



**THE OFFICE OF
SENATOR OF THE COLLEGE OF JUSTICE**

This paper has been provided by the Judicial Office for Scotland.

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Introduction from the Lord President

Observance of the Rule of Law is fundamental to the functioning of a democracy. A vital part of ensuring the observance of the Rule of Law is an independent judiciary comprised of lawyers of the highest quality and ability. You are considering whether you wish to apply to join the judges who comprise the Supreme Courts of Scotland - the Court of Session and the High Court of Justiciary. I would like to take this opportunity to explain to you both why being a judge is worthwhile and fulfilling and what it involves.

The work is varied and demanding. Whatever area of the law you may have come to practise, you can expect to preside in cases in any area of the law from the outset. With a small number of judges, we need to be lawyers who can master any aspect of the law. A substantial part of your time will be spent in the High Court, trying criminal cases involving the most serious of offences. Equally you will find yourself hearing cases in almost every branch of the civil law. Particularly so in the first few years the work requires a readiness to return the library or study to make sure that legal knowledge is up to date in all areas.

Being a judge is demanding, as explained in greater detail in what follows. As a judge you will ensure that Scots law continues to develop to meet the needs of today. You will take decisions that may fundamentally affect the lives of your fellow citizens, and they expect and trust you to carry out your duties to the best of your professional skill. I have found my time on the bench intellectually stimulating and rewarding. I expect, if you are successful in your application, you will also

Lord Carloway

The Judges of the Supreme Courts

- 1) The judges of the Supreme Courts are judges both of the Court of Session and the High Court. They have a jurisdiction which encompasses both civil and criminal cases, both at first instance and in an appellate capacity.¹ There is presently a maximum of thirty four judges. It is proposed, subject to the agreement of the Scottish Parliament, that this should increase to 35 while one Judge undertakes a major inquiry. At their head is the Lord President of the Court of Session and Lord Justice-General. The Lord President presides over the First Division, and in a number of significant criminal appeals. The Lord President is head of the Judiciary in Scotland and the chairing member of the Scottish Courts and Tribunals Service. He is also the Head of the Scottish Tribunals created by 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. She chairs the appellate sittings of the High Court in most of the important cases. She also deputises for the Lord President in administrative matters as required.
- 2) There is a maximum of twelve 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.
- 3) An Outer House judge is paid £181,566 *per annum* and an Inner House judge £206,742. The details of the New Judicial Pensions Scheme are contained in a guide issued by the Ministry of Justice (which is responsible for administering all judicial pensions in the UK). A copy of the guide forms part of the application pack. Candidates should take independent financial advice on the tax and other financial implications of joining the scheme preferably in advance of making an application. A judge must retire on his or her seventieth birthday.

Qualifications and experience

- 4) Those formally eligible for appointment are:
 - a) Advocates of five years' standing;
 - b) 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;

¹ In their civil capacity they are Senators of the College of Justice and in relation to criminal matters they are Lords Commissioners of Justiciary. The term judge is used throughout this document in place of either description

- c) Sheriffs Principal and Sheriffs who have exercised their respective functions continuously for a period of at least five years; and
 - d) Solicitors who have had rights of audience before either the Court of Session or the High Court of Justiciary or both continuously for a period of not less than five years.
- 5) Persons who are appointed have to demonstrate a degree of competence as a lawyer that marks them out from their peers. This 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 the ability to work effectively in any branch of the law that may arise in the course of their judicial duties, including new or emerging areas.

Judicial Duties

- 6) A newly appointed judge will begin work in the Outer House and the High Court. The precise division of work will depend upon circumstances and pressure of business. The workload of a judge is onerous. Those who seek appointment should be fully aware of this. They are required to work at home most evenings of the week and at weekends, as pressure of work demands. The decision 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.

Criminal Proceedings

- 7) A judge of the High Court of Justiciary 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 in High Court trials. Judges require to write reports for the Parole Board when they have imposed certain custodial sentences and, when required, appeal reports for the High Court sitting as in its appellate capacity. These reports require to be written within a tight time scale.
- 8) When sitting in the High Court, judges will 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 sitting in the same building. A judge may also be asked to sit as part of a court to hear criminal appeals

- 9) The bulk of criminal trial work is carried out in Glasgow, where there are 8 courts. Edinburgh has 4 trial courts. There is a dedicated court in Aberdeen. The High Court also sits in satellite courts, such as Paisley, Livingston or Perth 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. Their regular clerk will normally accompany them and they will also have a macer.
- 10) A small number of judges are appointed to manage criminal cases at Preliminary Hearings, 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 Criminal Administrative judge, who supervises the operation of criminal trials under the general guidance of the Lord Justice Clerk. He or she will be a member of, and report to, the Supreme Courts Programming Board.

Civil Proceedings

- 11) Outer House judges are expected to decide cases on a wide range of civil matters. Normally they sit alone, but occasionally they may sit with a civil jury in personal injury cases. In recent years, first instance judges have had to deal with a large number of 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 civil work, may result in appointment to the specialist commercial court, or as the judge with particular administrative responsibility for person injury or family litigation.
- 12) There are four 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. Another judge is selected to sit 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 will designate specific judges accordingly.
- 13) As a generality, other than in cases involving complex issue of fact and law, Outer House judges are expected to be able to deliver *ex tempore* judgments at, or very soon after, the conclusion of a hearing. With complex cases, judges are expected to produce written opinions by working outwith court hours. After particularly complex or lengthy cases, they can obtain additional writing time during the court day if

the judicial workload permits. Outer House judges deal with a wide range of written applications, including those to authorise the commencement of proceedings by party litigants.

- 14) An Outer House judge acts as Administrative Judge monitoring the key performance indicators for civil cases. He or she 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 below, but include part time work as President of the Scottish Tribunals, chairman of the Scottish Law Commission and membership of the Judicial Appointments Board, the Parole Board or the Sentencing Council. An Outer House judge, especially, but not exclusively, a senior one, can expect to be selected to sit on an appellate bench as business dictates. In certain cases a judge will be asked to do so because of particular experience in the field under review.

The Inner House and High Court (appellate)

- 15) Appointment to the Inner House is an ambition of most (but not all) Outer House judges. Although experience in the Outer House may be an important element, the selection of new Inner House judges is made on merit. The successful candidate will be expected to be able to produce sound opinions with reasonable despatch and to operate in the collegiate atmosphere of the Divisions. He or she will have had a good track record of presiding over High Court trials. Appointment is dependent upon the agreement of the Lord President and Lord Justice Clerk. At present appointments normally occur after between 7 and 10 years of Outer House work, although it could be earlier in exceptional cases.
- 16) 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. He or she will, however, 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. He or she should be in a position to express his or her views in oral discussion. The normal method of working is towards a consensus, especially in criminal cases where certainty is particularly important. However, each judge must have the strength to dissent on reasoning and decision, where appropriate.
- 17) All cases of importance, as determined by the Inner House Administrative Judge, will be directed to a hearing before one of the

“permanent” (ie First or Second) Divisions. The Keeper of the Rolls, in consultation with the Lord President, 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 chosen.

- 18) The Lord Justice Clerk will normally preside 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.
- 19) Extra Divisions, or benches of the High Court without the Lord Justice General or Lord Justice Clerk, will hear more routine appeals. Relatively new Division judges can expect to chair some of these benches, especially in relation to sentencing. The arrangements for writing time in the Inner House are regarded as generally satisfactory.

Administrative Duties

- 20) In addition to their judicial work, judges will be given responsibility for administrative duties. The main administrative duties are:
 - a) Administrative Judge (four appellate civil and criminal; and first instance civil and criminal).
 - b) President of the Scottish Tribunals.
 - c) Supervising family or personal injury litigation.
 - d) Supervising the business of the commercial court.
 - e) Chairman and Vice Chairman of the Judicial Institute.
 - f) Chairman of the Scottish Law Commission (part-time).
 - g) Member of the Judicial Appointments Board.
 - h) Member of the Parole Board.
 - i) Member of the Scottish Civil Justice Council (two judges).
 - j) Member of the Criminal Courts’ Rules Council.
 - k) Member of the Scottish Sentencing Council.
 - l) Deputy Chairman of the Boundaries Commission for Scotland.

- m) Member of the International Hague Network of Judges and family liaison judge for the European Civil Judicial Network.
- n) Six judges serve on the Judicial Council for Scotland and its Committees. One of these is the representative on the European Network of Councils for the Judiciary.

Other Activities

- 21) Judges assist public understanding of the law and the justice system by giving lectures and speeches on matters relating to the law in the universities or at professional conferences. They give lectures at judicial training conferences. They assist in international programmes for judicial exchanges. Judges represent Scotland and the United Kingdom at judicial exchanges and international meetings.

The first few months of appointment

- 22) The following will be provided for all newly appointed judges:

- a) **An induction course**

The Judicial Institute gives all newly appointed judges induction training over five days,² including presentations, problem exercises and facilitated discussions on the following topics:

- i) Judicial ethics and conduct;
- ii) Court management, including criminal jury management;
- iii) Procedural and evidential issues (civil and criminal);
- iv) Assessment of witnesses;
- v) Judgement writing and *ex tempore* decision making;
- vi) Sentencing;
- vii) Contempt of court;
- viii) Social context, equal treatment and diversity issues;
- ix) Unrepresented litigants;
- x) Vulnerable witnesses;
- xi) Use of information and communications technology.

² Lord President's Judicial Training Determination No 1 of 2011

If a newly appointed judge requests specific coaching in a particular area of practice, the Judicial Institute will provide it. However, the Institute does not normally provide training on the substantive law. That is a matter which all judges are expected to manage for themselves.

b) **Sitting-in**

Newly appointed judges must complete at least three sitting-in days with an experienced judge in order to familiarise themselves with the judicial environment on the bench, observe the work undertaken there, and have the opportunity to discuss with a serving judge on how best to approach and organise for the challenges ahead.

c) **Mentoring**

A new judge will be offered the assistance of a mentor, drawn from among the other judges, to whom he or she can turn on a confidential basis for support in the early period of his or her appointment. The scheme is voluntary. If a new judge opts for a mentor, the scheme envisages a mentoring relationship which lasts for one year. The relationship can last for a judicial career. This assistance will be in addition to the support that the judges as a whole will give to those newly appointed. A newly appointed judge can also seek assistance at any time from the Lord President or Lord Justice Clerk.

- 23) These measures are intended to provide reassurance to the new judge and accord with best international practice.