

Institution: University of Cambridge		
Unit of Assessment: UoA18 Law		
Title of case study: Reducing Barriers to entry in the judiciary		
Period when the underpinning research was undertaken: 2011-2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Sophie Turenne John Bell	Lecturer in Law Professor of Law	2004-present 2001-2019
Period when the claimed impact occurred: 2016 to the present		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact (indicative maximum 100 words)		
<p>Judicial studies is a relatively new research field in the UK. It relates to a highly confidential arena in which government and judicial policy meet, and where the impact of research in producing change is not always made public. Legal scholarship and empirical research conducted by Dr Sophie Turenne (partly in collaboration with Professor John Bell) has significantly advanced policy makers' understanding of the issues at stake, in particular by identifying key incentives and disincentives to potential applicants seeking judicial appointment. The research has had tangible and acknowledged impacts, in terms of enhancing the professionalism of the judicial selection process, and achieving greater transparency and perceived fairness of outcomes.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>English-law writers and judges have long contrasted the civilian systems of mainland Europe, with their 'professional' judges, with the common law approach of appointing judges from legal practice. Turenne's research, on the other hand, demonstrates that the idea of a judicial career has increasingly taken hold in the UK, to the extent that a judicial appointment is no longer exclusively or predominantly regarded as the final career move for a successful professional. As the notion of a judicial career has developed, issues of diversity and representativeness in the appointment and promotion of judges have become more pressing. Turenne's research has significantly advanced understanding of these issues and her recommendations for reform have been acted on by government.</p>		
<p>1. <u>Independence and professionalisation of the judiciary</u></p> <p>The Senior Salaries Review Body (SSRB) recently endorsed 'the importance of an excellent judiciary to society and to the rule of law, with all the social benefits that flow from this' (Cm 9117, 2018). Turenne has made research into practices regarding judicial independence the main focus of her work for over a decade. She was one of forty experts commissioned by the Office for Security and Cooperation in Europe to draft the <i>OSCE-Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia</i> in 2010 [R1]. The recommendations were tailored to the actual practices in the participating states and aimed at decreasing executive influence over judiciaries. This soft law instrument, is the OSCE basis for further reforms. Her 2013 monograph, <i>Judges on Trial. The Independence and Accountability of the English Judiciary</i> (co-authored with Shimon Shetreet, with Turenne as lead writer), appraised the rules, assumptions and practices in force within the English judiciary following the Constitutional Reform Act 2005 [R2]. Building on interviews with judges, institutional stakeholders, and practitioners, <i>Judges on Trial</i> showed how, from 2006, a formal appointment process, a regulatory framework for judicial conduct, and greater emphasis on</p>		

training, together became the foundation stones for the growing professionalisation of the English judiciary. This research has since become a source of reference for those working in the field. Turenne has gone on to apply the insights gained in this research to the study of the courts of other systems, including the Court of Justice of the European Union (CJEU) [R3]. Turenne gained access to judges, Advocate Generals and *référéndaires*, notwithstanding the CJEU's reluctance to allow discussion of its internal workings. Turenne argued that a short tenure period and the permanent triennial renewal of judges under the control of Member States posed a concern for judicial independence. Now that the CJEU has jurisdiction in protecting the national courts' independence (Case C-64/16), Turenne has filled a gap in addressing the next issue - *Quis custodiet ipsos custodes?* Who guards the guardians?

In July 2016, prompted by concerns about the selection process for the English judiciary, Lord Burnett, then Interim Head of the Judicial Appointments Commission of England and Wales, commissioned Turenne to make recommendations on methods of selection for the offices of Recorder, Deputy District Judge and Deputy High Court Judge. Turenne completed a confidential report, which was based on extensive interviewing of judges, institutional stakeholders, and practitioners [R4].

2. Diversity and attractiveness of judicial appointments

The balance to be struck between diversity and merit in the process of judicial recruitment, retention and motivation poses issues of major strategic importance for the government and judiciary. In *Judges on Trial* [R2], in a context of a heated debate on diversity, Turenne argued that diversity and merit should remain distinct considerations in the appointment process. She also argued that, on both diversity and merit grounds, outstanding academic lawyers might be suitably deployed as judges at High Court and appellate level, including in the UK Supreme Court. This suggestion may have seemed radical at the time, but has since been acted on, with the appointment of an academic lawyer, Professor Andrew Burrows, to the Supreme Court, with effect from 2020.

In *Fair Reflection of Society* [R5], a work synthesising 21 national expert reports, Turenne showed that, beyond the composition of the highest courts (a long-standing focus of institutional design), a fair reflection of society in the judiciary would be achieved by procedures relating to the institutional structure of the judiciary as a whole. She also showed that factors such as the role of lay participants in selecting judges, and the style of judgments, should be taken into account when addressing the issue of judicial diversity and representativeness.

In October 2017, the SSRB commissioned Turenne and Professor John Bell to carry out research on why seemingly eligible and qualified candidates were not applying for salaried judicial posts. This research comprised interviews with 59 practitioners. Their report [R6] was the first systematic research to examine the reasons for eligible and qualified applicants not applying for a range of judicial posts, and the first to compare the attractions and downsides of a judicial appointment in England and Wales, Scotland, and Northern Ireland. It also showed how perceptions of the judicial role had changed within the legal community since 2008.

3. References to the research (indicative maximum of six references)

[R1] [Sophie Turenne et al., *OSCE-Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* \(2010\)](#)

[R2] Shimon Shetreet and Sophie Turenne, *Judges on Trial* (Cambridge: CUP, 2013) <https://doi.org/10.1017/CBO9781139005111>

[R3] Sophie Turenne, 'Institutional Constraints and Collegiality at the Court of Justice of the European Union: A Sense of belonging?' *Maastricht Journal of European and Comparative law* (2017) Vol. 24(4) 565-581. <https://doi.org/10.1177%2F1023263X17723813>

[R4] Sophie Turenne, Independent Review on Large Selection Exercises for the Judicial Appointments Commission of England and Wales (Confidential Report, University of Cambridge, 2016)

[R5] Sophie Turenne (editor), *Fair Reflection of Society in Judicial Systems: a Comparative Study* (Berlin: Springer, 2015) ISBN 978-3-319-18485-2

[R6] [Sophie Turenne and John Bell, *The Attractiveness of Judicial Appointments in the UK* \(Research report, University of Cambridge, 2018\)](#)

[R1, R4, R6] distil the research for a legal audience. [R2, R3, R5] were all peer reviewed. The items above therefore meet the 2* minimum requirement.

Project: *The Attractiveness of Judicial Appointments in the UK*. Sponsor: Senior Salaries Review Body, Budget: GBP40,855. Dates: 2017-18.

4. Details of the impact (indicative maximum 750 words)

Turenne's research on recruitment, retention and motivation of UK judges has had a tangible impact in advancing understanding of key issues among key policy makers and stakeholders. Her practice of substantiating scholarly research with stakeholders' interviews has enabled her to gain the trust of senior judges and practitioners. Key policy decision makers including the Senior Salaries Review Body and other parts of government, have relied on her work in reforming the process of judicial selection.

Turenne's research was the basis for recommendations she made to the Judicial Appointments Commission (JAC) in 2016, with a view to achieving greater fairness in and professionalisation of the judicial selection process. The JAC discussed Turenne's findings as part of internal strategic discussions in 2017. Recommendations which came into force after that process of consultation included i) introduction of a more rigorous framework for drafting selection tests; ii) putting in place a career development pathway with a specific selection track for current judicial office-holders (including a fast-track process for the Section 9(4) DHCJ exercise in 2017); iii) introduction of a co-ordinated approach to pre-appointment training and mentoring, with the 'Pre-Application Judicial Application' project launched in April 2018; iv) greater attention paid to forecasting needs and selection exercises, with a view to facilitating candidates' career planning. The Lord Chief Justice, Lord Burnett of Maldon, who was Interim Head of the JAC at the relevant time, writes in a testimonial that Dr. Turenne's research, and the related recommendations she made to the JAC in 2016, were 'extremely valuable'. His testimonial further notes that Dr. Turenne's recommendations on issues of career appraisal and flexibility were later taken forward under the remit of the Judicial Office, for which the Lord Chief Justice is responsible. Her research led to 'extensive work [being] undertaken to ensure that career development for judicial office holders is maximised, with particular improvements in appraisal, flexibility and mentorship. This has also incorporated an increased focus on developing the diversity of the judiciary and ensuring that judicial office holders are equipped with the necessary opportunities to develop their skills' ([S1]).

Impact on and through the SSRB

Further impact was achieved with the publication of the report by Turenne and Bell, *The Attractiveness of Judicial Appointments in the UK* [R6] in October 2018, along with the SSRB *Major Review of the Judicial Salary Structure* [S2]. The report resolved key questions over why legal practitioners at various levels were not applying for judicial posts, and suggested how to reverse the decline in applications from candidates with different legal specialism and those with care responsibilities. According to the testimonial provided by Sir Geoffrey Vos, Chancellor of the High Court, the Turenne-Bell Report provided 'the evidence needed to show that senior practitioners were genuinely less willing to apply for judicial appointment' [S3]. The Report's findings provided new knowledge and altered policy makers' perceptions: they 'were not quite as expected by the AEG', according to Sharon Witherspoon, Chair of the SSRB

Judicial Sub-Committee, also the Chair of the Advisory and Evidence Group (AEG) which was supporting the SSRB's work [S4]. Pay and pensions were shown to be an important factor in some cases, but they were not the only, nor a universal, deterrent to applications for judicial appointment. Vos, who was a member of the Senior Salaries Review Board at this time, reports that the SSRB was 'particularly grateful' that the report 'imposed some analytic ordering in their own view of the implications' of their findings, as it 'uncovered' various concerns about what it meant to be a judge, such as the fear of losing specialist knowledge upon appointment [S3]. Discussions subsequently took place with the Judicial Appointments Commission (which was represented on the AEG) and senior judges about taking more account of applicants' expertise and interests in decisions on the allocation of judges' caseloads [S1], and the need for more nuanced ways of measuring workload [S4].

According to the SSRB, the Turenne-Bell report 'demonstrated what national and regional issues needed to be addressed to rectify' the unwillingness of qualified candidates to come forward across 'different levels of the judiciary' [S4]. Evidence of procedural obstacles led to the JAC to change the timetable for applications. They also altered their approach to demonstrating competence with respect to judicial appointments, thereby emphasising that a merit-based approach remained a distinct and essential aspect of the appointment process, as Turenne's research had consistently recommended [R2]. In these respects, 'the agenda had been set by [the Turenne-Bell report]' [S3].

[R2] also 'informed [the SSRB's] recommendations in particular about why there were more significant recruitment issues for the higher judiciary' [S4], with the SSRB's recommending significant pay increases with a view to addressing recruitment needs with regards to the senior ranks [S3]. The Report also queried whether the judicial retirement age (70 years) was acting as a disincentive to judicial recruitment. 'As a direct result' a government consultation began on 16 July 2020 on whether the judicial retirement age should be increased, and the UK government is considering a reconsideration of the rule preventing judges returning to practice, in both cases as the Report suggested [S4].

Overall, 'the Report was, in effect, extremely influential in persuading the SSRB, and thence the Government, to deal with the serious questions that faced both judicial retention and recruitment...It improved the outcomes, in terms of remuneration and other issues, for the judiciary'[S4]. Findings and policy implications were further disseminated, with Turenne making presentations to key stakeholders including the JAC and Ministry of Justice representatives, senior judges and practitioners. Forty judges and practitioners attended a Chatham House seminar in March 2019 on the subject of judicial recruitment and remuneration. In two articles in January 2019, *The Times* described the 'research by Sophie Turenne and John Bell' as 'a stark illustration of how the work of a judge has lost its appeal, fuelling the present crisis in recruitment' [S5]. *The Times* cited the Lord Chancellor's response to Turenne & Bell's evidence, promising 'careful consideration to the issues that have been raised' [S5]. For *The Times*, 'The report, which was posted on the SSRB website, will fuel the case for higher salaries, improvements to pensions and more money generally into the courts system' [S5].

Impact in France and Italy

Turenne's wider research is leading to impact outside the UK. The OSCE has promoted the 2010 *OSCE-Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* in relation to countries including Poland. Turenne took part in the training of French judges between 2016 and 2019, at the invitation of the French School of the Judiciary. In October 2018 she was invited by the OECD to discuss, in a government roundtable, the likely benefits of court-based adjudication in state/investor disputes, as part of impetus to reform investment arbitration so as to align it more closely with core principles of judicial practice. In March 2019 she gave the keynote speech at a swearing-in ceremony of judicial office holders (London Inner South Coroners, Southwark). From 2019 she has been advising Italian academics based at the University of Milan on approaches to research on

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these issues, and conducting interviews with members of the Italian judiciary, with a view to completing a book project on judicial independence in Italy.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[S1] Testimonial from the Lord Chief Justice, Lord Burnett of Maldon

[S2] [SSRB Report](#) Cm 9716. See Executive Summary for key findings.

[S3] Testimonial from the Chancellor of the High Court

[S4] Testimonial from Chair of the Judicial Sub-Committee, Lead SSRB member for the SSRB Major Review of the Judicial Salary Structure.

[S5] Citations in the press: Two articles in *The Times online* (Ames and Gibb, 8 January 2019, 16 January 2019).