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# **The attractiveness of judicial appointments in the United Kingdom**

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## **Report to the Senior Salaries Review Body**

January 2018

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**Dr Sophie Turenne and Professor John Bell**

University of Cambridge

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# Overview and Executive Summary

1. There are many changes from ten years ago in the attractiveness of a judicial position in the United Kingdom. For many prospective candidates, it suffices just to cite some, and not all of them. But the most significant point is that the previous expectation that a position on the Bench would conclude a successful career in practice is now not to be taken for granted.
2. The gap between pay in practice and pay on the Bench has increased significantly, at the same time that judicial pensions have become less generous and subject to high levels of taxation. The relevance of this varies depending on specialism. The financial hurdles are less serious for those who practice in family and criminal law. Practitioners in commercial law have their own distinctive problems.
3. In recent times, lawyers tend to specialise increasingly, and it is accordingly less appealing to move to the Bench to hear cases outside one's specialism. There is an additional problem that judicial assistants are rarely available and that it can be difficult to speak informally with judges with greater experience in a legal area.
4. A greater disincentive, which affects all practitioners regardless of specialism, is the increased workload in court at a time when many cases, especially those involving litigants in person, will necessarily take longer if the judge is to be sure that the case has been properly considered. Many feel that the pressures on judges in these situations are misunderstood by court managers.
5. Contemporary lawyers are used to flexibility of working hours and practices at the Bar or in the solicitors' office, but they do not perceive this as being available on the Bench. Nowadays practitioners in their 50s may have young children and even for those without dependent children or other care responsibilities, it is to be expected that their partners will be in work and unable to accompany them on circuit. Unhappiness and isolation is experienced especially by those who need to travel long distances to court or stay away from home during the working week.
6. Conditions in courtrooms are criticised, with crucial IT facilities wont to fail too often, creating additional pressures on all court personnel. Facilities are not conducive to collegiate working. There is a failure to account for the time needed to pre-read the documentation relating to the case and write judgments.
7. A growing distance is perceived between the judiciary and the executive, and the government in particular. Potential judges are aware of the unhappiness of present judges and are wary of the convention that they should not return to practice if they should wish to leave the Bench. Many believe that the government would be more receptive to their needs or complaints if they were in a better position to leave judicial office.
8. Pensions and pay may need to be revised upwards in order to prevent a further decline in judicial applications. However, attracting the best candidates will require a number of further measures that may be outside the remit of the SSRB. These measures, summarised at the end of the report, include greater flexibility in working practices, greater support especially for judges who are asked to judge outside their area of specialism, and more nuanced ways of measuring judicial workload.

## Section 1. Introduction

### *Purpose and scope*

1. In October 2017, the Lord Chancellor (then Liz Truss MP) asked the SSRB to carry out a Major Review of judicial pay, to be completed by June 2018. For this purpose, judicial recruitment, retention and motivation are one strategic area for review, and this study aims to provide the evidence needed to assist the SSRB properly and fairly to make important recommendations about judicial pay.
2. The SSRB remit comprises salaried judicial office holders in the courts and tribunals of the United Kingdom, with the judicial pay salary structure consisting of nine salary groups. This Report considers some judicial roles that are considered the entry points to the judiciary: High Court (salary group 4); circuit judges (salary group 6.1), and district judges (salary group 7). In addition, Lower tribunal judges are in scope of the Major Review and this Report (see Annex 1). Equivalentents in Scotland and Northern Ireland are also within the scope of the Major Review and this Report. Although judicial salaries and pensions are reserved matters under the Scotland Act 1998, the Scottish Government accepts that those matters need to fit into a UK-wide system,<sup>1</sup> and it wishes the SSRB to make recommendations on a number of judicial office-holders whose pay is devolved.<sup>2</sup>
3. While government policy on judicial pensions is outside the SSRB's remit, the SSRB recognises that pay cannot be considered in isolation from other aspects of financial reward or taxation.<sup>3</sup> Judicial pensions (both changes to the pension scheme and the tax treatment of pensions) are currently a matter of concern equal to, if not greater than, base pay. Those issues can influence decisions whether to apply to the judiciary, and may potentially lead to increased pay pressures. Indeed, the SSRB has acknowledged "some evidence that the vacancy levels in the High Court in 2016 are linked to decreasing pay and pensions".<sup>4</sup> The topic of judicial pensions is accordingly within the scope of this Report.

### *Research objectives*

4. Following the SSRB terms of reference, we have collected data relating to the feeder groups to the Bench with a view to contributing to a better understanding of how to recruit and retain sufficient numbers of high quality judges at different levels. Our main research question was whether, from different areas of legal practice, the Bench is seen as an attractive option. This involved a discussion of the factors currently influencing the decision whether to apply to the Bench or not, and how far salary and pensions would make a difference. In particular, the Report has three broad objectives:
  - To investigate and identify the reasons why some eligible people do not apply to the judiciary.

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<sup>1</sup> *Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review 2010*

<sup>2</sup> *Thirty-Ninth Annual Report on Senior Salaries 2017*, thereafter 'Annual Report 2017', Annex E.

<sup>3</sup> *Annual Report 2017*, para. 2.67

<sup>4</sup> SSRB, *Annual Report 2017*, para. 6.50.

- To compare the reasons why some eligible people do not apply to the judiciary across different judicial posts and different groups of applicants.
  - To compare those reasons across the UK jurisdictions.
5. All three objectives address the main question the research is designed to answer; in addition the first objective fills a gap. There is a lack of up-to-date information on the range of reasons why some candidates with the apparent skills and experience to take judicial posts at various levels do not apply to do so. In the words of the SSRB, “the external market from which the judiciary is mostly appointed is insufficiently understood”.<sup>5</sup> This work contributes to evidence that may assist in determining whether, in England and Wales, the recent unprecedented recruitment difficulties (with, between April and September 2016, six vacancies unfilled out of 14 High Court posts (salary group 4) in 2016, and 11 unfilled vacancies from a total of 55 circuit posts - salary group 6.1) is only a transient phenomenon or whether it is a portent of more problems to come. (For similar difficulties in Scotland and Northern Ireland, see paras. 9-11 below).
6. This Report is the first to examine reasons not to apply to the judiciary across different judicial posts. Previous studies were limited to one post only (High Court Judge in Genn’s 2008 study)<sup>6</sup> or adopted a quantitative methodology that did not consider whether barriers were the same for all posts.<sup>7</sup> Our Report shows that attitudes do differ from post to post and barriers do not apply, or do not apply to the same extent, for each post.
- Similarly, judicial attitude about encouragement to apply varies from post to post. According to the *2016 UK Judicial Attitude Survey (2016 UK JAS)* (England and Wales),<sup>8</sup> 57% of all judges said they would still encourage suitable people to join the judiciary, with that percentage falling just below 50% for district judges and High Court judges. 43% of judges said they would either not encourage suitable people to apply (17%) or were not sure if they would do so (26%). First Tier Tribunal judges were most likely to encourage suitable people to apply (71%).
- Reasons further differ between distinct groups of potential candidates to judicial appointment (e.g. barrister and solicitor; family law and commercial practitioner) and a comparison of reasons across different specialisms is in scope of this work.
7. The third objective is to compare the attractions and downsides of a judicial appointment between England and Wales, Scotland and Northern Ireland. Here too our research is the first to do so. Unlike the evidence provided for England and Wales, evidence provided to the SSRB in 2016 indicated that neither the Judicial Appointments Board of Scotland (JABS) nor the Northern Ireland Judicial Appointments Commission (NIJAC) faced difficulties in their recent recruitment exercises.<sup>9</sup>
- Thus, in 2015-2016, the JABS was able to recruit summary sheriffs, paid in line with those in salary group 7; one sheriff (pay equivalent to salary group 6.1), and five vacancies in the Office of Senator of the College of Justice, equivalent to Outer House Judges of the Court of

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<sup>5</sup> SSRB, *Annual Report 2017*, para. 1.30.

<sup>6</sup> Professor Dame Hazel Genn DBE, QC, *The Attractiveness of senior judicial appointment to highly qualified practitioners* (Judicial Executive Board, December 2008), para. 43.

<sup>7</sup> See, for example, Accent, [Barriers to Application to Judicial Appointment. Report 2013](#), prepared for the Judicial Appointment Commission of England and Wales.

<sup>8</sup> Cheryl Thomas, *2016 UK Judicial Attitude Survey. Report of findings covering salaried judges in England & Wales Courts and UK Tribunals*, para. 9.2.

<sup>9</sup> *Annual Report 2017*, para. 6.48 to 6.50.

Session or salary group 4. The NIJAC also ran four exercises for salaried judiciary in 2015-16 and succeeded in filling all the vacancies, including three in the High Court.

Both the Lord President and Lord Chief Justice of Northern Ireland have since expressed concern at the impact of changes to pensions and pension taxation on senior judicial recruitment.<sup>10</sup> The morale and motivation of the Scottish judiciary are also affected by “the judicial salary issue”, with, according to the *2016 UK JAS (Scotland)*, “virtually identical results to those for Judges in England and Wales, UK Tribunals and Northern Ireland in 2017”.<sup>11</sup>

8. Our research has found many similarities in views among practitioners in those two jurisdictions. There are however also some marked differences.
9. In Scotland, there are different problems at different levels of the judiciary. At the level of sheriff (salary group 6.1), there are a large number of applicants predominantly from among the solicitors and procurators fiscal.<sup>12</sup> Among the reasons for this is the relative attractiveness of the salary and pension arrangements compared with those of members of those particular professions.<sup>13</sup>
10. The position in relation to Senators (salary group 4) is different and poses more problems. A survey of QCs conducted by the Lord President found that 59% of responding QCs would not apply for a judicial office and 35% had yet to make up their minds.<sup>14</sup> That survey had a 93% response rate. Thus only 6% of QCs (i.e., as the report notes, 7 individuals) would definitely be willing to apply for judicial office.<sup>15</sup> There is no restriction of applications to QCs for such positions, but it does turn out that QCs and existing sheriffs are the only persons appointed in practice. Arguably, there is a very specific problem in attracting QCs to higher judicial positions, which does not extend to the full range of judicial positions in Scotland. It should also be noted that whereas a third of applicants for shrieval positions were women, barely 10% of those for the position of Senator were women (although they make up 22% of all QCs).<sup>16</sup>
11. In Northern Ireland, the 2015-2016 Annual Report of the Northern Ireland Judicial Appointments Commission notes that there were 9 applicants for 3 High Court appointments (salary group 4), which is much lower than, for example, applications to sit on tribunals (which run in the mid-teens per available post).<sup>17</sup> The applications for county court

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<sup>10</sup> SSRB, *Annual Report 2017*, para. 6.50.

<sup>11</sup> Para. 5.1.

<sup>12</sup> A procurator fiscal is the title given to a public prosecutor in Scotland.

<sup>13</sup> JABS, *Annual Report 2016-17*, pp. 16 and 18. In 2016-2017, over 80% of applicants for the position of summary sheriff and for the position of sheriff were either solicitors or solicitor advocates. In three competitions for these posts, there were 154 applicants for the posts of summary sheriff and 19 for one post and 31 for two posts as sheriff.

<sup>14</sup> Judicial Office, [Report on QCs attitudes regarding appointment as a senator of the college of justice](#) (2017) (hereafter “Lord President’s Survey”).

<sup>15</sup> JABS, *Annual Report 2016-17*, pp. 13 and 17. QCs rarely apply for shrieval positions (though two were appointed as summary sheriffs in 2016). In October 2016, the competition for a Senator position produced only 3 QC applicants, two of whom were appointed. In the November 2015 competition, 6 of the 15 applicants were QCs and 5 were appointed.

<sup>16</sup> Ten Senators (28%), two sheriffs principal (40%) and 27 sheriffs (22%) are women.

<sup>17</sup> NIJAC, *Annual Report and Accounts 2015-16* (2016), p. 20.

and similar level positions are significantly more numerous.<sup>18</sup> The Queen’s University Belfast *Equity Monitoring Report 2014*<sup>19</sup> notes that representation of women in the courts is much lower than in the barristers or solicitors professions (22% compared with 39% of those eligible to apply for judicial office). By contrast, the pools of candidates at applicant and interview stages are much as would be expected from the gender profile of eligible practitioners.<sup>20</sup>

In terms of the professions from which judicial appointments are drawn, independent barristers are disproportionately represented and solicitors in private practice are disproportionately under-represented among appointees.<sup>21</sup> There are now (since 2015) two female members of the High Court in Northern Ireland (20%) and since 2016 women in the county court represent 28% of the judiciary.<sup>22</sup>

12. In both jurisdictions, there are specific problems with the appointment to the most senior judiciary. Solicitors apply for the most senior appointments, but are not appointed, which creates a disincentive to applications. In both, appointment to the next tier is helped by the practice of public prosecutors applying for judicial appointment, which is not the case in England and Wales. Issues relating to applications and appointment of women may have connections with the issue of work flexibility which we discuss later in the report.

### **Methodology**

13. Our overarching research question was, as noted in paragraph 4 above, to understand whether, from different areas of legal practice, the Bench is seen as an attractive option; to discuss the factors currently influencing the decision whether to apply to the Bench or not, and to consider how far salary and pensions would make a difference. We are therefore reporting perceptions of the judicial role and the life of the judge, not necessarily what the reality is. Our reason is that perception drives the decision to apply to become a judge or not.
14. The majority of our respondents (66%) are practitioners or judges based and working in England and Wales. Only 5% or three of our respondents are salaried judges or an executive member of one of the Law Societies in the UK. Their views echoed the views of the judiciary across jurisdictions and across different posts, as documented in the *Judicial Attitude Survey* conducted by Professor Cheryl Thomas (UCL) across the three jurisdictions. In combination with our initial sample of practitioners, they helped us to refine our area of questioning in a most efficient way.
15. Our “snowball sample” started with the names of eligible practitioners at the Bar and in Law firms provided by the Advisory and Evidence Group to the SSRB for the three jurisdictions under scrutiny. We partly relied on the SSRB list to approach potential respondents, but also took private initiatives to identify further candidates for interview. This was considered desirable, as part of an active process of monitoring the snowball sample for diversity

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<sup>18</sup> See NIJAC, *Annual Report and Accounts 2014-15* (2015), p. 28: 18 applicants for one county court position and 14, 12 and 21 applications for various positions as Master.

<sup>19</sup> [Equity Monitoring Report 2014](#), p. 2.

<sup>20</sup> *Ibid*, pp. 6 and 12.

<sup>21</sup> *Ibid*, pp. 18 and 19.

<sup>22</sup> M. Potter, “The representation of women in public life: where does Northern Ireland stand (now)” (8 March 2017), see [Research Matters: A blog from the Northern Ireland Assembly Research and Information Service](#).

purposes. We contacted 10 practitioners for England and Wales out of a longer list gradually provided by the Advisory and Evidence Group. 20 practitioners were contacted in Scotland and Northern Ireland, including some suggested from the Advisory and Evidence group. Our sample of respondents was then expanded by means of respondents suggesting names of other practitioners to contact.

16. The sample of respondents is not fully representative of the breadth of the legal profession. We monitored the risk of selection bias and aimed to capture the wide range of experiences which we know to exist. 75% of barristers were in silk, but not all 7 solicitors were partners in Magic Circle firms. They were all of suitable seniority, with many at the top of their field, for their application to a judicial appointment to be taken very seriously. Law Societies were contacted in each jurisdiction and gave further information.
17. We started the fieldwork with a first interview taking place in early October 2017; our last interview took place in mid-December 2017.

### *Diversity*

18. There were 59 respondents: 44% were women and 56% were men. 7% or four of them were self-classified as BAME. 7% or four of them also had a career outside legal practice before qualifying and practising as an advocate, barrister or solicitor. The geographical groups are as follows:

<b>Table 1: Geographical groups of respondents</b>				
United Kingdom	Northern Ireland	Scotland	England and Wales London	England and Wales Regions <sup>23</sup>
Respondents (n=59)	12%	22%	44%	22%

### *Area of practice*

19. The main areas of practice among the 56 practitioner respondents (i.e., excluding the three salaried judges or an executive member of one of the Law Societies in the UK among our respondents) were broadly as follows:

<b>Table 2: Main practice area of practitioner respondents</b>					
Area of practice	Chancery <sup>24</sup> / Commercial /European Union law	Criminal law or Civil and Criminal law	Family law	Civil or Employment law	Public law or Taxation law

<sup>23</sup> Respondents were mainly practising in Birmingham, Bristol, Leeds and Manchester.

<sup>24</sup> Our respondents used the term 'Chancery' and so we follow their terminology. We note the launch of the Business and Property Courts in July 2017 and the attempt to introduce a more 'user-friendly' name ("Business and Property Courts") to the business community. The Business and Property Courts bring together the work of the Chancery Division and specialist courts of the Queen's Bench Divisions of the High Court, see "The Launch of the Business and Property Courts in Bristol" (January 2018) by Sir Geoffrey Vos, Chancellor of the High Court.

Respondents (n=56)	32%	27%	21%	12%	7%
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### *Judicial appointment*

20. Some 19% (or 11 respondents: 7 women and 4 men, out of total of 59) had applied for salaried judicial appointment, as follows:

<b>Table 3: Respondents who applied for a salaried judicial appointment</b>			
Applications	Unsuccessful application	On-going application	Successful application
England and Wales (n=9)	8%	3%	3%
Scotland (n=2)	3%	0	0
Northern Ireland	0	0	0

21. Among the 81% of respondents (48 in number) who had not previously applied for a salaried post, some 39% or 19 respondents currently hold one or more fee paid posts, with the following geographical breakdown:

<b>Table 4: Respondents with no application to salaried judicial appointment and fee paid holders among them (by geographical group)</b>				
UK jurisdiction	Northern Ireland	Scotland	England and Wales London	England and Wales Regions
No application to salaried judicial appointment (n=48)	14%	23%	43%	20%
Fee paid post holder (n=19)	2%	8%	16%	12%

22. 53% (or 30) of our practitioner respondents (of whom 24% were women and 27% were men) had experience of part-time judging, sometimes cumulating two fee-paid posts: 16 had experience as Recorder; 5 as part-time sheriff, district judge or county court judge; 11 were Deputy High Court judges and 5 were Tribunal judges.
23. We undertook an initial set of 5 interviews together and shared the remaining interviews between us, with regular progress meetings to discuss the issues which we identified separately. Potential respondents were approached by email, with some brief explanatory information highlighting the purpose and scope of this project. The duration of our meetings varied typically from 30 minutes to 55 minutes. Whenever possible, we had face-to-face meetings but for practical reasons most of our interviews were conducted by phone. In total, we held 18 face-to-face meetings and 41 interviews by phone.

### *Areas of questioning*

24. Our areas for discussion with respondents included, but also went beyond, issues that had been considered in the research commissioned in 2008 by the Judicial Executive Board<sup>25</sup> and which the SSRB had indicated as expected topics for discussion. We collected the respondents' personal thoughts on applying to the Bench themselves: whether they already feel interested in judicial appointment (including the level at which they might consider themselves to be eligible to apply for a judicial position and why or why not) and whether they had already applied. The information was provided under the Chatham House Rule.<sup>26</sup> Respondents were then invited to consider, in their own terms, the perceived disadvantages of salaried and/or fee-paid office and to consider the perceived attractions and motivating factors for application. Among the factors considered, we asked open-ended questions about the relevance and importance of the following:
- Pre-application concerns, such as impact of application on practice and career prospects.
  - Beliefs about the financial impact of a judicial appointment. Salary, changes to the pension scheme and the tax treatment of pensions were considered.
  - Status and perception of a judicial appointment as career progression.
  - The working conditions of full-time judges.
  - Changes in the judicial role with greater leadership duties and greater court management duties.
  - Beliefs about impact of appointment on private life including the potential need for relocation, and including travel impact for circuit court candidates or the impact of appointment on social life (an issue of particular concern in Scotland and Northern Ireland).
  - Attitudes to the Judicial Appointments Commission for England and Wales, Judicial Appointments Board for Scotland and the Northern Ireland Judicial Appointments Commission selection processes (confidentiality and fairness).
25. The preparation has included reading publicly available documents on the judiciary in the three jurisdictions considered, as well as reading the literature relating to judicial pay and pensions in particular. This covers judicial writings and speeches, information publicly available from judicial associations, representative groups and institutional stakeholders (e.g. Law Society, Bar Council, CILEX, Judicial Appointments Commission's Official Statistics) with equivalent references in Scotland and Northern Ireland.

## **Section 2. Traditional Incentives and Disincentives to a Judicial Appointment**

26. Most of our respondents recognised that, in the past, there were five incentives, often operating together, that encouraged professionals to move to the Bench. These incentives applied across the jurisdictions.

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<sup>25</sup> Note 6 above.

<sup>26</sup> Under the Chatham House Rule, participants to a meeting are free to use the information received, but neither the identity of the speaker(s) nor that of any other participant whose statements are relied upon or cited may be revealed.

- A reduction of workload and pressure, compared with private practice, creating thus a more agreeable lifestyle later in one's career.
  - A good salary which, though smaller than many practitioners had been gaining before going onto the Bench, was secure, compared with the vagaries of income in professional practice.
  - A good pension which was non-contributory and achieved after 15 years on the Bench with a lump sum that was tax-free. Given that many practitioners had not made significant pension provision for themselves, this was often very attractive.
  - The social status of judges was well respected in society and this was acknowledged by the knighthood to the members of the High Court in England, Wales and Northern Ireland or the title Lord to Senators of the Court of Session in Scotland.
  - Public service was a major motivation to go onto the Bench. The recognition that lawyers had gained from the legal system and should put something back into it was strong. With this came the opportunity to contribute to the development of the law through decisions.
27. Genn, in her 2008 study,<sup>27</sup> focused on the first (a reduction of workload and pressure), the fourth (the high social status of judges) and the fifth (a sense of public service), but there is no divergence between her findings and ours. The major difference in our interviews was that each of these attractions had altered significantly in the past 20 years and this was true across the different posts and jurisdictions under scrutiny. Today, the attractiveness of remuneration for undertaking judicial office must be viewed as part of the whole package presented to potential candidates. We detail these findings in **Section 3**.
28. Genn<sup>28</sup> also identified seven factors in order of frequency which her respondents gave for not seeking judicial appointment:
1. Increasing workload and poorer working conditions.
  2. For High Court judges travelling on the circuit, the absence from home and family and the environment of the circuit.
  3. Salary: the differential from practice, and also a recent demographic change in the age at which practitioners are willing to contemplate a substantial drop in income.
  4. Loss of autonomy.
  5. A preference to be an advocate, rather than to decide cases. This is connected with the enjoyment successful practitioners feel in relation to their work.<sup>29</sup>
  6. Some considered their temperament was better suited to the Bar and desired to stay at least until their career had plateaued.
  7. Isolation and lack of support as a judge.
29. All these disincentives were raised by our respondents, but with a difference in emphasis in the priority given to particular issues. The biggest disincentives are now seen as the lack of autonomy and the inflexibility of working practices. Significant in this area were the control exercised by court managers over judicial workload and the perceived failure of the judicial career to match the flexibility in working offered in the best chambers or solicitors' firms or in the public sector more generally. A dislike of the application process was also commonly

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<sup>27</sup> Note 6 above, para. 43.

<sup>28</sup> Ibid, para. 50.

<sup>29</sup> See Genn, note 6 above, para. 70, Case 4.

cited. We noted also continuing security concerns attached to judicial appointments in Northern Ireland.

30. A further important and concomitant change is that the social expectation within the professions that good barristers would naturally see a judicial appointment as the apogee of their career has increasingly dissipated. Many of our barrister respondents saw taking silk as the top recognition to which they aspired. Becoming a judge was an option, but not a common one, and many large chambers had few members, or even none, appointed to the Bench in the last ten years.

### Section 3. Pay and Pensions

31. The very substantial differential in earnings on the High Court Bench (England and Wales) compared with the Bar was noted by Genn.<sup>30</sup> The differential has increased in the ten years since her study. Probed more deeply, the issue of earnings affects the motivations of different kinds of practitioner in different ways. The same is true of the value of the judicial pension. For some, recent changes, particularly in taxation, have made the judicial pension not worth having at all. For others, it remains a very significant attraction

#### *Salary*

32. By the standards of the general public and public sector employees in general, judges are well paid. A district judge and certain tribunal judges receive £108,171 (salary group 7); a circuit judge or sheriff receives £134,841 a year (salary group 6.1); a Northern Ireland county court judge receives £145,614 (salary group 5);<sup>31</sup> a High Court judge £181,566 (salary group 4). But the difference between judicial salaries and those in the private sector have grown since the end of the 1980s. As one London family law barrister put it, it is not unusual for a fee-paid judge to be paid only a third of what the publicly funded advocate before her is being paid or a tenth of what a privately funded advocate is being paid. Although the highest incomes are mainly received in commercial law, even criminal and family law practitioners receive considerably more than judges.

The earnings of solicitors have also increased considerably in the same period, and so similar considerations affect many of them. This is not just the case in relation to “Magic Circle” firms. Our respondents suggested that earnings in regional firms across the UK have outpaced judicial salaries by a considerable margin.<sup>32</sup> The decision to go onto the Bench thus typically involves a considerable drop in income for many barristers and solicitors. The differential varies across the UK, but it was noted as significant in provincial England, in Northern Ireland and in Scotland, as well as in the South-East of England.

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<sup>30</sup> Ibid., paras. 56-57.

<sup>31</sup> County court judges (salary group 6.1) are paid the salary for group 5 so long as they are required to carry out significantly different work from their counterparts elsewhere in the UK, see Annex 1 for further details on salary groups.

<sup>32</sup> The Law Society of England and Wales, [Private practice solicitors’ salaries 2016. PC Holder Survey 2016](#) (September 2017); see also the [Hudson Salary Guides Legal 2016](#).

33. For solicitors in Scotland and Northern Ireland, the interviews suggested that the judicial salary provided security of income and was often close enough to what would be received in private practice. The Law Society of Scotland has produced a survey of solicitors' income. That suggests that firms with 5-9 partners or sole practitioners had a median total income of about £210,000 per partner.<sup>33</sup>

In the Lord President's survey of Scottish QCs, the level of salary provision was only of either "major" or "critical" concern to a small number of those surveyed.<sup>34</sup> Our interviews with Scottish practitioners suggested that they took the fall in income as inevitable when they applied to the Bench and did not think anything could be done about it. As both male and female QCs stated, "It is not about money. You expect to take a significant pay cut to go onto the Bench." Those who commented further did say it was a good salary and none of the 12 Scots practitioner respondents suggested that they would be more likely to go onto the Bench if the pay were increased.

In Northern Ireland and in England and Wales, views were more nuanced. The pay cut has been a disincentive for a long time, but there used to be good reasons for going beyond it: "...Before, you would get a salary reduction but you got a bit of your life back" (London female QC, Family law). Another respondent thought aloud: "I would take a significant pay cut so what is the trade off? It would be the security [of having a pension]. If that part of the financial deal isn't there then things have to be adjusted" (regional male QC, civil law).

Overall, 67% of those interviewed commented at length that there was a substantial loss of income, even if not much could be done about it, and only 15% saw the salary level as an attraction of the Bench. 29% of the whole sample or 44% of those commenting at length on this point saw salary as a disincentive.

34. One specific point noted by some lawyers in the English regions was that the cost of housing in London was a significant disincentive. One of our correspondents presented evidence based on the experience of recent appointees that suggested the additional cost of renting or buying a property in London, together with travel costs, could be between £25,000 and £38,000 a year, to be met out of net income.
35. As noted above, practitioners have long traded off the loss in income against potential advantages in judicial office. But the significant changes in thinking that were already noted by Genn<sup>35</sup> ten years ago have continued. Genn reported that many of those interviewed were having children at a later age than earlier and many practitioners over 50 had young children. Our respondents also reported that financial commitments to children may well continue during their 20s. This may lead practitioners to wish to defer consideration of becoming a judge to their mid-50s. This was specifically stated by a significant number of practitioners in all jurisdictions. Another barrister put it this way,

"When I was 28-30, I had no children and I was earning shedloads of money without being particularly good. I thought I might apply [one day]. But now I have four children. Half of them are still in education, and in private education. I have a crushing mortgage. With cuts in legal aid, fees are cut to the bone by the taxman. I'm not in the

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<sup>33</sup> Law Society of Scotland, [Financial Benchmarking 2017: Report](#).

<sup>34</sup> Judicial Office, *Report on QCs attitudes regarding appointment as a Senator of the College of Justice* (May 2017), para. 11.

<sup>35</sup> Note 6 above, para. 59.

financial position that I thought I would be in. I can't afford being a judge. In the next ten years, maybe." (London male QC, criminal law)

36. The combination of financial commitments to the family and the impact of taxation changes on the value of pensions (considered below) led many of our respondents to state that they would not feel financially secure enough to accept the drop in salary that comes with judicial office until their late 50s. This has implications for the retirement age, which we consider later (see para. 65).
37. By contrast, the judicial salary is a considerable increase for public sector lawyers, such as the procurator fiscal in Scotland or the Crown Prosecution Service in Northern Ireland, which may help to explain the attractiveness of judicial appointments to them. Academics would also find the salaries an increase (though, these days, many do not have the requisite professional qualifications to go onto the Bench).
38. Thus, more attention needs to be paid to the salary element of incentives in the different sectors of the legal community. They may need to be different to attract people from different parts of that community. Whilst many practitioners say that salary is not a motivation for them (because they have to take a large cut in income), it still plays some part in the decision whether to apply to the Bench. It was often put in the balance with other elements, such as workload: "Senior circuit judge role: the money is too low. It is class 1 work and someone manages a court but is paid less than a High Court judge. The work is only different in London" (regional male QC, criminal law). Salary was however generally associated with pensions, as respondents noted they may have to use part of their judicial salary to fund their pensions.

### *Pensions*

39. The judicial pension was mentioned by two-thirds of respondents, particularly by female practitioners. When they commented on it, the general level of the judicial pension was seen more often as good or generous than as bad. But for over half those commenting on the issue, the level of the judicial pension was seen as irrelevant as an *attraction* to join the Bench. More significantly, the pensions issue is regarded as emblematic of the poor way in which the judiciary is treated by the UK Government.

### *Pension Changes in 2015*

40. The judicial pension used to be one of the significant attractions of a judicial appointment. For our purposes, it is simply necessary to focus on the most recent changes. Under the old scheme, a judge was entitled to a final salary pension accruing at the rate of one-fortieth (1/40) for every year of service up to a maximum of 20 years. In addition, there was a lump sum of 2.25 times the pension. For this, judges contributed at the rate of 3.08% plus a further 1.28% for high earners.<sup>36</sup> The Judicial Pension Scheme 2015 was designed as part of the reforms to public sector salaries. It is not a final salary scheme, but a career average scheme and does not have a fixed period of service (beyond an initial two years). The pension pot accumulates at the rate of 2.32% of salary each year (1/43). It is a contributory scheme with

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<sup>36</sup> See Government Actuary's Department, *Judicial Pension Scheme. Report on Membership Data as at 31 March 2012* (2014), Appendix B2.

circuit judges and equivalents paying 7.35% and High Court Judges 8.05% of salary as a contribution.<sup>37</sup> There is no lump sum.

The change was introduced with some tapering protection for those who had accumulated pension entitlement under the 1993 scheme. Nevertheless, as in other parts of the public sector, the effect was to change pension entitlement significantly whilst judges were in office. The scheme is significantly less generous and the contribution is significantly higher than under the previous scheme. One very distinctive feature of the judicial pension scheme is that members join at a late age and contribute for a relatively short time before taking their pension, compared with most other public sector workers. The summary at 2012 showed 2227 active contributors to the scheme and 1735 pensioners.<sup>38</sup>

### *Changes in the taxation of pensions*

41. The combination of changes to the pension scheme and changes to the taxation of pensions has caused particular problems. The judicial pension lump sum used not to be taxed. In 2006, the taxation of pensions was changed and introduced the Lifetime Allowance as a limit on the amount of pension benefit that can be drawn from pension schemes – whether lump sums or retirement income – and can be paid without triggering a tax charge. The lifetime allowance was introduced in 2006 at a level of £1.5 million. It then increased each year to 2010, when it reached a level of £1.8 million. Since 2010, this has been reduced and, since 6 April 2016, it stands at £1m having been reduced from £1.25 million. The pension benefit is calculated as being 20 times the pension received in the first year, plus any lump sum.<sup>39</sup> Thus, even without a lump sum, the Lifetime Allowance is reached by a retirement pension of £50,000 (a sum which would be achieved by less than 12 years of service as a High Court Judge or equivalent).
42. As many respondents explained, those who have been making regular provision for their pension in practice are being advised by their accountants to stop putting money into a pension scheme even before they reach 50 and to diversify their investments in other ways to prepare for retirement. A number of recent appointees to the High Court Bench have renounced their right to a pension because of the tax position.

### *The reduced status of the pension as an attraction*

43. The result of the taxation changes is that the pension no longer provides any incentive at all to some professionals who have made adequate provision for their retirement at an early stage in their career. For them, “Joining the Bench is punitive” (London female barrister, Family law). For those who need a judicial pension to make their retirement financially secure, the incentive is still less than it was because they will be taxed on the combination of their accumulate private sector pension and their judicial pension. There is also a particular problem of managing the first year in a judicial post where the contributions to the judicial pension are added to the contributions to the previous pension and may take a new judge over the threshold of tax-free contributions to a pension. All of these are unintended consequences of national developments in tax law.

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<sup>37</sup> Ministry of Justice, *Judicial Pension Scheme 2015. Scheme Guide* (2016), pp. 6-7.

<sup>38</sup> See above note 32, p. 3.

<sup>39</sup> On the tax on private pension, see <https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance>.

44. In Scotland, the Lord President's survey<sup>40</sup> reports that the level of pension provision was however not a major concern for the majority of QCs. A similar point was made by two-thirds of our Scottish respondents. They considered that the judicial pension (even in its revised form) was a very good pension. But, for most of them, it was not an incentive to go on the Bench because they had made adequate provision or because other factors weighed against it.

In relation to the public employee lawyers, then the pension is much higher than they would have been getting in their existing job. For private sector solicitors, then it might be difficult to release enough equity from a firm to provide anything like as good a pension. In any case, the Law Society of Scotland's Financial Benchmarking report suggests that the median capital per partner in many regional firms is £60,000.<sup>41</sup> For these groups of people, judicial pension is a seriously attractive way of providing for their future in a way that cannot be found in private practice.

45. Our conclusion is therefore that, for many practitioners in (for example) commercial practice, who have been able to make provision for their own pensions, the judicial pension provides no incentive. But for others whose incomes in practice are lower, the pension is seen potentially a significant attraction.

### *The symbolic significance of pension changes*

46. Apart from the financial impact of the pension changes, the issue has two other implications for incentives to become a judge. The first is to fuel mistrust of the Government in its dealing with both judges and the justice system. If the Government is prepared to change radically the basis on which judges were encouraged to come onto the Bench, what else might it be prepared to do in changing the working terms and conditions of judges? As one regional Recorder put it, "I do not trust the system not to change the rules once I am in post – they may assign me to different areas, change sitting arrangements or alter pension arrangements" (regional male barrister, criminal law).

Secondly, and even more commonly, respondents reported that existing members of the judiciary, especially on the English circuit Bench were vocal in their expressions of dissatisfaction with their job. Among the main reasons for this dissatisfaction was the change to pensions. Part-time judges reported that this was a regular feature of lunchtime conversations with their full-time colleagues. Basically, the changes to pensions have not only removed much of the incentive to go to the Bench for many practitioners, they have sapped morale and the atmosphere which makes the judiciary an attractive profession to those who are not yet members. "It's the pensions, more than the salary. Because of the tax bracket, circuit judges are paid lesser pensions than a district judge. Circuit judges are at the coal face. They have the biggest workload. So the pension changes were a massive slap in the face" (regional male barrister, family law). The morale issue has also been recognised by the House of Lords Select Committee on the Constitution, which commented that "the sense of grievance created by the pensions issue has damaged morale throughout the judiciary and

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<sup>40</sup> JABS, *Annual Report*, para. 12.

<sup>41</sup> See Law Society of Scotland, note 33 above, especially the section on "Accounts", Table "Profit per Partner".

will have reduced the appeal of a judicial career to those who might otherwise have been thinking of one".<sup>42</sup>

## Section 4. Flexibility

47. Compared with work as a barrister or solicitor, most of our respondents considered the role of a judge as "inflexible". Lack of flexibility of working practices on the Bench was the most commonly cited barrier to judicial appointment (comparable with judicial workload and the judicial appointment process). Significantly, it was an issue raised by nearly 65% of the women we interviewed, as compared to 24% of men.

The Advisory Panel on Judicial Diversity recommended in 2010 that "It should be assumed that all posts are capable of being delivered through some form of flexible working arrangement, with exceptions needing justifying."<sup>43</sup> That panel found examples of flexibility both in the issue of going on circuit and the accommodation of different working patterns. But hardly any of our English and Scots respondents were aware of these possibilities and their impression was the contrary. At the very least, more needs to be done to make current arrangements more transparent.

48. Flexibility has a variety of aspects, but is broadly connected to lifestyle and the balance between work and private life. There is a perception that the current model of judicial work is rooted in an out of date set of social expectations. In addition, the management of performance indicators by HM Court Service and Ministry of Justice officials is characterised as "stakhanovite" and unsympathetic to both the workload that this imposes and to values about the quality of justice to which potential candidates aspire. A further significant aspect is the inability to return to the profession if the judicial career does not work out as expected.

### *Flexibility of working hours*

49. Many practitioners who are solicitors, fiscals, advocates or barristers alike noted that practice in the professions typically accommodates flexible working patterns. This is a feature which has been identified in more general surveys of the professions.<sup>44</sup> The ability to see partners and children on most days was valued. Most of those parents interviewed did not send their children to boarding schools, so flexibility in order to be available for children is considered an essential part of the quality of life. A common complaint, articulated by a Scots lawyer was that the judiciary shows "a complete lack of flexibility" (Scots female advocate). A male barrister in the English regions suggested "The circuit Bench is good for a 50 year-old bloke living on his own, not for those with primary care responsibilities."

This was noted particularly by many women who are currently able to restrict working time, e.g. not working during school holidays, or location, e.g. limiting cases to be taken to places within one hour's travel from home. Such flexibility is valued by a large number of men

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<sup>42</sup> House of Lords Select Committee on the Constitution, 7<sup>th</sup> Report of Session 2017-19, *Judicial Appointments: follow-up* (November 2017), para. 23.

<sup>43</sup> *Report of the Advisory Panel on Judicial Diversity* (chair Dame J. Neuberger) (2010), recommendation 51.

<sup>44</sup> See, e.g. Bar Council, *Barristers Working Lives 2013* (2014), pp. 30 and 88. See also the Lord President's survey (para. 14) which reports that this was one of two issues which was added by respondents in the free-text part of the survey.

and women interviewed, but especially those with caring responsibilities. It is therefore not surprising that the issue was raised by the vast majority of women we interviewed.

50. When one inquires what is needed to persuade those deterred by these considerations, one finds a number of features. First, the ability to plan the location of work, the timing of work, non-work days compatibly with family commitments ranks the highest. Secondly, some understanding in the handling of unexpected family problems, e.g. illness. Thirdly, consideration of the option of part-time working.
51. The first of these was the most pressing. Many women reported that they had been able to negotiate with their chambers or solicitors' firm arrangements about the work they would undertake and this had enabled them both to be successful in practice and to make appropriate private family care arrangements, as well as to play a full role according to modern expectations within the family. We were told by some Scottish respondents that, informally, senior judges are very understanding in their approaches to managing workload allocation. But the absence of clarity about policies in this area and of obvious illustrations of how this works makes many potential applicants wary of applying.

In a number of other European countries, which have predominantly written procedures, there are fewer sitting days and flexible working is easily achieved. Our respondents often pointed to the increasing use of written submissions in the contemporary civil and family proceedings, but the emphasis on "presentism" in the court building reinforced by the approaches of court managers (see below, para. 79), was perceived as a limitation on greater flexibility in the way a judge handles his or her workload.

52. The second problem of handling personal crises is reportedly managed sensitively and well by senior judges, but less well by court managers. The third problem of part-time working is not clearly addressed by any of the Judicial Appointments Commissions in their advertisements, though the Northern Irish Commission at least opens up that possibility.

### *Flexibility of geographical deployment*

53. The issue of the geographical location of judicial work was raised by two-thirds of those raising the question of flexible working in general. Professionals in the later stage of their career typically have settled in a specific geographical area, often with their family or partner, and have developed social networks and roots which they are not willing to give up for the 10-15 years they may happen to sit on the Bench before they retire. The Lord Chief Justice and Court officials or equivalents in Scotland and Northern Ireland, on the other hand, have to ensure that justice is delivered in all parts of the country and so need to ensure adequate coverage by judges of an appropriate level for all court centres, however remote.
54. The solution to this tension is handled differently in the three different jurisdictions. In Scotland, most sheriffs are appointed to one of the 39 court centres in specific towns across the Kingdom. However, some sheriffs are appointed as "floating" between a number of centres. Advertisements to sheriff posts are, therefore, to specific locations. It is a requirement that the sheriff should live within an hour's drive of her court centre and this is understood when the person applies for the post. The judge can move at her request, but cannot be moved. This is comparable to the position in continental Europe.
55. By contrast, the English, the Welsh and the Northern Irish operate effectively a "pool" system. In Northern Ireland, a judge is appointed to the County Court and then gets an assignment.

Judges are appointed in England and Wales to a circuit and then assigned to positions within that circuit, as the need arises. The English and Welsh circuits are very large and judges are not formally appointed to specific towns or localities. For example, a person living in Sussex might find that the available job on the South-Eastern circuit was in Norwich or Great Yarmouth. There is thus a real likelihood that judges will have to travel long distances to court centres or acquire a residence close to the court.

56. Many who had sat as fee-paid judges gave very graphic accounts of the distances travelled by themselves or their colleagues – up to 250 miles in one case; and many had partners with jobs which would prevent them from accompanying them. Respondents commonly expressed the view that they did not want to move and did not want to start commuting long distances or living regularly away from home in their 50s. Most were also unsure of the consequences of turning down more than one appointment to a specific geographical location.
57. High Court deployment to the circuit still raises similar concerns. In 2010, the Neuberger Report urged the judiciary to dispel some misconceptions about working conditions that are deterring good candidates from coming forward (“myth busting”).<sup>45</sup> One of these “myths” included the perception that High Court judges go out on circuit irrespective of an individual’s personal circumstances (the circuit Bench was outside the remit of Genn’s Report). Today, while recognising the need for some flexibility, several respondents considering an application to the High Court were confident that their personal circumstances would be recognised and that they would be able to secure their preferred deployment on circuit (or no deployment) if or when appointed to the High Court. Others were rather unsure, and some questioned whether there was any structure in place to guarantee or safeguard any deployment arrangement they would make upon appointment.
58. One respondent considering appointment to tribunals identified a deterrent factor in the Ministry of Justice’s new powers to deploy newly-appointed full-time tribunal judges to another court or tribunal to fill shortages. One respondent referred to the “Expression of Interest” for fee-paid and salaried judges to be assigned to the Immigration tribunals in 2014, with a further expression of interest resulting in new assignees going into training in 2017.<sup>46</sup> The point made to us was that an expression of interest may not be required anymore. A tribunal judge may now be requested to train to do immigration cases (or any other type of tribunal work), should there be less work in his or her tribunal and help needed in another tribunal. One unintended consequence is the impression that judicial office-holders have no control over the type of work they will be doing when joining tribunals.
59. It is acknowledged that flexible deployment has recently been advocated by the Senior President of Tribunals as a matter of principle, as the opportunity to the judiciary “for career development by the enhancement of skills, knowledge and experience as judges deal with a broader range of litigation and take back the good practice they find being used by their colleagues to their home jurisdiction”.<sup>47</sup> Whether it is about tribunals or the ordinary courts, the increasing specialisation of those who practise as solicitors and barristers poses challenges for this model and therefore for the recruitment and training of judges. As noted

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<sup>45</sup> *Report of the Advisory Panel on Judicial Diversity*, note 43 above, Recommendation 49, p. 48.

<sup>46</sup> See [Senior President of Tribunals’ Annual Report 2017](#), p. 51.

<sup>47</sup> 5<sup>th</sup> Annual Ryder Lecture: the University of Bolton “The Modernisation of Access to Justice in Times of Austerity” by the Rt. Hon. Sir Ernest Ryder, Senior President of Tribunals (March 2016), para. 40.

below (para. 78), solicitor respondents in particular lacked confidence that there would be good training and mentoring to help them in being good judges.

60. The concentration of the High Court on London (with its very high housing costs) provides a further disincentive to legal professionals who are not based within close proximity to London (see above para. 34).
61. There was a strong opinion that the approach to geographical location in England and Wales requires serious reconsideration by the Ministry of Justice. Adding commuting or re-location to the list of issues with which a new judge and her family will have to deal makes the role unattractive. It is clearly a barrier to judicial appointment.

### *Flexibility in specialism*

62. Another barrier raised by a number of respondents (more than 20%) was the way they had specialised away from many of the major areas of judicial work. In particular, many had not done criminal work since their early years in the profession. In the case of one or two Scots advocates, they had considered it necessary to improve their profile for an application to the Bench by undertaking six months' worth of criminal work. In England and Wales, a number of specialists in civil or Chancery work had become criminal Recorders. But many had not taken that route. Many judicial positions, especially in England, are advertised as generalist. A number of respondents who had developed a strong interest and specialisation in specific branches of law worried that they would be assigned to areas of work where they had no particular expertise and might feel out of their depth. Those who might be described as very conscientious in their approach worried a lot about whether they would do a good job when assigned to deal with cases in which they were not expert: "I like to know what I am doing...maybe it is a very female thing, but it is an issue of confidence. Being thrown into criminal law on your own is daunting. If you are conscientious, it is a bit scary" (London female QC, commercial law). At the very least, this is an area for re-assurance to be given to potential applicants about how they will be helped.
63. When it came to family law and/or criminal law, where there is the greatest demand for judicial resources (outside tribunals), some respondents, including Northern Irish respondents, were especially reluctant about criminal law: "I don't want to do crime...I don't want to do sex offences" (QC, civil law).<sup>48</sup> Another respondent (regional female QC, criminal law) spoke of her dislike of the thought of an "unrelenting diet" of sex offences cases. Accommodations are sometimes possible, and some respondents noted that they had accepted their appointment as Deputy High Court judges on the basis that they wouldn't sit in criminal cases. Another respondent suggested that promises were not reliably made:
 

"I see judges being pulled into family work even though there are made promises that they won't do much of it. They get quite upset because it's emotionally draining. The Civil work is pushed down to district judge level, so there is less and less civil for the circuit. The circuit judge might do the complicated trials. What they do have (at district judge level) is more and more child care work." (Regional female barrister, civil law)

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<sup>48</sup> It is reported that 75% of Scottish High Court work and 50% of English and Welsh Crown Court criminal work concern sex cases: see Inspectorate of Prosecution in Scotland, *Thematic Review of Investigation and Prosecution of Sexual Offences* (2017), p. 3; Liz Truss, Lord Chancellor, Question Time, 2 March 2017. But published statistics are not available to support the latter assertion

The same respondent concluded: “It’s so sleek when a specialist is in charge. I would want to use my skills effectively”.

64. It is already the case that fee-paid roles often identify the field of expertise required (family, crime, Chancery) and the High Court Family and Chancery Divisions have distinct competitions. The issue for many of the respondents we saw is that a similar disaggregation of specialisms does not occur in relation to the Queen’s Bench Division and the circuit Bench. It would be much easier for a current practitioner to list their competences in relation to a post connected with their areas of existing specialism, rather than projecting their competences in the abstract to a more generalist array of possible areas of work.

### *Flexibility in retirement age*

65. The current retirement age for newly appointed judges is 70. Very many of our respondents took the view that they would not apply to become judges until they were in their mid- to late-50s. This age was the convergence points for a number of different ideas about the development of the professional career. For very many, that age fitted the point at which the respondent thought she or he would be free from commitments to support children. For others, it was the point at which they would have ‘maxed out’ their pension pot and made additional savings sufficient to provide for a comfortable retirement. For yet others, this was the moment when they thought they would want to reduce their workload. For some City solicitors, it would be the point when they would be expecting to retire from their firm and seeking a new activity.
66. 20% of the respondents specifically raised the need to extend the retirement age - twice as many were men than women. Those who thought that the retirement age should be reconsidered (who outnumbered those who did not) offered a number of distinct reasons. The most common was that they needed to work 20 years to get a full judicial pension and that could not be achieved with the retirement age of 70. For others, it was important to be able to contribute significantly to the development of the law, and this meant the opportunity to advance to an appellate court. In order to have the opportunity to advance and then to serve a significant period in an appellate position, many considered that they would need to serve beyond 70: “I enjoy the Bar, but in my case I will have to go to the Bench soon if I want to have a chance to move to the Court of Appeal. If the retirement age were increased to 75, people would apply aged 58-59” (London commercial QC and Deputy High Court judge). Another respondent commented: “It would be sensible to increase the retirement age to 75, but difficult – the perception of old judges is not great. But 70 is not old or out of touch. You see many incredible and perceptive minds at that age. They work as arbitrators” (regional male, ethnic minority QC).

## **Section 5. Workload**

67. In the past, a move to the Bench was justified by a change of pace: it led to a reduction in workload and pressure, compared with private practice, thus creating a more agreeable lifestyle later in one’s career. Our respondents generally agreed that the stability and security of income at the Bench remained good, though not compelling, reasons to apply for judicial appointment. It was also agreed that reduction in stress would be, for several respondents, a

good reason to apply to the Bench. However, there was considerable doubt that this latter consideration still applied, and many thought that the workload and accompanying stress had increased significantly of late. Many adverted to various publicised early retirements from the Bench and other practitioners offered their own view that the judges who decide their cases do not appear happy and that their demeanour does not act as an incentive to join the Bench. If, by joining the Bench, legal practitioners are not getting ‘a bit of [their] life back’ against a salary reduction anymore, it was suggested that they are now merely trading their legal practice with the security of the job and a reduced pensions.

### *Volume of cases*

68. Respondents were quick to comment on the increase in the volume of cases before the courts, which they personally experienced as fee-paid judges or court observers. In England and Wales, HMCTS’ lack of financial resources and the cuts to legal aid have constrained the working conditions of full-time judges, and in that respect many respondents proved familiar with the recent Judicial Survey,<sup>49</sup> noting that it was “grim” or “unhappy” reading. Both High Court and circuit Bench are also currently under-resourced, below the maximum number of judges, with the consequence that current judges are covering for the work of other, yet-to-be-appointed High Court and circuit judges. Respondents thought that it was only partly a recruitment issue: “It’s not so much the lack of remuneration, it’s having a jammed-packed list (12 hours instead of 8)” (London male QC, family law).” The point was repeatedly made:
- “It’s the volume of work, the volume of the bundles. The parties approach litigation with unrealistic expectations about what judges have read...Altogether something will have to go. It feels like a hamster wheel. There are periods of high intensity at the Bar, but also days off. You have some control over your life. There’s always a day when I can catch up with some friends...I shouldn’t have to read the papers, scurry down the shop next door, get a sandwich, go back and prepare the papers while eating my sandwich.” (London QC, commercial law, Deputy High Court judge)
- “Now judging here is ‘the toughest gig of them all’. There is the pressure of new cases coming all the time. You will have to work 60 hours a week. There is pressure from the powers that be to turn round judgments quickly... The focus is on numbers, not quality. You would be less resentful if it were better paid. It is a hard job and there have to be some attractions to make you do it that are sufficient to make you accept a drop in income and to move from a job in which you are happy...It is not a very attractive picture.” (London male QC, commercial law)
69. In Scotland, about one half of the QC respondents to the Lord President’s survey of 2017 identified “lack of personal control over working time” as a major or critical issue in relation to judicial appointment.<sup>50</sup> In England, Wales and Northern Ireland too, the autonomy enjoyed by the self-employed barrister or the partner in a law firm was offered in a third of cases as a reason for not pursuing a judicial career. As one female commercial QC put it, “being self-employed means that having a boss is difficult”. As a female Deputy High Court judge put it, “At the Bar there is a tremendous amount of freedom and control over your practice and no one can tell you that you can’t [do something]. At my age, lifestyle matters. I am watching

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<sup>49</sup> Note 8 pp. 14-5.

<sup>50</sup> Note 14 above, para. 13.

friends who have been appointed [to the Bench] work in a very rigid way and one where it is so hard to fit in things you value in life.”

### *Reading and judgment writing*

70. Pre-reading is a requirement, but judges must do this, as they must prepare their judgment, in their own time. There is a demand for court managers to take more notice, in allocating work, of the time needed for pre-reading and electronic communication with lawyers:

“At the moment both circuit and district judges sit and prepare their judgment. You can use *DragonDictate* [speech recognition software] but even so, you have the finding of facts, to set out the evidence, you have to do it properly and sit down to do it and read 300 pages. There is no system, no allowance for that. Our liaison family judge was horrified that we had no reading time before the cases. In X Court, we went from 80 to 100 cases – a 25% increase in workload. Judges are stressed, they take time off. The family courts are also dealing with more complex cases today. The difficulty with litigants in person is that there is nobody they can sit with. Parents sit outside not trying to achieve a compromise. The amount of work and the timetable of 26 weeks create some pressure.” (Regional barrister, family law)

While the High Court work was perceived as varied and challenging, its judges were seen as likely to have trials on Monday to Thursday and interlocutory appeals on Friday, with four or more judgments to write after that. Several respondents suggested that there was not enough writing time during the court day, with judgments *de facto* needing to be written in evenings or at weekends.

Additionally, the increasing role of electronically submitted documentation requires a judge to spend a lot of time reading in preparation for a hearing. “The role of the skeleton argument in particular is pivotal. There will also be emails direct with counsel to deal with the final form of orders” (London QC, family law). Many respondents cited the failure of court managers to assign time for such activities and the pressure this created would often lead to working outside normal working hours.<sup>51</sup>

71. The circuit Bench was perceived as having an especially high workload in this respect. On the circuit, “if you sat for 2 weeks and had a trial, the officials would schedule 2/3 short matters every day. So you are working on these beyond the normal court day” (London male QC, family law). Many respondents objected to the “sheer relentlessness” of a full-time post as circuit judge, and similar remarks were made about district judges: “The difference with the Bar is that it’s all the time, and quite full on” (regional male QC, family law). Several further observed that Crown Court work was challenging, with complex sentencing, although the day was short (8.30 am to 4.30 pm) with no weekend work. Most rulings are *ex tempore* and summing up gets easier as judges became more experienced.

### *Leadership*

72. Respondents considered leadership to be naturally part of the judicial role (albeit that they also commented that it can be difficult to provide evidence of it when applying for positions). But they observed that it isn’t currently remunerated and that no additional time was

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<sup>51</sup> The 2016 *Judicial Attitude Survey* (note 8 above) notes that use of the Digital Case System was very much concentrated at the level of circuit and district judges and so it may be that it is taking some time for the effects of this to be understood: see pp. 30-31.

provided to do it. Many thought that longer hours would be required to manage the local courts, to give lectures and training. For most, this only meant that they should be cautious not to overburden themselves with such obligation. Some were more pessimistic:

“There are some spectacular Designated Family judges, but the sense of exhaustion is palpable. My fear is that it would finish me off. You can see that look of tiredness. However courteous and polite the judge might be to staff, they run a very good ship but it takes its toll.” (Regional barrister, family law)

“At the Queens’ Bench Division [of the High Court] you get a really wide range of cases combined with lifestyle. It’s not as stressful as presenting a case but leadership will take over” (London female QC, commercial law)

### *Litigants in person*

73. The proportion of litigants appearing before the civil and family courts without legal representation (also known as litigants in person) has increased since the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* took many civil and private law children and family cases out of scope for legal aid in England and Wales from 1 April 2013. Litigants in person vary a great deal in their abilities and attitude toward the court and the litigation process. The majority of litigants in person before family courts are however “procedurally (and, where relevant, legally) challenged in some way, with some having no real capacity to advocate for their or their children’s interests. Around half of those observed had one or more vulnerabilities, making more difficult for them to represent themselves and in some cases making it impossible.”<sup>52</sup> The consequence is that even straightforward cases may become time consuming while the judge works out for him or herself the main issues, and that the judge may need to do his own research on the leading authorities without counsel to guide him:

“But it is much more difficult today, with cuts on legal services and litigants in person. It’s more difficult to manage. They haven’t had a conversation with solicitors. It’s time-consuming to have that conversation with them as a judge. And yet, to use the court time efficiently you need to know the dispute. The allegations are amorphous, they want some contact” (London female barrister, family law)

74. Litigants in person may also add to the stress of proceedings (as well as the time needed). It has been noted that that they may “create problems for the courts by not appearing, by refusing to engage with proceedings, or (less frequently) by behaving violently and aggressively”.<sup>53</sup> This causes additional burdens on all those involved in litigation, a fact that did not escape our respondents. The majority observed that litigants in person made the court process more difficult to manage and made the judicial appointment less attractive:

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<sup>52</sup> House of Commons Brief Papers SN07113, Section 2.3. As noted in the House of Commons Brief Papers SN07113, *Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales*, most of the data that are available concern litigants in person in the family courts, although the National Audit Office has said that the legal aid reforms are likely also to have increased the number of litigants in person in civil law courts. The National Audit Office has reported a 22% increase in cases involving contact with children (*Children Act 1989* private law matters) and a 30% increase across all family court cases (including those that remain eligible for civil legal aid) in which neither party had legal representation, see NAO, *Implementing Reforms to Civil Legal Aid* 20 Nov 2014, HC 784, 2014-2015, cited in the House of Commons Brief Papers SN07113, *ibid*.

<sup>53</sup> *Ibid*, Section 2.3.

“Every case I’ve done [as a fee paid judge] there is at least one side unrepresented, often both sides. You need to explain the procedure, to identify the issues, to assist with cross-examination both ways. It’s hard going and a difficult path to tread without looking partial. When it’s private family law, there is no legal aid. Family law isn’t comfortable but dealing with litigants in person is a lot of work to do, over and over.” (Regional male barrister, family law)

“Plus the work itself has changed. When I sit, I see litigants in person. The last time I sat I had to explain to a litigant in person that I couldn’t deal with him because his mental capacity was lacking. They had to go and get a certificate that they had mental capacity – for which they would pay of their own pocket. The individual’s mental health worker had written a letter to me but didn’t want to come to court. It was horrific. It’s the same for the children cases. No one is prepared to pay for the reports they need. It affects morale deeply. That’s why I don’t want to sit at circuit level in family – deal with the litigants in person, the under-resourced social workers, nobody having done the reports needed because there is no money for it.” (Regional female barrister, civil law)

### *Limited support*

75. Many respondents contrasted the support available at the Bar with that available at the Bench.<sup>54</sup> At the Bar, junior barristers and solicitors will usually help. In Law firms, there will be a team of lawyers working together. It was suggested that judicial assistants are necessary, not just at the commercial courts, but also on the Administrative courts. There was a feeling that judges could not always rely on legal representation, even when it is present; the ultimate responsibility for avoiding error is that of the judge, and so the research needs to be done.
76. The High Court stood out with the availability of a clerk, who is not provided for the circuit Bench. Even then, one respondent noted that the High Court clerk was not only providing administrative support but was also “all in one: PA and shifter of files. They plug all the gaps” (London female QC, Commercial law); there needs to be more of them. Judicial assistants were often perceived as a necessity at the Commercial courts but also at the Administrative courts.<sup>55</sup>

In the case of Commercial courts, respondents referred to the increasing workload and to the pioneering *Combar* scheme of judicial assistants<sup>56</sup> (funded by the Commercial Bar) to highlight that judges needed support. With the increase in electronic documents, it may be

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<sup>54</sup> Respondents distinguished between legal and administrative support and the support they could gain from other judges.

<sup>55</sup> We note the objective of the Judicial Diversity Committee to undertake a feasibility study on the introduction of a scheme to employ Judicial Assistants in the High Court to provide support to High Court Judges (by, e.g. clarifying issues before a hearing, identifying and summarising important facts, procedural history and legal issues), see “[Judicial Diversity Committee - Report on Progress and Action Plan 2016-2017](#)”, p. 10.

<sup>56</sup> The *Commercial Court Judicial Assistant Pilot Scheme* was launched by the Commercial Court in November 2017 with the assistance of the Commercial Bar Association (COMBAR). This scheme creates three (full-time) Judicial Assistant placements for a fixed six-month period in 2018. It is open to tenants of COMBAR sets in their first two years of practice following the successful completion of pupillage: “Each Judicial Assistant will assist the Judge to whom they are allocated, for example by carrying out research, summarising submissions and discussing cases and hearings with the Judge. Each Judicial Assistant will receive an award for the six-month placement, equal to half of their Chambers’ annual pupillage award. For the purposes of the pilot scheme, the award paid for the placement will be paid by the Judicial Assistant’s own Chambers.”

that other judges will begin to think that they too need professional support to analyse the work coming in to them.

In the case of Administrative courts, it was suggested that more research needed to be done to fill gaps in legal representation and in the respect judicial assistants could play a useful role. Several generally emphasised the need for a high standard in judicial assistants and referred to the Court of Appeal (civil division), where such a scheme applies. They wondered whether a judicial assistant scheme would attract lawyers of the same high calibre if they were invited to work in a less prestigious court. They also emphasised the responsibilities taken by judges in writing judgments, which could not be surrendered.

77. One respondent joked that most employment judges dictate their judgments via digital recording, “But then what happens when X goes on holiday? X is the only person typing judgments” (London male barrister, employment law). Despite improvements, the court system is known to lag behind on information technology, with an expectation that the video link will break down; “When you think of the likely costs, the frustration is even higher” (London female QC, family law). In our discussion of support systems, respondents were to a great extent considering ways to alleviate the pressure created by the existing lack of resources into the justice system. In that respect, several respondents maintained that there is no substitute for having more judges and better working courts.
78. The lack of support was a particular concern for some of the solicitors interviewed. They thought that former barristers had a network of contacts and a better collegial spirit and so could ask their former chambers whether a pupil could look up a point of difficulty. Former solicitors might not have that network. “If I thought I could only do 80% of the job, I would not apply”. Another respondent had seen how the district judges could use their iPad to log into the judicial intranet to get some help. “I would want to be sure not to be left in the job floundering” (regional female solicitor).

### *Concern about quantitative targets*

79. Some expressed a concern that judges are answerable for achieving quantitative targets, and that these may be prioritised by court managers over qualitative targets (see para. 79). In a context of exacerbated cuts on HMCTS, respondents were particularly apprehensive that court administrators did not share their conception of what is a job well done in handling a case (that the case is legally well resolved) and are too focused in processing as many cases as possible. Typically, the court managers were keen to have cases finished, whilst many respondents considered that they needed more time to write the judgment well. Tying in with earlier comments about heavy caseloads and the lack of time for pre-reading, there was an impression that “It is as if the judge is only perceived to be working when sitting” (London male QC). Such comments were widespread and focused principally on the circuit Bench in England and Wales and the county court in Northern Ireland.
80. Most respondents described the role of a judge as like being “a civil servant”. By this they meant that a judge is required to perform under the direction of managers, whether a senior judge or an administrator. Their cases are assigned, as is often their location. “You are well respected and listened to [at the Bar]. Then you become the bottom of the heap and are being sent to do things you do not want to do [e.g. criminal cases in the regions]” (male Scottish QC). The perceived emphasis on “getting through” cases was for many inimical to the reasons they had for applying to be judges, which often included maintenance of high judicial

standards and, in some cases, contributing to the development of the law through their judgments.

## Section 6. The Judicial Selection Process

81. In all three jurisdictions, a Judicial Appointments Commission or Board is responsible for judicial selection decisions, based solely on merit and good character. The broad merit criteria are intellectual capacity, personal qualities, an ability to understand and deal fairly, authority and communication skills, and efficiency. The weighting of these criteria may vary depending on the post advertised. The selection processes involve a self-assessment form, a qualifying test taken online, a role play exercise, an interview and references selected both by the candidate and statutory consultees (i.e., the Judiciary). The weighting of each element may vary depending on the post advertised.

### *Role and perception of the selection processes*

82. Perceptions of the selection process were remarkably similar across the three jurisdictions. But we noted that in Scotland and Northern Ireland respondents had greater concerns about confidentiality and observed that everybody seemed to know who had applied, with the consequence, in some cases, that solicitors stopped giving them briefs.

In 2010, it was the (England and Wales) JAC's experience that candidates did not always prepare effectively for selection processes; candidates also needed to understand that even highly talented applicants may not succeed first time, due to the large numbers of quality applications the JAC receive.<sup>57</sup> Genn had provided an explanation in 2008, that:

“Historically, [the pattern of legal careers] has involved little or no movement following pupillage or articles. The stars of the profession have arrived at the top without applying for promotion, re-grading, salary enhancements, or having been mentored, appraised, or peer reviewed. A transparent selection process for appointment to silk was only introduced in 2005. This lack of experience in completing application forms, with the inevitable risk of failure and rejection, leads to some apprehension about applying for senior judicial appointment, even if it does not actually deter those with serious judicial aspirations. It also points to the need for structures that identify and encourage talent.”<sup>58</sup>

83. Respondents were asked how relevant the judicial selection process was in deciding whether to apply for judicial appointment. All respondents across the jurisdictions supported the principle of a more open and transparent process under the auspices of a Judicial Appointment Commission or Board. This was almost always compared favourably to the old selection process, except when it came to emphasise that encouragement to apply was needed and that this used to be one positive aspect of the ‘tap on the shoulder’.<sup>59</sup> Many

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<sup>57</sup> *Report of the Advisory Panel on Judicial Diversity*, note 43 above, para. 72.

<sup>58</sup> Genn, note 6 above, para. 79.

<sup>59</sup> Another respondent thought that women in particular might gain the necessary confidence to apply from such an approach. She added “The silk process works the same ways, but applying to the Bench plays into some psychological barriers. You’re not good at promoting yourself. It’s important to recognise that. Yes, I went to see a consultant, she understood the process, it’s an HR process. You need to understand the rules of the game. It’s another barrier.” (London female barrister, criminal law)

respondents had experience of the JAC post-2006 selection process<sup>60</sup> for fee-paid posts and full-time salaried posts: 12 out of 29 of those who commented at length on the judicial selection process had applied for a fee-paid or full-time position. A few had experience of the old selection process run by the Department of Constitutional Affairs. All respondents were well aware of the need to prepare effectively for selection processes. They understood that even highly talented applicants may not succeed first time. Some acknowledged that they had applied too early or that their first application had been purely speculative. Others acknowledged that they felt too old to need to self-promote themselves by filling in forms:

“I’ve encouraged people to sit, I’ve filled the form [High Court Competition] but not sent it...it’s the process itself. I don’t enjoy the exercise of self-promotion. It’s slightly humiliating too. I’ve been a silk for X years, to have to spend time completing the form is a drawback to the system. It’s my reason number 1 for [for not applying]...my own anecdote is that, had it been easy, a swift process then I would have applied. Instead I got frustrated by the form, and the idea of getting the referees. There used to be a moral pressure to apply with the tap on the shoulder, now that it’s gone, and when I look at the form I’m left pondering about whether I want to apply and I get frustrated with the form.” (London male QC, commercial law)

84. Notwithstanding the support in principle for an external body, the majority of respondents with a declared judicial aspiration or open-mindedness about judicial application, expressed a lack of confidence in the JAC selection processes as experienced to date. Most respondents tended to focus critically on one or two among a number of specific aspects of the selection process which they saw as a deterrent to their application for judicial appointment, as detailed below. This is not to say that respondents disagreed about whether all of the perceived drawbacks truly existed; rather, for most, it sufficed to name one or two of them to explain their reservations about the processes as they are currently perceived.

### *Main concerns*

85. The concerns arose at many different stages of the selection process. Respondents were concerned, first, about their ability to demonstrate skills within the constraints of the self-assessment form, and by the short window for application. The need for role-play was queried, along with outcomes and feedback provided to unsuccessful applicants was also criticised.

### *Demonstrating skills*

86. Several respondents called for more flexibility in bringing evidence of judicial aptitude in the self-assessment form, and issues in demonstrating skills appear similar across the UK jurisdictions. A London QC in commercial law commented: “It should be evidence-based but not prescriptive about how you demonstrate the competences.” Another respondent questioned the requirement to demonstrate evidence of competencies within the last two years of practice only. She emphasised that it could take longer than two years to build the required competencies, for civil practitioners outside London in particular. Another respondent commented:

“It’s quite disheartening; I’ve been trying to work out what they are looking for. In my...interview I was asked about ethnic minorities and diversity – whether I had dealt

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<sup>60</sup> The JAC formally came into being on 3rd April 2006.

with them as clients. But in my area there is no ethnic minority! In my area there are 660 individuals identified as having ethnic origin. How do you adjust your practice?"  
(Regional male barrister, family law)

Several respondents were reluctant to contact referees, partly because of the demands placed on referees, partly due to a concern that their professional reputation would be damaged in case of an unsuccessful application. But in many cases, having the support of certain referees might offer the only chance of demonstrating certain skills.

### *Short window for application*

87. Respondents considering the prospect of applying lamented the short window for applying (2-3 weeks to fill the form once the selection process starts). The selection timetable is known well in advance, however practitioners themselves are not in a position to know what they will be doing when the selection process starts. If a complex trial is still running, it is difficult to find the spare time for a process perceived as labour-intensive, as noted by a London QC in commercial law who filled the application form but didn't send it:

"I was in a case and I thought that if I can't do myself fully justice then I won't apply. It's a small issue, but on the form it says: 'have you had any issue in paying your taxes?' and I thought about a VAT form I returned late some years ago. I had to dig up the information, I didn't have time to do it."

In respect of filling the form with adequate preparation, one Criminal law barrister queried the time and the costs of hiring a coach to fill the form and train for interview while several respondents queried the perceived necessity of doing so:

"If you get a coach, isn't it then a question of who gets the best coach? People teach people to answer exam questions?" (Regional barrister, civil law)

Many respondents expected to hire a coach and the Scottish respondents noted that they had to come to England for this purpose.

### *Perception of selection outcomes*

88. Several respondents offered the view that some very good candidates failed to be selected when other candidates of a lesser calibre were successful. The point was often made to support the view that the JAC was not able to reach fair decisions. Several further observed that if the candidates widely perceived as top candidates for judicial appointments were not appointed, more might not apply. This highlights the perception that the Bench is further devalued if quality candidates are not applying or are not appointed. The position is further aggravated by the habit of the JAC to suggest criteria for what would be an "A" (outstanding) candidate as opposed to a "B" (strong) one, which may have the unfortunate effect that, by their own criteria, they end up appointing "B" candidates:

"Appointing B and B [because the selection panel hasn't been able to select ranked-A candidates], that's not the way to do it. I don't want to be stuck under the same banner as those people who aren't very good. In ten years those appointments will cause more difficulties on the Bench." (Regional Barrister, family law)

### *The feedback provided to unsuccessful applicants*

89. The Advisory Panel for Diversity noted in 2010 that unsuccessful applicants with significant judicial potential may be deterred from re-applying and that clear feedback is likely to ensure

that a candidate who has just missed out applies again. Some respondents emphasised how ‘demoralising’ the interview feedback had been and called for more constructive feedback.

“The feedback I got was ‘you’re pretty rubbish’” (Regional barrister, family law)

“The Feedback I got was unhelpful. It was telling me that some examples run against others I gave, and it told me I was lacking confidence in interviews. They got the psychology wrong: the whole process requires to beg to say how brilliant or so good I was. The form is not suited for purpose. I know that other women found this form difficult too.” (London QC, family law)

“Rejection is a factor for me: never open yourself to a second rejection in life.” (Scottish female QC, who found the feedback difficult to cope with)

90. It should also be mentioned that several white men expressed the view they were not wanted, e.g. that the publicity for judicial appointments emphasised under-represented groups and that made several respondents feel that they were not the sort of person they wanted. It would seem that ensuring helpful and constructive feedback for all unsuccessful candidates is an important way to try to dispel such negative impressions.

## Section 7. Infrastructure

91. The working conditions on the Bench raised many comments. They appear to be a significant factor, particularly in relation to applying for the post of circuit or district judge, though not, by themselves, a tipping factor in the decision whether to apply to the Bench. Courts are perceived as run down and there is not enough staff to support the judges, in addition to the fact that both High Court and circuit Benches are currently under-staffed. The buildings are, for several, a minor factor in their thinking about applying: “it’s an irritation. A very minor factor – I take extra layers not to be cold” (London female barrister, Taxation law). But several were quick to contrast some “fairly grim” courts with another “well-equipped” court:

“It’s appalling. The RCJ is simply not fit for purpose. I want to weep when I’m looking at the Rolls building. Last week I did some case in Court [X] at the [Y]. The toilet facilities were disgusting, the kitchen is a 1954 kitchen, it’s freezing and I can’t tell you what would happen if you had a disability. It’s not fit for purpose.” (Regional female QC, family law)

More widely, the lack of resources in the courts system were taken as symptomatic of a bigger issue, namely that the difficulty of judicial work is not appreciated, and that judicial services are correspondingly under-valued, by the Ministry of Justice. The majority of respondents commented that if conditions are poor, then there is a lack of esteem and a lack of understanding about the importance of the rule of law and justice system. This, at the least, provides a further reason for many respondents to postpone the decision to apply, or to be less inclined to apply today than some time ago. Typical comments include

“I know a silk working part-time at the High Court. There was no furniture in the room he was allocated. He had to have his clerks bring in a table. When are you supposed to eat? He had a sandwich while working. There is a lack of resources and no one cares about it” (London, female QC, commercial law QC)

“You see the judge standing next to the photocopier, it’s of that level – they shouldn’t be the ones doing the photocopies. I shouldn’t have to read the papers, scurry down

the shop next door, get a sandwich, go back and prepare the papers while eating my sandwich. I have my pack of Gaviscon. It's that bad!" (London female barrister, commercial law)

Another London male QC in commercial law:

"Ultimately, it's the way they're treated. It's shameful. They've been told to stop print papers double spaced to save on printing. They have a huge influence on society and they should be highly regarded for what they are doing. Instead, a junior civil servant tells them not to waste papers. That's a reason for not applying: they get told [that sort of thing] all the time. They've given up a lot and they are treated like junior civil servants. They are not treated well...Cuts are not the reason, they are a reflection of other factors, mainly that there is lesser regard for what they do."

"...the conditions for the judiciary have got worse over the years. There is hardly any judicial dining room, people come in with their Tupperware boxes. It's a tough job. Nobody is saying 'I want to be treated like God', but the function has been devalued all the time in terms of working conditions...The judge is seen as a bit of an irritant in the system... It's a palpable sense, a feeling that they are constantly ground down, under-resourced, the computer system is not working well, the workload...you are told to be kinder to yourself but that's not possible" (Regional male barrister, family law)

92. There were numerous complaints about IT systems not working in the Crown Court: "You have to use your own laptop, tether it to your mobile in order to attach to the internet" (London male Recorder). The issue of assistance is part of a larger question about the quality of the infrastructure to support judges. The Court Services of the different jurisdictions are said to struggle in having enough qualified staff and appropriately functioning IT systems.<sup>61</sup>
93. Further distinctions were made between the High Court and the circuit Bench. There was often felt to be an absence of collegiality on circuit. Communal lunching is available in some courts but canteens at around half the crown courts in England and Wales were closed in 2015, and they were replaced by vending machines. Fewer meetings took place between judges when there wasn't a canteen, suggested one. Others observed that a discussion around a lunch table was often a good way to raise and solve matters between the judges and between judges and court administrators.
- "Look at the Canteen. Most crown courts don't have a canteen. Others don't have dining room. You come with your Tupperware box. I do sex cases. I would like to have some contact(s) with other judges, to share ideas. If you have a good resident judge, it's business as usual. You share your ideas, [as a part-timer] you get to know your judges. It's about your well-being. Having a lunch break; eating proper food....Don't alienate the people" (London female QC, commercial law)

Other comments related to circuit judges included:

"It's the working conditions. I sit as a Recorder in county courts, in Leeds, Sheffield, Hull, Manchester. The facilities are atrocious. The Wifi is poor, the lists are overloaded, the court staff demotivated. There aren't enough judges, too many litigants in person, too many solicitor advocates – the quality of advocacy is an issue. I do my own legal

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<sup>61</sup> See the *2016 Judicial Attitude Survey*, note 8 above, p. 31 on issues about the quality of the Digital Case Management system.

research, none of the parties came with a skeleton; it's very rare as a circuit judge that you get good quality advocates across the board. It's the whole package."

Our impression was that the frustrations are sufficiently well known to be capable of deterring strong applicants who would otherwise be prepared to accept a radical pay cut by itself.

## Section 8. Other Factors

### *Social standing*

94. The majority of respondents asserted that social respect for judges has declined markedly in recent years. Two groups in society are singled out: government ministers and the press. Reaction to the Brexit case *Miller*, decided by the High Court in 2016, was seen as emblematic of the change in social attitudes. Lawyers in Scotland, Northern Ireland and all parts of England and Wales spontaneously cited the failure of the Lord Chancellor to defend the High Court judges against press criticism as an indication of how little ministers value the judges.<sup>62</sup> They also cited this example as showing how little the press respects judges and the rule of law. Press criticism of judges over sentencing decisions without making any reference to the formal sentencing guidelines which constrain the judge's discretion also indicated a lack of respect for and interest in the legal process.

These high profile instances were then woven together with the neglect by politicians of the deterioration in the material conditions in which the court system now works. Many respondents asked themselves whether they really wanted to put themselves in harm's way by being subject to such unjustified and unpleasant attacks. Here the security considerations of Northern Ireland are an additional and distinctive disincentive to judicial appointment.

There was a widespread impression that the press reporting of legal matters is of low quality, "certainly compared with the USA" (London male QC who had spent some years in the United States). There is a failure to understand the constraints within which judges operate, such as the sentencing guidelines. The complaints about unfair criticism from politicians were not limited to England and Wales, but were also directed against Scottish politicians. There is a broad sense that politicians do not protect the judges from improper criticism.

This identification of the press and politicians as lacking respect for the judiciary matches the findings of the *2016 Judicial Attitude Survey*.<sup>63</sup> The lack of respect is usually attached also to the Ministry of Justice: "Judges are valued by the public, but not by the Ministry of Justice" (London female QC), a view which is echoed in that *Survey*.

### *Isolation*

95. A number of respondents commented that to go onto the Bench would have an adverse effect on their social life and that of their family. As mentioned above (para. 94), there are very specific issues in Northern Ireland about the security protection required for High Court judges. But the comments go further. The comments from English, Northern Irish and Scottish practitioners alike suggest that the expectations about the social behaviour of judges have

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<sup>62</sup> See also the House of Lords Select Committee on the Constitution, note 42 above, paras 46-57.

<sup>63</sup> Note 8 above, p. 12.

become more constraining in recent years. As one Northern Irish practitioner put it, “The job, especially at the High Court, can be lonely and personally challenging. Your social life is restricted. You cannot be socialising with those who are going to appear before you.” Scottish lawyers noted that such expectations are particularly restrictive in a small jurisdiction. “Scotland is a village and your behaviour out of work is seen like in a goldfish bowl. You have to be careful where you are seen and who you are seen with” (Scottish female QC).

The effect of being careful about overly close social contacts with those in the professions who may appear before you was perceived to have effects on social life. “It is such an awful life being a judge. Your social circle gets reduced to the 34 Senators. Your friendship group is curtailed, and you have to be careful about relationships. Scotland is a small society and the circle you move in gets reduced” (Scottish female QC). By contrast, a different Scottish female QC argued that “What is expected is no different from how I expect to conduct myself as a senior member of the Bar. Attending public events requires caution. (You do not want to be seen publicly in fancy dress in a way that would affect how clients respect you.) I want respect for the position.” The issue of public scrutiny of a judge’s personal life was acknowledged as significant in the Lord President’s survey.<sup>64</sup>

Judges having to live away from home during the week in order to be close to their courts may also be on their own, living “lonely, miserable lives” (regional solicitor’s description of local circuit judges) (see para. 91). The description of a lack of collegiality in some court centres, reinforced by the lack of communal meals or facilities also reinforces isolation in some cases.<sup>65</sup> We noted earlier the increasing likelihood that partners would often not be available to accompany judges on the English circuit.

96. A very different aspect of isolation was the sense that the judge is on her own in deciding cases. She is not part of a team as at the Bar in preparing a big case or in a law firm. She is exposed as the one to make the decisions and that can make one feel isolated (London female QC, Commercial law). There is a need to share ideas with other judges, but this may not always be possible.

### *Public service*

97. Public service has been a major motivating factor in the decision to apply to the Bench in the past and continues to be a concern among many interviewed for this study. Northern Irish respondents in particular emphasised a traditionally strong ethos of public duty at the Bar. Public service is however not strong enough a motive on its own to encourage many suitable candidates to apply to the Bench. Some practitioners interviewed found considerable satisfaction in serving as part-time tribunal members. Such roles could be combined with continued activity in practice. This is particularly an interest in Scotland where part-time judicial posts are no longer offered in a way that can be combined with practice. (A third of our respondents in Scotland had some tribunal fee-paid experience.) Furthermore, many in Scotland and England and Wales reported that the application process for tribunals was much less difficult than the judicial appointments process (e.g. the views of a Scottish civil QC: “I have two tribunal positions. One president of tribunal has a different appointment process [from the Judicial Appointments Board for Scotland], which is more flexible and would be preferable.”)

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<sup>64</sup> Note 14 above, para. 13.

<sup>65</sup> See House of Lords Select Committee on the Constitution, note 42 above, para. 27.

98. As one respondent put it, in the past, public service was a response to public gratitude and public recognition. If, as is suggested above, these latter have gone in large measure, then the pull of public service and putting something back into the community through judicial service has become diminished. There are other ways in which lawyers regularly put their talents at the service of the community, for example through pro bono legal work or as trustees of charitable or arts organisations. In these areas, lawyers are welcomed for the contribution they bring and are less in the limelight than on the Bench.

### *Career progression*

99. It used to be assumed that going onto the Bench was the apogee for a successful barrister, if not necessarily for a successful solicitor. As mentioned in the Introduction (para. 29), the interviews we have conducted suggest that this has not been a correct assumption for 20 years. If there is no longer a natural progression, there needs to be some appeal in the work which will attract successful practitioners to devote their time to it. In particular, the work on the Bench has to offer a new challenge of sufficient importance as to persuade someone to leave their existing successful career.

But for many, it was unclear what sort of alternative career might await them in the judiciary. A significant issue for many potential applicants is whether they will be on the Bench long enough to have a chance of further promotion. Particularly those who aim for the High Court, Court of Session or the Northern Irish Court of Appeal, the issue whether there will be a chance to move to an appellate court level is significant. This ties in with our observation that for many practitioners who expect to support their children financially for some time after they have finished school, their expectation would now be to join the Bench later than might have been the case in earlier times.

100. Generally, solicitors expressed the view that, though it was frequently said that solicitors are welcome to apply to the highest level, as opposed to, e.g. tribunal work, this level is not in reality open to them. More concerted efforts to encourage applications and to provide role models may be needed. The difference between official pronouncements and perception among respondents makes this an issue to be explored further.

### *The irreversibility of a judicial appointment*

101. The convention is that a person appointed to a judicial position may take a role as an arbitrator, as an in-house lawyer, or as a judge abroad, but may not return to practice in the courts (see para. 65). A number of respondents thought this was an unnecessary limitation. Although there would need to be safeguards in place, this is one area of flexibility which a significant minority of respondents thought was important, particularly in the area of commercial law.

We note that the House of Lords Select Committee on the Constitution<sup>66</sup> received representations from both the English Bar and the English solicitors that the convention of judges not returning to practice was a disincentive to potential applicants. Those representations match opinions expressed by respondents not just in England and Wales, but also in Scotland. The Select Committee invited the Lord Chancellor and Lord Chief Justice to examine this issue, and it would seem appropriate that this review should involve the whole of the UK.

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<sup>66</sup> House of Lords Select Committee on the Constitution, note 42 above, paras. 36-38.

Many more respondents took the irreversibility of a move into the Bench for granted, as part of “the character of the job”. This irreversibility creates a distinction from any other profession which, it was suggested, wasn’t sufficiently recognised. Respondents strongly felt that the Ministry of Justice provided less safeguards and guarantees to their terms and working conditions than are commonly found in the private sector.<sup>67</sup> In this context, the irreversibility of a judicial appointment took special salience: “...you have no reassurance about the terms and conditions in 5 years’ time. You burnt your bridges.” (London female barrister, commercial law).

102. This lack of trust was most apparent in relation to appointments below High Court level. Respondents referred to circuit judges who have found that the terms and conditions on which they were engaged had changed and commented that they did not trust the system not to change the rules once they would be in post, whether it would be about deploying judges to different geographical areas, different sitting arrangements or different pension arrangements. The ability to ask Tribunal judges to switch specialities led to this comment:
- “If I were appointed I could do traffic parking! Until last year, they would invite you to fill shortage. Now, for new appointees, the Ministry of Justice has discretion to move people. In any other employment contract, I would have a choice to leave. If the Ministry of Justice knew you can leave, they would negotiate with you” (London female QC).
103. In England, Wales and Northern Ireland, it is at least possible to try out the role as a judge by being appointed to a fee-paid position as a Recorder or a Deputy High Court judge or Deputy County Court judge in Northern Ireland. This helped many of those we interviewed to come to a decision about whether to apply for a full-time position or not. By contrast, in Scotland since 2013, temporary judicial positions are offered either to existing judicial office-holders or retired judges and are not available to current practitioners.<sup>68</sup> Though it is legally possible to appoint part-time sheriffs, the recent guidance has restricted the practice. A number of Scots practitioners thought this was a problem for them, since they could not know already whether judicial work suited them.

### *Growing division between judiciary and executive*

104. Plain views were therefore expressed about the Ministry of Justice’s willingness to listen, engage with the judiciary and with court users, and to understand the importance of the rule of law.

Most respondents spontaneously referred at one point or another to the government attitude at the time of the High Court decision in *Miller* in 2016, which appears to be a watershed moment. The unanimous view was that the then Lord Chancellor should have stuck up for the Judges involved. Respondents understood the government’s attitude as revealing what the people at the heart of government really think, that, far from being a coordinate branch of government, judges are seen as an obstacle. Government contempt, it was suggested, was demonstrated by the way in which poor working conditions had been allowed to develop (see **Sections 5 and 7**).

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<sup>67</sup> Although judges are “office-holders” rather than employees, certain terms and working conditions such as pay and pensions are within the Ministry of Justice’s competence; see, about the employment status and protections given to judges, *Gilham v Ministry of Justice* [2017] EWCA Civ 2220.

<sup>68</sup> See the [Guidelines for the Use of Temporary Judges issued by the Lord President](#) in February 2013.

Respondents further regretted what they perceived as the inability on the part of government to realise the value of commercial courts, which bring soft power into London as well as a very substantial revenue (about £27 bn) and thought that the high reputation of English law and English Judges for international disputes was under threat.

“The legal services are invisible. How much money comes in the commercial courts? The calibre of our judges, it shapes the reputation of the legal system as a whole, including criminal justice.... Now people are going to Qatar, to Dubai.” (London barrister, commercial law)

Reference was made to the Ministry of Justice consultation on increasing court and tribunal fees in 2015. The Government decided to proceed with most of its proposals to increase court and tribunal fees, in spite of acknowledging the overwhelming opposition to its proposal and the disagreement of the senior judiciary.<sup>69</sup> One respondent commented:

“The Ministry of Justice is completely detached from the judiciary. For instance, there was a consultation on ... tribunal fees. It was a joke. The judges were not listened to. Then we get *Unison* [UK Supreme Court decision finding that the fees interfered unjustifiably with the right of access to justice under common law and EU law]. The feedback from people going to [HMCTS] meetings is that they’ll do it anyway.”

## Section 9. Conclusions

### *How far are the problems uniform across different areas of work?*

105. There is not one single problem about incentives to recruitment to the judiciary, and little prospect that a raise in remuneration by itself will make an appreciable difference. The attractiveness of remuneration for undertaking judicial office must be viewed as part of the whole package presented to potential candidates (see para. 26). At their active and senior position within their existing professions, they are presented with a package which combines changes in lifestyle (see especially paras. 47-61, 67-71, 72, 75-76, 91-93), fulfilment of professional objectives (paras. 62-63), social status (paras. 94 and 104), contribution to public service (paras. 97-98), as well as salary (paras. 32-38) and pension (paras. 39-46). Indeed, none of these elements alone is sufficient to encourage an application.
106. Nonetheless, it is possible to identify how these elements are perceived by the different constituencies from which the judiciary wishes to draw applicants.
107. If we look at the circuit, sheriff or county court benches, in none of the three jurisdictions is there perceived to be a shortage of applications (paras. 9 and 11). The constituencies from which applicants can be drawn differ among the jurisdictions studied. The solicitors’ profession offers the largest pool. Studies of solicitors’ salaries in England and Scotland suggest that the salary at the circuit and shrieval benches is typically higher than the median for senior lawyers, except for those firms engaged in commercial work (paras. 32-33).<sup>70</sup> The pension is also higher than could easily be afforded by private practitioners and by what is on offer in the public sector (paras. 32 and 39).

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<sup>69</sup> *The Government response to consultation on further fees proposals* (December 2015), Cm 9181 (Session 2015/2016), para. 10.

<sup>70</sup> See the Law Society Study: <http://www.lawsociety.org.uk/support-services/research-trends/solicitors-salaries-in-2016>; Tables 6 and 7.

But this does not make this category of judicial appointment sufficiently attractive to many of the best regarded candidates. The low morale of current judges reported by many of our interviewees is undoubtedly influential on the minds of potential applicants (paras. 46 and 101). Although triggered by the changes to the judicial pension, a number of problems are deep-seated. Workload (including handling litigants in person) and the content of the work (paras. 62-63, 67-71, 72-74, 75-76), relations with court managers (paras. 48 and 79-80), and issues related to geographical location (paras. 53-61) affect the perception of whether there will be an agreeable change in lifestyle by going onto the Bench, or whether professional objectives and a valued contribution to public service will be achieved. The attractiveness of the shrieval bench is much lower among senior advocates in Scotland and a similar attitude towards the county courts in Northern Ireland is seen (paras. 9-11). Even in England, the drop in salary level amongst barristers (particularly QCs) adds to the disadvantages perceived by solicitors.

108. Comments about the work of a circuit judge or a sheriff were markedly more negative than about the work of the High Court or the Court of Session. The description of the former was frequently "awful", "pretty miserable" or "such an awful life". "Judges are having a rubbish time in practice" (male regional solicitor). "Many judges I know regret that decision [to go onto the Bench]. Many go on to 70 because they need to, financially" (QC, criminal law).
109. There are different problems regarding the High Court Benches in England, Wales and Northern Ireland, and the Court of Session in Scotland. Since these are perceived to be principally the preserve of barristers or advocates who are QCs (paras. 101) a shortage of suitable application is a real possibility. The judicial salary is almost universally seen as below what can be gained by QCs in private practice (para. 33). For many, especially in areas of practice where there has traditionally been legal aid work (crime and family) security of income and the pension are nonetheless attractions (paras. 33, 39, 44, 67). But in commercial work, salary and pension for both barristers and solicitors are significantly out of line and cannot realistically be made to work as incentives (paras. 42-45). This encourages practitioners to delay making applications until they have obtained financial security for themselves and their families in other ways (paras. 35-36). Then the risk arises that the candidate will delay applying until he or she reaches an age by which there would be little opportunity to rise through the judicial ranks before compulsory retirement at 70 years old, and might decide never to apply.

The perceived lack of flexibility in judicial work also discourages applications, particularly from women (paras. 49-57). The character of the workload no longer offers the same easier pace of life than in the past and so the change in lifestyle is perceived as less obvious (paras. 68-71, 72, 75). At the same time, there is a clearer element of public service and professional fulfilment through making decisions in difficult and sometimes controversial areas which will contribute to the development of the law (paras. 97 and 99).

110. Distinctions may also be made between different areas of practice. There are at least four different areas of judicial practice which have different issues of recruitment: crime, civil, family and commercial/Chancery. It is possible to recruit quite widely for criminal work, including from prosecutors and legal aid practitioners, whose earnings are much lower than other branches of the profession. In England, Wales and Northern Ireland, there are part-time, fee-paid judges who have experience of sitting as Recorders and who therefore know

what to expect as a judge. Though many do not apply to become full-time salaried judges, others do. Although salaries in private practice are higher than judicial salaries, the differential is not enormous.<sup>71</sup>

Many practitioners, especially solicitors, have experience of civil work but it is in this area that handling litigants in person is likely to be a major issue. Family law, by comparison, already attracts recruits especially to the High Court and to Deputy High Court and Recorder positions. But attracting commercial and Chancery lawyers poses very distinctive problems. Their earnings are very significantly higher than judges. Their work as practitioners is typically High Court work and both complex and highly remunerated. Many will have the option of working as arbitrators at home or abroad. It is really in this area that much of the public attention on the recruitment problems and conditions of work is focused. Most lawyers in these areas in all parts of the UK do not do much criminal work, if any. They are used to handling large amounts of documentation, rather than witnesses, and so it will also be difficult to ease them into the judiciary with fee-paid positions as Recorders.

Respondents from these different areas confirm their distinctiveness. For example, the pension arrangements were seen as good by a third of the criminal lawyers interviewed, but irrelevant by the commercial lawyers. In between these extremes is a distinct group of specialist practitioners who also earn significantly more than judges and have the option of becoming private arbitrators, but the differentials are markedly lower than in the commercial sphere. Rather than seeking solutions to the situation of “judges” in general, it may be more productive to look at different areas of practice, and thus different groups of practitioners.

### *The impact of austerity cuts and a breach of trust*

111. The division between the executive and the judiciary (and indeed the wider legal profession) was a common cause of spontaneous comment across the UK jurisdictions. The criticism of judges by members of government, and the apparent tolerance of invective aimed at them in the press, was seen to be part of a wider pattern which includes increasing workloads, poor infrastructure of the courts and performance targets by court managers. For many, this is very far from the esteem and independence of the judiciary which they had taken for granted earlier in their careers. It was linked by some with the knowledge of the government that full-time judges, if disillusioned, would yet be unable to return to practice. It may be that revision of the convention that judges do not return to practice, or the increase in opportunities for part-time appointments at all levels, would be a useful mode of reassurance to those who fear they may burn their bridges and have cause to regret it.

### *Flexible working (patterns, jurisdictional and geographical deployment)*

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<sup>71</sup> Bar Council, *Barristers Working Lives 2013*, p. 66 identified that 50% of criminal barristers and 32% of family barristers were unhappy with their situation (the situation was particularly striking for the self-employed criminal barristers 58% of whom were not satisfied compared with 27% of employed barristers. The survey p. 70 Table 6.1 found only 3% of barristers (n= 97) planned to look for a full-time judicial appointment in the next two years. Table 6.2 suggested a marked difference between those who were dissatisfied with their current situation and those who were not. The former were 4 times as likely to expect to take a judicial appointment (p. 71). Table 6.3 shows that criminal lawyers (4%), personal injuries lawyers (5%) and family lawyers (5%) were much more likely to be thinking of applying for a full-time judicial appointment than commercial/Chancery lawyers (2%) or international practice (1%) or civil (3%).

112. For many, it is nonetheless a long-held career ambition to join the Bench. But by the time that they might do so, they are used to enjoying considerable flexibility in their practice. For many, it is most unappealing to start living away from home on circuit in their late 50s, to work full weeks (and in practice weekends) when required, and to hear cases in which they are not specialists. All such demands are expected more of younger people starting careers. Assurances regarding all of working patterns, type of caseload and geographical deployment are capable of having a salutary effect on recruitment.

### *Women and carers*

113. It is worth reiterating that many practitioners are having children later than in previous years. Nor is it necessarily likely that they will wish to pay for childcare assistance at the cost of missing out altogether on seeing their children grow up. The need to provide extra flexibility for parents of young children or those with other care responsibilities is clear, especially if the recruitment of women is regarded as a priority.

### *Overall conclusions*

114. The pension issue looms large; pensions are no longer an incentive to most respondents. But our overall conclusion is that even modest improvements in salary and pensions alone will not make significant improvement in attracting able candidates to the judiciary. To the extent that it will make a difference, only in the case of certain sections of the Bar will it be the fact of the extra money in itself. For the rest, it is more likely to make a difference in so far as it might show a greater value shown to judges on the part of the executive. That low value currently perceived to be put on the judicial function is currently the biggest disincentive to apply. It is reflected in the heavy caseload, the state of the buildings and infrastructure, the lack of consultation or sensitivity regarding deployment on circuit and the court managers who seem concerned only with meeting quantitative targets. Measures to address these factors, as well as the sense of isolation that many judges perceive, along with advertising greater flexibility in working practices, are more likely to make a significant difference to the application rate among potentially outstanding candidates.
115. We conclude by suggesting some further topics for consideration by the SSRB and other relevant powers.

### **Topics for further consideration**

- Consider revising pay depending on legal specialist areas and therefore consider appointments with greater emphasis on specialities.
- Consider measures to offer greater flexibility in working conditions, especially regarding geographical deployment and working hours for parents with dependent children and others with care responsibilities.
- Consider more nuanced ways of measuring workload – e.g. accounting for pre-reading time and writing judgments.
- Reconsider the convention that judges should not return to practice.
- Consider improvements to court infrastructure.
- Consider raising the present retirement age of 70.



## Annex 1

**Annex Table 6.1: Judicial salaries and salary group from 1 April 2017**

**Source: Ministry of Justice**

The SSRB remit comprises salaried judicial office holders in the courts and tribunals of the United Kingdom, with the judicial pay salary structure consisting of nine salary groups. While salary groups are detailed below, this Report only consider specific judicial roles that are considered the entry points to the judiciary: High Court (salary group 4); circuit judges (salary group 6.1), and district judges (salary group 7), and their equivalent in Scotland and Northern Ireland. Lower tribunal judges are also in scope of the Major Review and this Report.

Salary group (with examples of specific roles)	Salary from 1 April 2017
4. High Court	£181,566
5.	£145,614
6.1 Circuit judges	£134,841
6.2	126,946
7. District Judges	£108,171

### Group 4

Puisne Judge of the High Court  
 Puisne Judge of the High Court (Northern Ireland)  
 Outer House Judge of the Court of Session  
 Vice Chancellor of the County Palantine of Lancaster

### Group 5

Chairman, Scottish Land Court / President, Lands Tribunal (Scotland)  
 Chief Social Security  
 Commissioner (Northern Ireland)  
 Circuit Judges at the Central Criminal Court in London (Old Bailey Judges)  
 Former Deputy President, Asylum and Immigration Tribunal  
 Judge Advocate General  
 Permanent Circuit Judge, Employment Appeals  
 Tribunal Presidents of the First-tier Tribunal (Immigration and Asylum Chamber; General Regulatory Chamber; Health, Education and Social Care Chamber; Property Chamber; Social Entitlement Chamber; and Tax Chamber)

President, Employment Tribunals (England & Wales)  
 President, Employment Tribunals (Scotland)  
 Recorder of Liverpool  
 Recorder of Manchester  
 Senior Circuit Judges  
 Senior District Judge (Chief Magistrate)  
 Sheriffs Principal  
 Specialist Circuit Judges  
 Vice President of the Upper Tribunal (Immigration and Asylum Chamber)

### **Group 6.1**

Chief Registrar and Senior and Chief Masters  
 Circuit Judges  
 Deputy Chamber President of the  
 First-tier Tribunal (Health, Education and Social Care Chamber)  
 Judge of First-Tier Tribunal Social Entitlement Chamber (Former Regional Chairmen, Appeals  
 Tribunals)  
 President, Appeal Tribunals (Northern Ireland)  
 President, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)  
 President, Lands Tribunal (Northern Ireland)  
 Regional Employment Judges (formerly Regional Chairmen, Employment Tribunal) (England  
 & Wales)  
 Registrar of Criminal Appeals  
 Resident Judge, First Tier Tribunal (Immigration and Asylum Chamber)  
 Senior Costs Judge  
 Senior District Judge, Principal Registry of the Family Division  
 Senior Judge of the Court of Protection  
 Sheriffs  
 Social Security and Child  
 Support Commissioner (Northern Ireland)  
 Upper Tribunal Judges (Administrative Appeals Chamber, Immigration and Asylum Chamber,  
 Lands Chamber and Tax and Chancery Chamber)  
 Upper Tribunal Judges (Tax and Chancery Chamber)  
 Vice President, Employment Tribunal (Scotland)  
 County Court Judges (Northern Ireland)<sup>72</sup>

### **Group 6.2**

Chamber President of First-tier Tribunal (War Pensions and Armed Forces Compensation  
 Chamber)<sup>73</sup>  
 Deputy Senior District Judge (Magistrates' Courts)  
 Principal Judge, First-tier Tribunal (Property Chamber)  
 Surveyor Members, Lands Tribunals (Scotland & Northern Ireland)  
 Surveyor Members, Upper Tribunal (Lands Chamber)

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<sup>72</sup> Post holders are paid the salary for Group 5 so long as they are required to carry out significantly different work from their counterparts elsewhere in the UK.

<sup>73</sup> The office of Chamber President (War, Pensions and Armed Forces Compensation Chamber) is situated in salary group 6.2; the post is currently held by a High Court judge.

Vice-Judge Advocate General  
 Vice-Presidents, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)

**Group 7<sup>74</sup>**

Assistant Judge Advocates General  
 Chairperson of the Appeals Tribunal NI  
 Chairmen, Industrial Tribunals and Fair Employment  
 Tribunal (Northern Ireland)  
 Chief Medical Members, First-Tier Tribunal (Health, Education and Social Care Chamber and  
 Social Entitlement Chamber)  
 Coroner (Northern Ireland)  
 Costs Judges  
 District Judges  
 District Judges (Magistrates' Courts)  
 District Judges (Magistrates Courts) (Northern Ireland)  
 District Judges (Northern Ireland)  
 Employment Judges (England & Wales)  
 Employment Judges (Scotland)  
 First-tier Tribunal Judges  
 Masters of the Senior Court  
 Registrar of the Supreme Court  
 Masters of the Supreme Court (Northern Ireland)  
 First-tier Tribunal Judge, Property Chamber (former Vice President RPT, London -legal)  
 First-tier Tribunal Judge, Property Chamber (former Vice President RPT, Regions -legal)  
 Member of First-tier Tribunal, Property Chamber (former Vice President RPT, London - valuer)  
 Member of First-tier Tribunal, Property Chamber (former Vice President RPT, Regions -valuer)

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<sup>74</sup> Group 7 post holders in London are paid an additional £2,000 salary lead and an additional £2,000 London allowance. Group 7 post holders in London are paid an additional £2,000 salary lead and an additional £2,000 London allowance.