NIJAC
Northern Ireland Judicial Appointments Commission

Executive Summary

Research into the barriers and disincentives to judicial office by QUB and NISRA

Independent research commissioned by Northern Ireland Judicial Appointments Commission

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1. Introduction

Lord Falconer of Thoroton, the then Constitutional Affairs Secretary and Lord Chancellor, stated at the Commission's launch on the 14 June 2005

"The establishment of the Commission demonstrates the real and tangible commitment of the Government and myself to the implementation of the Criminal Justice Review here in Northern Ireland. We are committed to maintaining the independence of the judiciary. We are committed to creating a strong justice system here to serve all the people of Northern Ireland. And we are committed to appointment on merit."

At its launch the Chairman of the Commission, the Lord Chief Justice, stated that there was a need to "identify disincentives, speak to those eligible to apply, to those who will do so in the future, and to those who are interested in securing a robust and reflective judiciary." The present research was commissioned in the context of this need.

Our thanks is extended to Dr. John Mallon and his team at NISRA, and to the team from the Law School at QUB led by Professor Philip Leith and including Professor Brice Dickson, Ms Lisa Glennon, Professor Philip Leith, Ms Marie Lynch and Professor Sally Wheeler.

The Commission will use this research to inform our future work.

Background to the research

The Northern Ireland Judicial Appointments Commission was established on 15 June 2005 and is an independent executive Non-Departmental Public Body (NDPB) created under the Justice (NI) Acts 2002 and 2004.

It was established to enhance an independent process for the appointment of members of the judiciary in Northern Ireland.

The Commission has a statutory duty under section 5(8) to ensure that appointments to judicial office are based solely on merit and it is required by section 5 (9) and (10) to undertake a programme of action to secure, so far as it is reasonably practicable, that those holding judicial office are reflective of the community and that when, choosing an applicant to recommend for appointment, a range of persons reflective of the community is available for consideration. In fulfilment of its duties under section 5 (9) and (10) the Commission keeps under continuous review its policies on diversity.

In order to enable it to understand better the attitudes within the legal profession and among the judiciary to judicial appointment, including any barriers to such appointment, and in order to inform its future policy, particularly on diversity, the Commission engaged Queen's University Belfast and the Northern Ireland Statistical Research Agency (NISRA) to undertake research between April 2007 and June 2008.

The judiciary is defined here and throughout as all District Judges and Masters, Resident Magistrates (now referred to as District Judges (Magistrates Court), County Court judges, High Court Judges and other offices, including Tribunal chairmanship and membership, falling within the remit of the Judicial Appointments Commission for which a legal qualification is required.

The two stages of the research

The main part of the research was conducted by survey and then complemented by follow-up discussions with a number of key informants and/or focus groups to explore more qualitatively the findings of the survey.

Consultation occurred with the main interest groups (e.g. Bar Council, Law Society, representative bodies, a sample of tribunal chairs and legally qualified members, Northern Ireland members of the UK Association of Women Judges, staff and students in the Schools of Law of QUB, UUJ and the Institute of Professional Legal Studies, the Council of Legal Education etc).

The survey, which consisted of a postal questionnaire, was sent to the serving judiciary, and the membership of the Bar Council and the Law Society of Northern Ireland.

In addition, QUB explored this further by conducting interviews and focus groups to elicit both information about career planning and choices, and attitudes to judicial appointments.

In this way the research sought to elicit biographical and career information and explore a range of opinions held by informants as well as a number of other factors pertaining to career decisions in relation to judicial appointment.

2. QUB RESEARCH

A full copy of the QUB research can be viewed by clicking **here**.
The numbering of paragraphs below (i.e. paras 2.1 - 3.16) reflects the original numbering in the Queens University Research Paper.

2.1 We did not find any substantial divergence between our qualitative findings and the Stage 1 quantitative findings. We found that our respondents had the same lack of legal family background, were to be found in similar gender located practice fields, etc, as did the survey data. What differences exist between our Stage 2 findings and those of Stage 1 may be explained by the fact that a higher proportion of our respondents had had a closer connection to NIJAC and the applications process (through, for example, being an unsuccessful candidate) and also that interview methodologies have a tendency to pick up more nuanced perspectives.

2.2 We found in our respondents' views that religion was perceived as irrelevant as a factor in applying for judicial posts. We did not ask what the community background of our respondents was.

2.3 We found that recent structural change in the NI legal profession meant that technical legal competence – and thus perhaps interest in a judicial career – was spread more widely than had previously been assumed. Thus most solicitors were likely to suggest that they had the competence to undertake some judicial role although a significant number felt that they did not possess the skills required for a High Court appointment.

2.4 We found a realisation – fuelled by appointments which would not have been expected under previous appointment regimes – that candidates who did not have the more usual bar-oriented background were being successful in appointments. This was leading to these individuals being seen as role models for others wishing a judicial career.

2.5 We found that those who were most positive about the new changes were solicitors and barristers who were to be found in the public sector. The methodology used by NIJAC to assess candidates – competence based assessment – was popular primarily with potential applicants who had a public service background. It was generally viewed suspiciously by others.

2.6 We found that many successful solicitors – who may be viewed as having sufficient skills and abilities for higher judicial office – were simply not interested in applying for judicial posts. They were not particularly attracted by the public service ethos, felt that the judicial role was lonely, and viewed such roles (on a full-time basis) as only suitable at the end of a career in practice.

2.7 We found a concern in the bar from female barristers that, should they wish a judicial career, they were being hampered by the difficulty in getting work in areas which were given higher status. There was a particular concern that other women – both at the bar and in solicitors' practices – were unhelpful and that there was a lack of 'sisterhood' to match connections for men on the golf course and at the rugby match.

2.8 We found there were essentially two perspectives towards judicial office: the first covered County Court, Magistrates Court, Coroner posts and tribunal chairs. Most felt that NIJAC was operating satisfactorily in opening up this stream to non-traditional candidates. The second perspective – concerned with High Court appointments – was that NIJAC was being much less successful in overcoming traditional barriers and encouraging non-traditional candidates.

2.9 We found a concern that the High Court has no female judge, and that this reflects poorly upon the notion of a representative judiciary. The current High Court judges are viewed as being of very high quality, but there is a feeling that the local profession has sufficient female candidates for the High Court bench, and that a female elevation is overdue.

2.10 We found a belief that appointments of women to other (non-High Court) judicial posts under the NIJAC system were being viewed as successful and that these people may become role models for other women wishing to undertake this career route.

2.11 We found a lack of knowledge about exactly what a judge does and what pressures in terms of time, workload etc, are upon them. Most of our respondents believed that they understood the workloads, but pointed to different and contradictory elements. Clearly these could not all be accurate.

2.12 We found that the formal requirements for a post – e.g. for number of years standing – were simply viewed as inaccurate. There was presumed to be a set of conditions – age, experience, background – which were not formally outlined as

part of the process. This was particularly the case for the High Court which post formally requires 10 years standing. Most respondents felt that even 20 years was too little for a person to be a serious candidate.

2.13 We found that applying for a judicial post is not viewed as something which one undertakes lightly. There are advantages to being a judge or tribunal chair – significantly pension rights, an easing of pressure from chasing work, or an escape from pestering clients – but overall it entails a very large sense of public duty which an individual must weigh against the collegiality of the bar or teamwork of the practice as well as a potential loss of income. There can be career reasons for becoming a judicial post holder, but it requires a personality which suits the role.

2.14 We found that NIJAC is generally perceived to be a 'good thing'. Most of those who have had close contact with it have been happy with the processing of their application for judicial post. There have been some worries around assessment of technical competence – particularly with early assessment means – but we felt that these were partly due to the changing nature of who has an appropriate group of skills for a given appointment. Only those concerned with High Court posts felt that NIJAC was either irrelevant to the process or negatively affected the process.

2.15 We found that there is mostly an acceptance that lay membership of the process is a 'good thing', though the exact role and importance in final decisions of the lay members are not well understood.

2.16 We found that consultees can be a significant problem for some potential applicants, both in terms of finding useful individuals who would act in that role, and also – we believe – in making public an individual's application for a post. The profession in NI is very small and information passes around it quickly about any individual who has applied for a judicial post – particularly a senior post – and there is good reason to believe that this may be a major reason for individuals deciding not to apply for posts in the first place.

3. Discussion Points Arising from the Research Data

It does not seem to us to be appropriate to provide formal recommendations. Past research has done this and many of these have been accepted and included in either statutory form or as best practice.

This research has examined a system which appears to be relatively well-run and well-received (especially given the very short period for bedding in) and we have felt that a better and more useful approach is to outline various aspects which have come out of our research and which have struck us as important in the further development of NIJAC.

Such aspects – when outlined – can be used as *loci* of discussion for that further development. Some of these would be difficult to implement (requiring a return to the basic statutory framework and all that entailed) but some would be easier to implement.

Other aspects are simply outside the influence of NIJAC and require a cultural shift from the profession or their clients. We have not concerned ourselves with matters of ease or difficulty of implementation, simply suggesting that these points are worth consideration.

3.1 Who Feels Most Comfortable with NIJAC Process?

The new system has changed perceptions of appointments to judicial posts – as indeed one which moves away from a relatively secretive process which is based around soundings must. We found that for a number of reasons – some outlined below – there were some groups who felt emboldened by the new appointments process and some who felt disadvantaged.

Those who were most happy were those barristers/solicitors in public service. If from the bar, they had a barrister's sense of judicial office being a natural career development; were often significantly less well paid than judicial office holders; and were comfortable with interviews and the idea of competence based assessment. Those in this group who could approach potential consultees easily felt particularly positive.

Another group who were relatively happy with the new system were those barristers who we describe as having had 'portfolio

careers' (frequently women). They had a barrister's sense of judicial office being a natural career development; could be interested in a full-time post as family responsibilities declined; were attracted by the income; and were often well versed in interview technique and may have had experience of competence based assessment. Access to consultees could be a problem for this group depending upon their career to date.

A group who were generally non-committal at present were solicitors in private practice. They felt that the system was an opening to them – and potentially attractive – but they lacked interview and competence based assessment skills. However, members of this group felt that skills could be developed to overcome these weaknesses. Access to consultees could be a significant problem for this group in that their pool of potential referees could be small. Further, this group appeared to be the group least likely to see a judicial career as attractive - earnings might drop, the role was viewed as lonely (when most were recruited for team qualities), and had never really appeared on their radar screen as a natural progression. Where a judicial career was considered, it was more often for reasons of personal interest (e.g. on a part-time basis) or from a desire to leave practice behind.

The group who we found to be least happy about the system were barristers in private practice. The old system of preferment matched their professional skills – that is, was based upon critical assessment by colleagues who saw them display qualities in a professional context. The new system requires interview skills when most have never been interviewed in their life; form-filling when their professional skills were advocacy and strategy; and a system of competence-based assessment which is totally alien. The only positive remaining is that they have easier access to good quality consultees. Female judicial office holders were also critical of the system and thought that current appointments process does not encourage promotion through the tiers of the judiciary, not least due to the difficulty sitting judges have in nominating consultees.

There is a gender aspect in attitudes to the new system in that some of these groups which see benefit are better balanced in terms of female participation at the higher levels of experience and role – e.g. public service lawyers and portfolio lawyers – as opposed to the bar which remains more unbalanced at the senior levels.

3.2 The Consultation Process

The use of both automatic and nominated consultees was identified by respondents as one of the most difficult aspects of the appointments process. Several reasons were given for this. It appears that practitioners in Northern Ireland fear the professional implications of being identified as an unsuccessful candidate for judicial office. The consultation process adds to this concern as the consultee is perceived as being the primary source of information through which the names of candidates are often leaked. Female judicial office holders were very critical of the lack of confidentiality of the system and all felt that these leaks were the result of the consultation process.

In addition to being the most likely source of gossip, the consultation process is viewed as problematic by both applicants and consultees. Solicitors, in particular, were put off applying because of the requirement to nominate consultees.[1] Not only does the concern about burdening the same busy people for references discourage candidates from making another application after an unsuccessful attempt, but those with fewest links to litigation had the greatest difficulty in selecting suitable referees who were familiar with their work and could comment on it in relation to the specific competencies. Another group who felt disadvantaged by the requirement to nominate consultees were current female judicial office holders who all thought that a sitting judge has particular difficulties in selecting suitable referees. They pointed out that one may not be able to ask judicial colleagues as they may also be applying for the post and all agreed that it would compromise one's judicial position to ask counsel to act as referee. They also made the point that it was very unclear how the comments of the consultees are taken into account, and how much weight they carry in the appointments process. It was suggested that rather than requiring consultees to comment on the candidate's ability to meet the core competencies, the reference form should only include the option of answering the basic question of whether they know of 'any reason why this person should not take judicial office'.

Consultees were also critical of the process. If they could not comment on the candidate's court craft and thus had to submit a

[1] Earlier research revealed that females were more likely than males to find the requirement to identify consultees off-putting, NIJAC, *Survey of views about Judicial Appointments: 2007*, p. 84, Table 7.2.

limited reference[2], it was felt that this would damage the candidate's chances of appointment. As one consultee said, 'I really do wonder what good these references do'. Thus, we found that the requirement for referees with judicial status was most biased towards the private barrister and most biased against the solicitor in private practice.

The automatic consultation process also appeared to perpetuate the idea of the old boys' network in that 'secret soundings' took place which disadvantaged those who either do not network in the right circles, or whose professional work is not visible to the consultee community[3]. A similar point was made in research carried out in England and Wales where it was observed that the automatic consultation process 'smacks of an 'old boys' club' whereby senior judges will choose their cronies over other equally (or more) suitable applicants'.[4] In order to make the process more transparent and less of a disincentive to solicitors in particular, it seems that the consultation process needs some refinement.

Earlier research recommended that the automatic consultation procedure for High Court and County Court appointment should be abolished and replaced with a process of nominated referees.[5] It was further recommended that for all judicial appointments, the candidate should be required to nominate two judicial referees and two references from professional clients. While soundings from the existing judiciary may be regarded as a necessary a feature of the appointment process, concerns could be addressed by widening the range of persons whose opinions on candidates are sought. In a similar vein, the Law Council of Australia recommended in 2002 that wide consultation take place in relation to judicial appointments –

> *'for example, it would be appropriate for the Attorney-General to consult with: Judges; other members of the legal profession who are in a position to assess the candidate's work and abilities; and with office holders of organisations, such as the peak national women lawyers association'.*[6]

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[2] Comments from the consultee that do not relate to the specific competencies are disregarded.

[3] In a similar vein, the recent report of the Northern Ireland Judicial Appointments Ombudsman observed that the selection process 'retained too much emphasis on judicial views about candidates', Northern Ireland Judicial Appointments Ombudsman, *Annual Report* (2007) at p. 19.

[4] Judicial Diversity: Findings of a Consultation with Barristers, Solicitors and Judges, 2006, p 24.

[5] D. Feenan, *Applications by Women for Silk and Judicial Office in Northern Ireland*, 2005 at p. 76.

[6] Law Council of Australia, *Policy on the Process of Judicial Appointments* (2002) at para. 7.

In England and Wales, the consultation process has been refined. The Judicial Appointments Commission no longer consults with a long list of automatic consultees but now publishes a list of JAC-nominated referees for each appointments process which *'includes, in addition to senior judges, close senior colleagues such as managing partners, heads of chambers or line managers'*.[7] A similar philosophy could apply to nominated consultees in that candidates could draw from professional colleagues outside of the judiciary. Including the views of non-judicial consultees also helps to dispel the notion that the preferred candidate for judicial appointment is one who embodies similar characteristics to the existing judiciary.

Questions have previously been raised about the efficacy of the current consultation process. It is not unusual for consultees to fail to respond to requests for references which certainly devalues this source of information.[8] While candidates must currently nominate between three and six consultees, thought might be given to reducing the required number to two or three. Consultees might thus receive fewer requests and so may be more likely to complete the form.[9]

3.3 Gender Imbalance within the Judiciary

There was a general acceptance amongst respondents that there was a clear gender imbalance in some parts of the judiciary, particularly the High Court. The calibre of the existing judiciary was not called into question, nor was it generally felt that the quality of decision making given by female judges would differ (although the female judges interviewed thought that having females on the bench does make a difference to the administration of justice).

However, the gender imbalance was regarded as an issue because of representational concerns that the judiciary should be reflective of society and because of the loss of competent individuals from the bench. It seems then that there is broad support for steps to be taken to address the gender imbalance. At one end of the spectrum, positive discrimination could be used to increase the number of female appointments. However, most of

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[7] Judicial Appointments Commission, *Annual Report 2006/07: Committed to Selection on Merit,* at p 18. In addition, candidates must nominate three referees, six for the most senior appointments.
[8] Commissioner for Judicial Appointments for Northern Ireland, *Annual Report 2005*, para. 3.15-3.17.
[9] *Ibid*. para. 5.20. In England and Wales, the reference form has been shortened to reduce the burden on consultees.

the respondents did not support such methods and felt that this would, in fact, undermine the appointee.

Other steps though could be taken in an effort to make the appointments system more appealing to women. It seems that the core problem is the lack of female applicants. Indeed, earlier research revealed that males are more likely to have applied for judicial office, but that there was no significant difference between the success rates of male and female applicants.[10] There are many and varied reasons for the lack of female applicants, including the fear of not fitting in to the judicial culture[11] and not being known to the existing judiciary who, for senior posts, are consulted on the candidate's ability to meet the selection criteria[12]. To counter such fears, thought might be given to including external judiciary within the appointments system. Indeed, to show a commitment and willingness to take senior female judges seriously, female High Court judges from outside of Northern Ireland could be included within appointment panels, or as part of the consultation process. As an external voice, this would help to place all candidates on a level playing field in that none would be likely to be known to the external, either professionally or socially. Further, including a representative of the senior female judiciary within the appointments system would be symbolically important and may help to disrupt the notion that those who share the characteristics of the existing judiciary are more likely to be appointed.

3.4 Part-Time Judicial Roles

Encouraging part-time/deputy judicial roles appears to us, based upon our respondents' views, to have advantages and some disadvantages. The majority of female judicial office holders interviewed were adamant that there should be greater part-time and flexible working conditions, although one felt that this would need to be very carefully thought out to ensure that full-time members of the judiciary were not over-burdened.

A major advantage is that an individual can test their personality against the role – the requirements of judicial office are particular and it was accepted that not all who have the formal qualifications are suited to the posts. Part-time temporary posts enable an individual to try out these roles and determine whether they wish to

[10] NIJAC, *Survey of views about Judicial Appointments: 2007*, pp. 29-30, Figures 3.1 & 3.2.
[11] *Ibid*. p. 47, Figure 3.11.
[12] The majority of the survey respondents in earlier research thought that 'being known to the senior judiciary' would have a positive influence on the outcome of an application for a judicial post, *ibid*. p. 77, Figure 6.1.

seek full-time posts. Part-time posts could also fit in with lifestyle choice. Part-time posts could conceivably become a part of the assessment of an individual for full-time posts. Also, if a post does not require particular technical expertise in that field, the general court-craft (handling of evidence, say) should be transmissible.

However, there are a number of problems we found. First, it was clear that for solicitors firms any post which impinged upon the needs of the firm were viewed as unwanted. There was no perceived benefit to the firm, so there was no encouragement to undertake these roles. The strength of this opposition to roles which competed with the firm was marked.

Second, the perspective of judicial independence could be affected, as an individual moved into a judicial role and back into client-oriented role. In other jurisdictions which are larger than NI, the task of ensuring clear space between one's own practice and judicial independence is easier. However, we do not view this as insurmountable – there are practice areas in the UK where deputy judges require an expertise which can only come from those who appear before that court on a near daily basis, and where impartiality of the deputy is a given. It may be that clients, in particular, would need to be educated by their lawyers on the essential need for independence of a judge: those repeat players who may be having their case heard one day by counsel who appears for them on another day could conceivably be a particular problem.

Third, there was a view that even if one undertook a part-time/deputy role, it would not be clear how this could be assessed as part of – if the individual wished to apply – an application for a full-time post. A judge or tribunal's court craft is rarely demonstrated in front of any other judges, and decisions can be found agreeable or disagreeable by other judges or tribunal chairs, and – even if decisions are appealed – they may be because they are simply very messy cases. Of course, it is not quite clear how professional knowledge and experience is currently being assessed, so this may be more of a theoretical than actual problem.

Fourth, we found a sensitivity of the barrister in private practice to undertaking a role which might be perceived as undermining their practice: that solicitors who brief them may move work onto others who they think do not have judicial ambitions.

There is a clear gender issue with part-time work (in that it appears to fit in with traditional womens' responsibilities) but we believe that

part-time/deputy posts would be attractive to both male and female lawyers[13].

3.5 Merit and Professional Knowledge

Merit was a concept which was at the heart of all our interviews. There was a feeling that it was the most important aspect which should be taken into account in judicial appointments. Even those who advocated a modicum of positive discrimination suggested that merit would not need to be ignored because there were plenty of female potential applicants who had sufficient merit. However, when we asked our respondents what they meant by merit, few were able to define this. Mostly, it is as though if you saw an elephant then you would know that it was an elephant. Thus, merit for the High Court appeared to be – viewed from both solicitors and barristers – intrinsically linked to success at the bar and appointment to silk. The bar were particularly prone to see the QC process as closely linked to judicial appointments, and indeed viewed colleagues at the bar on what appeared to be a very ordered hierarchy of where they stood in seniority and ability as a barrister, and thus as appointable to the bench. Since this linked in with the status of the work which was received then those who felt – we found they were usually women – that they often received lesser status work felt that this impacted upon whether they were perceived to merit elevation to the bench. In a similar vein, one female judge commented that 'family law experience counts for nothing in the High Court'.

There is thus clearly, to the bar, a link between success, field of practice and being ready for judicial appointment. This is potentially a problem for NIJAC because it imposes a bar-led notion of appointability upon candidates. No matter that, for the High Court, NIJAC may only require 10 years standing no-one we think would consider applying from the bar unless they met the bar's standards rather than those from NIJAC.

It was pointed out to us that there are many solicitors working with very high value cases, managing these successfully for demanding clients, and with proven leadership skills. Under the bar's ordering, they would not be perceived as having sufficient merit to be appointed to the High Court. This may indeed be the case, but our feeling is that NIJAC – should it wish to encourage a wider professional background in the higher judiciary – should consider what may be done to highlight what it perceives as the requisite

[13] In the survey study, flexible working options and the availability of part-time salaried posts were two measures identified by *both* male and female respondents which would encourage them to apply for judicial office, *ibid*. pp. 36-40.

elements which make up merit – in terms of professional legal knowledge – for each judicial post. Many of the female respondents told us that they were unwilling to consider applying for posts unless they knew exactly what was involved and whether it matched their particular experience and knowledge, so a fuller expounding of these issues may encourage a wider body of applicants.

The gender issue here we found particularly relevant to female barristers developing a practice outwith 'chick law' fields. This was certainly possible, but some found it difficult and blamed their professional environment for this difficulty. This is an issue which is relevant to – and correctable by – clients, those who brief for clients, and senior barristers who utilise junior counsel.

3.6 Competences

Competence based assessment is viewed as an artificial process by many in the legal profession. We can see that it appears to offer a relatively objective manner in which applications can be matched to a required professional role. However, for many potential applicants the artificiality is viewed as off-putting[14]. One female judge felt the competency-based nature of the form favoured men who, she suggested, tend to be more comfortable in matching their skills to the competencies and giving appropriate examples of professional performance.

It can also be viewed as complex and confusing by consultees. That some applicants feel that professional aid is required to complete forms in a suitable format is an indication of this mismatch between role in reality and testing of that role in an application process. It is not clear to us what might be done to ensure that the negative perspective of competence based assessment is reduced, but some considered that the Bar Council and the Law Society should have a larger role in training their members. For NIJAC there appears to be a need to persuade the profession that competence based assessment is a philosophy and practice which produces meritorious appointments.

The use of competence based assessment, of course, implies that the competences for a particular task have been extracted from the role and properly set out. Given that there is such a dearth of study of the judicial task, it may be that the artificiality which our

[14] In the survey study, the application form was regarded by respondents as the most off-putting aspect of the appointments process (barristers (45%) were more likely to report it as more off-putting than did solicitors (37%)), *ibid*. pp. 83-84, Figure 7.5 & Table 7.1.

respondents noted was linked to poorly delineated competence criteria. We cannot comment upon this.

We found no particular gender elements here: female participants in the process were as likely to be critical as male participants.

3.7 The Application Process

We found that most of those who had undergone the process – and who had responded to our request for interview – felt relatively positive about it and viewed it as a fair and open process, although one female judge was very critical of the lack of constructive feedback after an unsuccessful application. Our interviewees were mostly those who had been shortlisted but were unsuccessful or had not been shortlisted and therefore would have been expected to be critical. There were some concerns about order of process, assessment methods of professional skills, form-filling, role of consultee information (prior or post interview) but these were not the type of concerns which would put individuals off applying again.

The off-putting factors were: first that it was too public (information leaked profusely and corrosively, apparently from consultees); that for some, approaching consultees again would be difficult and too demanding of the consultees; or that one felt that one's interview skills were not sufficient.

The use of lay members was not objectionable to the applicants, but there was a degree of confusion about just what their role and the impact of their views might have on a professional panel.

We did not find a relevant gender aspect to the general application process. The feeling was that individuals would be assessed in a gender free manner and that the best candidate would be appointed. The female unsuccessful candidates for non-High Court posts who we interviewed were happy that the person/people who were successful had been appointed on a merit basis.

3.8 The Workload of Judges and Skills Required

There is no doubt that the workload faced by judges is in general a disincentive for people who are thinking of applying for a judicial post, even if not many practising lawyers seem able to provide details about the typical working day of a judge. At the top end of the scale we learned from senior barristers that not many of them

relished the prospect of an even higher workload than they currently experienced and – along with it – greater responsibility, lesser social mobility and a cut in annual income. At the lower end of the scale, particularly within the magistracy, the workload was not cited as a particular disincentive. It was felt that the paperwork involved, and the duty to deliver written judgments, impacted much more severely at the High Court, County Court and tribunal levels. It was suggested by some that women lawyers were generally less workaholic in attitude than men lawyers and that therefore relatively fewer of the former would therefore be interested in applying for a job where the workload was very great, but we also interviewed women who appeared to be just as committed to their work.

There is also the obvious point that some women, particularly those in their thirties and forties, will prefer (more so than men) to work fewer hours as a professional lawyer in order to spend more hours with their children. But we were not always convinced that lawyers we spoke to were fully aware of how precisely becoming a judge would impact on their family commitments. However, we did not detect much flexibility in the judicial appointments system to allow for permanent but part-time positions. There appears to be an *idée fixe* that being a judge has to be an all-consuming, identity-changing, occupation. We can see how the need to develop respect for the law and its institutions requires those appointed to judicial appointments to behave judiciously (and above all independently), but this does not mean that they need to be slaves to the job and avoid the assumption of *any* other commitments.

We were struck by how little respondents knew about the day-to-day work of a judge. This was a significant factor which held many women back from applying for judicial appointment. There were diverse views about the time involved and the balance of work between the court, backroom, research and private life. The problem with this lack of knowledge is that it led to perceptions that holding judicial office involves a heavy workload, particularly for senior posts, that it was not particularly family-friendly and that it would be a lonely and isolating. However, respondents were generally unclear whether this was, in fact, the reality but this lack of knowledge is certainly a strong disincentive for those thinking of applying. Other negative factors regarding the judicial role were listed as the increasing case load; the pressure vis-à-vis targets and the lack of flexibility. Respondents who had litigation experience felt that they had some knowledge of the working conditions of a judge by their observations from courts or tribunals, but we were struck by the range of descriptions of these conditions which means that there are clearly misconceptions about what the

job actually entails. These details concerning what is involved in undertaking a judicial position are of great import as it is commonly appreciated that once a judicial post is undertaken it is difficult for solicitors to return to their former positions and impossible for barristers to return to the bar.

Respondents were also unclear about the skills set required for judicial roles. Most said that while they could carry out lower level judicial functions, some felt intimidated by the skills required of a High Court judge (such as substantial research skills and ability to produce good quality judgments). This seemed to impact upon solicitors' views of whether they had skills which would be transferable to this judicial role. Though many solicitors interviewed felt that they had the skills to be a judicial officer most felt that the transition to a High Court position would be beyond their ability. Some expressed the view that the most important skill of a partner in a solicitors' firm was business management which would not necessarily be relevant in the courtroom environment. There was also a general misapprehension as to the appropriate age to apply for a judicial position.

Respondents were generally very unsure about the level of training which is provided before taking up a post. Those who had previously applied for judicial office had received the application pack from NIJAC which provided some information. However, as this is only sent to prospective applicants, it does not educate those who have not considered making an application. Concerns about the level of training provided also seemed to discourage solicitors, in particular, in applying for judicial office. Indeed, it appeared to us that solicitors seemed to be very unwilling to step outside of their professional comfort zone.

We felt that a greater effort could be made to address many of the misconceptions that are commonly held regarding the undertaking of a judicial position. Many of the features which would make the job more welcoming and attractive to women should be rigouroulsy promoted. In particular, we would suggest that there needs to be much greater awareness about what judicial roles actually entail through perhaps the development of work shadowing programmes, professional newsletters; workshops or seminars/lectures given by female judicial members and organised in conjunction with the Law Society and Bar Council.[15] As an example, in England, the DCA provides a booklet and DVD which includes personal 'case studies'

[15] In the survey study solicitors, in particular, cited 'practical information about the nature of the work' as one of the measures which might encourage them to apply for judicial office, *ibid*., p. 37, Table 3.5. This was also identified, in particular, by female respondents, p. 39, Table 3.6.

about the real experiences of members of the judiciary. Information of this nature is extremely helpful in dispelling myths about the workload and the skills/professional knowledge required of judicial office-holders. It would be helpful if this sort of information was disseminated not only to prospective candidates, but to practitioners at an early stage of their career. Solicitors in private practice did not generally regard the judiciary as a career option, or as a means of career development. Part of this was due to their concern that their increased specialisation rendered them unsuitable for a judicial role which, they perceived, required breadth of knowledge and experience. If, however, detailed information was provided at an early career stage, this could put the possibility of judicial office on peoples' radar which might help to dispel the notion, held by some, that it is simply a public service role that one may undertake at the end of a successful career.

3.9 The Work Experience of Applicants

In so far as gaining a wide experience of legal work is seen as an advantage to applicants for judicial posts (and this was certainly the message we received from interviewees and focus groups), it is obviously of benefit to some barristers that they are included in the panels of counsel who are called upon to do Crown work or work for insurance companies. We did not see any evidence that there were inappropriate barriers to being included on these panels but we were not able to verify whether the panel for Crown work is 'equality-proofed' in the sense that those who compile it take into account the obligations imposed on public authorities by section 75 of the Northern Ireland Act 1998. Insurance companies, as private entities, do not have to have regard to section 75, but it would seem that, like public authorities which maintain panels of legal advisers,[16] they are still required to comply with the various anti-discrimination laws. We note that Regulation 13 of the Employment Equality (Sex Discrimination) Regulations (NI)[17] extends the protection of the Sex Discrimination (NI) Order 1976 to office holders.

On the whole, the experience gained by solicitors does not seem to be fully appreciated when the rules on eligibility for judicial appointments are examined.[18] We heard evidence from some

[16] *Kelly and Loughran v Northern Ireland Housing Executive* [1999] 1 AC 428 (House of Lords, 3 v 2).
[17] SR 2005/426.
[18] In the earlier survey study, the vast majority of respondents perceived that 'being a barrister' would have a positive influence on the outcome of an application for judicial office: NIJAC, *Survey of views about Judicial Appointments: 2007*, p. 53. Solicitors were more likely to hold this belief (89%) than barristers (70%) or judicial office holders (67%), Figure 4.4.

solicitors that judges were often condescending towards solicitors a practice which, if it is prevalent, could be countered by ensuring that more solicitors reach the bench. It also seems that the teamwork and management skills which many solicitors acquire in the course of their career are not of great use to them when trying to convince a panel that they have the requisite skill set for the bench.

We found substantial evidence that promotion to the bench was an attractive career move for lawyers employed in the public sector, but the statutory requirement that lawyers must have a number of years of practical experience may militate against the eligibility of some such applicants, particularly if their years of private practice were not in the recent past.

3.10 The Solicitor – Counsel Relationship

We were told by several counsel that they would be reluctant to have it made known to solicitors who regularly briefed them that they were applying for a judicial post. Apparently there is a fear that if it were common knowledge that barrister A was on the look-out to leave the bar, solicitors would not want to risk continuing to brief barrister A and instead would brief barrister B. It would seem that a somewhat similar attitude can display itself within solicitors' firms once it becomes known that a member of the firm has applied for a judicial post. It is as if the person in question can no longer be trusted to give his or her work their undivided attention.

This is of course an irrational position to take. Apart from anything else, if a barrister or solicitor applies for a judicial post it may be a sign that he or she has been encouraged by others to apply because they consider him or her to be worthy of the position. But openly displayed ambition is not considered a virtue in the legal professions and we have to acknowledge that it is no real answer to the problem simply to assert that members of the solicitors' and barristers' profession should be more mature in their attitudes to ambitious colleagues.

Both professions are intensely competitive and colleagues may not look too kindly on their associates who 'get above themselves' by thinking they are judicial material. Probably the only way to counter such prejudice is for NIJAC to reiterate constantly that it welcomes applications from a broad range of applicants, that failure to be appointed to a particular post should not be taken as a sign that the person in question is generally non-appointable to that kind of post, and that the candidates most likely to be good judges are

those who are really keen to receive the requisite training for what the job entails.

In line with previous research (Feenan, 2005) we detected that many women barristers feel at risk of being discriminated against by solicitors (both male and female) because the client has indicated that he (or even she) would prefer to be represented by a male barrister.

Preventing this kind of discrimination should be a key goal of both the Law Society (see next section) and of solicitors' firms (see next section but one). Of course this should cut both ways. There is no reason why a male barrister, for example, cannot very effectively represent a female client in family or matrimonial work. It was depressing to hear so many female lawyers tell us that female clients in this field did tend to insist upon using female barristers.

3.11 The Law Society's Role

The solicitors' profession is much larger and more diverse than that of barristers. Arguably its governing body, the Law Society of Northern Ireland, should be playing a greater role in urging its members to get themselves into a position from which they can make a good shot at applying for a judicial post. For the higher judicial posts the odds are stacked against solicitors because the assumption continues to be made – wrongly, we think – that long experience of court procedures and of advocacy skills are absolute prerequisites to appointment. We found a very strong sense amongst most of our interviewees, and all of the solicitors and barristers who took part in our focus groups, that no-one should apply for a senior judicial appointment unless they had considerable experience of how to behave appropriately and effectively in court. But when we tried to pin down exactly what was meant by this, and why the requisite knowledge could not be acquired through pre-service training, we did not receive what to us were convincing replies. There is a firm belief that to be a good judge one has to have been a good barrister - a patently false proposition as noted by Baroness Usha Prashar[19]. This is a bit like saying that to be a good referee of a football match one has to have been a good footballer.

There is a good case for the Law Society to advertise transfer to the bench as a real badge of distinction not just for the individual solicitor concerned but for the solicitors' profession as a whole. It could be made to seem as a natural career progression, as it is in

[19] Judicial appointments: A new system for a new century, Speech, March 2007.

the eyes of many barristers, especially those in public service. The Law Society could also assist by promoting more generally the value of diversity within the legal professions, including the judicial branch. The Society itself needs to be a place within which people of either gender, and any religion, race and ability, feel comfortable.

3.12 The Role of Solicitors' Firms

Our research has unearthed evidence showing that firms of solicitors, especially the larger and more prominent ones, are not always happy when one of their partners or senior members of staff leaves the firm in order to take up a judicial post. They do not necessarily view elevation to the bench as a feather in the firm's cap. This is, again, an attitude which is difficult for people outside the profession to understand, since the natural conclusion is surely that some of the kudos attached to becoming a judge would rub off on the firm for which the solicitor was previously working. It seems, however, that firms feel a sense of ownership over their partners and staff, in whom they have supposedly invested so much. To have that investment cut short, and the talent redeployed for the benefit of society as a whole, is not always palatable to them. Firms cannot advertise the fact that such-and-such a former partner is now a judge, nor can they in any other way legitimately profit from the partner's appointment to the bench. Of course they can try to discourage transfers to the bench by making life as a senior solicitor a more rewarding one in many ways, but they should also bear in mind that working for society as a whole is a noble calling that deserves to be applauded.

Solicitors' firms could also encourage female solicitors to apply for judicial appointments by facilitating whatever different working patterns they might prefer while they are practising as solicitors. If such women can experience, for example, a family-friendly environment within a busy solicitors' practice, it is more likely that they will have the confidence to apply for a post within the judiciary and to expect the same level of family-friendly environment there. It was disappointing to discover, as Feenan had done (2005), that firms were not particularly supportive of women on their staff who were thinking of applying for a judicial post and that they did not seem to think that part-time work on the bench would make a solicitor a better practitioner. Firms can help as well by ensuring that their partners and staff acquire experience in a wide range of legal areas, allowing them to specialise where they have a particular aptitude for a subject area

3.13 The Need for Training in Court Craft

In order to counter the assumption that appointment as a judge can be deserved only if the applicant has already mastered the necessary 'court craft', the Northern Ireland Judicial Appointments Commission might consider the precise extent to which such mastery really is a prerequisite to serving as a judge. To the extent that applicants may lack the experience or knowledge deemed necessary, the Commission might want to ensure that appropriate training in the skills and awareness involved are supplied to the applicant immediately after appointment. Selection could then focus on the applicant's *potential* to acquire these skills and awareness and on his or her *aptitude* for judicial work. It should be remembered that the main task of judges is to judge, after weighing up competing arguments and conflicting evidence. The job does not itself involve advocacy, only the appreciation of advocacy. A very good knowledge of the rules of evidence is obviously important (for court work if not for tribunal work), but this can quickly be taught if not already acquired. Those who teach law in universities are familiar with the fact that students who already have experience of other walks of life often learn the law much more quickly and effectively than students who are asked to devote three or four years to the subject after leaving school. There is every reason to believe that judging is also a job that can be learned quite quickly. If both the intelligence – intellectual as well as emotional – and the commitment are there, the appointee can usually be guaranteed to rise to the challenges demanded of him or her.

3.14 Knowledge of NIJAC

Overall we found an appreciable disparity of knowledge over the existence, basic purpose and role of NIJAC. Those who had the most information on the Commission were those who had either an interest in applying and/or had previously applied for a judicial post. This lack of knowledge was chiefly prevalent in the solicitors' profession. It was suggested to us that NIJAC should be more pro-active in seeking out applicants particularly outside the greater Belfast area. Other solutions that were submitted to us were that NIJAC could run seminars or recruitment drives focusing on the judicial role as a career option. These could be held in academic institutions with a view to encouraging young women to consider the judicial office and in the west of the Province as a means of encouraging those who felt isolated from the Belfast legal network.

3.15 The Bar Council's Role

As the professional body representing barristers in Northern Ireland it was generally felt that the Bar Council had an important role in addressing the issue of diversity of the bench. A significant feature of our research was the fact that many solicitors interviewed had not considered the judiciary as a career move. This aspect was not as evident in our contact with female barristers where although they were more aware of a judicial office as a career option, we found that they either did not want to apply; were generally content staying at the Bar or, significantly, felt that they were being hampered from building a CV through sexist briefing practices.

The term 'chick law' continually arose in our research. This relates to the concern of many female barristers who complained about the type of work being sent to them. Women in the profession were finding it difficult to gain experience outside areas such as family and conveyancing law[20]. While solicitors accepted that their briefing practices can be gendered, some pointed to the fact that senior counsel do not tend to use younger women as juniors in complex trials which, in turn, led to difficulties in convincing a client that they had sufficient experience to take on non-family work. The difficulty that female barristers experienced in securing good quality non-family work was felt to be disadvantageous to development of their careers in that they were not gaining wider experience available with the practice of other fields of law. It also had the added disadvantage of making them less visible to those who could be used as consultees in judicial applications[21]. Evidence also arose that a dismissive attitude towards these 'female areas of law' was taken by male barristers and that the bar was sexist.

This negative attitude and the issues of work distribution are issues that the Bar Council should address. Along with the Law Society they should stress the value of all work and that it must be distributed without gender discrimination.

A very distinct aspect of our research which continually arose is the issue of the current changing nature of the legal environment in Northern Ireland. A notable concern which arose through the course of our research was the considerable casualty rate at the junior bar. It was suggested that there exists a much harsher environment for barristers than one experienced a decade

[20] See also NIJAC, *Survey of views about Judicial Appointments: 2007*, p. 24, Table 2.10.
[21] See D. Feenan, *Applications by Women for Silk and Judicial Office in Northern Ireland*, A Report Commissioned by the Commissioner for Judicial Appointments for Northern Ireland, June 2005, para 6.9.

previously. This is due not least to the significant changes to legal aid policy and payments which makes it increasingly difficult for junior barristers to establish themselves. As a consequence many potential judicial candidates may be lost at this very early stage of their career.

The shifting nature of the solicitor's role was also making it difficult for the young barrister to find work. As the solicitors' profession gains advocacy and procedural expertise and the confidence to undertake these roles, these developments could have a serious impact on the value of a barrister's expertise. If this trend is to continue, it could have a bearing on a barrister's decision on whether or not to stay at the bar and gain the experience required for high judicial position. The changes which characterise today's profession need to be addressed by the Bar Council, though of course whether they can effectively turn back history and return to the halcyon days of a less technically expert solicitors' profession is a moot point.

3.16 Female Support Systems at the Bar

A striking feature of our findings was the lack of fellowship shown by females to other females. This was a trait that was in evidence in both the solicitors' and barristers' professions. We were told that female solicitors did not tend to instruct female barristers unless it involved family law. When women were successful it was generally viewed that they were reluctant to assist other women. In the course of our research we were given little indication as to why there was such a lack of a 'sisterhood' in the profession. Most seem to put the practice down to habitual performance. However a few did indicate that their client did specifically request a male advocate.

Whatever the reasons for the practice, the consequences of the lack of such 'sisterhood' have meant that it is all the more difficult for females to do well in the profession unless perhaps they have influential family. Changing the perceptions of clients may be a difficult issue to address, however a more practical measure would be for the Law Society to actively promote the briefing of female counsel. The Bar Council and influential senior counsel should encourage the use of female junior counsel in complex trials thereby highlighting their expertise and fostering their image.

3. NISRA RESEARCH - AN EXECUTIVE SUMMARY

A full copy of the NISRA Report "*Survey of views about Judicial Appointments: 2007*" can be viewed by clicking **here**.

Methodology

The Northern Ireland Statistics and Research Agency (NISRA) administered a postal survey of solicitors, barristers and judicial office holders in April 2007. The survey questionnaire was issued to 3,583 recipients.

Some 1,104 questionnaires were completed, representing a response rate of 31% which was broken down as follows:

- 31% of solicitors responded
- 26% of barristers responded
- 79% of judicial office holders responded

This was higher than the response rates to similar surveys in Scotland and the Republic of Ireland.

The profile of respondents matched the profile of the target population in terms of professional status, gender and community background.

An Executive Summary of the key findings is presented below.

Key Findings

Main areas of work

The most common main areas of work of full-time judicial office holders prior to taking up office were Common Law, Criminal Law, and Administrative and Public Law.

Judicial office holders were much more likely than solicitors and barristers to report these as their main areas of work.

There were many differences in respect of gender and community background. For example, males were more likely than females, and Roman Catholics were more likely than Protestants, to report Common Law or Criminal Law as a main area of work.

The evidence from the NISRA survey indicates that only a relatively small minority of members of the legal profession has ever applied for judicial office.

Applicants to judicial office

Males were more likely than females to have applied for judicial office (23% males; 13% female).

There is no significant difference in success rates overall (48% males; 59% females).

Protestants were more likely than Catholics to have applied for judicial office (22% Protestant; 16% Catholic).

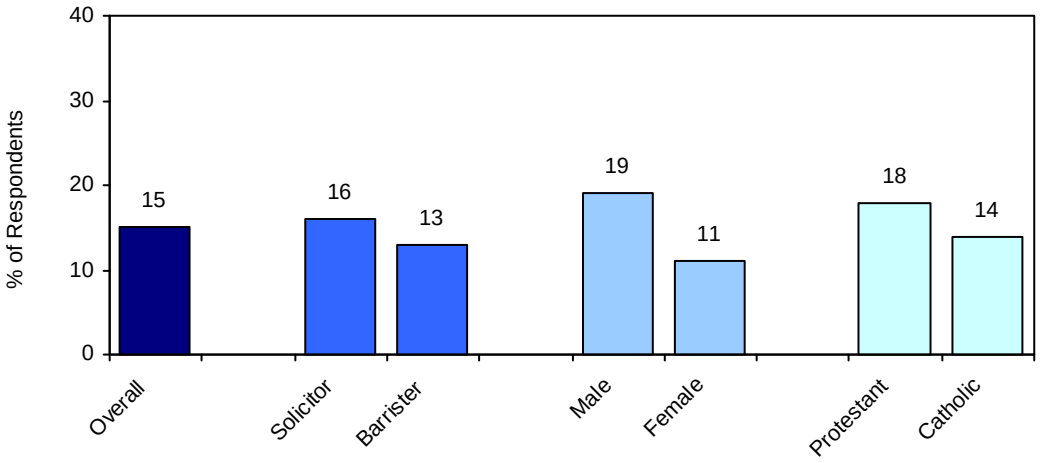
There is no significant difference in success rates overall (52% Protestant; 49% Catholic).

Excluding full-time judicial office holders, 15% of respondents reported that they had previously applied for judicial office/higher judicial office.

While there was little difference between the application rates by profession (16% of solicitors had applied compared with 13% of barristers), differences by gender were statistically significant.

Male respondents were much more likely (19%) than female respondents (11%) to report that they had previously applied for judicial office (see Graph below).

Proportion of respondents (other than full-time judicial office holders) who had applied for judicial office by profession, by gender and by community background

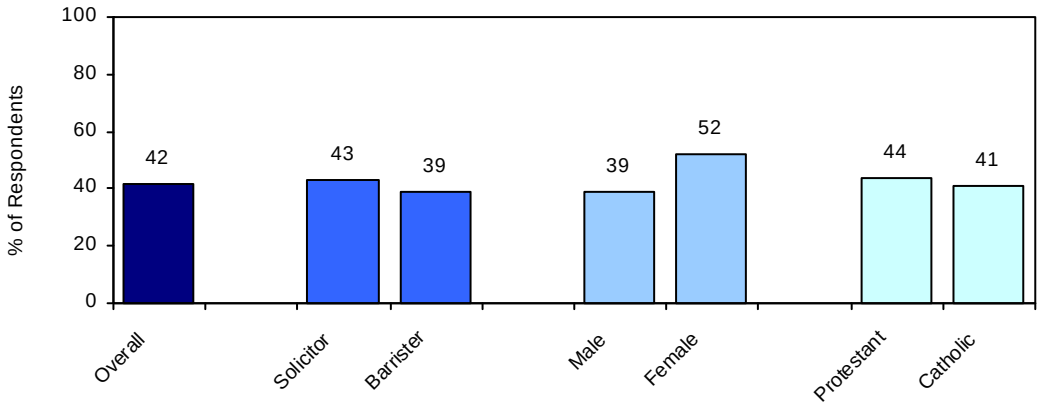


Success rates

Among respondents, a substantial minority of these applicants have been successful, and there were no statistically significant differences in terms of gender or community background in the reported success rates.

The graph below shows the success rates of respondents (other than full-time judicial office holders) who had applied for judicial office/higher judicial office.

Graph illustrating success rates by profession, by gender and community background for respondents other than full-time judicial office holders (%)



While there were some differences in the success rates recorded by profession, by gender and by community background, these were not statistically significant.

Prior links with the profession

Before qualifying, some two thirds of respondents had no links with the legal profession. A higher proportion of females than males had no such links; in particular, a higher proportion of females than males had not had a parent in the profession.

By contrast, the proportions of those from Protestant and Roman Catholic community backgrounds who had no prior links with the profession were almost equal.

Table illustrating links with the legal profession prior to qualifying by gender and by community background

	Overall	Gender		Community background	
		M	F	P	RC
Parent	11%	15%	7%	11%	11%
Close relative	14%	15%	13%	9%	18%
Friend	10%	11%	10%	11%	10%
Other acquaintance	11%	10%	12%	12%	9%
Did not have any of these links	66%	63%	69%	66%	65%
Total number of respondents	**1,087**	**596**	**477**	**466**	**570**

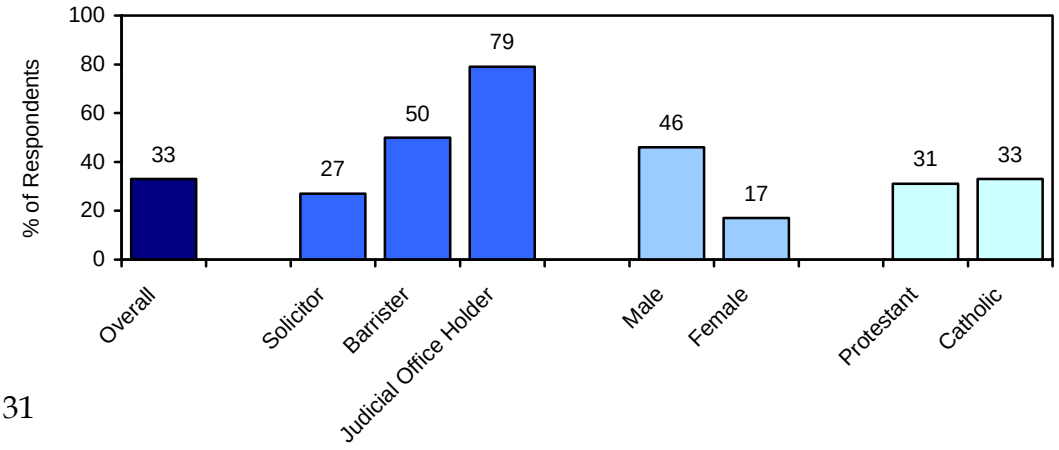
Knowledge of work involved across the range of judicial offices

Survey respondents were asked if they knew enough about the work involved across the range of judicial offices. Overall, one third of survey respondents (33%) reported that they did know enough.

By gender and by community background

Male respondents were much more likely (46%) than female respondents (17%) to report that they knew enough about the work involved across the range of judicial offices.

Graph illustrating proportion of respondents who reported that they knew enough about the work involved across the range of judicial offices by profession, by gender and by community background:



Similar proportions of respondents with Protestant and Roman Catholic community backgrounds reported that they had sufficient knowledge in this area (31% and 33% respectively).

By Profession

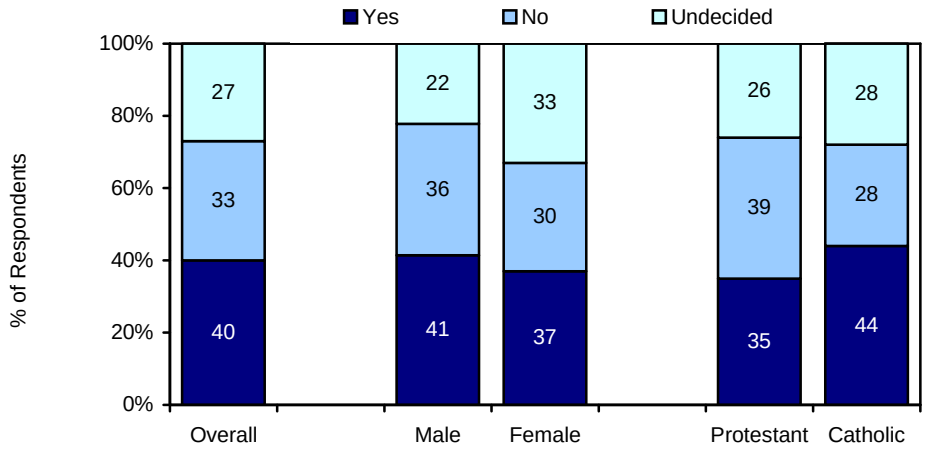
Respondents in full-time judicial office posts were most likely to report that they knew enough (79%) followed by barristers (50%). Respondents in solicitor positions were least likely to report that they knew enough (27%).

Future applications for judicial office

Males were more likely than females, and Protestants were more likely than Roman Catholics to say they would not consider applying. A large majority of respondents indicated that they would not consider applying unless they had far in excess of the minimum experience required.

There was substantial variation among professional groups in the level of knowledge of the work involved across the range of judicial offices. Knowledge of the work was particularly limited among solicitors.

Those below High Court level were asked if they would consider applying for judicial office/higher judicial office in the future: 40% of respondents reported that they would consider doing so, whilst 33% reported that they would not (with the remaining 27% undecided).



Solicitors were much more likely than barristers to say they would not consider applying. Males were more likely than females and Protestants were more likely than Roman Catholics to say they would not consider applying.

A large majority of respondents indicated that they would not consider applying unless they had far in excess of the minimum experience required.

The measures which respondents were most likely to identify as potentially encouraging them to consider applying for judicial office (or higher judicial office) were better guidance/training on the competence requirements, flexible working options, practical information about the nature of the work, better guidance/training on the appointments process, and the availability of part-time salaried posts.

Only a small proportion of respondents identified changes related to the appointments process, or changes to the eligibility criteria. Measures were summarised as follows:

	Male (%)	Female (%)
Better guidance/training on the competence requirements	28	50
Part-time salaried posts	27	42
Flexible working options	25	46
Better guidance/training on the appointments process	25	45
Practical information about the nature of the work	23	47

Aspects of judicial office/higher judicial office that appeal 'to a large extent' is summarised as follows:

- Job Security – 24% males; 37% females
- Salary – 19% males; 43% females
- Pension arrangements – 40% males; 54% females
- Interesting work – 51% males; 63% females

See Table below illustrating the top 5 measures which might encourage respondents to apply for judicial office/higher judicial office by profession:

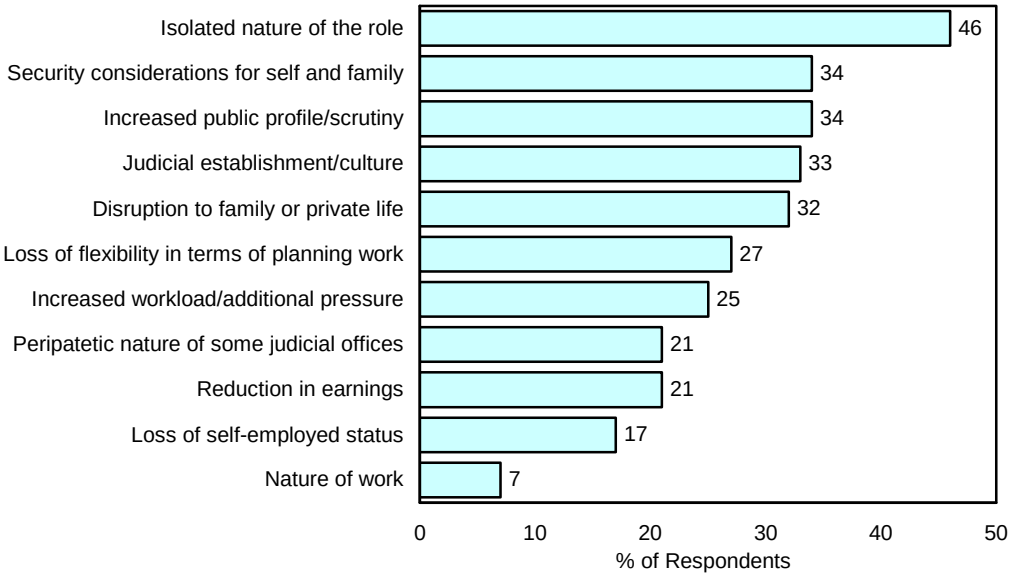
Profession		
Overall:	1	Better guidance/training on the competence requirements (39%)
	2	Flexible working options (36%)
	Equal 3rd	Practical information about the nature of the work (35%)
		Better guidance/training on the appointments process (35%)
	5	Part-time salaried posts (34%)
Solicitor:	1	Better guidance/training on the competence requirements (40%)
	2	Practical information about the nature of the work (39%)
	3	Flexible working options (37%)
	4	Part-time salaried posts (36%)
	5	Better guidance/training on the appointments process (35%)
Barrister:	Equal 1st	Better guidance/training on the appointments process (37%)
		Better guidance/training on the competence requirements (37%)
	3	Flexible working options (34%)
	4	Part-time salaried posts (29%)
	Equal 5th	Changes to the appointments process (22%)
		Practical information about the lifestyle demands of the role (22%)
Judicial Office Holder:	Equal 1st	Changes to the appointments process (25%)
		Better guidance/training on the competence requirements 25%)
		Job specific or on the job training (25%)
	Equal 4th	Part-time salaried posts (21%)
		Flexible working options (21%)
		Better guidance/training on the appointments process (21%)
		Opportunity to experience a wider range of work (21%)

Aspects of judicial office/higher judicial office that did not appeal to survey respondents

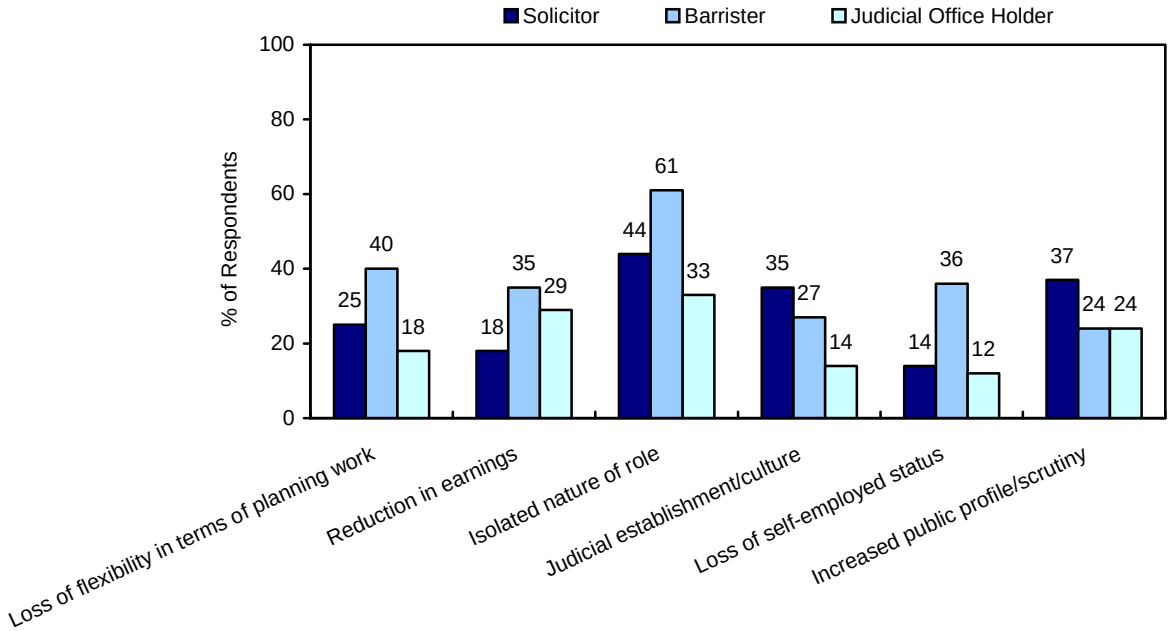
The greatest proportion of respondents (46%) reported that the isolated nature of the role did not appeal to them.

The other aspects most frequently identified as not appealing were security considerations for self and family (34%), increased public profile/scrutiny (34%), judicial establishment/culture (33%) and disruption to family or private life (32%).

Graph illustrating aspects of judicial office that did not appeal to respondents (%)



Graph illustrating aspects of judicial office where there are significant differences by profession (%)



The Appointments Process

The NISRA Research revealed that there was a considerable lack of knowledge of how the appointments process operated, particularly among solicitors and females.

Females were more likely than males to find the requirement to identify consultees off-putting. A higher proportion of Protestants than Roman Catholics found the application forms off-putting.

Respondents were asked to rate a number of factors in terms of the type of influence they believed they would have on the outcome of an application for judicial office.

Most respondents believed that the following work-related factors would have a positive influence: being senior counsel, having higher court experience, experience as a deputy or part-time judicial office holder, being a barrister and being on a Government civil panel or engaged as Prosecution Counsel.

A majority of respondents believed that the following non work-related factors would have a positive influence: being known to the senior judiciary, being in the right social networks, being aged 41-50 or over 50, and working in the Greater Belfast area. The only factor that a majority of respondents believed would be a negative influence was being aged 30-40.

Positive Influence

- Being senior counsel (93%)
- Having higher court experience (89%)
- Experience as a deputy or part-time judicial office holder (88%)
- Being a barrister (85%)

Other factors which were recorded as having a positive influence on the bearing whether to apply for judicial office included:

- Being known by the senior judiciary (82%);
- Being in the right social networks (74%); and
- Working in the Greater Belfast area (53%)
- Being aged 41-50 (56%)
- Being aged over 50 (53%)
- Being from a middle/upper class background (47%)
- Being male (44%)

Negative influence

- Being a solicitor (33%)

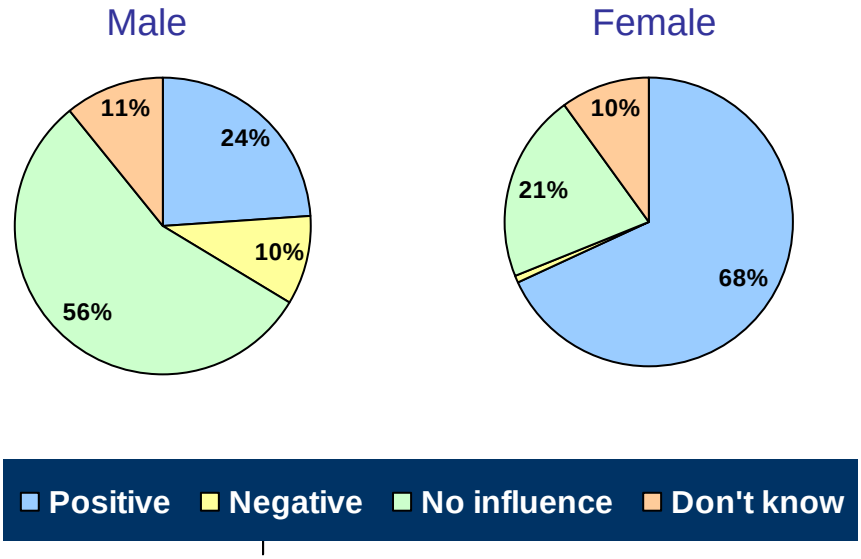
Perceptions of the influence of various factors differed markedly by the characteristics of respondents.

For example, 38% of solicitors thought that being a solicitor would have a negative influence, but only 5% of barristers thought this; 24% of males thought that being male would have a positive influence, compared with 68% of females; and 2% of Protestants, compared with 25% of Roman Catholics, believed that having a Protestant community background would have a positive influence.

Most respondents believed that community background would have no influence, but fewer than half believed that gender would have no influence.

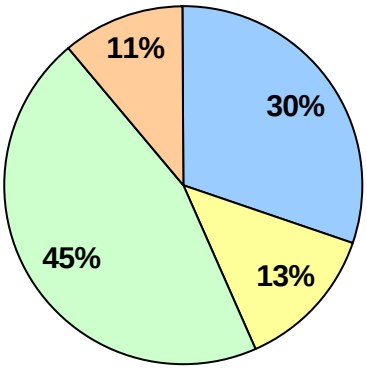
The perceptions of males and females (and to a lesser extent those with Protestant and with Roman Catholic community backgrounds) on the influence of gender and community background on an application for judicial office differ considerably.

Being Male

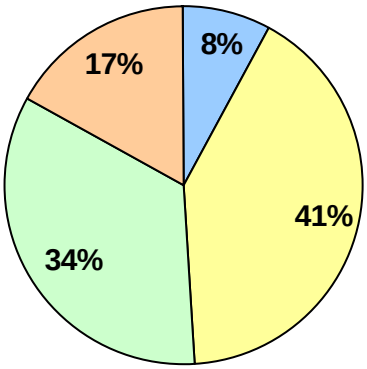


Being Female

Male



Female

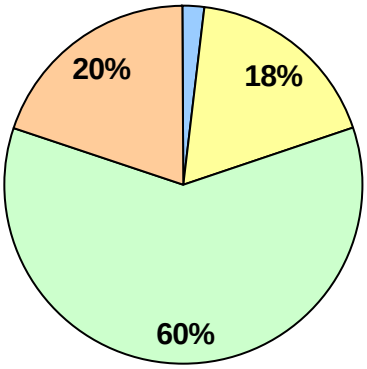


Fewer than half of respondents perceived that being male or being female would have no influence, though over half perceived that having a Protestant or Roman Catholic community background would have no influence.

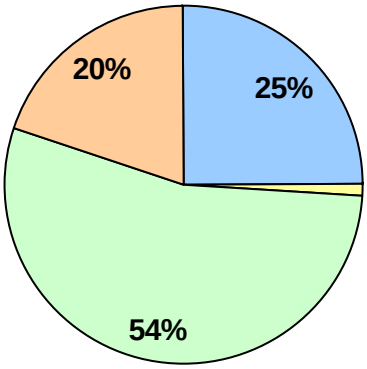
However, it is also worth noting that 68% of female respondents considered that being male was likely to have a positive influence on the application for judicial office.

Having a Protestant background

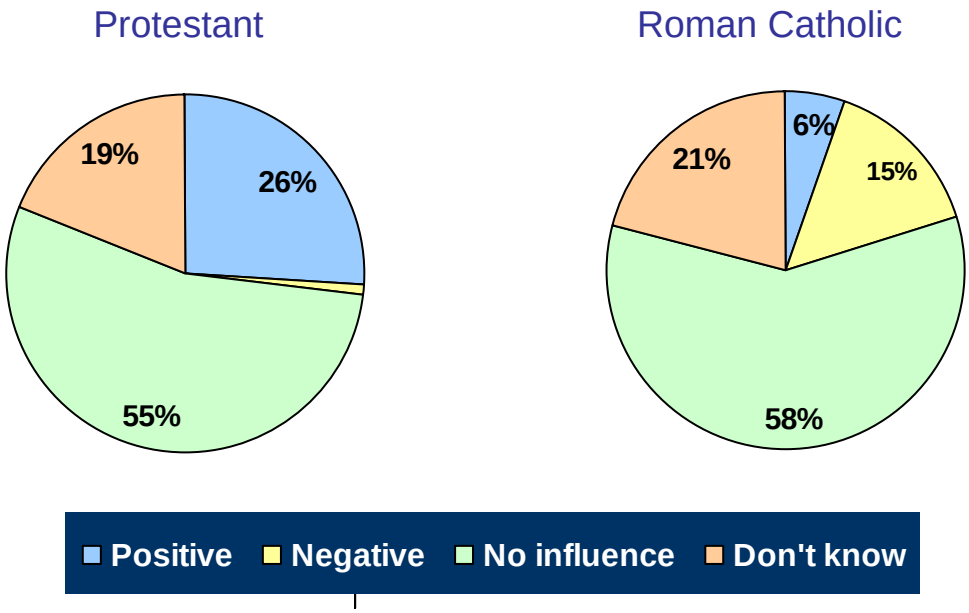
Protestant



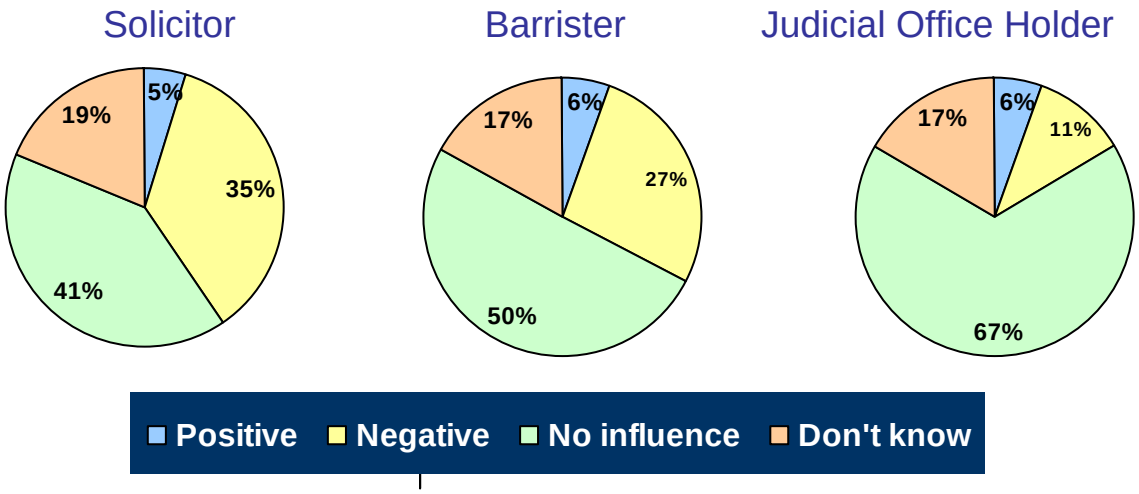
Roman Catholic



Having a Catholic background



Being from a working class background



Knowledge of the Appointments Process

A substantial minority of respondents reported that they knew how the appointments process operated. Barristers were more likely than solicitors, and males were more likely than females to report that they had this knowledge.

The aspects of the appointments process which respondents were most likely to identify as off-putting were the interview process, the application forms and the requirement to identify consultees.

Females were more likely than males to find the requirement to identify consultees off-putting and a higher proportion of those from

a Protestant than from a Roman Catholic community background found the application forms off-putting.

	Overall	Gender		Community background	
		M	F	P	RC
Application forms	42%	43%	40%	46%	36%
Requirement to identify consultees (referees)	30%	24%	40%	29%	30%
Interview process	31%	30%	31%	30%	30%
Feedback arrangements	7%	9%	5%	7%	8%
Post-interview checks	6%	9%	1%	5%	8%
Other	6%	6%	4%	4%	7%
Total number of respondents	**418**	**267**	**144**	**171**	**224**

Conclusions

The evidence from this survey indicates that only a relatively small minority of members of the legal profession has ever applied for judicial office.

Among respondents, a substantial minority of these applicants have been successful and there were no statistically significant differences in terms of gender or community background in the reported success rates.

However, these findings can give only a very broad impression and are not a substitute for systematic monitoring of equality of opportunity.

The perceptions of males and females (and to a lesser extent those with Protestant and Roman Catholic community backgrounds) on the influence of gender and community background on an application for judicial office differ considerably.

Fewer than half of respondents perceived that being male or being female would have no influence, though over half perceived that having a Protestant or Roman Catholic community background would have no influence.

Certain work-related factors were reported by a large majority as having a positive influence, especially being senior counsel, having higher court experience, experience as a deputy or part-time judicial office holder and being a barrister.

The non-work related factors reported by a large majority as having a positive influence were being known to the judiciary and being in the right social networks.

A very substantial proportion of the profession would consider applying for judicial office in the future, although a large majority of respondents indicated that they would not consider applying unless they had far in excess of the minimum experience required.

The extent of reported knowledge about the work involved across the range of judicial offices varied markedly across the professional groups, with only a minority of solicitors reporting they knew enough.

The measures which respondents were most likely to identify as potentially encouraging them to consider applying for judicial office (or higher judicial office) were better guidance/training on the competence requirements, flexible working options, practical information about the nature of the work, better guidance/training on the appointments process and part-time salaried posts.

A substantial minority of respondents reported that they knew how the appointments process operated. Barristers were more likely than solicitors and males were more likely than females to report that they had this knowledge.

The aspects of the appointments process which respondents were most likely to identify as off-putting were the interview process, the applications forms and the requirement to identify consultees.

Females were more likely than males to find the requirement to identify consultees off-putting. A higher proportion of those from a Protestant than a Roman Catholic community background found the application forms off-putting.