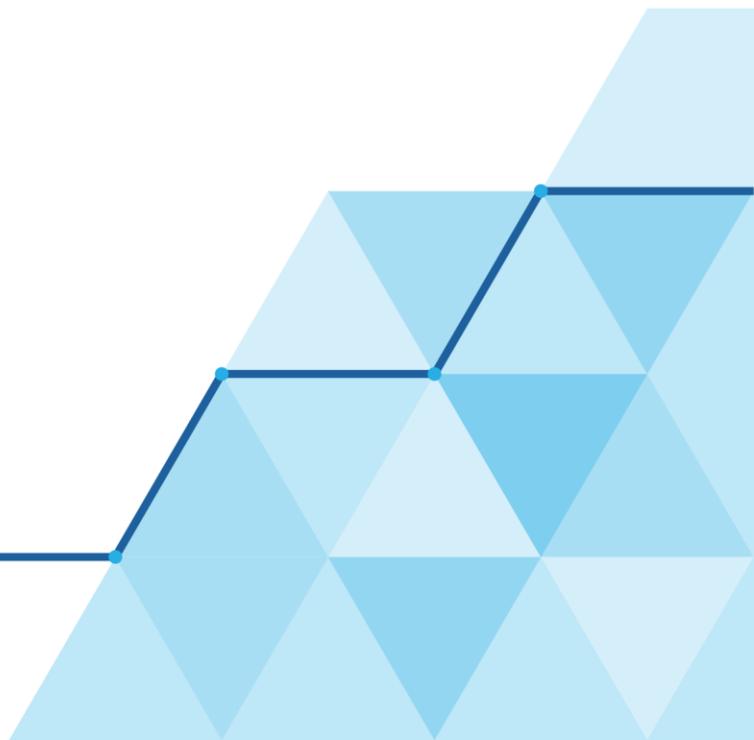




Ministry  
of Justice

# Ministry of Justice Evidence Pack: Judicial Pay 2022/23

23 February 2022



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# 1. Introduction

1. At Spending Review 2021, the Chancellor of the Exchequer announced that the public sector will see pay rises over the next three years as the recovery in the economy and labour market allows a return to a normal pay setting process.
2. The Lord Chancellor has commissioned the Senior Salaries Review Body (SSRB) to undertake the 2022/23 judicial pay review, this document constitutes the Ministry of Justice's (MoJ) evidence for this review.
3. The purpose of this document is to:
  - a. provide evidence on the Government's preferred approach to judicial pay for 2022/23.
  - b. set out the strategic context.
  - c. explain the financial position of the MoJ and Her Majesty's Courts and Tribunal Service (HMCTS).
  - d. provide a summary of the policy and operational changes affecting the judiciary since the last review was undertaken.
4. This document, and the associated 'Core Data Pack' (Annex A), includes evidence for all salaried judicial office holders in the courts and tribunals of the United Kingdom for whom the Lord Chancellor sets the rate of remuneration. Information has also been included from the Northern Ireland Courts and Tribunals Service about the work of the judiciary in Northern Ireland (Annex B).
5. MoJ has worked with Judicial Office, the Judicial Appointments Commission (JAC) and the payroll administrator (Liberata) to ensure the best data available is used in this document. There is no single, comprehensive data source encompassing all the data provided, and therefore differences between categorisation and collection criteria can give rise to discrepancies between data sets.

## 2. Background

6. Our UK judiciary is world-renowned because of its reputation for excellence, objectivity, and incorruptibility. Every day, judges take decisions which have a profound impact on people's lives: whether they are deciding care arrangements for vulnerable children, hearing serious criminal cases, giving citizens redress, or determining commercial cases of all scales. Our strong, independent judiciary is fundamental to maintaining the Rule of Law, the bedrock of our democracy, and has a key constitutional role as one of the three branches of the state.
7. The reputation of our judiciary also attracts international business to the UK, with foreign firms and individuals looking to our judges to hear their cases fairly and without favour. Legal services are a major contributor to the UK economy. The sector contributes over £22bn gross value added (GVA) to the economy and generates revenue of over £36bn<sup>1</sup>. Given the importance of a high-quality judiciary to our society and economy, it is vital that the very best talent from the legal professions is attracted to join the bench.

### Organisational Structure

8. The courts structure operates throughout England and Wales; the tribunals system covers England, Wales and in some cases Northern Ireland and Scotland (some tribunals in Wales, Scotland and Northern Ireland are devolved). Salaried judicial office holders are typically assigned to a regional location, but some office holders are assigned nationally, or to more than one region. We do not publish data on the regional location of tribunals judges, who are organised by chamber.

### Previous Reviews

9. In 2018, the SSRB's Major Review of the Judicial Salary Structure provided clear evidence of recruitment and retention problems within the judiciary, particularly in the High Court and Circuit Bench. The SSRB highlighted that changes to judicial pensions and pensions tax, and the period of public sector pay restraint following the banking crisis had made a judicial career less attractive compared to remaining in private practice and leading the judiciary to feeling undervalued by Government.
10. In 2019, in order to address the recruitment issues raised in the Major Review the Government committed to:

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<sup>1</sup> [The CityUK's report Legal Excellence, Internationally Renowned: UK Legal Services 2020](#)

To note: The actual figures quoted in the report are £22.2bn and £36.8bn. We are quoting 'more than £22bn' and 'over £35bn' to cover the regular revisions made to the figures. GVA is the value of the amount of goods and services that have been produced in a country, minus the cost of all inputs and raw materials attributable to that production.

- a. deliver a sustainable, long-term pension reform for the whole judiciary, which subject to successful passage of legislation, will lead to implementation of a new judicial pension scheme in April 2022.
  - b. introduce a new short-term Recruitment and Retention Allowance (RRA) to target the most acute recruitment problems until a long-term solution could be put in place.
11. The last judicial pay review completed by the SSRB was for 2020/21. The Government was able to implement all the SSRB's recommendations including:
  - a. a 2% pay award for all judicial office holders
  - b. a new salary group placement for Upper Tribunal Judges and the Senior Masters
  - c. introduction of a leadership allowance for Circuit Judges in leadership positions.
12. The SSRB made the 2% pay recommendation on the basis that the Government would deliver on its commitment to implement pension reforms, and that without such reforms a more significant pay increase would be required.
13. In November 2020, the Chancellor of the Exchequer announced a public sector pay freeze for 2021/22, with the exception of the NHS, in response to the unprecedented economic pressures brought about by the Government's response to the Covid-19 pandemic. As a result of this, the MoJ did not commission the SSRB to provide recommendations on judicial pay for 2021/22. The MoJ did provide an update on the implementation of the 2020/21 pay round recommendations and an update on recruitment and retention to the SSRB.

## **Judicial Attitudes Survey**

14. The Judicial Attitudes survey is designed, administered and analysed for the Judiciary by Professor Cheryl Thomas, Co-Director of the University College London Judicial Institute and covers salaried judges. It was last completed in 2020 and the public report published in February 2021. The results from this survey showed an increase across all judicial posts in the proportion of judges who feel that they are paid a reasonable salary for the work they do. Now a majority or close to a majority of judges in all judicial posts, with the exception of Circuit Judges and District Judges, say they are paid a reasonable salary for the work they do. There is a significant difference in the response from First Tier Tribunal Judges and District Judges to this question, both in Salary Group 7.
15. The survey also showed that two-thirds of all salaried judges feel that their pay and pension entitlement combined does not adequately reflect the work they have done and will do before retirement; this is an improvement since 2016 and predates the Government's consultation on pension reform setting out the detail of the new scheme.

## 3. Strategic Context

16. This section sets out the impact of recent and ongoing reforms on the courts and tribunals system and the role of judicial office holders.

### Post-pandemic Court Recovery

17. The enormous efforts of the judiciary and courts staff have kept justice moving in the face of an unprecedented pandemic, and we will continue to ensure the courts and tribunals system can recover from this.
18. We invested a quarter of a billion pounds to support recovery in the last financial year. As part of the Spending Review, we announced that we will be investing £477 million in the Criminal Justice System over the next three years to help reduce the backlog and deliver the swift access to justice that victims deserve. This year we will also provide over £150 million for support services for victims and witnesses.
19. We have extended 32 Crown Nightingale courtrooms until the end of March 2022, removed the limit on the number of days the Crown Court can sit this year, and our rapid roll out of video technology enabled up to 20,000 cases to be heard virtually each week at the height of the pandemic. These measures are already working. The caseload in the Crown Court has stabilised at around 60,000 cases and we are seeing early signs that it has fallen slightly from this level over the last few months.
20. The Magistrates' Court is close to recovering to pre-pandemic levels. The data shows that the caseload has fallen from 445,000 in July 2020 to 373,000 in November 2021 – a reduction of 16%.
21. We are taking every action to drive forward recovery in the civil courts. We have made greater use of fee-paid judges and have rolled out technology to allow hearings to take place remotely. Volumes of final hearings increased from around half of pre-Covid levels in June 2020 to around 80% in May 2021. We are continuing to work closely with the senior judiciary and our partners across the system to improve waiting times for cases.
22. In the family court, we sat to our highest ever level in 2020 – 54,830 days in public law and 71,832 days in private law. This is 9% higher than we sat in 2019 for public law and 5% higher than we sat in 2019 for private law.
23. For most of our tribunals, the outstanding caseload is either static or already beginning to reduce. Despite the enormous challenges they have faced, judges in the employment tribunals have succeeded in returning to pre-Covid hearing levels. In the Immigration and Asylum chamber, judges have adapted to conducting hearings remotely and HMCTS has brought forward implementation of the reformed service for immigration appeals to ensure cases can be processed as swiftly as possible.

24. We continue to work closely with the judiciary to tackle the outstanding caseloads and improve waiting times across the justice system.
25. Annex E provides information on the number of cases received and disposed in courts and tribunals.

## **HMCTS Reform**

26. In 2016, the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals released a joint statement regarding the future of HMCTS, announcing an investment of over £1.3 billion in the courts and tribunals system. Court reform is bringing new technology and modern ways of working to the justice system, for the benefit of everyone who uses it.
27. For the judiciary, reform means operating in a modernised court system, using updated and upgraded IT systems, and with revised procedures to ensure judges have the time to conduct the key role of hearing cases, rather than seeing to administrative tasks or dealing with cases that need not be before them. Eight new services have already been delivered, and the remainder are expected to come live in the next 18 months and so judges will begin to see these benefits.

## **Modern Working Practices**

28. The judiciary operates within a complex and changing justice system, and collectively the judiciary itself continues to evolve and adapt to reflect modern working practices. The independence of the judiciary however means that many of these functions are not for the Government but the judiciary themselves to lead on. The SSRB's 2018 Major Review of the Judicial Salary Structure found that "over the last ten years, there have been significant changes to the roles that judges perform and the environment in which they work" which "require very high workforce management skills, in the widest sense".
29. Consequently, judicial HR resources have been increased to be able to provide greater support to the senior judiciary in leading a range of measures. For instance, strengthened strategy and policy capability, increased welfare services and diversity and inclusion resource. Work has also been undertaken to ensure that all judicial office holders have clear and agreed job descriptions, ensuring consistency and clarity about expectations and responsibilities to support appraisals (for fee-paid judges) and career discussions (for salaried judges).
30. The Judicial College is revising its training programmes for all leadership judges to ensure judicial leadership is highly professional and effective.

## **Judicial Policies Review**

31. It has been noticeable in recent years that we have faced challenges in recruiting sufficient numbers of salaried judges, particularly in the courts, whilst at the same time, recruitment

to fee-paid judicial office has seen relatively consistent outcomes against vacancy requests, and for some offices (Recorder, Deputy District Judge, fee-paid FtT and Employment Judges), more appointable candidates have been identified than were originally sought. We are undertaking a Judicial Policies Review to consider a range of issues to identify the reasons for shortfalls in salaried judge vacancies and whether there are policy changes that might address them.

32. This includes a review of judicial terms & conditions (T&Cs), which will be crucial to paving the way for more consistent sets of T&Cs that are more transparent and equitable across the judiciary. Currently, there is a varying level of detail given for key terms within the T&Cs that often does not reflect modern practice and are different for judges in the same judicial salary group.
33. The review is also considering how changing T&Cs can support the Lord Chancellor's, the Lord Chief Justice's and the Senior President of Tribunals' ambition to create greater cohesion between courts and tribunals. The long-term objective is a unified judiciary which will support greater deployment flexibility between courts and tribunals as well as between the jurisdictions/chambers within the courts and tribunals respectively. This would improve judicial career development opportunities and resourcing flexibility to better respond to changes in demand and supply.

## **Non-Legal Members in Tribunals**

34. The SSRB's Major Review of the Judicial Salary Structure, published in 2018 recommended increasing the salary of Salaried (Regional) Medical Members sitting in the Social Entitlement Chamber by 20%. However, in line with usual practice, exclusively fee-paid NLMs were outside the scope of the SSRB's annual review. In response to the recommendation the Government indicated that it would review the remuneration for medical members through a wider review of NLM sitting fees.
35. Fees for NLMs have not been reviewed since 2008, before the tribunals were brought into the unified courts and tribunals service in 2010. While remuneration for salaried and fee-paid judges in the tribunals was aligned with the courts' judiciary, the fees paid to NLMs were not. As a result, in contrast to legal members of tribunals, there is a wide range of daily sitting fee rates paid to NLMs, from £195 for Employment Tribunal lay members to £508 for a medical member in the Mental Health Tribunal.
36. In February 2021 the Lord Chancellor commissioned the SSRB to undertake a review of fees for NLMs. The SSRB is expected to report in 2022.

## 4. Financial Context

37. HM Treasury (HMT) have set out the economic, labour market and fiscal context within which the independent pay review bodies are asked to consider their recommendations for 2022/23 pay awards.
38. The Ministry of Justice's SR21 settlement provides a £3.2bn cash increase over the Parliament to £11.5bn in 2024-25, which is equivalent to a real-terms growth rate of 3.3% per year on average over the SR21 period. This funding will ensure that the justice system is equipped to respond to the impact of COVID-19 and to rising demand over the next three years and will continue transformational reform programmes to make justice more efficient and effective.
39. This is the first full multi-year Spending Review since 2015 and provides MoJ with the certainty to plan for the longer-term and make the changes that will improve our justice system for all and deliver against the government's priorities.
40. We are currently going through our internal allocations process where we will take decisions of where to prioritise resources in the wider context of departmental and governmental affordability. Whilst SR21 was a positive settlement for the department, this comes against the backdrop of increased activity due to rising demand across the system and the impacts of the pandemic, and therefore the financial position across the period will still be challenging and clear prioritisation will be required.
41. However, to provide a flavour of some elements of the settlement, Treasury have agreed funding to:
  - a. Increase capacity across courts, prisons and probation to manage the demand from the recruitment of 20,000 additional police officers. There is also significant investment to continue recovery from Covid-19 across all of our courts, to tackle the backlogs and improve timeliness.
  - b. Complete the Court Reform programme by the end of 2023 to reshape the justice system around the needs of all those who use it by simplifying and streamlining our processes.
  - c. Continue our prison building programme, with the aim to build 20,000 new places by the mid-2020s.
  - d. Meet the outcomes of our various legal aid reviews, to ensure the legal aid system meets the need of its users moving forward.
  - e. Bolster support for victims of crime by increasing annual funding for victim support services with an uplift of 85% from 2019-20.

- f. Invest in tackling the root causes of reoffending with a range of innovative new programmes over the next three years. This includes longer-term funding for the new unified probation service, and to expand the use of GPS and alcohol monitoring tags – a key part of the Government’s plan to tackle crime.

## Judicial Pay Costs

42. Judicial remuneration amounted to £573.6 million in 2020/21. The requirement is expected to rise to approximately £582 million in 2021/22 due to the changes in workload across a number of jurisdictions and an increase in the employer’s contribution rate as a result of pension reforms. Of these judicial costs, 68% relate to salaried judiciary and the remaining 32% to fee-paid judiciary for specific sitting days and other commitments such as training and statement writing.
43. Judicial pay is met from the Consolidated Fund (in the case of Circuit Judges and above, and for the District Judge (Magistrates Court)) and the HMCTS budget (in other cases). All judicial remuneration is included in HMCTS accounts for reasons of transparency.
44. Table 1 below provides a breakdown of judicial pay costs.

**Table 1: Total judicial pay costs for 2019/20 and 2020/21<sup>2</sup>**

	2020-21				2019-20			
	Senior judiciary £000	Other judiciary £000	Fee paid £000	Total £000	Senior judiciary £000	Other judiciary £000	Fee paid £000	Total £000
Wages and salaries	139,228	114,081	107,460	360,769	135,178	114,384	127,013	376,575
Social security costs	18,565	14,737	10,771	44,073	18,208	14,734	13,012	45,954
Employer’s pensions contribution	69,386	56,383	43,074	168,843	68,001	51,609	44,558	164,168
<b>Total payroll costs of the judiciary</b>	<b>227,179</b>	<b>185,201</b>	<b>161,305</b>	<b>573,685</b>	<b>221,387</b>	<b>180,727</b>	<b>184,583</b>	<b>586,697</b>

<sup>2</sup> HMCTS Annual Report and Accounts

## 5. Judicial Remuneration

45. This section provides a summary of the key elements of judicial remuneration, reward and benefits.

### Pay

46. The Lord Chancellor has the power, under the relevant legislation, to pay salaries to judges in England and Wales. There are a number of posts in Scotland and Northern Ireland where the Lord Chancellor sets the rate of remuneration. Judicial offices are assigned to a salary group in the judicial salary structure. A link to the judicial salary schedules can be found at Annex F.
47. The pay of those in the judicial remit group is not subject to incremental progression, and judges are paid at a spot rate determined by the salary group in which their judicial office is situated. No aspect of judicial pay or judges' overall remuneration package is performance related. A small number of judicial office holders receive a different salary to others in their salary group due to transitional arrangements or legacy pay arrangements (which cease once the individual judicial office holder leaves office).
48. Under statute, a judicial office holder cannot have their salary reduced<sup>3</sup>. This makes it particularly important for any changes to judicial pay or salary groupings to be well-evidenced, since they cannot subsequently be reversed.
49. Salaried judges are unique in public service in that they are unable to return to private practice after becoming judges. Entering salaried judicial office is, in effect, a 'one-way street'. As the SSRB have previously noted, this convention has compounded the negative impact that previous pension changes had on judicial remuneration and, by extension, on judicial morale. Annex D provides a comparison with pre-appointment salaries.

### Recent Pay Awards

50. In the 2018 Major Review, the SSRB recommended a 2.5% pay award for 2018/19 for all judges in the event the Government was unable to immediately implement the Major Review recommendations. Given the need to carefully consider the findings in the Major Review, in October 2018 the then Lord Chancellor announced a pay award for the entire judiciary of 2%, backdated to 1 April 2018.
51. Due to the ongoing Major Review at the time, the SSRB was not commissioned to undertake an annual pay review for 2019/20. The Government considered the evidence

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<sup>3</sup> The statutory provision only applies to courts judiciary, but, for reasons of the constitutional importance of judicial independence, we equally apply this to the tribunal judiciary.

and findings from the Major Review in its decision to award a 2% pay award to all judicial office holders for 2019/20. This increase was announced in June 2019 and backdated to 1 April 2019.

52. For 2020/21, the MoJ commissioned the SSRB to undertake an annual review of judicial pay. This reported in June 2020, and a pay award of 2% was implemented in August 2020, backdated to 1 April 2020.
53. In November 2020, the Chancellor of the Exchequer announced a public sector pay freeze for 2021/22 as a result of the economic pressures brought about by the Covid-19 pandemic. Consequently, there was no judicial pay award for 2021/22.
54. Table 2 below provides details of previous pay awards and Consumer Price Index (CPI) at the time.

**Table 2: Level of annual judicial pay award and CPI from 2015/16 to 2019/20<sup>4</sup>**

Year	Pay award	CPI in year leading up to pay award (Annual CPI)
2021/22	0%	1.8%*
2020/21	2%	0.9%
2019/20	2%	1.8%
2018/19	2%	2.5%
2017/18	1%	2.7%
2016/17	1%	0.7%
2015/16	1%	0.0%

\*Note: 2021/22 CPI figure calculated as the Q1 to Q3 average.

## Allowances

55. The Lord Chancellor has the statutory power to determine allowances to most, but not all, JOHs for whom he has the power to determine remuneration. Legislation is progressing through Parliament which will address this and provide a statutory basis for the determination of allowances to all other offices, including Senior Masters and District Judges.

<sup>4</sup> Source for CPI: <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23> and <https://www.statista.com/statistics/306648/inflation-rate-consumer-price-index-cpi-united-kingdom-uk/>

56. With statutory pay protection provided to judicial salaries, allowances enable a more flexible way to reward judicial office holders. It is not possible within the current legal framework to pay an allowance for core judicial work (i.e. hearing cases), so allowances are used to recognise additional leadership responsibilities or address recruitment and retention issues. The allowances currently paid are:

### **Recruitment and Retention Allowance (RRA)**

57. To help address recruitment issues highlighted in the Major Review the Government implemented a new RRA (for High Court Judges this replaced the previous scheme of an 11% allowance). Judges eligible for the Judicial Pension Scheme 2015 who held a qualifying office (Annex B of the Government's Response to the Major Review<sup>5</sup>) received a taxable, non-pensionable and non-consolidated allowance. The RRA was at 25% of salary for High Court Judges (and those above them in the judicial hierarchy) and 15% of salary for Circuit and Upper Tribunal Judges.
58. The RRA was implemented on a temporary basis until a long-term pensions solution could be implemented. Once the impact of the *McCloud* judgment became clear, a decision was taken in March 2020 to stop paying the RRA to judges who would benefit from the *McCloud* remedy. Likewise, following HMT changes to pensions tax rules in the March 2020 Budget, the RRA was removed from CJ and UTJ.
59. The payroll administrators' records showed that as of 31 March 2021 there were 19 office holders in receipt of the 25% RRA, all at High Court level. These judges will no longer receive this once the new pension scheme is in place from 1 April 2022.

### **London Weighting Allowance (LWA)**

60. A London Weighting Allowance of £4000 per annum, made up of a £2000 salary lead and an additional London allowance of £2000 is paid to judges in salary groups 7 whose principal court or hearing centre is based in London.

### **Leadership Allowance**

61. The Major Review highlighted the issue of unrewarded leadership in the judiciary. The majority of leadership roles are in a higher salary group than the judges they lead, this is to recognise the extra leadership component of the role. In the courts however, there are key leadership posts of Designated Family Judge, Designated Civil Judge, Resident Judge and Senior Judge in the Court of Protection. These posts are sometimes held by a Senior Circuit Judge and where that is the case, are rewarded through salary. Frequently, this post is held by a Circuit Judge, providing leadership to a court or region, and this work was carried out without any further reward. In October 2020, the Leadership Allowance was introduced, to reward judges who take on these vital local leadership roles. The allowance is taxable but non-pensionable and is payable for as long as the role is being conducted. The allowance is set at 4% of the salary.

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<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/806480/government-response-ssrb-june-2019.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806480/government-response-ssrb-june-2019.PDF)

## Judicial Pensions

### Core pensions

62. Pensions form a significant part of the remuneration package for the judiciary. The Government's commitment to implement judicial pension reform forms a major part of addressing recruitment issues in the judiciary by making judicial careers more attractive.
63. Annex C provides details of the existing judicial pension schemes including contribution rates.

### The Reformed Scheme (JPS 2022)

64. In our response to the SSRB's 2018 Major Review, we indicated that we would seek to reform the judicial pension scheme. As a result, we consulted<sup>6</sup> on draft regulations for a reformed Judicial Pension Scheme 2022 (JPS 2022), which provides significant improvements on the previous scheme. All judges will be moved to this new scheme, which is due to commence on 1 April 2022, subject to the Public Service Pensions and Judicial Offices Bill receiving Royal Assent and approval of the JPS 2022 regulations by Parliament.
65. The judiciary have a unique constitutional role. After taking up office, salaried judges cannot return to private practice. Therefore, the value of their pensions is of particular significance. The proposed approach to judicial pension reform offers a long-term solution to the recruitment and retention issues by providing a remuneration package which is both fair to the taxpayer and attractive to potential candidates for judicial office.
66. The reformed scheme's key features are intended to be more generous for judges than the 2015 Judicial Pension Scheme, balancing the need to be fair with the need to be affordable in the long term. It will have the following features:
- a. Tax-unregistered, where pensions accrued will not count either towards annual or lifetime allowances.
  - b. No service cap, where, unlike some previous schemes, there will no longer be a 20-year service cap for members.
  - c. Defined benefit, career average scheme.
  - d. Annual accrual rate of 2.5% of pensionable earnings.
  - e. A uniform contribution rate of 4.26% of pensionable earnings.
  - f. Linked to the state pension age.
67. Table 3 below shows how the reformed scheme compares to the previous judicial schemes.

### Table 3: Comparison of judicial pension scheme

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<sup>6</sup> <https://www.gov.uk/government/consultations/judicial-pension-scheme-2022-scheme-regulations>

	<b>Fee-Paid Judicial Pension Scheme FPJPS</b>	<b>Judicial Pensions and Retirement Act 1993 Scheme JUPRA</b>	<b>New Judicial Pension Scheme 2015 NJPS or JPS 15</b>	<b>Judicial Pension Scheme 2022 JPS 2022</b>
<b>Membership</b>	Fee-paid judges	Salaried judges	Salaried & fee-paid	Salaried & fee-paid
<b>Defined benefit category</b>	Final salary	Final salary	Career-average	Career-average
<b>Service cap</b>	20-year reckonable service cap		No cap	No cap
<b>Tax status</b>	Unregistered	Unregistered	Registered	Unregistered

68. JPS 2022 returns judges to a tax-unregistered pension scheme, which is the position they were in in JUPRA. This means that benefits accrued under the scheme will not count towards either the individual's annual allowance or the lifetime allowance. This particularly benefits judges who may currently be subject to annual allowance charges or those who may be near or have reached their lifetime allowance<sup>7</sup>.
69. For example, under NJPS, a tax-registered scheme, members are subject to the annual allowance. If the growth in pension savings over the tax year is more than the annual allowance, members might have to pay a tax charge.
70. When judges move to JPS 2022 the annual allowance does not apply to the benefits accrued in this scheme. Previous benefits accrued in NJPS, alongside any other tax-registered pensions, count towards the individual's lifetime allowance. These benefits include lump sums and retirement income. Other features of JPS 2022 flow from this tax-unregistered status - including the member contribution rate and commutation supplement.
71. Member contributions in a tax-unregistered scheme do not receive tax-relief. Therefore, the contribution rate in JPS 2022 has been set at a lower rate, to ensure members pay roughly the same contribution rates to the scheme, net of tax, compared to NJPS. The contribution rate for JPS 2022 is a uniform contribution rate of 4.26%. This is different to JUPRA, FPJPS and NJPS which have tiered contribution rates where what a member pays depends on how much they earn.
72. Recognising that the uniform contribution rate will result in salary group 7 judges taking a reduction in take home pay, we are giving members of JPS 2022 the option to make reduced contributions (3%) to the scheme in return for a commensurate reduction in the

<sup>7</sup> The current annual allowance limit is £40,000, or lower for higher earners, and the lifetime allowance limit is £1,073,100.

accrual rate (2.42% rather than 2.5%). This option will last for a fixed period of three years, after which judges who have taken the option will move to the uniform contribution rate. Providing this option allows judges to adjust to the new contribution rate, particularly where some members would see an initial reduction in their take home pay when they move to JPS 2022.

73. The Government Actuary's Department (GAD) estimate the cost of JPS 2022 to be 37.2% of judicial payroll in terms of employer contributions in 2024/25. Based on a projected payroll of £380 million per year, this would equate to £141m per year. This amounts to an increase of 9.3% compared to if they stayed in NJPS, or around £35m per year. This is a sizeable investment in the judiciary and the costs will be borne by MoJ.<sup>8</sup>
74. JPS 2022 will benefit judges from every salary group. For example:
- a. A District Judge (Salary Group 7), working for 20 years, would have an annual pension of just over £40,000 if they were to stay in NJPS for that time. By comparison, their annual pension under JPS 2022, would be over £56,000 if they were to stay in the scheme for that time.
  - b. A Circuit Judge (Salary Group 5.2), working for 15 years, would have an annual pension of just over £35,000 if they were to stay in NJPS for that time. By comparison, their annual pension under JPS 2022, would be over £52,000 if they were to stay in the scheme for that time.
  - c. A High Court Judge (Salary Group 4), working for 15 years, would have an annual pension of over £42,000 if they were to stay in NJPS for that time. By comparison, their annual pension under JPS 2022, would be over £70,000 if they were to stay in the scheme for that time.
75. A detailed analysis of the benefits for judges in each salary group which has been produced in collaboration with GAD is in Annex G. We have communicated these changes to the judiciary and have received positive feedback from judges. We will continue to communicate with judges the features and benefits through a series of webinars, newsletters and letters to eligible members. We anticipate that these pension changes will go a significant way to addressing the issues highlighted by the SSRB in their 2018 Major Review.

### **Response to McCloud judgment**

76. In the *McCloud* case the Court of Appeal held, in December 2018, that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination.
77. Since that decision in the *McCloud* litigation, we have been working with HMT to address discrimination for those affected by the Court of Appeal's judgment.

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<sup>8</sup> The estimate that the cost of JPS 2022 will be £35m (9.3%) per annum higher than the annual cost of NJPS refers to *only* the cost of JPS 2022 benefits for currently serving judges in 2024/25. The 'true' employer contribution rate will be higher, as it would also include McCloud and O'Brien costs relating to pre-2022 service.

78. Judges in scope of the *McCloud* remedy will be given the choice of returning to their legacy pension scheme (JUPRA or FPJPS) for the remedy period from 1 April 2015 to 31 March 2022 or remaining in JPS15. It is expected that an options exercise will run during 2023.

## **Other Reward**

79. Judges are entitled to travel and subsistence costs for travel relating to official judicial business. Where an overnight stay is necessary, judges can claim for the cost of a hotel, as well as a subsistence allowance and a small amount for personal incidental expenditure.
80. Salaried judges are entitled to reimbursement of relocation costs where they have relocated beyond reasonable travelling distance due to business need or transfer to another circuit. Judges whose new location is within daily travelling distance may be entitled to an excess fares allowance.
81. Judicial Lodgings are provided for use by the senior judiciary, principally High Court Judges and the Court of Appeal, when sitting on Circuit. Judges staying at Judicial Lodgings are also entitled to a weekly lodgings allowance designed to cover meals and newspapers.
82. Judicial office holders are entitled to maternity, paternity, shared parental or adoption leave, compassionate leave, sick leave, and free eyecare vouchers. Judges have access to a cycle to work scheme, salary-sacrifice childcare vouchers, official stationery, and are entitled to receive court dress on appointment.

## 6. Recruitment and Retention

83. In order to ensure the effective administration of justice it is essential that we are able to attract and retain the individuals with the right level of knowledge, skills and experience to take up a judicial career.

### Recruitment

84. We continue to closely monitor recruitment into and retention of the judiciary. The positions of most concern at the Major Review, at the High Court and Circuit tiers seem to be improving, or at least, holding steady in terms of % shortfalls, rather than continuing to decline. There hasn't been sufficient recruitment yet to establish whether the introduction of the Public Sector Pensions and Judicial Offices Bill has affected applicant numbers. We have anecdotal evidence that the strength of the Government's commitment to reform pensions and bringing forward the Bill has had some positive impact on prospective High Court candidates. Recruitment to the District bench is an area of current concern.
85. The collaborative work between the MoJ, the judiciary and the JAC to address recruitment issues has produced positive results for some offices. This includes a greater focus on having a regular, rolling programme of exercises for the key offices and to ensure the pool of fee paid offices, where significant gaps had arisen as a result of limited recruitment undertaken for a few years before 2017, has been replenished. We have also improved supply and demand forecasting to better plan the recruitment programme.
86. On the recruitment issue at the salaried District Bench, it would be helpful for the SSRB to provide any observations on the extent to which the particular recruitment and retention problems apply solely to the salaried District Bench. It would also be helpful to understand whether the pay position is the cause of these recruitment issues, or if other factors have an impact.
87. The recruitment and retention of the highest calibre of judicial office holders is essential for the continuing excellence of the UK legal sector and our well-respected justice system. The recruitment pool for the judiciary is made up of an expert, and often highly-paid, group of individuals. In order to attract these individuals to take up office in the salaried judiciary it is clear that they must see an attractive remuneration package, coupled with good working conditions, attractive terms and conditions, and a manageable workload. We hope that the pay proposals set out in this evidence pack will help to boost the attractiveness of a career as a salaried member of the judiciary.
88. A high volume of judicial recruitment has continued since 2019/20, with the current 2021/22 judicial recruitment programme being for around 1,100 vacancies. This level of recruitment will continue into 2022/23. This is due to a combination of anticipated retirements and promotions; recruitment shortfalls in some key exercises recent years; our

continuing work to address the backlog of recruitment stemming from a period before 2017 when only limited recruitment was carried out; and to support court recovery from Covid-19.

89. Judicial recruitment was able to continue throughout the Covid-19 pandemic, with the only significant delays to the recruitment of medical members. This was achieved by JAC adjusting its selection processes to ensure that they could be carried out entirely remotely whilst restrictions were in place. In 2021, the JAC was able to return to face-to-face selection days for salaried offices as well as the office of Deputy High Court Judge, although in light of new guidance introduced by the government effective from 13 December 2021, they have temporarily returned to conducting remote selection days for salaried exercises and will continue to run all other selection activity remotely. Due to higher levels of candidate satisfaction, the JAC has indicated it will retain remote selection days for most fee-paid offices until November 2022, when it will review feedback / processes.
90. To maximise the volume of recruitment within the overall system capacity, a number of actions have been taken. This includes keeping under review the volume and frequency of each of the exercises within the 'rolling programme' to even-out the numbers recruited over two financial years; and including capacity in the annual programmes for the JAC to run 12 small (for up to five vacancies) exercises or single leadership exercises so that these positions can be filled promptly.
91. Recruitment needs are determined with reference to the supply and demand model that enables us to consider judicial recruitment needs over the coming years. The modelling takes account of trends in judicial departures (retirements, promotions and other exits) and changes to demand (as measured by sitting days) arising from the court reform programme and other government departments' known policy changes, such as the increase in criminal cases as a result of the recruitment of an extra 20,000 police and as changes to UK borders policy that may impact on demand in the IAC. Changes to supply factors are also considered, such as the proposed increase to the judicial mandatory retirement age from 70 to 75 (subject to the legislation getting royal assent in 2022). Our longer-term planning remains necessarily dynamic as it needs to react to significant changes, such as continued demand within the Crown Court. In addition, annual planning draws on jurisdictional and local intelligence as the supply and demand forecasting does not yet take account of geographical variations.
92. Despite the steps taken by all partners, delivering a recruitment programme of the current scale has consequences for the length of time it takes from recruitment approval to judges commencing sitting. This is a result of both large volume exercises have a longer end-to-end timeline, including matching candidates to geographical jurisdictions, and for undertaking required induction training and sitting-in; and the number of different exercises which have to be scheduled to be delivered efficiently within the JAC's and JO's resources.

93. The accompanying Core Data Pack (Annex A) contains the available detailed data on recruitment, with additional information being provided directly by the JAC in their evidence.

## **Retention**

94. Judicial Office data shows that 53 salaried judicial office holders in England and Wales left the judiciary in 2021/21. Of these c95% were for the reason of retirement. The average age of retirement was 68.5 for salaried courts judges and 66.1 for salaried tribunals judges.
95. Further data on judicial retirements, including trends since 2016-17, is provided in the accompanying core data pack, this includes data on the movement between salary groupings, promotions, movement between fee-paid to salaried roles.

### **Mandatory Retirement Age**

96. Unlike most occupations the judiciary is unusual in that there is a mandatory retirement age (MRA), which is 70 for most judges, as set by the Judicial Pensions and Retirement Act 1993 and the Courts Act 2003. A small number of judges currently have higher 'preserved' MRAs as they were appointed before 1995. Where it is in the public interest, judges below the High Court can have their appointment extended annually up to a maximum of 75 with the agreement of the senior judiciary and the Lord Chancellor.
97. Given that most individuals leaving the judiciary do so for reasons of retirement, it is expected that increasing the MRA will retain judges for longer and may increase the attractiveness of judicial appointments (for example by enabling senior advocates to apply for judicial positions later in their legal careers). We do not have evidence yet of the possible positive impact of the MRA by jurisdiction.
98. Following a public consultation in 2020, in March 2021, the Government confirmed its plans to raise the MRA from 70 to 75. The Public Service Pensions and Judicial Offices Bill was introduced to the House of Lords on 19 July 2021 includes provisions to set the MRA of all judicial office holders at 75. Subject to parliamentary passage, the new MRA will come into effect immediately upon Royal Assent to the Bill, currently anticipated to be early March 2022.
99. Concerns have been raised around the impacts on the diversity of the judiciary by extending the MRA, as office holders remaining longer in post might limit opportunities for progression for younger, more diverse, cohorts. These concerns were particularly expressed in relation to the effect on the diversity of the senior judiciary in Bill debates in the House of Lords, although in November, an amendment to make the MRA 72, supported by some recently retired former senior judges, was defeated.

### **Sitting in Retirement**

100. Sitting in retirement (SIR) is the current policy that permits salaried judges to retire from a salaried office, draw their judicial pension and at their request or the request of the

business, be appointed to a fee-paid office, without a JAC competition. This then allows them to draw their salaried pension whilst continuing to sit as a fee-paid judge.

101. At present, fee-paid judges are not able to sit in retirement mainly due to fee-paid offices not being included in the relevant legislation that allows salaried judges to sit in retirement and the operation of some current judicial pension schemes. The MoJ accepted this constituted unjustified discriminatory treatment under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). In the Government response to the judicial mandatory retirement age consultation, MoJ confirmed it would remedy this discrimination.
102. The differential treatment is being corrected by provisions within the Public Service Pensions and Judicial Offices Bill. The Bill creates new 'sitting in retirement' offices as well as a new appointment power to these offices. The statutory provisions will be underpinned by a new non-statutory policy covering matters such as assessment of business need, the requirement to retire and a time limit for returning to sit in retirement and also be supported by new, bespoke terms of appointment created for sitting in retirement.
103. In addition, the new Judicial Pensions Regulations 2022, which introduce the Judicial Pension Scheme 2022, will provide for certain new 'sitting in retirement' offices to accrue a judicial pension in the new Judicial Pension Scheme 2022. As the ability to draw pre-retirement pension will be in line with the rules of the scheme in which the pension benefit was accrued, the Regulations will also make some minor amendments to the Judicial Pensions Regulations 2015, to ensure the operability of the policy.
104. Sitting in retirement offices which do not accrue a judicial pension may be able to accrue pension in respect of their sitting in retirement service in the National Employment Savings Trust (NEST) auto-enrolment scheme.
105. Subject to parliamentary timings, it is anticipated that the new SIR policy will come into effect in 2022 but timings are to be confirmed, subject to confirming matters such as the arrangements for existing judges to transfer to the new SIR offices.

## 7. Judicial Diversity

106. The Lord Chancellor is committed to driving and supporting efforts to improve the diversity of the judiciary. The MoJ continues to work closely with the members of the Judicial Diversity Forum (JDF), which includes the judiciary, the JAC, the legal professions and the Legal Services Board. The Forum provides strategic direction in the areas of; challenging structural barriers to appointment; analysing and addressing the reasons behind differential progression; the gathering and use of data and evidence; resolving issues of common concern and the coordination of agreed activities aimed at encouraging greater judicial diversity.
107. We have funded the Pre-Application Judicial Education programme (PAJE) since April 2019, which supports eligible lawyers from under-represented groups to apply for judicial roles, including women, Black, Asian and minority ethnic lawyers, lawyers with disabilities, and/or solicitors and chartered legal executives (both with litigation and non-litigation experience) and those from a non-litigation background. The programme provides online resources and virtual judge-facilitated discussion group courses. Since the launch of discussion group courses in September 2019, 525 places have been allocated to support lawyers from under-represented groups. We have committed further funding and JDF members have agreed to support the extension of the programme beyond 2021, to expand its reach further to support over 200 applicants a year.
108. For the first time in September 2020, data from across the judiciary, the JAC and the relevant legal professions (The Bar Council, The Law Society and CILEX Regulation Limited) was brought together in a comprehensive statistical report titled 'Diversity of the Judiciary 2020' to drive better insights into the challenges we face on addressing diversity in the judiciary. The 2021 combined statistical report, published on 15 July 2021, contained a more detailed analysis of ethnicity and the intersection of diversity characteristics. We are currently working towards the 2022 statistical publication. On 9 December the MoJ produced an ad hoc report on "Statistical analysis of candidate progression through judicial selection tools 1 April 2015 to 31 March 2021".
109. Alongside the 2020 report, the JDF published an action plan, which set out a wide range of actions JDF members have committed to delivering – both individually and collectively – to improve diversity in the judiciary. An update to this action plan was published on 20 December 2021.<sup>9</sup> This included actions that will be undertaken by the MoJ on:
- a. Programmes to provide information and targeted outreach to potential applicants for judicial office from underrepresented groups.

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<sup>9</sup> <https://judicialappointments.gov.uk/equality-and-diversity/diversity-and-equality-measures/judicial-diversity-forum/>

- b. Supporting publication of data through the annual “Diversity of the Judiciary” statistics.
- c. Reviewing the process and barriers to appointment for lawyers from diverse parts of the legal professions, including Chartered Legal Executives, Solicitors, Crown Prosecutors and Government Legal Department lawyers.
- d. Considering the findings of the forthcoming JAC review into statutory consultation.

The judiciary published a 5-year Judicial Inclusion and Diversity strategy in October 2020<sup>10</sup>.

110. Diversity data for the judiciary is published in the Statistics of judicial diversity report (2021). Key points include:
  - a. **Gender:** as of 1 April 2021, 34% of court judges and 50% of tribunal judges were women. The proportion of court judges who were women increased from 24% in 2014, an increase of 9 percentage points. The proportion of tribunal judges who were women increased by 7 points over the same time period.
  - b. **Ethnicity:** as of 1 April 2021, 9% of court judges, 12% of tribunal were Black, Asian and minority ethnic (BAME). Between 2014 and 2021, the proportion of BAME court judges, tribunal judges and non-legal members of tribunals has increased by 3 percentage points in each group.
  - c. **Age:** the age profile of the judiciary reflects the fact that most join the bench after a successful legal career.
  - d. **Disability:** Judicial Office does not report disability data for judicial office holders as the response rate is too low.

## Salaried part-time working

111. In September 2021, the Lord Chancellor revised the Salaried Part-Time Working (SPTW) policy to support the provision of a more flexible working environment within the judiciary, and to support aims on improving diversity. We worked alongside HMCTS, the JAC and JO to revise the policy. The revised policy’s objective is to further encourage and support applications from diverse existing salaried judicial office holders, with the intention of encouraging applications from those for whom a full-time working pattern is not conducive to their personal circumstances. It also aims to encourage applicants to work part-time but do not wish to apply for a fee-paid judicial role. The September 2021 revision removed an already suspended policy which prevented salaried part time Judges from undertaking fee paid roles on their non-working days.
112. The latest judicial diversity statistics (2021) report that just under 11% of salaried court judges work part time, with the highest figures for District Judges (Civil) at 18%. Just under 37% of salaried tribunal judges work part time with the highest share among Employment Judges at 55%.

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<sup>10</sup> [Judicial Diversity Strategy 2020 – 2025 \(judiciary.uk\)](https://www.judiciary.uk/judicial-diversity-strategy-2020-2025/)

113. The 2020 Judicial Attitudes Survey showed that tribunal judges attached more importance to the opportunity to work part time than court judges and were much more positive about the availability of part-time working. 67% of Employment Judges placed high importance on working part-time and 95% of them considered there was high availability for working part-time. Of those court judges who responded, District Judges (Civil) were the largest group that placed high importance on working part-time (50%) and 48% of District Judges (Magistrates) considered that it was available to them. Women are better represented among the groups of judges attaching importance to availability of part time working than the average of the judiciary, 50% of tribunal judges, 45% of District Judges (Civil) and 38% of District Judges (Magistrates) are women.

## 8. Proposal for 2022/23

114. The Government proposes that pay for all judicial office holders should **increase by 2%** in 2022/23. The rationale for this is based on the following points.

### Economic Evidence

115. As set out in HMT's Economic Evidence to Pay Review Bodies 2021 it is important that:
- a. public sector pay growth over the SR period should retain broad parity with the private sector whilst continuing to be affordable for Departments
  - b. public sector pay doesn't drive inflation and make it more permanent.

### Affordability

116. As set out in the remit letter for the 2022/23 pay round, the MoJ's priority is to balance the need to have a remuneration package which helps attract individuals with the right skills, knowledge and experience to take up, and remain in, judicial office, with the need to ensure value for money for taxpayers and meet increasing demands on the justice system.
117. This proposal is affordable for the Department. Any recommendations above that detailed in this evidence would be unfunded and if implemented would result in reductions elsewhere in the MoJ budget, for example a reduction in the budget for the number of available sitting days. Any such reduction in sitting days would have significant implications for the recovery in the courts and tribunals and the effective administration of justice.

### Commitment to Pensions Reform

118. As described in detail in section 5, the Government has committed to implementing a new judicial pension scheme from 1 April 2022, subject to legislation, and a remedy to those affected by the *McCloud* judgment. The MoJ believe it is essential to see what impact this has on recruitment, retention and morale before any other significant changes to remuneration, such as to the pay structure, are considered.

### Implementation

119. Given these changes and the public sector pay freeze announced in November 2020 including judicial pay, our preferred approach is to make a pay award to all judicial office holders regardless of individuals' pension scheme arrangements. The MoJ's preference is to provide the same % salary increase to judicial office holders whose primary role is the same (including based on their pension scheme membership).

120. In addition, rather than targeting a higher pay award at a particular cohort, our proposed approach is to make an award at the same level for all judicial office holders. The equal approach also reflects the value the Government places on the work of all judges, regardless of their specific responsibilities or area of law. This is in line with our longstanding approach to judicial pay and we would need to see well-justified reasoning from the SSRB to depart from this approach.

## Proposal Costs

121. A 2% increase in judicial pay would cost £12m on budgeted 2021/22 payroll costs (this excludes further NI and Pension contribution adjustments). Table 4 below shows the salaries for each salary group following a 2% increase.

**Table 4: The impact of the Government's recommended percentage increase on the 2022/23 judicial pay award**

Salary Group	2021/22 Salaries (£)	% Change	2022/23 Salaries (£)
1	267,509	2	272,859
1.1	238,868	2	243,645
2	230,717	2	235,331
3	219,396	2	223,784
4	192,679	2	196,533
5	154,527	2	157,618
5.1	148,820	2	151,796
5.2	143,095	2	145,957
6	134,717	2	137,411
7	114,793	2	117,089
8	91,217	2	93,041

## **Annex A: Core Judicial data pack**

122. Attached is the core data pack produced in collaboration with Judicial Office to support our respective independent evidence to the SSRB.

## **Annex B: Northern Ireland evidence**

123. Since the last annual review Non-jury ('Diplock') cases continue to be heard in Northern Ireland and information on the number of cases can be found in the Core Data Pack. The non-jury trial provisions are in place until 31 July 2023 at which time there will be a further review. NICTS recommends that the salary uplift for County Court Judges in Northern Ireland continues.
124. Attached is the core data pack provided by the Northern Ireland Executive.

## Annex C: Pensions: scheme details, contribution rates and value

125. There are two main pension schemes for members of the salaried judiciary: the Judicial Pension Scheme 2015 (JPS); and the Judicial Pension Scheme 1993 (JUPRA). The details of each scheme are set out below.
126. As of 31 March 2020, there were 4,266 serving judges in the JPS and 1,454 serving judges in JUPRA.<sup>11</sup>

### Judicial Pensions Regulations 2015 (the 2015 Scheme)

127. The Judicial Pension Scheme 2015 is set out in the Judicial Pensions Regulations 2015 and came into operation on 1 April 2015. Judges who were in post on 31 March 2012 and were aged over 55 (which is within ten years of normal retirement age) on 1 April 2012 were given transitional protection enabling them to stay in the 1993 scheme until their retirement. To avoid a ‘cliff edge’ impact, judges aged 51½ to 55 on 1 April 2012 were given limited protection (tapering protection) enabling them to stay in their existing scheme for an extended, but not indefinite period. These provisions were challenged in the *McCloud* case and, in December 2018, the Court of Appeal found that the transitional protections in the judicial pension scheme were unlawful on the grounds of age discrimination. The Court found that the less favourable treatment in moving all younger judges from JUPRA to JPS was not justified and therefore constituted unlawful direct age discrimination contrary to section 13(2) of the Equality Act 2010. The Court was also satisfied that equal pay and indirect race discrimination claims were made out. The Government appealed to the Supreme Court, but permission to appeal was refused in June 2019. We have outlined our judicial pension reform strategy at paragraphs 55-58 above.
128. 544 (approximately 28%) salaried judicial office holders became members of JPS when it first launched. Virtually all other members of the salaried judiciary remained in the 1993 scheme as they were eligible for transitional or tapering protection.

**Table 1: Number of salaried judicial office holders in each group at the introduction of the Judicial Pension Scheme 2015, as at 1 April 2012<sup>12</sup>**

Level of protection from changes	Number of salaried judges affected
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<sup>11</sup> Judicial Pension Scheme Annual Report and Accounts: <https://www.gov.uk/government/publications/judicial-pension-scheme-accounts-2018-to-2019>

Note that JPS active members includes fee-paid judges; figure for serving judges in JUPRA includes 896 active members and 706 salary linkage members.

<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217306/judicial-pension-reforms-eia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217306/judicial-pension-reforms-eia.pdf) p.4

Fully protected – unchanged group	1453
Transitionally protected – taper group	249
2015 Unprotected – transfer group	260

129. The scheme is set out in the Judicial Pensions Regulations 2015: it is for judicial office holders appointed to judicial office for the first time on or after 1 April 2015, and serving judiciary also joined the scheme subject to applicable transitional provisions. Membership is open to both the salaried and the fee-paid judiciary. It is a defined benefit scheme based on career average revalued earnings and is registered for tax purposes.
130. The benefits are earned at a rate of 2.32% per year and there is no limit on the amount of pension that can be accrued within the scheme, although annual and lifetime tax allowances apply. The benefits accrued are increased each year in line with the consumer price index (CPI).
131. Judicial office holders are required to pay contributions.
132. The normal pension age for the scheme is linked to the individual's state pension retirement age. There is no automatic lump sum, although it is possible at retirement to commute part of the pension into a lump sum. Death in service benefits, medical retirement benefits and early retirement are all features of the scheme. Benefits for surviving adults and eligible children are available. The scheme also offers the ability to buy added pension, and to take partial retirement.
133. The scheme has an employer cap of 25.7% of pensionable earnings of members. If the costs of the scheme, as assessed by a valuation, vary from this figure by a margin of 2 percentage points, the Lord Chancellor must consult the Scheme Advisory Board as to what steps should be taken to return the costs to the cost cap figure<sup>13</sup>. In a consultation response in October 2021, the Government set out proposals to reform the cost control mechanism so that:
- a. It only assesses costs of reformed schemes, and legacy scheme costs are excluded.
  - b. A wider margin of +/-3% applies.
  - c. An economic check is included.
134. In 2016, the Government Actuary's Department was appointed to carry out an actuarial valuation of the 2015 Schemes as at 31 March 2016. In January 2019, the Government announced a pause to the cost control element of the 2016 valuations of public service pension schemes, following the Court of Appeal's judgment in *McCloud*. The judgment

<sup>13</sup> [Public service pensions: cost control mechanism consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/public-service-pensions-cost-control-mechanism-consultation)

meant that the value of the schemes to members could not be assessed with any certainty. The remainder of the valuation was completed on this basis on 5 March 2019 and a revised employer contribution rate introduced on 1 April 2019. On 16 July 2020, alongside the publication of the Government's consultation on addressing the discrimination identified in the *McCloud* and *Sargeant* judgments, the Government announced that the pause of the cost control element of the 2016 valuations process would be lifted. The Government published Amending Directions on 7 October 2021, which will allow schemes to finalise their 2016 valuation reports.

135. As an alternative to the main scheme, members can take out a Partnership Pension Account which is administered by the Prudential, who provide a range of investment funds. The individual contributes a minimum of 3% of salary and the employer 19%. However, new partnership pension investments will not be possible after 31 March 2022 when the reformed judicial pension scheme commences.

**Table 2: Current member contribution rates in the Judicial Pensions Regulations 2015 for the scheme year 1 April 2020 to 31 March 2021<sup>14</sup>**

<b>Annualised rate of pensionable earnings</b>	<b>Member contributions rate</b>
Up to but not including £22,005	4.6%
£22,005 to but not including £52,392	5.45%
£52,392 to but not including £150,001	7.35%
£150,001 and above	8.05%

136. On 1 April 2020, the Judicial Pensions and Fee-Paid Judges' Pension Schemes (Contributions) (Amendment) Regulations 2020 came into force specifying the rates shown in the table above.

### **The Judicial Pensions and Retirement Act 1993 (the 1993 scheme)**

137. The 1993 scheme is set out in the Judicial Pensions and Retirement Act (JUPRA) 1993 and its regulations. It is a final salary, defined benefit, employer financed retirement benefits scheme, which means that it is not subject to the pensions tax regime (tax reliefs subject to annual and lifetime allowances) that applies to registered pensions schemes under the Finance Act 2005. The scheme is divided into two; Part 1 deals with earnings up to the pension's cap (£172,800 for 2021/22), and Part 2 for earnings above that. Regulations under JUPRA also provide for an equivalent scheme for fee-paid judges which in turn are provided for as the Fee-Paid Judicial Pension Scheme (FPJPS) under The Judicial Pensions (Fee-Paid Judges) Regulations 2017. FPJPS presently only provides for eligible fee-paid service from 7 April 2000. As a result of the *O'Brien 2* and

<sup>14</sup> The Judicial Pensions and Fee-Paid Judges' Pension Schemes (Contributions) (Amendment) Regulations 2020 (legislation.gov.uk)

*Miller* litigation, FPJPS will be amended from 1 April 2023 to provide pension benefits for eligible fee-paid service prior to 7 April 2000.

138. Judicial office holders are required to pay contributions.
139. This scheme became operational on 31 March 1995, and all judges first appointed to salaried office on or after that date became members. Judges who were members of one of the older schemes could elect to transfer into the 1993 scheme at any time during service or up to six months after retirement. With the exception of High Court Judges or above, any judge who changed office after 31 March 1995 had to transfer into the 1993 scheme. The amendment to FPJPS will mirror these provisions for fee-paid judges.
140. The Public Service Pensions Act 2013 closed the 1993 scheme on 31 March 2015 to future accrual, except for those judges who are entitled to either transitional or tapering protection. This also applied in respect of FPJPS.<sup>15</sup> However, the transitional/tapering protection was found to unlawfully discriminate against younger judges. The discrimination is being addressed by the Public Service Pensions and Judicial Offices Bill which will provide those affected by the discrimination with a choice of 1993 scheme or JPS benefits for the period from 1 April 2015 to 31 March 2022. The Bill closes the 1993 scheme to accrual for future service on 31 March 2022. From 1 April 2022, all eligible judges will be members of the reformed scheme, JPS 22.
141. The benefits are earned at a rate of 1/40th per year of reckonable service and there is a limit of 20 years on the amount of pensionable service that can be accrued within the scheme.
142. The normal pension age of the scheme is 65. An automatic lump sum of 2.25 times the pension is payable on retirement. As the scheme is non-registered the lump sum is taxed, but for the lump sum that is attributable to Part 1 of the scheme a further sum is paid (known as the judicial service award) to compensate for the tax deducted at a default rate of 45%. Death in service benefits, medical retirement benefits and early retirement are all features of the scheme. Benefits for surviving spouses/registered civil partners and eligible children are available.

**Table 3: Rates of members contributions in the Judicial Pensions and Retirement Act 1993**

<b>Salary</b>	<b>Member Contributions rate</b>	<b>Contribution towards dependents</b>
0 - £150k	2.61%	1.8%
Anything above £150k	4.43%	0%

<sup>15</sup> We note that the transitional arrangements have been ruled unlawful and the MoJ is working to address this discrimination.

**Pension taxation**

143. Unlike JUPRA, the JPS is tax registered and therefore subject to the Annual Allowance.

**Table 3: JPS 2015 members who have paid Annual Allowance Charges, and the total value of payments, via the scheme's Scheme Pays facilities, from 2015/16 to 2017/18 (most recent data)<sup>16</sup>**

<b>Year</b>	<b>Number of JPS members who exceeded the annual allowance</b>	<b>Number of scheme pays applications</b>	<b>Number of scheme pays applications accepted</b>
2015/16	303	1	1
2016/17	591	17	17
2017/18	764	28	28
2018/19	938	125	125
2019/20	895	319	319

<sup>16</sup> XPS (pensions administrator) data

## Annex D: Comparison with pre-appointment earnings

144. The analysis provided by the SSRB’s 2018 Major Review, together with the research they commissioned to support this report (the NatCen Survey of Newly Appointed Judges 2017), currently provides the most comprehensive and up-to-date source of data on the pre-appointment earnings of judicial office holders.<sup>17</sup> The SSRB found that judicial appointees, at all levels, face a drop in their earnings when they take up post: in 2017/18, new High Court Judges’ median earnings typically fell by 67% when they joined the bench; Circuit Judges’ typically fell by 26%; and District Judges’ by 12%.<sup>18</sup>
145. Aside from this analysis, detailed pay comparisons between current judicial office holders, the pre-appointment earnings of those joining the judiciary, and the earnings of legal practitioners (who would be potential applicants for judicial office), are not available. In general, the salaries of both barristers and solicitors will vary widely depending on, for example, the type of law practised, the volume of work, level of experience and location.
146. The majority of barristers are self-employed<sup>19</sup>, and while barristers renew their Practising Certificate from the Bar Standards Board each year and are required to “declare the appropriate income band for the purposes of setting the appropriate fee”, this is not publicly available information.<sup>20</sup> In addition, the gross fee income of a self-employed barrister is not a salary equivalent (for example, the barrister will need to pay their chambers’ and clerks’ costs, tax, and they do not receive sick pay, annual leave or pension provision in addition to their income).<sup>21</sup>
147. In 2018 the average salary (median gross) for solicitors working full-time in private practice was £62,000 each year.<sup>22</sup> This is an increase on the median gross average salary across all practice grades analysed in The Law Society’s 2016 earnings survey, which was published in October 2017.<sup>23</sup>

<sup>17</sup> In particular pp.116-122

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751903/Supp\\_to\\_the\\_SSRB\\_Fortieth\\_Annual\\_Report\\_2018\\_Major\\_Review\\_of\\_the\\_Judicial\\_Salary\\_Structure.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751903/Supp_to_the_SSRB_Fortieth_Annual_Report_2018_Major_Review_of_the_Judicial_Salary_Structure.pdf)

<sup>18</sup> Para 126, p.20

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751903/Supp\\_to\\_the\\_SSRB\\_Fortieth\\_Annual\\_Report\\_2018\\_Major\\_Review\\_of\\_the\\_Judicial\\_Salary\\_Structure.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751903/Supp_to_the_SSRB_Fortieth_Annual_Report_2018_Major_Review_of_the_Judicial_Salary_Structure.pdf)

<sup>19</sup> Statistics on Practising Barristers 2021 [Statistics on practising barristers \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/statistics-on-practising-barristers)

<sup>20</sup> ‘Authorisation to Practice (ATP)’ <https://www.barstandardsboard.org.uk/for-barristers/authorisation-to-practise.html>

<sup>21</sup> Para 2.2 ‘Income at the Bar – by Gender and Ethnicity: Research Report’ [Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/income-at-the-bar-by-gender-and-ethnicity-final.pdf)

<sup>22</sup> ‘How much do solicitors earn?’ 2021, The Law Society [How much do solicitors earn? | The Law Society](https://www.lawsociety.org.uk/how-much-do-solicitors-earn/)

<sup>23</sup> Solicitors’ Salaries in 2016, The Law Society <https://www.lawsociety.org.uk/support-services/research-trends/solicitors-salaries-in-2016/>

## Annex E: Judicial workload

148. HMCTS publish a detailed breakdown of the number of cases received and disposed of in the courts and tribunals. The following tables have been provided only as an indicator of the context in which judges work, rather than a measure of their workload.

**Table 1: Annual total number of receipts, disposals and caseload outstanding by tribunals overall, 2011/12 to 2020/21<sup>24</sup>**

Financial year	Receipts	Disposals	Outstanding caseload (as at 31 March)
2011/12	760,020	748,820	761,714
2012/13	882,404	749,283	901,421
2013/14	701,299	878,007	664,155
2014/15	361,375	649,068	374,858
2015/16	408,544	372,926	402,254
2016/17	460,292	394,102	472,023
2017/18	484,469	407,638	550,464
2018/19r	449,419	400,816	594,573
2019/20r	395,160	378,629	595,278
2020/21r	304,729	265,628	622,017

r- Figures have been revised as part of an annual reconciliation exercise.

**Table 2: Annual total number of receipts, disposals and outstanding criminal cases in the magistrates' courts in England and Wales, 2012 - 2020<sup>25</sup>**

Year	Receipts	Disposals	Outstanding
2012 <sup>4</sup>	1,169,522	1,179,639	307,803
2013 <sup>6</sup>	1,537,272	1,556,261	288,946
2014	1,607,163	1,570,660	326,437
2015	1,591,592	1,594,051	327,228
2016	1,529,018	1,566,357	291,025
2017	1,515,548	1,509,022	297,593
2018	1,451,020	1,456,735	289,664
2019	1,443,208	1,441,778	300,229
2020r	1,125,434	1,040,308	384,801

**Table 3: Annual total number of receipts, disposals and outstanding cases in the Crown Court in England and Wales, 2014 - 2020<sup>26</sup>**

Year	Receipts	Disposals	Outstanding
2014	135,569	129,047	55,456
2015	126,754	130,805	51,164

<sup>24</sup> <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2021> Main tables; Table S\_1

<sup>25</sup> <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2021> Tables; Table M1

<sup>26</sup> <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2021> Tables; Table C1

2016	114,890	123,250	43,005
2017	112,081	115,723	39,296
2018	99,842	105,772	33,310
2019	104,414	99,640	38,291
2020	96,852	78,162	57,047

**Table 4: County court activity in England and Wales, annually 2012 - 2020<sup>27</sup>**

Year	Total claims	Claims defended <sup>a</sup>	Claims allocated to track <sup>b</sup>	Claims gone to trial <sup>b</sup>
2012	1,394,230	259,585	151,120	46,993
2013	1,445,339	262,872	149,637	43,093
2014	1,594,596	264,701	143,529	45,062
2015	1,562,065	264,545	151,260	48,192
2016	1,802,286	284,328	157,140	51,106
2017	2,048,446	297,936	165,221	56,373
2018	2,073,957	298,055	175,888	58,517
2019	2,029,258	298,605	191,725	64,754
2020	1,296,188	250,087	147,285	45,200

a) The number of defences is lower than the number of claims issued because the vast majority of claims are not defended.

b) The number of claims allocated is less than the number of claims defended, and the number of trials is less than the total number of claims allocated to trial because claims can be settled or withdrawn at any point.

**Table 5: Cases starting and concluding in Family courts in England and Wales, annually 2012 - 2020<sup>28</sup>**

Year	Total cases started	Total cases disposed
2012	265,912	233,371
2013	265,553	239,201
2014	241,469	247,307
2015	245,057	220,080
2016	256,020	227,696
2017	255,293	225,190
2018	262,751	213,123
2019	266,482	233,842
2020	266,339	224,077

**Table 6: Average number of HMCTS FTE employees, 2016/17-2020/21<sup>29</sup>**

Financial year	Permanently employed staff	Agency and contract staff
2016-17	14,269	1,480
2017-18	13,841	2,034

<sup>27</sup> <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-april-to-june-2021> Tables; Table 1.1

<sup>28</sup> <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2021> Tables; Table 1

<sup>29</sup> HMCTS Annual Report and Accounts 2020-21, p.53

2018-19	14,177	2,042
2019-20	14,041	2,223
2020-21	14,495	2,218

149. Further data on sitting days is published on Gov.UK and available here:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/991062/RCJ\\_Tables.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991062/RCJ_Tables.ods)

## Annex F: Judicial Salary Schedules

150. Judicial Salaries for 2021/22 are detailed in the Judicial Salary Schedules:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1020732/judicial-fee-salary-21-22.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020732/judicial-fee-salary-21-22.pdf)

# **Annex G: Government Actuarial Department report on Judicial Pension Scheme 2022 (JPS 2022): Comparison with the legacy NJPS 2015**

151. Attached is a report from GAD on the Judicial Pension Scheme 2022.



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