with the 28% who thought that working part-time should also have a greater or lesser negative influence.)

Having good references, being known by the judiciary, and being in the right social networks were all considered by over half of the eligible respondents to have a positive affect on applications. Of these, most respondents felt that only having good references should have a positive affect.

Nearly three quarters of respondents stated that they agreed with the statement "*I would not consider applying for judicial office unless I had far in excess of the minimum experience required to do the job (currently 10 years for most offices, but 5 years for advocates in relation to senatorial appointment).*" This finding may have an important effect on the size and shape of any pool of applicants, suggesting that widening the pool may take longer than the overall population figures might otherwise indicate.

5 Attitudes to Judicial Office and the appointments process, and other potentially influencing factors

5.1 Q24 Eligible Respondents Views of Judicial Office and the Appointments Process

5.1.1 Due to a routing error on the questionnaire, many respondents were routed past Question 24 in the survey form. However, a usable response rate was still achieved (n=564). This sample was also compared to the structure of the total sample and found to be largely consistent with it.

5.1.2 Respondents were asked to consider a series of aspects relating to judicial office and the appointment process, and to indicate whether each would encourage or discourage them from applying, or would have no effect. Data shows that, amongst those respondents eligible to apply for judicial office (n=1304), the main aspects that were felt to encourage applications included:

- the intellectual and personal qualities needed to perform the duties of judicial office (78%) - this was more likely to encourage those that have applied (96%) compared to those that had not (69%), however there is little difference between those who had applied based upon whether their application had been successful (97%) or not (94%);
- judicial pension arrangements (72%) - this was more likely to encourage those who had applied (80%) compared to those who had not (68%), however there was no difference between those who had applied based upon whether their application had been successful or not (both 80%);
- the public service element of judicial office (71%) - this was more likely to encourage those who had applied (81%) compared to those that had not (65%), however there was little difference between those who had applied based upon whether their application had been successful (84%) or not (78%);
- more judicial skills training (70%) – there was little difference between those who had applied (71%) compared to those who had not (69%), or between those who had applied based upon whether their application had been successful (72%) or not (69%);
- the type of work available on appointment (65%), however a further 20% said that this was a discouraging factor - this was more likely to encourage those that have applied (84%) compared to those who had not (54%), and those who had been successful with an application (89%) compared to those who had not (78%);
- the opportunity to experience a wider range of work (63%) - this was more likely to encourage those who had applied (69%) compared to those who had not (59%), and those who had been successful with an application (75%) compared to those who had not (62%); and
- the change of career focus involved in becoming a judge (62%) - this was more likely to encourage those who had applied (84%) compared to those that have not (52%), and those who had been successful with an application (88%) compared to those who had not (78%).

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5.1.3 Conversely, the main aspects that were reported to discourage applications from eligible respondents included:

- the level of confidence they had that the process results in the appointment of the most suitable people (47%), however a further 15% said that this was an encouraging factor and 38% said it had no effect on them either way – this was only slightly more likely to discourage those who had not applied (49%) than those who had (44%), and far more likely for those who had applied but been unsuccessful (67%) compared to those who had been successful (27%);
- general levels of confidence within the profession that the process results in the appointment of the most suitable people (46%), however a further 15% said this was an encouraging factor and 39% said it had no effect either way – this was only slightly more likely to discourage those who had not applied (48%) than those who had (42%), and far more likely for those who had applied but been unsuccessful (65%) compared to those who had been successful (27%);
- the need to work in different geographical locations, sometimes at short notice (39%) - this was more likely to discourage those who had not applied (44%) than those who had (30%), however, there was no real difference between those who had applied but been unsuccessful (28%) compared to those who had been successful (32%);
- a reduction in earnings (35%) – there was no real difference between those who had not applied (35%) and those that had (34%), or between those who had applied but been unsuccessful (33%) compared to those who had been successful (36%);
- the geographical location of the post (33%) - this was more likely to discourage those who had not applied (37%) than those who had (25%), however, it was slightly more likely to discourage those had applied and been successful (29%) than those who had been unsuccessful (21%); and
- disruption to family or private life (32%) - there was no real difference between those who had not applied (33%) and those who had (30%), however it was more likely to discourage those who had applied and been successful (36%) than those who had been unsuccessful (21%).

5.1.4 Full results for this question by eligibility, whether respondents had applied for judicial office, and the outcome of their application can be found in Tables 5.1 to 5.3 in Volume 2 of this report.

5 Attitudes to Judicial Office and the appointments process, and other potentially influencing factors

5.2 Q24 Views of Judicial Office and the Appointments Process - Key Differences in Opinion

5.2.1 Table 4.1 in Volume 2 of this report provides full details of the responses to this question based upon the whole sample, while Chapter 5 of Volume 2 provides full disaggregated results.

Whole Sample

5.2.2 When the sample is considered as a whole, it seems that the impact of judicial pension arrangements was much more pronounced than the issue of salaries in encouraging applications. Nearly three quarters of the sample (72%) stated that judicial pension arrangements would encourage them to apply, compared to only 28% who said it would have no effect, while only 18% stated that the change from self employed status to salaried status would encourage them, compared to 75% who said this would have no effect. Further, only 7% were discouraged by a move from self employed to salaried status; this suggests that the impact of remuneration overall is quite complex and highlights an interesting area that might bear more investigation out-with the survey.

5.2.3 Though lower than security of tenure (62% were encouraged by this), the prestige of office was still important to nearly half (47%) of the respondents. Around 10% of the total sample said that they were positively attracted by the degree of public exposure involved, but nearly a third (29%) were discouraged by this.

5.2.4 The requirements to fill in an application form, to participate in an interview process and to identify referees had no negative effect on most people (all above 70%). Those who were discouraged by these factors however, were generally more likely to be full-time (but not part-time) judges and advocates. Overall, 39% of full-time judges and 37% of advocates would be discouraged by the need to fill in an application form; 34% of full-time judges and 32% of advocates reported that they would be discouraged by the interview process; and 35% of full-time judges stated that they would be discouraged by the need to identify referees.

5.2.5 Individual levels of confidence that the process results in the appointment of the most suitable people and respondents' perception of the general level of confidence within the profession showed this to be a discouraging factor in 42% and 41% of the sample respectively. It should be noted that those who lacked confidence were more likely to be older, and advocates or solicitor advocates; and that women were also more likely than men to lack confidence in the process. Further, respondents who were discouraged by these factors were also more likely to have made an unsuccessful application to the JAB. For both individual and general levels of confidence, the majority did not lack confidence, and 18% of respondents found both elements to have been encouraging. Slightly greater proportions of men than women and respondents in the younger age groups were more likely to be encouraged by these two factors. Non-white ethnic groups tended to be more positive with regards to these elements; however the numbers who responded were too small to be statistically significant.

5.2.6 The use of a 'slate' did discourage some people but had no negative effect on 81% of the sample.

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- 5.2.7 Interestingly, 1% of the sample (five people in all) said that they were discouraged by the need to undertake criminal records checks.

Eligible vs Ineligible Differences

- 5.2.8 The greatest differences in opinion between those applicants who were eligible to apply for judicial office and those who were not, were as follows.
- 5.2.9 Ineligible respondents were more likely to be encouraged to apply for judicial office by flexible working options: 74% of ineligible respondents, compared to 42% of eligible ones. They were also more likely to be encouraged by the possibility of career breaks: 62% of ineligible respondents reported that they were encouraged by this compared to 31% of eligible ones.
- 5.2.10 Further, ineligible respondents were more likely to be encouraged to apply for judicial office by having greater practical information about the nature of the job: 70% of ineligible applicants were encouraged by this compared to 37% of eligible ones. Moreover, ineligible respondents were more likely to be encouraged by having greater information about the lifestyle demands of the job: 75% of ineligible respondents were encouraged by this compared to 40% of eligible ones.
- 5.2.11 Also, ineligible respondents were more likely to be encouraged to apply for judicial office by an increase in earnings: 67% of ineligible applicants were encouraged by this compared to 37% of eligible ones.

Gender Differences

- 5.2.12 By far the greatest difference in opinion between male and female respondents was in their belief that more flexible working options would encourage them to apply for judicial office: 72% of females felt this way compared to 37% of males.
- 5.2.13 Interestingly, female respondents were also be more likely to be encouraged to apply by an increase in earnings: 57% of females were encouraged by this compared to 38% of males.
- 5.2.14 The intellectual and personal qualities needed to perform the office were more likely to encourage men than women, with this element encouraging 79% of men and 66% of women, while it was reported to discourage only 6% of men but 14% of women. Conversely, more judicial skills training, better guidance/training on the appointment process and work shadowing schemes were all felt to be more encouraging for women than for men. Overall, 82% of women said they would be encouraged by judicial skills training compared with 68% of men; 78% of women would be encouraged by better guidance/training on the appointment process compared to 57% of men; and 76% of women would be encouraged by work shadowing schemes compared to only 51% of men.

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5.3 Q25-27 Influence in the Outcomes of a Successful Application for Judicial Office by Respondents Eligible to apply for Judicial Office

5.3.1 Respondents were asked to rate the extent to which they felt that various aspects 'do' and 'should' influence the outcomes of a successful application for judicial offices. These elements were divided into three areas:

- work related factors;
- biographical factors; and
- other factors.

5.3.2 In order to provide context to the attitudes expressed, respondents were also asked to indicate which judicial office, ie Senator or Sheriff (all types), they were thinking about when replying to these questions. Of those respondents eligible to apply for judicial office, more than half (57%, n=748) indicated that their responses related to the appointment of Sheriffs, while only 9% (n=123) stated they were thinking about Senators. A further 33% (n=433) did not specify an individual office, suggesting they were considering appointments in general rather than for specific offices.

5.3.3 There was no significant gender pattern regarding the office thought of, and all branches of the profession were more likely to think about shrieval than senatorial appointments. However full-time judicial office-holders (31%) and advocates (30%) were more likely than the other branches of the profession to be thinking about senatorial roles.

5.3.4 The data was then reviewed to see whether there were any marked variations in what people thought did influence appointment and what they felt should influence appointment according to the office being thought about.

5.3.5 Being a solicitor was seen as being a major positive influence in relation to a shrieval appointment and a major negative influence for a senatorial appointment; it was also perceived that this pattern **should** apply, but less strongly than it is perceived to do at present.

5.3.6 Being an advocate was seen to be a major positive influence for both senatorial and shrieval appointments, and it was generally agreed that this should be the case.

5.3.7 Being a solicitor advocate sat between these two but, interestingly, this was seen as being a rather more negative influence on appointment as senator in particular than it should be.

5.3.8 In terms of the main areas of work experience, working mainly in criminal law was seen as being much more important for shrieval appointments than senatorial ones, and this pattern was also seen as desirable. Conversely, working mainly in commercial litigation was considered to be more important for shrieval appointments than senatorial ones, again this pattern was also seen as desirable. Meanwhile, working mainly in civil litigation (including family law) showed a pattern which did not vary significantly between the two roles.

5.3.9 Transferable skills and potential were seen as having a positive influence for both offices, with very few seeing it as negative. Further, it was seen even more positively as a desirable

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attribute for both roles, and seen as desirable only slightly more for shrieval (86%) than senatorial (76%) roles.

- 5.3.10 Working part-time was seen as having a negative influence in relation to both roles, but particularly for senator positions. This pattern was repeated, but slightly less strongly, when respondents were asked about whether or not it should influence appointment; 39% of those who were thinking about senatorial appointments thought it should be a major or minor negative influence, and 21% of those thinking about shrieval appointments also thought it should be a major or minor negative influence.
- 5.3.11 In considering biographical factors, there was little variation between those who were thinking about senatorial roles and those who were thinking about shrieval roles, other than a slight variation in views about having caring responsibilities for children or adults. A higher proportion of respondents considered this to have a negative influence of applications for shrieval office (45%) than senatorial office (34%). However, a slightly higher proportion of respondents considered that this should be a negative influence for senators (21%) than sheriffs (14%).
- 5.3.12 The following sections outline the views expressed by eligible respondents in more detail, but do not take account of the judicial office indicated. Full results for each of the three sections, disaggregated by the judicial office indicated, can be found in Tables 4.3 to 4.8 in Volume 2 of this report.

5.4 Q25 Views of Work-Related Influences

- 5.4.1 Tables 4.3 and 4.4 in Volume 2 of this report provide full details of the responses to these questions based upon the whole sample, while Chapter 6 of Volume 2 provides full disaggregated results. In particular, Tables 6.1 and 6.2 provide full details of eligible respondents' views to these questions.

Eligible Respondents' Views

- 5.4.2 The work related aspects which eligible respondents felt **do positively** affect the outcome of an application included:

- having experience as a part time or temporary judicial office holder (88%);
- being Queen's Counsel (88%);
- being an advocate (84%); and
- having worked as an Advocate Depute (81%);
- having Sheriff Court experience (78%);
- having experience in litigating in the High Court of Judiciary (76%);
- having experience of litigating the Court Of Session (74%); and
- being a Solicitor Advocate (72%).

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5.4.3 More than half of the respondents felt that the following work related aspects **do negatively** influence the outcome of an application:

- having no court experience (77%);
- having little experience in the courts covered by a particular office (67%); and
- working part-time (54%), however 43% said it had no influence or 'don't know'.

5.4.4 Interestingly, an additional 23% of eligible respondents felt that being a solicitor negatively influenced the outcome of their application.

5.4.5 The work related aspects which eligible respondents felt **should positively** affect the outcome of an application included:

- having Sheriff Court experience (89%);
- having experience as a part time or temporary judicial office holder (89%);
- having transferable skills and potential (82%);
- being a Queen's Counsel (76%);
- having Tribunal experience – either as a Chair/Judge or as a member (74%);
- being a solicitor advocate (72%);
- being an advocate (70%);
- having experience of litigating in the Court Of Session (70%); and
- having experience of litigating in the High Court of Judiciary (70%).

5.4.6 A number of work-related factors were identified by around half to two-thirds of eligible respondents which they felt **should have no influence** on the outcome of an application. These included:

- being a partner (66%), but 28% thought this should have a positive influence;
- working part time (64%), but 28% thought this should have a negative influence;
- working mainly in commercial litigation (46%), but 45% thought this should have a positive influence;
- working mainly in criminal law (46%), but 43% thought this should have a positive influence; and
- working mainly in civil litigation including family law (41%), but 53% thought this should have a positive influence.

5.4.7 The two factors which were most commonly identified by eligible respondents as being those which **should negatively** affect the outcome of an application, were:

- having no court experience (83%); and
- having little experience in the courts covered by a particular office (70%).

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- 5.4.8 Interestingly, over half of the eligible respondents (54%) felt that working part-time had a negative influence on the outcome of an application, while 64% felt that this should have no affect. However, 28% of respondents believed it should have either a major or minor negative influence.
- 5.4.9 Further, court experience was seen as important by a large majority of respondents, both actually and (usually even more so) desirably; however, the area of law in which most time has been spent was seen as less important, with between 40% and 55% of respondents stating that each area did and should have a positive influence.

Key Differences in Opinions – Whole Sample

- 5.4.10 When asked about how they felt work related factors impacted on the applications process, ineligible respondents' views were generally similar to those of the eligible respondents mentioned above. However, ineligible respondents were more likely to think that being a solicitor should have a positive influence on the applications process: 79% of ineligible respondents felt this way compared to 66% of the eligible ones. In addition, they were more likely to feel that being a solicitor had a positive influence: 61% of ineligible respondents felt this way compared to 50% of eligible ones. Ineligible respondents were also more likely to think that being an advocate should have a positive influence on applications: 82% of ineligible respondents felt this way compared to 70% of eligible ones.
- 5.4.11 Ineligible respondents were more likely to think that having experience of litigating in the Court of Session should have a positive influence on the applications process: 82% of ineligible respondents felt this way compared to 70% of eligible ones. Moreover, ineligible respondents were more likely to think that having experience of litigating in the High Court of Judiciary should have a positive effect on applications: 82% of ineligible respondents felt this way compared to 70% of eligible respondents.
- 5.4.12 Overall, the data suggest that there is a general tendency for the work related factors which are seen as being influential to reflect the experience of the respondents. For example, being a Queen's Counsel was seen as a positive influence by three quarters of respondents, but the view that this should be so was held most strongly by advocates and solicitor advocates. Similarly, advocates tended to consider that being a solicitor was a more positive benefit than it should be, whilst solicitors considered that that it should be more so. In considering the different judicial offices, solicitor experience was seen as being a much more positive influence for shrieval appointments than for Senatorial ones, both actually and desirably.
- 5.4.13 In addition, there was a view, held by 83% of respondents, that having transferable skills and potential should be important, but only 48% perceived this to be the case currently. This view was held by more women than by men, by non-white ethnic groups, and by younger age-groups, although it was fairly evenly held across all the professional groups.

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5.5 Q26 Views of Biographical Influences

5.5.1 Tables 4.5 and 4.6 in Volume 2 of this report provide full details of the responses to these questions based upon the whole sample, while Chapter 7 of Volume 2 provides full disaggregated results. In particular, Tables 7.1 and 7.2 provide full details of eligible respondents' views to these questions.

Eligible Respondents' Views

5.5.2 Only three biographical factors were identified by more than 40% of the eligible respondents which **do positively** affect the outcome of an application. These were:

- being from a middle/upper class background (48%);
- being aged 41-50 (46%); and
- being aged 51-60 (44%).

5.5.3 A further three factors were identified by over 25% of respondents:

- being male (39%, with 19% stating this was a major positive influence), this view was held mainly by women;
- being from a minority ethnic group (31%); this view was held mainly by non-minority groups; and
- being female (29%), this view was held mainly by men.

5.5.4 Those factors identified by between one-third and half of the eligible respondents which were perceived to **have no influence** on the outcome of an application included:

- having a particular religious belief or other belief (51%), only 16% felt this had a negative influence;
- having a mobility impairment - eg: using a walking aid or requiring a wheelchair (44%), while 27% felt this had a negative influence;
- being male (44%), while 39% felt it had a positive influence;
- being from a working class background (40%), while 35% felt this had a negative influence;
- being gay, lesbian, bisexual, transgender or transsexual (40%), while 27% felt this had a negative influence;
- being female (37%), while 29% felt this had a positive effect and 26% felt it had a negative effect;
- being from a middle/upper class background (34%), while 48% felt this had a positive influence;
- having a visual impairment – not corrected by spectacles or contact lenses (34%), while a further 34% felt this had a negative influence; and
- having daily responsibility for the care of dependent children and/or adults (33%), while 40% felt this had a negative influence.

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5.5.5 Interestingly, being male was highlighted as one of the top four factors for both positively influencing and having no influence on the outcome of an application.

5.5.6 Only four aspects were identified by over half of the respondents which **do negatively** affect the outcome of an application:

- being aged under 40 (63%);
- having a mental health impairment – eg a history of depression (59%);
- having a communication impairment – eg hearing or speech impairment (52%); and
- being aged over 60 (51%).

5.5.7 Around one quarter of respondents felt that the following two aspects **should positively** effect on the outcome of an application:

- being aged 41-50 (25%); and
- being aged 51-60 (23%).

5.5.8 It was generally felt that the majority of biographical aspects **should have no influence** on the outcome of an application. Those mentioned by two-thirds of the respondents or more include:

- being male (96%);
- being from a middle/upper class background (96%);
- being female (94%);
- being from a working class background (93%);
- being from a minority ethnic group (92%);
- being gay, lesbian, transgender or transsexual (90%);
- having a particular religious or other belief (89%);
- having a mobility impairment (88%);
- having daily responsibility for the care of dependent children and/or adults (75%);
- being aged 51-60 (73%); and
- being aged 41-50 (71%).

5.5.9 Meanwhile, those aspects that were identified by more than a quarter of respondents which **should negatively** affect the outcome of an application are:

- having a mental health impairment – eg a history of depression (61%);
- having a communication impairment – eg hearing or speech impairment (56%);
- having a visual impairment - not corrected by spectacles or contact lenses (39%);
- being aged under 40 (37%); and
- being aged over 60 (29%).

5.5.10 Being aged 41-60 and being from a middle/upper class background were identified as having a positive affect on applications. However these characteristics were also identified by a majority of respondents as being amongst those that should have no effect.

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5.5.11 Overall, more respondents believed that biographical influences did have an effect on outcomes than believed that they should. However, in addition to those factors outlined above, which more than half of the eligible respondents identified as having a negative effect, others were identified by a significant minority, including having carer responsibilities (40%), being from a working class background (35%), and sexual orientation (27%). Very small proportions of eligible respondents also felt that certain biographical factors should have a positive or negative influence in relation to gender, disability, ethnicity, social background, sexuality or religious belief. Most notably, 19% of respondents thought that having daily responsibility for the care of dependent children and/or adults should be a minor or major negative influence on appointment. This seems to be consistent with the 28% who thought that working part-time should also have a greater or lesser negative influence.

Key Differences in Opinions – Whole Sample

5.5.12 In general, those respondents who were not eligible to apply for judicial appointment had similar views on biographical influences to those who were eligible. However, a few key differences in their opinions can be identified.

5.5.13 Those respondents who were ineligible to apply for judicial office were more likely to see being male as having a positive influence; 55% of ineligible applicants felt this way compared to 39% of eligible applicants. However, ineligible respondents were more likely to see being from a working class background as having a negative influence; 49% of ineligible respondents felt this way compared to 35% of eligible respondents.

5.5.14 Meanwhile, eligible respondents were more likely than ineligible respondents to think that having any impairment should be a negative influence in the applications process:

- mental health impairment - 61% of eligible respondents compared to 44% of ineligible respondents;
- visual impairment - 39% of eligible respondents compared to 26% of ineligible respondents;
- communication impairment - 56% of eligible respondents compared to 45% of ineligible respondents; and
- mobility impairment: 9% of eligible respondents compared to 4% of ineligible respondents.

5.5.15 Finally, higher social class was seen to be less influential by judges and advocates than by the other groups. None of the other diversity strands produced any differences in opinion which are not likely to be explicable by the gender/age/professional mix.

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5.6 Q27 Views of Other Influences

5.6.1 Tables 4.7 and 4.8 in Volume 2 of this report provide full details of the responses to these questions based upon the whole sample, while Chapter 8 of Volume 2 provides full disaggregated results. In particular, Tables 8.1 and 8.2 provide full details of eligible respondents' views to these questions.

Eligible Respondents' Views

5.6.2 Other aspects which the majority of eligible respondents felt **do positively** affect the outcome included:

- having good references (85%);
- being known by the judiciary (80%); and
- being in the right social networks (67%).

5.6.3 Two aspects were highlighted by significant numbers of respondents as being those which **should positively** effect the outcome; having good references (95% indicated either a major or minor influence) and being known by the judiciary (45%).

5.6.4 Meanwhile, the rest of the eligible respondents stated that all the other aspects listed **should have no influence** on the outcome:

- being in the right social networks (94%);
- working in the central belt of Scotland (93%); and
- having a certain political opinion/belief or affiliation to a political party (89%).

5.6.5 Interestingly, 'being in the right social networks' was highlighted in the top three factors that respondents felt had a positive effect on the outcome of applications, however, this was also the most common factor that respondents felt should have no influence.

5.6.6 Overall, having good references was seen as being 'actually' important by 85% of respondents and 'desirably' important by 95%. Elsewhere there was more of a divergence between what does and what should influence appointments.

5.6.7 Being known by the judiciary, working in the central belt, being in the right social networks, and, to a much lesser extent, having certain political opinions/beliefs or an affiliation to a political party were seen by a large number as being much more important in the appointments process than they believed should be. In particular, 80% consider that being known to the judiciary does have a positive influence compared to only 45% who think it should.

Key Differences in Opinions – Whole Sample

5.6.8 In general, those respondents who were not eligible to apply for judicial appointment had similar views on other influences to those who were eligible. However, a few key differences in their opinions can be identified.

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- 5.6.9 Ineligible respondents were more likely to think that working in the central belt of Scotland had a positive influence in the applications process: 55% of ineligible respondents felt this way, compared to 45% of eligible respondents. Further, ineligible respondents were more likely to think that being in the right social networks had a positive influence on applications: 78% of ineligible respondents felt this compared to 67% of eligible respondents.
- 5.6.10 Advocates, in particular, appear to see working in the central belt of Scotland as being less influential than the other professional groups (35% of Advocates consider this to be a positive influence), with solicitors (53%) and 'others' (52%) seeing it as being most influential.
- 5.6.11 Nearly half (49%) of the solicitors, but only 27% of advocates thought that being in the right social networks had a major positive influence; however no advocates, and only 1% of solicitors thought that it should have.
- 5.6.12 Further, while virtually no respondents expressed the view that being in the right social networks should have an influence (only 4% of the total sample), there is a reasonably widespread and strong belief that it does (71% of the total sample). This is more acute among solicitors, solicitor-advocates (who may identify more strongly with the solicitor group than with other groups), and those not in any of the main professional groups. This is worth noting since it is interesting in its own right and, if it is a view held by 'under-represented groups' *could* contribute to an indirect effect on the diversity of the group prepared to apply for judicial office. When considering this aspect by the diversity strands the following conclusions can be drawn:
- **Age:** the view (that being in the right social networks does influence appointment) tends to be held more strongly by younger respondents than by those in the older age-groups. This seems to be intuitively logical as younger people may consider that they are not (yet) in the right social networks and may ascribe more importance to them than they merit.
 - **Gender:** the view (that being in the right social networks does influence appointment) is also held more strongly by women respondents than the men. This may be explained in whole or in part by the fact that more women are solicitors, and by the fact that there are more women in the younger age-groups than in the older ones.
 - **Ethnicity:** the numbers here are not statistically significant, however the variation in responses suggests the possibility that people from non-white ethnic backgrounds tend to see this as having more influence than those from white ethnic groups (44% of white British respondents saw this as having a major positive influence; 58% of any other white background; and 67% of people from 'other ethnic backgrounds').
 - **Sexual orientation:** again, the numbers are not statistically significant, but are slightly suggestive of the possibility that non-heterosexual respondents may tend to see this as more of an influence than heterosexual respondents. For heterosexual respondents, 45% saw it as a major positive influence on appointment and 27% as a minor positive influence; for other orientations, 54% saw it as a major positive influence and 23% as a minor positive influence (although 1% of this group also saw it as a major negative influence).

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- **Religion:** there is also a very slight suggestion that respondents who reported themselves to be 'Church of Scotland' were least likely to see being in the right social networks as having a positive effect on applications (but still 41% of this group stated it had a major positive influence), when compared to the 52% for Roman Catholic, 43% of Other Christian, 58% of Other religions, and 47% of those with no religious belief. This is not explained by age or gender, but might reflect perceptions of which religious groups are more or less seen as part of the 'establishment'.
- **Disability:** no difference is detectable between people who have a disability and people who have not.

5.7 Q28 Agreement with Minimum Experience Required – Whole Sample

5.7.1 Respondents were asked to rate the extent to which they agreed with the following statement:

"I would not consider applying for judicial office unless I had far in excess of the minimum experience required to do the job (currently 10 years for most offices, but 5 years for advocates in relation to senatorial appointment)."

5.7.2 Overall, the majority of respondents agreed with this statement, with 72% stating that they either strongly agreed or agreed. Table 5.1 provides a breakdown of all responses.

Table 5.1 Agreement with Minimum Experience Required

	Number	Percent (%)
Strongly Agree	850	37
Agree	799	35
Neither Agree nor Disagree	265	12
Disagree	245	11
Strongly Disagree	48	2
No Views	71	3
Total	2278	100

Key Differences in Opinions

- 5.7.3 Overall, there is very little variation in agreement to be detected between the different groups or between respondents with different characteristics, although full-time judicial office-holders were the most likely to agree, with 85% indicating they either strongly agree or agree with the statement. Interestingly, there was little or no difference between men and women, or between those eligible to apply and those that are not.
- 5.7.4 If respondents act on the views expressed here, then the actual pool of applicants for any competition will tend to be older (in order to significantly exceed the experience requirement) and, therefore, skewed in terms of age, gender and (possibly) other characteristics. As such, widening the pool of applicants may take longer than the overall population figures suggest.

6 Other Comments from Respondents

Summary

Only 185 respondents (fewer than 8%) provided responses when asked if they wished to contribute additional comments, views or opinions on the survey. The main issues highlighted by these comments included:

- appointments should be made on merit alone (26 comments, 1.2% of respondents);
- there should be no positive discrimination in the application process (25 comments, 1.1% of respondents);
- a more open/transparent appointments system is required (19, 0.9% of respondents); and
- successful applicants are seen as an unusual choice and incompetent in their role, giving the JAB a poor reputation within the profession (18, 0.8% of respondents).

These are small numbers and do not add to the overall content of the survey, but they do illustrate perceptions in a different, and more detailed way.

6.1 Main Issues

- 6.1.1 Respondents were invited to provide additional comments, views or opinions. This chapter provides an overview of the themes and issues discussed by respondents. In total, 185 respondents provided comments.
- 6.1.2 Some respondents stated that, as they had not applied for judicial office or participated in the appointment process, they were uncertain about the extent to which certain factors would or should influence the outcome.
- 6.1.3 Other respondents, however, took the opportunity to highlight what they considered to be the most important issues. Those issues mentioned by five or more respondents included:

- appointments should be made on merit alone (26 respondents);
- there should be no positive discrimination in the application process (25 respondents);
- a more open/transparent appointments system is required (19 respondents);
- successful applicants are often seen as an unusual choice and incompetent in their role, giving the JAB a poor reputation within the profession (18 respondents);
- there is bias within the application process (9 respondents);
- successful applicants should undergo a probationary period, monitoring or appraisal (9 respondents);
- it is not appropriate that the JAB includes lay persons (8 respondents);
- there is too much of an emphasis placed on being interviewed in the appointments system (8 respondents);
- soundings should form a key part of the applications process (8 respondents);

- the requirement for references does nothing to improve the application process (7 respondents);
- having children is a disadvantage (6 respondents);
- females are at a disadvantage (6 respondents);
- to be successful, applicants have to have worked a good deal of time in the courts or as criminal practitioners (6 respondents);
- the applications process is daunting, intimidating and stressful (6 respondents);
- potential applicants should have access to more information on the types of qualities looked for (5 respondents);
- a formal training structure is required for judicial appointments (5 respondents); and
- there are concerns over the confidentiality of the judicial applications process (5 respondents).

6.1.4 A full list of themes/issues can be found in Appendix B. The remainder of this chapter will discuss each of these issues in turn.

6.1.5 All of these comments need to be considered in the context of the small numbers involved, although all of the themes identified by this group were also covered by the main survey.

6.2 Appointments should be made on merit alone

6.2.1 When participants were asked if they had any further comments, a common theme was that they felt strongly that decisions regarding judicial appointments should be based on merit alone. This reveals a perception among respondents that this is not currently the case – despite the Board’s remit to appoint on merit.

“I thought that the main objective for setting up the board was to ensure that such important public appointments, paid for by the taxpayers, were made on merit alone.”

“It should simply be a question of appointing the best candidate on (legal) merit to be able to sit as a judge/sheriff.”

6.2.2 In addition, several participants thought that the consideration of merit should not end when an applicant was accepted for judicial office.

“Who cares how they are appointed when they are unaccountable once in the chair? A transparent and accountable system of appointments begins with a democratically based process of correction and removal. Until that is in place this is window dressing for the purposes of political correctness.”

“Perhaps there should be a more formal training structure for judicial appointments. Also there should be a clearer statement of what is, and what is not acceptable behaviour for those in judicial office.”

“I strongly believe that all initial appointments should be on a part-time basis in the first instance to allow proper monitoring of the ability of the post holder and training where appropriate.”

6.2.3 Merit was commonly considered to include the following attributes:

- experience, although this could be quite position specific;

“Experience of appearing in court is of utmost importance.”

“At least 10 years’ experience as a solicitor or an advocate, with an ability to comprehend almost any business, commercial or family issue by incisive questioning and document inspection.”

“It should be the best person for the job. For a Senator that means somebody taken from the ranks of Q.C. with the appropriate experience. For Sheriff that means a Solicitor (or Advocate/Q.C.) with appropriate court experience.”

- qualifications and ability;

“The most important factor is that appointments are correctly qualified in the necessary discipline. The only realistic discipline that provides the necessary background and training is that of advocacy, given the importance of decisions that require to be made in the public interest.”

“Experience and ability are not the same thing, though often conflated... Ability can be more easily tested and is therefore a more useful criterion.”

- character;

“A strong sense of common human empathy and compassion.”

“Integrity... and the ability to communicate well.”

“Social skills.”

6.2.4 Reasons given for emphasising merit were usually based on the limitations of the current appointments process. In particular, respondents felt that an applicant’s social connections and/or personal background often took priority over their ability.

“The current perception in the profession is that to obtain judicial office, the candidate must move in ‘the right’ social circles, have political connections, and an appropriate middle class background. It seems that ability and knowledge are lesser considerations.”

“There seems to be a tendency to appoint people who have been on Committees (eg: the Law Society) who may just be connected to the right circles to be appointed, whereas they ought to be nowhere near the bench.”

“There is a strong belief that, particularly at shrieval level, appointments are not being made on merit... It is extremely difficult to see a number of JAB shrieval appointments as anything other than an exercise in quota filling.”

“Gender or racial quotas are being applied and there is little or no regard being paid to experience, competence or even eminence in a chosen field.”

6.2.5 The negative effects of sidelining merit were described as follows:

- the judicial system is not being as fair as it could be on court users;

“The balance between fairness to applicants and court users is tilted too much in favour of applicants.”

- the judiciary is developing a poor reputation amongst legal practitioners;

“Some of the JABS appointments are not only woefully short of the basic competencies but are generally recognised within the profession as such.”

- the Scottish Court system is in danger of becoming less meticulous;

“I would not wish to see a dumbing down of the intellectual rigour of the Scottish Court system.”

- the ability of the Scottish Court system is already limited by poor appointment decisions;

“The range of appointed Judges and Sheriffs is far too limited in terms of ability... There are some very poor Sheriffs and latterly there have been some poor appointments in the Court of Session too.”

- 6.2.6 However, many in the group who emphasised the importance of merit also showed frustration at the influence of other factors mentioned earlier in the questionnaire, possibly causing them to conflate merit with the need to encourage greater diversity among applicants. This suggests that this confusion may have inflated respondents’ preferences for merit.

“It is possible to inflate the importance of diversity and origin (for example race, gender, religion) and to lose sight of ability. The key criterion should be ability... the Board should not become extensively pre-occupied with diversity and origin, but instead merely take them into account.”

“I am concerned about the stated purpose of this survey in relation to diversity – surely appointment based on merit should be what is required, without regard for race, colour, sexual orientation or otherwise.”

“Please can we get rid of the politically correct sensitivity and just look for lawyers who are good at their job?”

- 6.2.7 Encouragingly, some respondents felt that applicants were already being appointed through merit alone.

“I have found the Bar to be open, unbiased and a place where advancement and success are based on merit, regardless of social class or connection.”

“I do not consider the current system significantly flawed... I have not been disadvantaged by either my gender or my background.”

- 6.2.8 Interestingly, several applicants felt that practical issues with the applications process were making it more difficult to assess candidates’ merit and appoint the best people.

“The selection process should be more rigorous to identify the truly talented.”

- 6.2.9 These issues with the applications process are further discussed in Section 6.6.

6.3 There should be no “positive discrimination” in the application process

- 6.3.1 As mentioned earlier, many of the respondents who emphasised the primacy of merit in the applications process also felt that perceived political quota filling could detract from this. A common theme amongst these responses, therefore, was that positive discrimination should be avoided.

“Any changes to the present pool of potential candidates requires to be handled very conservatively and not be unduly influenced by considerations of diversity... It is only where suitably qualified candidates emerge from a more diverse Bar, having demonstrated the necessary qualifications and experience, that it will be possible to introduce greater diversity to the Bench. The public interest will not be served by appointing less suitable judges to the Bench from other walks of life, simply in order to make it appear more diverse to the public at large.”

“I do not believe in positive discrimination but rather in greater openness and accessibility to these roles... Neither should changes be made to the requirements of judicial roles to cater for modern sensibilities.”

- 6.3.2 Further, it was felt that positive discrimination was unnecessary in the current system.

“I have met many lawyers in the 30 or so years I have been in practice and cannot think of any of appropriate merit who have been discouraged from applying because of assumptions that they are of the wrong gender or background (whether social or ethnic)”

“I think that in Scotland generally appointments come from most backgrounds.”

- 6.3.3 In particular, several participants felt that any positive discrimination to encourage more female applicants was unnecessary.

“I expect to see more female judicial appointments in 10 to 20 years’ time due to the huge number of new lawyers in the profession who are female. Positive discrimination in this regard will likely not be necessary.”

“My impression is that the legal profession is well on the way to becoming gender neutral. In 20 years or so women will out-number men, certainly in litigation based work. Diversity is otherwise restricted by entrants into the profession at a trainee level.”

“I do not agree with positive discrimination. Appointments should continue to be on merit. Well over 50% of the law student population are female. It was already so in my class at university. My class was also predominantly from a non-legal family background. We’re rising up through the profession and it will get there naturally without either real or perceived positive discrimination.”

- 6.3.4 Several respondents also highlighted the dangers of what they perceived to be positive discrimination. In particular, they felt that it could seriously damage the reputation of the judiciary and the JAB.

“The current obsession with minority representation within the judiciary at the perceived expense of merit is doing nothing to advance the credibility of the judiciary.”

“There is a widely held perception that the Board is far too concerned with ‘diversity’ issues and other forms of political correctness.”

“There is a strong impression, justified or not, that the JAB is guilty of positive discrimination. The JAB’s job is far too important for that.”

“There is a very widespread belief among practitioners that judicial appointments have become a closed book for white middle-aged males, regardless of their experience or competence.”

- 6.3.5 However, some participants highlighted the need for broadening diversity, although they did not specify whether positive discrimination would be the best means of doing this.

“I do not know the number of female Sheriffs but, given the number of female lawyers, they appear to be very much in the minority... Regrettably, working patterns of Courts and the appointment system do not appear to accommodate, with any ease, women with children.”

“Judicial appointment MUST begin to reflect the proportion of females now practising the law and the proportion of non-white people now practising the law.”

“I think it is impossible for people from the public sector to be appointed... I know of no Sheriff appointed directly from the public sector despite the many talented litigators in the sector who often carry out far more complex litigation than many of those in the private sector... I feel that snobbery exists in parts of the profession against those who choose public service as a career.”

“It appears to be a closed club to ethnic minorities.”

“My impression is that appointments to Judicial Office are predominantly male, white, middle class and usually from a crown/procurator fiscal background. Having spoken with colleagues I am aware that many have the same views as me and that experience in civil litigation/family law is not looked upon as sufficient experience to adapt to dealing with criminal work as a Sheriff, whereas those with a criminal law background do not appear to be considered ill equipped to deal with family matters and civil litigation. However, having worked in criminal law for the first 10 years of my career, I know that this can be more demanding and require more skills than criminal work.”

- 6.3.6 Interestingly, several respondents mentioned that some discrimination was still necessary in the legal profession, in order to ensure that those being appointed were physically capable of doing their job properly. In particular, they felt that certain physical impairments should remain as barriers to the judiciary (although this might have been the result of confusion about the definition of disability and the adjustments that can be made for or by the individual, eg hearing aids).

“I find it difficult to accept that that the holder of judicial office might be suffering from a visual impairment (not corrected by spectacles or contact lenses) or a hearing impairment. A judge needs to be able to see and hear witnesses in order to be able to form a judgement as to their credibility.”

- 6.3.7 In addition, many of those who disagreed with positive discrimination also felt that an open and transparent application process was important. This suggests that they made an

association between perceived positive discrimination and a more confusing, convoluted and unappealing applications system.

“The open applications and appointments process encourages wider applications.”

“Public concern is for quality, transparency and a degree of accountability. It is not for Judicial Appointments to be wholly representative of society – that being the function of a parliament.”

6.4 More open/transparent appointments system

6.4.1 Another common theme from participants’ further comments was that the judicial appointments system was in need of becoming more open and transparent.

“I feel like the appointments system is still shrouded in mystery and there should be far more open information on the type of qualities that are looked for in a successful applicant and of the process itself.”

6.4.2 The reasons they gave for why a more open and transparent appointments process was important included:

- surprise at certain appointments which were seen as inappropriate;

“It is difficult for the outside to know what actually goes on in the appointment process. I know a number of people, now Sheriff/Judges, whose appointments surprised me.”

- perceived inconsistency in the appointment standards;

“I have an impression that some appointments of Sheriffs have resulted in people not suited or less suited to the post than others being appointed.”

- perceived inconsistency in the particular qualities required, which made it difficult and frustrating for solicitors to prepare for a career in the judiciary;

“I found it a very disheartening and disillusioning experience to be appointed to the slate for appointment as a part-time Sheriff and on the rest of my applications not to be even offered an interview despite my relevant experience having only increased. It seems to me that if you are considered suitable for recommendation for appointment at any time, that should remain the position unless your relevant skills/suitability for appointment in some way diminishes.”

“Why are defence lawyers able to become part-time Sheriffs but Procurator Fiscals are not?”

“Why aren’t Crown Office or Procurator Fiscal Service employees able to apply for part-time judicial posts.”

- perceived favouritism towards certain groups of applicants, for example;

“There is a perceived and, I think, well founded belief that Fiscals receive favourable treatment.”

“The sifting process for permanent positions does appear to exclude those who are in full-time public sector employment unless one had reached a senior management grade in the prosecution service.”

6.4.3 Respondents highlighted the following issues, which they felt prevented the judicial appointments process from being as open and transparent as it could be:

- the specific competencies required were not always clearly identified;

“Specific talents are not identified. It [the appointments system] lacks any real transparency.”

“it would be interesting to know how candidates are selected.”

- there could be a better system of feedback, especially for unsuccessful applications;

“There is no opportunity to obtain sensible feedback for rejection at this stage [the pre-interview sifting stage]. The procedures adopted by the Ministry of Justice for UK and English applications are vastly superior.”

“I was very disappointed by the lack of feedback I received for my (unsuccessful) application, and the fact that no explanation was given for why certain candidates are considered better qualified than others.”

“Meaningful feedback is important given the effort and trauma of the whole applications process.”

- more information about the kinds of people being appointed would help reassure or satisfy curious solicitors;

“I think it would be helpful and useful to have more information about criteria for appointment and statistics (anonymised as necessary) on those applying and ultimately appointed (or not).”

- there was currently little information available on the necessary career path/career steps to prepare a solicitor for a career in the Judiciary;

“The career path to the Judiciary is not well advertised and... it is hard to see how solicitors can break into it. It would be interesting to know what training is offered to potential applicants and what opportunities there are to help prepare them for a career in the Judiciary.”

6.5 The JAB's reputation within the profession

6.5.1 Another common theme amongst a very small number of participants' additional comments was that the JAB was developing a poor reputation within the legal profession. The two main reasons given for this were as follows:

- some of the JAB's judicial appointment decisions were seen as unsuitable, and even sometimes detrimental to the high standards of the judiciary;

“There is a strongly held view at the Bar that the Board has little understanding of the qualities which are required for holding office as a Senator. A number of weak

appointments have been made – this has seriously damaged the standing of the Board in the eyes of the practising Bar.”

“I have no confidence whatsoever in the Judicial Appointments Board... It is true that there have been some excellent shrieval appointments. However, there have been too many absolute ‘howlers’. The result is that there is widespread disillusionment and cynicism in the profession.”

“I am astounded at some appointments as the persons appointed seem to have no ability at all and are unfit for office. This is especially the case for Sheriffs.”

- the JAB was seen as being dominated by politicians, who imposed distracting quotas on the types of candidates being promoted to the Judiciary;

“The Board is controlled by politically correct politicians who are determined to promote homosexuals, lesbians, females, and non-British people... ability counts for absolutely nothing. That is why standards are so low now.”

“For all the supposed independence of the judiciary at all levels, it is very easy to see the political influence exerted on judges and sheriffs by the government. The fact that this pressure is responded to also shows that there is significant political emphasis on who is appointed for a judicial position.”

- the JAB was not solely made up of members of the judiciary but included lay members, which caused some respondents to doubt their authority and was suspected of deterring some eligible candidates from applying for judicial office;

“I think some would be discouraged from applying for judicial office because of the make up of the Board – it should either be made up solely of members of the judiciary or at least a substantial majority of the Board members should be members of the Judiciary – they are best.”

“The judiciary is now in the unique position of requiring selection from a panel which includes lay members. This is not the position with other professionals in positions of trust eg: doctors...”

6.5.2 One respondent went on to outline his perceived failings of the Board as:

- their delays in making appointments, which sometimes took over six months;
- their failure to take soundings into account and ask the most relevant people for these;
- their failure to enquire about recent appointees’ outstanding work and the speed of their decision making;
- their failure to introduce probationary periods and appraisal schemes to those newly appointed to the judiciary, which could help root out inappropriate selections:

“All the major Tribunals now have appraisal as part of their training and support for the Judiciary, the same should be introduced for Judges.”

6.6 Practical Application Issues

6.6.1 Another common theme amongst the group which offered extra comments was their concern with certain practical issues in the applications process, which they saw to be having a negative effect on the quality of applicants recruited. The major practical issues discussed included:

- a lack of confidentiality;
- self-assessment and self-promotion;
- interviews;
- references;
- the advertising of posts;
- the application forms; and
- extra curricular activities.

Lack of confidentiality

6.6.2 There were complaints about what respondents saw as a lack of confidentiality in the judicial applications process.

“Time and again, when appointments for Senator are under consideration, the identities of those on the short list are widely known and talked about in Parliament House. This must be intolerable for all those on the list, especially the candidates who are ultimately unsuccessful. This culture of leaks and rumour is a huge disincentive, especially for women who may be less confident to weather such a process.”

“There is an extremely serious and damaging lack of confidentiality about the process, with the names of applicants becoming well known on every occasion. This has a major discouraging effect on potential applicants.”

Self-assessment and self-promotion

6.6.3 Some felt that too much emphasis was placed on self-assessment type questions, which was seen as being unfair on applicants who had less of a talent for self promotion.

“The application form for Judicial appointment calls for a fair degree of self-assessment. This seems to be a reasonably familiar process for Applicants with, say, a civil service background, but I do wonder if it elicits the best from solicitors in private practise, or others simply un-used to such a thought process.”

“The application form seems to place a great deal of emphasis on what the applicant thinks of himself. Great for those who like to blow their own trumpet but rules out those less ebullient about themselves.”

“Self promotion, which seems essential, is not part of the Scottish make up.”

Interviews

- 6.6.4 There was felt to be too much emphasis placed on interviewing in the applications process, which was not seen as an effective way of identifying the best applicants for the job. One respondent also felt that soundings should be seen as equally, if not more important than interviews before the JAB.

“The current arrangement places too much emphasis on the interview before the JAB.”

“Interviewing is an unsatisfactory method of assessing a person’s character and ability; especially the former, since it favours those who are naturally more convincing, even if they are in fact the most untrustworthy.”

“Many potential candidates for appointment find the present system ‘daunting’, even ‘intimidating’, particularly those candidates not used to interview procedures for promotion or those not used to public presentation.”

“I believe that a face-to-face interview is generally a very poor means to identify suitable candidates for a position. It is a highly subjective process, prone to allow subtle and unconscious bias to operate.”

“I assume that, because all serious candidates will meet the minimum requirements and will have appropriate references, there will be little to distinguish the various candidates other than face-to-face interview. This gives the (in my view flawed) interview process a disproportionate weight.”

“How can the necessary qualities of hard work, integrity, impartiality, humanity and courtesy be evaluated from one’s ‘performance’ (for that is what it is) in an interview?”

“As members of the bar do not have regular interviews or employer-type reviews etc, which contrasts with those on the Solicitor side of the profession, this may put members of the Bar at a disadvantage in this part of the selection process.”

References

- 6.6.5 There was also felt to be too much emphasis placed on references, and the current requirements for obtaining them were not deemed to be robust enough.

“References are of very limited value since they are almost always obtained from persons whom the applicant knows will support him.”

“The requirement on referees to provide new references for each successive time an applicant applies for judicial office is burdensome for the referees and embarrassing for applicants to have to keep asking.”

- 6.6.6 However, one respondent highlighted that they felt references could be very important, especially in the first stages of the application process, alongside the application form.

“Appropriate praise from another is worth much more than self praise, yet references are not sought until the first stage is passed.”

- 6.6.7 Instead of references, a common theme amongst the group was that soundings and/or peer reviews would be more effective for getting an idea of applicants' abilities and expertise. This was because some respondents felt that relying on references was not an objective way of judging their capability.

"I consider the practice of refraining from taking soundings regarding an applicant's performance in their pre-application employment to be dangerous and misguided. The reliance on referees alone from persons selected by the applicant seems to me most unwise."

"I think sheriffs (permanent) and judges should be consulted as to applicants' abilities and personality. We are in a position and disposition to make comments based on the experience of these applicants in courts before us."

"Wider consultation with those amongst whom the applicant works could help determine the industry and application of an applicant... as well as the state of their mental health."

"Whilst an 'old boy' network is to be deplored, in a small jurisdiction such as this, peer review is very valuable."

The advertising of posts

- 6.6.8 It was seen as unfair that posts were only advertised if there was nobody suitable within the existing ranks of the judiciary. Some respondents also disagreed with the fact that vacancies within a Sheriffdom were only advertised internally.

"It is detrimental to the overall quality of the Shrieval Bench that 'vacancies' within a Sheriffdom are only 'advertised' internally to existing Sheriffs and are only advertised if there are no takers from within the existing ranks."

- 6.6.9 However, one respondent disagreed that all types of posts should be advertised because:

"I think that the practise of advertising vacancies of senior judicial posts (Lord President, Lord Justice Clerk, Senator and Sheriff Principal) is absurd. The pool of candidates able and willing to fill these offices is small and identifiable and I think it would be more sensible to canvass the people concerned directly, rather than going to the expense of placing advertisements in national newspapers."

The application form

- 6.6.10 Several respondents complained about the lengthy nature of the initial application form.

"The forms used for applications for judicial office are complex and repetitive."

- 6.6.11 One respondent added that some of the questions seemed particularly off-putting.

"Particularly, for example, such requirements as giving an example of one's moral courage."

- 6.6.12 In addition, several respondents felt that there could be more practical information on how to fill out the application form.

"The guidelines on how to complete the application form are very unclear."

"I took advice from several experienced parties who told me the completion of the application form in the correct style was all important, and yet the guidelines were very unclear. Everyone knew of someone else, very well qualified, who never got past the Application stage to interview."

- 6.6.13 One respondent suggested that the applications process would be more straight forward if an online option was available:

"The requirement to submit all the photocopies of the application seems ridiculous in a digital age."

Extra curricular activities

- 6.6.14 One respondent felt that there was too much emphasis placed on extra curricular activities, which excluded certain groups.

"It would appear that significant emphasis is placed on extracurricular publications and activities. It is difficult for many married female lawyers to squeeze this in if they have domestic and child commitments."

6.7 Culture Change Issues

- 6.7.1 In addition, another theme in the comments provided was that the perceived changes in working culture seen to be a part of entering judicial office were a deterrent. In particular, the following elements of the judiciary's working culture were emphasised:

- geographical location;

"It is detrimental to the appointment of full time Sheriffs that the overwhelming majority of posts advertised are for all Scotland floating Sheriffs. Not knowing where in Scotland you could be expected to work deters significant numbers of otherwise good candidates from applying."

- pressure and the loss of self-employed freedoms;

"There is no reason why anyone of appropriate merit should feel discouraged from applying for judicial appointment... What does make lawyers think twice is the adequacy of remuneration, the pressure of the job and the loss of self-employed freedoms."

- incompatibility with child rearing responsibilities;

- 6.7.2 "In my view a perceived barrier to people applying for judicial posts is the incompatibility of the post and caring for children. In particular, the requirement to be able to travel at short notice to different parts of Scotland is not easy to manage with family life."

7 Conclusion

- 7.1.1 The research has highlighted the areas in which further progress can be made towards ensuring that the Judicial Appointments Board for Scotland is perceived as fulfilling its responsibility of encouraging diversity in the applicants available for selection. It has also highlighted those areas that will encourage future applications from those most deserving on merit, as well as identifying some of the current barriers towards achieving this ideal.
- 7.1.2 In particular, the characteristics of the population which is eligible to apply for judicial office, and the views of that population, suggest that the actual pool of applicants for any competition will tend to be older (in order to significantly exceed the experience requirement, as they say is their intention) and, therefore, skewed in terms of age, gender and (possibly) other characteristics such as ethnicity. Widening the pool of high quality applicants may, therefore, take longer than the overall population figures for the legal profession suggest.
- 7.1.3 Through this survey, the Board has been provided with the data to enable it to take considerable steps forward in terms of understanding the diversity of both current eligible applicants, and those who will become eligible for appointment in the medium and long term. The survey has provided evidence in relation to diversity among the legal profession in Scotland, and whether that diversity is reflected in the applicants for judicial office.
- 7.1.4 The survey provides a building block for the consideration of practicable suggestions for increasing the proportion of people from under-represented groups who apply for judicial office. Importantly, these suggestions can now be user-led and evidence-based, thanks to the information provided by the legal community in response to this survey

Appendix A – Diversity Questionnaire

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND



RESEARCH QUESTIONNAIRE

Why are we conducting this survey?

This survey is sponsored by the Judicial Appointments Board for Scotland, through its Diversity Working Group, working with the Law Society of Scotland and the Faculty of Advocates. The Working Group has been unable to establish the precise make-up of the eligible population for appointment to the bench from the data which is currently in the public domain, but its researches to date suggest that the Judicial Appointments Board may not be receiving applications from the widest possible range of eligible applicants. The Group has accordingly identified a need to gather more evidence in order to establish the current make-up of the eligible population for judicial appointments (and how this might change in the next few years) as well as to identify whether there are any actual or perceived barriers which could be inhibiting eligible candidates from applying to become Sheriffs or Judges.

What information are we seeking?

We are asking for information about:

- Your professional background and current experience;
- What factors have encouraged or discouraged you from applying for judicial office;
- Your views on the factors which actually affect the successful outcome of applications for judicial office as well as the factors which you think should affect the successful outcome of applications for judicial office; and
- Information about you as an individual (there is further information about this in the second half of this questionnaire).

Who will have access to the information?

The survey is being conducted independently by MVA Consultancy. The researchers will generate statistical reports, from which it will be impossible to identify individual responses or respondents, and they will destroy the original responses upon completion and sign-off of the study. Free-text comments will also be screened to ensure that they do not identify individuals or organisations. At no time will any other body have access to the original completed questionnaires.

The study will result in the production of a report which will be made available publicly on the JAB website, and distributed to various interested parties. Some additional information may be provided to the Faculty of Advocates, and to the Law Society of Scotland relating solely to their respective members, to

assist in their more detailed understanding of any issues arising. It will not be possible to identify any individuals from any of the reports resulting from this survey.

Completing the survey

Because we have so little reliable data at the moment, we are asking for a great deal of information. Every effort has been made to design the questionnaire for ease of completion, but we recognise that this is yet another task for those with heavy workloads. Completion is entirely voluntary, but we do very much hope that you will be able to provide your input to an exercise which is very important for the future.

As an alternative to this paper copy, the questionnaire can be completed online at www.jasurvey.co.uk. Also, should you require any assistance to complete the questionnaire, a member of MVA's research team can be contacted on 0141 225 4412 and the questionnaire completed over the phone.

We are extremely grateful to you for your time and effort in helping us.

Returning your Questionnaire

If you are not completing it online or by telephone, your completed questionnaire can be posted anonymously in the enclosed pre paid envelope to:

MVA Consultancy
7th Floor
78 St Vincent Street
Glasgow
G2 5UB

Should you have any questions about this questionnaire, or any queries about the research in general, please contact MVA on 0141 225 4412 or email research@mvaconsultancy.com.

Current status

1. Are you currently: *Please tick (✓) one option only.*

- | | | | | | |
|---|--------------------------|---|----------------------|--------------------------|---|
| A holder of a full-time judicial office | <input type="checkbox"/> | 1 | A Solicitor-Advocate | <input type="checkbox"/> | 4 |
| A holder of a part-time judicial office | <input type="checkbox"/> | 2 | A Solicitor | <input type="checkbox"/> | 5 |
| An Advocate | <input type="checkbox"/> | 3 | None of these | <input type="checkbox"/> | 0 |

Professional Background

2. Are you qualified as a solicitor?

- | | | | | | |
|----------------|--------------------------|---|---------------|--------------------------|---|
| Yes (CONTINUE) | <input type="checkbox"/> | 1 | No (GO TO Q6) | <input type="checkbox"/> | 2 |
|----------------|--------------------------|---|---------------|--------------------------|---|

3. At what age did you qualify as a solicitor? *Please tick (✓) one option only.*

- | | | | | | |
|----------|--------------------------|---|---------------|--------------------------|---|
| Under 25 | <input type="checkbox"/> | 1 | 41 to 45 | <input type="checkbox"/> | 5 |
| 25 to 30 | <input type="checkbox"/> | 2 | 46 to 50 | <input type="checkbox"/> | 6 |
| 31 to 35 | <input type="checkbox"/> | 3 | 51 to 55 | <input type="checkbox"/> | 7 |
| 36 to 40 | <input type="checkbox"/> | 4 | 56 to retiral | <input type="checkbox"/> | 8 |

4. How many years post-qualification experience do you have as a solicitor? *Please tick (✓) one option only.*

- | | | | | | |
|----------|--------------------------|---|--------------|--------------------------|---|
| 1 to 5 | <input type="checkbox"/> | 1 | 16 to 20 | <input type="checkbox"/> | 4 |
| 6 to 10 | <input type="checkbox"/> | 2 | 21 and above | <input type="checkbox"/> | 5 |
| 11 to 15 | <input type="checkbox"/> | 3 | | | |

5. Have you acquired rights of audience in the higher courts as a solicitor advocate?

- | | Yes | No |
|---|--------------------------|--------------------------|
| (a) Court of Session, House of Lords and Privy Council? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) High Court of Justiciary and Privy Council? | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Other Jurisdictions? | <input type="checkbox"/> | <input type="checkbox"/> |

6. Have you been called to the Scottish Bar?

- | | | | | | |
|----------------|--------------------------|---|---------------|--------------------------|---|
| Yes (CONTINUE) | <input type="checkbox"/> | 1 | No (GO TO Q9) | <input type="checkbox"/> | 2 |
|----------------|--------------------------|---|---------------|--------------------------|---|

7. At what age were you called to the Scottish Bar? *Please tick (✓) one option only.*

- | | | | | | |
|----------|--------------------------|---|---------------|--------------------------|---|
| Under 25 | <input type="checkbox"/> | 1 | 41 to 45 | <input type="checkbox"/> | 5 |
| 25 to 30 | <input type="checkbox"/> | 2 | 46 to 50 | <input type="checkbox"/> | 6 |
| 31 to 35 | <input type="checkbox"/> | 3 | 51 to 55 | <input type="checkbox"/> | 7 |
| 36 to 40 | <input type="checkbox"/> | 4 | 56 to retiral | <input type="checkbox"/> | 8 |

8. For how many years have you practised/did you practise at the Scottish Bar? *Please tick (✓) one option only.*

- | | | | | | |
|----------|--------------------------|---|--------------|--------------------------|---|
| 1 to 5 | <input type="checkbox"/> | 1 | 16 to 20 | <input type="checkbox"/> | 4 |
| 6 to 10 | <input type="checkbox"/> | 2 | 21 and above | <input type="checkbox"/> | 5 |
| 11 to 15 | <input type="checkbox"/> | 3 | | | |

9. Are you a Queen's Counsel?

Yes (CONTINUE) ₁ No (GO TO Q11) ₂

10. At what age did you become a Queen's Counsel? Please tick (✓) one option only.

Under 31	<input type="checkbox"/> ₁	46 to 50	<input type="checkbox"/> ₅
31 to 35	<input type="checkbox"/> ₂	51 to 55	<input type="checkbox"/> ₆
36 to 40	<input type="checkbox"/> ₃	56 to retiral	<input type="checkbox"/> ₇
41 to 45	<input type="checkbox"/> ₄		

11. Do you currently hold or have you ever held the office of: Please tick (✓) all that apply.

	Previously Held	Currently Hold
Senator of the College of Justice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₁
Sheriff Principal	<input type="checkbox"/> ₂	<input type="checkbox"/> ₂
Sheriff (Resident or Floating)	<input type="checkbox"/> ₃	<input type="checkbox"/> ₃
Part-time Sheriff (or a temporary sheriff pre-1999)	<input type="checkbox"/> ₄	<input type="checkbox"/> ₄
Honorary Sheriff	<input type="checkbox"/> ₅	<input type="checkbox"/> ₅
Tribunal Chair/ Judge	<input type="checkbox"/> ₆	<input type="checkbox"/> ₆
Tribunal Member	<input type="checkbox"/> ₇	<input type="checkbox"/> ₇
Re-employed Retired Judge	<input type="checkbox"/> ₈	<input type="checkbox"/> ₈
Temporary Judge	<input type="checkbox"/> ₉	<input type="checkbox"/> ₉
Temporary Sheriff Principal	<input type="checkbox"/> ₁₀	<input type="checkbox"/> ₁₀

12. Into which category does your current main occupation fall? Please tick (✓) whichever you feel most appropriate.

Judicial office	<input type="checkbox"/> ₁
Advocate	<input type="checkbox"/> ₂
Advocate Depute	<input type="checkbox"/> ₃
Private practice	<input type="checkbox"/> ₄
Public sector	<input type="checkbox"/> ₅
Solicitor or Solicitor Advocate in:	<input type="checkbox"/> ₆
Charitable organisation	<input type="checkbox"/> ₇
Commercial organisation	<input type="checkbox"/> ₈
Higher and Further Education	<input type="checkbox"/> ₉
Crown Office and Procurator Fiscal Service	<input type="checkbox"/> ₁₀
Full-time parent or carer	<input type="checkbox"/> ₁₁
Other (please state):	<input type="checkbox"/> ₁₁

.....

13. Have any of the undernoted changes to your status occurred at any stage during your career?

Please tick (✓) all that apply.

- Solicitor to Solicitor Advocate ₁
- Solicitor to Advocate ₂
- Solicitor Advocate to Advocate ₃
- Advocate to Advocate Depute ₄
- Advocate to Queen’s Counsel ₅
- Solicitor Advocate to Queen’s Counsel ₆
- Solicitor Advocate to Advocate Depute ₇
- Advocate to Solicitor Advocate ₈
- Advocate to Solicitor ₉
- Other employment/profession to Solicitor ₁₀
- Other employment/profession to Advocate ₁₁
- Solicitor in private practice to employed/in-house Solicitor ₁₂
- Employed/in-house Solicitor to Solicitor in private practice ₁₃

- Have not made any of these moves ₀

14. (a) Have you ever taken a break from full-time working for any of the following reasons?

Please tick (✓) all that apply.

- Part-time working ₁
- Maternity (including a paid or unpaid break for that purpose) ₂
- Paternity (including a paid or unpaid break for that purpose) ₃
- Other career break ₄
- Have not availed myself of any of these ₀

14. (b) If you have ever taken a career break, please specify the total number of **weeks** attributable to the break or breaks:.....

15. On average, how many hours per week do you work? *Please tick (✓) one option only.*

- | | |
|--|--|
| Less than 10 <input type="checkbox"/> ₁ | 41 to 50 <input type="checkbox"/> ₅ |
| 11 to 20 <input type="checkbox"/> ₂ | 51 to 60 <input type="checkbox"/> ₆ |
| 21 to 30 <input type="checkbox"/> ₃ | 61 or more <input type="checkbox"/> ₇ |
| 31 to 40 <input type="checkbox"/> ₄ | |

16. What are your main areas of work? (Please tick all areas which apply, and indicate which **one** area of work you generally allocate the most time to).

Note: If you are a full-time judicial office holder you should respond in respect of your work prior to taking up full-time judicial office.

	Main areas of work by time spent <i>(Tick all that apply)</i>	Area where most time spent <i>(Tick only one area)</i>
Criminal Law	<input type="checkbox"/> ₁	<input type="checkbox"/> ₁
Employment Law	<input type="checkbox"/> ₂	<input type="checkbox"/> ₂
Child, Family and Matrimonial Law	<input type="checkbox"/> ₃	<input type="checkbox"/> ₃
Commercial Law	<input type="checkbox"/> ₄	<input type="checkbox"/> ₄
Corporate Law	<input type="checkbox"/> ₅	<input type="checkbox"/> ₅
Personal Injury	<input type="checkbox"/> ₆	<input type="checkbox"/> ₆
Administrative/Public Law	<input type="checkbox"/> ₇	<input type="checkbox"/> ₇
Private Client	<input type="checkbox"/> ₈	<input type="checkbox"/> ₈
In-house Legal Advisor	<input type="checkbox"/> ₉	<input type="checkbox"/> ₉
Other (please state).....	<input type="checkbox"/> ₁₀	<input type="checkbox"/> ₁₀

17. In which geographical area(s) or Sheriffdom(s) do you normally work? *Please tick (✓) all that apply.*

Note: If you are a full-time judicial office holder you should respond in respect of your work prior to taking up full-time judicial office.

Glasgow and Strathkelvin	<input type="checkbox"/> ₁
Grampian, Highland and Islands	<input type="checkbox"/> ₂
Lothian and Borders	<input type="checkbox"/> ₃
North Strathclyde	<input type="checkbox"/> ₄
South Strathclyde, Dumfries and Galloway	<input type="checkbox"/> ₅
Tayside, Central and Fife	<input type="checkbox"/> ₆

Your attitudes to judicial office

In this section, we are interested in your views on judicial office or applying for judicial office in the period since the Judicial Appointments Board came into being (June 2002).

18. Were you ten or more years qualified as a solicitor or an advocate, or were you a Sheriff or Sheriff Principal at any stage between June 2002 and the present date?

Yes ₁ **CONTINUE** No ₂ **GO TO Q25**

19. Have you ever applied for judicial office in an exercise run by the Judicial Appointments Board for Scotland (from 2002 onwards)?

Yes ₁ **CONTINUE** No ₂ **GO TO Q25**

20. Have you been offered judicial office, or placed on the slate or list of recommended candidates, as a result of an application to the Judicial Appointment Board?

Yes ₁ **CONTINUE** No ₂ **GO TO Q25**

21. Which office(s) have you been offered, or in respect of which were you added to the slate or list of recommended candidates? *Please tick (✓) all that apply.*

- Part-time Sheriff ₁ Sheriff Principal ₃
 Sheriff ₂ Senator of the College of Justice ₄

22. If currently holding judicial office, how long have you held that office for?

- 0 to 4 years ₁ 15 to 20 years ₄
 5 to 9 years ₂ Over 20 years ₅
 10 to 14 years ₃

23. If currently holding judicial office, would you consider applying for another judicial office or higher judicial office in the future?

- Yes ₁ Undecided ₃
 No ₂ Not Applicable ₀

24. When thinking about the aspects of judicial office or of the appointments process itself, as they apply to you personally, what is your view of **each** of the following considerations?

	It would encourage me to apply	It would discourage me from applying	It would have no effect
The intellectual and personal qualities needed to perform the duties of judicial office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The type of work available on judicial appointment	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The change of career focus involved in becoming a judge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The move from being paid for specific items of work to being salaried	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Increase in earnings	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Reduction in earnings	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Judicial pension arrangements	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Judicial status/prestige	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The tenure and security of judicial office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Use of a slate in shrieval appointments	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Level of compatibility with child rearing responsibilities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Level of compatibility with carer responsibilities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The public service element of judicial office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The degree of public exposure that the role entails	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The geographical location of the post	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The need to work in different geographical locations, sometimes at short notice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The requirement to fill in an application form	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The interview process	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The competitiveness of the process	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
My level of confidence that the process results in the appointment of the most suitable people	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
General levels of confidence within the profession that the process results in the appointment of the most suitable people	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

	It would encourage me to apply	It would discourage me from applying	It would have no effect
The requirement to identify suitable referees	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The requirement to submit to criminal records checks	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The requirement to submit to questions about my health	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
My level of confidence in the confidentiality of the process	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Change from self employed status to salaried status	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were changes to the eligibility criteria	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were flexible working options	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were career breaks	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there was more practical information about the nature of the work of a judge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were changes to the appointments process	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If more had been done to raise awareness about judicial office earlier in my career	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were mentoring schemes	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
If there were work shadowing schemes	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Better guidance/training on the appointment process	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Better guidance/training on the competence requirements	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Practical information about the lifestyle demands of the role	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Opportunity to experience a wider range of work	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
More judicial skills training	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Additional pressures of the judicial office	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Isolated nature of the role	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Disruption to family or private life	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
The emphasis on specific skills, rather than on specific experience, in the criteria for judicial appointment (ie transferable skills developed in a specialised role(s))	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
Other – please specify:	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

The following three questions are designed to inform the Board on your thoughts about what **does** and what **should** influence the outcomes of a successful application for judicial offices.

Please indicate which judicial office you are thinking about when replying to these questions.
Please select one only:

Senator ₁

Sheriff (all types) ₂

25. Please indicate the extent to which you believe each of the WORK-RELATED factors listed below **does** and **should** affect the successful outcome of an application for judicial offices.

	DOES Affect the Outcome						SHOULD Affect the Outcome					
	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know
Being a solicitor												
Being a solicitor advocate												
Being an advocate												
Being Queen's Counsel												
Experience as a part-time or temporary judicial office holder												
Having worked as an Advocate Depute												
Working mainly in criminal law												
Working mainly in civil litigation including family law												
Working mainly in commercial litigation												
Working part-time												
Being a partner												
Having experience of litigating in the Court of Session												
Having experience in litigating in the High Court of Justiciary												
Having experience of appearing before the Judicial Committee of the House of Lords and/or Privy Council												
Having Sheriff court experience												
Having little experience in the courts covered by the particular office												
Having no court experience												
Having Tribunal experience (either as a Chair/Judge or Member)												
Having transferable skills and potential												

26. Please indicate the extent to which you believe each of the BIOGRAPHICAL factors listed below **does** and **should** affect the successful outcome of an application for judicial offices.

	DOES Affect the Outcome						SHOULD Affect the Outcome					
	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know
Being male												
Being female												
Being aged under 40												
Being aged 41 to 50												
Being aged 51 to 60												
Being aged over 60												
Having a visual impairment (not corrected by spectacles or contact lenses)												
Having a communication impairment (eg hearing impairment or speech impairment)												
Having a mobility impairment (eg using a walking aid or requiring a wheelchair)												
Having a mental health impairment (eg a history of depression)												
Being from a minority ethnic group												
Being from a working class background												
Being from a middle/upper class background												
Being gay, lesbian, bisexual, transgender or transsexual												
Having daily responsibility for the care of dependent children and/or adults												
Having a particular religious or other belief												

27. Please indicate the extent to which you believe each of the OTHER FACTORS listed below **does** and **should** affect the successful outcome of an application for judicial offices.

	DOES Affect the Outcome						SHOULD Affect the Outcome					
	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know	Major positive influence	Minor positive influence	No influence	Minor negative influence	Major negative influence	Don't know
Having good references												
Being known by the judiciary												
Working in the Central belt of Scotland												
Being in the right social networks												
Having a certain political opinion/belief or affiliation to a political party												
Any other factors (please specify):												

28. Please indicate the extent of your agreement with the following statement:

I would not consider applying for judicial office unless I had far in excess of the minimum experience required to do the job (currently 10 years for most offices but 5 years for advocates in relation to senatorial appointment).

Please circle **one** number only.

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	No Views
1	2	3	4	5	6

Personal Background

Why are we asking for this data?

This section asks for a range of personal data about you as an individual. Because the data analysis is being carried out independently, and all of the results will be seen only as anonymised statistical data, no answer will be traceable to an individual.

The questions are deliberately wide-ranging since we considered it important to cover all the areas which are the subject of discrimination legislation. Completion is entirely voluntary – you can complete some, all, or none of it. We very much hope that you will provide as much information as you can: diversity is a crucial element in ensuring that appointments are made solely on merit, uninfluenced by any other unrelated factor, and currently we do not have sufficient background data to enable us to assess and measure progress and success in this area. Your help will be very much appreciated.

About yourself

29. Your Age

- | | | | |
|--------------|--------------------------|--------------|--------------------------|
| 25 and under | <input type="checkbox"/> | 56 to 65 | <input type="checkbox"/> |
| 26 to 35 | <input type="checkbox"/> | 66 to 72 | <input type="checkbox"/> |
| 36 to 45 | <input type="checkbox"/> | 72 and older | <input type="checkbox"/> |
| 46 to 55 | <input type="checkbox"/> | | |

30. National Identity - *please tick the box you feel best describes your national identity.*

- | | | | |
|----------|--------------------------|--------------------------|--------------------------|
| Scottish | <input type="checkbox"/> | Irish | <input type="checkbox"/> |
| English | <input type="checkbox"/> | British | <input type="checkbox"/> |
| Welsh | <input type="checkbox"/> | Other (please describe): | <input type="checkbox"/> |
| | | | |

31. Ethnicity – *please tick the box you feel best describes your ethnic origin.*

- | | | | | | |
|-------|----------------------------|--------------------------|-------------------------|-----------|--------------------------|
| White | British | <input type="checkbox"/> | Black | Caribbean | <input type="checkbox"/> |
| | Any Other White Background | <input type="checkbox"/> | | African | <input type="checkbox"/> |
| | | | | Other | <input type="checkbox"/> |
| Asian | Indian | <input type="checkbox"/> | | | |
| | Pakistani | <input type="checkbox"/> | Mixed | | <input type="checkbox"/> |
| | Bangladeshi | <input type="checkbox"/> | | | |
| | Chinese | <input type="checkbox"/> | Other Ethnic Background | | <input type="checkbox"/> |
| | Other | <input type="checkbox"/> | | | |

32. Gender: Male Female

33. Is your gender identity the same as the gender you were assigned at birth?

- Yes No

34. Do you live and work full time in the gender role opposite to that assigned at birth?

- Yes No

35. Do you feel able to discuss your gender identity with colleagues at work?

- Yes No With some people, but not all

36. Sexual orientation. Which of the following best describes your sexual orientation?

- | | | | | | |
|-----------------------|--------------------------|---|-------------------------|--------------------------|---|
| Heterosexual/straight | <input type="checkbox"/> | 1 | Bi-sexual man | <input type="checkbox"/> | 4 |
| Homosexual man | <input type="checkbox"/> | 2 | Bi-sexual woman | <input type="checkbox"/> | 5 |
| Lesbian | <input type="checkbox"/> | 3 | Other (please specify): | <input type="checkbox"/> | 6 |

.....

37. Religion/faith/belief. What religion, religious denominations, or body, if any, do you belong to/follow? *Please tick (✓)*

- | | | | | | |
|--------------------|--------------------------|---|-------------------------|--------------------------|---|
| None | <input type="checkbox"/> | 0 | Muslim | <input type="checkbox"/> | 6 |
| Church of Scotland | <input type="checkbox"/> | 1 | Jewish | <input type="checkbox"/> | 7 |
| Roman Catholic | <input type="checkbox"/> | 2 | Sikh | <input type="checkbox"/> | 8 |
| Other Christian | <input type="checkbox"/> | 3 | Other (please specify): | <input type="checkbox"/> | 9 |
| Buddhist | <input type="checkbox"/> | 4 | | | |
| Hindu | <input type="checkbox"/> | 5 | | | |

.....

38. Do you consider yourself to have a disability?

The Disability Discrimination Act sets out the circumstances in which a person is considered “disabled”. It says you are disabled if you have:

- A mental or physical impairment.
- This has an adverse effect on your ability to carry out normal day to day activities.
- The adverse effect is substantial.
- The adverse effect is long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

Yes 1 **CONTINUE** No 2 **GO TO Q39**

If you answered **yes**, please select the option which best describes the type of disability you have. *Please tick (✓)*

- | | | |
|---|--------------------------|---|
| Visual impairment (not corrected by spectacles or contact lenses) | <input type="checkbox"/> | 1 |
| Communication impairment (for example, hearing or speech) | <input type="checkbox"/> | 2 |
| Mobility | <input type="checkbox"/> | 3 |
| Mental health | <input type="checkbox"/> | 4 |
| Learning impairment | <input type="checkbox"/> | 5 |
| Other (please specify): | <input type="checkbox"/> | 6 |

39. What is your current marital or civil partnership status? *Please tick the one which you consider best describes you.*

- | | | |
|---|--------------------------|---|
| Never been married or in a civil partnership | <input type="checkbox"/> | 1 |
| Married and living with spouse <i>or</i> in a civil partnership and living with civil partner | <input type="checkbox"/> | 2 |
| Separated from most recent spouse/civil partner | <input type="checkbox"/> | 3 |
| Most recent marriage/civil partnership dissolved | <input type="checkbox"/> | 4 |
| Most recent spouse/ civil partner deceased | <input type="checkbox"/> | 5 |

40. Do you have dependent children (children aged 16 or under whether or not they live with you; or children aged 17-25 in full-time education, whether or not they live with you)?

Yes ₁ **CONTINUE**

No ₂ **GO TO Q43**

41. Please indicate the number of children you have in each of the following age groups:

	Number
Under 5 years	
5-11 years	
12-16 years	
17 years and over	

42. Do you have significant caring responsibilities on a regular basis for a child aged under 16? (This might include looking after them yourself at home, arranging childcare, picking them up from school; anything which you think is significant and which, if you did not do, would have to be done by another adult.)

Yes ₁

No ₂

43. Do you have significant caring responsibilities for people other than children (for example, an elderly relative, or an adult with a disability)?

Yes ₁

No ₂

44. Which would best describe the occupations of your parents (if alive) at the time you started your legal training? If they were unemployed or a full-time parent/carer, please indicate their previous employment category only (for all those who ever worked).

	Father <i>Please tick (✓)</i>	Mother <i>Please tick (✓)</i>
Unemployed	<input type="checkbox"/> ₁	<input type="checkbox"/> ₁
Unskilled	<input type="checkbox"/> ₂	<input type="checkbox"/> ₂
Skilled	<input type="checkbox"/> ₃	<input type="checkbox"/> ₃
Self – employed	<input type="checkbox"/> ₄	<input type="checkbox"/> ₄
Professional	<input type="checkbox"/> ₅	<input type="checkbox"/> ₅
Managerial	<input type="checkbox"/> ₆	<input type="checkbox"/> ₆
Executive	<input type="checkbox"/> ₇	<input type="checkbox"/> ₇
Legal	<input type="checkbox"/> ₈	<input type="checkbox"/> ₈
Full-time parent/carer	<input type="checkbox"/> ₉	<input type="checkbox"/> ₉
Deceased	<input type="checkbox"/> ₁₀	<input type="checkbox"/> ₁₀
Not Known	<input type="checkbox"/> ₀	<input type="checkbox"/> ₀

45. Are there any other additional comments you would like to make about judicial appointments or the Judicial Appointments Board for Scotland? *(Please append additional sheets if required).*

THANK YOU

Please return your questionnaire using the reply paid envelope supplied

Appendix B – Summary of Qualitative Comments (Q45)

Question 45: Summary of Additional Comments Provided

Number of Respondents	Comment
26	Appointments should be made on merit/ability alone
25	There should be no positive discrimination in the application process
19	More open/transparent appointments system required (currently shrouded in mystery)
18	Successful applicants are often very surprising and often incompetent, and as such the JAB has a poor reputation within the profession
9	There is bias within the application process
9	Successful applicants should undergo a probationary period, monitoring or appraisal
8	Not appropriate that the make up of the JAB includes lay persons
8	Too much emphasis placed on interview before Judicial Appointments Board
8	Soundings should form a key part of the application process
7	Requirement for references does nothing to improve application process
6	Having children is a disadvantage
6	Females are at a disadvantage
6	There is a perception that to be successful you need to have worked a good deal of time in courts/criminal practitioners are at an advantage
6	The application process is daunting, intimidating and stressful
5	More information on types of qualities looked for
5	A formal training structure is required for judicial appointments
5	Concerns exist over the confidentiality of the application process
4	Applicants state of mental health should be taken into account
4	The appointments process is too long
4	Inappropriate that employees of COPFS cannot apply for part-time judicial posts
4	The application form is laborious and repetitive
4	Appointments need suitable personal skills in addition to required academic background
3	Over-emphasis on self-assessment in application form which is unfair for those unaccustomed to such a tough process
3	The application process should be simplified
3	Consideration should be given to splitting the roles of sheriffs
3	Middle aged males are at a benefit
3	The requirement for 'floating' jobs puts off potential candidates
3	More candidates from the public sector should be appointed
3	There is a perception that females are at an advantage in the applications process
2	The JAB is Edinburgh-biased
2	There is a lack of feedback from the application process
2	Outstanding candidates should be invited to take office

Number of Respondents	Comment
2	Many appointments do not know enough about litigation
2	The JAB should evaluate the success of its appointments
1	Practice of advertising vacancies for senior judicial posts is unnecessary due to the small number of candidates
1	There should be no political bias or considerations within the application process
1	The quality of conduct of civil business in sheriff courts has not been improved by the appointments made by the JAB
1	There is a need for sheriff/judge apprenticeships/work shadowing as it is a very big step up to make
1	It pays to be someone who has no history of pushing the boat out
1	It is detrimental that vacancies within a Sheriffdom are only advertised internally to existing sheriffs and are only advertised externally if there are no takers
1	Appointments must begin to reflect proportion of non-white people now practicing law
1	The JAB is a vast improvement on the previous patronage system
1	Not all occupations can be undertaken by those with visual or hearing impairments
1	There is a tendency to appoint people who have been on committees
1	Contractual obligations in the civil service inhibit one being considered for part time shrieval appointments
1	A large proportion of shrieval appointments are of candidates with little experience of appearing in court
1	Procurator fiscals are disadvantaged in the application process
1	No opportunity for very senior solicitors to migrate to senior judiciary
1	Some form of testing or assessment should be introduced
1	All posts should be advertised
1	It is a closed shop for ethnic minorities
1	The JAB should have an elected component from among solicitors
1	Previous judicial decisions overturned on appeal should be taken into account
1	Candidates from corporate/commercial law are under-represented
1	Hearing impairments are a huge barrier to judicial appointments
1	Advocates have an unfair advantage in becoming sheriffs
1	Question marks over influence from existing judiciary
1	Application form benefits public sector but puts private sector solicitors at disadvantage
1	Too much emphasis on application form
1	Number of interviews held in relation to candidates is often inappropriate
1	Appointments must be able to communicate clearly
1	Practice at the bar at the highest level is more compatible with childcare responsibilities than office-based professions at a similar level
1	Senators should not be selected exclusively from members of the Faculty of Advocates

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