



Review Body on Senior Salaries

Supplement to the Forty- Fourth Annual Report on Senior Salaries 2022

Report no. 95

Non-Legal Members Fees Review

Chair: Pippa Lambert



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September 2023



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Review Body on Senior Salaries

Terms of reference

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

Our terms of reference are 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 Social Care 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; senior managers in the NHS; 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.
- The Government's inflation target.

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.
- 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.
- 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 submitting this Report are:

Pippa Lambert, Interim Chair

Pippa Greenslade

Philippa Hird, ex officio, Chair of the NHS Pay Review Body

Sir Adrian Johns KCB CBE DL

Ian McCafferty CBE

Julian Miller, ex officio, Chair of the Armed Forces' Pay Review Body

Sharon Witherspoon MBE, Chair of the SSRB Judicial Sub-Committee

The Secretariat is provided by the OME.

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Chapter 1

Summary

- 1.1 Non-legal members (NLMs) play an important role in the Tribunals Service, bringing expert knowledge, skills and experience to inform decisions which profoundly affect the lives of people every day. It is therefore essential that the fee structure enables the recruitment and retention of high-quality candidates with appropriate experience and qualifications for NLM roles.
- 1.2 The aim of this Review is to recommend a simplified and transparent fee structure which will achieve this and provide consistency of pay for NLMs sitting on different tribunals.
- 1.3 Although specialisms and professional knowledge differ, the size, purpose and function of NLM roles are broadly comparable regardless of chamber or jurisdiction.
- 1.4 The current fee structure is underpinned by the rates set by the various sponsoring departments before the Tribunals, Courts and Enforcement Act 2007 placed them all under the Tribunals Service. This has resulted in an incoherent structure with unjustified differences between fee levels.
- 1.5 These differences, in what are essentially very similar roles across tribunals, are hard to justify, are perceived as unfair by members, and cause confusion and resentment.
- 1.6 To support the principle of a unified Tribunals Service, we do not propose any variation in the daily sitting fee by location or jurisdiction. Nor should there be any differentiation by the number of sitting days. We also consider that the equivalent daily fee paid to the tribunal judge should provide a ceiling on the amount paid to non-legal members.
- 1.7 In setting daily sitting fees, our premise is that they should generally include time for preparation and reading, attendance and writing up. We also note that these roles do not offer any consistency or guarantee of remuneration. We have taken into account the labour market evidence where NLM roles require specific skills, expertise and/or professional qualifications, and where there is evidence about recruitment challenges for particular roles.
- 1.8 We are recommending a structure with a standard fee, which will apply to most NLM roles, and two levels of enhanced fee (A and B) to meet specific skills needs and recruitment challenges.
- 1.9 Taking into account all the benchmark data, and the agreed need to simplify the fee structure, we recommend a daily sitting fee of £285 to cover all non-legal member roles.
- 1.10 There are some NLM roles for which there are recruitment difficulties and/or for which the labour market evidence indicates a higher rate of pay. This is often due to the specific qualifications or professional background required for the role. To address this, we recommend that the two levels of enhancement to the standard fee are set at £385 and £485. This will provide clear differentiation from the standard fee to support effective recruitment in areas with shortfalls.
- 1.11 Based on the evidence we have reviewed, we recommend that enhancement A applies to valuer members of the Property Chamber and financial members of the Social Entitlement Chamber. We recommend that enhancement B applies to all medical roles.

- 1.12 It is important to develop a system that can respond to short-term changes in the labour market without the need for a full review. We recommend, therefore, that if a future recruitment exercise results in a significant shortfall, and there is labour market evidence of a higher market rate for the specialism, the fee level for the role moves to enhancement A or B as appropriate.
- 1.13 We expect fees for NLMs to continue to be updated with the annual pay award for all judicial office-holders.
- 1.14 Decisions made in the Upper Tribunal are of greater legal significance, and there is evidence that the cases are both more complex and require more preparation. Given the greater demands of the role, and the need to ensure the highest-quality candidates, we recommend that NLMs in the Upper Tribunal are paid at a rate 10 per cent above the standard fee level for the First-tier Tribunal.
- 1.15 On occasion, NLMs are asked to act as the tribunal chair in the absence of a judge. This is a distinctive role with greater responsibility and demands. We recommend that an NLM acting as a tribunal chair should be paid the same sitting fee as the tribunal judge.
- 1.16 As requested in our terms of reference, we have looked specifically at salaried (regional) medical members in the Social Entitlement Chamber. The management and leadership requirements of this role suggest it is typically a larger role than a fee-paid medical member. In light of this, we recommend that salaried (regional) medical members are placed into judicial salary group 7.
- 1.17 Our terms of reference ask us to make observations on the additional fees paid to NLMs. Additional fees are clearly an important part of the remuneration package for many NLMs. Differences in the payment of additional fees between tribunals are difficult to justify and cause significant resentment due to both perceived and real inequalities.
- 1.18 We therefore recommend a number of principles to govern the payment of additional fees in future. Conditions for the payment of additional fees should be harmonised and implemented consistently across tribunals. Conditions for the payment of additional fees, and an understanding of what the daily sitting fee encompasses, should be communicated more clearly to tribunal members. The number of occasions when additional fees need to be claimed, and the resulting administrative burden, should be reduced by remunerating most NLM activities through the payment of daily fees.
- 1.19 We support the principle that NLMs should be adequately compensated for short-notice cancellations. This should be achieved through a fair and transparent policy.

Recommendations

Recommendation 1

We recommend that the daily sitting fee for non-legal members of tribunals should not exceed the equivalent daily fee of the tribunal judge.

Recommendation 2

We recommend the same standard fee level for all non-legal members in non-devolved tribunals in England, Wales and Scotland, and devolved tribunals in Northern Ireland.

Recommendation 3

We recommend that in future fees should not be differentiated by the number of sitting days undertaken during a year.

Recommendation 4

We recommend a structure with a standard fee, that will apply to most non-legal member roles, and two enhanced fee levels, enhancement A and enhancement B, for roles with demonstrable recruitment difficulties and labour market evidence that support a higher fee.

Recommendation 5

We recommend a standard daily sitting fee for non-legal members in non-devolved tribunals in England, Wales and Scotland, and devolved tribunals in Northern Ireland, of £285 from 1 April 2022.

Recommendation 6

We recommend two levels of enhanced daily sitting fee at £385 (enhancement A) and £485 (enhancement B) from 1 April 2022.

Recommendation 7

Based on the evidence we have reviewed, we recommend that enhancement A applies to valuer members of the Property Chamber and financial members of the Social Entitlement Chamber.

Recommendation 8

Based on the evidence we have reviewed, we recommend that enhancement B applies to non-legal member roles with a medical specialism.

Recommendation 9

We recommend that, if a significant recruitment shortfall develops in a particular specialism and there is labour market evidence of a higher market rate for the specialism, the fee level for the role may be set at enhancement A or B as appropriate.

Recommendation 10

We recommend that fees for non-legal members be updated in line with the annual pay award for all judicial office holders.

Recommendation 11

We recommend that non-legal members in the Upper Tribunal are paid at 10 per cent above the standard fee (or the enhanced fee if applicable).

Recommendation 12

We recommend that a non-legal member acting as a tribunal chair should be paid the same equivalent daily sitting fee as the tribunal judge.

Recommendation 13

We recommend that salaried (regional) medical members are placed into judicial salary group 7.

Recommendation 14

We recommend the following principles when setting the policy for additional fees:

- Conditions for the payment of additional fees should be harmonised and implemented consistently across tribunals wherever possible.
- Conditions for the payment of additional fees, and an understanding of what the daily sitting fee encompasses, should be clearly communicated to tribunal members.

- The number of occasions when additional fees need to be claimed should be reduced by remunerating most NLM activities through the daily sitting fees.

Chapter 2

Introduction and context of the review

- 2.1 In March 2021, the then Lord Chancellor commissioned the Review Body on Senior Salaries (SSRB) to review and make recommendations on the daily fees for non-legal members of tribunals in England and Wales, non-devolved tribunals in Scotland and devolved tribunals in Northern Ireland.
- 2.2 The most recent review of non-legal member fees in England and Wales was conducted well over a decade ago as part of the major overhaul of the Tribunals Service following the implementation of the Tribunals, Courts and Enforcement Act 2007.¹ The SSRB's recommendations in its *Review of the Tribunals' Judiciary Remuneration 2008* for non-legal members were not accepted by the Government at the time.² Therefore, while remuneration for salaried and fee-paid judges in the tribunals has been aligned with the courts, the fees paid to NLMs have not. Fees for non-legal members in devolved Northern Ireland tribunals have never been subject to an over-arching review.
- 2.3 Although there have been some annual uplifts in fees in line with the judicial pay award, the underlying structure of NLM fees has remained as set by the various departments that sponsored the different tribunals before they were placed under the Tribunals Service as part of the 2007 Act. Fee-paid NLMs were out of scope of the SSRB's *Major Review of the Judicial Salary Structure* in 2018.
- 2.4 In his remit letter (at appendix A), the Lord Chancellor highlighted the wide disparity in the current daily sitting fees paid to NLMs. NLMs sitting on different tribunals get very different daily fees, even when their occupational backgrounds and skills are the same. He asked that the SSRB look at the fee structure with the aim of achieving greater consistency within and between the tribunals, setting fees at a level which enables the recruitment and retention of high-calibre individuals. Our response to the Lord Chancellor can be found at appendix B.
- 2.5 The Lord Chancellor has responsibility for determining the fees and salaries for NLMs in the Tribunals Service, excepting posts in Northern Ireland and reserved posts in Scotland. The tribunals and NLMs in scope of this review are set out in the terms of reference (at appendix C). While the devolved tribunals in Northern Ireland are also in scope of this review, the devolved tribunals of Wales and Scotland are out of scope, in line with the wishes of those devolved administrations.
- 2.6 As well as the daily sitting fee, fee-paid NLMs are sometimes able to claim a range of additional fees for cancellations, training or travelling time. The Ministry of Justice (MoJ) has acknowledged that a review of these fees is necessary. However, because additional fees are also paid to fee-paid legal members of tribunals, the MoJ is looking at them separately. We do, however, consider these to be an important part of the remuneration package for NLMs and make observations on additional fees in light of the evidence we received.

¹ See:

<https://webarchive.nationalarchives.gov.uk/ukgwa/20130705000819/http://www.ome.uk.com/Tribunals.aspx>

² HC Deb, 16 July 2009, c61ws. <https://publications.parliament.uk/pa/cm/cmvol496.htm>

Objectives and terms of reference

- 2.7 As set out in the terms of reference at appendix C, the objectives of the review are to:
- Determine whether the current daily sitting fee rates (and salaries) are correctly set and appropriate.
 - Evaluate the consistency in the rate of remuneration paid to NLMs for comparable work across the different tribunals and provide options to achieve greater consistency.
 - Assess the extent of any issues with recruitment and retention of NLMs and examine the causes and impact of any issues identified.
 - Make recommendations on the appropriate salary or fees for NLMs in scope of the review in light of evidence received and the SSRB's judgement.
 - Make observations on the consistency (including when and on what basis they are made) and quantum and other relevant issues relating to the payment of additional fees paid to NLMs.
 - Make any other relevant recommendations as appropriate in light of the information received and the SSRB's judgement.
- 2.8 The terms of reference also require the SSRB, in reaching its recommendations, to consider:
- Affordability, and legal and operational constraints.
 - The relative responsibilities, experience, qualifications and skills of different NLM roles.
 - The need to recruit, retain and motivate sufficient high-quality NLMs.
 - The rates of daily sitting fees/salary paid to comparable NLM roles in the unified tribunals and, where appropriate, to other relevant external market comparators for NLM roles where there is a specific recruitment or retention issue, where appropriate.
 - The impact of any proposals on diversity and inclusivity, having regard to obligations under the Equality Act 2010 and Northern Ireland Act 1998.
 - The fact that NLMs now receive pension benefit (this is under consideration for devolved Northern Ireland NLMs).
- 2.9 The MoJ has said that the rate of fees paid to *individual* NLMs currently in post will not decrease as a result of this review due to the statutory protection for salaries paid to judicial office-holders in the courts. This is applied, by convention, to tribunal judicial office-holders, given the importance of judicial independence from the Executive.
- 2.10 The MoJ has said that the need to achieve greater consistency in NLM fees and to enable recruitment and retention of high-calibre individuals needs to be balanced against ensuring value for money for taxpayers and meeting increasing demands on the justice system. It has, therefore, asked that affordability is a key part of our considerations and that we are mindful of other pressures on the Department's budget as well as overall value for money. It has warned that any changes to the NLM fee structure may need to be implemented over a number of years in order to be affordable.

The Tribunals Service

- 2.11 Tribunals are specialist judicial bodies which decide disputes in a particular area of law. Tribunals were previously administered by a wide range of organisations under the responsibility of different government departments, resulting in a range of approaches to the setting and uprating of fees. In November 2008, the Tribunals, Courts and Enforcement Act

2007 created a new unified Tribunals Service under the leadership of the Senior President of Tribunals (SPT). Tribunals are now part of the HM Courts and Tribunals Service (HMCTS), an executive agency sponsored by the MoJ, responsible for all tribunals in England and Wales. The geographical jurisdiction of tribunals varies – some extend to Scotland and/or Northern Ireland, as well as England and Wales.

- 2.12 The Tribunals Service has two tiers: a First-tier Tribunal and an Upper Tribunal, both of which are split into chambers. Each chamber comprises similar jurisdictions or brings together similar types of experts to hear appeals (see figure 2.1). The Employment Tribunal sits outside the two tiers, as it is a separate pillar rather than a chamber of the Tribunal Service, but still makes a distinction between first hearings and appeal hearings and is administered by HMCTS. The majority of NLMs sit in the First-tier Tribunals but there are a small number of NLMs in the Upper Tribunals.
- 2.13 Tribunals decide on a wide range of cases, ranging from workplace disputes between employers and employees to appeals against decisions of government departments (including social security benefits, immigration and asylum, and tax credits). The First-tier Tribunal hears appeals from citizens against decisions made by government departments, agencies, local government and other public bodies, although proceedings in the Property Chamber and Employment Tribunal can be brought against private individuals and organisations. The Upper Tribunal primarily, but not exclusively, reviews and decides appeals arising from the First-tier Tribunal. It is a superior court of record, like the High Court. Tribunals hear around a million cases each year, more than any other part of the justice system.

Figure 2.1: The Tribunals Service

Court of Appeal, Court of Session, Court of Appeal (NI)							
Upper Tribunal							Employment Appeals Tribunal
Administrative Appeals Chamber				Tax and Chancery Chamber	Immigration and Asylum Chamber	Lands Chamber	
First-tier Tribunal							
War Pensions and Armed Forces Compensation Chamber	Social Entitlement Chamber <i>Social Security and Child Support</i> <i>Criminal Injuries Compensation</i>	Health, Education and Social Care Chamber <i>Mental health</i> <i>Special educational needs and disability</i> <i>Care standards</i> <i>Primary health lists</i>	General Regulatory Chamber <i>Charity</i> <i>Estate agents</i> <i>Transport</i> <i>Information rights</i> <i>Pensions</i> <i>Gambling</i> <i>Environment</i>	Tax Chamber	Immigration and Asylum Chamber	Property Chamber <i>Residential property</i> <i>Agricultural land and drainage</i>	Employment Tribunal (England & Wales) <i>Reserve Forces Appeal Tribunal</i> Employment Tribunal (Scotland)

Source: Ministry of Justice.

Northern Ireland

- 2.14 A unified tribunal administration was created between 2009 and 2011 in Northern Ireland by transferring responsibility for most tribunals in Northern Ireland to the Department of Justice. The Northern Ireland Courts and Tribunals Service (NICTS), an agency of the Department of Justice for Northern Ireland, provides administrative support to the Northern Ireland courts and tribunals.
- 2.15 There is, however, no integrated tribunal structure in Northern Ireland. Instead, NICTS manages 15 legally separate devolved tribunals, each of which deals with a different subject jurisdiction (such as social security, criminal injuries compensation or traffic penalties), has its own leadership and management, operates under its own rules of procedure with its own arrangements for onward appeals, and has different fees for non-legal members as determined by the relevant responsible Department.
- 2.16 For the purposes of this review, 13 devolved Northern Ireland NLM roles in eight tribunals are within scope (see appendix I). Of these, the Department of Justice sponsors six tribunals and the Department for the Economy and the Department for Communities each sponsor one tribunal. There were 146 non-legal members of devolved tribunals in Northern Ireland in 2021.

Non-legal members

- 2.17 Tribunal hearings are usually chaired by legally qualified tribunal judges and often sit with specialist NLMs. NLMs use their personal or professional experience to provide a practical, specialised view of the facts and evidence before the tribunal. For example, employment tribunals will include NLMs with an employer and employee perspective. The Health Education and Social Care Chamber includes NLMs with expertise in disability or care matters, as well a range of healthcare professionals including medical practitioners.
- 2.18 All tribunal members listen to the evidence and question parties and witnesses where appropriate. NLMs participate fully in the decision-making process after the hearing has concluded, including contributing to the drafting of the decision, but are advised on points of law by the tribunal judge, who will usually lead on writing up decisions.
- 2.19 The vast majority of NLMs are appointed as fee-paid members of the judiciary and are paid a daily sitting fee according to the number of sittings or days they work. NLM costs are paid from the HMCTS budget. The MoJ has estimated a total paybill for NLMs of £34 million in 2020-21, around 6 per cent of the total judicial paybill. There were an estimated 3,422 NLMs in non-devolved tribunals in 2021.

Our evidence base

- 2.20 To assist with the compilation of evidence and data for the Review, the Lord Chancellor convened an Advisory Group for the MoJ. This group was established in April 2021 and included a range of stakeholders representing NLMs, tribunal judiciary and the MoJ (see appendix D). The SSRB attended in an ex officio capacity. The Advisory Group issued a call for evidence to stakeholders in May 2021 and all information received was submitted to the SSRB for consideration.
- 2.21 The SPT convened an NLM working group to develop job descriptions for all NLM roles for submission to the SSRB in evidence. It is helpful, not only for the SSRB but for others involved with tribunals, to have up-to-date job descriptions using a common template. These are, however, necessarily brief and fairly generic descriptions and indicate minimum requirements

for skills and experience; they may not reflect the actual characteristics of those appointed to NLM positions and, of course, make no allowance for labour market issues.

- 2.22 The MoJ, working with the Judicial Office, the Northern Ireland Devolved Administration and the NLM working group, compiled a core data pack including information on NLM job descriptions, headcount, recruitment and retention, daily sittings, fee rates and diversity information. The MoJ submitted written evidence to the SSRB in December 2021 setting out its preferred approach for the fee structure.
- 2.23 The SSRB has also kept abreast of other relevant tribunal developments. These include the growth in virtual hearings during the later phases of the COVID-19 pandemic and discussions about the conditions under which virtual hearings may appropriately continue. We are also aware of the recent consultation launched by the SPT which includes questions about when hearings do not require NLMs.³ Finally, we have kept a watching brief on recent recruitment exercises for NLMs.
- 2.24 In order to supplement our evidence base, the SSRB undertook the following pieces of work:
- **A survey of NLMs.** A survey was run in May and June 2021 to gather information about the professional background of NLMs. The survey provided information on the characteristics of serving NLMs, including information on their occupations, pre-appointment earnings and any earnings received from other work while serving as an NLM. The survey also covered issues of morale and motivation. In total, 1,239 NLMs responded to the survey, giving a response rate of around 40 per cent. Further details are in appendix F.
 - **A consultation.** An open consultation for stakeholders was launched in February 2022 for 10 weeks to seek views on, and evidence about, the total remuneration package for the role of an NLM and factors affecting recruitment and retention. The consultation covered issues of principle and asked for views about a possible structure for sitting fees. It also covered views on allowances. The consultation received 307 structured responses, with 298 of these from individuals (predominantly non-legal members but also other individuals within the judicial system such as tribunal judges) and nine groups/associations. Further details are in appendix G.
 - **A pay-benchmarking exercise.** Incomes Data Research conducted a pay-benchmarking exercise on behalf of the SSRB to obtain evidence on what NLMs might earn in comparable or alternative roles requiring the same professional or expert competence. The aim of the pay-benchmarking exercise was to support the SSRB to make its recommendations in light of evidence from the relevant labour markets. It used the job descriptions provided by the SPT's NLM working group and therefore reflected the minimum requirements rather than the full characteristics and experience of those successfully appointed to NLM roles. Further details are in appendix H.
- 2.25 We are grateful to those individuals who have submitted evidence to us and responded to the survey or the consultation. We know both the preparation and provision of this information can take considerable time and effort. In reaching our recommendations, we have considered all the evidence available to us.

³ <https://www.judiciary.uk/guidance-and-resources/senior-president-of-tribunals-consultation-on-panel-composition-2022/>

Equality, diversity and inclusion

- 2.26 We have taken account of equality, diversity and inclusion issues throughout this Review. In particular, our approach has enabled us to:
- Analyse the administrative data on diversity provided by the MoJ.
 - Collect survey data on protected characteristics to inform ourselves about the make-up of the NLM population and ensure that views expressed are representative of the whole remit group.
 - Run an open consultation to include all NLMs whose posts are included in the scope of the Review.
- 2.27 We make a number of observations:
- Encouraging applicants for NLM roles from a diverse range of backgrounds depends in part on the level of fees.
 - In recommending fee levels, we have worked on the basis that all NLM roles are broadly similar in scope and demands and that – in contrast to the current position – any differences in fee levels should be justified by labour market evidence, specifically evidence of recruitment and/or retention issues.
 - We have considered all professions and specialisms covered by NLM roles so that we can demonstrate why some specialisms might qualify for an enhanced fee while others may not.
 - We note, in particular, the valuable contribution made by members with a specialism in disability issues who are themselves more likely than other members to have a disability.
 - We are aware that the current cohort of NLMs is typically older than the average worker. This reflects the skills and experience required to carry out the role.
- 2.28 The MoJ has said it will conduct an Equality Impact Analysis of any proposed changes to ensure the policy is consistent with the Lord Chancellor’s statutory equality duties and supportive of the Government’s aim of promoting judicial diversity.

Chapter 3

Evidence

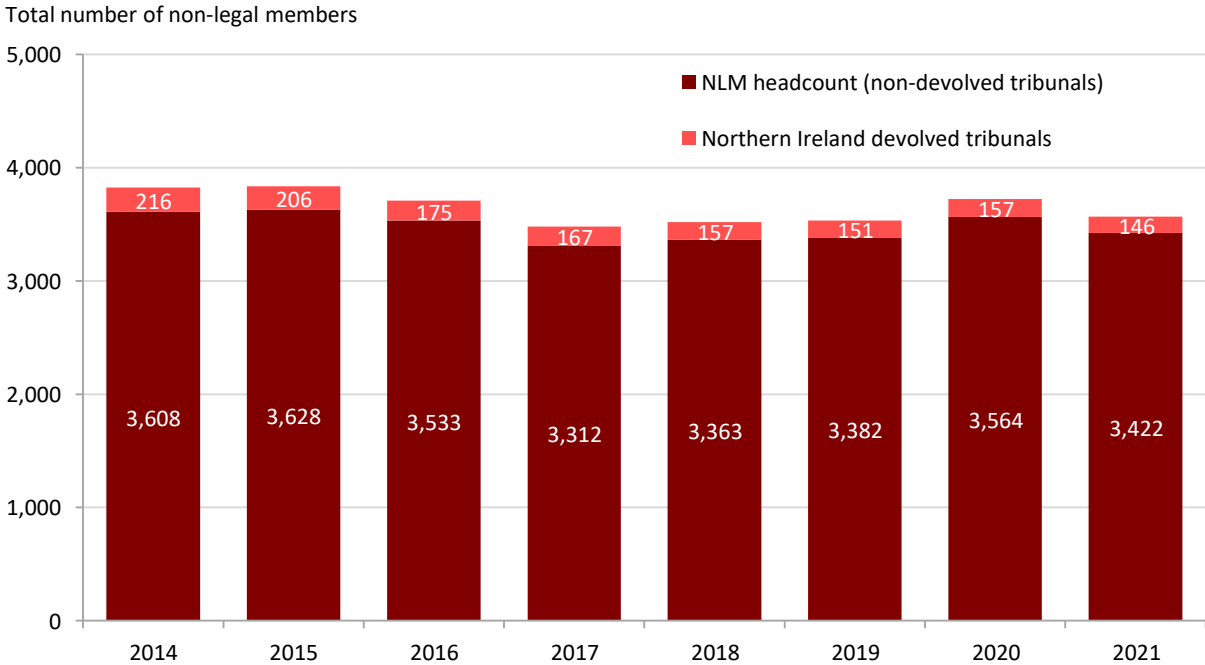
The remit group⁴

- 3.1 There were an estimated 3,422 NLMs in the non-devolved tribunals in 2021.⁵ There were 146 NLMs in the devolved tribunals in Northern Ireland in 2021. The number of NLMs has fallen since 2014 (see figure 3.1 and table 3.1). This is likely to be the result of the lack of recruitment exercises after 2010. The fall between 2020 and 2021 was concentrated in the Social Security and Child Support Tribunal (part of the Social Entitlement Chamber) and the medium-term fall has been concentrated in the employment tribunals, where the caseload has varied with policy changes.
- 3.2 The number of NLMs in the Northern Ireland devolved tribunals has fallen significantly since 2014. This is due, in particular, to a fall in the number of panel members in the Industrial Tribunals and Fair Employment Tribunal (see table 3.2).

Diversity

- 3.3 In 2021, 53 per cent of NLMs in non-devolved tribunals in England and Wales were women. Overall, 17 per cent were from an ethnic minority background – 12 per cent from an Asian or Asian British background, 2 per cent from a black or black British background, and 3 per cent from a mixed or other ethnic group. These are higher proportions than for the main judicial group.

Figure 3.1: Total non-legal member headcount, 2014 to 2021



Source: Judicial Office and Judicial Office for Scotland; Department of Justice (Northern Ireland).

⁴ The evidence in this chapter relates to 2021-22, unless stated otherwise.
⁵ This review covers non-legal members of the non-devolved tribunals in England, Wales and Scotland. It also covers devolved tribunals in Northern Ireland, with evidence provided separately where available. See appendix C for full details of the scope of the review.

Table 3.1: **Headcount data for each Chamber, 2021**

Chamber	2021 headcount	Change since 2014		Change since 2020	
Administrative Appeals Chamber (Upper Tribunal)	48	-10	-17%	+10	26%
Tax Chancery Chamber (Upper Tribunal)	12	-2	-14%	0	0%
General Regulatory Chamber	37	0	0%	-8	-18%
Health, Education and Social Care Chamber	822	+171	26%	+32	4%
Property Chamber	130	-29	-18%	+6	5%
Social Entitlement Chamber	1,161	-14	-1%	-115	-9%
Tax Chamber	47	-49	-51%	-7	-13%
War Pensions and Armed Forces Compensation Chamber	40	+10	33%	-2	-5%
Employment Tribunal (England and Wales)	938	-247	-21%	-42	-4%
Employment Tribunal (Scotland)	136	-6	-4%	-13	-9%
Employment Appeals Tribunal	18	-22	-55%	-3	-14%
Gender Recognition Panel	9	+6	200%	0	0%
Special Immigration Appeals Commission	3	-5	-63%	0	0%
Pension Appeal Tribunal (Scotland)	19	+12	171%	0	0
Lands Tribunal (Scotland)	2	-1	-33%	0	0
Total	3,422	-186	-5%	-142	-4%

Source: Judicial Office and Judicial Office for Scotland.

Note: Headcounts are at 1 April each year. Where members work in more than one area, their primary assignment has been counted.

Table 3.2: **Headcount data for Northern Ireland devolved tribunals, 2021**

Tribunal	2021 headcount	Change since 2014		Change since 2020	
Care Tribunal	7	-12	-63%	-6	-46%
Charity Tribunal	4	+1	33%	0	0%
Criminal Injury Compensation Appeal Panel	12	0	0%	-1	-8%
Industrial Tribunals & Fair Employment Tribunal	53	-58	-52%	-7	-12%
Review Tribunal	43	+26	153%	+13	43%
NI Valuation Tribunal	11	-9	-45%	-2	-15%
Rent Assessment Panel	6	-4	-40%	-2	-25%
SENDIST	10	-14	-58%	-6	-38%
Total	146	-70	-32%	-11	-7%

Source: Department of Justice (Northern Ireland).

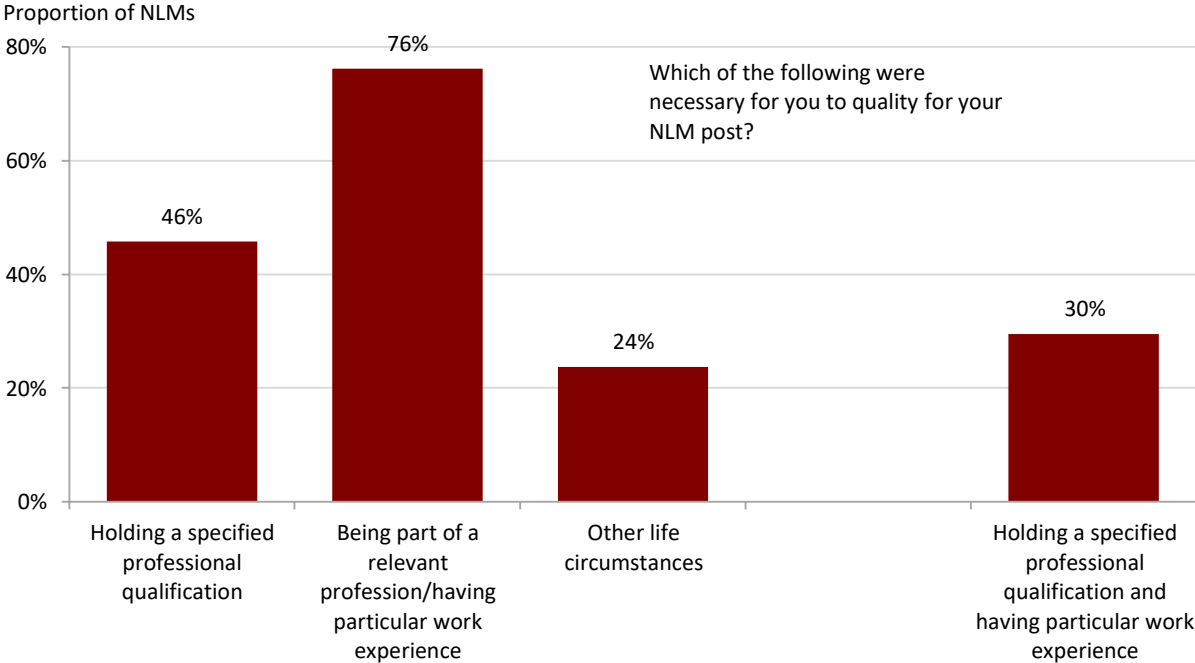
3.4 Just 14 per cent of NLMs were aged under 50 (and 3 per cent aged under 40), while 58 per cent were aged 60 or over. Given the nature of the NLM role, both in requiring experience and being part time, this distribution is unsurprising.

3.5 In 2020, 48 per cent of NLMs in Northern Ireland were women.⁶ Where information was available, 13 per cent of NLMs were aged 50 or under (and 1 per cent were 40 or under), while 57 per cent were aged over 60. No information was available on ethnicity.

The non-legal member role

3.6 Evidence from our survey of NLMs indicated that almost half were required to hold a specific professional qualification for their post and three-quarters needed to have particular work experience.⁷ Overall, 30 per cent needed both a specific qualification and particular work experience.

Figure 3.2: Prerequisites for non-legal member roles



Source: SSRB survey of non-legal members.

Note: In response to question “Which of the following were necessary for you to qualify for your NLM post? If you sit in more than one jurisdiction, please answer based on the jurisdiction in which you typically spend the majority of your time.”

3.7 Half of NLMs combined their role with other employment (see figure 3.3). Two-thirds of these worked part time and one third worked full time.

3.8 We do not have evidence on how many days non-legal members are working, either for individuals or the population overall. In our discussions, tribunal judges and NLMs said they believed that the typical number of sitting days of individual NLMs had gone up in recent years, with the exception of a hiatus during the pandemic before virtual hearings were common.

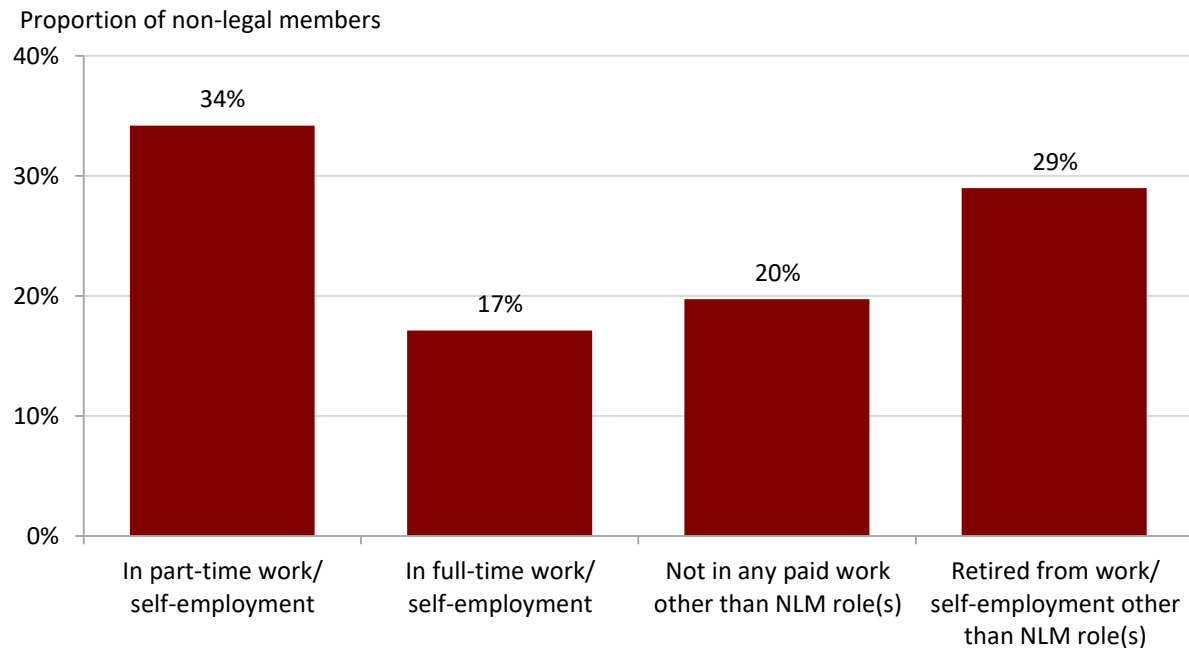
⁶ Data not available for the Industrial Tribunals and Fair Employment Tribunal.

⁷ See appendix D for more details of the survey of non-legal members.

Recruitment

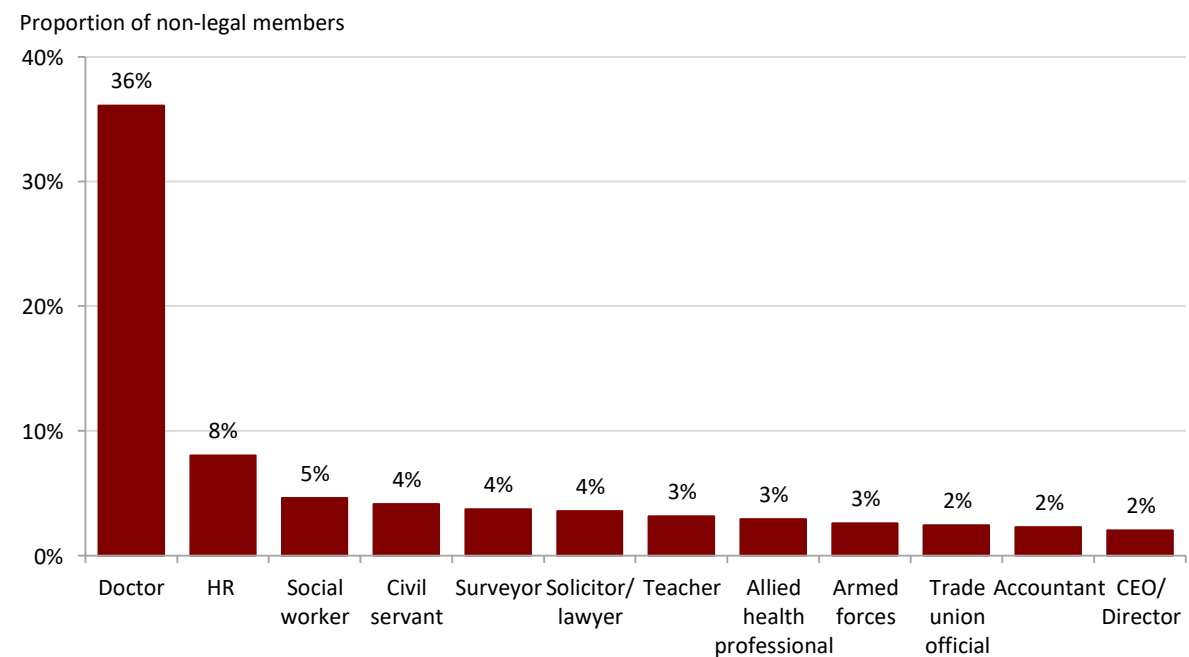
3.9 NLM roles are distinct from other fee-paid judicial roles as they are not a feeder group or a stepping-stone for a salaried position. The incentives to apply are therefore different. Evidence from our survey of NLMs suggested that individuals came from a wide range of professional backgrounds. The most common were doctors, making up 36 per cent of NLMs and reflecting the high proportion of posts that require a medical background. The next most common prior occupation was HR professional, most of whom took a role in employment tribunals.

Figure 3.3: **Non-legal members and additional employment**



Source: SSRB survey of non-legal members.

Figure 3.4: **Most common former occupations of non-legal members**

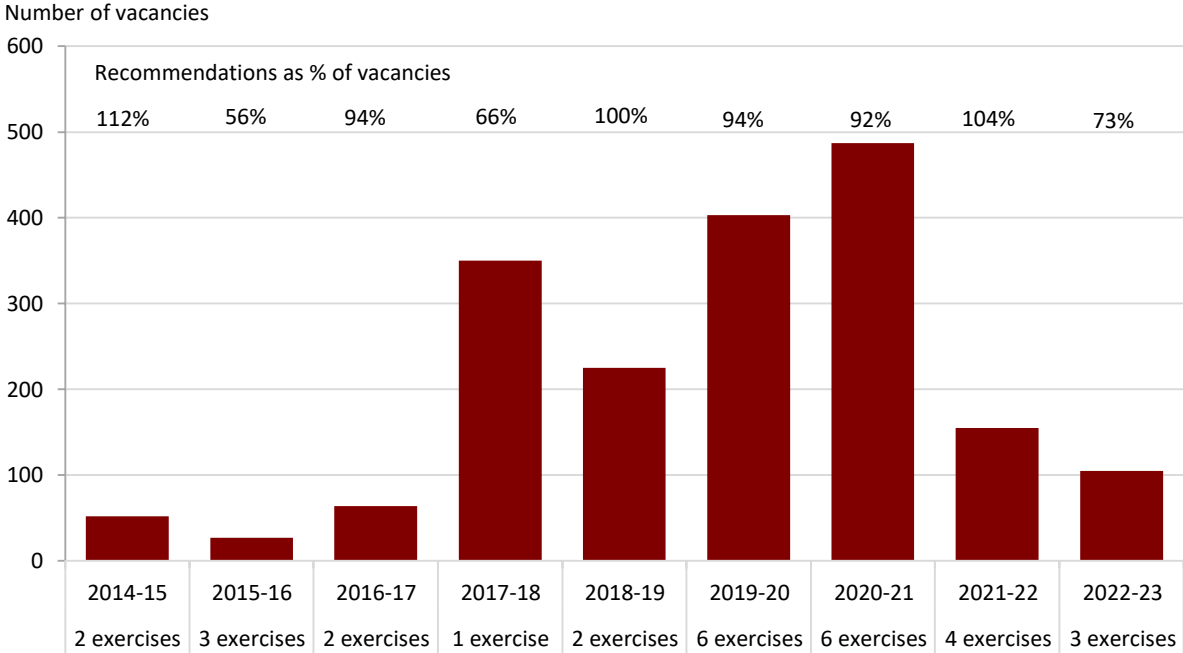


Source: SSRB survey of non-legal members.

Note: Chart only shows most common former occupations. Members were recruited from many other occupations.

3.10 The number of NLM vacancies, and recruitment, increased significantly after 2016-17 (figure 3.5). Prior to this, there had been little recruitment for several years. In the light of various legislative and policy changes, numbers were viewed as sufficient for tribunals to function, and recruitment was only undertaken when an essential business case was accepted. There were also a number of expressions-of-interest exercises to identify existing NLMs who had the necessary expertise so that appropriate assignments could be made to other tribunals.

Figure 3.5: **Non-legal member recruitment, 2014-15 to 2022-23**



Source: Judicial Appointments Commission.

Note: Total number of vacancies includes two exercises for which the number of recommendations was not available. This covers two vacancies in 2014-15 and two vacancies in 2015-16 (excluded from the recommendations as a percentage of vacancies).

3.11 Of the 19 recruitment exercises that have taken place since 2019-20, nine resulted in shortfalls (see table 3.3). The largest shortfalls (by proportion of vacancies filled) were for environmental specialists in the General Regulatory Chamber, valuers in the Property Tribunal, members of the Employment Appeals Tribunal, medical specialists in the Health Education and Social Care Chamber, and financial specialists in the Social Entitlement Chamber. Two large-scale recruitment exercises were undertaken for medical specialists in 2020-21. In one, 67 out of 80 vacancies were filled; in the other, all 200 vacancies were filled. In 2022-23, only 51 out of 72 medical vacancies in the Health Education and Social Care Chamber were filled.

3.12 Recent recruitment exercises in Northern Ireland have mostly been successful, including for medical members, but a 2019-20 exercise to recruit 10 psychiatrists to the Review Tribunal made only one recommendation for appointment. A further recruitment campaign for 10 psychiatrists was underway in early 2023.

3.13 Of the eight tribunals in Northern Ireland, three reported vacancies in 2021 for up to eight members while three did not have a set complement. The Industrial Tribunals and Fair Employment Tribunal does not have a set complement for panel members and has not had a recruitment campaign for several years as there has been no need. At its peak, around 20 years ago, it had approximately 280 panel members, a number that declined to 53 in 2021 due to retirements, deaths and resignations. A recruitment campaign has now been requested.

Table 3.3: **Recruitment exercises since 2019-20**

Chamber	Member type	Vacancies	Applicants	Recommendations	Recommendations to vacancies %
2019-20					
Administrative Appeals/ General Regulatory	Information rights	10	123	10	100%
War Pensions and Armed Forces Compensation	Service	14	95	14	100%
Employment Tribunal (Scotland)	Member	39	181	39	100%
Employment Tribunal (E&W)	Member	301	1,428	287	95%
Property	Valuer	28	31	16	57%
Property	Professional	11	62	11	100%
2020-21					
Health Education and Social Care	Medical	80	134	67	84%
Administrative Appeals (Disclosure and Barring Service) and First-tier (Care Standards)	Member	10	75	10	100%
Social Entitlement	Financial	17	27	12	71%
Health Education Social Care (Special Educational Needs and Disability)	Specialist	100	219	79	79%
Social Entitlement (Social Security and Child Support)	Medical	200	402	202	101%
Social Entitlement (Social Security and Child Support Appeals)	Disability	80	456	80	100%
2021-22					
Health Education and Social Care	Member	120	322	136	113%
Employment Appeals Tribunal	Member	19	200	13	68%
General Regulatory (Environment)	Specialist	6	12	2	33%
Administrative Appeals (Traffic) and General Regulatory (Transport)	Member	10	16	16	160%
2022-23					
Health Education and Social Care	Medical	72	97	51	71%
Health Education and Social Care	Specialist	30	105	23	77%
General Regulatory (Immigration)	Specialist	3	58	3	100%

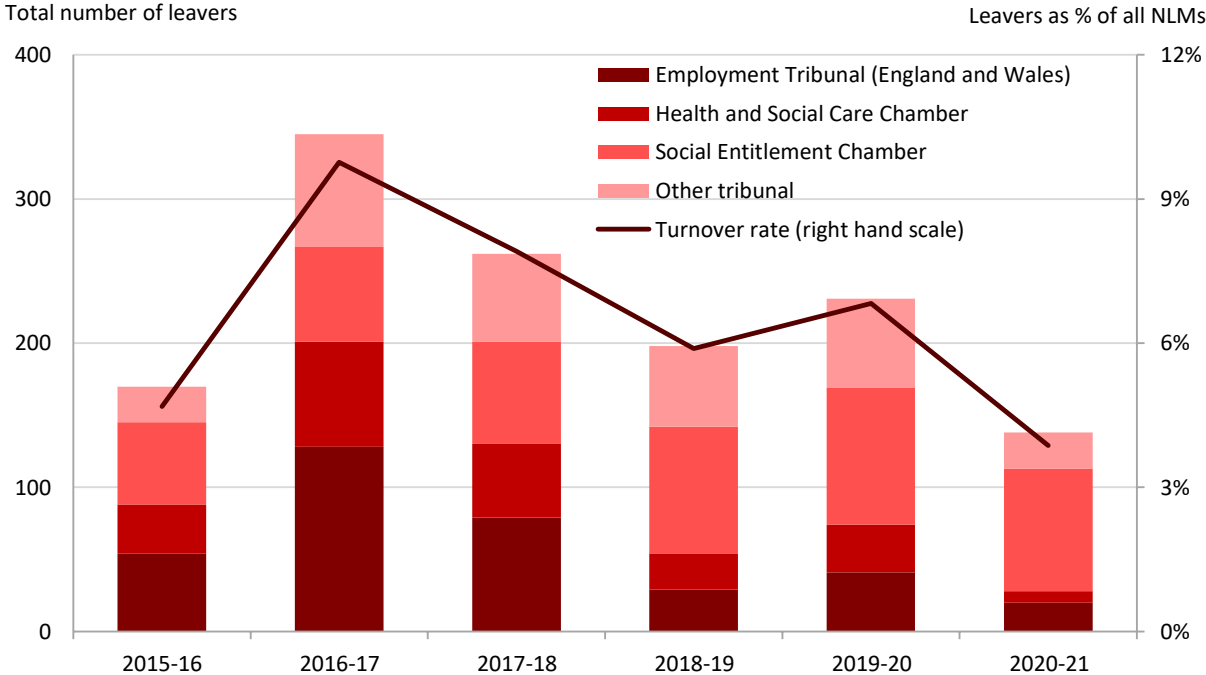
Source: Judicial Appointments Commission.

3.14 A significant proportion of NLMs are cross-deployed and serve on different tribunals. Our survey indicated that around 13 per cent of NLMs worked across more than one tribunal. Stakeholders considered cross-ticketing to be a useful strategy to make the best use of expert skills but pointed out that it increased the awareness of the differences in fees between tribunals.

Retention

3.15 The proportion of leavers from the cohort of NLMs in non-devolved tribunals has ranged from 4 to 10 per cent in recent years, falling to 3.9 per cent in 2020-21 (see figure 3.6). In the Northern Ireland tribunals, leaver rates ranged from 3 to 13 per cent between 2014-15 and 2020-21, ending the period at 10 per cent in 2020-21.

Figure 3.6: Number of leavers and turnover rate, 2015-16 to 2020-21



Source: Judicial Office.

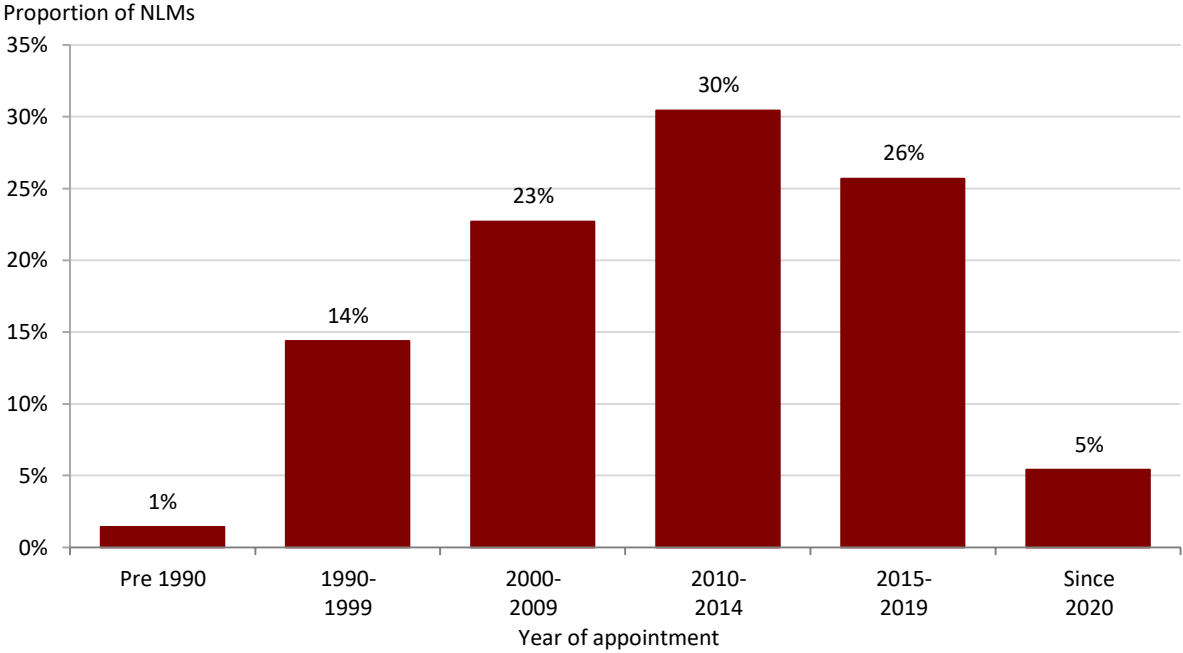
Note: Not including Northern Ireland devolved tribunals.

3.16 The most common reason for leaving was retirement, accounting for 52 per cent of leavers. A further 43 per cent resigned, and 3 per cent died in office. The average age of retirement was 70, the mandatory retirement age until 2022.

3.17 Evidence from our survey of NLMs indicated that the median year of appointment for serving NLMs was 2012. Nearly half of NLMs had at least 10 years in role, and almost three-quarters had at least five years in role. Only 5 per cent had been recruited since 2020.

3.18 Four out of five non-legal members (79 per cent) reported that they had no current plans to step down or retire; 16 per cent planned to step down or retire in the next three years; while just 5 per cent planned to retire or step down within the next year. Eleven per cent of NLMs were aged 70 or over.

Figure 3.7: Non-legal members by year of appointment



Source: SSRB survey of non-legal members.

Retirement

3.19 The mandatory retirement age for all judicial office-holders was increased from 70 to 75 from March 2022. The MoJ said that this was to support recruitment and retention objectives and to reflect the increases in life expectancy since the previous mandatory retirement age was set over 25 years ago. It said that analysis of retirement trends suggested that there could be around 190 more tribunal non-legal and medical members retained each year following the increases in the mandatory retirement age to 75.

3.20 The MoJ acknowledged that the retention of existing NLMs could have an impact on the flow of new appointees, which might affect the rate of change in the overall composition and diversity of the judiciary. However, it considered that any potential impact was outweighed by the significant benefits to the retention of resource and expertise.

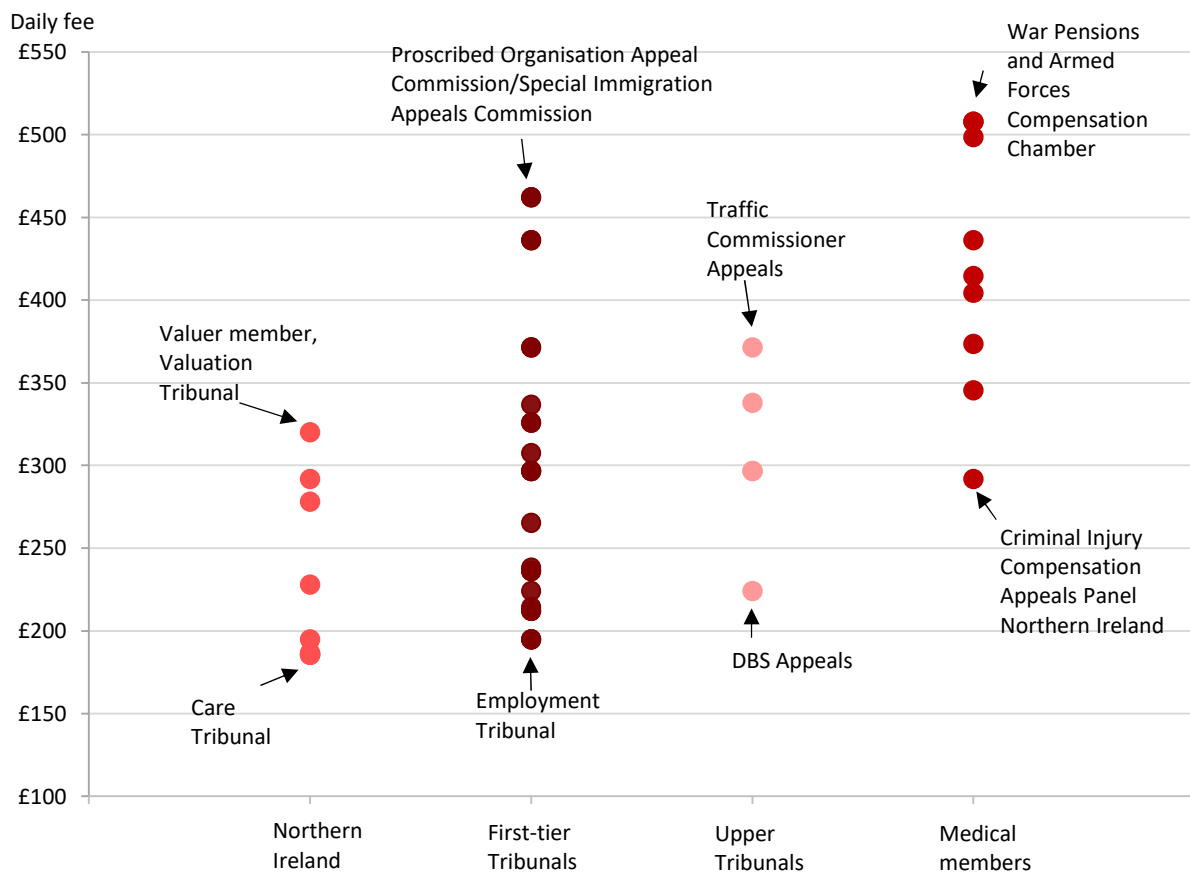
Motivation and morale

3.21 Our survey of NLMs asked respondents how they felt about their work. The evidence on motivation was very clear: 94 per cent strongly agreed that their work was important for the administration of justice and 93 per cent strongly agreed that their work allowed them to make a difference.

Existing pay arrangements

3.22 There is a wide range of fees for NLMs. Daily sitting fees in 2021-22 ranged from £195 in the employment tribunals to £508 for medical members in the War Pensions and Armed Forces Compensation Chamber and some medical members in the Health, Education and Social Care Chamber. In Northern Ireland, daily fees ranged from £186 for members of SENDIST, the Care Tribunal, and the Valuation Tribunal, to £404 for a medical member of the Review Tribunal. A full schedule of daily sitting fees is in appendix I. It is notable that there is not only a wide range of fees for different tribunals, but that people with similar professional backgrounds and experience working in different tribunals are paid different amounts.

Figure 3.8: **Distribution of daily fees for non-legal member roles**



Notes: Northern Ireland and First-tier Tribunals excludes medical members. 2021-22 fee levels.

Table 3.4: **Range of non-legal member daily fees, 2021-22**

Type of member	Minimum £	Median £	Maximum £	Count
First-tier Tribunal*	194.86	296.62	462.24	25
Upper Tribunal**	224.08	296.62	371.32	5
Northern Ireland*	185.71	211.43	355.50	10
Medical members	291.83	414.64	507.72	9
All members	185.71	296.62	507.72	49

*Excludes medical members and Northern Ireland members.

**Includes Employment Appeals Tribunal.

3.23 While there is differentiation of daily fees between different categories of NLM, there is significant overlap between them (see figure 3.8).

3.24 There is currently no difference in NLM fees by location, including in London. Legal members of tribunals in salary group 7 receive a London allowance worth £4,000 a year (or the daily equivalent).

3.25 Medical members of the Social Security and Child Support Tribunal are paid a higher daily sitting fee (£406.50 rather than £345.34 in 2021-22) after they have sat more than 20 days in the financial year. A consistent theme in the comments from the survey was that medical

members did not understand why this system was in place and viewed it as receiving a lower fee for some days, which was felt to be unfair and irrational.

3.26 In our survey, only 23 per cent of members agreed that their daily sitting fee reflected the time and commitment necessary to make robust decisions. A number of consistent themes emerged from the comments about fees.

- Fees were much lower than were being earned elsewhere. This seemed to be particularly the case for those that were medically qualified, some of whom said they would be able to take on more work as an NLM if the fees were higher.

As comparatively the pay per day is significantly lower than my daily rate for NHS medical work, I tend to prioritise the NHS work. If the pay was more comparable, I would be able to do more tribunal work.

Respondent to SSRB survey of non-legal members

- Rates were too low generally to motivate and attract people to the role.

Although I enjoy NLM work, the fees do not reflect the work required particularly with regard to preparation. I feel the level of remuneration does not attract quality new candidates to the roles.

Respondent to SSRB survey of non-legal members

- The difference in fees for equivalent roles in different jurisdictions could not be justified. Often members were working across a number of tribunals and paid quite differently.

As the medical member of four different tribunals, doing exactly the same role in two and almost the same role in the other two, there is no logical justification for four different daily rates of pay.

Respondent to SSRB survey of non-legal members

- The differences in pay rates between different members of the same tribunal were felt by some to be unfair and unjustified.

I feel it is unfair that disability-qualified members are paid less than medical members, despite the expectation that we will read all available notes, including medical notes, and we are expected to make joint decisions and be jointly accountable for decisions made.

Respondent to SSRB survey of non-legal members

Salaried non-legal members

3.27 The vast majority of non-legal tribunal members are paid a daily fee. However, there are a small number who are salaried: 10 medical members and four surveyor members in 2021-22. These roles are not generally part of this review as they are allocated to a judicial salary group (see table 3.5).

3.28 Our terms of reference ask us specifically to look at the difference in responsibilities between salaried (regional) medical members and fee-paid medical members in the Social Entitlement and War Pensions and Armed Forces Compensation Chambers, and whether different rates of remuneration should be paid to these groups taking into account the day-to-day responsibilities of the roles.

3.29 In our *Major Review of the Judicial Salary Structure*, we recommended that salaried (regional) medical members in the Social Entitlement Chamber, who were at that time paid 80 per cent of the group 7 rate, be placed into group 7.⁸ This was because the responsibilities of the post were comparable to those of the non-medical members of this Chamber.

3.30 In response, the Government said that there was insufficient evidence to justify a change in salary for this role.⁹ It concluded that salaried (regional) medical members should retain their existing salary but be placed in the new salary group 8.

Table 3.5: **Salaried non-legal members**

Salary group	Role	Salary £	Equivalent daily rate £
5.1	Surveyor member, Upper Tribunal (Lands)	148,820	676.45
5.2	Surveyor member, Lands Tribunal (Northern Ireland)	143,095	650.43
6	Surveyor member, Lands Tribunal for Scotland	134,717	612.35
7	Chief medical member (Social Entitlement Chamber) Chief medical member (Health, Education and Social Care Chamber) Regional surveyor	114,793	521.79
8	Salaried (regional) medical member, Social Entitlement Chamber	£91,217	414.62

Notes: Uses a 220-day divisor. There is also a part-time chief medical officer role in the War Pensions and Armed Forces Chamber which is not assigned to a salary group.

Economic context

3.31 Current daily sitting fees are based on the historical rates which applied when the tribunals sponsored by different government departments transferred into the Tribunal Service in 2010. Since then, fees have been uplifted in line with the annual judicial pay award. Annual pay increases since 2010-11 are shown in table 3.6.

Table 3.6: **Fee uplifts for non-legal members since 2010**

Year	Annual pay increase %	Year	Annual pay increase %
2010	0	2017	1
2011	0	2018	2*
2012	0	2019	2**
2013	1	2020	2
2014	1	2021	0**
2015	1	2022	3***
2016	1		

*SSRB recommended 2.5 per cent.

**SSRB was not asked to make a recommendation on an annual pay uplift in 2019 or 2021.

***SSRB recommended 3.5 per cent.

Note: Pay uplifts effective from 1 April each year.

⁸SSRB, *Major Review of the Judicial Salary Structure*, 2018, recommendation 9. Referred to as group VI in the Report.

⁹<https://www.gov.uk/government/publications/government-response-to-ssrb-major-review>

- 3.32 This means that NLM fees increased by a cumulative 11.5 per cent between 2010 and 2021. Over the same period, the consumer prices index increased by 24.8 per cent.¹⁰ Whole-economy average weekly earnings increased by 30.4 per cent between 2010 and 2021.¹¹ Average weekly earnings increased by 32.5 per cent in the private sector and 26.1 per cent in the public sector.¹²
- 3.33 A 3 per cent increase in fees for NLMs was awarded from 1 April 2022, in line with the pay uplift for the judiciary.

Pay comparisons

- 3.34 To inform our recommendation on the appropriate level of fees, we need to understand what comparable roles might be paid in the external labour market, identify where there are signs of recruitment challenges, and consider how this might vary for the different NLM specialisms. We have a number of sources including data from our survey on pre-appointment and additional earnings and a commissioned pay-benchmarking exercise. In chapter 4 we discuss our recommendations in the light of the evidence we have received, but in the remainder of this chapter we summarise some of the main evidence relevant to fees.
- 3.35 We have assessed the market value of the professional qualifications, experience and skills of NLMs from a number of different aspects. Our survey of NLMs looked at both pre-appointment earnings and additional earnings while working as an NLM, and the Incomes Data Research (IDR) benchmarking exercise compared the job descriptions submitted by the MoJ to available labour market data on similar roles.
- 3.36 Statistically and analytically, each of these individual approaches has both strengths and shortcomings, requiring judgement on the relative merits of each indicator, and the weight to be given to each, when making recommendations on fee levels and the structure of fees.

Pre-appointment earnings

- 3.37 The pre-appointment earnings of NLMs who were appointed since 2010¹³ are shown in table 3.7. Median pre-appointment earnings were £55,000 excluding those previously employed as doctors and £75,000 including doctors. There is a wide distribution of pre-appointment earnings, which reflects the heterogeneity of NLMs. The data in this table have not been uprated for inflation and report the pre-appointment earnings from 2010.
- 3.38 The median year for the pre-appointment salary data was 2016 (and 2017 excluding doctors). Whole-economy average weekly earnings (AWE) grew by 17.2 per cent between 2016 and 2021; public sector average weekly earnings grew by 15.8 per cent; and the consumer prices index (CPI) increased by 10.8 per cent.¹⁴ Uprating the overall median pre-appointment earnings by these figures gives a median in 2021 values of £400 a day (whole-economy AWE); £395 a day (public sector AWE); or £378 a day (CPI). Excluding doctors, the uprated median is £293 a day (whole-economy AWE); £290 a day (public sector AWE); or £277 a day (CPI).

¹⁰ Consumer prices index, D7BT, annual index 2010 to 2021.

¹¹ Whole-economy average weekly total earnings level, KAB9, annual average 2010 to 2021.

¹² Whole-economy average weekly total earnings level, KAC4 (private sector) and KAD8 (public sector excluding financial services), annual average 2010 to 2021.

¹³ Reported pre-appointment earnings for those appointed prior to 2010 have not been included, as this was not felt to be reliable.

¹⁴ Whole-economy average weekly earnings (KAB9); public sector average weekly earnings excluding financial services (KAD8); consumer prices index (D7BT), annual index 2016 to 2021.

Table 3.7: **Pre-appointment earnings of non-legal members**

		Annual earnings £	Daily equivalent £
All	Lower quartile	45,000	205
	Median	75,000	341
	Upper quartile	95,000	432
Excluding doctors	Lower quartile	35,000	159
	Median	55,000	250
	Upper quartile	65,000	295

Source: SSRB survey of non-legal members.

Notes: Pre-appointment earnings of those appointed since 2010. Respondents were asked to choose a £10,000 band. Uses a 220-day divisor.

Additional earnings

3.39 Around one-in-six NLMs combine their role with other full-time employment and one-in-three combine it with part-time employment. The earnings from these additional roles are shown in tables 3.8 and 3.9. Doctors were the highest paid occupation both for full-time and part-time working. Other occupations with above-average additional earnings were management consultants and surveyors.

Table 3.8: **Additional earnings of non-legal members**

Full-time additional employment			Part-time additional employment		
Occupation	Median earnings £	Count	Occupation	Median earnings £	Count
Doctor	£125,000	53	Doctor	£65,000	144
Management consultant	£80,000	8	Management consultant	£55,000	14
Accountant	£75,000	5	Surveyor	£50,000	10
Armed forces	£75,000	5	Allied health professional	£45,000	19
Surveyor	£70,000	14	HR professional	£45,000	24
HR professional	£65,000	30	CEO/director	£35,000	5
Trade union official	£55,000	7	Civil servant	£35,000	7
Solicitor/lawyer	£55,000	14	Environment specialist	£35,000	5
Allied health professional	£55,000	5	Social worker	£35,000	11
Civil servant	£50,000	8	Accountant	£25,000	9
			Solicitor/lawyer	£25,000	11
			Other panel member	£25,000	20
			Teacher	£15,000	9
			Non-executive director	£15,000	10
All full time	£65,000	205	All part time	£35,000	393

Source: SSRB survey of non-legal members.

Note: Listed occupations are only those with five or more responses. Respondents were asked to choose a £10,000 band for additional earnings. Hours of work are not available.

Table 3.9: **Additional earnings of non-legal members**

		Full-time annual £	Daily equivalent £
All	Lower quartile	45,000	205
	Median	65,000	295
	Upper quartile	95,000	432
Excluding doctors	Lower quartile	45,000	205
	Median	55,000	250
	Upper quartile	75,000	341
		Part-time annual £	Daily equivalent £
All	Lower quartile	15,000	136
	Median	35,000	318
	Upper quartile	75,000	682
Excluding doctors	Lower quartile	15,000	136
	Median	35,000	318
	Upper quartile	55,000	500

Source: SSRB survey of non-legal members.

Note: Daily equivalent assumes a 0.5 full-time equivalent for part-time work and uses a 220-day divisor.

Pay benchmarking

3.40 IDR benchmarked individual NLM roles against a range of market data using job descriptions to indicate the skills required. Details are given in appendix H. The job descriptions provided were brief and generic, and tended to provide minimum requirements in terms of experience and qualifications. Consequently, this approach does not take into account the typical level of experience of appointed non-legal members. As a result, we judge that the better indicator of the market value of a non-legal member role is the upper quartile rather than the median.

Table 3.10: **Pay benchmarking summary, daily equivalents**

Tribunal	Number of roles	Market lower quartile £	Market median £	Market upper quartile £
All roles	42	184	215	257
excluding Northern Ireland	32	187	227	261
excluding medical and Northern Ireland	26	177	212	252
Upper Tribunals	5	225	255	257
First-tier Tribunals	37	175	208	253
excluding Northern Ireland	27	179	215	333
excluding medical and Northern Ireland	21	166	198	242
Medical	8	337	389	429
Northern Ireland (excluding medical)	8	150	188	204

Source: Incomes Data Research. See appendix H for details.

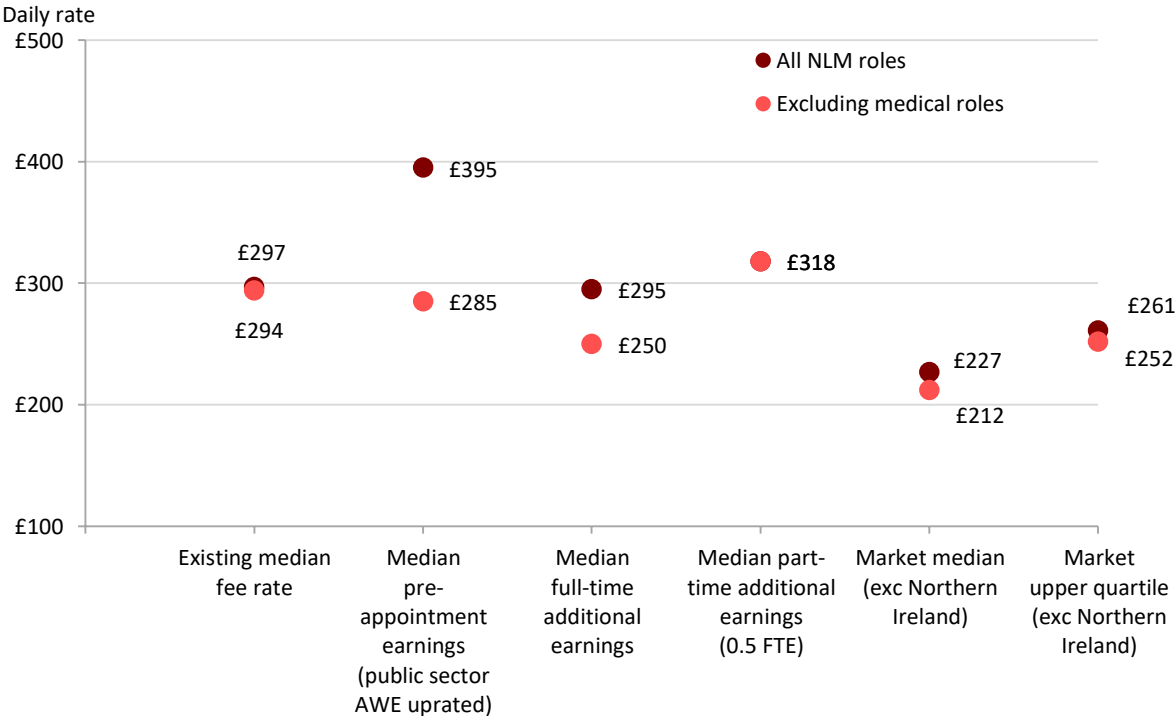
3.41 The unweighted upper quartile labour market benchmark was £56,492, equivalent to a daily rate of £257 a day (see table 3.10). Excluding both medical and Northern Ireland NLM roles, the market upper quartile was equivalent to £252 a day.

Summary of pay data

3.42 In summary:

- The overall median of daily fees by NLM role was £297 a day in 2021-22. It was £294 a day excluding medical roles.
- Median pre-appointment earnings, uprated by public sector AWE to 2021, were £395 a day or £285 a day excluding doctors.
- Median additional full-time earnings were equivalent to a daily rate of £295 (or £250 if doctors are excluded). Median part-time additional earnings (assuming a full-time equivalent of 0.5) imply a median daily rate of £318 (both including and excluding doctors).
- The pay benchmarking identified an unweighted market upper quartile of £257 a day (excluding Northern Ireland roles), or £252 also excluding medical roles.

Figure 3.9: **Summary of pay comparisons**



Pensions

3.43 Since 17 March 2021, NLMs in England and Wales have been offered a National Employment Savings Trust (NEST) workplace pension. This includes an employer pension contribution of 3 per cent. NLMs who sit as Chairs have eligibility for the judicial pension scheme. Pension contribution rates in NEST are shown in table 3.11. A pension scheme is under consideration for devolved NLMs in Northern Ireland.

3.44 NLMs have been offered membership of the NEST scheme, backdated to 1 November 2012 (or their automatic enrolment eligibility start date). The MoJ met both employee and employer contributions between 1 November 2012 and 31 March 2021. Approximately 60 per cent of

eligible NLMs (3,087) were initially enrolled into the scheme and, at September 2021, there were 2,976 NLMs with an active account.

Table 3.11: **NEST pension contribution rates**

	Employer minimum contribution	Employee minimum contribution	Total minimum contribution
Before 5 April 2018	1%	1%	2%
6 April 2018 to 5 April 2019	2%	3%	5%
Since 6 April 2019	3%	5%	8%

Source: Ministry of Justice.

3.45 Unlike fee-paid legal members of tribunals, NLMs are not entitled to join the Judicial Pension Scheme. This is because they do not have a salaried comparator and so were not covered by the judgment in O’Brien.¹⁵ They are considered to be workers for the purposes of the Pension Act.

Additional fees

3.46 We have been asked to make observations on the payment of additional fees for NLMs as part of this Review, though we are not responsible for making recommendations about these fees. It was clear from our early engagement with NLMs that the issue of additional fees was important to them and that they wanted to give their opinions about them when we were collecting evidence.

3.47 Additional fees – fees other than daily sitting fees – include payments for:

- Cancellation.
- Preparation and reading time.
- Writing-up of the determination.
- Erroneous attendance.
- Appraisals.
- Additional travel.
- Session over-running.
- Pre-hearing examinations.
- Training.

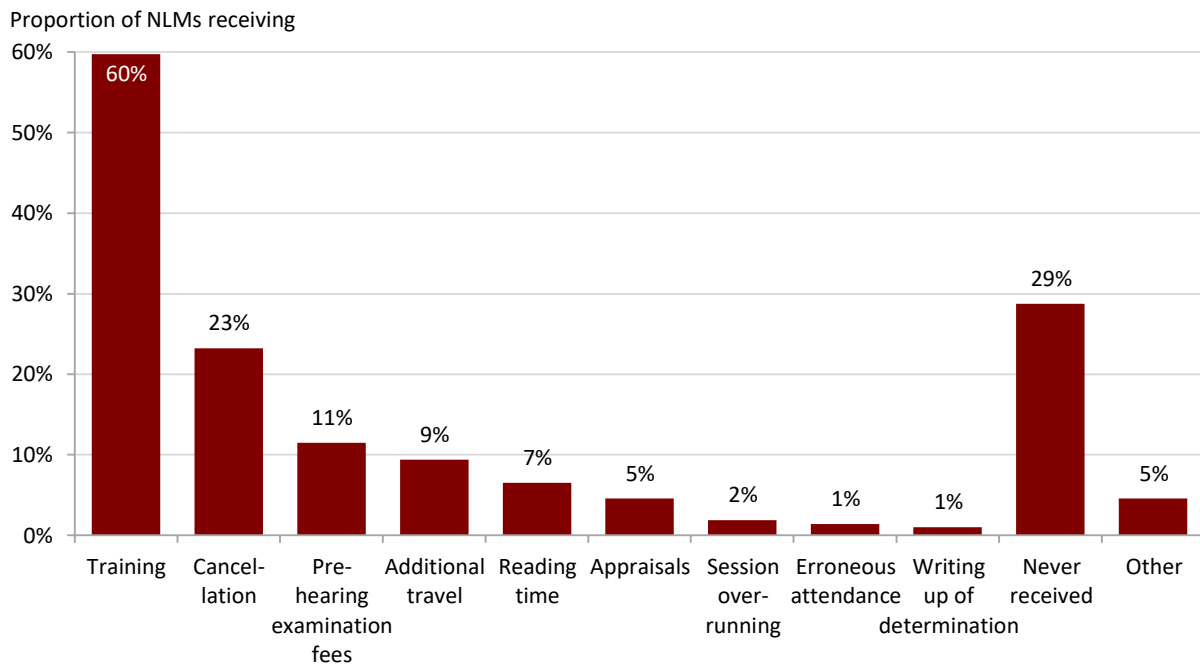
3.48 For some of these, there is a consistent approach across the different tribunals, for others the payment of additional fees varies.¹⁶

3.49 Our survey asked NLMs about which additional fees they received (see figure 3.10).

¹⁵ O’Brien v Ministry of Justice [2013] UKSC 6.

¹⁶ This is set out in the Judicial Finance Guide.

Figure 3.10: **Additional fees received by non-legal members**



Source: SSRB survey of non-legal members.

Cancellation fees

3.50 The MoJ reviewed and reconfirmed its policy on cancellation fees in 2022. Members receive a cancellation compensation payment where a sitting day is cancelled with less than two days' notice *and* there is evidence of financial loss, i.e., no other work was paid.¹⁷ The fee paid is equivalent to the fee applicable for the booking made; either a full day or half a day, up to two days. For cancellations made on the day of the hearing, the requirement to provide evidence of financial loss is waived.

3.51 We do not have comprehensive information on the extent of cancellations across tribunals as it is not routinely collected. Evidence was provided for the Employment Tribunal in Wales for the period 2016 to 2019. This indicated an extremely high cancellation rate of 70 to 80 per cent. While wider evidence was not available, these rates were thought to be broadly comparable with cancellation rates in employment tribunals across other regions.

3.52 The President of Employment Tribunals (England and Wales) identified four reasons for cancellations (with the first considered the main reason):

- The late settlement or withdrawal of cases.
- Local systems for booking NLMs that often lack intelligence or consistency.
- Unavailability of judges with whom members can sit.
- Pre-pandemic, the absence of a venue for an attended hearing.

3.53 We do not know which reason is most common but, in an adversarial legal system, late settlements are often unavoidable.

¹⁷ The guidance states that this can be when the office holder has evidence that they have refused an invitation for other work; has advised prospective employers that he/she is not available; or is self-employed or works in a practice.

- 3.54 In our survey, 23 per cent of NLMs said that they received cancellation fees. Respondents offered numerous and extensive comments on the issue. Opinions were strongly expressed and consistent. It was felt that the cancellation fee should be automatic and not contingent on evidence of having turned down other work. This was considered to be particularly unfair on those that did not have other employment. Preparation was often undertaken for which there was no remuneration. It was not felt reasonable to limit the payment to one or two days when a longer hearing might have been scheduled, or to short-notice cancellations only. Many reported that cancellation fees were rarely paid. The following comment was typical:

The inability to claim for cancellation fees unless you have another role, cancellation was within 48 hours of the sitting, *and* you can prove loss of earnings is insulting. We are expected to read and fully prepare all cases before the hearing. This basically means you end up doing substantial amounts of work you don't get paid for. This work has to be done before the 48-hour period kicks in so any issues with the papers can be flagged with allocations and addressed. Despite some cases being excessively long – whole session cases with bundles running to more than a 'typical' day's reading – being very complicated and taking excessive preparation time, I've never been successful in claiming a fee for excessive prep time. I've had these cases cancelled at short notice with no remuneration at all despite spending six plus hours preparing them.

Respondent to SSRB survey of non-legal members

Preparation and reading time and writing-up of the determination

- 3.55 The HMCTS judicial financial guidance says that fees are paid on a half-day or daily basis, depending on the chamber and jurisdiction, and include all work in connection with the determination of any application/appeal during a tribunal sitting. This includes preparation for the hearing, attendance at the hearing and where relevant, the writing of tribunal decisions.
- 3.56 In exceptional circumstances, where essential pre-case reading in complex cases exceeds what can reasonably be achieved in a day, Chamber Presidents or a judge nominated by the President have the discretion to recommend payment for additional time. This is a half-day or full-day fee depending on the time spent.
- 3.57 The survey evidence indicates that just 7 per cent of NLMs reported receiving additional payments for pre-hearing reading. Very many respondents felt that preparation and reading time should be separately remunerated. A number of respondents also noted that the time taken on preparation was increasing as cases became more complex and involved more paperwork.
- 3.58 Just 1 per cent of members reported receiving additional fees for the writing-up of determinations. Many in the survey reported undertaking post-hearing work, being required to read and comment on decisions, and felt that this should be recognised.
- 3.59 The survey asked members how much time they spent on pre-hearing work, in hearings, and on post-hearing work. The median amount of time spent on pre-hearing work was three hours for each sitting, with a median of six hours in hearings and half an hour on post-hearing work. With the exception of employment tribunals, there was less variation in the ratio of preparation to hearing time than we might have expected given the very different nature of the types of cases.

Table 3.12: **Median hours per sitting**

Chamber	Median hours			Total
	Preparation	Hearings	Post-hearing	
Upper Tribunal: Tax and Chancery	5.0	14.7	2.8	22.3
Employment Tribunal (England and Wales)	2.0	13.3	1.0	16.5
Employment Tribunal (Scotland)	2.0	12.0	1.0	14.8
First-tier Tribunal: Tax	3.0	6.0	2.0	11.6
First-tier Tribunal: General Regulatory	4.5	4.8	1.3	11.0
Upper Tribunal: Administrative Appeals	4.1	4.8	1.2	11.0
First-tier Tribunal: Social Entitlement	4.0	6.0	0.2	10.2
First-tier Tribunal: War Pensions and Armed Forces	4.0	5.3	0.6	10.2
Pensions Appeal Tribunal for Scotland	4.4	4.0	1.0	10.2
First-tier Tribunal: Property	3.0	5.0	1.6	10.0
Northern Ireland devolved tribunals	3.1	3.9	1.0	8.7
First-tier Tribunal: Health, Education and Social Care	2.4	4.8	0.6	8.2
All	3.0	6.0	0.5	10.0

Source: SSRB survey of non-legal members.

Note: Respondents were asked to report average hours across their previous five sittings. Sometimes sittings are for half a day.

Erroneous attendance

3.60 If a member attends a tribunal in error, due to a mistake by a court official (and the error was not contributed to by the member), a claim for erroneous attendance can be made. Just 1 per cent of members reported being in receipt of payment for erroneous attendance. There was no evidence that the current approach was considered to be a problem.

Appraisals

3.61 The guidance suggests that members should be paid a fee for time spent on appraisals. Just 5 per cent of members reported being paid additional fees for appraisals. This may reflect the limited number of appraisals being carried out.

Additional travel

3.62 In some Chambers, in addition to basic travel and subsistence, travel time to a venue which takes more than an hour can be claimed at the hourly rate. The survey indicated that 9 per cent of members had received additional fees for travel. A number of respondents felt that they should be paid for travel time but were not, while some commented that they were paid it for some tribunals and not for others. It was noted that travel time had fallen since the introduction of remote hearings.

Session over-running

3.63 In the guidance, only the Social Entitlement Chamber makes additional payments for the over-run of sessions (payment for running more than half an hour beyond a half-day session of 3.5 hours, or beyond a full-day session of seven hours, at the hourly rate). Just under 2 per cent of respondents to the survey said they had received additional payments for sessions over-running (four-fifths of whom were working in the Social Entitlement Chamber). There were very few comments on this issue from respondents.

Pre-hearing examination fees

3.64 Pre-hearing examination fees of £177.50 are paid to medical members of the Mental Health Tribunal for each patient examined (with a daily sitting fee for these members of £507.72 in 2021-22). Medical members in the Social Security and Child Support Tribunal receive a higher daily fee (of £406.50 rather than £345.34 in 2021-22)¹⁸ if a medical examination is required. Just over 11 per cent of survey respondents reported receiving pre-hearing examination fees – 19 out of 20 of these were in the Mental Health Tribunal. A number of respondents commented that the fee was not enough to reflect the time it took to carry out the examination, in particular the travel time.

Training

3.65 Members can claim a training fee for attendance as an observer at a tribunal sitting (for one observation) and at a formal training event. The payment is equivalent to a half-day sitting fee for a full day of training.¹⁹ We do not have evidence on how much training a non-legal member receives. In total, 60 per cent of respondents to the survey reported that they had received an additional payment for training. A number of respondents questioned why only a half-day fee was paid for a full day of training, while others said that they were now getting a full day's fee for training. Others commented that training was increasingly being delivered in short online sessions which were compulsory but which could not be accumulated in order to receive a fee.

3.66 In the Northern Ireland devolved tribunals there was a similar split on training fees, with around half of tribunals paying a full day's fee to members for training and half paying a half-day fee. Evidence from the survey indicates that members in Northern Ireland were in receipt of fees for training, additional travel and cancellations at a similar rate to other NLMs.

¹⁸ The lower rate is paid to medical members of the Mental Health Tribunal for the first 20 sitting days in a year.

¹⁹ Valuer chairs/members of the Property Chamber can claim for a full day's fee for training. This also applies to legal members of tribunals.

Chapter 4

Issues and recommendations

- 4.1 This chapter makes recommendations on the daily fees for non-legal members and a number of associated issues as set out in our terms of reference.
- 4.2 Our focus in setting fees is on simplification, consistency and fairness. We aim to have a system that can be flexible to respond to changing needs and emerging skills shortages. We agree with the Ministry of Justice that, although specialisms and levels of professional knowledge differ, the size, purpose and function of NLM roles are broadly comparable across chambers and jurisdiction. However, we also believe there are some posts with specialised skills and/or qualifications where the labour market evidence, including recruitment data, shows there needs to be higher fees.
- 4.3 In general, we consider that the daily sitting fee should include reasonable time for preparation and reading, attendance and writing up, but there are exceptions. We note that, due to the tribunal system, these roles do not offer any guarantee of remuneration. We make observations about additional fees, including cancellation fees, after we discuss the issue of sitting fees.

Principles

- 4.4 As with our work on the Major Review, we began by consulting widely about the principles that should underpin our work. This also ensured that there was a shared understanding about the limits and parameters of the Review. We identified a number of principles through discussions with the Ministry of Justice, the Department of Justice in Northern Ireland, and tribunal stakeholders, as well as our own preliminary analysis, including the 2008 Review. We then issued a broader consultation on these principles.

Non-legal members and tribunal judges

- 4.5 In our consultation exercise, we put forward the principle that NLM daily fees should not exceed those of the tribunal judge. Although all panel members' views are given equal weight in decision-making, it is the legally qualified tribunal judge who advises on points of law and who (normally) chairs the panel and writes up the decision. Overall, 88 per cent of the 307 respondents to our consultation agreed with this principle, 6 per cent disagreed and 6 per cent were unsure. It was noted that tribunal judges have significantly better additional terms, such as pensions, than fee-paid non-legal members.
- 4.6 We feel this is an important underpinning principle which can help set the framework for NLM fees. We therefore recommend that NLM daily sitting fees should not exceed the equivalent daily fee (using a divisor of 220 days of the annual salary) of the tribunal judge.

Recommendation 1

We recommend that the daily sitting fee for non-legal members of tribunals should not exceed the equivalent daily fee of the tribunal judge.

Location of tribunals

- 4.7 While labour market factors might suggest differentiation of fees by geographic location, the principle of having a unified Tribunals Service argues against such distinctions. This mirrors one of the principles in our 2018 Major Review and is supported by the MoJ and the Northern Ireland Department of Justice.
- 4.8 Our consultation asked if respondents agreed with the principle that the geographic location of a tribunal should not affect NLM fee rates. Most respondents agreed that the geographic location of the tribunal should not affect NLM fees: of the 304 respondents to this question, 84 per cent agreed, 10 per cent disagreed and 6 per cent were unsure.
- 4.9 Respondents explained how the job requirements, skills and qualifications of NLMs do not differ based on location and that pay should be determined by responsibility and effort. Others noted that the increased use of virtual hearings and increased incidence of NLMs working across locations made geographic differentiation of fees less relevant. Some respondents suggested that there may be justification for a London allowance and pointed out that there was a London payment for legal members of tribunals. Others suggested that the higher cost of living and travel in some areas should be considered.
- 4.10 We support the principle of a unified Tribunals Service, assisted by consistency of fees across tribunals. We have not received any compelling evidence that would support fees varying by location. We note that some legal members of tribunals receive a London allowance. However, we have received no evidence of differential recruitment or retention issues in London that would indicate that this is necessary for NLMs.
- 4.11 We therefore recommend that fees do not vary by location.

Recommendation 2

We recommend the same standard fee level for all non-legal members in non-devolved tribunals in England, Wales and Scotland, and devolved tribunals in Northern Ireland.

Differential fees based on sitting days

- 4.12 Currently, for medical members of the Social Security and Child Support Tribunal, a higher fee is paid to those who sit for 20 days or more in a financial year (£406.50 rather than £345.34 in 2021-22). We did not receive evidence on the rationale for this but presume that it was intended to incentivise and reward members to work more days.
- 4.13 A consistent theme from the comments in our survey was that members did not understand why this system was in place and viewed it as receiving a lower fee for some days, which was felt to be unfair, irrational and demotivating.
- 4.14 The consultation asked whether respondents agreed with the principle that fees should not be differentiated by the number of sitting days over a year. In total, 95 per cent of the 306 responses to this question agreed with the principle, 4 per cent disagreed and 2 per cent were unsure. Respondents said that it made them feel undervalued, that it benefitted those who were able to give more time, and that the contribution was the same for each sitting day so should be paid the same.

- 4.15 The MoJ said in evidence that fees should not be differentiated based on the number of sittings and it would prefer to remove the differentiated fee.
- 4.16 We have seen no rationale or support for fees to be differentiated by the number of sitting days. It is demonstrably damaging to morale and also poses a risk to recruitment and retention. We recommend that fees should not be differentiated by the number of sitting days undertaken over the course of a year.

Recommendation 3

We recommend that in future fees should not be differentiated by the number of sitting days undertaken during a year.

The structure of fees

- 4.17 Currently, fees vary markedly across NLM roles. These differences are at most only partly attributable to recruitment pressures and there is much greater variation than such pressures might justify. Cross-ticketing means the same individual may receive different fees for performing the same role on separate tribunals. We were not surprised to see survey evidence that this fee variation without good reason is widely resented.
- 4.18 Our aim is a fee system which is simple and consistent, but also able to respond to current and future labour market challenges. Therefore, we propose that the starting point should be a standard fee for similar work. The standard fee should be the default remuneration.
- 4.19 While the evidence indicates that all NLM roles are similar in terms of demands, there are some for which there are recruitment shortfalls or for which the labour market evidence (on prior earnings, additional earnings and the pay benchmarking) suggests a higher rate of pay. This is often due to the specific qualifications or professional background required for the role. In many cases, these specialist roles are already receiving a higher daily fee.
- 4.20 Given these circumstances, a single rate for all NLMs would be too inflexible. Either all NLMs would, in effect, receive a premium driven by the specific recruitment pressures affecting a minority of them, or the rate would be too low to avoid recruitment shortfalls for certain specialisms. In the first case, remuneration would exceed what is merited by labour market evidence or value for money for the taxpayer. In the second case, tribunals may not have the expert NLMs they need.
- 4.21 With this in mind, in our early conversations with stakeholders we discussed a standard fee level along with no more than two additional fee levels. We suggested this could offer the flexibility required to respond to recruitment challenges while achieving simplicity and consistency. This was also the approach offered by the MoJ.
- 4.22 Our consultation asked respondents if they agreed that all NLMs should receive the same base rate but with provision for a small number of supplementary fee levels, for roles requiring professional qualifications or expertise, where recruitment and labour market evidence suggests they are needed.
- 4.23 Around three in five individual respondents and almost four in five organisations agreed with this principle. Responses expressed a collective understanding that daily fees should be set to recruit and retain the best candidates and not drive disparities between tribunals. A few

respondents believed there should be pay parity across different NLMs and tribunals. Others thought there should be a pay differential between different types of NLM as long as this was not too large and that a supplementary fee was used sparingly.

- 4.24 In other words, the evidence we gathered suggests that, while some NLMs would favour a single standard fee for all NLMs, there is also widespread recognition that some scope to enhance it is necessary, provided that is merited by evidence of recruitment pressures.
- 4.25 We are therefore recommending a structure with a standard fee, which will apply to most NLM roles, and two levels of enhanced fee to meet specific skill needs and recruitment challenges. We discuss the level of fees and which roles should receive an enhanced fee below.

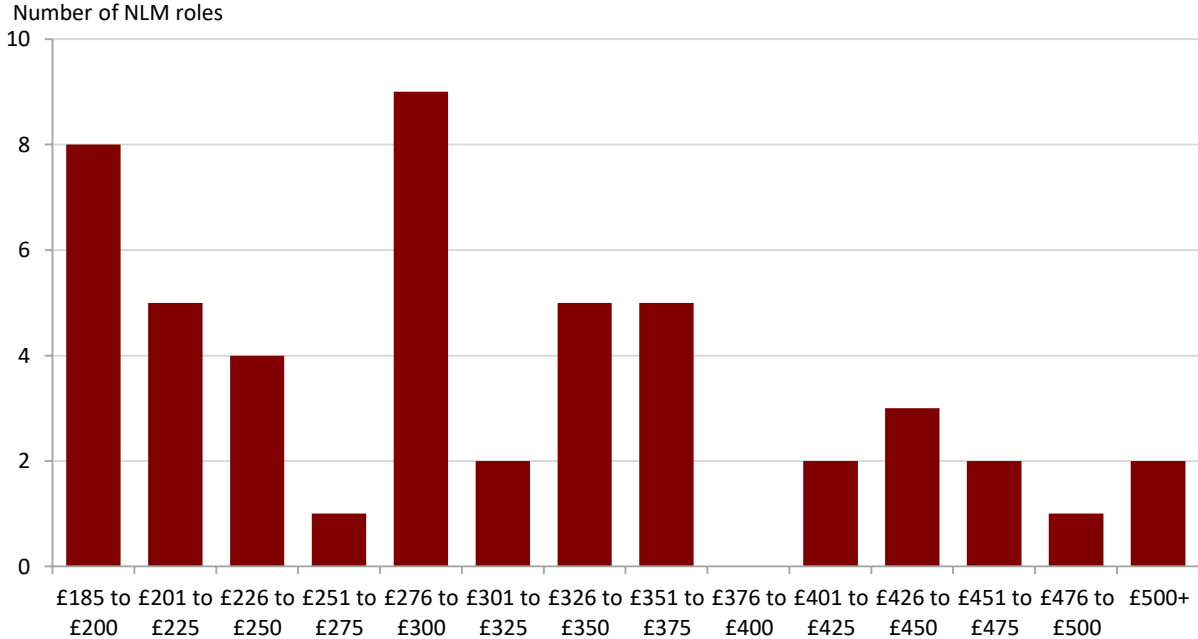
Recommendation 4

We recommend a structure with a standard fee, that will apply to most non-legal member roles, and two enhanced fee levels, enhancement A and enhancement B, for roles with demonstrable recruitment difficulties and labour market evidence that support a higher fee.

The level of the daily fee

- 4.26 In recommending the standard fee level, we have adopted the following principles:
- Pay for NLMs should not exceed that of the tribunal judge.
 - Fees need to be set at a level to enable the recruitment and retention of high-quality individuals.
 - All NLM roles are broadly similar in scope and demands.
 - Any differences in fees should be based on labour market evidence, particularly evidence of recruitment and/or retention issues, supported by data on earnings for comparable roles.
- 4.27 In making our recommendation for the standard daily sitting fee we have taken a number of pieces of evidence, set out in chapter 3 and below, into account:
- Current daily fees.
 - Rates for tribunal judges, which set a ceiling on the NLM daily fee.
 - Pre-appointment earnings of NLMs.
 - Additional earnings which NLMs receive in other roles.
 - Market pay data for individual NLM roles.
- 4.28 We are aiming to set a fee level to cover most NLM roles, so have focused on medians when looking at most earnings data points. The exception to this is the external comparator market data, where we felt the upper quartile was a more appropriate reference point. NLMs are required to be high-quality, established professionals with considerable experience and as such we would expect them to be drawn from among the higher earners in their professions.

Figure 4.1: **Distribution of fees for non-legal member roles, 2021-22**



Source: Ministry of Justice.

Note: 2021-22 fee levels.

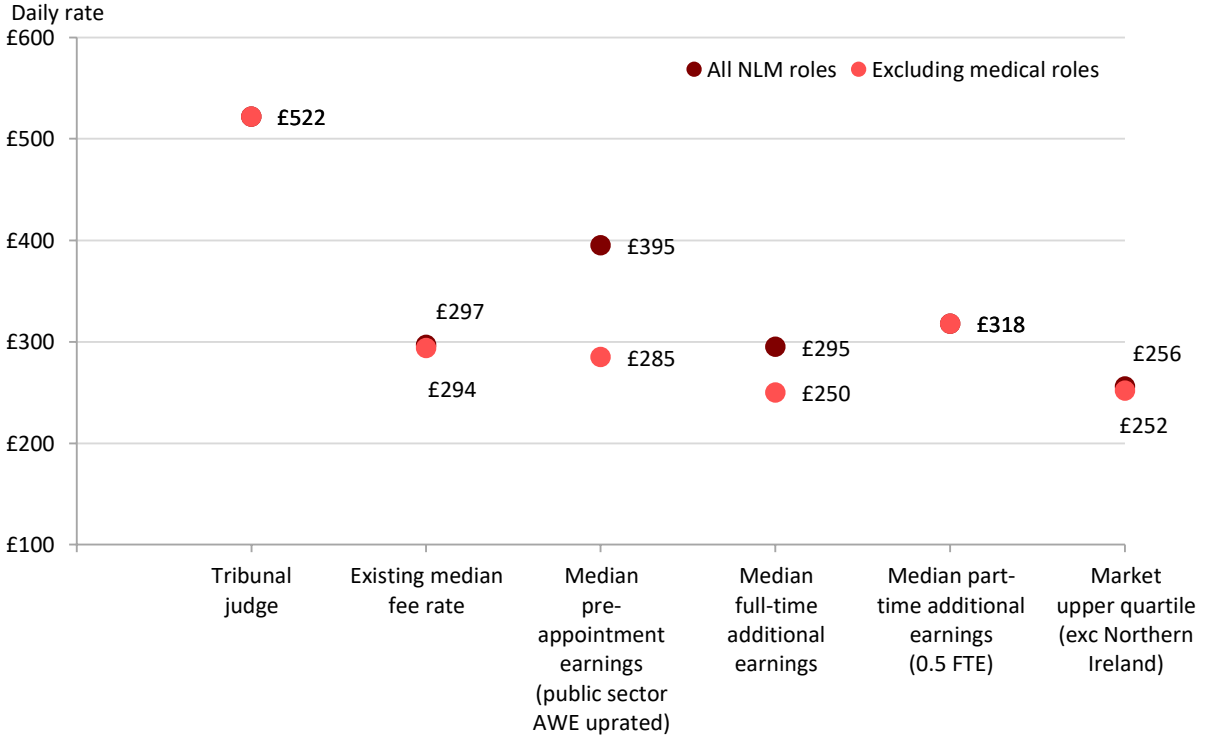
Evidence on fees

- 4.29 Our evidence base on earnings is effective for the 2021-22 pay year, i.e., it does not take into account the 3 per cent pay uplift from 1 April 2022 in line with the judiciary.
- 4.30 The overall median of daily fees by NLM role was £297 a day in 2021-22. It was £294 if medical roles are excluded.
- 4.31 Most tribunal judges are in judicial salary group 7, which equated to a daily sitting fee of £522 in 2021-22. Upper Tribunal judges are in salary group 5.1, which equated to £676 a day.
- 4.32 In our survey of non-legal members, median pre-appointment earnings across respondents appointed since 2010 were equivalent to £341 a day, or £250 a day when those previously working as medical practitioners/doctors are excluded.
- 4.33 The median year for the pre-appointment salary data was 2016 (and 2017 excluding doctors). Uprating the overall median pre-appointment earnings by CPI inflation and average weekly earnings growth to 2021 levels gives a median of £400 a day (whole-economy AWE); £395 a day (public sector AWE); or £378 a day (CPI). Excluding doctors, the uprated median is £287 a day (whole-economy AWE); £285 a day (public sector AWE); or £270 a day (CPI).
- 4.34 Our survey of non-legal members found that around half combined their roles with other paid work. Around one in three of these worked full time. Median external full-time earnings were equivalent to a daily rate of £295 (or £250 if doctors are excluded). Median part-time external earnings (assuming a full-time equivalent of 0.5) imply a median daily rate of £318 (both including and excluding doctors).²⁰

²⁰ We do not have data on the number of part-time hours worked so have assumed a 0.5 full-time equivalent; alternative assumptions will imply a higher or lower daily equivalent.

4.35 The IDR pay benchmarking work identified market equivalent data for 42 NLM roles. The unweighted market median across all NLM roles was equivalent to £215 a day and the upper quartile was £257 a day (£227 and £261 excluding Northern Ireland). Excluding both medical and Northern Ireland NLM roles, the market median salary was equivalent to £212 a day and the upper quartile was equivalent to £252 a day. While this work aims to match to equivalent skills in the external market, it is not able to encompass the level of experience expected of a non-legal member. We therefore give it less weight than would otherwise be the case and, insofar as it provides a guide, consider the upper quartile to be a better reference point for the experience required of a non-legal member.

Figure 4.2: Summary of pay comparisons



Notes: Pre-appointment and additional earnings are from the SSRB survey of non-legal members. Market data is from the IDR pay benchmarking.

4.36 Our evidence base for making recommendations on fees is effective for 2021-22. NLM fees and judicial salaries increased by 3 per cent from April 2022. We have taken this into account, along with all the benchmark data. We note that median earnings (excluding medics) before becoming an NLM, and reported external part-time earnings received by NLMs, are in the range £285 to £318 a day. We recommend a standard daily sitting fee of £285 to cover all NLM roles. Exceptions to this, based on labour market evidence, are set out below.

Recommendation 5

We recommend a standard daily sitting fee for non-legal members in non-devolved tribunals in England, Wales and Scotland, and devolved tribunals in Northern Ireland, of £285 from 1 April 2022.

- 4.37 We note that the higher the standard fee, the lower the number of members that would require an enhanced rate, thus achieving the Review’s objectives of harmonisation and simplicity. The lower the standard fee, the less effective it would be in terms of achieving the objectives of simplicity, consistency and fairness. We also recognise the financial constraints that the Government faces and the competing resources within the justice system. A fee of £285 a day balances these competing considerations.
- 4.38 We have made our recommendation on the fee level in cash terms. The SSRB’s previous 2008 Review made recommendations setting tribunal member fees as a proportion of the tribunal judge’s equivalent daily fee.²¹
- 4.39 This previous Review was underpinned by a job evaluation based on widely divergent job descriptions and used that as the basis on which to assess the relative size of roles. It said that this had the advantage of maintaining a link to the judicial salary structure. This may support the status of the NLM role and enable fees to be automatically uprated with judicial salaries.
- 4.40 Our current Review, however, is underpinned by market data and recruitment and retention evidence, so does not assess the NLM role relative to a tribunal judge. We think the role and salary of tribunal judge (and others in the judicial structure) should be able to be reviewed independently, without an automatic read-across to NLM fees, as it may see changes in scope or in recruitment and retention that do not impact NLMs. Also, for reasons we discussed in our Major Review, we believe that the job evaluation approach can put undue weight on minor differences, which can impede the search for consistency, simplification and an agreed sense of fairness.²²
- 4.41 Independently of our predecessors, we have come up with the same fee structure, albeit based on recruitment and retention evidence rather than job evaluation. Our recommendation for the standard fee sets it at 53 per cent of the tribunal judge equivalent daily fee, lower than the 2008 recommendation of 60 per cent.
- 4.42 We make our recommendation on the uprating of the NLM fee level below.

Enhanced fee levels

- 4.43 In the section above on *The structure of fees*, we explained why a standard fee should be accompanied by two enhanced levels of fees for those NLM roles which have specific labour market issues.
- 4.44 We have considered each NLM role to identify the skills and specialisms required to demonstrate why some might qualify for an enhanced fee while others may not. To qualify, we expect to see both:
- Evidence of recruitment shortfalls or difficulties.
 - Labour market evidence that these specialisms command a higher external rate of pay.

²¹ The 2008 review recommended fees be set at 60 per cent of the tribunal judge rate, with enhancements to 75 and 90 per cent for professional roles. These recommendations were not implemented.

²² <https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

Table 4.1: Summary of data by specialism

Specialism	Current fees	Market rate (median-UQ)	Median pre-appointment earnings**	Median additional earnings	Recruitment issues?
Care	£186-£224	£157-£189	£267	£364 pt	-
Charity	£278	£225-£249	-	-	No
Compensation/criminal injuries	£292-£436	£130-£172	£240	£409 pt	-
Disability	£214	£156-£181	£228	£295 ft £318 pt	No
Disclosure and barring	£224	£271-£290	-	-	No
Employee relations	£195-£338	£215-£242	£269	£250 ft £227 pt	No
Environment	£297	£159-£174	-	-	Yes
Finance	£337	£252	£380	£341 ft £409 pt	Yes
Health	£307	£228-£242	-	-	Some
Hydrology	£436	£166-£213	-	-	-
Immigration	£371	£156-£163	-	-	No
Information rights	£297	£255-£288	-	-	No
Intelligence/terrorism	£462	£517-£542	-	-	-
Medical	£292-£508	£228-£518	£500*	£500+ ft* £500+ pt*	Some
Medical (mental health)	£404-£508	£350-£518	£500*	£500+ ft* £500+ pt*	No
Mental health	£187-£236	£175-£226	£304	£250 ft £227 pt	-
Military	£236-£238	£405-£429	£392	£341 ft £500+ pt*	No
Property, land	£212-£326	£195-£255	£355	£295 ft £409 pt	No
Special educational needs	£186-£265	£199-£222	£320	£318 pt	Some
Tax	£297	£252-£257	-	£341 ft £136 pt	-
Transport	£371	£162-£274	-	-	No
Valuer	£326-£356	£188-£205	£346	£295 ft £409 pt	Yes

*Median annual earnings fell into the category £100,000+

**For appointments since 2010. Uprated by public sector AWE.

Notes: Assumes 0.5 FTE for part-time additional earnings. Daily rate based on 220 days a year. Pre-appointment and additional earnings are only for specialisms where there is a sample size of five or more. Where a tribunal has both medical and non-medical roles, these have been treated as separate specialisms.

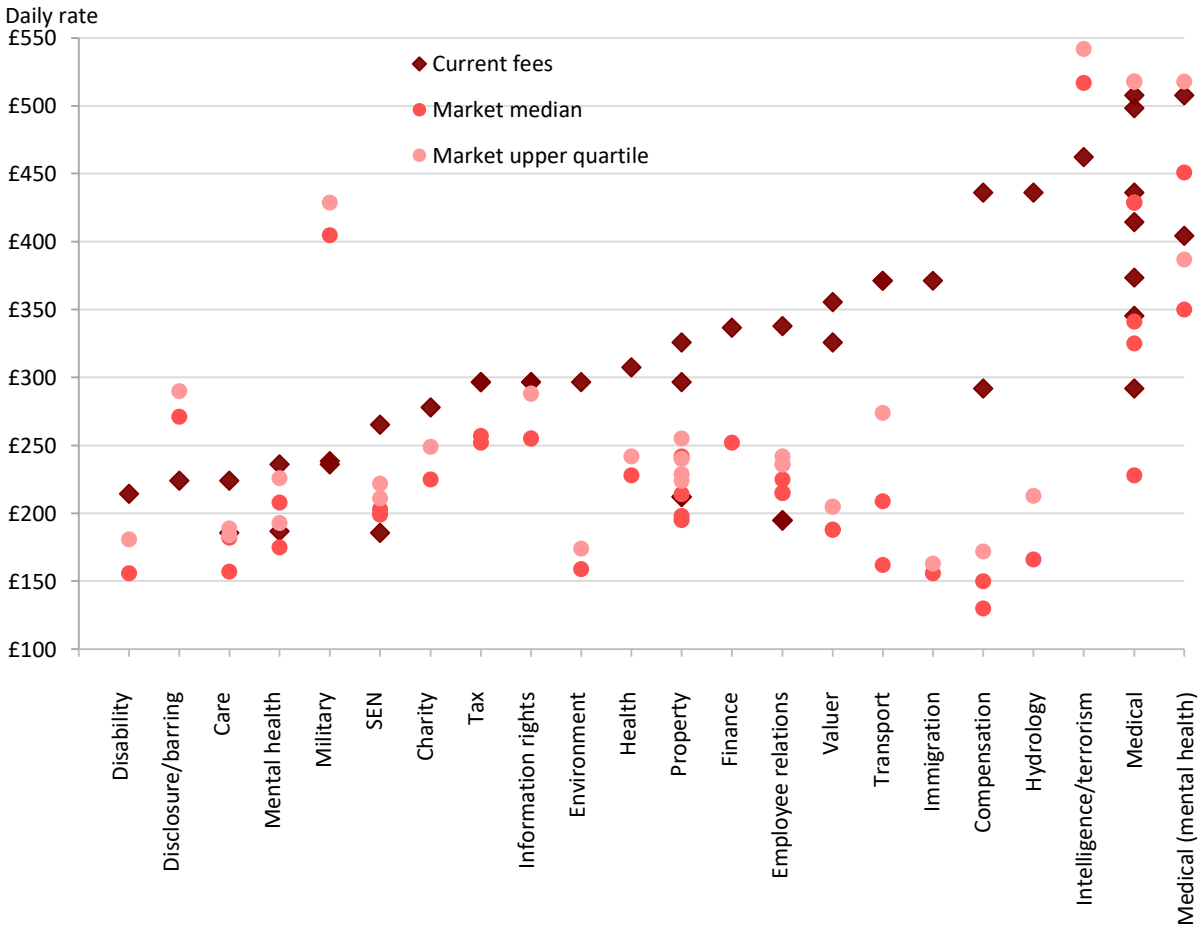
4.45 For each specialism we have considered:

- Any specific qualifications or experience needed for the role (using the job descriptions).
- The current fees for the role.
- Evidence on recruitment.
- Relevant salaried judicial comparators.
- The pre-appointment earnings of those in post.
- The additional earnings of those in post.
- Evidence on the market rate (median and upper quartile earnings where available) for the profession/skills.

4.46 A summary of this evidence is set out in table 4.1. We have used the evidence on the market rate, pre-appointment earnings, and additional earnings to identify which specialisms are clearly above the median, rather than attempt to match the levels.

4.47 We do not wish to differentiate between roles which require similar skills or qualifications, to ensure both consistency and fairness, even if there has been no recent recruitment to some roles.

Figure 4.3: Current rates by specialism



Source: IDR, Ministry of Justice.

Note: Some specialisms cover a number of roles with different current fees and market benchmarks.

- 4.48 We are also aware that some specialisms receive higher fee levels already, and to reduce these to the standard rate for future recruitment exercises could lead to shortfalls. However, we have to balance this against the need for consistency across all roles.
- 4.49 Unsurprisingly, the data points do not fall into a neat three-tier ranking, and an element of judgement is needed to arrive at the level of the enhanced fees. The upper enhancement will need to attract specialists who can earn over £500 a day. The first enhancement should be sufficiently above the standard fee to avoid clouding the principle that the standard fee is, as the name suggests, what most NLMs should receive. Moreover, the enhancements should be set at levels high enough to be effective in supporting recruitment of specialists who are harder to attract.
- 4.50 We recommend that the two enhanced fee levels are set at £385 and £485 a day. This will provide clear differentiation from the standard fee to support effective recruitment in areas with shortfalls.

Recommendation 6

We recommend two levels of enhanced daily sitting fee at £385 (enhancement A) and £485 (enhancement B) from 1 April 2022.

- 4.51 We recommend that enhancement A applies to roles which require a specific financial qualification *and* where there have been shortfalls in recent recruitment exercises. This covers valuer members of the Property Chamber and financial members of the Social Entitlement Chamber.
- 4.52 Other roles that we consider might be appropriate for enhancement A are valuer members of the Northern Ireland Valuation Tribunal, members of the Proscribed Organisations Appeal Commission, and members of the Special Immigration Appeals Commission. However, because there has been no recent recruitment for these roles, the evidence is not strong enough to make a clear recommendation.
- 4.53 The position of tax members in the First-tier and Upper chambers required more deliberation. The job description states that specialist tax qualifications are not required of these members. We have no empirical evidence about whether non-qualified people are actually considered appointable, though we suspect they would not be. There has been no recruitment since at least 2014, when the MoJ data starts. Our own survey of pre-appointment earnings gave very limited information for recently appointed tax members. The lack of a requirement for a qualification means that we believe the labour market benchmarking data was unlikely to be a good match for the current tax members or, indeed, future ones.
- 4.54 Some of these objections apply to the roles mentioned in paragraph 4.52 above. We believe there is analytic coherence in including the valuers and tax members as part of an overall category of financial specialists. We suspect it would be helpful to have further data on the actual qualifications held by the current members. However, we felt the need to be consistent in using our methodology.
- 4.55 For these reasons, we believe that MoJ (and the Department of Justice in Northern Ireland) may want to consider the empirical evidence about the qualifications actually held by these members, and whether they want to put them into the enhancement A group before the next recruitment. Or, since there has been no recent recruitment, it may wish to attempt

recruitment first at the standard fee, though it should bear in mind that this risks not yielding applicants of the required quality.

Recommendation 7

Based on the evidence we have reviewed, we recommend that enhancement A applies to valuer members of the Property Chamber and financial members of the Social Entitlement Chamber.

- 4.56 We recommend that enhancement B applies to all medical roles.²³ This covers specialist medical roles in the Health, Education and Social Care Chamber (Primary Health Lists and Mental Health), the Social Entitlement Chamber (Criminal Injuries Compensation and Social Security and Child Support), the War Pensions and Armed Forces Compensation Chamber, the Gender Recognition Panel, the Pension Appeal Tribunal Scotland, the Northern Ireland Criminal Injury Compensation Appeals Panel, and the Northern Ireland Review Tribunal.

Recommendation 8

Based on the evidence we have reviewed, we recommend that enhancement B applies to all non-legal member roles with a medical specialism.

- 4.57 There is insufficient evidence to support any other specialisms receiving enhancement B. It should be possible for other specialisms to receive enhancement B where a recruitment or retention issue arises in future.
- 4.58 At 72 and 90 per cent of the judicial daily fee, these recommendations on enhanced fees are at a similar proportion of the judicial daily fee as our 2008 recommendations.

Implementation

- 4.59 No current postholders will see a fall in their daily sitting fee when the new structure is implemented. Many existing NLMs will see an increase in their daily fee. However, some roles will see a fall in the fee level at which the post is recruited. These are typically those which are currently paid above average but for which the labour market evidence does not support a higher fee.
- 4.60 The proposed changes to the 2022-23 level of fees are set out in table 4.2. Our recommendations would mean an increase in the daily fee for 28 NLM roles (including six medical roles) and a lower daily fee (for new recruits only) for 21 roles (including three medical roles).
- 4.61 It is important to develop a system that can respond to short-term changes in the labour market without the need for a full review. Therefore, we recommend that if a significant recruitment shortfall develops in a particular specialism, and there is labour market evidence of a higher market rate for the specialism, the fee level for the role may be set at enhancement A or B as appropriate.

²³ That is, qualified medical practitioners who are registered to practice with the General Medical Council.

Recommendation 9

We recommend that, if a significant recruitment shortfall develops in a particular specialism and there is labour market evidence of a higher market rate for the specialism, the fee level for the role may be set at enhancement A or B as appropriate.

4.62 The default should be to pay the standard fee for all non-legal member roles. A business case (based on the skills required, with recruitment, retention and labour market evidence, including from previous exercises) should be made in advance of each recruitment exercise if an enhanced fee is thought to be required. This will mean that there is a recorded evidence base for an enhanced fee in each case which will help ensure that equality considerations are met.

Table 4.2: **Recommended changes to 2022-23 fee levels**

NLM role	2022-23 fee £	Recommended daily fee £
Member, Care Tribunal (Northern Ireland)	191.28	285.00
Member, Valuation Tribunal (Northern Ireland)	191.28	285.00
Member, SENDIST (Northern Ireland)	191.28	285.00
Member, Review Tribunal (Northern Ireland)	192.37	285.00
Member, Industrial Tribunals and Fair Employment Tribunal (Northern Ireland)	200.72	285.00
Member, Employment Tribunal (England and Wales)	200.72	285.00
Member, Employment Tribunal (Scotland)	200.72	285.00
Member, Employment Tribunal (Reserve Forces Appeal Tribunal)	200.72	285.00
Member, Property Chamber, Agricultural Land and Drainage	218.40	285.00
Member, Property Chamber, Residential Property	218.56	285.00
Member, Social Entitlement Chamber, Social Security and Child Support	220.78	285.00
Member, Administrative Appeals Chamber, Disclosure and Barring Service	230.80	313.50
Member, Health, Education and Social Care Chamber, Care Standards	230.80	285.00
Member, Rent Assessment Panel Northern Ireland	228.00	285.00
Member, War Pensions and Armed Forces Compensation Chamber	243.08	285.00
Member, Health, Education and Social Care Chamber, Mental Health	243.10	285.00
Member, Pensions Appeal Tribunal for Scotland	245.45	285.00
Member, Health, Education and Social Care Chamber, Special Educational Needs and Disability	273.18	285.00
Member, Charity Tribunal (Northern Ireland)	286.37	285.00
Medical member, Criminal Injury Compensation Appeals Panel (Northern Ireland)	300.58	485.00
Member, Criminal Injury Compensation Appeals Panel (Northern Ireland)	300.58	285.00

NLM role	2022-23 fee £	Recommended daily fee £
Member, Administrative Appeals Chamber, Information Rights	305.52	313.50
Member, General Regulatory Chamber, Estate Agents	305.52	285.00
Member, General Regulatory Chamber, Environment	305.52	285.00
Member, General Regulatory Chamber, Information rights	305.52	285.00
Member, Tax and Chancery Chamber	305.52	313.50
Member, Tax Chamber	305.52	285.00
Member, Health, Education and Social Care Chamber, Primary Health Lists	316.68	285.00
Chair, Rent Assessment Panel (Northern Ireland)	320.00	285.00
Valuer member, Property Chamber, Residential Property	335.64	385.00
Professional member, Property Chamber, Residential Property	335.64	285.00
Financial member, Social Entitlement Chamber, Social Security and Child Support	346.78	385.00
Member, Employment Appeals Tribunal	347.90	313.50
Medical member, Social Entitlement Chamber, Social Security and Child Support	355.70	485.00
Valuer member, Valuation Tribunal (Northern Ireland)	366.17	285.00
Member, Administrative Appeals Chamber, Traffic Commissioner Appeals	382.46	313.50
Member, General Regulatory Chamber, Immigration Services	382.46	285.00
Member, General Regulatory Chamber, Transportation	382.46	285.00
Medical member, Health, Education and Social Care Chamber, Primary Health Lists	384.68	485.00
Medical member, Review Tribunal (Northern Ireland)	416.45	485.00
Medical member, Gender Recognition Panel	427.08	485.00
Hydrologist member, General Regulatory Chamber, Environmental and Nitrate Vulnerable Zones	449.36	285.00
Medical member, Social Entitlement Chamber, Criminal Injuries Compensation	449.36	485.00
Member, Social Entitlement Chamber, Criminal Injuries Compensation	449.36	285.00
Member, Proscribed Organisation Appeal Commission	476.11	285.00
Member, Special Immigration Appeals Commission	476.11	285.00
Medical member, Pensions Appeal Tribunal for Scotland	513.38	485.00
Medical member, Health, Education and Social Care Chamber, Mental Health	522.96	485.00
Medical member, War Pensions and Armed Forces Compensation Chamber	522.96	485.00

Note: 2022 fee levels for non-legal members in Northern Ireland have not yet been implemented.

- 4.63 We expect both the standard fee and the enhanced fees for non-legal members to continue to be updated with the annual pay award for all judicial office-holders. This would also apply to members whose fee for their current role is above the new recommended rate.

Recommendation 10

We recommend that fees for non-legal members be updated in line with the annual pay award for all judicial office holders.

Non-legal members in Upper Tribunals

- 4.64 In our consultation, we asked if there were compelling reasons for NLMs sitting on Upper Tribunals to receive a higher daily sitting fee. Of the 288 individual respondents to this question, 26 per cent thought the fee should be higher, 30 per cent said it should not, and a significant 44 per cent said that they were unsure.
- 4.65 Those who favoured a higher fee said that there was a greater level of knowledge and understanding needed for NLMs in Upper Tribunals, that decisions had greater legal implications for future cases and so indicated a higher level of responsibility, that cases were more complex and challenging, that cases may require a higher level of preparation, and that it would be in line with the judges in those tribunals.
- 4.66 Those who supported equal fees said that the demands were the same in any tribunal situation and in some cases were made of the same person, with the same level of qualifications and skills, and that the impact of decisions was equally significant. Several respondents said that there needed to be a fundamental difference in skills to justify a different fee. This was supported by the Chamber Presidents during the stakeholder meetings.
- 4.67 Our Review covers the Employment Appeal Tribunal and four Upper Tribunal roles, with fees ranging from £224 a day for an NLM working on Disclosure and Barring Service appeals to £371 a day for NLMs working on Traffic Commissioner appeals in 2021-22. This is within the range of NLMs on First-tier Tribunals but with a higher median (£293 compared to £252 across all roles). NLMs in the Employment Appeals Tribunal received a daily sitting fee of £338 in 2021-22, compared to £195 for NLMs in the Employment Tribunal.
- 4.68 The judge in an Upper Tribunal is in salary group 5.1 (equivalent to £676 a day in 2021-22) compared to the judge in a First-tier Tribunal who is at salary group 7 (equivalent to £572 a day). A Recorder in the Employment Appeal Tribunal had a daily fee of £876 in 2021-22, with an Employment Judge at salary group 7 (equivalent to £572 a day).
- 4.69 Evidence from the job descriptions indicates that the Upper Tribunal NLM roles are similar to those in First-tier Tribunals, without a requirement for additional legal knowledge. Specialist knowledge is required for some roles but not beyond that needed for First-tier Tribunal roles, and this would be covered by the enhanced fees where required.
- 4.70 In our survey of NLMs, 19 of the 20 NLMs in the Upper Tribunal also had a role in a First-tier Tribunal. This does not suggest there is a clear division between the roles or that a consistent fee rate would be damaging. Upper Tribunal members were more likely to have additional part-time work than other NLMs, with a similar level of additional earnings. Pre-appointment earnings were close to the upper quartile for all NLMs excluding doctors. They had typically been tribunal members for longer than average but were of a similar age. The pay

benchmarking indicated that Upper Tribunal roles had a higher market median equivalent (£255 a day compared to £208 a day) than First-tier Tribunal roles but a similar market upper quartile (£257 a day compared to £253 a day).

- 4.71 It is the MoJ's view that the Upper Tribunal job descriptions do not provide sufficient differentiation from the roles within the First-tier Tribunal to support a different fee level, and that there is no evidence of recruitment and retention issues in the Upper Tribunal which might justify a different rate. In our stakeholder discussions, judges from the Upper Tribunal and more senior judges thought it important to recognise the greater legal significance of the appellate function, and the need for judgments to set out the reasoning followed in decisions.
- 4.72 There was a recruitment exercise for 10 NLMs across both the Administrative Appeals and the General Regulatory Information Rights Chambers for NLMs in 2019-20. There were 123 applications, 24 were shortlisted and there were 10 recommendations. A more recent recruitment exercise for 19 members of the Employment Appeals Tribunal in 2021-22 saw 200 applicants but only 13 recommendations for appointment.
- 4.73 Moving the Upper Tribunal roles to a standard NLM fee of £285 a day would mean an increase for the Disclosure and Barring Service Appeals role, but a decrease for the other positions.²⁴ As with other specialist roles, if a significant recruitment shortfall develops, an Upper Tribunal role may be eligible for an enhanced fee. We do not consider that any of the Upper Tribunal roles currently meet the criteria for an enhanced fee.
- 4.74 Decisions made in the Upper Tribunal are, however, of greater legal significance, and there is evidence that the cases are both more complex and require more preparation. We note that judges in the Upper Tribunal are remunerated at a higher level to reflect this. Given the greater demands of the role, and the need to ensure the highest-quality candidates, we recommend that non-legal members in the Upper Tribunal are paid at a rate 10 per cent above the standard fee level for the First-tier Tribunal, or 10 per cent above the enhanced fee where this might be applicable.

Recommendation 11

We recommend that non-legal members in the Upper Tribunal are paid at 10 per cent above the standard fee (or the enhanced fee if applicable).

Non-legal members sitting as chairs

- 4.75 On occasion, NLMs are asked to hear cases alone, or act as the tribunal chair in the absence of a judge. We believe that the responsibility of this role should be reflected in the daily sitting fees.
- 4.76 In our consultation, we asked for responses to the principle that NLMs acting as a tribunal chair should be paid the same daily sitting fee as the tribunal judge. A significant majority (88 per cent) of the 297 individual respondents to this question agreed with the principle.
- 4.77 The MoJ also agreed that when the NLM is appointed to the role of chair, a role normally undertaken by the tribunal judge, there is merit in the NLM receiving a fee rate in line with the

²⁴ Fees paid to individual NLMs currently in post will not decrease due to the statutory protection for salaries paid to judicial office holders.

equivalent tribunal judge, as is currently the case. This was supported by the NLM associations and Chamber Presidents.

- 4.78 An NLM sitting as a tribunal chair is undertaking a distinctive role with greater responsibility and demands. We recommend that NLMs acting as a tribunal chair should be paid the same equivalent daily sitting fee as the tribunal judge.

Recommendation 12

We recommend that a non-legal member acting as a tribunal chair should be paid the same equivalent daily sitting fee as the tribunal judge.

Salaried (regional) medical members

- 4.79 Our terms of reference ask us specifically to look at the difference in responsibilities between salaried (regional) medical members and fee-paid medical members in the Social Entitlement and War Pensions and Armed Forces Compensation Chambers, and whether different rates of remuneration should be paid to these groups taking into account the day-to-day responsibilities of the roles.
- 4.80 In our Major Review, we recommended that salaried (regional) medical members in the Social Entitlement Chamber, who were at that time paid 80 per cent of the judicial group 7 salary, be placed into group 7. This was because the responsibilities of the post were comparable to those of the non-medical members of this Chamber.
- 4.81 In its response to the Major Review, the Government said that there was insufficient evidence to justify a change in salary for this role. It concluded that salaried (regional) medical members should retain their existing salary but be placed in the new salary group 8.
- 4.82 In the remit letter for the NLM review, the then Lord Chancellor said that the Government felt unable to act on this recommendation at the time because to do so would have led to significant disparity between the amounts paid to salaried and fee-paid medical members. Instead, it made a commitment to carry out a wider review of NLM fees.
- 4.83 This role is in group 8 now, with a salary of £91,217 in 2021-22, equivalent to a daily fee of £415. Group 7 had a salary of £114,793 in 2021-22, equivalent to a daily fee of £522. Chief medical members and regional surveyors are in group 7.
- 4.84 There are currently eight regional medical members and there has not been a recent recruitment exercise. The current job description says that:
- Salaried medically qualified members often sit on those cases identified as the most complex. In addition, they may be involved in triaging cases with a District Tribunal Judge or providing medical input into interlocutory decisions.
 - Decisions usually relate to substantial payments of benefit and awards may be lengthy, often for life, and the outcome impacts significantly on appellants, many of whom are the most socially disadvantaged in society.
 - Evidence may include details of complex medical conditions and evidence which gives rise to questioning on sensitive personal matters.

- 4.85 In terms of management and leadership, the job description states that the main role of the salaried medical member is sitting, but they also have important additional duties such as:
- Appraising the performance of medical members in the region, identifying training and development needs.
 - Providing support to the regional judge in ticketing fee-paid medical members to act as regional medical appraisers and providing induction and continuing appraisal training to these doctors.
 - Providing support and advice to medical members in their region.
 - Participating in judicial training, including the writing and delivery of training material.
 - Providing support to the chief medical member.
 - Conducting on-site supportive visits for newly appointed medical members. This will be at the location of the fee-paid medical members sitting and could be anywhere in the region.
- 4.86 The management and leadership requirements of this role suggest it is a larger role than most fee-paid medical members of tribunals (we note that, in 2014, an employment tribunal found that the role of regional medical members was qualitatively different from that of fee-paid medical members²⁵). Given the market evidence, we are recommending an enhanced daily sitting fee for medical members of £485. In light of the demands of the role, we recommend that salaried (regional) medical members are placed into salary group 7 (equivalent to £537 a day in 2022-23). It is very hard to justify their remaining in group 8, which would see a lower daily rate than for fee-paid medical members.

Recommendation 13

We recommend that salaried (regional) medical members are placed into judicial salary group 7.

Principles governing additional fees

- 4.87 Our terms of reference ask us to make observations on the consistency (including when and on what basis they are made) and quantum and other relevant issues in relation to the payment of additional fees – other than sitting fees – paid to NLMs. We consider that the daily sitting fee includes time for preparation and reading, attendance and writing up.
- 4.88 We understand that the MoJ has a review of additional fees underway, to cover both fees paid to legal members of tribunals as well as NLMs. However, we wish to set out some general principles for consideration of additional fees, based on the evidence we collected. Additional fees are clearly an important part of the remuneration package for many NLMs and cause a number of problems.
- 4.89 Differences in the payment of additional fees between tribunals are difficult to justify and cause significant resentment due to both perceived and real inequalities. Our survey of NLMs,

²⁵ The judgment held that 85 per cent of the work that the regional members did, that is sitting on appeals in a judicial capacity, was the same as the work done 100 per cent of the time by fee-paid medical members. It concluded that the differences were of such importance that the two groups should not be regarded as being engaged in broadly similar work.

Moultrie & others v MoJ (2015) Employment Appeal Tribunal. <https://www.gov.uk/employment-appeal-tribunal-decisions/dr-p-moultrie-and-others-v-the-ministry-of-justice-ukeat-0239-14-la>

the consultation responses, and discussions with the MoJ Advisory Group, show that there is an even higher level of unhappiness about the inconsistency in the additional fees available in some tribunals or for some roles than there is for sitting fees.

- 4.90 We note the evidence from our survey, which indicated that there was not a large variation in the proportion of time spent of preparation across different tribunals. This indicates that preparation accounts for between a third and a half of many NLMs' activity.
- 4.91 Therefore, there should be a principle that terms and conditions on additional fees are harmonised and implemented consistently across tribunals. We urge that conditions for the payment of additional fees, and an understanding of what the daily sitting fee encompasses, be communicated more clearly to tribunal members.
- 4.92 We also propose a general principle of reducing the number of occasions when additional fees need to be claimed, and the resulting administrative burden, by recompensing most NLM activities through the payment of daily sitting fees. This should include time spent on preparation and writing up beyond that included in a standard day, appraisals, agreed training (including short training modules), sessions significantly over-running, and any pre-hearing examination undertaken by medical members. We observe that when a tribunal sits for example, for six hours, an NLM has a further two hours available in the working day for preparation etc. We believe the levels we have recommended for the standard and enhanced rates can reduce the occasions when additional fees may be claimed.

Recommendation 14

We recommend the following principles when setting the policy for additional fees:

- **Conditions for the payment of additional fees should be harmonised and implemented consistently across tribunals wherever possible.**
- **Conditions for the payment of additional fees, and an understanding of what the daily sitting fee encompasses, should be clearly communicated to tribunal members.**
- **The number of occasions when additional fees need to be claimed should be reduced by remunerating most NLM activities through the payment of daily sitting fees.**

Cancellation fees

- 4.93 Short-notice cancellations are an inevitable part of the current tribunal system although they clearly cause considerable disruption and frustration for fee-paid tribunal members. There are two reasons to compensate tribunal members for this – for the time they may have spent on preparation, and for the loss of earnings due to the cancellation itself, and they have rather different implications. Our survey of current NLMs gives some useful information about the extent of preparation time spent before tribunal hearings.
- 4.94 We are aware that the current policy tries to balance reimbursing members where they have incurred a loss of earnings with the costs of compensating members for what are an unavoidably large number of short-notice cancellations. We support the principle that NLMs should be adequately compensated for short-notice cancellations. This should be achieved in a fair and transparent manner. We note that the current policy allows for payment of cancellation fees when certain criteria are met and that our recommended fee levels are consistent with the policy that cancellation fees are not automatically paid.

Concluding remarks

- 4.95 Our Review has followed a different approach to our 2008 Review, but we have arrived at broadly the same conclusions on the appropriate structure and level of non-legal member fees. If our recommendations had been implemented in 2008, we would now have a coherent and consistent approach to rewarding NLMs. We would urge the Government to implement this structure, even if that requires more than one year, to achieve consistency and fairness and enable an effective and functional system of non-legal members. The strongly-held perceptions of unfairness and inconsistency of reward among existing non-legal members cause unnecessary damage to morale in this important role. It is clear from our discussions with stakeholders during this Review that the expectations of non-legal members for reform are high and were raised when this Review was commissioned.
- 4.96 The fee structure we propose is sustainable over the medium term, especially in the light of other reforms to the NLM role. It also responds to changing labour market challenges, while meeting the remit requirement for consistency and simplification.

Appendix A

Remit letter from the Lord Chancellor to the SSRB Chair, 12 March 2021



The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Dr Martin Read
Chair, Senior Salaries Review Body
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

MoJ ref: 86260

12 March 2021

Dear Martin,

NON-LEGAL MEMBERS FEES REVIEW

I am writing formally to ask the Senior Salaries Review Body (SSRB) to undertake a review of the fees paid to Non-Legal Members (NLMs) in tribunals for whom I set the rate of remuneration, and the devolved tribunals in Northern Ireland. I very much value the SSRB's robust and independent advice and think that you are best placed to conduct a review of this type. This letter sets out the main points of the commission; the detail is captured in terms of reference, drawn up following helpful discussions with your officials.

Context

Fees for NLMs in the tribunals have not been reviewed since 2008 when the tribunals were brought into the unified courts and tribunals service. In contrast to legal members of tribunals, there is wide disparity in the daily sitting fee rates paid to NLMs.

You will recall that the SSRB's Major Review of the Judicial Salary Structure in 2018 recommended increasing the salary of Salaried (Regional) Medical Members sitting in the Social Entitlement Chamber. We felt unable to act on this recommendation at the time because to do so would have led to significant disparity between the amounts paid to salaried and fee-paid medical members. Instead, we made a commitment to carry out a wider review of NLM fees.

In light of this commitment and bearing in mind the length of time since NLM fees were last examined, I think it important that we commence the review now.

Remit

I invite the SSRB to consider, and make recommendations in respect of, the fees paid to NLMs in tribunals for whom I set the rate of remuneration, and devolved tribunals in Northern Ireland. I am particularly keen to achieve greater consistency in fees for NLMs fulfilling comparable roles and to ensure that fee rates are set at a level which enables the recruitment and retention of high-calibre individuals.

In consultation with the Senior President of Tribunals, I will convene a representative advisory group to advise on the evidence-gathering process for this review. When developing recommendations, the SSRB will want to take account of the evidence we provide on areas such as affordability, recruitment, retention and diversity of NLMs. I plan to submit written evidence to you by the summer.

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E <https://contact-moj.dsd.io/>
www.gov.uk/moj

102 Petty France
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SW1H 9AJ

The proposed timings of the NLM review mean that recommendations would be implemented in 2022/23 at the earliest, although we will of course need to have regard to the position on public sector pay at that point.

I would be grateful for your confirmation that the SSRB is content to carry out this review on the terms proposed.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

RT HON ROBERT BUCKLAND QC MP

Appendix B

Letter from the SSRB Chair to the Lord Chancellor, 23 March 2021



Office of Manpower
Economics

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The Right Honourable Robert Buckland QC MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

23 March 2021

Dear Robert,

Non-Legal Members Fees Review

Thank you for your letter of 12 March formerly asking the Senior Salaries Review Body (the SSRB) to undertake a review of the fees paid to Non-Legal Members (NLMs).

I am writing to confirm that the SSRB is happy to carry out this review in line with your brief.

We will aim to deliver our report in January 2022. However, you will appreciate that our timetable depends on when we receive the evidence from the Department. Our secretariat will continue to liaise with the Department and the Judicial Office on this issue.

With all good wishes.

*Yours
Martin*

Dr Martin Read CBE
Chair, Senior Salaries Review Body

CC: Sharon Witherspoon, SSRB member

Appendix C

Terms of reference: Non-legal member fees review

Background

1. Fees for non-legal members (NLMs) in the tribunals were last reviewed in 2008 as part of the major overhaul of the Tribunals Service following the implementation of the Tribunals, Courts and Enforcement Act 2007. Fees for NLMs in devolved tribunals in Northern Ireland have never been subject to over-arching review. Fee-paid NLMs were out of scope of the Senior Salaries Review Body's (SSRB) *Major Review of the Judicial Salary Structure* in 2018.
2. The rate of fees paid to individual NLMs will not decrease as a result of this review due to the statutory protection for salaries paid to judicial office holders in the courts, which is applied, by convention, to tribunal judicial office holders, given the importance of judicial independence from the Executive.

Purpose

3. The objectives of the NLMs' fees review are to:
 - a. review whether the current daily sitting fee rates (and salaries) are correctly set and appropriate;
 - b. review the consistency in the rate of remuneration paid to NLMs for comparable work across the different tribunals, and provide options to achieve greater consistency;
 - c. assess the extent of any issues with recruitment and retention of NLMs and examine the causes and impact of any issues identified;
 - d. make recommendations on the appropriate salary or fees for NLMs in scope of the review in light of evidence received and the SSRB's judgement;
 - e. make observations on the consistency (including when and on what basis they are made) and quantum and other relevant issues relating to the payment of additional fees²⁶ paid to NLMs; and
 - f. make any other relevant recommendations as appropriate in light of the information received and the SSRB's judgement.
4. In reaching its recommendations, the SSRB must consider:
 - a. affordability, and legal and operational constraints;
 - b. the relative responsibilities, experience, qualifications and skills of different NLM roles;
 - c. the need to recruit, retain and motivate sufficient high-quality NLMs;
 - d. the rates of daily sitting fees / salary paid to comparable NLM roles in the unified tribunals and to other relevant external market comparators for NLM roles where there is a specific recruitment or retention issue, where appropriate;

²⁶ For example, medical examinations, preparation time, writing up etc (see Appendix B for list).

- e. the impact of any proposals on diversity and inclusivity, having regard to obligations under the Equality Act 2010 and Northern Ireland Act 1998;
- f. NLMs now receive pension benefit (this is under consideration for devolved Northern Ireland NLMs), and this should be taken into account.

Scope

Tribunals and NLMs

- 5. A list of all tribunals in scope is set out below.
- 6. NLMs in the devolved tribunals Northern Ireland are in scope of this review, whilst those in the devolved tribunals of Wales and Scotland are out of scope, in line with the stated wishes of the Devolved Administrations.
- 7. NLMs in tribunals which fall outside of the unified tribunals structure or which are sponsored by other government departments, other than those listed at paragraphs 5 and 6, are not in scope of this review.
- 8. Valuer chairs in the Property Chamber of the First-tier Tribunal are out of scope as they receive the same pay and benefits as a judge in that Chamber, despite being described as “other member” in the Tribunal, Courts and Enforcement Act 2007. For the avoidance of doubt, fee-paid valuer members are in scope of this review.
- 9. Surveyor members, Upper Tribunal (Lands) are out of scope of this review as their pay was reviewed in the SSRB’s Major Review. Based on those recommendations, this office moved to salary group 6.1 with effect from 1 October 2019 (subsequently to 5.1 following the 2020 annual review).
- 10. Although out of scope for assessing appropriate remuneration, the SSRB may have regard to the responsibilities of these two NLM roles (valuer chairs and surveyor members) if it considers it appropriate to do so when considering consistency across the tribunals.
- 11. The non-legal chair in the Criminal Injuries Compensation Appeal Tribunal can be authorised to act as a chair of the panel, even when a legal member is present. The SSRB will need to consider the appropriate remuneration for NLMs both as a panel member and as a chair.
- 12. A full list of all NLM offices in scope of this review is set out below.

Specific issues

- 13. Within the scope of the review as set out above, the SSRB should also consider the following specific issues:
 - a. the difference in responsibilities between salaried (regional) medical members and fee-paid medical members in the Social Entitlement and War Pensions and Armed Forces Compensation Chambers, and whether different rates of remuneration should be paid to these groups taking into account the day-to-day responsibilities of their roles;
 - b. the impact of paying a higher rate to medical members in Social Security and Child Support (SSCS) who sit for 20 days or more per financial year on recruitment, retention and morale, and whether this practice should continue.
- 14. The SSRB should also have regard to the potential impact of HMCTS reform on the NLM role.

Governance

The Ministry of Justice

15. Remuneration for non-devolved judicial office holders, including NLMs, which are determined by the Lord Chancellor.
16. The relevant policy team within the Ministry of Justice (MoJ) will be responsible for setting the remit and evidence-gathering in consultation with the SSRB.
17. The MoJ team will convene an officials-led group consisting of HMCTS, Judicial Office and a representative from the Senior President of Tribunals' office to help compile the data and other evidence required for the review.
18. MoJ, working with Judicial Office, the SPT's office and the Northern Ireland (NI) Devolved Administration, will lead on compiling evidence for the review. This will comprise a joint data pack and additional evidence pack. Evidence will be approved by the Lord Chancellor and the SPT before submission to the SSRB.
19. MoJ, (and the NI Devolved Administration for NI devolved tribunals) will produce its own written evidence submission for the SSRB representing the views of the Department on the issues to be addressed within the review and proposals.
20. MoJ will publish its response to the SSRB's recommendations. This will have been agreed by the Lord Chancellor and cross-government prior to publication.
21. MOJ will consider recommendations by taking into account, the evidence, operational viability, legal and equalities considerations and other relevant factors in the context of the prevailing public sector pay policy. This may make it necessary to delay or stage some or all elements of implementation.

Judicial Office

22. Judicial Office is responsible for co-ordinating judicially-agreed role descriptions for all posts in scope of this Review (except posts in devolved tribunals for which the relevant Devolved Administration will be responsible).
23. Judicial Office will also assist the senior judiciary in producing the joint data pack and subsequent judicial written evidence submission for the SSRB, which will represent the views of the senior judiciary on the issues to be addressed within the Review.

Northern Ireland

24. Remuneration for devolved judicial office-holders in Northern Ireland, including NLMs, is determined by three Northern Ireland departments: the Department of Justice (DoJ); the Department for the Economy; and the Department for Communities. The Northern Ireland Judicial Appointments Commission (NIJAC) is responsible for appointing some NLMs and departments are responsible for others.
25. Decisions on the Northern Ireland administration's response to the Review's recommendations will be made independently of those made by the Lord Chancellor in relation to non-devolved NLMs.
26. DoJ will publish the Northern Ireland response to the Review recommendations. This will have been agreed by the three relevant departments in Northern Ireland prior to publication.

Advisory Group

27. An Advisory Group will be convened by the MoJ to provide advice in the gathering of evidence for the review.
28. The chairs and members will be appointed to the Advisory Group by the Lord Chancellor, in consultation with the Senior President of Tribunals.
29. The composition of the Advisory Group will be representative of a range of different NLM roles, and other relevant stakeholders. Members of the Advisory Group must be capable of reflecting objectively on evidence and data.
30. The Advisory Group should consist of:
 - a. A judicial representative and an MoJ official (joint chairs)
 - b. 1 NLM of the First-tier Tribunal
 - c. 1 NLM of the Upper Tier Tribunal
 - d. 1 NLM of the Employment Tribunal
 - e. 1 Medical Member
 - f. 1 Disability Member
 - g. 1 Valuer Member
 - h. 2 NLMs from NI Tribunals
 - i. 1 Legal Member from either Upper or First-tier Tribunal
 - j. 1 Legal Member from outside tribunals
 - k. Sharon Witherspoon (SSRB, ex officio)

Note: Although not members of the Advisory Group, officials from Ministry of Justice, Judicial Office or Office of Manpower Economics may attend as appropriate and with the agreement of the joint chairs.

31. Fee-paid members of the Advisory Group will be paid for their time.
32. The Advisory Group will provide advice during the review to inform and shape the evidence base. Frequency of meetings, the time commitment expected of Advisory Group members and the rates at which fee-paid members will be remunerated for their time will be agreed by the MoJ and the SSRB in consultation with the SPT.

Senior Salaries Review Body

33. MoJ will commission the SSRB to undertake this Review.²⁷

²⁷ Terms of reference for the SSRB can be found at: <https://www.gov.uk/government/publications/terms-of-reference-for-the-senior-salaries-review-body>

- 34. The SSRB is responsible for making recommendations and observations to Government which fulfil the Review’s purpose and objectives as set out in paragraphs 3-4 above.
- 35. As part of its normal way of working, the SSRB will ensure there is an opportunity for judicial associations, the SPT’s NLM working group, individual NLMs and other relevant stakeholders to submit evidence directly to the SSRB to be considered as part of its deliberations.

Miscellaneous

- 36. The MoJ cannot guarantee that there will be no tax implications as a result of any changes introduced in response to this Review. The twin priorities for the MoJ are to ensure the effective use of public money and ensure that NLMs are appropriately remunerated for the work they do.
- 37. The MoJ will conduct an Equality Impact Analysis of any proposed changes to ensure the policy is consistent with the Lord Chancellor’s statutory equality duties and supportive of the Government’s aim of promoting judicial diversity.

Timings

- 38. The Lord Chancellor will write to the SSRB to formally commission the review.
- 39. Once the SSRB has accepted the Lord Chancellor’s commission, the evidence phase will commence. This is expected to be completed by June 2021.
- 40. The SSRB will draft a report which is expected to be submitted to the MoJ and the relevant Northern Ireland departments in January 2022 (subject to evidence delivery).
- 41. We anticipate that MoJ will respond to the SSRB’s report by March 2022.

List of non-legal members in scope of the review

- 42. The tribunals and non-legal members set out in the table below are in scope of this review.

Tribunal	Chamber	Jurisdiction	Type of non-legal member
Upper Tribunal	Administrative Appeals Chamber	Disclosure and Barring Service Appeals	Fee-paid other member
		Information Rights	Fee-paid other member
		Traffic Commissioner Appeals	Fee-paid other member
	Immigration and Asylum Chamber	-	Fee-paid other member
	Lands Chamber	-	Surveyor member
	Tax and Chancery Chamber	-	Fee-paid tax member
First-tier Tribunal	General Regulatory Chamber	Estate Agents	Fee-paid other member
		Immigration services	Fee-paid other member
		Environmental and Nitrate Vulnerable Zones	Fee-paid specialist (Hydrologist) member
			Fee-paid other member

Tribunal	Chamber	Jurisdiction	Type of non-legal member
		Transportation	Fee-paid other member
		Charity	Fee-paid other member
		Information Rights	Fee-paid other member
	Health, Education & Social Care Chamber	Care Standards	Fee-paid other member
		Primary Health Lists	Fee-paid medical member
			Fee-paid other member
		Mental Health	Fee-paid medical member
			Fee-paid other member
		Special Educational Needs and Disability	Fee-paid specialist member
	Immigration and Asylum Chamber	-	Fee-paid other member
	Property Chamber	Residential Property	Fee-paid valuer member
			Fee-paid professional member
			Fee-paid other member
		Agricultural Land and Drainage	Fee-paid other member
	Social Entitlement Chamber	Criminal Injuries Compensation	Fee-paid medical member
			Fee-paid financial member
			Fee-paid disability member
			Fee-paid other member
		Social Security and Child Support	Chief medical member
			Salaried (regional) medical member
			Fee-paid medical member
			Fee-paid financial member
			Fee-paid disability member
	Tax Chamber	-	Fee-paid tax member
	War Pensions and Armed Forces Compensation Chamber	-	Fee-paid medical member
			Salaried medical member
			Fee-paid service member
Employment Tribunal (England and Wales)	-	-	Fee-paid other member
	-	Reserve Forces Appeal Tribunal	Fee-paid other member
Employment Tribunal (Scotland)	-	-	Fee-paid other member
Employment Appeals Tribunal	-	-	Fee-paid other member

Tribunal	Chamber	Jurisdiction	Type of non-legal member
Gender Recognition Panel	-	-	Fee-paid medical member
Proscribed Organisation Appeal Commission	-	-	To be confirmed
Special Immigration Appeals Commission	-	-	Fee-paid other member
National Security Certificate Appeals Tribunal (NI)	-	-	Fee-paid other member
Pensions Appeal Tribunal Northern Ireland	-	-	Fee-paid other member
Pensions Appeal Tribunal for Scotland	-	-	Fee-paid other member
Lands Tribunal (Scotland)	-	-	To be confirmed
<i>Northern Ireland devolved tribunals</i>			
Care Tribunal	-	-	Fee-paid lay member
Charity Tribunal	-	-	Fee-paid ordinary member
Criminal Injuries Compensation Tribunal	-	-	Fee-paid medical member
			Fee-paid ordinary member
Fair Employment Tribunal and Industrial Tribunal	-	-	Fee-paid panel member
Review Tribunal	-	-	Fee-paid medical member (consultant)
			Fee-paid medical member (GP)
			Fee-paid experienced member
NI Valuation	-	-	Fee-paid valuer member
			Fee-paid ordinary member
Rent Assessment Panel	-	-	Fee-paid chair
			Fee-paid ordinary member
SENDIST	-	-	Fee-paid ordinary member

43. The following non-legal members/tribunals are out of scope of this review:

- County Court Assessors including Lay Assessors from the Employment Tribunal as this is not a judicial appointment but instead a person appointed by the court to assist in the determination of the proceedings.
- Valuer chairs of the First-tier Tribunal Property Chamber and Surveyor Members, Upper Tribunal (Lands) as they were considered by the SSRB in their recent *Major Review of the Judicial Salary Structure*.

- Assessor for appeals against decisions of Re-instatement Committees as these assessors hold a legal qualification.
- Appointed persons sitting on Gangmaster Licensing Appeals as these office holders are appointed by the Secretary of State for the Department for Environment, Food and Rural Affairs.

List of additional fees

44. Additional fees paid to NLMs in scope of this review, include (in no particular order and not an exhaustive list):
- a. Cancellation
 - b. Preparation/reading time
 - c. Writing up of determination
 - d. Erroneous attendance
 - e. Appraiser/appraisee
 - f. Additional travel claims separate to those claimable under the travel and expenses policy
 - g. Session over-running
 - h. Pre-hearing examination fees
 - i. Training
 - j. Any other fees non-legal members are entitled to claim for not listed above.

Appendix D

Ministry of Justice Advisory Group

The MoJ convened its own Advisory Group for the early stages of the Review, to provide advice on the evidence collection and its implications. The SSRB took part as an ex officio member and found the advice helpful and thought-provoking.

Advisory group membership

Advisory Group role	Name
Judicial chair	Judge Sutherland-Williams (President of the Health, Education, and Social Care Chamber)
MOJ chair	Simon Masterson (Deputy Director of Judicial Pay and Pensions)
NLM of the First-tier Tribunal	Pam Charlwood
NLM of the Upper Tier Tribunal	Jo Neill
NLM of the Employment Tribunal	Gillian Fleming
Medical member	Howard Freeman
Disability member	Diane Hill
Valuer member	Dallas Banfield
NLM NI tribunal	Colin Kennedy
NLM NI tribunal	Alison Murphy
Legal member tribunals	Judge Monk/Judge O'Connor (rotational)
SSRB (ex officio)	Sharon Witherspoon

Note: Although not members of the Advisory Group, officials from the Ministry of Justice, Judicial Office and OME attended meetings as appropriate and with the agreement of the joint chairs.

Appendix E

Stakeholders met as part of the Review

Ministry of Justice
Department of Justice in Northern Ireland
Judicial Office
Co-chair of Advisory Group – Judge Mark Sutherland Williams
Senior President of Tribunals – Sir Keith Lindblom
Selected NLM associations
Chamber Presidents – President of the First-tier Property Chamber, President of the Employment Tribunals (England and Wales), President of the Social Entitlement Chamber, President of the Scottish Employment Tribunals, Deputy President of the Scottish Employment Tribunals

Appendix F

Survey of non-legal members

1. We ran an online survey of non-legal members from May to June 2021 and received responses from 1,239 individuals. The survey had a response rate of around 40 per cent (41 per cent in Northern Ireland). The results should be regarded as indicative.
2. The survey was communicated to non-legal members through a judicial intranet notice on 19 May 2021, with a further notice on 3 June 2021. In addition, the survey was communicated in the Tribunal Diary newsletter which is sent to all tribunal judiciary (judges and non-legal members).
3. Unless otherwise stated, information summarised below presents the percentage of active declarations. Therefore, when referring to the percentage of responses/respondents, the tables present the percentage of responses/respondents for each category excluding those who have not responded.

Non-legal member chamber and jurisdiction

4. The survey was broadly representative of the distribution of NLMs by tribunal and chamber across England, Wales, Scotland and Northern Ireland (tables F.1 and F.2). This was calculated by comparing responses to Ministry of Justice data on headcounts.
5. The most represented chamber/tribunal of England, Wales and Scotland was the Social Entitlement Chamber with 37.5 per cent of active responses.

Table F.1: Respondents by chamber/tribunal of England, Wales and Scotland

Chamber/tribunal	% of responses
Administrative Appeals Chamber	1.0%
Tax Chancery Chamber	0.4%
General Regulatory Chamber	1.5%
Health, Education and Social Care Chamber	24.0%
Property Chamber	4.4%
Social Entitlement Chamber	37.5%
Tax Chamber	1.6%
War Pensions and Armed Forces Compensation Chamber	3.7%
Employment Tribunal (England and Wales)	20.2%
Employment Tribunal (Scotland)	2.4%
Pension Appeal Tribunal (Scotland)	0.8%
Other chambers*	2.3%

Note: Includes double ticketing i.e., respondents may work in more than one chamber/tribunal.

*Other chambers consist of multiple chambers which had a small number of respondents and those who chose the 'other/not listed (please specify)' option.

Table F.2: **Respondents by tribunal in Northern Ireland**

Tribunal	% of responses
Criminal Injury Compensation Appeals Panel	12.5%
Industrial Tribunals and Fair Employment Tribunal	18.8%
Review Tribunal	15.6%
SENDIST	7.8%
Other chambers*	45.3%
Of which: Northern Ireland Appeals Tribunals**	34.4%

Note: Includes double ticketing i.e., respondents may work in more than one tribunal.

*Consists of multiple chambers which had a small number of respondents and responses contained within the 'other/not listed (please specify)' option.

**This has been derived from the 'Other chambers' category.

6. Survey respondents reported that they sat in a variety of jurisdictions (see table F.3): 44.0 per cent of respondents worked in Social Security and Child Support, followed by 20.5 per cent in Mental Health. The other/not listed category was overwhelmingly comprised of NLMs sitting on the Employment Tribunal.

Table F.3: **Respondents by jurisdictions in England, Wales and Scotland**

Jurisdiction	% of responses	Jurisdiction	% of responses
Care Standards	1.4%	Primary Health Lists	0.9%
Charity	0.4%	Reserve Forces Appeal Tribunal	1.9%
Criminal Injuries Compensation	2.2%	Residential Property	4.9%
Disclosure and Barring Service Appeals	0.6%	Social Security and Child Support	44.0%
Information Rights	0.8%	Special Educational Needs and Disability	3.4%
Mental Health	20.5%	Taxation	1.8%
Other/not listed	17.3%		

Note: Includes double ticketing i.e., respondents may work in more than one jurisdiction.

7. When asked 'In how many jurisdictions do you sit?', four in five NLMs responded with one jurisdiction and one in five NLM responded that they spanned two or more jurisdictions.

Table F.4: **Number of jurisdictions in which survey respondents sit**

Number of jurisdictions	% of respondents
One	80.9%
Two	14.2%
Three	3.0%
Four	0.7%
Other	1.3%

8. NLMs were most likely to be working in London (15.9 per cent), followed by the South East (13.2 per cent). Around 5 per cent of respondents reported that the majority of their duties are carried out in a national jurisdiction and therefore had no regular sitting centre.

Table F.5: **Regions in which respondents carry out the majority of NLM duties**

Region	% of respondents	Region	% of respondents
North East	7.6%	South East	13.2%
North West	9.6%	South West	9.6%
Yorkshire and the Humber	4.9%	Scotland	8.0%
East Midlands	5.9%	Wales	3.7%
West Midlands	8.5%	Northern Ireland	4.9%
East of England	3.5%	National jurisdiction/ no regular sitting centre	4.6%
London	15.9%		

Non-legal member personal characteristics and qualifications

9. The personal characteristics of respondents were also representative of the total headcount of NLMs by sex, age, ethnicity, and disability status. The most common characteristics of NLMs are to be aged between 55 and 64 years old (43.5 per cent), female (52.4 per cent), of white ethnicity (85.6 per cent), and have not declared a disability.

Table F.6: **Personal characteristics of survey respondents**

Age	% of respondents	Ethnic group	% of respondents
Under 44	5.8%	White	85.6%
45-54	16.3%	Asian or Asian British	6.9%
55-64	43.5%	Black, African, Caribbean or black British	1.4%
65-69	22.0%	Mixed or multiple ethnic groups	1.4%
70 or above	10.9%	Other ethnic group	1.8%
Prefer not to say	1.4%	Prefer not to say	3.0%
Disability		Sex	
Yes	16.2%	Male	46.2%
No	81.1%	Female	52.4%
Prefer not to say	2.8%	Prefer not to say	1.4%
Member with experience of disability			
Yes	26.7%		
No	73.3%		

10. Almost two in three NLMs have an undergraduate degree. One in three NLMs have a master's degree and almost four in five NLMs have professional qualifications. More than half of respondents had more than three qualifications.

Table F.7: **Qualifications held by non-legal member survey respondents**

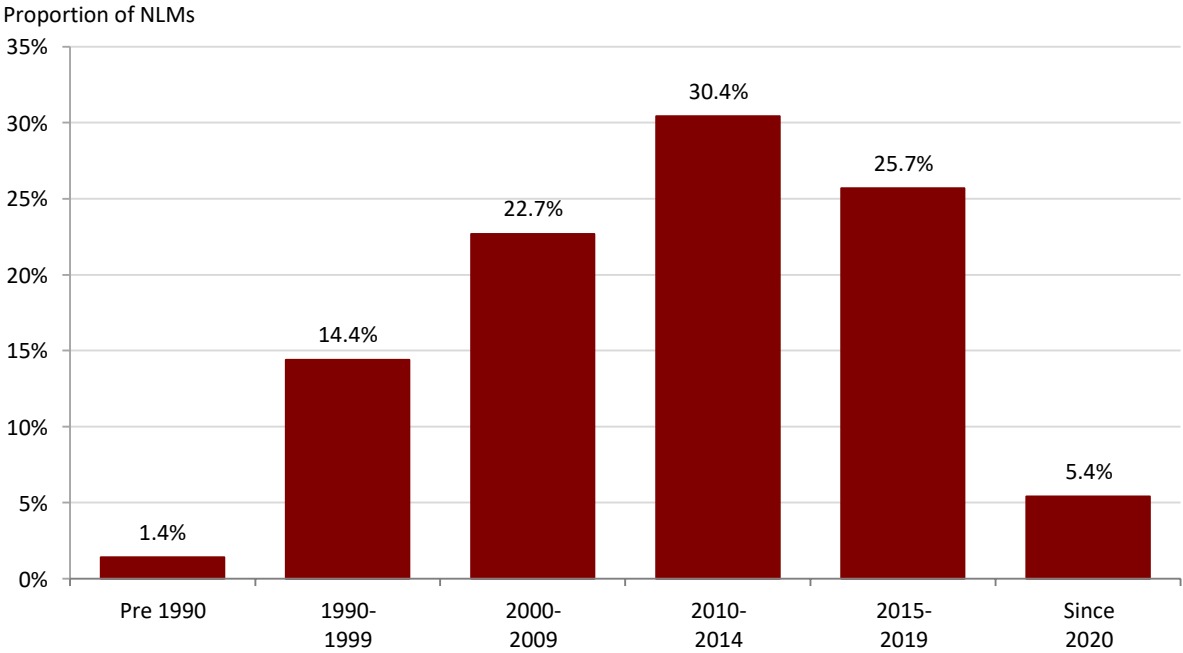
Qualification level	% of respondents
GCSE or equivalent	65.2%
A-Level or equivalent	64.6%
Undergraduate degree	64.2%
Master's degree	34.5%
Doctoral degree	7.3%
Professional qualifications (e.g. medical qualifications, etc.)	77.4%

11. Three in four NLMs believe that being part of a relevant profession/having particular work experience was necessary for them to qualify for their NLM post. Almost one in two NLMs believe that holding as specified professional qualification was necessary for them to qualify for their NLM post.

Table F.8: **Pre-requisites for non-legal members to qualify for their post**

Pre-requisite	% of respondents
Holding a specified professional qualification	45.8%
Being part of a relevant profession/having particular work experience	76.2%
Other life circumstances	23.7%
Holding a specified professional qualification and having particular work experience	29.5%

Figure F.1: **Year of appointment of non-legal members**

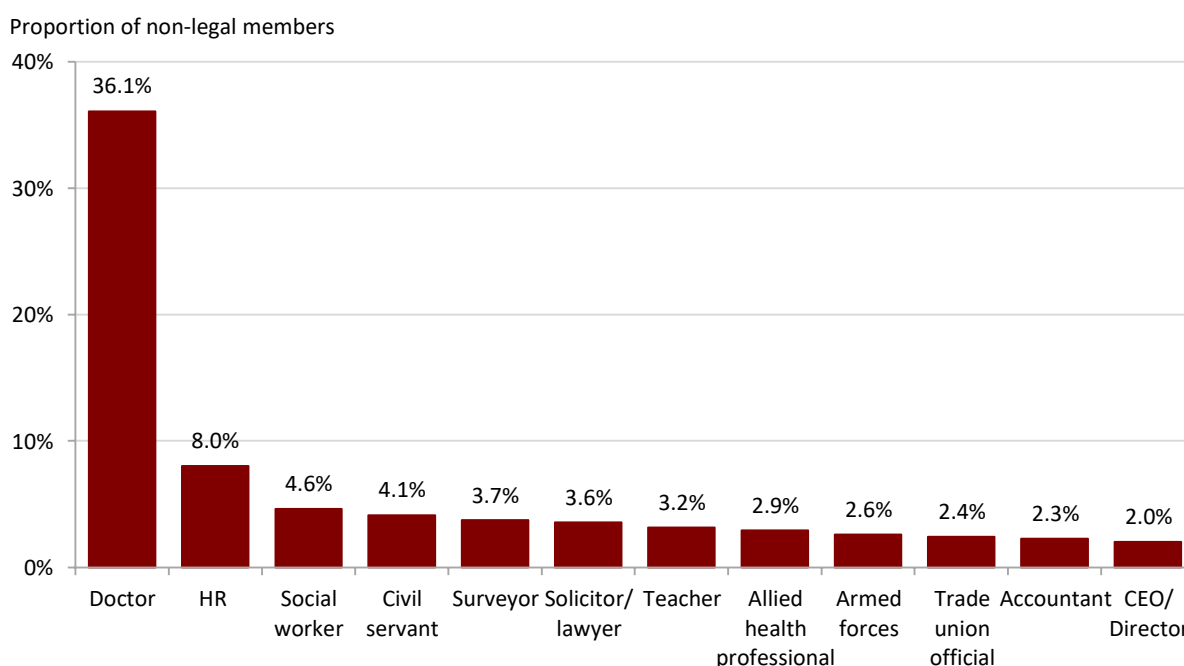


12. One in three NLMs were appointed to their post between 2010 and 2014, with a further one in four NLMs appointed to their post between 2015 and 2019. Just over one in twenty NLMs were appointed to their post in 2020 or 2021.

Pre-appointment earnings

13. Prior to becoming an NLM, respondents worked in various occupations of which the most common was doctor (36.1 per cent), with the second largest occupation being HR (8.0 per cent) as can be seen in figure F.2. Survey respondents reported that they worked in over 30 different occupations, and 3.2 per cent reported they were not in paid work immediately prior to becoming an NLM.

Figure F.2: **Main occupation of respondents prior to appointment**

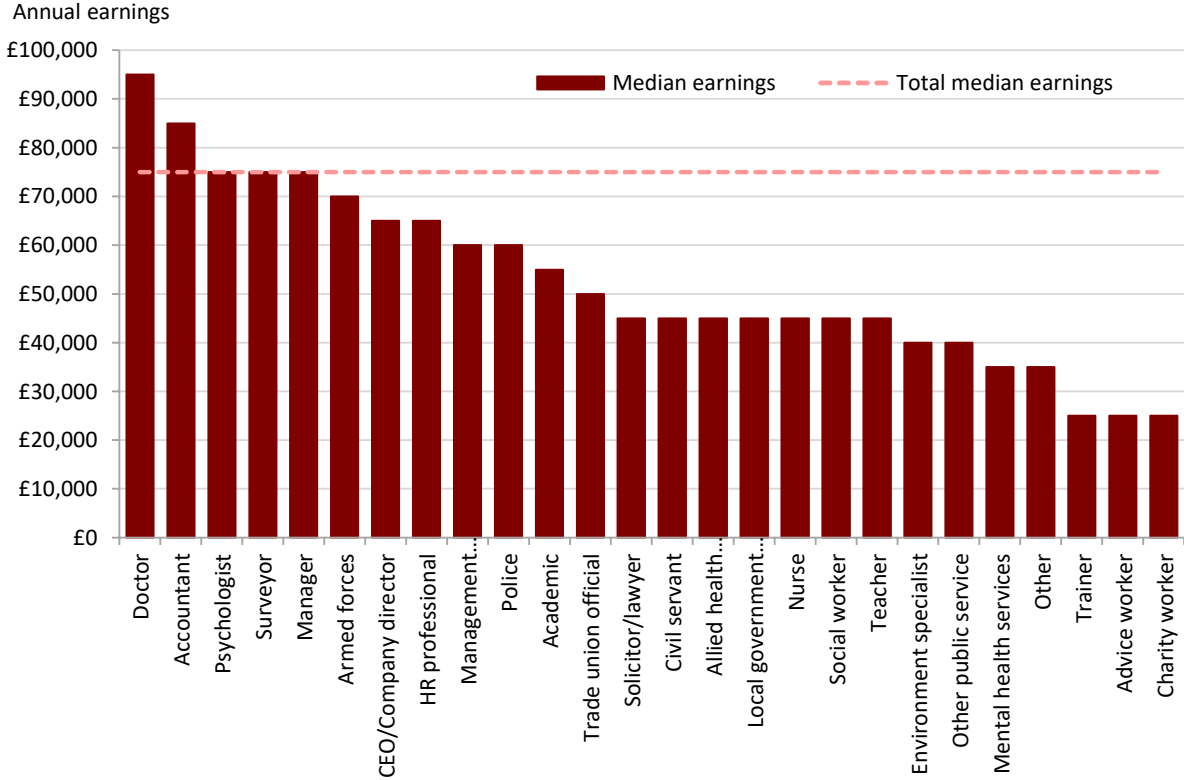


14. Survey respondents reported their earnings within a year immediately prior to their appointment as an NLM before tax deductions. Due to decreasing reliability of the data, we only use pre-appointment earnings data for those who were appointed in 2010 or after. The median pre-appointment earnings of respondents who were appointed in 2010 or after were £75,000. Doctors reported the highest median earnings of £95,000 and charity workers/advice workers/trainers reported the lowest median earnings of £25,000.

Table F.9: **Employment status of respondents alongside their non-legal member role**

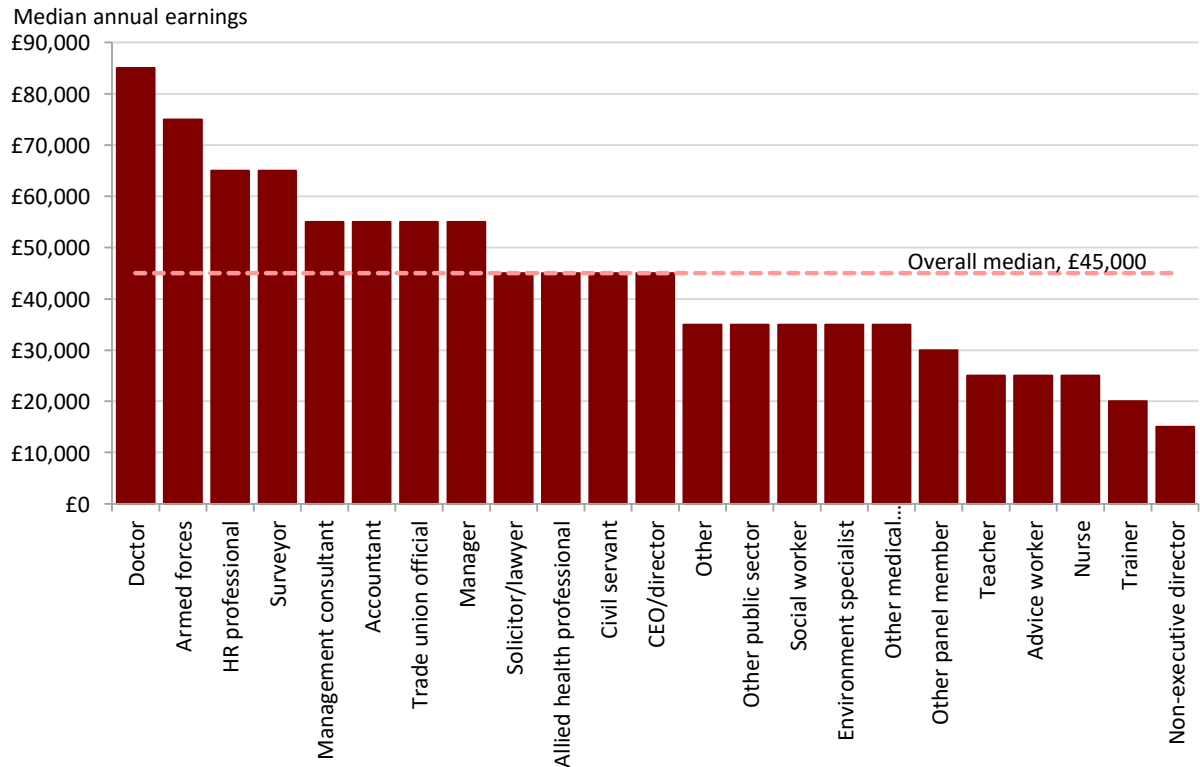
Type of employment	% of respondents
Full-time work/self-employment	17.1%
Part time work/self-employment	34.2%
Not in any paid work other than NLM role	19.7%
Retired from work/self-employment	29.0%

Figure F.3: Earnings of respondents prior to becoming a non-legal member



Note: Includes full and part-time earnings. Only includes NLMs appoint in or since 2010.

Figure F.4: Additional earnings of respondents alongside their non-legal member role



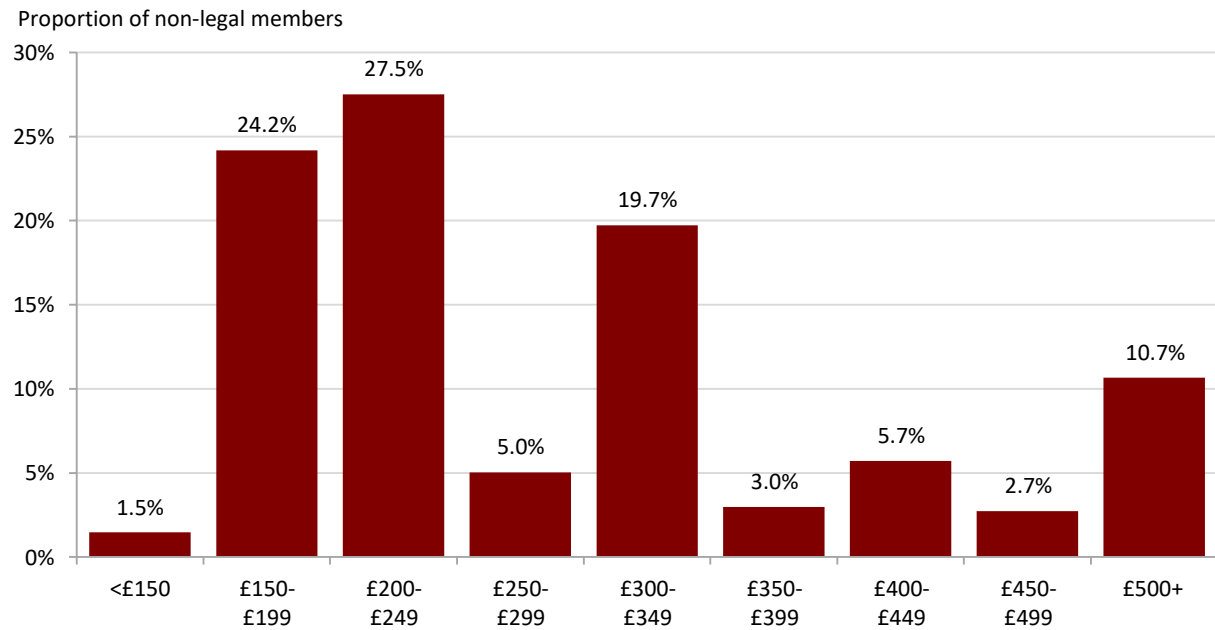
Note: Includes full and part-time earnings.

15. Respondents reported median additional earnings of £45,000. The highest additional earnings were reported by doctors of £85,000 and the lowest earnings were reported by non-executive directors of £15,000 (figure F.4).

Daily sitting fees

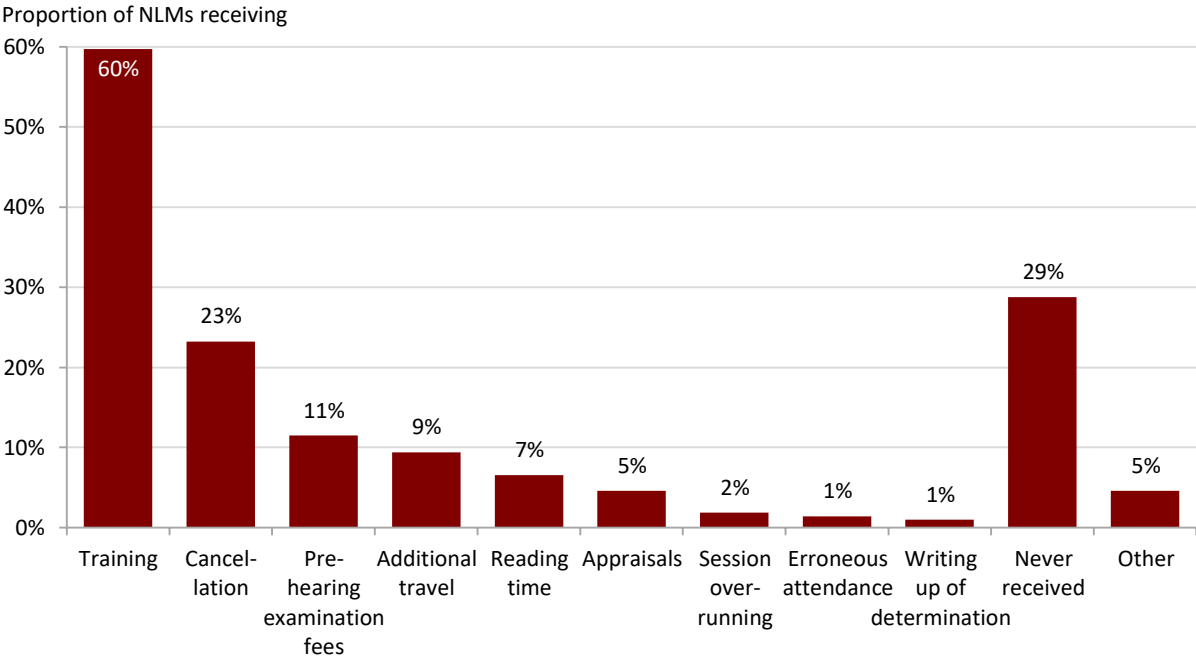
16. Three-quarters (76 per cent) of respondents reported that their current daily sitting fee was between £150 and £349 (figure F.4). Almost 11 per cent of respondents reported that their daily sitting fee was over £500.

Figure F.5: **Daily sitting fee of survey respondents**



17. In addition to the daily sitting fee, 59.7 per cent of respondents reported that they had received fees for training, 23.2 per cent had received fees from cancellations and 28.8 per cent had never received any additional fees.

Figure F.6: **Other fees received by respondents in addition to daily sitting fee**



Hearing hours

18. The survey asked respondents, based on their previous five sittings, how many hours were spent on pre-hearing work, how many hours were spent in hearings and how many hours were spent on post-hearing work (table F.10)

Table F.10: **Median hearing hours**

Type of hearing work	Median hours
Pre-hearing	3 hours
Hearing	6 hours
Post-hearing	0.5 hours
Total	10 hours

Motivation and morale

- 19. Most respondents strongly agree that their work as an NLM was important for the administration of justice and allowed them to make a difference to decisions using their non-legal knowledge and expertise.
- 20. Over two in three respondents disagreed that their daily sitting fee as an NLM reflected the time and commitment necessary to make robust decisions.

Table F.11: **Motivation and morale**

My work as an NLM is important for the administration of justice	% of respondents
Strongly agree	93.9%
Somewhat agree	5.5%
Other	0.6%
My work as an NLM allows me to make a difference to decisions using my non-legal knowledge and expertise	
Strongly agree	93.4%
Somewhat agree	5.9%
Other	0.7%
My daily sitting fee as an NLM reflects the time and commitment necessary to make robust decisions	
Strongly agree	9.2%
Somewhat agree	13.7%
Neither agree nor disagree	9.2%
Somewhat disagree	33.3%
Strongly disagree	34.6%

Note: Other comprises the categories: 'Neither agree nor disagree'; 'Somewhat disagree'; and 'Strongly disagree' where population sizes are too small to be reported separately.

Future plans

21. Almost four in five NLMs responding to the survey had no current plans to retire. Almost one in three NLMs had no current plans to cut back or stop other work, but for over 40 per cent of respondents, this was not applicable (table F.12).

Table F.12: **Future plans**

Which of the below best describes your plans for continuing your NLM role in the future?	% of respondents
No current plans to step down/retire	79.4%
Plan to step down/retire within one to three years	15.6%
Plan to step down/retire within one year	5.0%
If you are still in paid work other than your NLM role, which of the below best describes your plans for the next few years?	
I have no current plans to cut back or stop other work	34.3%
I plan to cut back but not stop other work within one to three years	9.2%
I plan to cut back but not stop other work within the next year	3.5%
I plan to stop other paid work within one to three years	6.5%
I plan to stop other paid work within one year	4.2%
Not applicable	42.2%

Appendix G

Consultation

1. We ran a consultation on non-legal member fees between 3 February 2022 and 14 April 2022. This appendix is a summary of the results and main points identified from the feedback.

What we asked

2. The consultation consisted of 10 questions, six based on the underlying principles of the Review with multiple choice options and free text boxes, two concerning additional fees with free text boxes, and two regarding recruitment and retention with free text boxes.

3. The questions were as follows:

Question 1: Do you agree with principle 1 that NLM daily sitting fees should not exceed those of the tribunal judge?

Question 2: Do you agree with principle 2 that NLMs acting as a tribunal chair should be paid the same daily sitting fee as the tribunal judge?

Question 3: Do you agree with principle 3 that fee rates should not be differentiated by the number of sitting days undertaken over the course of a year?

Question 4: Do you agree with principle 4 that the geographic location of the tribunal should not affect NLM fee rates?

Question 5: Do you agree or disagree that all NLMs should receive the same base rate but with provision for a small number of levels of supplementary sitting fee rates for roles requiring professional qualifications or expertise where recruitment and labour market evidence suggests they are needed?

Question 6: In your view, are there compelling reasons for NLMs sitting on Upper Tribunals to receive a higher daily sitting fee?

Question 7: One possibility is that the daily sitting fee could include some recognition of basic 'preparation time', leaving additional fees for a smaller number of circumstances when they are warranted. This was an issue also raised by the SSRB 2008 Review. What is your view on this?

Question 8: In your view, what would be an adequate compensatory mechanism to reflect the impact of short-notice cancellations (of 48 hours or less)?

Question 9: What changes other than changes to fees could be made to make the role of an NLM more attractive?

Question 10: How could the role of an NLM be made more attractive to younger or more diverse applicants?

Scale of responses

- 4. The consultation received 307 structured responses that completed the consultation response form available on gov.uk²⁸ and seven further supporting e-mails and letters. Of the structured responses, 298 were from individuals and nine were from organisations.
- 5. Not all of those that responded by e-mail directly answered the consultation questions, but all responses have been considered in the summary below.
- 6. Respondents to the consultation made a total of 1,915 additional comments.

Summary of responses

- 7. This appendix highlights the most prevalent issues raised but is not an exhaustive commentary on every response received.
- 8. The summary of multiple-choice questions 1 to 6 below presents the percentages of all known responses (where a respondent has made an active declaration of agree, disagree or unsure) to each question. The maximum non-response to any of these questions was 4 per cent of the total responses. The totals may not sum due to rounding.

Question 1: Do you agree with principle 1 that NLM daily sitting fees should not exceed those of the tribunal judge?

Response	Individuals	Organisations
Agree	88%	100%
Disagree	6%	0%
Unsure	6%	0%
Total	100%	100%

- 9. Around nine in 10 respondents agreed that daily sitting fees should not exceed those of the tribunal judge.
- 10. Many respondents commented on how judges have greater responsibilities which includes the decision write-up and statement of reasons. Additionally, comments reflected on how judges require skills, training and experience acquired over years of practice and understand the law, rules of evidence, appropriate procedure and managing the conduct of tribunal hearings.

There has to be a ‘leader’ in any group – that is the judge – who should be the highest or higher paid.
Respondent to consultation

- 11. A few comments highlighted that the tribunal panel acts collegiately to reach a decision which can rely on the skills of the NLM (sometimes with an expertise in case law) so therefore there should be greater parity in fees between NLMs and judges. Further factors raised by respondents to consider when assessing NLM sitting fees included market rates, opportunities

²⁸ OME, Review of Tribunal Non-Legal Member Fees Consultation.
<https://www.gov.uk/government/consultations/review-of-tribunal-non-legal-member-fees-consultation>

for advancement, and the training and education that NLMs have undertaken e.g., doctors' training may exceed that of judges.

Depending on the expertise of the NLM it should be possible that an NLM fee could exceed that of a judge.

Respondent to consultation

Question 2: Do you agree with principle 2 that NLMs acting as a tribunal chair should be paid the same daily sitting fee as the tribunal judge?

Response	Individuals	Organisations
Agree	88%	100%
Disagree	3%	0%
Unsure	9%	0%
Total	100%	100%

12. Around nine in 10 respondents agreed that an NLM acting as a tribunal chair should be paid the same daily sitting fee as the tribunal judge.

13. Most respondents agreed that if NLMs were performing the judge's work, then the NLM should be paid the same rate as the tribunal judge based on 'equal pay for equal work'. Of respondents who agreed, many accepted that there would an expectation for the NLM to conduct the tribunal process in an identical manner to the judge, have the same accountability as a judge and formulate draft decisions to warrant pay parity.

Agree as the NLM in that case is acting as a quasi-judge and as such has the same responsibilities as a legal fee-paid judge.

Respondent to consultation

14. Of respondents who disagreed, comments referred to whether an NLM could be considered for an enhanced rate for acting as a tribunal chair that is less than the tribunal judge's rate, or how the fee should be on par with remuneration NLMs could achieve in a non-judicial role.

The fee for any NLM should reflect the level of their professional expertise and experience and be on a par with the remuneration they could achieve in a non-judicial role that required a similar level of expertise and experience.

Respondent to consultation

Question 3: Do you agree with principle 3 that fee rates should not be differentiated by the number of sitting days undertaken over the course of a year?

Response	Individuals	Organisations
Agree	95%	100%
Disagree	4%	0%
Unsure	2%	0%
Total	100%	100%

- 15. Respondents strongly agree that the fee rate should not be differentiated by the number of sitting days undertaken over the course of a year.
- 16. Respondents gave a number of reasons for agreeing based around the fairness of the tribunal system. Comments focused on rewarding hearings equitably as each hearing required the same effort; allocation of sitting days being outside of the control of NLMs and it therefore being unfair to differentiate pay based on number of sitting days; and the premise that NLMs with more time to dedicate to tribunals due to retirement getting paid more would be discouraging.

There should be no penalty or bonus associated with the number of sitting days, it appears arbitrary to reward or punish NLMs over availability.
Respondent to consultation

- 17. For respondents who disagreed with principle 3, comments suggested that additional work (preparation, writing up etc.) was not compensated appropriately in the daily sitting fee and some respondents suggested there should be an uplift in fees for those providing greater service to the tribunals as an incentive.

There is no reason why loyalty to the job should not be rewarded.
Respondent to consultation

Question 4: Do you agree with principle 4 that the geographic location of the tribunal should not affect NLM fee rates?

Response	Individuals	Organisations
Agree	84%	78%
Disagree	10%	11%
Unsure	6%	11%
Total	100%	100%

- 18. Most respondents agreed that geographic location of the tribunal should not affect NLM fee rates. Responses explained how the job requirements, skills and qualifications of NLMs do not differ based on location and that pay should be determined by responsibility and effort.

The increasing use of remote hearings and the increased incidence of NLMs sitting in other regions makes geographical differentiation in rates of fee less relevant.

Respondent to consultation

19. A few respondents stressed that differentiating pay by location may exacerbate pay/regional inequality, and de-motivate and disincentivise flexibility as NLMs could sit in other geographic regions.
20. However, many respondents felt that there was an argument for a London allowance for NLMs given the higher cost of living, application of London allowance to many salaries in the capital and the need to recruit in a higher-cost labour market.

I think there should be London weighting as this is common practice in many other industries. The cost of living is substantially higher for those living and working in London compared to the rest of the country and remuneration should reflect that.

Respondent to consultation

Question 5: Do you agree or disagree that all NLMs should receive the same base rate but with provision for a small number of levels of supplementary sitting fee rates for roles requiring professional qualifications or expertise where recruitment and labour market evidence suggests they are needed?

Response	Individuals	Organisations
Agree	61%	78%
Disagree	19%	0%
Unsure	20%	22%
Total	100%	100%

21. Around three in five individual respondents and almost four in five organisations agreed that all NLMs should receive the same base rate but with provision for a small number of levels of supplementary sitting fee rates for roles requiring professional qualifications or expertise where recruitment and labour market evidence suggests they are needed.
22. Responses expressed a collective understanding that daily fees should be set to recruit and retain the best candidates and not drive disparities between tribunals. The views of respondents differed between those who believed there should be pay parity across NLMs/tribunals and those who believed that there should be a pay differential between different types of NLM if the supplementary fee was used sparingly and did not instil a large differential.
23. NLMs commented on how recruitment issues in specific jurisdictions could attract a supplementary fee, but this would need to be based on a clear criterion and agreed transparent mechanism for updating the fee level. If a category merited higher fees due to attrition rates, then fees needed to be under constant review.
24. Many responses acknowledged that fees should reflect earnings of previous employment or alternate roles. However, a few responses also noted how this could perpetuate the notion that some members were less valuable than others.

I believe that all NLMs bring a level of experience and expertise to their roles – I do not believe that certain qualifications make that contribution more valuable and feel that all NLMs should be rewarded at the same level.

Respondent to consultation

Question 6: In your view, are there compelling reasons for NLMs sitting on Upper Tribunals to receive a higher daily sitting fee?

Response	Individuals	Organisations
Agree	26%	38%
Disagree	30%	38%
Unsure	44%	25%
Total	100%	100%

- 25. Around one in four individuals and two in five organisations agreed that there were compelling reasons for NLMs sitting on Upper Tribunals to receive a higher daily sitting fee.
- 26. Many respondents commented that they had no experience of sitting in an Upper Tribunal, so either felt unable to comment or responded based on their assumptions that if Upper Tribunal work sets precedent and requires a higher level of qualification/experience then they would not be averse to the principle.
- 27. Respondents that agreed said that greater knowledge was required in the Upper Tribunal and the cases were more complex which demanded more preparation time and carried greater legal implications.

This is in line with practice elsewhere throughout the court system. It is generally accepted that an appellate court or tribunal requires a higher level of experience and skill than a first instance court or tribunal, and the pay structure should reflect this accordingly.

Respondent to consultation

- 28. Respondents who disagreed stressed that the impact of decision-making by NLMs was of equal significance regardless of jurisdiction, the input of an NLM was similar across all tribunals, and in many cases the Upper Tribunal used the same NLMs as First-tier Tribunals, therefore the daily sitting fee should not be higher.

Absolutely not – unless the quality of experience and required professional skills are fundamentally different and just not assumed due to their membership in a hierarchically higher body.

Respondent to consultation

Question 7: One possibility is that the daily sitting fee could include some recognition of basic ‘preparation time’, leaving additional fees for a smaller number of circumstances when they are warranted. This was an issue also raised by the SSRB 2008 Review. What is your view on this?

- 29. All consultation respondents provided a comment for this question.

30. Many comments noted the expectation on NLMs to read legal emails and judge’s draft findings, join Q&A sessions and read outside of the sitting time, which attracted no pay. A number of these responses also commented on how preparation time had increased to cope with the uptick of digital bundles and how there was a disparity across tribunals where some did not access casework until the sitting day and others were required to prepare beforehand.

Especially with the introduction of electronic bundles there has been more instances of accessing evidence outside of the designated sitting time. Also, tribunal judges will understandably share their draft findings and judgment documents and request NLMs to proof read, again outside their sitting time. I fully support that professional approach but would appreciate some financial recognition for this commitment.

Respondent to consultation

31. There was a feeling that unpaid preparation time created an incentive to move as much work as possible away from face-to-face hearings. Generally, responses expressed the view that the current fee arrangement (inclusive of preparation time) diminished the value of the daily fee and if the work was not so interesting, then motivation would wane.

Most hearings in my experience required significant preparation time, compensation for which cannot be readily claimed. I think it would therefore be sensible and equitable for a standard allowance to be made for preparation time.

Respondent to consultation

32. A number of responses proposed different remuneration arrangements and queried further additional fees for arranging their own travel/accommodation and the laborious task of completing expenses claims. Respondents also asked for greater transparency around sick pay and holiday pay separate from the basic fee.

Question 8: In your view, what would be an adequate compensatory mechanism to reflect the impact of short-notice cancellations (of 48 hours or less)?

33. Almost all (98 per cent) of consultation respondents provided a comment for this question.
34. Respondents proposed a variety of compensatory mechanisms to reflect the impact of short-notice cancellations that concerned the following:
- The length of time in advance of a hearing for which a cancellation fee is paid.
 - The scale of the cancellation fee (whether to cap at two days as currently).
 - The rate of cancellation fee (e.g., full fee and/or sliding scale for more notice).
 - Whether to link to the provision of the papers (increasing the likelihood that preparation work will have been undertaken).
 - Whether to link to the forgoing of alternative earnings.
35. Generally, respondents felt that the combination of case preparation often being completed by the time of cancellation, loss of income through late cancellation, and the inability to reschedule other employment caused frustration and motivated NLMs to seek compensation for lost days.

It is critical that fees are paid for loss of earnings incurred by short notice cancellations; without this it would deter NLMs from offering sittings and the same for applicants, affecting particularly those who may be more dependent on fees as an income, such as those with families or more diverse circumstances.

Respondent to consultation

36. A number of respondents commented that the policy requirement of having to prove a loss of earnings was demeaning. Further issues such as the requirement to book childcare at least 48 hours in advance and remote hearings being cancelled due to connection problems were frustrating for NLMs.

My experience is that this is the most unreasonable aspect of the current regime. It is not always possible to identify explicit lost revenue opportunities, but I have often adjusted my commitments and travel opportunities for a sitting which is then cancelled.

Respondent to consultation

I have felt for a long time that compensating only those who could have been gainfully employed in their 'other' job elsewhere for short notice cancellations is wrong. It should be either everyone is compensated or none are compensated.

Respondent to consultation

Question 9: What changes other than changes to fees could be made to make the role of an NLM more attractive?

37. Most (92 per cent) of the consultation respondents provided a comment for this question.
38. Responses varied significantly for this question, but can be grouped into the following categories:
- Advertising e.g., wider publicity campaigns.
 - Rights e.g., guaranteed minimum number of working days a year, more suitable pension.
 - Incentives e.g., paid travel time, childcare vouchers.
 - Support (provision) e.g., provision of laptops with technological support, administrative support.
 - Support (career opportunities) e.g., peer appraisals, access to salaried roles.
 - Soft changes e.g., buddy system between NLMs, staff room.
 - Culture changes e.g., a greater appreciation of the role of NLMs from the Ministry of Justice and judges, open days and recruitment fairs.

Question 10: How could the role of an NLM be made more attractive to younger or more diverse applicants?

39. Most (93 per cent) of the consultation respondents provided a comment for this question.
40. Responses varied significantly for this question, but can be grouped into the following categories:
- To raise more awareness of the role of NLMs and engage in social media advertising and career events at university to appeal to a more diverse population.

- To introduce a guaranteed level of earnings which is competitive with opportunities outside the judicial system.
- To introduce weekend sitting days or a minimum amount of sitting days each month to provide stability for those wanting to become an NLM.
- Demystify the role of an NLM by introducing pre-application workshops for those seeking to apply for the role to give them experience of being an NLM; or undertake an Equality Impact Assessment of the recruitment process and general assessment of the competence nature of recruitment to ensure there are no barriers to entry.
- Generally, NLMs feel that they have become more diverse. A few comments referred to how the role is not suitable for younger people due to the need for security and flexibility, and that experience is vital to the role which comes with age.

Appendix H

Pay benchmarking

1. The OME commissioned market data on earnings for external comparable role to non-legal members from Incomes Data Research (IDR) to inform the Review.
2. IDR's approach involved reviewing job descriptions for each of the 47 roles.²⁹ These varied in detail, so in some cases further information was requested about the role. The roles were not formally job evaluated. The job descriptions provided were brief and generic, and tended to provide minimum requirements in terms of experience and qualifications. Consequently, this approach does not take into account the typical level of experience of non-legal members.
3. Suggested comparators were discussed and agreed with the OME. The number of comparators varied for each role. The comparators are the result of IDR's particular approach and methodology; other approaches might identify alternative/additional comparator professions.
4. Once a set of comparators was agreed, salary data was collated for each of the comparators, effective for 2021-22. A variety of sources was used:
 - IDR Pay Benchmarker.
 - Bespoke job panels constructed by IDR for matching jobs based on in-house data.
 - NHS Agenda for Change pay rates (excluding high-cost area supplements).
 - Leadership and upper pay ranges for teachers (national).
 - Doctors pay ranges.
 - Armed Forces pay scales.
 - Pay ranges for executive and senior managers in arm's length health bodies.
 - Pay scales for police officers.
 - Local Government Blue Book (Soulbury Officers).
 - Robert Half Salary Guide 2021 – Accountancy.
 - Michael Page 2021 Guide to Salaries and Skills: Audit, Tax and Treasury.
 - Labour Market Information for All.
 - Annual Survey of Hours and Earnings 2021 (Office for National Statistics).
 - NHS Digital.
 - Hays 2022 UK Salary and Recruiting Trends – Legal.
 - Hays 2022 UK Salary and Recruiting Trends – Construction.
 - Royal Institute of British Architects (RIBA) salary survey.
 - Institute of Agricultural Management (IGRAM) survey.
 - Job advertisements for specific jobs at individual organisations.

²⁹ Including five salaried roles which were later excluded from the analysis.

5. The summary figures below are based on the median of the market sources. Daily rates were derived by dividing the annual median market salary figure by 220.

Summary of pay benchmarking data

Tribunal	Member role	Market data			Implied median daily rate £
		Lower quartile £pa	Median £pa	Upper quartile £pa	
Upper Tribunals					
Disclosure and Barring Appeals	Non-legal	55,770	59,696	63,757	271
Information Rights Appeals	Non-legal	46,845	56,091	63,374	255
Traffic Commissioner Appeals	Specialist	40,208	46,081	60,219	209
Tax and Chancery Chamber	Non-legal	-	56,625	-	257
Employment Appeals Tribunal	Non-legal	44,715	49,504	53,168	225
First-tier Tribunals					
General Regulatory Chamber: Estate Agents	Non-legal	49,957	53,281	56,000	242
General Regulatory Chamber: Immigration Services	Non-legal	32,639	34,272	35,904	156
General Regulatory Chamber: Environment	Hydrologist	--	36,555	-	166
General Regulatory Chamber: Environment	Specialist	31,623	34,965	38,327	159
General Regulatory Chamber: Driving Instructors	Specialist transport	-	35,685	-	162
General Regulatory Chamber: Information Rights	Non-legal	46,845	56,091	63,374	255
Health, Education and Social Care Chamber: Care Standards	Non-legal	38,690	40,147	41,604	182
Health, Education and Social Care Chamber: Primary Health Lists	Professional	-	74,959	-	341
Health, Education and Social Care Chamber: Primary Health Lists	Non-legal	47,126	50,173	53,219	228
Health, Education and Social Care Chamber: Mental Health	Medical	-	99,281	-	451
Health, Education and Social Care Chamber: Mental Health	Specialist	36,182	38,560	42,433	175
Health, Education and Social Care Chamber: SEN and Disability	Specialist	40,509	43,846	46,430	199
Property Chamber: Residential Property	Valuer	36,668	41,438	45,000	188
Property Chamber: Residential Property	Professional	36,334	42,930	49,380	195
Property Chamber: Residential Property	Non-legal	39,584	43,648	50,380	198

Tribunal	Member role	Market data			Implied median daily rate £
		Lower quartile £pa	Median £pa	Upper quartile £pa	
Property Chamber: Agricultural and Land Drainage	Non-legal	36,668	47,104	52,769	214
Social Entitlement Chamber: Criminal Injuries	Compensation medical	-	50,173	-	228
Social Entitlement Chamber: Criminal Injuries	Compensation specialist	31,568	33,094	37,914	150
Social Entitlement Chamber: Social Security and Child Support	Medical	84,559	94,291	114,003	429
Social Entitlement Chamber: Social Security and Child Support	Financially qualified	-	55,392	-	252
Social Entitlement Chamber: Social Security and Child Support	Disability qualified	32,194	34,313	39,718	156
Tax Chamber	Non-legal member	-	55,392	-	252
War Pensions and Armed Forces Compensation Chamber	Medical	84,559	94,291	114,003	429
War Pensions and Armed Forces Compensation Chamber	Service	83,765	89,034	94,302	405
Employment Tribunals	Non-legal	44,229	47,308	52,018	215
Gender Recognition Panel	Medical	84,559	94,291	114,003	429
Special Immigration Appeals Commission, Proscribed Organisations Appeal Commission and Pathogens Access Appeal Commission	Non-legal	105,600	113,702	119,220	517
Northern Ireland					
Special Educational Needs and Disability Tribunal	Lay	40,548	44,737	48,811	203
Care Tribunal	Lay	32,081	34,453	40,409	157
Charity Tribunal	Ordinary	43,786	49,432	54,814	225
Criminal Injuries Compensation Appeals Panel	Medical	-	71,528	-	325
Criminal Injuries Compensation Appeals Panel	Lay	-	28,579	-	130
Valuation Tribunal	Ordinary	26,591	27,318	29,259	124
Valuation Tribunal	Valuation	36,668	41,438	45,000	188
Rent Assessment Panel	Chair	37,287	41,438	45,611	188
Review Tribunal	Experienced	42,645	45,660	49,683	208
Review Tribunal	Medical	68,818	76,929	85,040	350

Appendix I

Daily sitting fees³⁰

Daily sitting fees, non-devolved tribunals, 2021-22

Tribunal	Chamber	Jurisdiction	Type of NLM	Daily fee £
First tier	Health, Education and Social Care Chamber	Mental Health	Medical	507.72 ¹
First tier	War Pensions and Armed Forces Compensation Chamber	-	Medical	507.72
Pensions Appeal Tribunal for Scotland		-	Medical	498.43
Proscribed Organisation Appeal Commission		-	Member	462.24
Special Immigration Appeals Commission		-	Member	462.24
First tier	Social Entitlement Chamber	Criminal Injuries Compensation	Medical	436.26
First tier	Social Entitlement Chamber	Criminal Injuries Compensation	Specialist	436.26
First tier	General Regulatory Chamber	Environmental and Nitrate Vulnerable Zones	Hydrologist	436.26
Gender Recognition Panel		-	Medical	414.64
First tier	Health, Education and Social Care Chamber	Primary Health Lists	Medical	373.48
Upper tier	Administrative Appeals Chamber	Traffic Commissioner Appeals	Member	371.32
First tier	General Regulatory Chamber	Immigration Services	Member	371.32
First tier	General Regulatory Chamber	Transport	Member	371.32
First tier	Social Entitlement Chamber	Social Security and Child Support	Medical	345.34 ²
Employment Appeals Tribunal		-	Member	337.76
First tier	Social Entitlement Chamber	Social Security and Child Support	Financial	336.68
First tier	Property Chamber	Residential Property	Valuer	325.86
First tier	Property Chamber	Residential Property	Professional	325.86
First tier	Health, Education and Social Care Chamber	Primary Health Lists	Member	307.46
Upper tier	Administrative Appeals Chamber	Information Rights	Member	296.62
Upper tier	Tax and Chancery Chamber	-	Tax	296.62
First tier	Tax Chamber	-	Tax	296.62
First tier	General Regulatory Chamber	Estate Agents	Member	296.62

³⁰ Fees were increased by 3 per cent from 1 April 2022.

Tribunal	Chamber	Jurisdiction	Type of NLM	Daily fee £
First tier	General Regulatory Chamber	Environmental	Member	296.62
First tier	General Regulatory Chamber	Information Rights	Member	296.62
Upper tier	Immigration and Asylum Chamber ³	-	Member	296.62
First tier	Immigration and Asylum Chamber ³	-	Member	296.62
First tier	Health, Education and Social Care Chamber	Special Educational Needs and Disability	Member	265.22
Pensions Appeal Tribunal for Scotland		-	Service	238.30
First tier	Health, Education and Social Care Chamber	Mental Health	Member	236.02
First tier	War Pensions and Armed Forces Compensation Chamber	-	Service	236.00
Upper tier	Administrative Appeals Chamber	Disclosure and Barring Service Appeals	Member	224.08
First tier	Health, Education and Social Care Chamber	Care Standards	Member	224.08
First tier	Social Entitlement Chamber	Social Security and Child Support	Member	214.34
First tier	Property Chamber	Residential Property	Member	212.18
First tier	Property Chamber	Agricultural Land and Drainage	Member	212.04
Employment Tribunal (England and Wales)		-	Member	194.86
Employment Tribunal (England and Wales)		Reserved Forces Appeal Tribunal	Member	194.86
Employment Tribunal (Scotland)		-	Member	194.86

¹ Plus an additional £177.50 for every patient examined.

² Fee is £406.50 if medical examination required or if member has sat more than 20 days that financial year.

³ This role is not part of the Review.

Daily sitting fees, Northern Ireland 2021-22

Tribunal	Type of member	Daily rate £
Review Tribunal	Medical – Consultant/GP	404.32
NI Valuation Tribunal	Valuer	355.50
Rent Assessment Panel	Chair	320.00
Criminal Injury Compensation Appeals Panel ¹	Medical	291.83
Criminal Injury Compensation Appeals Panel	Member	291.83
Charity Tribunal	Member	278.03
Rent Assessment Panel	Member	228.00
Fair Employment Tribunal and Industrial Tribunals	Member	194.86
Review Tribunal	Experienced	186.77
Care Tribunal	Member	185.71
NI Valuation Tribunal	Member	185.71
SENDIST	Member	185.71

¹ No qualifications needed but normally drawn from the legal or medical professions.

Appendix J

Tribunals covered by the Review

Chamber	Jurisdiction	Decisions required to make
Upper Tribunals		
Administrative Appeals Chamber	Disclosure and Barring Service	Considers appeals against decisions by the Disclosure and Barring Service.
Administrative Appeals Chamber	Information Rights	Considers appeals from decisions of the Information Commissioner made under the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Data Protection Act 2018/GDPR.
Administrative Appeals Chamber	Traffic Commissioner Appeals	Considers appeals from decisions of a Traffic Commissioner or Deputy Traffic Commissioner made under the Transport Act 2000. Cases cover revocation of operators' licences, financial standing, loss of repute or disqualification of nominated transport managers. Also act as an appeal panel against decisions about London Service permits made by Transport for London.
Immigration and Asylum Chamber	-	Consider appeals against some decisions made by the Home Office relating to: permission to stay in the UK; deportation from the UK; and entry clearance to the UK. Also applications for immigration bail from people being held by the Home Office on immigration matters.
Tax Chancery Chamber	-	Considers appeals by individuals, corporate bodies and organisations against decisions made by HMRC relating to direct and indirect taxes and duties. Appeals against penalties imposed by HMRC and against decisions of HMRC or Border Force relating to restoration of seized goods and against some decisions by the NCA. Appeals from decisions of the Compliance Officer for the IPSA in relation to MPs' expenses claims. Appeals against penalties for failing to register under the money laundering regulations.
First-tier Tribunals		
General Regulatory Chamber	Estate agents	Considers appeals from decisions of the National Trading Standards Estate and Letting Agency Team under the Estate Agents Act 1979.
General Regulatory Chamber	Environmental (Nitrate Vulnerable Zones)	Considers appeals relating to whether land should be designated a 'Nitrate Vulnerable Zone' under the Nitrate Pollution Prevention Regulations 2015.
General Regulatory Chamber	Environmental	Considers appeals from decisions of a wide range of public bodies charged with making decisions which affect the environment. These include Natural England, the Environment Agency and local authorities.
General Regulatory Chamber	Information Rights	Considers appeals from decisions made or enforcement action taken by the Information Commissioner under the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Data Protection Act 2018.

General Regulatory Chamber	Immigration services	Considers appeals from decisions of Office of the Immigration Services Commissioner.
General Regulatory Chamber	Transportation	Consider appeals resulting from disqualification of Approved Driving Instructors from the Register.
Health, Education and Social Care Chamber	Care Standards	Considers appeals against a range of decisions across the care standards regulatory field involving health, education and social care matters.
Health, Education and Social Care Chamber	Mental Health	Reviews whether compulsory detention under the Mental Health Act should continue.
Health, Education and Social Care Chamber	Primary Health Lists	Considers appeals relating to decisions made by National Health Service Commissioners relating to the registration of primary healthcare performers.
Health, Education and Social Care Chamber	Special Educational Needs and Disability	Considers appeals against a local authority's decision concerning children and young people with special educational needs under the Children and Families Act 2014. Decides claims of disability discrimination against schools brought on behalf of children and young people with disabilities under the Equality Act 2010.
Property Chamber	Residential property	Adjudicates on residential property matters such as private sector rents and residential leasehold management.
Property Chamber	Agricultural Land and Drainage	Considers applications made for Orders under the Agricultural Holdings Act 1986 or sections 28 or 30 of the Land Drainage Act 1991.
Social Entitlement Chamber	Criminal Injuries Compensation	Considers appeals against review decisions made by the Criminal Injuries Compensation Authority in respect of compensation for victims of crimes of violence.
Social Entitlement Chamber	Social Security and Child Support	Considers appeals relating to a wide variety of benefit decisions including entitlement to Disability Living Allowance, Attendance Allowance and Personal Independence Payments.
War Pensions and Armed Forces Compensation Chamber	-	Considers appeals by current and former servicemen or women in relation to pensions, compensation and other amounts.
Employment Tribunal (England and Wales)	Employment Tribunal	Considers employment disputes involving employees, workers, employers, trade unions and professional and regulatory bodies.
Employment Tribunal (England and Wales)	Reserve Forces Appeal Tribunal	Consider appeals from UK reserve forces personnel and employers of reservists who want to challenge a decision to turn down their request for exemption from service. Also appeals on decisions regarding financial assistance for reservists or their employers.
Employment Tribunal (Scotland)	Employment Tribunal	Considers employment disputes involving employees, workers, employers, trade unions and professional and regulatory bodies.
Gender Recognition Panel	-	Considers applications for a Gender Recognition Certificate under the Gender Recognition Act 2004.

Proscribed Organisation Appeal Commission	-	Considers appeals where the Home Office bans an organisation because it is believed to be involved with terrorism.
Special Immigration Appeals Commission	-	Considers appeals where a decision has been made to remove an individual from the UK, stop them entering the UK, or take away their British Citizenship, in the interests of nationality security or on other related grounds.
Pensions Appeal Tribunal for Scotland	-	Considers appeals for both the War Pension Scheme and the Armed Forces Compensation Scheme.
Northern Ireland		
Care Tribunal	-	Considers appeals against decisions prohibiting or restricting the employment of individuals teaching or caring for children or vulnerable adults and decisions concerning the registration of social workers.
Charity Tribunal	-	Considers appeals concerning the use of the Charity Commission's regulatory powers, such as the suspension or removal of a trustee or decisions of the Commission relating to charitable status.
Criminal Injury Compensation Appeals Panel	-	Considers appeals against decisions made under the Northern Ireland Criminal Injuries Compensation Scheme.
Industrial Tribunals and Fair Employment Tribunal	-	Determines claims to do with employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages and other payments as well as discrimination on the grounds of sex, race, disability, sexual orientation, age, part time working and equal pay. The Fair Employment Tribunal determines complaints of discrimination on the grounds of religious belief or political opinion.
Review Tribunal	-	Hears applications made by patients or their relatives for discharge from compulsory detention in psychiatric hospitals or from compulsory guardianship and to review the authority for detention of patients whose cases have been referred.
Rent Assessment Panel	-	Considers, at the request of a landlord or tenant, if the rent determined by the rent officer is appropriate.
Special Educational Needs and Disability Tribunal	-	Considers appeals by parents against decisions made by the Education Authority in connection with aspects of assessing and making provisions for children with special educational needs. It also considers claims in relation to allegations of discrimination in education against children with a disability.
Valuation Tribunal	-	Considers appeals against capital values for property in Northern Ireland upon which domestic rates bills are based, and appeals over rates allowances and rates relief.

Appendix K

Abbreviations used in the report

AWE	Average weekly earnings
CEO	Chief executive officer
CPI	Consumer prices index
DBS	Disclosure and Barring Service
DHSC	Department of Health and Social Care
DoJ	Department of Justice Northern Ireland
E&W	England and Wales
ft	Full time
FTE	Full-time equivalent
GDPR	General Data Protection Regulations
GP	General Practitioner
GRC	General Regulatory Chamber
HESC	Health, Education and Social Care Chamber
HMCTS	HM Courts and Tribunals Service
HMRC	HM Revenue and Customs
HR	Human resources
IDR	Incomes Data Research
IPSA	Independent Parliamentary Standards Authority
JAC	Judicial Appointments Commission
MoJ	Ministry of Justice
NCA	National Crime Agency
NEST	National Employment Savings Trust
NHS	National Health Service
NI	Northern Ireland
NICTS	Northern Ireland Courts and Tribunals Service
NIJAC	Northern Ireland Judicial Appointments Commission
NLM(s)	Non-legal member(s)
OME	Office of Manpower Economics
pt	Part time
SCS	Senior civil service/servants
SEC	Social Entitlement Chamber
SEN&D	Special Educational Needs and Disability
SENDIST	Special Educational Needs and Disability Tribunal

SPT	Senior President of Tribunals
SSCS	Social Security and Child Support
SSRB	Senior Salaries Review Body
UKSC	UK Supreme Court
UQ	Upper quartile
UT	Upper Tribunal

