



**JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND (JABS) -
CONFLICT OF INTEREST POLICY - FOR JUDICIAL APPOINTMENT
COMPETITIONS**

SCOPE

1. This policy relates to individuals appointed to be part of a panel for any judicial recruitment exercise and subsequent Board decisions on these exercises. This includes Board members, lay/legal appointment advisors and those Tribunal members appointed by the President of Scottish Tribunals to be part of Tribunal competitions, hereafter referred to as “Board members and relevant others”.
2. Public confidence in the independence and impartiality of JABS recommendations is critical. JABS has robust safeguards in place to manage conflict of interests during our recruitment process. These include the requirement to identify and declare potential or actual conflicts of interests which may call into question the independence, fairness or objectivity of the recommendation process.
3. It is recognised that Scotland is a small jurisdiction. It is therefore not uncommon for Board members (particularly legal and judicial members) and relevant others to have had professional or social contacts with applicants. In themselves, these may not constitute conflicts of interests, the key point is the extent of any relationships as to whether they meet the threshold for being a conflict or interest.

DECLARATION

4. On the application form, JABS asks applicants to declare if they have or have had any personal or professional relationships with any of the Board members and appointed Panel members (whether Board members or relevant others) for all competitions.
5. As part of the selection process, our Board members and relevant others also disclose any knowledge of, or potential conflict of interest they may have with, any of the applicants.
6. It is acknowledged that, whilst it is not possible to produce a definitive list of circumstances where a conflict of interest may arise, it is likely that a familial, close personal or professional relationship should be disclosed.
7. Board Members and relevant others should not consider it to be a conflict of interest if an applicant is a member of the legal profession who has appeared before them in a judicial capacity.

CONFLICT OF INTEREST

8. It is important that Board members and relevant others are able to identify potential conflicts of interest with applicants in advance of any work being undertaken involving applications and for appropriate steps to be taken.
9. The Board has agreed that the following principles will underpin the rules on conflicts of interest:
 - Maintaining, and being seen to maintain the independence, fairness and objectivity of the Board's recommendation decisions is of paramount importance.
 - A rigorous approach should be adopted to potential conflicts of interest that requires Board members and relevant others to declare any form of conflict with an applicant as soon as it comes to their attention.
 - The onus is on Board members and relevant others to recognise and identify possible conflicts and bring them to the attention of the Chairing Member before any work, relating to the affected application, begins.
 - There is a presumption that any conflict will require the Board member or relevant other to refrain from assessing the affected application and any resultant interview or discussion.
10. This policy provides guidance on:
 - Identifying a potential conflict of interest;
 - Alerting the Chairing Member to any interests and/or conflicts in advance;
 - How a conflict of interest may be handled at all stages of competitions;
 - How late declarations may be handled.
11. If Board members and relevant others have any doubt about how to handle a possible conflict of interest they should seek advice from the Chairing Member in the first instance. The Chairing Member will, as appropriate, seek advice from the Chief Executive as the Standards Officer.

IDENTIFYING CONFLICTS OF INTEREST

12. For each competition, participants must consider if they know any of the applicants. This could be a family relationship, friendship or a professional relationship as noted in paragraph 18 below. If they do, this must be recorded.
13. Whilst it is not possible to produce a definitive or exhaustive list of the circumstances in which a conflict of interest may arise, the questions which should be asked are:
 - “Is there a real possibility that this relationship might:
 - Put me at risk of not being objective as to the applicant's suitability or otherwise for selection; or

- Would a member of the public with knowledge of the relevant facts reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making”.
14. Board members and relevant others should consider relationships that might create a (perceived) risk of treating a candidate less favourably as well as those that might create a (perceived) risk of treating a candidate more favourably.
15. Online relationships should be included as part of any consideration.

DIFFERENCE BETWEEN INTERESTS AND CONFLICTS

Interest

16. It is anticipated that Board members or relevant others may have met or have prior knowledge of some applicants as a part of their day-to-day life.
17. Simple contact with an applicant in a professional context, such as the applicant having appeared before a Board member or relevant other or both sitting in the same court or having involvement in the same cases, will not usually constitute a professional relationship without further involvement and does not need to be declared. However, frequent contact of this nature may constitute a professional relationship and should be declared in advance of any work relating to that applicant commencing.
18. Board members or relevant others should check the list of applicants’ declarations, which may provide a reminder if you are unsure. However, applicant declarations should not be seen as a substitute for those from Board members or relevant others, and you are still required to make this declaration separately. If you decide that a relationship with you declared by an applicant does not constitute an interest or a conflict, you should explain this in your own declaration.

Conflict

19. The following are examples of situations that Board members and relevant others could regard as creating a conflict of interest:
- Where a significant level of business or professional involvement exists between a candidate and Board members and relevant others, such as being partners (or former partners), being long-standing colleagues in the same stable (currently or formerly), or one being an employee (or former employee)
 - Where Board members and others have mentored a candidate, or participated in an appraisal scheme that involved assessments of them

- Where an applicant is a close relative (including but not limited to a father, mother, brother, sister, child, grandchild or stepfather/-mother/-brother/-sister/-child), spouse or civil partner (or former spouse/civil partner), or close personal friend of a Board member or others.
- Regard would be had as to the recency of the relationship where this is relevant.
- Where a panel or Board member has particular knowledge of an applicant, this may also constitute a conflict.

WHAT TO DO ABOUT POTENTIAL CONFLICTS OF INTEREST

20. All Board members and relevant others are required to inform the Chairing Member of any potential conflict of interest before any assessment work commences in line with the agreed process. As documents arising from this will contain candidate information they should not be sent via email (unless via a secure email such as Scottish Government or Scottish Courts and Tribunals Service).

21. Specifically you are required to declare:

- All relevant relationships to any of the applicants for a competition where you are part of the panel, including for only parts of the competition (i.e., shortlisting) at the earliest possible opportunity and before shortlisting commences;
- All relevant relationships to any of the applicants for a competition where you are a Board member not sitting as part of a panel at the earliest possible opportunity and before the start of the interview period;
- Any potential conflicts of interest arising from that relationship;
- The reasons why you consider this relationship to constitute a (potential) conflict of interest;
- Where appropriate an explanation for not declaring a conflict or interest in respect of an applicant who has declared a relationship with you.

22. Where a potential conflict of interest is raised by a panel member, the Chairing Member, after discussion with that member may consult with the Chief Executive to consider there is an actual conflict of interest and will advise the member of the outcome of that consideration before any assessment work commences. Where a potential conflict of interest is raised by a Board member or relevant other (not on the panel), the same process shall be followed with the outcome being advised at an appropriate time.

23. If the Chairing Member is unavailable for an extended period and where the interim chairing arrangements as set out in legislation have not yet been put in place, members should raise any potential conflict with the Chief Executive and the panel chair.

LATE DECLARATIONS

24. Where an interest or (potential) conflict of interest is declared late, such as after the start of the application sift or at a meeting, the individual making the declaration should pause any work being done in respect of the application in question and advise the Chairing Member.
25. In the rare event that an interest or (potential) conflict of interest is not recognised until the time of a meeting relating to the applications received (and after the applications have been assessed) it should be declared at the meeting at the earliest possible opportunity. The panel chair will have the authority to make a determination on how to proceed. Depending on the nature of the conflict this may be:
- To suspend the meeting to bring the matter to the attention of the Chairing Member and Chief Executive for decision.
 - To determine that the interest being declared does not prevent the meeting from proceeding, but that the individual making the declaration should either speak last or leave the meeting when the matters are being discussed
 - To note the interest being declared but decide, in line with established process that no action is required.
26. In all events that a late declaration is made, this should be recorded in the note of the meeting being held and the Chairing Member and Chief Executive shall be informed.

OUTCOMES OF CONFLICTS OF INTEREST

27. The Chairing Member, after discussion with the member/relevant other and, where appropriate, with the Chief Executive, will confirm the approach to be taken where a (potential) conflict of interest has been declared. There are three potential outcomes:
- That the matter declared does not represent a conflict or interest and as such, no action is needed.
 - That the matter declared represents an interest, but is not a conflict. In this instance, the individual making the declaration can remain as part of the competition panel, at sift assess the application as normal and may take part in any resultant interview and subsequent decision meetings. The individual should speak last at any meetings where the application in question is discussed.
 - That the matter declared represents a conflict. In this instance the individual making the declaration may remain as part of the competition panel but should not assess the application in question, should not participate in any

resultant interview and should recuse themselves from any meetings where the application in question is being discussed. In this instance the Chairing Member will make alternative arrangements for the application assessment at sift and for any interview. The replacement member(s) will speak on the application at any meetings.