



Review Body on
Senior Salaries

Supplement to the Fortieth Annual Report on Senior Salaries 2018

REPORT No. 90

Major Review of the Judicial Salary Structure

Chair: Dr Martin Read, CBE



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Presented to Parliament by the Prime Minister
by Command of Her Majesty

October 2018



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Review Body on Senior Salaries

Terms of Reference

The Review Body on Senior Salaries (previously known as the Review Body on Top Salaries) was formed in 1971 and is appointed by the government to provide it with independent advice.

The government wrote to us in September 2014 to confirm changes to the SSRB's terms of reference to reflect:

- the transfer of responsibility for MPs' pay, allowances and pensions from the SSRB to the Independent Parliamentary Standards Authority following the 2009 Parliamentary Standards Act;
- the addition of police and crime commissioners to the SSRB's remit in 2013;
- the addition of senior police officers in England, Wales and Northern Ireland to the SSRB's remit from 2014; and
- the removal of the requirement to maintain broad linkage between the remuneration of the SCS, judiciary and senior military.

Our terms of reference are now as follows:

The Review Body on Senior Salaries provides independent advice to the Prime Minister, the Lord Chancellor, the Home Secretary, the Secretary of State for Defence, the Secretary of State for Health and the Minister of Justice for Northern Ireland on the remuneration of holders of judicial office; senior civil servants; senior officers of the armed forces; very senior managers in the NHS;¹ police and crime commissioners, chief police officers in England, Wales and Northern Ireland; and other such public appointments as may from time to time be specified.

The Review Body may, if requested, also advise the Prime Minister from time to time on Peers' allowances; and on the pay, pensions and allowances of Ministers and others whose pay is determined by the Ministerial and Other Salaries Act 1975. If asked to do so by the Presiding Officer and the First Minister of the Scottish Parliament jointly; or by the Speaker of the Northern Ireland Assembly; or by the Presiding Officer of the National Assembly for Wales; or by the Mayor of London and the Chair of the Greater London Assembly jointly; the Review Body also from time to time advises those bodies on the pay, pensions and allowances of their members and office holders.

In reaching its recommendations, the Review Body is to have regard to the following considerations:

- *the need to recruit, retain, motivate and, where relevant, promote suitably able and qualified people to exercise their different responsibilities;*
- *regional/local variations in labour markets and their effects on the recruitment, retention and, where relevant, promotion of staff;*
- *government policies for improving the public services including the requirement on departments to meet the output targets for the delivery of departmental services;*
- *the funds available to departments as set out in the government's departmental expenditure limits; and*
- *the government's inflation target.*

¹ NHS Very Senior Managers in England are chief executives, executive directors (except medical directors), and other senior managers. The SSRB's remit group is now called Executive and Senior Managers in the Department of Health Arm's Length Bodies.

In making recommendations, the Review Body shall consider any factors that the government and other witnesses may draw to its attention. In particular, it shall have regard to:

- *differences in terms and conditions of employment between the public and private sector and between the remit groups, taking account of relative job security and the value of benefits in kind;*
- *changes in national pay systems, including flexibility and the reward of success; and job weight in differentiating the remuneration of particular posts; and*
- *the relevant legal obligations, including anti-discrimination legislation regarding age, gender, race, sexual orientation, religion and belief and disability.*

The Review Body may make other recommendations as it sees fit:

- *to ensure that, as appropriate, the remuneration of the remit groups relates coherently to that of their subordinates, encourages efficiency and effectiveness, and takes account of the different management and organisational structures that may be in place from time to time;*
- *to relate reward to performance where appropriate;*
- *to maintain the confidence of those covered by the Review Body's remit that its recommendations have been properly and fairly determined; and*
- *to ensure that the remuneration of those covered by the remit is consistent with the government's equal opportunities policy.*

The Review Body will take account of the evidence it receives about wider economic considerations and the affordability of its recommendations.

Members of the Review Body are:

Dr Martin Read CBE, *Chair*
Margaret Edwards
Sir Adrian Johns KCB CBE DL
David Lebrecht²
John Steele³
Dr Peter Westaway
Sharon Witherspoon, *Chair of the Judicial Sub-Committee*

The Secretariat is provided by the Office of Manpower Economics.

² Ex Officio: Chair Police Remuneration Review Body.

³ Ex Officio: Chair Armed Forces Pay Review Body.

Contents

	<i>Paragraph</i>	<i>Page</i>
Terms of Reference		iii
Executive Summary		1
Key report findings		1
Remit and Introduction		3
Background to this Major Review	1	3
Remit	3	3
Relationship to previous Major Reviews	6	3
Context of judicial pay and pensions	7	3
Judicial structural and constitutional changes in the UK since 2011	12	4
The importance of a high quality, independent judiciary	18	5
Perceptions about a judicial post	22	5
The current judiciary: context and concerns	29	6
The morale of the current judiciary	37	7
Flexible working	41	8
Leadership and management in the judiciary	44	8
Judicial career management	50	9
Judicial salary structure and placement of posts	52	9
<i>Key principles</i>	56	10
<i>Evidence</i>	57	10
<i>SSRB comments and recommendations</i>	62	11
<i>Supplements within new group V (Circuit Judges and equivalents)</i>	66	11
<i>Supplements within new group VI (District Judges and equivalents)</i>	69	12
<i>A new group VII</i>	70	12
<i>Implementation, and criteria for leadership supplements</i>	73	12
Posts proposed for moves between salary groups	78	13
Judicial recruitment and retention		14
<i>Workforce modelling</i>	84	14
<i>General judicial recruitment and retirement trends</i>	88	15
<i>High Court recruitment and retirement</i>	93	15
<i>Circuit Bench and Upper Tribunal recruitment and retirement (groups 5 and 6.1)</i>	101	16
<i>District Bench and First-tier Tribunal recruitment and retirement (groups 6.2 and 7)</i>	108	17
<i>Overall comment</i>	115	18
<i>Return to private practice, and retirement ages</i>	118	19
Judicial remuneration		19
<i>The evidence on pay and remuneration trends</i>	125	19
<i>General pension changes and their effect on total net remuneration since 2010</i>	130	20
<i>Judicial pay and pensions since 2010</i>	133	21

	<i>Paragraph</i>	<i>Page</i>
<i>Judges in the JUPRA pension scheme – recommendations</i>	143	22
<i>Judges in the 2015 New Judicial Pension Scheme – recommendations</i>	148	23
Looking ahead	157	24
Summary of recommendations		25
Summary of observations		27
<i>Chapter 1</i>		
Introduction		33
Background to the Major Review	1.1	33
Relationship with the annual pay review	1.7	34
The remit group	1.9	34
<i>Salaried judicial office holders</i>	1.11	34
<i>Fee-paid judicial office holders</i>	1.14	36
<i>Diversity</i>	1.17	38
Pay costs	1.20	38
<i>Pension changes</i>	1.25	39
Structural and constitutional changes to the judiciary since the 2011 Review	1.29	40
<i>Changes prior to 2011</i>	1.30	40
<i>The Courts and Tribunals System: England and Wales</i>	1.36	41
<i>The Courts and Tribunals System: Northern Ireland</i>	1.40	42
<i>The Courts and Tribunals System: Scotland</i>	1.44	42
<i>Wales</i>	1.47	43
Our approach to this Major Review		43
<i>Governance</i>	1.48	43
<i>Relationship to previous Major Reviews</i>	1.49	43
<i>Support and advice to the Review</i>	1.50	44
<i>Commissioned research</i>	1.53	44
<i>Visits</i>	1.54	45
<i>Call for Evidence</i>	1.56	45
<i>Consultation</i>	1.57	45
<i>Oral evidence</i>	1.58	45
<i>Communication</i>	1.60	46
<i>Chapter 2</i>		
Strategic context		49
Introduction	2.1	49
The importance of a high quality, independent judiciary	2.3	49
<i>Legal services underpinning economic growth</i>	2.6	50
<i>The direct financial value of the legal services sector</i>	2.9	51
<i>Potential international challenges to UK legal services sector</i>	2.13	52

	<i>Paragraph</i>	<i>Page</i>
Motivations for applying, or not applying, for a judicial post	2.17	53
The current judiciary: context, views and concerns	2.30	55
<i>Reductions in administrative support</i>	2.33	56
<i>Court infrastructure</i>	2.37	56
<i>Workload</i>	2.43	57
State of feeling in judiciary: pay, pensions and morale		59
<i>Pay and pensions</i>	2.50	59
Flexible working	2.58	60
Leadership and management within the judiciary	2.64	62
<i>Judicial career management</i>	2.72	63
<i>Chapter 3</i>		
Judicial salary structure and placement of posts		65
Introduction	3.1	65
Our evidence-gathering process and methodology	3.3	65
<i>A – Job Placement Research Exercise</i>	3.7	66
<i>B – The Judgement Panel Exercise</i>	3.10	67
<i>C – The Call for Evidence</i>	3.15	68
<i>D – Consultation document</i>	3.16	68
<i>E – Oral evidence</i>	3.17	68
Key principles	3.18	68
Evidence on overall judicial salary structure	3.25	70
General conclusions on judicial salary structure	3.33	71
Recommendations about basic group structures	3.37	71
Supplements within new group V	3.39	72
Supplements within new group VI	3.42	73
A new group VII	3.43	73
Implementation of, and criteria for, leadership supplements	3.47	74
<i>Possible future development of leadership supplements</i>	3.52	75
<i>Fee-paid judges</i>	3.53	75
<i>Benefits</i>	3.54	76
Discussion and recommendations: posts proposed for moves between salary groups		76
<i>General comments</i>	3.55	76
<i>Posts recommended to move to a new salary group – England and Wales</i>	3.61	77
<i>Posts recommended to move to a new salary group – Northern Ireland</i>	3.67	78
<i>Posts recommended to move to a new salary group – Scotland</i>	3.71	78
Posts where the SSRB have decided, having had significant representations, not to propose a move to a new salary group		79
<i>Employment Judges</i>	3.74	79

	<i>Paragraph</i>	<i>Page</i>
<i>Vice-Judge Advocate General and Assistant Judge Advocate General</i>	3.77	80
<i>Sheriffs Principal (Scotland)</i>	3.78	80
<i>Deputy Senior District Judge (Magistrates' Courts) (England and Wales)</i>	3.79	80
<i>District Judge Magistrates' Courts (Northern Ireland)</i>	3.80	80
Post placement recommendations	3.81	80
Chapter 4		
Recruitment and retention		91
Introduction	4.1	91
Workforce modelling	4.2	91
Background – number of judges in post over time	4.7	92
Judicial recruitment – general	4.9	92
Judicial recruitment – professional background of candidates	4.21	95
Judicial retention and retirement – general	4.22	96
High Court recruitment and retirements		98
<i>High Court recruitment: evidence from judicial appointments bodies across the UK</i>	4.33	98
<i>High Court recruitment: evidence from judicial representatives</i>	4.41	100
<i>High Court retirement: data from the government executives and the judicial offices across the UK</i>	4.48	101
<i>High Court retirement: evidence of judicial representatives</i>	4.52	102
<i>Our views in relation to High Court recruitment and retention</i>	4.57	102
Circuit Bench and Upper Tribunal recruitment and retirement		103
<i>Recruitment: evidence from the judicial appointments bodies across the UK</i>	4.58	103
<i>Circuit Bench recruitment: evidence from judicial representatives</i>	4.65	105
<i>Circuit Bench retirement: data from the MoJ and the Judicial Office</i>	4.69	105
<i>Circuit Bench retirement: evidence from judicial representatives</i>	4.72	107
District Bench and First-tier Tribunal recruitment and retention		108
<i>District Bench and First-tier Tribunal recruitment: evidence from the JAC</i>	4.75	108
<i>District Bench and First-tier Tribunal recruitment: evidence from judicial representatives</i>	4.78	108
<i>District Bench and First-tier Tribunal retirements</i>	4.83	109
<i>District Bench and First-tier Tribunal retirements: views of judicial representatives</i>	4.85	111
Overall comments on recruitment and retirement/retention	4.88	111

	<i>Paragraph</i>	<i>Page</i>
	<i>Return to private practice and retirement ages</i>	4.91 112
<i>Chapter 5</i>	Judicial remuneration	115
	Introduction	5.1 115
	Our approach to pay modelling	5.4 115
	External comparators to the judiciary	5.6 116
	<i>Survey of Newly Appointed Judges</i>	5.9 116
	<i>Time comparisons using the NatCen data</i>	5.13 118
	<i>Review of market data for senior legal professionals</i>	5.17 119
	<i>Summary of external comparators</i>	5.26 122
	Pension changes and their effect on total net remuneration since 2010	5.27 122
	Changes in judicial pay and remuneration since 2010	5.39 125
	Other taxation and pension effects	5.56 131
	The evidence on judicial pay recommendations	5.59 131
	<i>Judges in the 1993 JUPRA scheme – discussion</i>	5.65 132
	Judges in the 2015 NJPS	134
	<i>Recruitment and pay</i>	5.72 134
	<i>Objectives for judicial recruitment</i>	5.77 134
	<i>Rationale for pay recommendations for judges in the 2015 New Judicial Pension Scheme</i>	5.80 135
	<i>Judges above group IV</i>	5.91 137
	<i>London weighting</i>	5.92 137
	Full pay recommendations	5.93 138
	<i>Paybill</i>	5.94 138
	Implementation and looking forward	5.96 139
<i>Chapter 6</i>	Looking ahead	6.1 141
	Judicial salary structure and pay	6.2 141
	Going beyond pay	6.8 142
	Future reviews	6.15 143
<i>Appendix A</i>	Letter from the Lord Chancellor and Secretary of State for Justice to the SSRB Chair about the remit for the Major Review of the Judicial Salary Structure of 28 October 2016	145
<i>Appendix B</i>	Reply from the SSRB Chair to the Lord Chancellor and Secretary of State for Justice regarding the Major Review of the Judicial Salary Structure of 7 November 2016	147
<i>Appendix C</i>	The Terms of Reference for the Major Review of the Judicial Salary Structure	151
<i>Appendix D</i>	Court structures in England and Wales, Scotland and Northern Ireland	153
<i>Appendix E</i>	List of judicial offices in scope of the Major Review	157

	<i>Paragraph</i>	<i>Page</i>
<i>Appendix F</i>	Judicial salaries by salary group and the day rates of fee-paid judges from 1 April 2017	167
<i>Appendix G</i>	Visits undertaken in support of the Major Review	177
<i>Appendix H</i>	List of respondents to the Call for Evidence	179
<i>Appendix I</i>	List of respondents to the Consultation	181
<i>Appendix J</i>	List of those who gave oral evidence to the SSRB	183
<i>Appendix K</i>	Membership of the Advisory and Evidence Group	185
<i>Appendix L</i>	Responses from the Judicial Attitude Surveys in 2014 and 2016	187
<i>Appendix M</i>	Pay modelling – approach and assumptions	191
<i>Appendix N</i>	Glossary of terms and abbreviations	197

Executive Summary

Key report findings

- A respected and effective judiciary, at all levels, is fundamental to a democratic society.
- The UK judiciary's reputation has historically been extremely strong. Businesses and individuals from all over the world have wanted their cases to be heard in this country. Legal services had a trade surplus worth £3.4 billion in 2015.
- This international excellence is now under threat. Judges at all levels are recruited from serving legal professionals, mainly barristers (and advocates) and solicitors. However, it has recently not been possible to fill all the vacancies for the High Court, difficult to fill all the vacancies on the Circuit Bench, and problems are starting to emerge at District Bench level. These problems are unprecedented.
- The recruitment problems are principally occurring because the conditions of service for a judge have become much less attractive to potential applicants. Changes to tax and pensions mean that the total net remuneration⁴ for a new High Court Judge is worth £80,000 less than it was ten years ago (a 36 per cent decrease); for a new Circuit Judge, it is £49,000 less (a 30 per cent decrease); and for a new District Judge, it is £29,000 less (a 21 per cent decrease).
- In addition, factors other than pay have been affecting recruitment. These include inadequate administrative and IT support for judges in the courts, a significant increase in workload, inflexible working patterns, inadequate rewards for judges taking on leadership roles, and a large-scale breakdown in trust in the government. Many of these factors have been deteriorating over time. In the last Judicial Attitude Survey (JAS), only 2 per cent of judges in England and Wales said they felt valued by government.
- Those who do join the judiciary are motivated by a challenging job and by providing a valuable public service. These expectations are generally fulfilled.
- The problem is that potential judges from the senior ranks of the legal profession are not applying in sufficient numbers. This situation requires urgent and effective intervention. It is generally accepted that the public sector cannot match the rewards for a top QC or solicitor. However, the judicial role needs to be made more attractive in order to recruit high quality legal professionals as judges.
- We are therefore recommending significant increases in the remuneration of judges, with the largest pay increases going where there is the most obvious recruitment need. In reaching our conclusions, we have looked at the needs at different levels of the judiciary. We have also taken account of the high value of the 1993 Judicial Pension Scheme (JUPRA) to judges who are in membership, compared to the 2015 New Judicial Pension Scheme (NJPS).⁵

⁴ Total net remuneration is calculated as take-home pay (i.e., gross pay minus pension contributions, income tax and national insurance) plus the value of the additional amount added to the annual pension during the year multiplied by a 'valuation factor'. This is our preferred measure of remuneration because it takes account of pension benefits accrued in the year. We believe this is the most comprehensive, and therefore the most appropriate, measure. All the calculations we have carried out to assess total net remuneration have been appropriately adjusted for inflation. Full details are given in Chapter 5.

⁵ Where we need to differentiate between the new and older judicial pensions schemes, the term *NJPS* refers to both the New Judicial Pension Scheme 2015 and the equivalent Northern Ireland Judicial Pension Scheme. The term *JUPRA* refers to all the legacy schemes i.e., the Judicial Pension Scheme 1993, the Fee-Paid Judicial Pension Scheme 2017, and the 1981 salaried scheme.

- For judges covered by the NJPS, we recommend that the gross pay of a High Court Judge (group IV)⁶ should rise to £240,000, backdated to April 2018 (an increase of 32 per cent); that of a Circuit Judge and equivalents (group V) to £165,000 (an increase of 22 per cent); and that of a District Judge and equivalents (group VI) to £117,000 (an increase of 8 per cent).
- For all judges in JUPRA, we recommend a 2.5 per cent pay increase, backdated to April 2018.
- We recognise that it is not ideal for judges at the same level to be paid different base salaries. However, judges are already getting very different total net remuneration, depending on whether they are in the 1993 JUPRA or the 2015 NJPS pension scheme. Even after our recommended pay increases, judges in the 1993 scheme will still be receiving higher total net remuneration than those in the 2015 scheme.
- It is our view that any JUPRA judge who wishes to switch to the NJPS and secure the higher basic pay award should be free to do so.
- We are conscious that there are some serious concerns about the retention of JUPRA judges, and that this situation could deteriorate quickly. The MoJ is best placed to weigh up the risks and benefits of committing additional resources towards retention. There are a range of pay-related measures that could be considered. The SSRB would be happy to comment on specific propositions, and to do so quickly, if desired.
- We are also recommending new pay supplements to recognise judges in groups V and VI who take on extra leadership responsibilities, regardless of pension scheme membership. These supplements should only apply for the time that judges undertake these leadership responsibilities.
- We stress that these changes in pay need to be accompanied by improvements in workforce planning, improved court infrastructure, and more opportunities for salaried judges to achieve a better work-life balance.
- This Major Review was commissioned by the then-Lord Chancellor in October 2016 and was re-endorsed by subsequent Lord Chancellors, each of whom confirmed that they would consider its recommendations seriously and in a timely fashion. We trust that this commitment will be met.

⁶ The Recruitment and Retention Allowance would no longer apply.

Remit and introduction

Background to this Major Review

- 1 It has been customary for the SSRB to be asked, roughly every five years, to carry out a Major Review of the judicial salary structure. The last such review was completed in 2011. The UK government did not respond to that report for some years, and in the end decided not to take forward its recommendations. Hence, changes to the judicial salary structure have not been implemented since the previous Major Review reported in 2005.
- 2 This 2018 Major Review of the Judicial Salary Structure was commissioned from the SSRB by the then-Lord Chancellor in October 2016. The requirement and remit for this Review have since been re-endorsed by subsequent Lord Chancellors, each of whom confirmed that they would consider its recommendations seriously and in a timely fashion.

Remit

- 3 The SSRB was invited to make recommendations on the appropriate pay levels required to recruit, retain and motivate high-calibre judicial office holders at all levels. In addition, we were asked to look at whether the current salary structure could be simplified, and at how best to reward judicial leadership.
- 4 The remit covers the SSRB's standard judicial group: full-time and part-time salaried judicial office holders in the courts and tribunals in the UK. The SSRB was also asked to make recommendations on fee-paid judges who had comparators within the salaried judiciary. In addition, at the request of the Scottish government, we were asked to make a recommendation on pay for the newly created post of Summary Sheriff and, by the devolved administrations, to make recommendations on a number of judicial office holders in the devolved tribunal systems.
- 5 The SSRB set up a Judicial Sub-Committee of four members to assemble the evidence needed to consider the issues rigorously. An Advisory and Evidence Group, drawn from members of the judiciary at all levels and officials from the relevant government departments, supported the work of this Review. We are very grateful for their help and advice.

Relationship to previous Major Reviews

- 6 We noted that the last Major Review was completed in 2011 but that the UK government did not take forward the recommendations in a timely or comprehensive fashion. In the light of the length of time that has passed, we agreed at the outset that this Major Review would not take into account previous unimplemented recommendations. Given the significant changes since evidence was gathered for the 2011 Review, we felt that it was not appropriate to revisit the rationale of the recommendations of our predecessors seven years ago, but to start afresh and form our own views based on the evidence.

Context of judicial pay and pensions

- 7 The current judicial salary structure consists of nine groups. All judges at each level receive a single spot rate of pay. They do not receive incremental progression or performance-related pay. Fee-paid judges are paid a day rate that is generally based on the salary of their salaried comparator judge, with a divisor applied to take account of the numbers of sitting days.
- 8 In 2017-18, there was £504 million total payroll expenditure for the England and Wales judiciary. Of the total expenditure, £325 million related to the salaried judiciary, and £179 million related to the fee-paid judiciary. The £504 million payroll expenditure is an

increase from £484 million in 2016-17.⁷ The total payroll expenditure for salaried judges in Scotland in 2017-18 was £44 million. The total payroll expenditure for salaried judges in Northern Ireland in 2016-17 was £15 million.

- 9 As with other public sector groups, base pay for the judiciary has been subject to a period of pay restraint since 2010. In total, nominal gross base pay increased by 5.1 per cent between 2009-10 and 2017-18.
- 10 Following consultations in 2012 and 2014, the New Judicial Pension Scheme (NJPS) and the Northern Ireland Judicial Pension Scheme came into operation on 1 April 2015. Unlike the previous 1993 Judicial Pension Scheme (JUPRA),⁸ the 2015 schemes are registered for taxation purposes, in line with other public sector pension schemes.
- 11 All judicial salary groups have received the same pay awards since 2009-10, except in 2017, when the government introduced a temporary Recruitment and Retention Allowance (RRA) for High Court Judges in the NJPS. This is worth 11 per cent of salary and is intended to address increasing recruitment concerns. It is not payable to judges in JUPRA.

Judicial structural and constitutional changes in the UK since 2011

- 12 The 2011 Major Review noted the fundamental changes implied by the Constitutional Reform Act (CRA) 2005. The Lord Chief Justice of England and Wales (LCJ) took on responsibility for the training, guidance and deployment of individual judges and for representing the views of the judiciary to parliament and the government. The CRA made similar changes to the management role of the Lord Chief Justice of Northern Ireland (LCJNI). It also established the office of Senior President of Tribunals (SPT) as head of the tribunals judiciary.
- 13 For **England and Wales**, the Tribunals and Courts Services were merged to form Her Majesty's Courts and Tribunals Service (HMCTS) in 2011. The Crime and Courts Act 2013 created a single county court and a single family court. This also allowed salaried judges to work part time in the High Court and above. Plans for further reform from 2017 included the simplification and digitisation of processes and procedures (for example, expanding the use of virtual hearings) alongside an investment in estates and IT. These are expected to mean substantial changes to the working practices of the judiciary.
- 14 In **Scotland**, the Judiciary and Courts (Scotland) Act 2008 established the Lord President as head of a unified Scottish judiciary. The Courts Reform (Scotland) Act 2014 created a new office of Summary Sheriff, and the Sheriff Appeal Court. The 2014 Act also created a merged Scottish Courts and Tribunals Service. The Tribunals (Scotland) Act 2014 brought the Scottish tribunals under the leadership of the Lord President and created the new office of the President of Scottish Tribunals.
- 15 The Scottish government intends that devolved tribunals will move into the new Scottish tribunals structure in an incremental manner; the first jurisdiction transferred in December 2016 and the last devolved jurisdiction is due to transfer in April 2022. The management and operation of the tribunals dealing with matters of reserved UK law in Scotland will also be devolved to the Scottish parliament.
- 16 In **Northern Ireland**, legislation in 2015 established a single jurisdiction for County Courts and Magistrates' Courts. Proposals also exist for tribunals to be devolved to the LCJNI, although these have not yet been acted upon.

⁷ This increase is due to the increased workload in certain jurisdictions and tribunals, the full impact of the *O'Brien* and *Miller* judgments in relation to fee-paid judges, and other factors as set out in Chapter 1.

⁸ Also other legacy pension schemes. Further details are given in Chapter 1.

- 17 In **Wales**, the Wales Act 2017 created the office of President of Welsh Tribunals. This legislation also includes provisions to enable cross-deployment both within devolved Welsh tribunals and between Welsh tribunals and reserved courts and tribunals for England and Wales.

The importance of a high quality, independent judiciary

- 18 An effective, independent judiciary is fundamental to the functioning of a democratic society. Every day, judges make decisions that profoundly affect individuals, families, businesses and society. Judges need to be of sufficient quality that their rulings are respected, and there need to be enough judges to enable cases to be heard in a timely and effective fashion. The UK is widely held to have an internationally trusted legal system based on the rule of law. One of the key factors contributing to this is the perceived quality of its judiciary, which includes their integrity and impartiality.
- 19 There is research evidence⁹ that having an effective independent judiciary also brings benefits for the wider economy. Legal services are seen as critical to the broader financial and related professional services cluster which make the UK one of the leading international business hubs. When UK lawyers, anywhere in the country, are instructed on an international project, there is a greater chance that UK accountants, actuaries and others will also be engaged. In a report for the Law Society, Cambridge Econometrics estimated that £1 of extra turnover in the legal sector stimulates a further £1.39 of spending in the wider economy.
- 20 Legal activities make a sizeable contribution to the UK economy. The sector employs over 370,000 people, many of them outside London, and it is an important source of income from overseas. Legal services had a trade surplus worth £3.4 billion in 2015, and this surplus has almost doubled over the past decade. Research suggests that the reputation and experience of UK judges was the main reason for litigants choosing to bring cases in the UK. However, the market for international commercial courts is becoming more competitive, with other countries in Europe, the Middle East and Asia marketing themselves as potential rivals.
- 21 We endorse the importance of an excellent judiciary to society and to the rule of law, with all the social and economic benefits that flow from this. The UK judiciary enjoys a high international reputation among its peers, not least for its effectiveness and integrity, and it is vital for this to be maintained.

Perceptions about a judicial post

- 22 Most judges at, or below, High Court level are recruited externally. In the main, they are drawn from a labour market of relatively highly-paid individuals – barristers, advocates or solicitors, or sometimes academics – who are already well-established in their careers. This sets the judiciary apart from most public sector workforces where it is common to ‘move up through the ranks’. The key external recruitment entry levels have been at the High Court (salary group 4); the Circuit Bench and Upper Tribunals (salary groups 5 and 6.1); and the District Bench and First-tier Tribunals (salary group 7).
- 23 Our research¹⁰ on recently appointed judges found that the top four factors cited across all levels as motivations for applying were:
- The challenge of the job (89 per cent).
 - Providing a public service (83 per cent).
 - A natural career step (80 per cent).

⁹ See: Chapter 2.

¹⁰ *NatCen Survey of Newly Appointed Judges in the UK 2017*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

- The promise of a good pension (71 per cent).

High Court Judges were more likely than others to cite the challenge of the role; Circuit Judges to mention the pension; and District Judges to cite the security of the job.

- 24 Seventy-three per cent of the judges reported that their expectations were fully met for public service, and 72 per cent for the challenge of the role. However, of those judges who said that the pension was a positive incentive to apply, 37 per cent said their expectations had not been met.
- 25 We also commissioned research¹¹ looking at qualified legal professionals who had not put themselves forward for judicial appointments. This found that the main incentives that had traditionally encouraged professionals to move to the Bench were:
- A reduction of workload and pressure, compared with private practice.
 - A reasonable salary which, although smaller than many practitioners had been gaining before, was secure.
 - A good pension.
 - A respected social status.
 - A wish to “put something back” into the legal system through public service, and to contribute to the development of the law through decisions.
- 26 Over the nine-year period to 2017, all these incentives, except the last, had eroded. Problems of a heavy workload, a perceived increase in the volume of cases, a lack of judicial autonomy, and inflexible working practices are considered to have steadily worsened. In addition, there has been a long-term decline in how the judiciary is perceived to be valued by government, the press and the public (a drop in ‘social status’).
- 27 In our study, more recent disincentives were also mentioned, including infrastructure, especially the poor conditions of court buildings and facilities, and a deterioration in administrative support. However, the biggest disincentive related to pension changes. These meant that the judicial pension was no longer seen to provide a strong incentive to highly-paid legal professionals who have already made adequate provision for their retirement. However, some of these are the very people who would ideally be applying to the higher judiciary. Meanwhile, for legal professionals working in the less remunerative areas of the law, the judicial pension remained attractive.
- 28 On pay, most respondents accepted that judicial salaries would be below those earned by top legal professionals, particularly in the commercial sector. Only 15 per cent saw the salary level as an attraction of the Bench.

The current judiciary: context and concerns

- 29 Like all workforces in the public sector, the judiciary has been affected by reductions in government spending. The Ministry of Justice (MoJ) told us that, following the 2015 Spending Review settlement, it needed to deliver around £1 billion in savings (equating to a 15 per cent real-terms cut to the MOJ’s budget) by 2019-20. It said this would involve significant reductions in administrative spend, as well as in the running costs of courts and prisons. Judges at all levels have experienced adverse consequences from these spending pressures.
- 30 In terms of administrative support, there has been a reduction in the number of support staff employed. In 2012, the number of full-time equivalents was 15,700; in 2017 it was 13,200. The HMCTS reform programme envisages further staff reductions as a result of

¹¹ *The Attractiveness of Judicial Appointments in the UK*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

business transformation. In our visits to courts, we heard of several examples where the current administrative support staff lacked the skills to do the job. The consequence was an increase in administrative workload for the judiciary. This is an inefficient use of skilled and expensive resource.

- 31 On infrastructure, the LCJ has acknowledged that substantial investment in the court estate is needed in the long term to fully address its dilapidated position. The 2016 Judicial Attitude Survey (JAS) showed that three-quarters of judges in England and Wales thought working conditions had worsened since 2014. In Scotland, 68 per cent of judges said that their working conditions were worse than in 2014. In Northern Ireland, the figure was 81 per cent.
- 32 This is not simply a question of poor working conditions. The 2016 JAS reported that 51 per cent of judges in England and Wales, and 68 per cent of judges in Northern Ireland, had concerns about their personal safety when sitting in court. The lack of investment in the infrastructure was perceived by legal professionals to be symptomatic of the low value the MoJ placed on judicial services.
- 33 Poor working conditions are compounded by reports of poor and “antiquated” IT equipment and facilities. The 2016 JAS reported that 54 per cent of judges rated the standard of equipment used in courts and tribunals as poor.
- 34 The LCJ and SPT told us there had been a significant increase in judicial workload across all areas of the justice system. The MoJ said that, in 2017-18, it was expecting an increase in workload for the family and civil jurisdictions, and the Social Security and Child Support and Employment Tribunals. Judicial associations said many judges found the volume of cases they were expected to handle becoming burdensome and potentially unmanageable.
- 35 In addition to a rise in the volume of judicial work, we heard that the gravity of cases had increased. Cases in relation to recent and historical sexual abuse, terrorism, child exploitation and cyber-crime were more likely to be contested, take longer and be more complex. Crown Court judges were dealing with a high volume of sex offending cases. The Council of Her Majesty’s Circuit Judges (CoCJ) described this as a “constant diet of serious sexual and physical abuse”.
- 36 The MoJ said that it was investing in digital services that would in future be easier to use, and that new, modern and robust technology across all courts would result in the better use of judicial time. We understand and support the logic behind many of the modernisation changes that the MoJ and judiciary are seeking to make, and recognise that this is a long-term programme running up to 2022. However, at present, few of the hoped-for benefits, and many of the disadvantages, are being experienced by judges in the courts.

The morale of the current judiciary

- 37 An overwhelming majority of judges responding to the JAS did not agree that they are adequately remunerated for the work they do. Approximately three-quarters of judges at all levels in 2016 said that their pay and pension did not adequately reflect their work.
- 38 Sixty-one per cent of respondents to the 2016 JAS said their morale had been affected by pension changes. There was a strong feeling that the government had committed a fundamental breach of trust. Many judges asserted that, in joining the judiciary, they made a permanent and irreversible choice to leave their private practices on the basis of well-established judicial pension arrangements. These arrangements were then changed to their disadvantage. Because judges cannot step down from the judiciary and return to their previous legal careers, they have had no opportunity to mitigate their losses.

Moreover, there is a fixed retirement age of 70 for judges appointed after 1 April 1995, so they cannot extend their working lives on the Bench.

- 39 The damage that the pension changes have had on judicial morale was a consistent and forceful message from our respondents. Pay and pensions were also raised as emblematic of the perceived low value put on the judiciary by the government. Many judges believed that politicians have failed to stand up for the judiciary against hostile media. They felt they were exposed to criticism without the political support for the rule of law and the legal process that they were entitled to expect.
- 40 Overall, we were struck by the JAS figures suggesting that extremely low numbers of judges felt valued by the government. This number was 3 per cent of judges in England and Wales in 2014, and 2 per cent in 2016. This indicates exceptionally low levels of trust between a profession and those responsible for their pay and conditions. This disillusionment must affect both retention and recruitment. We believe it is essential for the government to find ways to convince the judiciary that they are indeed valued.

Flexible working

- 41 Our research found that the lack of flexible working practices on the Bench was a commonly cited barrier to applying for a judicial appointment. Notably, it was an issue raised by more than half of the women interviewed. Legal practitioners who were solicitors, advocates or barristers felt that flexible working patterns, and a reasonable balance between work and private life, were generally accommodated in their current place of work. However, they doubted that this would be the same if they moved into the judiciary and considered the role as currently configured to be “inflexible”.
- 42 It was pointed out in our research that there were few part-time salaried judicial positions. Applicants and new judges feared that they might be allocated to a geographical location that was potentially inconvenient for their domestic responsibilities. In addition, they felt they would lose the autonomy and collegial support that they enjoyed in private practice. The research found that there was very little confidence in court managers. Respondents believed that HMCTS and MoJ officials saw the management of performance indicators as their sole priority, irrespective of the workload on judges.
- 43 We think that the judicial leadership could do more, both to communicate what has already been done to accommodate flexible working patterns, and to consider developing these. While there are certainly challenges in increasing the number of salaried judicial part-time posts, we do not believe that the barriers are insuperable. Over the last 20 years, every profession has been responding to demands from women and men who want a better balance between their work and non-work time.

Leadership and management in the judiciary

- 44 Over the last ten years, there have been significant changes to the roles that judges perform and the environment in which they work. Some of these have proved extremely challenging. They require very high workforce management skills, in the widest sense.
- 45 We believe that good workforce management should go beyond modelling the need for recruitment exercises, important though this is. It involves taking full responsibility for the needs of the current and potential workforce. Our reading of the CRA 2005, and the Judiciary and Courts (Scotland) Act 2008, indicates that the responsibility here now lies with the judiciary itself.
- 46 We heard evidence that the judicial leaderships across the UK recognise this, and are keen to address the challenges. However, we think there is still much to be done. For example, in conducting this Review, we became aware of the difficulties in getting basic management information for the judiciary. We were asked to look at a much wider range

of courts and tribunals posts than had been covered by previous Reviews. We therefore sought a full list of job titles and job descriptions. It only gradually emerged that there was no comprehensive list and, for many judicial posts, no agreed job description. Where job descriptions did exist, they ranged from a paragraph to scores of pages. Some, which had been used for the 2011 Major Review, were, we were told, inaccurate and inconsistent.

- 47 While we received a great deal of help from the judicial offices, it also became clear that there was uncertainty about who was responsible for producing and maintaining these job descriptions. Concerns about maintaining judicial independence were sometimes invoked as a reason why only those judges holding a particular post could produce a job description for that post. We fundamentally disagree with this view; indeed, it seems to us likely to be one cause of the inconsistent job descriptions with which we were confronted.
- 48 A system where there is uncertainty about key building blocks, such as job descriptions, is likely to struggle when facing the type of management challenges that are now confronting the judiciary. For example, overseeing different models of flexible working requires high quality management information. So does securing high quality support staff in the court system to manage workflows and monitor workloads. Some of the court managers we met on our visits were in very demanding jobs, for which they had little training or relevant experience. Further investment in HMCTS management could, indirectly, make a judicial career look considerably more appealing.
- 49 We assess that a more proactive approach to leadership is required at all levels of the judiciary. We saw that judicial leadership and management is too often haphazard and unrecognised. We believe there now needs to be a wide-ranging look at judicial human resources management. Mechanisms should be put in place to provide a consistent 'offer' to judges in each jurisdiction. This should set out what they are expected to do (in the form of a job description) but also the support available to help them to do it.

Judicial career management

- 50 A number of judges and judicial associations told us that there was limited, or no, career management or opportunities for career progression, and that judges felt isolated. We note that good career management is not simply about identifying and developing individuals who may seek promotion. It is about individuals feeling that the organisation for which they work has a genuine interest in their job satisfaction and professional development. When an organisation is under strain, it becomes harder to devote the appropriate resource to identifying and supporting individual aspirations. However, this is precisely the time when such activity is most needed, not least to support the retention of experienced people.
- 51 The information, resources and skills available for career management within the judiciary do not seem adequate. We believe it is essential that sufficient resource, including in the relevant judicial offices, is dedicated to this work.

Judicial salary structure and placement of posts

- 52 The remit we were given by the Lord Chancellor asked for recommendations on a future judicial salary structure. It also asked how the pay system might reward and incentivise judicial leadership, recognise high levels of judicial specialisation in some areas, and consider the scope for simplification.
- 53 We made a conscious decision not to take account of the changes to job placements recommended by the 2011 Major Review, which had neither been accepted nor implemented by the government. We felt that, whatever the rationale of the

recommendations of our predecessors seven years ago, we needed to start from the 2017 status quo, and form our own views.

- 54 We also decided to take a different approach from the one taken in the 2011 Major Review for considering the placement of posts in a salary structure. We particularly wanted consistency between job descriptions, produced under judicial oversight. We then used a judgement panel process, facilitated by the Institute of Employment Studies (IES) to assess these job descriptions. We describe this fully in Chapter 3.
- 55 In addition, we gathered evidence from our programme of visits, largely undertaken in late 2017, from a Call for Evidence, from a separate Consultation on salary structure, and from oral evidence sessions with government and judicial representatives.

Key principles

- 56 We adopted the key principles, set out below, to guide our final judgements on job placement and salary structure. These were agreed with, and supported by, the judiciary and governments across the UK.
- There should be no inherent distinction between the work of ‘courts’ and ‘tribunals’. The salary structure, as now, should place court and tribunal judiciary within the same broadly comparable groups.
 - Judges at the same level should generally be paid at the same rate, regardless of the area of law in which they operate. A First-tier Judge in the Tax Tribunal should, as now, be paid the same as a First-tier Judge in the Immigration and Asylum or Social Security and Child Support Tribunals.
 - Judges should be paid at a spot rate with no progression up a pay range. Experience alone does not qualify one judge to be paid more than another at the same level.
 - Geographical location should not affect judicial pay.¹² The pay structure should not differentiate for labour markets or costs of living.
 - Full-time, part-time, salaried and fee-paid judges who do the same job should be paid at the same *pro rata* rate, in accordance with recent legal rulings.

Evidence

- 57 The evidence that we received indicated that the basic judicial salary structure does not need radical change. Respondents felt that each of the judicial salary groups had to encompass a broad range of work. However, we repeatedly heard that, at some levels of the judiciary, leadership roles are not satisfactorily recognised under the current system.
- 58 This is primarily because the existing ways of recognising judicial leadership roles are inflexible. They involve moving a post into a higher salary group – for example, from group 6.1 to group 5. This makes it difficult to reward leadership positions that are not weighty enough to justify such a move, but are nevertheless important. It also means that judges who take more demanding roles in a higher salary group continue to be paid at this higher rate even if they subsequently move to a less demanding role.
- 59 This was particularly highlighted with regard to the Circuit Bench, where the distinction between the Senior Circuit Judge (group 5) and a Circuit Judge (group 6.1) was described by the CoCJ as “no system – the [pay] arrangements have developed on an *ad hoc* basis, that could not possibly be described as fair or consistent”. Similar, though less strongly-expressed, concerns emerged from the Judgement Panel in relation to the District Bench, and the distinction between groups 6.2 and 7.

¹² The one exception is that London weighting is currently paid to group 7 Judges in London. We discuss this in Chapter 5.

- 60 Both the LCJ and the CoCJ proposed that the SSRB should consider recognising intermediate leadership roles within the Circuit Bench by means of new 'leadership increments'. They felt that there might be two or three such increments.
- 61 There was general support for the proposition that any new allowances for leadership responsibilities should apply for only as long as the office holder held the post for which the allowance had been awarded.

SSRB comments and recommendations

- 62 We concluded that there was a need for a more flexible pay system, enabling greater recognition for judges who take on leadership roles, for as long as they hold such roles. The need is most immediate in the salary groups 5 and 6.1, and 6.2 and 7. We are therefore recommending changes that would simultaneously simplify the salary structure for these groups and support better recognition of leadership. In order to distinguish this new structure from the current one, we are using Roman numerals I, II, III, etc., to denote the new salary groups.
- 63 We recommend no changes in the structure of current salary groups 4 and above, which would henceforth become groups I – IV.
- 64 We recommend that current salary groups 5 and 6.1 should be combined into a new group V, and salary groups 6.2 and 7 into a new group VI. This change should be accompanied by introducing new leadership supplements to distinguish between the leadership responsibilities of different judges.
- 65 No changes to judicial job titles or status, or to terms of appointment, are envisaged in any of these proposals. All supplements would be pensionable.

Supplements within new group V (Circuit Judges and equivalents)

- 66 There should be four levels of supplement in group V, plus a 'base rate', making five spot rate pay points in all.
- All Senior Circuit Judges who are currently in group 5 should, at a minimum, go onto the third supplement point – one below the maximum (point V.3).
 - Judges in the new group V who have leadership responsibilities for judges who are themselves at the third leadership point in group V should be placed on the fourth supplement point – the maximum (point V.3+).
 - Judges currently in group 6.1 should be paid at the base rate (V.base), or on the first (V.1) or second points (V.2), depending on whether their post attracts a leadership supplement. They should retain that leadership supplement only for as long as they undertake these leadership responsibilities.
 - Other judges who are appointed to group V in future should be paid on the base rate, or whichever of the four leadership supplement points is appropriate for their post. They should retain any leadership supplement only for as long as they undertake these leadership responsibilities.
- 67 Some people asked us to consider specialist supplements. We wish to be clear that we are not recommending here the introduction of a general supplement to reflect the seriousness or difficulty of cases. Nor is the aim to introduce any generalised presumption of recognising specialisms. We have heard strong representations that a collegial judiciary, in which all areas of work are valued, is important to the smooth functioning of the system.

68 However, the contribution of a small number of judges, such as the Chancery and Old Bailey Judges who handle complicated cases requiring scarce specialist knowledge is already recognised in remuneration. For these judges, who are normally appointed through success in a Judicial Appointments Commission (JAC) competition, **we recommend the payment of a single specialist supplement, fixed at the third supplement point.**

Supplements within new group VI (District Judges and equivalents)

69 There should be three levels of supplement within group VI, plus a 'base rate', making four spot rate pay points in all.

- Judges currently in group 6.2 (unless their post moves as a result of our recommendations) should be on the third (maximum) supplement (point VI.3).
- Judges currently in group 7 should be paid at the base rate (VI.base), or on the first (VI.1), second (VI.2) or third supplement points (VI.3), depending on whether their post attracts a leadership supplement. They should retain that leadership supplement only for as long as they undertake these leadership responsibilities.
- Other judges who are appointed into group VI in future should be paid at the base rate, or whichever of the three supplement points is appropriate for their post. They should retain any leadership supplement only for as long as they undertake these leadership responsibilities.

A new group VII

70 At present, there is no recognised judicial salary group below group 7. The implication is that any judicial post must be at the level of a District Judge or Judge of the First-tier Tribunal.

71 We believe that there is an unhelpful lack of flexibility here. We do not think it is our role to try to examine in detail the demands on, for example, the Parking Adjudicator (Scotland), nor to take a view on the salary that the post should attract. We believe that task should rest with the relevant judicial leadership in discussion with the relevant government executives, in keeping with the objectives of the CRA 2005 and its counterparts in the devolved administrations. However, it seems to us very possible that the weight of these jobs is below that of current group 7.

72 **We therefore recommend the creation of a new group VII, sitting below the new group VI.** This group could accommodate any judicial posts that are not currently allocated to a salary group, but which appear to the judicial leaderships to be of a lower weight than group VI. We suggest two spot rates of pay to provide a structure. While we do not have enough evidence to allocate posts to either of these spot rates, we believe that having two published rates may help reduce pay variability between different devolved tribunals. We were struck by the number of discrete pay rates that did not seem to have a strong rationale, particularly on our visits to the devolved administrations.

Implementation, and criteria for leadership supplements

73 We are assuming that, if our recommendations are accepted, no present member of the judiciary would see a reduction in their current base pay.

74 We stress that implementation of the leadership supplements can only take place once transparent criteria for their award have been agreed. We believe that it is for the judicial leaderships across the UK to finalise these criteria, and to take decisions about which posts should attract which supplements. This is a logical consequence of the expectations that were placed on the judicial leaderships in the CRA 2005 and its counterparts in the

devolved administrations. We do not envisage any increase in the number of judicial posts for which JAC appointment is required.

- 75 In oral evidence, we sought agreement from all the heads of the UK judiciary that they see it as their responsibility to finalise the award criteria for supplements, to agree the specific posts that should be eligible, and to manage implementation. We were pleased to receive this confirmation. They indicated that they would welcome a clear recommendation that they do so. Therefore, **we recommend that the heads of the UK judiciary take responsibility for the detailed arrangements for the award of leadership supplements to individual posts.** As a starting point, we set out in Chapter 3 some possible criteria that could underpin these awards.
- 76 We are making recommendations on leadership supplements for salary groups V and VI, since this is where the need seems most urgent and obvious. However, once these are established, there may be a case for considering whether any of the small number of posts that might exercise leadership in the higher judiciary are currently unrecognised. Specifically, this might enable some extra recognition to be given to a post, such as Deputy President of the Supreme Court, without needing either to create a new salary group, or to move the post into an existing higher group.
- 77 We are not differentiating between salaried and fee-paid judges. We see no inherent reason why fee-paid judges should not exercise leadership, which would make them eligible for a leadership supplement at the appropriate level. However, we have heard regularly on our visits that there are jurisdictions where the great majority of judges are fee paid, and where small numbers of salaried judges find themselves having to handle a disproportionate amount of management work. If such a situation exists, it would seem reasonable for the extra leadership work undertaken by the salaried judge to be recognised through the leadership supplements.

Posts proposed for moves between salary groups

- 78 We received a great deal of evidence from judicial associations and individuals proposing that particular posts should move to higher salary groups. It is inevitable in an exercise such as this that our recommendations will not give everyone the responses that they were hoping to see.
- 79 We noted that growing workloads, and more devolved responsibilities, have been features for the whole judiciary over the last decade. Hence, we looked for evidence that the demands of particular judicial jobs, *relative to other judicial jobs*, have significantly changed since the last Major Review recommendations were implemented in 2005.
- 80 We also tried to get a sense of the norm for different judicial posts. Many judges, at all levels, will sometimes be faced with highly complex and demanding cases, going well beyond what they would expect to handle. However, that does not imply that all, or most, of their cases will be highly complex and demanding.
- 81 Finally, we noted that in our new salary structures, extra demands on a judicial post can be recognised without the post having to move into a different salary group. The new groups V and VI are broad, and the judicial leaderships will be able to differentiate posts within them, using pay supplements.
- 82 The table below shows all the salaried posts for which a salary group move is recommended. The rationale for the moves is discussed in Chapter 3.

Table 1: Recommendations for changes in salary group post placement: salaried posts

Post title	Current placement (current salary structure)	Proposed placement in proposed new structure
England and Wales and UK Tribunals		
Chamber President of the First-tier Tribunal War Pensions and Armed Forces Compensation Chamber	6.2	V
Insolvency and Company Court Judge (Bankruptcy Registrar)	7	V
Masters and Cost Judge (England and Wales)	7	V
Principal Judge, First-tier Tribunal, Property Chamber – Land Registration	6.2	V
Regional Judge, Property Chamber	7	V
Surveyor members, Upper Tribunal (Lands)	6.2	V
Salaried (regional) medical members, Social Entitlement Chamber	Currently paid below the current salary group 7 rate	VI
Scotland		
Legal Members, the Lands Tribunal for Scotland	6.2	V
Member of the Scottish Land Court	Currently paid below the current salary group 7 rate	VI
Northern Ireland		
Presiding Master of the Court of Judicature (Northern Ireland)	7	V
Masters of the Court of Judicature (Northern Ireland)	7	V
Member, Lands Tribunal (Northern Ireland)	6.2	V

83 In Chapter 3, we also discuss a number of posts for which we received significant representations, but where we decided not to propose a move to a new salary group.

Judicial recruitment and retention

Workforce modelling

84 Planning judicial recruitment programmes in England and Wales is a joint responsibility between the senior judiciary, the Judicial Office (JO), the MoJ, HMCTS and the JAC. We acknowledge that Scotland and Northern Ireland have their own approaches to workforce planning which reflect the specific scope and size of their jurisdictions.

85 Until this year, the MoJ operated a policy that any judicial recruitment was restricted to a ‘business critical’ only basis. This changed to a ‘business need’ basis, but not before there had been a long absence of fee-paid judge recruitment for posts such as Recorders. The lack of competitions for fee-paid judges affects not only the complement of judges for

those posts but also the recruitment to the salaried judiciary, since most salaried judges will first have to spend time as a fee-paid judge.

- 86 Work is underway in the JO to improve workforce planning to enable longer-term projections of retirements and career profiling. We were told that the JO had only implemented professional HR systems in the last three years and that there was a lot of ground to catch up.
- 87 We welcome the work that is now going into workforce planning. We regard this as essential. While it is difficult to have a comprehensive picture, given the nature of the available data on recruitment and retirements, it is apparent to us that the judicial recruitment system is not yet in a steady state. The stop-start nature of recruitment in recent years has made recruitment to the judiciary more difficult than it otherwise would have been.

General judicial recruitment and retirement trends

- 88 There was an overall fall in salaried judicial numbers between 2010 and 2017, from 2,240 to 2,119, although there was a pick-up in numbers in 2017. The number of judges in salary groups 5 and 6.1 reduced from 956 to 879, and in groups 6.2 and 7 from 1,075 to 1,039. Over this same period, there has continued to be a reasonable overall ratio of applicants to recommendations for judicial posts in the three UK jurisdictions. In most years, this ratio has been around seven to one.
- 89 The JAC told us that the number of vacancies that they were being asked to fill for salaried judicial posts had steadily increased over the period 2012 to 2017. The number of vacancies for 2017-18 (part year, from April to December 2017) was already significantly higher than for any previous year.
- 90 For salaried judicial posts, the percentage of outstanding or strong applicants (graded A or B by the JAC) has fallen, from 103 per cent in 2013-14 to 90 per cent in 2016-17.¹³ For fee-paid posts, the same percentage has risen (from 82 per cent in 2013-14, to 109 per cent in 2016-17). It is possible that fee-paid positions may be becoming a more attractive career path than the salaried judiciary.
- 91 The mandatory retirement age for the salaried judiciary is 70. The data for England and Wales show a relatively consistent number of judicial retirees between 2011-12 and 2016-17 and suggests that the average age of retiring judges has, if anything, risen over this period. The average age of 67.4 in 2016-17 is the highest shown. Scotland shows a similar picture; their average judicial retirement age was 66.8 in 2017.
- 92 However, according to the 2016 JAS, well over a third of judges were considering leaving the judiciary early. This had increased slightly since 2014. We note that the retirement position could change quickly. In evidence provided for our 2017 Report, the then-LCJ suggested that because of pension taxation changes there may be little incentive for some judges to work more than 80 per cent of their full-time hours. If a judge's personal circumstances changed – for example, if they reached the point when they were obliged to switch from the 1993 JUPRA pension scheme to the 2015 NJPS – then it might well be rational for them to retire and take fee-paid roles.

High Court recruitment and retirement

- 93 High Court recruitment is distinctive in that the JAC does not recommend any candidate for appointment unless they are assessed as either A (Outstanding) or B (Strong). Hence,

¹³ The JAC grading criteria are explained and discussed in Chapter 4 at paragraph 4.18.

if not enough A and B graded candidates are available, High Court vacancies will not be filled and will carry forward.

- 94 This is exactly what has happened in recent years. The first unfilled High Court vacancy occurred in 2014-15. There was then a further shortfall in the 2016-17 exercise, which carried forward into 2017-18, when there was a third consecutive shortfall, of eight vacancies. The JAC told us that the number of High Court vacancies to be filled in the 2017-18 round was the highest ever, partly due to this accumulated carry over of vacancies. The JO confirmed that the number of vacancies for the High Court currently stands at 14.¹⁴
- 95 There were 129 applications to the 2017-18 competition, more than in any recent High Court competition and more than twice the number for 2016-17. However, the number of Outstanding or Strong selections has not increased sufficiently to fill all the vacancies. In 2017-18, the JAC selected all 17 applicants who had been assessed as Outstanding or Strong, but were still left with a shortfall.
- 96 All our respondents expressed concern about the recruitment picture for the High Court. Until very recently, appointment to the High Court had been a coveted career goal for many judges. There would have been strong competition for any available vacancies.
- 97 The LCJ told us there were no longer enough applicants from the very top echelons of the commercial sector, the Chancery Bar and London solicitors' firms. The flow of top criminal, family and administrative barristers to the High Court Bench had also reduced considerably in the last few years. The High Court Judges' Association commented that the recruitment shortfall coincided with the NJPS coming into effect in 2015. They felt it was "wholly improbable" that these statistics were explained by other factors. Similar concerns were expressed in Scotland and Northern Ireland.
- 98 On retirements, High Court numbers are potentially affected by any departures from the senior judiciary, since the High Court is the normal source of recruits for the Court of Appeal and above. In 2016-17, 34 senior judges retired, double the norm of any of the previous five years. Eleven of these judges retired, or were expected to do so, aged 70 or over,¹⁵ and the remaining 23 could therefore be said to have retired early. Specifically, in the High Court, 11 judges retired in 2016-17, nine of them before the age of 70. This compares with five early retirements in 2014-15 and three in 2015-16.
- 99 The LCJ said he was already anticipating between eight and ten High Court Judge retirements or promotions by the end of calendar year 2018. This would leave the High Court around 16 judges below its full complement of 108. A further six to 12 retirements or promotions were expected in 2019. The current position, as provided by the JO, is set out in paragraph 94.
- 100 Overall, there is very strong evidence for recruitment difficulties in the High Court in England and Wales. Recruitment exercises have failed to fill the vacancies and shortfalls have accumulated. Recently there have been greater numbers of early retirements, in the High Court itself and in higher courts. It is not clear if this rise is a temporary phenomenon or marks a permanent new higher level of early retirement.

Circuit Bench and Upper Tribunal recruitment and retirement (groups 5 and 6.1)

- 101 The JAC told us it had been advertising for a rising number of vacancies at these levels. In 2017-18, they were seeking to fill 116.5 Circuit Judge vacancies, which is more than

¹⁴ As of 14 September 2018.

¹⁵ Prior to the introduction of the mandatory retirement age of 70, judges could serve until they were 75.

double the number of judges that had been sought in the previous year. A further recruitment exercise to recruit 94 Circuit Judges was in progress.¹⁶

- 102 A considerable number of Circuit Judges had been selected for appointment; 104 in 2017-18. However, there had been unfilled vacancies in two consecutive Circuit Judge competitions; 11 in 2016-17 and 12.5 in 2017-18. The JAC has also had a smaller choice of suitable applicants and the percentage of C-graded appointees has been rising. In both 2013-14 and 2014-15, all Circuit Judge vacancies were filled, with no C-graded candidates appointed. In each subsequent recruitment round, C-graded candidates have been selected; close to 25 per cent of selections in 2015-16 and 2017-18, and 43 per cent of selections in 2016-17.
- 103 The LCJ and SPT said they were concerned about recruitment to the Circuit Bench and Upper Tribunals. We were told of the importance of attracting high-quality individuals, such as Queen's Counsel (QCs), especially in the Business and Property Courts. They said that top-class judges are needed to maintain the confidence of the international legal community and attract global business.
- 104 The CoCJ told us that the percentage of QCs appointed to the Circuit Bench has been falling. In 2014, 33 per cent of those taking up post had been QCs. However, of the 99 offers of appointment in the 2017-18 Circuit Judge competition, only seven were made to QCs. The Upper Tribunal Tax and Chancery Chamber said that the latest recruitment round for their Chamber produced no applicants from top QCs at the Tax Bar.
- 105 The data show that the peak for total retirements from the relevant salary groups (5 and 6.1) was in 2012-13. Over the last four years, the number has been fairly steady. Judges on the Circuit Bench have throughout this period predominantly retired before age 70; the numbers retiring at or after age 70 are higher in 2017-18 than in any of the previous six years.
- 106 In August 2018, the LCJ said that he was very concerned about the need to retain experienced Circuit Judges, who were discontented with their current pay. He cited the 2016 JAS, indicating that 72 per cent of experienced Circuit Judges had said that limits on pay awards would make them more likely to leave the judiciary early. He felt that many Circuit Judges were feeling very demoralised and that the danger of further early retirements was a real one.
- 107 We note that a large recruitment exercise for Circuit Judges is in progress. This has ambitious targets and there are reasonable doubts whether these vacancies can be filled with candidates from the full range of backgrounds that would be desirable. The same caveats apply to recruitment to the Upper Tribunal, where particular Chambers are finding it harder to secure the specialist skills that they are seeking.

District Bench and First-tier Tribunal recruitment and retirement (groups 6.2 and 7)

- 108 For the District Bench, the two immediate recruitment exercises before 2017-18 succeeded in filling all the vacancies, with a high proportion of candidates assessed as A or B. However, in 2017-18 there was a shortfall of 4.5 from a recruitment exercise for 100.5 vacancies. This was the first time there had been a shortfall in recruitment at this level. The 2017-18 exercise also resulted in a larger number of C-graded selections (45 per cent of total appointees).

¹⁶ This had not concluded at the time of writing our Report.

- 109 For salaried Judges of the First-tier Tribunal, there was a shortfall of one from an exercise to recruit 65 from April to December 2017. The last time there was an unfilled vacancy in a selection exercise for a First-tier Tribunal Judge had been in 2013-14.
- 110 The SPT told us the tribunals were starting to experience similar recruitment problems to the courts. It was now virtually impossible to recruit Surveyor Judges and Salaried Medical Members. The recent First-tier Tribunal recruitment competition yielded many A and B candidates, but eight of these refused appointment and there was no reserve list.
- 111 Tribunal representative bodies told us that it was now hard to fill salaried posts because fee-paid posts were more attractive. The Association of Her Majesty's District Judges (ADJ) said that shortages on the Circuit Bench were now having knock-on effects on the District Bench, which was increasingly the recruiting ground for Circuit Judges.
- 112 The total number of retirements, and of those before 70, for these groups of judges peaked in 2014-15. Since then it has been relatively stable. The majority of District Judges and First-tier Tribunal Judges have consistently retired before age 70. However, the number of District Judges retiring at 70 or older was higher in 2017-18 than in any of the six preceding years.
- 113 The LCJ drew attention to JAS data about the number of experienced District Judges (46 per cent) who had said they were considering leaving the judiciary before full retirement age. The ADJ said that in their 2017 Exit Survey, 63 per cent of the respondents who had recently retired confirmed that they had brought their retirement forward. Of these, half said that the main reason was financial.
- 114 The evidence suggests that recruitment problems may be starting to emerge for judges at this level. It seems likely that further recruitment exercises will shortly be needed, and it is unclear whether sufficient numbers of suitable candidates will apply. There are particular problems recruiting for some specialist tribunal posts. The trend in retirements appears steady, with no particular sign of an increased tendency among judges in this group to retire before age 70.

Overall comment

- 115 Overall, it is hard to draw firm conclusions from some of the data, given that the judicial system has not been in a steady state. Some recruitment catch-up is going on, with higher numbers of new judges being sought across the High Court, Circuit Bench and District Bench in England and Wales. In addition, largely as a result of the transitional arrangements, the potential knock-on consequences of pension changes for judges' retirement decisions have not fully worked through.
- 116 However, some implications for recruitment and retention seem clear. There are serious recruitment problems at the High Court; growing problems for the Circuit Bench/Upper Tribunals; and the position for the District Bench/First-tier Tribunals gives some cause for concern. There is some evidence that fee-paid roles are becoming more popular than salaried roles. The position in Scotland and Northern Ireland is similar to England and Wales.
- 117 The retention and retirement picture is hard to gauge. While many judges do retire before 70, there is no generally obvious recent surge in the numbers. There is, however, real concern among the judicial leadership that such a surge could happen, given the general levels of disaffection among many of the judiciary. We find it impossible to assess the scale of this risk. Chapter 2 sets out some of the factors that might be influencing the decisions of individual judges. These go well beyond questions of pay. However, if the number of early retirements were to rise, this could cause serious problems. It would

mean additional vacancies to fill, at a time when recruitment to the judiciary is already proving challenging.

Return to private practice, and retirement ages

- 118 There are two final matters that might have an influence on retention and retirement that are outside our remit, but which were brought to our attention.
- 119 First, there is the long-standing convention that a person appointed to a judicial position may not return to private practice before the courts. Some respondents suggested that judicial recruitment would become more attractive if this convention were reviewed, and perhaps changed. However, there were also some strong objections from within the judiciary who considered that a change might cause at least as many problems as it solved, for example by creating the perception of possible bias by the public and litigants. We note that the MoJ has said that it will seek the views of the judiciary and legal profession on the possible implications of any change. This seems to us the appropriate way forward.
- 120 Second, there is question of the judicial retirement age and expectations about how long a judge might be expected to serve. The current retirement age of 70 was introduced by the Judicial Pensions and Retirement Act 1993. While there is no maximum age limit to apply to be a judge, applicants are expected to be able to offer a “reasonable length of service” which is defined as “usually at least five years”.
- 121 In our discussions with judges, we have heard suggestions that this judicial retirement age should be raised. It seems likely that there are some skilled judges retiring at 70 who would stay for longer if the retirement age were higher. It is also possible that some people are discouraged from joining the judiciary because they consider that they will be unable to serve for long enough to make it worthwhile. We note that, since 1993, there have been increases both in the State Pension Age and in life expectancy.
- 122 Approximately 5 per cent of the judiciary are currently sitting as fee-paid judges in retirement. At present, a judge can sit in retirement, but only for a limited period and not beyond the age of 75. These limits may also become a matter of debate if recruitment difficulties for the salaried judiciary continue.
- 123 We can see the dilemma: if large numbers of current judges remained beyond the age of 70 that could restrict opportunities for new recruits and have undesirable implications for judicial diversity. However, given the concerns about the supply of judges at different levels, we understand why this issue is now being raised.
- 124 Our conclusion is that this issue merits urgent and serious consideration. If the retention situation deteriorates, there would be a need to move quickly. We note that, in its response to the House of Lords Constitution Committee’s 7th Report on Judicial Appointments, the government said that it would consider further whether the mandatory retirement age should change.

Judicial remuneration

The evidence on pay and remuneration trends

- 125 Recruitment to the judiciary has historically come from a wide range of legal professionals. We have used different data sources to try and estimate remuneration trends and levels for relevant groups over recent years.

- 126 Our research on the pre-appointment earnings¹⁷ of recently appointed judges shows that judicial appointees at all levels face a drop in earnings when they take up a post. The decrease in earnings on appointment is largest for High Court Judges, whose median pre-appointment earnings were £554,822, compared with a judicial salary of £181,566 in 2017-18 (a 67 per cent decrease). Median pre-appointment earnings for Circuit Judges were £182,425, indicating a typical 26 per cent earnings decrease on appointment. For District Judges, median pre-appointment earnings were £123,457, indicating a typical 12 per cent decrease.
- 127 However, that research (based on those applying for and accepting a judicial appointment) also suggested that earnings for many of the legal professionals who become judges have not increased greatly between 2009 and 2017. The groups that we have taken as comparators for High Court Judges and Circuit Judges saw a fall in earnings of 13.2 per cent and 12.7 per cent respectively, when adjusted for inflation. The comparators for District Judges saw a modest increase in earnings over the period of 6.0 per cent after inflation, from £97,555 to £123,457.
- 128 These findings would suggest the pay reduction that High Court and Circuit Judges experienced on appointment was very similar for those appointed in the years before 2009, and those appointed in the years before 2017. For District Judges, what was a small pay increase on appointment in 2009 has become a pay decrease in 2017.
- 129 Looking at ONS data, we separately estimate that the gross earnings of employed legal professionals in the private sector may have risen by 19.2 per cent in nominal terms between 2011 and 2017, and 7.7 per cent in real terms. This might imply that our research has underestimated the general growth in private sector legal earnings over this period. However, we cannot assess how typical these average earnings are for potential applicants to the judiciary.

General pension changes and their effect on total net remuneration since 2010

- 130 Very significant changes have occurred in recent years in pensions and taxation policy that have affected almost everyone in the public and private sectors. They include the introduction of the additional rate of income tax for individuals earning over £150,000; changes in individuals' personal allowances; increased national insurance contributions; and new annual and lifetime pension tax thresholds. These will have reduced take-home pay, and total net remuneration¹⁸ (which includes the value of pension benefits), for higher earners, whether in the judiciary or in private legal practice.
- 131 We have modelled the possible cumulative effect of these changes on the total net remuneration of private sector legal professionals. This modelling shows significant real reductions, particularly for the senior barristers who might be potential candidates for the High Court. Their estimated fall in total net remuneration between 2009 and 2017 is between 31.1 per cent and 38.4 per cent. For Circuit Judge comparators, the estimated fall is between 17.5 per cent and 22.1 per cent. For District Bench comparators, it is only 1.3 per cent. This is because their estimated total net remuneration will keep them within the annual and lifetime allowance limits for pension purposes.

¹⁷ Where we refer to 'earnings', in this context we mean gross earnings. In addition, for individuals in the private sector who are self-employed (e.g., barristers), we generally refer to their 'pay' as earnings.

¹⁸ Total net remuneration is calculated as take-home pay (i.e., gross pay minus pension contributions, income tax and national insurance), plus the value of the additional amount added to the annual pension during the year multiplied by a 'valuation factor'. For a Defined Benefit scheme, the value of the additional amount added to the annual pension has been calculated by multiplying an individual's pensionable pay in a given year by the accrual rate of the pension scheme. For a Defined Contribution scheme, the additional amount added is comprised of the individual's contributions including the value of the tax relief. Total net remuneration is our preferred measure because it takes account of pension benefits accrued in the year. We believe this is the most comprehensive, and therefore the most appropriate, measure. All the calculations we have carried out to assess total net remuneration have been appropriately adjusted for inflation. Full details are given in Chapter 5.

- 132 The key finding here is that the potential impact on private sector total net remuneration of changes since 2009-10 is severe for those who were making maximum pension contributions. Our modelling uses the median pre-appointment earnings data from our research, which may not necessarily reflect reality for a particular individual. However, they do provide some context for the changes in judicial pay over this period.

Judicial pay and pensions since 2010

- 133 As for other public sector groups, gross base pay for the judiciary has been subject to a period of pay restraint since 2010. In total, nominal gross base pay has increased by 5.1 per cent between 2009-10 and 2017-18. All judicial salary groups have received the same pay awards over this period. In addition, in 2017 the government announced a temporary RRA for High Court Judges in the NJPS only. This extra non-pensionable and taxable allowance is worth 11 per cent of salary.
- 134 As for all other employees, judges' take-home pay will have been affected by changes to tax and national insurance thresholds over this period, and its real-terms value will have been eroded by inflation. However, the single most significant factor affecting total net remuneration is the pension change to the 2015 NJPS from the 1993 JUPRA scheme.
- 135 JUPRA was, and is, deregistered for tax purposes. This means that those within it were, and remain, unaffected by the changes to the lifetime allowance and annual allowance that have been introduced since 2010. However, the 2015 NJPS is not deregistered, and judges within it (which include all those who became judges after its introduction) are subject to the same rules on lifetime allowance and annual allowance that apply to the rest of the working population.
- 136 Some members of JUPRA were eligible for partial or full 'protection', depending on how close they were to their normal pension age of 65 on 1 April 2012. Some could remain members of the 1993 scheme until they retired. Others (about 350 in all) were given partial, or 'tapering', protection, allowing them to remain in the 1993 scheme for a time-limited period linked to their age. These transitional arrangements have been subject to legal challenge, and consideration by the Court of Appeal is pending. However, we can only proceed on the assumption that the pension changes as introduced by the government are, and will remain, the *status quo*.
- 137 We have modelled the effect of the different judicial pension arrangements on total net remuneration – in other words, taking into account the effects of taxation, the costs of pension contributions, and making allowance for the extra value of the ultimate pension.
- 138 The modelling shows the significant value of JUPRA. Judges who remain on it (i.e., judges with either full protection, or transitional protection for as long as it lasts), have suffered much lower falls in total net remuneration since 2009-10, compared to other judges. That is most true at High Court level, and least true at District Bench level. The impact of the annual and lifetime allowances is most acute on the higher salaries, so protection from the impact is worth more for the higher paid.
- 139 To illustrate:
- In 2009-10, we estimate that the total net remuneration for a group 4 judge, was equivalent to £220,299 in 2017 prices. Compared to that figure, we estimate a JUPRA group 4 judge's total net remuneration in 2017-18 would be £181,736, a fall of just under £40,000, or 17.5 per cent. A judge in the 2015 NJPS would have total net remuneration of £140,439 in 2017-18, a drop in the order of £80,000, or 36.3 per cent.

- For a group 6.1 judge, we estimate total net remuneration in 2009-10 as £165,718 in 2017 prices. Compared to that figure, we estimate a JUPRA 6.1 judge's total net remuneration in 2017-18 would be £136,962, a fall of just under £30,000, or 17.4 per cent. A judge in the 2015 NJPS would have total net remuneration of £116,476 in 2017-18, a drop of just under £50,000, or 29.7 per cent.
- For a group 7 judge, we estimate total net remuneration in 2009-10 as £134,565 in 2017 prices. Compared to that figure, we estimate a JUPRA group 7 judge's total net remuneration in 2017-18 would be £113,468, a fall of around £21,000, or 15.7 per cent. A judge in the 2015 NJPS would have total net remuneration of £105,796 in 2017-18, a drop of nearly £29,000, or 21.4 per cent.

140 It is also worth noting that the percentage reductions in total net remuneration for JUPRA High Court and Circuit Judges, at 17.5 and 17.4 per cent respectively, are less than the reductions that we have modelled for the higher earning legal professionals. JUPRA insulates its members from the effects of the annual allowance and lifetime allowance changes. This benefit is unique to JUPRA members. It will have become more valuable over this period.

141 We therefore conclude that it is necessary to consider separate pay recommendations for the judges in JUPRA and the judges in the NJPS. Currently, the judges in these schemes receive a different overall pay and benefits package for performing the same role. That difference is having a visible effect on recruitment because all new judges will be in the NJPS.

142 This is not an ideal position. In principle, it would be desirable for all judges at the same level to be on identical terms and conditions. The judicial leaderships have stressed this point to us. **However, we feel we cannot ignore the fact that the total value of remuneration is already significantly different for a judge in JUPRA and a judge in the NJPS. If the pensions position were different, then our approach and recommendations would have been different.**

Judges in the JUPRA Pension Scheme – recommendations

143 We are conscious that there are some very serious concerns about retention, and that this situation could deteriorate very quickly.¹⁹ We note also that there could be a trigger point for early departures as judges currently in JUPRA reach the end of their period of transitional protection.

144 Nevertheless, we conclude that focusing on the recruitment of *new* judges is where resources should be targeted. The MoJ is best placed to weigh up the risks and benefits of committing additional resources towards retention. There are a range of pay-related measures that could be considered here; for example, a retention allowance, assessed in relation to expected retirement dates, in order to encourage judges (including those in the JUPRA pension scheme) to remain on the bench. **We would be happy to comment on specific propositions, and to do so quickly, if desired.**

145 A pay increase for JUPRA judges is certainly necessary and it is important that the UK government and devolved administrations take all opportunities to show this group that they are valued. They have seen a real-terms decrease in take-home pay since 2009-10. However, the same applies to all of our other remit groups. We do not see a rationale to recommend more for JUPRA judges than we have recommended for other senior public servants for 2018. **We therefore recommend that base salaries for JUPRA judges are increased by 2.5 per cent from April 2018.**

¹⁹ The LCJ wrote to us in August 2018, expressing concern that a surge in early leaver numbers, particularly from the High Court and Circuit Bench, was a serious possibility. This was based on discussions by him and others in the judicial leadership with judges.

146 **We stress that in our proposed new groups V and VI, leadership pay supplements should be available to all judges as appropriate, regardless of pension scheme.**
For a judge in JUPRA who was previously in group 6.1, this will make four further pay points, worth a cumulative total of £25,000, potentially available.

147 **Any judge who wishes to switch to the NJPS and secure the higher basic pay awards should be free to do so.**

Judges in the 2015 New Judicial Pension Scheme – recommendations

148 The key issue for us is to ensure adequate future recruitment, at all levels. The Lord Chancellor and the LCJ both confirmed to us that, while they wished to see a diverse judiciary, they thought it essential that judicial appointments continued to be attractive to senior legal practitioners – for example, senior commercial QCs and senior partners in City law firms. They wished the UK to remain an attractive venue for the settling of international commercial disputes, and for the quality of the UK judiciary to continue to be recognised throughout the world. In particular, they did not wish to compromise on quality in the High Court – for example, by allowing the appointment of those who had been C-rated by the JAC.

149 We endorse this assessment and have therefore approached our pay recommendations with these objectives in mind. We noted the strong evidence of a recruitment problem to the High Court (group 4); good evidence of a recruitment problem to the Circuit Bench/Upper Tribunal (groups 5 and 6.1); and some emerging evidence of a problem in the District Bench/First-tier Tribunals.

150 There is no straightforward way to assess what pay levels are necessary to solve current recruitment problems at different levels of the judiciary. If we were seeking to return judges in the NJPS to a position equivalent to 2009-10, the implied uplifts would be 56.9 per cent for group 4, to approximately £285,000; 42.3 per cent for group 6.1, to approximately £192,000; and 27.2 per cent for group 7 to approximately £138,000. These figures gave us a useful ‘upper boundary’ for our discussions.

151 In considering the ‘lower boundary’, we have seen no signs that the RRA, at 11 per cent, has been large enough to have any positive effect on recruitment to the High Court.

152 Ultimately, we have had to take a view on the salary levels that we thought stood a reasonable chance of improving the recruitment position to the judiciary at the different levels. Our recommendations are intended to alleviate recruitment problems in what is, at the upper end, a highly lucrative external labour market. We cannot be completely confident that these levels will be high enough to solve the problem, but we do believe they offer a credible signal that government values the judiciary and genuinely wishes to make a judicial appointment more attractive.

153 **We therefore recommend that, from April 2018, the following salaries apply to judges in the NJPS:**

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

154 These recommendations are for gross pay. We have calculated the estimated total net remuneration that we think they should produce. This analysis shows that, even after our recommendations, JUPRA judges would still have higher total net remuneration than

judges in the NJPS. However, the gap between them will have narrowed, and in that sense the pay system could be described as fairer.

- 155 For judges above group IV, almost all recruitment comes from within the judiciary. The external recruitment consideration therefore does not apply. However, these very senior judges do have to make significant judgments that carry greater weight, with implications throughout the justice system, and many carry heavy leadership and management roles in the judiciary. It is important that pay levels remain sufficient to attract the highest calibre judges, even within a largely internal labour market. Nobody has suggested to us that the current differentials are seriously wrong, or that they should be reduced. **We therefore think it right to maintain the existing differentials in cash terms, and our recommendations reflect this.**
- 156 Group 7 judges in London, but no others, are currently entitled to London weighting:²⁰ a salary supplement of £2,000 and an allowance of £2,000, both of which are pensionable. We recommend that all judges in new pay group VI should continue to have this entitlement at the existing rate.

Looking ahead

- 157 If these recommendations are implemented, their impact will need to be carefully monitored. The SSRB stands ready to offer advice if this looks to be necessary. However, a theme of this Major Review is our belief that, wherever possible, on matters such as the award of leadership supplements to individual posts, it should be for the leadership of the judiciary to take the decisions that they believe need to be taken, using clear and transparent criteria.
- 158 We hope that our pay recommendations will help to increase the attractiveness of the judiciary to a wide range of good quality candidates. However, pay is not the only factor that affects judicial recruitment and retention. We have made observations on matters such as improvements to infrastructure and administrative support; judicial retirement ages; pensions flexibility; the importance of a strong human resource function; good management and HR information; and greater consideration of flexible working opportunities.
- 159 This Major Review has covered the salary structure and pay of salaried and fee-paid judges across all UK jurisdictions and has made recommendations to apply from April 2018. Our remit for this review did not require us to make any annual pay recommendations for members of the judiciary for 2019-20. We therefore look forward to receiving timely evidence and data from the MoJ to allow us to make an annual pay recommendation for members of the judiciary, effective from 1 April 2019, in our next annual report.

²⁰ London weighting is currently paid to all judges in salary group 7 whose principal court is within 18 miles of Charing Cross. A principal court is defined as the place where a judge sits for 40 per cent or more of their time.

Summary of recommendations

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

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

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

Recommendation 4: We recommend that there should be four levels of leadership supplement in group V, plus a 'base rate', making five spot rate pay points in all.

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

Recommendation 6: We recommend that there should be three levels of supplement within group VI, plus a 'base rate', making four spot rate pay points in all.

Recommendation 7: We recommend the creation of a new group VII, sitting below the new group VI.

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

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

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

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

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

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

- Chamber President of the Health and Education Chamber of the First-tier Tribunal for Scotland.
- The Chamber President of the Housing and Property Chamber of the First-tier Tribunal for Scotland.
- The Chamber President of the Tax Chamber of First-tier Tribunal for Scotland.
- Legal Member, the Lands Tribunal for Scotland.

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

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

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

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

Recommendation 15: We recommend that, from April 2018, the following salaries apply to judges in the NJPS:

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

Summary of observations

Chapter 2: Strategic Context

Observations about the importance of the judiciary to society

We endorse the importance of an excellent judiciary to society and to the rule of law, with all the social benefits that flow from this. Every day, judges make decisions that profoundly affect individuals, families, businesses and society. They need to be of sufficient quality that their rulings are respected, and there needs to be sufficient numbers of judges for cases to be heard in a timely fashion; it remains as true as ever that justice delayed may be justice denied. It is clear that the UK judiciary enjoy a high international reputation among its peers, not least for its effectiveness and integrity, and it is vital for this to be maintained.

We also note the economic benefits that are associated with high levels of confidence in the quality and integrity of the UK judiciary. International competitors are seeking to compete for the high-value legal business. But the benefits to the UK from its judiciary go well beyond attracting lucrative cases to London. It is hugely important for all citizens and businesses, large and small, day to day, that there is widespread confidence in the courts and tribunals, all over the country. Any threat to this, in the shape of a threat to the quality of the judiciary, deserves to be taken seriously.

Observations on the attractiveness of judicial appointment

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

Observations on the working environment for the current judiciary

A combination of factors are making the work of a judge more challenging. On the one hand, there are pressures to make very rapid changes to working practices and to some conditions of service, and, on the other, there is a general reduction in resources. In particular, there has been a reduction in the administrative resource available at a time when the judicial workload has, if anything, increased. Added to this is an environment where some physical court structures are no longer fit for purpose.

We understand and support the logic behind many of the modernisation changes that the MoJ and judiciary are seeking to make, and recognise that this is a long-term programme, running up to 2022. However, at present few of the hoped-for benefits, and many of the disadvantages, are being experienced by judges in the courts.

Observations on judicial morale

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

Observations on flexible working

Many of the concerns expressed about flexible working were highlighted by the 2010 Report of the Advisory Panel on Judicial Diversity, chaired by Baroness Julia Neuberger. The judicial leaderships and the MoJ have recognised them and sought to offer guidance and reassurance. However, the findings of our research show that this has not been sufficient.

It is evident to us that the social context within which judicial recruitment takes place has changed. Many professional men and women now have different attitudes towards the balance they want between their professional and family lives. The rise of the two-earner household means that it is more complicated than previously for one person to relocate geographically in response to the needs of their job. Employees expect to negotiate these questions with their employer, and not to be assigned solely according to the employer's convenience. The judiciary will need to respond appropriately.

We also consider that the judicial leadership could do more, both to communicate what has already been done to accommodate flexible working patterns, and to consider going further. For example, while there are certainly challenges in increasing the number of salaried judicial part-time posts, we do not believe that the barriers are insuperable. Over the last 20 years, every profession has been responding to demands from women and men who want a better balance between their work and non-work time.

Observations on judicial management

The Constitutional Reform Act 2005 envisaged an independent judiciary, managed by judges. That management function needs to be properly resourced. We believe there now needs to be a wide-ranging look at judicial human resources management. Mechanisms should be put in place to provide a consistent 'offer' to judges in each jurisdiction. This should set out what they are expected to do (in the form of a job description) but also the support available to help them to do it.

This will ensure more consistency and fairness, and better alignment between the needs of the judicial appointments commissions, the executives and the judiciary in decisions about complement levels, and resourcing recruitment. It would also enable the judicial leadership to take more management responsibility, including making more day-to-day decisions about some pay and reward questions. We return to this in Chapter 5.

Observation on career management within the judiciary

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

Chapter 4: Recruitment and retention

Observations on workforce planning

We welcome the work that is now going into workforce planning. We regard this as essential.

The MoJ policy, until recently, of recruiting only for 'business critical' judicial vacancies will have affected the pipeline for recruits into the judiciary. The lack of competitions for fee-paid judges affects not only the complement of judges for those posts, but also the recruitment to the salaried judiciary, since most salaried judges will first have to spend time as a fee-paid judge.

While it is difficult to have a comprehensive picture, given the nature of the available data on recruitment and retirements, it is apparent to us that the judicial recruitment system is not yet in a steady state. The stop-start nature of recruitment in recent years has made recruitment to the judiciary more difficult than it otherwise would have been, and narrowed the field of fee-paid judges who are an important source for recruitment to the salaried judiciary.

Observation on recruitment and retention

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

Observations on High Court recruitment and retirement

There is very strong evidence for recruitment difficulties in the High Court in England and Wales, and in Northern Ireland. Three successive recruitment exercises have failed to fill all the available vacancies in England and Wales. The shortfalls have accumulated and mean that, as of September 2018, the number of vacancies is 14, which is unprecedented. Further vacancies are expected this year, from promotions and retirements. Even if the judiciary improves its workforce planning, on present trends there is likely to remain a significant number of vacancies.

An increasing number of these vacancies in England and Wales have been caused by early retirements in the High Court itself and in higher courts. Nine of the 11 High Court Judge retirements in 2016-17 were 'early'. This compares with five early retirements in 2014-15, and three in 2015-16. It is not yet clear if the increase in 2016-17 is a temporary phenomenon due to the age profile of incumbents or if it marks a permanent new higher level of early retirement. The potential for High Court Judges to retire early, creating more vacancies, is a cause of serious concern among the leadership of the judiciary.

Observations on Circuit Bench and Upper Tribunal recruitment and retention

In our 2017 Report, we noted that the recruitment and retention of Circuit Judges should be closely monitored. Since then, there has been a second Circuit Judge competition which, despite making large numbers of appointments, has failed to fill all vacancies. The percentage of candidates rated as Outstanding or Strong has fallen over the last five years. Further recruitment exercises are in progress, with ambitious targets, and there are reasonable doubts whether these vacancies can be filled with candidates from the full range of backgrounds that would be desirable. The same caveats apply to recruitment to the Upper Tribunal, where particular Chambers are finding it harder to secure the specialist skills that they are seeking.

The retirement picture does not suggest that the number of pre-70 retirements has significantly increased to date. However, we note the concerns of the judicial leadership that many experienced judges in this group could decide to retire at short notice, since they are seriously disaffected, not least about their levels of pay. Past patterns may not therefore be a guide to future behaviour.

Observations on District Judges and First-tier Tribunal Judges recruitment and retention

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

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

Observation on judicial retirement age

In its response to the House of Lords Constitution Committee's 7th Report on Judicial Appointments, the government said that it would consider further whether the mandatory retirement age of 70 should change. We believe that this issue merits urgent and serious consideration. If the retention situation deteriorates, there would be a need to move quickly. It would also be timely to examine the arrangements under which a retired judge can sit on a fee-paid basis.

Chapter 5: Judicial remuneration

Observation: Conceptually, there are a range of pay-related measures that could be targeted specifically towards retention; these could include, for example, different models for a retention allowance assessed in relation to expected retirement dates, in order to encourage judges (including those in the JUPRA pension scheme) to remain on the bench. Ultimately, the MoJ needs a long-term pay and reward strategy to recruit *and* retain. The SSRB stands ready to comment on specific propositions, and to do so quickly, if desired.

Observation: It seems to us possible that retention issues may arise for JUPRA judges at the moment that their transitional protection expires. The MoJ and the judicial leadership will want to think very carefully about whether they need to mitigate this risk, and how this might be done. We note in our observation following paragraph 5.66, the type of measure that might be open to the MoJ and the judicial leadership, if they felt action were necessary.

Observation: We are strongly of the view that the MoJ should consider offering judges in the 2015 NJPS some choice between take-home pay and employer pension contribution, and we have suggested that there are other alternatives which the MoJ might want to explore further. We note that an arrangement for pay in lieu of pension was put in place previously.

Chapter 1

Introduction

Background to the Major Review

- 1.1 In October 2016, the then-Lord Chancellor, the Right Honourable Elizabeth Truss MP, invited the SSRB to undertake a Major Review of Judicial Salaries. We were invited to make recommendations on the appropriate pay levels required to recruit, retain and motivate high calibre office holders at all levels in courts and tribunals. We were also asked to look at whether the current salary structure could be simplified and how best to reward judicial leadership.
- 1.2 It has been customary for the SSRB to be asked roughly every five years to undertake a Major Review of the judicial salary structure. The last such review was completed in 2011. The UK government did not respond to that report for some years, and in the end did not take forward the recommendations. Hence, no changes to the judicial salary structure have been implemented since the previous Major Review in 2005.
- 1.3 This current Review was therefore considered timely, not least given the substantial changes which had taken place to the justice system and planned further reforms. The Lord Chancellor's commissioning letter is reproduced in Appendix A and the SSRB Chair's letter of acceptance is in Appendix B. The Terms of Reference for this Major Review, as endorsed by the then-Lord Chancellor in March 2017, are set out in Appendix C.
- 1.4 In commissioning this Review, the Lord Chancellor asked us to provide recommendations on the judicial salary structure and appropriate pay levels. In doing so, we were expected to:
 - Consider whether the current salary structure is fit for purpose.
 - Evaluate roles carried out by all judicial office holders and advise on their appropriate position within the salary structure.
 - Advise on the level of pay required to recruit, retain and motivate high calibre office holders at all levels of the judiciary.
 - Consider broader issues relating to judicial remuneration.
 - Consider how best to reward judicial leadership.
- 1.5 In addition to our standard judicial remit group of salaried judicial office holders in the courts and tribunals of the UK, whose pay is the responsibility of the Lord Chancellor, we were invited to consider and make recommendations on the pay of fee-paid judges who have comparators with the salaried judiciary. At the request of the Scottish government, we were asked to make a recommendation on the pay for the newly created post of Summary Sheriff. In addition, at the request of all the devolved governments, we were invited to make recommendations on a number of judicial office holders in the devolved tribunal systems. This is the first time that a Major Review has considered both salaried and fee-paid members within the court *and* the tribunal judiciaries.
- 1.6 In commissioning this Major Review, the Lord Chancellor requested that our recommendations be submitted by June 2018. As discussed in Chapter 3, unexpected delays occurred in the job placement research exercise, reflecting the lack of accurate management information about the judiciary. It was subsequently agreed that, to enable the Review to draw on the best possible information and to allow time for us to consider our recommendations, we should aim to deliver our Report to government in September 2018.

Relationship with the annual pay review

- 1.7 As this Major Review progressed, it became apparent that to deliver a separate annual recommendation for pay commencing April 2018 would be impractical. We welcomed the then-Lord Chancellor's agreement, in September 2017, that the two pieces of work should run in parallel, with recommendations for any 2018 annual award to be delivered alongside those for this Major Review, and for his assurance that the government would consider the recommendations seriously and promptly. Subsequent Lord Chancellors have endorsed their commitment to this Major Review.
- 1.8 Our annual pay recommendations for the SSRB remit groups other than the judiciary were submitted to government on 4 July 2018 and published in our Fortieth Annual Report on Senior Salaries on 13 September 2018.²¹ In that Annual Report, we discuss a number of overarching issues, including the economic context for pay and the wider pensions issue. We do not repeat those sections, common across all of our remit groups, in this Report, but the 2018 Report provides important background for this Major Review.

The remit group

- 1.9 The court and tribunal structures in England and Wales, Scotland and Northern Ireland are set out in schematics in Appendix D. The remit group for this Review comprises:
- Full-time and part-time salaried judicial office holders in the courts and tribunals of the UK, including the new post of Summary Sheriff in Scotland.
 - Fee-paid court judges and tribunal judges and legal members in the Reserved Tribunals and devolved tribunal systems in Scotland, Wales and Northern Ireland who have comparators with the salaried judiciary and/or are entitled to a judicial pension.
- 1.10 A full list of the judicial offices in scope of the Major Review is provided in Appendix E.

Salaried judicial office holders

- 1.11 Table 1.1 details the number of salaried judicial office holders by UK jurisdiction and salary group for 2017. This shows that the total number of salaried judicial office holders in the UK in 2017 was 2,119. Data provided by the Ministry of Justice (MoJ) show that the 1,840 salaried judges in England and Wales were made up of 1,393 court judges and 447 tribunal judges. There was a total of 197 salaried judicial office holders in Scotland and a total of 82 in Northern Ireland.

²¹ 40th Annual Report on Senior Salaries 2018. See: <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2018>

Table 1.1: Judicial salaries and numbers in post (headcount) for 2017 by UK jurisdiction and salary group

Salary group (<i>examples of specific roles</i>)	Annual salary (1 April 2017)	England and Wales (31 March 2017) ¹	Scotland (September 2017)	Northern Ireland (31 March 2017)	Total 2017
	£	Headcount			
1 (<i>Lord Chief Justice</i>)	252,079	1	0	0	1
1.1 (<i>Lord Chief Justice NI, Lord President</i>)	225,091	2	1	1	4
2 (<i>Justices of the Supreme Court</i>)	217,409	14	1	0	15
3 (<i>Lord/Lady Justices of Appeal, Inner House Judges of the Court of Session</i>)	206,742 ²	37	9	3	49
4 (<i>High Court Judges, Outer House Judges of the Court of Session</i>)	181,566 ²	97	24	10	131
5+ (<i>Judge of the First-tier Tribunal (Social Entitlement Chamber) and Deputy Judge of the Upper Tribunal</i>)	154,149	1	0	0	1
5 (<i>Senior Circuit Judges, Sheriffs Principal</i>)	145,614	78	7	2	87
6.1 (<i>Circuit Judges, County Court Judges (Northern Ireland), Sheriffs</i>)	134,841	649	121	22	792
6.2 (<i>Surveyor Members, Lands Tribunal (Scotland and Northern Ireland)</i>)	126,946	19	0	2	21
7³ (<i>District Judges</i>)	108,171	942	34	42	1,018
Total		1,840	197	82	2,119

Notes:

1 The courts structure operates throughout England and Wales; the tribunals system covers England, Wales, and in some cases Northern Ireland and Scotland.

2 These salary totals do not include the temporary recruitment and retention allowance (RRA) announced by the government in February 2017. The RRA is non-pensionable and taxable, it is worth 11 per cent of salary and is given to High Court Judges and Court of Appeal Judges in the 2015 New Judicial Pension Scheme (NJPS).

3 Includes salaried medical members.

Sources: Ministry of Justice's evidence to the SSRB 2018, Table 2, p.25 for England and Wales and Annex H, p.87 for Northern Ireland. See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>. Judicial Office for Scotland's evidence to the SSRB 2018 (unpublished).

1.12 As Table 1.1 shows, the current judicial salary structure consists of nine groups. All judges at each level receive a single spot rate of pay. They do not receive incremental progression or performance-related pay. Fee-paid judges are paid a day rate that is generally based on the salary of their salaried comparator judge, with a divisor applied to take account of the numbers of sitting days. Appendix F contains a list of judicial salaries by salary group and the day rates of fee-paid judges from 1 April 2017.

1.13 Table 1.2 below gives the number of salaried judges by headcount in post in the UK since the last Major Review. The table shows that while there have been year-on-year fluctuations, the general trend has been a decrease in numbers. However, since 2016

numbers have picked up, particularly in the bottom four salaried judicial groups who hear most cases.

Table 1.2: Number of salaried judges in post in the UK, 2010 to 2017 (headcount)

Salary group	2010	2011	2012	2013	2014	2015	2016	2017
1	1	1	1	1	1	1	1	1
1.1	4	4	4	4	4	4	4	4
2	15	15	15	14	16	16	12	15
3	49	47	48	44	49	51	53	49
4	140	141	140	141	139	136	136	131
5+								1
5	96	96	96	97	99	99	85	87
6.1	860	831	823	812	811	808	757	792
6.2	36	37	41	40	39	32	42	21
7 ¹	1,039	1,036	1,041	1,024	1,045	1,037	936	1,018
Total	2,240	2,212	2,219	2,188	2,213	2,194	2,035	2,119

Notes:

1 This includes salaried medical members and Summary Sheriffs (previously stipendiary magistrates).

Source: Previous SSRB reports (pre-2017). See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>. For 2017 figures, see sources in Table 1.1.

Fee-paid judicial office holders

1.14 Data from the Judicial Diversity Statistics 2017 show that on 1 April 2017 there were a total of 6,227 fee-paid judicial office holders in England and Wales. Of this total, 1,745 worked in the courts and 4,482 worked in the tribunals. Table 1.3 shows the number of court fee-paid judicial office holders by job role since the last Review, and Table 1.4 shows the same for the tribunals judiciary. The role of fee-paid judges is set out in Chapter 4.

Table 1.3: Number of fee-paid courts judges in post in England and Wales, 2010 to 2017 (headcount)¹

Job role	2010	2011	2012	2013	2014	2015	2016	2017
Deputy High Court Judge								66 ²
Deputy Master, Deputy Registrar, Deputy Costs Judge and Deputy District Judge (Principal Registry of the Family Division)	80	74	67	68	60	55	53	58
Recorder	1,233	1,221	1,155	1,196	1,126	1,031	1,035	920
Deputy District Judge (County Courts)	640	788	754	764	721	622	627	595
Deputy District Judge (Magistrates' Courts)	151	143	134	145	125	115	101	106
Total	2,104	2,266	2,110	2,173	2,032	1,823	1,816	1,745

Notes:

1 Numbers are as at 1 April of each year.

2 Prior to 2016, only a limited number of appointments of Deputy High Court Judges were made under the provisions of s9(4) of the Senior Courts Act 1981.

Source: Judicial Diversity Statistics for courts and tribunals judiciary in England and Wales, Courts and Tribunals Judiciary. See: <https://www.judiciary.uk/publication-type/statistics/>

1.15 Table 1.3 shows that the number of fee-paid courts judges, in particular Recorders²² in England and Wales, has shown a decreasing trend since 2010.

Table 1.4: Number of fee-paid tribunals judges in post in England and Wales,¹ 2012 to 2017 (headcount)²

Job role	2012	2013	2014	2015	2016	2017
First-tier Tribunal Judges	3,183	3,239	3,948	3,712	3,487	3,232
Upper Tribunal Judges	76	61	72	81	80	69
Employment Judges ³	1,847	1,681	1,541	1,242	1,287	1,150
Employment Appeal Tribunal	54	49	28	23	34	31
Total	5,084	5,030	5,589	5,058	4,888	4,482

Notes:

1 Tribunals within the responsibility of the Senior President of Tribunals, including First-tier and Upper Tribunals in England, Wales, and in some cases Northern Ireland and Scotland.

2 Numbers are as at 1 April of each year. Includes non-legal members.

3 Employment Tribunal England and Wales and Employment Tribunal Scotland.

Source: Judicial Diversity Statistics for courts and tribunals judiciary in England and Wales, Courts and Tribunals Judiciary. See: <https://www.judiciary.uk/publication-type/statistics/>

1.16 Table 1.4 shows that, overall, there has been a decrease in the number of fee-paid tribunals judges, albeit with fluctuations that may be linked to changes in legislation and regulations.

²² Fee-paid members of the Circuit Bench.

Diversity

1.17 Data from the Judicial Diversity Statistics 2017²³ highlighted the following key findings for England and Wales for 1 April 2017:

- Women represented 28.4 per cent of the courts judiciary and 45.1 per cent of the tribunals judiciary. These percentages have increased by around 1 per cent since 1 April 2016.
- 7 per cent of the courts judiciary and 10 per cent of the tribunals judiciary declared themselves to be from Black, Asian and Minority Ethnic (BAME) backgrounds.²⁴
- 34 per cent of the courts judiciary and 66 per cent of the tribunals judiciary were from non-barrister backgrounds.²⁵

1.18 The MoJ informed us that no data were held on the proportion of judicial office holders registering a disability.

1.19 Data for Scotland²⁶ showed that women represented 25 per cent of judicial office holders as of September 2017.

Pay costs

1.20 Her Majesty's Courts and Tribunals Service's (HMCTS) Annual Accounts for 2017-18 show £504 million total payroll expenditure for the England and Wales judiciary (£344 million in salaries, £43 million in social security costs, £116 million in employer pensions contribution). Of the total expenditure, £325 million related to the salaried judiciary, and £179 million related to the fee-paid judiciary.

1.21 The £504 million payroll expenditure is an increase from £484 million in 2016-17. The MoJ told us that this was due to: an increased workload in certain jurisdictions and tribunals (resulting in an increase of sitting days and deployment of fee-paid judges); the full impact of the *O'Brien* and *Miller* judgments requiring judicial pensions and other specific benefits to be made available to fee-paid judges; the impact of the apprenticeship levy of 0.5 per cent; and the impact of the Recruitment and Retention Allowance (RRA) for the High Court, discussed at paragraph 1.24 below.

1.22 In evidence, the Judicial Office for Scotland told us that the total paybill for salaried judges in Scotland in 2017-18 was £44 million. This included salaries, employer national insurance costs, employer pension contributions and service awards.

1.23 The Lord Chief Justice's Office in Northern Ireland informed us that the paybill for salaried judges in Northern Ireland in 2016-17 was £15 million. This included salaries, employer national insurance costs and employer pension contributions.

1.24 As with other public sector groups, base pay for the judiciary has been subject to a period of pay restraint since 2010. In total, nominal gross base pay has increased by 5.1 per cent between 2009-10 and 2017-18. All judicial salary groups have received the same pay awards over this period. In addition, in 2017 the government announced a temporary Recruitment and RRA for High Court Judges in the New Judicial Pension Scheme (NJPS).²⁷ This extra non-pensionable and taxable allowance is worth 11 per cent of salary.

²³ Diversity Statistics 2017 Tables 1.1, 1.3, 2.1, 2.3 and 2.5 available from <https://www.judiciary.uk/publications/judicial-statistics-2017/>.

²⁴ Ethnicity declaration rates were 83 per cent for the courts judicial office holders and 93 per cent for the tribunals judiciary. Tables 1.1 and 2.3.

²⁵ Almost all declaring their background as non-barristers were formerly solicitors. Tables 1.1 and 2.3.

²⁶ See: <http://www.scotland-judiciary.org.uk/Upload/Documents/DiversityStatsScotlandSept2017.pdf>

²⁷ Judges in the 1993 Judicial Pension Scheme (JUPRA) do not receive the RRA.

Pension changes

- 1.25 In 2010, the government established an independent commission to review the provision of public service pensions with the aim of placing them on a sustainable and affordable basis for the longer term. The government subsequently legislated to introduce new pension schemes for many groups of public sector staff, including the judiciary.
- 1.26 Following consultations in 2012 and 2014, the NJPS and the Northern Ireland Judicial Pension Scheme came into operation on 1 April 2015.²⁸ The main differences between these 2015 schemes and the previous pension scheme available for members of the judiciary (the Judicial Pension Scheme (JUPRA) 1993) include the following:
- Unlike the 1993 scheme, the 2015 schemes are registered schemes for taxation purposes.
 - The pension paid upon retirement is calculated based on career average earnings, rather than final salary.
 - An automatic additional lump sum is no longer received on retirement (although 2015 scheme members can choose to take part of their earned pension as a lump sum).
 - The 2015 schemes are open to both salaried and fee-paid judicial office holders, while only salaried judges were eligible to join the 1993 scheme.
- 1.27 As part of its response to litigation relating to the employment rights of fee-paid judicial office holders (the *O'Brien* and *Miller* judgments), the government also created a new Fee-Paid Judicial Pension Scheme (FPJPS) in 2017. This scheme is open to current and former fee-paid judicial office holders in all UK jurisdictions who have been determined to be eligible for pension rights no less favourable than those provided to salaried judges under the Judicial Pension Scheme 1993.²⁹
- 1.28 The membership of each of the pension schemes is set out in Table 1.5 below.

Table 1.5: Judicial Pension Scheme membership, July 2018

Scheme	Number of active office holders	% of active office holders in each scheme
1981 scheme (salaried)	18	0.26
JUPRA 1993 (salaried)	1,014	14.81
FPJPS 2017 (fee paid)	3,334	48.69
NJPS 2015 (fee paid and salaried)	2,482	36.24
Total	6,848	100.00

Note: Office holder is not the same as headcount.
Source: Ministry of Justice (unpublished).

²⁸ A judge, either fee paid or salaried, will be eligible to join the NJPS if they were either first appointed to judicial office after 1 April 2012; in eligible service at 1 April 2012, and at that date under 51 years 6 months; or, in eligible service at 1 April 2012, and at that date under the age of 55, and have reached the end of any period of tapering protection.

²⁹ The FPJPS is for eligible fee-paid judicial office holders with reckonable service from 7 April 2000 up to 31 March 2015. Transitional or tapering arrangements may apply in respect of service after 31 March 2015, where the fee-paid judicial office holder meets the relevant criteria for transitional protection in respect of their transfer to the Judicial Pension Scheme 2015 (JPS 2015).

Structural and constitutional changes to the judiciary since the 2011 Review

1.29 This section provides context to this Review by outlining recent changes that have had a substantial effect on judicial office holders and their work. It mainly focuses on changes to the courts and tribunals system, the judicial workforce, and its remuneration since the last Major Review in 2011. However, the substantial constitutional and structural reforms that took effect from 2005 onwards and are still being implemented are outlined first. The impact of some of these changes is discussed further in Chapter 2.

Changes prior to 2011

1.30 The Constitutional Reform Act (CRA) 2005 enshrined in law the independence of the judiciary and made fundamental changes to the relationship between the executive, legislature and judiciary.³⁰ The main objectives of the CRA 2005 relevant to the judiciary were:

- To modify the office of Lord Chancellor so that he or she is no longer a judge and does not exercise any judicial functions.
- To share functions related to the judiciary and the courts between the Lord Chancellor and the Lord Chief Justices of England and Wales and of Northern Ireland (or other senior members of the judiciary).
- To provide a guarantee of continued judicial independence.
- To give effect to the agreement (known as the Concordat) between the Lord Chief Justice of England and Wales (LCJ) and the Lord Chancellor on the transfer of the Lord Chancellor's judiciary-related functions.
- To make provision for the creation and operation of a UK Supreme Court, to replace the system of the Law Lords operating as a committee of the House of Lords.
- To make provision for a Judicial Appointments Commission (JAC) for England and Wales to operate as an independent body to recruit and select judges for the courts and members of certain tribunals.
- To make provision for a Judicial Appointments and Conduct Ombudsman and for judicial discipline.
- To make provision for the supply of information to the existing Northern Ireland Judicial Appointments Commission (NIJAC) to enable it to operate as an independent body to select candidates for judicial office, to create a Northern Ireland Judicial Appointments Ombudsman and to provide a mechanism for the removal of judicial office holders in Northern Ireland.

1.31 The Act had a substantial impact on the management roles of the more senior judges in England and Wales. The LCJ took on responsibility for the training, guidance and deployment of individual judges and for representing the views of the judiciary of England and Wales to parliament and the government. In fulfilling these responsibilities, the LCJ chairs a Judicial Executive Board, the members of which include the Master of the Rolls, each of the Heads of Division, the Senior President of Tribunals (SPT), the Senior Presiding Judge, and other senior judges with specific leadership roles.

³⁰ The introduction to the Constitutional Reform Act 2005 states it is "an Act to make provision for modifying the office of Lord Chancellor, and to make provision relating to the functions of that office; to establish a UK Supreme Court, and to abolish the appellate jurisdiction of the House of Lords; to make provision about the jurisdiction of the Judicial Committee of the Privy Council and the judicial functions of the President of the Council; to make other provision about the judiciary, their appointment and discipline; and for connected purposes." See: <https://www.legislation.gov.uk/ukpga/2005/4/contents>

- 1.32 The Act also had an impact on the management role of the Lord Chief Justice of Northern Ireland (LCJNI), who took on responsibility for the training, guidance and deployment of individual judges there. The LCJNI also deals with complaints and discipline matters.
- 1.33 The Supreme Court of the UK came into existence on 1 October 2009.
- 1.34 The Judiciary and Courts (Scotland) Act 2008 resulted in far-reaching changes in Scotland.³¹ It established the Lord President of the Court of Session as head of a unified Scottish judiciary. The Lord President is responsible for the welfare, training, guidance, conduct and deployment of individual judges and for representing the views of the Scottish judiciary. Additionally, the Act states that the Lord President is responsible “for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts”. These responsibilities extend throughout the Scottish courts system, including the sheriff courts and the justice of the peace courts. Previously, the Lord President’s management responsibilities were largely limited to the judiciary in the Court of Session. These changes came into effect on 1 April 2010. This means that the Lord President and other corporate board members are directly responsible for the Scottish Court Service, including the budget, the collection of fines, and court staff. The Act also provides a statutory basis for the Judicial Appointments Board for Scotland (JABS), which selects candidates for judicial office in Scotland.
- 1.35 There have also been major changes to the legal and administrative structures of courts and tribunals over the last 11 years.³² In England and Wales, the Tribunals, Courts and Enforcement Act 2007 brought together over 30 different tribunals into the Tribunals Service.³³ The implementation of these reforms involved, from 2008, the functions of certain tribunals being transferred into the First-tier Tribunal and Upper Tribunal (each of which is divided into chambers). The Employment Tribunal and Employment Appeal Tribunal form a separate pillar within the tribunals system. The 2007 Act also established the office of SPT as head of the tribunals judiciary. The Tribunals and Courts Services were then merged to form HM Courts and Tribunals Service (HMCTS) in 2011. In Scotland, the Judiciary and Courts (Scotland) Act 2008 established the Scottish Court Service as an independent non-ministerial department, managed by a corporate board chaired by the Lord President, with effect from April 2010.

The Courts and Tribunals System: England and Wales

- 1.36 The Crime and Courts Act 2013 enacted further changes to the structure of the courts system in England and Wales.³⁴ These reforms, intended to increase efficiency, replaced the previous system in which there were around 170 county courts with geographical jurisdictions, each of which was an individual legal entity, and a family justice system in which cases could be heard in a number of different types of court. This legislation instead created a single county court and single family court, in order to provide greater consistency and clearer leadership and management roles. Cases in these courts can now be heard in multiple geographic locations across England and Wales, but with consistent procedures and governing legislation.
- 1.37 The 2013 Act also included provisions relating to the appointment and deployment of judicial office holders. The changes relating to judicial appointments aimed to promote

³¹ See: <https://www.legislation.gov.uk/asp/2008/6/contents>

³² In our Report on Tribunals Judiciary Remuneration 2008, we explain how we were invited to propose a pay system for the tribunals judiciary within this new structure. We recommended a pay system to meet the objectives of the new tribunal organisation including, in particular, the ability to develop cross-assignment of judges between different tribunals. In our Report, we noted that it was inevitable that such a system would entail some departure from the principle of allocating posts to salary groups solely by reference to job weight. See: <http://webarchive.nationalarchives.gov.uk/20130106083131/http://www.ome.uk.com/Tribunals.aspx>

³³ See: <https://www.legislation.gov.uk/ukpga/2007/15/contents>

³⁴ See: <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

judicial diversity, including allowing salaried judges to work part time in the High Court and above. They also included an equal merit provision, which allowed diversity to be taken into account when there were two or more candidates of equal merit. The legislation gave the Lord Chancellor and the LCJ statutory duties to encourage judicial diversity. In relation to judicial deployment, the 2013 Act enabled the LCJ to deploy judges more flexibly to different courts and tribunals of equivalent (or lower) status.

- 1.38 The MoJ and HMCTS, in collaboration with the judiciary, are currently developing plans for further reform. These include a programme of modernisation of the court and tribunal systems, with the simplification and digitisation of processes and procedures in various jurisdictions (for example, expanding the use of virtual hearings), alongside an investment in estates and IT. The effects of these reforms will be to make substantial changes to the working practices of the judiciary.
- 1.39 The MoJ also consulted on modernising judicial terms and conditions in 2016. The consultation response,³⁵ published in February 2017, stated that the UK government intended to implement a number of changes. These included introducing legislation to make all judicial leadership positions fixed-term appointments, and introducing an expectation, rather than a guarantee, of the number of days that fee-paid judges in the courts are required to sit.

The Courts and Tribunals System: Northern Ireland

- 1.40 The Justice Act (Northern Ireland) 2015 established a single jurisdiction for County Courts and Magistrates' Courts in Northern Ireland.³⁶ This replaced court boundaries based on local authority areas and aimed to provide flexibility to manage the distribution of court business more efficiently.
- 1.41 In November 2011, the LCJNI was appointed President of the Coroners' Courts in Northern Ireland, placing a duty upon him to address the significant backlog of legacy inquests. The approach taken has included appointing a High Court Judge as the Presiding Coroner and some County Court Judges as Coroners.
- 1.42 A review of civil and family justice (led by Lord Justice Gillen) reported in September 2017 and made recommendations for reforms to the family and civil justice systems in Northern Ireland. A Family Justice Board and a Civil Justice Council have been established in shadow form to plan for the implementation of agreed review recommendations.
- 1.43 Proposals also exist for tribunals to be devolved to the LCJNI, although these have not yet been acted upon.

The Courts and Tribunals System: Scotland

- 1.44 The Courts Reform (Scotland) Act 2014³⁷ introduced substantial reforms to the function of the civil courts in Scotland. The 2014 Act included a number of provisions in response to recommendations made by Lord Gill in his 2009 Scottish Civil Courts Review, which was concerned with improving efficiency and ensuring that cases are heard at an appropriate level in the court structure. Three elements of the reforms are most relevant to the Major Review:
 - A major transfer of litigation from the Court of Session to the Sheriff Court by means of a significant increase in the exclusive competence of the Sheriff Court.

³⁵ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590426/modernising-judicial-terms-and-conditions-government-response.pdf

³⁶ See: <https://www.legislation.gov.uk/nia/2015/9/contents>

³⁷ See: <http://www.legislation.gov.uk/asp/2014/18/contents/enacted>

- The creation of a new office of Summary Sheriff to deal with summary criminal business and some civil claims.
 - The creation of the Sheriff Appeal Court in September 2015 which gave Sheriffs Principal a new appellate jurisdiction over summary crime. Further, all decisions taken in the Sheriff Appeal Court are now binding on all courts of equal or lower jurisdiction across Scotland.
- 1.45 The 2014 Act also formed a merged Scottish Courts and Tribunals Service with powers to provide administrative support to both courts and tribunals. The Tribunals (Scotland) Act 2014 created a new structure for tribunals dealing with devolved matters in Scotland. This Act simplified the previous structure of devolved tribunals by creating a First-tier Tribunal (divided into chambers) and an Upper Tribunal (which may comprise separate divisions), collectively known as the Scottish tribunals. It also brought the Scottish tribunals under the leadership of the Lord President, created the new office of the President of Scottish Tribunals and specified the process for appointing tribunal members. The Scottish government intends that devolved tribunals will move into the new Scottish tribunals structure in an incremental manner; the first jurisdiction transferred in December 2016 and the last devolved jurisdiction is due to transfer in April 2022.
- 1.46 In line with the recommendations of the Smith Commission in 2014, the management and operation of the tribunals dealing with matters of reserved UK law in Scotland (with limited exceptions) will also be devolved to the Scottish parliament. The Scotland Act 2016³⁸ contained an enabling power for this devolution and the Scottish and UK governments are currently working with the judiciary to develop and implement arrangements for this transition.

Wales

- 1.47 The Wales Act 2017 created the office of President of Welsh Tribunals.³⁹ The responsibilities of this office include ensuring the accessibility of devolved Welsh tribunals and that hearings are conducted fairly and efficiently, and also making appropriate arrangements for training and welfare of members. This legislation also includes provisions to enable cross-deployment both within devolved Welsh tribunals, and between Welsh tribunals and reserved courts and tribunals for England and Wales.

Our approach to this Major Review

Governance

- 1.48 The SSRB is responsible for delivery of this Major Review and for making decisions about the final recommendations. However, in line with previous Major Reviews, a Judicial Sub-Committee (JSC), chaired by Sharon Witherspoon, and comprising three other members of the SSRB,⁴⁰ was formed to take forward the detailed work, including overseeing the gathering of the evidence needed to enable us to consider the issues rigorously.

Relationship to previous Major Reviews

- 1.49 We noted that the last Major Review was completed in 2011 but that the UK government did not take forward the recommendations in a timely or comprehensive fashion. Therefore, we agreed at the outset that this Major Review would not take into account previous unimplemented recommendations. Given the significant changes since evidence was gathered for the 2011 Review, we felt that it was not appropriate to revisit the

³⁸ See: <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

³⁹ See: <http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted>

⁴⁰ Margaret Edwards and Peter Westaway joined the JSC at the outset, David Lebrecht subsequently joined in early 2018.

rationale of the recommendations of our predecessors seven years ago. In this Review, therefore, we started afresh and formed our own views based on the evidence, so that this Major Review constitutes an independent examination of all the relevant issues in their own right.

Support and advice to the Review

1.50 During the course of this Review we have been grateful for the engagement and support of successive Lord Chancellors, members of the senior judiciary and officials within the MoJ, the devolved governments, and the Judicial Office and its equivalents in Scotland, Wales and Northern Ireland. We are grateful for the written submissions and detailed data provided by them to inform our work. Throughout the process we have been aware of the need to understand and gather evidence pertinent to the different UK jurisdictions.

1.51 An Advisory and Evidence Group (AEG) was formed to support the work of the Review. This comprised members of the judiciary at all levels covering the scope of the Major Review: the four UK jurisdictions, courts and tribunals judiciary, salaried and fee-paid office holders, and representatives from the MoJ, the JAC and the devolved governments.⁴¹ The MoJ coordinated the process for identifying members of the group. The AEG supported our work by:

- Assisting us in drafting the Terms of Reference for the Major Review, prior to their submission to the Lord Chancellor.
- Ensuring we were aware of judicial expertise, views and sentiment.
- Ensuring that we had timely access to the data and information we needed, helping us to identify gaps in evidence, and providing advice as to how these gaps might be filled.
- Providing advice on how any commissioned research could support our work and add genuine value.

1.52 The AEG met on nine occasions over the course of the Review. We are grateful to all the members of the Group for their hugely valuable contribution and advice.

Commissioned research

1.53 In support of the Major Review, we commissioned three external research projects, all of which are published alongside this Review:⁴²

- A job placement research exercise (*Report on the placement of judicial posts*), undertaken by the Institute for Employment Studies (IES), by which members of the judiciary were invited, through a structured facilitated process, to consider a standardised set of job summaries and to advise on how these might be assigned to salary groups. This work provided an expert-based view on how posts are mapped to pay groups and an insight into the weighting that should be given to leadership roles and functions. This research is explained and discussed further in Chapter 3.
- A survey of judges appointed to a salaried or fee-paid post since April 2012 (*The NatCen Survey of Newly Appointed Judges 2017*). The survey gathered data about motivations for joining the judiciary, and on the previous roles and salaries of recent judicial appointees. This gave us robust information on the changes in salary which individuals might experience on joining the judiciary. This work, undertaken by the National Centre for Social Research, is explained and discussed further in Chapters 2 and 4.

⁴¹ A full list of AEG members is in Appendix K.

⁴² See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

- Research conducted on our behalf by Cambridge University to understand reasons why seemingly eligible and qualified candidates do not apply for judicial posts (*The Attractiveness of Judicial Appointments in the UK*). This research comprised a series of focussed and confidential interviews with individuals who were identified by members of the senior judiciary and others as being potentially eligible for a judicial appointment. This work is discussed further in Chapters 2 and 4.

Visits

- 1.54 Between July 2016 and February 2018, and over the course of 19 days, we undertook visits to a range of courts and tribunals across the four jurisdictions in the UK, including nine visits to locations outside of London. We are grateful for the advice provided by the judicial offices and the executives in the formulation of this programme and to those who then organised the detailed visits. Further detail on the visits' locations and the types of judges we spoke to is given in Appendix G.
- 1.55 The visits provided the opportunity for us to gather significant contextual and detailed information to inform the Major Review. These visits also gave us the opportunity to observe court and tribunal procedures, and to hear at first-hand the views of the remit group on pay and related matters, as we met a wide range of judges at all the locations we visited. We are very grateful to all those who gave their time to meet with us, and for their candid and constructive engagement.

Call for Evidence

- 1.56 On 17 January 2018, we launched a Call for Evidence, seeking evidence from the judiciary on a number of thematic topics relating to remuneration, recruitment, retention, motivation, and leadership.⁴³ While this was an open call, we said that we would welcome, in particular, responses from judicial office holders whose salaries and fees were the subject of this Review and their representative associations. We received a total of 124 responses, of which 47 were from judicial associations and representative groups, 75 were from members of the judiciary, and two were from members of the public. A list of the judicial organisations that responded can be found in Appendix H. The Call for Evidence is cited throughout the Report.

Consultation

- 1.57 In April 2018, following the conclusion of the Job Placement Research Exercise, we launched an open Consultation exercise to gather information relevant to the judicial salary structure and the grouping of posts, including how best to recognise judicial leadership.⁴⁴ We received a total of 121 responses, of which 43 were from judicial associations and representative groups, 76 were from members of the judiciary, and two were from members of the public. A list of the judicial organisations that responded can be found in Appendix I. Our response to the results of this Consultation is discussed in Chapter 3.

Oral evidence

- 1.58 We consider the opportunity to challenge and discuss the evidence received in oral evidence as an important part of any pay round. To supplement the considerable amount of written evidence received, we took oral evidence from:
- The Lord Chancellor and Secretary of State for Justice.
 - The Lord Chief Justice of England and Wales.

⁴³ See: www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-call-for-evidence

⁴⁴ See: www.gov.uk/government/consultations/major-review-of-the-judicial-salary-structure

- The Senior President of Tribunals.
- The Lord President.
- The President of Scottish Tribunals.
- The Lord Chief Justice of Northern Ireland.
- The JAC for England and Wales.

1.59 In addition, given the remit of the Major Review, we also took oral evidence from a range of judicial associations and representative groups as listed in Appendix J.

Communication

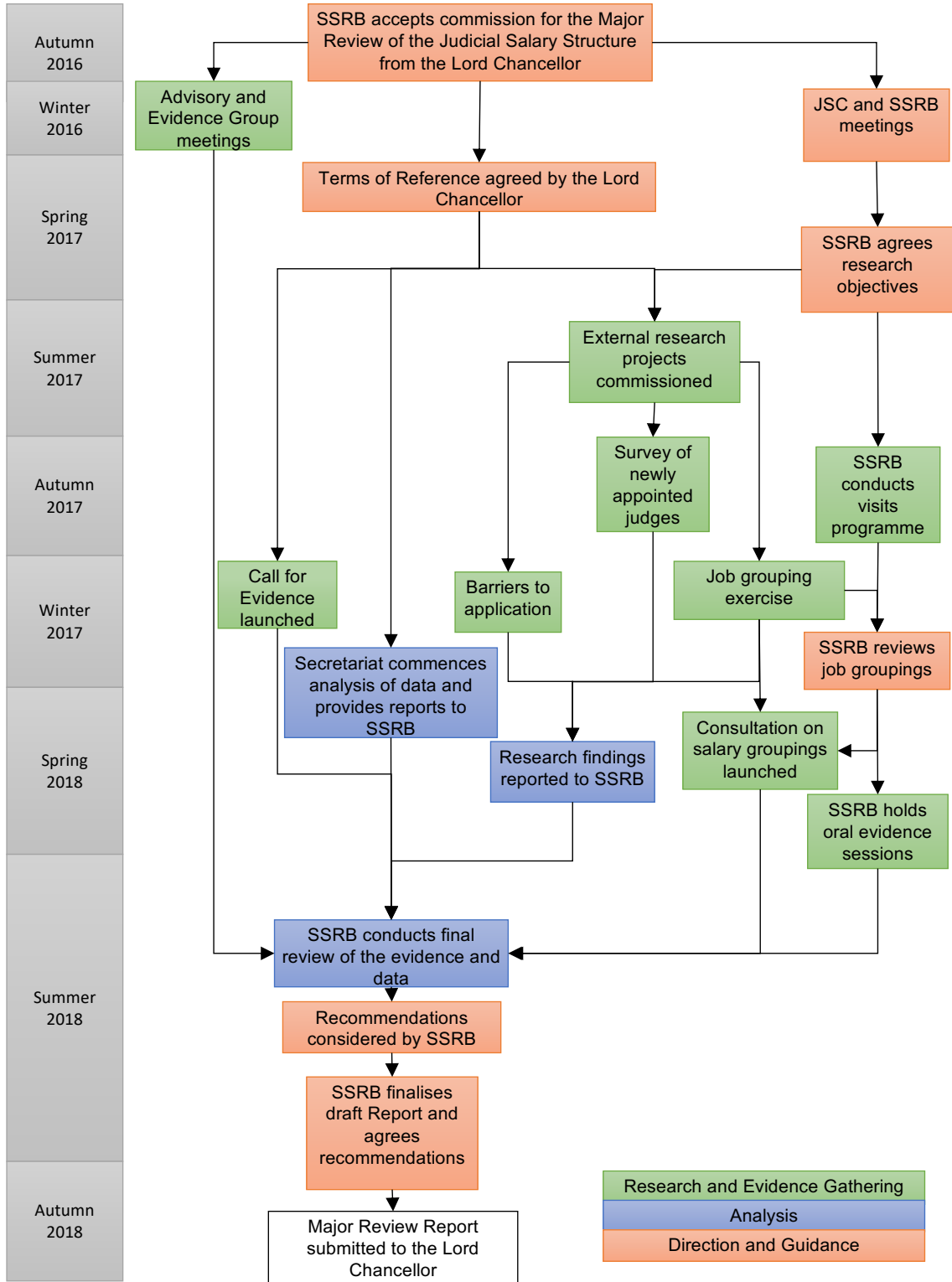
1.60 Throughout this Review, we have considered it important to keep all members of the judiciary informed of progress. The JSC Chair, therefore, wrote to the heads of UK jurisdictions in December 2016, setting out the remit and intentions of the Review and the importance of engagement with the judiciary. This letter was shared with the judiciary and it, together with subsequent update letters, were published on our website.⁴⁵

1.61 In her final letter, announcing the completion of the Review, the JSC Chair expressed her thanks to all who have contributed to this substantial Review. The SSRB is grateful to those who have enabled the delivery of this Report.

1.62 Figure 1.1 summarises the elements of this Major Review.

⁴⁵ See: <https://www.gov.uk/government/publications/letter-from-the-chair-of-the-ssrb-judicial-sub-committee-to-the-uk-judiciary>

Figure 1.1: Flow chart summarising the elements of this Major Review



Chapter 2

Strategic context

Introduction

- 2.1 In this Chapter, we consider the context within which the UK judiciary now works as relevant background for our Review. We note the considerable contribution that a high-quality, independent judiciary makes to the UK's national well-being and prosperity. We discuss why potential candidates decide to apply, or not to apply for the judiciary, and assess how serving judges have been affected by economic and political change in the last ten years. Finally, we look at some particular management matters that will be important for the future judiciary. We make observations on a number of issues which, while not directly pay related, seem to us relevant to judicial recruitment and retention.
- 2.2 We have drawn widely on the oral and written evidence we received, and on our visits to judges throughout the UK. In addition, we have found three sources of information particularly valuable.
- The Judicial Attitude Survey (JAS), a longitudinal study which was conducted in 2014 and 2016 by the Judicial Institute at University College London (UCL).⁴⁶ The survey aims to assess the attitudes of serving salaried judges in the United Kingdom. The findings are split across three reports, between England and Wales courts and UK tribunals, Scotland, and Northern Ireland. The survey has a very high response rate, particularly in England and Wales.
 - Research commissioned specially for this Review from Cambridge University on *The Attractiveness of Judicial Appointments in the UK*.⁴⁷ This qualitative study sought to understand, through in-depth interviews with professionals at different levels and areas of legal practice, whether applying to join the Bench was seen as an attractive option, and to look at the factors influencing individuals' decisions about whether or not to apply to the Bench.
 - The *NatCen Survey of Newly Appointed Judges 2017*, also commissioned specially for this Review, repeated a study originally carried out for the 2011 Major Review. It looked particularly at pre-appointment earnings for judges (salaried and fee paid) who had been appointed since 2012, but also included an examination of judges' reasons for taking up a judicial appointment.⁴⁸

The importance of a high quality, independent judiciary

- 2.3 An effective, independent judiciary is fundamental to the functioning of a democratic society. Every day, judges make decisions that profoundly affect individuals, families, businesses and society. The written evidence we received from the Lord Chief Justice (LCJ) and Senior President of Tribunals (SPT) summed this up very well:

"An excellent judiciary is vital. A criminal justice system in which the public has confidence is a cornerstone of a stable society. Administrative justice, whether in the courts or tribunals, allows citizens to vindicate their rights against the state and is crucial to the maintenance of the rule of law. An efficient family justice system provides economic savings in terms of housing and benefits costs. Civil justice is essential for

⁴⁶ The next JAS is scheduled to be published in 2019.

⁴⁷ Chapter 1 gives further details of each element of this Major Review.

⁴⁸ The *NatCen Survey of Newly Appointed Judges 2017* was targeted at judges who were appointed between April 2012 and September 2017. In total, 517 eligible judges responded to the survey. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

providing a sure framework for socio-economic growth, for securing property rights and providing a sound basis for the application and enforcement of private law rights and obligations.”

- 2.4 It therefore follows that judges need to be of sufficient quality that their rulings are respected, and there need to be enough judges to enable cases to be heard in a timely fashion. The UK is widely held to have an internationally trusted legal system based on the rule of law. One of the key factors contributing to this is the perceived quality of its judiciary, which includes their integrity and impartiality.
- 2.5 The LCJ drew our attention to a recent survey undertaken by the European Network of Councils for the Judiciary, in which 11,712 judges from 26 European countries participated. In 18 of these countries, more than 10 per cent of judges either thought that some of their colleagues were taking bribes or were not sure whether they were. The UK was one of only five countries (including Sweden, Ireland, Finland and Denmark) where all respondents were confident that judicial bribes were not being taken. The LCJ commented that this perceived incorruptibility was built on strong historic foundations of a well-remunerated judiciary, and said that, once corruption begins, it is almost impossible to eradicate.

Legal services underpinning economic growth

- 2.6 There is research evidence that having an effective independent judiciary brings benefits for the wider economy. Feld and Voigt (2003 and 2004) found that de facto judicial independence⁴⁹ positively influences economic growth.⁵⁰ A paper by Barro (2000) examining economic growth in the 1960-80s across 100 countries found a positive and statistically significant link between economic growth and rule of law⁵¹ values (as measured by surveys and reported in the International Country Risk Guide).⁵²
- 2.7 The legal services sector therefore acts as a catalyst for other UK professional services. When UK lawyers are instructed on an international project, there is a greater chance that UK accountants, actuaries and others will also be engaged.⁵³ Legal services are seen as critical to the broader financial and related professional services cluster which make the UK one of the leading international business hubs.⁵⁴ International investors are attracted to markets where a reliable and independent dispute resolution process is available. A study⁵⁵ by the Bingham Centre for the Rule of Law found that the strong rule of law is among the top three considerations (out of 13) for firms when making Foreign Direct Investment (FDI) decisions, alongside the ease of doing business and a stable political environment.⁵⁶ The confidence of international investors in the UK financial services sector is therefore linked to the quality of the justice system.⁵⁷

⁴⁹ The degree of independence that the courts in fact enjoy.

⁵⁰ Feld and Voigt (2003). See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=395403 and Feld and Voigt (2004). See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=597721

⁵¹ The World Justice Project's definition of the rule of law is comprised of four principles: Accountability, Just Laws, Open Government and Accessible and Impartial Dispute Resolution. Further information is available at: <https://worldjusticeproject.org/about-us/overview/what-rule-law>

⁵² Barro, R. (2000). Democracy and the rule of law. In B. Bueno de Mesquita and H. Root (Eds.), *Governing for prosperity* (pp. 209–231). New Haven, CT: Yale University Press.

⁵³ See: <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/chc-speech-faculty-of-advocates.pdf>, paragraph 28.

⁵⁴ See: <https://www.thecityuk.com/research/uk-legal-services-2016-report/>, last bullet point on page 6.

⁵⁵ See: http://www.biicl.org/documents/625_d4_fdi_main_report.pdf, see Table 4 on page 22.

⁵⁶ There were 13 considerations available in the survey question and an 'other' category. The top three considerations found were the first three considerations listed in the survey question which may have biased the results to some extent.

⁵⁷ See: <https://www.judiciary.gov.uk/announcements/speech-by-sir-geoffrey-vos-chancellor-of-the-high-court-integrity-and-independence-in-the-judiciary-and-the-financial-services-industry-a-comparative-study/>, paragraph 31.

- 2.8 In a report for the Law Society, Cambridge Econometrics estimated that £1 of extra turnover in the legal sector stimulates a further £1.39 of spending in the wider economy.⁵⁸ The paper also suggested the boost to UK Gross Value Added (GVA) because of a 1 per cent positive shock to legal services market value would be £379 million, along with 8,000 extra jobs.⁵⁹

The direct financial value of the legal services sector

- 2.9 The UK legal services sector is estimated to be second in size only to the US, and is considered the most international legal sector in the world.⁶⁰ In 2017, the GVA output of legal activities, on a current prices basis, was £26 billion (1.4 per cent of UK GVA).⁶¹ The sector also employs over 370,000 people; two-thirds of these jobs are based outside of London.⁶² Legal services had a trade surplus⁶³ worth £3.4 billion in 2015; this has almost doubled over the past decade.⁶⁴
- 2.10 In the 2015 International Arbitration Survey, London was ranked as the number one used and preferred arbitration hub by respondents, ahead of Paris, Hong Kong, Singapore, Geneva, New York and Stockholm.⁶⁵ Cases involving international businesses and people are often tried in the UK. In 2014, the Financial Times reported that over three-quarters of those using London's commercial court to settle disputes were from outside the UK, with litigants from 66 countries being represented in the court.⁶⁶ The consultancy firm Portland Communications analysed the 158 cases heard in the commercial courts between March 2017 and April 2018 and found that the number of commercial cases rose by 7 per cent over the previous year.⁶⁷
- 2.11 These benefits are underpinned by the international reputation of the UK judiciary. A 2015 MoJ report examined the factors influencing litigants' decisions to initiate commercial litigation and bring claims to London-based courts.⁶⁸ It found that the reputation and experience of judges in England and Wales was the first and foremost reason. In a survey comprised of lawyers, judges, firms and academics, 76 per cent of respondents (108 out of 143), reported that the reputation/experience of judges was either decisive or very relevant in driving the choice in favour of courts in England and Wales.
- 2.12 These benefits are not confined to London. The LCJ's evidence said that the Business and Property Courts in Manchester, Leeds, Birmingham, Bristol, Cardiff, Liverpool and Newcastle undertook a large amount of international litigation. The President of the Law Society of Scotland has estimated that the legal sector in Scotland generates over £1.2 billion for the Scottish economy, and supports more than 20,000 high quality jobs. The Midland Chancery and Commercial Bar Association, in written evidence, highlighted

⁵⁸ See: <https://www.lawsociety.org.uk/news/documents/legal-sector-economic-value-final-march-2016/>, see page 6. A strong degree of caution is necessary with static input-output analysis, as it typically over-estimates the net economic effect.

⁵⁹ These benefits are based on the impact to the economy one year after the positive shock. The impact would continue in the medium term but would diminish over time. See page 13 of the same source.

⁶⁰ See: <https://www.thecityuk.com/research/the-impact-of-brexit-on-the-uk-based-legal-services-sector/>, paragraph 11, page 5.

⁶¹ See: <https://www.ons.gov.uk/economy/grossdomesticproductgdp/datasets/ukgdpolowlevelaggregates>, derived using column EL (industry 69.1) and column D (Total GVA).

⁶² See: <https://www.judiciary.gov.uk/wp-content/uploads/2017/08/legaluk-strength-of-english-law-draft-4-FINAL.pdf>, paragraph 9, page 5.

⁶³ That is, the value of exported goods and services is higher than the value of imported goods and services.

⁶⁴ See: <https://www.thecityuk.com/research/uk-legal-services-2016-report/>, third bullet point on page 5.

⁶⁵ See: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf, page 12.

⁶⁶ See: <https://www.ft.com/content/4c33f0c0-e716-11e3-88be-00144feabdc0>. The online article is behind a pay wall.

⁶⁷ See: <https://portland-communications.com/pdf/Portland-commercial-courts-report-2018.pdf>

⁶⁸ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396343/factors-influencing-international-litigants-with-commercial-claims.pdf, responses to Q22 on page 50.

the importance of the quality of the senior UK judiciary in attracting a disproportionate share of high-value international litigation.

Potential international challenges to UK legal services sector

- 2.13 We were told that the market for international commercial courts is becoming increasingly competitive. London is and continues to be the destination of choice for litigants, but jurisdictions from around the globe are seeking to compete with London. The Dubai International Financial Centre Courts, the Qatar International Court, the Abu Dhabi Global Market Courts and the Singapore International Commercial Court are the courts most frequently mentioned, according to Portland's annual Commercial Courts report.⁶⁹ A separate survey also supports the view that there is increasing competition from other jurisdictions.⁷⁰ A question was posed to survey respondents on whether they would consider bringing a case under English law to another jurisdiction and of those that responded, 25 per cent (36 respondents out of 143)⁷¹ reported that they were either very likely or likely to do so, with New York and Singapore being the most commonly selected jurisdictions outside England.
- 2.14 The LCJ told us that commercial courts operating in the English language had been set up in Paris, Frankfurt, Amsterdam, Brussels, Kazakhstan, Abu Dhabi, Qatar and Dubai. He added that there were already numerous international commercial courts in Singapore, New York, and the Middle East. Commentators have observed that Paris authorising commercial law hearings in English, to woo companies moving from London to continental Europe, is something that would previously have been considered unthinkable.⁷²
- 2.15 The UK is, of course, facing various changes in its relationship with the global economy, which is itself going through a period of uncertainty. TheCityUK, an industry body, has commented that Brexit could affect the UK's world-class legal services sector.⁷³ Mintel has forecast that whilst the legal sector will grow in the short term, it will do so at a rate slower than previously anticipated, due to uncertainty and intense price competition.⁷⁴
- 2.16 A report by NatWest examining the legal market comments that London will continue to be an attractive place for dispute resolution into the future, citing the impartial judiciary as one reason.⁷⁵ However, Oxford Economics has forecast that, in the longer term, the loss in legal revenues could be 4 per cent per annum by 2030 (£1.7 billion in 2011 prices).⁷⁶ A perceived or actual decline in the quality of the judiciary would be likely to amplify such risks.

⁶⁹ See: <https://portland-communications.com/pdf/Portland-commercial-courts-report-2018.pdf>, third paragraph on page 3.

⁷⁰ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396343/factors-influencing-international-litigants-with-commercial-claims.pdf, responses to Q27 and Q28 on page 52.

⁷¹ This 143 includes 13 responses that selected not applicable but excludes the 72 respondents who provided no response. Responses to Q27 on page 52.

⁷² See: <https://www.thetimes.co.uk/article/paris-opens-english-court-to-snatch-british-business-before-brexit-swkbwzxdc>. The online article is behind a pay wall.

⁷³ See: <https://www.thecityuk.com/research/legal-excellence-internationally-renowned-uk-legal-services-2017/>, page 5.

⁷⁴ Mintel: Legal Services – UK, May 2018. <https://store.mintel.com/legal-services-uk-may-2018>. The full report is behind a pay wall.

⁷⁵ See: https://www.business.natwest.com/content/dam/natwest_com/Business_and_Content/PDFs/A_perspective_on_the_legal_market.pdf, page 12, Litigation section.

⁷⁶ See: <http://www.lawsociety.org.uk/news/documents/economic-scenarios-uk-sept-2015>, pages 6 to 7.

Observations about the importance of the judiciary to society

We endorse the importance of an excellent judiciary to society and to the rule of law, with all the social benefits that flow from this. Every day, judges make decisions that profoundly affect individuals, families, businesses and society. They need to be of sufficient quality that their rulings are respected, and there needs to be sufficient numbers of judges for cases to be heard in a timely fashion; it remains as true as ever that justice delayed may be justice denied. It is clear that the UK judiciary enjoy a high international reputation among its peers, not least for its effectiveness and integrity, and it is vital for this to be maintained.

We also note the economic benefits that are associated with high levels of confidence in the quality and integrity of the UK judiciary. International competitors are seeking to compete for the high-value legal business. But the benefits to the UK from its judiciary go well beyond attracting lucrative cases to London. It is hugely important for all citizens and businesses, large and small, day to day, that there is widespread confidence in the courts and tribunals, all over the country. Any threat to this, in the shape of a threat to the quality of the judiciary, deserves to be taken seriously.

Motivations for applying, or not applying, for a judicial post

- 2.17 In this section, we summarise the research evidence on what attracts potential candidates to apply to the judiciary, or puts them off doing so. We consider the changes and continuity over the last nine years.
- 2.18 An important feature of the judiciary is that most judges at, or below, High Court level are recruited externally. This sets the judiciary apart from most public sector workforces (and the SSRB's other remit groups), where it is common to "move up through the ranks". In the main, judges are drawn from an external labour market of relatively highly-paid individuals, already well-established in their careers. They are usually barristers, advocates or solicitors, or less commonly from academia. The key external recruitment entry levels have been at the High Court (salary group 4); the Circuit Bench and Upper Tribunals (salary groups 5 and 6.1); and the District Bench and First-tier Tribunals (salary group 7).
- 2.19 The *NatCen Survey of Newly Appointed Judges 2017*⁷⁷ found the top four factors cited by recently appointed judges as motivating factors for applying were:
- The challenge of the job (89 per cent).
 - Providing a public service (83 per cent).
 - A natural career step (80 per cent).
 - The promise of a good pension (71 per cent).
- 2.20 The first two reasons were widely cited by all the judges who responded. However, there were also some differences according to the level of judicial appointment. For example, High Court Judges were more likely than others to cite the challenge of the role; Circuit Judges were more likely to mention the pension; and District Judges were more likely than others to cite the security of the job.
- 2.21 The survey also showed that the factors that were the strongest motivators for applicants were also those for which expectations were most likely to be met.⁷⁸ Seventy-three per cent of the judges reported that their expectations were fully met for public service, and 72 per cent for the challenge of the role. However, of those judges who said that the pension was a positive incentive to apply, 37 per cent said their expectations had not been met.

⁷⁷ *NatCen Survey of Newly Appointed Judges in the UK 2017* section 3.8.1. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

⁷⁸ Only judges that reported each factor had been an incentive to become a judge were asked this question.

- 2.22 We set these findings alongside those of the Cambridge research that we commissioned on *The Attractiveness of Judicial Appointments in the UK*, which was designed to examine the reasons why some seemingly eligible people do not apply for salaried judicial roles. This research was qualitative, involving fewer respondents than the *NatCen Survey of Newly Appointed Judges 2017*, but probing their reasoning in depth. It followed the methodology used in 2008 research⁷⁹ by Dame Hazel Genn DBE QC, that looked at the same questions. Viewed together, these pieces of research give a sense of how the judicial role has been viewed within the legal community over nine years, and allows us to make some inferences about what issues may have changed since 2008.
- 2.23 Both the Genn study and *The Attractiveness of Judicial Appointments in the UK* research found that the main incentives that traditionally encouraged professionals to move to the Bench, applying across all UK jurisdictions, were:⁸⁰
- A reduction of workload and pressure, compared with private practice.
 - A reasonable salary which, although smaller than many practitioners had been gaining before, was secure.
 - A good pension.
 - A respected social status.
 - A wish to “put something back” into the legal system through public service, and to contribute to the development of the law through decisions.
- 2.24 Over the nine-year period between the two sets of research, all these incentives, except the last, had eroded. For some factors, this continued what was a steady long-term deterioration. These included:
- Workload: a perceived increase in the volume of cases, the lack of judicial autonomy, and the inflexibility of working practices.
 - How the judiciary is perceived to be valued by government, the press and the public (a drop in the ‘social standing’ of the judiciary).
- 2.25 The biggest disincentives raised by the 2017 respondents were a lack of autonomy and inflexibility of working practices.⁸¹ However, they were likelier than their 2008 counterparts to mention questions of infrastructure, the poor conditions of court buildings and facilities, together with a lack of administrative support. They also disliked the judicial application process.
- 2.26 A striking change from the 2008 findings was that by 2017, following pension taxation changes, the judicial pension was no longer seen to provide a strong incentive to legal professionals who have made adequate provision for their retirement at an early stage in their career. Many of these are the very people who would ideally be applying to the higher judiciary. For legal professionals working in the less remunerative areas of the law, the judicial pension remained attractive.
- 2.27 Otherwise, views on pay had not changed significantly since the 2008 research. Most respondents accepted that judicial salaries would be below those that were earned by top legal professionals, particularly in the commercial sector. Only 15 per cent now saw the salary level as an attraction of the Bench, though most accepted that not much could be done about it.

⁷⁹ *The Attractiveness of senior judicial appointments to highly qualified practitioners*, Judicial Executive Board, December 2008. See: <https://studylib.net/doc/11990641/the-attractiveness-of-senior-judicial-appointment-to-high>

⁸⁰ *The Attractiveness of Judicial Appointments in the UK* (paragraph 26). See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

⁸¹ *The Attractiveness of Judicial Appointments in the UK* (paragraph 29). See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

- 2.28 This general picture is consistent with the findings of recent surveys⁸² in Northern Ireland and Scotland. In April 2018, the Lord Chief Justice's Office in Northern Ireland commissioned a survey exploring Queen's Counsel (QC) concerns over applying to become a High Court Judge and the reasons for seeking, or not seeking, appointment. Of the 43 responses received,⁸³ the majority of respondents (91 per cent) had not applied for appointment in the past and just under half (47 per cent) had no intention of applying in the future. Factors of particular influence⁸⁴ in determining whether or not to apply included the lack of confidence in the Northern Ireland Judicial Appointments Commission (NIJAC) competency based testing process (63 per cent) and the isolation of the judicial lifestyle (53 per cent). The majority of respondents reported that the level of satisfaction in their present practice and workload (79 per cent) and the impact on personal commitments (84 per cent) would also be important factors to consider.
- 2.29 In April 2017, the Lord President commissioned a survey asking practising QCs in Scotland about their concerns regarding appointment as a Senator of the College of Justice and the reasons for seeking, or not seeking, appointment. The results from 113 respondents⁸⁵ showed that most respondents had not applied to become a Senator in the past (83 per cent) and just over half (59 per cent) did not intend to apply in the future. There were a number of issues dissuading potential applicants, including judicial workload and working time, the impact on personal commitments, a lack of confidence in the Judicial Appointments Board for Scotland (JABS) competency based testing process and, for those of seven or more years standing, remuneration.

Observations on the attractiveness of judicial appointment

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

The current judiciary: context, views and concerns

- 2.30 In this section, we assess what we have been told in evidence, and seen on our visits, to paint a picture of the context in which the judiciary are currently working, and of their views and concerns.
- 2.31 Like all workforces in the public sector, the judiciary has been affected by reductions in government spending since 2008. The Ministry of Justice (MoJ) told us that, following the 2015 Spending Review settlement, it needed to deliver around £1 billion in savings

⁸² Report on QCs' Attitudes Regarding Appointment as a Senator of the College of Justice, Judicial Office, Scottish Courts and Tribunal Service, May 2017. See <http://www.scotland-judiciary.org.uk/Upload/Documents/ReportonQCsattitudesreappointmentasSenator.PDF> and Results of Survey of QCs on Barriers to Seeking Judicial Appointment, Northern Ireland Lord Chief Justice's Office, May 2018. See: <https://judiciaryni.uk/sites/judiciary/files/media-files/Results%20of%20Survey%20of%20QCs%20on%20Barriers%20to%20Seeking%20Judicial%20Appointment%20-%20May%202018.pdf>

⁸³ 43 responses were received from a total of 89 practising QCs asked to complete the survey – a response rate of 48 per cent.

⁸⁴ Here we report percentages of respondents ranking factors as moderate, major or critical. Other options included little, not at all or not applicable.

⁸⁵ 113 responses were received from a total of 122 QCs asked to complete the survey – a response rate of 93 per cent.

(equating to a 15 per cent real-terms cut to the MoJ's budget) by 2019-20. It said this would involve significant reductions from administrative spend, as well as the running costs of courts and prisons.

- 2.32 We received considerable evidence, in writing and on our visits, showing how judges at all levels have experienced the adverse consequences of the spending pressures. Below we set out some of the main messages that we heard.

Reductions in administrative support

- 2.33 Judges are supported in carrying out their duties by administrative staff. However, there has been a reduction in the number of support staff employed. In 2012, the number of full-time equivalents was 15,700; in 2017 it was 13,200. The MoJ told us that the Her Majesty's Courts and Tribunal Services (HMCTS) reform programme envisages further staff reductions as a result of business transformation including digital working. The HMCTS workforce strategy supports that expected reduction by meeting a proportion of current workforce requirements with agency and fixed term staff.⁸⁶
- 2.34 In principle, we can see the logic of this approach. However, it has not yet bedded in effectively. In our visits to courts, we ourselves saw several examples where the current administrative support staff lacked skills to do the job, and the consequence was an increase in workload for the judiciary. Judges across all jurisdictions told us that inadequately paid administrative staff resulted in high turnover and low standards. Judges were left to carry out functions that would previously have been carried out by court staff. This is an inefficient use of skilled and expensive resource.
- 2.35 In Northern Ireland, judges said that diminishing levels of court staff had increased work for the judiciary and judges were unable to rely on staff in a way they used to do. These views are supported by the findings of the 2016 JAS, which found that 42 per cent of judges in England and Wales considered the amount of administrative support they received as poor.
- 2.36 Senior judges (High Court Judges and above) have a statutory right to the services of a clerk. However, the High Court Judges' Association (HCJA) told us that due to shortages in clerks' recruitment, among the 100 High Court Judges there were presently 26 "doubling-up" arrangements, meaning that one clerk worked for two judges. Indeed, there are judges who do not have even half a clerk's services, and are having to handle the administrative work, such as preparing bundles of documents, themselves.

Court infrastructure

- 2.37 The LCJ, in his appearance before the House of Lords Select Committee on the Constitution in April 2018 said that:

*"We have some terrific buildings, particularly those that are relatively new or very new. The problem is that they are the minority rather than the generality, and many of our buildings are terrible. Indeed, they are frankly an embarrassment... in that we expect the public to have to operate in them."*⁸⁷

- 2.38 In his oral evidence to us, the LCJ said that the MoJ had agreed an additional £7 million⁸⁸ to address immediate and relatively straightforward issues in the estate, such as paint peeling, filthy carpets and broken chairs, which were currently affecting judicial morale

⁸⁶ See: HMCTS Annual Report and Accounts 2017-18, July 2018, Section 3, page 51. <https://www.gov.uk/government/publications/hm-courts-tribunals-service-annual-report-and-accounts-2017-to-2018>

⁸⁷ See: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/lord-chief-justice/oral/82108.html>, reponse to Q7.

⁸⁸ The MoJ advised that £5 million was provided for extra maintenance in 2017-18.

and which were disproportionately irritating both the judiciary and court users. However, he acknowledged that substantial investment in the court estate was needed in the long term, to fully address its dilapidated position.

- 2.39 The England and Wales Judicial Attitude Surveys (JAS) show the judiciary's negative perception of their working environment. The 2014 JAS reported that 86 per cent of judges considered working conditions were worse compared with five years previously. In 2016, the second (and most recent) JAS showed that three-quarters (76 per cent) of judges thought working conditions had worsened since 2014. Over half of all Circuit Judges (57 per cent) and nearly half of all Employment Judges (46 per cent) rated the maintenance of the building they worked in as poor. *The Attractiveness of Judicial Appointments in the UK* research noted that the lack of investment in the infrastructure was perceived by legal professionals to be symptomatic of the low value the MoJ placed on judicial services.
- 2.40 The data for Scotland and Northern Ireland in the 2016 JAS showed a similar picture to that in England and Wales. In Scotland, 68 per cent of judges said that their working conditions were worse than in 2014, with a higher percentage of Sheriffs (73 per cent) than Senators (41 per cent) reporting worsening working conditions since 2014. In Northern Ireland, the majority of judges (81 per cent) felt there had been further deterioration in their working conditions since 2014.
- 2.41 This is not simply a question of poor working conditions. The 2016 JAS reported that 51 per cent of judges in England and Wales had concerns about their personal safety when sitting in court, while 37 per cent were concerned about it when out of court. In written evidence, the Lord Chief Justice of Northern Ireland (LCJNI) reminded us that security has been a major issue for the Northern Ireland judiciary since the 1970s, as a result of terrorist threat. While there was no direct question on personal safety for judges as a result of terrorism in the NI 2016 JAS, 68 per cent of judges in Northern Ireland expressed concern about their personal safety when they are in court.
- 2.42 Poor working conditions were compounded by reports of poor and "antiquated" IT equipment and facilities. The 2016 JAS reported that 54 per cent of judges rated the standard of equipment used in courts and tribunals as poor. The MoJ said that they were investing in digital services that would in future be easier to use, and that new, modern and robust technology across all courts would result in better use of judicial time. However, there is a long way to go before these benefits are fully felt across the courts service.

Workload

- 2.43 The LCJ and SPT, in written evidence, said there had been a significant increase in workload across all areas of the justice system. For example, across the UK tribunal system, the workload was 7 per cent more than had been anticipated, and therefore budgeted for. The MoJ, in written evidence, said that for 2017-18 they were expecting an increase in workload in the family jurisdiction, the Social Security and Child Support Tribunal, the civil jurisdiction, and the Employment Tribunal.⁸⁹
- 2.44 Judicial associations said many judges found the volume of cases they were expected to handle becoming burdensome and potentially unmanageable. The Council of Her Majesty's Circuit Judges (CoCJ) said that the workload for most Circuit Judges was now untenable, whilst the Association of Her Majesty's District Judges (ADJ) said that the job had changed beyond all recognition during the last five years or so.

⁸⁹ Ministry of Justice's evidence to the SSRB 2018 (paragraph 22). See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>

2.45 In addition to a rise in the volume of cases, we heard that the gravity of cases had also increased. In written evidence, the LCJ and SPT said that cases such as recent and historical sexual abuse, terrorism, child exploitation and cyber-crime were more likely to be contested, longer and more complex. In family law, one judge said:

“Most of the work that I do now seems to involve the death or abuse of a child. Such cases are emotionally draining. Yet as one case finishes, the following day another one starts.”

2.46 Crown Court Judges were dealing with a high volume of sex offending cases, and the gruelling workload was also discouraging individuals from entering the judiciary. The CoCJ described a “constant diet of serious sexual and physical abuse”.

2.47 The LCJNI described a similar picture in Northern Ireland, where they were dealing with a large number of legacy cases, relating to complaints about incidents that had taken place 30 to 40 years ago.

2.48 One of the factors cited for the increase burden on judges has been the rise in the numbers of litigants in person over the last few years, which has arisen principally as a result of reductions in the provision of legal aid. In the family court, for example, the number of cases where at least one party is self-represented has increased from 42 per cent in 2012-13 to 64 per cent in 2016-17.⁹⁰ In relation to family law, the CoCJ said that:

“Many, if not the majority, of litigants are ill-equipped to present their own cases. It is incumbent upon the judge to establish what the real issues in the case are. This is time-consuming and challenging.”

2.49 The MoJ stated that whilst there was no clear empirical evidence that increases in self-representation lead to an additional pressure on judges’ workload or longer cases, they did recognise that recent developments had created an additional burden in some jurisdictions.⁹¹

Observations on the working environment for the current judiciary

A combination of factors are making the work of a judge more challenging. On the one hand, there are pressures to make very rapid changes to working practices and to some conditions of service, and, on the other, there is a general reduction in resources. In particular, there has been a reduction in the administrative resource available at a time when the judicial workload has, if anything, increased. Added to this is an environment where some physical court structures are no longer fit for purpose.

We understand and support the logic behind many of the modernisation changes that the MoJ and judiciary are seeking to make, and recognise that this is a long-term programme, running up to 2022. However, at present few of the hoped-for benefits, and many of the disadvantages, are being experienced by judges in the courts.

⁹⁰ Ministry of Justice’s evidence to the SSRB 2018 (paragraph 37). See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>

⁹¹ Ministry of Justice’s evidence to the SSRB 2018 (paragraph 34). See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>

State of feeling in judiciary: pay, pensions and morale

Pay and pensions

- 2.50 The 2014 and 2016 JAS surveys⁹² highlighted two particular areas of concern for a large number of judges, affecting motivation and morale. These are the levels of pay in recent years and changes in pension entitlements.
- 2.51 An overwhelming majority of judges responding to the JAS did not agree that they were adequately remunerated for the work they do. Approximately three-quarters of court-based judges at all levels in 2016 agreed with the negatively phrased statement that their pay and pension did not adequately reflect their work.⁹³ This compares to around half of the tribunal judiciary.
- 2.52 Sixty-one per cent of respondents to the 2016 England and Wales JAS said their morale had been affected by pension changes.⁹⁴ There was a strong feeling that the government has committed a fundamental breach of trust. Many judges asserted to us that, in joining the judiciary, they made a permanent and irreversible choice to leave private practice on the basis of well-established judicial pension arrangements. These arrangements were then changed to their disadvantage. Because judges cannot leave the judiciary and return to their previous legal careers, they have had no opportunity to mitigate their losses. There is a fixed retirement age of 70 for judges appointed after 1 April 1995, so they cannot extend their working lives on the Bench.
- 2.53 The damage that the pension changes have had on judicial morale was a consistent and forceful message heard throughout our visits, and was echoed in the responses from our Call for Evidence. The LCJNI said that the introduction of the new pension scheme had a disastrous effect on morale, with younger judges being the ones most affected, and the Lord President said that judges felt that the effect of the changes was not understood by government. The CoCJ described the position “as an intense and deep dissatisfaction within all the circuit judiciary at the erosion of salary and pensions”. The House of Lords Select Committee on the Constitution has commented, “The sense of grievance created by the pensions issue has damaged morale throughout the judiciary”.
- 2.54 Pay and pensions were also raised with us as being emblematic of the perceived low value set on the judiciary by the government. In *The Attractiveness of Judicial Appointments in the UK* research on motivations for applying to the judiciary, it was apparent that the wider legal profession was very aware of this issue, and were concerned that, if government was prepared to make such a radical change to the terms and conditions of serving judges, then other damaging changes could not be ruled out. Many believed that politicians have failed to stand up for the judiciary against hostile media. They felt they were exposed to criticism without the political support for the rule of law and the legal process that they were entitled to expect.
- 2.55 Overall, we were struck by the extremely low number of judges who felt valued by government, according to both the 2014 and 2016 JAS. This number was 3 per cent of judges in England and Wales in 2014, and 2 per cent in 2016. This suggests exceptionally low levels of trust between a profession and those responsible for their pay and conditions.
- 2.56 A sense of disillusionment was also visible in judges’ responses to a 2016 JAS question on whether they would encourage suitable people to apply to join the judiciary.⁹⁵ Whilst

⁹² See note at the end of Appendix L for source details.

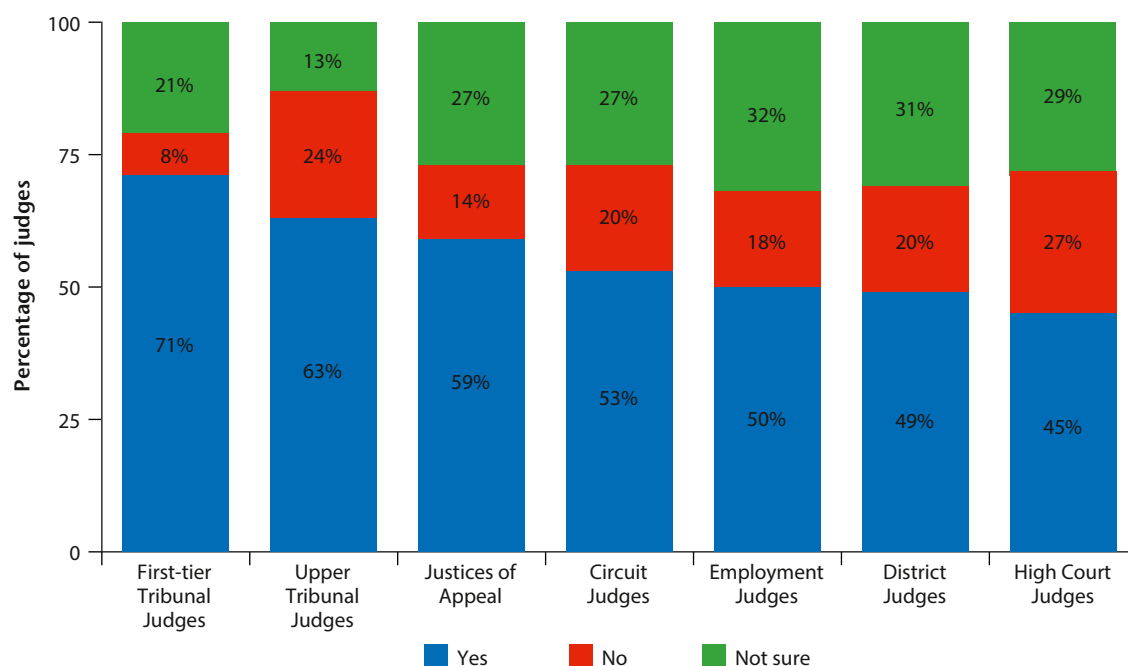
⁹³ The statement asked in the JAS was: *My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement.*

⁹⁴ Details of the pension changes and effects on individuals are given in Chapter 5.

⁹⁵ UCL did not include this question in the 2014 JAS.

over half (57 per cent) of judges in England and Wales courts and UK tribunals would encourage suitable people to apply, 43 per cent either said they would not encourage people to apply (17 per cent) or were not sure if they would do so (26 per cent). High Court Judges would be least likely to offer encouragement. District Judges, Employment Judges and Circuit Judges expressed broadly similar sentiments. In Scotland, over a third (36 per cent) of judges either said they would not encourage people to apply (11 per cent) or were not sure if they would do so (25 per cent), and in Northern Ireland the figure was 61 per cent (20 per cent said they would not encourage people and 41 per cent were not sure). This is set out by judicial post in Figure 2.1.

Figure 2.1: Responses to whether judges would encourage suitable people to apply to join the judiciary (by judicial post)



Source: England and Wales Judicial Attitude Survey 2016. See: <https://www.judiciary.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>

Observations on judicial morale

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

2.57 We now comment on two other important issues that we have noted in the course of our work on this Review. They are flexible working, and management of the judicial workforce.

Flexible working

2.58 A striking finding from the research on *The Attractiveness of Judicial Appointments in the UK* was that lack of flexible working practices on the Bench was a commonly cited barrier to

applying for a judicial appointment.⁹⁶ Notably, it was an issue raised by more than half of the women interviewed, compared to about a quarter of the men.

- 2.59 The research found that legal practitioners who were solicitors, advocates or barristers felt that flexible working patterns, and a reasonable balance between work and private life, were typically accommodated in their current place of work. However, they doubted that this would be the same if they moved into the judiciary. On the contrary, most respondents considered the role of a judge as “inflexible”. They felt that in their current jobs they could exercise greater control over their working time or their location – for example, not working during school holidays, or limiting their cases to those requiring no more than an hour’s travelling time from home.
- 2.60 Respondents also noted that there were few part-time salaried judicial positions. Applicants and new judges feared that they might be allocated to a geographical location that was potentially inconvenient for their domestic responsibilities; for example, the South Eastern circuit stretches from Sussex to Great Yarmouth.
- 2.61 This was exacerbated by their perception that the role of a judge was “like that of a civil servant” – by which they meant that the judge was required to perform under the direction of managers, whether a senior judge or an administrator. They felt they would lose the autonomy and collegial support that they enjoyed in private practice. While there was a belief that the senior judiciary would try to understand and accommodate their personal needs, there was very little confidence in court managers. In particular, respondents believed that HMCTS and MoJ officials saw the management of performance indicators as their sole priority, with neither interest in, nor sympathy for, the workload or personal inconvenience imposed on judges.
- 2.62 In their response to our own Call for Evidence, the CoCJ said that they would welcome more opportunities for salaried part-time working. However, they said it was not consistently available, which was likely to lead to resentment from those who wish to work part time but have been refused. We note elsewhere in this Report that the effect of the current taxation and pensions regimes makes it financially advantageous for a Circuit Judge to work 80 per cent of normal salaried hours, and the possible stresses this might cause in judicial planning were all judges who wished to reduce their hours to be allowed to do so.⁹⁷
- 2.63 The ADJ reported a similar picture. In 2018, a survey ran by the ADJ found that 85 per cent of respondents said that the opportunities for flexible working were poor or non-existent, compared to 83 per cent in 2016. Additionally, 68 per cent of District Judges in 2018 said that the opportunities for part-time working were poor or non-existent, compared to 64 per cent in 2016.

⁹⁶ *The Attractiveness of Judicial Appointments in the UK* (paragraphs 47-66). See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

⁹⁷ See: paragraph 5.58.

Observations on flexible working

Many of the concerns expressed about flexible working were highlighted by the 2010 Report of the Advisory Panel on Judicial Diversity, chaired by Baroness Julia Neuberger. The judicial leaderships and the MoJ have recognised them and sought to offer guidance and reassurance. However, the findings of our research show that this has not been sufficient.

It is evident to us that the social context within which judicial recruitment takes place has changed. Many professional men and women now have different attitudes towards the balance they want between their professional and family lives. The rise of the two-earner household means that it is more complicated than previously for one person to relocate geographically in response to the needs of their job. Employees expect to negotiate these questions with their employer, and not to be assigned solely according to the employer's convenience. The judiciary will need to respond appropriately.

We also consider that the judicial leadership could do more, both to communicate what has already been done to accommodate flexible working patterns, and to consider going further. For example, while there are certainly challenges in increasing the number of salaried judicial part-time posts, we do not believe that the barriers are insuperable. Over the last 20 years, every profession has been responding to demands from women and men who want a better balance between their work and non-work time.

Leadership and management within the judiciary

- 2.64 We end this Chapter by considering management and leadership within the judiciary. Over the last ten years, there have been significant changes to the roles that judicial office holders perform and the environment in which they work. As the Judicial Attitude Surveys indicate, some of these have proved extremely challenging. They require very high levels of management skills in, for example: identifying and implementing appropriate savings programmes; providing effective administrative support; introducing new IT systems; facilitating flexible working; and adjusting workloads in the light of changing circumstances. Much of this is simply workforce management in the widest sense.
- 2.65 Some key workforce tasks are shared ones. In particular, the judicial recruitment programme is a joint responsibility between the senior judiciary, the Judicial Office (JO), the MoJ, HMCTS and the Judicial Appointments Commission in England and Wales.⁹⁸ However, we believe that good workforce management should go beyond modelling the need for recruitment exercises, important though this is. It involves taking full responsibility for the needs of the current and potential workforce. Our reading of the Constitutional Reform Act 2005 and the Judiciary and Courts (Scotland) Act 2008 indicates that the lead responsibility here now lies with the judiciary itself.
- 2.66 We heard evidence that the judicial leaderships across the UK recognise this, and are keen to address the challenges. However, we think there is still much to be done in giving them the necessary tools for this task.
- 2.67 For example, in conducting this Review, we became aware of the difficulties in getting basic management information for the judiciary. We were asked to look at a much wider range of courts and tribunals posts than had been covered by previous Reviews. We therefore sought a full list of job titles and job descriptions. It only gradually emerged that this was a major task. There was no comprehensive list and, for many judicial posts, no agreed job description. Where job descriptions did exist, they ranged from a paragraph to scores of pages. Some, which had been used for the 2011 Major Review, were, we were told, inaccurate and inconsistent.

⁹⁸ Similar sharing of responsibilities in relation to recruitment exist to a greater or lesser extent in the devolved administrations.

- 2.68 While we received considerable help from the judicial offices in different parts of the UK, it also became clear that there was uncertainty about who was responsible for producing and maintaining these job descriptions. Concerns about maintaining judicial independence were sometimes invoked as a reason why only those judges holding a particular post could produce a job description for that post. We fundamentally disagree with this view; indeed, it seems to us likely to be one cause of the inconsistent job descriptions with which we were confronted.
- 2.69 A system where there is uncertainty about key building blocks such as job descriptions is likely to struggle when facing the type of management challenges that are now confronting the judiciary. For example, overseeing different models of flexible working, which are increasingly expected to be available to a modern workforce, requires high quality management information. So does securing high quality support staff in the court system to manage workflows and monitor workloads. Some of the court managers we met on our visits were in very demanding jobs for which they had had little training or relevant experience. Further investment in HMCTS management would, indirectly, be likely to make a judicial career look much more appealing.
- 2.70 We assess that a more proactive approach to leadership is required at all levels of the judiciary. We saw that judicial leadership and management is too often haphazard and unrecognised, particularly in England and Wales. We gained a sense that in Scotland and Northern Ireland the smaller scale of the jurisdictions resulted in greater cohesion and judges feeling generally more supported.
- 2.71 In our discussions with members of the judiciary, particularly on our visits, we heard enthusiasm for, and an understanding of, the need for judges to address management issues. We also heard of some effective local initiatives including, for example, the setting up local mentoring schemes. There is still a way to go however, for it to be widely recognised by judges that management is their responsibility.

Observations on judicial management

The Constitutional Reform Act 2005 envisaged an independent judiciary, managed by judges. That management function needs to be properly resourced. We believe there now needs to be a wide-ranging look at judicial human resources management. Mechanisms should be put in place to provide a consistent 'offer' to judges in each jurisdiction. This should set out what they are expected to do (in the form of a job description) but also the support available to help them to do it.

This will ensure more consistency and fairness, and better alignment between the needs of the judicial appointments commissions, the executives and the judiciary in decisions about complement levels, and resourcing recruitment. It would also enable the judicial leadership to take more management responsibility, including making more day-to-day decisions about some pay and reward questions. We return to this in Chapter 5.

Judicial career management

- 2.72 For the last two years, the Judicial Office business plan⁹⁹ has had the objective that judges at all levels should have conversations with their leadership judges about capability and aspirations in the course of the year. This is in order to give leadership judges a picture of potential across the judiciary. It states that judges with potential and ambition to progress will have greater opportunities to gain the experience needed to compete for more senior positions.

⁹⁹ Judicial Office Business plan 2018-19 (page 9). See: <https://www.judiciary.uk/publications/judicial-office-business-plan-2018-19/>

2.73 However, we did not see much evidence of this objective being achieved. In the responses to the Call for Evidence, a number of judges and judicial associations reported that there was limited, or no, career management or opportunities for career progression. The ADJ reported that, in their 2018 survey, 68 per cent of respondents said career progression was poor or non-existent, compared with 64 per cent in 2016. The CoCJ said that:

“Once a Judge is appointed a Circuit Judge there is little prospect of promotion. Very few Circuit Judges are later appointed as High Court Judges. Some judges can become leadership judges, but apart from that careers and income effectively flat line.”

2.74 In relation to the tribunals, the Council of Upper Tribunal Judges said there was an ‘absence of transparent avenues’. In the First-tier Tribunals, we heard that there needed to be a proper structure for careers and people need to know where they can go.

2.75 More fundamentally, we note that good career management is not simply about identifying and developing individuals who may seek promotion to another level of the judiciary. It is about individuals feeling that the organisation for which they work has a genuine interest in their job satisfaction and professional development. For example, judges might look to handle larger, more complex or more diverse cases, or to receive specialist training. When an organisation is under strain, it becomes harder to devote the appropriate resource to identifying and supporting individual aspirations. However, this is precisely the time when such activity is most needed, not least to support the retention of experienced people.

Observation on career management within the judiciary

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

Chapter 3

Judicial salary structure and placement of posts

Introduction

- 3.1 The Terms of Reference for the Major Review, agreed by the Lord Chancellor and by the Advisory and Evidence Group (AEG), asked us to:
- Determine whether the current structure of judicial salary groups is fit for purpose, in the light of future plans for the justice system in each jurisdiction, and of recent and expected changes in the nature of work undertaken at different levels.
 - Determine whether the structure of judicial salary groups can be simplified.
 - Consider whether there are newly created and transferred judicial posts which need to be allocated to salary groups.
 - Consider evidence on the appropriate grouping of judicial posts.
 - Consider how best to reward and incentivise judicial leadership.
- 3.2 In doing this work, the SSRB was asked to look at a broader group of the judiciary than in previous Major Reviews. The requested coverage was not only the SSRB's standard judicial group, comprising salaried judicial office holders in the courts and tribunals of the United Kingdom, previously handled in separate reviews. It also included fee-paid judges with comparators within the salaried judiciary. In addition, at the request of the Scottish government and the Lord Chancellor, the Review was asked to make recommendations on judges in the devolved Scottish tribunal system and on the newly created post of Summary Sheriff.

Our evidence-gathering process and methodology

- 3.3 At the outset of this Major Review, we had to take a decision on how to approach the recommendations about job placements that had been made by the previous Major Review in 2011. These recommendations were sent to the new Coalition government at a time when public spending was being reduced, and virtually none of them have been accepted or implemented. We decided that, whatever the merits of the recommendations of our predecessors seven years ago, we had to start from the 2017 *status quo*, and form our own views based on the evidence.
- 3.4 We also knew, from early visits and discussions, that some members of the judiciary did not support the 2011 recommendations, and considered that the process that had produced them was not robust. In particular, we heard comments that the formal job evaluation exercise in the 2011 Major Review, where job descriptions were submitted only by the particular category of judge being evaluated, had led to inconsistencies in how posts were described. Job evaluation is a specialist discipline, and some judges felt that they could have made stronger cases for their own positions if they had been more experienced in filling in the forms.
- 3.5 In addition, there is an inherent methodological problem in using a job evaluation system for judicial posts. A job evaluation exercise typically consists of two parts: one analysing responses from the employer side and one from the employee. However, there is no natural 'employer' for a judicial appointment, so the job evaluation process cannot be applied with the same levels of confidence as in other contexts. As the 2011 Major

Review pointed out, in the process that was used then “in effect, judicial office holders evaluated their own jobs”.¹⁰⁰

3.6 Accordingly, we gave careful consideration to the evidence-gathering process that we should adopt in this Major Review, consulting closely with the AEG. We eventually decided on a thorough, multi-level process, seeking maximum involvement from the judiciary across a range of levels. The five stages (A-E) of this process are described below.

A – Job Placement Research Exercise

3.7 This was the first step, co-ordinated and managed by the Institute for Employment Studies (IES), who were contracted following an open competition. The relevant judicial offices and/or government departments in the different UK jurisdictions were invited to provide job descriptions for every post in scope of the Major Review. IES then used these job descriptions to produce a standard set of job summaries. These were structured to reflect criteria used in previous SSRB Major Reviews, and agreed by the AEG as appropriate for this exercise, to inform judgements about job placement. These criteria are set out in Table 3.1.

Table 3.1: Criteria for the Job Placement Research Exercise

Criteria	Description
Jurisdiction	The range of court participation, the nature of jurisdiction, and the types of cases heard.
Complexity and diversity of cases	The depth of specialisation and the complexities of the facts and the law, including the length of hearings and the number of matters typically handled within a day.
Impact and sensitivity of decisions	The impact of decisions on the public and on litigants. This includes the extent to which decisions are binding on lower courts.
Court craft	The skills required to conduct judicial proceedings, including case management, communication skills, dealing with information and delivering judgments.
Leadership and management	Responsibility for the leadership and management of a jurisdiction, chamber or court/tribunal centre. Leadership encompasses all the management and leadership that judicial office holders may be required to carry out, including responsibilities for other judicial office holders, for the listing and allocation of cases, for practice rules/directions, and for liaison with the court services and others on policy matters.

3.8 This work proved much more complicated and challenging than we had been led to expect. It gradually emerged that, for many judicial posts, there was no agreed job description, and that there was little consistency between the job descriptions that did exist. It also became clear that there was no agreement as to the precise posts that the Review was being asked to cover. It was not until November 2017 that a final list of posts was eventually agreed with the relevant executives, and the final validations of the summaries took a further month. This led to a regrettable delay in the overall Major Review timetable. We comment in Chapter 2 on the wider management issues that we believe are illustrated by the difficulties that we encountered.

¹⁰⁰ 33rd Annual Report on Senior Salaries 2011 (paragraph 4.21). See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228587/8026.pdf

3.9 Given concerns over the quality of the existing job descriptions, we thought it essential that these summaries were endorsed by knowledgeable judges as sufficiently accurate for the purposes of the job placement exercise. In accordance with the responsibilities envisioned by the Constitutional Reform Act (CRA) 2005, the Judicial Executive Board¹⁰¹ gave invaluable assistance for posts in England and Wales; other senior members of the judiciary played this role in Scotland, Northern Ireland and Wales for courts and devolved tribunals (where they were able to do so).

*B – The Judgement Panel Exercise*¹⁰²

3.10 The next step was to seek structured comment from the judiciary on whether the posts described in the job summaries were in the appropriate salary group. We did this through a ‘Judgement Panel’ exercise, arranged and facilitated by IES. A cross section of 25 members of the judiciary¹⁰³ from all levels of the existing salary structure were nominated by the Judicial Office, and its equivalents in the devolved administrations, to serve on the Judgement Panel. This panel worked in two stages: first, with each individual member making their own initial assessment, and then with a collective Judgement Panel meeting.

3.11 Panel members were asked, for all posts in scope of the Review:

- To identify any judicial posts that should be moved to a different salary group within the existing structure because the salary group where they currently sit did not reflect the judicial roles and responsibilities that they currently undertake.
- To identify judicial posts that exercise leadership responsibilities that were not at present appropriately recognised through their salary group position.
- For any judicial role not currently assigned to a salary group, to give a view on what the appropriate group should be. For fee-paid posts, the Judgement Panel was asked to consider the appropriate salaried comparator.

3.12 The initial assessments were completed in early February 2018, and the Judgement Panel meeting was held on 2 March 2018, chaired by the Director of the Office of Manpower Economics, with expert support from IES.

3.13 The Judgement Panel members were invited to take account of the following in their discussions:

- Each of the existing salary groups is designed to encompass a broad range of posts. When deciding on the placement of a post, the Panel should consider whether it fits within the broad range of work covered by the group.
- The Panel was told that we would consider any suggestions for the creation of new salary groups but that it should be mindful of the need to keep the overall structure as simple as possible.
- The Panel should form a view on the placement of posts without regard to the levels of pay that may be necessary to recruit and retain people of the required calibre. It was made clear to the Panel that we would determine salary levels separately.

¹⁰¹ Chaired by the Lord Chief Justice. Members include the Master of the Rolls, each of the Heads of Division, the Senior President of Tribunals, the Senior Presiding Judge, and other senior judges with specific leadership responsibilities.

¹⁰² Full details of the Judgement Panel membership and the process followed are in the published IES Report, *Major Review of the Judicial Salary Structure; Report on the placement of judicial posts*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

¹⁰³ Including a representative from each of the Scottish and Northern Ireland governments to advise on posts in their respective tribunals.

- When assessing the placement of a post, the depth and breadth of judicial responsibilities should be considered. For example, a post that covers a range of different types of case might be considered equivalent to a post that requires a deep specialism in a single area.
- In general, judicial post holders are experiencing more demanding and complex workloads. Therefore, consideration of a change to a post's salary group should not look at the post in isolation, but take account of how the demands of that post compare with those of other posts in its current salary group.

3.14 The recommendations and observations from the Panel were discussed by the SSRB's Judicial Sub-Committee on 12 and 15 March 2018, and by the full SSRB on 5 April 2018. We take this opportunity to thank publicly all members of the Judgement Panel for the help that they gave us.

C – The Call for Evidence

3.15 In parallel with the Judgement Panel process, the SSRB issued a Call for Evidence¹⁰⁴ in January 2018. Responses were requested by 28 February. Questions 9-12 invited comments on leadership, including how well the current system incentivised and rewarded judicial leadership, and whether there were areas of substantive skills that were insufficiently recognised in the current judicial salary structure. We received 124 responses to the Call for Evidence, of which 47 were from judicial associations and representative groups, 75 were from members of the judiciary, and two were from members of the public.

D – Consultation document

3.16 Having considered the Judgement Panel report, and the responses to the Call for Evidence, the SSRB issued a further Consultation document on Job Placement on 20 April 2018.¹⁰⁵ This contained our initial proposals on a future judicial salary structure. It indicated some posts which might move from their current salary groups, on the basis of job summaries and the relative weight of the post, and discussed other posts where suggestions for a move had been made. It also presented propositions on how, in future, the pay system might reward and incentivise judicial leadership, while also becoming simpler and more flexible. We received 121 responses to this Consultation, of which 43 were from judicial associations and representative groups, 76 were from members of the judiciary, and two were from members of the public.

E – Oral evidence

3.17 Finally, between April and June 2018, we took oral evidence on the full range of Major Review issues, including the proposals in the Consultation document. A list of the individuals and representative organisations who participated is given in Appendix J.

Key principles

3.18 The process described above has provided us with a wealth of evidence, both about particular posts and the judicial pay structure in general. It would be wholly impractical to summarise it all in this Report, but we are extremely grateful to all the associations and individuals who responded to us. We have ensured that the judicial offices have copies of the relevant job summaries and we trust that the judiciary will find these of help in the future management and leadership roles they need to play.

¹⁰⁴ The Call for Evidence document is available at <https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-call-for-evidence>

¹⁰⁵ The Consultation document is available at <https://www.gov.uk/government/consultations/major-review-of-the-judicial-salary-structure>

3.19 From our early visits and discussions with members of the judiciary all over the country, and with the relevant governments, we identified some overarching principles to guide our final judgements on job placement and salary structure. These were seen by most of our interlocutors as fundamental to a robust judicial pay structure. These principles are not self-evident, and we regularly tested them during the process of evidence gathering. While we were always open to them being challenged, these principles were agreed with, and supported by, the judiciary and governments across the United Kingdom as being the right foundations upon which to build. We have proceeded accordingly and summarise these principles below.

There should be no inherent differentiation between court and tribunal judges

3.20 There should be no inherent distinction between the work of ‘courts’ and ‘tribunals’ so that judicial salary groups need, as now, to cover both court and tribunal judges. For example, the current salary group 7 covers both District Judges, and judges of First-tier Tribunals. It was thought essential that the salary structure place court and tribunal judiciary within the same broadly comparable groups in order to promote parity of esteem and encourage diversity (tribunal judges are more likely to have been solicitors). It also facilitates judges moving between the courts and tribunals where appropriate, which is becoming more common and may become more so in future, as the judiciary operates more flexibly.

Judges at the same level should be paid the same, whatever their area of law

3.21 Judges at the same level should generally be paid at the same rate, regardless of the area of law in which they operate. A First-tier Judge in the Tax Tribunal should, as now, be paid the same as a First-tier Judge in the Immigration and Asylum or Social Security and Child Support Tribunals. This facilitates collegiality and flexibility; a judge is expected to be able to hear cases in different jurisdictions, as necessary.

Judges should be paid at a spot rate

3.22 Judges are paid at a spot rate with no pay progression based on time served or experience gained (which is a pay model that applies in some of our other remit groups). Experience alone does not qualify one judge to be paid more than another at the same level. This is part of the tradition of judicial cohesiveness, whereby there should be no suggestion that a judge might be ‘rewarded’, in pay terms, for reaching a particular decision or handling a particular caseload.

Geographical location should not affect judicial pay

3.23 Judges at the same level should be paid the same, wherever they are based. The pay structure should not differentiate for labour markets or costs of living, either within England¹⁰⁶ or between judges in Scotland, Wales or Northern Ireland (while recognising that, in some cases, judges in the different jurisdictions may have roles that sound similar but are, in fact, distinctive).

Full-time, part-time, salaried and fee-paid judges should be treated on the same basis

3.24 Full-time, part-time, salaried and fee-paid judges who do the same job should be in the same salary grouping and paid at the same *pro rata* rate in accordance with recent legal rulings.¹⁰⁷

¹⁰⁶ The one exception is that London weighting is currently paid to group 7 judges in London. We discuss this in Chapter 5.

¹⁰⁷ See: *O’Brien v Ministry of Justice* [2013] UKSC 6 and *Miller & Others v Ministry of Justice*.

Evidence on overall judicial salary structure

- 3.25 Over the course of our evidence gathering, we heard very few claims that the basic judicial salary structure needed radical change. It was felt that each of the judicial salary groups has to encompass a broad range of work, in terms of the relative weighting on the criteria set out in the job summaries, and in terms of specialisms and leadership roles. Many of the judicial associations were concerned to maintain the basic collegiality between judges doing different work at the same level. However, we repeatedly heard that, at some levels of the judiciary, leadership roles are not satisfactorily recognised under the current system.
- 3.26 This is primarily because the existing ways of recognising judicial leadership roles are inflexible. They involve moving a post into a higher salary group – for example, from group 6.1 to group 5. This has two drawbacks. First, it makes it difficult to reward leadership positions that are not weighty enough to justify such a move, but are nevertheless important. Second, it means that judges who take roles in a higher salary group – for example, moving to take on leadership of a large court area in salary group 5 – would continue to be paid at the higher group 5 rate if they moved, several years later, to take a less demanding Circuit Bench role, which might normally have been filled by a judge in salary group 6.1.
- 3.27 This leadership issue was particularly highlighted with regard to the Circuit Bench, where the distinction between a Senior Circuit Judge (group 5) and a Circuit Judge (group 6.1) was described by the Council of Her Majesty’s Circuit Judges (CoCJ) as “no system – the [pay] arrangements have developed on an *ad hoc* basis that could not possibly be described as fair and consistent.” The CoCJ suggested that the majority of leadership judges at the Circuit Bench level are not financially rewarded at all.
- 3.28 The Lord Chief Justice of England and Wales (LCJ) and the Senior President of Tribunals, in their joint response to the Call for Evidence, said that “the areas of greatest concern [on how judicial leadership is incentivised and rewarded] are the rewards offered for Circuit Judges acting as Resident Judges, Designated Civil Judges and Designated Family Judges. These are not always fair, because only some Circuit Judges are rewarded for their leadership by being placed into group 5”. They suggested that “it would be possible to envisage a three-tier leadership allowance for these judges”.
- 3.29 We heard less evidence of a perceived need for similar leadership allowances within salary groups 6.2 and 7 (covering the District Bench and the First-tier Tribunals). However, the Report of the Judgement Panel, prepared by IES, commented: “Most of the posts that are in 6.2 have been placed there to distinguish them from group 7 posts because they have additional management responsibilities. These additional responsibilities could more effectively be replaced by an allowance. [The implication of this is that] salary group 6.2 is no longer necessary.”¹⁰⁸
- 3.30 There was also general support for the proposition that any new allowances for leadership responsibilities should apply for only as long as the office holder held the post for which the allowance had been awarded. The Report of the Judgement Panel recommended that, “where management responsibilities are undertaken on a fixed-term basis, they should be recognised through an additional allowance for the duration of that term”.¹⁰⁹ That sentiment was echoed by virtually all of the responses to the Call for Evidence, whether from associations or from individuals.

¹⁰⁸ IES Report, *Major Review of the Judicial Salary Structure; Report on the placement of judicial posts*: Executive Summary. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

¹⁰⁹ IES Report, *Major Review of the Judicial Salary Structure; Report on the placement of judicial posts*: Executive Summary. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

- 3.31 The Scottish and Welsh governments did not give us evidence about the posts that sat exclusively within their jurisdiction, many of which are in the lower level tribunals. However, we understand that delays may be occurring in the devolution of tribunals to Scotland, originally expected in 2018 or 2019. Nevertheless, the judicial leaderships in these countries were able, to some extent, to advise us.
- 3.32 The Lord Chief Justice of Northern Ireland (LCJNI) told us that, some years ago, a political decision had in principle been taken to make him responsible for the tribunals in Northern Ireland as well as the courts, but legislative time had never been found to implement it. The LCJNI was therefore unable to offer evidence on the tribunal posts there. In the absence of a Northern Ireland government, nor was anyone else.

General conclusions on judicial salary structure

- 3.33 We see no requirement for radical change to current judicial salary structures. In particular, at the level of the High Court and the Court of Outer Session and above (salary groups 1-4), the judicial salary structure is simple, and mirrors a hierarchy that culminates with the LCJ, LCJNI and the Lord President.¹¹⁰ However, below the High Court the picture becomes rather more complex.
- 3.34 Judges who sit on the Circuit Bench or in the Upper Tribunals form a single natural grouping sitting between the District Bench/First-tier Tribunals and the High Court. However, they are spread across salary groups 5 and 6.1. In particular, we observe that judges in group 5 (Senior Circuit Judges) are a mixture. Some are in visibly identifiable leadership roles, such as the President of a Tribunal Chamber. Others are in roles that have been deemed particularly demanding, such as Resident Judges or Designated Family Judges in certain locations (but not in others). Still others are among a small number of formally recognised specialist judges, such as Chancery Judges, who are appointed by the Judicial Appointments Commission (JAC).¹¹¹ However, for many posts, there does not appear to be a consistent rationale for why they are in group 6.1 rather than group 5.
- 3.35 Similarly, salary groups 6.2 and 7 cover judges who sit in the courts of first instance (District Judges, First-tier Tribunal Judges, Employment Judges). We note that the number of judges in group 6.2 is small, and that these posts are mainly specialist tribunal or tribunal leadership posts.
- 3.36 It seems clear from the evidence that there is a perceived need for a more flexible pay system, enabling greater recognition for judges who take on leadership roles, for as long as they hold such roles. The need is most immediate in the salary groups 5 and 6.1, and 6.2 and 7.

Recommendations about basic group structures

- 3.37 We are therefore recommending changes that would simultaneously simplify the salary structure for these groups and support better recognition of leadership. In order to distinguish this new structure from the current one, we are using Roman numerals I, II, III etc., to denote the new salary groups.

¹¹⁰ We had some representations that the Senior President of Tribunals should be considered co-equal with the Lord Chief Justice but in the absence of clear evidence or a relevant statutory basis for this, we have not taken this forward. The creation of Senior President of Tribunals post is discussed in the 33rd Annual Report on Senior Salaries 2011 (paragraph 4.13). See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228587/8026.pdf

¹¹¹ Throughout, where the JAC is mentioned this includes equivalents in devolved administrations: the Judicial Appointments Board for Scotland (JABS) and Northern Ireland Judicial Appointments Commission (NIJAC).

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

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

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

3.38 No changes to judicial job titles or status, or to terms of appointment, are envisaged as a consequence of the implementation of these recommendations. All supplements would be pensionable.

Supplements within new group V

Recommendation 4: We recommend that there should be four levels of leadership supplement in group V, plus a 'base rate', making five spot rate pay points in all.

3.39 In making the above recommendation, we are of the view that:

- All Senior Circuit Judges who are currently in group 5 should, at a minimum go onto the third supplement point – one below the maximum (point V.3).
- Judges in the new group V who have leadership responsibilities for judges who are themselves at the third supplement point in group V should be placed on the fourth supplement point – the maximum (point V.3+).
- Judges currently in group 6.1 should be paid at the base rate, or on the first (V.1) or second points (V.2), depending on whether their post attracts a leadership supplement. They should retain that leadership supplement only for as long as they undertake these leadership responsibilities.
- Other judges who are appointed to group V in future should be paid on base rate, or whichever of the four leadership supplement points is appropriate for their post. They should retain any leadership supplement only for as long as they undertake these leadership responsibilities.

3.40 It is already recognised that the contribution of a small number of judges, such as the Chancery and Old Bailey Judges who handle the most complicated cases requiring scarce specialist knowledge, should be recognised in remuneration.

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

3.41 We wish to be clear that we are not recommending here the introduction of a general supplement for the seriousness or difficulty of cases. Nor is the aim to introduce any generalised presumption of recognising specialisms. We have heard strong

representations that a collegial judiciary, in which all areas of work are valued, is important to the smooth functioning of the system.

Supplements within new group VI

Recommendation 6: We recommend that there should be three levels of supplement within group VI, plus a 'base rate', making four spot rate pay points in all.

3.42 In making the above recommendation, we are of the view that:

- Judges currently in group 6.2 (unless their post moves as a result of our recommendations) should be on the third (maximum) supplement (point VI.3).
- Judges in group 7 should be paid at the base rate (VI.base), or on the first (VI.1), second (VI.2) or third supplement points (VI.3), depending on whether their post attracts a leadership supplement. They should retain that leadership supplement only for as long as they undertake these leadership responsibilities.
- Other judges who are appointed into group VI in future should be paid on base rate, or whichever of the three supplement points is appropriate for their post. They should retain any leadership supplement only for as long as they undertake these leadership responsibilities.

A new group VII

3.43 At present, there is no recognised judicial salary group below group 7. Hence the implication is that any judicial post must be at the level of a District Judge or Judge of the First-tier Tribunal.

3.44 It seems to us that there is an unhelpful lack of flexibility here. We do not think it is our role to try to examine in detail the demands on, for example, the Parking Adjudicator (Scotland), nor to take a view on the salary that the post should attract. We believe that task should rest with the relevant judicial leadership in discussion with the relevant government executives, in keeping with the objectives of the CRA 2005 and its counterparts in the devolved administrations. However, it seems to us very possible that the weight of these jobs is below that of current group 7 and that a new group is needed for these posts.

Recommendation 7: We recommend the creation of a new group VII, sitting below the new group VI.

3.45 This new group VII could accommodate any judicial posts that are not currently allocated to a salary group, but which appear to the judicial leaderships and relevant government executives to be of a lower weight than group VI. We suggest two spot rates of pay to provide a structure. While we do not have enough evidence to allocate posts to either of these spot rates, we do believe that having two published rates may help reduce pay variability between different devolved tribunals. We were struck by the number of discrete pay rates that did not seem to have a strong rationale, particularly on our visits to the devolved administrations.

3.46 Taking all of the above into account, the recommended salary structure is as follows.

Table 3.2: Recommended salary structure for England and Wales, Scotland and Northern Ireland

New salary group	Current salary group	Example England and Wales and UK tribunals post	Example Scotland post	Example Northern Ireland post
I	1	Lord Chief Justice of England and Wales		
I.I	1.1	President of the Supreme Court Master of the Rolls	Lord President of the Court of Session	Lord Chief Justice of Northern Ireland
II	2	Chancellor of the High Court	Lord Justice Clerk	
III	3	Lord/Lady Justice of Appeal	Inner House Judge of the Court of Session	Lord/Lady Justice of Appeal
IV	4	High Court Judge	Outer House Judge of the Court of Session	High Court Judge
V Additional leadership supplements may be paid at this level	5 and 6.1	Senior Circuit Judge Upper Tribunal Judge Circuit Judge Chamber Presidents of First-tier Tribunals	Sheriff Principal Sheriff Chairman Scottish Land Court	County Court Judge President Lands Tribunal (Northern Ireland)
VI Additional leadership supplements may be paid at this level	6.2 and 7	First-tier Tribunal Judge District Judge Employment Judge	Summary Sheriff Legal member Pensions Appeal Tribunal	District Judge Coroner Employment Judge Legal member Appeal Tribunals
VII	New group		Adjudicator, Parking and Bus Lanes	Adjudicator, Northern Ireland Traffic Penalty Tribunal

Implementation of, and criteria for, leadership supplements

3.47 We are assuming that, if our recommendations are accepted, no present member of the judiciary would see a reduction in their current base pay.

3.48 Implementation of the leadership supplements can only take place once transparent criteria for their award have been agreed. We believe that it is for the judicial leaderships across the United Kingdom to finalise these criteria, and to take decisions about which posts should attract which supplements. This is a logical consequence of the expectations that were placed on the judicial leaderships in the CRA 2005, and their counterparts in

the devolved administrations. We do not envisage any increase in the number of judicial posts for which JAC appointment is required.

- 3.49 In oral evidence, we sought agreement from all the heads of the United Kingdom judiciary that they see it as their responsibility to finalise the award criteria for supplements, to agree the specific posts that should be eligible, and to manage implementation. We were pleased to receive this confirmation. They indicated that they would welcome a clear recommendation that they do so.

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

- 3.50 Many of the respondents to our Consultation were concerned about the criteria that might apply for leadership supplements. In order to illustrate the sort of considerations that we think might be taken into account, we set out our initial thoughts below.
- 3.51 Leadership supplements should apply in circumstances where a judicial post holder has management responsibilities for the work of other judges or magistrates. A supplement is not intended to reward activities which are considered core aspects of the judicial role, and are already rewarded in the base-level pay for that role. For example, criteria to determine eligibility for leadership supplements could include:
- The weight and complexity of the management work.
 - The number and level of judges for whom a judge has leadership responsibility.
 - The type of management responsibilities exercised (e.g., the extent to which the post holder is responsible for managing the flow of work, issuing guidance, organising training, and offering individual support, advice, and pastoral care).
 - Any substantial additional leadership obligations which the post holder is expected to undertake, locally or nationally, alongside their judicial responsibilities.
 - Any other factors which make the post holder's leadership role more complicated than would be the case if, for example, the judges were co-located rather than spread over a large region.

Possible future development of leadership supplements

- 3.52 We are making recommendations on leadership supplements for salary groups V and VI, since this is where the need seems most urgent and obvious. However, once these are established, there may be a case for considering whether any of the small number of posts that might exercise leadership in the higher judiciary are currently unrecognised. Specifically, this might enable some extra recognition to be given to a post such as, Deputy President of the Supreme Court, without needing either to create a new salary group, or to move the post into an existing higher group.

Fee-paid judges

- 3.53 In line with our overarching principles, we are not differentiating here between salaried and fee-paid judges. We see no inherent reason why fee-paid judges should not exercise leadership, which would make them eligible for a leadership supplement at the appropriate level. However, we have heard regularly on our visits that there are jurisdictions where the great majority of judges are fee paid, and where small numbers of salaried judges find themselves having to handle a disproportionate amount of management work. If such a situation exists, it would seem reasonable for the extra

leadership work undertaken by the salaried judge to be recognised through the leadership supplements.

Benefits

3.54 We consider that our recommendations deliver several benefits:

- They simplify the judicial pay structure.
- They provide flexibility and, therefore, an ability to respond more readily to future changes in the justice system.
- They provide more explicit recognition of leadership, and a more straightforward way to reward judges for taking on particular responsibilities, but only for as long as they undertake them.

Discussion and recommendations: posts proposed for moves between salary groups

General comments

3.55 We received a great deal of evidence from associations and individuals proposing that particular posts should move to higher salary groups. Some of this was fed into the Judgement Panel discussions; some into the responses to the Call for Evidence; and some into responses to our Consultation. In several instances, we were able to explore the questions further in oral evidence. At each stage, we listened carefully to the messages we received and made some modifications. However, it is inevitable in an exercise such as this that our recommendations will not give everyone the responses that they were hoping to see.

3.56 Three initial points should be made.

3.57 First, the whole of the judiciary (as with most other roles in the public sector) has seen great changes over the last ten years. Growing workloads, and more devolved responsibilities, have been features for all our remit groups over this period. In our view, evidence of extra workload would not justify a change in salary structure, unless the extra workload clearly fell disproportionately on a particular post. Therefore, for judicial roles, we have been looking for evidence that the demands of the job, *relative to other judicial jobs*, have significantly changed since the last Major Review recommendations were implemented in 2005.

3.58 Second, we have tried to get a sense of what is the norm for different judicial posts. We fully recognise that many judges, at all levels, will sometimes be faced with highly complex and demanding cases, going well beyond what they would expect to handle. However, that does not imply that all, or most, of their cases will be highly complex and demanding.

3.59 Finally, one of the main aims in our recommendations for supplements was to enable extra demands on a judicial post to be recognised without the post having to move into a different salary group. The new salary groups V and VI are broad, and the judicial leaderships will be able to differentiate posts within them, using pay supplements.

3.60 For example, **Upper Tribunal Judges** and the **Registrar of Criminal Appeals** are currently in salary group 6.1. Judges in both of these roles have an appellate function and the Judgement Panel recommended that they should move to salary group 5 on the basis of the level and significance of judicial work that these posts now cover. We agree with the reasoning that these posts are not currently appropriately placed. However, within our proposed new structure, the posts would still be in salary group V, since this

covers both the former group 6.1 and the former group 5, and it will be for the judicial leadership to determine what salary supplements they might now attract.

Posts recommended to move to a new salary group – England and Wales

- 3.61 **Surveyor members of the Upper Tribunal (Lands)** are currently in group 6.2. The evidence suggested that they do work akin to that of other Upper Tribunal Judges. We therefore recommend that they move to new salary group V, alongside other members of the Upper Tribunal.
- 3.62 **Masters and Costs Judges, and Insolvency and Company Court Judges (formerly Bankruptcy Registrars)** are currently in salary group 7. However, we received evidence from senior members of the judiciary that these posts now carry out complex and specialist work that is more comparable to that done by a Circuit Judge. We therefore recommend that they move to new salary group V.
- 3.63 **Principal Judges in the Property Chamber** are currently in salary group 6.2, and **Regional Judges in the Property Chamber** are in group 7. The evidence suggested to us that these judges' responsibilities are now akin to that of other Regional Judges, in a very specialist subject area. We therefore recommend that these posts should move to new salary group V, with an appropriate leadership supplement being applied to recognise the extra responsibility of the Principal Judges.
- 3.64 **The Chamber President of the First-tier Tribunal War Pensions and Armed Forces Compensation Chamber** currently sits in salary group 6.2. It was put to us strongly that all other First-tier Tribunal Chamber President posts sat in group 5, and that, while this Chamber was smaller than the others, there remained important leadership responsibilities for the President, which were similar those of other Chamber Presidents. Under our proposed new salary structure, the choice falls between placing this post in group VI with a leadership supplement, or in group V. On balance, we recommend placing it in group V but suggest that it should not receive the same leadership supplements that more heavily loaded Chamber President posts would merit.
- 3.65 **Salaried (Regional) Medical Members, Social Entitlement Chamber**, are currently paid below the group 7 rate. However, we were advised that the responsibilities of this post were comparable to those of the non-medical members of this Chamber. We recommend that this post be placed in group VI.

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

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

- 3.66 At the outset of the Review, we were informed that the **President of the Mental Health Review Tribunal (Wales)** was in salary group 6.2. However, we subsequently learned

that the Welsh government had, following the 2011 Major Review, moved this post into group 6.1. That would, for our current purposes, put it in group V.

Posts recommended to move to a new salary group – Northern Ireland

- 3.67 Most of these proposals follow from recommendations to move the equivalent posts in England and Wales. We did not take it for granted that changes to English posts should necessarily mean changes elsewhere; apparently identical job titles may conceal important differences in what the posts are expected to do. However, we have taken the view that, where such posts are assessed by senior judicial leadership in the relevant jurisdiction as being of the same weight, then parity should be maintained.
- 3.68 The **Masters of the Court of Judicature (Northern Ireland)** are currently in group 7, as is the **Presiding Master of the Court of Judicature (Northern Ireland)**. These posts appear comparable to the Masters and Senior Masters in England and Wales. We therefore recommend that they move to new salary group V, with appropriate leadership recognition for the Presiding Master.
- 3.69 The **Lands Tribunal post in Northern Ireland**, currently in group 6.2, appears comparable to the Surveyor Member Upper Tribunal (Lands) that is covered above. On the same logic, we recommend that this post moves to group V alongside other Upper Tribunal Judges.

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

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

- 3.70 **County Court Judges in Northern Ireland** are currently in salary group 6.1, but are paid at the rate of salary group 5, because they hear non-jury trials in terrorist cases. We were told that it was important for this arrangement to continue for as long as the non-jury trial provisions remain in force (they have been extended until July 2019). We endorse this approach.

Posts recommended to move to a new salary group – Scotland

- 3.71 There were some judicial posts, created within Scotland as part of the process of devolution of tribunals, that had never been assigned to a salary group. These included the fee-paid roles of **Chamber Presidents of the Health and Education Chamber, the Housing and Property Chamber, and the Tax Chamber of First-tier Tribunals for Scotland**. Following principles agreed by the Judgement Panel and advice from the judicial leadership in Scotland, we concluded that these posts appeared to be comparable to First-tier Tribunal Posts in the Reserved Tribunals, and therefore recommend that they belong in our new salary group V.
- 3.72 In addition, we supported the Judgement Panel's recommendation that the salaried posts of **Legal Member, the Lands Tribunal for Scotland** should move to new salary group V and that the role of **Member of the Scottish Land Court** should be in salary group VI.
- 3.73 We were asked to look in particular at the new role of **Summary Sheriff**. On the basis of the job summary provided, and the advice of the Judgement Panel, this post appears broadly comparable to other First-tier jurisdiction posts. On that basis, we recommend it be placed in salary group VI.

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

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

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

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

Posts where the SSRB has decided, having had significant representations, not to propose a move to a new salary group

Employment Judges

- 3.74 **Employment Judges** are currently in salary group 7, along with District Judges and Judges of the First-tier Tribunal. We had many representations from them that they should move, either to salary group 6.2 (as recommended by the 2011 Major Review) or to salary group 6.1, alongside Circuit Judges. The arguments centred around the high level of complexity and technicality in many employment law cases, including the impact of European law, and the potentially far-reaching effects of their judgments in terms of financial and management implications. We acknowledge that there are some extremely sensitive and complex employment law cases.
- 3.75 However, we did not see strong evidence that such cases were typical of the daily work of an Employment Judge. We noted that the majority of Judgement Panel members did not recommend a move. This is because the work of Employment Judges was not in essence different from that of other First-tier jurisdictions. It was agreed that Employment Judges certainly handle a specialist area of law, but a First-tier Tribunal Judge deciding immigration or mental health matters could also be handling very complicated cases that required considerable specialist knowledge. Similarly, a first instance judge handling family cases could be managing litigants in person, against highly stressed backgrounds, with enormous effects on individuals. A first instance judge in tax or pension tribunal cases would have to address complex and weighty statute and regulation, and could face cases where both sides were represented by Queen's Counsel and a seemingly 'technical' decision could have large financial repercussions. District Judges are typically less specialised, but cover a broader spectrum of cases and would therefore need to be familiar with a wider range of legislation, and some may handle very serious cases.
- 3.76 We concluded that the case was not sufficiently strong for Employment Judges to be differentiated from other first instance judges to such a degree as to warrant placing them in a separate salary group. It would, under our new salary structure, be open to the tribunals leadership to consider designating particular Employment Judges (or indeed other first instance judges) to hear the most complex cases, and to recognise this through appropriate salary supplements within group VI.

Vice-Judge Advocate General and Assistant Judge Advocate General

3.77 Significant representations have been made to us from within the Judge Advocate General organisation about the placement of the **Vice-Judge Advocate General** and **Assistant Judge Advocate General** posts, currently in groups 6.2 and 7. These judges oversee the specialised area of Courts Martial and have argued that much of what they do is more akin to Circuit Judge level work than to District Judge level work. We heard evidence that they could hear some significant and weighty cases, and that some incumbents also sat as Circuit Judges. However, as with Employment Judges, we concluded that the evidence was not strong enough to distinguish the Judges Advocate General from all other First-tier Tribunal Judges in terms of the cases that they were normally expected to handle.

Sheriffs Principal (Scotland)

3.78 We had representations that the **Sheriffs Principal** post might belong alongside Judges of the Court of Outer Session in group IV because of its broad responsibilities, including a new appellate function. However, after discussion and having examined the job summaries, we concluded that the weight of responsibility and jurisdiction of this role made it closer to that of Senior Circuit Judges in England and Wales than to Judges of the Court of Outer Session or High Court.

Deputy Senior District Judge (Magistrates' Courts) (England and Wales)

3.79 The Judgement Panel proposed that the post of **Deputy Senior District Judge (Magistrates' Courts)** should move from its current group 6.2 to group 6.1. This would equate to a move to the new group V. Representations about this post in response to Consultation focussed on the significant leadership weight of the role when compared to other roles in the same salary group (VI). We considered this carefully. On balance, we conclude that these leadership responsibilities could be adequately recognised if the post were in group VI, alongside other District Judge posts, but paid the highest level of leadership supplement.

District Judge Magistrates' Courts (Northern Ireland)

3.80 The **District Judge Magistrates' Courts (Northern Ireland)** post was proposed for a move to group V from group VI on the basis of the judges' dual responsibility to sit as Deputy County Court Judges (i.e., at group V level). We know that this case is subject to ongoing litigation in Northern Ireland (where the District Judges claim a right to the higher level of pay when they sit at the higher level) and that this litigation needs to run its course. We observe that 'sitting up' is common across jurisdictions, and that moving these District Judges to a higher salary group on these grounds alone could set a precedent with wider implications.

Post placement recommendations

3.81 Table 3.3 below summarises all the salaried posts for which a salary group move is recommended.

Table 3.3: Recommendations for changes in salary group post placement: salaried posts

Post title	Current placement (current salary structure)	Proposed placement in proposed new structure
England and Wales and UK Tribunals		
Chamber President of the First-tier Tribunal War Pensions and Armed Forces Compensation Chamber	6.2	V
Insolvency and Company Court Judge (Bankruptcy Registrar)	7	V
Masters and Cost Judge (England and Wales)	7	V
Principal Judge, First-tier Tribunal, Property Chamber – Land Registration	6.2	V
Regional Judge, Property Chamber	7	V
Surveyor members, Upper Tribunal (Lands)	6.2	V
Salaried (regional) medical members, Social Entitlement Chamber	Currently paid below the current salary group 7 rate	VI
Scotland		
Legal Members, the Lands Tribunal for Scotland	6.2	V
Member of the Scottish Land Court	Currently paid below the current salary group 7 rate	VI
Northern Ireland		
Presiding Master of the Court of Judicature (Northern Ireland)	7	V
Masters of the Court of Judicature (Northern Ireland)	7	V
Member, Lands Tribunal (Northern Ireland)	6.2	V

3.82 Tables showing the recommended placement of all posts in scope of the Major Review are below. In each table, judicial post holders are lists listed in alphabetical order by their new salary group.

Table 3.4: Salaried judicial post holders in England and Wales and UK Tribunals

New salary group	Post	Current salary group
I	Lord Chief Justice of England and Wales	1
I.I	Master of the Rolls	1.1
I.I	President of the Supreme Court	1.1
II	Chancellor of the High Court	2
II	Deputy President of the Supreme Court	2
II	Justice of the Supreme Court	2
II	President of the Family Division	2
II	President of the Queen's Bench Division	2
II	Senior President of Tribunals	2
III	Lord/Lady Justice of Appeal	3
IV	High Court Judge	4
V	Chamber President of the First-tier Tribunal, War Pensions and Armed Forces Compensation Chamber	6.2
V	Chamber Presidents of First-tier Tribunals	5
V	Circuit Judge (leadership)	6.1
V	Circuit Judge (non-leadership)	6.1
V	Circuit Judge of the Employment Appeals Tribunal	5
V	Deputy Chamber President, Health, Education and Social Care Chamber	6.1
V	Deputy Chamber President, Upper Tribunal Lands	6.1
V	Insolvency and Company Court Judge (Bankruptcy Registrar)	7
V	Judge Advocate General	5
V	Judge of the First-tier Tribunal (Social Entitlement Chamber) and Deputy Judge of the Upper Tribunal	5+
V	Masters and Cost Judges	7
V	President, Employment Tribunals (England and Wales)	5
V	President, Employment Tribunals (Scotland)	5
V	Principal Judge, First-tier Tribunal, Property Chamber – Land Registration	6.2
V	Regional Employment Judge	6.1
V	Regional Judge	6.1
V	Regional Judge, Property Chamber	7
V	Registrar of Criminal Appeals	6.1
V	Senior Circuit Judge (leadership)	5
V	Senior Circuit Judge (non-leadership)	5
V	Senior District Judge (Chief Magistrate)	5
V	Senior Masters and Registrars	6.1
V	Surveyor Members, Upper Tribunal (Lands)	6.2

New salary group	Post	Current salary group
V	Upper Tribunal Judge	6.1
V	Vice President of the Upper Tribunal (Immigration and Asylum Chamber)	5
V	Vice-President, Employment Tribunal (Scotland)	6.1
VI	Assistant Judge Advocate General	7
VI	Chief Medical Member, First-tier Tribunal	7
VI	Deputy Regional Judge, Property Chamber	7
VI	Deputy Regional Valuer, Property Chamber	7
VI	Deputy Senior District Judge (Magistrates' Courts)	6.2
VI	Designated Judge, First-tier Tribunal, Immigration and Asylum Chamber	6.2
VI	District Judge	7
VI	District Judge (Magistrates' Courts)	7
VI	Employment Judge	7
VI	Judge of the First-tier Tribunal	7
VI	Salaried (Regional) Medical Members, Social Entitlement Chamber	Other
VI	Vice-Judge Advocate General	6.2

Note: Includes posts which are the responsibility of the Senior President of Tribunals including tribunals in England and Wales and, in some cases, Northern Ireland and Scotland.

Table 3.5: Fee-paid judicial post holders in England and Wales and UK Tribunals

New salary group	Post
III	Lord/Lady Justice of Appeal (sitting in retirement) England and Wales
IV	High Court Judge (sitting in retirement) England and Wales
IV	Deputy High Court Judge England and Wales
V	Deputy Circuit Judge (sitting in retirement)
V	Deputy Insolvency and Company Court Judge (Deputy Bankruptcy Registrar)
V	Deputy Judge Upper Tribunal (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)
V	Deputy Master and Cost Judge
V	Recorder
V	Surveyor member (Chair only) Upper Tribunal Lands
V	Upper Tribunal Judge (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)
VI	Deputy District Judge
VI	Deputy District Judge (Magistrates' Court)
VI	First-tier Tribunal Judge (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)
VI	Judge of the Employment Tribunal (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)
VI	Legal Chair Criminal Injuries Compensation Appeals Panel
VI	Legal Chair National Security Certificate Appeals Tribunal (Northern Ireland)
VI	Non-legal Chair Criminal Injuries Compensation Appeal Panel
VI	Temporary Assistant Judge Advocate General
VI	Valuer Chair, First-tier Tribunal (Property Chamber) Residential Property

Note: Includes posts which are the responsibility of the Senior President of Tribunals including tribunals in England and Wales and, in some cases, Northern Ireland and Scotland.

Table 3.6: Salaried judicial post holders in Scotland

New salary group	Post	Current salary group (salaried judges only)
I.I	Lord President of the Court of Session	1.1
II	Lord/Lady Justice Clerk	2
III	Inner House Judges of the Court of Session	3
IV	Outer House Judges of the Court of Session	4
V	Chairman, Scottish Land Court/President, Lands Tribunal for Scotland	5
V	Sheriffs Principal	5
V	Sheriffs	6.1
V	Deputy Chair of the Scottish Land Court	6.1
V	Legal Members, Lands Tribunal for Scotland	6.2
VI	Surveyor Members, Lands Tribunal for Scotland	6.2
VI	Summary Sheriff	7
VI	Member of the Scottish Land Court	Other

Table 3.7: Fee-paid judicial post holders in Scotland

New salary group	Post
IV	Temporary Judge (Scotland)
IV	Re-employed former Judge (Scotland)
V	Legal Member, Upper Tribunal for Scotland
V	President, Mental Health Tribunal for Scotland
V	Temporary Sheriff Principal
V	Re-employed former Sheriff Principal, Sheriff or part-time Sheriff, acting as Sheriff (Scotland)
V	Chamber President, Health and Education Chamber of First-tier Tribunal for Scotland
V	Chamber President, Housing and Property Chamber of First-tier Tribunal for Scotland
V	Chamber President, Tax Chamber of First-tier Tribunal for Scotland
V	Part-time Sheriff (Scotland)
V	Re-employed former Appeal Sheriff
VI	Legal Member, First-tier Tribunal for Scotland, assigned to Housing and Property
VI	Legal Member, First-tier Tribunal for Scotland, assigned to Tax Chamber
VI	Legal Member, First-tier Tribunal for Scotland, assigned to the Health and Education Chamber
VI	Legal Member, Police Appeals Tribunal
VI	Legal Member, Mental Health Tribunal for Scotland
VI	Legal Member, Pensions Appeals Tribunal for Scotland
VI	Part-time Summary Sheriff
VI	President, Pensions Appeals Tribunal for Scotland
VI	Re-employed former Summary Sheriff, or part-time Summary Sheriff, acting as Summary Sheriff
VII	Adjudicator, Parking and Bus Lane Adjudicators
VII	Legal Member, Scottish Charity Appeals Panel

Table 3.8: Salaried judicial post holders in Northern Ireland

New salary group	Post	Current salary group
I.I	Lord Chief Justice of Northern Ireland	1.1
III	Lord/Lady Justices of Appeal (Northern Ireland)	3
IV	High Court Judges (Northern Ireland)	4
IV	Presiding Coroner (Northern Ireland)	4
V	Chief Social Security Commissioner and Child Support Commissioner (Northern Ireland)	5
V	Recorder of Belfast	5
V	County Court Judge (Northern Ireland)	6.1
V	President, Appeal Tribunals (Northern Ireland)	6.1
V	President, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	6.1
V	President, Lands Tribunal Northern Ireland	6.1
V	Social Security and Child Support Commissioner (Northern Ireland)	6.1
V	Presiding Master of the Court of Judicature (Northern Ireland)	7
V	Masters of the Court of Judicature (Northern Ireland)	7
V	Member, Lands Tribunal (Northern Ireland)	6.2
VI	Vice-President, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	6.2
VI	Presiding District Judge (Magistrates' Courts) (Northern Ireland)	7
VI	Presiding District Judge (Northern Ireland)	7
VI	Coroners (Northern Ireland)	7
VI	District Judge (Magistrates' Courts) (Northern Ireland)	7
VI	District Judge (Northern Ireland)	7
VI	Employment Judge (Northern Ireland)	7
VI	Full-time Salaried Legal Member of the Appeal Tribunal (Chair) (Northern Ireland)	7

Table 3.9: Fee-paid judicial post holders in Northern Ireland

New salary group	Post
III	Lord/Lady Justices of Appeal (sitting in retirement) (Northern Ireland)
IV	High Court Judge (sitting in retirement) (Northern Ireland)
IV	Deputy High Court Judge (Northern Ireland)
IV	Temporary Judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978
V	Deputy County Court Judge (Northern Ireland)
VI	President of the Pensions Appeal Tribunal for Northern Ireland
VI	Deputy President of the Pensions Appeal Tribunal for Northern Ireland
VI	President, Special Educational Needs and Disability Tribunal for Northern Ireland
VI	Chairman, Criminal Injuries Compensation Appeals Panel for Northern Ireland
VI	Chairman, Mental Health Review Tribunal
VI	Chairman, Special Educational Needs and Disability Tribunal for Northern Ireland
VI	Deputy Child Support Commissioner for Northern Ireland
VI	Deputy Coroner (Northern Ireland)
VI	Deputy District Judge (Magistrates' Court) (Northern Ireland)
VI	Deputy District Judge (Northern Ireland)
VI	Deputy Social Security Commissioner for Northern Ireland
VI	Deputy Statutory Officer (Northern Ireland)
VI	Fee-Paid Employment Judge, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)
VI	Legal Chair, Care Tribunal
VI	Legal Member of Pensions Appeal Tribunal for Northern Ireland appointed under paragraph 2 of the Schedule to the Pensions Appeal Tribunals Act 1943
VI	Legal Member, Appeal Tribunals
VI	Legal Member, Mental Health Review Tribunal
VI	President, Charity Tribunal for Northern Ireland
VI	President, Northern Ireland Valuation Tribunal
VI	Legal Adjudicator, Criminal Injuries Compensation Appeals Panel for Northern Ireland
VII	Adjudicator, Northern Ireland Traffic Penalty Tribunal
VII	Legal Chairman, Northern Ireland Health and Safety Tribunal
VII	Legal Member, Charity Tribunal for Northern Ireland
VII	Legal Member, Northern Ireland Valuation Tribunal

Table 3.10: Judicial post holders in devolved Welsh tribunals

New salary group	Post	Salaried/ fee paid	Current salary group (salaried judges only)
IV	President of Welsh Tribunals	Fee paid	
V	President Mental Health Review Tribunal (Wales)	Salaried	5
VI	Legal Chair Special Educational Needs Tribunal Wales (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	Fee paid	
VI	Legal Member Mental Health Review Tribunal Wales (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	Fee paid	
VI	President Adjudication Panel Wales	Fee paid	
VI	President of Special Educational Needs Tribunal Wales	Fee paid	
VI	President of the Rent Assessment Committees Wales	Fee paid	
VI	President Welsh Language Tribunal	Fee paid	
VI	President Agricultural Land Tribunal Wales	Fee paid	
VII	Legal Member Adjudication Panel for Wales	Fee paid	
VII	Legal member Agricultural Land Tribunal Wales	Fee paid	
VII	Legal Member of the Rent Assessment Committee Wales	Fee paid	
VII	Legal Member Welsh Language Tribunal	Fee paid	

Chapter 4

Recruitment and retention

Introduction

4.1 In this Chapter, we look at the evidence relating to judicial recruitment and retention. We consider this for the judiciary as a whole, and for particular groups of judges, and make some observations. It is important to note that recruitment into the judiciary is from the external market, and retention in practice means a serving judge making a choice about whether to remain in post until the age of 70 or to retire before then. Normally, recruitment will take place to fill vacancies caused by retirements or promotions. Workforce planning should mean these are foreseen in good time.

Workforce modelling

- 4.2 In written evidence, the Ministry of Justice (MoJ) said that planning judicial recruitment programmes was a joint responsibility between the senior judiciary, the Judicial Office (JO), the MoJ, Her Majesty's Courts and Tribunals Service (HMCTS) and the Judicial Appointments Commission (JAC). They said that the forecasting that underpinned the detailed annual plans considered changes in business demand across jurisdictions, and any efficiencies would be the outcome of court reform measures. HMCTS had traditionally adopted a forecasting model based on 80-85 per cent of sitting days being undertaken by salaried judges, with the remaining 15-20 per cent undertaken by fee-paid judges. In tribunals, the ratio was approximately 25 per cent of sitting days undertaken by salaried judges, with 75 per cent undertaken by fee-paid judges.¹¹²
- 4.3 Expanding on this in oral evidence, the MoJ said that it operated a supply and demand model for workforce planning. They considered that data on the supply side was fairly robust, with retirement dates and promotions providing this information. However, the demand side, which included the volume of cases in the courts and tribunals, was harder to predict. Until this year, the MoJ operated a policy that any judicial recruitment was restricted to a 'business critical' only basis. This changed to a 'business need' basis, but not before there had been a long absence of fee-paid judge recruitment for posts such as Recorders.¹¹³ This is demonstrated in Table 1.3 in Chapter 1.
- 4.4 In oral evidence, the Lord Chief Justice (LCJ) said that work was underway in the JO to improve workforce planning to enable longer-term projections of retirements and career profiling. This would allow it to know how many of each type of judge they would need to recruit in the future. He added that work was ongoing with the JAC to plan the number of recruitment competitions for the next five years. The LCJ acknowledged that the JO had only just implemented professional HR systems in the last three years and that there was a lot of ground to catch up.
- 4.5 We acknowledge that Scotland and Northern Ireland have their own approaches to workforce planning which reflect the specific scope and size of their jurisdictions.
- 4.6 The complement of judges is set by statute for the High Court,¹¹⁴ and by business considerations for others. It is not clear, however, how business needs have changed, and how these, plus the rate of retirements, have fed into the numbers of judges in post as set out in Tables 1.1, 1.2 and 1.3 in Chapter 1. For our analysis of recruitment and retention,

¹¹² Ministry of Justice's evidence to the SSRB 2018 (paragraph 91). See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>

¹¹³ Fee-paid members of the Circuit Bench.

¹¹⁴ This could in theory be changed. The complement of 108 is set out by the Senior Courts Act 1981 Section 4(1)(e).

it has been difficult to obtain robust data in order to understand how complement changes, retirement patterns, and vacancies fit together. The information we have is from multiple sources and is incomplete. We discuss workforce planning in more detail in Chapter 2 and reiterate here the crucial importance of timely and accurate workforce planning data.

Observations on workforce planning

We welcome the work that is now going into workforce planning. We regard this as essential.

The MoJ policy, until recently, of recruiting only for 'business critical' judicial vacancies will have affected the pipeline for recruits into the judiciary. The lack of competitions for fee-paid judges affects not only the complement of judges for those posts, but also the recruitment to the salaried judiciary, since most salaried judges will first have to spend time as a fee-paid judge.

While it is difficult to have a comprehensive picture, given the nature of the available data on recruitment and retirements, it is apparent to us that the judicial recruitment system is not yet in a steady state. The stop-start nature of recruitment in recent years has made recruitment to the judiciary more difficult than it otherwise would have been, and narrowed the field of fee-paid judges who are an important source for recruitment to the salaried judiciary.

Background – number of judges in post over time

- 4.7 We turn now to consider the judicial workforce data. Chapter 1 sets out the numbers of judges in post. Table 1.2 shows that, for the salaried judiciary, while there have been year-on-year fluctuations, the general trend has been a decrease in numbers. However, since 2016 numbers have picked up, particularly in the bottom four salaried judicial groups who hear most cases.
- 4.8 A great many cases in courts and tribunals are heard by fee-paid judges. These may be former salaried judges who have retired (who are generally able to sit as fee-paid judges for a limited period and not beyond the age of 75), or legal professionals who wish to gain some part-time experience of judicial work. It has been common in the past for fee-paid judges to use this position as a stepping stone to applying for salaried judicial posts, so the number of fee-paid judges is relevant when thinking about salaried judicial recruitment. As shown in Tables 1.3 and 1.4, the number of fee-paid courts judges, in particular Recorders, in England and Wales has shown a decreasing trend since 2010. Overall, there was a decrease in the number of fee-paid tribunals judges, albeit with fluctuations that may be linked to changes in legislation and regulations.

Judicial recruitment – general

- 4.9 This Chapter considers evidence mainly in relation to the recruitment and retention of salaried judges, about which we received the most evidence. Where possible we provide England and Wales, Scotland, and Northern Ireland data separately.
- 4.10 Judicial appointments at the most senior levels – i.e., at group 3 and above – are almost exclusively made from existing members of the judiciary. However, most other judges are recruited externally, from a labour market of relatively highly-paid individuals, usually solicitors or barristers. Appointments are made following competitions run by the JAC, and its equivalents in the devolved administrations. The key 'entry points' are:
- High Court/Court of Outer Session.
 - Circuit Bench/Upper Tribunals/Sheriffs.
 - District Bench/First-tier Tribunals.

4.11 The JAC publishes evidence annually on its recruitment activities for the year ending 31 March for England and Wales.¹¹⁵ Headline JAC data for competitions run and vacancies filled over recent years are given in Table 4.1 below.

Table 4.1: Applications for JAC exercises and recommendations made in England and Wales, 2011-12 to 2017-18

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18 ¹
Applications	5,490	4,637	5,591	2,356	2,588	2,199	2,173
Recommendations	746	597	806	310	340	290	327
Ratio of applications to recommendations	7.4	7.8	6.9	7.6	7.6	7.6	6.6 ²

Notes:

1 2017-18 data only includes exercises run between April and December 2017.

2 This ratio has decreased from previous years but a significant increase in application numbers is anticipated in 2017-18 once the Recorder exercise reports.

Source: Ministry of Justice's evidence to the SSRB 2018, Table 23, p.48. See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>. A couple of very minor inaccuracies discovered by OME have been corrected.

4.12 The Judicial Appointments Board Scotland (JABS) publishes data annually on its recruitment activities in Scotland. The headline data for competitions run and vacancies filled over recent years are given in Table 4.2 below. This shows that, at aggregate level, there is considerable interest in applying for judicial posts, albeit with some fluctuation in the ratio of applications to recommendations.

Table 4.2: Applications for JABS exercises and recommendations in Scotland, 2011-12 to 2016-17

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Applications	192	94	8	161	212	237
Recommendations	27	20	2	15	15	33
Ratio of applications to recommendations	7.1	4.7	4.0	10.7	14.1	7.2

Source: OME compilation of Judicial Appointments Board for Scotland. See: <https://www.judicialappointments.scot/publications>

4.13 The Northern Ireland Judicial Appointments Commission (NIJAC) publishes data annually on its recruitment activities in Northern Ireland. The headline data for competitions run and vacancies filled over recent years are given in Table 4.3. This shows that, at aggregate level, there is considerable interest in applying for judicial posts.

¹¹⁵ In this Chapter we rely on the data submitted to us, which reflects the position to January 2018 when we issued our Call for Evidence.

Table 4.3: Applications for NIJAC exercise and recommendations in Northern Ireland, 2011-12 to 2015-16

	2011-12	2012-13	2013-14	2014-15	2015-16
Applications	209	154	351	510	167
Recommendations	32	23	60	47	22
Ratio of applications to recommendations	6.5	6.7	5.9	10.9	7.6

Source: Northern Ireland Judicial Appointments Commission. See: <https://www.nijac.gov.uk/publications/type/annualReport>

- 4.14 Table 4.1 suggests that, at the aggregate level, the ratio of applications to recommendations has remained fairly steady in England and Wales at around seven to one. This suggests that there is still consistent interest in applying for judicial posts, at least as judged by the number of applications. The JAC evidence said that, of the 26 selection exercises run in 2016-17, 22 of these exercises identified sufficient high-quality candidates. Of the four exercises which left vacancies, two covered the High Court (one exercise specifically to recruit High Court Judges, and a second fee-paid exercise to identify judges who could be given section 9(1) authorisation to sit in the High Court). The third exercise covered Circuit Judges, and the fourth was for fee-paid drainage members of the First-tier Tribunal Property Chamber.¹¹⁶
- 4.15 The JAC also provided data for the 14 salaried exercises that reported between 1 April 2017 and 31 December 2017. In all but four of these (High Court Judge, Circuit Judge, District Judge (Civil and Family) and Salaried Judge of the First-tier Tribunal), the JAC received enough high-quality applications to fill the salaried vacancies. In respect of Circuit Judges, this represented a shortfall over two consecutive exercises, and for High Court Judges, it represented a shortfall over three consecutive exercises.¹¹⁷
- 4.16 In recent years, there has been a growing number of JAC recruitment exercises. The JAC, in written evidence, told us that the number of vacancies that they were being asked to fill for **salaried judicial posts** had steadily increased over the period 2012 to 2017. The number of vacancies for 2017-18 (part year, from April to December 2017) was already significantly higher than for any previous year.¹¹⁸
- 4.17 The JAC also oversees exercises for **fee-paid vacancies**. The JAC told us that the number of fee-paid vacancies had fallen over the period April 2012 to December 2017.
- 4.18 The JAC uses the following gradings to support the internal assessment of candidates throughout each selection exercise, categorising them as A (Outstanding), B (Strong), C (Appointable) or D (not currently selectable). The JAC told us that a grading of A-C indicates that the evidence demonstrates that the candidate is ready to take up an appointment as a judge immediately, with either no initial training or a short training programme, depending on the role in question. The JAC's primary indicator of the level of appointable candidates in a field for a given exercise is therefore the number of candidates graded A-C, or the number of vacancies left unfilled. The JAC has also used the percentage of candidates graded A-B against vacancies as an additional indicator of the strength of the field. The JAC has asked us to note that these gradings are a measure

¹¹⁶ Judicial Appointments Commission's evidence to the SSRB 2018 (paragraphs 13, 14, 27 and 28). See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>

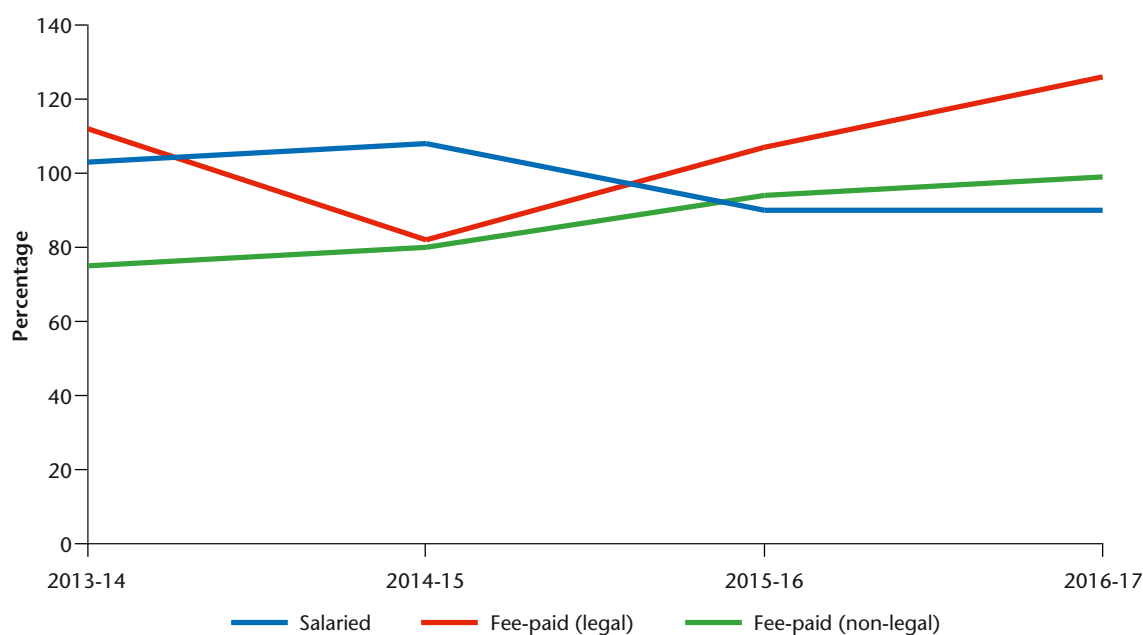
¹¹⁷ Judicial Appointments Commission's evidence to the SSRB 2018 (paragraph 29). See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>

¹¹⁸ Judicial Appointments Commission's evidence to the SSRB 2018. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-letter-2018.pdf>

of a candidate's performance in a particular selection exercise and against the specific criteria for that role at that time. They do not indicate performance upon appointment.

4.19 We discuss below how candidates for different levels of the judiciary have been assessed against these categories over time. However, at an aggregate level, there is a noteworthy difference between applicants for salaried judicial posts, and applicants for fee-paid judicial posts. As Figure 4.1 shows, for salaried judicial posts, the percentage of outstanding or strong applicants (graded A or B by the JAC) has fallen, from 103 per cent in 2013-14 to 90 per cent in 2016-17. For fee-paid posts, the same percentage has risen (from 112 per cent in 2013-14, to 200 per cent in 2016-17 for legal members¹¹⁹ and from 75 per cent in 2013-14, to 99 per cent in 2016-17 for non-legal members).

Figure 4.1: Number of A and B candidates as a percentage of total selections, 2013-14 to 2016-17



Note: This includes some posts that are out of scope for this Major Review.

Source: JAC's evidence to the SSRB 2018, Table A and B candidates compared to selections, page 13. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>. A minor inaccuracy discovered by OME has been corrected.

4.20 The JAC said that, taking into account the range in the number of fee-paid roles required from the eligible pool since 2012, there was insufficient evidence to state whether fee-paid positions were becoming a more attractive career path than the salaried judiciary. However, this is certainly a plausible hypothesis, put to us by many judges in evidence and on our visits.

Judicial recruitment – professional background of candidates

4.21 The JAC collects a limited amount of information about the professional background of successful appointments to the judiciary, principally for monitoring the diversity of those being appointed. However, the *NatCen Survey of Newly Appointed Judges 2017*¹²⁰ showed that over the period between April 2012 and September 2017, the overwhelming majority of recent joiners to the High Court had been Queen's Counsel (QC) before appointment, with three-quarters having a minimum of 25 years post-qualification

¹¹⁹ Posts where a legal qualification is a requirement for appointment.

¹²⁰ Data extracted from survey results, *NatCen Survey of Newly Appointed Judges 2017*, tables 3.4.1 and 3.4.4. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

experience.¹²¹ Almost a third of successful applicants to the Circuit Bench had been QCs before appointment and two-thirds had been Junior Counsel. Around a third of successful applicants to the District Bench (Civil and Magistrates) had been Junior Counsel before appointment.

Judicial retention and retirement – general

- 4.22 In most of our remit groups, retention and retirement would be clearly distinct categories, considered separately. For the judiciary, appointees will normally join after many years working as a legal professional, and there is a long-standing convention that they will not return to private practice before the courts. Therefore, for most judges, leaving the salaried judiciary coincides with retiring, although a retired judge may subsequently take on many paid roles, not least as a fee-paid judge (current rules allow this for a limited period and not beyond the age of 75). The mandatory retirement age for the salaried judiciary is 70, and so monitoring the age of those retiring is one yardstick to ascertain how well judges are retained.
- 4.23 The MoJ, in its written evidence, sent us data on the number of retirements of salaried judges in England and Wales, and their average age at departure, between 2011-12 and 2016-17 (the latest date for which these figures are available). These are set out in Table 4.4 below.

Table 4.4: Number of retirements of salaried judges and average age at departure in England and Wales, 2011-12 and 2016-17

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Number of retirements	126 (6 DIO, 3 MR)	145 (8 DIO, 6 MR)	91 (3 MR)	145 (7 DIO, 2 MR, 2 RFO)	138 (5 DIO)	146 (6 DIO)
Average age	66.6	66.0	66.9	66.1	66.7	67.4

Key: DIO – Death in Office, MR – Medical Retirement, RFO – Removal from Office.

Source: Ministry of Justice’s evidence to the SSRB 2018, Table 17, p.43. See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>

- 4.24 This table shows a fairly consistent number of judicial retirees, with the exception of a temporary fall in 2013-14. It also shows that the average age of retiring judges has, if anything, risen over this period; the average of 67.4 in 2016-17 is the highest shown.
- 4.25 The Judicial Office for Scotland, in its written evidence, sent us data on the number of retirements of judges in Scotland, and their average age at departure, between 2010 and 2017. These are set out in Table 4.5 below.

Table 4.5: Number of retirements of salaried judges and average age at departure in Scotland, 2010 and 2017

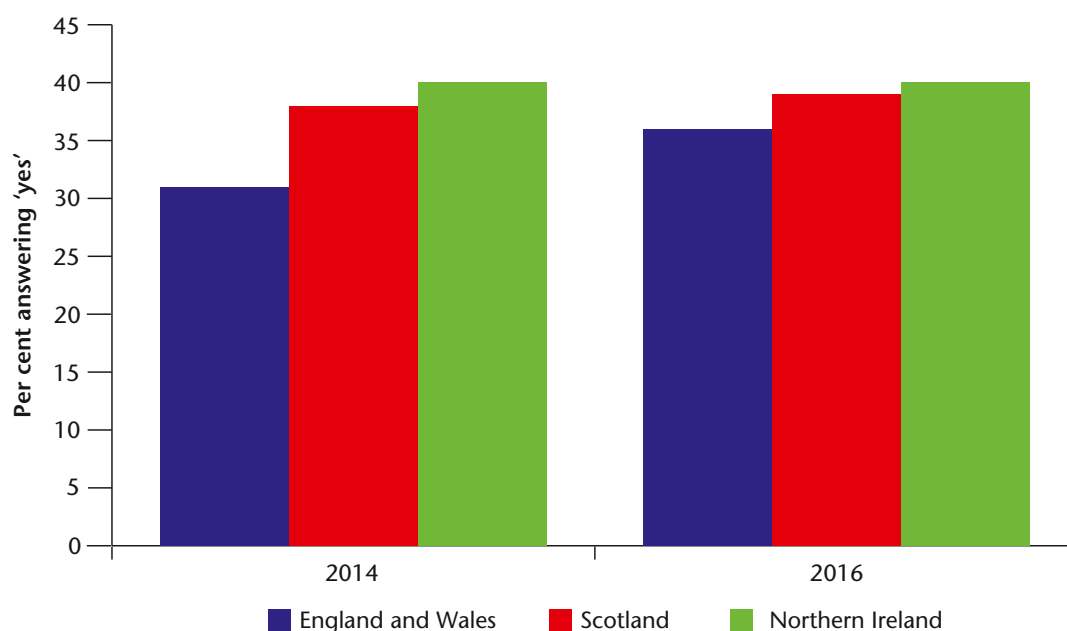
	2010	2011	2012	2013	2014	2015	2016	2017
Number of retirements	3	13	9	6	14	13	7	8
Average age	66.3	66.5	65.3	65.5	66.2	66.4	63.4	66.8

Source: Judicial Office for Scotland’s evidence to the SSRB 2018 (unpublished).

¹²¹ We recognise the need to encourage diversity within the judiciary, in particular to attract solicitors to apply for judicial appointment. However, given that the award of QC is for excellence in advocacy in the higher courts (see: <http://www.qcappointments.org>), any changes in the number of QCs applying to the judiciary gives some indication of the attractiveness of the bench to those practitioners whom the judiciary needs to be able to continue to attract.

- 4.26 This table shows some fluctuations in the number of retirements, with an increase in numbers retiring in 2014 and 2015. The average age of retiring judges has also shown some fluctuations, falling slightly in 2012 and 2016. However, overall it has remained fairly constant.
- 4.27 The Northern Ireland Courts and Tribunals Service provided aggregate data on the number of judges in Northern Ireland who retired or resigned from the judiciary. Of the 87 people who ceased to be a judge in the period 2011-2017, 13 (15 per cent) left due to early retirement and 22 (25 per cent) resigned. The average retirement age was not available.
- 4.28 The above data should be set alongside responses to the Judicial Attitude Survey (JAS). The JAS asked judges about whether they might consider leaving the judiciary before compulsory retirement age.¹²² Well over a third of judges¹²³ across the three jurisdictions in 2016 were considering leaving the judiciary early. This had increased slightly since 2014, to 36 per cent in England and Wales courts and UK tribunals, to 39 per cent in Scotland and was unchanged in Northern Ireland at 40 per cent. This is shown in Figure 4.2. Pay and pensions were identified as the factors most likely to make judges consider an early departure.¹²⁴

Figure 4.2: Percentage of judges saying they were considering leaving the judiciary early in the next five years, 2014 and 2016



Source: Judicial Attitude Surveys 2014 and 2016.

- 4.29 Tables 4.4 and 4.5 confirm that, in aggregate, many judges do leave before the age of 70. However, it shows that the number of early leavers is not generally increasing. Nor are judicial retirements generally happening earlier than they did in the recent past.
- 4.30 This could, however, change quickly. For example, in their joint response to the Call for Evidence, the LCJ and Senior President of Tribunals (SPT) said that, in the tribunals,

¹²² The statement asked in the JAS was: *Might you consider leaving the judiciary in the next five years other than by reaching full retirement age?* It is important to state that considering leaving the judiciary and actually leaving the judiciary are distinct from one another and, as such, results from this question should be treated with caution.

¹²³ That is, of those judges that would not reach full retirement age within the next five years.

¹²⁴ We note that, in practice, it may not automatically follow that pay and pensions should cause judges to retire early. For example, individuals may feel the need to work longer to ensure a target level of income in retirement.

fee-paid judges had portfolio careers and many could sit up to the maximum sitting day limit for a salaried judge. There was no remuneration benefit in being salaried, and a salaried judge who wished to expand his or her earnings could retire and almost automatically apply for and obtain fee-paid appointment. This would enable that judge to earn a separate income, in the form of a daily sitting fee, alongside his or her pension.

- 4.31 In fact, because of the way the tax system operates, many judges could work 80 per cent of full-time salaried hours and earn as much as if they had been full time.¹²⁵ If a judge's personal circumstances changed – for example, if they reached the point when they were obliged to switch from the 1993 JUPRA pension scheme to the 2015 New Judicial Pension Scheme – then it might well be rational for them to retire and take fee-paid roles.

Observation on recruitment and retention

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

- 4.32 We turn now to examine the recruitment and retention/retirement evidence for different judicial groups.

High Court recruitment and retirements

High Court recruitment: evidence from the judicial appointments bodies across the UK

- 4.33 Table 4.6 shows the JAC data for High Court recruitment exercises in England and Wales since 2012-13.

Table 4.6: Vacancies, selections and quality of candidates for the High Court in England and Wales, 2012-13 to 2017-18

	Vacancies	Number of selections	Shortfall	Applicants to post ratio (where known)	% A and B graded candidates (to selections)	Implied C graded selections ¹
2012-13	14	14	0	6.1	24 (171%)	0
2013-14	10	10	0	7.3	16 (160%)	0
2014-15	11	10	1	6.6	15 (150%)	0
2015-16²	–	–	–	–	–	–
2016-17	14	8	6	4.0	10 (125%)	0
2017-18³	25	17	8	5.2	17 (100%)	0

Notes:

1 The number of C-graded candidates selected for recommendation for appointment.

2 There was no High Court recruitment exercise in 2015-16.

3 Part year – April to December.

Sources: Ministry of Justice's evidence to the SSRB 2018, Table 24, p.49. See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>. JAC's evidence to the SSRB 2018, Annex C, p.3. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>

¹²⁵ See: paragraph 5.58.

- 4.34 High Court recruitment is distinctive in that the JAC, by agreement, does not recommend any candidate for appointment unless they are assessed as either A (Outstanding) or B (Strong). Hence, if not enough A and B graded candidates are available, High Court vacancies will not be filled and will carry forward.
- 4.35 Table 4.6 shows that this is exactly what has happened in recent years. The first unfilled High Court vacancy occurred in 2014-15. There was then a further shortfall in the 2016-17 exercise, which carried forward into 2017-18, where there was a third consecutive shortfall, of eight vacancies. The JAC told us that the number of High Court vacancies to be filled in the 2017-18 round was the highest ever, partly due to this accumulated carry over of vacancies.¹²⁶ The JO confirmed that the number of vacancies for the High Court currently stands at 14.¹²⁷
- 4.36 The JAC announced in July 2018 that it expects to launch an exercise to select High Court Judges in October 2018. They have told us that they are seeking to fill up to 25 vacancies. The JO has confirmed that this number includes the shortfall of eight from the 2017-18 exercise, plus a further 17 anticipated vacancies.
- 4.37 Commenting on the general High Court recruitment picture, the JAC noted that the number of applications has been high. There were 129 applications to the 2017-18 competition, more than in any recent High Court competition and more than twice the number of applications of 2016-17. However, the number of outstanding or strong selections has not increased sufficiently to fill all the High Court vacancies. As Table 4.6 shows, in 2017-18 the JAC selected all 17 applicants who had been assessed as outstanding or strong, but were still left with a shortfall.
- 4.38 Table 4.7 below shows the JABS data for Senators of the College of Justice recruitment exercises in Scotland since 2011-12.

Table 4.7: Applications and recommendations for Senators of the College of Justice in Scotland, 2011-12 to 2016-17

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Applications	5	30	8	0	0	25
Recommendations	0	6	2	0	0	7
Ratio of applications to recommendations	–	5.0	4.0	–	–	3.6

Source: OME compilation of Judicial Appointments Board for Scotland data. See: <https://www.judicialappointments.scot/publications>

- 4.39 The JABS informed us that the most recent recruitment exercise for the post of Senator in Scotland was in 2016-17. In that year, all seven vacancies were filled and there was no shortfall.
- 4.40 The NIJAC explained that there had been an unsuccessful recruitment round for Northern Ireland High Court positions in 2016. Three positions were advertised in the High Court; none of these posts was filled. They also said it was uncertain whether the then ongoing High Court exercise would deliver the required three appointments. We have subsequently learnt that this exercise has resulted in one post being filled and one further appointment is anticipated. We have been informed that there will need to be a further

¹²⁶ Judicial Appointments Commission's evidence to the SSRB 2018 (paragraph 30). See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>

¹²⁷ As of 14 September 2018.

recruitment exercise to fill the outstanding vacancy and any other vacancies that may arise in the intervening period.

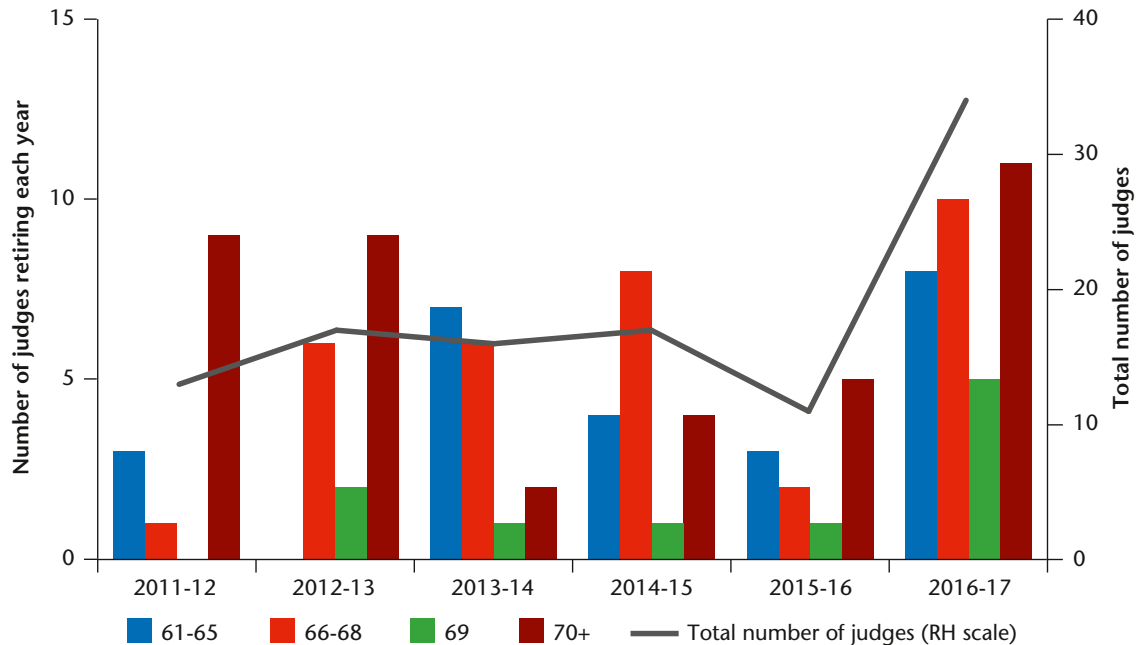
High Court recruitment: evidence from judicial representatives

- 4.41 Responses to our Call for Evidence confirmed, and gave added colour to, the data from the JAC. All respondents expressed concern about the recruitment picture for the High Court. Until very recently, appointment to the High Court was a coveted career goal for many judges. There would have been strong competition for any available vacancies. Respondents were clear that this state of affairs had now changed.
- 4.42 In his written evidence to us in March 2018, the LCJ estimated that the High Court would be 25 to 30 judges below complement by the end of the summer of 2018 and he was concerned that the then ongoing High Court Judge competition might recruit only half of the 25 judges sought given the reduced number of applications. There were no longer enough applicants from the very top echelons of the commercial sector, Chancery Bar and London solicitors' firms. He saw a prospect that the Chancery Division could have nine vacancies by next year.
- 4.43 The LCJ gave a similarly alarming picture on the non-commercial side of the profession. The flow of top criminal, family and administrative barristers to the High Court Bench had reduced considerably in the last few years. The number of QCs from these areas applying to become either High Court or Circuit Judges had reduced to a trickle.
- 4.44 The High Court Judges' Association (HCJA) commented that the recruitment shortfall coincided with the New Judicial Pension Scheme coming into effect in 2015. They felt it was "wholly improbable" that these statistics were explained by other factors. They noted a particular shortage of specialist judges, for example those able to deal with the most complex planning cases. They pointed out that the present recruitment crisis to the High Court would influence succession planning, as the High Court is the entry level into the judiciary for full-time appointees who will make up the pool for Court of Appeal and most Supreme Court appointees.
- 4.45 The President of the Family Division said that the number and quality of candidates for appointment to the Family Division had unquestionably declined in recent years. It had proved especially difficult to recruit specialists to deal with high-value divorce cases. The President added, "Unless urgent measures are taken to improve remuneration, there is a risk that the Division will be unable to function in its current form". The President of the Queen's Bench Division told us that, in the last two years, ten of the most experienced High Court Judges had retired before the mandatory retirement age of 70 and they had not been able to recruit sufficient judges to replace them.
- 4.46 For Scotland, the Lord President expressed significant concerns over recruiting sufficient numbers of new judges of a necessary calibre over the coming eight to ten years.
- 4.47 For Northern Ireland, the High Court Judges' Association Northern Ireland (HCJANI) believed that the unsuccessful recruitment round in 2016 indicated that the role was not sufficiently rewarding to give up private practice. Most successful candidates for the High Court accepted a reduction in their income, but the steady erosion in pay, followed by the pension changes, suggested that a tipping point had been passed. They described the failure then to fill three posts in a full complement of ten as being "little short of a disaster".

High Court retirement: data from the government executives and the judicial offices across the UK

4.48 Figure 4.3 summarises the retirement data for the higher judiciary over recent years.

Figure 4.3: Higher judiciary retirements by year and age in England and Wales, 2010-11 and 2016-17



Notes: Includes Court of Appeal, Heads of Division, High Court and Senior Circuit Judges.
Source: Lord Chief Justice of England and Wales and Senior President of Tribunals (unpublished).

4.49 The diagram shows that there was an increase in retirements among this group in 2016-17. Thirty-four senior judges retired in 2016-17, over three times more than the previous year (11) and double the amount in 2012-13 (17) and 2014-15 (17). The diagram also shows that 11 of these judges retired, or were expected to do so, aged 70 or over,¹²⁸ and the remaining 23 could therefore be said to have retired early. Retirements from judicial groups at above High Court level, such as the Court of Appeal, are likely to have knock-on effects on the High Court, because promotions from the High Court will be the normal way of filling these vacancies.

4.50 Since 2014-15, it has been possible to identify High Court Judges as a separate group. These data show that:

- Eleven High Court Judges retired in 2016-17, more than in 2015-16 (five) and 2014-15 (nine).
- Nine of the 11 High Court Judge retirements in 2016-17 were 'early', in that they were before 70. This compares with three early retirements in 2015-16, and five in 2014-15.

4.51 In Scotland, 14 Senators retired between 2010 and 2017. Of these, ten were under the age of 70. The median age of retirement was 67.5. In Northern Ireland, two High Court Judges retired between 2011 and 2017 (both retirements occurred in 2012). None of these were classified as early retirements.

¹²⁸ Prior to the introduction of the mandatory retirement age of 70, judges could serve until they were 75.

High Court retirement: evidence of judicial representatives

- 4.52 The LCJ and SPT informed us that they were anticipating between eight and ten High Court Judge retirements or promotions by the end of the calendar year 2018. That would mean the High Court would be running at around 16 judges below the full complement of 108. They were anticipating a further six to 12 retirements or promotions in 2019.
- 4.53 In correspondence, the LCJ drew particular attention to the additional 2016 JAS analysis conducted,¹²⁹ which showed that 47 per cent of High Court Judges said they were considering whether to “leave early”. He indicated that the results for judges with longer seniority, who were still in the Judicial Pensions and Retirement Act pensions scheme (1993 JUPRA), suggested that they were particularly likely to be considering leaving. Sixty-three per cent of JUPRA High Court Judges had signalled this, and 60 per cent of them had said that limits on pay awards would make them more likely to leave the judiciary early.
- 4.54 The LCJ wrote to us in August 2018, expressing concern that a surge in early leaver numbers was a serious possibility, based on discussions that he and others in the judicial leadership had had with High Court Judges. He wrote that, until a few years ago, the availability of fee-paid work for judges who had retired was very limited, but that now an “occasional sitting”, giving an agreeable lifestyle and some additional earnings, was readily available, in part due to the shortfalls in recruitment of salaried judges.
- 4.55 The HCJA said that cuts to remuneration and pension changes provided a strong motive to retire early over the coming five years. It believed that the trends were for more early retirements, driven by the desire to do something else in life, but also working conditions and remuneration.
- 4.56 The High Court Judges’ Association for Northern Ireland stated that, in their small jurisdiction, there was not yet any evidence available of early retirements. The retirements which created the three vacancies in the High Court were of judges who stayed until they were 70 or very close to it.

Our views in relation to High Court recruitment and retention

- 4.57 For the High Court, we examined particularly closely the possibility that the difficulties were the result of the timing of recruitment exercises. The decision not to recruit in 2015-16 undoubtedly created a larger number of vacancies to be filled in the next round and contributed to a larger proportion of the High Court Bench being in the age group where early retirements tend to occur. However, we would have expected a shortfall caused mainly by the absence of one recruitment round to have been filled over time. If the High Court Bench were attractive to applicants, there should have been a pent-up supply of candidates. That the shortfall has worsened over three successive recruitment rounds is clear evidence that High Court judicial posts are no longer as attractive as they once were.

¹²⁹ The LCJ requested UCL to conduct additional analysis from the JAS. The unpublished analysis is for all courts judiciary in England and Wales and all UK tribunals judiciary. It does not include courts judiciary in Scotland or Northern Ireland.

Observations on High Court recruitment and retirement

There is very strong evidence for recruitment difficulties in the High Court in England and Wales, and in Northern Ireland. Three successive recruitment exercises have failed to fill all the available vacancies in England and Wales. The shortfalls have accumulated and mean that, as of September 2018, the number of vacancies is 14, which is unprecedented. Further vacancies are expected this year, from promotions and retirements. Even if the judiciary improves its workforce planning, on present trends there is likely to remain a significant number of vacancies.

An increasing number of these vacancies in England and Wales have been caused by early retirements in the High Court itself and in higher courts. Nine of the 11 High Court Judge retirements in 2016-17 were 'early'. This compares with five early retirements in 2014-15, and three in 2015-16. It is not yet clear if the increase in 2016-17 is a temporary phenomenon due to the age profile of incumbents or if it marks a permanent new higher level of early retirement. The potential for High Court Judges to retire early, creating more vacancies, is a cause of serious concern among the leadership of the judiciary.

Circuit Bench and Upper Tribunal recruitment and retirement

Recruitment: evidence from the judicial appointments bodies across the UK

4.58 For group 5 (which includes Senior Circuit Judges), there were no unfilled vacancies in 2016-17 or 2017-18,¹³⁰ but the ratio of JAC-rated A and B candidates to selections has fallen from 227 per cent in 2012-13 to 100 per cent in 2017-18.¹³¹

4.59 Table 4.8 gives JAC data for recruitment of Circuit Judges in England and Wales since 2012-13.

Table 4.8: Vacancies, selections and quality of candidates for Circuit Judge recruitment in England and Wales, 2012-13 to 2017-18

	Vacancies	Number of selections	Shortfall	Applicants to post ratio (where known)	% A and B graded candidates (to selections)	Implied C graded selections ¹
2012-13	–	–	–	–	–	–
2013-14	54	54	0	5.4	64 (119%)	0
2014-15	32	53 ²	0	7.3	54 (102%)	0
2015-16	61	62	0	4.0	48 (77%)	14 (23%)
2016-17	55	44	11	3.3	25 (57%)	19 (43%)
2017-18³	116.5	104	12.5	3.4	79 (76%)	25 (24%)

Notes:

1 The number of C-graded candidates selected for recommendation for appointment.

2 After the initial 32 recommendations were made in July 2014, a further 21 recommendations were made between October 2014 and March 2015.

3 Part year – April to December.

Sources: Ministry of Justice's evidence to the SSRB 2018, Table 25, p.49. See: <https://www.gov.uk/government/publications/ministry-of-justices-evidence-to-the-senior-salaries-review-body>. A minor inaccuracy discovered by OME has been corrected. JAC's evidence to the SSRB 2018, Annex C, p.3. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>

¹³⁰ Part year – April to December.

¹³¹ Judicial Appointments Commission's evidence to the SSRB 2018, page 2 of Annex C. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>

- 4.60 The table shows how the JAC has been advertising for a rising number of vacancies. In 2017-18, they were seeking to recruit Circuit Judges for 116.5 vacancies, which was more than double the number that had been sought in the previous year. The JAC told us that a further recruitment exercise to recruit 94 Circuit Judges was currently in progress. The JAC had succeeded in appointing a considerable number of Circuit Judges, selecting 104¹³² in 2017-18. However, there have also been unfilled vacancies in two consecutive Circuit Judge competitions: 11 in 2016-17 and 12.5 in 2017-18.
- 4.61 The table also suggests that the JAC had a smaller choice of suitable applicants in the last two recruitment rounds. The ratio of applications to vacancies was lower in 2016-17 and 2017-18 than in previous years, at 3.3 and 3.4. In addition, while 79 selections in 2017-18 were graded A or B, the number of C-graded selections has been rising. In both 2013-14 and 2014-15, all Circuit Judge vacancies were filled, with no C-graded candidates selected. In each subsequent recruitment round, C-graded candidates have been selected; close to 25 per cent of selections in 2015-16 and 2017-18,¹³³ and 43 per cent of selections in 2016-17, were C-graded.
- 4.62 Table 4.9 gives JAC data for recruitment for salaried Upper Tribunal posts in England and Wales since 2012-13.

Table 4.9: Vacancies, selections and quality of candidates for salaried Upper Tribunal recruitment in England and Wales, 2012-13 to 2017-18

	Vacancies	Number of selections	Shortfall	Applicants to post ratio (where known)	% A and B graded candidates (to selections)	Implied C-graded selections ¹
2012-13	3	3	0	–	6 (200%)	–
2013-14	8	8	0	–	10 (125%)	–
2014-15	6	12	0	8.7	9 (75%)	3 (25%)
2015-16²	–	–	–	–	–	–
2016-17²	–	–	–	–	–	–
2017-18³	5	5	0	–	9 (180%)	–

Notes:

1 The number of C-graded candidates selected for recommendation for appointment.

2 There were no exercises for salaried Upper Tribunals in 2015-16 and 2016-17.

3 Part year – April to December.

Sources: JAC's evidence to the SSRB 2018, Annex C, p.4. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>. JAC Official Statistics June 2015, Table 5. See: <https://www.judicialappointments.gov.uk/news/jac-official-statistics-june-2015-revised>

- 4.63 The table shows a generally stable picture with no shortfalls in recruitment. All vacancies were filled in the 2017-18 selection exercise for Upper Tribunal Judges. The previous competition was in 2014-15. This exercise also resulted in selections for all vacancies.
- 4.64 Table 4.10 gives the JABS data for recruitment for the Office of Sheriff and Office of Sheriff Principal in Scotland since 2011-12. It shows some fluctuations in the ratio of applications to recommendations but that the ratio is higher in recent years than it was in earlier years.

¹³² This includes six recommendations to a reserve list (s94).

¹³³ Part year – April to December.

Table 4.10: Applications and recommendations for Office of Sheriff and Office of Sheriff Principal in Scotland, 2011-12 to 2016-17

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Applications	187	64	–	161	43	56
Recommendations	27	14	–	15	2	4
Ratio of applications to recommendations	6.9	4.6	–	10.7	21.5	14.0

Note: Also includes competitions for part-time Sheriff and Chair of the Scottish Land Court.
 Source: OME compilation of Judicial Appointments Board for Scotland data. See: <https://www.judicialappointments.scot/publications>

Circuit Bench recruitment: evidence from judicial representatives

- 4.65 The LCJ and SPT said they were concerned about recruitment to the Circuit Bench and Upper Tribunal, drawing attention to the JAC data cited above. We were told of the importance of attracting high-quality individuals, particularly QCs, especially in the Business and Property Courts, where top-class judges are needed to maintain the confidence of the international legal community and attract global business. For the tribunals generally, a level of specialist knowledge extending beyond specialist legal principles into good practice and accepted/peer reviewed empirical expert evidence in at least one major tribunal jurisdiction was expected of each recruit. In addition, the capability to be assigned into one or more other jurisdictions with different procedural and expert knowledge requirements was expected. In written evidence, we were told that finding a sufficient number of First-tier and Upper Tribunal Judges of the calibre necessary to fulfil these requirements has proved to be increasingly demanding.
- 4.66 The Council of Her Majesty’s Circuit Judges (CoCJ) told us that the percentage of QCs appointed to the Circuit Bench had been falling. In 2014, 33 per cent of those taking up post had been QCs. Of the 99 offers of appointment in the 2017-18 Circuit Judge recruitment competition, only seven were made to QCs. The CoCJ expressed concern that “there are fewer appointments from those in the [legal] professions who have the most extensive practices and are therefore more likely to have the most appropriate experience.” They felt that the salary of a Circuit Judge was now insufficient to attract practitioners of sufficient calibre to fill the vacancies.
- 4.67 In addition, more Circuit Judges appointments were ‘internal’ appointments from those already serving as salaried judges (see paragraph 4.79). If a growing proportion of Circuit Judges are being promoted from within the salaried judiciary, this raises questions about the attractiveness of the Circuit Bench to external applicants.
- 4.68 We were told that the latest recruitment round for the Upper Tribunal Tax and Chancery Chamber produced no applicants from top QCs at the Tax Bar. For Scotland, in written evidence, the Sheriffs’ Association referred to the 2017 survey commissioned by the Lord President regarding the attitude of QCs to appointment as Senators of the College of Justice.¹³⁴ The Sheriffs’ Association was concerned that the trend of increasing reluctance on the part of senior Advocates to apply for a judicial role at this senior level would have a similar effect on the size and quality of the pool interested in applying for shrieval posts.

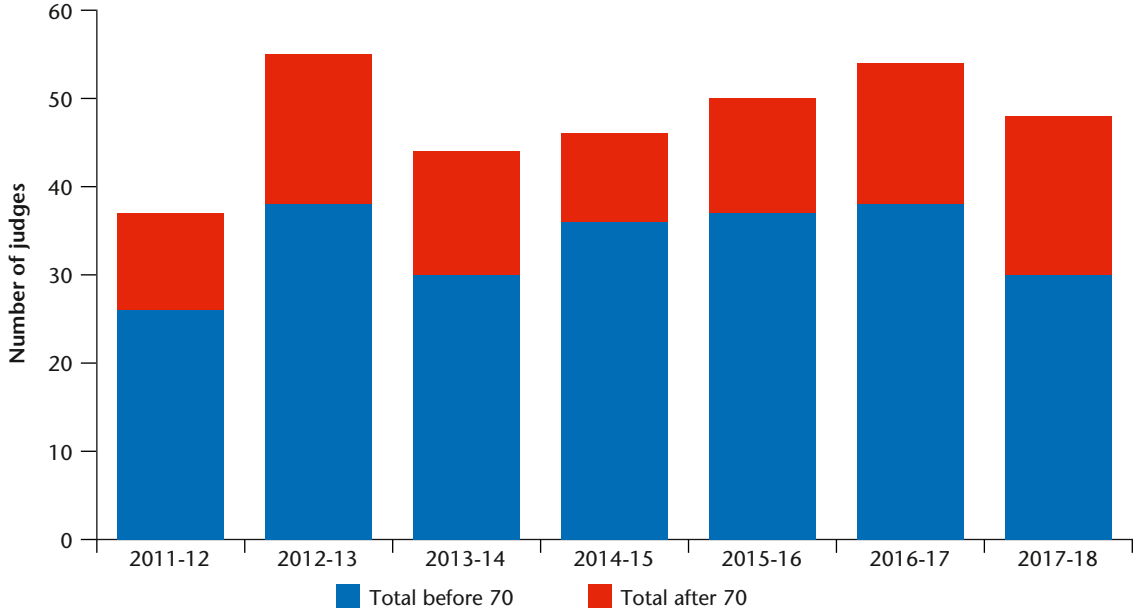
Circuit Bench retirement: data from the MoJ and the Judicial Office

- 4.69 Figure 4.4¹³⁵ below shows total retirements from the Circuit Bench and Upper Tribunals in England and Wales over time, and Figure 4.5 splits this between the two jurisdictions.

¹³⁴ See: <http://www.scotland-judiciary.org.uk/Upload/Documents/ReportonQCsattitudesreappointmentasSenator.PDF>

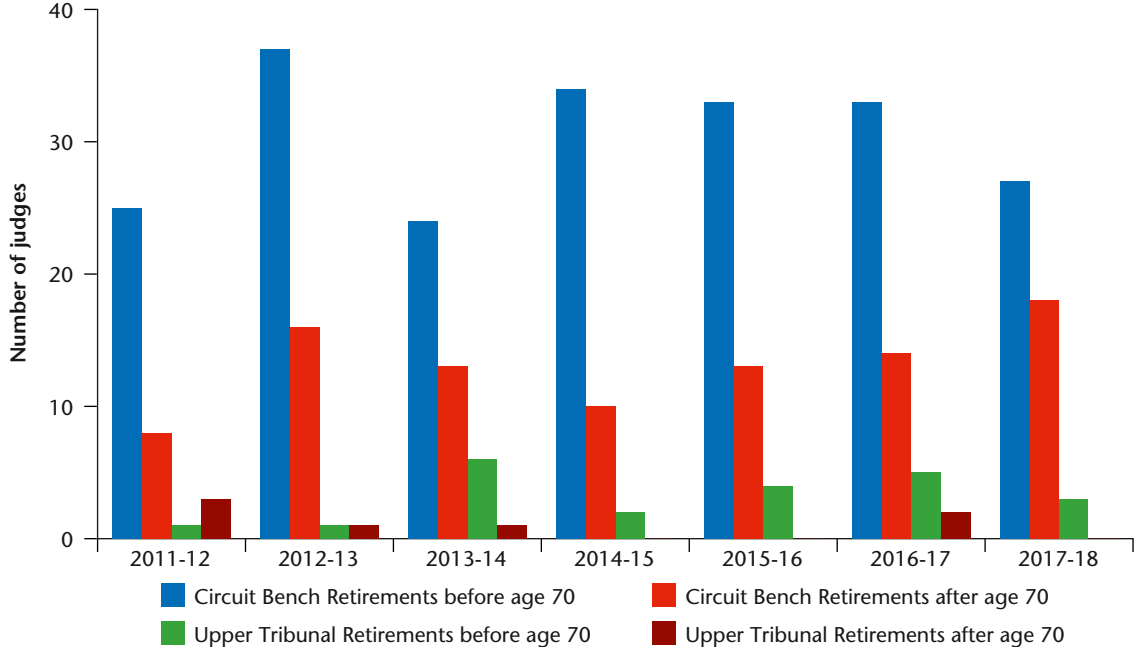
¹³⁵ We would expect the numbers of retirements to be consistent with the numbers of vacancies in Tables 4.8 and 4.9.

Figure 4.4: Salary groups 5 and 6.1 age of retirements in England and Wales,¹ 2011-12 to 2017-18



Note:
 1 Combined retirement data for Circuit Bench and Upper Tribunals Judges do not necessarily correspond exactly to retirement data for salary groups 5 and 6.1. We have used this proxy measure where the full salary groups 5 and 6.1 time series was not available to us.
 Source: Lord Chief Justice of England and Wales and Senior President of Tribunals (unpublished).

Figure 4.5: Salary groups 5 and 6.1 numbers of retirements in England and Wales,¹ 2011-12 to 2017-18



Note:
 1 Combined retirement data for Circuit Bench and Upper Tribunals Judges do not necessarily correspond exactly to retirement data for salary groups 5 and 6.1. We have used this proxy measure where the full salary groups 5 and 6.1 time series was not available to us.
 Source: Lord Chief Justice of England and Wales and Senior President of Tribunals (unpublished).

4.70 The peak for total retirements was in 2012-13; over the last four years, the number has been fairly steady. Judges on the Circuit Bench have throughout this period

predominantly retired before age 70; the numbers retiring after age 70 are higher in 2017-18 than in any of the previous six years.

- 4.71 In Scotland, 58 Sheriffs and Sheriffs Principal retired between 2010 and 2017. Of these, 48 were under the age of 70. The median age of retirement was 65.

Circuit Bench retirement: evidence from judicial representatives

- 4.72 The LCJ wrote to us in August 2018 that he was very concerned about the need to retain experienced Circuit Judges, who were discontented with their current pay. He cited the 2016 JAS, indicating that 72 per cent of experienced Circuit Judges had said that limits on pay awards would make them more likely to leave the judiciary early. He felt that, from the judicial leadership's regular conversations with the judiciary all over the country, many Circuit Judges were feeling very demoralised, and that the danger of further early retirements was a very real one if action were not taken to address their concerns.
- 4.73 The CoCJ cited from a survey it had conducted in 2015 of recently retired judges, which it believed "demonstrated a worrying leakage of very experienced judges as a direct result of the gradual and continuing erosion of the value of the judicial remuneration package." In a separate survey The Judicial Early Leavers Survey 2016, reasons given for leaving early included deterioration in the judicial working environment (58 per cent), that judges no longer gained satisfaction from their day to day role (42 per cent) and changes to remuneration (33 per cent). The CoCJ said that, based on 2014-17 data, only 25-29 per cent of Circuit Judges worked until the retirement age of 70, and that 22 per cent of judges retired or resigned on or before age 65.
- 4.74 The Tribunals Forum told us in written evidence that recent pension changes gave an incentive to judges to reduce their working hours. They said that affected judges could rationally reduce their working hours to 70 per cent or 80 per cent of full time, to mitigate the impact of these changes. The Tribunals Forum thought this was likely to be a particular issue for judges in their early 60s. This represented a loss of very experienced, and still energetic, judicial talent.

Observations on Circuit Bench and Upper Tribunal recruitment and retention

In our 2017 Report, we noted that the recruitment and retention of Circuit Judges should be closely monitored. Since then, there has been a second Circuit Judge competition which, despite making large numbers of appointments, has failed to fill all vacancies. The percentage of candidates rated as Outstanding or Strong has fallen over the last five years. Further recruitment exercises are in progress, with ambitious targets, and there are reasonable doubts whether these vacancies can be filled with candidates from the full range of backgrounds that would be desirable. The same caveats apply to recruitment to the Upper Tribunal, where particular Chambers are finding it harder to secure the specialist skills that they are seeking.

The retirement picture does not suggest that the number of pre-70 retirements has significantly increased to date. However, we note the concerns of the judicial leadership that many experienced judges in this group could decide to retire at short notice, since they are seriously disaffected, not least about their levels of pay. Past patterns may not therefore be a guide to future behaviour.

District Bench and First-tier Tribunal recruitment and retention

District Bench and First-tier Tribunal recruitment: evidence from the JAC

4.75 Table 4.11 below summarises the vacancies, selections and quality of candidates for the District Bench (Civil) in England and Wales.

Table 4.11: Vacancies, selections and quality of candidates for District Bench (Civil) in England and Wales, 2012-13 to 2017-18

	Vacancies	Number of selections	Shortfall	Applicants to post ratio (where known)	% A and B graded candidates (to selections)	Implied C-graded selections ¹
2012-13	–	–	–	–	–	–
2013-14	–	54	–	–	45 (83%)	9 (17%)
2014-15	–	–	–	–	–	–
2015-16	61	61	0	3.3	65 (107%)	0
2016-17	–	–	–	–	–	–
2017-18²	100.5	96	4.5	2.7	53 (55%)	43 (45%)

Note:

1 The number of C-graded candidates selected for recommendation for appointment.

2 Part year – April to December.

Sources: JAC's evidence to the SSRB 2018, Annex C, p.3. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>. JAC evidence to the SSRB, p.11. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>

4.76 The table shows that the two most recent recruitment exercises before 2017-18 succeeded in filling all the vacancies, with a high proportion of candidates assessed as A or B. However, in 2017-18 there was a shortfall of five from an exercise for 100.5 vacancies that resulted in 96 selections. This was the first time there had been a shortfall in recruitment at this level. The 2017-18 exercise also resulted in a larger number of C-graded candidates (45 per cent of total appointees). The absolute number of A and B grade candidates remained fairly steady, but that was not enough to match the extra number of vacancies that needed to be filled.

4.77 For salaried judges of the First-tier Tribunal, the JAC told us that from April to December 2017 there was a shortfall of one from an exercise for 65 vacancies that resulted in 64 selections. The last time there was an unfilled vacancy in a selection exercise for a First-tier Tribunal Judge had been in 2013-14, when there were 31 selections for 32 vacancies. However, the 2017-18 recruitment exercise that resulted in one unfilled vacancy represented the first time the JAC had run a competition for a generic salaried judge of the First-tier Tribunal. This makes it difficult to directly compare to previous years.¹³⁶

District Bench and First-tier Tribunal recruitment: evidence from judicial representatives

4.78 The SPT stated in oral evidence that the tribunals were starting to experience similar recruitment problems to the courts. It was now virtually impossible to recruit Surveyor Judges and Salaried Medical Members. The recent First-tier Tribunal recruitment competition yielded many A and B candidates, but eight of these refused appointment and there was no reserve list.

¹³⁶ JAC evidence to the SSRB, Annex C, page 4. See: <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf> and first bullet on page 11 of <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-2018.pdf>

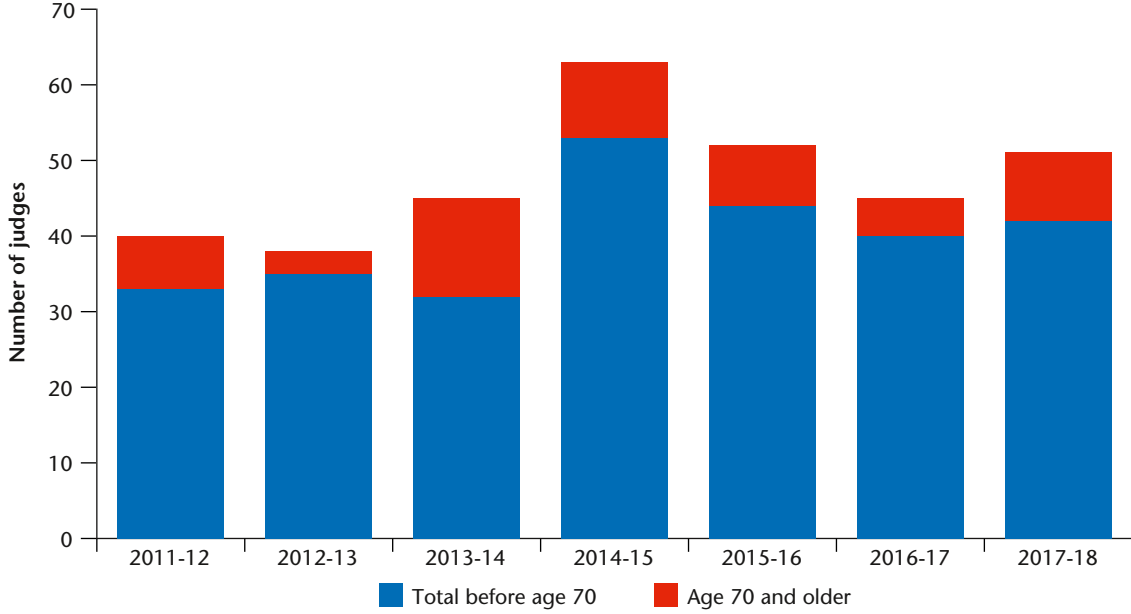
- 4.79 In written evidence, the Association of Her Majesty's District Judges (ADJ) reported concern that an increasing number of District Judges were applying for the Circuit Bench. In addition, they reported anecdotal evidence of people applying to the District Bench as a stepping stone to the Circuit Bench. Similarly, the National Council of HM District Judges (Magistrates' Courts) reported that high-calibre District Judges (Magistrates' Courts) were seeking appointment to the Circuit Bench. Of the 104 selections for Circuit Judge in 2017-18, 45 were existing members of the salaried judiciary, who would typically have come from the District Bench.¹³⁷ This was a much higher number than was the case ten years ago, and greater numbers of promotions from the District Bench would naturally create knock-on vacancies at this level.
- 4.80 The Council of Employment Judges said that there had been no recruitment of salaried or fee-paid Employment Judges in England and Wales since 2013. This was due to a fall in the number of cases after changes to the court fees regime. However, there had recently been further changes to this fees regime, and recruitment was now taking place. The Council believed that there would be a strong field of good quality candidates because of the pent-up "demand" for salaried appointments among the current cohort of fee-paid Employment Judges. It remained uncertain, however, how many good-quality applicants there would be for full-time employment, as the Council's survey suggested that the majority of fee-paid Employment Judge applicants would seek a part-time appointment.
- 4.81 The Presidents of the Social Entitlement Chamber and the Health, Education and Social Care Chamber said that younger lawyers did not want to commit themselves to the salaried judge route from where they cannot return to practice. They did not expect to fill all the vacancies in a current recruitment exercise seeking 42 salaried judges. Fee-paid positions were growing more attractive.
- 4.82 We were told that an Expression of Interest exercise in 2016 for a Regional Judge in the Property Chamber received only one application. The President of the First-tier Tribunal Property Chamber argued that this was because Regional Judges had significant extra responsibilities but still received only a group 7 salary alongside Deputy Regional Judges.

District Bench and First-tier Tribunal retirements

- 4.83 Figure 4.6 below shows total District Bench and First-tier Tribunal retirements since 2011-12. Figure 4.7 shows those retiring before and after age 70 for the two jurisdictions.

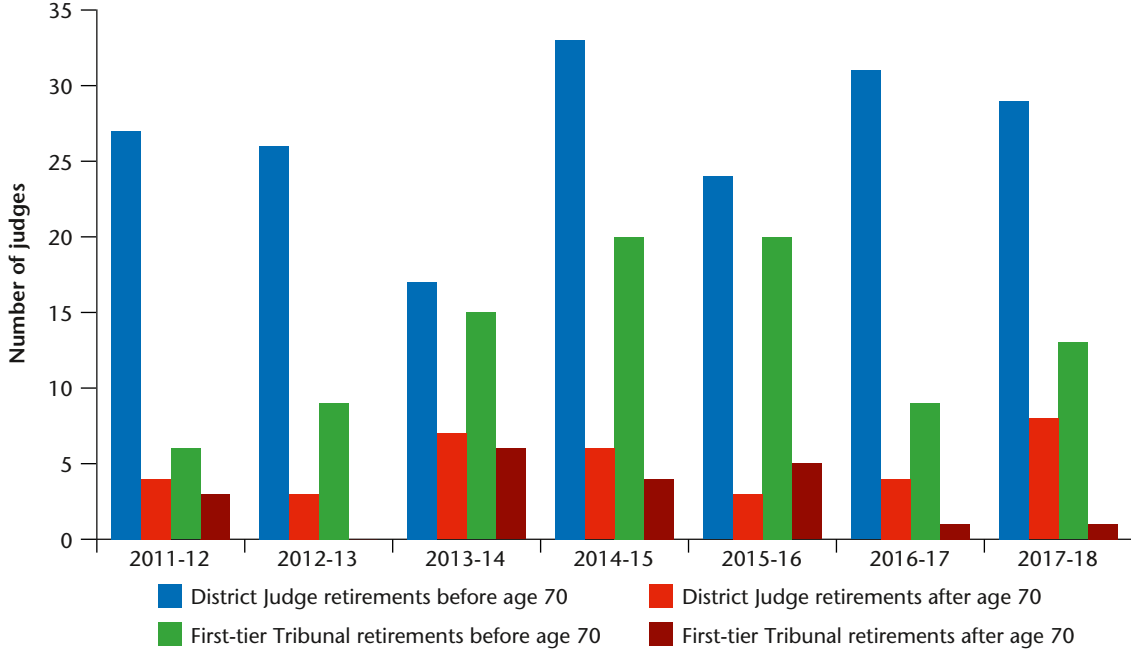
¹³⁷ Judicial Appointments Commission, JAC official statistics, Statistics tables 2017-18, Table 4, columns I plus M. See: https://www.judicialappointments.gov.uk/sites/default/files/sync/about_the_jac/official_statistics/statistics-tables-jac-2017-18.xlsx

Figure 4.6: Salary group 7 age of retirements in England and Wales,¹ 2011-12 to 2017-18



Note:
 1 Combined retirement data for District and First-tier Tribunal Judges do not necessarily correspond exactly to retirement data for salary group 7. We have used this proxy measure where the full salary group 7 time series was not available to us.
 Source: Lord Chief Justice of England and Wales and Senior President of Tribunals (unpublished).

Figure 4.7: Salary group 7 total retirements in England and Wales,¹ 2011-12 to 2017-18



Note:
 1 Combined retirement data for District and First-tier Tribunal Judges do not necessarily correspond exactly to retirement data for salary group 7. We have used this proxy measure where the full salary group 7 time series was not available to us.
 Source: Lord Chief Justice of England and Wales and Senior President of Tribunals (unpublished).

4.84 The figures show that the total number of retirements, and of retirements before 70, peaked in 2014-15. The majority of District Judges and First-tier Tribunal Judges have

consistently retired before age 70. The number of District Judges retiring at 70 or older was higher in 2017-18 than in any of the six preceding years.

District Bench and First-tier Tribunal retirements: views of judicial representatives

- 4.85 The LCJ drew attention to JAS data about the number of JUPRA District Judges (46 per cent) who had said they were considering leaving the judiciary before full retirement age. Sixty-six per cent of these judges had said that limits on pay awards would make them more likely to leave the judiciary early.
- 4.86 The National Council of HM District Judges (Magistrates' Courts) said the data suggested most District Judges (Magistrates' Courts) retired at age 65, the age at which pensions under the JUPRA scheme were payable without actuarial reduction. They went on to say that "...there has been a failure to retain judges beyond the minimum retirement age." They thought that factors behind early retirement included: workload, working conditions, working practices, disaffection, risk of changes to pension arrangements, and being able to retire when still sufficiently active to enjoy retirement.
- 4.87 The ADJ described to us their 2017 Exit Survey. Sixty-three per cent of the respondents who had recently retired confirmed that they had brought their retirement forward. Of these, half said that the main reason for this was financial. Other reasons were listed as: lack of respect for District Judges, the poor IT equipment, the stress of the job, no progression prospects, and doing Circuit Judge work for District Judge pay.

Observations on District Judges and First-tier Tribunal Judges recruitment and retention

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

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

Overall comments on recruitment and retirement/retention

- 4.88 As we set out at the start of this Chapter, it is hard to draw firm conclusions from some of the data, given that the judicial system has not been in a steady state. Some recruitment catch-up is going on, with higher numbers of new judges being sought across the High Court, Circuit Bench and District Bench in England and Wales. In addition, the potential knock-on consequences of pension changes on judges' retirement decisions have not fully worked through.
- 4.89 However, some implications for recruitment and retention seem clear. There are serious recruitment problems at the High Court; growing problems for the Circuit Bench/Upper Tribunals; and the position for the District Bench/First-tier Tribunals gives some cause for concern. There is some evidence that fee-paid roles are becoming more popular than salaried roles. The position in Scotland and Northern Ireland is similar to England and Wales, although we acknowledge the data are less clear for these jurisdictions.
- 4.90 The retention and retirement picture is hard to gauge. While many judges do retire before 70, there is no generally obvious recent surge in the numbers. There is, however, real concern among the judicial leadership that such a surge could happen, given the general levels of disaffection among many of the judiciary, as shown by the Judicial Attitude Surveys. We find it impossible to assess the scale of this risk. Chapter 2 sets out

some of the factors that might be influencing the decisions of individual judges. These go well beyond questions of pay. However, if the number of early retirements were to rise, this could cause serious problems. It would mean additional vacancies to fill, at a time when recruitment to the judiciary is already proving challenging. We return to this in Chapter 5.

Return to private practice and retirement ages

- 4.91 There are two final matters that might have an influence on retention and retirement that are outside our remit, but which were brought to our attention.
- 4.92 First, there is the long-standing convention that a person appointed to a judicial position may not return to practice in the courts. The *Attractiveness of Judicial Appointments in the UK* research that we commissioned showed that some potential applicants to the judiciary saw this as an unnecessary limitation. We note also that the House of Lords Select Committee on the Constitution¹³⁸ also received representations from the English Bar and English solicitors that this convention was a disincentive to potential applicants. Some respondents suggested to us that the problem would be reduced if this convention were reviewed, and perhaps changed.
- 4.93 However, we were also made aware of some very strong objections from within the judiciary who considered that a change might cause at least as many problems as it solved, for example by creating the perception of possible bias by the public and litigants. We note that the MoJ, in its response to the House of Lords Select Committee on the Constitution's 7th Report on Judicial Appointments in November 2017, said that it would seek the views of the judiciary and legal profession on the possible implications of change in this area. This seems to us an appropriate way forward.
- 4.94 Second, there is question of judicial retirement age, and expectations about how long a judge might be expected to serve. The current retirement age of 70 was introduced by the Judicial Pensions and Retirement Act 1993. While there is no maximum age limit to apply to be a judge, applicants are expected to be able to offer a "reasonable length of service" which is defined as "usually at least five years".¹³⁹
- 4.95 In our discussions with judges, we have heard suggestions that this judicial retirement age should be raised. Certainly, it seems likely that there are some skilled judges retiring at 70 who would stay for longer if the retirement age were higher. It is also possible that some people are discouraged from joining the judiciary because they consider that they will be unable to serve for long enough to make it worthwhile. The Lord Chief Justice of Northern Ireland (LCJNI), for example, felt that given the difficulties in recruiting judges at High Court level in Northern Ireland, there may be merit in considering whether the current fixed retirement age of 70 continues to be appropriate. In his written submission, the LCJNI noted that he had recently requested a number of retired Court of Appeal and High Court Judges sit in accordance with s.7(1) of the Judicature (NI) Act 1978 to provide assistance until NIJAC could fill the three High Court Judge vacancies. He went on to state that four of these retired office holders are over 70 years of age but are eminent senior judges who can provide a wealth of knowledge and experience to the High Court Bench in Northern Ireland.
- 4.96 The research on the *Attractiveness of Judicial Appointments in the UK* revealed concern among potential applicants that they will not be on the bench long enough to have a chance of further promotion.¹⁴⁰ Some respondents observed that they expect to

¹³⁸ See: <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/32/3202.htm>, chapter 2, paragraphs 36 to 38.

¹³⁹ See: <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/becoming-a-judge/>, 'Basic Requirements' section.

¹⁴⁰ The *Attractiveness of Judicial Appointments in the UK* (paragraph 99). See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

support their children financially for some time after they have finished school and their expectation would be to join the bench later than might have been the case in earlier times. A later retirement age would enable those joining the judiciary after their late fifties to be sure of getting at least 15 years pensionable employment. We note that since 1993, there have been increases both in the State Pension Age and in life expectancy.¹⁴¹

- 4.97 The issue of retirement age is, of course, a complex question. For example, if large numbers of current judges remained beyond the age of 70, that could restrict opportunities for new recruits. Both the MoJ and the senior judiciary stressed to us the importance of a diverse age profile among the judiciary. However, given the concerns about the supply of judges at different levels, we understand why this issue is now being raised.
- 4.98 The MoJ's evidence to us said that approximately five per cent of the judiciary were currently sitting as fee-paid judges in retirement. At present, a judge can sit in retirement, but only for a limited period and not beyond the age of 75. These limits may also become a matter of debate, if recruitment difficulties for the salaried judiciary continue. A measure that might provide a greater incentive to judicial early retirement would have obvious disadvantages, but those would need to be weighed against an extra supply of skilled and experienced people to hear cases.

Observation on judicial retirement age

In its response to the House of Lords Constitution Committee's 7th Report on Judicial Appointments, the government said that it would consider further whether the mandatory retirement age of 70 should change. We believe that this issue merits urgent and serious consideration. If the retention situation deteriorates, there would be a need to move quickly. It would also be timely to examine the arrangements under which a retired judge can sit on a fee-paid basis.

¹⁴¹ See: Figures 1 and 2 in <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/bulletins/lifeexpectancyatbirthandage65bylocalareasinenglandandwales/2015-11-04#national-life-expectancy-at-age-65> and <https://www.gov.uk/government/publications/state-pension-age-timetable/state-pension-age-timetable>

Chapter 5

Judicial remuneration

Introduction

- 5.1 In this Chapter, we consider changes in pay and remuneration that have affected the judiciary in recent years, and make our recommendations for judicial pay in the future.
- 5.2 We start by analysing pay and remuneration trends since the last Major Review for different groups in the legal profession, as most judges are recruited externally. We then analyse changes in judicial pay over this period and highlight the significance of changes to judicial pension arrangements in the light of wider changes to pension allowances and taxation.
- 5.3 We evaluate this analysis alongside the evidence of the trends in judicial recruitment and retention that are described in Chapter 4. We then make recommendations for judicial pay rates effective from April 2018. These pay recommendations are based on the salary structure that we recommended in Chapter 3.

Our approach to pay modelling

- 5.4 We have used three measures of pay to conduct our analysis.
 - **Gross pay** is the total amount an employee is remunerated (i.e., base pay plus any allowances, pay premia or performance-related pay) before any deductions are made for pension contributions, income tax and national insurance, not including any non-pay benefits or pensions.
 - **Take-home pay** provides a direct measure of how much pay someone ‘takes home’ each time period. It has been calculated as gross pay minus employee pension contributions,¹⁴² income tax, employee national insurance contributions, and any annual allowance tax charges.
 - **Total net remuneration** is calculated as take-home pay (as per the definition above) plus the value of the additional amount added to the annual pension during the year multiplied by a ‘valuation factor’.¹⁴³ For a Defined Benefit scheme, the value of the additional amount added to the annual pension has been calculated by multiplying an individual’s pensionable pay in a given year by the accrual rate of the pension scheme. For a Defined Contribution scheme, the additional amount added is comprised of the individual’s contributions including the value of the tax relief. Total net remuneration is our preferred measure because it takes account of pension benefits accrued in the year. We believe this is the most comprehensive, and therefore the most appropriate, measure. All the calculations we have carried out to assess total net remuneration have been appropriately adjusted for inflation.
- 5.5 Our analysis starts with the pre-appointment earnings¹⁴⁴ data found in the 2009 and 2017 NatCen surveys.¹⁴⁵ These are used as the basis for calculations of take-home pay

¹⁴² The tax relief available on employee pension contributions (applicable to registered pension schemes) is not considered to be part of an individual’s remuneration package.

¹⁴³ We have used a valuation factor of 16 as this is the factor used in calculating the annual allowance tax charge. In reality, this factor will vary for each judge, depending on their age and eventual age at retirement.

¹⁴⁴ Where we refer to ‘earnings’, in this context we mean gross earnings. In addition, for individuals in the private sector who are self-employed (e.g., barristers), we generally refer to their ‘pay’ as earnings.

¹⁴⁵ *NatCen Survey of Newly Appointed Judges in the UK 2017*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries> and the National Centre for Social Research. *Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers Report*. Office of Manpower Economics, 2010. Available as link from: http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx.pdf

and total net remuneration for legal professionals in the private sector and for how these measures of pay have changed since the last Major Review. We then repeat this analysis using judicial pay and remuneration as the source data to calculate how take-home pay and total net remuneration have changed for judges since the last Major Review.

External comparators to the judiciary

- 5.6 The legal profession is broad and the pay of different groups of legal professionals varies hugely. The commercial Queen's Counsel (QC) or a senior partner within a 'Magic Circle'¹⁴⁶ firm of City solicitors can expect a reward package wholly different from that earned by a legal professional working outside London and specialising in immigration, housing or family law. Recruitment to the judiciary has historically come from a wide range of groups, depending on the seniority and specialism of the judicial vacancy. The labour market for a judge in the First-tier Immigration and Social Security Tribunal is distinct from that for the Lands Tribunal, the Employment Appeal Tribunal or the Court of Outer Session. It is therefore important to try to gauge the remuneration levels for the different groups, and how these have been changing. We have used several sources to form an overall picture.
- 5.7 The level of pay required to recruit¹⁴⁷ judges will be influenced by the remuneration in the legal profession which forms the recruitment pool for the judiciary. Therefore, we have looked at the earnings of legal professionals who might potentially apply to become a judge, at different levels.
- 5.8 We have undertaken two main strands of work on legal earnings. The first was a commissioned survey on the pre-appointment earnings of newly appointed judges. The second was a review of the available data on earnings for legal professionals with the seniority and experience to apply for judicial roles.

Survey of Newly Appointed Judges

- 5.9 We commissioned a survey on the pre-appointment earnings of newly appointed judges (*NatCen Survey of Newly Appointed Judges 2017*). It was carried out by the National Centre for Social Research and was targeted at judges who were appointed between April 2012 and September 2017.¹⁴⁸ A total of 517¹⁴⁹ eligible judges responded to the survey. In England and Wales, 448 judges responded, made up of 327 salaried judges (of which nine were part time), and 121 fee-paid judges. In Scotland, 50 judges responded to the survey, made up of 34 salaried judges (45 per cent of all newly appointed salaried judges), and 16 fee-paid judges (28 per cent of all newly appointed fee-paid judges). From Northern Ireland, 18 judges responded, eight salaried (32 per cent of all newly appointed salaried judges) and ten fee-paid (21 per cent of all newly appointed fee-paid judges).¹⁵⁰
- 5.10 A similar survey was carried out in 2009 to inform the last Major Review.¹⁵¹ Therefore, as far as possible, a like-for-like comparison between 2009 and 2017 can be made, because the data will have been collected in a similarly robust and reliable manner. This

¹⁴⁶ The term 'Magic Circle' was first coined by legal journalists in the late 1990s, and for the past 15 years it has consisted of a distinct group of five firms based in London that share a focus on corporate and finance work. See: www.chambersstudent.co.uk/law-firms/types-of-law-firm/magic-circle-law-firms accessed 16 August 2018.

¹⁴⁷ The level of pay required to retain judges after appointment is less directly affected by remuneration in the legal profession, given the constraints on retired judges returning to private practice. For some judges, the ability to undertake private sector arbitration work is particularly financially attractive.

¹⁴⁸ *NatCen Survey of Newly Appointed Judges in the UK 2017*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

¹⁴⁹ One judge did not reveal where he or she was from hence the following figures total to 516 rather than 517.

¹⁵⁰ The number providing valid responses to particular questions was often lower than the total number of respondents.

¹⁵¹ The National Centre for Social Research. *Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers Report*. Office of Manpower Economics, 2010. Available as a link from: http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx

methodology has the disadvantage that it necessarily draws from a limited and self-selecting sample – those legal professionals who made the decision to apply for and accept appointment to become judges. The survey does not therefore give a full picture for what has been happening to the earnings of all legal professionals, nor of those legal professionals whom the Ministry of Justice (MoJ), or Judicial Appointments Commission (JAC) and its equivalents in the devolved administrations, might hope to attract into the judiciary but who do not apply.¹⁵² However, with that caveat, the data clearly show the different labour markets, in terms of earnings, that exist for High Court Judges (current salary group 4), Circuit Bench/Upper Tribunal Judges (current salary groups 5 and 6.1), and District Bench/First-tier Tribunal Judges (current salary groups 6.2 and 7).

5.11 Table 5.1 below shows the mean, median, lower and upper quartile pre-appointment earnings of those appointed to judicial posts in group 4, group 6.1, and group 7, as well as overall figures for salaried and fee-paid judges and court and tribunal judges. Figures for groups 1, 2, 3, 5 and 6.2 are not shown as the numbers reporting were too small.

Table 5.1: Pre-appointment earnings of newly appointed judges, April 2012 to September 2017¹

	Sample size	Lower quartile £	Upper quartile £	Mean £	Median £
Group 4	68	365,997	762,823	643,952	554,822
Group 6.1	150	139,102	244,963	214,224	172,834
Circuit Judges	105	152,126	250,319	214,236	182,425
Other group 6.1 ²	45	109,593	179,401	214,195	147,728
Group 7	217	79,167	182,294	155,915	116,428
District Judges	111	89,702	171,397	144,913	123,457
Other group 7	106	62,656	188,335	167,436	105,993
Salaried	363	114,819	261,434	260,070	168,965
Fee paid	137	62,514	202,844	187,766	106,008
Court Judges	377	114,819	263,336	258,836	172,661
Tribunal Judges	110	60,555	174,044	189,925	106,572

Notes:

1 Pre-appointment earnings for individual years were updated by the percentage increase in gross weekly earnings experienced at the top decile of all legal professionals between the individual year and 2017.

2 Treat these results with caution due to a low base size.

Source: NatCen Survey of Newly Appointed Judges 2017. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

5.12 This work enables us to compare the pre-appointment earnings of judges with the judicial salaries they receive after appointment. Table 5.1 shows there is a wide distribution of pre-appointment earnings for each level. At the High Court level, even the lower quartile is well above current judicial pay; for the Circuit Bench, it is somewhat above current judicial pay. However, on average, judicial appointees at all levels face a drop in earnings when they take up a judicial post. Table 5.2 shows that, compared to their previous earnings, the decrease in earnings on appointment was largest for High Court Judges: median pre-appointment earnings for High Court Judges were £554,822, compared with a judicial salary of £181,566 in 2017-18 (a 67 per cent decrease). Median pre-appointment earnings for Circuit Judges were £182,425, indicating a typical 26 per

¹⁵² See: paragraphs 5.16 and 5.17.

cent decrease in earnings on appointment. For District Judges, median pre-appointment earnings were £123,457, indicating a typical 12 per cent decrease.

Table 5.2: Judicial salaries in 2017 compared with median pre-appointment earnings of newly appointed judges, April 2012 to September 2017¹

	Median pre-appointment earnings 2017 £	2017 judicial Salary £	Indicative increase or decrease on appointment %
Group 4	554,822	181,566	-67
Group 6.1	172,834	134,841	-22
Circuit Judges	182,425	134,841	-26
Other group 6.1 ²	147,728	134,841	-9
Group 7	116,428	108,171	-7
District Judges	123,457	108,171	-12
Other group 7	105,993	108,171	+2

Notes:

1 Pre-appointment earnings for individual years were updated by the percentage increase in gross weekly earnings experienced at the top decile of all legal professionals between the individual year and 2017.

2 Treat these results with caution due to a low base size.

Source: NatCen Survey of Newly Appointed Judges 2017. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

Time comparisons using the NatCen data

5.13 Table 5.3 below shows how the data compare, using both the 2009 and the 2017 NatCen surveys of judges' pre-appointment earnings.

Table 5.3: Pre-appointment earnings of newly appointed judges, 2009 and 2017

	Median pre-appointment earnings 2009 ¹ £	Median pre-appointment earnings 2017 ² £	Nominal change 2009 to 2017 %	Real change 2009 to 2017 ³ %
High Court Judges	535,417	554,822	3.6	-13.2
Circuit Judges	174,941	182,425	4.3	-12.7
District Judges	97,555	123,457	26.6	6.0

Notes:

1 Pre-appointment earnings for individual years were updated by the percentage increase in gross weekly earnings experienced at the top decile of all legal professionals between the individual year and 2009.

2 Pre-appointment earnings for individual years were updated by the percentage increase in gross weekly earnings experienced at the top decile of all legal professionals between the individual year and 2017.

3 Adjusted by CPI.

Sources: OME analysis of Survey of Newly Appointed Judges 2017. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>. OME analysis of Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers. See: http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx

5.14 This table shows that, according to the survey, the pre-appointment earnings for many of the legal professionals who become judges have not increased greatly, even in nominal

terms, between 2009 and 2017. High Court Judge and Circuit Judge pre-appointment earnings saw a fall of 13.2 per cent and 12.7 per cent between 2009 and 2017 respectively when adjusted for inflation. District Judge pre-appointment earnings saw an increase over the period of 6.0 per cent after inflation, from £97,555 to £123,457.

- 5.15 Comparing both of the NatCen surveys of judges' pre-appointment earnings also allows us to look at whether the pay change experienced on appointment to the judiciary has altered. Table 5.4 shows that for judges in group 4 and group 6.1, including Circuit Judges, the pay fall experienced on appointment was very similar in 2009 and 2017. For District Judges, what was previously a small pay increase has become a pay decrease.

Table 5.4: Pay change experienced on appointment to the judiciary, 2009 and 2017

	Indicative increase or decrease on appointment	
	2009 %	2017 %
Group 4	-68	-67
Group 6.1	-26	-22
Circuit Judges	-27	-26
Group 7	+3	-7
District Judges	+6	-12
Other group 7	0	+2

Sources: Survey of Newly Appointed Judges 2017. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>. Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers. See: http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx

- 5.16 We stress that care needs to be taken in interpreting the comparison between the 2009 and 2017 data, as it does not account for any differences in the characteristics of those applying for judicial appointments between 2009 and 2017. As discussed in Chapter 4, we have heard evidence showing that, for example, fewer QCs are applying to join the judiciary than was historically the case. Overall, we consider it likely that fewer top earners have joined the judiciary in recent years. This will have had the effect of reducing the pre-appointment earnings estimates in the 2017 NatCen survey compared to the historic pool from within which judges have been appointed.

Review of market data for senior legal professionals

- 5.17 While the NatCen survey gives strong evidence on pre-appointment earnings, it only reflects those who chose to join the judiciary, rather than those who did not, possibly on the basis of the pay cut they might face. Furthermore, if the make-up of the applicant pool has changed over time, the comparison between 2009 and 2017 could mis-measure the pay gap that judicial applicants face. The SSRB has therefore also collated evidence from other sources on the earnings of barristers and solicitors in the broader legal labour market.
- 5.18 The legal labour market is large and so it is important to find appropriate comparators for each tier of the judiciary. The NatCen survey data on previous appointees suggests appropriate comparator backgrounds for appointed judges are:
- High Court Judge: a QC with 26 years' experience or more.
 - Circuit Judge: a barrister with 16 years' experience or more.
 - District Judge: a solicitor with 16 years' experience or more.

- Tribunal Judge: a solicitor with up to 25 years' experience.
- Deputy District Judge: a solicitor with up to 25 years' experience.

5.19 We therefore examined such evidence as we could find about these groups when looking at legal earnings data, while of course we recognise that judges will be appointed from a range of legal backgrounds.

5.20 The majority of practising barristers are self-employed and act as 'independent practitioners'. This means that they do not get a salary and do not have to file accounts. Barristers can also work in an employed capacity working for a sole organisation. They receive a salary from the organisation that employs them and, unlike self-employed barristers, are generally instructed to take on cases. According to the Bar Council, around 20 per cent of practising barristers in England and Wales are employed, working in a range of public and private sector organisations, most commonly in central government and the Crown Prosecution Service.

5.21 The Bar Council of England and Wales, the Bar of Northern Ireland and the Faculty of Advocates in Scotland were all contacted to ask if they could provide this review with earnings data on barristers. The Faculty of Advocates in Scotland provided some data, while the Bar of Northern Ireland directed us to some published data on legal aid payments.¹⁵³ The Bar Council of England and Wales does not hold data on barristers' earnings, and there is no legal aid data published for England and Wales. The review approached Bar Mutual, which provides professional indemnity insurance for barristers, and so collects data on earnings, but it did not feel able to pass on any information. This absence of earnings information for barristers in England and Wales has presented difficulties in benchmarking judicial pay with as much evidence as we would like, particularly for those tiers of the judiciary that recruit almost exclusively from this pool, notably High Court Judges and Circuit Judges.

5.22 A summary of the data sources available to the review on barristers' earnings is shown in Table 5.5. Legal aid payments are likely to make up only a proportion of income for some barristers, and do not cover those practising in many areas (commercial or private family law for instance). Table 5.6 summarises the data for solicitors' earnings.

Table 5.5: Summary of legal earnings data for barristers (nominal)¹

Source	Positions covered	Range of earnings, £pa		
Faculty of Advocates, Scotland, 2017²	Top 20 highest earning QCs in Scotland	474,723 (15 th highest)	484,553 (10 th highest)	620,962 (5 th highest)
Legal aid payments, Scotland, 2016-17³	Top 100 earning advocates in Scotland	46,000 (75 th highest)	80,000 (50 th highest)	123,000 (25 th highest)
Legal aid payments, Northern Ireland, 2014-15⁴	Top 100 earning barristers in Northern Ireland	119,000 (75 th highest)	152,000 (50 th highest)	189,000 (25 th highest)

Notes:

1 Figures refer to the year stated and are not adjusted for inflation. These were the latest available at the time of the Review.

2 Unpublished.

3 See: <https://www.slab.org.uk/about-us/what-we-do/annual-report/>

4 See: <https://www.justice-ni.gov.uk/publications/topic/12286?search=%22Payments+to+practitioners%22>

¹⁵³ Legal aid can help meet the costs of legal advice, family mediation and representation in a court or tribunal. Legal aid rules differ in Scotland and Northern Ireland. More information is available at: www.gov.uk/legal-aid, accessed 21 August 2018.

Table 5.6: Summary of legal earnings data for solicitors (nominal)¹

Source	Positions covered	Lower quartile £pa	Median £pa	Upper quartile £pa
Law Society, Private practice earnings survey, 2016 ²	Equity partner, England and Wales	50,000	97,000	200,000
	Salaried partner, England and Wales	50,000	65,000	95,000
	Salaried partner, 16+ years PQE, England and Wales	70,000	80,000	120,000
Law Society, Corporate in-house earnings, 2015 ³	In-house solicitor, 20-29 years PQE, England and Wales	68,000	130,000	200,000
	In-house solicitor, 10-19 years PQE, England and Wales	75,000	100,000	140,000
Law Society of Scotland, Financial Benchmarking 2017 ⁴	Median profit per partner, Scotland	81,838 (2-4 partners)	96,330 (5-9 partners)	124,508 (10+ partners)

Notes:

1 Salaries are full time, where available. Figures refer to the year stated and are not adjusted for inflation. These were the latest available at the time of the Review.

2 See: <https://www.lawsociety.org.uk/support-services/research-trends/solicitors-salaries-in-2016/>

3 See: <https://www.lawsociety.org.uk/about-us/documents/corporate-in-house-solicitors-earnings-2015/>

4 See: <https://www.lawscot.org.uk/news-and-events/news/financial-benchmarking-report-2017/>

5.23 This information, from a number of external sources, on the range of private sector legal earnings suggests that the potential scale of the fall in earnings upon taking up a judicial post may be larger than that given in Table 5.4. The *NatCen Survey of Newly Appointed Judges 2017* was based on those who took up judicial appointment and not the entire eligible pool of applicants. Whilst the external sources provide a greater range of earnings data from the potential pool of applicants, they do not provide a complete picture.

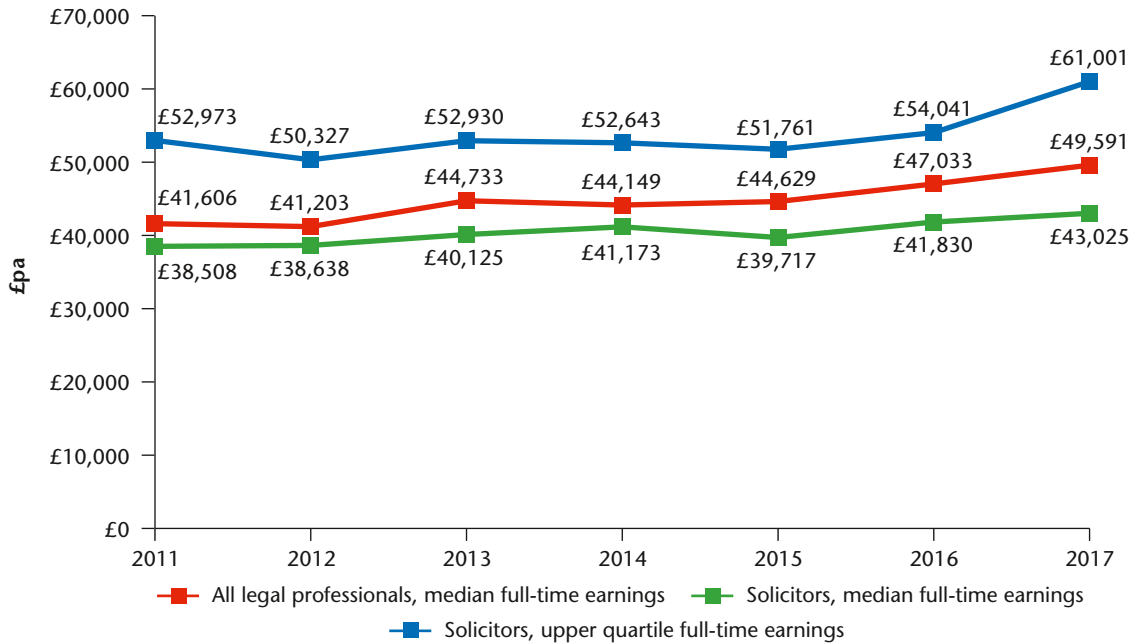
5.24 To get some sense of trends over time, we looked at earnings for employed legal professionals from the Annual Survey of Hours and Earnings compiled by the Office for National Statistics (ONS), noting that this excludes self-employed barristers. Figure 5.1 suggests modest earnings growth in the legal profession in employment since 2011 in nominal terms, with an overall rise of just under £8,000 (or 19.2 per cent) in median full-time earnings for all legal professionals between 2011 and 2017. Much of the growth occurred between 2012 and 2013, with an increase of £3,530 (or 8.6 per cent), and between 2016 and 2017 with an increase of £2,558 (or 5.4 per cent). At the upper quartile level for solicitors, the increase between 2016 and 2017 was more pronounced with an increase of £6,960 (or 12.9 per cent).

5.25 On the basis of these data, we estimate that earnings of employed legal professionals in the private sector may have risen overall by 7.7 per cent in real terms between 2011 and 2017.¹⁵⁴ This is larger than the changes in real earnings shown by the NatCen data (Table 5.3), and may imply that the fall in earnings facing someone who might join the judiciary has grown somewhat more than the analysis of Table 5.4 indicated. To the extent that there is evidence that the growth of earnings at the top of the income distribution has tended to be higher, the actual fall in earnings being faced by

¹⁵⁴ Adjusted by CPI.

prospective senior judges may be greater than our estimates above. So, we cannot assess precisely how typical these average earnings are for potential applicants to the judiciary.

Figure 5.1: Legal earnings, 2011 to 2017 (nominal)



Source: Office for National Statistics, Annual Survey of Hours and Earnings, SOC 241 and 2413, Table 14.7a.

Summary of external comparators

5.26 The data above provide a composite picture of the range of earnings that is earned by legal professionals who might be potential candidates for judicial posts. There are some very high-earning individuals, but also some for whom a judge’s salary would still look competitive. In that sense, the other sources of comparative pay data are roughly consistent with the NatCen surveys of pre-appointment earnings. However, these comparative pay data also show that there has been a higher rise in general legal earnings since 2011 than would be inferred from the NatCen surveys of pre-appointment earnings. We cannot assess precisely how great that rise will have been for every potential applicant to the judiciary, but it is likely to have been bigger for those who might be eligible to serve as judges at the higher levels of courts and tribunals.

Pension changes and their effect on total net remuneration since 2010

5.27 The analysis of private sector legal earnings described so far has focussed on gross pay. In practice, however, the impact on the recipients is better characterised by a measure of remuneration that takes into account taxation and any pension benefits which are provided. This more sophisticated analysis is important because of the very significant changes that have occurred in recent years in pensions and taxation policy, which have affected both the public and private sectors. The need to focus on a more comprehensive measure of remuneration is borne out by the evidence we have received in carrying out this Review on the importance of the judicial pension. Appendix M sets out the method we used in more detail.

5.28 There have been a number of changes to taxation policy since the last Major Review in 2009-10 that apply to all taxpayers. These included the introduction of the additional rate of income tax (50 per cent) in 2010-11 for individuals earning over £150,000. The rate was revised down to 45 per cent in 2013-14, but the income threshold has

not changed.¹⁵⁵ An individual's personal allowance has increased over recent years, from £6,475 in 2009-10 to £11,850 in 2018-19,¹⁵⁶ but this allowance reduces for those individuals whose income is above £100,000, by £1 for every £2 of income above £100,000. National insurance contributions also increased over the period. The main contribution rate for primary contributions for employees rose from 11 per cent to 12 per cent in 2011-12 and the additional contribution rate rose from 1 per cent to 2 per cent.¹⁵⁷ These changes to income tax and national insurance contributions will have affected take-home pay for all high earning employees, including legal professionals in the judiciary or private sector.

- 5.29 We have documented in detail in our recent reports how the changes that have been made in recent years¹⁵⁸ to annual and lifetime pension tax thresholds have affected many members of our remit groups. For the judiciary, these changes affected all those who moved to the 2015 New Judicial Pension Scheme (NJPS).¹⁵⁹
- 5.30 The annual allowance is the limit determining the maximum increase in the value of benefits that a pension scheme member can earn over a particular tax year without incurring a tax charge. Annual allowance pension tax relief was available on contributions of up to £245,000 in 2009-10, allowing high earners to benefit from £98,000 of tax relief if they used the full allowance (at the 40 per cent higher tax rate). The allowance was reduced to £50,000 from April 2011, and further reduced to £40,000 with effect from 2014-15. From April 2016, the allowance was tapered at a rate of £1 for every £2 of adjusted income received over £150,000, down to £10,000 for those with an adjusted income over £210,000.
- 5.31 These limits are likely to affect anyone paid more than around £110,000 a year who sees an increase in their pension benefits of more than £40,000 in a given year.¹⁶⁰ Those with a total income of over £210,000 in 2017-18 would have had an annual allowance of just £10,000, allowing for only £4,500 of tax relief (at the 45 per cent additional tax rate). In our 2017 Report, we record the evidence of the Lord Chief Justice (LCJ) suggesting that for judges in the 2015 NJPS this could result in annual tax charges of £25,500 for affected High Court Judges, and £8,500 for affected Circuit Judges.¹⁶¹
- 5.32 The lifetime allowance is the maximum amount of pension savings an individual can build up over their life from all registered pension schemes, without incurring a tax liability. Between April 2012 and April 2014, the allowance was progressively reduced from £1.8 million to £1.25 million, and then reduced further to £1.0 million from April 2016, with tax charges payable on pension benefits above this level.¹⁶² The effects of this on individuals will vary, depending on how much each individual has saved for their pensions over their careers. However, the lifetime allowance is likely to affect all higher earners, such as senior legal professionals, who have had a chance to build up pension

¹⁵⁵ See: HMRC rates of Income Tax statistics for more information, available at: <https://www.gov.uk/government/statistics/rates-of-income-statistics>

¹⁵⁶ See: HMRC Income Tax personal allowances and reliefs for more information, available at: <https://www.gov.uk/government/statistics/income-tax-personal-allowances-and-reliefs>

¹⁵⁷ See: HMRC National Insurance contributions for more information, available at: <https://www.gov.uk/government/statistics/main-features-of-national-insurance-contributions>

¹⁵⁸ 39th Annual Report on Senior Salaries 2017 (Chapter 2). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017 and 40th Annual Report on Senior Salaries 2018. See: <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2018>

¹⁵⁹ See: Chapter 1 for details of judicial pension schemes.

¹⁶⁰ Assuming the individual has no unused annual allowance from the previous three tax years that can be carried forward.

¹⁶¹ 39th Annual Report on Senior Salaries 2017 (paragraph 2.57). See: <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2017>

¹⁶² The lifetime allowance for 2018-19 is £1,030,000.

pots. For the judiciary, the changes to both the lifetime allowance and annual allowance will apply to all judges in the NJPS.

- 5.33 To show the possible effect of these changes on an individual, we have taken the pre-appointment earnings found by the 2009 and 2017 NatCen research (Table 5.3 above) and modelled the effect of the tax, national insurance and pension changes since 2009-10 on take-home pay and total net remuneration, adjusting for CPI inflation. This analysis looks at earnings in a single year, so does not model the impact of the lifetime allowance, nor take into account any annual allowance carry over. The results are shown in Table 5.7 below. (The definitions we use throughout this analysis are provided in paragraph 5.4).

Table 5.7: Changes in modelled take-home pay and total net remuneration in the private sector (adjusted for inflation), 2009-10 and 2017-18

	Assumed pre-appointment role and pension contribution ¹	Median pre-appointment earnings 2017, £pa	Real change (CPI adjusted) 2009 to 2017	
			Take-home pay %	Total net remuneration %
High Court Judge	Barrister, maximum tax-efficient pension contributions ²	554,822	43.0%	-38.4%
	Barrister, 15% pension contribution	554,822	3.6%	-31.1%
Circuit Judge	Solicitor, 15% pension contribution	182,425	-26.7%	-22.6%
	Solicitor, 1% pension contribution	182,425	-17.9%	-17.5%
	Barrister, 15% pension contribution	182,425	-31.3%	-22.1%
District Judge	Solicitor, 1% pension contribution	123,457	-1.8%	-1.3%

Notes:

1 Solicitors are assumed to be employees with a 7 per cent employer contribution to their pension scheme where the individual is contributing 15 per cent, and a 3.2 per cent employer contribution where the individual is contributing 1 per cent. Barristers are assumed to be self-employed, so not in receipt of an employer contribution to their pension scheme.

2 27.5 per cent in 2009-10 (to maximise available tax relief); less than 1 per cent in 2017-18 as only £10,000 of tax relief was available.

Sources: OME analysis of Survey of Newly Appointed Judges 2017. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>. OME analysis of Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers. See: http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx

- 5.34 Table 5.7 shows that take-home¹⁶³ pre-appointment earnings have increased by 43 per cent in the case of potential High Court Judges who reduced their pension contributions in line with the reduction in their pensions tax allowance to £10,000. A potential future High Court Judge who kept their pension contributions constant at 15 per cent will have seen an increase in real take-home pre-appointment earnings of 3.6 per cent.

¹⁶³ We include this for completeness. Take-home pay changes are likely to be closely linked to individual choices made about pension contributions. These choices are likely to be have been affected, in turn, by taxation changes over the period between 2009-10 and 2017-18. This, therefore, affects how changes in take-home pay can be interpreted.

- 5.35 Looking at potential future Circuit Judges, Table 5.7 shows that take-home pre-appointment earnings fell by 27 per cent for solicitors with a 15 per cent pension contribution and by 18 per cent those for with a 1 per cent pension contribution. Self-employed barristers saw a 31 per cent fall in take-home pay, assuming a 15 per cent pension contribution. Potential District Judges with a 1 per cent pension contribution saw a 2 per cent fall in take-home pre-appointment earnings.
- 5.36 As described at the start of this Chapter, a more appropriate measure that takes account of the pension benefits that accrue from higher pension contributions and associated tax relief during the year is total net remuneration. Table 5.7 shows how this has changed since 2009-10, and the potentially significant real reductions in total net remuneration, particularly for the higher earners, as a result of the changes to pension taxation. (Our modelling uses the median pre-appointment earnings data from NatCen but clearly this may not necessarily reflect reality for a particular individual). Our modelling shows that whilst a potential High Court Judge who was maximising their tax-efficient pension savings will have seen a substantial *rise* in take-home pay, this was because their pension contribution fell from 27.5 per cent to less than 1 per cent, as their annual allowance fell from £245,000 in 2009-10 to £10,000 in 2017-18. The knock-on effect of this on total net remuneration was a *fall* of 38 per cent over the period. Those who continued to make pension contributions at 15 per cent saw a fall in total net remuneration of 31 per cent.
- 5.37 For potential Circuit Judges, Table 5.7 shows that the estimated fall in total net remuneration is between 18 and 22 per cent. For potential District Judges it is much lower, at 1.3 per cent, since their estimated total net remuneration will keep them within the annual and lifetime allowance limits.
- 5.38 The key finding here is that the potential impact on private sector earnings of pension taxation changes since 2009-10 is severe for all those who were making maximum pension contributions.

Changes in judicial pay and remuneration since 2010

- 5.39 The modelling above provides some context for the changes in judicial pay and remuneration over this period. As for other public sector groups, base pay for the judiciary has been subject to a period of pay restraint since 2010. In total, nominal gross base pay increased by 5.1 per cent between 2009-10 and 2017-18. All judicial salary groups have received the same pay awards over this period. In addition, in 2017 the government announced a temporary Recruitment and Retention Allowance (RRA) for High Court Judges in the NJPS only. This extra non-pensionable and taxable allowance is worth 11 per cent of salary. We summarise the effect in nominal and real terms on salaries in Table 5.8 below.

Table 5.8: Judicial salaries 2009-10 to 2017-18¹

	Salary group	Salary £pa (nominal, 2009-10)	Salary £pa (nominal, 2017-18)	Nominal % change (2009-10 to 2017-18)	Real % change ² (2009-10 to 2017-18)
Group 4	Judges in JUPRA	172,753	181,566	5.1%	-12.0%
	Judges in NJPS (exc. RRA) ³	172,753	181,566	5.1%	-12.0%
	Judges in NJPS (inc. RRA)	172,753	201,538	16.7%	-2.3%
	Judge opting out of pension scheme (no RRA)	172,753	181,566	5.1%	-12.0%
Group 6.1	Judges in JUPRA	128,296	134,841	5.1%	-12.0%
	Judges in NJPS	128,296	134,841	5.1%	-12.0%
	Judges opting out of pension scheme	128,296	134,841	5.1%	-12.0%
Group 7	Judges in JUPRA	102,921	108,171	5.1%	-12.0%
	Judges in NJPS	102,921	108,171	5.1%	-12.0%
	Judges opting out of pension scheme	102,921	108,171	5.1%	-12.0%

Notes:

1 Salaries are in nominal terms.

2 Adjusted for CPI.

3 We would expect most judges in the NJPS to receive the RRA but we have included analysis for judges in the NJPS without the RRA as this is used later to show the effect of the RRA on remuneration.

Source: OME analysis.

5.40 As for all other employees, including the legal professionals discussed above, judges' take-home pay will have been affected by changes to tax and national insurance thresholds over this period, and its real-terms value will have been eroded by inflation. However, as we show later in this Chapter, the single most significant factor affecting total net remuneration in the judiciary is the change to the NJPS from the 1993 Judicial Pension Scheme (JUPRA).

5.41 The 1993 Judicial Pension Scheme was, and is, deregistered for tax purposes. This means that those within it were, and remain, unaffected by the changes to the lifetime allowance and annual allowance that have been introduced since 2010.¹⁶⁴ However, the 2015 NJPS is registered for tax purposes, and judges within it (which include all those who became judges after its introduction) are subject to the same rules on lifetime allowance and annual allowance that apply to the rest of the working population.¹⁶⁵ Further details about the judicial pension schemes are given in Chapter 1.¹⁶⁶

¹⁶⁴ Judges in the 1993 JUPRA scheme have, however, seen an increase in their pension contributions due to other changes since 2010.

¹⁶⁵ For example, the impact of the annual allowance on the value of judicial pensions is set out in 39th Annual Report on Senior Salaries 2017 (Chapter 2). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017

¹⁶⁶ Where we need to differentiate between the new and older judicial pensions schemes, the term *NJPS* refers to both the New Judicial Pension Scheme 2015 and the equivalent Northern Ireland Judicial Pension Scheme. The term *JUPRA* refers to all the legacy schemes i.e., the Judicial Pension Scheme 1993, the Fee-Paid Judicial Pension Scheme 2017, and the 1981 salaried scheme.

- 5.42 When the 2015 scheme was established, some members of JUPRA were eligible for partial or full protection. Those who were within ten years of their normal pension age of 65 on 1 April 2012 were granted full protection to remain members of the 1993 scheme. Those who were aged between 51½ and 55 at that date were given partial, or ‘tapering’ protection, allowing them to remain in the 1993 scheme for a time-limited period linked to their age. A one-off irrevocable option to take a ‘Transition Protection Allowance’ alongside salary from April 2015, worth 37.9 per cent of pensionable pay, was available to a group of judges meeting specific criteria in lieu of joining the NJPS; in effect, this allowed a small number of judges to take pay in lieu of employer pension contributions.¹⁶⁷
- 5.43 The MoJ supplied us with the numbers of office holders¹⁶⁸ eligible to remain as members of the 1993 scheme until retirement, those eligible for partial tapering protection, and those who were not eligible for any protection. Table 5.9 shows that 806 judges (48 per cent) are eligible for full protection and will stay in JUPRA until their retirement; 517 judges (31 per cent) had no protection; and 350 (21 per cent) are eligible for tapering protection. Table 5.10 then shows, for these 350 judges, that 226 will lose this tapered protection between 2018-19 and 2021-22, and would then have to move into the NJPS if they wished to remain in a judicial pension scheme.

Table 5.9: Numbers of judges eligible for full, tapering and no protection from 2015 pension changes

	High Court Judges	Circuit Judges	District Judges	Other	Total
Total office holders in JUPRA prior to introduction of the NJPS	71	505	428	669	1,673
Remain in 1993 scheme until retirement	39	268	174	325	806
Total cohort eligible for tapering protection	19	104	81	146	350
Tapered during 2015-16	0	9	7	13	29
Tapered during 2016-17	3	11	16	10	40
Tapered during 2017-18	3	17	11	24	55
Taper(ed/s) during 2018-19	5	15	12	30	62
Tapers during 2019-20	3	18	13	30	64
Tapers during 2020-21	2	17	9	24	52
Tapers during 2021-22	3	17	13	15	48
No protection from 2015 pension changes	13	133	173	198	517

Source: Ministry of Justice (unpublished).

¹⁶⁷ Full details were provided in the New Judicial Pension Scheme 2015 Consultation June 2014. See: https://consult.justice.gov.uk/digital-communications/judicial-pension-scheme-2015-consultation/supporting_documents/jpsconsultation.pdf accessed 16 August 2018. The Ministry of Justice advised us that 24 Judges opted for this Transition Protection Allowance.

¹⁶⁸ Not the same as headcount.

Table 5.10: Cohort of judges eligible for tapering protection

	High Court Judges	Circuit Judges	District Judges	Other	Total
Total cohort eligible for tapering protection	19	104	81	146	350
Of which cohort due to taper 2018-19 to 2021-22	13	67	47	99	226

Source: Ministry of Justice (unpublished).

- 5.44 These transitional arrangements have been subject to legal challenge. In January 2017, the Employment Tribunal concluded that the transitional protection mechanisms unlawfully discriminate on the basis of age.¹⁶⁹ In January 2018, the Employment Appeal Tribunal upheld this decision. The government has appealed this decision and consideration by the Court of Appeal is pending. However, for the time being we can only proceed on the assumption that the pension changes as introduced by the government are, and will remain, the *status quo*.
- 5.45 As with our previous calculations for legal professionals in the private sector, the effect of the different pension arrangements for different categories of judge is complex. Any personal contribution into a pension scheme reduces an individual's take-home pay in the short term, but also increases the ultimate value of a pension which the individual would hope to receive, a value that is boosted by tax relief on contributions.¹⁷⁰
- 5.46 As before, we have carried out two sets of modelling. Both are shown in Table 5.11. First, we have modelled the effect of the different judicial pension arrangements on take-home pay. Second, we have done the same modelling by making appropriate allowance for the value of the additional pension benefits received. It is this latter calculation on which we place most emphasis, though we include and comment on the take-home pay calculations for the sake of completeness. The definitions of take-home pay and total net remuneration are as described in paragraph 5.4.
- 5.47 Table 5.11 shows the results for three groups:¹⁷¹ judges with full transitional protection who have a right to remain in the 1993 pension scheme; judges without transitional protection in the 2015 NJPS; and judges who choose to opt out of the pension scheme available to them. The comparison is against judges in the 1993 pension scheme in 2009-10 for all scenarios, on the assumption that all judges were then enrolled in the JUPRA scheme. 2009-10 was also the date of the last Major Review.

¹⁶⁹ See: *Ms V McCloud and Others Mr N Mostyn and Others v The Lord Chancellor and Secretary of State for Justice and Ministry of Justice: 2201483/2015 and Others, 2202075/2015 and Others*, paragraph 125. https://assets.publishing.service.gov.uk/media/58e3a79640f0b606e30000ad/Ms_V_McCloud_and_others_v_The_Lord_Chancellor_and_Others_221483-2015_others__Judgment_and_reasons.pdf

¹⁷⁰ The future pension benefit may not be perceived until retirement but the tax charge that it incurs has an immediate impact on disposable income.

¹⁷¹ The table also shows the results for judges in NJPS without the RRA, in order to show the effect on remuneration.

Table 5.11: Changes in take-home pay and total net remuneration for judges (adjusted for inflation),¹ 2009-10 to 2017-18

Salary group ²		Take-home pay			Total net remuneration		
		2009-10	2017-18	Real % change ³	2009-10	2017-18	Real % change ³
Group 4	Judges in JUPRA	126,190	98,896	-21.6%	220,299	181,736	-17.5%
	Judges in NJPS (excl. RRA)	126,190	73,042	-42.1%	220,299	140,439	-36.3%
	Judges in NJPS (inc. RRA)	126,190	83,627	-33.7%	220,299	151,025	-31.4%
	Judges opting out of pension scheme (no RRA) ⁴	126,190	106,910	-15.3%	220,299	106,910	-51.5%
Group 6.1	Judges in JUPRA	95,828	75,441	-21.3%	165,718	136,962	-17.4%
	Judges in NJPS	95,828	66,423	-30.7%	165,718	116,476	-29.7%
	Judges opting out of pension scheme	95,828	81,387	-15.1%	165,718	81,387	-50.9%
Group 7	Judges in JUPRA	78,498	64,115	-18.3%	134,565	113,468	-15.7%
	Judges in NJPS	78,498	65,643	-16.4%	134,565	105,796	-21.4%
	Judges opting out of pension scheme	78,498	68,885	-12.2%	134,565	68,885	-48.8%

Notes:

1 The value of pension benefits has been calculated taking the pensionable pay for an individual and multiplying this by the accrual rate of the pension scheme and by a valuation factor of 16. In reality, the valuation factor to apply to an individual will vary depending on their age and expected retirement age. Further information is available in Appendix M.

2 All judges are assumed to be in JUPRA in 2009.

3 Adjusted for CPI.

4 This does not include the small number of judges who came off the 1993 Judicial Pension Scheme and received the 'Transition Protection Allowance' alongside salary from April 2015, worth 37.9 per cent of pensionable pay. This was available to a group of judges meeting specific criteria in lieu of joining the New Judicial Pension Scheme 2015. See: paragraph 5.42.

Source: OME analysis.

5.48 Table 5.11 shows that judges who opt out of the pension scheme have lower total net remuneration than those in either the NJPS or the 1993 JUPRA scheme, but higher take-home pay. This is true for all three salary groups considered. Given the potentially large tax bill resulting from an individual reaching his or her lifetime allowance, judges may still rationally choose to forego a pension to avoid tax charges resulting from exceeding either the annual allowance or lifetime allowance.

5.49 Table 5.11 also shows the value of the 1993 JUPRA scheme. Judges who remain on it (i.e., judges with either full protection, or transitional protection for as long as it lasts), have suffered much lower falls in total net remuneration than other judges. That is most true at

High Court level, and least true at District Bench level, because the impact of the annual allowance will be most acute for those in receipt of higher salaries. Even the addition of the RRA has not come close to bridging the gap in total net remuneration between High Court Judges in the NJPS and High Court Judges in the JUPRA pension scheme.

5.50 Table 5.11 shows that for judges in the 2015 NJPS:

- In 2009-10, we estimate that the total net remuneration for a group 4 judge was equivalent to £220,299 in 2017 prices. Compared to that figure, we estimate a JUPRA group 4 judge's total net remuneration in 2017-18 would be £181,736, a fall of just under £40,000, or 17.5 per cent. A judge in the 2015 NJPS would have total net remuneration of £140,439 in 2017-18, a drop in the order of £80,000, or 36.3 per cent.
- For a group 6.1 judge, we estimate total net remuneration in 2009-10 was equivalent to £165,718 in 2017 prices. Compared to that figure, we estimate a JUPRA group 6.1 judge's total net remuneration in 2017-18 would be £136,962, a fall of just under £30,000, or 17.4 per cent. A judge in the 2015 NJPS would have total net remuneration of £116,476 in 2017-18, a drop of just under £50,000, or 29.7 per cent.
- For a group 7 judge, we estimate total net remuneration in 2009-10 was equivalent to £134,565 in 2017 prices. Compared to that figure, we estimate a JUPRA group 7 judge's total net remuneration in 2017-18 would be £113,468, a fall of around £21,000, or 15.7 per cent. A judge in the 2015 NJPS would have total net remuneration of £105,796 in 2017-18, a drop of nearly £29,000, or 21.4 per cent.

5.51 It is also worth noting that the percentage reductions in total net remuneration for JUPRA High Court and Circuit Bench judges, at 17.5 and 17.4 per cent respectively, are less than the reductions that we have modelled in Table 5.7 for the higher-earning legal professionals making high pension contributions. JUPRA insulates its members from the effects of the annual allowance and lifetime allowance changes. This benefit is unique to JUPRA members. It will have become more valuable over this period.

5.52 We have also modelled the take-home pay position, which is what individuals most immediately perceive. Table 5.11 shows that the largest decrease in take-home pay compared to 2009-10 has been for High Court Judges in the 2015 NJPS, even though they will also have been receiving the RRA since 2017.¹⁷²

5.53 Some High Court Judges without transitional protection may have chosen to opt out of the NJPS if their pension pot exceeds the lifetime allowance and might have opted for the Transitional Protection Allowance.¹⁷³ They are not eligible for the RRA, but would be unaffected by the increase in pension contributions and the reductions in the annual allowance. The decrease in their take-home pay since 2009-10 is therefore lower for them than for other High Court Judges at 15.3 per cent. However, this does not take account of the fact that they do not receive any pension benefits.

5.54 Circuit Judges in the NJPS have been less adversely affected than High Court Judges with the same pension arrangements, despite there being no equivalent of the RRA for Circuit Judges. While High Court Judges' annual allowance is tapered down to the lower limit of £10,000, Circuit Judges retain more of the allowance and therefore face a lower annual allowance tax charge. They have also not been affected by the introduction of the additional rate of tax, as their salary is below the £150,000 threshold. However, Circuit

¹⁷² Judges in JUPRA do not receive the RRA. In addition, judges with transitional protection are still in JUPRA (which is deregistered) and are therefore not affected by the reduction in the annual allowance.

¹⁷³ See: paragraph 5.42. The Transitional Protection Allowance was available to all judges that were eligible regardless of level.

Judges are liable to pay a portion of the excess of their pension benefits over the tapered annual allowance at the additional (45 per cent) tax rate.

- 5.55 Take-home pay for District Judges has fallen by less since 2009-10 than for Circuit Judges and High Court Judges. Those in the NJPS are minimally affected by the annual allowance tax charge. The value of the additional pension benefits they accrue in the year is only just over the £40,000 annual allowance, meaning most of it remains tax free. This means that their 2017-18 take-home pay is higher than for District Judges in JUPRA, as those still in the deregistered 1993 scheme are not eligible for tax relief on their pension contributions.

Other taxation and pension effects

- 5.56 Before moving towards our pay recommendations, we recognise that there are two other pay-related issues that have manifested themselves due to pension taxation changes.

- 5.57 First, as we have said in our two most recent reports, changes to pension taxation have led to high effective marginal tax rates in some cases, where an apparently large increase in pensionable income leads to little real change in take-home pay.¹⁷⁴ In addition, we analysed the impact of the annual allowance on the value of judicial pensions and the impact of using Scheme Pays.¹⁷⁵ We found that combining the effect of the annual allowance taper with the Scheme Pays method for deferring pension tax charges could lead to counter-intuitive outcomes, such as senior judges in the NJPS retiring with a smaller pension than less senior colleagues.¹⁷⁶ At present, those employed in the public sector do not have much flexibility to respond to the loss of tax allowances – for example, by taking pay in lieu of employer pension contributions. These sharp thresholds and high marginal tax rates are features of the tax and pension systems. These are not within our remit, though we have noted in our recent reports that these features may have the potential to affect recruitment and retention.

- 5.58 Second, as the LCJ suggested in evidence provided for our 2017 Report, pension taxation changes mean that there may be little incentive for some judges to work more than 80 per cent of their full-time hours.¹⁷⁷ The LCJ said that, comparing the gross remuneration¹⁷⁸ packages of Circuit Judges working a five day week and a four day week, those working the four day week had slightly lower earnings, but a greater pension accrual. This was because the full-time judges' salaries took them over the threshold for annual allowance tax charges and because of the subsequent reduction made to the pension from using Scheme Pays to cover the tax charge.

The evidence on judicial pay recommendations

- 5.59 In considering our recommendations, we note the overarching principle, as set out in Chapter 3, that geographical location should not affect judicial pay. What follows therefore applies to all three jurisdictions of the UK. Drawing together the evidence presented in Chapters 2 and 4, and in the earlier part of this Chapter, we draw the following broad conclusions.

¹⁷⁴ 39th Annual Report on Senior Salaries 2017 (Chapter 2). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017. Our modelling of these effects showed that, for several of our remit groups at levels of pay between £133,000 and £170,000, take-home pay was heavily affected by these factors, remaining flat or even decreasing. This does not take into account the increased pension benefit that will come from higher pay. See also Appendix G, 40th Annual Report on Senior Salaries 2018, <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2018>

¹⁷⁵ Eligibility criteria apply. For further information about Scheme Pays see: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm056410#IDAYCILD>

¹⁷⁶ 39th Annual Report on Senior Salaries 2017 (Chapter 2, Figure 2.8 and paragraph 2.63). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017

¹⁷⁷ 39th Annual Report on Senior Salaries 2017 (Chapter 6, paragraph 6.70). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017

¹⁷⁸ Defined in the LCJ evidence as gross pay less pension contributions plus annual pension accrual.

- 5.60 From Chapter 2, we note that there is a widespread sense of dissatisfaction within the judiciary, at all levels. There are many reasons for this. This is certain to be producing some negative effects on recruitment and retention. The letter we received in August 2018 from the LCJ,¹⁷⁹ expressing concern about the retention of JUPRA judges, noted that the atmosphere remained “febrile”.
- 5.61 From Chapter 4, we note strong evidence of recruitment problems among some groups, further discussed below. We do not see strong evidence of a recent surge in numbers of judges retiring early. However, we do note that significant numbers of judges, at all levels, do in fact retire before they are 70, and have been doing so for several years now. We are also aware that past behaviour is not necessarily a guide to the future in the current atmosphere.
- 5.62 From earlier in Chapter 5, we note that the real-terms value of judicial remuneration has declined since 2009-10. This is largely explained by changes in pensions and pension taxation, and increases in judicial salaries that have not kept up with inflation. However, we also note that changes in the extent to which pension benefits are taxed has also lowered remuneration for many people on higher salaries across the public and private sectors, including legal professionals. This particularly applies to those judges who have moved from the JUPRA pension scheme to the NJPS, which is registered for taxation purposes. By contrast, those in JUPRA have been insulated from these significant pension tax changes on compensation.
- 5.63 We conclude that it is necessary to consider separate pay recommendations for the judges in JUPRA and the judges in the NJPS. The judges in these schemes already receive different overall pay and benefits packages for performing the same role. This difference is having a visible effect on recruitment because all new judges will be in the NJPS. We therefore see no logic for a pay award to be applied equally to both groups. This is not an ideal position, because in principle it would be desirable for all judges at the same level to be on identical terms and conditions. The judicial leaderships have stressed this point to us. **However, we feel we cannot ignore the fact that the total value of remuneration is already significantly different for a judge in JUPRA and a judge in the NJPS (see Table 5.11). If the pensions position were different, then our approach and recommendations would have been different.**
- 5.64 Our conclusions do not mean that we value the contribution made by JUPRA judges any less than new judges. However, we are concerned to move the judiciary to a remuneration footing that narrows the existing differential between judges in different pension schemes, in order to respond to the recruitment challenges.

Judges in the 1993 JUPRA scheme – discussion

- 5.65 We carefully considered the rationale for our recommendations. We are conscious that there are some very serious concerns about retention because of widespread dissatisfaction within the judiciary, as we set out in Chapter 2. This situation could deteriorate very quickly.¹⁸⁰ We note also that there could be a trigger point for early departures when those judges in receipt of transitional protection reach the end of their period of protection and move out of the JUPRA scheme (see Tables 5.9 and 5.10 for details of numbers receiving tapering protection).

¹⁷⁹ We also received letters from the Lord President of the Court of Session and the Lord Chief Justice for Northern Ireland.

¹⁸⁰ The LCJ wrote to us in August 2018, expressing concern that a surge in early leaver numbers, particularly from the High Court and Circuit Bench, was a serious possibility. This was based on discussions by him and others in the judicial leadership with judges.

5.66 Nevertheless, we conclude, based on the evidence, that the recruitment of *new* judges is where resources should be targeted. In our view it is for the MoJ to weigh up the risks and benefits of committing additional future resources towards retention. Given all the other reasons for judicial dissatisfaction, it is not clear to us how far, and at what level, pay could ameliorate the situation. We stress the need for the MoJ to keep a close eye on this.

Observation: Conceptually, there are a range of pay-related measures that could be targeted specifically towards retention; these could include, for example, different models for a retention allowance assessed in relation to expected retirement dates, in order to encourage judges (including those in the JUPRA pension scheme) to remain on the bench. Ultimately, the MoJ needs a long-term pay and reward strategy to recruit *and* retain. The SSRB stands ready to comment on specific propositions, and to do so quickly, if desired.

5.67 In making our recommendations, we also considered the pay and remuneration position of our other remit groups, all of whom are senior public servants. In our 2017 Report, we noted that all these groups have seen significant real-terms decreases in take-home pay since 2009-10.¹⁸¹ In our 2018 Report, we noted the generally improved picture for pay growth in the private sector, and recommended higher pay increases than for several years previously.¹⁸² However, we fail to see a compelling rationale to recommend more for JUPRA judges for 2018 than for our other remit groups. We therefore recommend that base salaries for JUPRA judges are increased by 2.5 per cent from April 2018.

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

5.68 A pay increase for JUPRA judges is certainly necessary. It is important that the UK government and devolved administrations take all opportunities to show this group of judges that they are valued, and that they are encouraged to remain in judicial office.

5.69 As set out in Chapter 3, this Major Review recommends that leadership supplements are introduced to enable appropriate recognition for judges in new salary groups V and VI. We recommend that leadership supplements should apply to all judges regardless of pension scheme membership, as it is important that leadership roles are recognised and incentivised. For a judge in JUPRA who was previously in group 6.1, this will have the effect of making four further pay points, worth a cumulative total of £25,000 extra pay, available to reward leadership responsibilities. This is set out in Table 5.13 summarising our pay recommendations in full.

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

5.70 In addition, any resources that the government can commit to improving the courts infrastructure and providing better administrative support to judges would support judicial retention in general.

5.71 We note that it is impossible to accurately assess the value of the JUPRA scheme to any individual judge. We are confident that our conclusions above are true in general, but

¹⁸¹ 39th Annual Report on Senior Salaries 2017 (Appendix J). See: <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2017>. Taking into account inflation, changes to pension contributions, income tax and national insurance.

¹⁸² 40th Annual Report on Senior Salaries 2018 (Summary of Recommendations, pages 3-4). See: <https://www.gov.uk/government/publications/senior-salaries-review-body-report-2018>

individuals will have their own circumstances. **Any judge who wishes to switch to the NJPS and secure the higher basic pay awards should be free to do so.**

Judges in the 2015 New Judicial Pension Scheme

Recruitment and pay

- 5.72 The key issue for us is to ensure adequate future recruitment at all levels. All new judges will be in the NJPS, which is therefore part of their recruitment package. We recap briefly below the conclusions we have drawn from the recruitment evidence for the different judicial groups, set out in Chapter 4.
- 5.73 The 'judicial offer', in the round, is now insufficiently attractive to secure a good choice of high quality applicants to the High Court. Historically, there was high demand for High Court posts from well-qualified legal professionals. The first unfilled High Court vacancy occurred in 2015. Since then, vacancies have grown, and the JAC has been consistently unable to recruit the necessary numbers to fill them. There have also been changes in the apparent quality of candidates, as measured by JAC criteria; the ratio of JAC-rated A and B candidates to selections has fallen from 171 per cent in 2012-13 to 100 per cent in 2017-18. In other words, every A or B rated candidate is now likely to be recommended for appointment, although not all will accept any subsequent offer.
- 5.74 The recruitment position for the Circuit Bench is growing more difficult. For group 5 (which includes Senior Circuit Judges), there were no unfilled vacancies in 2016-17 or 2017-18,¹⁸³ but the ratio of JAC-rated A and B candidates to selections has fallen from 227 per cent in 2012-13 to 100 per cent in 2017-18.¹⁸⁴ For group 6.1 (which includes Circuit Judges), there were 11 unfilled vacancies in 2016-17, and 12.5 in 2017-18 (with 104 selections made). Between 2012-13 and 2014-15, there were no C-rated Circuit Judge selections. In 2017-18, 24 per cent of selections were C-graded candidates.
- 5.75 Signs of recruitment problems for the District Bench may be starting to emerge. In 2016-17, there were no unfilled vacancies in group 7. For District Judge (Civil and Family) recruitment in 2017-18,¹⁸⁵ there was a shortfall of 4.5. Whereas previously there had been no C-rated selections at all in most years, in 2017-18 these represented 45 per cent of the total. We consider that the evidence, while not conclusive, suggests that recruitment at this level is becoming harder. We note the signs that applicants may be preferring fee-paid posts over salaried posts. We also note that the District Judge level is the group where the NatCen evidence suggests pay in the outside legal labour market has increased by the greatest percentage.
- 5.76 We saw no evidence of difficulties in filling the senior judicial roles above the High Court. Almost all of these appointments will be from existing members of the salaried judiciary, though we acknowledge they need to remain sufficiently attractive for serving judges to apply for them.

Objectives for judicial recruitment

- 5.77 It is, of course, not self-evident that the right objective for judicial recruitment is to secure applicants of the same calibre as in the past to all levels of the judiciary. The judiciary in the United Kingdom has been considered internationally excellent in the past; it does not have to retain that objective into the future if it were felt that a 'good enough' objective was now more appropriate.

¹⁸³ Part year – April to December.

¹⁸⁴ Judicial Appointments Commission evidence to the SSRB 2018 page 2 of Annex C. <https://www.judicialappointments.gov.uk/sites/default/files/sync/news-documents/ssrb-evidence-annexc-2018.pdf>

¹⁸⁵ Part year – April to December.

- 5.78 We put this question directly to the Lord Chancellor and the LCJ. They both confirmed to us that, while they wished to see a more diverse judiciary, they thought it essential that judicial appointments continued to be attractive to senior legal practitioners – for example, senior commercial QCs and senior partners in City law firms. They wished the United Kingdom to remain an attractive venue for the settling of international commercial disputes, and for the quality of the judiciary in the United Kingdom to continue to be recognised throughout the world. In particular, they did not wish to compromise on quality in the High Court – for example, by allowing the appointment of those who had been C-rated by the JAC.
- 5.79 We endorse this assessment. It is clearly of great importance in retaining an international reputation of the courts of the United Kingdom that they include a critical mass of judges with first-hand experience of litigation in the most significant cases. That does not only mean senior QCs; the major solicitor firms will also be important sources of recruitment. It does mean, however, that enough legal professionals from this type of background need to be attracted onto the Bench. We have therefore approached our pay recommendations with these objectives in mind.

Rationale for pay recommendations for judges in the 2015 New Judicial Pension Scheme

- 5.80 There is no straightforward way to assess what pay levels are necessary to solve current recruitment problems at different levels of the judiciary. However, we thought it relevant to start with a baseline of the position in 2009-10, since it appears that judicial recruitment was not then a significant issue. It therefore seems a reasonable assumption that the total judicial remuneration package was sufficiently attractive at that time. That date also coincides with when the last Major Review was conducted.
- 5.81 We considered the amounts by which total net remuneration has declined since 2009-10, as shown in Table 5.11 (36.3 per cent for a High Court Judge, 29.7 per cent for a Circuit Judge and 21.4 per cent for a District Judge). We considered that one benchmark for establishing what pay levels might be needed was to restore the loss in remuneration over the period, back to its 2009-10 level. We calculated the implied salary uplift that would be needed to return the judges with no transitional protection – in other words, judges in the NJPS – to the 2009-10 position. The implied uplifts would be 56.9 per cent for group 4,¹⁸⁶ to approximately £285,000; 42.3 per cent for group 6.1, to approximately £192,000; and 27.2 per cent for group 7, to approximately £138,000.
- 5.82 We do not, however, think that it is right to have an aim of restoring the 2009-10 position. All high earners in the public sector, and many in the private sector, have seen their total net remuneration fall since 2009-10, and there is no reason why the judiciary should be uniquely exempt. These figures, however, gave us a useful ‘upper boundary’ for our discussions.
- 5.83 We took into account the evidence, discussed earlier in this Chapter, about external remuneration trends for legal professionals. Table 5.7, based on the NatCen surveys in 2009 and 2017, indicated that total net remuneration for High Court comparators decreased between 2009-10 and 2017-18, by between 31.1 per cent and 38.4 per cent. Over the same period, for Circuit Judge comparators there were decreases of between 17.5 per cent and 22.6 per cent, and for District Judge comparators a decrease of 1.3 per cent. These figures imply that returning total judicial remuneration to its 2009-10 position would be out of step with what has happened to many private sector legal professionals.

¹⁸⁶ Disregarding the RRA, which is temporary.

- 5.84 In considering the 'lower boundary' for our discussions, we have seen no evidence that the RRA, at 11 per cent, has been large enough to have any positive effect on recruitment to the High Court.
- 5.85 Table 5.2 set out judicial salaries in 2017 compared with median pre-appointment earnings, drawn from the 2017 NatCen survey. It showed that group 4 judges took an average 67 per cent earnings decrease on appointment; that Circuit Judges (group 6.1) took an average 26 per cent earnings decrease; and that District Judges (group 7) took an average 12 per cent earnings decrease. As already mentioned, this sample does not include any legal professionals who decided not to join the judiciary because the remuneration was too low.
- 5.86 It has always been the norm that the higher-earning legal professionals would take a significant pay cut on joining the judiciary. When NatCen did their similar survey in 2009, the equivalent earnings decreases were 68 per cent for group 4, 26 per cent for group 6.1, and a 3 per cent increase for group 7, as set out in Table 5.3. However, back then the prospective judges were joining the JUPRA scheme, with the extra benefits that this offered. Their real-terms remuneration decrease will therefore have been lower than that of their 2017 counterparts.
- 5.87 Ultimately, we have had to take a view on the salary levels that we thought stood a reasonable chance of improving the recruitment position to the judiciary at the different levels. There is no one 'right answer' here. Given the many different factors that affect judicial recruitment, we cannot be completely confident that our recommendations will be high enough to solve the problem, but we do believe they offer a credible signal that government values the judiciary and wishes to make a judicial appointment more attractive.
- 5.88 Our recommendations are intended to alleviate recruitment problems from what is, at the upper end, a highly lucrative external labour market. This is a fundamental difference between the judiciary and our other remit groups. The external labour market matters for judicial recruitment; it matters less for retention.¹⁸⁷
- 5.89 All of the following recommendations are based on the new salary structures that we recommended in Chapter 3.

Recommendation 15: We recommend that, from April 2018, the following salaries apply to judges in the NJPS:

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

- 5.90 These recommendations are for gross pay. We have calculated the estimated total net remuneration that we think they should produce for the main judicial groups that we have been discussing. This analysis shows that, even after our recommendations, JUPRA judges would still have higher total net remuneration than judges in the NJPS. However, the gap between them will have narrowed, and to that extent the pay system could be described as fairer.

¹⁸⁷ The prohibition on return to private practice upon appointment to the salaried judiciary is discussed in Chapter 4.

Table 5.12: Indicative comparison of changes to total net remuneration for judges in JUPRA and in NJPS (adjusted for inflation)¹

Salary group		Total net remuneration		
		2009-10	2017-18	2018-19 if the SSRB recommendations for new pay rates are accepted ²
		£pa	£pa	£pa
Group 4	Judges in JUPRA	220,299	181,736	181,714
	Judges in NJPS	220,299	140,439	176,579
Group 6.1	Judges in JUPRA	165,718	136,962	137,088
	Judges in NJPS	165,718	116,476	126,059
Group 7	Judges in JUPRA	134,565	113,468	113,111
	Judges in NJPS	134,565	105,796	108,472

Notes:

1 Adjusted by CPI.

2 Group 7 judges still have a proportion of their personal allowance and so are still affected by the personal allowance taper (meaning more money is made taxable). High Court and Circuit Judges already have a personal allowance of zero in 2017-18.

Source: OME analysis.

Judges above group IV

5.91 We have recommended different levels of increase for the different judicial groups, since we consider that the recruitment and remuneration evidence justifies this. For judges above group IV, almost all recruitment comes from within the judiciary. The external recruitment consideration therefore does not apply. However, these very senior judges do have to make significant judgments that carry greater weight, with implications throughout the justice system, and many carry very heavy leadership and management roles in the judiciary, which will be even greater in the years ahead.¹⁸⁸ For this reason, it is important that pay levels remain sufficient to attract the highest calibre judges, even within a largely internal labour market. Previous SSRB Major Reviews have commented that the pay differentials between jobs at these levels are already arguably too small,¹⁸⁹ compared with what they would have considered normal in other professions. Nobody has suggested to us that the current differentials are seriously wrong, or that they should be reduced. **We therefore think it right to maintain the existing differentials in cash terms, and our recommendations reflect this.**

London weighting

5.92 Group 7 judges in London, but no others, are currently entitled to London weighting: a salary supplement of £2,000 and an allowance of £2,000, both of which are pensionable.¹⁹⁰ We recommend that all judges in new pay group VI should continue to have this entitlement at the existing rate. Our prevailing view is that at higher levels of the judiciary, salaries are such that London weighting would make no more than a token

¹⁸⁸ Discussed in Chapter 2.

¹⁸⁹ 28th Annual Report on Senior Salaries 2006 (paragraph 4.24) See: <https://www.gov.uk/government/publications/review-body-on-senior-salaries-twenty-eighth-report-on-senior-salaries-2006-report-no-62> and 33rd Annual Report on Senior Salaries 2011 (paragraph 4.66). See: <https://www.gov.uk/government/publications/review-body-on-senior-salaries-thirty-third-report-on-senior-salaries-2011>

¹⁹⁰ London weighting is currently paid to all judges in salary group 7 whose principal court is within 18 miles of Charing Cross. A principal court is defined as the place where a judge sits for 40 per cent or more of their time.

difference. This reflects the position taken in the last Major Review in 2011. We received no proposals for changing entitlement to London weighting for those currently eligible.

Full pay recommendations

5.93 The table below summarises our recommended pay rates for all judges with effect from 1 April 2018. They include pay rates for the different levels of leadership supplement, and for the specialist supplement in group V. They also include two indicative rates for the proposed new group VII. We note the overlap between those judges in the NJPS who will be placed at V.3+ with a salary of £190,000 and High Court Judges in JUPRA with a salary of £186,105. However, in total net remuneration terms the High Court Judges in JUPRA will still be better off.

Table 5.13: Recommended pay rates for all judges from 1 April 2018 (nominal)

New (old) salary group	Salary from 1 April 2018	
	Salary for JUPRA judges £pa	Salary for NJPS judges under Major Review recommendations £pa
I (1)	258,381	311,000
I.1 (1.1)	230,718	284,000
II (2)	222,844	276,000
III (3)	211,911	265,000
IV (4)	186,105	240,000
V.3+	163,212	190,000
V.3 (5)	158,212	185,000
V.2	153,212	180,000
V.1	148,212	175,000
V.base (6.1)	138,212	165,000
VI.3 (6.2)	130,875	137,000
VI.2	125,875	132,000
VI.1	115,875	122,000
VI.base (7)	110,875	117,000
VII.2	–	103,500
VII.1	–	86,250

Paybill

5.94 We estimate that, for the salaried judiciary in England and Wales, implementing our proposals from April 2018 would lead to a judicial paybill of £388 million, compared to £325 million in 2017-18. For Scotland, we estimate that the judicial paybill would be £50 million, compared to £44 million in 2017-18. For Northern Ireland, we estimate the judicial paybill would be in the order of £19 million.¹⁹¹ These costings depend on a number of assumptions including, for example, the number of judges who will remain on

¹⁹¹ We estimate the cost of our proposal but do not make a comparison with 2017-18 pay data as this was unavailable to us.

JUPRA.¹⁹² There will also be corresponding cost increases for the fee-paid judiciary which are harder to estimate, since we do not have data on the number of days worked by each tier of fee-paid judges. It is worth noting that the taxable element of any increased pay or pensions will ultimately flow back to the Exchequer.

- 5.95 We view these recommendations in the context of a current £3.4 billion trade surplus in legal services and the potential value of maintaining or growing this figure. In the absence of figures on the tax revenue generated by the legal sector, this is the best proxy we have to demonstrate the overall economic context within which we make our recommendations.

Implementation and looking forward

- 5.96 Implementation of these recommendations will rest with the relevant government departments and judicial offices. It will be for them, working with the judiciary and judicial leaders, to decide what use to make of the supplements in groups V and VI, and the indicative pay rates for the new group VII. Clearly, any payment of salary supplements for leadership to judges who are not already being paid at these levels will have to wait on the finalisation and validation of the criteria for awarding these supplements, which the judicial leadership will need to resolve.
- 5.97 We have focused on the different total net remuneration of judges in JUPRA and the NJPS. We note that some JUPRA judges have transitional protection arrangements that are due to come to an end before the judge is due to reach judicial retirement age. We believe that particular attention needs to be paid to this group, who may face stark decisions about whether or not to remain in judicial posts when their transitional protection ceases.
- 5.98 For JUPRA judges who are fully protected and who will remain on those pension arrangements until retirement, we simply note that narrowing existing remuneration differentials between judges in JUPRA and in the NJPS sitting on the same bench reflects our view about fairness, and good workforce management. We understand that there may be disappointment with our judgement, however, we believe our approach is justifiable in light of the evidence.

Observation: It seems to us possible that retention issues may arise for JUPRA judges at the moment that their transitional protection expires. The MoJ and the judicial leadership will want to think very carefully about whether they need to mitigate this risk, and how this might be done. We note in our observation following paragraph 5.66, the type of measure that might be open to the MoJ and the judicial leadership, if they felt action were necessary.

- 5.99 Pensions policy falls outside our remit, and we have deliberately refrained from making any comments on it. As we have shown however, changes in pension arrangements have had a significant effect on the judiciary, and the consequences have loomed large in our thinking and recommendations.
- 5.100 Putting aside questions about JUPRA or the 2015 NJPS, we observe that, at present, individual judges are not offered much flexibility in this area. They may have to face choices that may not suit them (for instance, between joining the NJPS, with the attendant tax implications, and opting out altogether). It is possible to imagine arrangements that offered more options to individuals. For example, as we noted when we discussed public sector pensions in our 2017 Report,¹⁹³ it would be conceivable to enable higher pay to be offered, with employer pension contributions offered as pay in

¹⁹² In addition, the number of judges eligible for leadership supplements, and, for Scotland and Northern Ireland, headcount has been used as opposed to FTE.

¹⁹³ 39th Annual Report on Senior Salaries 2017 (paragraph 2.77 to 2.79). See: www.gov.uk/government/publications/senior-salaries-review-body-report-2017

lieu of pension. We understand that a Transitional Protection Allowance allowed eligible judges (those in post on 1 April 2012 but not eligible for full protection) to opt out of joining the 2015 scheme and be paid an additional allowance alongside salary in lieu of pension. We understand that around 24 judges opted for this arrangement.

Observation: We are strongly of the view that the MoJ should consider offering judges in the 2015 NJPS some choice between take-home pay and employer pension contribution, and we have suggested that there are other alternatives which the MoJ might want to explore further. We note that an arrangement for pay in lieu of pension was put in place previously.

Chapter 6

Looking ahead

6.1 In this final Chapter, we briefly draw together our conclusions from nearly two years of work on this Major Review and look to the future. Throughout, we have tried to bear in mind the importance of the judiciary to society and the economy, as set out at the start of Chapter 2.

Judicial salary structure and pay

6.2 This Review's main remit was to consider judicial pay structures and pay levels. As set out in Chapter 3, we feel that the judicial salary structure is generally fit for purpose and that most judges are correctly placed within it. However, we believe that, for some groups of judges, the current structure is insufficiently flexible and is not able to recognise appropriately those who take on extra leadership responsibilities. We have accordingly made recommendations to introduce leadership pay supplements, suggesting some possible criteria. An important aspect of our recommendations is the need for the judicial leaderships to take the decisions about finalising the criteria and awarding the supplements for individual judicial posts.

6.3 Our recommendations on leadership pay supplements provide a new framework for recognising and incentivising judicial leadership and management which is, we believe, increasingly important. The implementation and impact of these recommendations will need careful monitoring. The SSRB stands ready to offer advice if this looks to be necessary. However, a theme of this Major Review is our belief that, wherever possible, it should be for the leadership of the judiciary to take the decisions that they believe need to be taken about individual posts, using clear and transparent criteria.

6.4 On pay, we have faced some difficult choices. The detailed evidence on recruitment and retention, set out in Chapter 4, leaves us in no doubt that there are some serious recruitment challenges for certain groups of the judiciary. In Chapter 5, we analyse the value of the remuneration packages for different groups of judges, and conclude that many of these packages have deteriorated significantly since 2010. Judges are largely recruited from an external labour market of legal professionals who have a free choice about whether or not they apply for judicial posts. In many cases, these legal professionals would always have taken a significant pay cut on becoming judges, but the judicial pension was traditionally seen as a compensatory factor.

6.5 In this context, we particularly highlight the tax and pension changes of recent years that have affected the judiciary. These have created a very marked difference between the value of the remuneration packages of different judges according to the pension scheme they are in. That difference is, in our view, an important contributor to the current recruitment difficulties.

6.6 It would be possible to address this issue by changes to the judicial pension scheme, but that is outside our remit. We have therefore made the pay recommendations we thought right given the current circumstance. This has meant recommendations that are different for judges in the 1993 (JUPRA) pension scheme and judges in the 2015 pension scheme (NJPS). We recognise that it is not ideal to have judges in the same posts paid at different rates. However, if considered in the light of total net remuneration, that differentiation is already present; indeed, it is very marked. Our recommendations aim to reduce these differences in total net remuneration. In due course, all judges will be in the 2015 pension scheme and the anomalies will no longer exist.

6.7 Meanwhile, we are aware that JUPRA judges still make up a significant proportion of the judiciary. It is crucial to retain their commitment and service, and it will be essential for the Ministry of Justice (MoJ) and the judicial leadership to monitor this. If it is felt that special retention measures are needed, we would be happy to comment quickly on any propositions.

Going beyond pay

6.8 We hope that our pay recommendations will help to increase the attractiveness of the judiciary to a wide range of good quality candidates. However, pay is not the only factor that affects judicial recruitment and retention.

6.9 We note in Chapter 1 the significant structural and constitutional changes affecting the judiciary that have taken place in all UK jurisdictions since 2011. These have built on the Constitutional Reform Act (CRA) 2005 and its counterparts in the devolved administrations. These changes would, by themselves, have created significant challenges for the judiciary as a whole.

6.10 However, these changes have also coincided with a prolonged period of public spending restrictions which have themselves produced challenges for recruitment. As well as pay and pension pressures, the spending restrictions have also meant a squeeze on judicial budgets for infrastructure and administrative support, and limitations on recruitment, at a time when legal aid budgets were also under pressure. That has created increased workloads in some jurisdictions.

6.11 In Chapter 2, we describe how the judiciary perceive they have been affected by these cumulative changes. Overall, the impact has been considerable and negative, particularly in respect of the trust between judiciary and government. It has affected the way that many judges have talked about their jobs, and this in turn has affected the way that the wider community of legal professionals has seen judicial life. This has, almost certainly, deterred some potentially strong candidates from applying to become judges. Further investment in improving court infrastructure and administrative support would give some necessary reassurance that judges are valued by government.

6.12 However, it is also clear from the material in Chapter 2 that this is not simply a matter of the judiciary having to confront unwelcome external events and financial pressures. We have highlighted how legal professionals, especially women, perceive that the judicial lifestyle offers less flexibility and autonomy than their current positions. We have also noted that there is not yet a common understanding among judges of what good management should mean in a judicial context. While undeniably difficult, these are issues that are largely within the judiciary's own control.

6.13 We have made a number of observations to help discussion of possible ways forward. To summarise:

- We believe that it is right to look urgently at current judicial retirement ages. This should include both the mandatory retirement age of 70 and the restriction on retired judges serving for more than three years on a fee-paid basis. If the retention situation deteriorates, there could be a need to move quickly.
- The value of judicial pensions has loomed large in this Review. For the long term, we have also been struck by the relative inflexibility of current pension arrangements. In our main reports for 2017 and 2018, we have commented on this for all our remit groups and suggested that this merits further consideration. For example, in the case of the judiciary, the choice to take extra salary in lieu of employer pension contributions could be attractive to some judges.

- At several points in this Review, we have referred to the need for up-to-date management and HR information to be readily available. This is essential underpinning for the judicial leadership, so that they can understand current recruitment and retention issues, and anticipate possible future problems such as early retirements. Many of the issues that most concern the judiciary at present, such as workload, will not be improved without a detailed understanding of where the pressure is greatest, and the capacity to take timely action in response. This might involve further recruitment exercises, more flexible deployment of existing salaried or fee-paid judges, better case management, or other measures. But without the right data, and the capacity to interpret it intelligently, there is little hope of successful intervention.
 - Any solution must include getting a firm grip on the basic information that provides the underpinning for judicial recruitment, such as the creation of consistent, comprehensive and up-to-date job descriptions. Without these, it will be hard to implement leadership pay supplements successfully, or to take forward initiatives such as recruiting a more generic cadre of tribunal judges. Professionalising the HR function for the judiciary would be an important step forwards.
- 6.14 We believe that, in line with the philosophy of the CRA 2005 and its counterparts in the devolved administrations, the judicial leadership needs to become more proactive in identifying particular pay and grading issues and in taking steps to resolve them. The SSRB's role should be a strategic one. We are in no position to take an annual view of the detail of what different judicial posts are expected to do, and these matters cannot sensibly be left to be considered by a Major Review every five years or so. We, as the Review Body, will naturally wish to be as helpful and responsive as possible, and to give advice and recommendations as and when sought. We will also be very interested to see further data that illuminate recruitment and retention questions.

Future reviews

- 6.15 This Major Review has covered the salary structure and the pay of salaried and fee-paid judges across all UK jurisdictions and has made recommendations to apply from April 2018. Our remit for this review did not require us to make any annual pay recommendations for members of the judiciary for 2019-20. We therefore look forward to receiving timely evidence and data from the MoJ and other stakeholders to allow us to make an annual pay recommendation for members of the judiciary, effective from 1 April 2019, in our next annual report.

Appendix A

Letter from the Lord Chancellor and Secretary of State for Justice to the SSRB Chair about the remit for the Major Review of the Judicial Salary Structure of 28 October 2016



Ministry
of Justice

The Right Honourable
Elizabeth Truss MP
Lord Chancellor & Secretary
of State for Justice

Dr Martin Read CBE
Chair of the Senior Salaries Review Body
8th Floor, Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

28 October 2016

Dear Dr Read

MAJOR REVIEW OF THE JUDICIAL SALARY STRUCTURE

I write following our meeting on the SSRB major review. Given the substantial changes that have taken place to the justice system and further reforms that are planned, it is important that a comprehensive evaluation of judicial pay takes place. I would therefore like the SSRB to carry out a major review of the judicial salary structure.

I would be grateful if you could provide me with recommendations on the judicial salary structure and appropriate pay levels no later than June 2018, taking into account comparisons with the legal profession and senior people elsewhere in the public sector. I recognise the points made in your 2016 report about the uncertainty resulting from the long delay in the government's response to the last review. I can assure you that the government will engage seriously with the recommendations from this review and will do so in a timely fashion.

In line with previous major reviews, I expect the SSRB to consider whether the current salary structure is fit for purpose, to evaluate roles carried out by all judicial office holders and advise on their appropriate position within the salary structure and to advise on the level of pay required to recruit, retain and motivate high calibre office holders at all levels of the judiciary. In addition, I want you to consider broader issues relating to judicial remuneration. The review should look at whether the current salary structure should be simplified. I would also like recommendations on how best to reward judicial leadership. Government policy on judicial pensions is – and will remain – outside of the SSRB's remit. I expect, however, that you will wish to take into account changes to the overall judicial remuneration package when formulating your recommendations on pay. The government policy that public sector pay awards will average up to 1% of pay bill in each financial year up to 2019/20, and that pay awards should be targeted, where possible, to support the delivery of public services and address recruitment and retention pressures, should also be taken into account.

In addition to the SSRB's standard judicial remit group of salaried UK judges whose pay is my responsibility, I would ask you to consider, and make recommendations on, the pay of fee-paid judges who have comparators within the salaried judiciary. Following policy changes as a result of recent litigation – where we have not yet assessed the true impacts of that litigation upon judicial remuneration as a whole – I feel that it is important that we include fee-paid judges in the review. The Scottish government also wish the SSRB to make recommendations on a number of judicial office holders whose

pay is devolved (those in the devolved Scottish tribunal system and the newly created post of Summary Sheriff). I agree that these office holders should be included in the review.

If you are minded, as in the past, to convene a small consultative group to guide the review in an advisory manner and support the process, I suggest that the group should be representative of the main parties who will be affected by the review by including judges representing the three UK jurisdictions, the tribunal judiciary and fee-paid officer holders. It should also include representatives of my department and the devolved administrations. During the first phase of the review, this group should advise me on the draft terms of reference that will form the guiding principles for the review.

I am keen that the review is timely and cost effective, and I know my officials have spoken to yours about this. I am particularly keen that any consultancy work commissioned during this review provides the best value for money results whilst future-proofing longer term arrangements for assessing judicial pay.

Once you agree to undertake the review I will write to the Lord Chief Justices of England and Wales, and Northern Ireland, the Lord President, the Senior President of Tribunals, and the Justice Ministers of Scotland and Northern Ireland to ask for nominees for consultative group members.

Best Wishes

A handwritten signature in black ink, appearing to read 'Elizabeth Truss', written in a cursive style.

ELIZABETH TRUSS

Appendix B

Reply from the SSRB Chair to the Lord Chancellor and Secretary of State for Justice regarding the Major Review of the Judicial Salary Structure of 7 November 2016



Office of Manpower
Economics

SENIOR SALARIES REVIEW BODY
FLEETBANK HOUSE
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E-mail mark.franks@bels.gov.uk
Website www.ome.uk.com

The Right Honourable Elizabeth Truss MP
Lord Chancellor and Secretary of State for Justice
102 Petty France
London
SW1H 9AJ

7 November 2016

Dear Lord Chancellor,

MAJOR REVIEW OF THE JUDICIAL SALARY STRUCTURE

Thank you for our recent highly constructive meeting and for your letter dated 28 October asking the SSRB to carry out a major review of the judicial salary structure. I believe such a review is needed and I am pleased that the Review Body has been asked to take on such an important role. I am delighted to accept the commission.

I strongly support your proposal to form a consultative group to assist the SSRB in carrying out its review. The suggestion in your letter on its composition is in line with our own thinking. The group will be chaired by Sharon Witherspoon, Chair of the SSRB Judicial Sub-Committee. Sharon and I would like the group to be active throughout the review, ensuring that the SSRB has full access to its expertise and views. It should also ensure the SSRB has timely access to required data and information and can help assess gaps and inconsistencies in evidence as they emerge and how they might be addressed. I agree that any research commissioned



needs to represent good value-for-money. The group's advice will be particularly valuable in achieving this objective.

Sharon and I wish to name the consultative group the Advisory and Evidence Group, reflecting the intentions outlined above. In order to be successful, the group needs to be composed of senior representatives of the main parties and I would be very grateful if you were able to make this point when you write to the Lord Chief Justices of England and Wales, and Northern Ireland, the Lord President, the Senior President of Tribunals and the Justice Ministers of Scotland and Northern Ireland.

The Review Body will aim to submit its advice by June 2018 as requested. However, this is a tight timescale and you will appreciate not fully within the SSRB's control. In order to meet the June 2018 date, the terms of reference will need to be approved by the end of February 2017. Any delay in such approval will mean a corresponding delay in the final submission. It is therefore important to ensure that members of the Advisory and Evidence Group understand they will need to make themselves available in January for meetings to formulate the draft terms of reference. Based on realistic assumptions about how long it will take to convene the Advisory and Evidence Group and the number of meetings that group will require, the draft terms of reference may not be ready for submission to you until mid-February.

There will also be a number of deadlines for the submission of data and information which the SSRB will set and which will need to be met in order to achieve a June 2018 submission date. We will need the full support of the Ministry of Justice in ensuring that these submission deadlines are met.

I can confirm that the SSRB will have regard to the Government policy that public sector pay awards will average 1 per cent in each year up to 2019-20 and that pay awards should be targeted where possible. However, the SSRB will need to look fundamentally at the pay structure taking into account judicial recruitment in the light of the external market, retention and motivation. The changing nature of judicial roles will also be relevant. It is, therefore, not possible to determine in advance the overall change in the judicial pay budget that the recommendations of this review may imply.

Finally, as I explained when we met, the review will be a major undertaking for the SSRB and others involved. I am therefore particularly grateful for your reassurance



that the Government will engage seriously with the findings from the review and will do so in a timely fashion.

Thank you once again for asking the SSRB to undertake this important task. I would be happy to discuss any of the issues outlined in this letter with you and, of course, our secretariat will work closely with your officials over the duration of the review.

I and my colleagues very much look forward to working on and delivering the review you have requested.

With all good wishes

Yours


Dr Martin Read CBE
SSRB Chair

Copy to Sharon Witherspoon, SSRB Judicial Sub-Committee Chair



Appendix C

The Terms of Reference for the Major Review of the Judicial Salary Structure

Terms of Reference for the Major Review of the Judicial Salary Structure

1. The Review Body on Senior Salaries will carry out a review of the salary structure for the judiciary across the United Kingdom with the aim of submitting its advice to the Lord Chancellor by June 2018.

Purposes of the review

2. The review will, as relevant, operate in accordance with the SSRB's general Terms of Reference.
3. It will have regard to the government policy that public sector pay awards will average 1 per cent in each year up to 2019-20 and that pay awards should be targeted where possible. However, the SSRB will need to look fundamentally at the pay structure, taking into account judicial recruitment in the light of the external market, retention and motivation. The changing nature of judicial roles will also be relevant. It is, therefore, not possible to determine in advance the overall change in the judicial pay budget that the recommendations of this review may imply.
4. The purposes of the review are to:
 - (i) determine whether the current structure of judicial salary groups is fit for purpose in the light of future plans for the justice system in each jurisdiction and recent and expected changes in the nature of work undertaken at different levels;
 - (ii) determine whether the structure of judicial salary groups can be simplified;
 - (iii) consider whether there are newly created and transferred judicial posts which need to be allocated to salary groups;
 - (iv) consider evidence on the appropriate grouping of judicial posts;
 - (v) consider what remuneration differentials between salary groups are justified by the relative job weight of the posts in each group, taking into account the nature of the different roles and the skills required, and different recruitment pools;
 - (vi) consider whether total remuneration for each salary group is correctly set, including in relation to that of appropriate recruitment pools in the legal profession, in order to recruit high calibre office holders at all levels of the judiciary;
 - (vii) consider whether total remuneration for each salary group is correctly set, including in relation to senior people elsewhere in the public sector, bearing in mind the unique responsibilities and constraints of judicial office, in order to retain and motivate high calibre office holders at all levels of the judiciary;
 - (viii) consider how best to reward and incentivise judicial leadership; and
 - (ix) make recommendations as appropriate in the light of evidence received and the review body's judgement.

Scope of the review

5. The review covers salaried judicial posts whose pay is the responsibility of the Lord Chancellor and fee-paid judges who have comparators with those posts. In addition, it includes fee-paid courts judges whose pay is the responsibility of Scottish Ministers, judges and legal members in the devolved tribunal systems in Scotland, Wales and Northern Ireland, and the new post of Summary Sheriff in Scotland. The corresponding list of all judicial posts in scope for the review is set out in Appendix E.

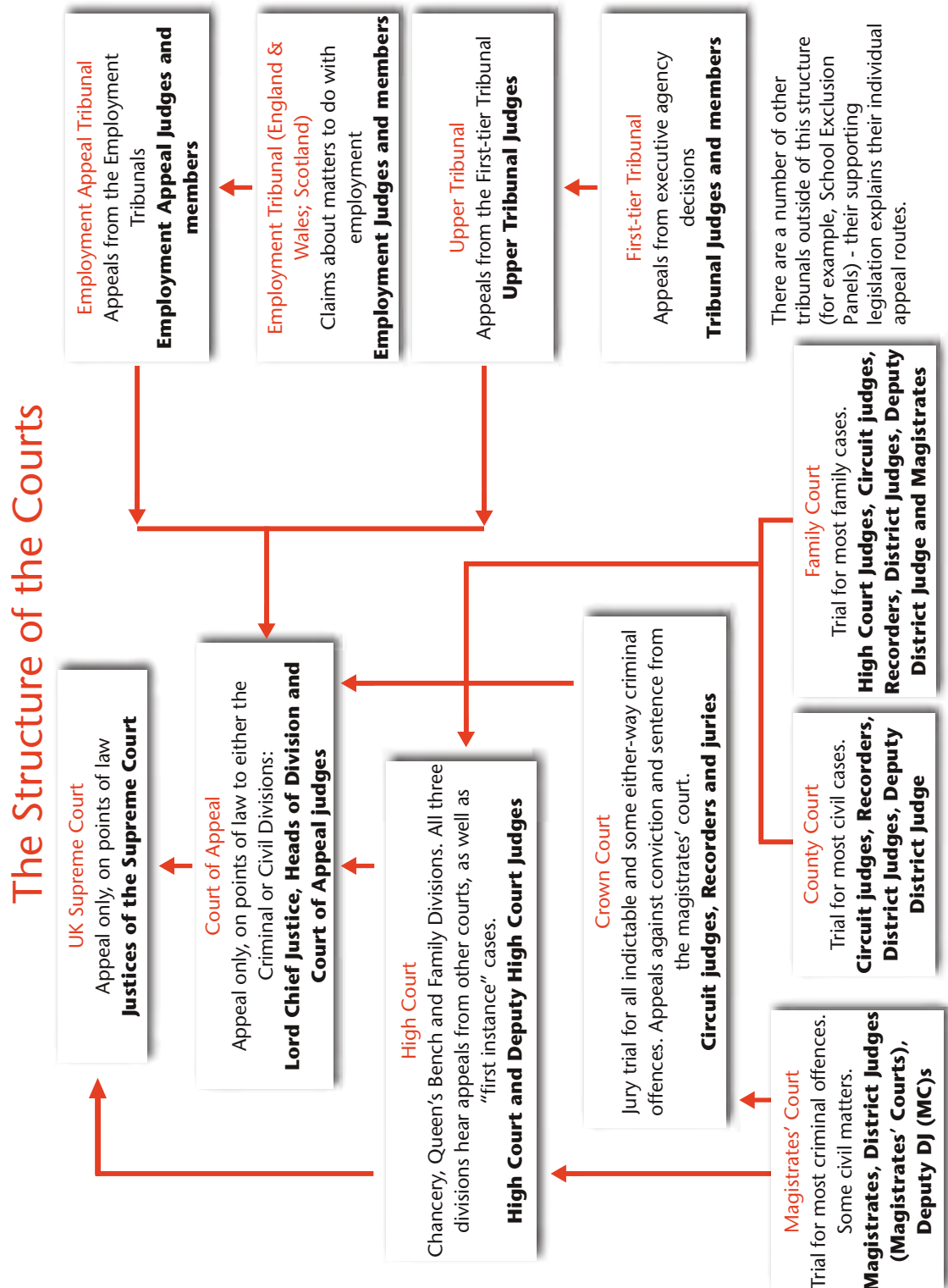
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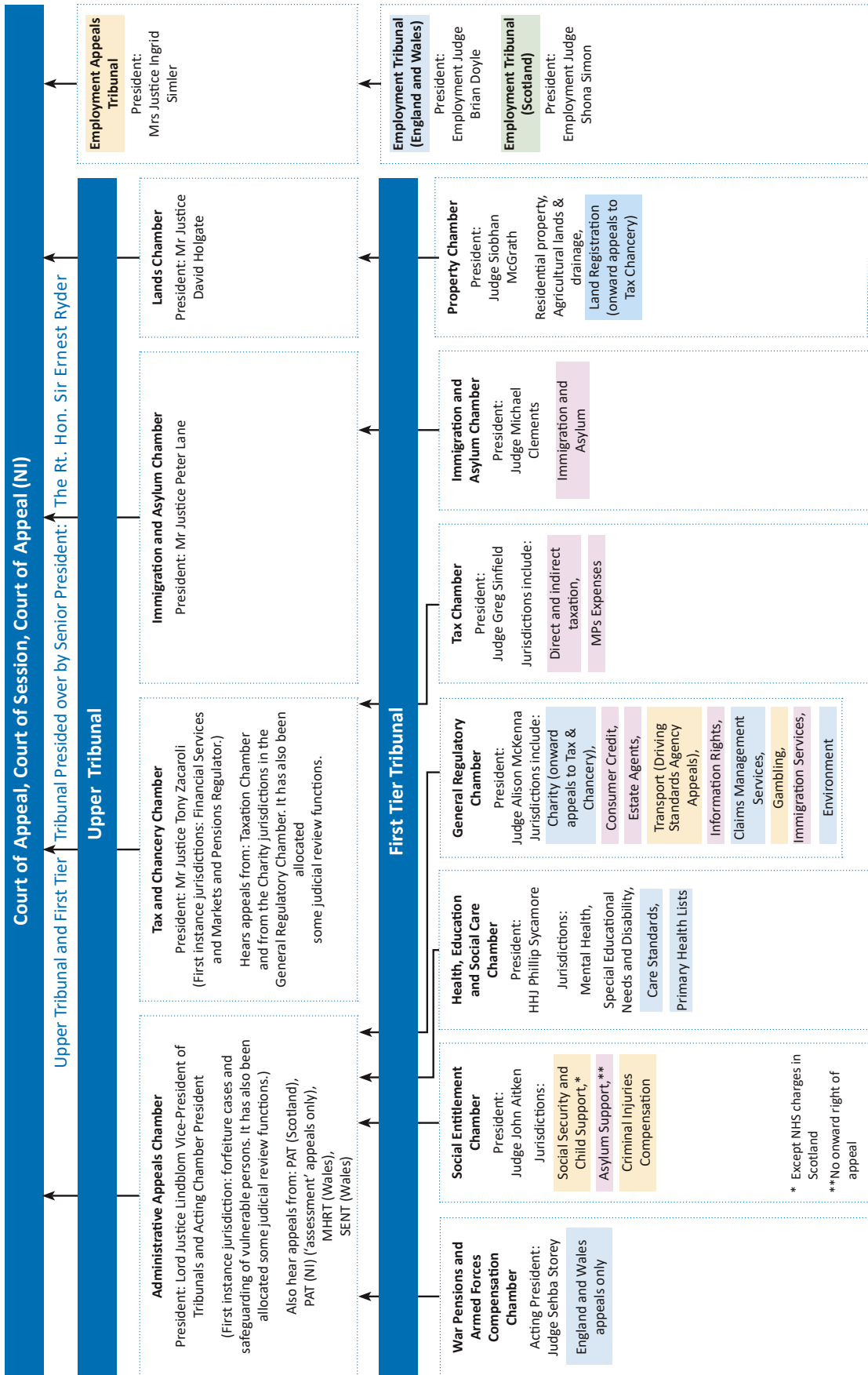
6. The main SSRB body will make all major decisions and agree the final recommendations. The SSRB will delegate some or all activities such as the taking of some or all evidence and commissioning research to its Judicial Sub-Committee. The Sub-Committee shall consult an Advisory and Evidence Group comprising representatives nominated by the:
 - Lord Chief Justice for England and Wales;
 - Lord President of the Court of Session;
 - Lord Chief Justice for Northern Ireland;
 - Senior President of Tribunals;
 - Ministry of Justice;
 - Scottish government;
 - Northern Ireland Executive; and the
 - Judicial Appointments Commission
7. The purpose of the Advisory and Evidence Group is to:
 - provide advice to the SSRB on the organisation and operation of the judiciary as they affect the review;
 - help ensure the SSRB has timely access to the required data and information;
 - help assess gaps and inconsistencies in evidence as they emerge and how they might be addressed; and
 - help ensure any research which the SSRB may commission as part of the review adds genuine value and represents good value-for-money.
8. Meetings of the Advisory and Evidence Group shall be chaired by the Chair of the Judicial Sub-Committee of the SSRB, or in the Chair's absence by another member of that Sub-Committee.
9. The SSRB will invite written evidence from members of the judiciary and from others, including the government, with an interest in judicial remuneration, recruitment, retention and motivation. The SSRB and Judicial Sub-Committee will also take oral evidence and may consult further if there are questions on which it wishes to receive more evidence before drafting its final report.

Appendix D

Court structures in England and Wales, Scotland and Northern Ireland

England and Wales: courts structure





The Supreme Court

Final Court of Appeal on points of law for the United Kingdom in civil cases.
Final Court of Appeal on points of law for England, Wales and Northern Ireland in criminal cases.

The Court of Appeal

Deals with appeals in civil cases from the High Court and with appeals in criminal cases from the Crown Court. Hears appeals on points of law from the county courts and the magistrates' courts.

The High Court

Hears complex or important civil cases in three divisions and also appeals from county courts.

- Queen's Bench Division
- Chancery Division
- Family Division

County Courts

(including family care centres)
Hear a wide range of civil actions and also appeals from magistrates' courts.

Small Claims Courts

Hear consumer claims and minor civil cases.

Coroners' Courts

Investigate the circumstances of sudden, violent or unnatural deaths.

The Crown Court

Hears all serious criminal cases.

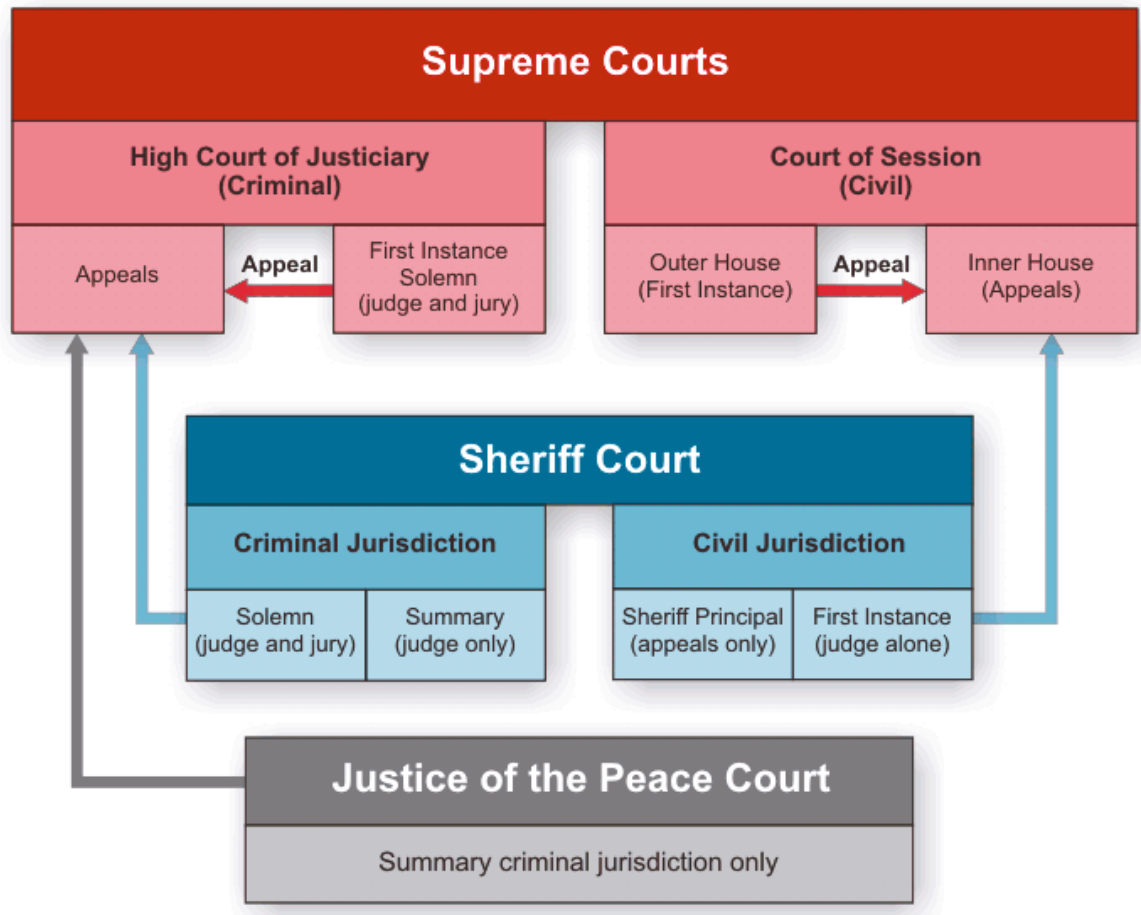
Magistrates' Courts

(including youth courts and family proceedings courts)
Conduct preliminary hearings in more serious criminal cases.
Hear and determine less serious criminal cases, cases involving youths and some civil and domestic cases, including family proceedings.

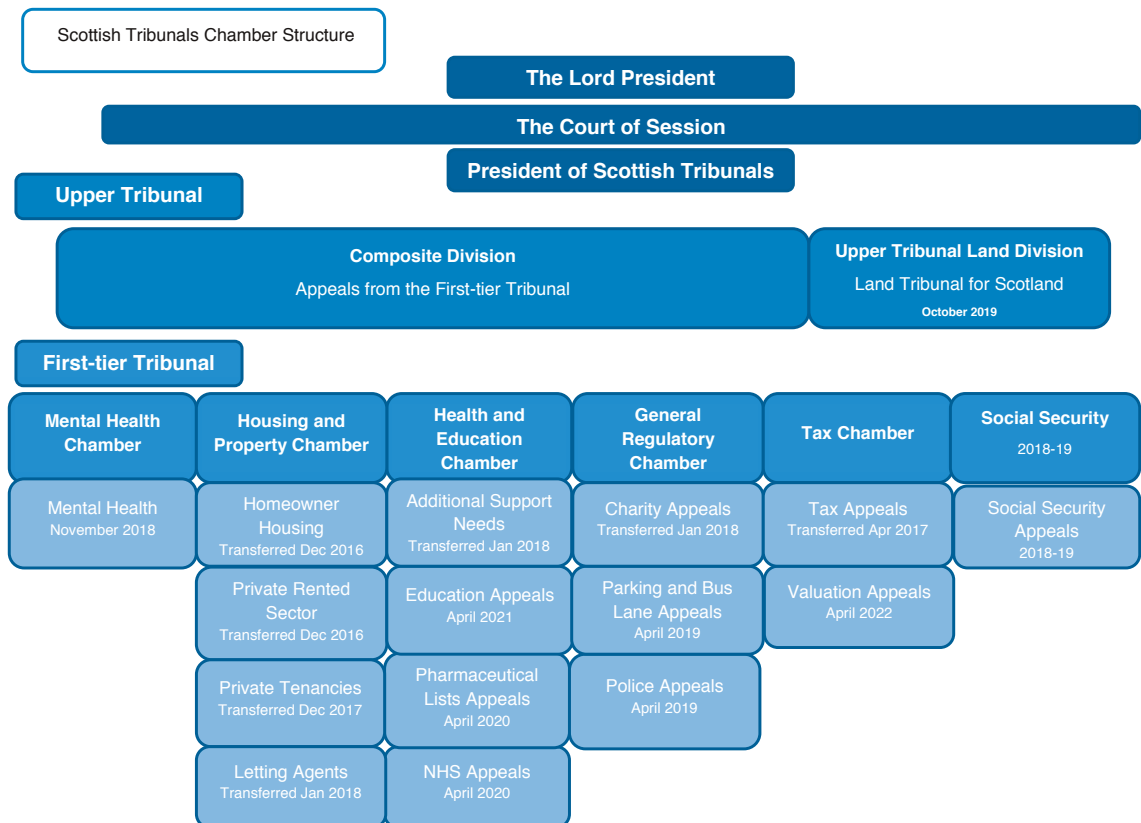
The Enforcement of Judgments Office

Enforces money and other judgments.

Scotland: courts structure



Scotland: tribunals structure



Appendix E

List of judicial offices in scope of the Major Review

Judge title and current salary group	Other judges in scope or jurisdiction
Salary group 1	
1. Lord Chief Justice of England and Wales	
Salary group 1.1	
2. Lord Chief Justice of Northern Ireland	
3. Lord President of the Court of Session	
4. Master of the Rolls	
5. President of the Supreme Court	
Salary group 2	
6. Chancellor of the High Court	
7. Deputy President of the Supreme Court	
8. Justices of the Supreme Court	
9. Lord Justice Clerk	
10. President of the Family Division	
11. President of the Queen's Bench Division	
12. Senior President of Tribunals	
Salary group 3	
13. Inner House Judges of the Court of Session	President of Scottish Tribunals
14. Lord/Lady Justices of Appeal	Includes the following roles: <ul style="list-style-type: none">• Senior Presiding Judge• Deputy Senior Presiding Judge• Deputy Head of Civil Justice• Vice President of the Court of Appeal (Civil Division)• Vice President Queen's Bench Division
15. Lord/Lady Justices of Appeal (Northern Ireland)	
Salary group 4	
16. High Court Judge	Includes the following roles: <ul style="list-style-type: none">• Vice-Chancellor of the County Palatine of Lancaster• Presiding Judge• Family Division Liaison Judge• Business & Property Courts Supervising Judge• President of the Employment Appeal Tribunal• President of the Upper Tribunal (Administrative Appeals, Immigration & Asylum, Tax & Chancery, Lands)

Judge title and current salary group	Other judges in scope or jurisdiction
17. High Court Judge (Northern Ireland)	
18. Presiding Coroner (Northern Ireland)	
19. Outer House Judge of the Court of Session	
Salary group 5+	
20. Judge of the First-tier Tribunal (Social Entitlement Chamber) and Deputy Judge of the Upper Tribunal	
Salary group 5	
21. Chairman, Scottish Land Court/President, Lands Tribunal for Scotland	
22. Chamber Presidents of First-tier Tribunals	Immigration and Asylum Chamber General Regulatory Chamber Health, Education & Social Care Chamber Property Chamber Social Entitlement Chamber Tax Chamber
23. Chief Social Security Commissioner and Child Support Commissioner (Northern Ireland)	
24. Senior Circuit Judge (non-leadership)	SCJ at the Central Criminal Court in London (Old Bailey Judges) Specialist Circuit Judges, Chancery, Circuit Commercial, Patents (IPEC) & Technology & Construction Court
25. Senior Circuit Judge (leadership)	Recorder of Liverpool Recorder of Manchester Designated Civil Judge Designated Family Judge Resident Judge
26. Judge Advocate General	
27. Circuit Judge of the Employment Appeals Tribunal	
28. President, Employment Tribunals (England & Wales)	
29. President, Employment Tribunals (Scotland)	
30. Recorder of Belfast	
31. Senior District Judge (Chief Magistrate)	
32. Sheriffs Principal	
33. Vice President of the Upper Tribunal (Immigration and Asylum Chamber)	

Judge title and current salary group	Other judges in scope or jurisdiction
Salary group 6.1	
34. Senior Masters and Registrars	Includes: <ul style="list-style-type: none"> • Chief Bankruptcy Registrar • Chief Chancery Master • Senior Master – Queen’s Bench Division • Senior Costs Judge • Senior Judge of the Court of Protection
35. Circuit Judge (non-leadership)	
36. Circuit Judge (leadership)	Includes: <ul style="list-style-type: none"> • Designated Civil Judge • Designated Family Judge • Resident Judge
37. County Court Judge (Northern Ireland)	
38. Deputy Chamber President, Health, Education & Social Care Chamber	
39. Deputy Chamber President, Upper Tribunal Lands	
40. Regional Judge	Includes: <ul style="list-style-type: none"> • Regional Tribunal, Judge Social Entitlement Chamber • Resident Judge, Asylum and Immigration Chamber
41. Regional Employment Judge	
42. Registrar of Criminal Appeals	
43. President, Appeal Tribunals (Northern Ireland)	
44. President, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	
45. President, Lands Tribunal Northern Ireland	
46. Sheriffs	
47. Social Security and Child Support Commissioner (Northern Ireland)	
48. Upper Tribunal Judge	Administrative Appeals Chamber Immigration and Asylum Chamber (also known as Senior Immigration Judge) Tax and Chancery Chamber
49. Vice-President, Employment Tribunal (Scotland)	
Salary group 6.2	
50. President, Mental Health Review Tribunal (Wales) ¹	
51. Chamber President of the First-tier Tribunal War, Pensions and Armed Forces Compensation Chamber	
52. Deputy Senior District Judge (Magistrates’ Courts)	

Judge title and current salary group	Other judges in scope or jurisdiction
53. Designated Judge, First-tier Tribunal, Immigration and Asylum Chamber	
54. Principal Judge, First-tier Tribunal, Property Chamber – Land Registration	
55. Member, Lands Tribunal (Northern Ireland)	
56. Surveyor Members, Lands Tribunal (Scotland)	
57. Surveyor Members, Upper Tribunal (Lands)	
58. Vice-Judge Advocate General	
59. Vice-President, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	
Salary group 7	
60. Assistant Judge Advocate General	
61. Employment Judge (Northern Ireland)	
62. Chief Medical Member, First-tier Tribunal	Social Entitlement Chamber Health, Education & Social Care Chamber
63. Coroners (Northern Ireland)	
64. District Judge	Civil Family
65. District Judge (Northern Ireland)	
66. District Judge (Magistrates' Courts)	
67. District Judge (Magistrates' Courts) (Northern Ireland)	
68. Employment Judge	England and Wales Scotland
69. Judge of the First-tier Tribunal	Health, Education & Social Care Chamber Immigration and Asylum Chamber (also called Immigration Judge) Property Chamber Social Entitlement Chamber Tax Chamber General Regulatory Chamber War Pensions and Armed Forces Compensation Chamber
70. Masters and Cost Judges	Includes: • Master of the Queen's Bench Division • Chancery Division • Cost Judge
71. Insolvency and Company Court Judge (Bankruptcy Registrar)	

Judge title and current salary group	Other judges in scope or jurisdiction
72. Masters of the Court of Judicature (Northern Ireland)	
73. Presiding District Judge (Magistrates' Courts) (Northern Ireland)	
74. Presiding Master of the Court of Judicature (Northern Ireland)	
75. Presiding District Judge (Northern Ireland)	
76. Full-time Salaried Legal Member of the Appeal Tribunals (Chair) (Northern Ireland)	
77. Regional Judge, Property Chamber	
78. Deputy Regional Judge, Property Chamber	
79. Deputy Regional Valuer, Property Chamber	
80. Salaried (Regional) Medical Members, Social Entitlement Chamber	
81. Summary Sheriff (Scotland)	
Fee paid offices	
82. Lord/Lady Justices of Appeal (sitting in retirement) England and Wales	
83. Lord/Lady Justices of Appeal (sitting in retirement) Northern Ireland	
84. High Court Judge (sitting in retirement) England and Wales	
85. High Court Judge (sitting in retirement) Northern Ireland	
86. Deputy High Court Judge England and Wales	
87. Deputy High Court Judge Northern Ireland	
88. Temporary Judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978	
89. Deputy Masters and Cost Judges	Includes: <ul style="list-style-type: none"> • Deputy Master of the Queen's Bench Division • Deputy Taxing Master • Deputy Costs Judge • Deputy Master of the Chancery Division
90. Deputy Insolvency and Company Court Judge (Bankruptcy Registrar)	
91. Deputy Circuit Judge (sitting in retirement)	
92. Recorder	
93. Deputy District Judge	Civil Family
94. Deputy District Judge (Magistrates' Court)	

Judge title and current salary group	Other judges in scope or jurisdiction
95. First-tier Tribunal Judge (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	Health, Education & Social Care Chamber Immigration and Asylum Chamber (these judges are also called Immigration Judges) Property Chamber Social Entitlement Chamber Tax Chamber General Regulatory Chamber War Pensions and Armed Forces Compensation Chamber
96. Upper Tribunal Judge (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	Administrative Appeals Chamber Immigration and Asylum Chamber (these judges are also called Senior Immigration Judges) Tax and Chancery Chamber
97. Deputy Judge Upper Tribunal (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	
98. Surveyor Member (Chair only) Upper Tribunal Lands	
99. Legal Chair Criminal Injuries Compensation Appeals Panel	
100. Non-legal Chair Criminal Injuries Compensation Appeals Panel	
101. Judge of the Employment Tribunal (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	
102. Temporary Assistant Judge Advocate General	
103. Valuer Chair, First-tier Tribunal (Property Chamber) Residential Property	
104. Legal Member of Pensions Appeal Tribunal for Northern Ireland appointed under paragraph 2 of the Schedule to the Pensions Appeal Tribunals Act 1943	
105. President of the Pensions Appeal Tribunal for Northern Ireland	
106. Deputy President of the Pensions Appeal Tribunal for Northern Ireland	
107. Temporary Judge (Scotland)	
108. Re-employed former Judge (Scotland)	
109. Part-time Sheriff (Scotland)	
110. Part-time Summary Sheriff (Scotland)	
111. Temporary Sheriff Principal (Scotland)	

Judge title and current salary group	Other judges in scope or jurisdiction
112. Re-employed former Sheriff Principal, Sheriff or part-time Sheriff acting as Sheriff (Scotland)	
113. Re-employed former Summary Sheriff, or part-time Summary Sheriff, acting as Summary Sheriff (Scotland)	
114. Re-employed former Appeal Sheriff (Scotland)	
115. Deputy Statutory Officer (Northern Ireland)	
116. Deputy County Court Judge (Northern Ireland)	
117. Deputy District Judge (Magistrates' Court) (Northern Ireland)	
118. Deputy Social Security Commissioner for Northern Ireland	
119. Deputy Child Support Commissioner for Northern Ireland	
120. Deputy Coroner (Northern Ireland)	
121. Deputy District Judge (Northern Ireland)	
122. Fee-Paid Employment Judge, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	
123. Legal Chair National Security Certificate Appeals Tribunal (Northern Ireland)	
124. President of Welsh Tribunals	
125. President of the Rent Assessment Committees Wales	
126. Legal Member of the Rent Assessment Committee Wales	
127. Legal Member Mental Health Tribunal Wales (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	
128. Legal Chair Special Educational Needs Tribunal Wales (where a legal qualification is a requirement of appointment or has gained the relevant experience in law)	
129. President of Special Educational Needs Tribunal Wales	
130. President Welsh Language Tribunal	
131. Legal Member Welsh Language Tribunal	
132. President Adjudication Panel Wales	
133. Legal Member Adjudication Panel for Wales	
134. President Agricultural Land Tribunal Wales	

Judge title and current salary group	Other judges in scope or jurisdiction
135. Legal Member Agricultural Land Tribunal Wales	
Other Judges and legal members in the following devolved tribunal systems in Scotland and Northern Ireland	
Scotland – salaried	
136. Deputy Chair of the Scottish Land Court	
137. Member of the Scottish Land Court	
138. Legal Members The Lands Tribunal for Scotland	
Scotland – fee paid	
139. Legal Member First-tier Tribunal for Scotland, assigned to Housing and Property	
140. Legal Member First-tier Tribunal for Scotland, assigned to Tax Chamber	
141. Legal Member Upper Tribunal for Scotland	
142. Chamber President Housing and Property Chamber of First-tier Tribunal for Scotland	
143. Chamber President Tax Chamber of First-tier Tribunal for Scotland	
144. Legal Member First-tier Tribunal for Scotland, assigned to the Health and Education Chamber	
145. Chamber President Health and Education Chamber of First-tier Tribunal for Scotland	
146. Legal Member Scottish Charity Appeals Panel	
147. Legal Member Mental Health Tribunal for Scotland	
148. President Mental Health Tribunal for Scotland	
149. Legal Member Police Appeals Tribunal	
150. Adjudicator Parking and Bus Lane Adjudicators	
151. President Pensions Appeals Tribunal for Scotland	
152. Legal Member Pensions Appeals Tribunal for Scotland	
Northern Ireland	
153. Legal Chair Care Tribunal	
154. President Charity Tribunal for Northern Ireland	
155. Legal Member Charity Tribunal for Northern Ireland	

Judge title and current salary group	Other judges in scope or jurisdiction
156. Chairman Criminal Injuries Compensation Appeals Panel for Northern Ireland	
157. Legal Adjudicator Criminal Injuries Compensation Appeals Panel for Northern Ireland	
158. Chairman Mental Health Review Tribunal	
159. Legal Member Mental Health Review Tribunal	
160. Legal Chairman Northern Ireland Health and Safety Tribunal	
161. Adjudicator Northern Ireland Traffic Penalty Tribunal	
162. President Northern Ireland Valuation Tribunal	
163. Legal Member Northern Ireland Valuation Tribunal	
164. President Special Educational Needs and Disability Tribunal for Northern Ireland	
165. Chairman Special Educational Needs and Disability Tribunal for Northern Ireland	
166. Legal Member Appeal Tribunals	

Notes:

1 Although we were notified that this post was in salary group 6.2, we subsequently learned that the Welsh government had, following the 2011 Major Review, moved this post into group 6.1.

Appendix F

Judicial salaries by salary group and the day rates of fee-paid judges from 1 April 2017

Table F.1: Pay rates for salaried judges

Salary group	Salaries with effect from 1 April 2017, £
1	252,079
1.1	225,091
2	217,409
3	206,742
4	181,566
5	145,614
6.1	134,841
6.2	126,946
7	108,171

Source: Ministry of Justice. See: <https://www.gov.uk/government/publications/judicial-salaries-and-fees-2017-to-2018>

Table F.2: Day rates for fee-paid judges: England and Wales courts

Judicial office	Day rates with effect from 1 April 2017, £
Retired Lord of Appeal/Retired Supreme Court Judge	988.22
Retired Lord/Lady Justice (sitting in the Court of Appeal)	939.74
Retired High Court Judge	864.60
Deputy High Court Judge	864.60
Retired Judge of the Technology and Construction Court (sitting as Deputy Judge of Technology and Construction Court)	661.88
Recorder	642.10
Deputy Circuit Judge	642.10
Assessor, Taxation Tribunal (County Court)	491.69
Assessor, Taxation Tribunal (High Court)	491.69
Deputy District Judge	503.12
Deputy District Judge (London weighting fee)	521.72
Deputy District Judge (Magistrates' Courts)	503.12
Deputy District Judge (Magistrates' Courts) (London weighting fee)	521.72
Deputy Judge Advocate	491.69
Deputy Supreme Court Master/Registrar	515.10
Deputy Supreme Court Master/Registrar (London weighting fee)	534.15
Deputy District Judge of the Principal Registry of the Family Division	515.10
Deputy District Judge of the Principal Registry of the Family Division (London weighting fee)	534.15

Note: Certain fee-paid judicial office holders in salary group 7 receive a *pro rata* salary lead and London allowance.
Source: Ministry of Justice. See: <https://www.gov.uk/government/publications/judicial-salaries-and-fees-2017-to-2018>

Table F.3: Day rates for fee-paid judges: England and Wales tribunals¹

Chamber	Jurisdiction	Judicial office	Day rates with effect from 1 April 2017, £
Upper Tribunals			
Administrative Appeals Chamber		Judge ²	612.91
	Care Standards	Other member	211.16
	Information Rights	Judge	612.91
	Information Rights	Other member	279.51
	Transport	Judicial Member (Chairman)	612.91
		Other member	349.89
	Immigration and Asylum	Judge	612.91
		Other member	279.51
	Lands Chamber	Member	577.03
	Tax & Chancery Chamber	Judge	612.91
Other member		279.51	
First-tier Tribunal			
General Regulatory Chamber	Local Government Standards in England	Former President, Adjudication Panel For England	577.03
		Charity	Judge
	Claims Management Services	Judge (London weighting fee)	509.87
		Other member	279.51
		Chairman	577.03
	Estate Agents	Other member	279.51
		Judge	577.03
	Environment	Other member	279.51
		Judge	491.69
		Judge (London weighting fee)	509.87
		Specialist (Hydrologist) member	411.10
		Other member	279.51
	Gambling Appeals	Judge	491.69
	Immigration Services	Judge	577.03
		Other member	349.89
	Information Rights	Judge	491.69

Chamber	Jurisdiction	Judicial office	Day rates with effect from 1 April 2017, £	
Health, Education and Social Care (HESC)	Transport	Judge (London weighting fee)	509.87	
		Other member	279.51	
		Judicial Member (Chairman)	491.69	
		Other member	349.89	
	Care Standards	Judge	491.69	
		Judge (London weighting fee)	509.87	
	Primary Health Lists	Other member	211.16	
		Former President	612.91	
		Judge	511.07	
		Judge (London weighting fee)	529.25	
		Medical member	351.93	
		Other member	289.71	
		Mental Health	Judge (Restricted Patients' Panel)	612.91
			Judge	491.69
	Special Education Needs & Disability	Judge (London weighting fee)	509.87	
		Medical Member	478.43	
Other member		222.38		
Judge		491.70		
Judge (London weighting fee)		509.88		
Other member		249.92		
Immigration and Asylum	Immigration Judge	491.69		
	Immigration Judge (London weighting fee)	509.87		
Social Entitlement Chamber	Asylum Support	Other member	279.51	
		Judge	491.69	
	Criminal Injuries Compensation	Judge (London weighting fee)	509.87	
		Legal	491.69	
		Legal (London weighting fee)	509.87	

Chamber	Jurisdiction	Judicial office	Day rates with effect from 1 April 2017, £
		Medical Member	411.10
		Other member	411.10
	Social Security & Child Support	Judge	491.70
		Judge (London weighting fee)	509.88
		Medical Member (medical examination might be required)	390.70
		Medical Member (no medical examination required)	325.40
		Financial Member	317.26
		Member with experience of disability	201.98
Tax		Transferred-in judge	577.03
		Transferred-in judge (London weighting fee)	595.21
		Other tax member	279.51
		Newly appointed judge	491.69
		Newly appointed judge (London weighting fee)	509.87
War Pensions and Armed Forces Compensation Chamber		Judge	491.69
		Judge (London weighting fee)	509.87
		Medical Member	478.43
		Service Member	222.38
Property Chamber		Judge (Residential Property)	491.69
		Judge (Residential Property, London weighting fee)	509.87
		Judge (Principal Judge, Agricultural Land and Drainage)	577.03
		Judge (Agricultural Land and Drainage)	491.69

Chamber	Jurisdiction	Judicial office	Day rates with effect from 1 April 2017, £
		Judge (Agricultural Land and Drainage, London weighting fee)	509.87
		Judge (Land Registration)	491.69
		Judge (Land Registration, London weighting fee)	509.87
		Valuer Chair (Residential Property)	491.69
		Valuer Chair (Residential Property, London weighting fee)	509.87
		Expert member (Valuer/Professional Member, Residential Property)	307.05
		Lay Member (Residential Property)	199.94
		Farmer, Land Owner, Drainage Expert members (Agricultural Land and Drainage)	199.80
	Employment Appeals Tribunal	Recorders	825.30
		Member (and Assessor (Appeals against decisions of Reinstatement Committees))	318.27
	Employment Tribunal	Employment Judge	491.69
		Employment Judge (London weighting fee)	509.87
		Member	183.62
	Gangmaster Licensing Tribunal	Appointed Person	491.69
		Appointed Person (London weighting fee)	509.87
	Gender Recognition Panel	Judge	491.69
	Pensions Appeals Tribunal	Legal & Medical Member	478.43
		Service Member	222.38

Chamber	Jurisdiction	Judicial office	Day rates with effect from 1 April 2017, £
	Prescribed Organisations Appeal Commission	Member	435.58
	Reserve Forces Appeal Tribunal	Employment Judge/Chair	491.69
	Social Security and Child Support Commissioners (Northern Ireland)	Deputy Social Security and Child Support Commissioners	612.91
	Special Immigration Appeals Commission	Non-legal Member	435.58
		County Court Assessor (Landlord & Tenant)	279.51
		County Court Assessor (Equality Act)	279.51

Notes:

1 Includes posts which are the responsibility of the Senior President of Tribunals including tribunals in England and Wales and, in some cases, Northern Ireland and Scotland.

2 Including Deputy Judge except where otherwise specified.

Source: Ministry of Justice. See: <https://www.gov.uk/government/publications/judicial-salaries-and-fees-2017-to-2018>

Table F.4: Day rates for fee-paid judges: Scottish courts

Post	Day rates with effect from 1 April 2017, £
Temporary Judge (Scotland)	865
Re-employed former Judge (Scotland)	984
Part-time Sheriff (Scotland)	627
Part-time Summary Sheriff (Scotland)	503
Temporary Sheriff Principal (Scotland)	677
Re-employed former Sheriff Principal, Sheriff or part-time Sheriff acting as Sheriff (Scotland)	627
Re-employed former Summary Sheriff, or part-time Summary Sheriff, acting as Summary Sheriff (Scotland)	503
Re-employed former Appeal Sheriff (Scotland) – Former Sheriff Principal	677
Re-employed former Appeal Sheriff (Scotland) – Former Appeal Sheriff	621

Source: Judicial Office for Scotland (unpublished).

Table F.5: Day rates for fee-paid judges: Scottish tribunals

Post	Day rates with effect from 1 April 2017, £
Legal Member, First-tier Tribunal for Scotland – assigned to Housing and Property	328.83
Legal Member, First-tier Tribunal for Scotland – assigned to Tax Chamber	408.04
Legal Member, Upper Tribunal for Scotland	459.05
Chamber President, Housing and Property Chamber of First-tier Tribunal for Scotland	472.43
Chamber President, Tax Chamber of First-tier Tribunal for Scotland	520.25
Legal Member, Additional Support Needs Tribunals for Scotland	399.59
President, Additional Support Needs Tribunals for Scotland	491.43
Legal Member, Scottish Charity Appeals Panel	338.20
Legal Member, Mental Health Tribunal for Scotland	447.46
President, Mental Health Tribunal for Scotland	677.27
Legal Member, Police Appeals Tribunal	328.00
Adjudicator, Parking and Bus Lane Adjudicators	55.63 (hourly)
President, Pensions Appeals Tribunal for Scotland	491.69
Legal Member, Pensions Appeals Tribunal for Scotland	491.69

Source: Judicial Office for Scotland (unpublished).

Table F.6: Day rates for fee-paid judges: Northern Ireland courts

Judicial office	Day rates with effect from 1 April 2017, £
Lord Justice of Appeal (sitting in retirement) Northern Ireland	948.36
High Court Judge (sitting in retirement) Northern Ireland	832.87
Deputy High Court Judge Northern Ireland	832.87
Temporary Judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978	832.87
Deputy County Court Judge (Northern Ireland)	618.53
Deputy District Judge (Magistrates' Court) (Northern Ireland)	496.20
Deputy Coroner (Northern Ireland)	496.20
Deputy District Judge (Northern Ireland)	496.20
Deputy Statutory Officer (Northern Ireland)	496.20

Source: Northern Ireland Courts and Tribunals Service (unpublished).

Table F.7: Day rates for fee-paid judges: Northern Ireland tribunals

Tribunal	Legal members	Day rates with effect from 1 April 2017, £
Deputy Social Security Commissioner for Northern Ireland		612.91
Deputy Child Support Commissioner for Northern Ireland		612.91
National Security Certificate Appeals Tribunal (Northern Ireland)	Legal Chair	948.36
Pensions Appeal Tribunal	President ¹	
	Deputy President	491.69
	Legal and Medical member	478.43
Employment Judge		491.69
Tribunals sponsored and administered by the Department of Justice²		
Care Tribunal	Chairman	386
Charity Tribunal for Northern Ireland	President	474
	Legal member	343
Criminal Injuries Compensation Appeals Panel for Northern Ireland	Chairman	481
	Adjudicator (legal member)	392
Mental Health Review Tribunal	Chairman	381
	Deputy Chairman	381
	Legal member	381
Northern Ireland Health and Safety Tribunal	Chairman	492
Northern Ireland Traffic Penalty Tribunal	Adjudicators	338
Northern Ireland Valuation Tribunal	President	454
	Legal member	335
Special Educational Needs and Disability Tribunal for Northern Ireland	President	474
	Chairman	348
Tribunals sponsored by other Northern Ireland Departments and administered by the Department of Justice		
Appeal Tribunals (Department for Communities)	Legal member	467.63

Notes:

1 There is no current fee rate for this post as it is held concurrently by the Chief Social Security Commissioner.

2 The rates of pay for the Department of Justice sponsored tribunals are as from 1 August 2017 (1 April 2017 in respect of the NI Valuation Tribunal).

Source: Northern Ireland Courts and Tribunals Service, in liaison with the appropriate sponsoring Department (unpublished).

Table F.8: Day rates for fee-paid judges: Welsh devolved tribunals

Tribunal	Legal members	Day rates with effect from 1 April 2017, £
	President of Welsh Tribunals	865
Agriculture Land Tribunal	President	381
	Legal member	381
Adjudication Panel Wales	President	494
	Legal member	414
Mental Health Review Tribunal	Legal member (restricted)	613
	Legal member (non-restricted)	492
Residential Property Tribunal ¹	President	523
	Legal member	443
Special Educational Needs Tribunal	President	662
	Legal chair	479
Welsh Language Tribunal	President	579
	Legal member	493

Note:

1 The Residential Property Tribunal includes the Rent Assessment Committees Wales.

Source: Welsh Government (unpublished).

Appendix G

Visits undertaken in support of the Major Review

Location	Date	Types of Judges met
Rolls Building and Royal Courts of Justice	5 July 2016	<ul style="list-style-type: none"> • High Court Judge • Senior President of Tribunals
Bristol Crown Court	8 July 2016	<ul style="list-style-type: none"> • Senior Circuit Judge
Reading Crown Court	13 July 2016	<ul style="list-style-type: none"> • Circuit Judge
Royal Courts of Justice	13 July 2016	<ul style="list-style-type: none"> • Court of Appeal Judge
Rolls Building	18 July 2016	<ul style="list-style-type: none"> • High Court Judge
Liverpool – Social Security and Child Support Tribunal, Liverpool Civil and Family Court, Liverpool Crown Court	25 October 2016	<ul style="list-style-type: none"> • Circuit Judge • First-tier Tribunal Judge (Social Entitlement Chamber) • Employment Judge
London	26 October 2016	<ul style="list-style-type: none"> • Senior Circuit Judge (Designated Family Judge) • Employment Judge
Cardiff Crown Court	30 June 2017	<ul style="list-style-type: none"> • Circuit Judge – Meeting with the Council of Circuit Judges
Royal Courts of Justice, Belfast	3-4 October 2017	<ul style="list-style-type: none"> • Lord Chief Justice of Northern Ireland • Justice of the Court of Appeal • High Court Judge • County Court Judge • Master • District Judge • Coroner • Social Security Commissioner • Tribunal Judges – Appeals, Industrial and Fair Employment, Mental Health, Special Educational Needs and Disability, Valuation • Employment Judge
Court of Session, Edinburgh	1-2 November 2017	<ul style="list-style-type: none"> • Lord President of the Court of Session • Lady Justice Clerk • President of Scottish Tribunals • Senator of the College of Justice • President of Employment Tribunal (Scotland) • Sheriff Principal • Sheriff • Summary Sheriff • Chamber President (Scottish Tribunals) • Legal Members (Scottish Tribunals)

Location	Date	Types of Judges met
Leeds – York House, Coverdale House, City Exchange, Leeds Combined Court	23 November 2017	<ul style="list-style-type: none"> • Circuit Judge • District Judge • First-tier Tribunal Judge – Social Entitlement Chamber, Health Education and Social Care Chamber • Employment Judge
Manchester Civil Justice Centre	24 November 2017	<ul style="list-style-type: none"> • Senior Circuit Judge • Circuit Judge • District Judge • First-tier Tribunal Judge – Immigration and Asylum Chamber, Health Education and Social Care Chamber, Social Security and Child Support Chamber • Employment Judge
Swansea Crown Court	1 December 2017	<ul style="list-style-type: none"> • President of the Adjudication Panel Wales • President of the Residential Property Tribunal Wales • Circuit Judge • District Judge • First-tier Tribunal Judge – Social Entitlement Chamber, Immigration and Asylum Chamber • Employment Judge
Rolls Building, Fox Court, Field House, Royal Courts of Justice	18 December 2017	<ul style="list-style-type: none"> • Registrar, Cost Judge and Master • Upper Tribunal Judge – Immigration and Asylum Chamber, Land Chamber, Tax Chamber, Administrative Appeals Chamber • First-tier Tribunal Judge – General Regulatory Chamber, War Pensions and Armed Forces Compensation Chamber, Social Entitlement Chamber, Health Education and Social Care Chamber, Property Chamber
Royal Courts of Justice	17 January 2018	<ul style="list-style-type: none"> • Judge Advocate General • High Court Judge – Family Division
Westminster Magistrates' Court	24 January 2018	<ul style="list-style-type: none"> • Chief Magistrate • District and Senior District Judges (Magistrates' Court)
Supreme Court	13 and 22 February 2018	<ul style="list-style-type: none"> • President of the Supreme Court • Deputy President of the Supreme Court

Appendix H

List of respondents to the Call for Evidence

47 Responses from judicial associations and representative groups:

Association of District Judges, Northern Ireland
Association of Her Majesty's District Judges
Association of High Court Masters and Registrars
Association of Personal Injury Lawyers
Bar Council
Chancery Bar Association
Chancery Masters
Coroners, Northern Ireland
Costs Judges of the High Court
Council of Appeal Tribunal Judges
Council of County Court Judges, Northern Ireland
Council of District Judges (Magistrates' Courts), Northern Ireland
Council of Employment Judges
Council of Employment Judges, Northern Ireland
Council of Her Majesty's Circuit Judges
Council of Immigration Judges
Council of Upper Tribunal Judges
Courts and Tribunals Judiciary for England and Wales
First-tier Tribunal (Property Chamber)
High Court Judges' Association
High Court Judges, Northern Ireland
Insolvency and Companies Court Judges
Judicial Appointments Board for Scotland
Judicial Appointments Commission for England and Wales
Judicial Office for Scotland
Mental Health Tribunal for Scotland
Mental Health Tribunal Members' Association
Midland Chancery and Commercial Bar Association
Ministry of Justice

National Council of Her Majesty's District Judges (Magistrates' Courts)

Northern Ireland Care Tribunal

Office of the Judge Advocate General

Office of the Senior District Judge (Chief Magistrate)

Queen's Bench Masters

Regional Employment Judges (England and Wales)

Salaried Tribunal Judges Association

Scottish Land Court and Lands Tribunal for Scotland

Senators of the College of Justice in Scotland

Sheriffs' Association

Society of Masters, Northern Ireland

Social Security and Child Support Regional Tribunal Judges for England, Scotland and Wales

Summary Sheriffs' Association

Surveyor Members and Deputy President

Tribunals Forum

UK Association of Fee Paid Judges

UK Supreme Court

War Pensions and Armed Forces Compensation Chamber

75 responses from individual judicial post holders

2 responses from individual members of the public

Appendix I

List of respondents to the Consultation

43 responses from judicial associations and representative groups:

Association of Business Recovery Professionals
Association of Her Majesty's District Judges
Association of High Court Masters and Registrars
Association of District Judges, Northern Ireland
Association of Regional Medical Members
Chamber Presidents of the First-tier Tribunals (England & Wales and Scotland)
Chancery Bar Association
Coroners, Northern Ireland
Council of Appeal Tribunal Judges
Council of County Court Judges, Northern Ireland
Council of District Judges
Council of District Judges (Magistrates' Courts), in Northern Ireland
Council of Employment Judges
Council of Her Majesty's Circuit Judges
Council of Immigration Judges
Council of Upper Tribunal Judges
Courts and Tribunals Judiciary for England and Wales
Designated Judges of the First-tier Tribunal (Immigration and Asylum Chamber)
First-tier Tribunal (Property Chamber)
Forum of Tribunals Organisations
Health, Education and Social Care Salaried Judges' Association (Mental Health)
Insolvency and Companies Court Judges
Judges' Council, Northern Ireland
Lord Chief Justice of Northern Ireland
Lord President of the Court of Session
National Council of Her Majesty's District Judges (Magistrates' Courts)
Northern Ireland Care Tribunal
Northern Region First-tier Tribunal (Property Chamber)
Office of the Judge Advocate General

Office of the Senior District Judge (Chief Magistrate)

Panel of Resident Judges (Immigration)

Parking and Bus Lane Tribunal for Scotland

President of Scottish Tribunals

President of Welsh Tribunals

Regional Employment Judges (England and Wales)

Scottish Land Court and Lands Tribunal for Scotland

Sheriffs' Association

Sheriffs Principal

Society of Masters, Northern Ireland

Southwark Crown Court Judges

Social Security and Child Support Regional Tribunal Judges for England, Scotland and Wales

UK Association of Fee Paid Judges

Valuer Chairs sitting in London and Eastern Regions of the First-tier Tribunal Residential Property

76 responses from individual members of the judiciary

2 responses from individual members of the public

Appendix J

List of those who gave oral evidence to the SSRB

The Lord Chancellor

The Lord Chief Justice of England and Wales and the Senior President of Tribunals

The Lord Chief Justice of Northern Ireland

The Lord President of the Court of Session

The President of Scottish Tribunals

Chair of the Judicial Appointments Commission

The High Court Judges' Association (and equivalents from Scotland and Northern Ireland)

Council of Her Majesty's Circuit Judges (and equivalents from Scotland and Northern Ireland)

Association of Her Majesty's District Judges and Council of Her Majesty's District Judges
(Magistrates' Courts) (and equivalents from Scotland and Northern Ireland)

Tribunals Forum (and equivalents from Scotland and Northern Ireland)

Council of Employment Judges

Association of Fee Paid Judges on the Judges' Council (and equivalents from Scotland and
Northern Ireland)

Appendix K

Membership of the Advisory and Evidence Group

Chair: Sharon Witherspoon, Chair of the Judicial Sub-Committee of the Senior Salaries Review Body

Margaret Edwards (SSRB member)

Professor Peter Westaway (SSRB economist member)

The Rt Hon. The Chancellor of the High Court

The Hon. Judge Beckett (Scotland judiciary)

The Hon. Mr Justice O'Hara (Northern Ireland judiciary)

President of Welsh Tribunals (devolved Welsh tribunals)

The Hon. Mrs Justice Simler

Her Honour Judge Newton (Circuit Judge)

District Judge Kemp

Upper Tribunal Judge Bishopp (salaried tribunals)

First-tier Tribunal Judge Hardy (fee-paid tribunals)

Professor Noel Lloyd (JAC)

Helen Whitehouse (MoJ); replaced by Sarah Jennings (MoJ)

Laurene McAlpine (Northern Ireland government)

Jan Marshall (Scottish government); replaced by Neil Rennick (Scottish government)

Appendix L

Responses from the Judicial Attitude Surveys in 2014 and 2016

Table L.1: Sample size and response rate by judicial post

	2014			2016		
	Number of responses	Number of judges in post	Response rate	Number of responses	Number of judges in post	Response rate
England & Wales Courts and UK Tribunals	1,666	1,883	89%	1,580	1,602	99%
<i>England and Wales</i>	1,257	1,402	90%	1,174	1,186	99%
Lord and Lady Justices of Appeal ¹	33	43	77%	38	44	86%
High Court Judges	107	107	100%	105	106	99%
Circuit Judges	585	640	91%	556	560	99%
District Judges ²	495	580	85%	438	438	100%
Other ³	30	32	94%	37	38	97%
Unknown	7					
UK Tribunals	409	481	85%	406	416	98%
Upper Tribunal Judges	47	59	80%	58	58	100%
Employment Judges	158	166	95%	127	132	96%
First-tier Tribunal Judges	204	256	80%	221	226	98%
Scotland⁴	150	185	81%	142	181	79%
Sheriffs ⁵	125	151	83%	–	–	–
Summary Sheriffs	–	–	–	13	15	87%
Sheriffs & Sheriffs Principal	–	–	–	108	132	82%
Senators: Outer House	13	22	59%	16	23	70%
Senators: Inner House	12	12	100%	5	11	45%
Northern Ireland	60	79	76%	60	79	76%
Masters and Coroners	7	10	70%	–	–	–
Master of the High Court	–	–	–	5	7	86%
Coroners	–	–	–	1	3	33%
Lord Justices of Appeal	0	4	0%	2	3	67%

	2014			2016		
	Number of responses	Number of judges in post	Response rate	Number of responses	Number of judges in post	Response rate
High Court Judges	6	9	67%	7	10	70%
County Court Judges	16	17	94%	17	17	100%
District Judges	22	25	88%	4	4	100%
District Judges (Magistrates' Courts)	–	–	–	17	21	81%
Tribunals Judges ⁶	9	14	64%	7	14	50%

Notes:

1 In 2016 UCL refer to this group as Court of Appeal Judges.

2 The number of District Judges responding to the 2016 survey (474) exceeded the number officially listed in post. UCL investigated this and determined this was most likely due to the fact that the number of judges officially listed in the Judicial Office HR database does not reflect the fact that some judges hold dual posts, the database assigns judges to only one post (assigned depending on where the judge spends most of their time). For the JAS judges were asked to self-identify their judicial post.

3 'Other' refers to Judge Advocates General, Masters, Registrars and Costs Judges. Due to the small number of judges, findings have not been reported by UCL separately for each of these groups to ensure participants' anonymity.

4 The groupings in 2016 are slightly different to 2014.

5 In 2014, Sheriffs also include Sheriff Principals and Stipendiary Sheriffs.

6 Classified as devolved Tribunal Judges in the 2014 JAS.

Table L.2: Percentage of judges reporting that their pay and pension entitlement does not adequately reflect the work they have done and will do before retirement

	2014			2016		
	Agree	Disagree	Not sure	Agree	Disagree	Not sure
England & Wales Courts and UK Tribunals	78%	11%	11%	74%	14%	12%
<i>England and Wales</i>						
Lord and Lady Justices of Appeal	62%	19%	19%	76%	8%	16%
High Court Judges	83%	9%	8%	80%	15%	5%
Circuit Judges	81%	10%	9%	81%	11%	8%
District Judges	79%	11%	10%	76%	10%	14%
<i>UK Tribunals</i>						
Upper Tribunal Judges	84%	8%	8%	54%	25%	21%
Employment Judges	79%	14%	7%	76%	14%	10%
First-tier Tribunal Judges	64%	18%	18%	53%	25%	22%
Scotland	74%	12%	14%	72%	15%	13%
Northern Ireland	81%	10%	9%	76%	14%	10%

Table L.3: Percentage of judges reporting consideration of leaving the judiciary early in the next five years

	2014			2016		
	Yes	No	Undecided	Yes	No	Undecided
England & Wales Courts and UK Tribunals	31%	47%	22%	36%	41%	23%
<i>England and Wales</i>	32%	46%	22%			
Lord and Lady Justices of Appeal	58%	30%	12%	41%	38%	21%
High Court Judges	39%	38%	23%	47%	32%	21%
Circuit Judges	36%	44%	20%	40%	37%	23%
District Judges	25%	50%	25%	30%	48%	22%
UK Tribunals	25%	53%	22%			
Upper Tribunal Judges	17%	67%	19%	36%	41%	23%
Employment Judges	26%	50%	24%	36%	34%	30%
First-tier Tribunal Judges	26%	52%	22%	29%	47%	24%
Scotland	38%	40%	22%	39%	39%	22%
Sheriffs	38%	40%	22%	40% ¹	39%	21%
Summary Sheriffs	–	–	–	–	–	–
Sheriffs & Sheriffs Principal	–	–	–	–	–	–
Senators: Outer House	25%	42%	33%	42% ²	32%	26%
Senators: Inner House	57%	29%	14%	–	–	–
Northern Ireland	40%	46%	14%	40%	40%	20%

Notes:

1 Includes Sheriffs, Sheriffs Principal and Summary Sheriffs.

2 Includes Senators of both the Outer and Inner House.

Table L.4: Percentage of judges reporting that the following factors would make them more likely to leave the judiciary early

	2014		2016	
	Limits on pay awards	Reduction in pension benefits	Limits on pay awards	Reduction in pension benefits
England & Wales Courts and UK Tribunals	71%	68%	68%	68%
<i>England and Wales</i>				
Lord and Lady Justices of Appeal	73%	63%	–	–
High Court Judges	53%	57%	–	–
Circuit Judges	76%	73%	–	–
District Judges	74%	67%	–	–
<i>UK Tribunals</i>				
Upper Tribunal Judges	74%	62%	–	–
Employment Judges	72%	74%	–	–
First-tier Tribunal Judges	53%	62%	–	–
Scotland	70%	70%	71%	83%
Northern Ireland	72%	72%	78%	80%

Sources:

England & Wales 2016:

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

England & Wales 2014:

<https://www.judiciary.uk/wp-content/uploads/2015/02/jac-2014-results.pdf>

Scotland 2016:

<http://www.scotland-judiciary.org.uk/Upload/Documents/JudicialAttitudeSurvey2016Scotland23October2016.pdf>

Scotland 2014:

<http://www.scotland-judiciary.org.uk/Upload/Documents/JudicialAttitudeSurvey2014Scotland.pdf>

Northern Ireland 2016:

<https://judiciaryni.uk/sites/judiciary/files/media-files/Judicial%20Attitude%20Survey%202016%20Northern%20Ireland%20Report%20%28Final%29%209.11.16.pdf>

Northern Ireland 2014:

<https://judiciaryni.uk/sites/judiciary/files/media-files/Judicial%20Attitude%20Survey%202014%20Northern%20Ireland%20Report%2018.11.14.pdf>

Appendix M

Pay modelling – approach and assumptions

- 1 This Appendix provides further detail on the analysis undertaken in Chapter 5. It sets out the changes to tax and pension policy since 2009-10 and the assumptions used to conduct the analysis.
- 2 To re-cap, we have used three measures of pay to conduct our analysis.
 - **Gross pay** is the total amount an employee is remunerated (i.e., base pay plus any allowances, pay premia or performance-related pay) before any deductions are made for pension contributions, income tax and national insurance, not including any non-pay benefits or pensions.
 - **Take-home pay** provides a direct measure of how much pay someone ‘takes home’ each time period. It has been calculated as gross pay minus employee pension contributions,¹⁹⁴ income tax, employee national insurance contributions, and any annual allowance tax charges.
 - **Total net remuneration** is calculated as take-home pay (as per the definition above) plus the value of the additional amount added to the annual pension during the year. Further details of how we have gone about valuing this are below.
- 3 Total net remuneration is our preferred measure of remuneration because it takes account of pension benefits accrued in the year. We believe this is the most comprehensive, and therefore the most appropriate, measure. All the calculations we have carried out to assess total net remuneration have been appropriately adjusted for inflation.

Take-home pay

Employee pension contribution rates

- 4 The employee contribution rate for members of the 1993 Judicial Pension Scheme (JUPRA) increased from 1.8 per cent in 2009-10 to 4.41 per cent for members earning up to £150,000 (i.e., Circuit and District Judges) and 4.43 per cent for members earning above £150,000 (i.e., High Court Judges) in 2017-18.
- 5 Members of the 2015 New Judicial Pension Scheme (NJPS), have a contribution rate of 8.05 per cent for those earning above £150,000 (i.e., High Court Judges) and 7.35 per cent for those earning below £150,000 (i.e., Circuit and District Judges). These rates have not changed since the introduction of the scheme.

Income tax

- 6 Changes to income taxation have impacted on take-home pay. Whilst the personal allowance increased over the period (from £6,475 in 2009-10 to £11,850 in 2018-19), the personal allowance taper, introduced in 2010-11 for those with an income above £100,000, will have negated this for higher-paid judges. The allowance reduces by £1 for every £2 of income above £100,000. This means an individual earning more than £123,700 in 2018-19 has an annual allowance of zero. High Court and Circuit Judges have a personal allowance of zero as their income is above £123,700 but District Judges still retain some personal allowance. The additional rate of income tax on earnings¹⁹⁵

¹⁹⁴ The tax relief available on employee pension contributions (applicable to registered pension schemes) is not considered to be part of an individual's remuneration package.

¹⁹⁵ Where we refer to ‘earnings’, in this context we mean gross earnings. In addition, for individuals in the private sector who are self-employed (e.g., barristers), we generally refer to their ‘pay’ as earnings.

above £150,000, initially at 50 per cent in 2010-11 and at 45 per cent since 2013-14, has also increased the income tax payable for High Court Judges since 2009-10.

Annual allowance and lifetime allowance

- 7 Those judges without transitional protection¹⁹⁶ have been affected by changes to pension taxation that have reduced the generosity of the tax treatment of high-value pensions. The annual allowance is the limit determining the maximum increase in the value of benefits that a scheme member can earn over a particular tax year without incurring a tax charge. It was reduced from £245,000 in 2009-10 to £40,000 in 2017-18. In addition, the allowance has been tapered at a rate of £1 for every £2 of adjusted income¹⁹⁷ over £150,000 from April 2016, down to £10,000 for those with an income over £210,000. As a consequence, many judges have an annual allowance below £40,000, and the allowance is at the lower limit of £10,000 for High Court Judges and members of the senior judiciary. Judges in JUPRA have not been affected as the scheme is not registered for tax purposes so fall outside the scope of the annual and lifetime allowances.
- 8 The lifetime allowance is the maximum amount of pension savings an individual can build up over their life from all registered pension schemes without incurring a tax liability. The allowance has been reduced from £1.75 million in 2009-10 to £1.03 million in 2018-19. Given the size of the potential tax charge,¹⁹⁸ it is probable that anyone with pension savings above the lifetime allowance would choose to opt out of a tax-registered pension. We have therefore chosen not to present separate calculations for a judge in breach of the lifetime allowance as such individuals are, in all likelihood, covered by the figures we present for judges opting out of the pension altogether.

Private sector comparators

- 9 We have also modelled the change in take-home pay (and total net remuneration) for judges' comparators in the private sector. We have used different comparators for different tiers of the judiciary and have assumed earnings¹⁹⁹ in 2009-10 (our starting point) for each tier were as reported in the previous 2009 NatCen survey of pre-appointment earnings.²⁰⁰
- 10 As discussed in Chapter 5, we have been limited by a lack of data on barristers' earnings in England and Wales. We have therefore had to make a range of assumptions on earnings growth for those in the private sector between 2009-10 and 2017-18. For some estimates, we have used the earnings growth reported in the 2009 and 2017 NatCen

¹⁹⁶ In a consultation on the NJPS, the MoJ provided information on transitional pension arrangements. Further information is available in the boxed example on p.20 and in Annex B on p.69-70 of the consultation. See: https://consult.justice.gov.uk/digital-communications/judicial-pension-scheme-2015-consultation/supporting_documents/jpsconsultation.pdf

¹⁹⁷ Adjusted income is an individual's threshold income plus the pension input amount. Individuals with a threshold income of £110,000 or less will not be affected by the tapered annual allowance, regardless of their adjusted income. Threshold income is pensionable pay minus pension contributions.

¹⁹⁸ The rate is 55 per cent if the pension is withdrawn as a lump sum or 25 per cent if it is received in any other way, for example pension payments or cash withdrawals. For further information see: <https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance>

¹⁹⁹ Where we refer to 'earnings', in this context we mean gross earnings. In addition, for individuals in the private sector who are self-employed (e.g., barristers), we generally refer to their 'pay' as earnings.

²⁰⁰ The National Centre for Social Research. *Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers Report*. Office of Manpower Economics, 2010. Referenced in 33rd Annual Report on Senior Salaries 2011 (paragraphs 4.26 and 4.27). See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228587/8026.pdf

surveys of recently appointed judges.²⁰¹ We have also included a higher earnings growth scenario for modelling.

Total net remuneration

Accrual rates

- 11 The value of the pension benefits accrued in the NJPS is lower than under the JUPRA scheme. The accrual rate has reduced from 2.5 per cent in the 1993 scheme to 2.32 per cent in the new scheme. In addition, the lump sum paid at 2.25 times the value of the annual pension on retirement is not available to those in the NJPS.

Valuing Defined Benefit pensions

- 12 Under Defined Benefit schemes, such as those available to the judiciary, the employee usually makes a contribution to the scheme. Upon their retirement, the size of the annual pension they receive depends on their earnings whilst in the scheme, the annual rate at which pension benefits were accrued (the accrual rate) and the number of years of scheme membership.
- 13 The annual allowance tax charge taxes individuals whose pension input amount is greater than their annual allowance. This is calculated firstly by multiplying an individual's pensionable pay in a given year by the accrual rate, which gives the additional amount added to their annual pension for that year's service (or pension input). This is then multiplied by a 'valuation factor'. The Government Actuary's Department has derived a single valuation factor of 16 for the purpose of calculating an annual allowance tax charge. We have used this valuation factor in our modelling in order to assess the tax liability in each tax year. The actual value of the pension will be greater the longer the individual is expected to draw their pension for, and this will vary depending on factors including the age, sex and retirement age of the individual concerned.
- 14 As an example, a High Court Judge earning £181,566 (in 2017-18) in the NJPS, which has a scheme accrual rate of 2.32 per cent, will add £4,212 to their pension in that year. This means that they will receive an additional £4,212 each year in retirement. Using a valuation factor of 16, as in our calculations, means the increase in pension benefits for the High Court Judge is valued at £67,397.
- 15 Before determining if any annual allowance tax is due, the prior value of the individual's pension is uprated by inflation.
- 16 We have assumed judges pay the tax due on their pensions above the annual allowance in the year that the charge was incurred. There is an alternative option, available to all, called Scheme Pays.²⁰² This is a mechanism allowing the pension scheme administrator to pay any tax charge due in return for applying a reduction in the value of the individual's pension benefit, in line with factors set out by the Government Actuary's Department. Some judges will choose to use Scheme Pays, and in such cases their take-home pay would be higher than we have modelled, although their pension benefits would be lower. The valuation factor used to calculate the cost to the pension scheme of paying the tax charge is different to the one used to value the employee's pension benefits for tax purposes. For judges who are younger than the normal retirement age, the factor used is less than 16 and hence the reduction in the annual pension is greater for a given

²⁰¹ The National Centre for Social Research. *Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers Report*. Office of Manpower Economics, 2010. http://webarchive.nationalarchives.gov.uk/20130705000818/http://www.ome.uk.com/Major_judicial_Review_2010.aspx and *NatCen Survey of Newly Appointed Judges in the UK 2017*. See: <https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

²⁰² Eligibility criteria apply. For further information about Scheme Pays see: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm056410#IDAYCILD>

tax charge than it would be if the 16 valuation factor were used.²⁰³ Hence total net remuneration, as measured using our methodology, would be slightly lower if the judge chose to use Scheme Pays, as the reduction in pension benefits would be valued as being greater than the tax charge when using a consistent valuation factor of 16.

Valuing Defined Contribution pensions

- 17 Defined Contribution pension schemes are more prevalent in the private sector. According to the ONS, whereas 93 per cent of public sector workers had an occupational Defined Benefit scheme in 2017, only 13 per cent did so in the private sector.²⁰⁴ Comparing the financial value of Defined Benefit and Defined Contribution schemes is not straightforward. In Defined Contribution schemes, the employer makes a monthly financial contribution, usually supplemented by the employee. The total contribution is then invested and can be used to purchase an annuity on retirement. It is difficult to compare the two types of scheme. There are differences between the two types of scheme, such as the value to the individual of the relatively certain future pension stream offered by Defined Benefit schemes and the greater flexibility offered by Defined Contribution schemes.
- 18 While it is reasonably straightforward to compare across the limited set of pension schemes available to the judiciary, there is additional complexity in modelling the range of pension arrangements available to those in the private sector. For instance, employer and employee contribution rates will vary across schemes. Typically, the contributions made by those who are employees are supplemented with those made by their employer. This is not possible for those who are self-employed. We have therefore had to make assumptions on how much barristers and solicitors at different levels of income save towards their pension, and how generous their employer (if they have one) is in adding to these contributions. As per our definitions above, we have subtracted pension contributions. This is important because for Defined Contribution schemes the amount saved will influence the level of tax relief saved (i.e., without the tax relief element the employee's pension contributions would have no effect on total net remuneration).

Tables for private sector comparators

- 19 Table M.1 shows the estimated changes in take-home pay and the changes in total net remuneration for judges' private sector comparators. The set of assumptions we have made for each of the scenarios is given in Table M.2.

²⁰³ For example, if a tax charge of £32,000 is due and the factor used is 10, then the annual pension will be reduced by £3,200. Using the 16 factor, the reduction would instead be £2,000.

²⁰⁴ Annual Survey of Hours and Earnings pension tables, UK: 2017 provisional and 2016 revised results, Table 1. See: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensiontables/2017provisionaland2016revisedresults>

Table M.1: Changes in take-home pay and total net remuneration resulting from pay, income tax, national insurance, pension contribution changes, annual allowance charges and inflation, 2009-10 to 2017-18

	Take-home pay real change (against CPI) %	Total net remuneration real change (against CPI) %
High Court Judges		
Barrister, 15% pension contribution	3.6	-31.1
Barrister, maximum tax-efficient pension contributions ¹	43.0	-38.4
Circuit Judges		
Solicitor, 1% pension contribution	-17.9	-17.5
Solicitor, 15% pension contribution	-26.7	-22.6
Barrister, 15% pension contribution	-31.3	-22.1
District Judges		
Solicitor, 1% pension contribution	-1.8	-1.3

Note:

1 27.5 per cent in 2009-10 (to maximise available tax relief); less than 1 per cent in 2017-18 as only £10,000 of tax relief was available.

- 20 As discussed earlier, high earners in the private sector have also been affected by changes to pension taxation. For this reason, we have assumed that high-earning barristers in the High Court Judge comparator group will have reduced their pension contributions between 2009-10 and 2017-18 such that they are maximising the tax relief available to them in both years. Their take-home pay is therefore modelled as increasing as their pension contributions falls. However, their total net remuneration falls substantially, as they are no longer able to benefit from the same level of tax relief as in 2009-10. The portion of their earnings that they previously put into pension savings is now subject to their marginal tax rate.
- 21 District Judges' comparators are assumed to have had earnings of just under £125,000 in 2017-18, in line with the figures reported in the most recent NatCen survey. They would in this case still have an annual allowance of £40,000, and we assume that it is unlikely they would want to make pension savings above this amount. They would therefore be minimally impacted by the changes to pension taxation.

Table M.2: Assumptions on earnings growth, employee contribution rates and employer contribution rates used to estimate the results in Table M.1

	Earnings growth	Employee pension contributions	Employer pension contributions
High Court comparisons			
Barrister, 15% pension contribution	3.6%, based on median pre-appointment earnings in NatCen survey	15%, less than 1 per cent in 2017-18 as only £10,000 of relief was available	0% (assumed self-employed)
Barrister, maximum tax-efficient pension contributions	3.6%, based on median pre-appointment earnings in NatCen survey	27.5% in 2009-10 (to maximise the available tax relief), less than 1 per cent in 2017-18 as only £10,000 of tax relief was available	0% (assumed self-employed)
Circuit Judge comparisons			
Solicitor, 1% pension contribution	4.3%, based on median pre-appointment earnings in NatCen survey	1% in both years (based on average for Defined Contribution schemes)	3.2% (based on average for Defined Contribution schemes)
Solicitor, 15% pension contribution	4.3%, based on median pre-appointment earnings in NatCen survey	15% in both years	7%
Barrister, 15% pension contribution	4.3%, based on median pre-appointment earnings in NatCen survey	15% in both years	0% (assumed self-employed)
District Judge comparisons			
Solicitor, 1% pension contribution	26.6%, based on median pre-appointment earnings in NatCen survey	1% in both years (based on average for Defined Contribution schemes)	3.2% (based on average for Defined Contribution schemes)

Appendix N

Glossary of terms and abbreviations

ADJ	Association of Her Majesty's District Judges
AEG	Advisory and Evidence Group
BAME	Black, Asian and Minority Ethnic
CoCJ	Council of Circuit Judges
CPI	Consumer Prices Index
CRA	Constitutional Reform Act 2005
FDI	Foreign Direct Investment
FPJPS	Fee-Paid Judicial Pension Scheme
FTE	Full-time equivalent
GVA	Gross Value Added
HCJA	High Court Judges' Association
HCJANI	High Court Judges' Association Northern Ireland
HMCTS	Her Majesty's Courts and Tribunals Service
HMRC	Her Majesty's Revenue and Customs
IES	Institute for Employment Studies
JABS	Judicial Appointments Board for Scotland
JAC	Judicial Appointments Commission
JAS	Judicial Attitude Survey
JO	Judicial Office
JPS	Judicial Pension Scheme
JSC	Judicial Sub-Committee
JUPRA	Judicial Pensions and Retirement Act 1993. The abbreviation is used as a term for the legacy judicial pension scheme which is created under this legislation. The scheme ceased to accept members from 1 April 2015.
LCJ	Lord Chief Justice of England and Wales
LCJNI	Lord Chief Justice of Northern Ireland
Lord President	Lord President of the Court of Session
MoJ	Ministry of Justice
NatCen	National Centre for Social Research
NIJAC	Northern Ireland Judicial Appointments Commission
NJPS	New Judicial Pension Scheme
OME	Office of Manpower Economics
ONS	Office for National Statistics
PQE	Post Qualified Experience

Queen's Counsel (QC)	Lawyers appointed by letters patent to be one of 'Her Majesty's Counsel learned in the law'. Barristers and solicitors with sufficient experience and knowledge can apply to become Queen's Counsel. QCs undertake work of an important nature and are referred to as 'silks', a name derived from the black court gown that is worn.
RRA	Recruitment and retention allowance
Rule of law	The World Justice Project's definition of the rule of law is comprised of four principles: Accountability, Just Laws, Open Government and Accessible & Impartial Dispute Resolution.
Salary group	The grouping of judicial posts, for pay purposes.
SPT	Senior President of Tribunals
SSRB	Senior Salaries Review Body
UCL	University College London