

Judiciary
of Scotland



Senator of the
College of Justice

Judiciary of
Scotland





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A foreword from the Lord President

Lord Carloway



The Rule of Law is fundamental to the functioning of a modern democracy. A vital part of ensuring the observance of the Rule of Law is an independent judiciary comprised of lawyers of high quality and ability. You may be considering whether you wish to become one of the judges of the Supreme Courts of Scotland - the Court of Session and the High Court of Justiciary. I therefore take this opportunity to explain why being a judge is both worthwhile and fulfilling.

The work is varied and demanding. Whatever areas of law you have been practising in, you can, from the outset, anticipate being asked to preside in a variety of first instance civil business and in the trial of serious crime. You will be assisted in understanding any relevant practices and procedures, with which you are unfamiliar, by the Judicial Institute's training programme. With a small number of judges in the Supreme Courts, everyone needs to be able to master any aspect of the law. Particularly in the first few years, the work may require a readiness to revisit your academic studies in order to make sure that your legal knowledge is up to date in the main areas of work with which the Courts are concerned.

As a judge, you will be entrusted with ensuring that Scots law continues to meet the needs of today. You will take decisions that may fundamentally affect the lives of fellow citizens. They will expect and trust you to carry out your task to the best of your professional ability. I have found my time on the bench intellectually challenging, stimulating and rewarding. If you are successful in your application, I am sure that you will too.

Senators of the College of Justice

Judges of the Supreme Courts are judges of the Court of Session and the High Court. They have a jurisdiction which encompasses civil and criminal cases, both at first instance and in an appellate capacity. There is presently a maximum of 36 judges. At the head is the Lord President of the Court of Session. The Lord President presides over the First Division and, as Lord Justice General, in a number of significant criminal appeals. The Lord President is the chairing member of the Scottish Courts and Tribunals Service Board. They also are the head of the Scottish Tribunals in terms of the Tribunals (Scotland) Act 2014.

The Lord Justice Clerk presides in the Second Division. Traditionally the Lord Justice Clerk has particular responsibility for criminal law and procedure. They chair the appellate sittings of the High Court in many important cases. They also deputise for the Lord President in administrative matters as required.

There is a maximum of 12 judges in the Inner House. The remaining judges sit in the Outer House. Outer House judges are occasionally asked to sit in the Inner House, especially if the appeal concerns a matter within their particular expertise.

Essential Requirement

The essential requirement for the role of a judge is to possess the ability and legal standing to perform the functions of the office.

This requires knowledge and experience in the branch of the law in which they have regularly practised, but also demonstrate the ability to work effectively in other branches of the law that may arise in the course of their judicial duties, including new or emerging areas.

Nature of Work

A newly appointed judge will begin work in the Outer House of the Court of Session and the High Court. The precise division of work will depend upon circumstances and pressure of business. At present, there is a high level of demand in the first instance courts of the High Court. All new judges can expect to conduct criminal trials. Those who have specialised in criminal may wish to preside only, or mostly, in such trials. Those from a civil background will have the opportunity to preside for prolonged periods in the commercial, family and other courts in the Outer House. The workload of a judge is challenging, but stimulating and rewarding. The decisions of judges on controversial matters can attract substantial, and often critical, scrutiny in the media. Judges are expected to be sufficiently robust in character to withstand public criticism, even when it is ill-informed.

Judges will be expected to conduct some, particularly procedural, hearings remotely. For Outer House procedural business this will often be by WebEx video conferencing. Technology presents judges with the opportunity to widen public access and make the courts more visible and accessible therefore the ability to master digital technology is an important tool in a modern judge's armoury.

Criminal Proceedings

A judge sitting at first instance must be able to preside over trials of people accused of the most serious offences. They must control the proceedings, rule on legal challenges, direct the jury on the law and, if there is a conviction, sentence the accused. Important issues of law can arise. Judges require to write reports for the Parole Board when they have imposed long term prison sentences. When required, they also prepare appeal reports for the High Court sitting in its appellate capacity. These reports must be written within a relatively short time scale and cover the issues of fact and law arising in the trial and challenged on appeal.

Judges deal with criminal appeal sifts (applications for leave to appeal). These are either single judge conviction and sentence sifts, or two and three judge sentence and conviction sifts to be carried out in conjunction with a judge or judges sitting in the same building. A judge may be asked to sit as part of a court to hear criminal appeals.

The bulk of criminal trial work is carried out in Edinburgh and Glasgow. There is a dedicated court in Aberdeen. The High Court also sits in certain sheriff court buildings, including places such as Dundee, Inverness, Livingston and Stirling as business requires. Judges sitting out of Edinburgh are provided with a car and driver, although they may elect to stay overnight if they prefer. Those with child or other care responsibilities may express a preference to sit only in and around Edinburgh or, depending upon their residence, Glasgow.

A small number of judges are appointed to manage criminal cases at Preliminary Hearings. These Preliminary Hearings are designed to ensure that cases are not assigned to trial diets before they are ready to proceed. An Outer House judge is appointed as the First Instance Crime Administrative judge. They will sit mostly in Glasgow and supervise the operation of criminal trials under the general guidance of the Lord Justice Clerk. They will be a member of, and report to, the Supreme Courts Programming Board.

Civil Proceedings

Outer House judges are expected to decide a wide range of civil matters. Normally they sit alone, but occasionally they may sit with a civil jury. In recent years, first instance judges have had to deal with a large number of judicial reviews in immigration cases. Cases of constitutional importance, including those challenging the actions of Government and Parliament, have become more frequent. An aptitude in the civil field, especially if accompanied by efficiency in producing succinct and readily understandable opinions, may result in appointment to the specialist commercial court, or as the judge with particular administrative responsibility for personal injury or family litigation.

There are designated judges for commercial and corporate cases. The Lord President appoints judges to work in those areas, usually for a maximum of three years, although this may be extended. Some judges are selected to sit part time on the Employment Appeal Tribunal. All Court of Session judges are *ex officio* entitled to sit in the Upper Tribunal of the reserved (UK) Tribunals (including the Finance and Tax Chamber) and the devolved Scottish Tribunals. The Lord President designates specific judges to sit occasionally in these tribunals in Scotland and elsewhere in the United Kingdom (usually London).

As a generality, other than in cases involving complex issues of fact and law, Outer House judges are expected to deliver *ex tempore* opinions at, or very soon after, the conclusion of a hearing. If a judge has elected to reserve judgment, they are expected to produce a final opinion within three months and, in most cases, much sooner. After particularly complex or lengthy cases, a judge may be allocated specific writing time during the court day on request to the Keeper of the Rolls. Outer House judges deal with a wide range of written applications, including those seeking permission to commence proceedings by judicial review or ordinary actions by party litigants.

An Outer House judge acts as the Administrative Judge who monitors the key performance indicators for civil first instance cases. They will, like the counterpart in criminal trials, sit on and report to the Supreme Courts Programming Board. Outer House judges may be given roles in a variety of different areas. These are listed on page 10.

The Inner House and High Court (appellate)

Appointment to the Inner House is an ambition of most (but not all) Outer House judges. Although experience in the Outer House is likely to be an important element, the selection of Inner House judges is on merit. The successful candidate will be expected to produce sound civil opinions within a reasonable time and to operate in the collegiate atmosphere of the Divisions. They should have had a good track record of presiding over High Court trials and producing opinions of the type described in the "Civil Proceedings" section promptly. Appointment is dependent upon the agreement of the Lord President and Lord Justice Clerk. At present appointments normally occur after about 10 years of Outer House work, although it can be earlier in exceptional cases.

Work in the appellate courts is markedly different from sitting at first instance. New Division judges will initially gain experience as the second or third judge in civil or criminal appeals. They will be expected to participate fully in the cases and to be prepared to write the leading Opinion when requested to do so by the chair. They should be in a position to express their views in oral discussion. The normal method of working is towards a consensus, especially in criminal cases where certainty is important. Nevertheless, each judge must have the strength of character to dissent on reasoning and decision, where appropriate.

All cases of importance, as determined initially by an Inner House Procedural Judge, will be directed to a hearing before one of the "permanent" (i.e. First or Second) Divisions. The Keeper of the Rolls, in consultation with the Lord President and the Lord Justice Clerk, will determine the precise composition of the bench. These will, if possible, be selected from members of one Division, but a judge with particular expertise in an area of civil law (possibly from the Outer House) may be involved.

The Lord Justice Clerk presides over criminal cases of notoriety, importance or interest. These are selected by the Criminal Appeals Administrative Judge. The Lord Justice General may also sit in these cases, sometimes with the Lord Justice Clerk.

Extra Divisions, or benches of the High Court without the Lord Justice General or Lord Justice Clerk, hear more routine appeals. Relatively new Division judges can expect to chair some of these benches, especially in relation to sentencing

Judicial Activities

In addition to their judicial work, judges may be given responsibility for some administrative duties. The main administrative duties are:

- Administrative Judge
- President of the Scottish Tribunals
- Supervising family or personal injury litigation
- Supervising the business of the commercial court
- Chair and Vice Chair of the Judicial Institute
- Chair of the Scottish Law Commission (part-time)
- Member of the Judicial Appointments Board for Scotland
- Member of the Parole Board
- Member of the Scottish Civil Justice Council
- Member of the Criminal Courts' Rules Council
- Member of the Scottish Sentencing Council
- Deputy Chairman of the Boundaries Commission for Scotland
- Member of the International Hague Network of Judges and family liaison judge for the European Civil Judicial Network
- The Judicial Council for Scotland and its Committees.

Other Activities

Judges promote public understanding of the law and the justice system by giving lectures and speeches in the universities or at professional conferences. They give lectures at judicial training events. They assist in international programmes for judicial exchanges. Judges represent Scotland and the United Kingdom at judicial exchanges and international meetings.

Eligibility

Judges are appointed by His Majesty The King on the recommendation of the First Minister, who receives recommendations from the Judicial Appointments Board for Scotland. The First Minister must consult with the Lord President of the Court of Session, before putting their recommendations forward.

Those formally eligible for appointment are:

- advocates of five years' standing;
- Writers to the Signet of ten years' standing, who have passed the examination in civil law two years before taking up their seat on the Bench;
- Sheriffs principal and sheriffs who have exercised their respective functions continuously for a period of at least five years; and
- solicitors who have had rights of audience before either the Court of Session or the High Court of Justiciary, or both, continuously of not less than least five years;

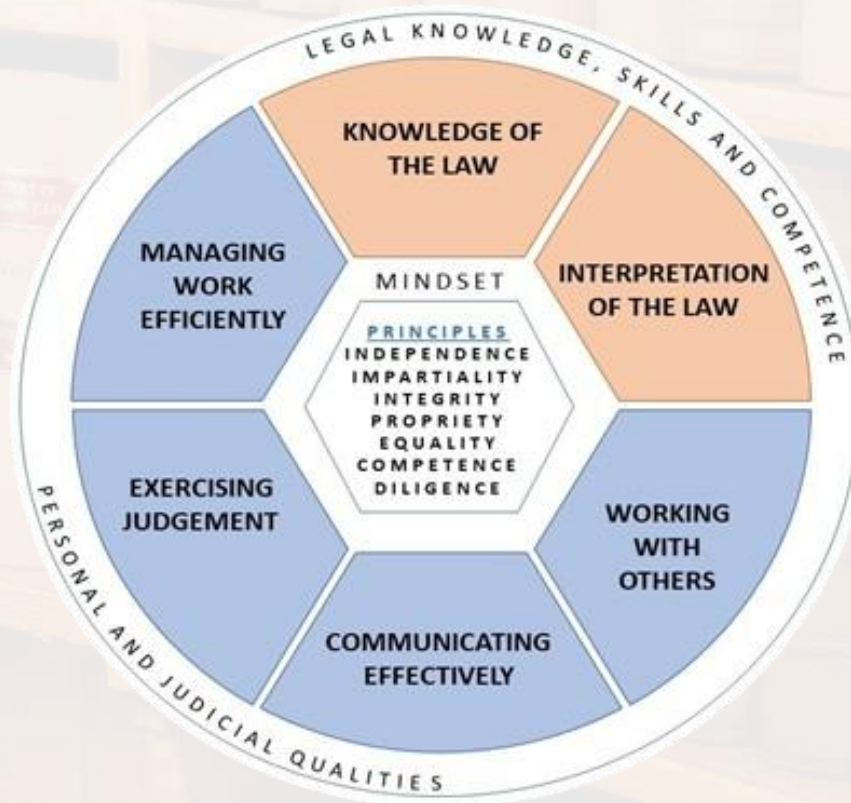
Those seeking appointment should demonstrate a level of competence that marks them out from their peers. Their ability needs to be demonstrated not just in the branch or branches of the law in which they have regularly practised. They must also demonstrate an ability to work effectively in other branches of the law that may arise in the course of their judicial duties, including new or emerging areas.

Application and Assessment Process

JABS is an independent non-departmental public body whose statutory role as set out in the Judiciary and Courts (Scotland) Act 2008 is to make recommendations for judicial appointments solely on merit

Candidates for the role of senator go through a holistic application process which tests the level of skill, experience and professionalism required to perform the duties of the office. JABS encourages diversity and particularly welcomes applications from groups currently under-represented in the judiciary. The principles of fair and open competition will apply and recommendation for appointment will be made solely on merit.

Each applicant to judicial office will be assessed against a set of skills and qualities which are necessary for the role:



Remuneration

An Outer House judge is paid £212,351 per annum and an Inner House judge £241,796.

A new reformed Judicial Pension Scheme was introduced for all judges in April 2022. Details of the 2022 scheme can be found at www.gov.uk/government/publications/judicial-pension-scheme-2022-guide

The mandatory retirement age for judicial office holders is 75.

A message from Lady Drummond



I trained with the Scottish Government and, once qualified, worked as assistant parliamentary counsel in London. Coinciding with devolution, I returned to Scotland and called to the Bar. I'd never worked in private practice and was uncertain about where any instructions might come from. I started as a crown junior and gradually built up a civil practice specialising in judicial review and acting for the government in immigration cases. After nine years at the Bar, and with two young children, I had my sights on a more balanced work life. I moved with my family to Ascension Island in the South Atlantic where I was Crown Counsel. As well as providing legal advice to the local government, I helped train local court users including the lay judiciary. The experience offered a different legal perspective: the island had a tiny community and an entirely lay criminal justice system at first instance. It brought home to me the importance of impartial and reasoned judicial decision-making as well as the need to adapt to local and diverse circumstances.

Prompted by my involvement with the judiciary overseas, and also in the hope there might be some guaranteed work on my return to the bar, I began to think about a judicial role. I completed the application form to be a part-time sheriff from my office 9,000 miles away, feeling that my prospects were about as remote. I had no judicial experience and not worked in Scotland for 2 years. I realised that I could draw on some of my recent experiences to meet the criteria and was fortunate that the 9 hour flight turned out not to be a wasted journey. I sat as a part-time sheriff for the following 5 years mixing that with work at the bar. I began to realise how much I enjoyed the variety of cases and making a reasoned decision rather than arguing for a particular outcome.

After appointment as a resident sheriff, I sat as a temporary High Court judge, Appeal sheriff and Justice of Appeal in the St Helena Court of Appeal for a few years and began to think about becoming a senator. Although I had by then many years' judicial experience, the role seemed out of reach. I was doubtful that I could meet the criteria for appointment, thinking those who were regularly practising in the higher courts were better placed. Out of interest, I attended an information event run by the Judicial Appointments Board for Scotland (JABS) and felt better informed and encouraged to apply. I realised that there is a lot of work involved in completing the form and preparing for the interview within fairly short timescales. I began to look more closely at the appointment criteria and to record examples from my experiences that I might use, adding to those as they occurred. I began also to think about what written work I might include in my application, and had an eye to that when making decisions. All of that meant that by the time a vacancy was announced, I was not staring at the blank pages of the form wondering where to start. Each time I applied, I tried to learn from the experience, addressing constructive feedback provided by JABS. I was delighted when I was ultimately successful. It's a responsible, stimulating and interesting role. Whilst there can be pressures, I have felt very well supported by colleagues, from the application itself through to judicial induction training and in the day to day work. New judges are allocated a more experienced judge as a mentor on appointment which is another helpful support. I would highly recommend the role, there is a real sense of fulfilment in being able to contribute to the administration of justice in Scotland.



A message from Lord Scott



From 1986 (as a second year trainee) until 2022 (when I became a senator), my name appeared on the Roll of Solicitors in Scotland. In those 36 years, I enjoyed a career which consisted mostly of court work. I appeared in every type of criminal court - JP, Stipendiary Magistrate, District, Sheriff (summary and solemn), High Court of Justiciary, Appeal Court and UK Supreme Court. I also appeared before the Parole Board in Life Prisoner Tribunals.

I trained in a Glasgow firm that was known for its court work but also offered valuable experience in other areas. I qualified in 1987 and moved in 1988 to a smaller Edinburgh firm which specialised in criminal court work. I appeared in my first jury trial in 1989 and was able to develop my experience of solemn criminal work to the stage where I was keen to seek extended rights of audience in 2001. I have always sought additional professional challenges and took silk in 2011, still acting mainly in criminal defence.

Alongside my legal career, I was involved in the Voluntary Sector for over 20 years – the Scottish Human Rights Centre (formerly the Scottish Council for Civil Liberties), the Howard League for Penal Reform in Scotland and Justice Scotland. Participating in these organisations added greatly to my understanding of people and society.

I have been President of the Edinburgh Bar Association and President of the Society of Solicitor Advocates. This allowed me to work and make representations on behalf of professional colleagues in matters such as legal aid and codes of conduct.

I had a short period as a part-time Advocate Depute, conducting trials, preliminary hearings and an extradition case for the Lord Advocate.

From 2015, I undertook a number of independent reviews for the Scottish Government, the Scottish Police Authority and Police Scotland. I was also instructed in two public inquiries on behalf of Core Participants.

When I started to think about a career on the bench, I was still enjoying my work which was varied and demanding.

My successful application to become a senator was not my first application. If you are interested in this role, persistence may be helpful, especially if coupled with taking every opportunity to develop and expand your professional experience. The JABS website has extensive information to guide you through the process. It is also useful to speak with others who have been through it.

My new role has been challenging and rewarding. Although I am mostly sitting in the same courtrooms with which I was very familiar, it takes a little time to adjust to the new perspective. New judges are now offered a mentor who is an experienced judge able to assist with the transition from private practice to the bench. I have found this very helpful and check in with my mentor regularly. In a role that can be quite isolated, all of my new colleagues have been extremely welcoming. (I am even getting used to the wig).



The first few months of appointment

Measures are in place during the early stages of a new judge's appointment. They are intended to provide support and reassurance to any new judge and to accord with best practice.

- The Judicial Institute will provide induction training over up to five days. This will include presentations, problem exercises and facilitated discussions on a range of topics, tailored to the needs of the new judge. Modules are designed to provide support in making the transition to the new judicial role.
- New judges are required to complete at least three sitting-in days with an experienced judge in order to familiarise themselves with the judicial environment, to observe the work undertaken, and to have the opportunity to discuss with a serving judge on how best to approach and organise for the challenges ahead. These are organised through the Keepers Office.
- A newly appointed judge will be offered the assistance and guidance of a mentor, drawn from among the other judges, to whom they can turn on a confidential basis for support in the early period of their appointment. The scheme is voluntary. If a new judge opts for a mentor, the scheme envisages a mentoring relationship which lasts for a minimum of one year. The relationship may last for a judicial career.
- A new judge will have the assistance and support of the other judges and have access to the advice and guidance from the Lord President or the Lord Justice Clerk.
- The Judicial Institute provides an annual programme of courses for serving judges on subjects relevant to the work of the Supreme Courts. The Institute also maintains the Judicial Hub which is the judicial intranet. The Hub hosts a wide range of written guidance and other materials designed to support judges in their daily work. It is regularly updated to assist judges to keep track of current developments.



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