



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

EXECUTIVE SUMMARY

Chair: Dr Martin Read, CBE

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 remuneration¹ 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).²

¹ 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.

² 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)³ 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.

³ 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 2016-17.⁴ 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),⁵ 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.

⁴ 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.

⁵ 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 evidence⁶ 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 research⁷ 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).

⁶ See: Chapter 2.

⁷ *NatCen Survey of Newly Appointed Judges in the UK 2017*. See: <https://www.gov.uk/government/organisations/natcen/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 research⁸ 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

⁸ *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.⁹ 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.

⁹ 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 2016-17.¹⁰ 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,

¹⁰ 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 14.¹¹
- 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,¹² 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

¹¹ As of 14 September 2018.

¹² 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.¹³

- 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).

¹³ 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 earnings¹⁴ 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 remuneration¹⁵ (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.

¹⁴ 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.

¹⁵ 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.¹⁶ 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.**

¹⁶ 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:¹⁷ 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.

¹⁷ 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.

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;¹⁸ 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.*

¹⁸ 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 Lebrecht¹⁹
John Steele²⁰
Dr Peter Westaway
Sharon Witherspoon, *Chair of the Judicial Sub-Committee*

The Secretariat is provided by the Office of Manpower Economics.

¹⁹ Ex Officio: Chair Police Remuneration Review Body.

²⁰ Ex Officio: Chair Armed Forces Pay Review Body.

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

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

The review will, as relevant, operate in accordance with the SSRB's general Terms of Reference.

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.

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

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.

Process

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

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.

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.

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.