

Judicial Office  
for Scotland

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# **Consultation on the Arrangements for Training of Justices of the Peace in Scotland**

## **Responses**

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# 1. Overview of Responses

In total 23 responses to the consultation were received.

The following 18 bodies/representatives of bodies were consulted directly:

- Convenors, Justices' Training Committees (one Convenor per Sheriffdom)
- Crown Office and Procurator Fiscal Service
- Judicial Appointments Board for Scotland <sup>1</sup>
- Law Society of Scotland
- Part-Time Sheriffs' Association
- Police Scotland
- Public and Commercial Services Union
- Scottish Government
- Scottish Justices Association
- Scottish Legal Aid Board
- Sheriffdom Legal Advisors
- Sheriffs' Association
- Sheriffs Principal

From those consulted 11 responses were received:

- 5 x JTCs. The only JTC which did not submit a response was South Strathclyde, Dumfries and Galloway. It was explained that the JTC felt it would be difficult to produce a consolidated response which fairly represented the views of all members of the committee.
- COPFS (submitted by Catherine Dyer, Crown Agent)
- Law Society of Scotland (submitted by Alan McCreadie, Deputy Director, Law Reform)
- Public and Commercial Services Union (submitted by Edward Burrows, PCS Union Scottish Courts Branch, Branch Chair)
- Sheriffdom Legal Advisors (Submitted by Phyllis Hands on behalf of all SLAs, with endorsement from SCS Policy and Legislation Branch)
- Sheriffs' Association (submitted by Sheriff A MacFadyen)
- Sheriffs Principal (submitted by Sheriff Principal CAL Scott on behalf of all Sheriffs Principal)

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<sup>1</sup> NB: The Judicial Appointments Board for Scotland declined to submit a response as it has no responsibility for the appointment of Justices.

Responses were also invited from SCS staff, the judiciary, and the public generally, with respective placement on the SCS staff intranet, the Judicial Hub, and the Judiciary of Scotland website. Staff and judiciary were given frequent reminders about the consultation through news items on the Judicial Hub and in the weekly “What’s New” email

- 10 responses were received from JPs
- 2 responses were received from organisations – Scottish Women’s Aid and Victim Support Scotland

### **Publicity of Responses**

Consultees were asked whether they were content for their response to be made public, and warned that their response would be made public should they fail to request that it not be so.

3 responders requested that their responses not be made public. Their responses were fully taken into account during response analysis and quantification but are not reproduced in this document.

7 responders explicitly stated that they were content that their responses be made public.

## 2. Quantification of Responses

3.24 – do you have a preferred option for delivery of Justices’ training? Please give reasons?					
option 1	option 2	option 3	option 4 (explicit support)	general support for “partnership” or similar	none of the options listed or unspecific answer
0	0	0	8	11	<b>4 (17%)</b>
<b>TOTAL: 19 (83%)</b>					

3.25 – are there other options for delivery of justices’ training?		
No/blank	Additional suggestions complementary to partnership option	Wholly separate suggestions
<b>6 (26%)</b>	<b>14 (61%)</b>	<b>3 (13%)</b>

3.28 – is there a need for there to be separate committees to consider training provision and the appraisal of justices?			
no	no w/ reservations	yes	no response/unclear
7	7	<b>6 (26%)</b>	<b>3 (13%)</b>
<b>TOTAL: 14 (61%)</b>			

3.34 – what is your view on the suggestion that the JTC and JAC should be amalgamated?			
Amalgamate	Amalgamate (w/ reservations)	Don’t amalgamate	no response/unclear
10	4	<b>6 (26%)</b>	<b>3 (13%)</b>
<b>TOTAL: 14 (61%)</b>			

**3.35 – if the committees are amalgamated what should the new committee be called?**

Justice of the Peace Training and Appraisal Committee	<b>6 (26%)</b>
Justices' (or JP) Development Committee	<b>4 (17%)</b>
Scottish Justices Training and Standards	<b>1 (4%)</b>
Sheriffdom Justices Training and Standards Committee	<b>1 (4%)</b>
No preference/not answered	<b>7 (30%)</b>
n/a given lack of support for amalgamation	<b>4 (17%)</b>

**4.10 – should there be a minimum mandatory annual training requirement? If so how should this be specified?**

yes (12 hours)	yes (14 hours)	yes (no specification of time)	no	no response
<b>13 (57%)</b>	<b>1 (4%)</b>	<b>6 (26%)</b>	<b>0</b>	<b>3 (13%)</b>

**4.11 – should attendance at a national training conference by compulsory? If so, how often**

Yes, 5 yrs	Yes, 3 yrs	Yes, 2 yrs	Yes, 1 yr	Yes, no specification	“strong encouragement” 3 years	no	no response
4	6	2	1	3	<b>1 (4%)</b>	<b>4 (17%)</b>	<b>2 (9%)</b>
<b>TOTAL: 16 (70%)</b>							

**4.13 – should attendance by way of self-study, attendance at external courses be credited towards the annual training requirement?**

Full credit (caveated)	Part credit	No credit	No response
<b>9 (39%)</b>	<b>0</b>	<b>12 (52%)</b>	<b>2 (9%)</b>

### 3. Consolidated Responses by Question

#### The Options for Change

**3.24 – do you have a preferred option for delivery of Justices training? Please give reasons [consultees were given the options of Do nothing, Central control and delivery, Central control with local delivery, A partnership between the JI and the sheriffdoms].**

- **JTC Glasgow and Strathkelvin**

The preferred model would be the training to continue in its present form (a partnership between the JI and the sheriffdom). We would not be in favour of the JI producing all training materials although they have an important part to play when it comes to the delivery of new legislation. The present training model appears to work well. This is evident from the very positive feedback received. It has a good balance from a local point of view (such as road traffic) and more rounded content for example visits and talks from external speakers from the wider criminal justice sector.

- **JTC Grampian, Highland and Islands**

Of the stated options our preference would be for option 4. However we would ideally like to see this option developed further. The notion of *partnership* is to us crucial in this whole exercise and we would like to see a greater input into the training programmes from the legal advisors across the sheriffdoms. We would also like to see a clearer statement of the anticipated learning outcomes so that we all have a common understanding of what we are trying to achieve through the training programme. Quality assurance is key to an effective programme if a consistently high standard of content and delivery is to be achieved. How is QA to be implemented for both JIS input and local input?

- **JTC Lothian and Borders**

Of the options described in the consultation document, the committee regarded the fourth option, in paragraph 3.23, as most closely fitting with its expectations.

- **JTC North Strathclyde**

We do not support any of the options contained in the consultation document. The success achieved by the training programme offered to Justices in North Strathclyde has, as its foundation, the excellent communication links between the Justices and their Training Committee. This has resulted in the design and implementation of relevant and varied training programmes tailored to the needs and wishes of the Justices. This approach has led to North Strathclyde

consistently providing ground breaking and exemplary training programmes the success of which is proven by the levels of participation and the high satisfaction ratings recorded by the Justices via the assessment forms. The feedback from North Strathclyde Justices make it clear that these participation and satisfaction levels are unrivalled by other training sources offered to or participated in by them.

- **JTC Tayside, Central and Fife**

Preferred option is a partnership between the JI and the Sheriffdoms. A partnership allows the JI to ensure that core national issues are covered whilst still preserving local input in relation to competency and on-going improvement needs.

- **Law Society of Scotland**

The Committee endorses the Lord President's preferred option as set out at paragraph 3.23 of the consultation paper being option 4.

The Committee notes however, that this option requires to be developed further.

In particular, the notion of a "partnership" is crucial in this exercise and it would perhaps be better to see a greater input into training programmes from Legal Advisers nationwide. It would also be helpful to see a clearer statement of the anticipated learning outcomes in order that there be a common understanding of what is to be achieved through the training programme. The Committee believes that quality assurance is fundamental to achieving an effective programme of training if a consistently high standard of content and delivery is to be achieved.

- **Public and Commercial Services Union**

The principle of JP Courts, as we understand the position to be, is based on Lay Justice being delivered locally by locally sourced Justices (JP's). Ordinarily, Justices require to be resident within the Sheriffdom, where they are appointed to sit on the bench. This reflects local dimensions, local knowledge and local experience that Lay Justices bring to the bench, for the ultimate benefit of the local community and society in general, in dispensing Lay Justice in Scotland. To maintain and secure that principle and local dimension to Lay Justice, we regard it as an imperative that local SLA and LA involvement be maintained and continued. It is our view that the current arrangements are effective, in ensuring that Lay Justice is dispensed, taking account of the local dimension referred to earlier, as the SLA's and LA's in each Sheriffdom, are all local and known to the JP's sitting within their area. This re-enforces local relationships, communications and knowledge required

for Lay Justice to be delivered effectively. SLA's and LA's, because of this close working relationship with JP's in their area's, are best placed, in our view, to assess the local Training needs of Justices within their area and to deliver the Training required, based on that need.

- **Sheriffdom Legal Advisors**

Yes. Please see response to question 2.

- **Sheriffs' Association**

We favour the option of a partnership between the JI and individual sheriffdoms. It is important the SLAs, all of whom are involved in training of JPs, have the opportunity to discuss among themselves, and with the experts in JI the local training needs to enable them to compare and contrast local practices. Partnership would reduce duplication of effort in different sheriffdoms, while maintaining the local link, which is valued by the judiciary, both JPs and sheriffs involved in training. Familiarity with sheriffs in the sheriffdom, heard and met at sheriffdom training events improves the training experience of the JP.

Partnership would allow communication between the SLAs to continue. Centralisation might reduce the potential for 'cross border' dissemination of knowledge and good practice. Direct communication between SLAs in different sheriffdoms about training techniques, speakers and materials can only be useful and any change in the current system should allow that communication and information sharing to continue and, indeed, be enhanced.

Further, if appraisals are to be worthwhile, the information arising therefrom locally must inform training needs, course development and design.

- **Sheriffs Principal**

Of the options discussed in the consultation paper we favour that outlined in paragraph 3.23 for the reasons there given. It is not entirely clear to us how the Judicial Institute would satisfy itself that those who are delivering training are able to do so to the required standard, although we recognise the importance of that objective. We view the participation of legal advisers in training as important in contributing to the overall effectiveness of the JP court and would advocate their continued involvement in that role. In that event, if there is to be an extended system of training and appraisal for them, we think it important that they are sufficiently resourced if their role in training is not to become too burdensome in the context of their overall duties. In favouring that option however we think it necessary to say two things. First, the proposal in paragraph 3.23 as presently framed lacks any precision as to how

the “partnership” will work and in particular who will play what part in the devising of appropriate training. Secondly, the proposal fails as yet to address adequately the geographical need to deliver training locally. Whilst it is noted that National Conferences have in the past been held in Stirling, account will have to be taken of the already observed reluctance of justices (in common with many sheriffs) to travel to Edinburgh for training from the West of Scotland and from even remoter parts of the country. These matters will, we suggest, require clarification before final decisions are taken.

- **Clasper, Allan JP**

Depending on the definition of “partnership”, option 4 would be the best of these given.

However, if the partnership was skewed towards the JIS, than a fifth option would be preferred where the skew was towards local training.

- **Hawthorn, Ewan JP**

The training of Justices requires a mixture of national and local input and the model that seems most appropriate is that contained in paragraph 3.23 (Option 4).

There are some training requirements that are clearly best delivered at a national level. The Benchbook, Legal Advisers Manual, Signing Duties Manual, On-the-bench Reference, Induction Training materials, reviews of appeal decisions and new legislation summaries should be produced at a national level. Although these seem to be clearly national resources, best provided by the Judicial Institute, there does not appear to have been any substantial contribution to any of them over the past five years. That absence gives rise to some concern as to the capacity or motivation within the Judicial Institute to provide the materials required by Justices.

Residential training events in judicial skills attended by Justices drawn from all six sheriffdoms are a useful medium for providing training and for promoting a collegiate and consistent bench across all JP Courts in Scotland.

It may also be appropriate for training on topics that is only required by a small proportion of Justices, too small in number within each sheriffdom for local training to be practicable, to be delivered nationally.

It is equally obvious that many aspects of skills training are best delivered locally. Different sheriffdoms, even different courts, can have different requirements depending on the nature of the business before their court and the mixture of skills that are possessed by the local bench. The diversity of experience and learning skills that Justices possess means that local

variations require local tailoring of most training, even that which is of national relevance.

Local training has been well received by Justices under the arrangements in place since the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Legal Advisers, who devise and deliver that training in accordance with the Training Plans prepared by the Justices Training Committees, are to be commended for quality of this training. At present, the Legal Advisers take on their training role in addition to their other duties. It may be appropriate for the skill with which they do this to be recognised by seeking formal accreditation of Legal Advisers who provide training by a suitable educational professional body, for example the Institute for Learning. Such formal recognition could be fostered within a training programme for Legal Advisers that should also develop the knowledge and skills that they require and display in performing their quasi-judicial function advising in the JP Court. Given the quasi-judicial nature of the Legal Advisers' role it may be that such training would be most appropriately delivered under the auspices of the JI.

- **Kirkwood, Susan JP**

Most of the delivery should be local and/or online. While it is useful to meet with other JPs in the sheriffdom and nationally, most benefit is gained by local or individual training. Residential or national training, except of everyone at almost the same time is not productive. E.g. the current practice of having the same national material provided to JPs over several years (and other JPs are not allowed to see it) is not good. National training should be undertaken when there are national events e.g. major legislative change, and all JPs should receive the same training within the same 12 months.

Additionally the Judicial Institute should provide updated guidance. The situation where the JP Bench Book has not had a single update since it was first issued is an abysmal record for its predecessor. I hope that the proposed e-Bench Book will have a better record.

- **Parkes, Keith JP**

My preference is for a mix of national and local training. National training will ensure consistency, exposure to quality speakers and allow justices to interact with justices from other Sheriffdoms. Local training will ensure timely training, Sheriffdom specific issues to be covered and allow justices time to discuss matters with other justices from the Sheriffdom.

- **Thomson, Gillian JP**

I would be happy with the option of a partnership between the local training and the JI but would want to see the JI have a stronger role in setting the framework for delivery as outlined in paragraph 3.17.

However, I do not think that the consultation paper fully understands the nature of appraisal when it proposes to merge training and appraisal. There is considerable concern already about how information from appraisals is used to inform training and bringing the two together too closely will only exacerbate that. Appraisal is not about establishing training needs, it is about performance review. Whether that performance can be improved through training is a separate matter. The appraisal system has of course to address both generic and specific training needs identified through training but how that is done must be at arms length, avoiding any conflict of interest.

The appraisal committees should be identifying generic shortcomings and ensuring that training is put in place to address those by asking for delivery from the training committees. No names or identifiable examples would be used. Issues specific to an individual should be addressed locally within a Sherifdom through confidential discussions that arise from the appraisal and involve the Chair of the appraisal committee, the appraiser and the individual.

It is unhelpful in this context that there is no more formal hierarchy of justices and that effectively the appraisal, and to a lesser extent the training, committee through their chairs take the role senior experienced justice which in an employment situation would be taken by a manager to address issues with individuals. Inevitably some do this more decisively than others, and there can be confusion about both the extent of authority and the procedures to be followed. Nevertheless that is the situation and the best option would be to provide those individuals with training on how to fulfil their roles effectively. Training on conducting an appraisal is strong but more is needed for appraisal and training committees on what constitutes good practice in following up or addressing issues.

I believe, as an appraiser, that personal training plans will be needed for some justices who have been weaker performers than expected. I would like to see more guidance on how those might be implemented, and how their effectiveness should be measured ie should weaker justices be re-appraised within 12 months, and what is the process if they decline to participate in tailored training or fail to strengthen their performance?

The separation of appraisal and training being agreed, the option I 3.24, in my experience as a senior manager of a diverse range of professional clerical staff in geographically dispersed locations would allow for local flexibility on

specific issues but ensure that there was a standard of delivery and also a core agreed curriculum which could be augmented to meet local needs. I would hope that those within the JI with an understanding of education theories and methods to be able to improve and to make more consistent the delivery at local level, and to advise on development of training skills – preferably delivering some “training of trainers”. In this I would like to see development of training materials that could be accessed through webinars, case studies and other formats without a justice having to physically attend.

- **White, Robin JP**

Option 4: A partnership between the JI and the sheriffdoms.

With a unified judiciary, and the resources of the JIS, a strong unifying tendency is both inevitable and appropriate.

However, justices remain essentially local judicial office holders (and much more so than sheriffs) and, in some sense, representatives of their communities. Moreover, most sit as single benches, and all sit only every few weeks, so they have few opportunities to discuss matters with each other. Monthly training sessions are thus very important in providing most of their interactions, so require considerable flexibility in content and delivery. Thus a sheriffdom dimension is equally essential.

Further, these monthly meetings provide an opportunity for the consideration of local needs to be fed back to the JIS *via* JTCs, as well as allowing JTCs to retain significant room for local initiatives. While clearly “the same quality, scope and depth of training” (para 3.4) should be available to justices, their training does not require to be identical. Indeed, if they are to “gain the relevant knowledge and skills to administer effective justice in the courts where they sit” (para 3.4), considerable attention has to be paid to the characteristics of those courts.

As the Consultation Paper observes (para 1.7), “There will always be a need to balance a core curriculum necessary for every justice, with local training requirements”. Indeed, few things would be more likely to prejudice the maintenance and capture of “the success, enthusiasm, motivation and commitment from existing national, local and induction training” (para 2.10) than for justices to feel they are being conducted locally through an inflexible syllabus determined elsewhere (a problem which would increase with greater use of e-learning).

Thus, this option would, clearly, require to be a genuine partnership, and not merge into an attenuated version of Option 3, “Central control with local delivery”, and that the sheriffdom for this purpose be represented by the JTC.

- **Wishart, Jan JP**

Option 4. It facilitates the identification through the JI + Sherifffdoms of a national curriculum of JP training that would thereby, importantly, lead to greater national consistency for effective delivery of Justice.

It would, in its implementation, establish a meaningful partnership between JI staff and Sherifffdom LA representations, as well as consultation channels with JP's themselves as may arise.

### 3.25 – Are there other options for delivery of justices’ training?

- **JTC Glasgow and Strathkelvin**

There is a concern that there would be too much theoretical content under the proposed curriculum, rather than peer to peer sharing of real experiences and practical learning. Glasgow Justices sit frequently and deal with a high volume of court business. We feel the fundamental principal is that Justices are lay members of the judiciary and we worry that we are viewed as pseudo legal professionals which is alluded to in point 4.2.

With reference to 4.2(a), there is concern as to legally qualified staff trained as trainers. The detail of this suggestion needs to be clarified

Several discussions have taken place in respect of managing the appraisal system but so far no uniform system has been set down. Investment in this area would be beneficial.

We were advised that an updated version of the Bench Book would be produced and to date this has not come to fruition. We would imagine that any proposed core training would be reliant on Justices having this Bench Book to hand.

- **JTC Grampian, Highland and Islands**

See 1) above.

- **JTC Lothian and Borders**

The committee took the view that there should be a better mechanism in place than at present for ensuring that national material is cascaded down to all Justices. The committee also wished to emphasise that the collegiate relationship between Justices should be more effectively promoted by the provision of national residential training events.

- **JTC North Strathclyde**

We are of the view that the Justices’ Training Committees should continue to design and lead the training programmes offered to Justices. We have set out our reasons for this in our response to question 1 above. In our vision for future training provision we can foresee a situation where the JI, working on content with the JTCs, manage an annual conference where topics of a generic nature could be covered. We also see the benefits that could accrue to the JI from having an overview of local Sheriffdom training events. We also believe that the JI could play a useful role in helping ensure that good practice is shared between the training committees. These activities would offer the JI the opportunity to better understand the way in which Justices view and conduct their duties. Finally, we believe that the role we envisage for the JI

would help it establish itself with Justices by helping clarify what it has been established to do and, in so doing, remove the doubts which presently exists.

- **JTC Tayside, Central and Fife**  
No other proposals.
- **Law Society of Scotland**  
The Committee refers to its comments at 1 above.
- **Public and Commercial Services Union**  
See Response to Q1 above
- **Sheriffdom Legal Advisors**  
We would respectively suggest an option 5.

We would prefer to leave the training to continue in its present form. It has been recognised that the current training meets the needs of the justices. The SLA is better able to recognise the level of training required by justices as it is not at the same level as that required by sheriffs and senators. It is difficult to see how the JI would be in a better position assess the training needs of justices both locally and nationally.

Investment in a centrally controlled and managed appraisal system would be more beneficial as this would ensure uniformity of practice throughout Scotland rather than the current piecemeal sheriffdom system where each sheriffdom has devised their own system of appraisal. This information could be collated and fed out to the sheriffdom training committee for action.

In addition the JI would have a national role in leading on new legislation and fundamental changes to practice and procedure.

It is more important that the JI concentrates of producing training materials on new legislation which can be disseminated to the sheriffdoms for delivery timeously. It is impossible to have justices prepared for the delivery of new legislative powers or the like when material arrives too late or is not pitched at the correct level of training for JPs and has to be altered locally to fit the training needs of the justices. Our experience of materials prepared by JI is in relation to the CPO material which arrived after each SLA, except, one had prepared and delivered their own training session. Specific scenarios for JP level would have been helpful with a scenario covering individual aspect of the legislation. The scenarios that covered all the issues were too complicated to deliver the necessary information to the JPs and did not allow the JP to focus

on any specific point. A lesson can be learned from this experience to avoid falling into the same pitfall in the future.

We would respectively suggest that option 5, which would retain many aspects of the current system and would set out procedures whereby:

- The duplication of work would be reduced on a more structured framework. (Currently the SLAs share material via the T drive).
  - Local input from JTC to formulate a local training need.
  - Design and delivery of sessions by SLA/ LA who recognise the level and type of training required and therefore pitch the learning at the right level. It must be borne in mind that it is harder to deliver training materials prepared by a third party as a person may not be familiar with the other's style and presentation methods.
  - SLAs draft a national training plan
  - A competence based core curriculum set by the Lord President should focus on new legislation and identified needs for all sheriffdoms. (The former DCA formulated core competences which were to be met by all justices and it is considered that those competences are relevant today and should be taken into account in the formulation of any training plans, national or otherwise.) This would enable the JTC to pick and choose on an annual basis the needs of their sheriffdom as identified from appraisal and performance of the JPs in court on a general basis.
  - The current core curriculum for the training of people identified as prospective JPs is adequate but some consideration should be given to the mandatory aspect of all parts of that curriculum. (Some prospective justices may come from a background in the law or a similar profession whereby they already have a knowledge of certain aspects of the curriculum. It may be possible to introduce a system of exemption if such knowledge can be demonstrated.)
- **Sheriffs' Association**  
The options suggested appear to be the only realistic choices.
  - **Sheriffs Principal**  
See response to 3.24
  - **Clasper, Allan JP**  
See the answer to question 1.

- **Hawthorn, Ewan JP**

Electronic and other distance learning methods of delivery appear disarmingly attractive. However, these methods are predicated on the assumptions that the recipients have a baseline level of learning skills and that the recipients have the same level of core knowledge to allow them to follow the material.

Electronic delivery is also predicated on the learner being supplied with the means to interact with the material. It would be iniquitous to expect Justices subsidise the judicial system by having to pay for their own computing equipment and network connection if this method of delivery were to be adopted.

Distance learning would also be likely to have a deleterious effect on the collegiate nature of the bench, in comparison with face to face tuition. Justices have few opportunities to interact with each other, and it is such interaction that fosters commonality of approach to their judicial role.

- **Kirkwood, Susan JP**

Where there are significant changes in legislation or guidance, (e.g. the recent update to the Equal Treatment manual; the previous CPO training), this should be supplemented by an online training module which every appropriate judicial holder can use to refresh and update their knowledge. There are systems in use (e.g. used by SCS staff for basic training) which can be used to monitor that every judicial office holder undertakes the refresher within a reasonable time. Where such material is difficult for JPs to access from home, then study times could be organized when they can undertake this online training in SCS premises.

- **Parkes, Keith JP**

I consider that certain areas should be reserved for national training (eg equal treatment, judicial independence, etc) but that other areas should be available in both national and local training (e.g. road traffic offences, community payback orders, etc).

- **Thomson, Gillian JP**

Yes – the current format is effective but cumbersome and resource intensive. There is a great deal of work available from pedagogical research which I am sure the members of the JI have access to. It may be that some pump-priming financial contributions from each Sherifffdom should be requested to create materials. Funds could be taken from the travel budgets used for local training.

- **White, Robin JP**

It is probably inconsistent with the model of a judicial hierarchy enshrined in the Judiciary and Courts (Scotland) Act 2008 for JTCs to become customers of the JIS's services – in internal market model – though this does not appear to have been considered.

It is important that, in any case, justices themselves be involved in the organisation of training, and not be simply passive recipients. This is perhaps a major weakness of the existing system not sufficiently highlighted in the Consultation Paper.

- **Wishart, Jan JP**

None that I consider/could imagine preferable to the reasons outlined in 3.24

### **3.28 – Is there a need for there to be separate committees to consider training provision and the appraisal of justices?**

- **JTC Glasgow and Strathkelvin**

No

- **JTC Grampian, Highland and Islands**

So much depends on how appraisals are carried out and how the resulting information is handled. In our view separate committees are necessary if the JAC actually receives detailed information on individuals and their appraisal reports. If however, as is the case in GHI, the JAC simply handles the administration of appraisals and developmental needs are passed anonymously to the JTC to inform future training programmes then there would be no difficulty in working with only one committee.

- **JTC Lothian and Borders**

The two committees were originally separated to ensure the judicial independence of Justices. Appraisal of members of the judiciary should be under the exclusive control of their judicial peers.

- **JTC North Strathclyde**

We can see no reason why there needs to be separate committees to cover training provision and the appraisal programme.

- **JTC Tayside, Central and Fife**

No

- **Law Society of Scotland**

The Committee has no strong view as to whether there should be separate Committees to consider training provision and the appraisal of justices. In this regard it notes that much depends on how the appraisals are carried out by the Justices' Appraisal Committee and how much that Committee receives detailed information on individual JPs and their appraisal report, in which case a separate JAC would be necessary .

On the basis, however, that the JAC simply handles the administration on appraisals and developmental needs which are then passed anonymously to the Justices' Training Committee to inform future training programmes then the Committee believes that there should be no difficulty in there being only one Committee.

- **Public and Commercial Services Union**

No

- **Sheriffdom Legal Advisors**

No

- **Sheriffs' Association**

The principle that only judges appraise judges is an important one. We are unaware of any difficulty being experienced in the practice that appraisal of JPs is performed by other JPs. That is a practice which commends itself. A judge carrying out the same work with the same powers is best placed to appraise the performance of his or her peer.

We recollect that the 2007 scheme provided that the Sheriffdom Justices' Appraisal Committee ('JAC') and the Justices' Training Committee ('JTC') had subtle but significant different memberships. The JTC had to have a sheriff as a member, whereas the JAC was made up of JPs only. Apparently over the years, practice has varied from sheriffdom to sheriffdom as to whether the SLA has attended the JAC. Where they do attend, it is purely to provide advice. The SLA, like the sheriff, is not a member of the JAC.

The JAC's remit is not to have any input in the individual appraisals, but to establish and maintain a scheme in the sheriffdom for appraisal of JPs.

In practice, the separation of the functions of the JTC and the JAC does not incur additional expense. Meetings can be held on the same day with the sheriff and, if appropriate the SLA, simply leaving the meeting at the conclusion of the TC meeting, allowing the JPs present to move on to the agenda of the AC. Accordingly, the amalgamation of the two committees may achieve little, if any, financial savings. The merit of keeping them separate would underline the importance of the principle above-mentioned. Conversely, amalgamation might allow more free-ranging debate on training arrangements to reflect training needs identified from appraisals.

Accordingly, we have no strong view on whether the two committees should be amalgamated.

Whichever option is favoured, in our view it is important to preserve the principle of JPs appraising JPs, with training reflecting general developments in law and practice as well as the individual or regional (i.e. Sheriffdom) requirements of the JPs.

- **Sheriffs Principal**

As the consultation paper recognises, membership of the two committees is substantially but not exactly the same. We suspect that the present distinction in the membership of each committee may have reflected a desire

that those concerned with the appraisal of justices should exclusively be the justices themselves. It should be noted however that the JAC merely oversees the appraisal system and actual appraisal is undertaken by individual justices. We do not consider therefore that there is any overriding requirement for there to be an appraisal committee comprising only justices and we see much sense in amalgamating the two committees. We have no particular view about what that committee should be called.

- **Clasper, Allan JP**

Appraisals were for Justices and by Justices.

Any training issues arising from Appraisals is directed anonymously to the Training Committee as a matter of course.

- **Hawthorn, Ewan JP**

Yes, appraisal of members of the judiciary should be within the exclusive control of members of the judiciary at that level.

Appraisal of members of the judiciary is a sensitive area. It would be very easy for judicial independence to be, or appear to be, undermined. In this regard, it is appropriate that the appraisal of members of the judiciary should be under the absolute control of their peers at the same level within the judicial structure. Thus, appraisal of Senators should be exclusive to Senators, appraisal of Sheriffs should be exclusive to Sheriffs and appraisal of Justices should be exclusive to Justices.

Employees of the executive branch of government, however valuable their supporting input, cannot be seen to have any involvement in the control of the process.

The involvement in the appraisal of members of one level of the judiciary of judicial officers from a different level of the judiciary also has the potential to cause difficulty. Those with experience of judicial appraisal at one level may have a contribution to make to the effective implementation of the process at another level. However, there is the potential for resentment and an appearance of interference if judicial officers from one level are involved in the control of the appraisal of those at another level. There are also likely to be differences in the judicial style that is appropriate to different levels of court, so that the extent of the contribution that judicial officers from a different level could make may be limited.

For the above reasons, it is appropriate that operational control of the appraisal of judicial officers is exercised exclusively by judicial officers at that level.

The training of Justices relates to a range of skills. The appraisal schemes in all six sheriffdoms are based on competences that predominantly relate to transferrable skills. Those skills are very likely to have been acquired and developed by Justices in their non-judicial careers. The fields in which Justices have greatest need for development are those which are specific to their judicial role. For this reason, the current appraisal schemes have only a limited relevance to the range of training that Justices require. It is therefore appropriate that the training of Justices should be governed by a wider group of contributors.

Sheriffs have extensive experience of the skills required of a judge with summary criminal jurisdiction, and the skills required to consider out of hours applications. Consequently, the contribution of Sheriffs to the training regime for Justices is of great value.

Legal Advisers have daily experience of the deployment of their judicial skills by Justices in their sheriffdom, and Legal Advisers acquire an understanding of the mix of learning skills and experience of the Justices in their sheriffdom through the delivery of local training. Consequently, Legal Advisers have a knowledge that is of great value in devising appropriate and deliverable training for Justices.

For these reasons, while majority operational control of training should be held by Justices, it is appropriate for Sheriffs and Legal Advisers to be members of the training committee.

These two sets of criteria give rise to overlapping but distinct committee memberships for appraisal and training. For that reason, the two committees should remain distinct. The present position, under which the membership of the Appraisal Committee is a subset of the membership of the Training Committee, appears to satisfy these criteria in the most practical and efficient way.

- **Kirkwood, Susan JP**

Either the Training committee membership must be restricted to judicial office holders or there needs to be a separate committee to consider appraisal. Non judicial office holders such as Legal Advisor or nominee from the Judicial Institute must not have more than an observer or advisory role to any combined committee.

The appraisal system which was accepted by Justices of the Peace was for peer-appraisal. The only reason for the separate Appraisal committee is to manage the membership of that committee to restrict it

to JPs. Unless there is a fundamental review of the Appraisal system: its principles and operation (which probably IS required), then the two committees cannot be combined with the current composition.

- **Parkes, Keith JP**

I do not see any need for separate committees; however, I do believe that before justices are allowed to conduct appraisals, an appropriately qualified panel or person should assess them. In addition, appraising justices should be subject to an annual check to ensure that they remain both objective and consistent.

- **Thomson, Gillian JP**

Yes. To merge the two is to misunderstand the purpose and the nature of appraisal. Nor should both be chaired by the same individual or share membership. Annual joint meetings might be considered however.

- **White, Robin JP**

There is such a need. It is right that there should be “a clear link between the training needs identified through the appraisal system and the training provided” (para 1.7), and it may be the case that “One is effectively a subset of the other” (para 3.26). Nevertheless, it is important that appraisal be seen as a supportive, and non-disciplinary, process and thus not a way of discovering if the appraisee has done enough training.

Indeed, it might be preferable to make the JTC and JAC more distinct, rather than to merge them, with the JAC providing the JTC annually with a report on perceived training needs.

- **Wishart, Jan JP**

No

### 3.34 – What is your view on the suggestion that the JTC and JAC should be amalgamated?

- **JTC Glasgow and Strathkelvin**  
Amalgamate for coherence and efficiency.
- **JTC Grampian, Highland and Islands**  
See 3) above
- **JTC Lothian and Borders**  
The committee noted that under the present arrangements, given the identity of JP membership, the two committees were *de facto* amalgamated. If the JTC and the JAC were to be amalgamated then the committee concluded that those members of the amalgamated committee who were not Justices should have no vote on matters relating to appraisal. The committee was content for the Director or Deputy Director of the JI to attend as observers, but was strongly opposed to the attendance of a nominated member of staff who is not a member of the judiciary.
- **JTC North Strathclyde**  
We support the view that the JTC and JAC be amalgamated.
- **JTC Tayside, Central and Fife**  
Amalgamation makes sense.
- **Law Society of Scotland**  
The Committee refers to its comments at 3 above.
- **Public and Commercial Services Union**  
We regard this to be a positive and beneficial step to take.
- **Sheriffdom Legal Advisors**  
It would be beneficial.
- **Sheriffs' Association**  
See response to 3.28
- **Sheriffs Principal**  
See response to 3.28
- **Clasper, Allan JP**  
See above.

- **Hawthorn, Ewan JP**  
 For the reasons given in response to the preceding question (3), particularly the preservation of judicial independence, the two committees should not be amalgamated.
- **Kirkwood, Susan JP**  
 See answer to 3 above.
- **Parkes, Keith JP**  
 Agreed.
- **Thomson, Gillian JP**  
 I disagree with it. See above. I do agree that the local training committee chairs should sit on the JTCJI as a way to ensure coordination and that vice versa the Director should have the right ex officio to attend local JTC meetings or to nominate another member of the JI to represent the Director. I also agree that the SLA should be a member of the local JTC – and not solely its legal adviser, which seems an odd restriction when the SLA is more often needed to develop the skills of the Las delivering training than to provide legal advice. I am unclear why the presence of a sheriff on any committee, merged or otherwise, should be required. I would expect their understanding of training needs of justices to be limited and their knowledge of training delivery to be replaced by the interaction through partnership between the local committees and the JI. However, the Sheriff Principal should have a seat ex officio, but not the right to nominate an alternate.
- **White, Robin JP**  
 See previous answer
- **Wishart, Jan JP**  
 I think it is sensible, particularly in the framework of the whole national training proposals.

### 3.35 – If the committees are amalgamated what should the new committee be called?

- **JTC Glasgow and Strathkelvin**  
Justice of the Peace Training and Appraisal Committee.
- **JTC Grampian, Highland and Islands**  
We would suggest the *Justices' Development Committee*.
- **JTC Lothian and Borders**  
The committee was divided on whether an amalgamated committee should be called the Justices' Training and Appraisal Committee or the Justices' Appraisal and Training Committee. The majority concluded that the latter may be preferred because it emphasises the link between appraisal and training.
- **JTC North Strathclyde**  
We would suggest the new committee be called 'The Justices Appraisal and Training Committee.
- **JTC Tayside, Central and Fife**  
No particular preferences.
- **Law Society of Scotland**  
The Committee has no strong view on this matter, but suggests that "Justices' Development Committee" may be an appropriate title.
- **Public and Commercial Services Union**  
No Comment
- **Sheriffdom Legal Advisors**  
The JP Development Committee
- **Sheriffs' Association**  
We hold no strong view but suggest 'Justices' Development Committee' for consideration.
- **Sheriffs Principal**  
See response to 3.28
- **Clasper, Allan JP**  
See above.

- **Hawthorn, Ewan JP**  
Under the present arrangements, and given that the two committees usually meet at the same time, they are generally referred to as the “Justices’ Training and Appraisal Committees”. Were the two committees to be amalgamated, the simplest course would be to omit the final “s” from the current description.
- **Kirkwood, Susan JP**  
I have no view.
- **Parkes, Keith JP**  
Sheriffdom Justices Training and Standards Committee
- **Thomson, Gillian JP**  
See above
- **White, Robin JP**  
See previous answer
- **Wishart, Jan JP**  
JTAC = Justices Training & Appraisal Committee.

**3.36 – Irrespective of your answer to the previous question what are your views on the respective responsibilities of the Committees set out in Appendix 3?**

- **JTC Glasgow and Strathkelvin**

This covers the requirements for training and development needs of Justices.

- **JTC Grampian, Highland and Islands**

We are supportive of the suggested committee structure and in particular the proposed composition of the JTCJI. We would emphasise however that this committee, in order to be effective, would have to meet more frequently than the currently existing JTC Convenors' Group and have a clearly stated remit to steer the development of the national curriculum.

- **JTC Lothian and Borders**

The committee is of the view that the Board of the Judicial Institute requires to have a member who has current experience of the judicial functions of the JP Court, either as an experienced Justice or as an experienced Legal Adviser, to provide day to day operational direction of the development and delivery of national training events and national resources within the ambit of the JI.

The committee regarded the description in Appendix 3 of the role of the shrieval member of the "local committee" as inappropriate. The committee felt that this role would be better described as being an appointment by the Sheriff Principal as an observer or representative.

As referred to in the response to Question 4, the committee is not content for a member of staff from the Judicial Institute who does not hold judicial office to attend meetings as an observer.

- **JTC North Strathclyde**

The description of responsibilities, set out in appendix 3, would seem to be a formalisation of the existing arrangements. However the wording of appendix 3 which lays the foundation for the list of responsibilities fails to recognise the unique position of JPs as opposed to the position of those members of the judiciary who hold office as a profession. It is inappropriate to talk about the 'continuing professional and personal development' of Justices. That Justices take their position and responsibilities seriously is not in doubt. Within North Strathclyde the average number of training hours per Justice was 22 set against a requirement of 12 hours. The unique nature of the role of Justice of the Peace which is based on the contribution of volunteers has already been recognised by the Scottish Parliament in its rejection of the McInnes proposals which sought to abolish the position. We believe that a remodelling of how Justices are viewed and approached would be welcomed.

- **JTC Tayside, Central and Fife**  
No comments in respect of the BJI and ACJI. The functions of the JTCJI and the Local Committee need to complement each other – it is likely that the role of the Local Committee changes to focus on individual competency.
- **Law Society of Scotland**  
The Committee supports the suggested reviewed structure and in particular the proposed composition of the Justices' Training Committee and the Judicial Institute. The Committee suggests that more frequent meetings of the existing JTC Conveners' Group may be required with a view to exercising their remit to shape the development of the national curriculum.
- **Public and Commercial Services Union**  
No Comment
- **Sheriffdom Legal Advisors**  
The remit of the committees as laid out at Appendix 3 covers the requirements of the development of justices.
- **Sheriffs' Association**  
We do not wish to express a view on this question.
- **Sheriffs Principal**  
We consider that appendix 3 to the consultation paper sets out an appropriate framework and that the suggested functions for each of the committees identified is broadly appropriate
- **Clasper, Allan JP**  
I support the committee structure and the respective responsibilities.

The committee would need to meet more often than once a year to steer a National Curriculum for Justices

- **Hawthorn, Ewan JP**  
Board of the Judicial Institute  
The membership of the Board of the Judicial Institute, having operational responsibility, needs to be augmented by the addition of a person who has current operational experience of the performance of the judicial functions of the Justice of the Peace Court, that is an experienced Justice or an experienced Legal Adviser. This additional member should be retained on a full time or, more probably, substantial part time basis. This is necessary to ensure, at an operational level within the Judicial Institute, that there is an awareness of, and familiarity with, the practical training differences required

because of the diversity of Justices, in contrast with the legally pre-qualified judiciary, and that Judicial Institute training materials and events for Justices are appropriately formulated and delivered.

#### Justices' Training Committee of the Judicial Institute

The JSC Justices' Training Subcommittee was established by the JSC on 28 April 2008. This subcommittee of the JSC is the apparent precursor of the Justices Training Committee of the Judicial Institute. The subcommittee was the only national forum concerned with the training of Justices. At the first meeting of the JSC JP Subcommittee, on 2 September 2008, the subcommittee adopted as its remit promoting training for JPs, assisting the Lord President in the execution of his training responsibilities for JPs, making recommendations to the Lord President and JSC on the delivery of national and local training for JPs and offering recommendations and advice to the Lord President on the operation of appraisal schemes for Justices throughout Scotland. The subcommittee at that and its subsequent meeting on 27 February 2009 discussed the training plans that had been submitted. At that time, responsibility for consideration of the annual training plans and reports had been delegated by the Lord President to the JSC. These meetings, attended by the present author, facilitated exchange of training ideas between all six sheriffdoms and co-ordination of the content of the training plans with the training that would be provided by the JSC. The subcommittee decided on 27 February 2009 that it would meet three times each year: in the spring to consider the training plans submitted at the end of February, in October or November to consider the training reports submitted at the end of September and in December or January to exchange views and information on the training plans being prepared for submission at the end of February. This remit and these discussions were expected to promote effective co-ordination of training between sheriffdoms and with the JSC, to facilitate the exchange of training ideas and to reduce duplication of effort through awareness of what had previously been done elsewhere. The subcommittee met again on 23 April 2009, as envisaged, to discuss the training plans that had been submitted and to consider a consistent format for training plans and reports. The present author understands that subsequently the subcommittee met substantially less frequently than the three times each year that had been decided upon and, as a consequence, the co-ordination and reporting functions that it had been expected would be undertaken by the subcommittee were not performed by it. The present author has no information on what alternative measures have been in place to perform these functions.

As with the Advisory Council of the Judicial Institute, the membership of this committee means that its function can only be the provision of strategic direction and co-ordination, rather than operational management.

### “Local Committee”

The shrieval member of the “Local Committee” should be nominated by the Sheriff Principal to have a representative and reporting role. The word “overseeing” connotes too strongly of paternalism and control.

The Director and Deputy Director of the Judicial Institute, as judicial office holders, are suitable observers at meetings of the “Local Committee”. The additional member of the Board of the Judicial Institute, proposed above, would also be a suitable observer. However, it does not seem appropriate that a “member of staff”, unless that member of staff was a Legal Adviser who was the additional Board member proposed above, should attend the “Local Committee” as an observer.

- **Kirkwood, Susan JP**

In relation to the local committee, it is important that it is the convenor, a JP, who reports directly to the Sheriff Principal. A Sheriff should NOT have an “overseeing” responsibility but an advisory role. As said above, the SLA should have only an observer role and should not attend any part of the meeting should any individually-identifiable appraisals be discussed.

- **Parkes, Keith JP**

BJI – No comment

ACJI – No comment

JTCI – Content

Local Committee – Disagree with “To communicate, liaise, engage and work with the JI at an operational level”. Communication should be via the convenor (who sits on the JTCI) – the rest is quite meaningless (eg, what is meant by ‘work with the JI at an operational level’?)

- **Thomson, Gillian JP**

The JTCJI should not have a role in appraisal monitoring but should be informed of generic training needs, or needs that are widespread. The same caveat applies to the local structures.

If the JTCJI is to be a true partnership it should also be able to approve local training programmes – which should be shared in order to help all local training committees develop good practice.

- **White, Robin JP**

So far as the membership and functions of the BJI and ACJI are concerned, these should remain as they are.

So far as the JTCJI is concerned, the attendance of “Staff from the JI as determined will attend ...” might profit from the addition of “by invitation” or (as appears in relation to “Local Committees”) “may attend meetings as observers but are not members of the committee”.

So far as “Local Committee” is concerned, the membership and functions are appropriate in relation to training, but in relation to appraisal, see above.

It is noticeable that the role of Legal Advisers is not spelt out.

- **Wishart, Jan JP**

I can see that the combination of JI, Sheriffdom and JP representations, as outlined, will reinforcefully lead to the provision of a robust national training structure and standard for JP’s. It will not only promote accurate uniform standards and expectations for JP administration of Justice but will also allow for the identification of any particular local Sheriffdom considerations or issues to be addressed.

## Training Content

**4.4 – Are the three training components in paragraph 4.2 correctly specified? If not, please say why not.**

- **JTC Glasgow and Strathkelvin**

We do not think there should be fixed percentages. We need the flexibility to deal with change and individual needs as and when they arise.

- **JTC Grampian, Highland and Islands**

The components are correctly identified.

- **JTC Lothian and Borders**

The committee took the view that the components of training content described in paragraph 4.2 contained appropriate subject matter, although it was felt that it seemed to be focused in a way that was reminiscent of the specification of training for prospective Justices. However, the committee concluded that the components were not properly described. “(a) Core Training” is more appropriately described as “(a) Legal Awareness”; “(b) Generic Training” is more appropriately described as “(b) Courtcraft” and “(c) Miscellaneous” is more appropriately described as “(c) Transferrable Skills”. Given these changes, it would be appropriate to consider “judicial ethics” and “off the bench duties” as part of “(a) Legal Awareness” or “(b) Courtcraft”.

- **JTC North Strathclyde**

The training components in 4.2 cover some of the skills required to perform the duties of a Justice. To suggest that they are all encompassing however demonstrates a very narrow and uninformed view of the skills a Justice requires and highlights how imperative it is that Justices identify and manage their own training programme.

- **JTC Tayside, Central and Fife**

Yes. However, there should be an absolute minimum percentage applied to core training. The percentages for generic and miscellaneous training can be more flexible.

- **Law Society of Scotland**

The Committee believes that the three training components, mainly core training, generic training and miscellaneous training are correctly specified.

- **Public and Commercial Services Union**

Given the wide and disparate range of knowledge and skills required by JP’s, a “one size fits all approach” is, in our view, not appropriate, especially if “the local dimension” of dispensing Lay Justice, is to be kept. The appointment of

JP's reflects, in general, the wide range of the social spectrum, of the communities in which they live and serve. This then means that JP's, even within their respective areas, will require differing Learning and Development needs and these should be reflected in the relevant training to be delivered.

- **Sheriffdom Legal Advisors**

We do not feel the allocation of percentages helpful but if they are to be allocated then it should be;

- Generic – 60%
- Core – 30%
- Miscellaneous – 10%

The contents of paragraph 4.2 appear to be directed towards the current approved locally delivered training for prospective justices and we feel the above percentages are more relevant to lay people training for the bench.

The overwhelming opinion of the SLAs is that to allocate percentages to certain types of training for the training of justices in general is too inflexible. JPs are by their very nature, a broad spectrum of the diaspora of the communities in which they live and as such have varying needs for various types of training e.g. an IT consultant may need no training in IT other than an introduction to the systems they will have access to whilst a lawyer will not need as much training on court procedures.

- **Sheriffs' Association**

Yes. It is assumed that this is a reflection of current training which is regarded as 'good'. This does not preclude review of this balance from time to time.

- **Sheriffs Principal**

We agree that the training curriculum should comprise the three components identified in paragraph 4.2.

- **Clasper, Allan JP**

Yes

- **Hawthorn, Ewan JP**

The training components in paragraph 4.2 are not correctly specified. The skills required by Justices are identified in paragraph 4.2. However, the allocation and description of those skills requires to be changed to reflect more effectively the training needs of Justices.

The skills identified in subparagraph 4.2(a) are more accurately described as “Legal Awareness” than “Core Training”. Up to date knowledge of law and procedure is the core skill of an advocate or solicitor. In the JP Court this core skill is supplied by the legally qualified Legal Adviser. The requirement in relation to this skill for Justices is different. Justices require to be aware of up to date law and practice and sufficiently familiar with the legal system. Justices can be expected to know those aspects of law and practice that they use whenever they perform their judicial functions to a sufficient standard for the efficient disposal of business. However, detailed knowledge of those technical issues that are encountered infrequently is not required: when such matters arise it is appropriate for the Justice to seek the guidance of the Legal Adviser. The Justice only requires sufficient knowledge to recognise when consultation with the Legal Adviser is appropriate.

The skills in subparagraph 4.2(b) are the core skills specifically required for judicial office. The skills identified in subparagraph 4.2(b) are role specific, soft skills and are more accurately described as “Courtcraft” than “Generic Training”.

Most of the skills identified in subparagraph 4.2(c) are better described as “Transferrable Skills” than “Miscellaneous Training”. Judicial Ethics should be included in “Courtcraft”. Off the bench duties would be best divided between “Legal Awareness” and “Courtcraft”.

It is wholly inappropriate to specify annual requirements for each component because need will vary from year to year and from sheriffdom to sheriffdom. The relative proportions of training in “Legal Awareness”, “Courtcraft” and “Transferrable Skills” that are required will vary depending on the amount of new legal material there is and on the skills mix and experience of each local bench. In general, the predominant training need for Justices is in those skills that are specific to their function as judges of summary criminal jurisdiction who are advised by a Legal Adviser in court, that is “Courtcraft” (as specified above). Justices are generally likely to develop the “Transferrable Skills” (as specified above) outwith the context of their judicial role. The amount of training in “Legal Awareness” required will depend on how many developments in the law there have been or that are anticipated.

The allocation of annual requirements for each component is also impracticable. Most training sessions include a mixture of skills drawn from different components. For example, a session dealing with a newly legislated sentencing option may include explanation of the legal requirements as well as role play scenarios in which the new type of sentence may be imposed. Such a session would be, in part, legal awareness, in part, sentence selection and, in part, sentence delivery. The time spent on each may well vary from

one training group to another, even within a sheriffdom. As a hyperbolic example, one group may be predominantly recently appointed Justices who happen to come from professional backgrounds. These Justices may assimilate the legal technicalities quickly, but require more time in relation to sentence selection and delivery. At the opposite extreme, another group may be predominantly highly experienced Justices with less academically structured backgrounds. This second group may take some time to assimilate the technical nuances of the legislation, but then be quite comfortable selecting the new disposal and delivering their sentence.

- **Kirkwood, Susan JP**

The categories should be:

- Legislation and procedures
- Court craft and management
- Judicial Principles (equal treatment, ethics)
- Court support (IT, using video and audio communication etc)

- **Parkes, Keith JP**

What is covered seems in each block seems good to me, but I would change the names:

If core training is training on law and procedure, why not call it 'Law and Procedure Training'?

Generic training would appear to be 'Court Craft Training'

Miscellaneous training might be called 'General Training'

- **Thomson, Gillian JP**

Yes, assuming that they are flexible enough to accommodate changes in the societal context.

- **White, Robin JP**

A. The tripartite division:

The terminology "Core", "Generic" and "Miscellaneous" could perhaps be improved upon, and the distinction between "procedure" ("Core") and "case management" (Generic") may be somewhat artificial. ("Law" and "Procedure and Case Management" might be a preferable distinction to "Core", "Generic").

Also, since "law and procedure" is not further disaggregated, it is not clear what it comprises. Certainly one area which it should include is the law (and procedure) governing the investigation of crime. Justices do not need a

detailed knowledge of this but, to give one example, they should know the difference between “detention” and “arrest” (and indeed, should have a reasonable grasp of police powers generally). It should not be forgotten that, while sheriffs will usually have dealt with such issues for years before appointment while they were in practice, justices commonly have not.

Further, “Miscellaneous” may be accurate, but is an odd way of describing subjects as important as judicial ethics. Equally, “off the bench duties” presumably covers issue of warrants in the home, which deserves considerable emphasis as it concerns fundamental liberties of the subject and arises at the only times when a Legal Adviser is unavailable to advise a justice.

Finally, it is not wholly clear where two or three of the most important issues, sentencing and “means matters” (or, for that matter, utility warrants) appear. Equally, no space is allotted to, for example, broad background issues, such as trends in crime and changes in policing practice.

#### B. The relative proportions

Subject to this, the 60% proportion allotted to “Core” may be excessive. It must be remembered that legal questions rarely arise in the JP Court, save as procedural ones. Pleas to the relevancy are almost unknown, trials hardly ever happen, and evidential points are rare. The typical address from both Crown and defence at the end of a trial asserts that “it is a matter of credibility and reliability”.

The typical “Cited Court” day involves numerous NCs, CWP’s, IDs and SDs, with the occasional custody or UTA; it is not unusual for trial days (in a court busy enough to have them) to finish early as all or most trials set down do not go ahead; but most importantly, almost everybody appearing in court is eventually sentenced, and a significant proportion return thereafter to a “means court” (and as much time is spent on granting or refusing “utility warrants” as on many other sorts of business).

In terms of “Core”, “Generic” and “Miscellaneous”, subject to the observations above, 30%, 60% and 10% might be preferable.

#### C. Delivery

The accent upon those delivering being “trained as trainers” is welcomed, as is the reference to justices’ involvement (strangely distinguished from “judicial office holders”, however). As implied above, experienced justices are an underused resource, and provide insights which Legal Advisers cannot. Moreover as the person in charge of the court the justice ought to be the

person ultimately (subject to the Lord President's requirements) determining what is necessary in training.

- **Wishart, Jan JP**  
Yes.

#### **4.5 – Should the curriculum for justices’ training be set annually? If so, what percentage of training time should be allocated to each component?**

- **JTC Glasgow and Strathkelvin**

While we feel the 5 year training programme has worked well, it may be beneficial to reduce this length of time due to the fact that each sheriffdom appoints new Justices at different times and this cycle may not fit with individual Justices training needs.

- **JTC Grampian, Highland and Islands**

We agree with the notion of operating a curriculum on a cyclical basis but feel that annually might be too short. We would suggest that consideration be given to operating on a two year basis. The stated percentages are fine as a guideline but we would hope that any system would allow sufficient flexibility to respond to needs and not be rigidly applied eg the balance of needs will be different for newly trained Justices as opposed to highly experienced Justices.

- **JTC Lothian and Borders**

The committee noted that the development of a curriculum was major undertaking that could not be done every year. The committee took the view that it would be more appropriate to identify relevant learning outcomes from a curriculum each year and devise a programme of events, within the framework of a curriculum, to deliver those learning outcomes. The committee also took the view that the process adopted in Lothian and Borders of treating the training programme as a continuous, rolling set of three trimesters remains a suitable model. In this model training during the immediately forthcoming trimester is specified in detail, training for the subsequent trimester is specified in outline and training for the third trimester is identified in general terms. This model allows for flexibility to adapt when planning more than a year ahead, while being sufficiently specific in the shorter term.

The committee regarded the allocation of specific percentages to the three components as unhelpful. The relative proportions in any given period will vary depending upon both local needs and national requirements.

- **JTC North Strathclyde**

The Sheriffdom training committee should set its programme annually. It should have as its base the outcomes from a training needs’ analysis culled from a review of the appraisal activity and be flexible enough to respond to changes in law or procedures.

The nature and diversity of the training required makes the suggestion that annual percentages be applied to each element of training seriously flawed.

- **JTC Tayside, Central and Fife**

Yes. A minimum of 50% should be allocated to core. The percentages for the remaining components should be more flexible – this allows for any topical or emerging issues to be included during the training year.

- **Law Society of Scotland**

The Committee agrees with the operation of a curriculum on a cyclical basis, but feels that annually may be too short and suggests that consideration be given to operating on a bi-annual basis.

While the Committee has no set view on the annual percentage requirement referred to at paragraph 4.3 of the consultation paper, it believes that such percentages should only be considered as a guideline and it would anticipate that any system should allow sufficient flexibility to respond to a JP's needs and should not be rigidly applied.

In particular, the Committee notes that the balance of needs will be markedly different for newly trained JPs as opposed to highly experienced JPs

- **Public and Commercial Services Union**

See Response to Q7 above.

- **Sheriffdom Legal Advisors**

We discussed the possibility of a five year training programme but felt that as justices were appointed at different times, the cycle may not fit with each individual justices training needs. After a lengthy discussion, we agreed on a two-year curriculum which would allow sheriffdoms to react to local needs in the short term and pick up on those areas neglected in the following year. It was the experience of all the SLAs that the current annual training plan followed a two year cycle of subjects that were routinely delivered to the justices to keep their skills and knowledge up to date and to promote consistency of sentencing within the sheriffdom.

- **Sheriffs' Association**

Yes. The annual percentage suggested in 4.3 seems appropriate. Flexibility to reflect local (i.e. individual courts or 'clusters' of courts) and Sheriffdom wide needs should be built into each sheriffdom's annual training plan.

- **Sheriffs Principal**

We have no particular view as to how much training time should be allocated to one component relative to the others. We consider however that it is important, in order to maintain the interest of justices in training, to focus the

training provided as much as possible on those types of business with which justices are in practice required to deal in their JP Courts.

- **Clasper, Allan JP**

Instead of annually, consider operating over a two year timescale.

Percentages of training time are satisfactory as a guideline – flexibility has to be allowed for.

- **Hawthorn, Ewan JP**

The diversity of skills and experience that Justices possess, combined with the unpredictable variation in the quantity of new law and resources mean that it is not sensible to set an annual programme for Justices' training, particularly not at a national level.

It would be sensible to require the provision of training in new law within a prescribed timescale relative to the coming into force of that law.

The model adopted in Lothian and Borders is of a rolling series of training trimesters. The training programme for the immediately forthcoming trimester is defined in detail as to both subject matter and learning outcomes, the programme for the subsequent trimester is specified in less detail and the programme for the most distant trimester is defined in general terms. This allows some flexibility to address changes in training requirements that arise after the snapshot, annual programme has been specified.

While the principal, continuing training requirement for Justices is that defined as "Courtcraft" in response to Question 7, above, new law and other developments have to be accommodated. Thus, the relative proportions of "Legal Awareness", "Courtcraft" and "Transferrable Skills" will vary from year to year. The relative proportions of these three components must also be varied to reflect the diversity of skills and experience amongst the Justices of each sheriffdom or even each court..

- **Kirkwood, Susan JP**

A menu of training could be provided each year for JPs to select from.

A minimum percentage could be set each year, in particular when major legislation or procedural changes will require that part of the training to take a higher percentage.

- **Parkes, Keith JP**

The national curriculum should be set annually but local training could be set on a more flexible basis. I would be reluctant to be too proscriptive regarding the allocation of training time to each component.

- **Thomson, Gillian JP**

Yes but I disagree with the allocation of percentages. It seems a false distinction to make and each year's programme, as it will in part be informed by generic information flowing from appraisals, could be quite varied in content.

- **White, Robin JP**

If this means that a plan for the year should be available in advance, clearly, this is desirable. However, it must contain some flexibility. A problem under the existing arrangements is that, since a training plan has to be approved in advance, it is difficult for it to accommodate unexpected events. "*Cadders*" will be rare, but significant High Court sentencing decisions are not, and all need to be dealt with while fresh.

As noted above, in terms of "Core", "Generic" and "Miscellaneous", subject to the observations above, 30%, 60% and 10% might be preferable.

- **Wishart, Jan JP**

Core – 40%

Generic – 50%

Misc. – 10%

## Quantity of Training

### **4.10 – Should there be a minimum mandatory annual training requirement? If so how should this be specified? Please give reasons**

- **JTC Glasgow and Strathkelvin**

It was agreed that there must be a minimum number of hours set. Twelve hours is the statutory amount although the majority of Justices within this sheriffdom complete in excess of this amount.

- **JTC Grampian, Highland and Islands**

Yes. Twelve hours is probably about right but again there has to be flexibility to respond to changes as they occur and not be too rigidly bound to a specific number. A balance needs to be struck so that there is a guarantee that at least half of the time should be given to locally based training.

- **JTC Lothian and Borders**

The committee agreed that there should be a minimum mandatory training requirement, subject to exemption depending on adverse personal circumstances. The requirement should be expressed as separate minima for local and national training.

- **JTC North Strathclyde**

We take the view that the current mandatory training requirement of 12 hours should remain. It has been shown that a properly designed training programme affords Justices the opportunity to meet all required training requirements within the 12 hour guideline. It should also be noted that the average number of training hours undertaken by Justices in North Strathclyde during the last training programme was 22 hours.

- **JTC Tayside, Central and Fife**

Yes. The current minimum of 12 hours should remain.

- **Law Society of Scotland**

The Committee believes that twelve hours is the correct level but notes that flexibility should be put in place in order to respond to changes in the law as and when they occur.

In particular, a balance requires to be struck in order that there is a guarantee that at least half of the time allocated to annual training should be given to locally based training

- **Public and Commercial Services Union**

Yes. We would agree this is necessary and essential to ensure that base learning, knowledge and skills are kept up to date and indeed, expanded and built upon.

- **Sheriffdom Legal Advisors**

It was agreed that a minimum number of hours should be set for justices to attend training. The regular training of justices enabled them to meet together throughout the year and share their concerns and experiences. It is a unique job and not an experience they can share generally with their friends and family so it is important that they meet with other JPs. The current 12 hours is acceptable and has been recognised as the optimum number of hours.

In addition we feel it would be beneficial to have a time restriction on training on new legislation for the judiciary such as all members of the judiciary must receive training on new legislation affecting their role within three months of the legislation being implemented or notice of the implementation date being given. This training would need to be compulsory for all JPs and could be delivered by the JI as it would be a national training need.

We recommend that each justice must obtain a minimum of six hours of the twelve hours each year from local training.

- **Sheriffs' Association**

Yes. As JPs are not salaried or fee-paid it is important to recognise that a more flexible approach is required when compared to the paid judiciary. Hours rather than days seems appropriate. If the current requirement of 12 hours is understood and working satisfactorily, there appears to be no case for increasing same. Expressing the requirement in hours also recognises that much training takes the form of local sessions in the evening.

- **Sheriffs Principal**

In our view there should be a minimum mandatory annual training requirement. At present the requirement is one of twelve hours which seems to us about right given that one is dealing with a cadre of volunteers. We wonder however whether a better measure might not be the attainment of a certain number of CPD points in a year or perhaps over two years. Thus individual elements of training would be assigned a particular number of CPD points and this would enable a more discriminating approach in the credit to be given to different types of training. Furthermore an approach such as that suggested in paragraph 4.3 would ensure a balanced attainment of the training requirement. Ultimately, what matters in our view is that the training undertaken by each justice in any prescribed period, be it a year or two,

should comprise the three components of the training curriculum set out in paragraph 4.2 of the consultation paper. Provided that objective is met it seems to us that the means of doing so are of secondary importance. In striking an appropriate balance however we would emphasise the importance of justices being able to get together on a regular basis, both nationally and locally, and any training requirement ought to have that in mind. In similar vein we think it desirable that the fulfilment of the annual training requirement ought to be easily verifiable.

With these principles in mind we consider that attendance at a national training conference ought to be compulsory and would suggest once every three years as an appropriate level of commitment. So far as attendance at external courses and self-study is concerned we think there may be difficulties of verification and we assume that some qualitative assessment of, for example, external courses would require to be undertaken to assess whether and to what extent they contribute to the delivery of the three components of the training curriculum. Additionally, unless one were to make a considerably greater demand on the level of training expected of justices, we think that attendance at external courses might unhelpfully limit participation in what we imagine to be the mainstream events at which the curriculum will be delivered, unless perhaps one were to set the period for the attainment of the required training to be spread over a longer period than one year. We certainly see a place for e-learning provided that that can be adequately audited although again we would think that only a proportion of the annual training requirement should be fulfilled by that means.

- **Clasper, Allan JP**

Yes

Current 12 hours is about correct.

However, National Training should not account for more than 6 hours in ANY training year – the remaining 6 hours should be for local training.

- **Hawthorn, Ewan JP**

There should be a mandatory minimum training requirement. The purpose of the mandatory minimum should be to emphasise the duty that Justices have to maintain and develop their skills. Care must be taken to avoid the portrayal of the minimum as “box to be ticked”.

This mandatory minimum should be set at an achievable level. It should be qualified by exemption in light of unexpected adverse personal circumstances. It should be viewed in the context of the whole of the five year rolling period of appointment.

A difficulty arises because of the different types of training that are offered: local, local residential, national residential and self study. For example, if the mandatory minimum was simply set at twelve hours each year then the whole of that might be accrued from the contact hours at a two day residential course. Thus, the mandatory minimum should be expressed in a way that reflects the different types of training offered. The mandatory requirement should be expressed in terms of hours of training undertaken and events attended.

Ideally, measurement against the mandatory minimum should also reflect the types of skill (“Legal Awareness”, “Courtcraft” and “Transferrable Skills”) covered. However, there is a difficulty with this because the mix of skills that require development will vary, depending on the skills and experience of each Justice and the volume of legal change that may have to be accommodated.

An example specification of the mandatory minimum might be as follows:

1. Attendance at training (locally or at a national event) on specific changes to law and practice within three months of those changes coming into force;
2. Attendance at no fewer than twelve hours of local training in each year;
3. Attendance at no fewer than three sheriffdom residential training events in every rolling five year period; and
4. Attendance at one or more national residential skills training events in every rolling five year period.

- **Kirkwood, Susan JP**

This annual training requirement would ideally be specified for each individual and should not be a matter of specifying hours (which appear to be ignored by some sheriffs principal in deciding on reappointment). Perhaps as an annual training contract – proposed by each individual or his/herself and approved against principles set nationally. Perhaps a JP has to have one or more modules (national local or online) from each of the main categories. That would be a long term ambition.

In certain years, there should be mandatory training for significant changes to legislation or procedure with a range of ways in which JPs can undertake that training (from online modules to local events to attendance at national training).

- **Parkes, Keith JP**

I am content that 12 hours is a reasonable combined national and local training minimum amount. I should like the minimum national training to be set at 8 hours/2 years and for local training to be 4 hours/year: this would allow flexibility for 8 hours every 2 years to be either national and/or local training. In addition to this minimum training, it may be appropriate to consider additional or remedial training for those justices assessed to require such during appraisals.

As stated above, appraisers need to be both trained and assessed both before and during their time as appraisers. This training should be in addition to the minimum training for all justices.

- **Thomson, Gillian JP**

Yes, and 12 hours seems adequate if it is simply face to face training but individuals should be given the opportunity to identify other training attended which would enhance their knowledge or performance in Court, and should be allowed to document that as a contribution to say, 50% of the expected total training time annually. I would include in this informal training through interactions with other justices – learning from one’s peers. I would however not count this as carrying the same weight as face to face training – even documented self-study should carry a lower weighting, unless it was through a JI website or webinar set-up where “attendance” can be recorded/monitored.

There is, whether we like it or not, a considerable degree of presenteeism in local training, much of which may be interesting but is not presented well or in a suitable forum and format. Much of it is also not challenging for experienced justices, or too theoretical for its relevance to be understood.

- **White, Robin JP**

Yes, there should be a minimum mandatory annual training requirement. The present level is appropriate, but the notation in terms of hours leads to the problems referred to (para 2.4).

A better form of notation would be to require, say, 8 out of 10 monthly sessions per year (without reference to their length), a Sherifdom one-day conference every second year, and a national conference every five years.

Clearly, the question of failure to fulfil the requirements will have to be dealt with delicately, at least in relation to events that only occur one a year.

- **Wishart, Jan JP**

I think the current minimum 12 hours is a reasonable expectation - particularly in the light of the total hours that JP's give voluntarily over the course of the year in the additional terms of their court sittings, as well as through fulfilling other obligations – e.g. warrant applications outwith normal working hours (oft times in the middle of the night!) Furthermore, these hours are happily given because of the keen concern and willingness to fulfil the JP role – especially with reflection upon the element of service to the processes of justice within the JP's own home locality.

**4.11 – Should attendance at a national training conference be compulsory? If so, how often? Please give reasons.**

- **JTC Glasgow and Strathkelvin**

It was agreed that attendance at national training should be compulsory. We suggest once every 3 years.

- **JTC Grampian, Highland and Islands**

Yes. For the number of Justices we have once every three years is probably about right. However the JIS training suite cannot cope with large numbers and such a conference would need to be held elsewhere. The training suite does however offer the advantage of accessibility to people (such as the Lord President) whom we might not otherwise see at events elsewhere.

- **JTC Lothian and Borders**

The committee decided that attendance at a national training conference should be compulsory. This compulsion should be expressed in terms of a minimum requirement and the committee decided that this minimum should be at least once during every five year term of appointment.

- **JTC North Strathclyde**

An annual conference organised by the JI in conjunction with the local Training Committees would provide an ideal opportunity for the JI to establish a meaningful role with Justices. In return Justices should be encouraged to attend an annual conference at least once every five years. While making attendance compulsory may be seen as a way of securing attendance, it is important to remember that Justices are volunteers who have already contracted to meet a 12 hour training requirement, and, has been shown, in most cases exceed their 12 hour commitment.

- **JTC Tayside, Central and Fife**

Yes. At least every two years. It is extremely valuable to network with fellow Justices.

- **Law Society of Scotland**

The Committee believes that the content of the national training conference should determine whether attendance is compulsory, albeit it strongly endorses that, for the number of JPs sitting in Scotland, attendance once every three years should be strongly encouraged. From a practical point of view, the Committee notes that the JI training suite cannot at present cope with large numbers and perhaps consideration should be given to holding the event elsewhere.

On a positive note, the Committee believes that the training suite does, however, offer the advantage of JPs being able to meet with senior legal figures including the Lord President who may not otherwise be available to attend events elsewhere.

- **Public and Commercial Services Union**

Yes. We would agree that there could possibly be a place in the JP Training calendar for an event such as this, although, we would add that making such an event compulsory for Volunteers, has inherent difficulties, which would require to be overcome, but the benefits of such a networking event cannot be underestimated

- **Sheriffdom Legal Advisors**

As national training currently stands, we do not think attending national training should be compulsory. It would be necessary to clarify the objectives of the national training before it could be made compulsory. The small numbers in attendance does not deliver the benefit of the 'coffee break chat' or the dinner conversations' which was always found to be of great benefit to each justice and contributed towards a more consistent approach from justices throughout Scotland. This was only possible by the numbers in attendance and each locality being represented.

The osmosis effect of speaking to JPs from around Scotland has been lost particularly as the local justices (living within 60 miles of the venue) do not stay overnight. National training was designed to attract the 'big' named speakers such as senators and sheriffs principal to address a larger audience and a common message could be delivered to several justices from one court and then be disseminated to the other JPs sitting in that court.

We are also concerned that while the SLAs on behalf of the JTCs submit annual training plans, no such reciprocal arrangement is in place to inform JTCs or SLAs on the proposals the JI have for the following year or years in respect of JP training. This would be beneficial to SLAs and LAs as we would then be prepared for an enthusiastic justice returning from training with some fresh ideas, some of which may not be appropriate to their local court or their powers in court.

National training is not for the nuts and bolts requirements of justices as this is delivered locally on a more regular basis and is more easily accessible by a wider number of justices.

- **Sheriffs' Association**

No. There should certainly be an opportunity for every JP to attend a national training conference once every three years. The question arises as to whether that attendance should be compulsory and what is to happen if a JP does not comply with such a requirement. The primary objective is that sufficient quality training be received by each JP. The ways that training is delivered must be flexible to suit the diversity of JPs. To demand that a volunteer attend regularly a particular form of training may breed resentment. It would be better that the training opportunities of different forms of training be made known to the JPs so that they may select what is best for them. The system of appraisal will at the same time identify where a JP may be lacking training or knowledge. It would not be unreasonable for a debriefing from appraisal to encourage suitable training to address needs and that might well include a different form from that previously used by the JP. Attendance at a conference consisting mostly of lectures may achieve less for a particular JP than a more focused local group discussion.

- **Sheriffs Principal**

See response to 4.10

- **Clasper, Allan JP**

Yes

Justices should attend every 3 years.

- **Hawthorn, Ewan JP**

Attendance at national training is necessary to develop the collegiate nature of the bench and to promote consistency across the country. It is therefore important that all Justices attend national skills training events. This has to be distinguished from attendance at topic specific events that are open to Justices from across the country.

In practical terms, attendance at a national judicial skills training event should be required once in every five year rolling period of appointment. However, additional, uncredited attendance should not be precluded.

- **Kirkwood, Susan JP**

No. Training should be available where and when justices need it, and not depend on them being able to give up 2 or 3 days of their time every 3 or 4 years when it fits into their personal calendar.

- **Parkes, Keith JP**

Yes, once every 2 years – otherwise some justices will not attend.

- **Thomson, Gillian JP**

Yes. Justices need to be exposed to different practices and different perspectives and that is most easily found through interaction with justices in different sheriffdoms. Whether it was compulsory would depend on the annual training programme – for example the partnership might decide that all justices should be trained in “X” and that “X” was best delivered by the JI as a single event, but ideally every justice should attend one session delivered at national level. As a norm however I would like to see all justices attending one large event and one ore specialised session each year.

- **White, Robin JP**

See above.

- **Wishart, Jan JP**

In the light of the information outlined in the consultation, perhaps obligatory attendance at a JP national training conference could be once every three , instead of five, years. It is a more practical timespan than five years.

#### **4.12 – Should attendance at a national training conference be given full or part credit towards the annual training obligation? If so how much?**

- **JTC Glasgow and Strathkelvin**

National training should be credited if a Justice is required to attend on a compulsory basis however, if attendance is not compulsory, no credit should be given.

We feel that the restriction of the 60 mile radius for provision of accommodation has a negative impact from the point of view that Justices seldom have the opportunity to meet their colleagues and discuss the content of any training, local knowledge and experiences.

- **JTC Grampian, Highland and Islands**

The national conference fulfils a different function from routine training events. It should not be seen as delivering the nuts and bolts of basic training but should be seen as adding another dimension. It is an opportunity to meet Justices from other parts of the country and to understand and appreciate the wider context in which we operate. It is therefore important that at least half of the time spent by a JP in training is spent locally or at national training events which are focussed on a particular theme or topic.

- **JTC Lothian and Borders**

Attendance at a national training conference should be credited toward the national component of the minimum training requirement.

- **JTC North Strathclyde**

It is our view that the local Sheriffdom training programme should represent the main training offering and that the training hours commitment should be met via attending the local programme. However if in certain circumstances, a Justice has not met their commitment via the local training programme it may be appropriate to allow any 'lost' time to be made up by attendance at an annual conference. As we have consistently shown in North Strathclyde the key to attracting Justices to an annual conference when they have already met their training hours' commitment is to build a reputation for excellence.

- **JTC Tayside, Central and Fife**

Part credit. A maximum of 6 hours.

- **Law Society of Scotland**

The Committee believes that a national training conference fulfils a different role from that of local training events and should accordingly be seen as adding another dimension to such basic training.

The Committee believes that the national training conference is an opportunity to meet JPs from other parts of the country and understand and appreciate the wider context in which they operate. It is therefore important that at least half of the time spent by a JP in training is spent either locally or at a national training event which focuses on a particular theme or topic.

- **Public and Commercial Services Union**

Yes and the full duration of the event should receive full credit towards the JP's annual training obligation

- **Sheriffdom Legal Advisors**

If the training was fixed with set objectives which tied in with the local training programmes and the national objectives were clearly defined, it may be that credit should be given to JPs who attend national training events. A maximum of six hours could be allocated for attending national training which would mean that each justice would have to do at least six hours training locally, where the emphasis should remain.

It must be recognised by the JI that it is getting more difficult to get Justices to attend national training and it may be that conferences catering for larger numbers could encourage a better participation in national training.

- **Sheriffs' Association**

Yes. There is no justification for failing to count training administered through the JI towards a JP's annual training commitment.

- **Sheriffs Principal**

See response to 4.10

- **Clasper, Allan JP**

As 9 above

- **Hawthorn, Ewan JP**

Attendance at a national training conference should be regarded as being an additional training requirement (within each rolling five year term of appointment) rather than as a substitute for part of an annually specified local training requirement.

- **Kirkwood, Susan JP**

I don't think the annual training obligation should be a number of hours. If parts of a national training conference fit the training required by an individual justice then that part of the conference should count 100%.

- **Parkes, Keith JP**

Please see my answer at 4.10 above

- **Thomson, Gillian JP**

Yes. Justices give of their time and they should be credited for turning out – it is quite common for a justice not to be paid by their employer for attendance at Court or at training so they should at least get credit in terms of their training time requirements. A major move would be to pay a day rate for attendance at the larger events!

Both types of events bring benefits so it is difficult to say one should be weighted more than the other but we should remember that justices who attend both a national event and the annual sheriffdom conference are probably giving up 3 weekend days a year, which, for those that are working or have other commitments, is quite a sacrifice for a voluntary role.

We want justices to get to the situation where they want to attend all training because it interests and benefits them. Most, I believe, value the large events but have serious concerns about the value of the monthly local training. Yet we need a training programme that is continuous not sporadic so we need to improve that local routine delivery and to do so quickly so that we can quell the muttering about “having to attend because larger events and JI events do not get credit/enough credit”. Either way, the Sheriffdoms should be unanimous in the credit they award for attendance at JI events. The current local autonomy on this point is not independence but fragmentation which is damaging. An agreed “tariff” should be one of the first matters for the partnership to decide.

- **White, Robin JP**

See above.

- **Wishart, Jan JP**

One attendance should then be given full accreditation towards the annual training requirement for that year - i.e. one in a three year period. Any extra such attendances at national conferences are then entirely optional, and expenses incurred paid by the JP himself/ herself.

#### **4.13 – Should attendance by way of self-study, attendance at external courses be credited towards the annual training requirement?**

- **JTC Glasgow and Strathkelvin**

No.

- **JTC Grampian, Highland and Islands**

No, not in general. Monitoring the standard of such training and guaranteeing its quality is difficult. However the current arrangements simply provide a general training programme for all Justices and do not help us to respond to individual JPs' developmental needs. If JIS developed a suite of on-line programmes of relevance and high quality this would go a long way to filling this glaring gap and participation in this, if appropriately monitored, should be given credit.

- **JTC Lothian and Borders**

Self study or attendance at an external training course, which is deemed allowable for the purpose of claiming travel, subsistence and loss of earnings expenses, should be credited toward the annual training requirement, subject to an upper limit. At present, in Lothian and Borders, the upper limit of credit for self study or attendance at an external course is two hours each year. However, where a Justice has been unable to meet the remainder of the minimum requirement for good reason further credit may be considered in respect of self study or external courses.

- **JTC North Strathclyde**

No. A 2 hour self-study allocation is sufficient.

- **JTC Tayside, Central and Fife**

No. Monitoring of this would be difficult and time consuming.

- **Law Society of Scotland**

While the Committee recognises that monitoring the standard of such training and guaranteeing its quality can be difficult, it suggests that any accreditation of either self study or attendance at external courses towards the annual training requirement should be capped and that this cap should be perhaps limited to 25%.

The Committee notes that current arrangements simply provide a general training programme for all JPs and does not allow them to respond to individual developmental needs.

As a way forward, the Committee suggests that the JI could develop a suite of online programmes of relevance and high quality in order to assist with self-study.

On the basis that this appropriately monitored, then accreditation could be given.

- **Public and Commercial Services Union**

No. Our view would be that being a JP is a unique role within the Scottish Justice system and any training that is devoted to undertaking that role, therefor requires to be targeted and relevant to that role and to the locally assessed Learning and Development need of the JP.

- **Sheriffdom Legal Advisors**

We do not think external courses are suitable for credit towards justices training given their unique status as volunteer justices. Attendance at magistrates training in England when it comes to judicial ethics and judicial conduct could perhaps be considered but generally attending university law lectures or other like courses do not cater to the specific needs of a justice.

Individual and private study cannot be monitored. Any such training must be seen to be beneficial and meet the needs of the justice. Once the Judicial Hub is fully operational and justices can undertake courses or accessing materials that can be monitored and recorded through the e learning on the hub, then self-study could be credited towards the number of hours of training a justice has undertaken in the year.

The problem with accrediting self-study would be that it would discourage justices attending local and national training, the effect of the training would be diluted. Ultimately, the lack of Justices attending training prepared and organised by a legal adviser will be very demoralising and lead to disinterest in the training of justices by the legal advisers locally. (It must be noted that two SLAs dissented from this opinion as the JTCs in their sheriffdoms implement this in the form of two hours credit, uncertified, to take account of JPs undertaking private studies, external lectures or reading materials sent out by the SLA and other similar materials.)

- **Sheriffs' Association**

No. There would be a major difficulty in obtaining quality assurance.

- **Sheriffs Principal**

See response to 4.10

- **Clasper, Allan JP**

No.

Difficult to monitor. If the JIS were to design distance learning packages with assessments built in or an assessment during a National Training event then the package could count towards the annual training hours.

(Minimum of 6 hours to remain for local training).

- **Hawthorn, Ewan JP**

Yes, subject to a low maximum credit and tight specification of what can be counted. This is however, a difficult area because of the need to identify the relevance of that which has been studied privately. One possibility might be that, where the principal vocation of a Justice relates to an aspect of training in, for example, “Transferrable skills” or “Legal Awareness”, self study may substitute for up to, say, two hours of the annual minimum where that annual minimum is not otherwise satisfied.

- **Kirkwood, Susan JP**

Yes if it is relevant to the individual need of the JP. Again the obligation should not be a number of hours. To encourage JPs to undertake the training they need in a timely fashion, such study should be encouraged – and even promoted and encouraged by the Judicial Institute.

- **Parkes, Keith JP**

No – quality and/or relevance of such training would be difficult to assess.

- **Thomson, Gillian JP**

Yes but see caveats under 4.10 above.

- **White, Robin JP**

In principle, they should. However, in order for “self-study” time not to be wasted, some guidance should be provided (eg read A Stewart *The Scottish Criminal Court in Action*).

As for external courses, they would have to be judged *ad hoc*.

- **Wishart, Jan JP**

Yes.....??..... but only if it could be effectively and transparently monitored/assessed or validated .

## **4. Non-Standard Responses**

### **JTC of North Strathclyde – Foreword by Tom Finnigan JP, Convenor**

The Justices' Training and Appraisal Committee for the Sheriffdom of North Strathclyde was established in 2007. Since that time it has been an organisation which is at the forefront of training for Justices of the Peace.

Serving a Sheriffdom that is widespread geographically, the committee has always had a composition that reflects each area to ensure training is delivered effectively across the Sheriffdom. We have been pioneers of the interactive video link system to deliver training to the more remote parts of our Sheriffdom thus reducing time commitment and travel costs.

Working together with our excellent Sheriffdom Legal Adviser and her team we have continued to produce and deliver training programmes that have been well received by our Justices. The content of our training programmes has been determined by; new legislation, feedback from Justices, personally, and through our network of local forums and from the analysis of the results of our appraisal scheme. Many of our training sessions are JP led. We would acknowledge the part played in our work by our Sheriff Principal, Sheriffdom Business Manager, Sheriffdom Executive Support Officer and the Sheriff who serves on our committee.

Our training comprises of evening, day and weekend sessions to suit all circumstances. The highlight of our training year is always our annual weekend training conference which has as its core intensive workshops augmented by keynote speakers, among whose numbers have included; the Cabinet Secretary for Justice, the Lord President, the Lord Advocate, the Solicitor General and the Director of the Judicial Institute. This policy has the added benefit of making Justices feel they are an integral part of the Judiciary and that their efforts are recognised by those at a higher level.

Our Appraisal Scheme is now well established with all involved acknowledging the benefits of the scheme. In order not to incur additional costs we hold Appraisal Committee meetings on the same day as our Training Committee meetings.

We have this year worked jointly with the Judicial Institute on a successful pilot for JP training based in the Institute's learning suite.

We look forward to continuing our excellent working relationship with the Judicial Institute and submit for consideration our response to the consultation document.

## **Law Society of Scotland – Introduction and General Comments**

### **Introduction**

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society Committees which are made up of solicitors and non-solicitors and ensure we benefit from the knowledge and expertise from both within and outwith the solicitor profession.

The Society welcomes the opportunity to respond to the Judicial Office for Scotland's Consultation entitled "Consultation on the arrangements for Training of Justices of the Peace in Scotland"

The Society's Criminal Law Committee (the Committee) has considered the consultation and should like to respond as follows.

### **General Comments**

The Committee recognises the important contribution that lay justices make to the administration of justice in the criminal court system in Scotland. On the basis that justices are to continue to sit as lay judges in courts of summary criminal jurisdiction and that the Lord President now wishes to review the structures for providing justices' training, nationally and locally, then the Committee considers that it is appropriate to give consideration to the ongoing training of JPs at a local and national level and, in particular, welcomes this review against the background of the current court reforms and the wide ranging changes to both the practice and procedure of criminal law which will undoubtedly be implemented in the very near future.

## **Sheriffs' Association – Introduction**

### **Introduction**

[1] Given the volume and ever-increasing complexity of business dealt with in the Justice of the peace Court, it is appropriate that the current arrangements for the training of Justices of the Peace ('JPs') is reviewed at this time. That view is fortified by the enactment since 2007, when the current scheme for training and appraisal of JPs commenced, of the Judiciary and Courts (Scotland) Act 2008 and the continuing development of judicial training for all tiers of the judiciary under the direction of the Judicial Institute for Scotland ('JI').

[2] The linkage between appraisal and training is clear. A good system of appraisal will clearly identify individual and generic training needs, so cross-fertilisation between appraisal and training is essential.

[3] Sheriffs individually contribute enthusiastically to the training of JPs and it appears that experience shared with the volunteers by the professional judges is appreciated by the JPs. Sheriffs also individually welcome the opportunity to share judicial experience with JPs. The shared experience adds value to both levels of the judiciary. It is hoped that informal approaches from Sherifffdom Legal Advisers (SLAs) to sheriffs for contributions to JP training will continue.

## **Sheriffs Principal – Introduction**

We recognise the good work that is being undertaken by training committees, legal advisers and sheriffs locally and endorse the view that justices have been "better trained" as a result of the reforms in 2007. With the benefit of this experience however we agree that a review of the present arrangements is appropriate, not least because of the material changes in the structure and approach of the Judicial Institute and the desirability of having an integrated approach to the education and training of the judiciary at all levels. In considering what model of training might be appropriate for justices we agree with the objectives of the Lord President outlined in paragraph 1.7 of the consultation paper that (a) all justices should receive training of a consistent quality on all relevant matters, (b) there should be a clear link between the training needs identified through the appraisal system and the training provided and (c) there should be a balance between a core curriculum necessary for every justice and local training requirements particular to different parts of the country. In our view this latter consideration is important and suggests to us that a degree of flexibility ought to be maintained. We note the proper recognition in that paragraph of a continuing need for local delivery of training.

### **Ewan Hawthorn JP (Substantial comment):**

This response has been prepared and submitted because of the author's unique background and experience of the training of Justices of the Peace in Scotland (Annex A). The author of this response has also made a submission on behalf of the Justices Training Committee for the Sheriffdom of Lothian and Borders in his capacity as the convenor of that committee. Nothing in this response should be taken to imply any disagreement with the Justices' Training Committee. The committee agreed that a separate submission was appropriate because the present author has experience beyond the remit of the committee. The present author also acknowledges the advantage he derived, in writing this response, from having had the benefit of considering the informed and constructive discussions by the committee.

### **Context**

In considering the training requirements for Justices of the Peace (JPs) in Scotland, there are a number of questions that need to be addressed:

- Who are JPs?
- What do JPs do?
- What skills do JPs have?
- What skills do JPs require?

The training requirement for JPs is that which is needed to maintain and develop the skills possessed by JPs in order to attain and maintain the skills JPs require.

Who are Justices of the Peace? JPs (Justices) are citizens, selected from the general population, who undergo initial training before appointment to judicial office. Justices do not require to be legally qualified to be eligible for appointment.

What do JPs do? Justices sit, part-time, as judges of first instance in a court of summary criminal jurisdiction, where they are advised on the law by a Legal Adviser (who must be qualified as a solicitor or advocate). Justices are also available to consider out of hours applications at any time. Honorary Sheriffs are the only other judicial officers with a similar role and demographic, although Honorary Sheriffs do not require pre-appointment training or the presence of a legally qualified adviser in court.

Identification of who JPs are and what JPs do determines the training assumptions that may be made and the skills required. The description also determines the similarities, and differences, between Justices and the holders of other judicial offices and thus enables identification of where the training of Justices must be approached differently from, or can be the same as, the training of other judicial officers.

### What skills do JPs have?

The recruitment process for prospective Justices identifies four qualities that must be demonstrated by applicants and the abilities that are required to demonstrate these qualities. These qualities, and the skills and abilities that demonstrate their possession, have been specified by the Judicial appointments Board for Scotland (Annex B).

These constitute the core qualities that it can be assumed are possessed by all prospective Justices. The induction training that all prospective Justices undergo before appointment then adds a baseline of core knowledge and skills required to undertake the judicial role of a Justice.

What skills do JPs require? The distinctively judicial functions of a judge of first instance are to act as a decision maker and fact finder and to "preside" over proceedings before them.

These functions must be performed "according to the laws and usages of the realm" and so an up to date knowledge and understanding of law and practice must be available to the judge. Up to date knowledge of law and practice is the core skill of solicitors and advocates. In the Supreme Courts, Sheriff Court and Stipendiary Magistrate Court the judge will be a solicitor or advocate and have this core skill; in the JP Court this skill is provided by the Legal Adviser.

The skills required of the judiciary may be divided into those skills that are specifically judicial and those skills that are necessary to discharge their judicial duties but which are of a more general nature. It is important to recognise that not all of the core skills of a judge are only possessed by holders of judicial office and that legal pre-qualification does not imply possession of non-legal skills.

Before deciding on what training is required by Justices in skills that are not specific to their judicial role, it would seem sensible to undertake a skills audit. To some extent, this is done informally by Legal Advisers and reflected in both local training plans and in the style and manner in which that training is delivered. A skills audit would supply objective information about the learning skills and transferrable skills that Justices possess. One might speculate that the results may show differences not only between sheriffdoms, but also between individual courts within each sheriffdom.

### How are the skills possessed to be maintained and developed to attain the skills required?

In developing any training regime, the first considerations must be the nature of the learning skills and the prior experience of those being trained.

Holders of those judicial offices for which it is a condition of appointment that they have qualified and practiced for a prescribed period as a solicitor or advocate may be described as the legally pre-qualified judiciary. There are three assumptions that can be made when devising training for the legally pre-qualified judiciary. First, it can be assumed that they have learning skills commensurate with a high level of professional achievement. Second, it can be assumed that they will have acquired the soft skills required to perform their judicial functions within the context of legal practice. Third, it can be assumed that legal practice is their primary vocation. These assumptions underpin training by lawyers for lawyers, which is not quite the same as training by judges for judges. Given that all but a handful of Justices are not legally qualified, these assumptions cannot be made in developing training for Justices. Justices are much more heterogeneous, in terms of their prior experience and learning skills, than the legally pre-qualified judiciary.

Some Justices will have attained professional eminence within their own field that is comparable with that attained within the legal profession by the legally pre-qualified judiciary, but many other Justices will have acquired their skills in less formally academic contexts and it may have been some considerable time since they last experienced formal, structured training. It is thus not possible to assume that Justices will have the same type of up to date learning skills that can be taken for granted with the legally pre-qualified judiciary. This variety of learning skills is not correlated with either location or judicial experience since appointment, but will exist within the Justices sitting in each court.

Justices will have acquired most of the skills relevant to their judicial role in contexts other than the practice of law, and it will be likely that most of these skills will continue to be practiced and developed in their non-judicial role. The heterogeneity of these non-judicial roles means that no assumptions can be made about a commonality of experiences amongst Justices. What is required is training that takes skills, which may be well developed in a non-judicial context, and develops them for deployment to the judicial role.

The areas where Justices can be assumed to have limited experience and limited skills are the law and judicially specific tasks. Justices require to have an awareness of the structure of the Scottish legal system and the nature of law. Justices require to have sufficient awareness of the details of law and practice in their own court to be able to recognise circumstances that may be unusual or complex, where consultation with their Legal Adviser would be prudent. Justices will acquire sufficient knowledge of the law and practice that applies to that which they routinely encounter to ensure the efficient disposal of business.

As well as being specific to the office held, the training of judicial officers must reflect whether they are part time or full time. All Justices of the Peace sit part time and perform their out of court duties on an occasional basis. Part time members of the judiciary have to organise sitting and training in the context of their other commitments. Both Justices and part time, legally pre-qualified members of the

judiciary undertake daytime training on the same basis as sitting in court: those who are legally pre-qualified are remunerated as for a day's sitting, Justices take a day's leave from their primary vocation.

Full time, legally pre-qualified members of the judiciary can be expected to be available to undertake all the training that is required of them and it can be taken for granted that their legal pre-qualification and experience make them practiced and able learners. Legally pre-qualified, part time members of the judiciary can be assumed to have a similar professional context and learning skills.

In developing training for Justices a threefold analogy may be drawn with students of the Open University studying a numerate discipline.

First, most of those who study with the Open University will not be starting their studies as school leavers but will have a diversity of backgrounds and so a wide range of learning skills and a wide range of prior knowledge. This contrasts with the predominantly school leaver intake of a conventional university. Justices have a similarly diverse range of backgrounds and experience and, unlike the legally pre-qualified judiciary, have a wide range of levels of learning skills. Second, Justices, unlike the legally pre-qualified judiciary, will be undergoing training for their judicial role where their exposure to the legal system is on a part time basis that is secondary to their principal vocation. Third, those who study science or engineering subjects require some knowledge of mathematics, but mathematics is a service subject that is supportive of their primary interest. Similarly, for most Justices, law is a service subject both in their judicial role (the principal legal knowledge function of the JP Court is performed by the Legal Adviser) and in the context of their non-judicial role. This contrasts with the legally pre-qualified judiciary for whom the law is their principal professional interest.

It follows that the training of Justices must be based on a different model and must have a differently weighted syllabus from the training of the legally pre-qualified judiciary. The model must accommodate the part time nature of Justices' court commitment. The model must accommodate the diverse range of learning skills amongst Justices. The syllabus must be more strongly focused on judiciary specific skills that Justices will not have acquired from their non-judicial roles. While some Justices may not have acquired all of the non-judicial skills that they require from their non-judicial roles, training in these non-judicial skills should be a subsidiary part of the syllabus.

### A Collegiate Bench

The development of a consistent and mutually supportive bench requires its collegiate nature to be promoted. Full time members of the judiciary who sit in courthouses with a number of courtrooms have daily opportunities to engage in the informal contact with their peers that fosters a collegiate bench. Part time members of the judiciary (and full time members of the judiciary who are resident in single

courtroom courts) do not have the same opportunities to integrate into a collegiate bench. Most Justices sit on their own (not just as a single bench, but also in a single courtroom court (albeit often within a larger courthouse)). There are thus limited opportunities during the discharge of their judicial functions for Justices to engage in the informal intercourse with their peers that is required to promote a collegiate bench. Although local training sessions give Justices some opportunity to interact with each other and share their experiences, most of these sessions are of short duration and are focused on the training objective of the session.

National, and sheriffdom wide, residential events are the principal means by which a collegiate bench can be promoted, maintained and developed. Such events give Justices the opportunity to interact informally with their peers and exchange views and experiences. These opportunities occur during the intervals between sessions, if those intervals are long enough, and before and after the formal business of the day. There are no other organised opportunities for Justices to develop a collegiate bench and share the corporate knowledge and experience of the JP Court.

One positive development since 2007 has been the significant and welcome increase in the interaction between Justices and Sheriffs. Justices have benefited from the wide experience of the shrieval bench through informal discussion and sitting in with sheriffs. This has led to an increased and shared understanding of the differences and similarities between the two courts and to the transfer of the judicial soft skills required in all courts. The presence of a sheriff on the JTC also offers the substantial benefit their experienced and practiced perspective.

### Appraisal

The principal, though oft overlooked, appraisal scheme for Justices is contained in Part X (Summary Appeals) of the Criminal Procedure (Scotland) Act 1995. The availability of the appeals process means that all members of the judiciary, including Justices, are constantly under scrutiny by skilled professionals whose duty on behalf of those instructing them is to identify acts that may be appealed. It is interesting to note that the rate of appeals, as a fraction of causes litigated, is lowest in the courts presided over by Justices.

In terms of paragraph 17 of the Justices of the Peace (Scotland) Order 2007 the Justices' Appraisal Committee in each sheriffdom operates an appraisal scheme. All six sheriffdoms have adopted similar schemes, with every Justice being appraised twice during each five year term of appointment. In particular, the competences against which Justices are appraised are the same across Scotland. There are nine skills areas, of which eight relate to transferrable, soft skills. The ninth is the only one that is a specifically judicial skill: legal knowledge and understanding. As a practical matter, these appraisal schemes only give a snapshot of the way that a Justice deals with whatever may be contained in a single day's business.

Although not in any way a formal appraisal process, the Legal Advisers are best placed to note areas where Justices (individually or generally) may be able to benefit

from training. The Legal Advisers (between them) see every Justice on each occasion that the Justice sits and so see every performance of the judicial functions of all Justices. The Legal Advisers also participate in pre- and post-court discussions with Justices that may identify knowledge or skills that could be enhanced.

### National vs Local Training

There are three types of national training. Topics and resources that are required by all Justices across the country need to be provided on a national basis. Specialist training in topics and resources that are required by too small a number of Justices in each sheriffdom to make local training a practicable option needs to be provided on a national basis. Events involving Justices drawn from all six sheriffdoms that serve the twin functions of skills development and promotion of the collegiate nature of the bench need to be provided on a national basis.

In his letter of 31 October 2008 to the convenors of the six Justices' Training Committees the Deputy Director of the JSC identified three areas of training that should be dealt with at a national level by the JSC. The JSC would maintain and update the JP Court Bench Books and the produce a quick reference On-The-Bench-Book. The JSC would produce and maintain the induction training syllabus and training reference materials for use in local training of prospective Justices and present the residential skills training course component of that training. The JSC would present an annual, residential judicial skills training conference. The Deputy Director also proposed that the exchange of locally produced training materials of nationwide interest should be promoted and co-ordinated by the JSC JP Subcommittee. As far as the present author is aware, that commitment has not been demurred from by the JSC or the Judicial Institute although, again as far as the present author is aware, only the presentation of the residential skills courses has been undertaken.

As a practical matter, the bulk of training for Justices has to be delivered locally. There are three types of local training. Training on topics of national relevance requires tailored delivery depending on the skills and experience of the local bench. Training on topics and resources that are specific to individual sheriffdoms or courts is only required for Justices sitting in those locations. Events directed to every Justice in one sheriffdom, which may deal with a mixture of location specific and nationally relevant topics, serve the twin functions of skills development and promotion of the collegiate nature of the bench.

In Lothian and Borders, some 26 hours of training are offered to Justices each year. Assuming that this is representative of the other sheriffdoms and that there are 440 Justices in Scotland, that represents the provision of 11,400 JP training hours a year of local training.

## Annex A

The present author was appointed as a Justice of the Peace in 1995, sitting initially in the City of Edinburgh District Court and latterly in Edinburgh Justice of the Peace Court. He graduated with an LIB in Scots law from the University of Edinburgh in 2002 and was awarded a Diploma in Legal Practice there in 2003. He completed an LIB in English law at the Open University in 2004 and was admitted as an advocate in 2010.

He lectured in mathematics at Napier University between 1990 and 1995 and was an Associate Lecturer in mathematics at the Open University between 1995 and 2010. He has tutored in Criminal Court Practice on the Diploma in Professional Legal Practice at the University of Edinburgh since 2011.

He was the principal author of the first edition of the *Guidance Notes on Signing Duties for Justices of the Peace in Scotland*, published in print and html in 2003. He devised an automatic sentence appeal report generator in html and Javascript in 2004. Between 2007 and 2009 he worked at the Judicial Studies Committee where he co-authored the *Justice of the Peace Court Benchbook* and the *Justice of the Peace Court Legal Advisers' Manual* in 2007; devised the *Course of Training for Prospective Justices of the Peace in Scotland* in 2008; assisted in devising and delivering the residential Refresher Course in Judicial Skills for all JPs in Scotland prior to the transfer of their appointments in December 2007 under the Criminal Proceedings etc. (Reform) (Scotland) Act 2007; assisted in devising and delivering, in 2008 and 2009, the first two annual residential Judicial Skills courses for JPs provided by the Judicial Studies Committee and in 2009 assisted in devising and delivering the first two residential Judicial Skills courses provided by the Judicial Studies Committee for prospective JPs. In 2008 he devised an automatic bail appeal report generator in html and Javascript. In 2007 he wrote *Information on Signing Powers for Councillors in Scotland* and in 2008 he wrote the second edition of *Guidance Notes on Signing Duties for Justices of the Peace in Scotland*.

He was a member of the City of Edinburgh Justices' Committee (responsible for setting the annual training programme) from 2004 and has been a member of the Justices' Training Committee for Lothian and Borders since 2007 (and its convenor since 2012).

He has been an appraiser since 2008.

He has been a member of the Justice of the Peace Advisory Committee for Lothian and Borders, which is responsible for the recruitment and training of prospective Justices, since 2011.

## Annex B - Qualities and Abilities Required of a Prospective JP

### 1. Capacity for fairness

Respect for, and understanding of, the needs of the diverse range of the population of Scotland;

Ability to recognise and set aside personal prejudice and challenge prejudice in others;

Ability to understand and explain different points of view ensuring all who have a right to be heard, are heard; and

Commitment to ensuring equality of treatment.

### 2. Sound Judgement

Ability to think logically, weigh arguments and reach objective and impartial decisions;

Ability to understand complex documents and identify relevant facts, and to distinguish between relevant and irrelevant material;

Ability to follow arguments without pre-judging the merits of these; and

Ability to make decisions in accordance with rules or procedures while taking account of individual circumstances.

### 3. Communication

Ability to listen, sometimes for long periods;

Ability to communicate effectively;

Ability to explain the reasoning for a decision;

Ability to question effectively and clarify appropriately; and

Willingness to seek and listen to advice.

### 4. Management of Self and Others

Sufficient self-awareness to be able to assess the impact of your own behaviour on others and to modify that behaviour;

Ability to manage a workload in a business-like manner while demonstrating sound judgement;

Open to different viewpoints and value contributions which others make;

Understanding and ability to articulate the differing views and needs of others;  
and

Resilience and ability to handle stress.

## Annex C - Skills and Criteria for the Appraisal of JPs

<b>Skill Area</b>	<b>High level of competence achieved</b>
Communication	Communicates clearly and succinctly in a manner that is timely and appropriate to the relevant parties.
Control	Appears confidently in control at all times; unfazed by the unexpected; allows others to contribute at appropriate times. Uses adjournments appropriately.
Decision Making	Gives fair, balanced and well-explained judgements based on all the relevant evidence and circumstances.
Engagement	Relates in a courteous manner to all parties whilst retaining own authority; adjusts own court style to suit circumstances.
Even Handedness	Shows even-temperedness, no prejudice and appropriate consistency in sentencing.
Focus	Quickly and accurately identifies key issues; sticks to relevant points; refuses to become side-tracked.
Knowledge	Shows good understanding in terms of processes and procedures and key changes in the law; awareness of general social issues.
Self Awareness	Seeks feedback from others on how they might improve; actively seeks advice when unsure.
Self Development	Keeps up to date in terms of knowledge of law and procedure, strives to improve own performance; new knowledge and skills implemented.

# Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA

Crown Agents Office

Tel:  
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Your ref:  
Our ref:

20 August 2014

Thank you for providing the Crown Office and Procurator Fiscal Service (COPFS) with the consultation paper on the arrangements for training of Justices of the Peace in Scotland. I can confirm that I am content that this response can be made public.

There are two particular areas of interest for COPFS within the consultation paper, the structure of training which is discussed in Chapter 3 and the provision of training discussed in Chapter 4.

We consider that it is very important that Judges at all levels in Scotland have an understanding of how COPFS operates, particularly in relation to prosecution practices and procedures. Our experience is that such understanding leads to improved quality of case management within the Courts which in turn leads to better use of Court time and improved service for people who come into contact with the criminal court system as accused, victim or witness.

## Chapter 3 – The case for change

Traditionally the local Procurator Fiscal and his or her Deputes would have been involved in the local training of Justices of the Peace on an *ad hoc* basis. As you will be aware, COPFS now operates within three geographical areas known as Federations in the West, East and North of Scotland with a National Federation which oversees specialist units. Within each Federation work and staff are allocated to functional specialisms which include initial case processing (the consideration of evidence to reach a decision as to type of prosecutorial action required in the public interest and forums if court proceedings are deemed appropriate) and summary proceedings. Local engagement and accountability remains through the continuation of the role of the District Procurator Fiscal ensuring that there are still strong local link.

In each of the Federations there is a Senior Prosecutor who is responsible for the running of the summary business. As you have highlighted in paragraph 3.6 of the paper there may be local initiatives put in place by COPFS which would benefit from local training or discussion.

However, our practices and procedures in relation to prosecution policies are often developed by the units in the National Federation and cascaded to local level. There is

therefore merit in COPFS being able to feed in to training at a national level rather than individual Procurators Fiscal delivering training for stakeholders and other criminal justice organisations at a local level. We would be more than happy to provide this input to be delivered whether in person or via Video message. COPFS are in the process of producing a DVD on the role of the Procurator Fiscal in Scotland. This could also be offered for local training.

I understand that there is a Judicial training hub which has an intranet section. COPFS would be happy to provide information and material that would be of assistance to the Judiciary, in particular Justices of the Peace, for publication there.

We fully recognise the challenges in providing national consistent training across an organisation. COPFS has devised different methods of training provision to reach a dispersed audience for example by way of e-learning with follow up "knowledge checks" to ensure comprehension. We have found these to be effective ways of providing training without having to extract large numbers of staff to attend face to face training courses.

#### Chapter 4 – Training provision

In relation to the content of the training, COPFS always considers diversity and equality impact and it is therefore mainstreamed throughout all our training courses. Our COPFS Equality training "Valuing and Managing Difference" course is mandatory for all new members of staff with regular refresher modules for existing staff. We consider this to be a core element of training for all involved in the delivery of justice.

#### Impact on Training on JP's of COPFS Policy Changes

There are of course often changes directed by the Law Officers or, as a result of legislative change which can have an impact on the Justice of the Peace Court and result in a training requirement for the Justices of the Peace. Any such changes would be intimated to the Director of the Judicial Institute to allow for any training required to be planned effectively. A recent example of this is the potential for imminent changes anticipated in road traffic legislation which were identified early on as requiring Justices to receive training and contact is already in place with the Director of Judicial Studies Board in this respect.

I hope you find this information to be of assistance. Please do not hesitate to contact me if you require further information.

Yours sincerely



CATHERINE DYER  
Crown Agent



scottish  
women's aid

changing **attitudes** changing **lives**

**Consultation on the  
Arrangements for Training  
of Justices of the Peace in  
Scotland**

**Submission by Scottish  
Women's Aid  
August 2014**

Scottish Women's Aid Charity No SC001099. Recognised as a charitable organisation by the Inland Revenue in Scotland.

## Foreword

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to members and non-members. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need, and an appropriate response and support from, local Women's Aid groups, agencies they are likely to contact and from the civil and criminal justice systems.

SWA are content to have our response made public and please contact [louise.johnson@scottishwomensaid.org.uk](mailto:louise.johnson@scottishwomensaid.org.uk) if you have any queries on our paper.

## Response to questions

SWA welcome the opportunity to respond to this consultation and would begin by making an overall observation and recommendation which relates to the focus of the consultation as a whole.

Although, at page 8, there is a list detailing why Justices' ("JP") training needs to be designed and delivered, we would recommend including the additional following objectives;

- Justices have relevant and up-to-date knowledge of the law and related procedures to make decisions in the courts in which they sit.
- Justices have the knowledge and skills to administer effective and transparent justice in the courts in which they sit.
- Justices have the skills and knowledge to address the diverse range of people and issues which they will face in their courts.

**1) Do you have a preferred option for delivery of Justices training? Please give reasons. (paragraph 3.24)**

**2) Are there other options for delivery of justices' training? (paragraph 3.25)**

**3) Is there any reason why there needs to be separate committees to consider training provision and the appraisal of justices? (paragraph 3.28)**

**4) What is your view on the suggestion that the JTC and JAC should be amalgamated? (paragraph 3.34)**

**5) If the committees are amalgamated what should the new committee be called? (paragraph 3.35)**

**6) Irrespective of your answer to the previous question what are your views on the respective responsibilities of the Committees set out in Appendix 3?**

We welcome the move to a more centralised and co-ordinated training approach for JPs. Therefore, we support the notion of the Judicial Institute taking the lead on this to ensure that there is a consistent, appropriate, national curriculum of training, a uniform method of accrediting attendance at training sessions and a robust review mechanism for gauging whether training requirements have been met. Allowing the Judicial Institute to take the lead will enable quality control and a coherent programme linking into judicial training.

Whilst acknowledging that there is a need for local input and local priorities to be addressed in training, the notion of a 'partnership' between the Judicial Institute and local training committees, in theory, a positive idea, may, in fact, result in disagreements over time, depending on how this is arranged and agreed. There is also a need to ensure that local training is consistent in content and quality. Consequently, to achieve this, having the Judicial Institute leading overall on arrangements, content and delivery, supported by local input, is probably the best solution.

Making use of other judicial office holders will require those persons themselves to be well-trained and experienced in both the issues on which JPs require training and in delivering such training and facilitating discussion thereon.

In terms of whether training provision and the appraisal of justices should be considered together by one committee or by two separate committees, good practice would suggest that there should be two committees, as there are two distinctly different functions to be undertaken, namely delivery of training and appraisal of JPs receiving that training.

**7) Are the three training components in paragraph 4.2 correctly specified? If not, please say why not. (paragraph 4.4)**

**8) Should the curriculum for justices' training be set annually? If so, what percentage of training time should be allocated to each component? (paragraph 4.5)**

We welcome the suggestion that training is provided by people who are qualified trainers and that they are engaged in the delivery of all training.

In terms of the three areas of training (Core, Generic and Miscellaneous) this does suggest a hierarchy, with one being important and the others less so, which sends out an unfortunate message, especially since equality and diversity, an important issue which merits its own judicial guidance publication, the Equal Treatment Bench Book, is included in "Miscellaneous" .

The training should, in fact, be framed in terms of what it is seeking to achieve, which would tie in with the training outcomes suggested above, and we would suggest the following:

- "Core Training" would be renamed "Law and Procedure "and judicial ethics should be moved here from "Miscellaneous."
- "Generic Training" would be renamed "Court Administration Skills", which would include IT , again, moved from "Miscellaneous"
- "Miscellaneous" would become "Issue-based Training". Equality and diversity is mandatory in induction training and should be refreshed for justices regularly, possibly every 3 or 5 years. Local priorities could be included here.

To be kept up to date with developments, the curriculum should be set annually to take into account new legislation and rules of court that have come into force in the intervening period

We would emphatically state that it is not appropriate for JPs to deal with domestic abuse cases routinely. In line with the Police Scotland/COPFS Protocol, cases of this nature are normally and routinely prosecuted in higher courts, particularly the sheriff court. However, we recognise that in exceptional circumstances, COPFS may refer such cases to JPs. These JPs should receive training on the dynamics and impact of domestic abuse.

**9) Should there be a minimum mandatory annual training requirement? If so how should this be specified? Please give reasons (paragraph 4.10)**

The consultation states at paragraph 4.6 that the current requirement of 12 hours training "*seems to be working satisfactorily*" but it is not clear what evaluation has produced this assessment. We would

recommend that the most appropriate way of determining the requirement is to identify what is needed in the curriculum in order to train JPs appropriately and adequately, and then to structure the hours around that, not the other way round.

**10) Should attendance at a national training conference be compulsory? If so, how often?**

**Please give reasons. (paragraph 4.11)**

**11) Should attendance at a national training conference be given full or part credit towards the annual training obligation? If so how much? (paragraph 4.12)**

If the overall requirement is only for 12 hours-worth of training, then attendance at this event will diminish the time available to attend curriculum-based training, unless part of the curriculum was included in this conference and only the practical sessions at the conference given credit, much in the same way that lawyers accrue CPD points from attending events. If the hours were increased to 15 or 20, for example, then it would be fair to allow this to account for 10%.

**12) Should attendance by way of self-study, attendance at external courses be credited towards the annual training requirement? (paragraph 4.13)**

This is not a wholly satisfactory option in this context given that the overall number of training hours available is so small and that there is no way of verifying the completion of self-study or the relevance and quality of external conferences as a training option. There is a case that could be made for attendance at training events run by other organisations, however; we would therefore suggest that to facilitate the delivery of quality training in this way, training providers are invited to participate in an accreditation process, to demonstrate that their course offers training which will support and inform JPs to carry out their duties more effectively and meets the overall training aims of the JP training agenda.



**Victim Support Scotland**  
**CONSULTATION ON THE ARRANGEMENTS FOR**  
**TRAINING OF JUSTICES OF THE PEACE IN SCOTLAND**  
**VSS RESPONSE**

Victim Support Scotland (VSS) is the largest voluntary organisation in Scotland helping people affected by crime. We provide emotional support, practical help and essential information to victims, witnesses and others affected by crime in every Scottish local authority area, and in every Sheriff and High Court in the land. The service is free, confidential and is provided by volunteers. As part of our role in advocating for victims and witnesses, VSS welcomes the opportunity to provide our views on the training arrangements for Justices of the Peace in Scotland.

Victim Support Scotland believes that training for all members of the judiciary plays an important role in enabling them to effectively perform their duties in an open and transparent manner. Training for Justices of the Peace should ensure that all parties involved in cases brought before them are treated with dignity, fairness and respect; this is particularly important for victims and witnesses, as their treatment in court contributes to their overall experience of the criminal justice system, which can in turn impact on future decisions to engage. Being in the same building as the accused, entering an unfamiliar and intimidating setting, and having to relive a traumatic event in their life are all issues faced by individuals who are giving evidence in court; it is our experience that some victims can even find the criminal proceedings more distressing than the crime itself. Our Witness Service, which provides support to witnesses in all Sheriff and High Courts in Scotland, is not currently funded to support witnesses in Justice of the Peace courts; this lack of available support as compared to other types of Scottish courts may result in the exacerbation of an already difficult experience, increasing levels of vulnerability for witnesses within this setting.

Regardless of the structural arrangements put in place, VSS believes that it is essential that a victim awareness element is incorporated into the training of justices. This would help to minimise any negative impact of criminal proceedings on victims and witnesses, and to ensure that they are treated with fairness, sensitivity and respect. It is our view that justices should attain a standard level of awareness of the issues faced by victims and witnesses as this would enable justices to put them at ease, reduce their distress and help them give their best evidence. We believe that the experience of attending court for victims and witnesses should not differ dramatically from one area of the country to the next; ensuring consistent practice across Scotland should be a main consideration for any training arrangements that are put in place for members of the judiciary. VSS has previously provided an input to training on victim awareness for

Justices of the Peace, and would welcome the opportunity to continue this, expanding to cover all sheriffdoms and members of the judiciary at this level.

In relation to the future arrangements for training of Justices of the Peace, VSS agrees with the Lord President that the most sensible approach may be that of a partnership between the Judicial Institute (JI) and the sheriffdoms. The development of a core curriculum would facilitate consistency across Scotland and enable key topics such as victim awareness to be delivered centrally, and where required, local needs would be met through additional localised training. We welcome further discussions on how we can contribute to comprehensive and effective training arrangements for Justices of the Peace in Scotland.