

POLICY ON CONFLICT OF INTEREST

Personal acquaintanceship with applicants

1. In a small jurisdiction such as Scotland, it would be surprising if Members of the Board (and the legal and judicial Members in particular) were not acquainted with a number of those applying for judicial appointment. The Board believes that public confidence in the independence and impartiality of its recommendations is very important and so various safeguards are in place to avoid conflicts of interest, or the perception of them, during the Board's selection processes.
2. Applicants are asked in the application form to inform the Board if they are in any way related to, or have a personal or professional relationship with any of the Board Members, and if so to provide details. They are also asked not to nominate a Board Member as a referee.
3. That safeguard is mirrored within the Board. As part of the Board's quality assurance process, prior to the sift of applications, the Chairing Member invites Members to disclose any knowledge of or conflict of interest with applicants.
4. If any Member has private knowledge relevant to an applicant's suitability which they feel should be disclosed, they should declare that fact to the Board (without disclosing details) and should then discuss with the Chairing Member how the matter should be handled. This could mean that the Member might speak last in discussion of the applicant, or that the Member might not be part of the panel which will interview the applicant.
5. Where it is accepted that there is a direct conflict of interest, declared by an applicant or a Board Member, the Board Member may not take part in the interview panel which that applicant is invited to attend. The Board member will also speak last in any discussion of the applicant.

Conflict of Interest

6. Personal acquaintanceship alone does not constitute a conflict of interest but where there exists a close personal relationship, for example, a long standing family or business connection, that may disqualify the Member from taking part in the discussion of the applicant.
7. The Board also considers past associations between its judicial and legal Members and potential applicants for office. In this context one example is "devilling" where, as part of their training and education, members of the Faculty of Advocates are required to spend several months with a devil master, i.e. a more senior member of the Faculty. This should be declared, but is not automatically considered a conflict of interest. Also partnership of a firm should be declared but will not necessarily be considered a conflict of interest.

Sharing knowledge about applicants/Board members

8. The Board considers that it would not be appropriate for those of its Members who are acquainted with applicants to share their private knowledge with other members of the Board in general discussion. The Board believes this approach preserves the autonomy of each Member of the Board as well as supporting openness, transparency and equality of opportunity for every applicant. As in para 4, if the private knowledge relates to information that would, if substantiated, give rise to serious concern about an applicant's suitability for judicial office, it would be incumbent on the member to share this information with the Chairing Member, thereafter the applicant may be offered the opportunity to discuss the matter. This approach differs from that in the negative check when consultees are asked if they are aware of any matter relating to the applicants' character or legal competence, or any other matter about the applicants, which might cause the Board, or if the applicants were recommended for appointment, the First Minister or the Scottish Ministers, to consider that the applicants may be unsuitable or unfit for appointment to judicial office.
9. It may also be the case that inconsistencies emerge between an applicant's and a Board Member's description of their relationship. Depending on the nature of the inconsistency and the stage of the process, at the time of disclosure, the applicant may be offered an opportunity to discuss the matter with the Chairing Member.
10. Each applicant is required to complete a declaration that the information provided in their application is true and complete. In doing so, they acknowledge that if it is subsequently discovered that any statement is false or misleading, or that they have withheld relevant information their application will be disqualified; or, if they have already been appointed to judicial office by the time such failure comes to light, that it will be taken into account in deciding whether they are fit to continue to hold office. It should be understood that decision would not be one for the Board.

Policy followed by the Board since becoming a Statutory Body in June 2009:

First Review	October 2011
Second Review	October 2012
Third Review	December 2014
Fourth Review	September 2016
Next review	September 2018