

## Judicial Pension Reform: Equality Statement

*February 2021*

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### **A. Introduction**

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1. This equality statement explains how we have given due consideration to and complied with our equality duties under the Equality Act 2010 (EA 2010) throughout the policy development of our proposals for reforming the judicial pension scheme. It has been updated following our public consultation on the design of the reformed judicial scheme.
2. The consultation was open for 12 weeks, from 16 July to 16 October 2020, and provided the opportunity for all those likely to be affected by the scheme to comment on the proposed scheme design.
3. We have carefully considered any equality issues raised during the consultation process. In doing so, 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 available.
4. We will continue to consider equality impacts as our proposals move from policy development through to implementation via legislation. 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, subject to parliamentary time allowing the necessary legislation to be passed.

### **B. Background**

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5. The Public Service Pensions Act 2013 (PSPA) 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.
6. The PSPA and the introduction of NJPS in 2015 brought about significant changes. Previous judicial schemes were closed to future accrual (subject to transitional protections) including – of relevance to most serving salaried judges – the scheme established under the Judicial Pensions and Retirement Act 1993 (JUPRA).
7. While JUPRA and its predecessor schemes were tax-unregistered, which meant 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.
8. 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 (or 65 years if that is higher), includes a lower annual accrual rate and uses career average rather than final salary as the basis for calculation of pension benefits.

**Judicial Pension Reform  
Equality Statement**

9. Although these changes were consistent with those made to other public service pension schemes as a result of the PSPA, they 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.
10. In addition, the comparatively high level of judicial salaries and the fact that many senior judges accrue significant private pensions before taking up judicial office means that tax charges are felt more acutely and by a significant proportion of the judiciary. Therefore, 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 and retaining 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.
11. 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 they will not return to private practice upon retirement. 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.
12. The changes to judicial pensions and subsequent changes to pension tax thresholds significantly reduced the remuneration package for judges. Recruitment and retention problems within the judiciary began to emerge at the same time 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 and, in response, the SSRB conducted a Major Review gathering detailed evidence over the course of two years. The SSRB reported its findings in 2018<sup>1</sup>.
13. 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.
14. The SSRB also found 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.
15. 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.
16. In response, the government introduced a temporary recruitment and retention allowance (RRA) for certain senior salaried judges who were eligible for NJPS. This was implemented to provide a short-term solution to urgent recruitment and retention issues 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.

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<sup>1</sup> Major Review of the Judicial Salary Structure 2018, [gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018](https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018)

## C. Policy

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17. We intend to implement a reformed judicial pension scheme that:
- is sufficiently attractive to address recruitment and retention challenges, particularly among the senior tiers of the judiciary;
  - is affordable and sustainable in the long-term by being consistent, so far as possible, with the principles of the wider 2015 public service pension reforms; and
  - is adequate and fair, by equalising future treatment for all members of the judiciary from the point at which the reformed scheme comes into force.
18. In order to do this, we are planning to bring forward primary legislation when parliamentary time allows to provide for a reformed scheme which combines some key elements of JUPRA, notably its tax-unregistered status, with the governance, design, cost control, administration and procedural requirements of the PSPA.
19. From April 2022, the point at which the reformed scheme is scheduled to come into effect, all judges will transfer into the scheme. Our intention is that all other judicial pension arrangements would be frozen to future accruals from April 2022, and the reformed scheme would then be the only scheme in which members would be able to accrue benefits.
20. The reformed scheme would contain the following features to ensure 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 (or 65 years if that is higher);
  - 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.
21. Additionally, the reformed scheme would have the following features to ensure that it 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% (1/40ths).
22. 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. This is because pension benefits can be affected by many variables, such as salary, career progression, income derived from work not connected to a member's judicial office and prior pension benefits accrued.

## D. Equalities analysis and data sources

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23. Section 149 of the EA 2010 requires public authorities<sup>2</sup>, 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.
24. There are nine protected characteristics that fall within the EA 2010: sex, race, disability, age, sexual orientation, religion and belief, gender reassignment, marriage and civil partnership, pregnancy and maternity.
25. We have undertaken our assessment on three protected characteristics on which we have consistently recorded data: age, sex and race. These 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.
26. In our data we have assumed that all judges who are in scope of the *McCloud* remedy will choose to accrue benefits under JUPRA/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/FPJPS as it is the more generous scheme for most judges in most circumstances.
27. We therefore consider 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.
28. 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.
29. 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.
30. 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. Therefore, when assessing the equality impacts of our

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<sup>2</sup> <https://www.gov.uk/guidance/equality-act-2010-guidance>

## Judicial Pension Reform Equality Statement

proposals, we have looked at the characteristics of the judiciary represented across NJPS, JUPRA and FPJPS.

31. 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 5.2 (which includes Circuit Judges), and
- Salary Group 7 (which includes District Judges and Judges of the First-tier Tribunal).

32. For fee-paid appointments, we have analysed the following roles:

- Deputy High Court Judge,
- Recorder,
- Deputy District Judge, and
- Tribunal Judge

33. 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

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34. The Judicial Diversity Statistics, which are published annually, contain information on the protected characteristics of the judiciary. Since publishing our last equalities statement, new judicial diversity statistics for 2020 have been published<sup>3</sup>.

35. The 2020 statistics showed that while the proportion of women, and Black, Asian and minority ethnic (BAME) judicial office holders continued to increase, generally they are underrepresented in the courts and tribunals, particularly at more senior levels.

36. Judicial diversity has increased over the years:

- a) The overall proportion of court judges who were women increased from 24% in 2014 to 32% in 2020 and the proportion of tribunal judges who were women increased by 4% to 47% over the same time period.
- b) Between 2014 and 2020, the proportion of BAME court judges and tribunal judges has increased by 2 percentage points, to 8% and 12% respectively.

37. MoJ continues to work with the JAC, the senior judiciary and the legal professions to promote further diversity in the judiciary, through the Judicial Diversity Forum (JDF). In September 2020, the MoJ published a report, '*Diversity of the judiciary: Legal professions, new appointments and current post-holders*', which brought together JAC statistics on recommendations for new appointments, Judicial Office statistics on the diversity of the current judiciary, and membership information from the legal professional bodies<sup>4</sup>. The JDF published a combined narrative and action plan, which sets out a wide range of actions its members are undertaking, at different stages, to help increase diversity. This includes the

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<sup>3</sup> Judicial diversity statistics: <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2020-statistics>

<sup>4</sup> '*Diversity of the judiciary: Legal Professions, new appointments and current post-holders*' available at <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2020-statistics> – document titled 'Diversity of the judiciary 2020 statistics: report'

**Judicial Pension Reform  
Equality Statement**

MoJ funding a JAC-led programme of targeted outreach for potential under-represented candidates, including BAME and women lawyers for specific court and tribunal roles.

38. We are also reviewing statutory and non-statutory eligibility criteria for judicial appointment with the aim of reviewing and removing unnecessary barriers that discourage or prevent applications for judicial posts from legal executives.

#### **F. Direct discrimination**

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39. Section 13 of the EA 2010 provides:

‘Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim...’

40. 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 for all members. Therefore, these changes would not result in direct discrimination.

41. The reformed scheme would be open to eligible members of the judiciary in England, Wales, Scotland and Northern Ireland.

#### **G. Indirect discrimination**

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42. Section 19 of the EA 2010 provides:

‘Indirect discrimination

- (1) 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.
- (2) 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) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) 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,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.’

43. We do not consider that the proposals for the reformed scheme would result in any indirect discrimination. However, as noted in our consultation document, certain scheme features may impact some cohorts of the judiciary more than others, and we received 10 responses to our consultation expressing concerns that the proposals could result in individual groups being disproportionately affected by the reforms. These concerns are further explored below under the relevant protected characteristic.

44. The precise benefits judges accrue under the reformed scheme will depend on a judge’s personal circumstances, including their previous pension savings. While it is therefore possible that some judges may not be better off in the reformed scheme, we have

**Judicial Pension Reform  
Equality Statement**

designed the scheme so that no judge should be worse off under the reformed scheme compared to NJPS.

**Age**

45. 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, 16% of judges are aged 60 and above, compared to JUPRA where 84% of judges are within this age range.
46. There is also generally a higher proportion of younger judges in the more junior salary bands compared to those in the more senior positions. For example, in NJPS, 2% of the judges in Salary Group 4 are aged between 41-50, compared to 32% of judges in Salary Group 7. JUPRA judges in the more senior tiers are also generally older compared to the junior tiers. For example, 11% of judges in Salary Group 4 are aged 59 or younger, compared to 21% of judges aged 59 or younger in Salary Group 7.
47. In general, judges who are in JUPRA or FPJPS, whether because they were transitionally protected or chose JUPRA or FPJPS for the *McCloud* remedy period, would find the reformed scheme less financially beneficial than if they remained in their current pension scheme. This cohort are more likely to be older.
48. Additionally, judges who are in NJPS, whether because they were appointed after 31 March 2012 or chose to become members of NJPS for the *McCloud* remedy window, would likely find the new arrangements more financially beneficial than if they remained in their current pension scheme. This cohort are more likely to be younger.
49. 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.
50. However, while the same scheme features would apply to all judges in the reformed scheme, certain scheme features are likely to impact older or younger judges differently. For example, JUPRA/FPJPS feature an automatic lump sum and accrual is based on the member's final salary, but these will not be features of the reformed scheme. This is therefore likely to impact judicial members in these pension schemes, who are more likely to be older.
51. We consider that these changes are necessary in order to make the reformed scheme more equitable and sustainable in the long-term. Instead of an automatic lump sum, the reformed scheme will offer all members of the judiciary the option to commute part of their pension into a lump sum payment, with a commutation supplement calculated to compensate for the tax-unregistered status of the scheme.
52. In the reformed scheme there will be no service cap, which was a feature of the JUPRA scheme. Removing the service cap will more likely benefit members who have reached or almost reached the JUPRA cap but have not yet retired. Those judges in JUPRA that have retired recently or will retire before the reformed scheme is implemented, who are likely to be older, will therefore not realise these benefits. However, these judges will have been able to benefit from belonging to a final salary pension scheme for 20-years and have had the opportunity to contribute to an additional voluntary contribution scheme between reaching their cap and retiring in order to help increase their retirement income.

## Judicial Pension Reform Equality Statement

53. In the reformed scheme, the normal pension age will be linked to the State Pension age in order to align with the 2015 pension reforms. While this will impact younger judges that are moving from JUPRA/FPJPS, we consider that the impact of this is balanced by the option in the reformed scheme for judicial office holders to take early retirement from the normal minimum pension age, which is currently set at 55 (with an early retirement reduction to reflect the fact that their pension will be in payment for longer).
54. Dependants' pension in the reformed scheme is set at 37.5%, compared to the 50% level in JUPRA. This change would have the biggest impact on younger JUPRA members, as had they been allowed to continue to build up a JUPRA pot, their spouse or civil partner would have been entitled to more of their pension. We consider this change is justified in order to make the reformed scheme more equitable and sustainable in the long-term.
55. The overall design of the reformed scheme is intended to achieve our policy objective of addressing our significant recruitment and retention issues which are particularly acute at the more senior tiers of the salaried judiciary and to ensure that the scheme is affordable and sustainable. When all scheme features are considered, no judge should be worse-off compared to moving or remaining in NJPS in terms of the overall 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**

56. 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 46% compared to 31% in JUPRA. The percentage of fee-paid judges in NJPS that are female is 45% compared to 26% in FPJPS.
57. There is also generally a higher proportion of female judges in the more junior salary bands compared to those in the more senior positions. For example, in JUPRA female judges make up 33% of all office holders in Salary Group 7, compared to 14% in Salary Group 4. This difference is, however, smaller in NJPS where 47% of judges in Salary Group 7 of NJPS are female, compared to 43% in Salary Group 4.
58. In general, judges in 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 based on sex, as all judges will accrue benefits in the same scheme once it comes into force.
59. Some scheme features will impact cohorts of the judiciary differently. For example, the effects of linking the normal pension age for the scheme to the State Pension age is more likely to be felt by female judges, who have seen an increase in their State Pension age in recent years.
60. As per the above, we feel that this scheme feature is objectively justified and required so that the reformed scheme is in line with the Hutton principles, ensuring it is affordable in the long term, is fair between generations and will provide a way to manage future expected increases in longevity.
61. To the extent that there is the potential for scheme features to have differential impacts on the basis of sex, we consider that this is a proportionate means of meeting our policy



## Judicial Pension Reform Equality Statement

objective of addressing our significant recruitment and retention issues while remaining in line with the Hutton principles.

### **Race**

62. 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 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 have increased from 6% to 8% between 2014 and 2020<sup>5</sup>. 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.
63. In general, judges who are members of 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.
64. 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 scheme features to have 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 Contribution Rate**

65. Our consultation document proposed a uniform contribution rate, set at 4.26%, which would be applicable to all judges. This would mean that from the date the scheme took effect, all members of the judiciary would be subject to this same contribution rate.
66. While all judges would be subject to the same contribution rate, we are aware that this will impact cohorts of judges differently. In particular, full-time NJPS judges in Salary Group 7 would see a reduction in their take-home pay as a consequence of the level of tax relief they currently receive on their contributions in a registered scheme. This group of judges currently benefit from a marginal tax relief rate of 60% because of the reduction in the Person Allowance between £100,000 and £125,000 (full-time Salary Group 7 judges earn £114,793).
67. The current structure of member contribution rates in NJPS was designed to take account of the point at which income tax rates of 40% and 45% impact the member. It does not, however, take account of the 60% tax relief that certain judges receive. This means that judges in this group currently have a contribution rate that is equivalent to 2.94% in a tax-

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<sup>5</sup> Judicial Diversity Statistics: <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2020-statistics>

## Judicial Pension Reform Equality Statement

unregistered scheme, whereas the equivalent contribution rates in NJPS for full-time salaried judges at other tiers equate to 4.41% or above.

68. As outlined in the previous sections, judges in Salary Group 7 transferring from NJPS are more likely to be younger, female and racially diverse compared to their more senior colleagues and their counterparts in JUPRA. In addition, the judicial diversity statistics suggest that this group are more likely to come from a non-barrister background, with the proportion of non-barristers among District Judges and Deputy District Judges at least 60% compared to 3% of all judges in the senior posts (High Court and above)<sup>6</sup>.
69. To the extent that this feature creates differential impacts, we consider that this is objectively justifiable. A uniform contribution rate is fair for members of the judiciary, who cannot be considered to be low paid; it removes the complexities and anomalies of a tiered system for fee-paid judges; and it is simple to administer. Furthermore, the increase in value of the pension scheme mitigates against the reduction in take-home pay.
70. As outlined in the worked examples in our consultation document, judges moving from NJPS will likely see the value of their pension increase significantly under the reformed scheme. For example, while a judge in Salary Group 7 could see their take home pay reduced by just over £1,500 per year, the value of their annual pension will be increased by around £15,000 per year under the reformed scheme<sup>7</sup>.
71. We therefore remain of the opinion that the proposed uniform contribution rate is objectively justified in that it contributes to our policy objectives, creates certainty and ensures fairness for scheme members, and removes the complexities and anomalies of a tiered system. It also forms part of an overall package of features in the reformed scheme which will increase the net pension value for most judges transferring from NJPS, including those in Salary Group 7.
72. However, we have given careful thought to the strong feelings expressed in response to our consultation by some members of the judiciary regarding this scheme feature. We are therefore proposing to provide judges with a time-limited option of mitigating the impact of transitioning to the reformed scheme by paying a lower contribution rate with a corresponding reduced accrual rate.
73. Under this option, any judge moving across to the reformed scheme would be able to pay a contribution rate of 3% instead of 4.26%, and their accrual rate would be reduced from 2.5% to 2.42%. This would be a one-off decision that the member exercises ahead of the reformed scheme being implemented. After the reformed scheme has been in place for three years, all members of the scheme would pay a uniform contribution rate of 4.26% and have an accrual rate of 2.5%, as we outlined in our consultation.
74. This option gives members the flexibility to adjust their take-home pay if they wish to do so, while slightly reducing their pension benefits for this period of time. It would allow judges to adjust to the new contribution rate and give them time to prepare for the contribution rate of

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<sup>6</sup> Judicial Diversity Statistics: <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2020-statistics>

<sup>7</sup> Based on an NJPS (salaried) group 7 judge with 20 years of service with an annual pension value of £40,692 in NJPS and £56,271 in the reformed scheme

## Judicial Pension Reform Equality Statement

4.26% to come into force after the scheme has been operational for three years. Under this proposal, those judges in Salary Group 7 moving to the reformed scheme from NJPS, would have their take-home pay reduced by just under £70 a year, instead of around £1,500 under a contribution rate of 4.26%.

### Fee-paid judges

75. Fee-paid judges may also see a reduction in take-home pay on introduction of a uniform contribution rate. 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.
76. However, the actual impact on an individual fee-paid judge will depend on a number of factors, including their sitting pattern and their total income, including any income received from work outside their judicial role. 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 judges we have used for our analysis. On this basis, some fee-paid judges will benefit from a uniform contribution rate where they have an uneven sitting pattern.
77. Many fee-paid judges are also able to supplement their judicial income, by continuing to practise as a solicitor or barrister, for example. This is not an option for salaried judges who are not able to work in private practice after taking up office and are appointed on the understanding that they will not return to private practice when they retire. They therefore have limited ways of supplementing their income once they have become a judge. The NatCen Survey of Newly Appointed Judges states that the majority of fee-paid judges are working in other roles when not undertaking work as a judge and earning on average £142,349 in addition to their judicial work<sup>8</sup>.
78. While we acknowledge that there are some fee-paid judges who may not be able to take on significant additional work outside their judicial role, we do not have enough data regarding the protected characteristics of these individuals. It may well be the case that some of the lower earning fee-paid judges are, for example, individuals with caring responsibilities who do little non-judicial work; however, the same category will include, for example, Deputy High Court Judges who may have significant additional income from employment in private practice.
79. We also note that where a fee-paid judge chooses not to or is unable to supplement their judicial income, they may be paying the basic rate of tax (20%) rather than the 40% assumed in the main consultation document. This will reduce the reduction in take-home pay for NJPS (fee-paid) judges following the introduction of a uniform contribution rate, as outlined in the table below.

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<sup>8</sup> p13, 'NatCen report on survey of newly appointed judges in the UK 2017':  
<https://www.gov.uk/government/publications/natcen-report-on-survey-of-newly-appointed-judges-in-the-uk-2017>

**Judicial Pension Reform  
Equality Statement**

NJPS Fee-paid judges				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	5.45%	£1,200	4.26%	£1,173	£28	£2
Recorder	£20,442	4.60%	£752	4.26%	£871	-£119	-£10
Dep. DJ	£16,018	4.60%	£589	4.26%	£682	-£93	-£8

80. Individual fee-paid judges may therefore be subject to a marginal tax rate of 20%, 40%, 45% or 60%. However, we are unable to establish which tax rate a fee-paid judge is required to pay. Given the various factors that can impact the tax rate of a fee-paid judge, it would be extremely difficult to devise a contribution rate where all fee-paid judges' effective take-home pay would remain the same after introduction of the new scheme.
81. We do not consider that the move to a uniform contribution rate results in indirect discrimination on the basis of age, sex or race. All fee-paid judges will be treated in a similar way, regardless of salary band or the scheme they were in prior to the reformed scheme coming into force. The reduction in take-home pay does not therefore disproportionately impact a certain group of judges with particular protected characteristics.
82. 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 as outlined above for Salary Group 7 judges transferring from NJPS, in that the uniform contribution rate contributes to our policy objectives, creates certainty for scheme members, and removes the complexities and anomalies of a tiered system. Furthermore, since the contribution rate of these judges depends on the number of days served and the working pattern, it is not the case that all fee-paid judges will incur a reduction in take-home pay.
83. 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 mitigates any reduction in take-home pay that some fee-paid judges may experience.
84. We are also offering fee-paid judges moving to the reformed scheme the option to choose a lower contribution rate in exchange for a lower accrual rate, as outlined above. This provides fee-paid judges with the flexibility to adjust their take-home pay if they wish to do so, in return for a commensurate reduction in their pension benefits. It will give them time to adjust and prepare for the contribution rate of 4.26%, to come into force after the scheme has been operational for three years.

## **H. Advancing equality of opportunity**

85. We have considered how these proposals might impact 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 future treatment. The reformed scheme would ensure that no judge is financially worse off in the scheme

**Judicial Pension Reform  
Equality Statement**

compared to NJPS. We believe that the reformed scheme will provide a more beneficial pension scheme compared to NJPS and therefore improve the attractiveness of judicial office. In turn, we anticipate that there should be a more diverse set of applicants for judicial office.

**I. Fostering good relations**

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86. 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<sup>9</sup>.
87. 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 under the reformed scheme than under the current judicial pension arrangements, in which judges are receiving very different total net remuneration depending on whether they are in JUPRA, FPJPS or NJPS.
88. We consider that ensuring all judges will become members of the same pension scheme will contribute to collegiality amongst members of the judiciary. This view was supported in the consultation response from members of the senior judiciary who commented that the proposals were "a major step towards restoring a sense of equity and collegiality among judges."

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<sup>9</sup> p11, *SSRB Major Review 2018*

## Annex A: Age<sup>10</sup>

Age of members of judiciary, by percentage:

Scheme	Under 40	41-49	50-59	60 and above
NJPS – Salaried <sup>11</sup>	3%	27%	54%	16%
JUPRA <sup>12</sup>	0%	1%	15%	84%
NJPS – Fee-Paid <sup>13</sup>	8%	36%	45%	10%
FPJPS <sup>14</sup>	0%	1%	5%	94%
<b>Total</b>	<b>4%</b>	<b>21%</b>	<b>34%</b>	<b>41%</b>

Age of salaried members of the NJPS, by percentage:

Salary Group	Under 40	40-49	50-59	60 and above
4	0%	2%	80%	17%
5	0%	3%	60%	37%
5.2	0%	18%	60%	22%
7	3%	32%	54%	12%
<b>Total</b>	<b>1%</b>	<b>24%</b>	<b>58%</b>	<b>17%</b>

Age of JUPRA members, by percentage:

Salary Group	Under 40	40-49	50-59	60 and above
4	0%	0%	11%	89%
5	0%	0%	24%	76%
5.2	0%	1%	16%	83%
7	0%	1%	20%	79%
<b>Total</b>	<b>0%</b>	<b>1%</b>	<b>18%</b>	<b>82%</b>

<sup>10</sup> Data taken from Judicial Office data matched with pension scheme data. The match rate between these two datasets is around 80% therefore the tables represent ~80% of scheme members. Specific match rates are included in the footnotes

<sup>11</sup> Includes 82% of NJPS15 salaried members

<sup>12</sup> Includes 83% of JUPRA members

<sup>13</sup> Includes 87% of NJPS15 fee paid members

<sup>14</sup> Includes 78% of FPJPS members

**Judicial Pension Reform  
Equality Statement**

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

<b>Salary Group</b>	<b>Under 40</b>	<b>40-49</b>	<b>50-59</b>	<b>60 and above</b>
Deputy High Court Judge	0%	9%	81%	9%
Recorder	3%	33%	52%	12%
Deputy District Judge	15%	41%	34%	9%
Tribunal Judge	10%	36%	41%	13%
<b>Total</b>	<b>10%</b>	<b>36%</b>	<b>42%</b>	<b>11%</b>

Age of FPJPS members, by percentage:

<b>Salary Group</b>	<b>Under 40</b>	<b>40-49</b>	<b>50-59</b>	<b>60 and above</b>
Deputy High Court Judge	0%	0%	0%	100%
Recorder	0%	0%	2%	98%
Deputy District Judge	0%	0%	0%	100%
Tribunal Judge	0%	2%	3%	95%
<b>Total</b>	<b>0%</b>	<b>1%</b>	<b>2%</b>	<b>97%</b>

## Annex B: Sex<sup>15</sup>

Analysis of the sex of judiciary, by percentage:

Scheme	Female	Male
NJPS – Salaried	46%	54%
JUPRA	31%	69%
NJPS – Fee-Paid	45%	55%
FPJPS	26%	74%
<b>Total</b>	<b>37%</b>	<b>63%</b>

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

Salary Group	Female	Male
4	43%	57%
5	23%	77%
5.2	42%	58%
7	47%	53%
<b>Total</b>	<b>44%</b>	<b>56%</b>

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

Salary Group	Female	Male
4	14%	86%
5	24%	76%
5.2	42%	58%
7	33%	67%
<b>Total</b>	<b>34%</b>	<b>66%</b>

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<sup>15</sup> Some figures in these tables don't total 100% as some judges within this group have sex 'Unknown' or 'Prefer not to say'



**Judicial Pension Reform  
Equality Statement**

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

<b>Salary Group</b>	<b>Female</b>	<b>Male</b>
<b>Deputy High Court Judge</b>	26%	74%
<b>Recorder</b>	32%	68%
<b>Deputy District Judge</b>	43%	57%
<b>Tribunal Judge</b>	53%	47%
<b>Total</b>	<b>44%</b>	<b>56%</b>

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

<b>Salary Group</b>	<b>Female</b>	<b>Male</b>
<b>Deputy High Court Judge</b>	10%	90%
<b>Recorder</b>	9%	91%
<b>Deputy District Judge</b>	24%	76%
<b>Tribunal Judge</b>	41%	59%
<b>Total</b>	<b>26%</b>	<b>74%</b>

## 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 <sup>16</sup> % BAME	Difference Factor
<b>Courts</b>				
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>
<b>Tribunals</b>				
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 judges</i>	<i>1,700</i>	<i>4%</i>	<i>12%</i>	<i>8%</i>
<i>All tribunal members (including non-legal)</i>	<i>3,275</i>	<i>11%</i>	<i>18%</i>	<i>7%</i>
<b>Total: courts and tribunals<sup>17</sup></b>	<b>6,606</b>	<b>7%</b>	<b>13%</b>	<b>6%</b>
<b>Magistrates</b>	<b>14,218</b>	<b>5%</b>	<b>11%</b>	<b>5%</b>

<sup>16</sup> Recent recruit % based on JAC data (last 4 years where available), except for magistrates where figure is based on recent entrants

<sup>17</sup> Only those roles for which data is available are included in the totals