



Ministry
of Justice

Government Response to Report No.90 by the Senior Salaries Review Body

Major Review of the Judicial Salary Structure

June 2019

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Major Review of the Judicial Salary Structure

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

June 2019



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Contents

Foreword	3
Executive Summary	4
Chapter One – Recruitment, Retention and Remuneration	6
Recruitment, retention and remuneration	6
Pay award for 2019/20	10
Chapter Two – The attractiveness of judicial appointment	11
The attractiveness of judicial appointment	11
Factors other than remuneration which impact on recruitment and retention	13
Judicial morale	13
Workforce planning	14
Working environment	15
Flexible working	17
Recruiting from a wide and diverse pool of candidates	18
Judicial retirement age	19
Chapter Three –Salary Structure	21
Salary Structure changes	21
Changing salary groups for certain judicial offices	26
Upper Tribunal Judges and the Registrar of Criminal Appeals	27
Surveyor Members of the Upper Tribunal (Lands)	28
Masters and Costs Judges and Insolvency and Company Court Judges	28
Principal and Regional Judges in the Property Chamber	28
Chamber President of the First-tier Tribunal War Pensions and Armed Forces’ Compensation	29
Deputy Chamber President of the Upper Tribunal Lands	29
Salaried (Regional) Medical Members of the Social Entitlement Chamber	30
Deputy Senior District Judge (Magistrates’ Courts)	30
Employment Judges	31
Vice-Judge Advocate General and Assistant Judge Advocate General	31
Scotland and Northern Ireland: courts judiciary	32
Devolved Judicial Offices in Wales, Scotland and Northern Ireland	33
Leadership, diversity and career development	33
Judicial Leadership and management	34
Wider support for judges	34
Appendices	36
Appendix A – Judicial Offices changing salary groups with effect from 1 October 2019	36
Appendix B – Judicial offices within scope of the Recruitment and Retention Allowance	37

Foreword

Here in the UK, we have a judiciary that is world-renowned because of its quality, independence and integrity. Every day our judges take decisions which have a profound impact on people's lives: whether they are deciding care arrangements for vulnerable children, trying serious crimes, giving citizens redress or deciding important commercial cases. The influence of our judiciary also reaches beyond our shores, playing a vital part in attracting international business to the UK and contributing to a legal services industry worth around £25 billion a year to our economy.

Given the importance of what our judges do, I believe it is important to have a judiciary that attracts the very best talent from every sphere of society. That is why I recently launched the Pre-Application Judicial Education Programme in collaboration with the judiciary and the Judicial Appointments Commission, to help ensure talented people from all backgrounds across the legal profession are given greater support to consider a judicial career.

I also believe that we should seek to marry the long-standing strengths of our judiciary with the opportunities for reform, particularly the opportunities technology brings us. Judges' time should be used to the best effect – on judging rather than administration – which is why I have brought forward legislation to enable that. I am keen to work with judges to drive the reform and modernisation of our courts and tribunals and the Government continues to invest in court modernisation to do just that. I believe it is vital that talent is nurtured and leadership valued amongst the judiciary and I fully endorse the work that the Lord Chief Justice and Senior President of Tribunals are leading to strengthen leadership and support career development in a modern and professional judiciary.

This must be all underpinned by the right package to attract and retain talent. I am very grateful to the Senior Salaries Review Body (SSRB) for their recommendations in this area. I am confident that the measures I am announcing today in response to the SSRB's Major Review will play a crucial role in maintaining the world-class status of our independent judiciary.



Rt Hon David Gauke MP
Lord Chancellor

Executive Summary

- 1 The Senior Salaries Review Body's (SSRB) Major Review of the Judicial Salary Structure identified clear evidence of significant and growing recruitment and retention problems within the judiciary, particularly at senior levels. The SSRB concluded that these problems are "*principally occurring because the conditions of service for a judge have become much less attractive to potential applicants*".¹ It pointed to pension-related changes as the main cause, with inflexible working practices, inadequate rewards for leadership, and poor working conditions as additional factors behind the problems.
- 2 The Government takes very seriously the impact that being unable to fill key judicial posts has on the proper functioning of justice and the UK's wider prosperity. The real-world impacts of not having enough judges are, for example: slower resolution of care proceedings, potentially leaving vulnerable children at risk or in care for longer, while a case is resolved; limited capacity to deal with high-value work from overseas (foreign litigants make up 72% of cases in the commercial courts); and damage to our international reputation as a world-class legal centre.
- 3 We will therefore take immediate action in respect of the senior judiciary where these problems are most acute by introducing a temporary recruitment and retention allowance for salaried High Court, Circuit and Upper Tribunal Judges and above who are eligible for the Judicial Pension Scheme 2015.
- 4 This is an interim solution: the Government is committed to addressing the underlying cause of the recruitment and retention problems highlighted by the SSRB through a long-term solution for the whole judiciary (to be put in place after litigation on public service pensions has concluded) which would include pension scheme changes.
- 5 The Government will also be making an annual pay award for 2019/20 of 2% for all judges, which will be backdated to 1 April 2019. In addition, we will ensure that judges are placed in the correct salary groupings based on the evidence provided by the SSRB and their independent Judgement Panel.
- 6 The Government recognises the importance of ensuring the most talented individuals are attracted to, and want to stay in, judicial office, regardless of their personal characteristics or background. Working in partnership with the judiciary, legal professions and the Judicial Appointments Commission (JAC), we are taking a number of steps to widen the recruitment pool, including the recent launch of the Pre-Application Judicial Education Programme. We will also continue to draw lawyers from all backgrounds into the pool of fee-paid judges (who tend to be more diverse) which is an important feeder pool for the salaried judiciary. In addition, the Government will introduce a revised part-time working policy for salaried judges to enable more people who want to take advantage of flexible working practices to consider or continue a career in the judiciary.

¹ Executive Summary; page 1, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

- 7 However, considering the potential judicial recruitment and retention benefits a change in mandatory retirement age might bring in the current context, the Government will consult further on the potential implications, taking into account a range of impacts, including future pension scheme changes.
- 8 We continue to invest in our courts and tribunals estate as part of the £1 billion HM Courts and Tribunals Service (HMCTS) reform programme.
- 9 The Government believes that the package of measures set out in this response to the SSRB's Major Review strikes the right balance between affordability and the importance of ensuring we can recruit and retain world-class judges for the future.

Chapter One – Recruitment, Retention and Remuneration

Recruitment, retention and remuneration

Observation 10: High Court recruitment and retirement – There is very strong evidence for recruitment difficulties in the High Court in England and Wales, and in Northern Ireland. Three successive recruitment exercises have failed to fill all the available vacancies in England and Wales. The shortfalls have accumulated and mean that, as of September 2018, the number of vacancies is 14, which is unprecedented. Further vacancies are expected this year, from promotions and retirements. Even if the judiciary improves its workforce planning, on present trends there is likely to remain a significant number of vacancies. An increasing number of these vacancies in England and Wales have been caused by early retirements in the High Court itself and in higher courts. Nine of the 11 High Court Judge retirements in 2016–17 were ‘early’. This compares with five early retirements in 2014–15, and three in 2015–16. It is not yet clear if the increase in 2016–17 is a temporary phenomenon due to the age profile of incumbents or if it marks a permanent new higher level of early retirement. The potential for High Court Judges to retire early, creating more vacancies, is a cause of serious concern among the leadership of the judiciary.²

Observation 11: Observation on Circuit Bench and Upper Tribunal recruitment and retention – In our 2017 Report, we noted that the recruitment and retention of Circuit Judges should be closely monitored. Since then, there has been a second Circuit Judge competition which, despite making large numbers of appointments, has failed to fill all vacancies. The percentage of candidates rated as Outstanding or Strong has fallen over the last five years. Further recruitment exercises are in progress, with ambitious targets, and there are reasonable doubts whether these vacancies can be filled with candidates from the full range of backgrounds that would be desirable. The same caveats apply to recruitment to the Upper Tribunal, where particular Chambers are finding it harder to secure the specialist skills that they are seeking. The retirement picture does not suggest that the number of pre-70 retirements has significantly increased to date. However, we note the concerns of the judicial leadership that many experienced judges in this group could decide to retire at short notice, since they are seriously disaffected, not least about their levels of pay. Past patterns may not therefore be a guide to future behaviour.³

Observation 12: District Judges and First-tier Tribunal Judges recruitment and retention – The evidence suggests that recruitment problems may be starting to emerge for judges at this level. In 2017–18, there was a shortfall in District Bench recruitment for the first time, with a fall in the percentage of candidates who were graded as A or B. It seems likely that further recruitment exercises will shortly be needed, and it is unclear whether sufficient numbers of suitable candidates will apply. There are particular problems recruiting for some

² Chapter 4 – Recruitment and Retention; page 103, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³ Chapter 4 – Recruitment and Retention; page 107, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

*specialist tribunal posts. The trend in retirements appears steady, with no particular sign of an increased tendency among judges in this group to retire before age 70.*⁴

- 10 The SSRB's Major Review of the Judicial Salary Structure, published in October 2018, identified clear evidence of significant and growing recruitment and retention problems within the judiciary, particularly at senior levels. The report highlighted '*very strong evidence for recruitment difficulties*' at the High Court, '*reasonable doubts whether...vacancies can be filled*' at the Circuit bench and in the Upper Tribunal, and '*some cause for concern*' for District and First-tier Tribunal Judges. We have now failed to fill vacancies in the High Court and at the Circuit bench in consecutive recruitment campaigns. This is the first time this has ever happened.
- 11 These recruitment and retention problems jeopardise our ability to run our courts and tribunals, undermine our capacity to deal with important cases, and have the potential to damage our international reputation as a world-class legal centre, at a time when the market for international commercial courts is becoming increasingly competitive.
- 12 The impact of not having enough judges is that cases take longer, with serious impacts across all jurisdictions. In practice, these delays mean that: victims of serious violence and sexual abuse have to wait longer to see the perpetrators brought to justice; care proceedings take longer, meaning that vulnerable children are left in the dark about their future for longer; the agony of families awaiting a decision on the continuation of medical treatment or withdrawal of life support for a family member is prolonged; individuals affected by the decisions of our Immigration and Asylum Tribunals have to wait longer to know where they and their families will live in the future; and parties involved in complex high-value commercial cases, who have placed their confidence in our legal system to provide certainty and resolve disputes in a timely fashion, are left waiting for answers.
- 13 Already in the family courts we are seeing that a shortfall in the number of judges is one of the factors contributing to delays. At the end of 2018, figures show that care proceedings (which involve deciding the future for vulnerable children) took, on average, 31 weeks; 5 weeks more than the statutory target. It is vital that the Government takes action to ensure both the continuing effectiveness of our justice system and its competitiveness in the international market for legal services.
- 14 On examining the causes of the growing recruitment and retention problem, the SSRB noted that, like others in the public sector, the judiciary has been subject to pay restraint since 2010. Take-home pay has also been affected by changes to tax and national insurance thresholds over this period. The SSRB concluded, however, that the '*single most significant factor affecting total net remuneration*'⁵ was the move from the unique non-registered pension scheme for judges (JUPRA)⁶ to the new, tax-registered Judicial Pension Scheme introduced in 2015 (JPS 2015). Judges in the new scheme

⁴ Chapter 4 – Recruitment and Retention; page 111, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁵ Remit and Introduction; paragraph 134; page 21, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁶ The Judicial Pensions Scheme 1993 was established under the Judicial Pensions and Retirement Act 1993, and regulations made there-under and this scheme is referred to as JUPRA

are subject to the annual and lifetime allowances, with significant implications for their overall remuneration. Many judges, particularly at more senior levels, have had years of successful private practice prior to appointment to the bench and their remuneration rightly reflects this level of experience. Given this, the impact of both sets of changes has been particularly stark for judges in the new scheme, with a consequent effect on recruitment and retention.

- 15 Salaried judges are unique in the public sector 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 noted, this convention has compounded the negative impact that pension changes have had on judicial remuneration and, by extension, on judicial morale. The 2016 Judicial Attitudes Survey⁷ found that just 2% of judges felt valued by the Government.
- 16 To address these issues, the SSRB recommended significant pay increases for judges in JPS 2015: of 32% for High Court judges, 22% for Circuit and Upper Tribunal judges, and 8% for District and First-tier Tribunal judges. It recommended a lower pay increase, of 2.5%, for judges in the older pension scheme, JUPRA.

Recommendation 13 – “We recommend that base salaries for judges in the JUPRA pension scheme are increased by 2.5 per cent from April 2018.”⁸

Recommendation 15 – “We recommend that, from April 2018, the following salaries apply to judges in the NJPS (New Judicial Pension Scheme):

- *Group IV judges: £240,000 (an increase of 32%)*
- *Group V judges: £165,000 (an increase of 22%, with four levels of supplement going up to £190,000)*
- *Group VI judge: £117,000 (an increase of 8%), with three levels of increment going up to £137,000.”⁹*

- 17 The Government has given careful consideration to the SSRB’s recommended salary increases for judges in JPS 2015 and has concluded that salary increases of this order would not be appropriate.
- 18 The Government is committed to addressing the underlying cause of the recruitment and retention problems highlighted by the SSRB through a long-term solution for the whole judiciary which would include pension changes. We do not think it would be prudent to make pension changes when the *McCloud* litigation, which could have a significant but uncertain impact on public service pensions, is ongoing.

⁷ Published in February 2017, available at <https://www.judiciary.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>

⁸ Chapter 5 – Judicial Remuneration; page 133, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁹ Chapter 5 – Judicial Remuneration; page 136, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

- 19 However, in light of the SSRB's findings, the Government recognises that there is a need for immediate action in respect of the senior judiciary where recruitment and retention problems are most acute. We will therefore be introducing, with immediate effect and will be backdated to 1 April 2019, a temporary recruitment and retention allowance for salaried High Court, Circuit and Upper Tribunal judges, and for those judicial office holders above them in the judicial hierarchy, who are eligible (or who will become eligible through tapering) for JPS 2015. Details of the judicial offices in scope to receive the allowance are set out in Annex B.
- 20 High Court, Circuit and Upper Tribunal judges play a pivotal role in the justice system. While relatively few in number, they handle the most serious and complex proceedings across all jurisdictions. They preside over the most difficult and sensitive criminal trials and family cases; resolve the most valuable and legally complex civil disputes; and ensure that government behaves towards the citizen in a fair and lawful manner. They are responsible for deciding difficult and complicated issues, and their decisions can have a lasting impact on society through their role in interpreting Parliament's will and shaping the common law through their jurisprudence. The importance and complexity of their work explains why these judges are highly experienced legal professionals with many years of training and experience behind them. It is vitally important that we can continue to attract the brightest and best legal minds to take up these posts to ensure the continued delivery of excellent public services.
- 21 The Government is setting the temporary allowance at 25% of salary for eligible High Court judges and above, and 15% of salary for eligible judges below the High Court. In setting these rates, the Government has sought to strike a balance between the SSRB's recommendations and addressing our serious recruitment and retention problems. This is a targeted, interim measure to address a specific problem in relation to recruitment and retention of our most senior judges. The allowance will be taxable, non-pensionable and non-consolidated, and will replace the existing 11% recruitment and retention allowance introduced for High Court judges in 2017. The Government will retain the new allowance until the *McCloud* litigation is complete and we are in a position to introduce a sustainable long-term solution.
- 22 Since the new allowance is aimed at addressing the most severe problems identified by the SSRB, the Government will not be introducing a recruitment and retention allowance for other tiers of the judiciary at this time. While the SSRB found evidence of an emerging recruitment problem at District bench and First-tier Tribunal level, this is not, at this stage, as significant as the problems facing the higher tiers of the judiciary. Even so, the Government is acutely aware of the crucial role of District and First-tier Tribunal judges in the justice system and will continue to monitor the situation. Similarly, the new allowance will not be available to judges within salary group 6.1 where recruitment problems have not been evidenced: only those offices specified in Appendix B will be eligible.
- 23 The Ministry of Justice is working with the Devolved Administrations in Northern Ireland and Scotland to consider the position in those jurisdictions, and further details will be announced in due course.
- 24 The Government is committed to delivering a solution that enables us to guarantee the proper functioning of justice and the UK's wider prosperity, and we believe that the combination of an interim recruitment and retention allowance at the most severely affected levels of the judiciary, followed by a long-term solution for the whole judiciary after *McCloud* has concluded, will help to guarantee this.

Pay award for 2019/20

- 25 The SSRB recommended a 2.5% pay award for all judges in 2018/19 in the event that the Government was unable immediately to implement its Major Review recommendations. Given the need to consider carefully the Major Review findings, in October 2018 the Lord Chancellor announced a pay award for the entire judiciary of 2%, backdated to 1 April 2018. In reaching the final position for the 2018/19 pay award, the Government balanced the need for affordability for the taxpayer and future sustainability of public services whilst ensuring that pay awards were fair and consistent across the public sector.
- 26 Given the ongoing consideration of the Major Review, the SSRB were not commissioned to undertake an annual pay review to inform the 2019/20 judicial pay award. However, having considered carefully the overall judicial remuneration package from 2019/20 (in particular, recognising that the recruitment and retention allowance will only benefit a small proportion of the judiciary), alongside the wider evidence set out in the SSRB's Major Review, the Government will be awarding a 2% pay increase to all judges in 2019/20. This will come into effect immediately and will be backdated to 1 April 2019. It equals the pay award made in 2018/19, which was the largest annual pay increase for the judiciary in a decade.
- 27 The Government is grateful for the expertise that the SSRB provides and we will be asking it to make recommendations for the judicial pay award for 2020/21 in due course.

Chapter Two – The attractiveness of judicial appointment

The attractiveness of judicial appointment

Observation 1 – The importance of the judiciary to society: We endorse the importance of an excellent judiciary to society and to the rule of law, with all the social benefits that flow from this. Every day, judges make decisions that profoundly affect individuals, families, businesses and society. They need to be of sufficient quality that their rulings are respected, and there needs to be sufficient numbers of judges for cases to be heard in a timely fashion; it remains as true as ever that justice delayed may be justice denied. It is clear that the UK judiciary enjoy a high international reputation among its peers, not least for its effectiveness and integrity, and it is vital for this to be maintained. We also note the economic benefits that are associated with high levels of confidence in the quality and integrity of the UK judiciary. International competitors are seeking to compete for the high-value legal business. But the benefits to the UK from its judiciary go well beyond attracting lucrative cases to London. It is hugely important for all citizens and businesses, large and small, day to day, that there is widespread confidence in the courts and tribunals, all over the country. Any threat to this, in the shape of a threat to the quality of the judiciary, deserves to be taken seriously.¹⁰

Observation 2 – The attractiveness of judicial appointment: Judicial appointment has never been attractive to every legal professional who might appear well-qualified to apply. The NatCen Survey of Newly Appointed Judges 2017 research suggests that those who do join the judiciary are motivated by a challenging job and providing a valuable public service, and that these expectations are generally fulfilled. The Attractiveness of Judicial Appointments in the UK research, and the surveys in Scotland and Northern Ireland, suggest that many of the disincentives to apply to the judiciary are similar to those that were identified nine years ago. The exceptions are a greater concern about infrastructure, and a change in perception of the worth of the judicial pension, which has markedly become less valuable to some applicants. There also remains a lack of confidence in the judicial appointments process. We comment later in this Chapter on the perceived lack of autonomy and flexibility.¹¹

- 28 The Government fully endorses the SSRB's emphasis on the value and importance of the judiciary to society and the economy. Our judges deservedly have the highest reputation for integrity and independence. They deliver justice every day without fear or favour, and in so doing, uphold the rule of law upon which our society is founded. Not being able to attract the brightest legal minds into key judicial posts threatens the proper functioning of justice, the UK's wider prosperity and the delivery of public services.
- 29 The independent research commissioned by the SSRB provides valuable insights into what motivates or dissuades talented legal professionals from applying for judicial office. The challenge of the job, providing an important public service, job security,

¹⁰ Chapter 2 – Strategic Context; Page 53, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

¹¹ Chapter 2 – Strategic Context; Page 55, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

career progression, improved work-life balance, and respect earned from the status of being a judge were all highlighted as incentives for joining the bench. Becoming a judge still represents an important, valued and respected role in society, and remains an aspiration for many.

- 30 The research also found several disincentives to apply to join the judiciary, notably the remuneration offer, working environment, judicial appointment process, and policies relating to part-time working and retirement age. In addition, the SSRB highlighted rising caseloads and an increase in stress from dealing with litigants in person.
- 31 The Government is working to address these disincentives, while recognising that not every legal professional aspires to a judicial career. The actions we are taking, aside from remuneration changes, are set out in this chapter. The senior judiciary has also taken steps to improve the support available to judicial office holders, which are set out in more detail in Chapter 3 (paragraphs 115–118). The JAC keeps its approach to selection under continuous review, and is currently trialling a streamlined application process for High Court judges and deputies that is designed to be more open, flexible and accessible.

Recruitment and retention trends

Observation 9: Recruitment and retention – Looking at the judicial system as a whole, we do not see evidence of generalised recruitment and retention problems. We do, however, note some evidence that fee-paid posts are attracting a rather higher proportion of candidates assessed by the JAC as ‘A’ and ‘B’ than in the past, and that salaried posts are attracting a rather lower proportion. It is possible that fee-paid positions may be becoming a more attractive career path than the salaried judiciary. We are also aware that the retirement picture could change quickly. We have seen no evidence to suggest that the picture in Scotland or Northern Ireland is significantly different from that in England and Wales.¹²

- 32 It is important for the quality, independence and impartiality of our judges that the most talented candidates are appointed based on merit alone – that high bar will not be lowered. The Government is confident that all applicants selected for appointment by the JAC meet the high standards required for judicial office and have fully demonstrated all the necessary skills and abilities for immediate appointment as a judge.
- 33 We have a world-class judiciary because the judges who are recruited are qualified lawyers with extensive experience in professional practice. In the context of the high volume of current recruitment exercises, it is vital that we look to expand the pool of lawyers from which we recruit judges. While the absolute numbers of candidates assessed as ‘outstanding’ or ‘strong’ in JAC competitions have been broadly constant, we acknowledge that the pool of good candidates for salaried roles has not been large enough to match the number of vacancies the JAC is asked to fill. That is why the Government has funded the development of the Pre-Application Judicial Education Programme (PAJE) which will be delivered in partnership with the judiciary, JAC, Judicial Diversity Forum, Judicial College, The Bar Council, The Law Society and The Chartered Institute of Legal Executives. The Programme was launched in April 2019

¹² Chapter 4 – Recruitment and retention; Page 98, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

and will help aspiring judges to understand more about the skills required to be a judge.

- 34 The Government recognises that fee-paid judicial office has always been an attractive option for lawyers who want both to sit as judges and to continue their legal practice. This provides important flexibility in the system, as well as acting as a stepping stone to salaried office. A high number of fee-paid judges have recently been appointed¹³ and, as they develop experience, they will become part of the eligible pool for salaried office. In addition, the Lord Chancellor will continue the practice of not requiring previous judicial experience for some salaried roles, especially where specialist jurisdictional or legal experience is essential.
- 35 The SSRB recognised that the evidence on retirement trends was more mixed, and that there has not been a fall in average retirement ages in recent years. However, the SSRB noted that an increasing number of vacancies at High Court level have been caused by early retirements. It also observed the serious concerns expressed by members of the senior judiciary that many experienced judges in this group could decide to retire at short notice, and that '*[p]ast patterns may not therefore be a guide to future behaviour.*'¹⁴ The SSRB also observed that the question of whether the mandatory retirement age should change '*merits urgent and serious consideration.*'¹⁵ The Government supports the SSRB's conclusion that the situation should be closely monitored, and we provide a response on the mandatory retirement age at paragraphs 55–57 below.

Factors other than remuneration which impact on recruitment and retention

Judicial morale

*Observation 4 – Judicial morale: Points of contention about the implementation of the pension changes are currently being litigated in the courts, and lie outside our remit. However, the evidence is clear that the pension changes have seriously affected relations between the government and the judiciary, and have affected judicial morale. While not all judges have been directly affected, the judiciary is a highly collegiate profession and the loss of trust is very widespread. A figure of 2 per cent of judges feeling valued by government suggests exceptionally low levels of trust between a profession and those responsible for their pay and conditions. This disillusionment must affect both retention and recruitment. We believe it is essential for government to find ways to convince the judiciary that they are indeed valued.*¹⁶

¹³ Approximately 1100 from exercises that launched in 2017/18 and we expect up to 645 to be appointed from exercises that launched in 2018/19

¹⁴ Chapter 4 – Recruitment and retention; Page 107, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

¹⁵ Chapter 4 – Recruitment and retention; Page 113, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

¹⁶ Chapter 2 – Strategic context; Page 60, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

- 36 The Lord Chancellor shares responsibility with the Lord Chief Justice and Senior President of Tribunals for improving judicial morale. Although the Government was disappointed and concerned by the findings of the 2016 Judicial Attitudes Survey,¹⁷ we believe that our commitment to long-term pension scheme changes will go some way to raising judicial morale. We also believe that the other measures announced in this document – such as a pay award of 2% for 2019/20 and a revised policy on salaried part-time working – demonstrate that the Government has listened to the concerns of judges and the SSRB, and has taken action in response.
- 37 At the time of the SSRB's last Major Review in 2011, the Coalition Government was unable to implement any recommendations due to the wider financial context. At the outset of this Major Review, the Government committed to engaging seriously with the recommendations and to doing so in a timely fashion. The careful consideration the Government has undertaken before responding to this Major Review is a sign of how seriously the Government takes the issues identified in the report, and the great value that the Government places both on the judiciary and the work of the SSRB.

Workforce planning

Observation 8: Workforce planning – We welcome the work that is now going into workforce planning. We regard this as essential. The MoJ policy, until recently, of recruiting only for 'business critical' judicial vacancies will have affected the pipeline for recruits into the judiciary. The lack of competitions for fee-paid judges affects not only the complement of judges for those posts, but also the recruitment to the salaried judiciary, since most salaried judges will first have to spend time as a fee-paid judge. While it is difficult to have a comprehensive picture, given the nature of the available data on recruitment and retirements, it is apparent to us that the judicial recruitment system is not yet in a steady state. The stop-start nature of recruitment in recent years has made recruitment to the judiciary more difficult than it otherwise would have been, and narrowed the field of fee-paid judges who are an important source for recruitment to the salaried judiciary.¹⁸

- 38 The Government agrees with the importance that the SSRB place in their report on strong workforce planning.¹⁹ Given the current scale of recruitment, it is even more important that rigorous workforce planning is undertaken, using supply and demand modelling to make accurate and timely decisions about the number and different types of judge needed, in support of a robust and independent appointment process.
- 39 The Government has already worked with the senior judiciary, HMCTS and the JAC to make a number of improvements to our approach to workforce planning. Since 2017, we have agreed to move to a forward programme of regular recruitment, either on an annual, 18 month or bi-annual basis for the main judicial offices (from District and First-tier Tribunal Judges up to Court of Appeal). It is hoped that moving to more regular recruitment campaigns will allow potential candidates to plan ahead for a judicial career. In particular, it will allow candidates from under-represented groups more time

¹⁷ Published in February 2017, available at <https://www.judiciary.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>

¹⁸ Chapter 4 – Recruitment and retention; Page 92, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

¹⁹ The term 'workforce planning' has been used to be consistent with the SSRB report, but it is recognised that judicial office holders are not workers

to access support programmes such as the Pre-Application Judicial Education Programme ahead of application.

- 40 The Government recognises that restricting judicial recruitment between 2014 and 2016 to business-critical roles only has been a factor in the shortfalls now facing the judiciary. We have, since then, scaled up recruitment and approximately one thousand judges were appointed in 2018/19 (a 34% increase from 2017/18 and 245% increase from 2016/17). It is forecast that similar high levels of recruitment will be required until 2021/22.
- 41 However, it is also important to recognise that effective workforce planning requires sufficient capacity in all parts of the system to plan and deliver recruitment exercises. This capacity is required not only from the JAC, but also from: judges taking time out of court to sit on interview panels, Judicial Office to process appointments, and Judicial College for training new judges. It can take up to two years for a newly appointed judge to complete relevant training and gain sitting experience to be ticketed for different case types. For example, a Circuit Judge or Recorder will only be able to hear sexual offences or murder cases if they are very experienced or have undertaken relevant training. There is inevitably a delay in filling some vacancies, even once a successful candidate has accepted their appointment.
- 42 For salaried roles, some of the shortfall in recent selection exercises can be attributed to the depletion of sufficiently experienced judges in the fee-paid pool, from which salaried judges are normally recruited. In the last two years, several large-scale fee-paid judge recruitment exercises have taken place. These have maintained the balance between salaried and fee-paid judges to respond flexibly to workload demands and should provide, in time, an experienced pool of judges ready for recruitment into salaried roles. In 2017/18, the JAC selected 151 Recorders, and in 2018/19, 283 Fee-paid First-Tier Tribunal judges and 325 Deputy District judges. Exercises are currently underway (May 2019) for up to 25 High Court Judges, 160 Recorders, 30 Deputy District Judges (Magistrates Court), 150 Deputy District Judges (Civil and Family) and 170 Fee-Paid First-Tier Tribunal and Fee-Paid Employment Judges. The Government will continue to work with the judiciary and HMCTS to develop our forecasting capability, with the objective of undertaking a recruitment programme of regular, lower volume exercises to maintain a healthy pool of fee-paid judges as a pipeline for salaried and senior roles.

Working environment

Observation 3: The working environment for the current judiciary – A combination of factors are making the work of a judge more challenging. On the one hand, there are pressures to make very rapid changes to working practices and to some conditions of service, and, on the other, there is a general reduction in resources. In particular, there has been a reduction in the administrative resource available at a time when the judicial workload has, if anything, increased. Added to this is an environment where some physical court structures are no longer fit for purpose. We understand and support the logic behind many of the modernisation changes that the MoJ and judiciary are seeking to make, and recognise that this is a long-term programme, running up to 2022. However, at present few of the hoped-

*for benefits, and many of the disadvantages, are being experienced by judges in the courts.*²⁰

- 43 The SSRB acknowledged that the Government is currently improving the working environment for all those who work in the courts and tribunals, including the judiciary, through the £1 billion HMCTS reform programme.
- 44 The physical condition of courts and tribunals has been a long-term challenge and the Government agrees with the SSRB that the environment in some of our court and tribunal buildings is not as good as we would like. Many courts also lack modern facilities such as fast Wi-Fi and digital screens. During 2016/17, 41% of court and tribunal buildings were used for less than half of their available time. We have closed many of these poor quality, poorly used courts in recent years, which allows us to focus our spending on a smaller and more efficient estate. As at February 2019, the Government had spent approximately £126 million on capital maintenance to improve the HMCTS estate since 2015/16 and raised approximately £122 million from the sales of surplus buildings to reinvest in the wider reform programme. We have also installed whole-building Wi-Fi in 110 out of 111 Civil, Family and Tribunal court locations and upgrades continue to install Wi-Fi in 103 criminal courts.
- 45 As we improve our digital capabilities and introduce new technologies in our courts and tribunals, it is vital that judges are involved in and supported through these changes. All judges will be able to access training to develop their digital skills and master new technology which will be designed and delivered through a combination of the Judicial College, HMCTS, and external providers. It will include both the technical skills required to use reform products and behavioural skills to support judges to work confidently and efficiently in these new settings. The Judicial College has already begun working with several reform projects to develop training materials. In addition, the Judicial College will provide more general digital upskilling for the judiciary.
- 46 The SSRB also observed an increase in judicial workloads. The HMCTS reform programme will introduce new efficiencies which will enable judges to spend more of their time judging, and less time on administrative duties. The programme has already delivered benefits: for example, as a result of the Tribunal Delegation Project, tribunal caseworkers are now undertaking judicial functions such as case management and dealing with pre-hearing matters, which has freed up judicial time to be spent on hearings. Since implementation, this and similar initiatives have delivered a total of £15 million in judicial time saved (as of May 2019). Similarly, online plea applications are also already eliminating the need for some hearings, freeing up judges' time. The Government also passed the Courts and Tribunals (Judiciary and Functions of Staff) Act in 2018, which included measures that will free up judges' time to focus on more complex matters by allowing suitably qualified and experienced court and tribunal staff to be authorised to handle uncontroversial, straightforward matters under judicial supervision. It also includes measures to ensure judges can be deployed where necessary and appropriate, taking into account changes in caseloads of different jurisdictions.

²⁰ Chapter 2 – Strategic context; Page 58, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

- 47 In the future model for courts and tribunals, the focus will still be on providing consistent and high-quality support to the judiciary, and a more personalised service to the people who use our courts and tribunals. We will have better technology, and much of the administration and casework will transfer to the new Courts and Tribunals Service Centres (CTSCs), in consultation and agreement with the judiciary. This will allow an absolute focus on supporting judges and members of the public before, during and after the hearing. We will have fewer staff in our courts and tribunals buildings than we have now, but courts and tribunals staff will still make up more than half of our operations. The design and detail of the future model will be agreed in consultation with the judiciary.

Flexible working

Observation 5: Flexible working – Many of the concerns expressed about flexible working were highlighted by the 2010 Report of the Advisory Panel on Judicial Diversity, chaired by Baroness Julia Neuberger. The judicial leaderships and the MoJ have recognised them and sought to offer guidance and reassurance. However, the findings of our research show that this has not been sufficient. It is evident to us that the social context within which judicial recruitment takes place has changed. Many professional men and women now have different attitudes towards the balance they want between their professional and family lives. The rise of the two-earner household means that it is more complicated than previously for one person to relocate geographically in response to the needs of their job. Employees expect to negotiate these questions with their employer, and not to be assigned solely according to the employer's convenience. The judiciary will need to respond appropriately. We also consider that the judicial leadership could do more, both to communicate what has already been done to accommodate flexible working patterns, and to consider going further. For example, while there are certainly challenges in increasing the number of salaried judicial part-time posts, we do not believe that the barriers are insuperable. Over the last 20 years, every profession has been responding to demands from women and men who want a better balance between their work and non-work time.²¹

- 48 There are a number of factors which influence judicial retention and the Government sees the provision of flexible working for the judiciary as a vital part of responding to wider societal changes. We support the SSRB's conclusion that the social context in which judicial recruitment now takes place has changed, with differing attitudes as to how individuals wish to balance their professional and family lives. Salaried part-time working is available to all salaried judicial office holders (with a few exceptions due to statutory provisions), including those in the High Court and Court of Appeal. However, we recognise that it has not been widely taken up, particularly in the courts. This is reflected in the findings of the 2016 Judicial Attitudes Survey (for example, 88% of Employment Judges considered that there was a high availability for part-time working, compared to 36% of District Judges)²² and in the actual take up of part-time working amongst the salaried judiciary:

²¹ Chapter 2 – Strategic context; Page 62, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

²² Published in February 2017, available at <https://www.judiciary.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>

*Take up of part-time working across courts and tribunals salaried judiciary
(as at 1 April 2018)²³*

<i>Judicial Office</i>	<i>Number of salaried judges</i>	<i>Number of salaried Part-Time Working</i>	<i>% of salaried Part-Time Working</i>
Courts			
Salaried Circuit Judges	660	44	6%
Salaried District Judges	398	64	16%
Salaried District Judges (Magistrates' Courts)	140	6	4%
Tribunals			
First-tier Tribunal Judges	240	58	24%
Upper Tribunal Judges	52	17	32%
Employment Tribunal Judges	113	53	47%

49 The Government has been working with HMCTS and the JAC, keeping Judicial Office officials appropriately updated, to review and revise the salaried part-time working policy²⁴ with the aim of providing flexible working options for judges who do not want to carry out their role on a full-time basis. This might include judges who may otherwise have requested to sit in retirement (drawing their pension whilst sitting as a fee-paid judge for a limited number of days per year) or to retire completely. The Government will also continue to work closely with the judiciary and relevant agencies to raise awareness of flexible working opportunities.

Recruiting from a wide and diverse pool of candidates

50 The Government is committed to driving and supporting efforts to improve the diversity of the judiciary, working in close partnership with the senior judiciary and the JAC. Judges make decisions that can affect the whole of society, so it is vital that they are reflective of society. Bringing diverse experiences and perspectives through our judiciary increases public confidence in the decisions judges make. Furthermore, in the context of the significant challenges we face in recruitment, it is vital that we take steps to ensure we are drawing judges of the future from the widest possible pool of suitable candidates, and removing any actual or perceived barriers to appointment for under-represented groups.

51 There has already been good progress to increase the diversity of the judiciary, particularly since the creation of the JAC in 2006. There are now more women than ever before at all levels of the judiciary; the proportion of female judges in the courts having increased from 24% to 29% since 2014 and from 43% to 46% in tribunals over

²³ Judicial Diversity Statistics 2018; published in July 2018, available at <https://www.judiciary.uk/publications/judicial-diversity-statistics-2018/>

²⁴ This policy was considered and issued in 2010, available at: https://www.judicialappointments.gov.uk/sites/default/files/sync/before_you_apply/salaried-part-time-working-guide.pdf – we plan to publish an updated policy by the Summer

the same period.²⁵ The proportion of Black and Minority Ethnic (BAME) judges has also increased, though to a lesser extent and from a lower base. BAME representation among judges aged 40 or over (who constitute the vast majority) is broadly in line with that of the working-age general population for that band. We are continuing to explore how we can encourage and enable more solicitors to apply for judicial office, particularly in the more senior roles. It is encouraging to see that two out of the ten successful candidates appointed in the most recent High Court Judge selection exercise were solicitors.

- 52 Considerable work is already underway to build on the progress already made. The revised salaried part-time working policy should help make a judicial career more accessible to less well-represented groups (for example, parents of young children or carers). There are already a number of support programmes designed to support diverse candidates for High Court and Deputy High Court offices. The recently launched Pre-Application Judicial Education Programme will go further still in helping ensure talented people from all backgrounds across the legal profession will be given greater support to apply to become a judge. The Government is also committed to increasing the number of high quality candidates drawn from top solicitors, and will consider what further action could be taken to help identify and support suitable individuals to apply for judicial office. As a member of the Judicial Diversity Forum, the Government continues to support the ongoing work to consider all practical actions that could achieve greater judicial diversity.
- 53 The Lord Chief Justice, through the Judicial Diversity Committee, is leading a series of initiatives to encourage individuals from less-well represented groups to aspire to and successfully apply for judicial office, including: the Schools Programme (through which over 8,000 children have benefited from either a judicial visit to a school or a visit to the courts), the Judicial Work Shadowing scheme (which is aimed at lawyers who are considering a career in judicial office and judges wishing to progress upwards) and the Judicial Mentoring Scheme, as well as a series of pre-application workshops targeted at under-represented groups.
- 54 The Government is keen to ensure its activity in this area is based on evidence about the barriers or disincentives to appointment for under-represented groups. We will work with the JAC, judiciary and professions to develop a fuller picture of the candidate pools in each of the legal professions: from the appointments process through to serving judicial office-holders. This will help to identify potential barriers to appointment, and will inform future initiatives to address these and target outreach and support.

Judicial retirement age

Observation 13: Judicial retirement age – In its response to the House of Lords Constitution Committee’s 7th Report on Judicial Appointments, the government said that it would consider further whether the mandatory retirement age of 70 should change. We believe that this issue merits urgent and serious consideration. If the retention situation

²⁵ Judicial Diversity Statistics 2018; published in July 2018, available at <https://www.judiciary.uk/publications/judicial-diversity-statistics-2018/>

*deteriorates, there would be a need to move quickly. It would also be timely to examine the arrangements under which a retired judge can sit on a fee-paid basis.*²⁶

- 55 The Government is grateful for the additional evidence the SSRB gathered as part of the Major Review on the mandatory retirement age, including the qualitative research commissioned on the Attractiveness of Judicial Appointments.²⁷ This research complements existing evidence on potential barriers to judicial appointments, for instance the two large-scale JAC-commissioned surveys on Barriers to Application to Judicial Appointment (2009 and 2013).²⁸
- 56 We note the small number of respondents to the Attractiveness of Judicial Appointments research may not provide a strong empirical basis for claiming that mandatory retirement age is “a significant issue” for “many potential applicants”.²⁹ In addition, the JAC-commissioned surveys revealed that a very small proportion (3%) of legal professionals who are deterred to apply to judicial office do so because they might not be appointed due to “being too old”, in comparison to other deterrents such as lack of required experience.³⁰ We note, though, that these studies only capture the views of legal professionals. We are not aware of any studies or survey evidence about whether the current retirement age is a barrier to applying for salaried office by existing fee-paid judges, or for existing judges to apply for a more senior office.
- 57 However, considering the potential judicial recruitment and retention benefits a change in mandatory retirement age might bring in the current context, the Government will consult further on the potential implications, taking into account a range of impacts, including future pension scheme changes.

²⁶ Chapter 4 – Recruitment and retention; Page 113, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

²⁷ The Attractiveness of Judicial Appointments in the UK; published January 2018, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748580/SSRB_Report_Attractiveness_Turenne-Bell_Revised_14_March_FINAL_-_temp_pdf.pdf

²⁸ <https://www.judicialappointments.gov.uk/research>

²⁹ The *Attractiveness of Judicial Appointments in the UK* (para 99). Sample size of study: 59 respondents

³⁰ JAC *Barriers to Application to Judicial Appointment 2013* (Figure 14). Sample size of study: 4,051 respondents

Chapter Three –Salary Structure

Salary Structure changes

- 58 In commissioning the Major Review, the then Lord Chancellor asked the SSRB to “*consider whether the current salary structure is fit for purpose*” and to make “*recommendations on how best to reward judicial leadership*”.³¹ The SSRB put forward a number of proposed changes to both the overall salary group structure and how leadership responsibilities should be recognised. The SSRB also made a number of observations about how human resources and career management currently work within the judiciary, and how they might be improved in future. These are addressed below.
- 59 The SSRB was also asked “*to evaluate roles carried out by all judicial office holders and advise on their appropriate position within the salary structure...*”.³² The SSRB therefore made a number of recommendations that specific posts should be moved to different salary groups. The Government’s response to the proposed moves is set out below.
- 60 Following an extensive period of evaluation and analysis, the SSRB “*heard very few claims that the basic judicial salary structure needed radical change.*”³³ However, the report concluded that changes were needed in order to address two shortcomings they identified in the existing remuneration regime.
- 61 First, the SSRB found that leadership roles at some levels within the judiciary are not currently adequately recognised and rewarded. At present, the only mechanism for recognising an increase in leadership functions is to move the post to a higher salary group. The SSRB highlighted that this makes it difficult to reward leadership roles which are not weighty enough to justify moving those judges to a higher salary group, but are nevertheless important. In their joint evidence to the SSRB, the Lord Chief Justice and the Senior President of Tribunals gave the example of Circuit Judges in Resident Judge roles, who have greater leadership responsibilities than a Circuit Judge but are not seen to be equivalent to a Senior Circuit Judge, in the salary group above.
- 62 Second, the SSRB found that the current system did not reflect the fact that leadership responsibilities may change over time. Due to the statutory restrictions on reducing

³¹ Letter from the Lord Chancellor and Secretary of State for Justice to the SSRB Chair about the remit for the Major Review of the Judicial Salary Structure, 28 October 2016, Appendix A, Page 226, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³² Letter from the Lord Chancellor and Secretary of State for Justice to the SSRB Chair about the remit for the Major Review of the Judicial Salary Structure, 28 October 2016, Appendix A, Page 226, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³³ Chapter 3 – Judicial salary structure and placement of posts; Paragraph 3.25, Page 70, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

judicial salaries, a judge's salary cannot be reduced even if he or she no longer undertakes a leadership function.

- 63 The SSRB therefore recommended two closely related sets of changes, to be implemented in parallel. First, it proposed a number of changes to the existing salary group structure:

Recommendation 1 – “We recommend no changes in the structure of current groups 4 and above, which would henceforth become groups I – IV.”³⁴

Recommendation 2 – “We recommend that current salary groups 5 and 6.1 should be combined into a new salary group V. This change should be accompanied by introducing new leadership supplements, see below, to distinguish between the leadership responsibilities of different judges.”³⁵

Recommendation 3 – “We recommend that current salary groups 6.2 and 7 should be combined into a new salary group VI with this change also accompanied by introducing new leadership supplements, see below, to distinguish between the leadership responsibilities of different judges.”³⁶

Recommendation 7 – “We recommend the creation of a new group VII, sitting below the new group VI.”³⁷

- 64 Then, the SSRB proposed that these changes should be implemented alongside two new concepts of leadership supplements and specialist supplements:

Recommendation 3 – “We recommend that current salary groups 6.2 and 7 should be combined into a new salary group VI with this change also accompanied by introducing new leadership supplements, see below, to distinguish between the leadership responsibilities of different judges.”³⁸

Recommendation 4 – “We recommend that there should be four levels of leadership supplement in group V, plus a ‘base rate’ making five spot rate pay points in all.”³⁹

³⁴ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³⁵ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³⁶ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³⁷ Chapter 3 – Judicial salary structure and placement of posts; page 73, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³⁸ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

³⁹ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

Recommendation 5 – “We recommend the payment of a single specialist supplement, fixed at the third supplement point, to those judges, normally appointed through success in a JAC competition, who handle the most complicated cases recognised as requiring scarce specialist knowledge.”⁴⁰

Recommendation 6 – “We recommend that there should be three levels of supplement, within Group VI, plus a ‘base rate’, making four spot rate pay points in all.”⁴¹

Recommendation 8 – “We recommend that the heads of the United Kingdom judiciary take responsibility for the detailed arrangements for the award of leadership supplements to individual posts.”⁴²

Recommendation 14 – “We recommend that all judges in new groups V and VI are eligible for leadership supplements, regardless of pension scheme membership.”⁴³

65 The SSRB envisaged that, together, these proposals would address the shortcomings it had identified in the existing remuneration structure.

66 It is worth noting that, while the SSRB used the term “*supplements*”, this is not a concept that exists in the legal framework for judicial remuneration. The Lord Chancellor has the power, under the relevant legislation, to pay salaries and allowances. The Government has therefore interpreted the SSRB’s recommendations as intending to create a leadership allowance for those judges who take on additional leadership responsibilities (or those with a specialist role – see paragraphs 77–79). Similarly, references to “*pay rates*” have been taken to mean judicial salary points.

67 The Government has carefully considered the SSRB’s analysis and these two sets of recommendations, taking into account the evidence supporting the proposed changes, and how the proposed model would operate in practice. In doing so, the Government has agreed a broad definition with the senior judiciary that leadership responsibilities in this context mean those judges who manage other judges’ time and volume of work or are responsible for the work of a court or tribunal regionally.

68 The Government broadly endorses the SSRB’s conclusions on the limitations of the current system for rewarding leadership. We agree with their assessment that it is important to be able to reward and recognise those judges who take on extra leadership responsibilities alongside the other challenges of their core judicial function of hearing cases. Most leadership responsibilities are recognised already within the system through the fact that leadership judges are generally in the salary group above those judges whose work they oversee. These are usually permanent roles, filled

⁴⁰ Chapter 3 – Judicial salary structure and placement of posts; page 72, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁴¹ Chapter 3 – Judicial salary structure and placement of posts; page 73, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁴² Chapter 3 – Judicial salary structure and placement of posts; page 75, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁴³ Chapter 5 – Judicial remuneration; page 133, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

following a JAC recruitment exercise (for example Senior Circuit Judges or Chamber Presidents).

- 69 The Government also agrees that a greater degree of flexibility in the salary structure to accommodate changes to the level of leadership responsibilities over time would be beneficial, since allowances could be removed when the additional leadership responsibilities lapse.
- 70 However, the Government considers that the SSRB's proposed model presents a number of challenges. First, the model assumes that the salary for those judicial offices already in the higher of the two sets of merged groups (ie. those in groups 5 and 6.2) will in future be adjusted down to the base rate of each of the two new groups, but that, where appropriate, office holders will receive an allowance. It appears that the SSRB did not envisage any serving members of the judiciary seeing a reduction in their current base pay rate. Indeed, any reduction in salary for the judiciary is explicitly prohibited in statute.⁴⁴ Rather, the SSRB anticipated that current office holders would receive their existing salary, and only new appointees would move to the new hybrid model of salary plus allowance. In practice, current and future judges at each level would receive the same level of remuneration, but either as salary or as a combination of (lower) salary and an allowance, depending on when they were appointed to judicial office.
- 71 The Government has concerns that pursuing this route would create unnecessary complexity in the system in the future. Paying judicial office holders a different salary for doing exactly the same work would also be likely to prove divisive within the judiciary. We are concerned, too, about the potential for allegations of discrimination or unequal pay between office holders. The Government therefore will not accept any proposal which involves reducing salary rates for future judicial posts.
- 72 Second, there are a number of judicial roles in relation to which the Lord Chancellor has no express statutory power to pay an allowance. There are different legislative provisions for different judicial office holders in relation to the payment of allowances. Judicial offices for which there is no statutory power to pay an allowance within the existing framework include Masters and Registrars⁴⁵ (including Senior Masters and Senior Registrars), the Vice-Judge Advocate General, Registrar of Criminal Appeals, and District Judges. The model proposed by the SSRB cannot therefore accommodate some judicial posts which might have been considered to be deserving of a leadership allowance.
- 73 The Government intends to retain the existing salary structure having concluded that it is not appropriate to reduce the salary applicable to future judicial appointments. We do not believe there is a strong case for merging the existing groups. The exception of this is to create a new salary group 8. The Government agrees with the SSRB's conclusion that "*there is an unhelpful lack of flexibility*"⁴⁶ for those judicial posts that are not currently allocated to a salary group because the weight of these roles is arguably below that of a current group 7 judicial office holder. It is for the Lord Chancellor in

⁴⁴ Section 12 (3) Senior Courts Act 1981 and Section 34 (2) Constitutional Reform Act 2005

⁴⁵ Registrars are now Insolvency and Companies Court Judges

⁴⁶ Chapter 3 – Judicial salary structure and placement of posts; paragraph 3.44 page 73, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

consultation with the Lord Chief Justice and Senior President of Tribunals to identify which, if any, posts in England and Wales should be allocated to this new group.

- 74 The Government recognises the SSRB's conclusion that there is a gap in rewarding leadership within the existing salary structure. In particular, we concur with the views of the senior judiciary that additional leadership responsibilities at Circuit Judge level (the roles of Resident Judge, Designated Family Judge and Designated Civil Judge) are not currently rewarded, and we recognise the vital role that these judges play in the effective running of our courts.
- 75 The Government would like to see judicial leadership appropriately rewarded. However, as set out above, the SSRB's proposal cannot be implemented in full due to restrictions with the current legal framework. In addition, there is currently limited evidence of recruitment and retention challenges for judges applying to take on these important leadership roles. We also do not have analysis on what motivates or deters Circuit Judges from applying to become a leadership judge. The recruitment and retention allowance being introduced for Circuit Judges eligible for JPS 2015 may further affect motivations for applying for leadership roles. The Government needs to understand the impact of the recruitment and retention allowance before making decisions to introduce further allowances. The Government has therefore concluded that there is not currently enough evidence of a problem to warrant increasing financial incentives by introducing allowances for leadership at this time.
- 76 We will explore what data can be collected to improve the evidence base, including on the additional responsibilities involved in these leadership posts. The Government will ask the SSRB to consider this issue again in future, taking into account the wider remuneration changes announced as part of this response.
- 77 The Government has carefully considered the SSRB's recommendation to implement a "*specialist supplement*". The Government has explored whether the Lord Chancellor's power to pay allowances extends to paying such a supplement to judges who have particular legal expertise. We have concluded that it is not possible to pay an allowance to recognise judges who are required to have scarce specialist knowledge, since this relates to the core judicial function of hearing cases which, within the existing legal framework, can only be remunerated for through salary. Furthermore, we are concerned that implementing this recommendation would risk creating divisions within the judiciary. The Government therefore does not accept this recommendation.
- 78 The Government does acknowledge that there is an anomaly insofar as the specialist nature of a small number of judicial offices explains their placement within the salary structure. Old Bailey Judges, Business and Property Specialist Judges and Principal Judges / specialist Senior Circuit Judge in the Employment Appeals Tribunal, who might otherwise sit in salary group 6.1 are recruited into salary group 5 as a Senior Circuit Judge due to the specialist nature of these roles. The Lord Chief Justice and Senior President of Tribunals, in their joint evidence to the SSRB, consider that it is not possible to redress this anomaly now without seriously affecting future recruitment to these posts. The Government concurs with this view.
- 79 Nonetheless, the Government supports the aims which underpinned the SSRB's recommendations in this area, and is grateful to the SSRB for its work in developing new proposals.

Changing salary groups for certain judicial offices

80 The SSRB commissioned an independent Judgement Panel⁴⁷ to inform its assessment of where roles should be placed within the salary structure. Using job summaries for every post within the scope of the Major Review, judicial roles were assessed against five criteria: jurisdiction; complexity and diversity of cases; impact and sensitivity of decisions; court craft; and leadership and management. An increase in workload was not found to justify a change in the salary grouping, unless this increase fell disproportionately on a particular post. The SSRB made the following recommendations on the basis of its analysis:

Recommendation 9 – We recommend that the following posts in England and Wales should move salary group:

- *Surveyor members of the Upper Tribunal (Lands) to new salary group V;*
- *Masters and Costs Judges, and Insolvency and Company Court Judges (formerly Bankruptcy Registrars) to new salary group V;*
- *Principal Judges in the Property Chamber and Regional Judges in the Property Chamber to new salary group V, with an appropriate leadership supplement being applied to recognise the extra work of Principal Judges;*
- *The Chamber President of the First-tier Tribunal War Pensions and Armed Forces' Compensation to new salary group V; and*
- *Salaried (Regional) Medical Members, Social Entitlement Chamber to new salary group VI.*⁴⁸

Recommendation 10 – We recommend that the following posts in Northern Ireland should move salary group:

- *The Masters of the Court of Judicature (Northern Ireland) and the Presiding Master of the Court of Judicature (Northern Ireland) to new salary group V, with appropriate leadership recognition for the Presiding Master.*
- *The Lands Tribunal post in Northern Ireland to new salary group V.*⁴⁹

Recommendation 11 – We recommend that the following posts in Scotland move to new salary group V:

- *Chamber President of the Health and Education Chamber of the First-tier Tribunal for Scotland.*
- *The Chamber President of the Housing and Property Chamber of the First-tier Tribunal for Scotland.*
- *The Chamber President of the Tax Chamber of First-tier Tribunal for Scotland.*

⁴⁷ Report on the placement of judicial posts (published October 2018), available at <https://www.gov.uk/government/publications/ies-report-on-the-placement-of-judicial-posts>

⁴⁸ Chapter 3 – Judicial salary structure and placement of posts; page 77, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁴⁹ Chapter 3 – Judicial salary structure and placement of posts; page 78, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

- *Legal Member, the Lands Tribunal for Scotland.*⁵⁰

Recommendation 12 – we recommend that the following posts in Scotland are placed in new salary group VI:

- *Summary Sheriff.*
- *Member of the Scottish Land Court.*⁵¹

81 The Government endorses the SSRB's intention that judicial office holders should be remunerated appropriately for the work they normally do on a day-to-day basis. In assessing which judicial offices should move to a higher salary group, we have had regard to the recommendations from the SSRB and the findings of the Judgement Panel Report. We have considered these proposals in light of our decision not to merge salary groupings.

Upper Tribunal Judges and the Registrar of Criminal Appeals

82 Upper Tribunal Judges and the Registrar of Criminal Appeals, which both have an appellate function, are currently based in salary group 6.1. The Judgement Panel recommended that these judicial offices should move up to (existing) salary group 5.⁵² However, in its final report, the SSRB took a different approach in light of its wider recommendations on the salary structure. It recommended that these posts should be within new salary group V, and that the senior judiciary should determine whether a leadership supplement would be appropriate.

83 The Government has considered the conclusions of the SSRB and the Judgement Panel Report, as well as the points raised by the Council of Circuit Judges and the Council of Upper Tribunal Judges in their evidence to the SSRB. We recognise the strength of judicial feeling on this issue.

84 It is not possible to pay Upper Tribunal Judges or the Registrar of Criminal Appeals a leadership allowance because they do not have leadership responsibilities for other judges. Since the Government is not accepting the proposals to merge salary groups, the question remains where these posts should be placed within the existing salary group structure.

85 We consider that further evidence is needed before the Government could support a move to a higher salary group for these posts. Further comparative analysis is needed, for example, of the difference between these roles and other posts in existing salary groups 6.1 and 5, such as Circuit Judges (group 6.1), who also deal with complex work and have an appellate function in relation to appeals from decisions of Magistrates or

⁵⁰ Chapter 3 – Judicial salary structure and placement of posts; page 79, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁵¹ Chapter 3 – Judicial salary structure and placement of posts; page 79, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁵² For the Registrar of Criminal Appeals this was based on the complexity and level of responsibility. For Upper Tribunal Judges this was based on the level of judicial work and in accordance with previous SSRB recommendations – Paragraph 4.3, page 9 Report on the placement of judicial posts by the Institute for Employment Studies

District Judges in the family court. We would also want to consider potential impacts on wider principles such as consistency between courts and tribunals judiciary, and to ensure the potential future consequences for cross-deployment are fully understood.

- 86 On balance, the Government has therefore concluded that Upper Tribunal Judges and the Registrar of Criminal Appeals should both remain in salary group 6.1, where they are currently placed. We will consult the SSRB on the placement of these judicial roles against finalised job descriptions in due course.

Surveyor Members of the Upper Tribunal (Lands)

- 87 The evidence presented to the SSRB showed that the work of Surveyor Members of the Upper Tribunal (Lands) is analogous to the work of an Upper Tribunal Judge. The Government supports the SSRB's analysis and is of the view that this judicial office should move to salary group 6.1.

Masters and Costs Judges and Insolvency and Company Court Judges

- 88 The evidence presented to the SSRB by senior members of the judiciary demonstrated that the work undertaken by these judicial office holders has evolved over time, and now involves complex and specialist work which is comparable to that of a Circuit Judge. The Government supports the SSRB's analysis and is of the view that these judicial offices should move to salary group 6.1.
- 89 We recognise that Senior Masters and Senior Registrars⁵³ will in future be in the same salary group as the judges they lead (Masters and Registrars). There is no statutory power within the existing legal framework for the Lord Chancellor to pay Senior Masters or Senior Registrars an allowance to recognise this leadership responsibility. For some other offices (eg. Senior Circuit Judges) this issue is addressed through the leadership judge being placed in the salary group above the judges that they lead. However, there is no substantive evidence from either the SSRB or the Judgement Panel to support moving Senior Masters and Senior Registrars to salary group 5. Such a decision should not be taken lightly – not least because of the legislative restriction on reducing judicial salaries. The Government intends to ask the SSRB to review whether the salary group placement of these judicial offices reflects the work they do, including their leadership responsibilities.

Principal and Regional Judges in the Property Chamber

- 90 Principal Judges in the Property Chamber are currently in salary group 6.2 and Regional Judges in the Property Chamber are currently in salary group 7. The SSRB, on the basis of the evidence presented to it, considered these roles to be analogous to other Regional Judges in a very specialist area. The SSRB recommended moving both roles to salary group 6.1, with the payment of a leadership allowance to Principal Judges to reflect their additional leadership responsibilities. This reflected the view of the President of the First-tier Tribunal (Property Chamber)⁵⁴ that a difference needs to be maintained between the Principal Judge and Regional Judges of the Property Chamber so that the additional leadership and management responsibilities

⁵³ Registrars are now Insolvency and Companies Court Judges

⁵⁴ Consultation on Job Placement Response Form submitted by the President of the First-tier Tribunal (Property Chamber) to the SSRB

undertaken by the Principal Judges are appropriately remunerated. The evidence gathered by the SSRB makes a clear case that these judges are currently not appropriately remunerated for the work they do.

- 91 The Government believes that a salary group move rather than an allowance should be used to remunerate these judicial office holders for the ongoing leadership responsibilities they hold. These roles are both filled following a JAC recruitment exercise and are permanent until such time as the judge retires, resigns or seeks appointment to a different (usually more senior) judicial office following a separate JAC recruitment exercise. The job summaries submitted to the Judgement Panel confirm that the post holders are expected to undertake leadership responsibilities alongside their core judicial functions.
- 92 The SSRB envisaged the Principal Judge receiving a higher remuneration rate than Regional Judges in recognition of their weightier leadership responsibilities. The Government has concluded that Principal Judges of the Property Chamber should move to salary group 6.1 (from 6.2) while Regional Judges of the Property Chamber should move to salary group 6.2 (from 7). The Deputy Regional Judge and Deputy Regional Valuer of the Property Chamber will remain in salary group 7.

Chamber President of the First-tier Tribunal War Pensions and Armed Forces' Compensation

- 93 The Chamber President of the First-tier Tribunal War Pensions and Armed Forces' Compensation chamber is currently placed in salary group 6.2. All other First-tier tribunal Chamber Presidents are placed in salary group 5. The role involves important leadership responsibilities for the President, although this Chamber is smaller than the others. The SSRB recommended moving this role to a higher salary group (and within their merged group all Chamber Presidents would be in the same salary group) without payment of any leadership allowances.⁵⁵ The Government supports the SSRB's analysis and is of the view that this judicial office should move to salary group 6.1.

Deputy Chamber President of the Upper Tribunal Lands

- 94 The Deputy Chamber President of the Upper Tribunal Lands Chamber is a leadership role currently in salary group 6.1. However, the Vice Presidents of the Immigration and Asylum Chamber, Upper Tribunal are in salary group 5. The judiciary presented evidence to the SSRB that these two roles were analogous in respect of the responsibilities of the role, including leadership functions. In addition, the Chamber President of the Upper Tribunal Lands Chamber is a High Court Judge in salary group 4. Although the independent Judgement Panel report and the SSRB were silent as to the position of the Deputy Chamber President role, we have confirmed with the SSRB that it was implicit that the post would be more appropriately recognised alongside group 5 post-holders. Having considered the representations made by the judiciary, and comparing the job descriptions for comparable roles, the Government is of the view that this role should move to salary group 5.

⁵⁵ Chapter 3 – Judicial salary structure and placement of posts; paragraph 3.64, page 77, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

Salaried (Regional) Medical Members of the Social Entitlement Chamber

- 95 Salaried (Regional) Medical Members currently receive a salary which is below the group 7 salary point. The independent Judgement Panel Report recommended that this office “*should be in 8 as the duties are not equivalent to other Group 7 salaried and it is currently paid 80% of Group 7.*”⁵⁶
- 96 The SSRB considered where this judicial office should be placed within the salary structure and recommended that Salaried (Regional) Medical Members should receive the group 7 base rate. It was advised that the responsibilities of this post were comparable to those of non-medical members in this Chamber. This view is supported by the Senior President of Tribunals who considers that the remuneration of Medical Members of tribunals should not value their membership at a lesser level than their salaried or fee-paid judicial colleagues, particularly as the fee also fails to reflect the market rate of their professional medical colleagues.⁵⁷
- 97 The Government has had to balance the conflicting views of the SSRB and the independent Judgement Panel. In particular, we have had to consider the position of these judicial office holders without evidence on other (exclusively fee-paid) Medical Members in other tribunals, since this was outside of the scope of the Major Review.
- 98 The Government has concluded that the Chief Medical Member of the Social Entitlement Chamber is appropriately placed at the salary group 7 base rate to reflect the role’s leadership responsibilities. However, the Government considers that there is currently insufficient evidence to justify a change in salary for Salaried (Regional) Medical Members in this chamber. We have concluded that these judicial office holders should retain their existing salary but be placed in the new salary group 8. We recognise that these judges play an extremely valuable role within the tribunals system. The move is intended to maintain consistency within the judicial salary structure – where possible – of leadership judges being placed in a higher salary group to the judges they lead.
- 99 The Government acknowledges that, while there are no vacancies for salaried offices, there is currently a shortfall of up to 350 fee-paid Medical Members. The Government intends to return to the question of the appropriate remuneration rate for Medical Members through a review of non-legal members fees. We will explore with the Senior President of Tribunals the most proportionate way of undertaking this.

Deputy Senior District Judge (Magistrates’ Courts)

- 100 In looking in detail at the proposals for salary group moves, the Government has identified an additional judicial office which we believe should be moved to a higher salary group to reflect the weight and responsibilities of its core judicial role. The Deputy Senior District Judge (Magistrates’ Courts) is currently placed in salary group 6.2. This judicial office holder supports the Senior District Judge (Chief Magistrate) in undertaking leadership and management responsibilities for a significant number of District Judges (Magistrates’ Courts) and Deputy District Judges (Magistrates’ Courts). The Judgement Panel report recommended that this office should be moved to Salary

⁵⁶ Paragraph 4.3, page 9 Report on the placement of judicial posts by the Institute for Employment Studies

⁵⁷ Consultation on Job Placement Response Form – Joint Response from the Lord Chief Justice and the Senior President of Tribunals

Group 6.1 based on the significant weight of their judicial and management responsibilities.⁵⁸ This move was also endorsed by the Chief Magistrate in her Call to Evidence Response form and Consultation on Job Placement Response. The SSRB envisaged this office remaining in the same salary group but with a leadership allowance being paid. This is not possible within the existing legal framework.

101 This role is filled through a JAC recruitment exercise for a fixed-term period. Taking this into account, alongside the recommendation of the Judgement Panel, the Government is of the view that this judicial office should move to salary group 6.1.

Employment Judges

102 Employment judges are currently in salary group 7. The SSRB concluded that Employment Judges were appropriately placed in this group, alongside District Judges and Judges of the First-tier tribunal.

103 There were many judicial representations to the SSRB and the Judgement Panel arguing that Employment Judges should move to a higher salary group due to the high level of complexity and technicality in many employment law cases. However, the SSRB concluded that there was not strong evidence that *“such cases were typical of the daily work of an Employment Judge”*.⁵⁹ Similarly, the majority view of the Judgement Panel was that *“whilst Employment Judges focused in depth on one specific area of law, other Judges in this salary group (for example, on the District Bench) had to be capable of handling a broader spectrum of cases across many different areas of law...[the] view of the panel was that Employment Judges, District Judges and First Tier Tribunal Judges were correctly placed alongside each other.”*⁶⁰

104 Whilst recognising the strength of judicial feeling on this issue, the Government has concluded that there is insufficient evidence to support moving Employment Judges to a higher salary group.

Vice-Judge Advocate General and Assistant Judge Advocate General

105 The post of Vice-Judge Advocate General is currently placed in salary group 6.2 and Assistant Judge Advocate General is currently placed in salary group 7.

106 Representations were made to the Judgement Panel and the SSRB from the Judge Advocate General’s office that these two roles should move to salary group 6.1. This was on the basis that these judges oversee the specialised area of Courts Martial, and the argument was made that their work is analogous to a Circuit Judge, rather than a District Judge.

⁵⁸ Paragraph 4.3, page 10 Report on the placement of judicial posts by the Institute for Employment Studies

⁵⁹ Chapter 3 – Judicial salary structure and placement of posts; paragraph 3.75, page 137, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁶⁰ Paragraph 4.9, page 11, Report on the placement of judicial posts by the Institute for Employment Studies

107 The SSRB concluded “*that the evidence was not strong enough to distinguish the Judges Advocate General from all other First-tier Tribunal judges in terms of the cases that they were normally expected to handle*”.⁶¹ The Government supports this conclusion, and believes that there should be no changes to the salary group of the Vice-Judge Advocate General or Assistant Judge Advocate General.

Scotland and Northern Ireland: courts judiciary

108 There are a number of posts in Scotland and Northern Ireland where the Lord Chancellor sets the rate of remuneration. The SSRB recommended some changes in respect of a small number of these posts.

109 In Scotland, the Legal Member of the Lands Tribunal for Scotland is the only judicial office specifically mentioned by the SSRB for whom the rate of remuneration is set by the Lord Chancellor. The Government proposes to move this office to salary group 6.1 (from 6.2), which is supported by the findings of the Judgement Panel.

110 In Northern Ireland, the SSRB recommended moving Masters of the Court of Judicature (Northern Ireland) and Presiding Master of the Court of Judicature (Northern Ireland) to salary group 6.1, with an appropriate leadership allowance for the Presiding Master.

111 This move is supported by the findings of the Judgement Panel and retains consistency with the remuneration rates of Masters in England and Wales. This move will result in the Presiding Master being in the same salary group as the judges he leads (similar to Senior Masters in England and Wales). We consider that a leadership allowance is not appropriate as it creates an unjustified distinction between the role of the Presiding Master and that of Senior Masters in England and Wales who have similar responsibilities and there is no evidence that the office of Presiding Master is equivalent to those offices in the higher salary group (group 5). The Government is therefore minded to maintain consistency with the position of Senior Masters in England and Wales with these offices remaining in salary group 6.1. At an appropriate time, we intend to ask the SSRB to review whether the salary group placement of this judicial office alongside that of Senior Masters and Registrars (in England and Wales) appropriately reflects the work they do, including their leadership responsibilities.

112 The SSRB did not make any recommendations in respect of the Presiding District Judge (Magistrates’ Courts) (Northern Ireland). This is a statutory leadership role filled through a fair and open competition.⁶² The salary is set by the Lord Chancellor. The Judgement Panel recommended that this office should move to salary group 6.2 based on their management and leadership responsibilities. The office holder is currently paid an 8% allowance in recognition of their leadership responsibilities. The Government has concluded that this judicial office should move to salary group 6.2 which will replace the allowance currently being paid.

⁶¹ Paragraph 3.77, page 80, Supplement to the Fortieth Annual Report on Senior Salaries 2018, Report No. 90

⁶² Competitions for this judicial office are managed by the Northern Ireland Judicial Appointments Commission

113 The Government has carefully considered the placement of Presiding District Judge (Northern Ireland). This office holder has leadership over three District Judges. The weight of leadership responsibilities is clearly different in comparison to the District Judge (Magistrates' Court) Northern Ireland as the Presiding District Judge has responsibility for providing leadership to much fewer judges. It is unclear what comparisons were drawn by the Judgement Panel which led them to conclude that both roles should be placed in salary group 6.2. The Government, in consultation with the Northern Ireland Civil Service, believes that further analysis and evidence is needed to assess the weight of leadership responsibilities in comparison to other leadership roles and we have concluded that, on the evidence currently available, it is not appropriate to change the salary group for the Presiding District Judge (Northern Ireland).

Devolved Judicial Offices in Wales, Scotland and Northern Ireland

114 The SSRB made a number of recommendations in respect of the devolved tribunals and the Member of the Scottish Land Court and summary sheriffs in Scotland. Remuneration rates for these posts are the responsibility of the respective administration rather than the Lord Chancellor. Each devolved administration is currently considering the recommendations pertaining to the judicial posts in their courts and tribunals and they will respond to these in due course.

Leadership, diversity and career development

Observation 6: Judicial management – The Constitutional Reform Act 2005 envisaged an independent judiciary, managed by judges. That management function needs to be properly resourced. We believe there now needs to be a wide-ranging look at judicial human resources management. Mechanisms should be put in place to provide a consistent 'offer' to judges in each jurisdiction. This should set out what they are expected to do (in the form of a job description) but also the support available to help them to do it. This will ensure more consistency and fairness, and better alignment between the needs of the judicial appointments commission, the executive and the judiciary in decisions about complement levels, and resourcing recruitment. It would also enable the judicial leadership to take more management responsibility, including making more day-to-day decisions about some pay and reward questions. We return to this in Chapter 5.⁶³

Observation 7: Career management within the judiciary – The information, resources and skills available for career management within the judiciary do not seem adequate. We believe it is essential that sufficient resource, including in the relevant judicial offices, is dedicated to this work. We note from visits and written evidence that some judges feel isolated and unsupported, and we believe that remedying this should be a priority. This is especially important in supporting the retention of experienced judges.⁶⁴

⁶³ Chapter 2 – Strategic context; page 63, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure.

⁶⁴ Chapter 2 – Strategic context; page 64, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

Judicial Leadership and management

- 115 The SSRB concluded that “*a more proactive approach to leadership is required at all levels of the judiciary*”.⁶⁵ The Government believes that strong judicial leadership is essential in order to support our judiciary to give of their best, and to drive continued improvements in the administration of justice.
- 116 Leadership of the judiciary is the responsibility of the Lord Chief Justice and Senior President of Tribunals, and must be consistent with the independence of the judiciary and the position of its office holders. The Government notes the significant amount of work being taken forward by the Lord Chief Justice and Senior President of Tribunals to put in place the practices needed to lead the judiciary in the modern world. They are overseeing work to improve leadership training and development, first introduced by the Judicial College in 2014, with a new programme of leadership training being put in place this year. The senior judiciary are also working with leadership judges and HMCTS to develop a new cross-jurisdictional leadership pack for all leadership judges across the courts and tribunals.
- 117 The Judicial Office is reviewing what further Human Resources functions are needed to support the modern judiciary and how best these can be provided. Work has already begun to develop clear and consistent job descriptions for all the main judicial offices by the end of 2019. Clearer job specifications will also be used to define more transparently what is expected of leadership judges.
- 118 The SSRB observed that the “*information, resources and skills for career management within the judiciary do not seem adequate*”.⁶⁶ It is essential that any system for managing or assessing the performance of members of the judiciary reflects the unique constitutional position of the judiciary and their independence both from each other and from government. The Government welcomes the steps being taken by the senior judiciary to support the development of judges through the use of appraisal and peer review discussions for fee-paid courts and tribunals judges, and to implement career discussions for salaried courts and tribunals judges. These discussions will focus not only on career development opportunities, but also provide an opportunity for discussion of any concerns judges have about the pattern or balance of their work.

Wider support for judges

- 119 Considerable work is also underway to build on and improve the wider support which is available to judges at all levels as they perform their important duties.
- 120 Steps are also being taken to provide better support for the health and welfare of judges. A specialised programme to support judges hearing traumatic cases was launched on 13 November 2018. Salaried judges in the crime, family and immigration jurisdictions will be offered an annual conversation with a qualified professional to help ensure they have not been adversely impacted by their work. Judges who are involved in high profile cases can also access support at the beginning of, during and after the

⁶⁵ Remit and Introduction; paragraph 49; page 9, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary Structure

⁶⁶ Remit and Introduction; paragraph 51; page 9, Supplement to the Fortieth Annual Report on Senior Salaries, Report No. 90 by the Senior Salaries Review Body: Major Review of the Judicial Salary

trial. From April 2019, additional face-to-face induction training is also being offered to new judges, which will include advising on sources of support for welfare and an introduction to the support available through Judicial Human Resources.

Appendices

Appendix A – Judicial Offices changing salary groups with effect from 1 October 2019

Judicial Office	Current Salary Group	Current salary base rate (based on 19/20)	Future Salary Group	Future salary base rate (based on 19/20)
Deputy Chamber President, Upper Tribunal (Lands)	6.1	£140,289	5	£151,497
Surveyor Members, Upper Tribunal (Lands)	6.2	£132,075	6.1	£140,289
Masters and Costs Judges	7	£112, 542	6.1	£140,289
Insolvency and Company Court Judges	7	£112, 542	6.1	£140,289
Chamber President of the First-tier Tribunal, War Pensions and Armed Forces Compensation Chamber	6.2	£132,075	6.1	£140,289
Deputy Senior District Judge (Magistrates' Court)	6.2	£132,075	6.1	£140,289
Principal Judges (Property Chamber)	6.2	£132,075	6.1	£140,289
Legal Members the Lands Tribunal for Scotland	6.2	£132,075	6.1	£140,289
Presiding Master of the Court of Judicature (Northern Ireland)	7	£112, 542	6.1	£140,289
Masters of the Court of Judicature (Northern Ireland)	7	£112, 542	6.1	£140,289
Regional Judges (Property Chamber) ⁶⁷	7	£112, 542	6.2	£132,075

⁶⁷ This does not include the Deputy Regional Judge or Deputy Regional Valuer who will remain in Salary Group 7

Appendix B – Judicial offices within scope of the Recruitment and Retention Allowance

The Recruitment and Retention Allowance (RRA) is a targeted and temporary allowance. It is taxable, non-pensionable and liable for National Insurance contributions.

I. Recruitment and Retention Allowance of 25%

In order to qualify for the RRA of 25% of salary a judicial office holder must be eligible for membership of the Judicial Pension Scheme 2015 (JPS 2015) and be a salaried holder of an office, in respect of the courts and tribunals in England and Wales, in salary groups 1 to 4 of the judicial salary schedule.

II. Recruitment and Retention Allowance of 15%

In order to qualify for the temporary RRA of 15% of salary a judicial office holder must be eligible for membership of JPS 2015 and be a salaried holder of one of the following offices, in salary groups 5+ to 6.2 of the judicial salary schedule:

<i>Salary group 5+</i>	
Judge of the First Tier Tribunal (Social Entitlement Chamber) and Deputy Judge of the Upper Tribunal	
<i>Salary group 5</i>	
Chamber Presidents of First Tier Tribunals	Includes: – Immigration and Asylum Chamber – General Regulatory Chamber – Health, Education and Social Care Chamber – Property Chamber – Social Entitlement Chamber – Tax Chamber
Senior Circuit Judge	Includes: – SCJ at the Central Criminal Court – Specialist Circuit Judges, Chancery, Circuit Commercial, Patents (IPEC) and Technology and Construction Court – Designated Civil Judge – Designated Family Judge – Resident Judge – Recorder of Liverpool – Recorder of Manchester
Judge Advocate General	
Circuit Judge of the Employment Appeals Tribunal	
President, Employment Tribunals (England and Wales)	
Senior District Judge (Chief Magistrate)	
Judges of the Business and Property Courts	

Vice Presidents of the Upper Tribunal (Immigration and Asylum Chamber)	
<i>Salary group 6.1</i>	
Circuit Judge	Includes: – Designated Civil Judge – Designated Family Judge – Resident Judge
Deputy Chamber President, Health, Education & Social Care Chamber	
Deputy Chamber President, Upper Tribunal (Lands)	
Upper Tribunal Judge	Includes: – Administrative Appeals Chamber – Immigration and Asylum Chamber – Lands Chamber – Tax and Chancery Chamber
<i>Salary group 6.2</i>	
Chamber President of the First Tier Tribunal, War Pensions and Armed Forces Compensation Chamber **Moving from salary group 6.2 to group 6.1 on 1 October 2019.	
Surveyor Members, Upper Tribunal (Lands) **Moving from salary group 6.2 to group 6.1 on 1 October 2019	

New appointments who qualify under the above criteria will receive the RRA.

Members of the judicial pension scheme established under the Judicial Pensions and Retirement Act 1993 (the scheme referred to as “JUPRA”) are not eligible for the RRA unless they taper across, under transitional arrangements, to JPS 2015, and then only from the point at which they become members of JPS 2015 (or, should they choose not to join JPS, the point at which they would become eligible to do so).

The RRA will cease to be paid to anyone who is no longer eligible on the basis of the above criteria.

The Ministry of Justice is working with the Devolved Administrations in Northern Ireland and Scotland in respect of the position in those jurisdictions, and further details will be announced in due course.

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