

CONFIDENTIAL

**REPORT
ON
QCs ATTITUDES REGARDING APPOINTMENT
AS A SENATOR OF THE COLLEGE OF JUSTICE**

MAY 2017

**Judicial Office
Scottish Courts & Tribunal Service
Edinburgh**

REPORT
ON
QCs ATTITUDES REGARDING APPOINTMENT
AS A SENATOR OF THE COLLEGE OF JUSTICE

INTRODUCTION

The Report

1. This report was commissioned by the Lord President of the Court of Session in his capacity as Head of the Scottish Judiciary and in implement of his duty, under 2(2) of the Judiciary and Courts (Scotland) Act 2008, to make and maintain arrangements to secure the efficient disposal of business in the Scottish courts. It was prompted by a concern to ensure that as many suitably qualified and experienced applicants as possible were applying for judicial office, in the capacity of a Senator of the College of Justice, and a further concern that female candidates, or those from minority ethnic backgrounds, may feel reluctant to apply.
2. As a starting point, the Judicial Office identified practising Queen's Counsel (QCs) – both advocates and solicitor-advocates – as the appropriate target audience. The Judicial Office prepared a questionnaire intended to explore QCs' concerns regarding appointment as a Senator of the College of Justice, and the reasons for seeking, or not seeking, appointment. The survey was issued to all QCs, through the Faculty of Advocates and the Law Society of Scotland. It was issued on Friday, 28 April and remained open to responses until Monday, 15 May.

Response rate

3. The response rate to the survey was excellent, with 113 responses received from a total pool of 122 QCs. This equates to a 93% completion rate.

Demographics of respondents

4. Respondents were asked to provide some limited demographic information about themselves. Responses to these questions appear in line with expectations based on the population surveyed, although women QCs appear a little under-represented, with only 17% of respondents indicating they were female, compared to about 22% of all female QCs.

Previous and future applications to become a Senator

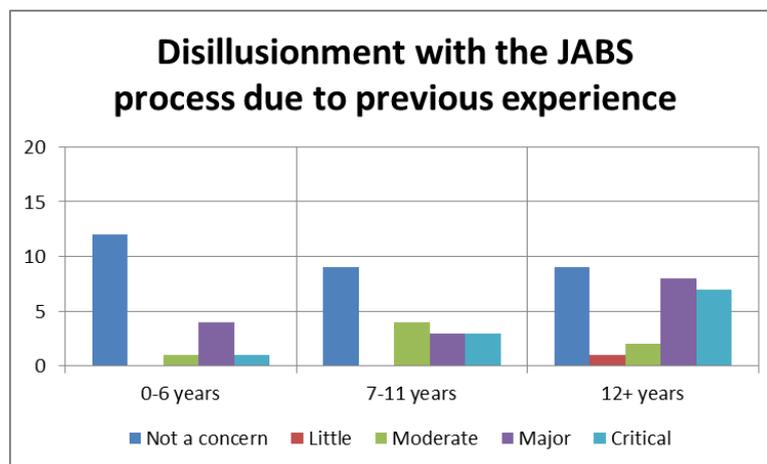
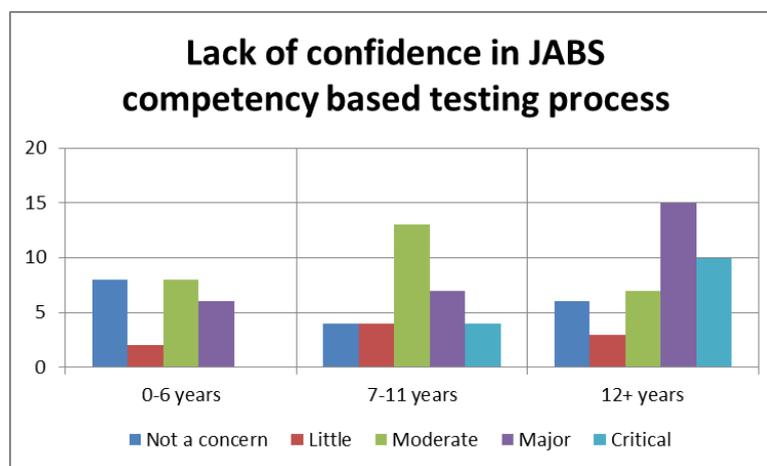
5. Most respondents had not previously applied to become a Senator, with 94 (83%) having not applied in the past.

6. The majority of respondents did not intend to apply to become a Senator in the future (67 responses, or 59%), with only 7 (6%) indicating that they intended to apply and 39 (35%) respondents considering applying in the future. The fact that the majority of QCs do not intend to apply confirms that there is cause for concern.

ANALYSIS OF THE RESULTS

7. Respondents were asked to rate the degree to which various factors were a concern when considering applying for appointment as a Senator. The distribution of these responses is detailed below, broken down by the length of time which respondents have been a QC.

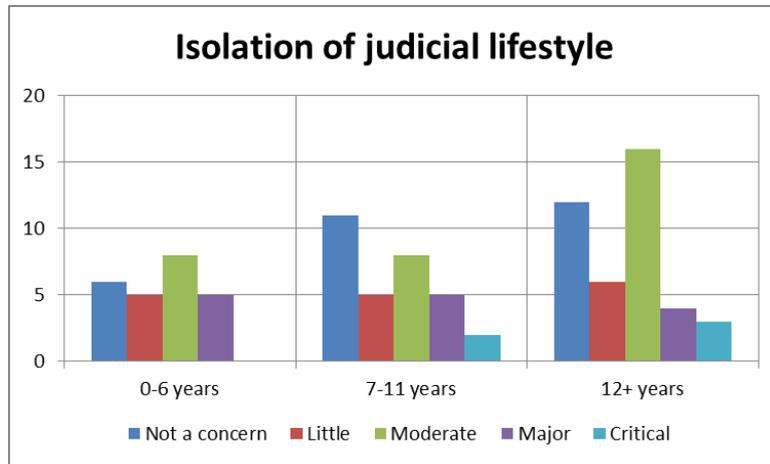
The JABS appointment process



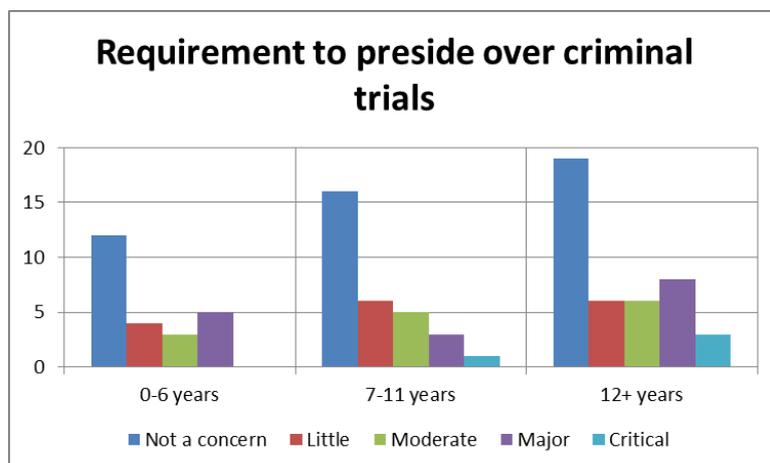
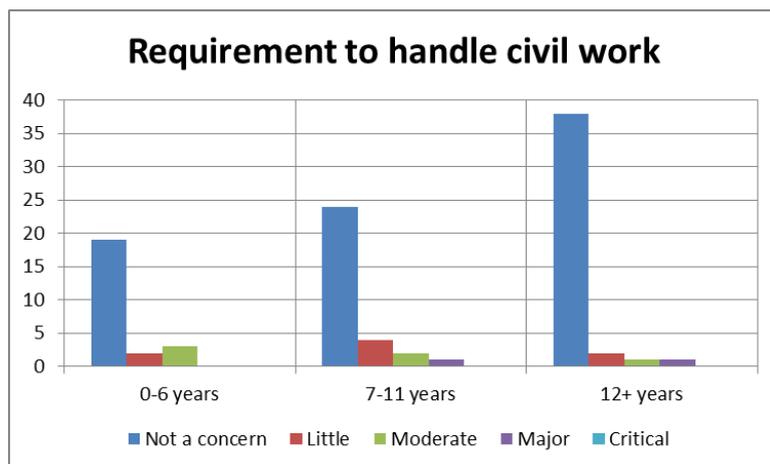
8. Lack of confidence in the JABS appointment process was highest in those QCs of 12 years or more standing. This was a 'major' or 'critical' factor for 25 of that cohort. Of the cohort who were of 7-11 years standing, this was a factor, from 'moderate' to 'critical', for 24 of them. This may be explained in part by the fact that respondents in these groups have probably had more experience of the process, being much more likely

to have applied in the recent past. Those of fewer than 7 years standing were less concerned by the process.

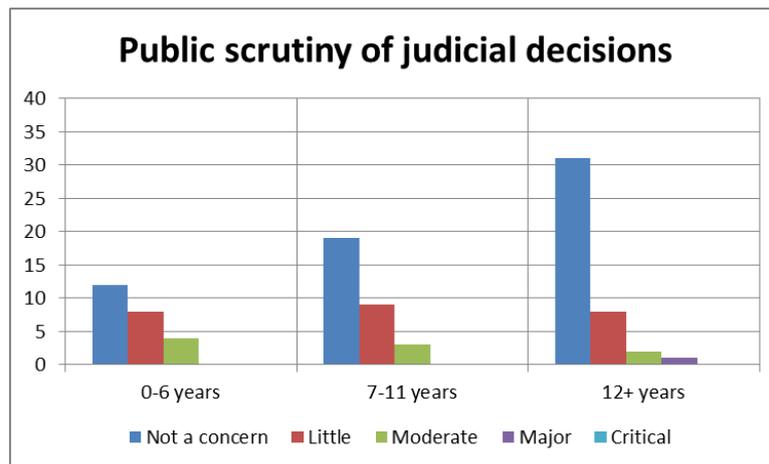
The judicial lifestyle



9. Concern over the isolation of the judicial lifestyle was similar in all three groups, with a slightly increased level of concern held by those of 12 years of more standing.

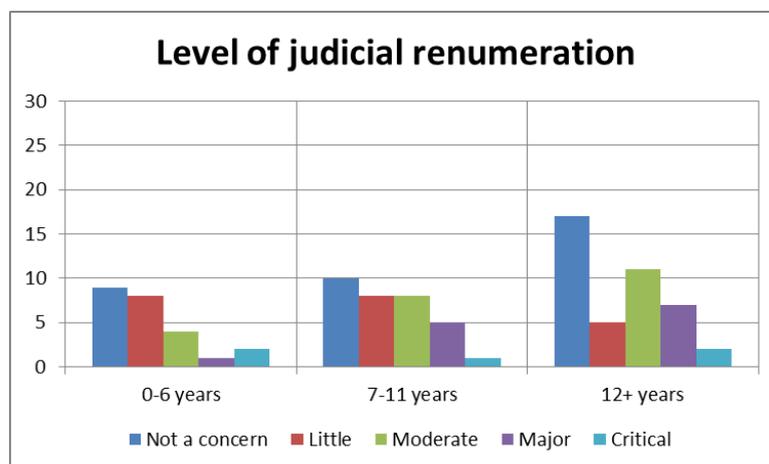


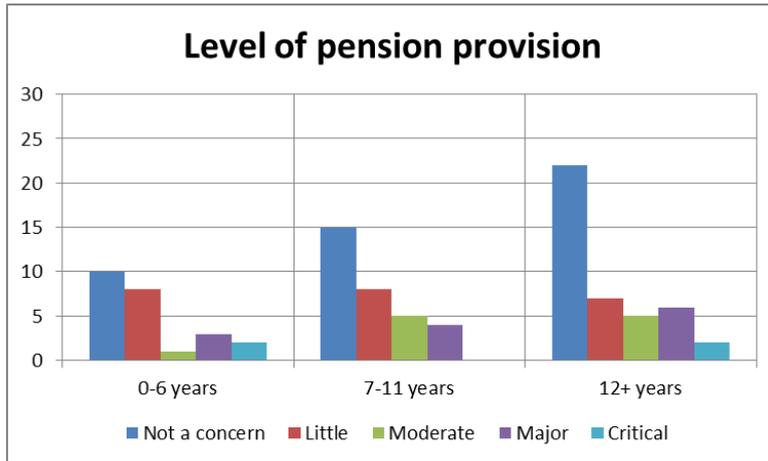
10. The requirement to preside over civil trials was not a source of concern for most QCs. The requirement to preside over criminal trials work was more of a concern, especially for those of more than 12 years standing. The reasons for that are not clear, but it may be that more senior QCs have at that stage established more specialist practices. It should be noted that free text comments submitted at the end of the survey indicated some concern regarding the inability of a Senator to request a specialised workload to reflect their previous practice.



11. Similarly, public scrutiny of judicial decisions was not a significant cause for concern among any of the groups.

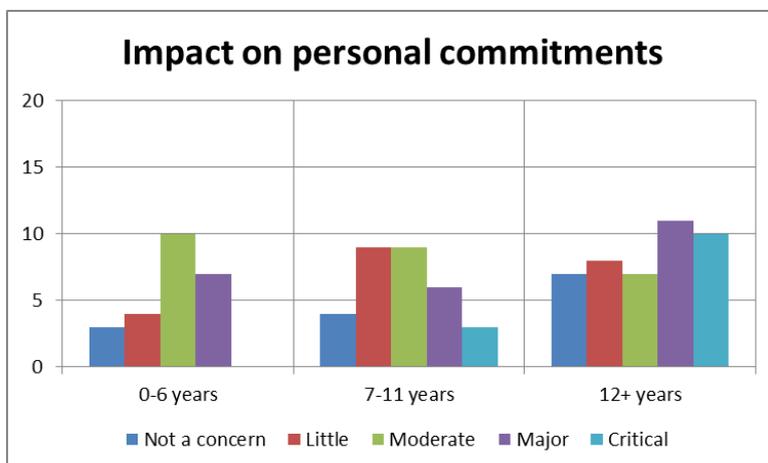
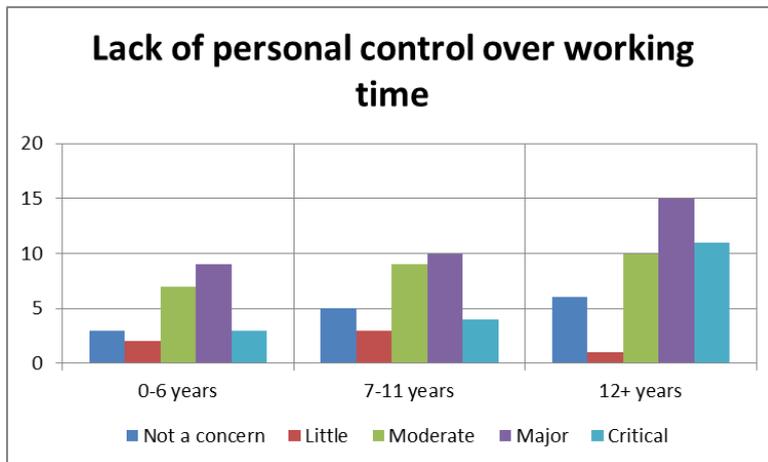
Judicial remuneration

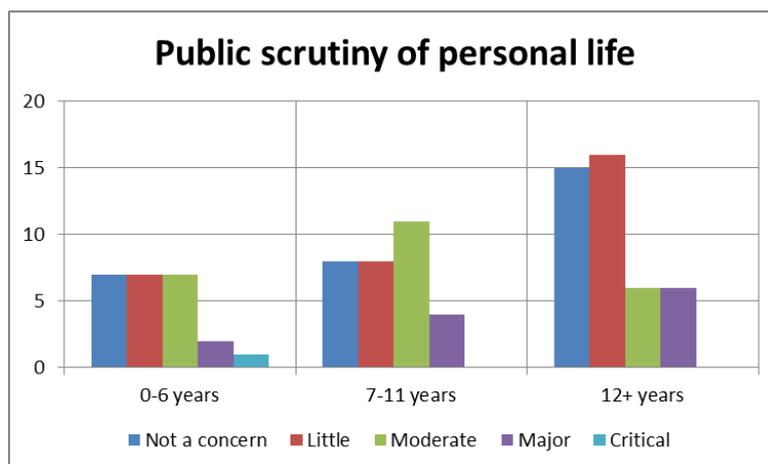




12. Concern over judicial remuneration and pension provision were more prevalent in the 7-11 years standing and 12 years or more standing groups. Of these two factors, direct levels of remuneration were more of a concern than pension provision. The increased concern shown by the two longer standing groups *may* reflect the fact that they generally have a more established senior practice and thus stand to lose more in terms of income should they be appointed as a Senator.

Personal factors





13. Personal factors were a significant concern to all groups, with lack of control over working time in particular being a major concern. Impacts on personal commitments were also a significant concern. Those QCs of 12 years or more standing showed increased concern about these factors compared to those with fewer years standing. Public scrutiny of personal life was a minor to moderate concern for all three groups. Overall, concerns over the impact on personal life appear to be high.

Other concerns

14. Respondents were given the opportunity to express other concerns in a free text field. There was a significant focus on judicial workload and the perceived lack of flexibility that goes along with the judicial lifestyle in these responses. A moderate number of respondents also expressed the opinion that they would find less personal fulfilment in the role of Senator, compared to continuing with their established practices.

Summary

15. Overall, the most significant concerns expressed by QCs centred on judicial workload and working time, impact on personal commitments, lack of confidence with the JABS process and, for those of 7+ years standing, remuneration.

**Judicial Office for Scotland
 Scottish Courts & Tribunals Service
 Edinburgh**

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