Ministry of Justice

Motivations to apply for salaried judicial office

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2. Judicial recruitment is of strategic importance to a well-functioning and high-quality justice system. In 2023–2024, the judiciary in England and Wales however faces significant recruitment shortfalls for the salaried positions of Circuit Judge, District Judge, Employment Judge, and First-tier Tribunal Judge. One problem is that a significant number of fee-paid judges who act in one or more of those capacities do not apply for these salaried positions.

3. This Report analyses the main reasons why too few fee-paid judges of a suitable level apply for certain salaried posts (Circuit Judge; District Judge; Employment Judge; and First-tier Tribunal Judge) in England and Wales. It presents evidence to assist the Ministry of Justice and other authorities in taking measures to attract enough high-quality fee-paid judges to salaried positions.

4. This research found that the attractiveness of remuneration for undertaking salaried office needs to be regarded not only as a key motivating factor but also as part of a wider package presented to potential candidates, so that remuneration increases need to be supported with changes to the other critical areas identified in this Report.

5. Further, potential applicants compare potential gains to be made by continuing in practice with the probability that a judicial salary would remain relatively stagnant, without a guarantee that pay rises would keep up with inflation.

6. More generally, fee-paid judges tend to compare the opportunity of moving to a salaried position with the interest afforded by their current work, before considering other incentives and disincentives to apply. They compare a salaried position with their present career, rather than with their fee-paid position.

7. Accordingly, a reduction of workload and pressure, as compared with legal practice, would be a key incentive to apply. But the current pressures of judicial workload and working conditions threaten to remove this potential incentive to seek salaried appointment.

8. Potential applicants are aware of the policy which permits salaried part-time working, but such arrangements are thought to be unwelcome and difficult to achieve if the applicant wishes to be on a fraction less than 80% FTE.

9. A major disincentive is the uncertainty of geographical deployment or transfer. Practitioners are not ready to travel excessive distances, or to be away from home and family upon salaried appointment. If this does need to happen, they seek reassurance that transfer closer to home would be possible within a few years of appointment.

10. Selection exercises are perceived as excessively lengthy and complex to manage. Fee-paid judges also expect their judicial experience to have greater relevance in the selection process and are concerned that specialist knowledge is not sufficiently valued in some cases. The length of the selection process and the competency frameworks operate as disincentives to at least some salaried post applications.

11. Most fee-paid judges tend to give priority to their practice over judicial sitting days. The current sitting day allocation system, which for many interviewees has meant cancellations, shortages and requests at short notice, makes it unlikely that decreasing caps on sitting days might act as an incentive to salaried post application.

12. A remuneration increase might be needed to incentivise salaried post applications, but motivating factors other than pay need to be addressed in conjunction to improve recruitment prospects. Recommendations to that effect are made at the end of the Report. They include reviewing geographical deployment, the value of fee-paid experience and legal specialism in the selection process, measuring and scheduling judicial workload, and improving working conditions.

2. Introduction

2.1 Background

Judicial recruitment is crucial to a well-functioning and high-quality justice system. In 2023–2024, the judiciary in England and Wales faces a heavy judicial caseload, although the extent varies by jurisdiction.[1] At the same time, there is a concern whether fee-paid judges of an appropriate level will apply for salaried positions at the same rate as they did in the past, and this concern will likely be a priority for the next Major Review of Senior Salaries.[2] Fee-paid judges provide "flexibility, specialist expertise, and a talent pipeline for the future",[3] and it is essential to encourage those who are suitable to take up salaried office. This research, which was commissioned by the Ministry of Justice ('MoJ'), aims to provide the evidence needed to assist the MoJ and other authorities properly and fairly in taking measures to increase the number of fee-paid judges of a suitable level to fill salaried vacancies.

Judicial recruitment shortfalls have affected the Circuit Bench (with vacancies in the Crown Court at the time of this Report); the District Bench (33% shortfall[4] in 2022); and the Magistrates' Courts (24% shortfall in 2022). There is also a recruitment shortfall in salaried Employment Tribunal Judges (50% in 2023), and in salaried First-tier Tribunal Judges (29% in 2020).[5] This research accordingly concentrates on motivations to apply for those salaried positions. To do so, this research put to the test some well-known motivations to apply for the Bench generally. Thus, in 2018, the Senior Salary Review Board (SSRB) cited judicial pensions, taxation and public sector pay restraint as factors making a judicial career less attractive in comparison to remaining in private practice. In 2024, the MoJ considers it essential to ensure that all aspects of the judicial role are attractive, including "competitive remuneration and terms and conditions, a positive work environment and a

1 SSRB (2023), Forty-Fifth Annual Report on Senior Salaries 2023, para. 5.32.
2 SSRB (2023), *Forty-Fifth Annual Report on Senior Salaries 2023*, para. 5.21; paras. 5.8-5.9, pp. 89-90.
3 MoJ (2024), *Ministry of Justice Evidence Pack: Judicial Pay 2024/25*, para. 98.
4 "Shortfall" refers to the proportion of posts advertised in a specific recruitment exercise that weren't filled.
5 *Ibid.*, paras. 105-110.

manageable workload".[6] All those issues are known to influence decisions whether to apply for salaried judicial office, and are therefore within the scope of this Report.

2.2 Research aims

The main research question was to identify and assess incentives and disincentives currently influencing the decision to apply for salaried judicial office (Circuit Judge; District Judge; Employment Judge; and First-tier Tribunal Judge) in England and Wales. In particular, this Report has three broad objectives:

- To assess fee-paid judges' incentives and disincentives to apply for salaried office, and to compare them with the motivations of recently appointed salaried judges
- To compare incentives and disincentives across different judicial positions
- To weigh the importance of different factors relative to each other

All three objectives address the main reasons why too few fee-paid judges of a suitable level apply for salaried office. This research also fills a gap in examining incentives and disincentives below Circuit Bench level, and in both courts and tribunals in England and Wales.[7] By considering courts and tribunals together, this research further contributes to better understand the challenges in building 'One Judiciary'. In so doing, it shows how the judiciary is embedded in a complex network of practices and organisations.

The encouragement to make an application varies from post to post. According to the *2022 UK Judicial Attitude Survey* (*2022 UK JAS*),[8] a slim majority of Circuit Judges would encourage suitable people to apply to join the salaried judiciary; a large majority of District Judges (MC) would do the same, but that percentage falls sharply to 40 per cent for District Judges (Civil). By contrast, First Tier Tribunal Judges and Employment Judges

6 *Ibid*, para. 98.

7 Previous studies have been limited to one post only (High Court Judge in Professor Dame Hazel Genn DBE, KC, (2008), *The Attractiveness of senior judicial appointment to highly qualified practitioners* (Judicial Executive Board); court posts only (Turenne and Bell (2018), *The attractiveness of judicial appointments in the United Kingdom – Report to the Senior Salaries Review Body* or compiled and appraised evidence about judicial diversity in England and Wales, see e.g. NatCen (2023), *Judicial diversity: Barriers and initiatives, Rapid evidence assessment* (MoJ), at the request of the Judicial Diversity Forum (JDF).

8 C. Thomas (2023), *2022 UK Judicial Attitude Survey. Report of findings covering salaried judges in England & Wales Courts and UK Tribunals*, para. 11.1.2

were most likely to encourage suitable people to apply. It should be appreciated already that measures will have different effects in incentivising different groups to apply. A range of measures in combination will therefore likely be needed to make a substantial difference to the overall application rate.

2.3 Methodology

As already noted, the overarching research question was to assess the factors currently influencing the decision whether to apply for salaried judicial office (Circuit Judge; District Judge; Employment Judge; and First-Tier Tribunal Judge) in England and Wales. We are reporting the perceptions of the salaried judicial role and the life of a salaried judge, not necessarily what the reality is, because perception drives the decision whether to apply to become a salaried judge.

The research comprised 61 semi-structured qualitative and online interviews with fee-paid and salaried judges over a three-month period (from mid-January until mid-April 2024). The research was conducted following Government Social Research Protocols. There were regular meetings with the MoJ Judicial Engagement and Strategic Reform Division (Judicial and Legal Services Policy Directorate) to raise issues identified, subject to confidentiality and data protection requirements. This Report was also subject to independent peer review before publication.

The fieldwork started on 17 January 2024 with one-to-one virtual interviews. Interview questions were developed from the project brief issued by the MoJ Judicial Engagement and Strategic Reform Division, and in consultation with the Judicial Office. Interviews were semi-structured, and the duration of the meetings varied typically from 30 minutes to 40 minutes. In line with the project brief, the random sample provided was stratified and restricted to judges holding the following positions: Recorder, Circuit Judge (CJ), Deputy District Judge (DDJ), District Judge (DJ), Employment Tribunal Judge (ET judge) and First-tier Tribunal Judge (FTT judge). The salaried judge sample was specifically restricted to salaried judges whose appointment took effect in 2020 or later, to collect information accurately about their motivations to apply.

A first random sample was provided by the Ministry of Justice with names and judicial email addresses of salaried judges and fee-paid judges. The profile of respondents was

monitored during fieldwork to address bias arising from self-selection participation, and to capture a wide range of experiences based on gender, post-qualification experience, legal profession (barristers and solicitors), and circuits or regions. Two further random samples were needed to reach the project brief (indicative) numbers of interviews. In total, this generated a sample of 298 individuals. Potential respondents were approached by email, with some brief explanatory information highlighting the purpose and scope of this project. Respondents were informed that their responses would be treated confidentially and reported anonymously. Interviews were then conducted based on a semi-structured guide (see *2.5. Areas of questioning*). Interviews were recorded and transcribed before thematic analysis. To develop this analysis, patterns were identified in answers, and data was compiled to identify any hierarchy and connections among patterns. Data patterns were then grouped under the specific themes which are reflected in this Report.

The research also comprised a review of publicly available documents to obtain evidence of relevant factors and their relative weight, and to check evidence provided by respondents against them. This review covered information publicly available from institutional stakeholders (e.g. Law Society; Bar Council; Judicial Appointments Commission's Official Statistics; MoJ evidence to SSRB (2018–2024); and *2022 UK Judicial Attitude Survey. Salaried judges and fee-paid judicial office holders in England & Wales Courts and UK Tribunals*), judicial speeches, academic literature, and media coverage of relevant issues until submission of the Report in June 2024.

2.4 Profile of respondents

Among the 61 respondents, a majority (56% or 34) were fee-paid judges based and working in England and Wales, and the others were judges appointed to salaried office since 2020. Among them, 20 per cent (or 12) were Circuit Bench judges; 23 per cent (14) District Bench judges; 28 percent (17) were Employment Tribunal judges; and 29 per cent (18) were First-tier Tribunal judges.

Among First-tier Tribunal respondents, three belonged to the Property Chamber; four to the Social Entitlement Chamber; five belonged to the Health, Education and Social Care Chamber (Mental Health and Special Educational Needs and Disability); and six to the Immigration and Asylum Chamber.

Within jurisdictions, the balance of respondents is as follows:

Table 1. Court and Tribunal fee-paid and salaried groups

Respondents (n=61)	Fee-paid judges (n=34)	Salaried judges (n=27)
District Bench (n=14)	27% (9)	18% (5)
Employment Tribunal (n=17)	29 % (10)	26% (7)
First-tier Tribunal (n=18)	29% (10)	30% (8)
Circuit Bench (n=12)	15% (5)	26% (7)

A minority (26%) of fee-paid judges held a second fee-paid position. We classified respondents based on the higher number of sitting days and self-declared preference (no respondent is included in statistics more than once).

Respondents comprised a male majority (56%), with 44 percent women, close to the *2022 UK JAS* gender breakdown of the judiciary.[9] A minority (11% or 7) were self-classified as people of ethnic groups, and 10% (or 6) mentioned a disability.

Several fee-paid respondents sat in the virtual region (Employment Tribunal, District Court, Immigration and Asylum) in addition to their region or circuit, or online in the case of specific jurisdictions (e.g. Mental Health). The virtual pool enables judges across jurisdictions to be deployed flexibly to hear cases outside their regional circuit.

The sample of respondents is not fully representative of the breadth and diversity of the legal profession and judiciary. Only a small number of barristers (4) had taken silk, and many solicitors were not partners in Magic Circle firms.[10] The proportion of current and former barristers and solicitors, is as follows:

[9] In the 2022 UK JAS, participants comprise 53.8% male participants and 45.8% female participants, see 2022 UK JAS, para. 13.1. The UK JAS 2022 however includes Upper Tribunal judges, High Court judges and above, who were not within the remit of this Report.

[10] The Magic Circle firms are the five most prestigious multinational law firms (based on profitability) and with headquarters in London: Allen & Overy, Clifford Chance, Freshfields, Linklaters and Slaughter and May.

Table 2. Proportion of current and former barristers and solicitors

	Circuit Bench (n=12)	District Bench (n=14)	Employment Tribunal (n=17)	First-tier Tribunal (salaried) (n=18)
Barristers (n=37)	11	7	4	12
Solicitors (n=24)	1	7	13	6

Post-qualification experience and age of the fee-paid judges were as follows:

Table 3. Post-qualification experience (fee-paid judges)

Post-Qualification Experience	Recorders (n=5)	DDJ (n=9)	Employment Tribunal fee-paid judges (n=10)	First-tier Tribunal fee-paid judges (n=10)
10–14 years	1	1	0	2
15–19 years	0	2	2	0
20+ years	4	6	8	8

Table 4. Age group (fee-paid judges)

Age group	Recorders (n=5)	DDJ (n=9)	Employment Tribunal fee-paid judges (n=10)	First-tier Tribunal fee-paid judges (n=10)
Under 40 years	0	1	0	2
40–49	3	2	3	2
50–59	2	6	7	4
60–69	0	0	0	2

A majority of Recorders and fee-paid judges in the Employment Tribunal and the First Tier Tribunal in the sample were interested in applying for salaried roles. Among them, five had ongoing applications, and two others had applied previously for a salaried role. Only three out of eight DDJs, however, were interested in applying for a salaried role.

2.5 Areas of questioning

The areas for discussion with respondents included, but also went beyond, issues that had been considered in the Judicial Attitude Survey,[11] the SSRB 2018 Major Review and in

[11] Thomas (2023), *ibid*.

annual reports since then, and which had been indicated as expected topics for discussion. We collected the respondents' personal thoughts on applying for the Bench: whether, in the case of fee-paid judges, they already felt interested in salaried judicial appointment (including the level at which they might consider themselves to be eligible to apply); whether, in all cases, they had already applied and why or why not. Respondents were invited to consider, in their own terms, the perceived disadvantages of salaried and/or fee-paid office, and to consider the perceived attractions and motivating factors for application. Open-ended questions were asked about the relevance and importance of a fee-paid or salaried post in the respondents' career, and the factors that would make fee-paid judge respondents choose between the status quo (staying in post as a fee-paid judge) and moving to a salaried post.

Respondents' views and beliefs were sought on the following factors in particular:

- The financial impact of a judicial appointment relative to other factors. Salary and recent changes to the pension scheme were considered.
- The impact of appointment upon private life, which included consideration of the potential need for relocation or travel impact.
- The working patterns at the Bench, with consideration of the flexibility, or lack of flexibility in terms of number of days and weeks worked and the ability to take time off.
- The work environment at the Bench, with consideration of workload and managerial duties, as well as the level of administrative support.
- The impact of appointment to a jurisdiction within or outside respondents' legal specialism.
- The status and perception of a judicial appointment in the legal profession. This included consideration of the challenge and interest of judicial work, and whether judicial appointment was, and offered, career progression.
- Attitudes to the Judicial Appointments Commission for England and Wales selection process
- The relevance of the convention of no return from salaried judicial office to practice
- The ability to interact with other judges
- The quality of court estate and facilities

The information collected was synthesized, and the issues presented in this Report reflect the common themes that were identified in interviews (see also section 2.3. Methodology). Information was gathered and corroborated as far as possible with the literature review mentioned earlier. Extracts from interviews presented in this report have been anonymised and information that might identify respondents has been removed or modified. Differences between fee-paid and salaried judge groups and/or jurisdictions, are specified when relevant, and, unless otherwise specified, extracts have been chosen to reflect views across jurisdictions. Overall points for consideration are listed at the end of each main section and in conclusions.

3. Applicants' incentives and disincentives

Certain factors must be assessed relatively to the personal situation of the applicant or the professional profile of the applicants (e.g. barristers and solicitors). Pay, pensions and flexibility in working conditions are such relative factors.

3.1 Salary

By the standards of the general public and public sector employees in general, judges are well paid. A DJ and certain tribunal judges receive £134,105 (salary group 7); a circuit judge receives £167,167 a year (salary group 5.2), as shown below:

Table 5. Salary groups 2024/25[12]

Judge Title	Amount (£)	Salary Group
Circuit Judge	167,167	Salary Group 5.2
District Judge District Judge (Magistrates' Courts) Employment Judge (England and Wales) Judge of the First-tier Tribunal	134,105	Group 7

Practitioners' income

The difference between judicial salaries and those in the private sector has continued to grow since 2018. As noted in 2018,[13] although the highest incomes are mainly received in commercial law, even some criminal and family law practitioners can receive considerably more than salaried judges.[14] Bar Council research shows that the median income of self-employed barristers slightly increased since 2021, from nearly 110K to fully over 110K

[12] Judicial Salaries by Salary Group 2024/25

[13] Turenne and Bell (2018), *ibid*.

[14] This assumes privately-paid work, or mostly privately-paid work. Publicly-funded work has been shown to be loss-making for criminal and for a majority of family law practitioners, see Sir Christopher Bellamy, *Independent Review of Criminal Legal Aid* (29 November 2021) and Frontiers Economics, *Research on the Sustainability of Civil Legal Aid* (09 May 2024), research commissioned by the Law Society, para. 6.1.

for female barristers and from over 150K to over 155K for male barristers.[15] The same research shows that the typical range of gross earnings for self-employed female silks sits between around £200k and £600k and around £250k to £900k for male silks.[16]

There was not a large difference between solicitors and barristers regarding the possible loss in income upon salaried appointment. In 2023, the median notional salary (partner) across law firms with different turnovers was £123,000 although notional salaries vary depending on the size of the firm.[17] As found in a previous study,[18] the geographical location of the respondents suggested that earnings outside "Magic Circle Firms" had also outpaced judicial salaries in group 7 as well as group 5.2. The decision to move to the salaried Bench thus typically involves a considerable drop in income for many barristers and solicitors. The differential varies across the UK, and there was some indication both that the financial disincentive was less marked among women and outside London and the South East of England:

> "[F]or me as a female partner, I haven't been paid as well as my male counterparts, so I'm finding that the salary wouldn't be a decrease…I'm in the Midlands, so I'm satisfied with that [level of pay] and it might also be to do with age [50–55]. Salary is not as important for me as the quality of work, the quality of life, and being able to focus, and getting skilled at something new is my drive" (Judge 15, Fee-paid Employment Tribunal Judge)

Judicial pay as a core incentive or disincentive

Inevitably, a large majority of respondents raised salary as a significant factor in their decision to apply for salaried role. Almost all Recorder respondents would take a pay cut in applying for a CJ position. By comparison, a slim majority of DDJs, also all public sector lawyers, would increase their salary with a DJ role. The judicial salary in Group 7 (District Judge, First-tier Tribunal Judge and Employment Tribunal Judge) represents a substantial salary increase for public sector lawyers, and it was reported to sometimes double the

[15] Bar Council (2023), *Gross earnings by sex and practice at the self-employed Bar*, p. 18.

[16] Bar Council (2023), *ibid.*, p.7.

[17] The Law Society Leadership and Management Section (2024), *Financial Benchmarking Survey 2024*, pp. 27 and 36. In 2018, average annual salaries by seniority were as follows: £130,000 for Equity partner; £75,000 for Salaried partner; £65,000 for Associate solicitor.

[18] Turenne and Bell (2018), *ibid*.

respondents' public sector salary. Half of fee-paid ET judges described ET salary as "acceptable", "a good salary" or "an increase". Half of FTT judges would take a pay cut upon appointment, against one public sector lawyer whose salary would increase. Respondents did not raise the 2023 pay award of 7 per cent for judicial office holders within SSRB remit.

For those taking a pay cut upon salaried appointment, even if salary was not a disincentive to apply altogether, the reduction nonetheless influenced when they would apply. Salaried post application then becomes a case of maximising earnings in private practice before applying. Even when judicial pay currently broadly matches practitioners' current earnings, several fee-paid respondents across all posts justified applying later based on their potential for greater earnings in the next 5–10 years. Research suggests that barristers reach peak median gross earnings at around 25 years' call,[19] which broadly tallies with the average of 21 years of post-qualification experience (PQE)[20] for applicants to courts and tribunal positions considered in this Report. Both solicitors and barristers emphasised the much greater room for income progression as practitioners, as they reach seniority and take silk or become partners:

> "Even if I'm earning a fairly steady level [of pay] now, I know that in 10 years time it might be substantially more, whereas if I were to move into a full-time judicial post, that opportunity is gone and there will never be a significant increase…You don't even get a guaranteed inflation-linked increase, there have been several years [of increase] where it's been less than the rate of inflation.…If you take that step, you know that at any stage you might have a government in power who says 'actually we're just not going to raise judicial salaries for the next five years', and your earning power decreases when you're trying to do quite a serious, responsible job" (Judge 04, Deputy District Judge (Magistrates' Courts))

A minority of DDJs (with PQE of 15–20 years) were interested in the DJ role. The DJ pay was said to be broadly comparable with the earnings of a barrister with 15 years of PQE (Criminal and other practice), but significantly below the DDJ's earning potential in

[19] Bar Council (2023), *ibid*., p.12.

[20] Official Statistics (MoJ) (2023), *Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2023 Statistics*, Section 4.2.

practice. Recent pension changes have increased DJ's total net remuneration, but not their take-home pay (as it did for more highly paid judges), and their pay has not kept up with inflation.[21] As was observed, "you obviously don't have to match their [practitioners'] earnings, but [a pay rise] is just making sure that the gap isn't so big as it currently is" (Judge 42, District Judge)

When pay was considered a disincentive, another option had been to apply for other, better-paid salaried positions than those directly associated with the respondent's fee-paid role. This was the case for at least one fee-paid judge in each of the respondent jurisdictional groups, who had applied or intended to apply for a post in a higher salary band (i.e. Salary group 5.1 or above): "I would probably look at a Circuit Judge position…my concern with the level of pay of a full time DJ is that it's just too low compared to what you could earn in the private sector" (Judge 07, Deputy District Judge).

Financial incentives

In 2023, the SSRB mentioned the need to consider proposals from stakeholders for financial incentives outside core pay, such as allowances.[22] Examples of financial incentives raised in interviews were a "golden hello" payment, or a regional uplift to target shortfalls in recruitment. These examples were discussed by just under a fourth of respondents. It was said that "£10,000 or so" might "soften the blow" (Judge 04, Deputy District Judge (Magistrates' Courts)) of taxation for self-employed practitioners in the first year of salaried role. It might "offset" (Judge 08, Deputy District Judge) existing disincentives for those at the end of their careers, but it would be unlikely to attract fee-paid judges at the more junior end of practice, as pay remains a significant issue: "[I]f I was looking at a golden hello payment initially and then 20 to 30 years of stagnant pay that only has the same rates of increase as public sector pay, it's not attractive" (Judge 12, Fee-paid First-tier Tribunal Judge).

In contrast with a "golden hello" payment, a regional uplift would target shortfalls in recruitment in specific circuits or regions only, e.g. London and South East for DJ recruitment. This would challenge the principle that geographical location within the UK

[21] SSRB (2023), *Forty-fifth Annual Report on Senior Salaries 2023* (CP 888).
[22] SSRB (2023), *ibid*., para. 5.134.

should not affect judicial pay, with the exception of the Salary Group 7 judges who receive London weighting.[23] This prospect only elicited criticism from respondents.[24] A parallel was made with the civil service, where different departments offer salary bandings at different grades:

> "…and people chop and change…People don't apply for the jobs where the salary is less, and you end up with this seesawing all the time. I think it also creates a problem as to the equality…how would this affect the morale of people?" (Judge 56, salaried First-tier Tribunal Judge)

Those views were shared across the positions considered:

> "if I found out that a new cohort [of judges] all of a sudden got a £6,000 payment just by becoming judges in London, I'll be like, well, that doesn't help me, does it? I've had to travel to London at £932 a month…, which is more than the £6,000 allowance, and I haven't got any help with that" (Judge 50, Salaried Employment Tribunal Judge)

> "Because someone five miles down the road is in a different court, they're getting five grand more…I think that could lead to a complete warfare. I don't see that you can go down that route. Maybe London should have a better weighting, obviously because it's more expensive to be there" (Judge 23, Recorder)

In addition to a potential increase of the London Weighting Allowance, respondents suggested that travel costs and relocation costs upon appointment (not simply upon transfer) needed to be addressed. A few respondents wondered about a possible loan scheme that would not come off net pay and so would be tax efficient. Costs mentioned were, e.g. travel to London for up to £15,000 a year, and £23,000 a year on a house and bills to be closer to work. Other respondents commented:

> "I got an offer to the place that was probably the most obvious place they could have put me without a fight…It's quite a long drive for me; it can be quite tiring and occasionally I do stay over. I have to stay over on my own dime because you can't

[23] SSRB (2023), *ibid*., para. 5.24.

[24] A view also expressed by the Senior Judiciary in 2023, see SSRB (2023), *ibid*., para. 5.134.

claim that back. It's not tax deductible in any way. That's a cost to me, but I do that because I want not to be as tired at the end of the week and I like my job" (Judge 45, District Judge)

"If they're expecting you, if you live in Wales, to go and sit in Lincoln…they need to think about a proper relocation package…people have got to manage their lives and these are people that aren't starting out, no one's getting this job in their 20s, thinking 'I'm about to buy my first house, shall I get it near this job?' They've got families, they've got commitments, they've got partners, they've got mortgages" (Judge 39, Circuit Judge)

3.2 Pensions

The reduced status of judicial pension as an incentive

The judicial pension used to be one of the main attractions of a judicial appointment. The research found that this still holds true. The 2022 Judicial Pension Scheme (JPS22) reverted to the tax-unregistered pension scheme that had existed until 2015,[25] so that pension accrued before judicial appointment will not count towards either annual or lifetime allowances. This, and the increase to pension income, is the main benefit for court and tribunal below Circuit Bench level, whereas the JPS22 increases both take-home pay and pension income for judges at the Circuit Bench level and above.[26] In relation to the public employee lawyers, the pension is typically much higher than they would have been getting in their existing job.

Although respondents who commented on the issue duly found the judicial pension scheme to be "generous", and "always an incentive" for self-employed respondents, it was only a minority who offered any comment at all. Even then, it was only raised after the more pressing issue of pay had been considered, and only through the lens of equalisation

[25] Other features are that there is no longer a 20-year service cap for members; that the scheme has an annual accrual rate of 2.5 per cent of pensionable earnings. It requires a uniform contribution rate of 4.26 per cent of pensionable earnings. There is an optional three-year transitional arrangement of having a 3 per cent contribution rate in return for a 2.42 rather than 2.5 per cent accrual rate. It is also linked to the state pension age, rather than the higher mandatory retirement age for the judiciary.

[26] SSRB (2022), *Forty-fourth Annual Report on Senior Salaries 2022* (CP 727), para. 5.9

of pensions between fee-paid and salaried judges.[27] Those respondents who started a fee-paid role with less than 12 year PQE thought they would be "in a good position" upon retirement, but others pointed out that, as a career average scheme (and unlike a final salary scheme), the JPS22 would negatively affect judges who gain a higher judicial appointment after their initial appointment.

The conclusion is therefore that the level of pension provision appears to raise no major concern, but, for most respondents, it was not a strong incentive to go onto the salaried Bench either because of the equalisation of pensions between fee-paid and salaried judges, or (typically) because they had made adequate pension provision. The reform in 2022 was welcomed, but, as the SSRB noted, because the new pension scheme was announced in 2019, consulted on in 2020, and has been extensively discussed by serving judges, much of the effect of the pension has likely already been "priced in".[28]

3.3 Flexibility

In 2018, the perceived lack of flexibility in working practices on the Bench was the most commonly cited barrier to judicial appointment.[29] It was an issue raised by nearly two-thirds of the women interviewed at the time, as compared with nearly one-fourth of men.[30] This year, a slim majority of women respondents raised it, and so did several men respondents who cited caring responsibilities, some of them being primary caregivers. Overall, most respondents considered flexibility of working patterns to be a significant factor. Flexibility of working patterns is broadly connected to lifestyle and the balance between work and private life, and some aspects are considered below: autonomy, salaried part-time working and geographical deployment.

Autonomy

When flexibility was understood as the need to maintain autonomy at work, other incentives such as flexible working arrangements were unlikely to make the balance tilt towards salaried position application. Many compared the routine of the position of a

[27] The judicial pension scheme now applies to fee-paid judges to remedy the discrimination identified in *O'Brien v Ministry of Justice* [2013] UKSC 6.

[28] SSRB (2023), *ibid*., para. 5.13.

[29] Turenne and Bell, 2018. This study applied to courts only.

[30] *Ibid*., para. 47.

salaried judge with the more flexible lifestyle they had in private practice – and a fee-paid position did not (too much) disturb this lifestyle. Some emphasised their comfort with their own more flexible practices as fee-paid judges:

> "…Following COVID, I now work from home two to three days a week…I tend to start work later in the day and work in the evening, so that flexibility is important to me, and I would lose it [if I were to join the salaried Bench]. It's not that I want to work part time. I would want to work full time. It's about power over how I organize my time…judges are simply going to be required to be available between set hours, because those are when the cases are being dealt with, there's no element of choice on certain issues, on certain aspects of the work" (Judge 25, Fee-paid First-tier Tribunal Judge)

Many respondents (especially barristers) valued their autonomy to pick and choose work on a rolling basis, to select cases which interested them and to fit their judicial fee-paid work around that. On the other hand, salaried judge respondents valued the ease of booking holidays and taking weekends away:

> "Perhaps curiously I find that I am more occupied [during the week] but I have less home work and less work at weekends. It's always more than a full-time job, but I don't have the pressure of clients, I don't dine at work. There is the flexibility of holiday; I can get away at times, take a weekend away" (Judge 35, Circuit Judge)

Overall, the balance between the advantages and disadvantages in the predictability of regular working practices was even, and the lesser flexibility and greater stability attached to a salaried role were understood as a disincentive and an incentive in equal terms by the majority of DJ and DDJ respondents who commented on this. A similar split was noticed among Employment judges. One half of FTT judges commented on it, with a majority considering the predictability of working patterns as an incentive. Most Recorders and CJs considered the holiday package and routine at the Bench in positive terms, with a majority of CJs noting the beneficial impact a salaried appointment had on their quality of life.

Part-time working

Part-time working is available for the salaried judicial roles considered in this Report, subject to there being sound operational reasons to exclude it. An overwhelming majority

of fee-paid judges were aware of the salaried part-time working policy, and a third of salaried respondents (women and Tribunal judges in the great majority) worked part-time, usually 80 or 90% FTE. For several respondents, the prospect of working through the ordinary school term, thus saving up sufficient leave to enable holidays with family, was a sufficient incentive, coupled with the ability to share some family time in the evenings throughout the year. In one case, pay being equal to that in the respondent's previous position, the salaried part-time working policy made the salaried position "acceptable" (Judge 46, Employment Tribunal Judge).

This contrasts with the majority perception, among fee-paid and salaried alike, that flexible working patterns are somewhat difficult to secure. DJ work was cited as well suited for part-time working, on the basis of oral judgments and order drafting that was not particularly time sensitive, but resistance was noted:

> "[There is] a stiff resistance in the leadership to approving anything other than a full-time salaried position…I think at the District Bench, speaking to people who have, for example, tried to move to a more flexible arrangement, it is the devil's own job to persuade the powers that be…it's possible, but…you'd have to kind of argue for it and it would be unpopular…It's not necessarily that easy to [secure] part-time working" (Judge 41, District Judge)

This perception acted as a deterrent to those fee-paid judges at an advanced stage of their career, who would rather not commit to a full-time salaried role without knowing what the chances of part-time working were.

Operational reasons such as recruitment difficulties and backlog may effectively limit the possibility of part-time working, but they were challenged by those respondents whose part-time working requests had been rejected or had not been well received when they raised the matter informally. Variations to existing arrangements (in one respondent's case, a return to 80% FTE or more that had been requested) are also a matter of contention: "I don't think that was handled well at all…I keep on reminding myself how much I enjoy doing the work, but from an HR point of view, it has not been a pleasant experience" (Judge 58, First-tier Tribunal Judge).

80% FTE was perceived as a cut-off point (and is stated as such in some jurisdictions) and some fee-paid judges saw it as a deterrent: “As a mother with two teenagers who seem to demand more time than a toddler, and a husband who works shifts, 90 and 80% FTE are not attractive” (Judge 06, Deputy District Judge). Fee-paid judges further queried the provision of parental leave for those salaried judges who were not primary carers, as an example of family policies that could be expanded. The sense that the workload itself was high was itself a reason to ask for part-time working to manage the workload: “I work 90%….I mean I think if I was 100% FTE, in effect, I’d probably be working 6 1/2 days a week” (Judge 56, Salaried First-tier Tribunal Judge).

When one enquires what is needed in this respect to shift the balance towards applying for salaried roles, then several features emerge. First, the option of part-time working is a strong incentive for those with caring responsibilities. It is not only that the judiciary is attracting “a young cohort of people often with a young family”,[31] there is also increasing demand for flexible working patterns in the legal professions.[32] This was reflected in many fee-paid judges raising this issue as a relevant factor in their decision to apply. Greater transparency of the operation of the policy on appointment or thereafter, as well as sensitive handling of reasons provided by applicants for part-time working are thought to be needed to make the judicial salaried part-time working policy fully effective.

Geographical deployment

Geographical location of judicial work was a pressing concern for a majority, though not for FTT judge respondents (who are simply assigned to one FTT Chamber). Professionals in the middle or later stage of their career typically have settled in a specific geographical area, often with their family or partner, sometimes near elderly parents, and they are not willing to give up their social networks for salaried appointment. On the other side, there

[31] Sir Andrew McFarlane, cited in M. Fouzder, “McFarlane urges family lawyers to aim for the Bench”, *Law Gazette* (19 May 2023).

[32] 43% of barristers want more flexible working for work-life balance reasons, see Bar Council (2024), *Barristers’ Working Lives Survey. Barrister Wellbeing (BWB) analysis*. The Law Society found that women are more likely to be working part time (21% v 12% of men; freelancer solicitors excluded), and women are more likely to be working flexibly (89% v 84% of men). These figures have notably increased since 2019, see The Law Society (2023), *The Law Society’s Practising Certificate Holder Survey 2022*, pp. 41-42.

must be adequate coverage by judges for all court and tribunal centres, however remote or expensive the part of the country to live in.

The solution to this problem has been to operate effectively a “pool” system of salaried judges. Court and Employment Tribunal salaried judges are appointed in England and Wales to a circuit or region and then assigned to positions within that circuit or region, as the need arises. But the English and Welsh six circuits are very large, and so are the Employment Tribunals ten regions; either way, salaried judges are not formally appointed to specific towns or localities. For example, a person living in Durham might find that the available salaried post is in Kent. Some salaried judges will therefore need to travel long distances to court or tribunal centres or acquire a residence nearby. Fee-paid and salaried judges, within courts and the Employment tribunal, gave accounts of the distances travelled by themselves or their colleagues – up to 200 miles away from home in one case, with a one-bedroom flat rented to support them and associated thoughts of resignation. High housing costs in London and the South East remain a disincentive to fee-paid judges who are not based within close proximity to London.

Many fee-paid and salaried respondents stated that they would decline, or that they would have needed to decline appointment had the commuting time been excessive (more than one hour or one hour and half, one way, for most of those who commented on this), in the absence of guarantees that they might be moved to a better location within less than five years. Since a primary incentive for salaried office is wanting “to be in one place, as close to home as possible” (Judge 35, Circuit Judge), with “fewer anti-social hours” (Judge 34, Circuit Judge), salaried posts are expected to be within commutable distance. One fee-paid FTT respondent with an ongoing salaried post application acknowledged his dilemma:

> **“**I’ve got a family. I don’t want to be away from them at this point, and I’ve got teenage [children]. That’s not a time when I want to be suddenly an absent father. I’m not interested in that. I think there’s an element of risk involved always in this. And there’s just not much way out of that” (Judge 26, Fee-paid First-tier Tribunal Judge 03)

Fee-paid judge respondents commonly expressed the view that they found the prospect of moving difficult and did not want to continue or start commuting long distances or living regularly away from home. The answer was the same across jurisdictions, whether with 10–19 or 20+ years of PQE. Allocation to geographically vast circuits and regions was perceived as out of line with modern social and family expectations. Respondents emphasised that judges whose children had left home or who had no children might have other reasons to stay in the area, whether for elderly parents or to be with their spouse: "I'm afraid, as it currently works, it is designed for men who can move while their wives do everything at home" (Judge 39, Circuit Judge).

The likelihood of excessive commuting or relocation is perhaps lower than is commonly perceived (see below), at least on a long-term basis, but the lack of information on location does create the risk of such an eventuality, and appears to deter some fee-paid judges from applying:

> "It [lack of information on location] does put me off because I won't take that risk at this point in time…My eldest will be doing her GCSEs in a couple of years. I simply cannot run the risk of being away from home. I wouldn't do it and I don't want to go through the process which I know from experience is lengthy and stressful in order to have to turn something down…The understanding is that you do five years wherever you get put…five years would take my children to university. I'm not prepared to commute to [X] on a daily basis by way of example, or live away for a week at a time, and I can't run the risk that I would go through that whole process and then be put in a very difficult negotiating position at which they have me over a barrel to some extent where they say, well, if you want this job, you go where we're going to send you" (Judge 07, Deputy District Judge)

Remote working was raised by salaried respondents as a way to reduce commuting, in agreement with their court or tribunal, but some respondents noted a perceived emphasis on "presenteeism" in the court building. This was regarded as putting greater strain than necessary in the way in which a judge handles their workload, particularly when everyone else but the judge was attending remotely:

> "I commute for [three hours or more] a day... I could see the children go to school instead of needing to be physically there. There is a blanket approach to always being there [in the office]; it would have put me off if I had known of it…It would be nice one day a fortnight if I had this writing day or maybe another day a fortnight if I could work from home if the hearing is remote. It would be quite nice to take my children to school and pick them up occasionally…I thought there would be more flexibility to work from home on occasions and I'm holding on to the hope that world is moving more towards technology enabling more flexibility" (Judge 46, Employment Tribunal Judge)

Among those who remained wary of the risks of being unable to negotiate a more suitable location, various related concerns were expressed. This included whether questions about location, or the prospect of dividing one salaried post between locations, were better raised before appointment:

> "I took the trouble to ask [at a pre-application seminar] and I believed the answer I was given, [i.e.] 'if they say, well, we're offering you a place where you can't move, just say it and we'll see what we can do'…People do worry about being blacklisted for asking. I was told it's not true. I decided to believe it because, you know, I'm an optimist, but others are not" (Judge 42, District Judge)

Notwithstanding these concerns, several respondents considering a salaried post application were confident that their personal circumstances would be recognised, and that they would be able to secure their preferred deployment on circuit or region if appointed or thereafter. This was reinforced by the finding that half of DJ and CJ respondents did secure allocation to a more convenient location than the initial location, either upon appointment or within less than two years of appointment. Respondents recognised that there might be limited choice in deployment upon initial appointment, and they indicated that what mattered more is a confidence that a more congenial posting will be found within the following few years.

Transfer

For the reasons considered above, the possibility of transferring within, or from, one circuit or region to be closer to home was raised by most of those who held appointment location

to be a significant factor to salaried post application. But salaried judges across the board suggested that greater transparency, communication and co-ordination between stakeholders was needed on judicial vacancies. Although a protocol for transfer within regions has recently been introduced, not all regions and circuits were said to advertise vacancies internally, and even when they did so, information provided was reportedly scarce.

> "When they send this email on, this is a two-line asking. Is anybody interested in going anywhere? You're playing in the dark. You don't know whether there is a vacancy anywhere or whether anybody has been appointed. You don't know, but you get it…It needs to be a little bit more transparent than just applying for a chance" (Judge 44, District Judge)

> "I know of several different judges who've met somebody over a dinner or something and said 'oh, I want to be down South' and they said, 'oh, I want to be up North. Well, should we swap?' But it shouldn't come down to chance meetings at dinner" (Judge 40, Circuit Judge)

Generally, there was a strong opinion that the approach to geographical location in England and Wales requires serious consideration by the Ministry of Justice. Adding commuting or re-location to the list of issues with which a new judge and their family will have to deal is a deterrent to applications. The overwhelming consensus was that likely locations should be systematically specified because circuits or regions were too large for anyone to know in advance whether deployment would be within reasonable commuting distance. Applicants should remain free to apply for a range of places to improve their chances. Improvements in communication between the various relevant authorities, and greater clarity about transfer opportunities and waiting lists should also be considered, to manage expectations of potential applicants. Having a clearer system of transfers between circuits and regions might also work to rebut the assumption among some respondents that transfers were only approved if a particular circuit or region actively wished to "move" a certain judge.

3.4 Overall points for consideration

1. Consider that remuneration for undertaking judicial office needs to be regarded not only as a key motivation but also as part of a wider package presented to potential candidates, so that remuneration increases need to be supported with changes to the other critical areas identified in this Report.

2. Consider the scope of salaried part-time work and review the consistency with which requests are handled.

3. Consider revising geographical deployment to address such related issues as relocation; excessive commuting; information about how geographical preferences will be considered; the possibilities of transfers to different circuits or regions, and split appointments between two geographical areas.

4. Institutional incentives and disincentives

In this Section, we analyse institutional factors which are of comparable interest to all potential applicants, most importantly the selection and appointment process, and the workload of salaried judges. We also consider the notion of career progression and the number and allocation of sitting days to fee-paid judges, recently cited as a reason for fee-paid judges to prefer the status quo and not apply for salaried positions. Those factors raise broader questions about the judiciary as a career path, and the place that fee-paid judges occupy in this career path.

4.1 Selection and appointment process

In 2010, the JAC for England and Wales noted that good candidates did not always prepare effectively for the selection process; and the intensity of the competition meant that even highly talented applicants might not succeed on their first attempt.[33] Today, although application numbers remain high, recruitment shortfalls apply to all positions within the remit of this Report, and there are concerns about the quality of applications as well. In this section, we note the respondents' concerns that might deter applicants of the relevant calibre. They mainly concerned the length of the process and the competency frameworks, which were thought not to test the skills most required for application to salaried positions. Those interested in applying cited the apparent disregard, in the process, for the experience and record of those who have already served as fee-paid judges, and the unproven assumption that those with appropriate skills can be deployed in any area of law regardless of lack of specialist knowledge.

Process length

The JAC time indicator for medium to large recruitment exercises within the remit of this Report, is up to 38–50 weeks from close of applications to recommendations to the appropriate authority.[34] Most respondents mentioned waiting for up to 18–24 months for

[33] *Report of the Advisory Panel on Judicial Diversity* (2010) (chair Dame J. Neuberger), para. 72.
[34] JAC (2023), *JAC Annual Report and Accounts 2022- 2023*, p. 18.

the whole process to conclude, from close of application to notification of their deployment. A majority of respondents commented at length on the judicial selection process. Most salaried judge respondents found the length excessive, and this view applied across jurisdictions. Among them, a minority raised judicial selection and appointment as a significant disincentive. By comparison, less than half of fee-paid judge respondents found the length of the process excessive, although an equal number of respondents, spread across all jurisdictions, raised the appointment process as a disincentive. This included three out of five fee-paid judges with ongoing salaried post applications. Perceptions of the selection process were remarkably similar across the fee-paid judge groups considered.

Respondents across all groups acknowledged the challenges of managing a high volume of applications, and a few compared favourably the JAC selection process to the old system based on a “tap on the shoulder”. But the JAC selection process was mostly described in terms such as “a bit of a mammoth”, “glacial in its processing” (Judge 56, salaried First-tier Tribunal Judge), and “not for the faint hearted” (Judge 28, Fee-paid First-tier Tribunal Judge). The effects of the lengthy process were that solicitors could take partnership or look to expand their practice during this period; and barristers might fill their diary with complex cases months in advance and needed to know the outcome more quickly. The length of the recruitment process is likely unparalleled in the legal sector; in any event no respondent was able to suggest examples of a comparable length.

Respondents also contrasted the short period to accept appointment with the waiting time of 3–4 months to know about deployment location: “I thought, after a year and a half, giving me less than seven days to decide whether I wanted to move my entire family to a different part of the country [was] completely unreasonable” (Judge 40, Circuit Judge). Another fee-paid judge withdrew his salaried position application before interview on account of having had too many months to think about it. Some fee-paid judges, even though they had been successful on their first attempt in gaining their present position, have instead sought further or alternative assignments outside JAC competitions, by responding to expressions of interest circulated to fee-paid judges.

The challenge in managing a high volume of applications in a shorter amount of time appears to be compounded by the perception that it is advisable to apply at the first opportunity and for more than one judicial position (excluding combined recruitment

exercise). Having “a handful” of fee-paid positions is a way to “keep options [for salaried positions] open”, Judge 29, Fee-Paid First-tier Tribunal Judge). Competitions are now anticipated to run every year, every 18 months or every two years for the posts within the remit of this Report. Given the time it takes to know the outcome, respondents were keen to maximise their chances with multiple applications: “I got both [salaried and fee-paid roles]…because I was firing on all cylinders on this” (Judge 49, Salaried Employment Tribunal Judge). As one respondent noted,

> “You could always turn [any offer] down, so you tend to apply for things as they come up with the tribunal service. Generally speaking, they do a generic exercise where you apply to the first tier tribunal and then you are deployed as they decide…So obviously I had hoped to go to [X Chamber], but that wasn’t on offer, so I was offered [Y Chamber]…given my age [50–55] I felt I didn’t want to hang around for another competition and it was better just to take what was on offer” (Judge 60, Salaried First-tier Tribunal Judge)

Competency frameworks

There is a clear perception that the JAC selection process relies on a skill set that is not naturally acquired in legal practice or even as a fee-paid judge, and that the skills which seem to be emphasised appear to have little to do with the skills needed for “judgecraft”. About one-fourth of respondents across all groups regarded this as a disincentive to application, in strikingly similar terms:

> “I actually think one of the reasons why people are put off applying is because sometimes you see some appointments and you think, how on Earth did they get it?” (Judge 39, Circuit Judge)

> “What I think about the competence-based thing is that it’s a bit like playing a game. If you know how to do a competence-based form, you can fill it in. I’m not sure that’s the best test of skills” (Judge 56, Salaried First-tier Tribunal Judge)

> “[T]hey are trying to make it objective, which is an admirable aim, but I think what they’ve ended up with is unjust appointments…It’s a particular skill set, and you learn that” (Judge 51, Salaried Employment Tribunal Judge)

Some respondents suggested that greater flexibility in the competency assessment would properly acknowledge diverse experiences or backgrounds which can be difficult to integrate into, or quantify, under the competency frameworks.[35] Others raised that the process was suitable for selection of civil servants (whose "whole life is competence based" (Judge 56, Salaried FTT Judge, former public sector lawyer)), and that judging as a profession required greater focus on legal skills, jurisdictional knowledge in some cases, and judgecraft in particular: "[S]hoe horning civil servants' competency process…[is] not helpful…The competency model is an imported model and is not suited to [judicial appointments]" (Judge 19, Recorder KC). Several (five) public sector lawyers also commented on their familiarity with the selection process, based on their public sector experience, including this respondent:

> "I'm very familiar with that whole approach. I think it possibly would have been harder if I'd been at the Bar or if I'd been a solicitor in private practice where they don't do this. But I worked in local government as well. So if I'm honest, I think it probably advantages me. I knew what they were looking for and how they would score my answers, so I had no problems, I have to say, in the process" (Judge 41, District Judge, former solicitor)

Several respondents across all groups expressed a lack of confidence in the ability of the JAC competency frameworks to properly identify those candidates suitable for salaried appointment. In particular, respondents suggested that inclusion of a qualitative assessment of their work as fee-paid judges within the selection process would be an incentive to apply. This would be consistent with viewing fee-paid judicial positions as a stepping stone into the salaried judiciary:

> "Giving people due career progression seems to me to be entirely inconsistent with a failure to give any regard to whether people are doing the job and doing it well in fee-paid roles" (Judge 11, Fee-paid Employment Tribunal Judge)

Judicial appraisal was incidentally commented on by several fee-paid respondents, as one possible way to facilitate their JAC application process, but those who commented on it did

[35] The JAC competency frameworks incorporate the judicial skills and abilities framework used by the courts and tribunals judiciary and the Judicial College.

not think judicial appraisal was sufficiently developed or a viable option for the purpose of JAC applications. Instead, it was suggested that samples of the judges' work (e.g. reserved decisions) could be considered by the JAC at the early stages of the process.

Fee-paid experience and jurisdictional knowledge

Linked to this, several (five) salaried judges, including two direct entrants, suggested that fee-paid experience was invaluable: "If there was an equivalent exercise, I would speak honestly and say I found it really hard because it's quite hard to learn judgecraft – fee-paid experience provides that" (Judge 09, direct entrant to salaried post). Many respondents thought it was natural to expect those with fee-paid experience to be better equipped for the role:

> "I have seen at the District Bench a lot of people being appointed who have very little courtroom experience and they find it a shock. I think those people have no idea what it's like. Some of them really struggle because it's tough…You have to have some fee-paid experience. I think it's a real strength of the system that you can be a fee-paid judge and then decide whether or not to apply. I think it's good for both sides. It means that the MoJ knows that they're getting somebody that's tried and tested…[But] we've got lots of people coming in without any real idea of what the job involves and they're struggling with it" (Judge 39, Circuit Judge)

Some Recorder, ET and Circuit judges also queried whether the JAC competency frameworks and behavioural indicators were suited to the reality that judges needed experience and jurisdictional knowledge in the field. Conversely, several (four) respondents, mostly fee-paid respondents of distinct jurisdictions, mentioned doubting their ability to hold judicial office outside their legal specialism. One commercial practitioner, also a Recorder (Recorder 05), suggested that transition to salaried role might not be smooth, because often there is no time to think, which compounds the issue of limited jurisdictional knowledge or practice in the relevant field. As one respondent forcefully suggested:

> "I've practiced crime for [20+] years and I think [the jurisdiction-blind approach] devalues the job and does not rate sufficiently jurisdiction-specific knowledge which is so important in first instance judging. Maybe on the High Court bench,

> those with the absolute highest intellect and ability – maybe – do have that skill; they can glide effortlessly into an administrative court or technology and construction court, having not sat there before, absorb all the procedure in the law briefly; but I think below High Court level that's a big ask and I don't think they've put enough value on jurisdictional knowledge" (Judge 19, Recorder KC)

Interestingly, fee-paid and salaried judges who themselves had lacked the relevant jurisdictional knowledge, raised whether the JAC assessment of generic competences and behaviours was sufficient. They were doubtful that they would recommend direct entry to salaried position or entry without jurisdictional knowledge. One salaried ET judge described their appointment as "bizarre" (Judge 53, Salaried First-tier Tribunal Judge) and based on the erroneous belief that generic skills allowed them "to do anything" within the judiciary when they felt they couldn't. At the very least, it was thought that role expectations might be made clearer:

> "I had no Employment law experience at all. It wasn't a requirement for the role, so I've had to learn things on the hoof, and I've done my best, but I almost constantly feel like a fraud. I accept that some judicial skills are transferable, but not all. And why would you appoint a specialist [in another field of practice] into an Employment Tribunal judge role? Obviously, I'm grateful I got the role, but I think if the adverts were clearer that it's this level of traditional role in this area in this jurisdiction specifically, then if you choose to apply, so be it" (Judge 07, Deputy District Judge, discussing their fee-paid Employment Tribunal role)

Another respondent, who holds two fee-paid roles, commented about the large number of appointees missing experience in their specialist area as a practitioner ("you get judges who don't know what they're doing, solicitors that are getting frustrated and then you get a knock-on effect", Judge 31, Fee-paid First-tier Tribunal Judge). Judicial induction training and mentoring were praised by respondents, in particular Judicial College training, but several respondents noted that it was mainly ad hoc support for those having difficulty to adjust to a new specialist area. The same respondent who observed in her own practice the difficulties in judges sitting outside their speciality commented on her own difficulty in sitting outside her speciality:

> "It's nice to learn something new, isn't it? But then on the flip side of that, you have to imagine the people that come in before me, and what they might think of that…You can't train someone in the experience and all the nuances of what's going to happen on a particular day" (Judge 31, Fee-paid First-tier Tribunal Judge)

It was accepted by some that not insisting upon specialist knowledge might help to improve diversity of the judiciary, but again one of the beneficiaries themselves seemed unsure:

> "…the only thing I would say would be [that] there needs to be a lot more knowledge that's coming through, as opposed to specific attributes. [The process] has worked in a way because you've got people like me and my colleagues who have come through. We're not typically judges, you know, if you think of what a Judge looks like and what a Judge would sound like, what they act like, what their background would be, you don't necessarily think of me and my colleagues. It's good that we've had the opportunity to come through…But the other side of it is [that] you're not getting that experience…I think half and half [would be better]…[say] 'we're going to assign you in an area that you already have experience in, and if eventually you want to try and cross-ticket and we think you can handle that, then we'll assign you there'…Then they may be take a view on someone's experience at that stage" (Judge 31, Fee-paid First-tier Tribunal Judge)

A particular concern among those interested in FTT salaried position was that they might be allocated to the Immigration and Asylum Chamber. Judicial work there was described as onerous by those who had done it, and "brutal" (Judge 58, Salaried First-tier Tribunal Judge) for those without an immigration law background. A fee-paid judge interested in FTT salaried position suggested that "there ought to be the recognition that we're not all skilled amateurs" (Judge 25, Fee-paid First-tier Tribunal Judge). This reflects that, for both fee-paid and salaried judges across jurisdictions, judging outside one's specialism is generally a concern, if not a disincentive.

Consultants

Respondents' perception of an overall disincentivising selection process was further exacerbated by the availability of recruitment consultants whom "you can pay to help you

pass" (Judge 41, District Judge). Less than a fifth of respondents, including several salaried judges, raised that they had sought their assistance. Some respondents described them as beneficial ("they lift as you climb", Judge 34, Circuit Judge), but it was also suggested that applicants feel at a disadvantage if they didn't have the money to get that input. More importantly, respondents suggested that the perceived need for recruitment consultants was further evidence that the JAC selection process was merely an exercise in working out how to jump the hoops:

> "There are consultancies who train people to take those [exercises]. That's not much of a fair system if it requires consultants to train what will be very skilled professionals who've been writing and doing a comparable job [as fee-paid judge] for many years. You have to be trained in order to contort your thought processes and write into a form…What's being asked is so far from what anybody in practice would actually do or write. And so you're having to go through such an artificial exercise to tick the right boxes…There may be other ways of doing it…[The process] ought to better test the skills that you're going to actually exercise on the Bench and I don't think it does at the moment" (Judge 25, Fee-paid First-tier Tribunal Judge, having reached interview stage for salaried role without consultant's help)

Those who did seek a consultant did not feel any more confident in the system, even when they, such as this respondent, had relied upon competency frameworks to recruit lawyers in their own firm:

> "I know people have differing views about consultants, but the consultant I spoke to just said it's a bit of a lottery as to who is successful in the application. It was disappointing to me in one sense, in that I'd already been doing effectively the job of a Deputy District Judge. I haven't actually met the core competencies, which made it clear to me that this is a very particular type of application, which is not necessarily meeting your competency to be a judge or your legal knowledge. It's assessed on a very particular framework" (Judge 29, Fee-Paid First-tier Tribunal Judge, with Deputy District Judge experience, unsuccessful District Judge application)

Another disincentive in relation to the selection process concerned inconsistency in grading answers in concomitant selection exercises, as mentioned by a few respondents. One of them was offered two salaried positions but at the same time was rejected for the corresponding fee-paid positions she had applied for: “I was told that I was totally unsuitable for the fee-paid role even though I answered all questions exactly in the same way [for fee-paid and salaried recruitment exercise]” (Judge 43, District Judge).

Referees

Some fee-paid judges raised the need for judicial referees when applying for salaried positions. They thought that those were difficult to get, and that such a requirement was unrealistic since they work in isolation and the judges on their circuit may not know who they are. Some salaried respondents applying for another post were also reluctant to contact judicial referees due to the same concern that they didn’t know their work; it was suggested that, for those respondents, at least references could be asked at the end of the process only, to avoid creating unnecessary rift in their court or tribunal.

Reasonable adjustments

Some respondents also questioned the JAC’s reasonable adjustment policy for neurodiverse candidates like them. They had applied before the JAC recently reviewed its policy on this matter.[36] In all cases they were highly successful and experienced specialists in their field, and they thought that the JAC process was a bar to their application. Some suggested that the time addition of 25% was not sufficient for online tests. They had been eliminated at that stage on a few attempts, but they were successful when the online sifting stage was removed from the selection process in which they participated. Another respondent cited the abrupt ending of a role play when they went over time, suggesting that there were better ways of dealing with this matter.

4.2 Career progression

Recruitment shortfalls over the past few years show limited natural progression from fee-paid to salaried positions. Instead, giving potential applicants who were unsure about applying for a salaried position the opportunity to experience judicial work in a fee-paid capacity has had mixed success. This is not to suggest that fee-paid judges have found

[36] The JAC reviewed its reasonable adjustment policy at the end of 2022, JAC (2023), p. 41.

the work unrewarding; indeed, various fee-paid judges across jurisdictions respectively described judicial work as “stimulating”; “keeping things really interesting”; “quality work”, and “answering questions rather than arguing for a living”. Rather, many fee-paid judges found that their present status suited them well, and they were unsure that they would gain greater satisfaction from a salaried position.

Distinction between fee-paid and salaried judicial work

Whether the challenge and interest of salaried judicial work is greater or the same as that of fee-paid work could be a relevant factor. One attraction to making an application for a salaried position might be that longer and more complex cases are likely to be assigned to salaried judges, and conversely some less attractive work including case management and other preliminary hearings, might be “pushed down to deputies” (Judge 06, Deputy District Judge, a view supported by respondents in other jurisdictions). On the other hand, a salaried position attracts a significant amount of administrative responsibility. The relative freedom of fee-paid judges was appreciated by both fee-paid and salaried judges:

> “If there are issues which arise on the day, then I can raise them appropriately with either the legal team manager or someone within HMCTS. But it isn’t something that follows me around…and it’s not something I have to come back to. I don’t have monthly meetings or quarterly meetings with judges” (Judge 05, Deputy District Judge)

> “All that’s happening at the moment is that your full-time judges are effectively left doing the same thing [as fee-paid judges], plus all the admin and all the other stuff that goes with it, all the training, all the appraising, all the rest of it for which there’s absolutely no incentive, there’s no extra pay, there’s…no positivity to it other than doing it being a good thing [whereas] all the deputies get a day’s pay, a day’s pension, plus their travel and pick and choose where they sit, where they go, when they work and whether they have more than one fee-paid role and [they get] to control that” (Judge 45, District Judge)

Importantly, fee-paid judges did not primarily compare the work of fee-paid judges with that of salaried judges; rather they compared the opportunity of moving to a salaried position with the interest of their current work, before considering other incentives and disincentives

to apply. Sometimes this would still favour a move to a salaried position. Some partners in solicitors' firms regarded salaried judicial office as a welcome release from an increasingly managerial role in which their legal skills were no longer being developed. There was usually no parallel incentive for barristers, who are increasingly dealing with more challenging cases as they become more experienced; instead, public service was raised by several as a motivating factor in the decision to apply to the Bench, in combination with the attraction of a better balance between private life and work.

Career progression within the salaried judiciary

Recently, "structured career development routes in the judiciary"[37] have been said to be available, which might be a further incentive to apply for salaried office. Thus, in 2023, 26 DJs were recommended by the JAC for appointment as CJ. Despite this recent development, career progression within the judiciary was not often raised in interviews. Some DDJs were considering applying to become CJs rather than starting in the DJ role, and some Recorders were considering applying for Deputy High Court (for the purpose of applying to the High Court) instead of, or as well as the CJ role. Some such respondents thought that they might not be on the Bench for long enough to have a chance of promotion, or they did not want to move to a salaried office outside their legal specialism.

Several DJs and salaried FTT judges praised the possibility of "moving around", whether through cross-ticketing or promotion, with, e.g. the possibility for a salaried FTT judge to spend a few days in the Upper Tribunal to explore the opportunity of applying to work there. But almost as many respondents suggested that substantial differences in the work and conditions of various jurisdictions made moves between courts and tribunals challenging, and seemingly only welcome for those judges who were moving towards their area of specialism in so doing. This gave the impression that early steps to consider career paths within the judiciary were welcomed in principle, without playing a major role in the decision whether to apply to move to salaried office.

[37] <https://nationalcareers.service.gov.uk/job-profiles/judge>, viewed 1 June 2024.

4.3 Sitting days for fee-paid judges

The shortage of salaried judges has been said by the SSRB to feed "a seller's market" as fee-paid judges can sit for many more days than their minimum commitment.[38] There are concerns that "the relative attractiveness of fee-paid roles is further increased when some fee-paid judges can, in practice, work as many days as they wish because of vacancies in the salaried judiciary".[39] To the extent that this is correct, it might follow that reductions in the maximum number of sitting days permitted to fee-paid judges might incentivise some fee-paid judges to move to salaried office. But we found little evidence that many fee-paid judges were in fact exceeding their minimum sitting days (30 days, or, under older terms and conditions, 15 days or an expectation of 20 days). Most fee-paid judge respondents gave priority to their practice and sat the minimum number of sitting days required in the last financial year. The median number of sitting days per role was remarkably similar across the board, with 28 days for ET judge respondents, 30 for FTT and DDJ respondents, and 25 days for Recorders.[40] About one-fourth of fee-paid respondents held a second fee-paid role, with one respondent holding three paid roles. Respondents also thought that it would in fact be difficult to increase their sitting days, which leads to the next point.

Shortages, cancellations and last-minute requests

One reason for not exceeding minimum numbers of sitting days would seem to be a shortage of sitting days across various jurisdictions (mentioned by county court judges; Employment Tribunal judges; and one Recorder). In one case, the budget ran out after sitting days had been booked, with two weeks of sitting cancelled, and the affected respondent commented: "I don't offer more days [than the 30-day minimum] because I will only have a couple of fee-paid gigs and that leaves people vulnerable [to loss of income]" (Judge 58, Salaried Employment Tribunal Judge). Fee-paid judges were fully aware that they should not rely on their fee-paid role for a livelihood. In addition, the number of sitting days on offer, and the booking and cancellation frequency varies according to jurisdiction. Several tribunal judge respondents received lists of available hearings every month and

[38] SSRB (2023), *ibid*. para. 5.36.
[39] SSRB, *ibid*., para. 5.9.
[40] Interviews took place between from mid-January until mid-April 2024.

one booked days three-four months in advance in the Employment Tribunal. Some other respondents contacted HMCTS to offer days in court when the trial which they were due to attend (as a lawyer) ended or collapsed. Trials are already scheduled in 2026, and so greater anticipation and communication of business needs/sitting day needs would work both ways – it would fill business needs and give greater certainty of sitting days to fee-paid judges:

> "[M]ost people at the Tribunal, like me, are fitting their Tribunal work around another job…essentially, we are on a zero-hours contract. So, we've got all the disadvantages of that, although we do get a pension and sick pay. But there is no certainty, and to be fair, I always seem to have enough work. But there could be a month where they give me no work at all" (Judge 24, Fee-paid First-tier Tribunal Judge, 30 sitting days in the last year)

Moreover, the volume of last-minute trial cancellations and last-minute requests to sit (which often cannot be accommodated at such short notice) makes it reportedly difficult for many respondents even to meet their minimum quotas. Again, there is variation between jurisdictions, and one jurisdiction (Mental Health Section, First-tier Tribunal) was described as unstable with cancellations always possible because of the nature of the cases. Rescheduling or adding sitting days is difficult for some practitioners, and cancellations are especially frustrating for those such as solicitors, who had negotiated leave from their employer to be able to sit on those days.

Last-minute sittings, with court papers sometimes sent the night before, were difficult for those with a learning disability, who raised needing more time and losing, in such case, the opportunity to organise themselves around the sitting day. Even when a disability was known locally, it was also problematic to have it considered for last-minute sittings in the virtual region, as fee-paid judges are "shipped off" to other regions than their own, without regional judges elsewhere knowing about it on time to affect listing considerations. Concerns were also raised that caring duties were not compatible with the last-minute availability needed to sit in the virtual region, though in any event sitting in the virtual region is additional to sitting days in courts or tribunals. The one portfolio respondent indicated only one role as being a steady and reliable source of sitting days, with two

sitting days a month given three or four months in advance, and they mentioned how sitting days otherwise came in "fits and starts" for the virtual region.

Volume of sitting days

As noted above, several respondents in all fee-paid groups indicated struggling to reach the 30 day-minimum for one or more of those reasons: cancellations, shortage of sitting days, and the difficulty to book sitting days at the last minute. One DJ raised that this situation compounded current workload difficulties, in addition to reducing chances of DDJs to satisfy their minimum sitting day requirements if they were not regularly asked to sit.

Perhaps unsurprisingly considering this, we found little enthusiasm among fee-paid respondents for seeking to increase their numbers of sitting days. Those fee-paid respondents (age 55+) who were winding down their practice or declared themselves as semi-retired did not wish to increase their hours. It was recently said by Lord Burnett, then Lord Chief Justice, that "A salaried judge is a judge for all purposes and subject to strict constraints on any other activity…Fee-paid judges, by contrast, are something else first and part-time judges second".[41] Echoing this, fee-paid judges said that as they became more senior, that made it difficult to take time away from practice. In this respect, solicitors in private practice suggested that the sitting day allocation system was designed for barristers who are used to getting cases pulled at the last minute and can sit on the Bench when they have a gap in their diary. This latter practice was acknowledged by some Recorder respondents. A significant number of respondents in FTT and ET recalled too the lack of sitting days during the COVID 19 pandemic and its dramatic impact on the livelihood of some practitioners; they would not wish to rely on having very many sitting days to supplement their practice.

The respondent sample is limited by the nature of this project, and cancellations may, admittedly, be typical of one circuit or region more than of another, or, to the contrary, be peculiar to the period under scrutiny for this research. Nevertheless, convergent explanations across the board make it very plausible that restricting the number of sitting days would play a limited role, if any, in relation to incentivising applications for salaried

[41] Lord Burnett of Maldon (2022), *Mansion House speech by the Lord Chief Justice* (2022).

vacancies. One solicitor respondent had in fact recently taken unpaid leave for concern that sitting in combination with practice left them at the risk of sitting too infrequently ahead of their salaried post application. To set a cap on sitting days would not engage with the actual experiences of fee-paid judges.

4.4 Irreversibility of salaried appointment

Several fee-paid judges expressed concerns that salaried judges, if disillusioned, would be unable to return to practice, and several others wondered whether one could better manage exceptions to the convention of not returning to practice upon retirement from the Bench. They often queried whether returning to practice was any different from the situation of fee-paid judges, who already manage conflicts of interests with their legal practice. We found a correlation between those who raised those concerns and shorter years of PQE or as a fee-paid judge, as well as direct entry to the judiciary. It seems that the irreversibility of salaried appointments acts as a disincentive for those in the middle of their career. If anything, such correlation might also indicate that substantial fee-paid experience likely mitigates concerns about committing to a salaried judicial position until retirement.

4.5 Workload and working conditions

A move to the Bench used to be justified by a change of pace: it led to a reduction in workload and pressure, compared with private practice, thus creating a more agreeable lifestyle later in one's career. This remains true to a significant extent. Several salaried respondents contrasted their working patterns at the Bench with the late hours or workload every weekend in private practice. Respondents in all groups were, however, quick to comment on the volume of cases before them, and their views echo the more detailed findings in the *2022 Judicial Survey*.[42] Some courts and tribunals are below judicial capacity due to recruitment shortfalls, with the consequence that current judges are covering for the work of other, yet-to-be appointed, salaried judges. Salaried judges cited requests for them to sit on more days in some jurisdictions due to budget restrictions on sitting days for fee-paid judges. In the background, in most jurisdictions, the backlog of cases sustains pressure on workload. Many respondents raised the failure of court

[42] Thomas (2023), *ibid*., Section 4.

managers to assign time, or realistic time, for pre-hearing preparation and writing up decisions following hearings, and that the pressure this created would too often lead to working outside normal working hours, while interlocutory work was completed during office hours. Where this is so, and noting that some work outside office hours might still reasonably be expected, this naturally undermines the core incentive of having a better balance between private life and work on the salaried Bench: "[T]he fact that now I'm going to still put in the same number of hours [as in practice] and…be paid less, and…have less freedom, that's not much of a sell" (Judge 25, Fee-paid First-tier Tribunal Judge).

The problems are worst when judges are required to sit five days per week. Most County Court rulings are ex tempore, but if judgment needs to be reserved, then judgments need to be written in evenings or at weekends:

> "I'm listed every day…You hope that you don't have to reserve judgment. You can probably predict when you would need to, but there's nothing you can do about it. You get to the end of trial, and you reserve judgment. Then you look at your list and the listing officer says, 'well, I could cancel things for you, and I could move them around'… I know we're letting the public down, whereas what we should really have is in reserve one day a week…that can be back filled because there's always stuff that can go in, and there's always box work to do. But if you need that judgment writing day, it doesn't exist. That's where my weekends come in, or you just make off the cuff decisions and hope it's OK" (Judge 43, District Judge)

Even when sitting is restricted to, e.g. three days a week, a majority of salaried judge respondents cited an unrealistically high volume of hearings listed across their sitting days, so that they too often worked at evenings or on weekends. Listing is a key judicial matter, but it was reported by some as largely delegated to court staff, with the possibility for judges to ask Resident judges or their Deputy Chamber President for more time to complete work, on an ad hoc basis. FTT and ET salaried judges in particular suggested that a common reason to seek part-time work was to ensure that they remained in control of the pace and demands of judicial work, as part-time work gave them time to write up judgments.

There is a lack of relevant and consistent data to understand the workload of the judiciary and court staff.[43] There are obvious difficulties in measuring accurately the amount of time required by a judge for reading and writing up – as judges become more experienced, certain tasks will likely take less time. But unrealistic expectations about how quickly work can be done have been cited over the past few years. Many salaried judges' perception was that the expectation that salaried judges should be able to write their decisions within the working week is unrealistic, and this perception is shared by many fee-paid judges, who experience needing more than a short amount of additional time to prepare and complete fee-paid judicial work. This latter aspect was emphasised by fee-paid tribunal judges, many of whom work unpaid hours on non-sitting days to complete their cases.

Certain aspects of working conditions were raised as causing great inefficiency instead of streamlining judicial work. Some salaried judges suggested that the work once done by clerks was now left to them due to the "clunky" technology they were dealing with, either as a pilot or because the case management system was too old. The reduction in administrative support was a matter of concern for most fee-paid and salaried judges, regardless of jurisdiction. Many mentioned a high turnover of HMCTS staff with substantial reliance on temporary staff, and as a consequence, a lack of experience and consistency in support, with ultimately more work for judges to do, and more to worry about.

4.6 Overall points for consideration

1. Consider ways to better anticipate and communicate sitting days' needs so that fee-paid judges can better plan sitting days around their other professional commitments.

2. Consider reviewing the selection process, in particular the value of fee-paid experience and the relevance of legal specialism in the competency frameworks.

[43] HoC, *Justice Committee Oral evidence: Work of the County Court* (HC 414, Tuesday 7 May 2024), Q7 and answer by Natalie Byrom, noting that the notion of a sitting day is recorded differently across different jurisdictions, with guidance now introduced on standardised time recording.

3. Consider ways to promote greater certainty in relation to the selection and appointment timeline, and ways also to reduce the overall length of the selection and appointment process.

4. Consider renewed guidance upon the terms of the convention that judges should not return to practice.

5. Consider systematic ways of measuring, scheduling, allocating and monitoring workload, and enabling (salaried) judges a clearer line of recourse in the face of excessive demands.

5. Conclusions

Pay and potential earnings in practice

The attractiveness of remuneration for undertaking judicial office is viewed as part of the whole package presented to potential candidates. The challenge is that those typically considered suitable for judicial office are already high earners. The great majority of salaried judge respondents in each jurisdiction had more than 20 years PQE when their salaried appointment took effect; others had 15 years PQE at the minimum. Fee-paid judges' approach to salaried position was similar, as they generally considered applying for salaried positions at an active and senior position in practice. So, whilst judicial pay in group 7 remains highly attractive to public sector lawyers, who constituted almost a quarter of respondents, it remains a problem for others. The greater challenge lies not in the comparison with present earnings, but rather in the comparison with potential earnings. For those in private practice, either as solicitors or barristers, there is often the sense that, as they approach their early forties, their most lucrative years are just about to come. Fee-paid respondents contrasted the potential gains to be made each year with the probability that a judicial salary would remain relatively stagnant, without even a guarantee that pay rises would keep up with inflation.

Participants recognised the "generous" judicial pension scheme that is uniquely unregistered for tax purposes, but many had already made adequate pension provision. The pension scheme was therefore not a strong incentive to apply for salaried appointment. There was also little enthusiasm for introducing specific incentives such as "Golden Hello" payments, which would be little compensation for lost increases in earnings some years down the line.

For these reasons, those fee-paid judges who retained an interest in applying for salaried positions were wary of the best time at which to apply. The problem might then be less that such judges might be on the Bench for shorter periods of time, but that such applicants might, by that time, be even less likely to wish to relocate or to travel long distances.

The evidence suggests that improvements which might be regarded as manageable from the perspective of the public purse would be insufficient by themselves to create an incentive other than for public sector lawyers, for whom the present conditions are already sufficiently attractive. Increases in remuneration might still prove persuasive for those prepared to accept a salary cut, if they were convinced that reducing the pay gap when it appears too high was a matter of some priority, and if there were compensating attractions to salaried judicial office.

Flexibility in working patterns and deployment

Practitioners appointed in their early fifties, or shortly before, are likely to have dependent children and elderly parents to regularly assist, and spouses are likely to be working. Greater flexibility in working patterns is now available, and most respondents were aware of the part-time working policy. A third of salaried judge respondents worked part-time, but many across the board interested in this option believed that salaried appointments were still premised on being full-time, and that it might be difficult to negotiate a suitable reduction. Anything less than 80% FTE was perceived as problematic to secure. Several respondents, especially women, would welcome a greater reduction of working hours, and besides the expected caring responsibilities, some found the workload to be so high that part-time working was needed to retain job satisfaction and time away from work.

For many respondents, particularly women, this was also the wrong time to commit to long distance travelling and staying in hotels, and family responsibilities often joined the list for waiting a bit longer to apply for a salaried position. Several salaried judges tended to be deployed to a more suitable location within their circuit or region within a few years of appointment, which showed consultation and sensitivity, but it was still difficult for any fee-paid judges to be fully confident that they would be so fortunate. Some were concerned that, especially given the perceived irreversibility of salaried appointment, they would be in a particularly poor negotiating position if no satisfactory solution could readily be found. Interviews indicated the desirability of more systematic and greater information about deployment location and transfer after initial appointment, without unduly raising expectations. They also pointed to mitigating travelling or relocation costs for those relocating beyond reasonable travelling distance due to the business need.

Judicial appointment process and legal specialism

There are connected problems: the process is too long – in many cases closer to two years than one year, and the connection between the JAC competency frameworks and the skills required to be a good judge is not well understood and might in any event need to be reviewed. First, although application rounds are expected, since 2022, to be more regular, those who consider that they might wish to apply soon have to choose between applying at a time which is too early and waiting too long for another opportunity. Second, there are doubts that the JAC competency frameworks are sufficiently related to the skills required for judicial office. There is a wide concern that specialist knowledge is not sufficiently valued in some cases, and that decision-makers overestimate the ease with which generally able applicants might adapt to unfamiliar areas of the law. The combination is unfortunate because few people will wish to wait for an inordinately long time for a decision if they are already sceptical about the criteria being applied and about judging outside their specialism.

Relevance of fee-paid judges' experience

A pool of fee-paid judges in principle facilitates application for salaried positions, because it gives potentially interested applicants an opportunity to discover whether the judicial role suits them whilst retaining an option to remain in practice. Fee-paid judicial experience also helps in mitigating concerns about committing to a salaried judicial position until retirement, but it does not allay lingering questions about the permissible scope for returning to practice upon retirement from the Bench. Fee-paid judges tended to give great prominence to fee-paid experience: as well as the exposure informing their interest (or lack of interest) in making an application, they considered that their fee-paid experience should also be taken into account if they did apply for salaried positions. This is not only because many expected there to be a career progression within the judiciary, from fee-paid to salaried role. Many also considered that judicial experience was necessary for a salaried position and, relatedly, that judges were likely to do much better in an area in which they had some legal specialism.

When commissioned to write this report, we were asked to explore the possible impact of a cap on the number of sitting days for fee-paid judges. Most fee-paid judges in the sample were not only content to fulfil their thirty days minimum sitting, but they would have

found it difficult to do many more even if they had wished to do so. The current sitting day allocation system, with its numerous cancellations, shortages, and requests at short notice, does affect fee-paid judges. It affects in particular women practitioners and solicitors, who are likely to have less flexibility than others to fit sitting days into their schedule. We suggest that the problem, such as it is, of fee-paid judges sitting a high number of days, is likely to be restricted to some jurisdictions only, and to some practitioners only. More to the point, to the extent that it exists, there is no evidence that such judges, facing a cap, would necessarily apply for a salaried position. In the current context, the most likely reasons for avoiding a salaried post application would be loss of autonomy, or possible relocation and/or possible location to an undesired jurisdiction, and these would not be addressed by any cap.

Workload and infrastructure

The pressures and demands of judicial workload have adverse implications for disincentivising salaried appointment, in addition to adverse implications on the quality of judicial decision-making. Judges must retain responsibility and some indispensable input on this matter, not least in the interest of fair delivery of justice but also to maintain a core incentive to salaried appointment. At the same time, greater emphasis might be put on training court staff to properly estimate the length of hearing before County Courts and Tribunals, and limitations might be placed on the volume of cases listed in some jurisdictions.[44] One salaried judge respondent noted, in relation to digital reform, that judges were putting “sticky plasters” on issues that were HMCTS responsibility, and as they did, the problem was left unaddressed by HMCTS. Infrastructure issues may be deep-seated and complex to resolve, but in the meantime, it is likely that they undermine other stakeholders’ efforts, such as those by the JAC, to encourage applications for salaried positions.

Overall conclusions and recommendations

Several fee-paid judges mentioned a long-held career ambition to join the salaried Bench, but a key difficulty in promoting applications for salaried posts is that there are several reasons, specific to individual applicants or to groups of applicants, that will make salaried

[44] This was suggested by the Bar Council of England and Wales in relation to County Courts, see *Bar Council Evidence to HoC* (2023) (WCC0046).

office more attractive. Salaried post application itself continues to be fundamentally motivated by fulfilment of professional objectives, and contribution to public service. Another major incentive is the aspiration for a better balance between work and private life, with a reduction of workload and pressure, compared with private practice. It follows that travelling excessive distances, and absence from home and family are not only strong disincentives in themselves but threaten to remove that main incentive. They also cancel the gains made with part-time working, and so does, for many, the prospect of hearing cases in which judges are not specialists. Workload and challenging working conditions in various court and tribunals make it further difficult for judges to remain in control of the pace and demands of the judicial role – and we suggest that control of the pace and demands of salaried judicial office is a common thread between the various factors considered in this Report, and between judges in different jurisdictions.

We conclude by bringing together recommendations for consideration by the MoJ and such other relevant authorities as the senior judiciary, the JAC, and the Judicial College within the Judicial Office. There is already much liaison between them, but some authorities will naturally be better placed than others to carry out the relevant recommendations, depending on the nature of the concern and recommendation:

1. Consider that remuneration for undertaking judicial office needs to be regarded both as a key motivating factor and as part of a wider package presented to potential candidates, so that remuneration increases need to be supported with changes to the other critical areas identified in this Report.

2. Consider reviewing geographical deployment to address such related issues as relocation, excessive commuting, information about how geographical preferences will be considered, the possibilities of transfers to different circuits or regions, and split appointments between two geographical areas.

3. Consider reviewing the selection process, in particular the value of fee-paid experience and the relevance of legal specialism in the JAC competency frameworks.

4. Consider ways to promote greater certainty in relation to the selection and appointment timeline, and ways to reduce the overall length of the selection and appointment process.

5. Consider systematic ways of measuring, scheduling, allocating and monitoring workload, and enabling (salaried) judges to have a clearer line of recourse in the face of excessive demands.

6. Consider improving working conditions in courts and tribunals to provide greater and more consistent support processes and staffing.

7. Consider the scope of salaried part-time work and the consistency with which requests are presently handled.

8. Consider renewed guidance upon the terms of the convention that judges should not return to practice.

9. Consider ways to better anticipate and communicate sitting days' needs so that fee-paid judges can better plan sitting days around their other professional commitments.

References

Advisory Panel on Judicial Diversity (chaired by Julia Neuberger) (2010) *Report of the Advisory Panel on Judicial Diversity*.

Bar Council of England and Wales (2023) *Bar Council Evidence to HoC*. WCC0046.

Bar Council of England and Wales (2023) *Gross earnings by sex and practice at the self-employed Bar*.

Bar Council of England and Wales (2024) *Barristers' Working Lives Survey. Barrister Wellbeing (BWB) analysis*. Quality of Working Life Research Group, Department of Psychology, University of Portsmouth.

Bellamy, C. (29 November 2021) *Independent Review of Criminal Legal Aid*.

Fouzder, M (19 May 2023) "McFarlane urges family lawyers to aim for the Bench". *Law Gazette*.

Frontiers Economics (09 May 2024) *Research on the Sustainability of Civil Legal Aid*, research commissioned by the Law Society.

Genn, H. DBE, KC (2008) *The Attractiveness of senior judicial appointment to highly qualified practitioners*. Judicial Executive Board).

House of Commons (Tuesday 7 May 2024) *Justice Committee Oral evidence: Work of the County Court*. HC 414.

Judicial Appointments Commission for England and Wales (2023) *JAC Annual Report and Accounts 2022–2023.*

Lord Burnett of Maldon (2022), *Mansion House speech by the Lord Chief Justice*.

Ministry of Justice (MoJ) (2024). *Ministry of Justice Evidence Pack: Judicial Pay 2024/25.*

NatCen (2023) *Judicial diversity: Barriers and initiatives, Rapid evidence assessment* (MoJ).

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

Official Statistics (MoJ) (2023) *Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2023 Statistics.*

Senior Salaries Review Body (2023) *Forty-fifth Annual Report on Senior Salaries 2023*. CP 888.

Senior Salaries Review Body (SSRB) (2022) *Forty-fourth Annual Report on Senior Salaries 2022*. CP 727.

The Law Society (2023) *The Law Society's Practising Certificate Holder Survey 2022.*

The Law Society Leadership and Management Section (2024) *Financial Benchmarking Survey 2024*.

Thomas, C. (2023) *2022 UK Judicial Attitude Survey. Report of findings covering salaried judges in England & Wales Courts and UK Tribunals.*

Turenne, S. and Bell, J. (2018) *The attractiveness of judicial appointments in the United Kingdom – Report to the Senior Salaries Review Body*.