

INFORMATION FOR APPLICANTS

APPOINTMENT OF STANDING JUNIOR COUNSEL AND SECOND STANDING JUNIOR TO THE ADVOCATE GENERAL FOR SCOTLAND

Background

1. The Advocate General is seeking to appoint around 20 junior Counsel to form a panel of Standing Junior Counsel to the Advocate General for Scotland. This panel will deal with work arising in relation to (for example) the Scotland Act 1998 including devolution challenges and legislative competence issues, judicial review of the actions of UK Government Ministers and immigration, social security and tax law. Both advisory and litigation work will be required. However availability for appearance work is an essential requirement.

2. There is no target number of junior Counsel that we must appoint to form this panel, and the number ultimately appointed will depend on a number of factors, including the number and quality of applicants. However, as a rough guide, we would be looking for 3 - 4 Counsel prepared to undertake work on behalf of each of the following: the Secretary of State for the Home Department, Her Majesty's Revenue and Customs, the Ministry of Defence and the Department for Work and Pensions. A short summary of the kind of work that this may involve is set out below. In addition, we require a pool of additional Standing Juniors to undertake general work but also to provide additional capacity for the departments just mentioned. In total, based on our experience of the volumes of work generated, we presently anticipate appointing around 20 Counsel in total.

3. We are introducing in this round of appointments the new post of Second Standing Junior Counsel. The successful applicant to that post will be expected to work alongside the First Standing Junior Counsel who is Chris Pirie but to undertake specific functions relative to the well-being of our panel of Standing Junior Counsel and liaising with the Office of the Advocate General for Scotland (OAG) in relation to the provision of training and the sharing of information and legal developments. The foundations of the post are being piloted but will require to be developed in conjunction with OAG going forward.

Eligibility

4. Appointment as Standing Junior Counsel is open to any member of the junior Scottish Bar, including Solicitor Advocates, other than Counsel holding appointment as an Advocate Depute, or as Standing Junior Counsel to the Scottish Government.

5. Appointment as Second Standing Junior Counsel is open to those who are eligible and are applying for appointment as Standing Junior Counsel.

Applications

6. There is an application form and referee's form for each post. Please note that if you are applying for the post of Second Standing Junior Counsel, as well as completing and submitting the forms relative to that appointment, you still require to complete the forms relative to the appointment as Standing Junior Counsel.

7. An application should be made on the application form(s) that may be downloaded from the OAG website ([Office of the Advocate General for Scotland - GOV.UK](http://www.advocategeneral.gov.uk)). The application for appointment as Standing Junior should be accompanied by a CV, and the applications for appointment as Standing Junior and Second Standing Junior should name one legally qualified referee, who can be the same for both posts although completion of a reference form for both posts is still required where the applicant is applying for both. Applications should be emailed to the address provided in paragraph 10 below. It will be an advantage for applicants in the application form for appointment as Standing Junior to be able to demonstrate interest and/or experience in relevant areas of public and private law (including some of the specific areas noted below in paragraph 13) and some appreciation of the special demands of Government litigation. The CV should also give details of academic attainments and a summary of relevant experience, either gained at the Bar or elsewhere. Any other particular relevant experience should be specified.

8. The application form(s) should be completed in full. Please note however that if submitting your application(s) by email, you need not sign the application(s).

9. As regards the referee, you should ask him or her to download and complete the referee's form(s) from the OAG website and send it direct to the address given below (by email) to arrive no later than the date specified in the next paragraph. Please still complete the application form(s) showing the referee's name and contact details (so that we can chase up if necessary).

10. Applications and references should be e-mailed to businesssupport@advocategeneral.gov.uk marked for the attention of Hannah Robinson and Lauren Smith, by no later than **midnight on Sunday 15th August 2021**. Any requests for clarification or further information should be directed to the same address (once again marked for the attention of Hannah Robinson (07708 493006) and Lauren Smith (07708 493002)). Applications will be acknowledged on receipt.

Procedure for Appointment

11. All applications will be considered by a panel comprising members of OAG and at least one external solicitor who advises, or has advised, UK Government Departments. That panel will make recommendations to the Advocate General, who will appoint as Standing Junior Counsel and Second Standing Junior Counsel those applicants who appear to him to be best qualified.

12. Depending on the number of applicants considered by the panel to be suitable for appointment, applicants may be invited to interview before recommendations are made to the Advocate General. It is however possible that the exercise will be carried out on the papers alone. Should interviews prove necessary for either appointment, we shall update all applicants as to the manner in which these will be conducted, the proposed timescale for these and of course endeavour to hold any such interviews outwith normal court hours and to otherwise accommodate the availability of applicants.

Specific Areas of Interest

13. As noted above, we are seeking a number of Counsel to advise and appear on behalf of particular Departments/ agencies in addition to a general pool. By way of brief explanation of the kind of work that may be involved for each of these Departments/agencies:

- Home Office: Counsel will represent the Secretary of State for the Home Department at judicial review hearings, statutory appeals before the Inner House and in occasional UK Supreme Court cases. Counsel will also require to appear at caveat hearings in which interim orders are sought and damages actions for unlawful detention. The work is varied and will expose Counsel to a variety of human rights issues. There may on occasion be appearance work before the Upper Tribunal.
- Her Majesty's Revenue and Customs: this involves appearances before the First - tier Tribunal and the Upper Tribunal, together with the Inner House of the Court of Session and occasionally the UK Supreme Court to deal with a wide range of tax appeals. These frequently involve not only points of tax law, but a wide range of points relating to (for example) trusts, partnerships, companies, contract law and the exercise of statutory powers.
- Ministry of Defence: the bulk of this work is personal injury litigation and in terms of numbers, the bulk of that is probably disease work. There are accident claims and the occasional FAI. However, the Standing Junior should expect the unexpected - from advising on who can determine where a body is buried to interdict to prevent access to a water supply used for fire fighting at a fuel store being blocked, and everything in between.
- Department for Work and Pensions: this involves appearances before the Upper Tribunal, the Court of Session and occasionally the UK Supreme Court, dealing with a variety of social security benefit appeals and occasional judicial reviews on topics such as human rights and statutory construction.

14. In terms of the general work that can arise, the work of a Standing Junior is nothing if not varied. Opinions, and assistance in relation to litigation brought by or against a UK Government Department/Agency, may be sought from Standing Juniors on a wide variety of topics. These include statutory interpretation, applications for warrants and other court orders, legislative competence of Acts of the Scottish Parliament, insolvency and company law matters and the validity of delegated legislation. We have occasionally been involved in criminal matters where issues such as public interest immunity and legislative competence have arisen. Nor are activities necessarily restricted to the domestic sphere – points of international and EU law can arise, and knowledge and/or experience of these areas of law would be useful.

15. Applicants are invited to make clear on their application form for Standing Junior Counsel to which (if any) of these particular departments they would wish to be considered for appointment. Please note that indication of a preference does not guarantee appointment to that Department, and you may be appointed to a Department in relation to which you have not expressed a preference (whether you have expressed any preference at all).

How Your Application For Appointment As Standing Junior Counsel Will Be Assessed

16. The criteria that will be used to evaluate applications are as follows:

- Overall experience and, in particular, any relevant experience of both advisory and advocacy work in the kind of areas which we anticipate Standing Juniors may become involved in i.e. one or more of the following areas: administrative, immigration, social security or tax law; judicial review; EU law; human rights; equality issues; personal injury; Scotland Act issues and the devolution settlement (including, in each case, related areas of law such as those mentioned above).
- Experience of working for or against Government or other public bodies and an appreciation of the special demands of Government litigation.
- Advocacy experience and ability.
- Writing/drafting ability.
- Academic strength.
- Experience of working, and a willingness to work, as part of a team, including in particular close working relations with clients.

How Your Application For Appointment As Second Standing Junior Counsel Will Be Assessed

17. The criteria that will be used to evaluate the applications are as follows:

- Consistent, in-depth and outstanding expertise and experience of both advisory, written/drafting and advocacy work, in terms of handling and/or legal complexity in high profile litigation in which the Second Standing Junior may have to become involved, should the First Standing Junior not be available to do so i.e. in one or more of the following areas: administrative, immigration, social security or tax law; judicial review; EU law; human rights; and personal injury or injury work.
- Expertise in constitutional matters, Scotland Act and devolution settlement issues and a willingness to develop that expertise further.
- Experience of, or at least a willingness to take forward, in conjunction with OAG, the continued development of building and maintaining cohesion among Standing Juniors by implementing existing processes/practices and/or innovating/implementing new ones.
- Experience of, or at least a willingness to promote and facilitate better links/liason between the Standing Juniors and OAG by implementing existing processes/practices and/or innovating/implementing new ones.
- Experience of, or at least a willingness to provide decision making support to other Standing Juniors in conjunction with the First Standing Junior, should that be required.

- Experience of, or at least a willingness to assist OAG in developing, building and maintaining a system whereby training is offered to OAG by the Standing Juniors on a regular basis throughout the year and OAG doing likewise depending upon whatever suitable training might be available from their end.
- Experience of, or at least a willingness to, assist OAG in developing, building and maintaining a system whereby information and legal developments, as well as lines to be taken, might be shared between Standing Juniors and OAG on a regular basis.

Please therefore provide evidence with at least 3 examples which taken together demonstrate the fulfilment of all of these criteria and the manner in which this has been achieved.

Terms of Appointment

18. Detailed terms of appointment will be set out in the individual letter sent to successful applicants. However, at this stage we would wish applicants to be aware of the key terms of appointment which are as follows:

- Appointment will be for a period of three years subject to termination by notice. Termination of the appointment may be made by either party at any time during the appointment and following one month's notice to terminate.
- Appointments will be to a particular Department/agency or to a general panel but all of those appointed as Standing Juniors may be instructed on behalf of any UK Department or Agency.
- Appointment as a Standing Junior will prevent the Standing Junior from accepting instructions to act against the Department to which an appointment is held without the prior agreement of OAG.
- Standing Juniors will be expected to give priority to instructions from UK Departments and Agencies.
- Appointment does not guarantee that instructions will be issued to any appointee.
- Work undertaken on behalf of the Advocate General in terms of instructions pursuant to an appointment as Standing Junior Counsel should be charged out at the following hourly rates-

Standing Juniors called for 7 years or more at time of appointment -£120

Standing Juniors called for fewer than 7 years at time of appointment - £80

This amount may be reviewed during the period of appointment. Fee notes should contain a detailed breakdown of work carried out and should record the time spent. Fee notes should be rendered on a monthly basis and will be payable within 30 days of receipt, with the exception of the MoD, which operates on a different feeing basis. *(Please note that appointment as Second Standing Junior Counsel to the Advocate General does not give rise to any additional remuneration.)*

- Reasonable expenses in relation to travel and subsistence will be reimbursed for work undertaken outside Edinburgh.
- Appointment as Standing Junior Counsel and Second Standing Junior does not attract any salary, pension or similar benefits.
- Those appointed will require to open a CJSM (Criminal Justice Secure eMail) account for the purpose of receiving instructions and otherwise communicating with OAG.
- Those appointed may be required to obtain security clearance up to and including Developed Vetting level to enable them to undertake work involving handling and discussion of sensitive material.
- There will be a formal performance appraisal once per year of each Standing Junior and the Second Standing Junior Counsel. Details will be notified in due course.
- Standing Juniors and the Second Standing Junior will be expected to provide talks as part of OAG's internal training programme on topics to be agreed.

Office of the Advocate General
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