



Major Review of the Judicial Salary Structure Call for Evidence Response Form

Please use this form to submit responses to the Review Body on Senior Salaries' (SSRB) call for evidence for its Major Review of the judicial salary structure.

This response form should be considered in conjunction with the call for evidence document, which is available at:

<https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

The SSRB welcomes any comments you wish to make in response to all of the questions or just in relation those issues that are of particular interest or relevance to you.

Response to the questions below should be input into this document electronically and completed document then emailed to: judicialsalaries@beis.gov.uk. All responses should be received by 28th February 2018.

Part 1: About You

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Respondents are not required to provide an email address. If you do wish to provide this information, it will allow the SSRB or its secretariat to contact you if they wish to obtain further information about any points raised in your response.

Are you responding:	on behalf of an organisation
If you are responding as an individual, are you:	
Choose an item.	
If you are current or former judicial office holder whose office falls under the scope of the review, please provide your job title:	Click here to enter text.
If not, please provide any information you wish to about your occupation or reason for your interest in judicial salaries:	Click here to enter text.

<p>If you are responding on behalf of an organisation, please provide its title:</p>	<p>Chancery Bar Association</p>
<p>Please provide a brief description of your organisation. This should include, if applicable, information about whom the organisation represents, the size of its membership and how the views of members were obtained.</p>	
<p>The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of some 1,300 members handling the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.</p> <p>This response was prepared by the Consultations Sub-Committee of the Association, following discussions with a range of senior members of the Association, many of whom have sat as Deputy High Court Judges pursuant to section 9 of the Senior Courts Act 1981. A draft of this response was then reviewed and approved by the full Committee of the Association.</p>	

Confidentiality

Information provided in response to this call for evidence, including personal information, could be subject to a request under access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). The Office of Manpower Economics, which provides secretariat support to the SSRB, must deal with any such request in accordance with relevant statutory framework. If you consider that any of the information that you have provided is confidential, it would be helpful if you could explain why. This will mean that, if the Office of Manpower Economics receives a request for disclosure of the information, it can take full account of your explanation. However, we cannot give an assurance that confidentiality can be maintained in all circumstances.

Please check this following box if any information provided in your response should be treated as confidential:

If so, please provide further details of what information is confidential and why below.

Click here to enter text.

Part 2: Call for Evidence Questions

Remuneration and other benefits

To assist its consideration of salary levels for each judicial group, the SSRB welcomes responses to the following questions. **In each case, respondents are invited to comment on the current position and whether and how it has changed since 2011. Where calculations are included, please provide workings.** *For example, respondents may provide examples of what external roles are comparable to holding judicial office, the relative levels of remuneration in such roles and how the comparison has changed over time.*

Question 1: To what extent is total remuneration currently correctly set, including in relation to appropriate recruitment pools in the legal profession and elsewhere, in order to recruit, retain and motivate high-calibre judicial office holders? What evidence is there about how differentials have changed over time and how this has affected recruitment, retention and motivation?

For obvious reasons, we have concentrated on the part of this question which relates to recruitment (rather than retention and motivation). We have also focussed on the questions from the particular viewpoint of Chancery barristers, since we obviously cannot speak for those who practise in other areas.

Our discussions with senior members of the Association established a range of factors which high-calibre Chancery barristers take into consideration when deciding whether to apply for full-time judicial office. Total remuneration is certainly one of them, but it is rarely (if ever) the decisive factor (we deal with some of the other factors, including the pension provision, below). This is because it is virtually inevitable, and has been so for many years, that successful Chancery practitioners will experience a substantial drop in earnings if they are appointed to judicial office. Realistically, the public purse is unlikely ever to be able to afford to pay a salary which is, by itself, a sufficient incentive for high-calibre Chancery barristers to apply for judicial office.

Our discussions revealed a generally held perception that there is a widening gap between the amount earned by a newly appointed judge and the sum earned by a barrister prior to his or her appointment. It is impossible to provide detailed evidence of the figures, not least because sums earned by barristers vary considerably and are generally kept confidential. Nevertheless, the universal impression is that the earnings of successful barristers have been steadily rising over the last 10 to 20 years, whereas judicial salaries have been static, or increasing only slightly (and perhaps decreasing in real terms, when inflation is taken into account).

For the reasons already given, the perception that the drop in earnings for a Chancery barrister becoming a judge is greater now than it was 10 or 20 years ago is unlikely to put high-calibre candidates off altogether. The effect it may well have, however, is to discourage candidates from applying at as early a stage as they might otherwise have done. Many, if not most, successful barristers have made expensive financial commitments, such as school fees and mortgage borrowings, which make it impossible permanently to give up their capacity to earn high fees until those commitments have been satisfied.

Accordingly, our discussions with senior Chancery barristers show that, whilst any increase in judicial salaries would, of course, be welcome, it would be unlikely, in isolation, to persuade high-calibre candidates to apply if they were otherwise not minded to do so. An increase might play some part in encouraging an application at a slightly earlier stage in someone's career than it would otherwise be made. It has been suggested to us, in particular, that the salary of the specialist Circuit Judges (including Chancery and commercial specialists) should be raised a little closer to that of High Court Judges, with a view to attracting high-calibre candidates to those posts.

Question 2: How does the pension offered to the judiciary, including the design of the Judicial Pension Scheme 2015 (or the Northern Ireland Judicial Pension Scheme 2015) and taking into account policy on taxation of pension benefits, act as an incentive or disincentive to recruiting, retaining and motivating high-calibre judicial office holders? If you consider the current arrangements to act as a disincentive, are there changes or improvements you could suggest?

Our discussions with senior members of the Association established that the judicial pension is one of the most important factors taken into account by high-calibre Chancery barristers when considering whether to apply for judicial office. The pension arrangements prior to the introduction of the 2015 Scheme were widely regarded as a significant benefit of holding judicial office, which could be a sufficient incentive for someone to apply who might not otherwise have done so. The provision under the 2015 Scheme does not begin to compare, principally because it is registered for taxation purposes. The problems caused by this change arise both because of the negative comparison with the former provision, which creates the impression that something very valuable has been taken away, but also because the 2015 Scheme is, on its own terms, of doubtful value to high-calibre candidates.

Many successful Chancery barristers have already made pension provision which, by the time they apply for judicial office, has reached the (now much

reduced) Lifetime Allowance, so the 2015 Scheme will result in adverse tax consequences and the successful candidate may decide to opt out of the Scheme altogether. One consequence of this is that successful Chancery barristers who have been financially prudent will obtain significantly less benefit from the judicial pension arrangements than those who have been less prudent, or those who have practised in a different area, where the fees are not as high. This creates a perception that those doing the same work do not receive the same benefits.

A further problem arises because the value of the pension provision depends on length of service, but there is now a compulsory retirement age of 70. In order to obtain valuable benefits from the Scheme, a candidate needs to apply for judicial office in his or her early 50s, but (as explained above) many have financial commitments which make that impossible. By the time the financial commitments have been satisfied, there is insufficient time left to earn the entitlement to a substantial pension.

Our discussions with senior practitioners left us in no doubt that, when these considerations are combined with the substantial drop in earnings which a Chancery barrister will experience on being appointed to judicial office, the current pension arrangements are a disincentive to recruiting high-calibre candidates.

We believe this is true at all levels of the judiciary, but our discussions revealed a particular sensitivity in relation to Circuit Judges. Relatively few successful Chancery barristers practising outside London now apply for Circuit Judge posts and we understand, anecdotally, that this is, to a considerable extent, the result of a perception that the pension provision, which used to be one of the significant attractions of the job, is no longer of significant value.

It is hard to say what improvements, short of restoring the former pension provision (which we recognise is unlikely to occur), could make a difference. One possibility might be de-registering the 2015 Scheme, which would at least mean that it has a real benefit for successful Chancery practitioners.

Question 3: What other aspects of financial or non-financial reward act as an incentive or disincentive to recruiting, retaining and motivating high-calibre judicial office holders?

In relation to financial rewards, it has been suggested that, for those who would need to move house in order to take up a judicial post, a relocation allowance of some kind might provide an added incentive to apply for the post.

In relation to non-financial rewards, it was pointed out to us that, whilst High Court Judges automatically receive a knighthood, there is no honour bestowed on Circuit Judges. The automatic award of an honour (albeit of a lower rank than knighthood) to Circuit Judges, which would reflect in some way the value of their contribution to the administration of justice, might be an incentive to at least some potential candidates and would cost the public purse very little.

Recruitment, Retention and Motivation

The SSRB invites additional evidence on recruitment of high-calibre candidates to the judiciary and the retention and motivation of judicial office holders. If commenting on whether it has been possible to maintain a sufficient number of office holders for a particular judicial role, it would be helpful if respondents could make it clear how they define sufficiency. This could, for example, be in terms of workload or effects on the wider courts and tribunals system and wider society. It is not necessary to repeat evidence already provided in relation to other questions. Again, comments are invited on the current position and whether and how it has changed since 2011. *For example, respondents may provide information on where posts in individual courts or tribunals have been left unfilled and to outline the reasons for, and impacts of, this.*

Question 4: What data and evidence can you provide on the recruitment of sufficient numbers of candidates to judicial posts and the factors that influence that, including eligibility for posts?

So far as the recruitment of sufficient numbers of candidates is concerned, we note that the Chancery Division is currently three judges short, which suggests too few candidates with Chancery expertise are applying for the High Court bench.

Based on our discussions with senior Chancery practitioners, we think there are a range of contributing factors influencing this, in addition to the drop in earnings and the poor pension provision referred to above.

First, it is generally perceived that judges at all levels, and on the High Court bench in particular, are expected to work harder than ever before. Of course, no one applying for high judicial office expects to have large amounts of free time, but there needs to be an appropriate work/life balance, if high-calibre applicants are to be persuaded to give up a much higher income at the bar. It appears that Judges are constantly under pressure to deal with an ever-increasing case load, including more and more applications involving litigants in person, and to keep up with a backlog of detailed judgment writing, quite apart from the need to become involved in the administration of the Courts and other extra-judicial activity. The problem is, to some extent, self-perpetuating, because the fewer judges who are recruited, the more work has to be done by the existing judges, making it unattractive to apply to become one of those few. We suggest that thought be given, amongst other things, to the more regular employment of suitably qualified judicial assistants to ease the burden of preparation and paperwork. We have also heard that there may be a shortage of Judge's clerks, which should obviously be rectified.

Secondly, the process of selection is itself burdensome and discouraging. It is now virtually impossible to be considered for a full-time judicial role without having held a part-time judicial post, yet it has been difficult for Chancery practitioners to qualify as Recorders, who since 2011 have nearly always been appointed within the criminal justice system, with which most Chancery practitioners are not familiar. It is the busiest and most successful practitioners who have the least

time to devote to taking all the steps on the fee-paid judicial ladder. Then, once a candidate applies for judicial office, the process is time consuming and (we understand from speaking to recent applicants) something of an ordeal. It requires a serious dedication of time, in an already busy practice, to apply for judicial office and there is nothing about the process which encourages those who do not succeed on the first attempt to try again. A rejection letter which tells an unsuccessful candidate that they are not sufficiently 'exceptional' is likely to have the effect of alienating them, such that the pool of possible candidates is constantly decreasing with each round of rejections.

Question 5: What data and evidence can you provide on the availability and willingness of sufficiently high-calibre candidates to join the judiciary and the factors that influence that?

As explained above, there is a range of factors which influence the willingness of Chancery barristers to apply for judicial office. Everyone we have spoken to understood and accepted that the judicial salary could never realistically compare with earnings at the bar. A minor increase in salary is unlikely to have much effect on appetite for judicial office. But there is a real sense that the pay disadvantage needs to be balanced by advantages elsewhere and that, at present, the advantages are not perceived as sufficient. Many of the long-standing attractions of a judicial career remain: a new challenge after many years practice at the bar, a certain level of prestige, a sense of fulfilment of duty, and so on. But these benefits are somewhat intangible and require some support from the advantages of good pension provision and good working conditions: sensible working hours and efficient administrative support. It should also not be an ordeal to make an application.

Question 6: What are the trends in resignation or early retirement of members of the judiciary and what factors are driving those trends?

No comment.

Question 7: What are the trends in motivation or morale among members of the judiciary and what factors are driving those trends?

No comment.

Question 8: Are there instances where inappropriate grading of posts has created recruitment, retention or motivation problems and what impact has this had?

No comment.

Leadership

The Terms of Reference for the Major Review require the SSRB to '*consider how best to reward and incentivise judicial leadership*'. In this sense, the SSRB is focused less on intellectual leadership and more on responsibility for the leadership and management of a jurisdiction, chamber or court/tribunal centre. Leadership encompasses all the management and leadership that judicial office holders may be required to carry out, including responsibilities for other judicial office holders, for listing and allocation of cases, practice rules/directions and liaison with the court services and others on policy matters.

The SSRB therefore invites comments on the issue of leadership, as well as other skills the system does, or potentially should, reward. *For example, respondents may highlight instances where roles with similar leadership responsibility are treated inconsistently and highlight the impacts of this at both the level of the individual and the level of a court or tribunal.*

Question 9: To what extent does the current system incentivise and reward judicial leadership, both across the system and for particular groups of judges? Is this done fairly and consistently, and why?

No comment.

Question 10: Are there cases of where the leadership component of certain judicial posts is insufficiently recognised in the pay and grading system, or of inconsistencies or anomalies in this regard?

No comment.

Question 11: Should financial recognition for leadership only run for the period that a judge occupies a leadership position? If it should extend beyond that date, why?

No comment.

Question 12: In addition to court management and leadership, what job characteristics does the current system reward, and are there areas of substantive skills that are insufficiently remunerated?

No comment.

Policy context

The judiciary has been subject to a number of reforms and developments since 2005. The SSRB is interested in any views on the impact of these changes that have not been already provided in response to questions above. Respondents do not need to repeat information provided in section 3, but are invited to expand on the impacts of those changes, or to highlight others.

Question 13: What policy changes or reforms to the justice system since 2011, in which jurisdictions, have affected the nature and content of judicial roles and what impacts has this had? What impact will future planned changes have?

No comment.

Question 14: Specifically, how have, or will, such policy changes and reforms affected recruitment, retention and motivation of high-calibre members of the judiciary, and why?

No comment.

Strategic context

To provide context to its recommendations on the pay and grading structure, the SSRB is interested in views on the importance and impact of a suitably staffed and qualified judiciary; and, conversely, any economic and societal costs that would result from not being able to appoint enough sufficiently qualified and experienced candidates. *For example, respondents may cite examples of where a high-quality or well-staffed judiciary has helped to secure or achieve wider economic or social benefits, or where the absence of such conditions has had an adverse economic or social impact. Reference to relevant research findings would also be helpful.*

Question 15: How important is a suitably staffed and skilled judiciary and what are the impacts of failing to recruit a sufficient number of suitably qualified individuals to judicial roles? Please comment on the economic impacts, the impacts on wider society or both.

In our view the impact of failing to recruit a sufficiently skilled judiciary is largely obvious. If the quality of the “service” provided by the justice system declines, that is bad for the administration of justice, it is bad for all those who work in the justice system, and it is ultimately bad for the economy if disputes cannot be resolved in a way which both is, and is seen to be, principled and fair and also within a reasonable time, without unexpected adjournments or cancellations. As Chancery practitioners, we would also draw attention, in particular, to the

international reputation of the English Courts, with particular emphasis on the Business and Property Courts, which makes the UK attractive to foreign business and investment. It is not overstating the position to say that a failure to maintain the exceptionally high standards of the judiciary would be disastrous for the country as a whole.

Other comments

Any further evidence of relevance to the Major Review not covered by the questions above may be provided in response to question 16.

Question 16: Do you have other matters that fall under the scope of this call for evidence that you wish to raise?

No comment.