

Judicial Pension Reform: Equality Statement
July 2020

A. Introduction

1. This equality statement explains how we have given due consideration to and complied with our equality duties under the Equality Act 2010 throughout the policy development of our proposals for reforming the judicial pension scheme. This statement accompanies our public consultation document.
2. We have sought, wherever possible, to use available evidence to assess the equality impacts. For matters where we lack relevant evidence, we have specified the limits of the data currently collected. We are also seeking to collect further evidence on these matters through the consultation exercise.
3. Consideration of equality impacts will continue to take place as the proposals in the consultation move from policy development through to implementation via legislation. This will include consideration of any equalities issues raised in the consultation responses. Further analysis will take place ahead of the relevant stages of implementation of the reformed scheme, which is scheduled to take effect from April 2022.

B. Background

4. The Public Service Pensions Act 2013 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary, the then Lord Chancellor announced the principles for reform of judicial pension scheme arrangements in February 2013 and, following a public consultation exercise, the New Judicial Pension Scheme (NJPS) was established under the Judicial Pensions Regulations 2015.
5. The Public Service Pensions Act 2013 and the introduction of NJPS in 2015 brought about significant changes. Previous judicial schemes were closed to future accrual including – of relevance to most serving salaried judges – the scheme established under the Judicial Pensions and Retirement Act 1993 (JUPRA). While JUPRA and its predecessor schemes were tax-unregistered, which meant that members were not subject to annual allowance and lifetime allowance limits on tax-relieved benefits accrued within the schemes, NJPS is a tax-registered scheme and members are subject to these limits. Member contribution rates for JUPRA and FPJPS (the scheme for fee-paid judges, which mirrors the provisions of JUPRA) are also lower compared to NJPS, to broadly reflect that members do not receive tax relief on contributions. In addition, and unlike JUPRA and FPJPS, NJPS does not provide an automatic lump sum on retirement, it links the normal pension age to State Pension age, includes a lower annual accrual rate and uses career average rather than final salary as the basis for calculation of pension benefits.
6. These changes, largely consistent with those made to other public service pension schemes as a result of the 2013 Act, have had a disproportionate impact on the judiciary. This was partly because other public service pension schemes partially offset the impacts of moving to a career average scheme by increasing the accrual rate, whereas in the judicial pension scheme (NJPS), the accrual rates were decreased. In addition, the comparatively high level of judicial salaries and the fact that many senior judges accrued significant private pensions before taking up judicial office mean that tax charges are felt more acutely and by a significant proportion. Many in legal practice may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case

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joining a tax-registered pension scheme is unlikely to be an incentive to leave private practice and join the bench. This is a clear impediment to attracting the best talent to the salaried judiciary. This disincentive is compounded by the fact that many judges face a significant drop in earnings when joining the judiciary.

7. Owing to the judiciary's unique constitutional role, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their options for supplementing their earnings are therefore limited. Furthermore, judges tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades.
8. The changes to judicial pensions significantly reduced the remuneration package for judges.
9. Recruitment and retention problems within the judiciary began to emerge at the same time that the 2015 pension reforms came into force. These issues were underlined by the fact that the first ever unfilled vacancy at the High Court occurred in the 2014/15 recruitment exercise. The then Lord Chancellor asked the Senior Salaries Review Body (SSRB) to examine the matter further, in response to which the SSRB conducted a Major Review, gathering detailed evidence over the course of two years. The SSRB reported its findings in 2018.
10. The SSRB's Major Review confirmed that there was evidence of significant and escalating recruitment and retention problems. It identified strong evidence of recruitment difficulties in the High Court and indications of a potential retention problem at this tier, with a number of vacancies caused by early retirements from the High Court and above. The SSRB also found that there was evidence of growing recruitment and retention problems at the Circuit and Upper Tribunal benches, and signs of an emerging issue at more junior levels. In 2017/18 there was a shortfall from a recruitment exercise at the District bench for the first time.
11. The SSRB concluded that the principal cause of the problem was the cumulative impacts of the 2015 public service pension reforms and subsequent changes to the annual allowance and lifetime allowance thresholds.
12. In response, the Government introduced a new temporary Recruitment and Retention Allowance (RRA), for certain senior salaried judges who were eligible for NJPS in England and Wales to provide a short-term solution to urgent recruitment and retention issues that were highlighted by the SSRB. The RRA was introduced as a temporary measure on the basis that it would be followed by a long-term pensions solution.

McCloud

13. The introduction of NJPS included transitional provisions to protect those closest to retirement from the effects of the 2015 pension reforms. In *McCloud*,¹ a group of younger judges brought legal action challenging the lawfulness of these provisions. In December 2018, the Court of Appeal held that the transitional protections in the scheme were unlawful on the grounds of direct age discrimination. As the Government was refused permission to appeal to the Supreme Court, the case has been remitted to the Employment Tribunal to determine a remedy which will include retrospectively addressing past discrimination. The Government has committed to addressing the discrimination for all affected judges whether

¹ *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844.

or not they have brought claims. A separate consultation seeking views on MoJ's proposed model to address the discrimination has been published alongside the consultation on reforming the scheme.

C. Policy

14. We are proposing a reformed judicial pension scheme that:
- is sufficiently attractive to support the resolution of recruitment and retention challenges, particularly at the higher levels of the salaried bench;
 - is consistent, so far as possible, with the principles of the wider 2015 public service pension reforms so that it is sustainable for the long-term; and
 - equalises future treatment for all members of the judiciary from the point at which the reformed scheme comes into force.
15. In order to do this, we are proposing to bring forward primary legislation when parliamentary time allows to provide for a reformed, modernised JUPRA. We would need to amend the Public Services Pensions Act 2013, which closed existing schemes, including JUPRA, to future accruals. We would also need to amend the Judicial Pensions and Retirement Act 1993 to enable the provision of a modernised non-registered section of the scheme for future accruals.
16. This would mean that judges in JUPRA prior to April 2022, the point at which the reformed scheme is scheduled to come into effect, would remain in JUPRA from April 2022 but would accrue benefits in a different section of the scheme that will have been modernised in line with the Hutton principles (see below). Those judges who were members of NJPS or FPJPS would transfer into this same modernised section of the JUPRA scheme.
17. The intention is that all other judicial pension arrangements would close to future accruals in 2022. The reformed section of JUPRA would then be the only scheme in which members can accrue benefits.
18. The reformed scheme would contain the following features to ensure that it is modernised in line with the Hutton principles which guided the 2015 public service pension reforms. These features are as follows:
- the calculation of pension benefits based on career average earnings;
 - normal pension age linked to State Pension age;
 - no restriction on the number of accruing years in service;
 - the dependant benefit rate set at 37.5%; and
 - the introduction of a cost control mechanism.
19. Additionally, we are proposing the following design features to ensure that the reformed pension scheme addresses our recruitment and retention issues:
- tax-unregistered status;
 - reduced member contribution rates compared to NJPS;
 - an option for members to commute part of their earned pension into a lump sum at a rate of 12:1, with a commutation supplement to compensate for the tax-unregistered status of the scheme; and
 - an accrual rate of 2.50% (1/40).

20. It is important to highlight that although all members would be treated equally in terms of accruing benefits under the same scheme, the financial value of the scheme to members is not uniform as pension benefits can be affected by many variables, such as salary, career progression, income derived from work not connected to their judicial office and prior pension benefits accrued.

D. Equalities analysis and data sources

21. Section 149 of the Equality Act 2010 (the Act) and the Equality Act 2010 (Specific Duties) Regulations 2011 require public authorities, in the exercise of their functions, to have due regard to the need to:

- a. eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- b. advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- c. foster good relations between people who share a relevant protected characteristic and those who do not share it.

22. There are nine protected characteristics that fall within the Act: sex, race, disability, age, sexual orientation, religion and belief, gender reassignment, marriage and civil partnership, pregnancy and maternity. The characteristics of marriage and civil partnership are relevant only when considering the first limb of the duty.

23. We have been able to undertake our assessment on three protected characteristics, that we have consistently recorded data for: age, sex and race. Those three protected characteristics were most consistently recorded in both Judicial Appointments Commission (JAC) recruitment data and the Judicial Office (JO) eHR database, which contains all current judicial office holders. Our conclusions about the diversity of the judiciary are discussed in the context of these three characteristics.

24. In our data we have assumed that all judges who are in scope of the *McCloud* remedy will choose to accrue benefits under JUPRA or FPJPS rather than NJPS for the remedy period. We have made this assumption because it is expected that the majority of judges are likely to be better off in JUPRA or FPJPS as it is the more generous scheme for most judges in most circumstances. We therefore consider that this assumption presents a more accurate assessment of the number of judges in each of the judicial schemes before the reformed scheme comes into effect in 2022 than is reflected in the current data. We are aware that some judges in scope of *McCloud* may choose NJPS benefits for the remedy period. This will, of course, ultimately depend on a judge's personal circumstances, which our analysis cannot account for and the analysis is therefore limited to the extent of the assumption outlined above.

25. While we have analysed the race data that we have for judges, broken down by pension scheme, our sample size was too small to be able to draw any trends with certainty. We have presented some of our high-level conclusions, but they should not be considered as robust as the information we have included on the age and sex of the judiciary.

26. We were also not able to conduct analysis on the remaining six protected characteristics for the following reasons:

- a. **Disability** – this is recorded and reported by the JAC. However, until recently, Judicial Office (JO) only collected this information on a non-mandatory basis by self-declaration. It is not currently possible to differentiate between those without a disability and those who chose not to respond to the disability

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question. JO are changing the way they collect diversity information to help resolve this issue. This will allow judicial office holders to self-record/update their diversity information.

- b. **Gender reassignment** – no data was available at the time of our assessment. The JAC have recently revised their candidate equalities monitoring form to collect information, but data will not be reported until 2021 at the earliest. JO will include this as a field for judicial office holders to self-record during the current reporting year.
 - c. **Marriage and civil partnership** – no data was available at the time of our assessment. The JAC do not record this information. JO will include this as a field for judicial office holders to self-record during the current reporting year.
 - d. **Pregnancy and maternity** – no data was available at the time of our assessment. The JAC and JO do not record this information through their diversity monitoring forms.
 - e. **Religion or belief** – no data was available at the time of our assessment. The JAC record and report this information at an aggregate level (i.e. for all exercises during a financial year). The JO will include this as a field for judicial office holders to self-record during the current reporting year.
 - f. **Sexual orientation** – the JAC record and report this information at an aggregate level (i.e. for all exercises during a financial year). The JO will include this as a field for judicial office holders to self-record during the current reporting year.
27. In addition to the Public Sector Equality Duty, the Lord Chancellor and the Lord Chief Justice have a statutory responsibility to encourage judicial diversity. We have therefore paid particular attention to assessing whether our proposed judicial pension reforms could affect the diversity of the judiciary.
28. When assessing the equality impacts of our proposals, we have looked at the characteristics of the judiciary represented across NJPS, JUPRA and FPJPS.
29. We have analysed the following salary groups, as they contain the majority of the judiciary:
- Salary Group 4 (which includes High Court Judges)
 - Salary Group 5 (which includes Senior Circuit Judges)
 - Salary Group 6.1 (which includes Circuit Judges and Upper Tribunal Judges)
 - Salary Group 7 (which includes District Judges and Judges of the First-tier Tribunal).
30. For fee-paid appointments, we have analysed the following roles:
- Deputy High Court Judge
 - Recorder
 - Deputy District Judge
31. We have not extended our analysis to other salary groups and fee-paid roles as they contain an insufficient number of judges to be able to draw any meaningful conclusions.

E. Characteristics of the judiciary

32. The Judicial Diversity Statistics, which are published annually, contain information on the protected characteristics of the judiciary². The statistics showed that there was generally a lower representation of women and black, Asian and minority ethnic (BAME) judicial office holders in more senior roles in the courts and tribunals. There was considerable regional variation in sex and ethnic diversity in the courts.
33. Judicial diversity has increased over the years:
- The proportion of court judges who were women increased from 24% in 2014 to 32% in 2019 and the proportion of tribunal judges who were women increased by 3% over the same time period.
 - Between 2014 and 2019, the proportion of BAME court judges, tribunal judges and non-legal members of tribunals has increased by 2 percentage points in each group.
34. MoJ continues to work with the JAC and the senior judiciary to promote further judicial diversity. For example, the Pre-Application Judicial Education Programme (PAJE), launched in April 2019 with MoJ funding, is an initiative offering targeted support through judge-facilitated discussion groups to lawyers from under-represented groups, including women, BAME, lawyers with disabilities and non-barristers. It is our ambition that the reformed pension scheme will facilitate and contribute towards increasing diversity of the judiciary as time goes on.

F. Direct discrimination

35. All judges eligible for a judicial pension would accrue benefits under the reformed scheme from the date that it comes into force (scheduled for April 2022). There would only be one judicial pension scheme with the same features, including a uniform contribution rate, for all members. Therefore, these proposals would not result in direct discrimination.
36. The reformed scheme would be open to all UK judiciary for whom the UK Parliament has sole competency to legislate for, except where terms and conditions are specifically non-pensionable.

G. Indirect discrimination

37. Indirect discrimination is defined under Section 19 of the Act, which provides:
- “Indirect discrimination
- A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.
 - For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –
 - A applies, or would apply, it to persons with whom B does not share the characteristic,
 - it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - it puts, or would put, B at that disadvantage, and

² Judicial Diversity Statistics 2019 - <https://www.judiciary.uk/wp-content/uploads/2019/07/Judicial-Diversity-Statistics-2019.pdf>

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(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

Age

38. The data we have used to look at certain protected characteristics of judges, broken down by the pension scheme that they are members of, demonstrates that NJPS (salaried and fee-paid judges) contains a higher proportion of younger judges compared to JUPRA and FPJPS. For example, in NJPS, 13% of judges are aged 60 and above, compared to JUPRA where 64% of judges are within this age range.
39. For the purposes of our analysis, we have assumed, that judges within scope of the *McCloud* remedy would choose to accrue benefits in JUPRA or FPJPS for the remedy period. Therefore, we would expect JUPRA and FPJPS to contain older judges compared to NJPS as the legacy schemes were closed to judges appointed after 31 March 2012.
40. There is also generally a greater representation of younger judges in the more junior salary bands compared to those in the more senior positions. For example, in NJPS, 10% of the judges in salary group 4 are aged between 41-50, compared to 40% for those judges in salary group 7. JUPRA judges in the more senior tiers are also generally older compared to the junior tiers. For example, 30% of judges in salary group 4 are aged 59 or younger, compared to 45% of judges aged 59 or younger in salary group 7.
41. The reformed pension scheme will impact judges differently depending on their personal circumstances, including what scheme they are accruing benefits in before the reformed scheme comes into force.
42. In general, judges who are in the original JUPRA or FPJPS, whether because they were transitionally protected or chose JUPRA or FPJPS for the remedy period, would find the reformed scheme less financially beneficial. This cohort are more likely to be older. However, a subset of these judges will have served 20 years or more, and due to the length of service cap in JUPRA and FPJPS, will no longer be accruing benefits, and so joining the reformed scheme would be more financially beneficial for those judges. Additionally, judges who are in NJPS whether because they were appointed after 31 March 2012 or chose to become a member of NJPS for the remedy window, would likely find the new arrangements more financially beneficial. This cohort are more likely to be younger.
43. From the date of implementation of the reformed scheme, there will only be one scheme that judges are able to accrue benefits in and the same scheme design would apply to all judges. Therefore, we do not consider that the reformed scheme results in indirect discrimination on the grounds of age.
44. While the same scheme features would apply to all judges in the reformed scheme, the change from a tax-registered to a tax-unregistered scheme would particularly benefit the more senior members of the judiciary who are likely to be older. Importantly, the other features contained within the reformed scheme, including a reduction in member contribution rates and increase to the accrual rate (compared to NJPS) as well as the commutation supplement, should mean that all judges would be in a better position from our proposals compared to the benefits they would accrue under NJPS. The precise benefits judges accrue under the reformed scheme will, however, depend on a judge's personal circumstances, including their previous pension savings, so while it is possible that some judges may not be better off in the reformed scheme, we have designed the scheme so that no judge should be worse-off under the reformed scheme compared to NJPS.

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45. The reformed scheme has been designed in this way to achieve our policy objective of addressing our significant recruitment and retention issues which are particularly acute at the more senior salaried tiers of the judiciary but to also ensure that all levels of the judiciary benefit (or are at least should be no worse-off compared to NJPS in terms of the value of their pension). Therefore, to the extent that the move to the reformed scheme results in differential impacts, we consider that that this is a proportionate means of meeting our policy aim.

Sex

46. Our data shows that NJPS (salaried and fee-paid) contains a higher proportion of women compared to JUPRA and FPJPS. The total percentage of salaried female judges in NJPS is 43% compared to 34% in JUPRA. The percentage of fee-paid judges in NJPS that are female is 40% compared to 26% in FPJPS.

47. There is also generally a greater representation of female judges in the more junior salary bands compared to those in the more senior positions. For example, 46% of judges in salary group 7 of NJPS are female, compared to 32% in salary group 4. There is a similar pattern in JUPRA where female judges make up 36% of all office holders in salary group 7, compared to 27% in salary group 4.

48. In general, judges who are in the original JUPRA or FPJPS would find the reformed scheme less financially beneficial. This cohort are more likely to be male. Conversely, judges who are in NJPS, would likely find the new arrangements more financially beneficial. This cohort is more likely to possess a stronger representation of female judges compared to JUPRA and FPJPS. However, we do not consider that a move to the reformed scheme results in indirect discrimination on the basis of sex as all judges will accrue benefits in the same scheme once it comes into force.

49. There is also a greater representation of men in senior positions compared to women and, as described above, the more senior judiciary particularly benefit from a move to a tax-unregistered scheme. However, to the extent that there is the potential for differential impacts based on sex, the same rationale for including features that are particularly beneficial for the senior judges as described above in relation to age also applies here.

Race

50. While the data we have on the ethnicity of the judiciary broken down by pension scheme is too small to be able to draw any trends with certainty, it does indicate that NJPS (salaried and fee-paid) judges may be more likely to be BAME (black, Asian and minority ethnic) than judges in JUPRA and FPJPS. This data is also supported by the judicial diversity statistics which show that the proportion of BAME judges in the courts has increased from 4.2% to 7% between 2012 and 2019.³ Therefore, we would expect a higher proportion of BAME judges to be members of NJPS, as this is the only scheme that judges can accrue benefits in if they were appointed after 31 March 2012.

51. In general, judges who are in the original JUPRA or FPJPS would find the reformed scheme less financially beneficial. This cohort is likely to be less racially diverse compared to NJPS. Conversely, judges who are in NJPS, would likely find the new arrangements more financially beneficial. This cohort is likely to be more racially diverse compared to JUPRA and FPJPS.

52. For the reasons outlined above, we do not consider that the reformed scheme results in indirect discrimination on the basis of race. To the extent that there is the potential for

³ Judicial diversity statistics, April 2019.

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differential impacts, this is justified to meet our policy objective of addressing the recruitment and retention issues and mitigated by the scheme design to ensure that no judge is worse-off under the reformed scheme compared to NJPS.

Uniform member contribution rates

53. We have also proposed the introduction of a uniform contribution rate for all judges as a feature of our reformed scheme. Currently, there are three sets of member contribution rates for judges, depending on whether they are accruing benefits in JUPRA, FPJPS or NJPS. As our intention is to move all eligible judges into the reformed scheme in 2022, we propose that there would be a single member contribution structure in the future. Creating a single structure of member contribution rates necessitates a change for some judges in the amount that they contribute towards their pension.
54. In order to determine the most appropriate structure that would apply to all judges in the future, we revisited the principles behind the current tiered contribution rates. The Hutton recommendations proposed that any increases in contribution rates should protect low earners and be progressive, so that high earners pay proportionally higher increases to reflect their more generous pensions. The arguments that the Coalition Government subsequently made for a tiered structure therefore included protecting the low paid by not increasing the employee contributions for those earning less than £15,000 and limiting the increase in employee contributions for those earning up to £21,000. The tiered structure would also allow for tax relief to offset the impact of contribution increases on take-home pay.
55. However, there are no judges in the judicial schemes earning less than £21,000 on a full time equivalent basis and the tax relief argument does not apply in a tax-unregistered scheme (as member contributions are not subject to tax relief). In addition, the tiered structure causes several issues for both members and the scheme administrator:
- It may create perceptions of unfairness between members as higher earners pay more despite the fact that no members of the judiciary can be considered to be low earners. In cases where judges have low judicial earnings, this is likely to be because they are fee-paid members of the judiciary and are able to benefit from continued private practice employment and have the flexibility to increase the number of days they sit.
 - The tiered contribution rates cause anomalies at the boundaries of contribution bands that could incentivise perverse behaviours. For example, fee-paid judges may limit the amount of days they sit in order to avoid moving to a higher contribution band and seeing a reduction in their take-home pay.
 - Tiering member contributions by earnings can also cause complexities and mean that fee-paid judges with the same earnings pay different amounts due to their working patterns.
 - Tiered contribution rates are also more difficult to administer.
56. For these reasons, we propose that a uniform contribution rate is more appropriate for the judiciary and would provide a solution to the issues outlined above.

Salaried judges

57. For salaried judges, a uniform contribution rate would benefit all members currently in JUPRA and those NJPS judges above salary group 7. NJPS judges in this salary group would be the only salaried judges to face a reduction in their take-home pay. As outlined in the previous sections, judges in this group are more likely to be younger, female and racially diverse compared to their more senior colleagues and their counterparts in JUPRA.

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58. While NJPS judges in salary group 7 may have their take home pay reduced, we do not consider that the introduction of a uniform contribution rate in itself results in indirect discrimination on the basis of age, sex or race because all judges would pay the same member contribution rate under the reformed scheme. Judges in this salary group are negatively affected because they earn between £100,000 and £125,000 and are subject to a reduction in their Personal Allowance by £1 for every £2 that their adjusted income is above £100,000. An individual's Personal Allowance is zero if their income is £125,000 or above. Therefore, it is the income tax rate that causes these judges to face a reduction in their take-home pay, rather than the uniform contribution rate.
59. Furthermore, if we had proposed to keep the current tiered rates that are set out in JUPRA, judges in salary group 7 would pay 4.41% in member contributions rather than the uniform rate of 4.26%.
60. To the extent that there is the potential for differential impacts, we consider that this is objectively justifiable on the basis that the uniform contribution rate removes some of the complexities and anomalies of a tiered system that are outlined above. NJPS judges in salary group 7 are likely to see the value of their pension increase under the reformed scheme. Compared to NJPS, the reformed scheme is tax-unregistered, gives members a commutation supplement if they take a lump sum and the accrual rate is increased to 2.5% from 2.32%. This package of features should increase the net pension value for many judges in this salary group. While individual judges may value their take-home pay more than the value of their pension, our proposals have been informed by the SSRB, who clearly stated that our recruitment and retention issues were caused by pension changes and our aim is to resolve these issues through long-term pension reform.

Fee-paid judges

61. Fee-paid judges may be impacted negatively as a uniform contribution rate may reduce their take-home pay. Our analysis shows that Deputy High Court Judges, Recorders and Deputy District Judges, currently accruing benefits under either NJPS or FPJPS would all have their take-home pay reduced on a move to the reformed scheme with a uniform contribution rate if they were to sit for 30 days, spread evenly across the year.
62. It is important to note that contribution rates for fee-paid judges are calculated monthly and subject to varied sitting patterns. Fee-paid judges whose sitting days are concentrated in part of the year could currently pay higher current contribution rates than the analysis we have carried out. This may also be the case for fee-paid judges who sit significantly more than the representative judge we have used for our analysis. On this basis, some fee-paid judges could benefit from a uniform contribution rate where they have an uneven sitting pattern.
63. We have calculated the number of days that fee-paid judges in these salary groups would need to work in a year in order to benefit from the uniform contribution rate, assuming their days are spread evenly across the year. A Deputy High Court Judge would need to work 58 days, a Recorder 78 days, and a Deputy District Judge 99 days in the year to benefit. In terms of earnings, those fee-paid judges who earn over £51,516 would benefit from the uniform contribution rate as both NJPS and FPJPS has a higher contribution rate for judges earning above this amount each year compared to the uniform contribution rate proposed for the reformed scheme.
64. We do not consider that the move to a uniform contribution rate results in indirect discrimination on the basis of age, sex or race because the uniform rate impacts fee-paid judges in a similar way, regardless of salary band or the scheme they were in prior to the

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reformed scheme coming into force. For example, 18% of judges in NJPS are aged 60 or over, compared to 95% of judges in FPJPS and the fee-paid schemes mirror their salaried schemes to an extent in terms of the age and sex of judges in different salary bands. However, fee-paid judges in both schemes and across salary bands have their take-home pay reduced by a similar amount. The reduction in pay does not disproportionately impact a certain group of judges with particular protected characteristics.

65. While we do not consider that the introduction of a uniform rate results in indirect discrimination, to the extent that there is any differential impact, our justification for some fee-paid judges having their take-home pay reduced compared to their salaried counterparts is that a uniform rate removes some of the complexities and anomalies of a tiered contribution structure as outlined above. Fee-paid judges are also able to supplement their income, such as continuing to work as a solicitor or barrister, alongside their judicial role. This is not an option for salaried judges who cannot return to private practice when they have joined the bench and have limited ways of supplementing their income once they have become a judge. While we acknowledge that there may be some fee-paid judges, for example those with caring responsibilities, who may not be able to take on significant additional work outside of their judicial role, we remain of the view that the policy is justified as described above.
66. For those fee-paid judges currently accruing benefits in NJPS, the reformed scheme is also likely to increase the value of their pension which we consider compensates for the reduction in take-home pay that some fee-paid judges may experience. The reformed scheme is tax-unregistered, gives members a commutation supplement if they take a lump sum and the accrual rate is increased to 2.5% from 2.32%. While some fee-paid judges may value their pay more highly than their pension benefits, our understanding is that, generally, the value of the judicial pension is an important factor for individuals seeking judicial appointment.

H. Advancing equality of opportunity

67. We have considered how these proposals might impact on the advancement of equality of opportunity. All judges will become members of the reformed scheme upon its implementation date, scheduled for April 2022, thereby equalising treatment going forwards. The reformed scheme would ensure that no judge is worse off in the scheme compared to NJPS. We believe that the reformed scheme would provide a more beneficial pension scheme compared to NJPS and therefore improve the attractiveness of judicial office. In turn, we anticipate that there would be a more diverse set of applicants for judicial office.

I. Fostering good relations

68. The SSRB's Major Review highlighted representations received from judges on the importance of a collegial judiciary, in which all areas of work are valued. This was considered an important factor in the smooth functioning of the system.⁴ Building on this view, we believe it is relevant that judges doing work at the same level will be remunerated in a more equal way than under the current judicial pension arrangements where judges are receiving very different total net remuneration depending on whether they are in JUPRA, FPJPS or NJPS. We consider that ensuring all judges will become members of the same pension scheme, will contribute to collegiality amongst members of the judiciary.

⁴ Page 11, SSRB Major Review 2018.

Annex A: Age

Age of members of judiciary, by percentage:

Scheme	Under 40	41-50	50-59	60 and above
NJPS – Salaried	5%	34%	48%	13%
JUPRA	0%	4%	32%	64%
NJPS – Fee-Paid	10%	33%	40%	18%
FPJPS	0%	1%	4%	95%
Total	5%	21%	33%	41%

Age of salaried members of the NJPS, by percentage:

Salary Group	Under 40	41-50	50-59	60 and above
4	0%	10%	70%	20%
5 ⁵	N/A	N/A	N/A	N/A
6.1	0%	25%	57%	18%
7	4%	40%	47%	9%
Total	5%	34%	48%	13%

Age of JUPRA members, by percentage:

Salary Group	Under 40	41-50	50-59	60 and above
4	0%	0%	30%	70%
5	0%	0%	27%	73%
6.1	0%	4%	28%	68%
7	0%	6%	39%	55%
Total	0%	4%	32%	64%

⁵ Sample size too small to breakdown to a salary group level

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Age of fee-paid members of the NJPS, by percentage:

Role	Under 40	41-50	50-59	60 and above
Deputy/ Retired High Court Judge	0%	14%	59%	27%
Recorder	6%	37%	47%	10%
Deputy District Judge	15%	38%	31%	16%
Total	10%	33%	40%	18%⁶

Age of FPJPS members, by percentage:

Role	Under 40	41-50	50-59	60 and above
Deputy/Retired High Court Judge	0%	0%	10%	90%
Recorder	0%	2%	3%	95%
Deputy District Judge	0%	0%	0%	100%
Total	0%	1%	4%	95%

⁶ Figures appear not to add to 100% due to rounding – 9.53%, 33.22%, 39.53% and 17.72%.

Annex B: Sex⁷

Analysis into the sex of judiciary, by percentage:

Scheme	Female	Male
NJPS – Salaried	43%	53%
JUPRA	34%	65%
NJPS – Fee-Paid	40%	60%
FPJPS	26%	74%
Total	37%	62%

Analysis into the sex of salaried members of the NJPS, by percentage:

Salary Group	Female	Male
4	32%	68%
5 ⁸	N/A	N/A
6.1	38%	62%
7	46%	47%
Total	43%	53%

Analysis into the sex of members of JUPRA, by percentage:

Salary Group	Female	Male
4	27%	73%
5	20%	80%
6.1	34%	66%
7	36%	64%
Total	34%	65%

Analysis into the sex of fee paid members of the NJPS, by percentage:

Role	Female	Male
Deputy/ Retired High Court Judge	23%	77%
Recorder	28%	71%
Deputy District Judge	41%	59%
Total	40%	60%

Analysis into the sex of the members of FPJPS, by percentage:

Role	Female	Male
Deputy/Retired High Court Judge	23%	77%
Recorder	11%	89%
Deputy District Judge	25%	75%
Total	26%	74%

⁷ Some figures in these tables don't total 100% as some judges within this group have sex "Unknown" or "Prefer not to say."

⁸ Sample size too small to present at a salary group level

Annex C: Race

New entrants recruited in the last 4 years will be in NJPS, while judicial office holders (JOHs) aged 65 and above are likely to have remained in JUPRA/FPJPS, indicating that NJPS will likely be more racially diverse than JUPRA/FPJPS.

JOH Type	Number of JOHs in post	JOH % BAME 65 and above	Recent recruits ⁹ % BAME	Difference Factor
Courts				
Court of Appeal	51	0%	0%	0%
High Court Judges	98	3%	3%	0%
Deputy High Court Judge	165	17%	11%	-5%
Circuit Judges	642	1%	5%	4%
Recorders	1,108	4%	7%	3%
District Judges (County Courts)	421	5%	8%	3%
Deputy District Judges (County Courts)	609	3%	12%	8%
District Judges (Magistrates' Courts)	131	0%	14%	14%
Deputy District Judges (Magistrates' Courts)	106	0%	6%	6%
<i>High Court and above</i>	<i>314</i>	<i>10%</i>	<i>7%</i>	<i>-3%</i>
<i>All court judges</i>	<i>3,331</i>	<i>4%</i>	<i>8%</i>	<i>4%</i>
Tribunals				
Upper Tribunal Salaried	55	22%	No JAC data available	
Upper Tribunal Fee-paid	122	19%	No JAC data available	
First-tier Tribunal Salaried	249	10%	11%	1%
First-tier Tribunal Fee-paid	1,162	4%	12%	8%
Employment Tribunal Salaried	106	0%	11%	11%
Employment Tribunal Fee-paid	183	0%	11%	11%
FtT - Non-legal member	1,575	18%	24%	6%
Employment Tribunal - Non-legal member	736	7%	No JAC data available	
<i>All tribunal judges¹</i>	<i>1,700</i>	<i>4%</i>	<i>12%</i>	<i>8%</i>
<i>All tribunal members (including non-legal)¹</i>	<i>3,275</i>	<i>11%</i>	<i>18%</i>	<i>7%</i>
Total: courts and tribunals¹⁰	6,606	7%	13%	6%
Magistrates	14,218	5%	11%	5%

⁹ Recent recruit % based on JAC data (last 4 years where available), except for magistrates where figure is based on recent entrants.

¹⁰ Only those roles for which data is available are included in the totals.

Annex D: Ministry of Justice Judicial Salaries from 1 October 2019

Salary Group	Salaries with effect from 01/04/2019
1	£262,264
1.1	£234,284
2	£226,193
3	£215,094
4	£188,901
5+	£160,377
5	£151,497
6.1	£140,289
6.2	£132,075
7	£112,542
8	£89,428