JUDICIAL COMPENSATION AND BENEFITS COMMISSION

SUPPLEMENTAL BOOK OF EXHIBITS AND DOCUMENTS

of the

CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION

and the

CANADIAN JUDICIAL COUNCIL

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Tab #	Description
1	Submission of the Government of Canada to the Judicial Compensation and Benefits Commission (December 20, 1999)
2	Australian Government, Office of Parliamentary Counsel, Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020
3	American College of Trial Lawyers, "Judicial Compensation: Our Federal Judges Must Be Fairly Paid", March 2007
4	American College of Trial Lawyers, "The Need to Promote and Defend Fair and Impartial Courts", March 2019
5	UCL Judicial Institute, "2016 UK Judicial Attitude Survey", 7 February 2017
6	Lady Hale of Richmond, *Can We Keep Pretending That Judicial Wellness is Not a Problem?*, Remarks presented to the CMJA 18th Triennial Conference, Brisbane, Australia, September 2018
7	UK Ministry of Justice, Press Release, "Government acts urgently to protect judicial recruitment", 5 June 2019
8	Letter of Mr. Sauvé to the Levitt Commission (February 14, 2012)

TAB 1

SUBMISSION OF THE GOVERNMENT OF CANADA

TO

THE JUDICIAL COMPENSATION AND BENEFITS COMMISSION

DECEMBER 20, 1999

Department of Justice
Ottawa, Ontario
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SUBMISSION OF THE GOVERNMENT OF CANADA

TO

THE JUDICIAL COMPENSATION AND BENEFITS COMMISSION

INTRODUCTION

1. The Government of Canada is committed to the continuing independence and effectiveness of the Canadian judiciary. Judicial salaries and benefits must be adequate to ensure that the judiciary may continue to carry out its role independently and effectively.

2. The Government of Canada is also committed to fiscal responsibility. Faced with competing demands, the Government must make the best use of financial resources, for the benefit of all Canadians.

3. The Government's principal submission to this Commission is that the current regime of salaries and benefits secures an independent and effective judiciary. At most, only limited adjustments, involving modest expenditures, are required in order to maintain the adequacy of judicial salaries and benefits.

4. This brief sets out the matters which the Government proposes that the Commission consider in its inquiry into the adequacy of judicial salaries and benefits. Issues and arguments that might be raised by other interested persons will be addressed in due course in line with the procedure that the Commission has established.

II. COMMISSION MANDATE

5. In accordance with s. 26 of the *Judges Act*, the Commission's task is to inquire into the adequacy of judicial salaries and benefits and report its recommendations. In doing so, the Commission is discharging essentially the same mandate as the previous commissions.

6. The element of the Commission's mandate which is new is the prescription by s. 26(1.1)

of factors to be taken into account in inquiring into the adequacy of judicial salaries and benefits. That subsection directs the Commission to consider:

> the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
> the role of financial security of the judiciary in ensuring judicial independence;
> the need to attract outstanding candidates to the judiciary; and
> any other objective criteria that the Commission considers relevant.

7. The Government will address these criteria in the submissions which follow, particularly those dealing with judicial salaries. It is the Government's position that the statutory criteria provide the analytical framework within which the adequacy of judicial salaries and benefits, and the proposals for their alteration, are to be assessed.

8. The statutory work of the Commission will be carried out against the backdrop of the decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 ("the *PEI Judges case*"). The constitutional principles identified in that case may assist in the interpretation and application of the statutory criteria.

III. SALARIES

9. The initial question for the Commission is whether the existing judicial salaries are adequate. If they are not, the question of an appropriate increase arises.

10. At the outset, two points should be noted. The first is that the existing judicial salaries are not static. In accordance with s. 25 of the *Judges Act* salaries are adjusted annually to reflect increases in the Industrial Aggregate Index ("IAI"). Judicial salaries will be automatically increased effective April 1, 2000 and effective April 1 of each following year.

11. The second point to note is that the existing judicial salaries fully reflect the recommendations of the 1995 Commission on Judges' Salaries and Benefits ("the Scott Commission"). The Scott Commission expressed concern about the erosion of judicial salaries resulting from the freeze on the salaries of judges and most other publicly-remunerated officials

during 1992 to 1996, and recommended:

> …commencing April 1, 1997, the Government introduce an appropriately phased upward adjustment in judicial salaries such as to ensure that the erosion of the salary base caused by the elimination of statutory indexing is effectively corrected.

See Appendix 1: *Report and Recommendations of the 1995 Commission on Judges' Salaries and Benefits*, at page 16.

12. That recommendation was implemented by way of Bill C-37, enacted as S.C. 1998, c. 30. Judicial salaries were increased by 4.1% on April 1, 1997 and again by 4.1% on April 1, 1998: see ss. 25(5) and (6) of the *Judges Act*, as amended. These increases were in addition to the restoration of the annual indexing adjustments. Their effect was to fully restore judicial salaries to the levels they would had attained if indexing had not been suspended during the freeze.

13. The result is a current annual salary for a puisne judge of $178,100. As noted above, that salary will be automatically adjusted effective April 1, 2000.

14. One question that may be asked is whether circumstances have changed since the Scott Commission such that the salary established by Bill C-37 can no longer be considered adequate. That question should be answered with reference to the criteria prescribed by s. 26(1.1) of the *Judges Act*. Each of those criteria is considered in turn below.

(a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government

15. The Government's current assessment of the state of the Canadian economy is to be found in *The Economic and Fiscal Update: Translating better finances into better lives*, presented by the Minister of Finance to the House of Commons Finance Committee on November 2, 1999. The General Director of the Economic and Fiscal Policy Branch of the Department of Finance explains:

> Prevailing conditions in the Canadian economy can be reasonably characterized in very positive terms. The economy is growing at

> robust rates, and is expected to continue to do so by both private-sector forecasters and by the major international financial institutions …

and goes on to point out that other economic indicators are similarly positive. See Appendix 4: Letter from David Moloney dated December 7, 1999, at pages 1-2.

16. *The Economic and Fiscal Update* indicates that inflation has been low and stable: see Appendix 5, at page 39. Inflation as measured by the Consumer Price Index is projected to remain moderate: see Appendix 5, page 75.

17. Judicial salaries are protected from erosion by inflation by the annual adjustments tied to the IAI. The General Director explains:

> …this measure of wages [the IAI] has tended to increase at or slightly above the rate of CPI inflation over the past decade. Taking the experience of the past two decades into account … it is clear that indexation to this measure of wages should protect purchasing power over a number of years even when major recessions are encountered.

See Appendix 4, at page 2 and the table attached thereto.

18. Focusing on the past seven years - the period of the freeze and subsequent restoration of indexing - Table 2 of Appendix 6 shows that the IAI of 14.5% has outpaced the CPI of 10.2%, on a compounded basis. The effect has been not merely to protect judicial salaries against inflation, but to deliver an increase in salary in real terms.

19. Given the protection against inflation afforded by the adjustments based on the IAI, the cost of living does not provide a basis for questioning the adequacy of judicial salaries.

20. The Commission is also directed to consider the overall economic and current financial position of the Government. *The Economic and Fiscal Update* projects a "fiscal surplus for planning" of $2.0 billion for 1999-00 and $5.5 billion for 2000-01, and further increases thereafter. See Appendix 5, at page 80.

21. The public debate as to the use of the surplus has already begun. The General Director explains:

> … the update identifies a "Fiscal Surplus for Planning". It is this latter amount that is available, based on current information, to fund any and all new government priorities and unplanned liabilities established in future years. This would include new expenditure and tax reduction priorities identified in the recent Speech from the Throne, as well as any faster-than-planned growth in the cost of existing programs. Thus adjustments to judicial compensation in excess of the rate of inflation would represent one among a great many competing claims against this substantial, but still finite, planning surplus.

See Appendix 4, page 3.

22. As Chief Justice Lamer recognized in the *PEI Judges case*, the allocation of public resources is an inherently political matter: see para. 142-145 and 176. There are difficult policy choices to be made as to new spending, reduction of the national debt, and tax relief. The Government's approach was laid out in general terms in the recent *Speech from the Throne*:

> Canadians expect their national government to focus on areas where it can and must make a difference. And they want this done in the Canadian way - working together, balancing individual and government action, and listening to citizens. Canadians expect their Government to be fiscally prudent, to reduce the debt burden, to cut taxes, and to pursue the policies necessary for a strong society. The emerging global marketplace offers an enormous opportunity to create more Canadian jobs, more Canadian growth and more Canadian influence in the world. It provides expanding opportunities to secure a higher quality of life for all Canadians. To seize these opportunities, we must build on our strengths.
>
> Achieving a higher quality of life requires a comprehensive strategy to accelerate the transition to the knowledge-based economy, promote our interests and project our values in the world. Together, we will strive for excellence. This demands that we collaborate with our partners to:
>
> develop our children and youth, our leaders for the 21st century;
> build a dynamic economy;

> strengthen health and quality care for Canadians;
> ensure the quality of our environment;
> build stronger communities;
> strengthen the relationship with Canada's Aboriginal peoples; and
> advance Canada's place in the world.

Appendix 7, pages 3-4. See also Appendix 8: *Prime Minister's Response to the Speech from the Throne.*

23. These priorities demonstrate the breadth of demands on the planning surplus. That is not to suggest that an increase in judicial salaries cannot be a legitimate demand on the surplus. Indeed, that could be the case where an increase is essential to ensure that judicial salaries are adequate. Short of that, however, increases in judicial salaries have no priority call on public resources.

(b) the role of financial security of the judiciary in ensuring judicial independence

24. In the *PEI Judges case*, at para. 131-135, Chief Justice Lamer identifies three components of financial security. Two of those components relate to process: the requirement of an independent, objective and effective commission and the avoidance of negotiations between the judiciary and the executive. The third component is substantive: judicial salaries may not fall below a minimum level. The Chief Justice explains, at para. 193:

> I have no doubt that the Constitution protects judicial salaries from falling below an acceptable minimum level. The reason it does is for financial security to protect the judiciary from political interference through economic manipulation, and to thereby ensure public confidence in the administration of justice. If salaries are too low, there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants. …

25. The Government submits that the current salary of $178,100, coupled with automatic annual adjustments, is far beyond the minimum acceptable level of judicial remuneration. There is no risk of judges paid such a salary being "perceived to be susceptible to political pressure through economic manipulation", to use the words of the Chief Justice at para. 135.

(c) the need to attract outstanding candidates to the judiciary

26. While this criterion is obvious, it is difficult to apply. The difficulty lies in isolating salary level as a decisive factor in the attraction of outstanding candidates. Salary is just one of a myriad of considerations that may enter into an individual's decision to apply for judicial office. Other considerations may include: the opportunity to make a contribution to the public life of the nation, a desire to change career direction while continuing to work within the law, the security of tenure and remuneration afforded a judge, the generous retirement provisions, and the recognition, status, and quality of life associated with judicial office. None of these considerations, including salary level, can be said to predominate.

27. A further difficulty lies in identifying the point at which the salary level may become a disincentive to outstanding candidates. Obviously, that will vary from individual to individual, depending upon their personal circumstances and aspirations. Given that difficulty, there may be a certain attraction in measuring the level of judicial salaries against earnings by members of the legal profession. Such a comparison is fraught with its own difficulties involving the availability of earnings data concerning the legal profession and its comparability to the total compensation package of judges (salary and benefits, including retirement provisions). Questions then arise as to how to make the comparison: to the average earnings in the legal profession as a whole, to the average earnings of members of the private bar, to the average earnings of higher-earners, to the median earnings of any of these populations?

28. The Government has not proposed that the Commission attempt to compare judicial salaries to earnings in the legal profession. If any such comparison is undertaken, the Government submits that the comparison must proceed from the principle that no segment of the legal profession has a monopoly on outstanding candidates. As shown in Appendix 10, appointments are made not only from the private bar, but from the provincial and territorial benches, the academic community, and government service. Appointments come from across the provinces, from small communities and larger urban centres. It is the stated policy objective of the Government to achieve a federally-appointed bench that is more reflective of Canadian society as a whole. That entails appointments from a broad range of backgrounds and experience. It also entails avoiding questionable assumptions of connections between earnings and excellence.

29. The ultimate question is whether outstanding candidates are being attracted to the judiciary. The Government submits that appointments have been and continue to be of the highest quality. A large pool of potential candidates apply for judicial appointments. As shown in Appendix 11, from January 1, 1989 through November 30, 1999, 5006 applications were received and 589 appointments were made, a ratio of 8.5 candidates for every appointment. The advisory committees have recommended 1887 candidates, a ratio of more than 3 candidates for every appointment. That number understates the qualified candidates because it does not include candidates from the provincial or territorial benches, who are not reviewed by the advisory committees and from among whom 7 candidates were appointed to the federal bench.

(d) any other objective criteria that the Commission considers relevant

30. The Commission may consider additional criteria as long as they are both relevant to the adequacy of judicial salaries and objective.

31. Establishing salary levels for judges, whose role and responsibilities are *sui generis*, has always presented a challenge. Faced with this task, past commissions have looked to the salary level of senior deputy ministers in the federal Public Service. The Crawford Commission explained:

> … the DM-3 range and mid-point reflect what the market place expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges.

See Appendix 12: *Report and Recommendations of the 1992 Commission on Judges' Salaries and Benefits*, at page 11.

32. In the past, the Government has on occasion made reference to the DM-3 mid-point as a rough benchmark, for lack of a more satisfactory reference point. However, comparison of judicial salaries to those paid senior deputy ministers must be approached with caution. The *PEI Judges case*, at para. 143, makes it quite clear that judges are not public servants, particularly when it comes to remuneration. In adding s. 26(1.1) of the *Judges Act*, Parliament did not direct the Commission to consider such a comparison. Comparative factors, including the relative

compensation of persons paid out of public funds, had formed part of the terms of reference of the Scott Commission: see Appendix 1, at page 32.

33. Furthermore, deputy ministers are a poor comparator. Unlike judges, they do not have tenure, they are appointed at pleasure. Unlike judges, their salaries are not indexed. A significant portion of deputy ministers' earnings depends upon an annual evaluation of their performance and is at risk. Unlike judges, deputy ministers are a very small cadre, with only 10 individuals who have risen to the DM-3 level.

34. If the DM-3 is used as a rough benchmark, the comparison should continue to be made to the mid-point of the salary range. Pay dependent upon annual assessed performance, either by way of annual performance award or movement through the range, should not enter into the comparison. Performance pay is a concept foreign to judicial salaries, since it would be at odds with the principle of judicial independence.

35. The current mid-point of the DM-3 salary range is $188,250: see Appendix 13. The mid-point is $10,150 or 5.7% ahead of the current judicial salary of $178,100. Of course, that salary will be increased effective April 1, 2000 in accordance with the automatic adjustment under the *Judges Act*. The DM-3 salary range is not expected to be reviewed until 2001; see Appendix 14: *First Report of the Advisory Committee on Senior Level Retention and Compensation* (1998), at page 27. Therefore, the gap between judicial salaries and the DM-3 mid-point will be bridged in part by the automatic increase accorded judges on April 1, 2000.

36. Given the difficulties attaching to direct comparison of salaries paid judges and senior deputy ministers it may be appropriate to consider the range of increases which the Government has afforded to public servants. Those increases are some indicator of the financial capacity and priorities of the Government. The focus is on the rate of increase, rather than the gross amounts of salary.

37. The bar graph in Appendix 15 shows the percentage increases awarded to various categories of public servants and compares those increases to that afforded judges. Since the end of the wage freeze, increases have ranged from 5.1% for the Executive Group to 19.4% for DM-3's. During the same period, judicial salaries have increased by 14.5%, a rate exceeded only by DM-2's and DM-3's. However, as explained above, the automatic increase effective April 1,

2000 will narrow the gap between judicial salaries and those of DM-3's. Therefore, the 19.4% increase accorded DM-3 should be compared to the combination of the existing 14.5% increase in judicial salaries plus the further increase in accordance with the IAI.

38. The cost of a salary increase should be considered. There is a difficulty in estimating the cost: the automatic IAI adjustment will not be known until April 1, 2000. Therefore, the estimate of the cost of a particular percentage increase at that date necessarily includes the cost of the automatic increase. On that basis, the cost of the 5.7% increase mentioned above would be $12,243,600 in the year 2000-01 and $48,974,400 for the four-year period through 2003-04.

39. In contrast, the Canadian Judges Conference and Canadian Judicial Council have indicated their intention to seek a judicial salary of at least $225,000 effective April 1, 2000, with further stage increments beyond the IAI. That increase is at least 26.3%. The salary cost of such an increase, quite apart from any improvements in benefits, would be $56,556,840 in 2000-01 and $226,227,360 through 2003-04, even without further staged increments beyond the IAI.

40. After considering all the factors under s. 26(1.1) of the *Judges Act*, it would appear that current salaries, coupled with the automatic annual adjustments, are adequate. Should the Commission consider it appropriate to have regard to compensation trends in the federal Public Service, the maximum increase that could be justified would be 5.7% as of April 1, 2000, inclusive of statutory indexing.

IV. NORTHERN ALLOWANCE

41. The *Judges Act* was amended in 1967 to provide a non-accountable annual allowance of $2,000 to judges appointed to the Supreme Courts of the Northwest Territories and Yukon Territory, expressly "as compensation for the higher cost of living". The allowance was increased to $3,000 in 1975, $4,000 in 1981, and to its current level of $6,000 in 1989. The Act was amended in 1999 to extend the allowance to judges of the Nunavut Court of Justice.

42. In addition to the northern allowance under the *Judges Act*, federally-appointed judges in the Territories are currently reimbursed for one vacation trip per family member per year, as well as for expenses for travel for medical, bereavement and compassionate reasons. These specific additional benefits are similar to those extended to federal public servants under the *Isolated*

Posts Directive, described below.

43. The subject of northern allowances was last dealt with by the Crawford Commission in its 1993 report. That Commission rejected a proposal by northern judges to vary the northern allowance by tying it to increases in judicial salaries. The Commission observed:

> The Commission is not persuaded that there is a sufficient basis to increase the northern allowance by any amount. The existing $6,000 allowance is already unique in that the *Judges Act* does not recognize other regional cost disparities that exist across Canada.

See Appendix 12: *Report and Recommendation of the 1992 Commission on Judges' Salaries and Benefits* (1993), at page 28.

44. The adequacy of the northern allowance has arisen again in the context of the recent establishment of the Nunavut Court of Justice, given of the particularly high cost of living in the new Territory. That disparity in the cost of living is identified in the *Isolated Posts Directive* applicable to federal public servants.

45. The *Isolated Posts Directive* comprises components intended to compensate public servants for the higher cost of living in the Territories and to address issues of recruitment and retention. Unlike the northern allowance for judges, the allowances under the Directive are location specific, calculated upon a number of factors that vary from place to place. The Directive also applies to locations outside the Territories. See Appendix 17 for relevant excerpts from the Directive and Appendix 18 for examples of allowances at various locations.

46. Special considerations apply to the design of the northern allowance for judges. For reasons of independence, benefits provided to the judiciary cannot be subject to the discretion of the executive, but rather must be established by law. In addition, on the authority of the *PEI Judges case*, any changes to judicial benefits require prior consideration by the Commission.

47. Tying northern allowances for judges to the Directive would raise the following difficulties:

(a) the Directive is part of a collective agreement and is amended from time to time to

reflect the negotiated solutions to issues arising in the Public Service;

(b) the application of the Directive would result in different treatment for judges in different locations; a departure from past practice and policy;

(c) in some locations, for example Whitehorse, application of the Directive would actually reduce the amount to which judges would be currently entitled under the *Judges Act*; and

(d) the Directive is designed to facilitate the recruitment and retention of employees to isolated locations, an objective beyond that of the current northern allowance for judges.

Nevertheless, the Directive may give some indication of the sort of compensation that might be afforded in respect of the higher cost of living at various locations within the Territories.

48. The Government submits that the northern allowances should be reviewed and welcomes the Commission's advice as to their scope, structure and amount.

V. LIFE INSURANCE

49. The Government supports the improvement of life insurance provided to judges, as long as it can be done fairly and at a reasonable cost.

50. Currently, judges participate in the portion of the Public Service Management Insurance Plan (PSMIP) that covers non-executive public servants. This provides a judge with coverage of one or two times salary, at the option and expense of the judge. Premiums under this sub-plan vary based on the age and sex of the member. The cost of coverage is therefore proportionate to the mortality risk of the individual, with the cost for younger, female judges being much lower than that for older, male judges.

51. Under the umbrella of the PSMIP, there is a separate Executive Plan. That plan provides deputy ministers and other executives in the Public Service with insurance coverage at two times salary at no cost to the participants. A similar separate plan provides coverage to Members of Parliament and Senators. For tax reasons, these separate plans have a single premium for life

insurance based on the claims experience (mortality rate, salary) of the group as a whole. The premium paid by the Government in respect of individual plan members varies only in relation to salary level. The premiums are a taxable benefit to the plan member.

52. Maintaining separate Executive and MP plans ensures that neither group subsidizes the other and that the costs for each group can be identified and considered in establishing their total compensation. Separate plans also permit the employer to modify coverage to suit the particular needs of the population in question.

53. At present, the judiciary is composed predominantly of older males. As a group, it represents therefore a higher insurance risk than deputy ministers and public service executives. In addition, judicial salaries are significantly higher than those of the average public service manager. The cost of life insurance for the judiciary is higher as a result of these factors.

54. The Government submits that it would be unfair to include the judiciary within the Executive Plan. Adding the judges would raise the premiums paid for each member of the Plan. The public service executives participating in the Plan would suffer an increased taxable benefit representing the greater premium being paid by the employer. In effect, other plan members would be subsidizing judges and receiving lower net compensation. See Appendix 19 for an illustration of the greater tax liability that public service executives would face.

55. The Government questions whether, as a matter of principle, judges and public servants should be within the same plan, particularly where there would be cross-subsidization. It has an appearance that might best be avoided.

56. An alternative would be to establish a separate "stand-alone" judicial life insurance plan within the PSMIP. This would be similar to the approach taken for Members of Parliament and Senators. The cost of providing active judges with life insurance coverage of two times salary under such a plan would range from $2,577,600 to $2,724,523, depending upon the salary assumption: see Appendix 19 for the calculation. There would be an additional, and growing, cost to provide post-retirement life insurance to judges. The Government is prepared to assume those costs.

57. However, given the current demographic profile of the judiciary, such a plan would be

open to criticism of discrimination because the younger female judges would be subsidizing the older male judges. The taxable benefit to younger female judges could leave them worse off than if they were to purchase insurance coverage from their own funds. See Appendix 19 for an illustration of comparative benefit to older male judges and younger female judges.

58. There may be other options for the design of a plan at an equivalent cost which would provide improved coverage to judges in a equitable fashion. For example, consideration might be given to providing an allowance to judges to purchase life insurance. Also possible might be the combination of a less generous group plan, with an allowance to purchase additional insurance, as the individual judge considered necessary.

59. There may be other possible plan designs. The Government submits that an acceptable design should avoid cross-subsidization by public servants, be fair to the judicial population and not involve a cost beyond that the Government would bear if judges were included in a sub-plan of the PSMIP providing coverage equivalent to that afforded deputy ministers and public service executives.

VI. ANNUITIES

(a) General Approach

60. Upon retirement, judges are entitled to an annuity of two-thirds of salary. Judges may retire after 15 years of service, once the combination of age and years of service totals 80.

61. Until retirement, judges contribute 7% of salary towards the annuity scheme. These contributions meet approximately 20% of the estimated long term cost of the scheme, with the balance paid from public funds.

62. The judicial annuity scheme should not be confused with the common employer-sponsored pension plans. Pension plans are designed to provide for the accrual of pension credits over an entire career, possibly 35 or more years. Judicial annuities are designed to provide judges with income protection at the end of their careers. While the amount of pension benefits depends upon the length of service, judicial annuities are available at two-thirds salary after as little as 15 years service. Pension plans operate within the framework of the *Income Tax Act*,

which both encourages contributions and limits benefits. Judicial annuities deliver benefits far in excess of those permitted under the pension plan provisions of the *Income Tax Act*.

63. Given its peculiar nature, review of the adequacy of the judicial annuity scheme is particularly complex. Proposals to graft elements of pension plans onto the judicial annuities and or to make other piecemeal adjustments should be rigorously scrutinized.

64. The task of reviewing the adequacy of the judicial annuity scheme is further complicated by changes in the demographic profile of the judicial community. More women are being appointed. Judges are being appointed at an earlier age. Appointments are less likely to mark the end of a long legal career. A judicial annuity scheme that does not take account of these changes may attract challenges under the *Canadian Charter of Rights and Freedoms*.

65. Members of the judiciary have increasingly expressed dissatisfaction with the current annuity scheme. The Government will respond in due course to any specific proposals that may be advanced in the written submissions of other parties. However, the general dissatisfaction must be addressed.

66. Subject to two exceptions discussed below, the Government submits that further *ad hoc* changes to the judicial annuity scheme, particularly changes that would alter fundamental features of that scheme, should only be undertaken following a comprehensive review of the structure and function of the scheme in the face of changing demographics and new demands.

67. It would be unrealistic to expect this Commission to undertake and complete a comprehensive policy review of the judicial annuity scheme by June 1, 2000, the Commission's reporting date. Time is required to design and carry out this complex and important study. The Government submits that the study should be undertaken separately from the current Quandrennial review.

68. The Minister of Justice intends to refer to the issue of the adequacy of the current judicial annuity scheme to the Judicial Compensation and Benefits Commission for consideration sometime following June 1, 2000. The Government invites the Commission's views about the appropriate timing of such a review, as well as any preliminary views as to the scope, design and conduct of the review.

(b) Survivor Annuity

69. One matter which the Government submits should be addressed by this Commission is the survivor annuity.

70. Section 44 of the *Judges Act* provides an annuity to the surviving spouse of a judge. The provision applies only to married spouses and not to extend to unmarried partners of the same or opposite sex.

71. The Government recognizes that the limitation to married spouses is likely vulnerable to challenge under the Charter, in light of recent Supreme Court of Canada decisions.

72. In Bill C-37 the Government proposed amendments to the *Judges Act* to extend the survivor annuity to:

> a person of the opposite sex who has cohabited with a judge in a conjugal relationship for at least one year immediately before the judge's death.

See Appendix 2, Bill C-37, clause 1.

73. As a result of concerns raised before the Standing Committee of the Senate on Legal and Constitutional Affairs, the proposed amendments concerning the survivor annuity were dropped from Bill C-37. The Government undertook to seek this Commission's guidance. See Appendix 20, *House of Commons Debates*, November 6, 1998, para. 1005. (As to the Committee's consideration of Bill C-37, see the *Proceedings of the Standing Committee* for September 23 and 30, and October 6, 7, 21 and 22, 1998.)

74. In any event, the *PEI Judges case* has now established that consideration and recommendation by the Commission is required prior to any legislative change to the judicial annuity scheme.

75. A model which is consistent with other federal legislation, and upon which the

Commission's views are sought, would include the following definitions:

> "common law partner" in relation to a judge, means a person who is cohabiting with the judge in a conjugal relationship and who has so cohabited for a period of at least one year.
>
> "survivor" means a person
>
> (a) who was married to the judge immediately before his or her death; or
>
> (b) who establishes that they were cohabiting in a conjugal relationship with the judge for a period of at least one year immediately before his or her death.

76. It should be noted that there was some discussion before the Senate Committee about whether the one year cohabitation period was equitable and appropriate. The Government continues to support this policy choice as consistent with public sector pension schemes. See Appendix 21 for similar legislative provisions.

77. The inclusion of common law partners as defined above introduces the possibility that a judge would be survived by both a married, separated spouse and a common law partner. Three approaches to competing claims are:

(a) the entire annuity would go to the married spouse;
(b) the entire annuity would go to the common law partner with whom the judge was living at the time of death; or
(c) the annuity would be apportioned on some equitable basis.

78. Apportionment is a fair solution and the one adopted in the legislation governing public sector pension plans: see Appendix 21 for the provisions in public sector pension plan legislation.

79. In Bill C-37 the Government proposed a formula for apportionment of the survivor annuity. Before the Senate Committee there was disagreement and debate as to the best approach to apportionment. The Senate Committee recommended, and the Government agreed, that the

issue of apportionment should be referred to this Commission at the first opportunity.

80. It should be noted that the Senate Committee also heard arguments suggesting that Parliament lacks the constitutional authority to legislate with respect to survivors' annuities. The Government rejects the argument. Parliament has the full authority to legislate with respect to judicial annuities, including matters ancillary to the creation and administration of those annuities.

81. The Government continues to view the Bill C-37 model as equitable and appropriate for the judiciary. The apportionment proposal upon which the Commission's views are sought is as follows:

(a) where there are two survivors, each would receive a prorated share of the annuity based on a formula set out in the Act;
(b) the apportionment formula would be that used in Bill C-37, by which the pro-rated share is based on the number of years each of the survivors cohabited with the judge; and
(c) flexibility would be provided by allowing either the married spouse or the common law partner to waive their claim, in which case the other would be entitled to the full annuity.

(c) Contributions

82. As noted above, federally-appointed judges contribute 7% of salary towards their annuity scheme until such time as they retire. Of the 7%, 6% is a contribution towards the cost of providing the basic annuity and the remaining 1% is a contribution towards the cost of indexing annuities to the cost of living.

83. The requirement that judges contribute towards the cost of the annuity scheme has been controversial. It led to litigation: *The Queen v. Beauregard*, [1986] 2 S.C.R. 56, which upheld the constitutional validity of the measure. It has been a contentious matter before the triennial commissions, producing conflicting recommendations that contributions be eliminated or

maintained.

84. The Government submits that the contribution issue goes to the basic nature and structure of the annuity scheme and would be better considered as part of the comprehensive review proposed above.

85. There is one modest adjustment that could be considered within the current review. That is reduction of contributions upon a judge reaching the eligibility for retirement. Currently, a judge eligible for retirement, but remaining in office, continues to pay the full 7% contribution. The Commission could recommend that a judge in that situation should no longer contribute the 6% towards the basic annuity, but only the 1% towards future indexing.

86. The reduction of contributions from 7% to 1% would reflect the provisions of public service pension plans. As explained above, such pension plans are far from a perfect analogy. However, contributions are an element imported from pension plans in the first place. An adjustment to achieve consistency would appear to be appropriate.

87. As contributions are based on salary, the cost of reducing contributions from 7% to 1% would depend on salary levels. At the current salary level the cost would be $2,631,300; with a salary increase of 5.7% effective April 1, 2000, the cost would be $2,781,284 in the first year, increasing annually with the automatic annual adjustments to salary levels.

VII. CONCLUSION

88. The Government respectfully requests that the Commission consider the matters set out above and make recommendations consistent with these submissions.

89. The Government seeks to support the Commission in its work and will make every effort to provide any additional information or advice which the Commission considers would be of assistance.

TAB 2

Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020

made under subsections 7(3), (3AA), (4) and (4B) of the

Remuneration Tribunal Act 1973

Compilation No. 1

Compilation date:	11 September 2020
Includes amendments up to:	F2020L01153
Registered:	22 September 2020

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020* that shows the text of the law as amended and in force on 11 September 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary

1 Name

This instrument is the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 When this instrument takes effect

This instrument takes effect at the start of 1 July 2020.

4 Authority

This instrument is made under subsections 7(3), (3AA), (4) and (4B) of the *Remuneration Tribunal Act 1973*.

5 Determination supersedes previous determination

This instrument supersedes the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019*.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

7 Definitions

In this instrument:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

Act means the *Remuneration Tribunal Act 1973*.

authority means the court, tribunal or other body to which an office holder is attached.

base salary, in relation to a judicial officer, is the amount specified in column 2 of Table 2A for the office that judicial officer holds.

benefit, in relation to a Part 3 office holder, means:

(a) any non-monetary benefit provided at the authority's expense to or for the benefit of an office holder as a personal benefit, including:
  (i) a vehicle (see section 27); and
  (ii) vehicle parking (see section 28); or

(b) any other benefits received by way of remuneration packaging (see section 24).

CSS (short for Commonwealth Superannuation Scheme) has the same meaning as in the *Superannuation Act 1976*.

DFRDB (short for Defence Force Retirement and Death Benefits) means the scheme established by the *Defence Force Retirement and Death Benefits Act 1973*.

employer superannuation contribution, for a Part 3 office holder, means:

(a) if the office holder is a member of the CSS, PSS, DFRDB or MSBS—the value attributed to the employer superannuation contribution under subsection 25(1), (2), (3) or (4); or

(b) if the office holder is a member of the PSSAP—15.4% of ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the office holder; or

(c) if the office holder is a member of another superannuation fund—the amount worked out under subsection 25(6).

Note 1: A Part 3 office holder's employer superannuation contribution is part of the office holder's total remuneration (see section 20).

Note 2: Superannuation contributions made as a result of remuneration packaging do not form part of a Part 3 office holder's employer superannuation contribution (see section 24).

Family Court means the Family Court of Australia.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Circuit Court Judge means a Judge of the Federal Circuit Court.

Federal Court means the Federal Court of Australia.

fringe benefits tax means fringe benefits tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

judicial officer: see section 11.

MSBS (short for Military Superannuation and Benefits Scheme) has the same meaning as ***Scheme*** has in the *Military Superannuation and Benefits Act 1991*.

office holder means a judicial officer, a Part 3 office holder or a Part 4 office holder.

office locality, in relation to a Part 3 office holder, means the geographic locality of the office holder's usual place of work on official business.

official travel determination means the *Remuneration Tribunal (Official Travel) Determination 2019* (or any determination that supersedes that determination).

Part 3 office holder: see section 19.

Part 4 office holder: see section 33.

PSS (short for Public Sector Superannuation Scheme) has the same meaning as ***Public Sector Superannuation Scheme*** has in the *Superannuation Act 1990*.

PSSAP (short for Public Sector Superannuation Accumulation Plan) has the same meaning as in the *Superannuation Act 2005*.

superannuation salary, for a Part 3 office holder who is a member of the CSS, PSS, DFRDB or MSBS, is the amount worked out under section 26.

Table 2A means the table of base salary for judicial officers in section 11.

Table 3A means the table of total remuneration for Part 3 office holders in section 22.

Table 3B means the table of superannuation salaries for Part 3 office holders in subsection 26(1).

Table 3C means the table of superannuation salaries for specified Part 3 office holders in subsection 26(2).

Table 4A means the table of daily fees and travel tiers for Part 4 office holders in section 36.

Table 4B means the table of daily fees and travel tiers for certain AAT members in subsection 40(2).

total remuneration, in relation to a Part 3 office holder, has the meaning given by section 20.

transitional AAT member: see section 42.

transitional determination: see section 43.

8 Administration of this instrument

An authority administering this instrument:

(a) is to pay to an office holder any annual amount specified in proportion (pro rata) to the office holder's period of service during a year; and

(b) may issue procedural instructions to assist in the implementation of this instrument; and

(c) may elect to apply the same instructions (including policies or procedures in relation to the administration of recreation leave) as the authority does for employees, except where those instructions are not in accordance with this instrument.

9 Certain AAT members not covered by this instrument

This instrument does not apply to a member of the AAT to whom item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies.

Note 1: Under item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015*, a person who was, immediately before 1 July 2015, a member of the Migration Review Tribunal, the Refugee Review Tribunal or the Social Security Appeals Tribunal is taken to hold office as a member of the AAT for the balance of their term of appointment that remained before that date.

Note 2: For the remuneration and allowances of such members, see the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2020* and the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2020*.

Part 2—Judicial officers

Division 1—Application of this Part

10 Application of this Part

(1) This Part sets a base level of remuneration and benefits for judicial officers.

(2) However, additional remuneration and benefits may be provided under the following:

(a) a general law of the Commonwealth concerning employment;

(b) the law of the Commonwealth that established the office the judicial officer holds;

(c) the Constitution, which grants certain executive powers to the Governor-General and to Ministers of State.

Division 2—Salary and allowances of judicial officers

11 Base salary

The following table (***Table 2A***) sets out, for a person (a ***judicial officer***) who holds an office specified in column 1:

(a) the full-time base salary (if any), per year, of the judicial officer; and

(b) the travel tier (if any) that applies to the judicial officer for the purposes of the official travel determination.

Table 2A—Full-time base salary for judicial officers

Column 1 Office	Column 2 Full-time base salary	Column 3 Travel tier
High Court—Chief Justice	$608,150	1
High Court—Justice	$551,880	1
Federal Court—Chief Justice	$514,980	1
Federal Court—Judge	$468,020	1
Family Court—Chief Justice	$514,980	1
Family Court—Deputy Chief Justice	$481,850	1
Family Court—Judge	$468,020	1
Federal Circuit Court—Chief Judge	$468,020	1
Federal Circuit Court—Judge	$394,980	1
Copyright Tribunal of Australia—President	$468,020	1
Copyright Tribunal of Australia—Deputy President (Judicial)	Nil	1
Australian Competition Tribunal—President	$468,020	1
Australian Law Reform Commission—President (Judicial)	$468,020	1
AAT—President	$468,020	1
National Native Title Tribunal—President (Judicial)	$468,020	1
Defence Force Discipline Appeal Tribunal—President	Nil	No travel tier

Note: The reference to a Judge of the Family Court includes a Judge assigned to the Appeal Division of the Family Court and a Senior Judge of the Family Court.

12 Additional allowances

A sitting Judge who also holds any of the following offices on a part-time basis is to be provided with an additional expense allowance of $2,421 per year:

(a) Aboriginal Land Commissioner;

(b) Chairperson of the Australian Electoral Commission;

(c) Chief Judge of the Supreme Court of Norfolk Island;

(d) President of the AAT;

(e) President of the Australian Competition Tribunal;
(f) President of the Copyright Tribunal of Australia.

Division 3—Vehicle allowance

13 Vehicle allowance

Chief Justice of the High Court

(1) In addition to a Commonwealth car-with-driver service, the Chief Justice of the High Court is allowed annually:
   (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
   (b) reimbursement for private vehicle running costs incurred by the Chief Justice up to $11,165.

Judges

(2) A Judge, other than the Chief Justice of the High Court of Australia, who has elected for the time being to forgo the entitlement, either in the Judge's city of residence or in the city in which the principal registry of the Judge's court is situated, to a regular Commonwealth car-with-driver service, is allowed annually in that city and as the alternatives to that service:
   (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
   (b) reimbursement for private vehicle running costs incurred by the Judge up to $11,165.

Federal Circuit Court Judges

(3) A Federal Circuit Court Judge is allowed annually:
   (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
   (b) reimbursement for private vehicle running costs incurred by the Judge up to $11,165.

Election of vehicle allowance

(4) During a year, the Chief Justice of the High Court, a Judge or a Federal Circuit Court Judge may elect to vary the officer's election under subsection (1), (2) or (3) to, or from, a Commonwealth leased vehicle from, or to, reimbursement for the running costs of a private vehicle if no additional administrative or other expenses are incurred by the Commonwealth as a result.

No cashing out of vehicle allowance

(5) The value of the entitlement allowed under subsection (1), (2) or (3) may not be taken as cash, except to the extent that reimbursement is claimed in accordance with paragraph (1)(b), (2)(b) or (3)(b).

Definitions

(6) In this section:

Commonwealth car-with-driver service means the arrangements for the use of a Commonwealth car-with-driver established, from time to time, by the Attorney-General with:

(a) the Chief Justice of the High Court; and
(b) the Chief Justice of the Federal Court; and
(c) the Chief Justice of the Family Court;

for Judges of those courts.

FVS Policy (short for Fleet Vehicle Selection Policy) means the Department of Finance's policy on the selection of passenger vehicles for the Australian Government Fleet.

Judge means one of the following:

(a) a Justice of the High Court;
(b) a Judge of the Federal Court;
(c) a Judge of the Family Court.

luxury car means a car the value of which exceeds the luxury car tax threshold (for non-fuel-efficient cars) mentioned in subsection 25-1(3A) of the *A New Tax System (Luxury Car Tax) Act 1999*.

principal registry means:

(a) in the case of the High Court—the Registry of the Court; or
(b) in the case of the Federal Court—the Principal Registry of the Court; or
(c) in the case of the Family Court—the Principal Registry of the Court.

private vehicle running costs does not include expenditure relating to the acquisition, leasing or hire of any vehicle.

Division 4—Recreation leave and salary packaging for Federal Circuit Court Judges

14 Purpose of this Division

This Division is made for the purposes of subsection 7(3AA) of the Act.

15 Recreation leave arrangements—general

(1) The recreation leave entitlements of the following are to be determined in accordance with this section:

(a) a Federal Circuit Court Judge who was appointed on or after 1 January 2018;

(b) a Federal Circuit Court Judge who was appointed before 1 January 2018, if an election to be covered by the general recreation leave arrangements is in effect for the Judge.

Note: For elections to be covered by the general recreation leave arrangements, see section 17.

Appointment year

(2) The Judge, for the year (the ***appointment year***) the Judge is appointed in, is entitled to an amount of recreation leave, accruing at the time of the Judge's appointment, of the number of weeks calculated in accordance with the following formula:

$$\frac{\text{Number of days in the appointment year for which the Judge will be appointed}}{\text{Number of days in the appointment year}} = 6 \text{ weeks}$$

Years after appointment year

(3) The Judge is entitled to 6 weeks of recreation leave accruing on 1 January of each year after the appointment year.

Expiration of recreation leave

(4) The Judge is entitled to recreation leave accrued under this section only in the year in which the leave accrued.

Payment of unused recreation leave on leaving office

(5) The Judge is to be paid on leaving office as though the Judge were then to take the balance of the recreation leave to which the Judge is entitled.

Special arrangements for the COVID-19 pandemic

(6) Despite subsection (4), if, at the end of 2020, the Judge has a balance of recreation leave accrued during 2020, the Judge may retain up to 2 weeks of that balance for use before the end of 2022.

16 Recreation leave arrangement—transitional

(1) This section applies to a Federal Circuit Court Judge if:
  (a) the Judge was appointed before 1 January 2018; and
  (b) an election to be covered by the general recreation leave arrangements is not in effect for the Judge.

Note: For elections to be covered by the general recreation leave arrangements, see section 17.

Accrual of recreation leave

(2) The Judge is entitled to 4 weeks of recreation leave per year of service accruing on 1 January each year.

Cashing out of recreation leave

(3) The Judge is eligible to cash out part of the Judge's recreation leave if:
  (a) the Judge has accrued more than 4 weeks of recreation leave; and
  (b) the Judge takes an amount of leave equal to or greater than the amount of leave being cashed out; and
  (c) the Judge cashes out a maximum of 2 weeks' recreation leave in any year.

Additional recreation leave

(4) The Judge is eligible to elect to purchase 1, 2, 3 or 4 weeks' additional leave per year.

(5) An amount will be deducted from the base salary of the Judge, dependent on the amount of leave purchased and the Judge's salary, which will be reflected in the Judge's regular salary payments.

(6) Purchased leave counts as service for all purposes.

Payment of unused recreation leave on leaving office

(7) The Judge is to be paid on leaving office as though the Judge were then to take the balance of the Judge's recreation leave.

Section 17

17 Election by certain Federal Circuit Court Judges to be covered by general recreation leave arrangements

Changing to general recreation leave arrangements

(1) This section applies to a Federal Circuit Court Judge if the Judge was appointed before 1 January 2018.

(2) At any time, the Judge may elect to be covered by the general recreation leave arrangements instead of the transitional recreation leave arrangements. The election takes effect on 1 January following the election.

Note: For the general recreation leave arrangements, see section 15. For the transitional recreation leave arrangements, see section 16.

(3) The Judge may make only one election to be covered by the general recreation leave arrangements.

(4) The Judge retains the balance of the Judge's recreation leave that had accrued immediately before the election took effect but, subject to subsection (6), is entitled to this balance only in accordance with subsection 15(5).

Revoking election

(5) At any time, the Judge may revoke the election to be covered by the general recreation leave arrangements. The election takes effect on 1 January following the revocation.

(6) The Judge retains the balance of the Judge's recreation leave mentioned in subsection (4) and is entitled to this balance in accordance with section 16.

Election made under superseded determination

(7) To avoid doubt, an election to be covered by the general recreation leave arrangements instead of the transitional recreation leave arrangements, or a revocation of such an election, that was made under a superseded determination is to be treated as an election or revocation made under this section.

18 Salary packaging for Federal Circuit Court Judges

A Federal Circuit Court Judge may elect to take benefits in lieu of base salary, in accordance with authority policies and procedures on salary packaging, if:

(a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and

(b) providing the benefit would not result in a cost to the Commonwealth (including any fringe benefits tax) that would not be incurred if benefits able to be taken as salary were taken as salary.

Part 3—Full-time office holders

Division 1—Application of this Part

19 Application of this Part

This Part applies to a person (a ***Part 3 office holder***) who:

(a) holds an office specified in column 1 of Table 3A; and

(b) was appointed to that office on a full-time basis.

Division 2—Remuneration

20 Meaning of total remuneration

(1) For the purposes of this instrument, the ***total remuneration*** of a Part 3 office holder is the amount, per year, in column 2 of Table 3A.

(2) The total remuneration of a Part 3 office holder represents the value, calculated at the total cost to the authority of the office holder (including fringe benefits tax), of the following in relation to the office holder:
  (a) salary, allowances and lump sum payments;
  (b) benefits;
  (c) the employer superannuation contribution.

(3) However, the total remuneration of a Part 3 office holder does not include the following:
  (a) the value of facilities provided as business support that are not required to be included in total remuneration under section 29;
  (b) reimbursement of expenses incurred on geographic relocation following appointment as an office holder, in accordance with authority policies and practices where approved by the authority;
  (c) assistance for the offices of Chief Judge Advocate and the Registrar of Military Justice (see section 30);
  (d) travel expenses and allowances under the official travel determination;
  (e) payment in lieu of recreation leave in accordance with section 31;
  (f) compensation for early loss of office in accordance with the *Remuneration Tribunal (Compensation for Loss of Office for Holders of Certain Public Offices) Determination 2018* (or any determination that supersedes that determination).

21 Remuneration and benefits not to be supplemented

The amount of total remuneration to a Part 3 office holder under Table 3A is exhaustive of the remuneration and significantly-related benefits payable to a Part 3 office holder, to the extent that the Tribunal is empowered to determine such remuneration and benefits. The amount of total remuneration to which the office holder is entitled under this Division must not be supplemented by an authority other than the Tribunal if to do so would be inconsistent with this instrument.

22 Total remuneration

The following table (***Table 3A***) sets out, for a holder of each office in column 1:
  (a) the total remuneration, per year, of the Part 3 office holder; and
  (b) the travel tier that applies to the Part 3 office holder for the purposes of the official travel determination.

Table 3A—Total remuneration for Part 3 office holders

Column 1 Office	Column 2 Total remuneration (per year)	Column 3 Travel tier
High Court—Chief Executive and Principal Registrar	$498,810	1
Federal Court—Chief Executive Officer	$498,810	1
Federal Court—Assessor (Full-time)	$281,460	2
Family Court—Chief Executive Officer	$387,960	1
Federal Circuit Court—Chief Executive Officer	$387,960	1
Australian Law Reform Commission—President (non-judicial)	$463,710	1
Australian Law Reform Commission—Commissioner (non-judicial)	$281,180	2
AAT—Deputy President (non-judicial)	$496,560	1
AAT—Senior member (level 1)	$391,940	2
AAT—Senior member (level 2)	$329,930	2
AAT—Member (level 1)	$249,420	2
AAT—Member (level 2)	$221,700	2
AAT—Member (level 3)	$193,990	2
AAT—Registrar	$415,680	1
National Native Title Tribunal—President (non-judicial)	$459,230	1
National Native Title Tribunal—Deputy President	$417,210	1
National Native Title Tribunal—Member	$320,360	1
National Native Title Tribunal—Registrar	$302,820	2
Military Justice System—Chief Judge Advocate	$435,110	2
Military Justice System—Deputy Chief Judge Advocate	$413,355	2
Military Justice System—Registrar of Military Justice	$275,930	2

23 Part-time work

(1) If a Part 3 office holder's authority has approved the office holder to perform the duties of the office on a part-time basis, the total remuneration for that office is to be paid on a pro rata basis in accordance with the proportion of full-time hours worked.

(2) However, if the proposed hours are less than 60% of the full-time hours, prior agreement of the Tribunal is required for the level of remuneration.

Section 24

24 Remuneration packaging

(1) Subject to this Part, a Part 3 office holder may elect to receive the benefit of the total remuneration, other than the employer superannuation contribution, as salary or a combination of salary and benefits if:

(a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and

(b) providing the benefit would not result in a cost to the authority (including any fringe benefits tax) that would not be incurred if the office holder received the remuneration in the form of salary.

(2) To avoid doubt, a superannuation contribution made as a result of an election by a Part 3 office holder under subsection (1) does not form part of the employer superannuation contribution for the office holder.

Division 3—Superannuation

25 Superannuation

Commonwealth Superannuation Scheme

(1) For a Part 3 office holder who is a member of the CSS:
  (a) the office holder's annual rate of salary for the purposes of the CSS is the office holder's superannuation salary; and
  (b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the CSS, see section 26.

Public Sector Superannuation Scheme

(2) For a Part 3 office holder who is a member of the PSS:
  (a) the office holder's basic salary for the purposes of the PSS is the office holder's superannuation salary; and
  (b) the amount of the office holder's recognised allowances for the purposes of the PSS is nil; and
  (c) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the PSS, see section 26.

Defence Force Retirement and Death Benefits

(3) For a Part 3 office holder who is a member of the DFRDB:
  (a) the office holder's annual rate of salary for the purposes of the DFRDB is the office holder's superannuation salary; and
  (b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the DFRDB, see section 26.

Military Superannuation and Benefits Scheme

(4) For a Part 3 office holder who is a member of the MSBS:
  (a) the office holder's annual rate of salary for the purposes of the MSBS is the office holder's superannuation salary; and

(b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the MSBS, see section 26.

Public Sector Superannuation Accumulation Plan

(5) For a Part 3 office holder who is a member of PSSAP, the office holder's superannuation salary for the purposes of the *Superannuation (PSSAP) Trust Deed* is the office holder's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*).

Other superannuation funds

(6) For a Part 3 office holder who is a member of any other superannuation fund, the employer superannuation contribution is the minimum contribution that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage for that office holder to nil.

26 Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS

(1) Subject to subsection (2), the ***superannuation salary*** for a Part 3 office holder who is a member of the CSS, PSS, DFRDB or MSBS is worked out in accordance with the following table (***Table 3B***).

Table 3B—Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS

Item	If the Part 3 office holder's total remuneration is …	the Part 3 office holder's superannuation salary is …
1	$443,390 or more	70% of the office holder's total remuneration (rounded up to the nearest $10).
2	less than $443,390	73% of the office holder's total remuneration (rounded up to the nearest $10).

(2) If an office or a Part 3 office holder is specified in column 1 of the following table (***Table 3C***), the amount in column 2 is the superannuation salary for the Part 3 office holder who holds that office, or for that Part 3 office holder.

Table 3C—Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS for specified Part 3 office holders

Item	Column 1 Office or Part 3 office holder	Column 2 Superannuation salary
1	AAT—a Deputy President (non-judicial) who is covered by subsection (3)	$362,490
2	Military Justice System—Registrar of Military Justice	$237,300

(3) A Deputy President (non-judicial) of the AAT is covered by this subsection if:

(a) before the Deputy President's current term of appointment as Deputy President, the Deputy President had previously been appointed as Deputy President; and

(b) item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applied to the Deputy President on 1 July 2015 during a previous term of appointment.

Division 4—Vehicles and other benefits

27 Vehicles

(1) If a Part 3 office holder:

(a) accepts an offer of a vehicle owned or leased by the office holder's authority for private use; or

(b) has access to a vehicle owned or leased by the office holder's authority for private use;

the actual cost of the vehicle to the authority (including fringe benefits tax), less a reasonable amount (if any) reflecting business usage patterns, is taken to be a benefit.

(2) For the purposes of subsection (1):

(a) if the annual business kilometres are less than 5,000—the business usage amount is to be based on the "cents per kilometre" method; or

(b) if the annual business kilometres are 5,000 or more:

(i) any business usage amount is to be assessed on log book records for at least a 12 week representative period; and

(ii) the percentage of business use to total kilometres travelled per year is to be applied to the total cost of the vehicle.

28 Vehicle parking

If a Part 3 office holder accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the authority is taken to be a benefit.

29 Business support

If a Part 3 office holder is provided with communications, information technology or other office facilities necessary for the efficient conduct of the office holder's office, incidental private use of those facilities does not require the value of the facilities to be included in total remuneration.

30 Assistance for Chief Judge Advocates and the Registrar of Military Justice

The authority may approve housing, relocation and medical assistance in accordance with authority policy and practices for the offices of Chief Judge Advocate and the Registrar of Military Justice.

Note: Assistance under this section is not included as part of total remuneration: see paragraph 20(3)(c).

Division 5—Leave of absence

31 Leave of absence

(1) A Part 3 office holder is entitled to the following types and amounts of leave of absence:

(a) an office holder may be absent without loss of pay on public holidays that are observed by the Australian Public Service in the location in which the office is based;

(b) paid recreation leave of 4 weeks per year of service, accruing on a pro rata basis;

(c) other paid and unpaid leave, including sick and carers' leave, at the discretion of the Commonwealth.

(2) A Part 3 office holder may elect:

(a) to take recreation leave on a half-pay basis; or

(b) to cash out up to one week's recreation leave in a financial year.

(3) A Part 3 office holder is to be paid the balance of their recreation leave on leaving office, calculated on the basis of the office holder's reference salary.

(4) The Part 3 office holder's ***reference salary*** is the office holder's total remuneration, less the amount of total remuneration that reflects the employer superannuation contribution for the office holder.

32 Leave accumulated before commencement of this instrument

Any entitlement to recreation leave accrued by a Part 3 office holder before the commencement of this instrument is taken to have been accrued under this instrument.

Part 4—Part-time office holders

Division 1—Application of this Part

33 Application of this Part

This Part applies to a person (a ***Part 4 office holder***) who:

(a) holds an office specified in column 1 of Table 4A; and

(b) was appointed to that office on a part-time basis.

Division 2—Daily fees, travel tiers and remuneration packaging

34 Payment of daily fee

(1) A Part 4 office holder is entitled to be paid the daily fee specified in column 2 of Table 4A for the office held by the office holder.

(2) The nature, reasonableness and duration of official business by the office holder is to be reviewed prior to the payment of any daily fee to the office holder, according to arrangements established by the authority.

(3) The maximum amount payable to the office holder for any one day is the daily fee for the office holder.

(4) Unless the authority determines otherwise, the minimum amount that may be claimed for payment at any one time is one daily fee, except that the final payment to any individual prior to leaving office may be less than one daily fee.

35 Calculation of daily fees for part-day work

(1) This section applies to a Part 4 office holder who works for less than a full day.

Note: This section does not apply to a member of the AAT to whom section 39 or 40 applies.

(2) On a formal meeting or hearing day, the following amounts of the office holder's daily fee are payable to the office holder:
  (a) for a period of less than 2 hours—40% of the daily fee;
  (b) for a period of between 2 and 3 hours—60% of the daily fee;
  (c) for a period of 3 hours or more—100% of the daily fee.

(3) On any other day, for each period of at least 1 hour spent entirely on authority business, the amount of the office holder's daily fee payable to the office holder is 20% of that daily fee for each hour, up to a maximum of 5 hours on any one day.

(4) The periods of work mentioned in subsection (2) do not include any normal preparation time for a formal meeting or hearing. There is no additional payment for time spent on normal preparation. However, if extraordinary preparation time is required by the officer for the formal meeting or hearing, the authority may authorise an additional payment in accordance with subsection (3).

(5) If the office holder is required to work at a location other than the office locality, any reasonable time required to travel between an office holder's home or usual place of work and the other location may be included by the authority in calculating payments under this section. Travel time between the office holder's home and usual place of work is not included for the purpose of calculation of payments.

Section 36

36 Daily fees and travel tiers for Part 4 office holders

The following table (***Table 4A***) sets out, for a holder of each office in column 1:

(a) the daily fee for the Part 4 office holder; and

(b) the special provisions (if any) of this instrument that apply to the Part 4 office holder; and

(c) the travel tier that applies to the Part 4 office holder for the purposes of the official travel determination.

Table 4A—Daily fees for Part 4 office holders

Column 1 Office	Column 2 Daily fee	Column 3 Special provisions	Column 4 Travel tier
Federal Court—Assessor (Part-time)	$1,024		1
Copyright Tribunal of Australia—Deputy President (non-Judicial)	$1,103	Subsection 38(1)	1
Copyright Tribunal of Australia—Member	$1,103	Subsection 38(1)	1
Australian Competition Tribunal—Member	$1,024	Subsection 38(2)	1
Australian Law Reform Commission—Member (Part-time)	$1,024		1
AAT—Deputy President	$1,950	Sections 39 and 40	1
AAT—Senior member (level 1)	$1,625	Sections 39 and 40	2
AAT—Senior member (level 2)	$1,383	Sections 39 and 40	2
AAT—Member (level 1)	$1,084	Sections 39 and 40	2
AAT—Member (level 2)	$949	Sections 39 and 40	2
AAT—Member (level 3)	$813	Sections 39 and 40	2
National Native Title Tribunal—Deputy President	$1,450	Subsection 38(1)	1
National Native Title Tribunal—Member	$1,064	Subsection 38(1)	1
Defence Force Discipline Appeal Tribunal—Member	$876		1
Australian Security Intelligence Organisation—prescribed authority	$1,545		1
Military Justice System—Judge Advocate General	$2,500		2
Military Justice System—Deputy Judge Advocate General	$2,250		2
Military Justice System—Judge Advocate	$1,823		2
Military Justice System—Defence Force Magistrate	$1,823		2

37 Remuneration packaging

A Part 4 office holder may elect to take, in lieu of the fee payable to the office holder under this Part, benefits or a combination of fee and benefits if:

(a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and

(b) providing the benefit would not result in a cost to the authority (including any fringe benefits tax) that would not be incurred if the office holder had received fees instead of the benefit.

Division 3—Special provisions

38 Special provisions—alternative and additional remuneration for Part 4 office holders

(1) If column 3 of Table 4A mentions this subsection in relation to an office mentioned in column 1, the minimum annual payment to the holder of the office is an amount that is 10 times the daily fee mentioned in column 2 in relation to the office.

(2) If column 3 of Table 4A mentions this subsection in relation to an office mentioned in column 1, the holder of the office is entitled to an annual payment of $24,480 in additional to the daily fee mentioned in column 2 in relation to the office.

39 Special provisions—daily fees etc. for part-time AAT members

(1) This section applies, and section 35 does not apply, to a member of the AAT on a part-time basis who is not covered by section 40.

(2) A daily fee is payable once a member has undertaken official business of 7 hours duration in aggregate, regardless of the day or days on which that work is done.

(3) Official business may include a hearing, preparation for a hearing, reading submissions, decision writing and travel time other than for travel between the person's home and principal place of work.

(4) The member is to be paid a cancellation fee equal to an amount that is 50% of the daily fee if all of a day's work is cancelled with less than 5 working days' notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).

40 Special provisions—annual fees for certain part-time AAT members

(1) This section applies, and sections 35 and 39 do not apply, to a member of the AAT on a part-time basis who is subject to:

(a) a direction under section 18B of the AAT Act by the President of the AAT to work a specified number of days each week for a continuous period of 12 months or more; or

(b) a direction under section 18B of the AAT Act by the President of the AAT to work a specified number of days each week for a period of less than 12 months if that period ends on the day that the person's appointment as a part-time member expires.

(2) The following table (***Table 4B***) sets out, for the member who holds an office in column 1, the annual fee to be paid to the member based on the specified number of days each week the President of the AAT has directed the member to work.

Table 4B—Annual fees for certain part-time AAT members

Column 1 Office	Column 2 1 day each week	Column 3 2 days each week	Column 4 3 days each week	Column 5 4 days each week
Deputy President	$84,420	$168,840	$253,260	$337,680
Senior member (level 1)	$66,630	$133,260	$199,890	$266,520
Senior member (level 2)	$56,090	$112,180	$168,270	$224,360
Member (level 1)	$42,410	$84,820	$127,230	$169,640
Member (level 2)	$37,690	$75,380	$113,070	$150,760
Member (level 3)	$32,980	$65,960	$98,940	$131,920

(3) The annual fee payable to the member is payable on a periodic basis throughout each year and covers all activities undertaken by the member in performing the duties of the member's office.

(4) Part years are paid on a proportionate basis.

Part 5—Official travel

41 Official travel

Justices of the High Court

(1) A Justice of the High Court (including the Chief Justice) who does not establish a place of residence in Canberra is to be paid $37,760 a year in lieu of the travelling allowance that would otherwise be payable to the Justice under the official travel determination.

President of the Fair Work Commission

(2) The President of the Fair Work Commission has the same travel entitlements when travelling within Australia as the Chief Justice of the Federal Court has under the official travel determination.

Part 6—Arrangements for transitional AAT members

42 Application of this Part

This Part applies to a member of the AAT (a ***transitional AAT member***) to whom item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies.

Note: Item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies to a member of the AAT (other than a Judge) who was a member of the AAT immediately before 1 July 2015.

43 Continued operation of the transitional determination

(1) Subject to this Part, *Determination 2015/05 – Judicial and Related Offices – Remuneration and Allowances* (the ***transitional determination***) continues to apply to a transitional AAT member as if the repeal of that instrument did not happen.

(2) Apart from this Part, this instrument does not apply to a transitional AAT member.

44 Modified remuneration for transitional AAT members

Full-time transitional AAT members

(1) Table 3 of the transitional determination has effect as if the amounts for the base salary and total remuneration in that table for a transitional AAT member who is a Deputy President of the AAT were the amounts set out in the following table.

Table 6A—Full-time transitional AAT members

Office	Base salary	Total remuneration
Deputy President	$362,490	$496,560

Part-time daily fees for transitional AAT members

(2) Table 2A of the transitional determination has effect as if the amounts for part-time office daily fees in that table for a transitional AAT member who is:

(a) a Deputy President of the AAT; or

(b) a Senior member of the AAT; or

(c) a member of the AAT;

were the amounts set out in the following table.

Table 6B—Part-time daily fees for transitional AAT members

Office	Part-time office daily fee
Deputy President	$1,675
Senior member	$1,325
Member	$1,113

Annual fees for transitional part-time AAT members

(3) Table 2B of the transitional determination has effect as if the amounts for annual fees in that table for a transitional AAT member who is:

(a) a Deputy President of the AAT; or

(b) a Senior member of the AAT; or

(c) a member of the AAT;

were the amounts set out in the following table.

Table 6C—Annual fees for transitional part-time AAT members

Column 1 Office	Column 2 1 day each week	Column 3 2 days each week	Column 4 3 days each week	Column 5 4 days each week
Deputy President	$84,420	$168,840	$253,260	$337,680
Senior member	$66,630	$133,260	$199,890	$266,520
Member	$56,090	$112,180	$168,270	$224,360

45 Additional remuneration for certain part-time transitional AAT members

(1) This section applies to a transitional AAT member to whom subsection 44(2) applies.

(2) The minimum annual payment to the member is 10 times the amount of the daily fee in Table 2A of the transitional determination, as modified by subsection 44(2), that applies to the member.

(3) Subsection (2) applies to the member, whether the member receives a part-time daily fee or an hourly rate under clause 2.4 of the transitional determination.

(4) The member is to be paid a cancellation fee equal to an amount that is 50% of the daily fee if all of a day's work is cancelled with less than 5 working days' notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).

46 Other modifications for transitional AAT members

Travel tier

(1) For the purposes of the official travel determination, travel tier 1 applies to a transitional AAT member.

(2) Subsection (1) applies despite any provision of the transitional determination.

Review of official business before payment

(3) Despite clause 2.5.4(ii) of the transitional determination, subsection 34(2) of this instrument applies to a transitional AAT member.

Schedule 1—Repeals

Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019

1 The whole of the instrument

Repeal the instrument.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020	18 June 2020 (F2020L00750)	1 July 2020 (s 2(1) item 1)	
Remuneration Tribunal Amendment Determination (No. 5) 2020	10 Sept 2020 (F2020L01153)	Sch 1 (item 1): 11 Sept 2020 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 6	rep LA s 48C
Part 2	
Division 4	
s 15	am F2020L01153
Schedule 1	
Schedule 1	rep LA s 48C

TAB 3

JUDICIAL COMPENSATION:
OUR FEDERAL JUDGES MUST BE FAIRLY PAID

Approved by the Board of Regents
March 2007

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◆ ◆ ◆

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TABLE OF CONTENTS

JUDICIAL COMPENSATION:
OUR FEDERAL JUDGES MUST BE FAIRLY PAID

Executive Summary

No one can seriously dispute that an independent judiciary is critical to our system of government and to our way of life.[1] The Founding Fathers gave us a system of government with three distinct and independent branches, designed to serve as checks and balances against one another, to ensure our life, liberty, and pursuit of happiness. If our judiciary is to maintain its independence and serve its critical constitutional function, judges must be fairly compensated in order to attract and retain the very best candidates.

Sadly, we do not now compensate our judges adequately. Since 1969, as the real wages adjusted for inflation earned by the average U.S. worker have increased approximately 19%, federal judicial salaries have decreased by 25%.[2] Starting salaries for new law school graduates at top tier law firms now equal or exceed what we pay district court judges. Our federal judges make less than many law school professors and a fraction of what most could make in private practice. As a result, good judges are leaving the bench at an alarming rate. Judicial vacancies are increasingly being filled from a demographic that is not conducive to a diverse and impartial judiciary.

Chief Justice Roberts describes this state of affairs as nothing less than "a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary." The American College of Trial Lawyers joins Chief Justice Roberts – and countless others – in calling for a substantial increase in judicial compensation commensurate with the importance and stature the federal judiciary should and must have. And the College has a specific suggestion for the amount of the increase. We assume – we know – that our federal judiciary is no less important to our society than the judges of the country from which we adopted our legal system are to their native land. Judges in England are paid twice as much as their counterparts in the U.S. We believe that our federal judges ought to paid at least as much as English judges; so we propose a 100% raise from current compensation. At that, our judges will arguably still be underpaid for the service they provide our society, but it is a start.

We recognize that the increase we propose is a substantial sum of money But the cost is a mere 5% of the $6.5 billion federal court budget, and it is a rounding error – one hundredth of 1% – of the overall $2.9 trillion federal budget. It should be seen as a modest, sound investment in an independent judiciary; it is an investment necessary to preserve our constitutional framework.

---

1 "Judicial independence" is an oft misunderstood phrase. Chief Justice Michael Wolff of Missouri, in his 2006 State of the Judiciary address, explained that the term should not be interpreted to mean that a judge is free to do as he or she sees fit but rather that courts need to be fair and impartial, free from outside influence or political intimidation. Chief Justice Randall Shepard of the Indiana Supreme Court puts it thus: "Judicial independence is the principle that judges must decide cases fairly and impartially, relying only on the facts and the law."

2 *Bureau of Labor Statistics CPI-U Index/Inflation Calculator; Social Security Administration National Average Wage Indexing Series.*

An independent judiciary is critical to our society; and fair compensation is essential to maintaining that independence.

Of all the grievances detailed in the Declaration of Independence, none was more galling than the lack of independence imposed by King George on Colonial judges:

> He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

Declaration of Independence, July 4, 1776. English judges were assured life tenure during their "good behavior" by the Act of Settlement of 1700, but their Colonial counterparts served at the pleasure of the King. Their salaries were subject to his whims. Judges beholden to the King, not surprisingly, often ruled as he pleased, no matter how unfairly. The framers of our post-Revolution government needed to ensure an independent judiciary.

In 1780, nearly a decade before the U.S. Constitution was ratified, John Adams drafted a Declaration of Rights for the Massachusetts State Constitution, which declared:

> It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

The concept of judicial independence – that judges should decide cases, faithful to the law, without "fear or favor" and free from political or external pressures – remains one of the fundamental cornerstones of our political and legal system. As Alexander Hamilton explained, once the independence of judges is destroyed, "the Constitution is gone, it is a dead letter; it is a paper which the breath of faction in a moment may dissipate."[3]

Fair compensation is critical to maintain that independence. In the *Federalist Papers,* Hamilton explained the importance of fair compensation: "[I]n the general course of human nature, a power over a man's subsistence amounts to a power over his will." *Federalist Papers* No. 79. Thus, the U.S. Constitution contains two critical provisions to defend and preserve judicial independence for federal judges: (1) life tenure and (2) a prohibition against diminution of compensation.

Inflation is not unique to modern times. The drafters of the Constitution were aware of the problem, and they took steps to solve it. Explaining that "next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support," Hamilton, in *Federalist Paper No. 79*, observed:

> It would readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of compensation in the Constitution inadmissible. What might be extravagant today might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations

3 *Commercial Advertiser* (Feb. 26, 1802) (quoted by Chief Justice Roberts in his 2006 Year-End Report on the Federal Judiciary).

> in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation.

A case can be made that the Constitution *requires* a raise in judicial compensation to ameliorate the diminution which has occurred over time as the result of inflation.[4] When the Constitution was adopted, the Founding Fathers provided that the President was entitled to compensation which can be neither increased nor decreased during the term of office, while judges were guaranteed there would be no diminution of compensation; there was no ban on increases in judicial compensation, because it was contemplated that there might have to be increases. Hamilton explained:

> It will be observed that a difference has been made by the Convention between the compensation of the President and of the judges. That of the former can neither be increased nor diminished; that of the latter can only not be diminished. This probably arose from the difference in the duration of the respective offices. As the President is to be elected for no more than four years, it can rarely happen that an adequate salary, fixed at the commencement of that period, will not continue to be such to its end. But with regard to the judges, who, if they behave properly, will be secured in their places for life, it may well happen, especially in the early stages of the government, that a stipend, which would be very sufficient at their first appointment, would become too small in the progress of their service.

Id.

The prohibition against diminution of judicial salaries was not simply to protect judges; it was designed to protect the institution of an independent judiciary and thereby to protect all of us. Society at large is the primary beneficiary of a fairly compensated bench:

> [T]he primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations and pervading principles of the Constitution and to the administration of justice without respect to persons and with equal concern for the poor and the rich.

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4 To be sure, in *Atkins v. United States*, 214 Ct. Cl. 186 (Ct. Cl. 1977), a group of federal judges were unsuccessful in arguing that their rights had been violated because Congress had raised other government salaries to adjust for inflation at a different rate than for judges. The court held that the Constitution vests in Congress discretion in making compensation decisions, so long as they are not intended as an attack on judicial independence. On the facts in *Atkins*, the court found no such attack. But the effect of inflation on judicial salaries over the past 30 years has eroded judicial compensation as effectively as an all-out assault. A court might well reach a different decision on today's facts.

Evans v. Gore, 253 U.S. 245, 253 (U.S. 1920).

The current levels of judicial compensation are not fair; and the inadequacy of those levels is having an adverse impact on the administration of justice in the federal courts.

In the period from 1969 through 2006, the average U.S. worker enjoyed an 18.5% increase in compensation adjusted for inflation; at the same time, the salaries of district court judges have decreased by 24.8%. Over the past 40 years, federal judges have lost 43.3% of their compensation as compared to the average U.S. worker.[5] In 1969, although federal judges earned less than they might in private practice, their salaries were consistent with and generally higher than those of law school deans and senior professors. But by 2007, law school deans and senior professors are, in general, earning twice what we pay our district court judges.[6]

Starting salaries for brand new law school graduates at top law firms now equal or exceed the salary of a federal judge. A judge's law clerks can out-earn their judge the day after leaving the clerkship.

No one can seriously argue that federal judges have not lost ground. At the same time, it must be conceded that a federal district judge's current salary – $165,200 – is a substantial sum to average Americans, the vast majority of whom earn substantially less. But the point is that judges are not supposed to be average. They should be the best of us, the brightest of us, the most fair and compassionate of us. The Founding Fathers knew and contemplated that good judges would be a rare commodity, entitled to the special emoluments of their stature:

> There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that ***there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges.*** And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government

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5 *Bureau of Labor Statistics CPI-U Index/Inflation Calculator; Social Security Administration National Average Wage Indexing Series.*

6 Chief Justice Roberts, *2006 Year-End Report on the Federal Judiciary*.

> can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity.

Federalist Papers, No. 78 (emphasis added).

The fact is that persons qualified to be federal judges can generally command far greater sums in the private sector and even in academia. So the issue is not whether current judicial salaries might seem adequate measured against the wages of a typical American; the issue is whether those salaries continue to attract and retain those relatively few, talented persons we need as judges. Our society cannot afford to have a federal judiciary overpopulated by persons who can afford to serve at vastly below-market rates only because their personal wealth makes them immune to salary concerns or because their personal abilities and qualifications do not command greater compensation.

During the Eisenhower administration, approximately 65% of federal judicial appointments were filled from the private sector, 35% from the public sector. Since then, the percentages have gradually inverted: currently, more than 60% of judicial appointments come from the public sector.[7] There is nothing wrong with having former prosecutors populate the bench. But too much of a good thing ceases to be a good thing. A bench heavily weighted with former prosecutors is one which may lose its appearance of impartiality and objectivity; and appearances aside, it may actually suffer that loss. It is an undeniable fact that some of the best and brightest lawyers are found in the private sector, and it is a regrettable fact that fewer and fewer of those persons are seeking appointment to the bench.

At the same time that current compensation levels place unacceptable barriers to attracting the best possible candidates for the bench, those levels are forcing sitting judges to rethink their commitments. Over the past several years, dozens of competent, able federal judges have left the bench, many of them making no secret of the financial pressures which led them to do so. In the past few years, at least 10 federal judges left the bench well before normal retirement age; combined, these 10 judges had 116 years left before they reached the age of 65.[8] The cost of losing these able jurists cannot be measured. Put aside the cost of finding their replacements – the cost of locating, screening, and vetting qualified applicants, the cost of training the new judges, the cost to the system as the remaining judges must shoulder the extra workload until a replacement is sworn in – all of these things have a cost to society, some measured in money, some measured in the time it takes for the wheels of justice to turn – but put all of that aside. The real cost is that those 10 judges we identify

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7 Chief Justice Roberts, *2006 Year-End Report on the Federal Judiciary,* p. 3-4.

8 Judge David Levi has announced he will retire in July 2007; Judge Levi, who has served on the bench for 16 years, is 55. Judge Nora Manella resigned in March 2006 at age 55 after 8 years of service. Judge Michael Luttig retired in May 2006 at age 51 with 14 years of service. Judge Roderick McKelvie resigned in June 2002 at age 56 with 10 years of service. Judge Sven Erik Holmes resigned in March 2005 at age 54 with 10 years of service. Judge Carlos Moreno resigned in October 2001 at age 53 with 3 years of service. Judge Stephen Orlofsky resigned in 2001 at age 59 after 7 years of service. Judge Michael Burrage resigned in March 2001 at age 50 with 6 years of service. Judge Barbara Caufield resigned in September 1994 at age 46 with 3 years of service. Judge Kenneth Conboy resigned in December 1993 at age 55 with 6 years of service. Over the past two decades, scores of other judges have left the bench while still in their prime to pursue more financially rewarding careers.

above, (and scores of others like them) had more than 100 years of prospective judicial experience now forever lost to our society; years they chose to expend in private rather than public pursuits.[9] The loss is incalculable.

A federal judgeship was once seen as the capstone of a long and successful career; seasoned practitioners with years of experience and accomplishment accepted appointments to the bench, knowing that they would make some financial sacrifice to do so, but counting on the sacrifice not being prohibitive. Now, sadly, the federal bench is more and more seen, not as a capstone, but as a stepping stone, a short-term commitment, following which the judge can reenter private life and more attractive compensation. As a long-term career, the federal bench is less attractive today for a successful lawyer in private practice than it is for a monkish scholar or an ideologue. Ann Althouse, *An Awkward Plea, N.Y.Times* Feb. 17, 2007 at A15, col. 1

Chief Justice Roberts is not alone in decrying the current situation. Former Federal Reserve Board Chairman Paul Volcker, as Chair of the National Commission on the Public Service, reported in January 2003 that "lagging judicial salaries have gone on too long, and the potential for the diminished quality in American jurisprudence is now much too large." The Volcker Commission pointed to judicial pay as "the most egregious example of the failure of federal compensation policies" and recommended that Congress should make it a "first priority" to enact an immediate and substantial increase in judicial salaries. Congress, of course, has yet to do so. In February 2007, Mr. Volcker published an opinion piece in the *Wall Street Journal* in which he noted that sad fact. Mr. Volcker, observing that federal judges must possess rare qualities of intellect and integrity, stated that "the authors of the Constitution took care to protect those qualities by providing a reasonable assurance of financial security for our federal judges. Plainly, the time has come to . . . honor the constitutional intent."

The current system of linking judicial salaries to Congressional salaries makes little sense. If federal judicial salaries are to be linked to a benchmark, it should be to the salaries of their counterparts in other countries.

Since the adoption of the *Ethics Reform Act of 1989,* judicial salaries have been linked to Congressional and Executive Branch salaries. Whatever the reasoning that led to that linkage, it is a tie which must now be broken. Certainly, there is no constitutional basis for such a linkage. Judges and members of Congress are equally important to our system of government, but it was never contemplated that judges and Congressmen be equated. The Constitution contemplated that Congress would be composed of citizen-statesmen, who would lend their insights and talents to government for limited periods of time and return to the private sector. Judges in contrast, were and still are expected to serve for life.

But even if it were entirely fair to equate the roles of members of Congress and members of the bench, the linkage would still be unfair to the judiciary. Members of Congress are also underpaid. But members of Congress are limited in their ability to vote themselves a salary increase for the very

9 We use 65 as the normal retirement age, but, of course, federal judges seldom retire at that age; most remain active far longer and take senior status to remain on the bench and contribute for many additional years.

reason that they are the ones who make the decisions. Congress must be appropriately concerned about awarding itself a raise no matter how well deserved because of the appearance of self-interest and the political impact of that appearance. But there is no appearance of impropriety in awarding a well-deserved increase to judges who have no say in the matter.[10]

Because of linkage, political considerations, which necessarily impact decisions about congressional compensation, adversely and unfairly affect judicial compensation. Political considerations should not dictate how we pay our judges. Indeed, we believe that the Constitution was designed to immunize that issue from political pressure.

The federal government already pays myriad individuals far more than current congressional salaries, in recognition that market forces require greater compensation. An SEC trial attorney or FDIC regional counsel can make $175,000 per year.[11] An SEC supervisory attorney can make over $185,000 per year. A CFTC deputy general counsel can make nearly $210,000 per year. The chief hearing officer at the FDIC can make in excess of $250,000 per year; the managing director of the OTS can make in excess of $300,000 per year.[12] The OCC compensates its employees in nine pay bands, a full third of which include salaries with possible maximums in excess of $183,000.[13]

A February 2007 search of the government website posting open positions as of that date returned 343 available jobs with possible salaries in excess of a federal judge's salary; 208 of those postings have salaries in excess of $200,000, 48 in excess of $250,000.

Interestingly, the two countries with legal and constitutional systems most closely analogous to ours, Canada and England, have no links between judicial and legislative salaries; both countries pay their judges at different (higher) rates than other government officials – and both countries pay their judges significantly more than we do. The Canadian counterparts to our Supreme Court justices and federal judges receive salaries approximately 20% greater than U.S. judges:

U.S.	Salary	Canada[14]	Can $	Rate	U.S. $
Chief Justice	$ 212,100.00	Chief Justice	297,100.00	0.863	256,397.30
Appellate Judges	$ 175,100.00	Puisne Judges	275,000.00	0.863	237,325.00
District Judges	$ 165,200.00	Federal Judges	231,100.00	0.863	199,439.30

10 The Constitution left Congress free to vote itself a raise or a salary cut. Almost immediately, at least one of the Founding Fathers thought better of that, and the "Madison Amendment" was proposed in 1789, along with other amendments which became the Bill of Rights. The Madison Amendment would have allowed Congress to increase congressional salaries, but no increase could take effect until an intervening election – which would allow the voters an opportunity to express their displeasure with such a move. But while the Bill of Rights amendments sailed through the original 13 states, it took more than 200 years to obtain the necessary percentage of states to ratify the Madison amendment; it finally became the 27th Amendment in 1992 when Alabama became the 38th state to ratify.

11 For those not conversant with government acronyms: SEC is the Securities & Exchange Commission; FDIC is the Federal Deposit Insurance Corporation; CFTC is the Commodities Futures Trading Commission; OTS is the Office of Thrift Supervision; OCC is the Office of the Comptroller of the Currency.

12 Facts assembled by the Administrative Office of the Courts, February 8, 2007.

13 OCC Pay band VII has salaries ranging from $98,300-$183,000; pay band VIII ranges from $125,600-$229,700; pay band IX ranges from $163,100-$252,700. See www.occ.treas.gov/jobs/salaries.htm.

14 Data provided by Raynold Langois, FACTL, Langlois Kronström Desjardins, Avocats, Montréal (Québec).

In England, a Member of Parliament earns 60,277 Pounds – approximately $120,000. A High Court judge, the equivalent of a federal district court judge, is paid 162,000 Pounds, approximately $318,000. English judges make nearly twice what their American counterparts earn:

U.S.	Salary	England[15]	£	Rate	U.S. $
Chief Justice	$212,100.00	Lord Chief Justice	225,000.00	1.964	$ 441,900.00
Appellate Judges	$175,100.00	Lords of Appeal	194,000.00	1.964	$ 381,016.00
District Judges	$165,200.00	High Court	162,000.00	1.964	$ 318,168.00

It is ironic – our forebears split from England and formed our great, constitutional democracy in no small part because of the manner in which King George exerted influence over colonial judges by controlling their compensation; Now, two centuries later, England has provided sufficient judicial compensation to assure the recruitment, retention, and independence of good judges, while we pay our judges less than we do numerous mid-level government employees and recent law school graduates. Our Founding Fathers would find this state of affairs unacceptable. Our judges are at least as valuable to our society as English judges are to theirs. And our judges should be paid accordingly.

A 100% salary increase will still leave our federal judges significantly short of what they could earn in the private sector or even in academia. But such an increase will at least pay them the respect they deserve and help to isolate them from the financial pressures that threaten their independence.

The College is not the first and undoubtedly will not be the last to advocate for a substantial raise for our judiciary. In addition to Chief Justice Roberts and former Fed Chairman Volcker, we join the American Bar Association, which has adopted a resolution in support of increased compensation. We join countless other state and local bar associations who have done likewise. We join the General Counsels of more than 50 of the nation's largest corporations who wrote to members of Congress on February 15, 2007 urging a substantial increase. We join the deans of more than 125 of the nation's top law schools who made a similar appeal to congressional leadership in letters dated February 14, 2007. We join the editorial staffs of numerous publications, including the *New York Times*, the *Detroit Free Press*, the *Albany Times Union*, the *Chattanooga Times Free Press*, the *Seattle Post-Intelligencer*, the *Orlando Sentinel*, the *Pasadena Star-News*, the St. *Petersburg Times*, the *Anchorage Daily News*, the *Akron Beacon Journal*, the *New Jersey Star Ledger*, the *Raleigh-Durham News*, the *Boston Herald* and the *Scripps Howard News Service*, all of which have advocated for salary increases. And we join the signers of our Declaration of Independence in recognizing the need to unlink judicial pay from political considerations. We are not sure we can say it any better than the editors of the *Chattanooga Times*:

> All Americans, of course, should want our judges to be among the most stable of our nation's lawyers, to be well-trained men and women of integrity, dedicated to absolute impartiality in upholding the Constitution and the law – with no political or philosophical agenda for "judicial activism."
>
> And we should pay enough to justify the best.

15 Data obtained from Department for Constitutional Affairs; see www.dca.gov.uk.

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TAB 4

THE NEED TO PROMOTE AND DEFEND FAIR AND IMPARTIAL COURTS

A sequel to *Judicial Independence: A Cornerstone of Democracy Which Must Be Defended (2006)*

Task Force on Judicial Independence

Approved by the Board of Regents
March 2019

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THE NEED TO PROMOTE AND DEFEND FAIR AND IMPARTIAL COURTS

Introduction

In 2006 the College published a report, "*Judicial Independence: A Cornerstone of Democracy Which Must Be Defended*." In this report, the College gave perspective to the deep roots that judicial independence occupies in the founding documents of our democracy. The College defined "judicial independence" to mean that "judges should decide cases, faithful to the law, without 'fear or favor' and free from political or external pressures." The 2006 Report offered historical and contemporaneous examples of how the legislative and executive branches – and even the public – threaten the judicial branch's freedom from external pressures that would compromise its role in our democracy. The report called for action by the College, lawyers, and professional organizations to assure the public is fully informed of the critical role of the judiciary and to respond to threats to judicial independence wherever they occur.

In this report, the College looks back at the past decade to evaluate the collective efforts of the College and others in our profession to meet the goals the 2006 Report set out. This report complements the 2006 Report. The two reports should be considered together for a broader understanding of the importance of fair and impartial courts throughout our history as well as today.

This report concludes that the threat level to fair and impartial courts in the United States rose over the past decade. The threats have increased in volume – both number and pitch – and at both the federal and state levels. We recognize that the preceding decade saw significant social changes that carried significant impact for public and political discourse in several contexts. There is little question that America is more polarized and its politicians and citizens have become less civil in their discourse in the past decade. Likewise, the national conversation, often dominated by sound bites and social media tweets, has diminished the thoughtful exchange of information and opinion. These facts, however, offer no solace.

The Founders envisioned judicial independence as a singular benefit for our citizens, all of whom are entitled to the fair and impartial administration of justice consistent with the rule of law. As one constitutional scholar points out:

> Modern presidents and Congresses have awesome powers affecting our lives, fortunes and freedoms. It follows that federal courts need the independence and respect to not only review presidential orders and federal legislation, but also to declare them invalid.

The statement has equal application to state executives, legislatures and courts. All citizens need, and have the right to expect, the rule of law to be fairly applied by impartial judges, especially now when there is so much dissonance in our social and political environments.

In sharp contrast to the courts, legislatures are political bodies elected to represent the views of their constituents who are often pushing fiercely-held beliefs and controversial issues. We are

witnessing a polarized passage in America's history, one that is driving more and more high-voltage policy issues into litigation in our courts. This polarized environment makes the need to protect the independence of the judiciary that much greater. As Chief Justice John Roberts remarked in October 2018, the judicial branch is, and must be, distinct from the representative branches that speak for the people. That is so because judges "do not speak for the people, but we speak for the Constitution. Our role is very clear. We are to interpret the Constitution and laws of the United States, and to ensure that the political branches act within them. That job obviously requires independence from the political branches." Citing to *Brown v. Board of Education* and *West Virginia v. Barnette*, the Chief Justice noted "the story of the Supreme Court would be very different without that sort of independence."

For these reasons, the College must reaffirm and redouble its commitment to protecting fair and impartial courts. It must do more than "going on the record." The College must reach out beyond our Fellows and beyond our profession. The College must use its voice to educate politicians and the public on how and why the judiciary's independence from the legislative and executive branches is essential to safeguarding the liberty of our citizens. The College must be proactive to counteract the negativity and misinformation that are undermining the public's confidence in the courts. Doing so will demand vigilance and prompt denunciation of statements or actions demeaning the judiciary. Retired Justice Sandra Day O'Connor reminds us: "Judicial independence doesn't happen all by itself. It's tremendously hard to create and easier than most people imagine to destroy."

Current and Continuing Threats to Judicial Independence

Criticism of the judiciary comes in many forms. Some critiques reflect the normal, salutary expression of opinion enshrined in the constitutional rights of the People and woven into the history of our nation. Some critiques, by contrast, are improper, cynical, and destructive. We should welcome and encourage vigorous public engagement, expression and dissent, while remaining vigilant against unfounded diatribes that diminish confidence in the fairness and integrity of our judiciaries. The following are recent examples of such threats to judicial independence.

Presidential Disparagement of Judges, the Courts and the Rule of Law

During the last two years, a historically uncommon kind of criticism emerged in repeated presidential denunciations of judges and of the judicial system. To be sure, the President has the right to disagree with and to criticize a judicial ruling. President Trump has not stopped, however, at criticizing rulings. He has attacked the judicial system and leveled personal attacks on individual judges.

Before he took office, Candidate Trump attacked United States District Judge Gonzalo Curiel based on the judge's ethnic background, pronouncing him incapable of fairly deciding a fraud case against Trump University because the judge was "Mexican" and Latinos opposed Mr. Trump's promise to build a border wall. He called Judge Curiel a "hater of Donald Trump" and demanded that the court system look into Judge Curiel because "what Judge Curiel is doing is a total disgrace."

Soon after the election, President Trump attacked United States District Court Judge James Robart, for his decision enjoining the President's executive order banning immigration from predominantly Muslim countries. He labeled Judge Robart a "so-called judge" whose opinion "takes enforcement away for our country and is 'ridiculous.'" He accused Judge Robart of "putting our country in such peril. If something happens blame him and the court system."

When United States District Judge William Orrick enjoined the administration's attempt to deny federal funding to sanctuary cities, the President proclaimed: "This case is yet one more example of egregious overreach by a single, unelected district judge." . . . . "Today's ruling undermines faith in our legal system and raises serious questions about circuit shopping."

President Trump has tweeted: "Our legal system is broken," declaring that terrorist attacks on American soil were not surprising because the American judicial system is a "joke" and "laughingstock."

The President's tweets have focused often on the federal courts of the Ninth Circuit, with comments such as: "We have a big country. We have lots of locations. But they immediately run to the Ninth Circuit . . . that's like a semi-automatic. . . . You have to see, take a look at how many times they been overturned with their terrible decisions. Take a look. And that is what we have to live with." He also chastised the Chief Justice of the Supreme Court for creating "total turmoil" throughout the country by not doing "the right thing" in not voting to overturn the Affordable Care Act.

President Trump escalated his campaign to politicize the judiciary as the American public prepared to celebrate our day of Thanksgiving for the privilege of living in our great democracy. Angry with the decision of United States District Court Judge Jon Tigar enjoining the President's effort to deny asylum to migrants entering the United States illegally, the President disparaged Judge Tigar as "an Obama Judge." He then repeated his now familiar exhortation that the Ninth Circuit is "a disgrace," warning he would make sure "it is not going to happen like this anymore." Chief Justice Roberts immediately responded to the President's attempt to politicize the judiciary: "We do not have Obama judges or Trump judges. Bush judges or Clinton judges. What we have is an extraordinary group of individual judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we all should be thankful for." The College applauded the Chief Justice's response pointing out that the President's "political characterization of judges is an affront to the fundamental principle of judicial independence that cannot be ignored."

Through his recurring attacks on judges who rule against his policies, President Trump undermines our citizens' faith in a fair and impartial judiciary. His ridiculing individual judges displays contempt for the rule of law that our nation's judges – like the President – have sworn to uphold.

To be sure, previous presidents have expressed differences with the courts. Presidents Lincoln, Nixon, Bush, and Obama, for example, also spoke out when they disagreed with decisions that appeared to limit their authority or curtailed their policies. When stating their disagreement with a particular ruling, however, these Presidents conveyed their support and respect for the independence

of the judiciary. President Trump has attacked the integrity of judges and the legitimacy of the judicial system. As Trump-nominee, now Supreme Court Justice Gorsuch observed, the President's comments against judges and the courts are "disheartening" and "demoralizing."

State Legislatures Threaten to Curtail Judicial Authority

Legislative authority includes the power to enact, amend or repeal a statute after a court has interpreted the law in a way the legislature disagrees with, thereby requiring a different result in future cases. That is an appropriate legislative response and function. Such authority also includes the power to revise the jurisdiction of the courts so long as such enactments do not prevent the judicial branch from accomplishing its core constitutional functions. The exercise of legitimate legislative powers, in itself, does not present a threat to the judiciary.

But there is a fundamental, critical distinction between the exercise of legitimate power, wise or unwise, and the improper use of such power. If Congress, responding to an unpopular decision, were to threaten a federal judge with impeachment proceedings, Congress would have gone too far. The Constitution permits impeachment of federal judges only in cases of "treason, bribery or other high crimes and misdemeanors." U.S. Constitution, Art. II, Section 4. Similar "for cause" language appears in virtually every state constitution. An unpopular, unsound or even blatantly erroneous opinion ─ indeed even a series of such opinions ─ do not make for an impeachable offense. The law sometimes demands unpopular outcomes. A judge who is weighing approval by the legislature or the popular will, rather than focusing on what the law demands, has surrendered at least some independence.

In recent years, we have seen repeated attempts by state legislators in numerous states to remove judges solely because of their disagreement with a particular opinion. 2011 was a watershed year for legislative attempts to impeach sitting judges based solely on legislators' disagreement with the judge's ruling in a particular case. Several state legislators introduced impeachment or removal bills against sitting judges in Iowa, Massachusetts, Missouri, New Hampshire, New Jersey, and Oklahoma. In 2018, legislation was introduced to impeach five Pennsylvania Supreme Court justices for their decision striking down the Commonwealth's redistricting map. This same year several Massachusetts lawmakers introduced a petition to impeach a state trial judge for granting probation to an immigrant guilty of drug dealing.

Of course, voters in states that elect judges have the power to remove judges simply because they disagree with even a single decision. Consider, for example, the ouster of three Iowa Supreme Court justices for their decision allowing gay marriages and the recall of a California state court judge for an unpopular sentencing decision in a high profile case. These examples do not conflict with the constitutional principle of separation of powers because the electorate removed the judges at the ballot box. But they present a concern, nevertheless, because in both instances the judges' removal resulted solely from a majoritarian disagreement with a single lawful decision.

The Iowa justices lost their retention elections in 2010 for recognizing a same-sex couple's constitutional right to marry – a right the United States Supreme Court later recognized in *Obergefell v. Hodges*. Likewise, a majority of California voters (59%) recalled Judge Aaron Persky because they believed he was too lenient in sentencing a criminal defendant, even though he gave

the sentence the county probation department recommended. The district attorney who prosecuted the case "vehemently opposed" the light sentence, but later explained why he opposed the recall. "Subjecting judges to recall when they follow the law and do something unpopular undermines judicial independence. When judges believe that they will lose their careers for making unpopular but lawful decisions, they may lack the courage to stand up for the rights of minorities or others needing protection from powerful majorities." As Chief Justice Roberts reminded us, judges are not representatives of the people; they are not supposed to speak for the people. Their role is to speak for the Constitution; they do so by fairly and impartially applying the law.

There have been other more subtle legislative threats in play in recent years. The Brennan Center for Justice reports that 41 bills introduced in 15 state legislatures in 2017 sought to politicize, limit or control state courts and judges. The Center found that during 2018 legislators in 16 states introduced 46 bills that would diminish the role or independence of the courts. This 2018 "state crop" included bills that would: change how judges are selected, in most cases injecting greater politics into the process; make it easier to remove judges for unpopular decisions; reduce judicial resources or exert more control over courts in exchange for resources; shorten judicial terms; or restrict the courts' power to find legislative acts unconstitutional.

Although overt legislative assaults on the judiciary have had little success thus far as final measures, it would be shortsighted to underestimate their potential. The message that such attempted measures send conflicts with the fundamental principle of separation of powers. Likewise, such measures confuse the public as to the singular, apolitical role of the judiciary in our Constitutional democracy. Efforts to push the judiciary to factor politics and popular opinion into their decision-making are real threats with real consequences.

Executive Encroachment at the State Level

Although state executives have less ability than legislatures to intrude on the judiciary, they have incited the legislative branch to encroach upon the judiciary on their behalf. The most familiar tack has been through intemperate personal attacks and advocating for the removal of judges who decide cases opposing the executives' initiatives or interests. Governors also have used their role in the state budgeting and appropriations process to exert control over the judiciary. In June 2015, the Governor of Kansas signed a bill stripping the courts of funding if a court invalidated legislation limiting the power of the state supreme court to appoint chief district court judges. This measure retaliated for a supreme court decision ordering the legislature to increase funding for public education. (After the supreme court declared unconstitutional the chief judge appointment law, the governor signed a bill repealing the offending court-defunding law.) In his 2019 budget proposal, the Governor of New York proposed to condition an increase in funding for the state courts on a requirement that the state's 1,250 judges certify each month that their court was open and functioning for 40 hours each week, such certifications to be audited by the state controller. (The state legislature rejected the Governor's proposal.)

Lack of Resources Undermines the Full and Fair Functioning of the Courts

The failure to fund a court system adequately, whether through neglect or from deliberate starvation by those controlling the purse strings, presents another major threat to judicial

independence. The current decade gave the courts some good news while it also displayed some tough challenges.

Good news first. The College's 2006 Report identified, as an assault on judicial independence, the erosion of federal judicial salaries due to infrequent pay raises that failed even to keep pace with inflation. The picture improved as a result of the Federal Circuit Court's holding in *Beer v. United States*, 696 F.3d 1174 (Fed. Cir. 2012), *cert. denied*, 133 S.Ct. 1997, that the denial of certain cost-of-living adjustments to judges violated the Compensation Clause and its order that federal judicial salaries be reset to recoup the missed adjustments. Judicial salaries increased by 14% in 2014 and have almost kept pace with inflation through 2018. For 2018, district court judges earned $208,000, circuit court judges, $220,600, and Supreme Court justices, $253,000. That said, however, the level of compensation still requires those willing to serve in the judiciary, and their families, to sacrifice the financial benefits they likely would enjoy in the private sector.

By contrast, during the past decade, state courts faced significant financial challenges. The Great Recession drastically slashed state court funding across the United States, causing significant staff reductions and darkened courthouses, imperiling access to justice. The National Center for State Courts reported that courts in two-thirds of the states experienced a decrease in state funding in 2010 and 60 percent experienced a decrease in 2011. A Fall 2016 NCSC survey revealed that state court funding had "somewhat improved, but the courts are still struggling." More than half the states responding to the survey reported being in better shape than they were at the start of the Great Recession, but a third reported being in worse shape.

The overall funding of state courts – judicial, staff and clerks' compensation – moves under the radar of public awareness and merits our significant attention.

Denigrating Personal Attacks on Judges Undermine the Public's Confidence in the Fairness and Impartiality of the Courts

Criticism of a judge or judicial decision may or may not be valid, but it is never, in and of itself, a threat to judicial independence. When a judge issues an unpopular ruling, he or she can anticipate, and should expect some criticism. The late Chief Justice William Rehnquist once said that criticism of judges and their decisions "is as old as our Republic" and can be a healthy part of the balance of power among the branches of government. Such legitimate criticism can come from many sources – public officials, law professors and lawyers, political commentators, interest groups, the media, and private citizens. Disagreement – even harsh disagreement – with a judicial ruling or rationale demonstrates the strength of our democracy. When criticism escalates, however, to *ad hominem* attacks against individual judges or broadside attacks on the judiciary generally, that criticism crosses a bright line.

There are some instances in which judges and judicial candidates become complicit in undermining the integrity of the judiciary by condoning negative campaign advertising in contested elections. The common feature of such advertising is the intentional depiction of an opponent as biased or corrupted by special interest. Hotly contested judicial races have become the norm in some states. All too frequently, these races create and reinforce a perception that judges are only politicians in robes who will be influenced by the funds raised and spent to finance their campaigns.

The Brennan Center reports in The Politics of Judicial Elections that $38.4 million was spent on state supreme court elections in 2009-10. $70 million was spent in the 2015-2016 cycle – a 53% increase over the average amount, adjusted for inflation, spent in the preceding three election cycles. Over the last four cycles, the percent of funding raised by outside interest groups (in contrast to funds raised by the candidate, individual supporters or a political party) increased from 17.5% to 26.2%, 30% and 40%, respectively. However fair and impartial a state judge may be, the perceived existence of "justice for sale" undermines the public's confidence in the court's impartiality. The Brennan Center reports: "Polling shows that 95 percent of the public believes campaign spending influences how judges rule in cases." Whether or not the perception is valid, its existence demonstrates a major threat to the integrity of our justice system. Retired Justice O'Connor summarized the core risk embedded in this issue: "The mere appearance of impropriety and partiality is enough to shake the foundation of our judiciary." *Thoughts on Safeguarding Judicial Independence*, Litigation, Vol. 35, No. 3, p. 9, American Bar Association, Spring 2009.

The Canadian Perspective

The Canadian judicial system shares the same heritage and many of the traditions and processes found in the United States. Judicial independence is a cornerstone of Canadian democracy, and, as in the States, is intended for the benefit of the People, not for the benefit of judges.

In a speech delivered in October 2018 by Justice Abella of the Supreme Court of Canada in honour of the 70th anniversary of the Supreme Court of Israel, she emphasized the extraordinary importance of judicial independence not only in Canada, but also in other countries including Israel. Justice Abella observed that "an attack on the independence of a court anywhere is an attack on all courts." She warned of the potential consequence associated with undermining the strength and legitimacy of the judiciary, including by deliberate attempts to undermine public confidence in the integrity of members of the judiciary and the use of "hyperbolic rhetoric" to criticize unpopular decisions:

> What have I learned about judicial independence from Canada's experience? I learned that democracy is strengthened in direct proportion to the strength of rights protection and an independent judiciary, and that injustice is strengthened in direct proportion to their absence. A Supreme Court must be independent because it is the final adjudicator of which contested values in a society should triumph. In a polarized society, it is especially crucial to have an institution whose only mandate is to protect the rule of law.

The Canadian Judicial Council (CJC), which consists of the Chief Justices and Associate Chief Justices of the Superior Courts in each Province and Territory as well as the Federal Court and the Supreme Court of Canada, provides in its "Ethical Principles for Judges" the following guideline:

> An independent judiciary is the right of every Canadian. A judge must be and seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone.

> Judges should be encouraged and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the Judiciary.

Canada, however, is underrepresented in this report, and for good reason. At the present time Canada rests in a much more comfortable place when it comes to the guarantee of the right to fair and impartial courts. Although one can find isolated examples of threats to the security and independence of the Canadian judiciary over the past twenty-five years, the current relationship among the federal government, provincial governments and the judiciary is with a few rare exceptions harmonious. It would be easy to say that the differences between Canadians and their stateside neighbors stem from the Canadians' reputation for politeness, tactfulness and tolerance. But the more likely explanation is that there are important structural differences between the nations, particularly regarding the appointment and discipline process for judges.

In the Superior Courts in each of the Provinces and Territories (which are the only courts of general jurisdiction), judges are appointed by the Minister of Justice of Canada following consultation with the Province in which the judge will sit. The administration of justice is funded in large part by the Provinces and Territories. They provide the courthouses, court staff and the associated resources for those offices. Each Province or Territory has at least one appointment committee composed of eight persons, including legal and community representatives, and chaired by a judge. Each committee classifies applicants as being highly recommended, recommended or unable to recommend.

From the pool of confidentially recommended names, the federal Minister of Justice, with further consultation with the appropriate Chief Justice, appoints an individual suited to the needs of the particular court with respect to language, legal background, and considerations of diversity. There are no judicial elections, and no campaigns for the election, or appointment of Superior Court judges. Rather, they hold office (unless they retire, become infirmed or are removed for misconduct) until their mandatory retirement age of 75. The salary and benefits of judges in Canada are in most instances significantly higher than those of their U.S. Colleagues.

The Supreme Court of Canada process is somewhat different. The Supreme Court of Canada consists of nine judges, including the Chief Justice of Canada, who are appointed by the Governor in Council and all of whom must have been either a judge of a superior court or a member of at least ten years' standing of the bar of a province or territory. Of the nine, the Supreme Court Act requires that three be appointed from Quebec. Traditionally, the Governor in Council has appointed three judges from Ontario, two from the Western provinces or Northern Canada and one from the Atlantic provinces. Recently, appointees have appeared before a Parliamentary Committee before confirmation of their appointment. Those appearances are largely perfunctory in nature, and largely a non-event. They do not resemble the confirmation process to which appointees to the United States Supreme Court are subjected.

As with the lower courts, the appointment process receives some criticism but for the most part proceeds without strong controversy.

Any complaint regarding a federally-appointed judge goes before the CJC. The ultimate

penalty is removal from the bench and this requires an address before both Houses of Parliament. There has only been one such removal in Canada's history, but a number of judges have resigned following such a recommendation from the CJC.

Largely due to these structural differences, the relationship between the executive branch and the Canadian judiciary is traditionally respectful and harmonious. Two recent departures from that tradition, however, must be noted.

In 2014, the Canadian Prime Minister publicly and wrongfully attacked Chief Justice Beverly McLachlin, accusing her of improperly lobbying against the appointment of a Justice of the Federal Court to the Supreme Court when his eligibility for that office was a matter that would come before the high court. The College issued a public statement in defense of Chief Justice McLachlin and the Geneva-based International Commission of Jurists issued an opinion stating: "the criticism [of Justice McLachlin] was not well founded and amounted to an encroachment upon the independence of the judiciary and integrity of the chief justice."

This past year Ontario Premier Doug Ford invoked a section of the Canadian Charter of Rights and Freedoms known as the "notwithstanding clause," to override a judicial decision that held legislation he proposed to radically reduce the size of the Toronto City Council because it violated the Charter's guarantee of freedom of expression. The notwithstanding clause had rarely been invoked in Canada to revive a law that was struck down by a court, and had never been invoked by the Government of Ontario. In defending his action, Premier Ford argued that he was preserving the will of the people and protecting the electorate from the tyranny of unelected judges. His remarks were met with staunch criticism from a variety of sources, including legal scholars who explained that the "judiciary acts as an independent check on government authority *because* it is unelected, not in spite of it" and "[w]e appoint judges and grant them security of tenure to preserve their impartiality and protect them from political reprisal."

Ultimately, the Court of Appeal for Ontario stayed the decision that prompted the Premier's attack on unelected judges, finding that there was a strong likelihood the decision was erroneous and would be reversed on appeal. The Toronto City Council elections went forward with the reduced number of wards favored by the Premier. The outcome illustrates that there is a perfectly acceptable way for governments to challenge a judicial ruling – one that protects the rule of law and respects the democratic legitimacy of the judiciary.

The above are recent examples of the need for prompt response to attacks on the independence of the Canadian judiciary, and of the role the College can play in its protection.

Conclusion

During the past decade, numerous prestigious organizations, as well as individual lawyers and judges, have devoted significant energy to educating the public and politicians about the need for judges to be free to decide cases based solely upon the rule of law, unconstrained by external pressures or fear of reprisals. Yet in 2018 the assaults on judicial independence have become more frequent and more threatening than ten years ago. These assaults now emanate from a broad range of public officials, including those at the highest levels of our state and national governments, from

officials who have taken an oath to defend our Federal and state constitutions. They have passed beyond rhetorical salvos into concrete actions.

An October 2018 poll of sitting judges conducted by the National Judicial College showed that nine out of 10 judges believe judicial independence is under siege. The judges identify false or misleading media reports, attacks through social media, recall elections triggered by unpopular rulings, and coercive budget cuts as leading elements of this siege. The obvious conclusion is more must be done. Reacting to individual threats as they occur will not be adequate. Writing reports to explain the importance of fair and impartial courts is salutary, but it will not be sufficient.

We as a profession must find new resolve and creative measures to promote – not just defend – the role of the judiciary and to safeguard fair and impartial courts. We must bring the message into the open forum of ideas, not expecting others to seek out what we have to say. As lawyers we are professional advocates and we must, as our ethical code requires, apply our special skills to "further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority." The greatest threat to judicial independence may well be ignorance about the role of the judiciary.

We need to bring together and maximize the best resources of our profession to promote judicial independence. The College holds a unique position to stand with and support national organizations speaking directly on behalf of the judiciary. At the same time the College encourages its Fellows to become actively engaged in meaningful ways at the state and local level. For its part, the College will seek to identify or provide the resources and strategies to assure they are successful.

Our efforts to educate the public, the politicians, and the media about the role of the judiciary and the importance of fair and impartial courts must appreciate that there are multiple audiences taking in and processing information in diverse ways. We must take up the public education task with the long view in mind and incorporate multiple communication strategies. The risks are too real and the stakes are too high for anything less. If our courts are devalued, we will have witnessed a devaluation of the rule of law itself.

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American College of Trial Lawyers
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TAB 5

2016 UK JUDICIAL ATTITUDE SURVEY

Report of findings covering salaried judges in
England & Wales Courts and UK Tribunals

Report prepared by
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UCL Judicial Institute
7 February 2017

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Executive summary

2016 UK Judicial Attitude Survey for England & Wales courts and UK tribunals

- The 2016 UK Judicial Attitude Survey (JAS) is the second attitude survey conducted with all serving salaried judges in the UK, covering England & Wales, Scotland and Northern Ireland.
- This report covers the 2016 JAS results for salaried judges in the England and Wales courts and UK tribunals, which together make up 86% of all salaried judges in the UK. Judges in England and Wales comprise 64% and UK tribunal judges comprise 22% of all UK salaried judges.
- There was a near universal response rate to the survey amongst salaried judges in England and Wales courts and UK tribunals, with 99% of judges taking part in the survey.

Being a member of the judiciary

- Virtually all judges feel they provide an important service to society (97%) and have a strong personal attachment to being a member of the judiciary (90%). There has been little change in these high levels since 2014.
- Virtually all judges (99%) also are committed to doing their job as well as they possibly can.
- These findings reflect a deep commitment to their job by virtually all salaried judges despite strong levels of disenchantment with their job expressed elsewhere in the survey.
- Judges feel most valued by their judicial colleagues at court (84%), court staff (77%), the legal profession (62%) and parties in cases before them (62%).
- Almost half (43%) of judges feel valued by the public, but very few feel valued by the UK Government (2%) or media (3%). There were some substantial differences in the extent to which judges in different judicial posts felt valued by different groups.

Working conditions

- A majority of judges (76%) feel they have experienced a deterioration in their working conditions since 2014, but fewer judges feel they have experienced as strong a deterioration over the last two years as they experienced in the period 2009-14.
- The England & Wales courts judiciary feels working conditions have deteriorated more in the last two years than do judges in UK tribunals, with 40% of the courts judiciary but only 20% of the tribunals judiciary saying working conditions are significantly worse since 2014. Circuit Judges have the highest proportion of judges (46%) who feel that their working conditions have become significantly worse since 2014.
- No specific working conditions were rated as either Good or Excellent by a majority of judges. A majority of judges (64%) rated the morale of court staff as Poor; 43% said the maintenance of their building was Poor; 42% said the amount of administrative support was Poor; and 31% said the physical quality of the building as a whole was Poor. Judges' views on these working conditions have not improved since the last survey in 2014, but there were some substantial differences in view by judicial post.
- A majority of judges (51%) have concerns for their personal safety while in court, 37% have concerns for their safety outside court and 15% have concerns related to social media. There were differences by post in judges' safety concerns in and outside court and on social media.

Salary and pensions

- An overwhelming majority (78%) of salaried judges say they have had a loss of net earnings over the last 2 years; 62% say the change in pensions has affected them personally; 74% feel that their pay and pension entitlement combined does not adequately reflect they work they have done and will do before retirement.

- The salary and pension issues have clearly had a detrimental effect on judicial morale: 63% said the judicial salary issue is affecting their morale, 82% said the judicial salary issue is affecting morale of judges they work with, 61% said the change in pensions has affected their morale and 88% said the change in pensions has affected morale of judges they work with.
- There has been little change in judges' views about their pay since the 2014 JAS.
- A majority of judges (51%) feel that the amount of out of hours work required to do their job is affecting them; this has increased substantially from 2014 when it was 29%.
- Judges are evenly divided over whether they would leave the judiciary if it was a viable option, but the proportion of judges in 2016 that said they would leave if it was a viable option (42%) has almost doubled from 2014 (23%).

IT Resources and new Digital Programme

- The JAS 2016 included a series of questions on the availability and quality of IT and other electronic working resources. These form part of the HMCTS Reform Programme for courts and tribunals, including digital working, on-line case management and paperless hearings.
- The quality of IT resources and support were rated as Poor by substantial proportions of judges: 54% said the standard of IT equipment used in courts was Poor, 46% said IT support was Poor, 41% said internet access was Poor and 39% said the standard of IT equipment for their personal use was Poor. However, there were some substantial differences by post.
- Just under half of all salaried judges (42%) said they were now regularly required to use electronic files and bundles (DCS), but this was comprised primarily Circuit and District Judges. Of the regular users of DCS: 42% said the usability of DCS was Adequate, 58% said they had received training on how to use DCS, and 53% rated the quality of the training as Poor.
- A majority of judges (55%) said they were on e-Judiciary, but this varied by judicial post. Half (50%) of those judges who are currently on e-Judiciary rated it as Good or Excellent.
- A majority of judges (52%) said Wi-Fi was available at their court or tribunal, but this varied by judicial post. Of those judges with Wi-Fi in court, 45% rated it as Adequate.

Opportunities, support, training and personal development

- A majority of judges said opportunities were not sufficient in the 3 areas most important to them: 91% of judges said time to discuss work with colleagues was important but only 20% said the opportunities for this were Good or Excellent; 72% of judges said support for dealing with stressful work conditions was important but 59% said this support was either Non-existent or Poor; 61% of judges said opportunities for career progression were important but 61% said this support was either Non-existent or Poor.
- 74% of judges are satisfied with the quality of the judicial training; 61% are satisfied with the range of training available; but only a minority of judges are satisfied with the time available to undertake judicial training (45%) and the opportunities for personal development (32%). There were also differences in view on these issues by judicial post.
- Three-quarters of judges are satisfied with the challenge of their job (77%) and the variety of their work (73%), and there has been no change in this from 2014.
- Since 2014 there is a lower level of satisfaction in the sense of achievement judges have in their job, with close to a majority of judges (45%) expressing dissatisfaction with it compared with 38% in 2014. But there are substantial differences on this issue by judicial post.

Change in the judiciary

- Almost all judges (90%) feel their job has changed since they were first appointed in ways that affect them, and there is little change in this since 2014.

- A majority of judges are most concerned by the following changes (in order of concern): staff reductions, judicial morale, increase in litigants in person, fiscal constraints, stressful working conditions, ability to attract the best people to the judiciary and loss of judicial independence.

Future planning

- A large proportion of the salaried judiciary say they might consider leaving the judiciary early over the next 5 years: 36% are considering it and 23% are currently undecided. This has increased since 2014.
- A higher percentage of courts judges (37%) than tribunal judges (32%) are intending to leave the judiciary early in the next 5 years, but the real differences emerge by individual judicial post. The highest proportions of judges intending to leave early in the next 5 years are High Court (47%), Court of Appeal (41%) and Circuit (40%) Judges.
- 31% of female judges are currently considering leaving the judiciary early in the next 5 years (144 female judges); 39% of all BAME judges are considering leaving the judiciary in the next 5 years (30 of the 77 BAME judges who took part in the survey).
- There are two main factors judges say would prompt them to leave the judiciary early: further limits on pay awards (68%) and reductions in pension benefits (68%). A majority would also be prompted to leave early by an increase in workload (57%), further demands for out of hours work (54%), stressful conditions at work (54%) and reduction in administrative support (51%).
- Most judges said three key factors would help to keep them in the judiciary until they reach retirement age: higher remuneration (80%), settled position on pensions (57%) and better administrative support (56%).

Recruitment

- Just over half of all judges (57%) said they would encourage suitable people to apply to the judiciary, but a substantial proportion (43%) said they would either not encourage suitable people to apply (17%) or were not sure if they would do so (26%). There are clear differences by judicial post, with High Court Judges least likely to encourage suitable people to apply.
- The main reasons judges would encourage suitable people to apply to join the judiciary are: the chance to contribute to justice being done (79%), the challenge of the work (75%), intellectual satisfaction (70%) and public service (70%).
- A majority of judges say they would discourage suitable applicants from applying to join the judiciary for five reasons: likelihood of further pension reductions (73%) reduction in income (65%), constant policy changes (57%), lack of administrative support (52%) and the feeling of being an employee or civil servant (51%).

Leadership

- Over a third of judges (39%) would be interested in taking on leadership responsibilities, but 14% of these judges feel no leadership opportunities are available in their jurisdiction. There were also some differences on this issue by judicial post, with judges in more senior posts more likely to say they were willing to take on leadership responsibilities.
- There were some differences in view by gender, with more male judges (50%) interested in taking on leadership responsibilities compared with female judges (42%). However, this reflects the greater proportion of male judges than female judges at senior levels.
- A majority of judges (54%) said they did not know enough about how leadership roles are allocated to say whether it is fair. Senior judges tended to have confidence that leadership roles are allocated fairly, while judges in other ranks were most likely to say they did not know enough about how roles were allocated to say whether the process was fair or not.

Judicial Attitude Survey (JAS) 2016

England and Wales Courts and UK Tribunals

1.1 The survey

The Judicial Attitude Survey (JAS) 2016 is the second attitude survey conducted with all serving salaried judges in the UK. The first survey of its kind was the Judicial Attitude Survey (JAS) 2014[1]. The aim of the JAS is to assess the attitudes of salaried judges in key employment and management areas including the experience of being a judge, morale, working conditions, remuneration, training and personal development, retention and leadership. The target group for the JAS is all serving salaried judges in England and Wales, Scotland, Northern Ireland and the UK non-devolved tribunals, including both full-time salaried and part-time salaried judges.

This report provides the findings for salaried judges in the England and Wales courts judiciary and UK non-devolved tribunals judiciary[2]. Judges in the England and Wales courts and UK tribunals together make up 86% of all salaried judges in the UK[3]. The report includes combined results for all salaried judges in these two jurisdictions who took part in the survey, and it also highlights those areas where there are differences between judges in different judicial posts.

The JAS 2016 was an online survey conducted by the Judicial Institute of University College London (UCL JI) via the web-based survey tool Opinio. The survey was designed, administered and analysed by Professor Cheryl Thomas, Co-Director of the UCL JI. A Working Group comprised of representatives from various judicial associations assisted Professor Thomas in the design of the 2016 questionnaire.

The survey was voluntary and all participants remained completely anonymous. The survey ran from 21 June through 22 July 2016. All salaried judges in the England and Wales courts judiciary and UK non-devolved tribunals were invited to take part in the survey through the Judicial Intranet and through personal communications from the Lord Chief Justice and the Senior President of Tribunals inviting judges to contribute to the survey.

The survey included 50 questions covering the following general subject areas[4]:

- working conditions
- salary and pensions
- resources and the new digital programme
- training and personal development
- change in the judiciary
- future planning
- being a member of the judiciary
- recruitment
- leadership

[1] *2014 Judicial Attitude Survey*, C. Thomas (2015) UCL Judicial Institute

[2] Findings for salaried judges in Scotland and those in Northern Ireland have been reported separately.

[3] The courts judiciary of England and Wales comprises almost two thirds (64%) of all salaried judges in the UK, and the UK tribunals judiciary comprises almost one quarter (22%) of all UK salaried judges. Scottish judges comprise 10% and Northern Ireland judges comprise 4% of all salaried judges in the UK.

[4] There were also several background questions for the respondents and two questions about the survey.

Almost all the questions from the 2014 JAS were repeated in identical form in the 2016 JAS, but a few questions from the 2014 JAS were phrased differently to increase clarity following a review of the 2014 JAS and several new questions were added to the 2016 JAS covering reforms taking place within the judiciary since 2014.

A copy of the survey is reproduced in the Appendix.

1.2 Response Rates

Almost every single salaried judge in England and Wales (99%) and UK non-devolved Tribunals (98%) took part in the 2016 Judicial Attitude Survey (JAS). This near universal completion of the survey meant that the 2016 JAS response rates exceeded the already high rates in the previous 2014 JAS (90% for Courts judiciary and 85% for Tribunals).

These response rates mean the 2016 JAS findings have a very high level of reliability, reflecting the views of virtually all salaried judges in England and Wales and UK tribunals. The fact that this is now the second time this survey has been run with the salaried judiciary and both surveys have extremely high response rates means that assessments can also be made about the extent to which judicial attitudes may have changed or intensified since the last survey. Where relevant these are addressed in this report.

Table 1: Response rates by jurisdiction and post to the UK JAS 2016 and 2014

England and Wales	**Total no. of judges in post 2016**	**2016 JAS number of responses**	**2016 JAS response rate**		**2014 JAS response rates**
Lord & Lady Justices	44	38	86%		77%
High Court Judges	106	105	99%		100%
Circuit Judges	560	556	99%		91%
District judges[5]	438	438	100%		85%
Other[6]	38	37	97%		
	1186	**1174**	**99%**		**90%**
UK Tribunals					
Upper Tribunal	58	58	100%		80%
Employment Judge	132	127	96%		95%
First Tier Tribunals	226	221	98%		80%
	416	**406**	**98%**		**85%**
Courts & Tribunals combined	**1602**	**1580**	**99%**		**89%**

[5] The number of District Judges responding to the survey (474) exceeded the number officially listed as in post. Further investigation determined that this was most likely due to the fact that the number of judges officially listed in the Judicial Office HR database does not reflect the fact that some judges hold dual posts. The Judicial Office HR database assigns judges to only one judicial post, that being the post where HR believes a judge spends most of his/her time. The Judicial Attitude Survey asked judges to self-identify their judicial post.

[6] This includes Judge Advocates General, Masters, Registrars and Costs Judges. Due to the small number of judges, findings have not been reported separately for each of these groups in order to ensure participants' anonymity.

2. Being a Member of the Judiciary and Commitment to the Job

2.1 Providing an Important Service to Society

Virtually all judges (97%) in all judicial posts feel they provide an important service to society. There has been no change in this view since 2014.

Table 2: Providing an important service to society

As a judge I feel I provide an important service to society	2016 JAS	2014 JAS
Agree	97%	97%
Not sure	2%	1%
Disagree	1%	2%

2.2 Personal Attachment to the Judiciary

Virtually all judges (89%) in all judicial posts feel a strong personal attachment to being a member of the judiciary. This has increased (+4%) since 2014.

Table 3: Personal attachment to the judiciary

I feel a strong personal attachment to being a member of the judiciary	2016 JAS	2014 JAS
Agree	90%	86%
Not sure	7%	8%
Disagree	3%	6%

2.3 Commitment to the Job

A new question on the 2016 JAS examined judges' commitment to doing their job. This new question was designed to provide some indication of judges' commitment to persevering with their work despite the known level of disenchantment with various aspects of their job expressed in the 2014 JAS.

Almost every single judge in the survey (98.5%) felt they had an important job to do and expressed a commitment to doing this job as well as they possible can. This reflects a deep underlying strength of the judiciary across all posts. This finding, along with the other strong views held by judges about their work as a judge (see above), reflects a deep commitment to their job by virtually all salaried judges despite widespread levels of disenchantment at working conditions and changes to their job (found in other parts of the survey and reported below).

Table 4: Commitment to the job

I feel I have an important job that I am committed to doing as well as I possibly can	2016 JAS		
Strongly Agree	80.7%	Agree total	98.5%
Agree	17.8%		
Not sure	0.7%	Not sure total	0.7%
Disagree	0.3%		
Strongly Disagree	0.5%	Disagree total	0.8%

2.4 Feeling Valued

There has been an overall drop since 2014 in the extent to which judges feel valued by all groups, but the general pattern in terms of who judges feel most or least valued by has not changed since 2014.

Table 5: Extent to which judges feel valued by different groups

As a judge I feel valued by	2016 JAS	2014 JAS	% change since 2014
Judicial colleagues at my court	84%	90%	-6%
Court Staff	77%	84%	-7%
Legal Profession	62%	73%	-11%
Parties in cases before me	62%	75%	-13%
Public	43%	49%	-6%
Senior Leadership in the judiciary	27%	33%	-6%
Media	3%	4%	-1%
Government	2%	3%	-1%

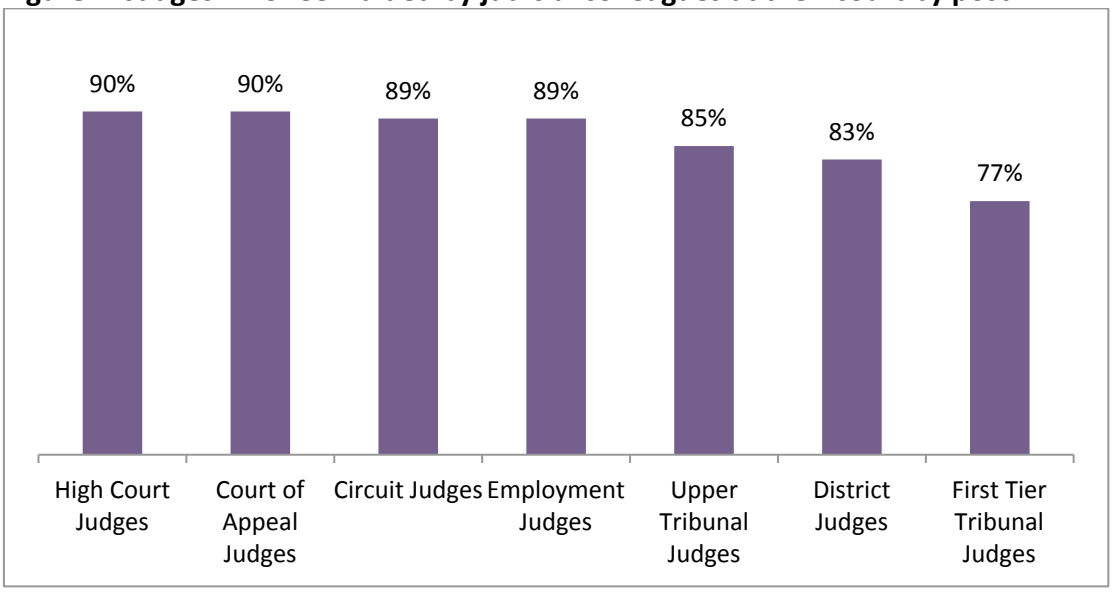
Feeling valued

The consistent fall in all categories suggests that judges feel generally less valued across the board than they did in 2014. However, given the large variation in numbers of judges in different judicial posts (with Circuit Judges and District Judges making up most of the judicial posts), it is helpful to break these findings down by judicial post to see if the combined figures reflect the view of all judicial posts or if there are substantial variations by post.

Judicial colleagues at my court

In feeling valued by judicial colleagues as their court, the average across all the judiciary was 84% (down 6% from 2014). There is not a substantial variation between judicial posts, but judges in five of the seven judicial posts are above the average in feeling valued by judicial colleagues at their court: High Court Judges (90%), Court of Appeal Judges (90%), Circuit Judges (89%), Employment Judges (89%) and Upper Tribunal Judges (85%).

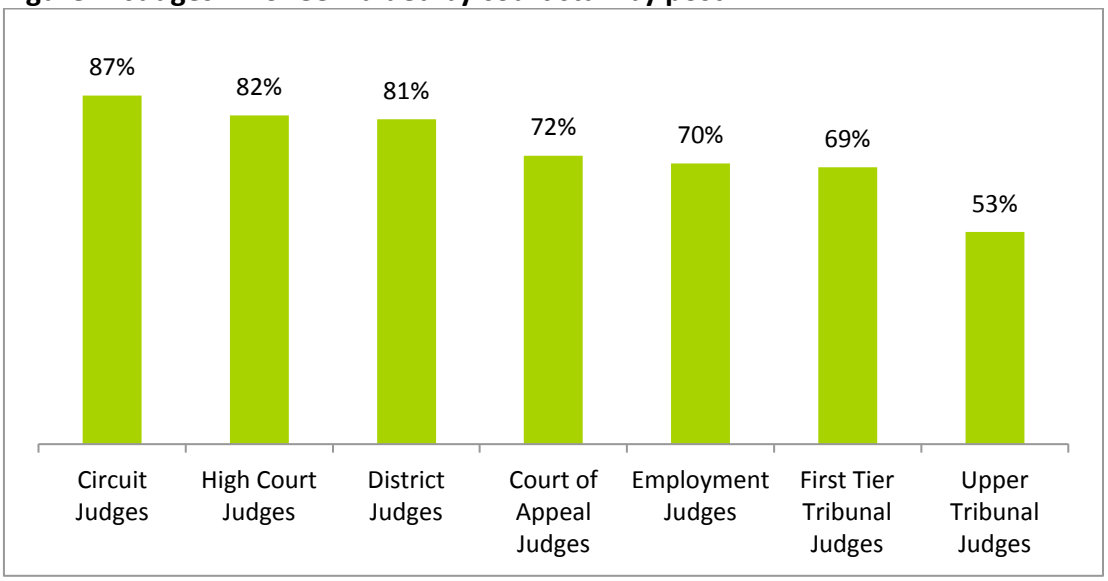
Figure 1: Judges who feel valued by judicial colleagues at their court by post



Court staff

In terms of feeling valued by court/tribunal staff, the average for all judges combined was 77% (down 7% from 2014). Circuit Judges (87%), High Court Judges (82%) and District Judges (81%) are all above the average in feeling valued by court staff. Overall tribunal judges feel less valued by staff than judges in the courts judiciary, with Upper Tribunal Judges (53%) well below the average.

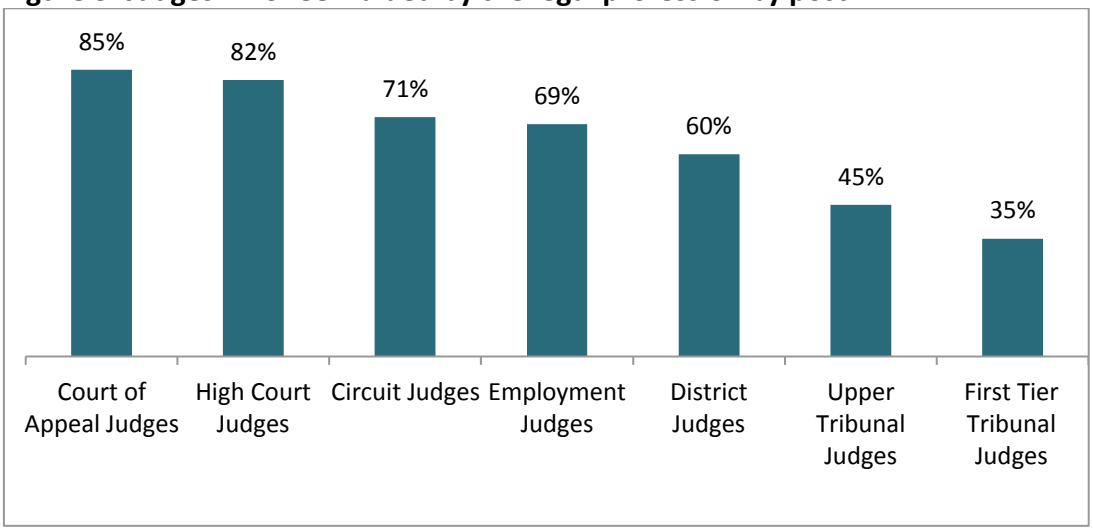
Figure 2: Judges who feel valued by court staff by post



Legal profession

The average for all judges combined was 62% (down 11% from 2014), but there is a very substantial variation by judicial post in the extent to which judges feel valued by the legal profession. Four of the seven judicial posts are above the average in feeling valued by the legal profession. Almost all Court of Appeal (85%) and High Court Judges (82%) feel valued by the legal profession, as do 71% of Circuit judges and 69% of Employment Judges. Only a minority of Upper Tribunal Judges (45%) and First Tier Tribunal Judges (35%) feel valued by the legal profession.

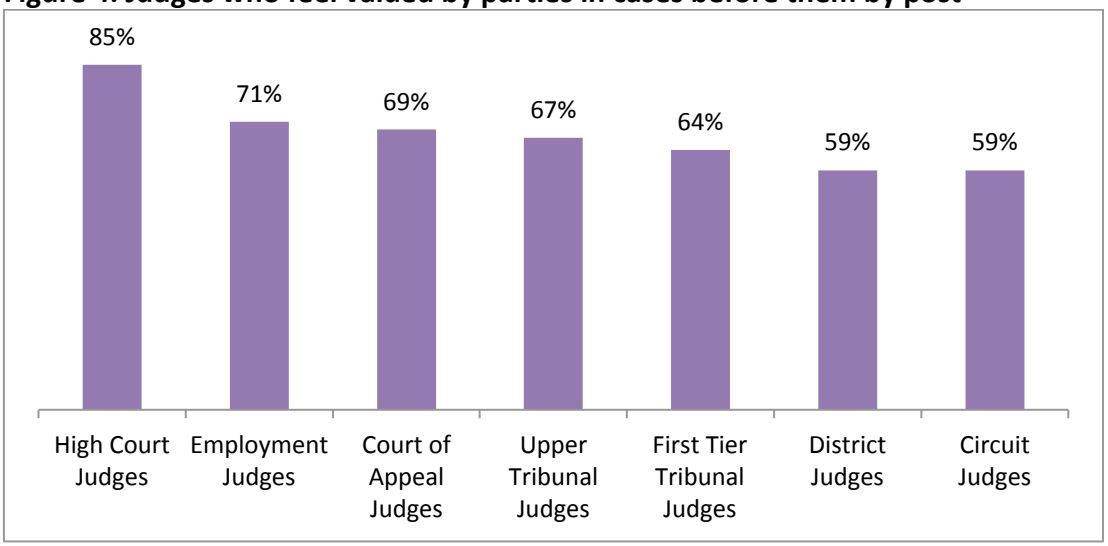
Figure 3: Judges who feel valued by the legal profession by post



Parties in cases

Amongst judges who say they feel valued by parties that appear in cases before them, the average for all judges combined was 62% (down 13% from 2014). This has had the largest decrease since 2014. However, there are some substantial differences by post, with all judicial posts except District and Circuit Judges being above the average in feeling valued by the parties who appear in cases before them. It may be helpful to consider this finding in relation to the finding in section 7.3 of this report that one of the issues that most concerned judges (especially District judges) in the 2016 JAS was the increase in litigants in person.

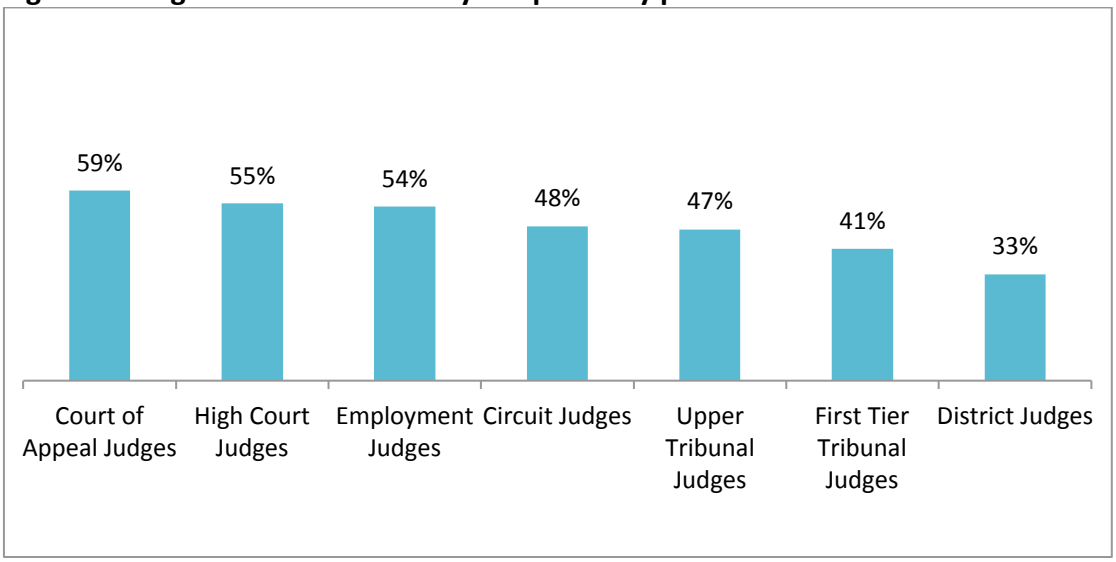
Figure 4: Judges who feel valued by parties in cases before them by post



Public

Amongst judges who say they feel valued by the public, the average for all judges combined was 43% (down 6% from 2014). There were some substantial differences by judicial post, with a majority of Court of Appeal, High Court and Employment Judges saying they feel valued by the public. District Judges had the lowest proportion of judges (33%) who said they felt valued by the public.

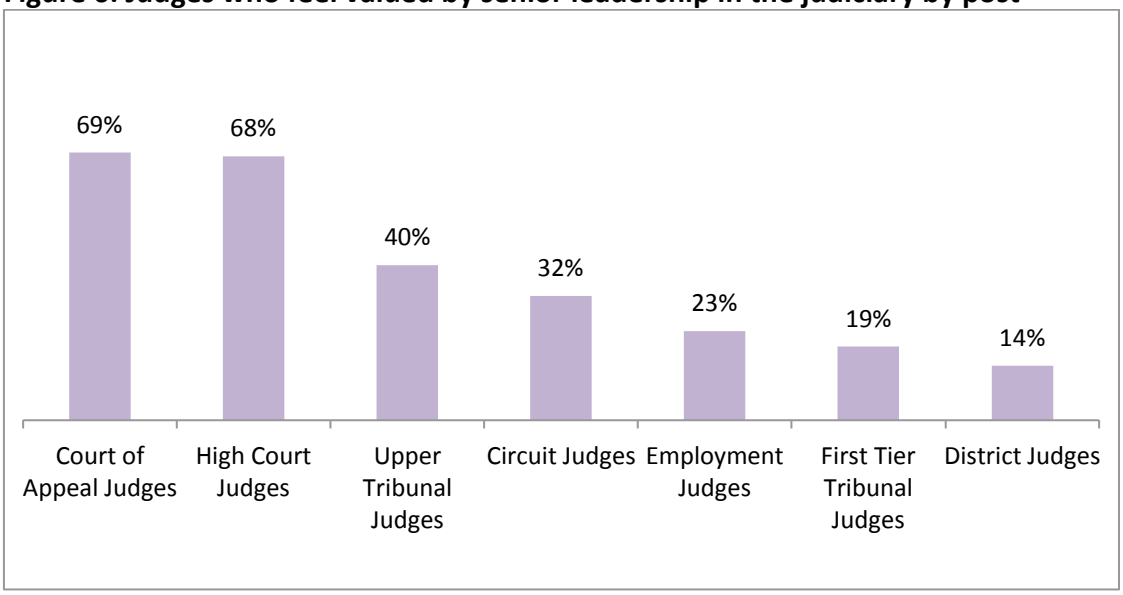
Figure 5: Judges who feel valued by the public by post



Senior Leadership in the judiciary

For judges who said they felt valued by the senior leadership in the judiciary, the average across all the judiciary was 27% (down 6% from 2014). This is the issue that shows the greatest variation by judicial post. The average does not reflect the views of Court of Appeal Judges and High Court Judges, with over two-thirds of judges in these posts saying they felt valued by the senior leadership in the judiciary. Only a minority of judges in other judicial posts said they felt valued by the senior leadership, and this was particularly low amongst First Tier Tribunal Judges (19%) and District judges (14%).

Figure 6: Judges who feel valued by senior leadership in the judiciary by post



Media

Only very small numbers of judges feel valued by the media (3% or 46 of the 1559 judges who responded to this question in the survey).

Government

Only very small numbers of judges feel valued by the government (2% or 38 of the 1559 judges who responded to this question in the survey). Judges in more senior judicial posts (which include those more likely to have working contact with government officials) were more likely to feel valued by the government than judges in other judicial posts.

3. Working Conditions

In the 2016 Judicial Attitude Survey, salaried judges were asked a series of questions about their working conditions. It should be noted that many of the working conditions examined in the survey are not within the judiciary's control to alter, but instead fall within the responsibility of the Ministry of Justice and/or Her Majesty's Courts and Tribunals Service (HMCTS).

3.1 Current working conditions compared with previous years

In the 2014 JAS judges were asked to rate working conditions in the judiciary then (2014) compared with 5 years ago. Given this, in the 2016 JAS judges were asked to rate working conditions in the judiciary now (2016) compared with 2 years ago (the last time they were asked about this issue).

The results indicate that working conditions for judges have not improved at all since 2014. But while judges are still experiencing a deterioration in working conditions, fewer judges feel they have experienced as strong a deterioration in their working conditions over the last 2 years (2014-16) as they experienced in the period 2009-2014.

Table 6: Change in working conditions in the judiciary

	2016 JAS working conditions now versus 2 years ago	2014 JAS working conditions now versus 5 years ago
Significantly worse	33%	48%
Worse	43%	38%
About the same	22%	12%
Better	2%	2%
Significantly better	0%	0%

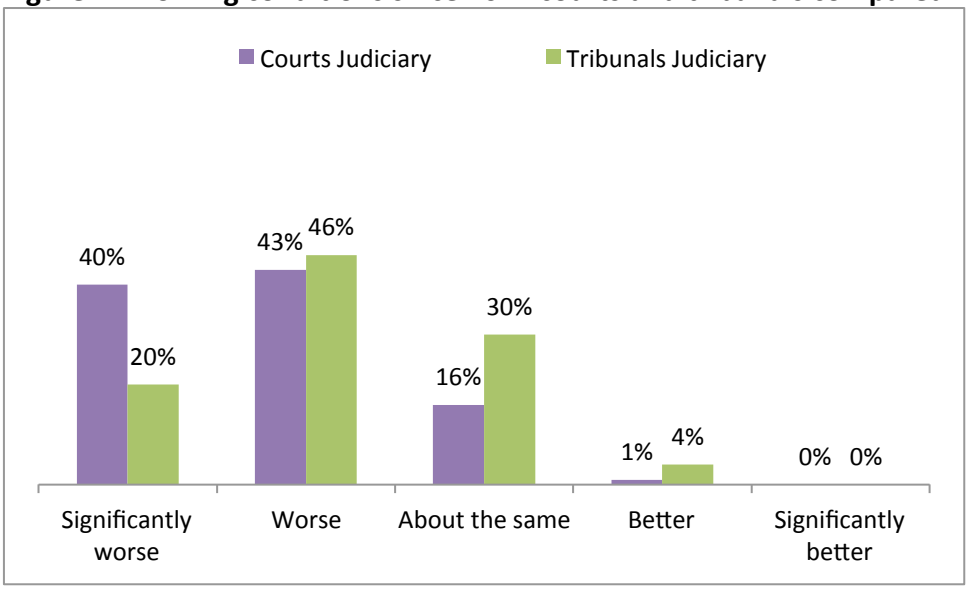
Table 7: Working conditions in the judiciary: change since 2014

	2016 JAS working conditions now versus 2 years ago	2014 JAS working conditions now versus 5 years ago	% change from 2014
Worse (total)	76%	86%	- 10%
About the same	22%	12%	+10%
Better (total)	2%	2%	0%

By Courts and Tribunals

The courts judiciary feels working conditions have deteriorated more in the last two years than judges in tribunals do, with 40% of the courts judiciary but only 20% of the tribunals judiciary saying working conditions in 2016 were significantly worse compared with 2014.

Figure 7: Working conditions since 2014 courts and tribunals compared

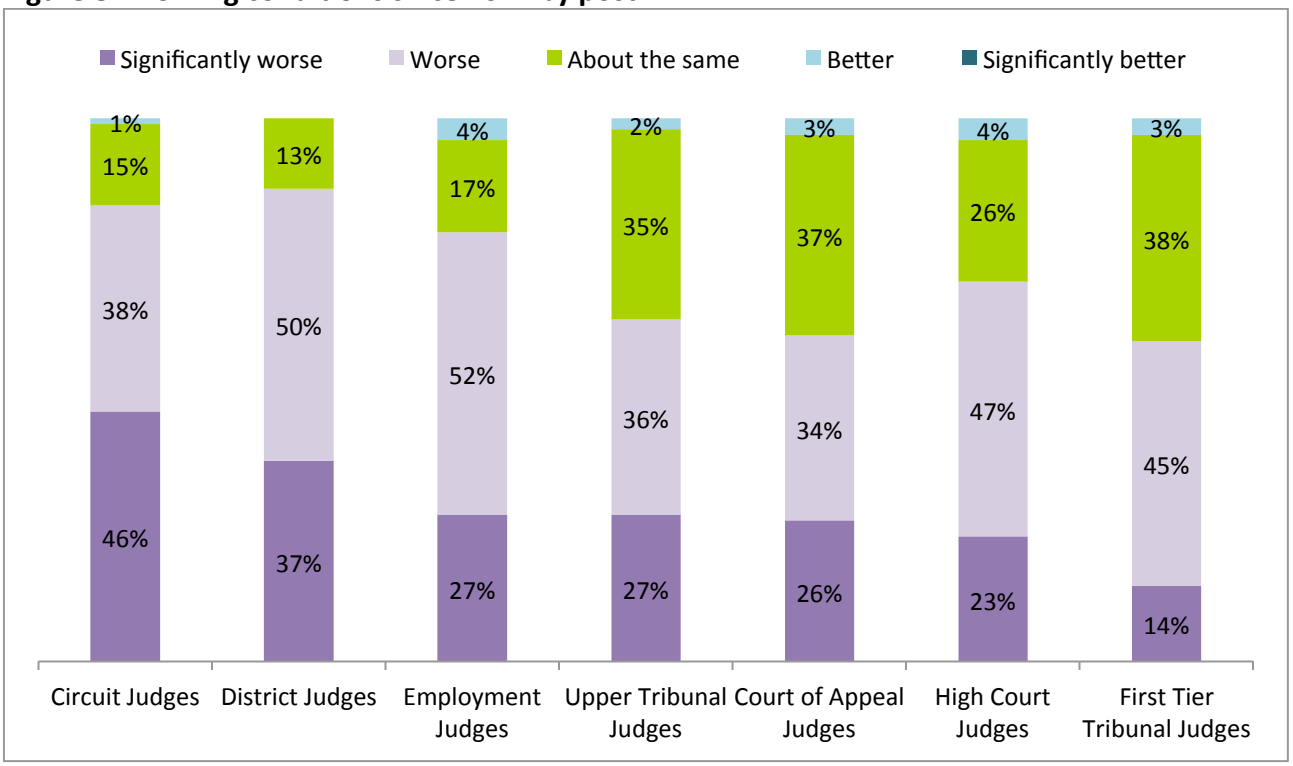


By Judicial Post

When broken down by individual judicial post:

- A majority of judges in each judicial post feel working conditions have deteriorated since 2014, with the largest majority amongst District Judges (87%) and the smallest amongst First Tier Tribunal Judges (59%).
- Circuit Judges have the highest proportion of judges (46%) who feel that their working conditions have become significantly worse since 2014.

Figure 8: Working conditions since 2014 by post



The survey explored several aspects of their working conditions with judges in more detail. This included case workload, non-case work and a range of other specific aspects of their working life.

3.2 Workload

One possible source of concern for judges could be their workload, but a majority of judges said that both their caseload and other judicial workload over the last 12 months have been manageable, and there is little change in this from 2014. There were also no differences by gender found in relation to judges' responses to these questions on workload.

Table 8: Case workload over the last 12 months

	2016 JAS	2014 JAS	% change from 2014
Too high	38%	41%	- 3%
Manageable	58%	57%	+1%
Too low	4%	2%	+2%

By Post

There were some differences in the extent to which judges in different judicial posts felt their case workload over the last 12 months was or was not manageable.

- Just over half of all Circuit Judges (51%) and just under half of all Court of Appeal Judges (46%) felt their case workload was too high, while only a small proportion of judges working in tribunals felt their case workload was too high.

Figure 9: Case workload over the last 12 months by post

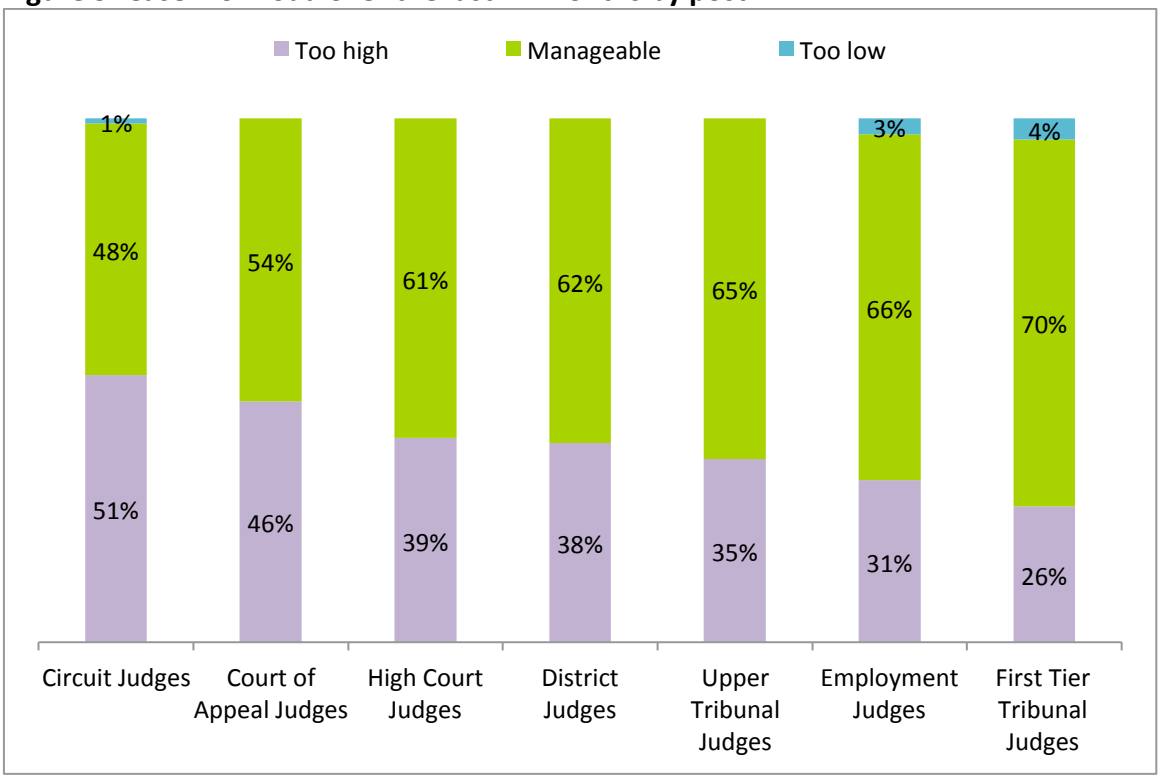


Table 9: Judicial workload not including caseload over the last 12 months

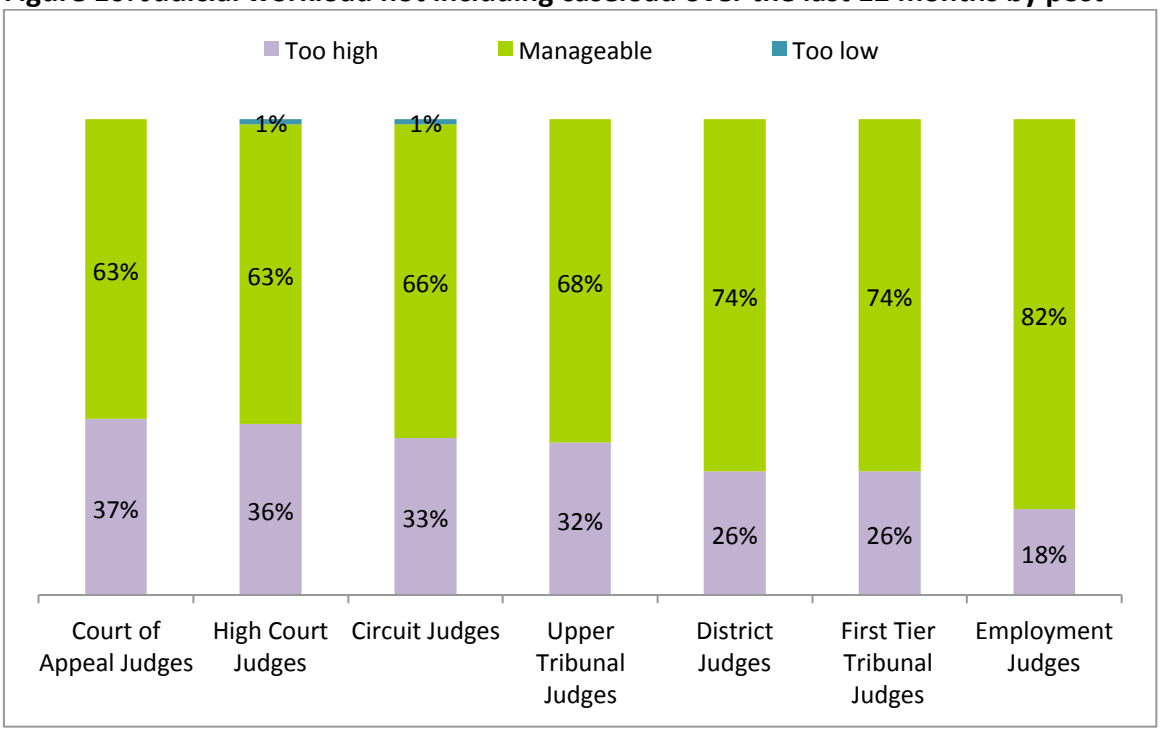
	2016 JAS	2014 JAS	% change from 2014
Too high	24%	28%	- 4%
Manageable	58%	59%	-1%
Too low	1%	1%	0%
I do not have any judicial work outside of my caseload	17%	12%	+5%

By Post

There were some differences in the extent to which judges in different judicial posts felt their judicial workload outside of their normal caseload over the last 12 months was or was not manageable.

- A third of Court of Appeal (37%), High Court (36%), Circuit (33%) and Upper Tribunal Judges (32%) felt their additional judicial workload outside of their case work was too high.
- While three quarters or more District Judges (74%), First Tier Tribunal Judges (74%) and Employment Judges (82%) felt this part of their judicial workload was manageable.

Figure 10: Judicial workload not including caseload over the last 12 months by post



3.3 Quality of Specific Working Conditions

The one working condition rated Poor by a clear majority of judges was the morale of court and tribunal staff:

- Almost two thirds (64%) of judges said the morale of court and tribunal staff was Poor.

No specific working conditions were rated as either Good or Excellent by a majority of judges:

- The physical quality of their personal workspace was rated the highest by judges, with 47% saying it was Good or Excellent.

- But 43% of judges said the maintenance of their building was Poor, 42% said the amount of administrative support was Poor and 32% said the physical quality of the building as a whole was Poor.

Table 10: Quality of specific working conditions of judges

	Poor	Adequate	Good	Excellent
Amount of administrative support	42%	39%	16%	3%
Morale of court or tribunal staff	64%	26%	10%	0%
Maintenance of the building	43%	36%	18%	3%
Physical quality of the building	31%	38%	25%	6%
Space to meet and interact with other judges	25%	35%	32%	8%
Quality of administrative support	23%	38%	31%	8%
Security at your court or tribunal	21%	42%	31%	6%
Physical quality of your personal work space	15%	38%	36%	11%

3.4 Change in specific working conditions since 2014

Judges' views on a range of specific working conditions have not improved since the last survey in 2014, with their assessment of most working conditions unchanged over the last 2 years.

- The single largest change is that judges feel **the physical quality of the buildings they work in has deteriorated since 2014**, with 10% more judges saying the quality is Poor compared with 2014.

Table 11: Change in specific judicial working conditions since 2014

	Rated "Poor" in 2016 JAS	Rated "Poor" in 2014 JAS	% change from 2014
Amount of administrative support	42%	40%	+2%
Morale of court or tribunal staff	64%	65%	-1%
Maintenance of the building	43%	----	----
Physical quality of the building	31%	21%	+10%
Space to meet and interact with other judges	25%	18%	+7%
Quality of administrative support	23%	22%	+1%
Security at your court or tribunal	21%	27%	-6%
Physical quality of your personal work space	15%	-----	-----

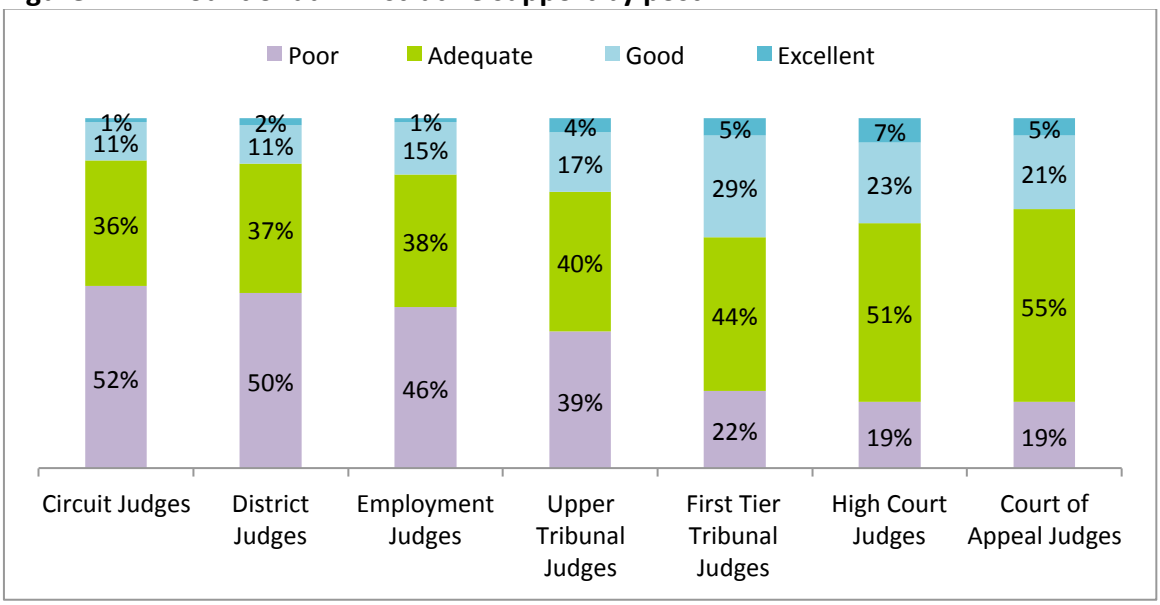
By Post

There are however differences in judges' views of their specific working conditions by post, and these are explored in more detail below.

Amount of Administrative Support

- Circuit Judges and District Judge rated the amount of administrative support lowest, with a majority saying it is Poor.
- A majority of High Court Judges (51%) and Court of Appeal Judges (55%) rated it as Adequate.
- Just over a third of First Tier Tribunal Judges said the amount of administrative support they have is Good (29%) or Excellent (5%).

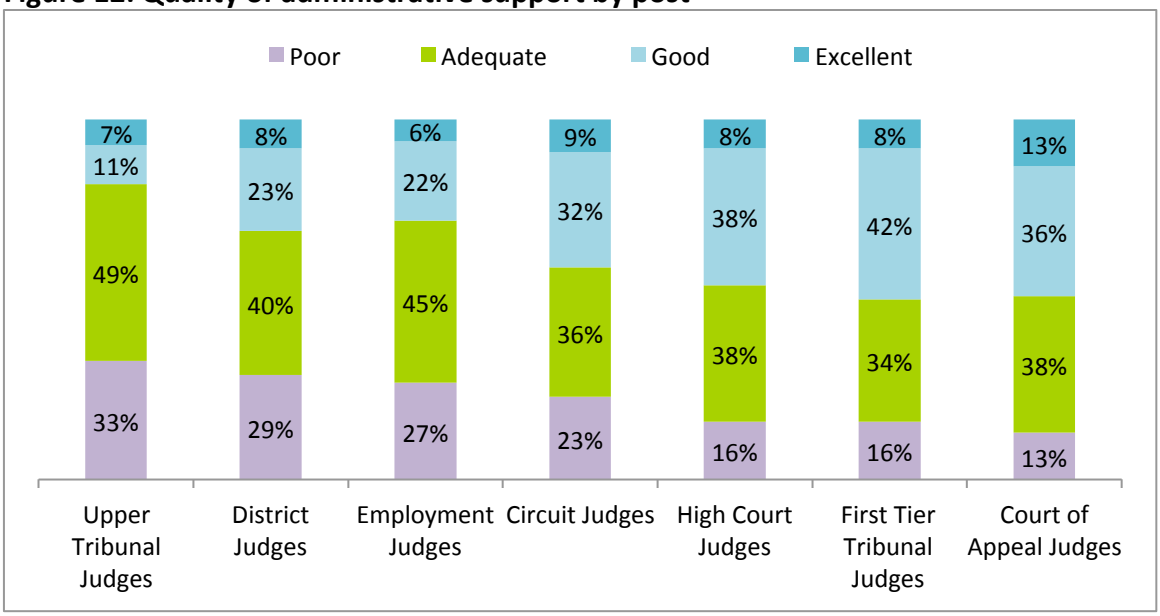
Figure 11: Amount of administrative support by post



Quality of Administrative Support

The quality of administrative support was rated highest by First Tier Tribunal Judges where 50% rating it Good (42%) or Excellent (8%), and Court of Appeal Judges where 49% rated it Good (36%) or Excellent (13%). Upper Tribunal Judges rated the quality of administrative support they receive lowest, with a third (33%) saying it was Poor, followed by District Judges where 29% said it was Poor.

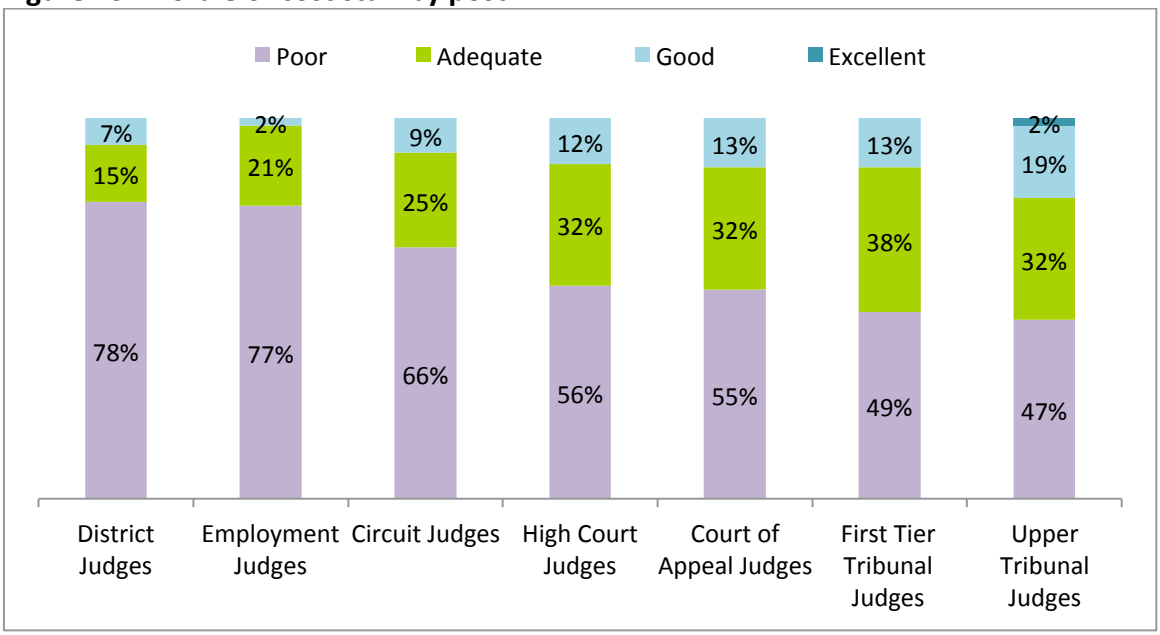
Figure 12: Quality of administrative support by post



Morale of Court Staff

An overwhelming majority of District Judges (78%), Employment Judges (77%) and Circuit Judges (66%) rated the morale of staff in their courts as Poor. Just over or just under half of judges in all other judicial posts rated the morale of staff in their courts as Poor. Out of 1574 judges who answered this question only 3 judges rated the morale of court staff as Excellent.

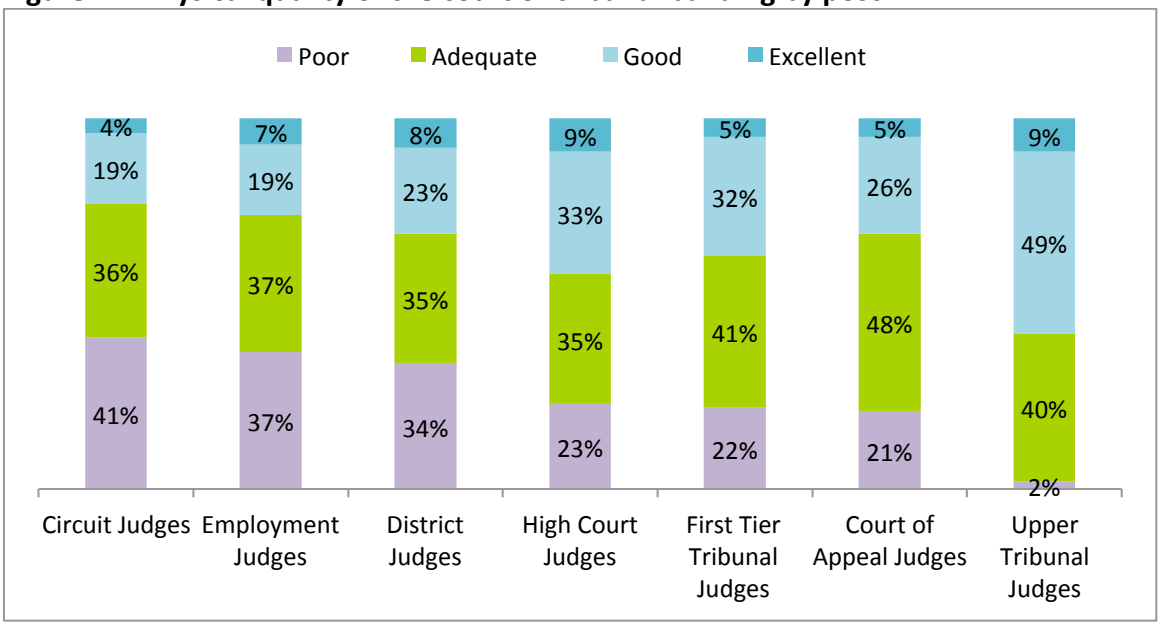
Figure 13: Morale of cost staff by post



Physical quality of the building

Circuit, Employment and District Judges rated the physical quality of the building they work in lowest, with over a third of these judges rating it as Poor. Upper Tribunal Judges rated the physical quality of their work building the highest, with more than half of these judges (56%) rating it as Good (49%) or Excellent (9%).

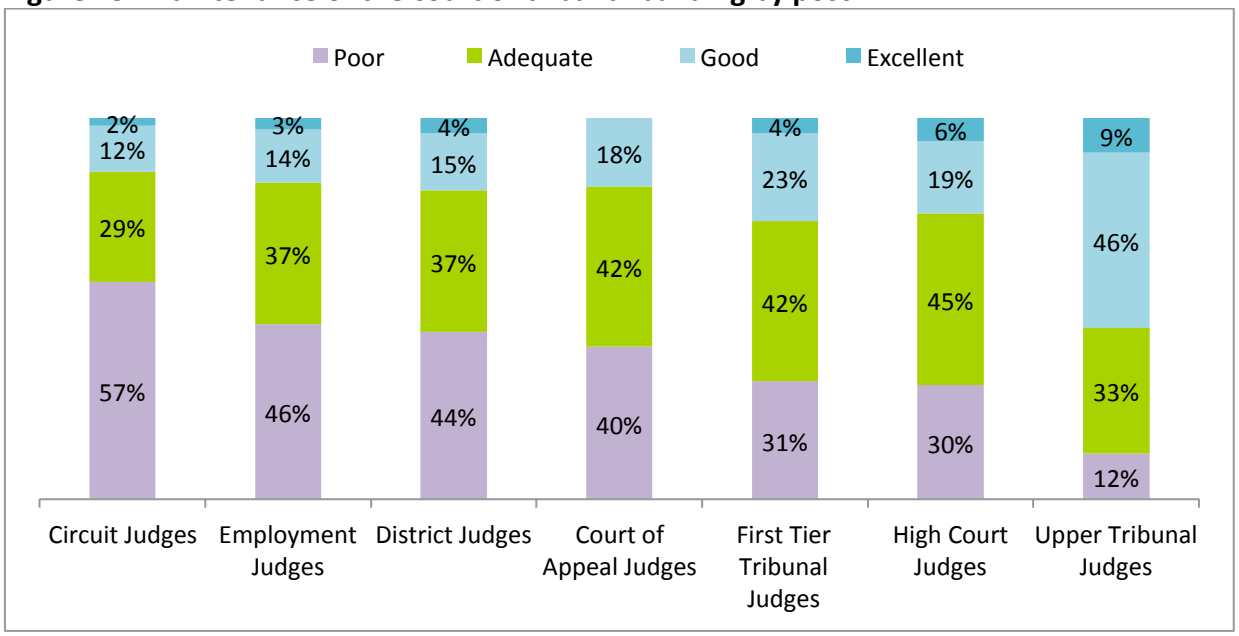
Figure 14: Physical quality of the court or tribunal building by post



Maintenance of the building

Circuit and Employment Judges rated the maintenance of the building they work in lowest, with more than half of all Circuit Judges (57%) and close to half of all Employment Judges (46%) saying it was Poor. In contrast more than half (55%) of all Upper Tribunal Judges said the maintenance of their court building was Good (46%) or Excellent (9%).

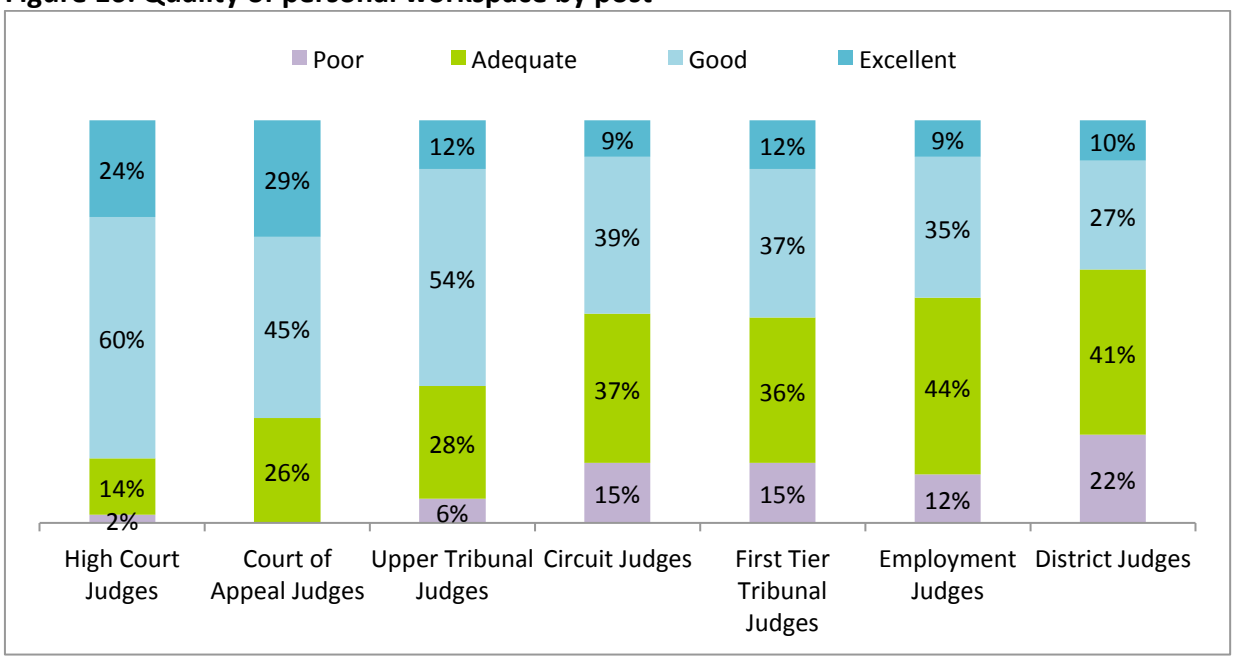
Figure 15: Maintenance of the court or tribunal building by post



Quality of personal workspace

There were clear differences by judicial post in how judges rated the quality of their personal workspace. The overwhelming majority of High Court Judges (84%) and Court of Appeal Judges (74%) and two-thirds of Upper Tribunal Judges (66%) rated the quality of their personal workspace as either Good or Excellent. But almost a quarter of District Judges (22%) rated their personal workspace as Poor.

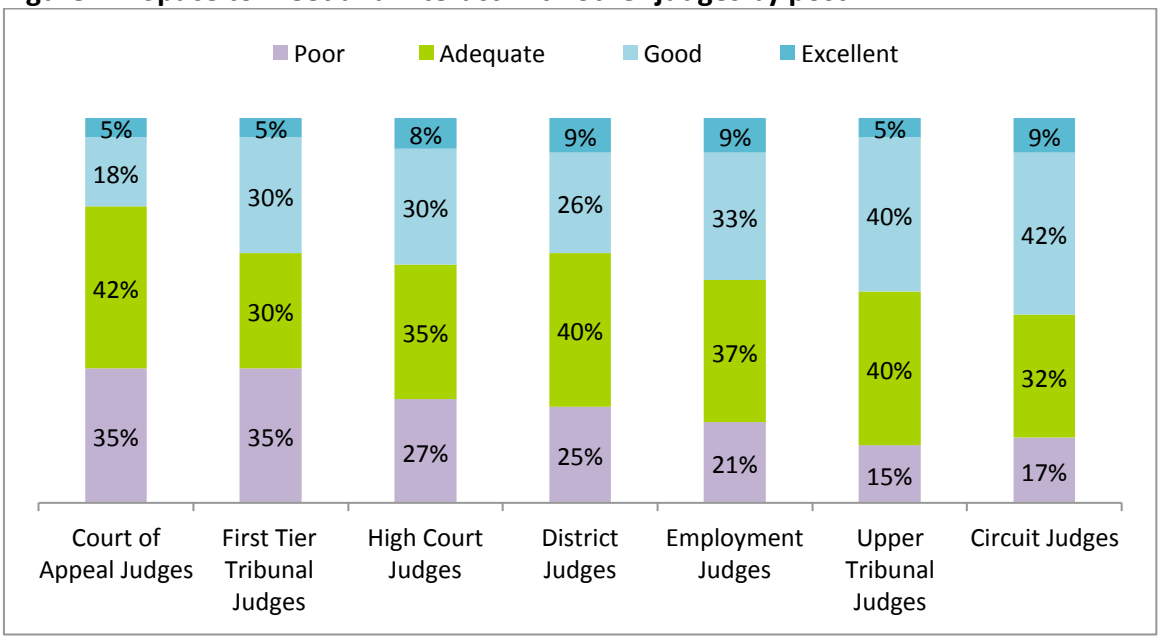
Figure 16: Quality of personal workspace by post



Space to meet and interact with other judges

There were clear differences by judicial post in how judges rated the available space to meet and interact with other judges at their court or tribunal. Over a third (35%) of Court of Appeal Judges and First Tier Tribunal Judges rated this as Poor, while just over half (51%) of Circuit Judges said this was Good or Excellent at their courts.

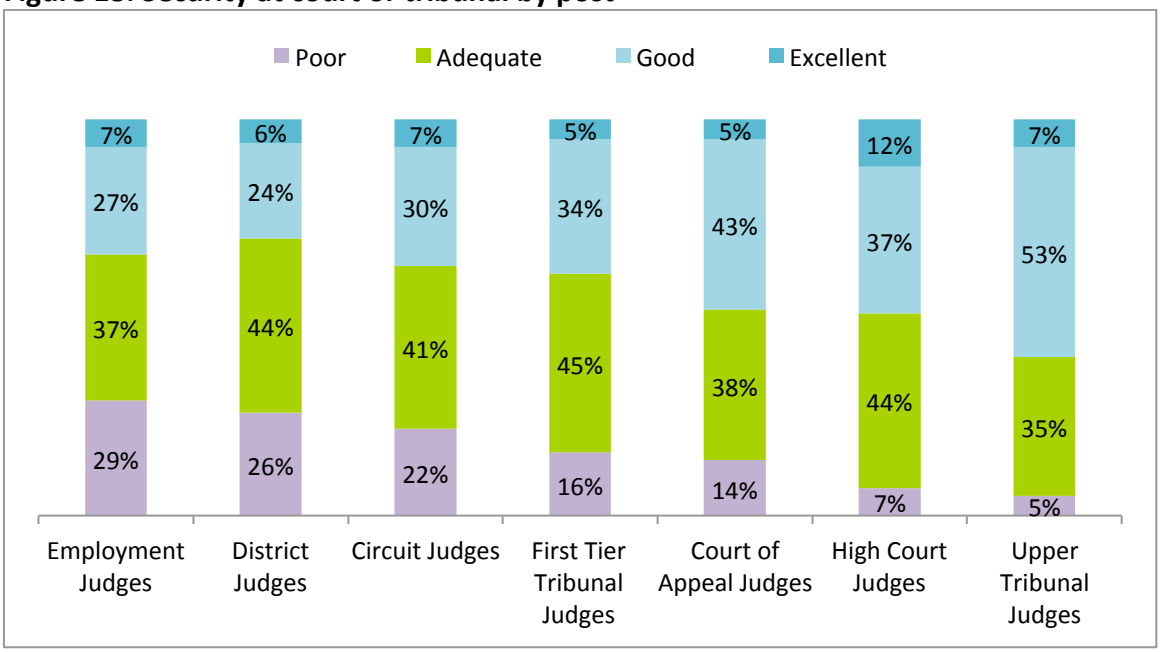
Figure 17: Space to meet and interact with other judges by post



Security at court or tribunal

There were clear differences by judicial post in how judges rated security at their court or tribunal. In most cases the single large proportion of judges in each post described security as Adequate, but approximately a quarter of Employment Judges (29%), District Judges (26%) and Circuit Judges (22%) described security as Poor. In contrast, a majority of Upper Tribunal Judges (60%) and close to a majority of High Court Judges (49%) and Court of Appeal Judges (48%) rated security as Good or Excellent.

Figure 18: Security at court or tribunal by post



3.5 Security concerns

In addition to the previous question on the quality of security provided at court, a new question was asked in the 2016 JAS about the extent to which judges are concerned about their personal safety arising from being a judge.

- **A majority of judges (51%) have concerns about their safety while in court.**
- Over a third (37%) have concerns about their safety when they are out of court.
- 15% have concerns about how they are dealt with on social media.
- A third (35%) do not have any concerns about their personal safety.

Table 12: Judicial concerns about personal security

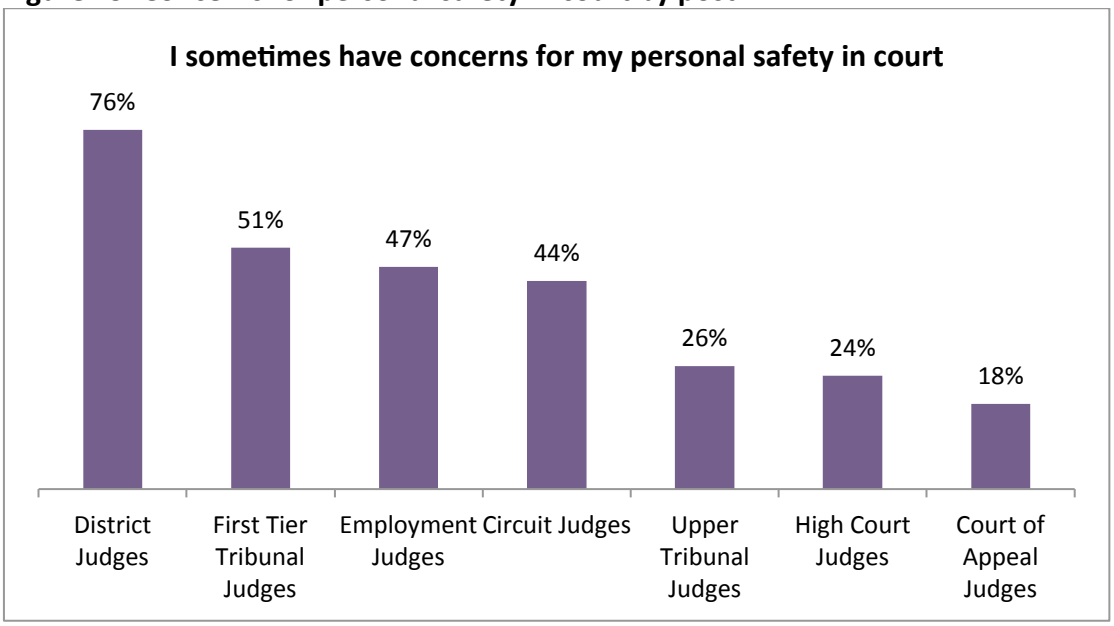
Are you ever concerned about your personal security as a result of your judicial role?	2016 JAS
Yes, sometimes in court	51%
Yes, sometimes outside of court	37%
Yes, sometimes on social media	15%
No	35%

By Post

There were very substantial differences not just in the extent to which different judicial post holders have concerns about their personal safety but also **where** different judicial post holders have security concerns.

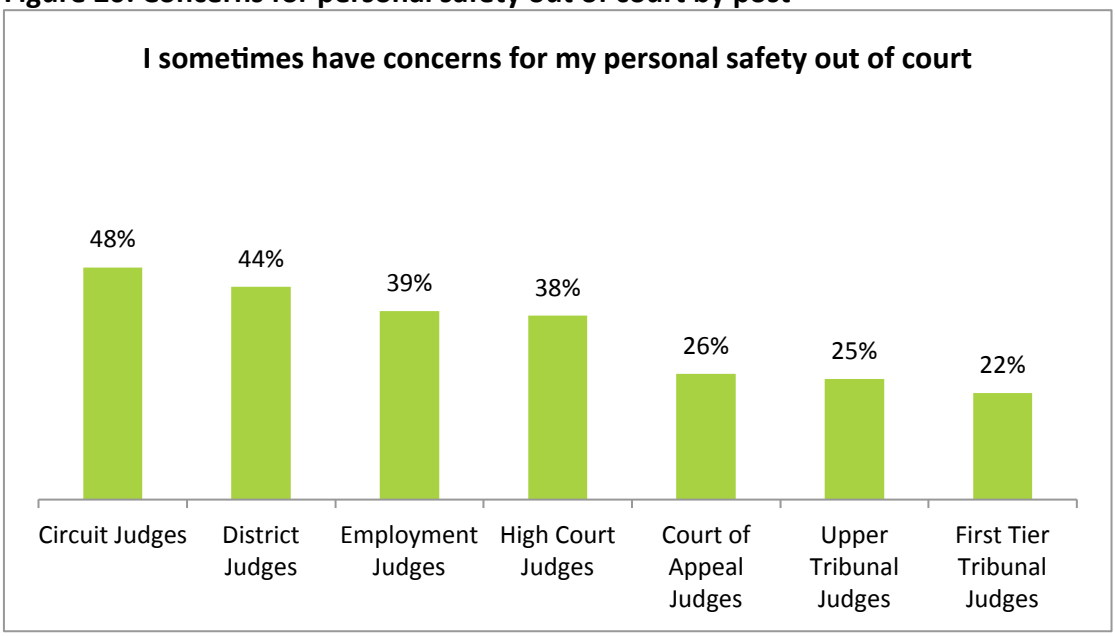
- Most Court of Appeal (64%) and Upper Tribunal Judges (54%) said they did not have concerns about their personal safety in relation to their job.
- But over two-thirds (76%) of District Judges, over half (51%) of First Tier Tribunal Judges and almost half of all Employment Judges (47%) and Circuit Judges (44%) sometimes have concerns about their personal safety **in court**.

Figure 19: Concerns for personal safety in court by post



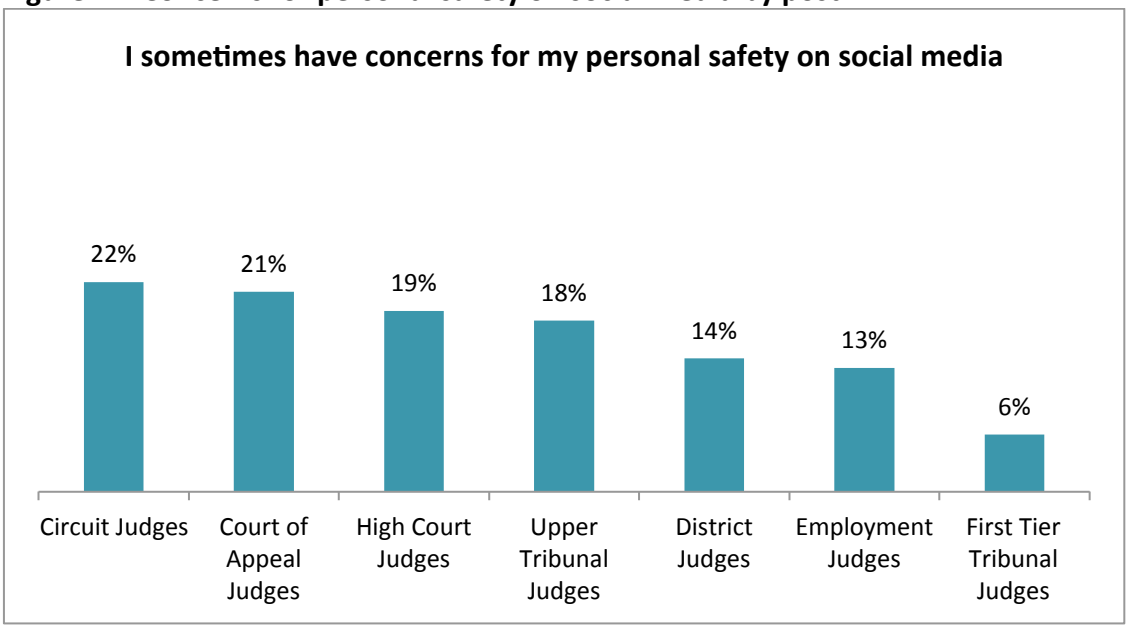
Out of court those with most concerns are Circuit, District, Employment and High Court Judges.

Figure 20: Concerns for personal safety out of court by post



On social media Circuit, Court of Appeal and High Court Judges have the most concerns.

Figure 21: Concerns for personal safety on social media by post



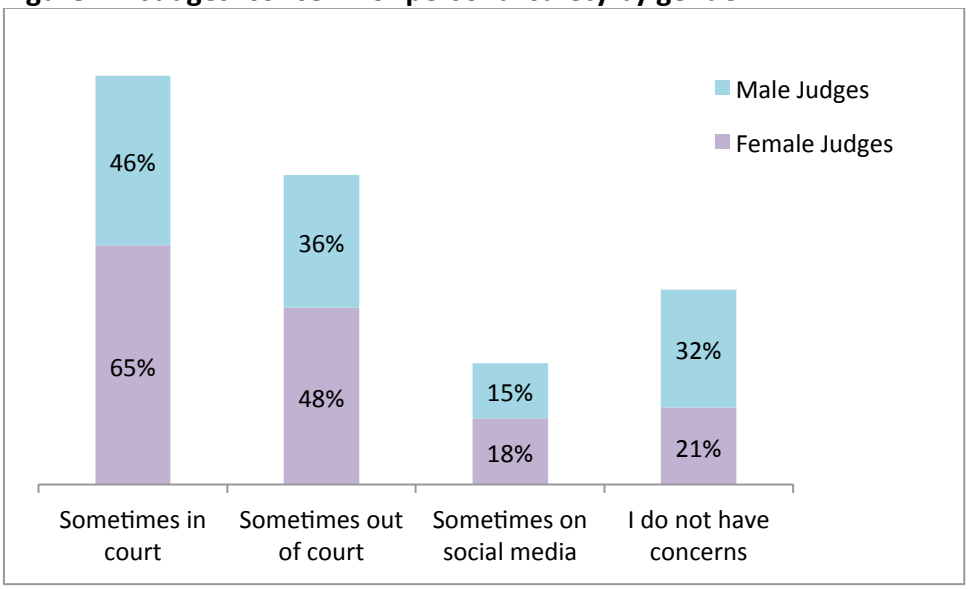
By Gender

There were also some differences between male and female judges in the extent to which and location where they sometimes felt concerned for their personal safety in relation to their work as a judge.

- Two-thirds (65%) of female judges have concerns for their personal safety in court, almost 20% more than male judges (46%).
- Almost half (48%) of all female judges said they sometimes have concerns for their personal safety out of court, while only a third (36%) of male judges had similar concerns.

- There was not much difference between the proportion of female (18%) and male (15%) judges who had security concerns in relation to social media.
- Male judges were more likely to say they did not have any concerns about their personal safety in relation to their work as a judge (32% of male judges compared with 21% of female judges).

Figure 22: Judges' concern for personal safety by gender



4. IT Resources and the New Digital Programme

The 2016 JAS included a series of previous and new questions exploring the availability and quality of IT and other electronic working resources. These form part of the HMCTS Reform Programme for courts and tribunals that includes digital working, on-line case management and paperless hearings. The intention with these questions was to create some important baseline data on judicial IT systems at this early stage of the new digital court programme, which will allow progress to be assessed over time as the programme is introduced and to identify those areas that are currently working best and those where judges may be experiencing difficulties.

The digital court programme is currently being rolled out at different stages in each of the different types of courts and tribunals. Therefore these findings are presented in relation to those specific judicial posts and judges who had access to different elements of the digital court programme at the time of the survey (July 2016).

4.1 Quality of IT resources and IT support for judges

Table 13: Quality of IT resources and support

	Poor	Adequate	Good	Excellent
Standard of IT equipment provided to judges to use (laptop, desktop computer)	39%	34%	21%	6%
Standard of IT equipment used in court or tribunals (video link, payback)	54%	35%	20%	1%
Internet access	41%	38%	17%	3%
IT support	46%	39%	13%	2%

Overall most judges rated the current quality of IT resources and support available to judges as either poor or adequate:

- A majority (54%) of judges rated the standard of IT equipment used in courts or tribunals as poor
- Almost half (46%) of all judges combined rated IT support as poor, and 41% rated internet access at court as Poor.

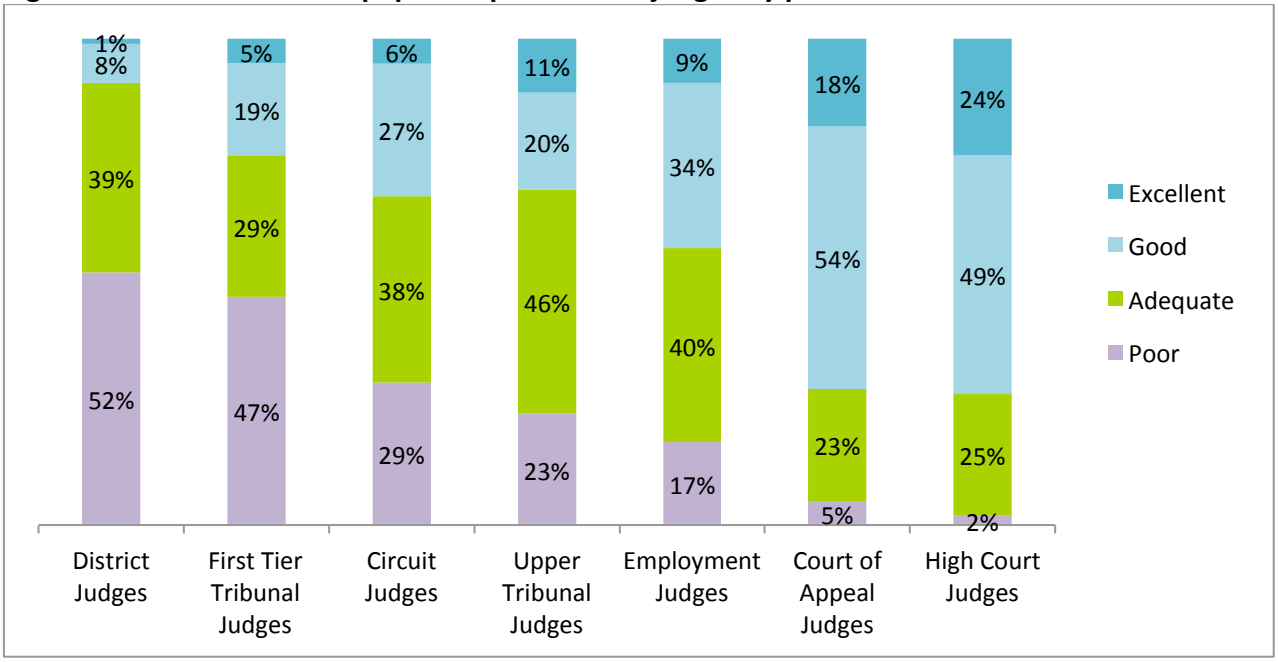
However, in many instances there were substantial differences in view on IT resources and support by judicial post.

Standard of IT equipment provided to judges

There are substantial differences by judicial post in how judges rated the standard of IT equipment they have been provided with for their judicial work. At the time of the survey a phased roll out of new laptops was taking place across the judiciary, and this may be reflected in the large variations in quality assessments made by judges in different posts.

- A majority of High Court Judges (73%) and Court of Appeal Judges (72%) said the standard of the IT equipment they have been provided with was either Good or Excellent.
- Most District Judges (52%) and First Tier Tribunal Judges (47%) rated the equipment as Poor.

Figure 23: Standard of IT equipment provided to judges by post

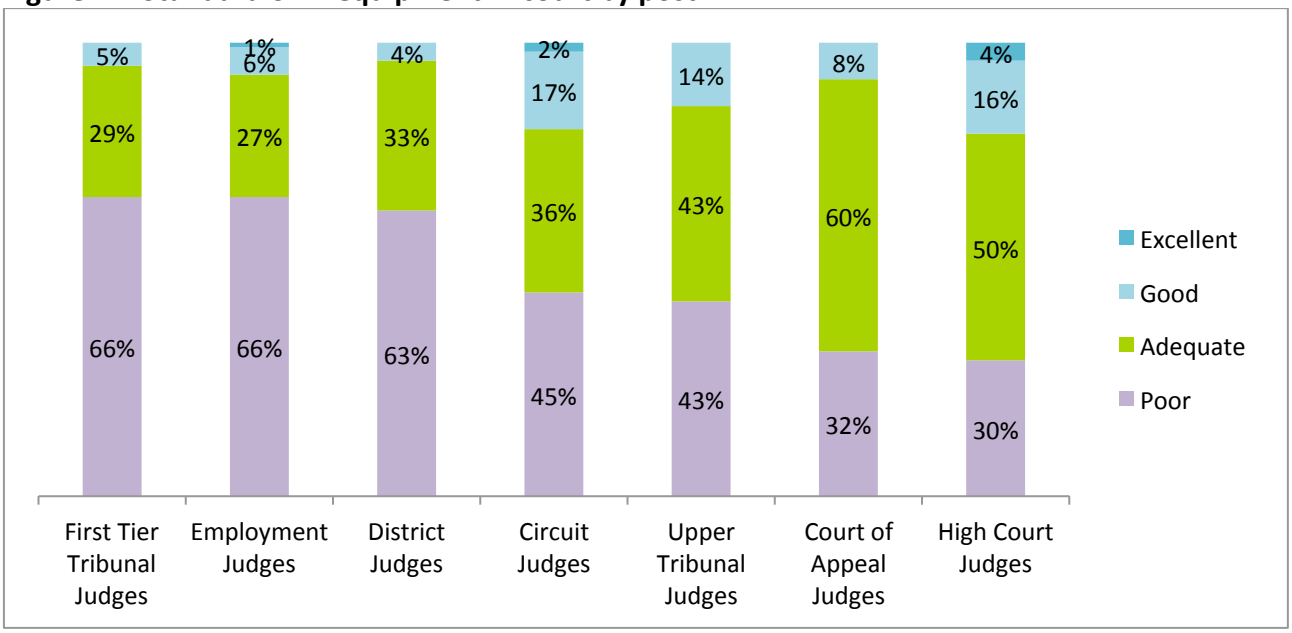


Standard of IT equipment in court

Very few judges in any of the specific judicial posts rated the standard of IT equipment used in court as Good or Excellent. But there is a very substantial variation in the extent to which different post holders rated the quality of IT equipment in court as either Poor or Adequate.

- The lowest ratings for in-court IT equipment were given by First Tier Tribunal, Employment and District Judges, with two-thirds of judges in these posts rating in-court IT as Poor.
- In contrast, a majority of Court of Appeal Judges (60%) and half of High Court Judges (50%) said the in-court equipment was Adequate.

Figure 24: Standard of IT equipment in court by post



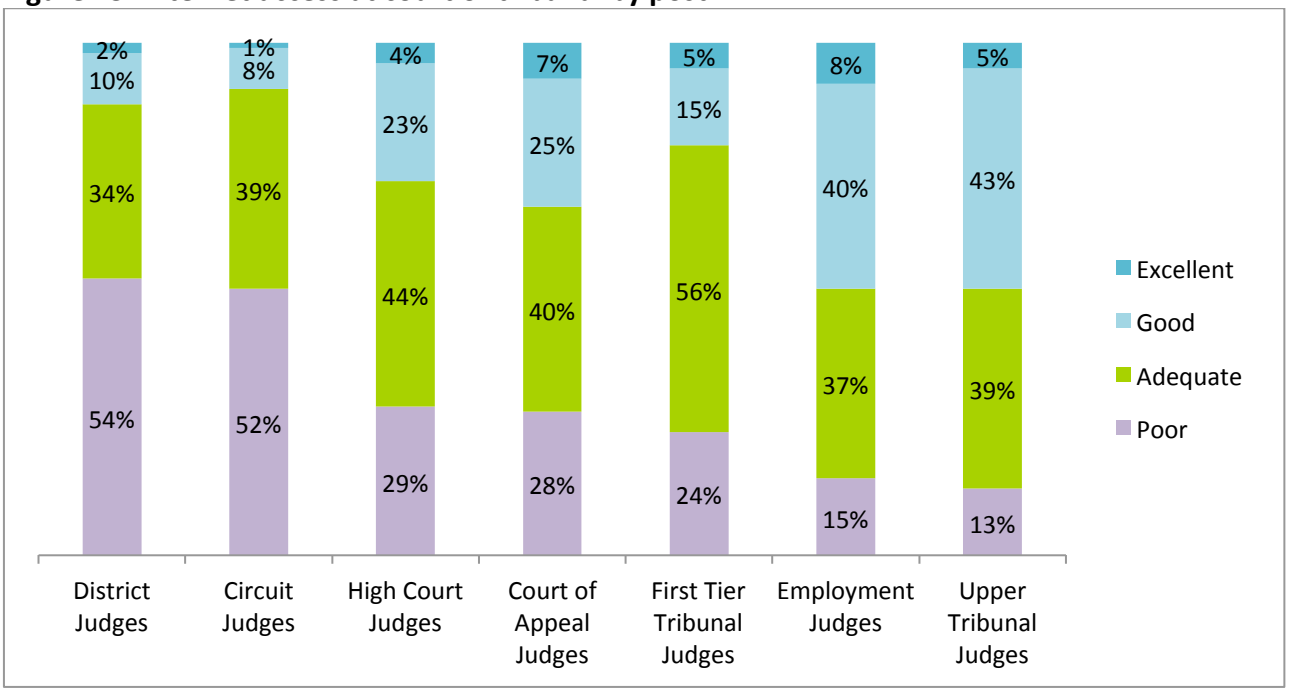
Internet Access

During the survey period (late June to late July 2016) the judiciary was in the process of rolling out Wi-Fi in courts and tribunals in England and Wales as part of the HMCTS Reform programme for digital working.

There is a distinct three-way divide in judges' view of internet access in their courts and tribunals based on the specific court of tribunal.

- A majority of District Judges (54%) and Circuit Judges (52%) said that internet access in their courts was Poor.
- At the other end of the spectrum almost half of all Employment Judges (48%) and Upper Tribunal Judges (48%) rated internet access at their tribunals as Good or Excellent.
- Internet access was rated mostly Adequate by High Court Judges (44%), Court of Appeal Judges (40%) and First Tier Tribunal Judges (56%).

Figure 25: Internet access at court or tribunal by post

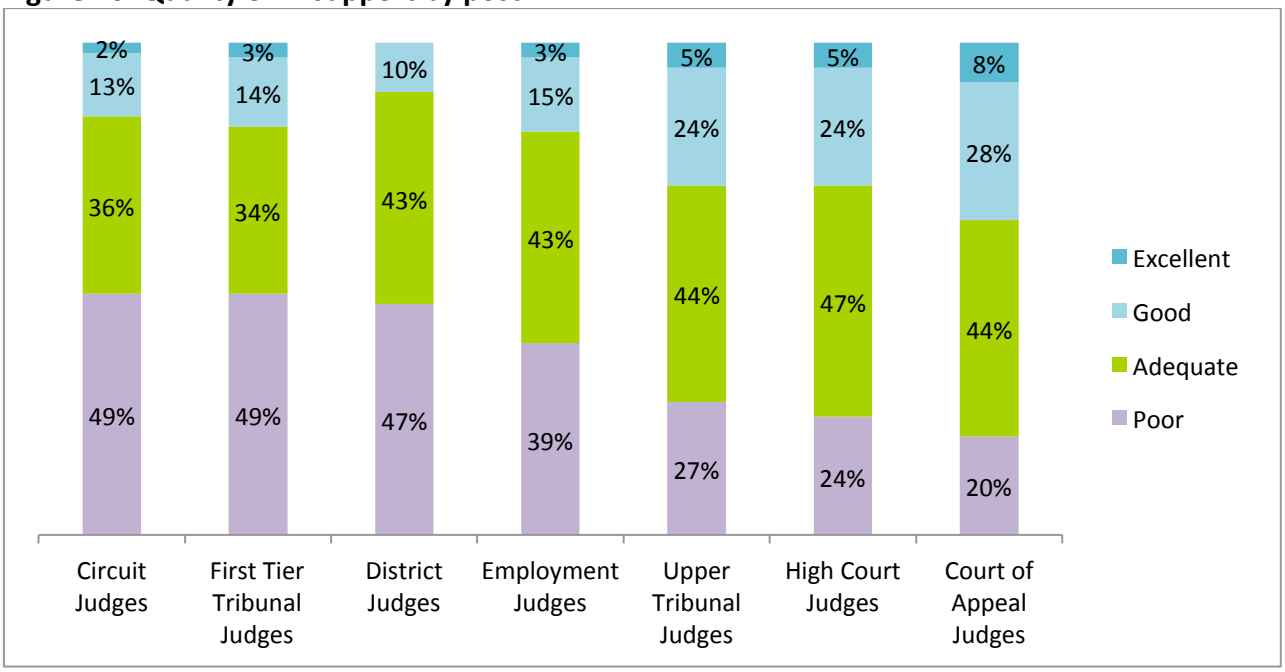


IT Support

While most judges did not rate the quality of IT support they were provided with highly, there was a distinct difference between those judicial post holders that said it was Poor and those that said it was Adequate.

- Almost half of all Circuit Judges (49%), First Tier Tribunal Judges (49%) and District Judges (47%) gave it the lowest rating of Poor.
- Almost half of High Court Judges (47%), Court of Appeal Judges (44%), Upper Tribunal Judges (44%) and Employment Judges (43%) rated the IT support they receive as Adequate.

Figure 26: Quality of IT support by post



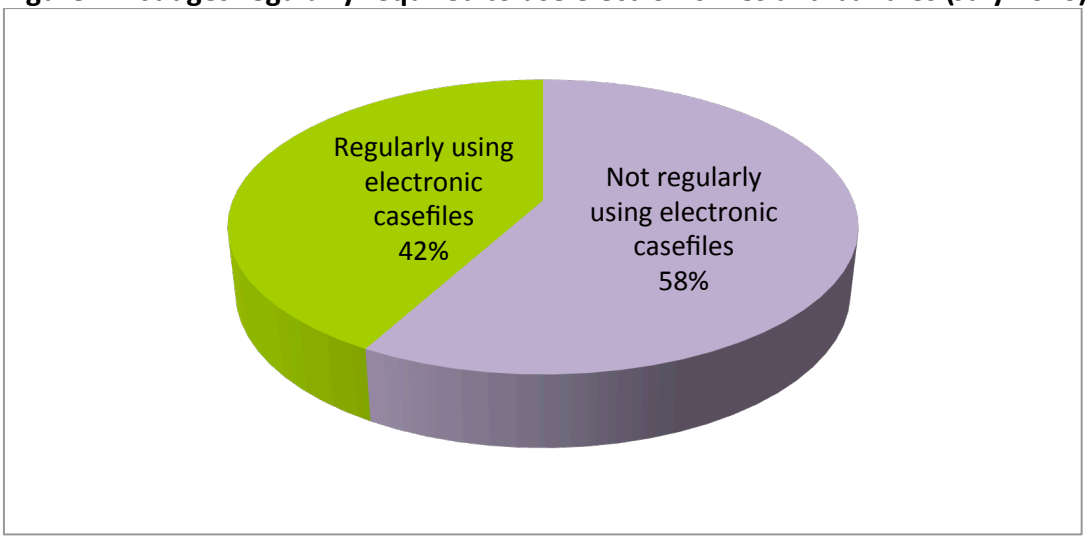
Digital Programme

A number of questions were included in the 2016 JAS related to the introduction of the new digital programme in the courts and tribunals, which forms part of the HMCTS Reform programme. This is a phased programme being rolled out in different courts and tribunals at different stages, and the analysis explores the views and experiences of judges at this early stage of the programme.

4.2 Electronic case files: Digital Case System (DCS) and other forms of electronic working

The Digital Case System (DCS) is an online system designed to reduce the amount of paperwork in the courts by creating electronic case files and bundles; there are also other forms of electronic working used in some courts and tribunals. In July 2016 just under half of all salaried judges (42%) said they were now regularly required to use electronic files and bundles (e.g., DCS or other forms of electronic working).

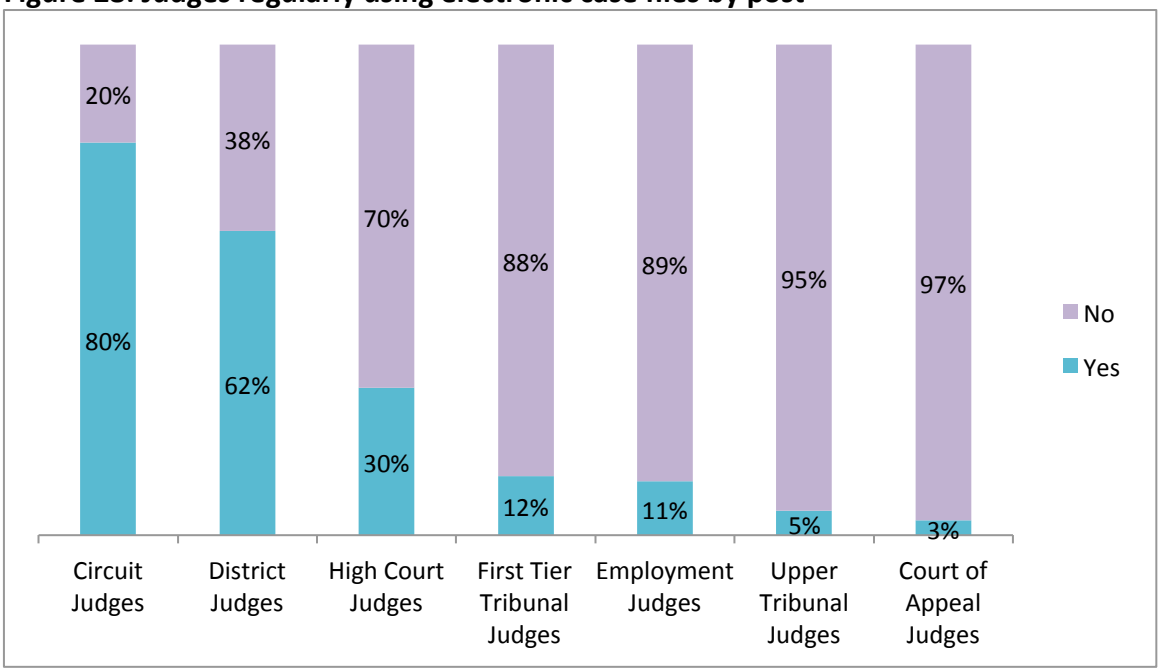
Figure 27: Judges regularly required to use electronic files and bundles (July 2016)



By Post

At the time of the survey DCS was only being used regularly primarily by Circuit Judges (80%) and to a lesser extent District Judges (62%). Almost a third (30%) of High Court Judges (mostly in the Queen's Bench Division) were using DCS, but there was very little use amongst any of the tribunal judges or the Court of Appeal. See Figure 28 below.

Figure 28: Judges regularly using electronic case files by post



Those judges using electronic case files were asked several further questions about the DCS (or other form of electronic files):

- Over a third (36%) said the **usability** of the DCS (or other electronic form) was Poor; almost half (42%) said it was Adequate, and just under a quarter (22%) said it was either Good or Excellent.
- Just over a half (58%) said they had **received training** on how to use the DCS (or other system).
- Of the judges who said they did receive training on the DCS (or other electronic system) just over half (53%) rated the **quality of the training** as Poor, just over a third (37%) said it was Adequate, and 10% said it was Good or Excellent

Table 14: Usability of DCS or other form of electronic working

Rating of usability of DCS or other form of electronic case files (by those using it regularly)	
Poor	36%
Adequate	42%
Good	19%
Excellent	3%

Looking further at the two judicial posts (Circuit Judges and District Judges) where a majority of judges said they regularly used DCS or some form of electronic case files, there are some differences in how judges in these two posts rated the usability of DCS:

- Circuit Judges rated the usability of DCS more highly than District Judges, with 72% of Circuit Judges saying it was Adequate, Good or Excellent but only 46% of District Judges saying it was Adequate, Good or Excellent.
- A majority (54%) of District Judges rated the usability of DCS as Poor.

Figure 29: Usability of DCS by Circuit and District Judges who use it regularly

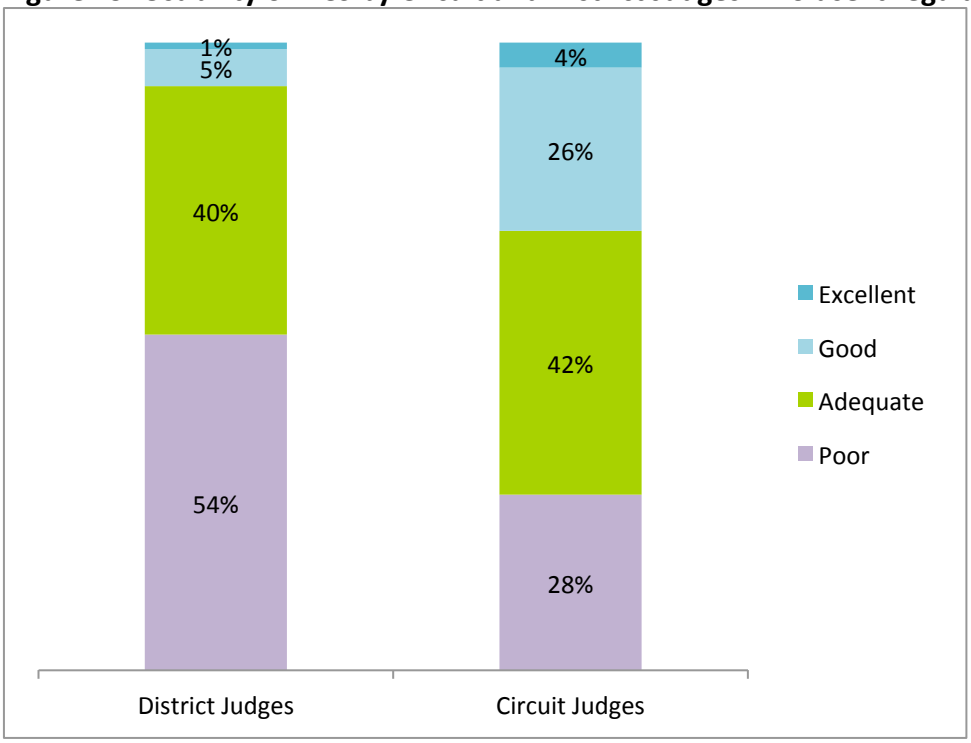


Table 15: Quality of training on DCS (Circuit & District Judges)

Rating of the quality of training provided on DCS (by those using it regularly)	
Poor	53%
Adequate	37%
Good	9%
Excellent	1%

Looking further at DCS training amongst judges in the two judicial posts (Circuit Judges and District Judges) where a majority of judges said they regularly used DCS or some form of electronic case files, there are some clear differences by post in the extent to which these judges said they received training in DCS:

- Only a small minority (25%) of Circuit Judges who use DCS regularly said they had not received training in DCS, while two-thirds (67%) of District Judges who use DCS regularly said they had not receiving any training in DCS.

But there was little difference in how those Circuit and District Judges who did receive training in DCS rated that training.

Figure 30: Judges who did not receive DCS training

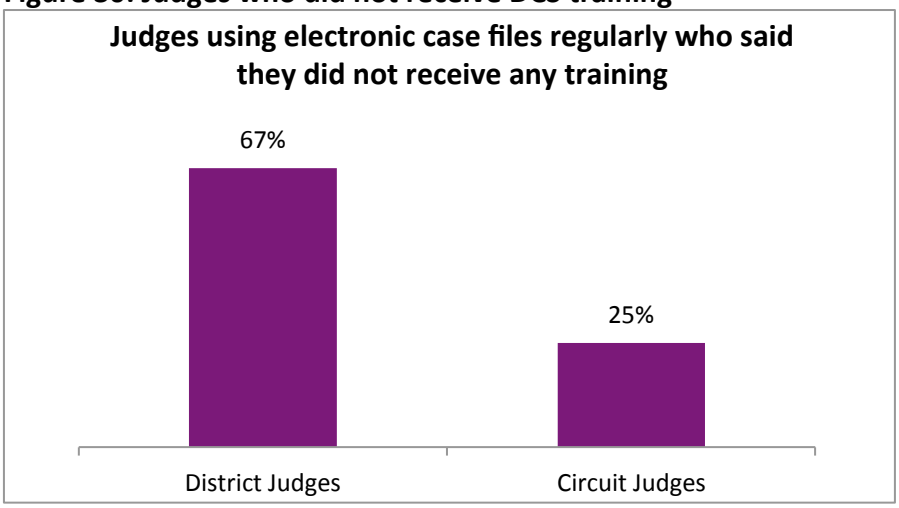
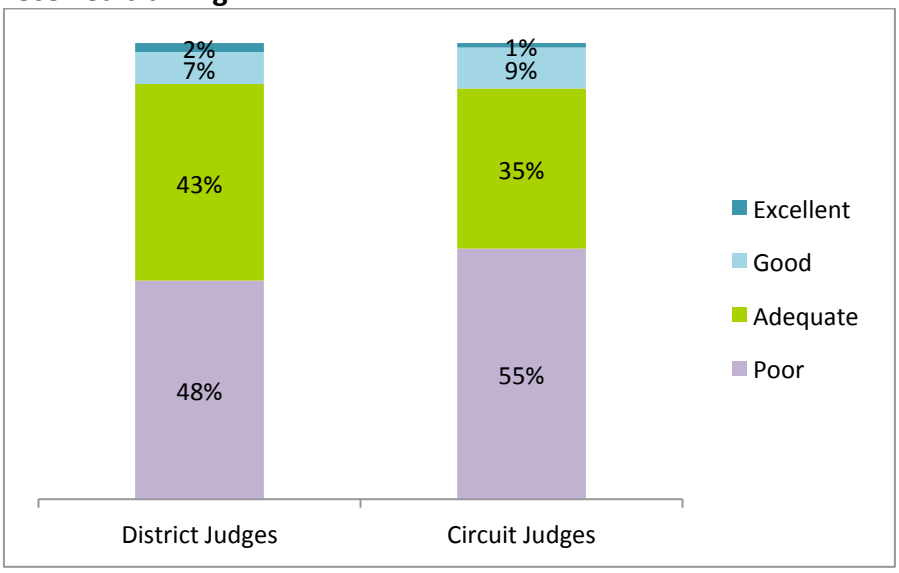


Figure 31: Quality of DCS training by those who use it regularly and received training



4.3 e-Judiciary

During the survey period (late June to late July 2016) the judiciary was in the process of introducing e-Judiciary, the web-based platform where judges can access the Judicial Intranet, email, calendar, documents and communications links. The survey analysis explores the views and experiences of judges with e-Judiciary at this stage of the roll out.

Looking first at all salaried judges combined, as of July 2016:

- Just over half of all salaried judges (55%) said they were on e-Judiciary.
- Of the 55% of judges who are currently on e-Judiciary, half (50%) rated it as Good or Excellent, over a third (38%) said it was Adequate, and only a small minority (12%) said it was Poor.

Figure 32: Salaried judges on e-judiciary (as of July 2016)

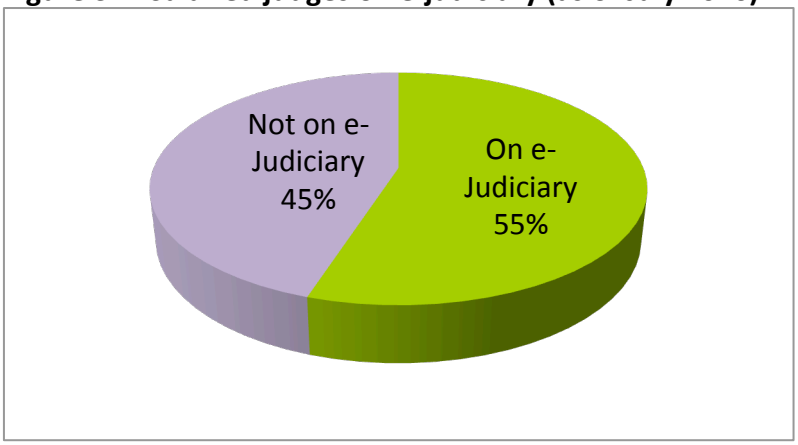


Table 16: Quality of e-Judiciary

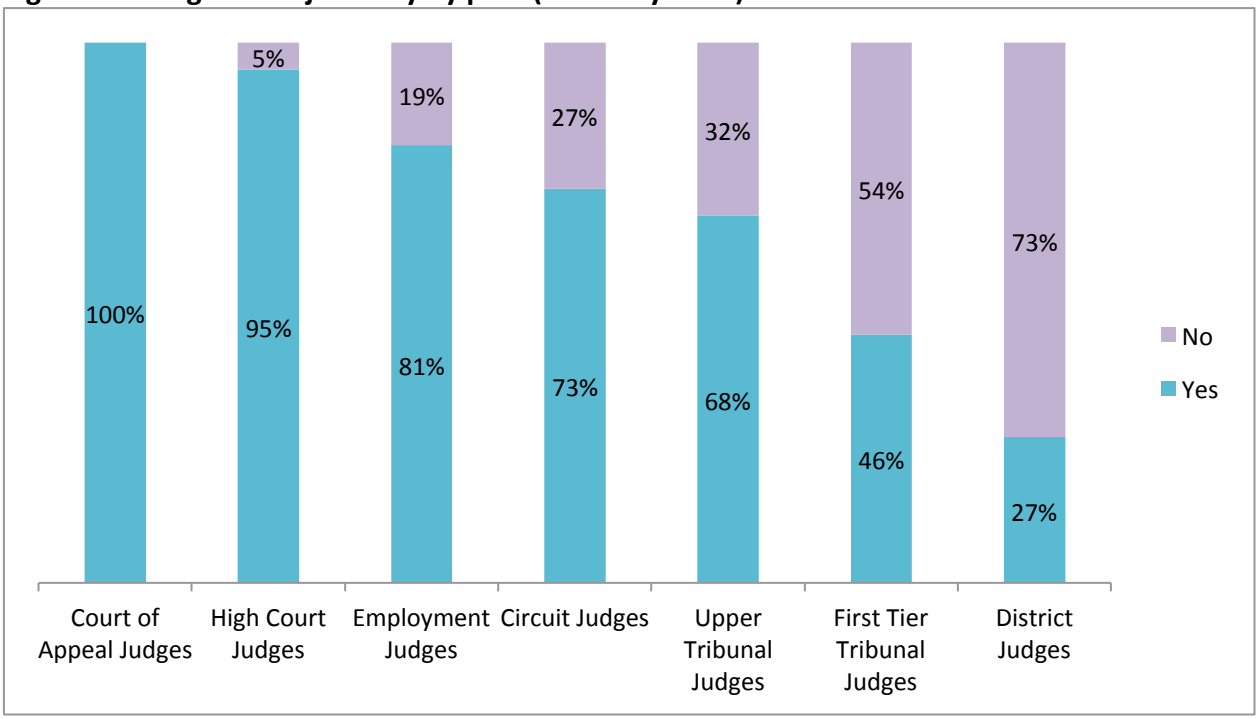
Rating of e-Judiciary (only by those on e-Judiciary)	2016 JAS
Poor	12%
Adequate	38%
Good	40%
Excellent	10%

By Post

There are substantial differences in the extent to which judges in different judicial posts are currently on e-judiciary (as of July 2016).

- All Court of Appeal Judges (100%) and most High Court Judges (95%) are on e-judiciary, as well as a majority of Employment Judges (81%), Circuit Judges (73%) and Upper Tribunal Judges (68%).
- Less than half (46%) of First Tier Tribunal Judges and only a quarter (27%) of District Judges were on e-judiciary as of July 2016.

Figure 33: Judges on e-judiciary by post (as of July 2016)



4.4 Wi-Fi availability in courts and tribunals

During the survey period the judiciary was in the process of introducing Wi-Fi in courts in England and Wales and UK non-devolved tribunals, and the survey explored the views and experiences of judges at this stage of the roll out of Wi-Fi in these courts and tribunals.

Availability and Quality of Wi-Fi

Looking first at all salaried judges combined, as of July 2016 (time of the survey):

- Just over half of all salaried judges (52%) said Wi-Fi was available at their court or tribunal.
- Of the 52% of judges who had Wi-Fi in their courts, 29% rated the quality of the Wi-Fi as Poor, just under half (45%) rated it as Adequate, and 26% said it was Good or Excellent.

Figure 34: Judges with Wi-Fi available in court/tribunal

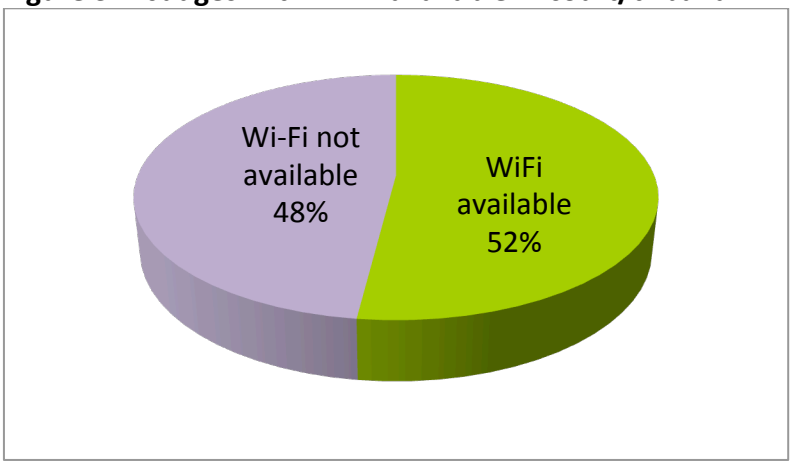


Table 17: Quality of Wi-Fi

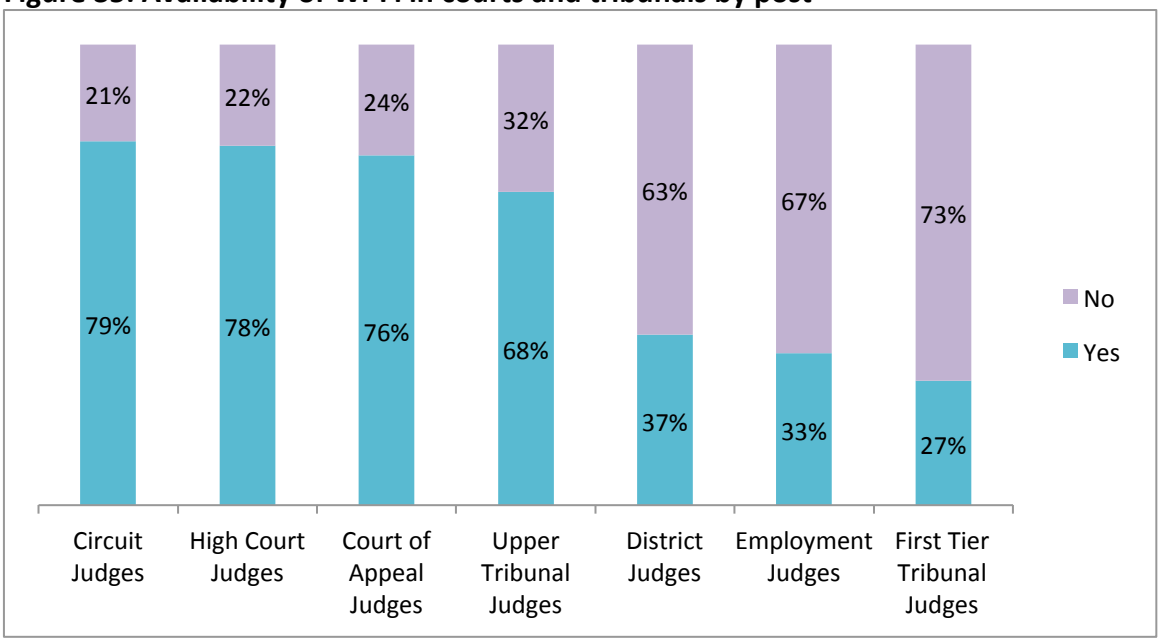
Rating of quality of Wi-Fi in court	2016 JAS
Poor	29%
Adequate	45%
Good	22%
Excellent	4%

By Post

Again there is a distinct divide between the types of judges who said they had Wi-Fi in their courts or tribunals and those who did not (as of July 2016).

- More than three-quarters of all Circuit Judges (79%), High Court Judges (78%) and Court of Appeal Judges (76%) and over two-thirds (68%) of Upper Tribunal Judges said their courts or tribunals had Wi-Fi.
- But only a small proportion of First Tier Tribunal Judges (27%), Employment Judges (33%) and District Judges (37%) said there was Wi-Fi in their courts or tribunals.

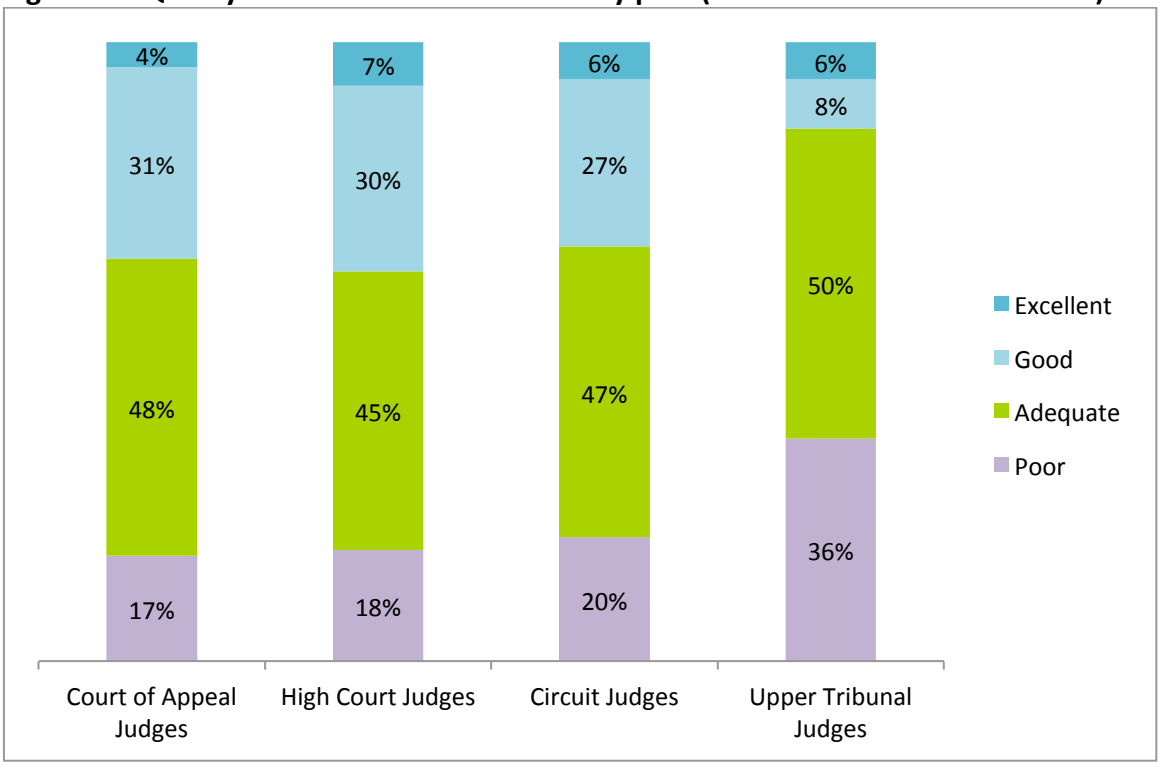
Figure 35: Availability of Wi-Fi in courts and tribunals by post



Looking only at those judicial posts where a majority of judges said they had Wi-Fi in their courts (Court of Appeal, High Court, Circuit and Upper Tribunal Judges), the judges in those courts who said they had Wi-Fi in court were asked to rate the quality of the Wi-Fi:

- Almost half of all judges who have Wi-Fi in their courts said the quality was Adequate.
- A third of judges in the Court of Appeal (35%), High Court (37%) and Circuit (33%) bench said the quality of the Wi-Fi was Good or Excellent.
- Over a third (36%) of judges who have Wi-Fi in the Upper Tribunal said the quality was Poor.

Figure 36: Quality of Wi-Fi available at court by post (based on all those with Wi-Fi)



5. Salary and Pensions

The 2016 JAS included a series of previous and new questions exploring judges' views on their salary and pension arrangements.

5.1 Judicial Pay

- An overwhelming majority of all judges (78%) say they have had a loss of net earnings over the last 2 years.
- Almost two-thirds of judges say the judicial salary issue is affecting their own morale (63%).
- The overwhelming majority of judges say the judicial salary issue is affecting the morale of judges they work with (82%).
- Just over half of judges (58%) do not feel they are paid a reasonable salary for the work they do.
- There has been little change in judges' views about their pay since the 2014 JAS.
- These are virtually identical results to those for salaried judges in Scotland and Northern Ireland in 2016.

Table 18: Judicial views on pay (2016 JAS)

	Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
I have had a loss of net earnings over the last 2 years	3%	10%	9%	28%	50%
The judicial salary issue is affecting my morale	5%	21%	11%	29%	34%
The judicial salary issue is affecting the morale of judges I work with	2%	5%	11%	32%	50%
I am paid a reasonable salary for the work I do	20%	38%	9%	28%	4%

Table 19: Judicial views on salary: 2016 and 2014 compared[7]

	Agree 2016 JAS	Agree 2014 JAS
I have had a loss of net earnings over the last 2 years	78%	75%
I am paid a reasonable salary for the work I do	32%	27%

[7] These are the two questions on salary that appeared in identical form on both the 2014 JAS and 2016 JAS.

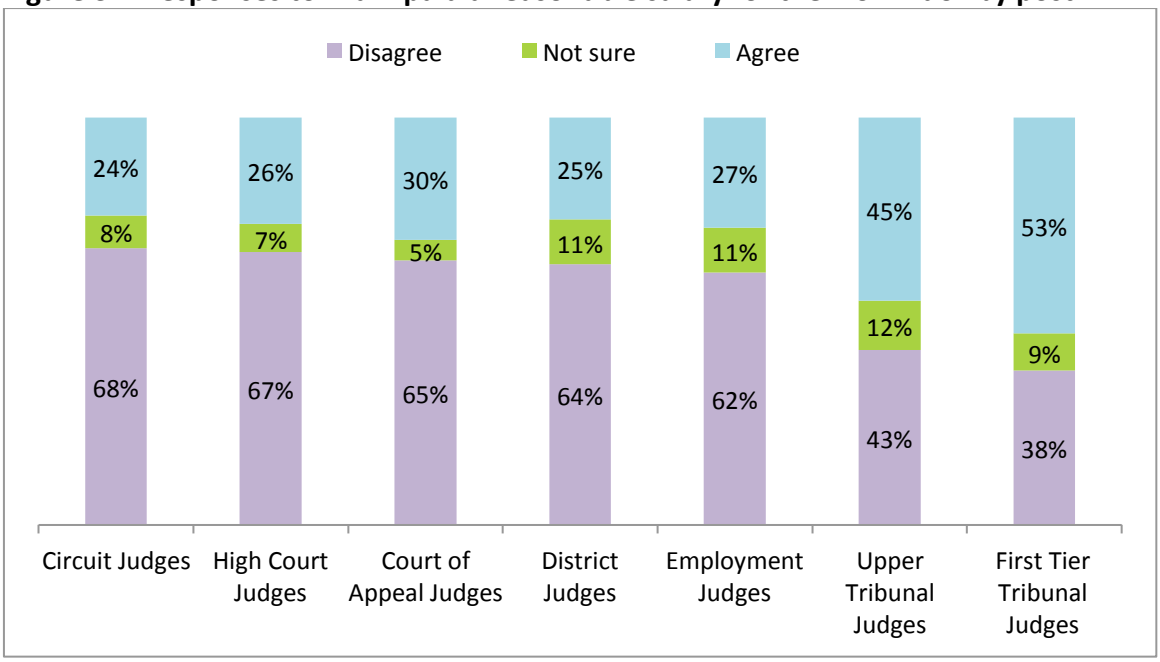
By Post

"I am paid a reasonable salary for the work I do"

There are clear differences by judicial post in terms of whether judges feel they are paid a reasonable salary for the work that they do:

- Two-thirds of judges in all courts judiciary posts and Employment Judges disagreed with this statement.
- A majority of First Tier Tribunal Judges (53%) agreed that they are paid a reasonable salary for the work they do.
- Upper Tribunal Judges are split over whether they are paid a reasonable salary for the work they do, with 45% agreeing that they are and 43% disagreeing.

Figure 37: Responses to "I am paid a reasonable salary for the work I do" by post

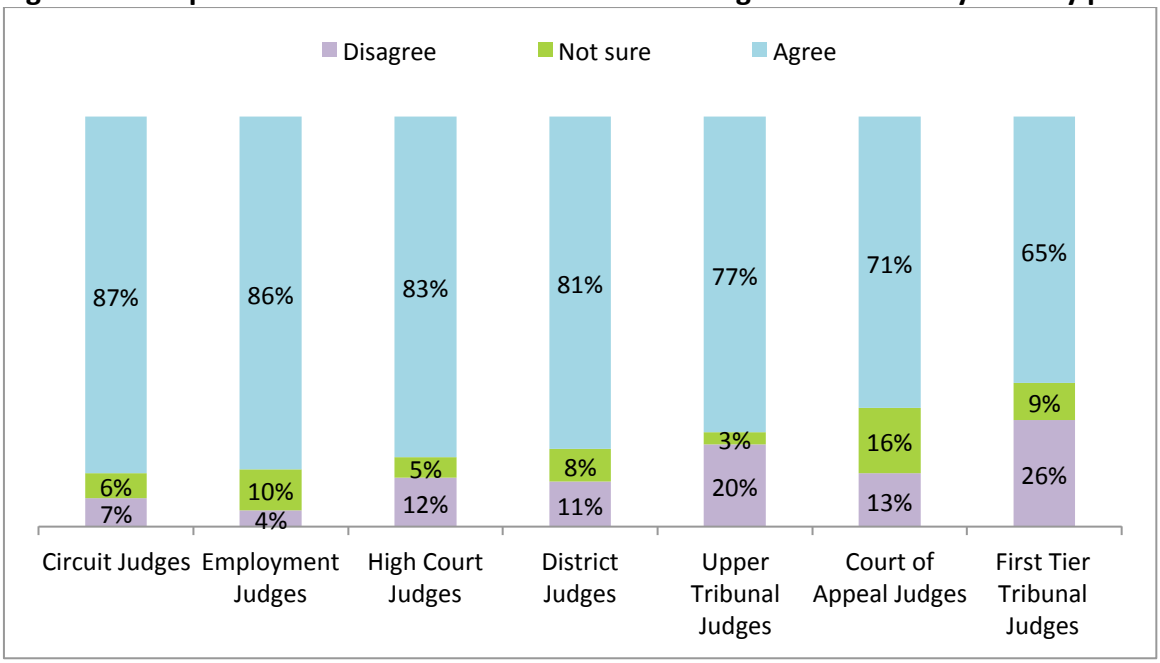


"I have had a loss of net earnings over the last 2 years"

All judges, regardless of post, are in clear agreement that they have had a loss of net earnings over the 2 years since the last JAS was conducted.

- An overwhelming majority of judges in each judicial post said they had had a loss of net earnings over the last 2 years.
- Over 80% of Circuit, Employment, High Court and District Judges agreed, and between two-thirds and three-quarters of judges in the other judicial posts agreed with this statement.

Figure 38: Responses to "I have had a loss of net earning over the last 2 years" by post

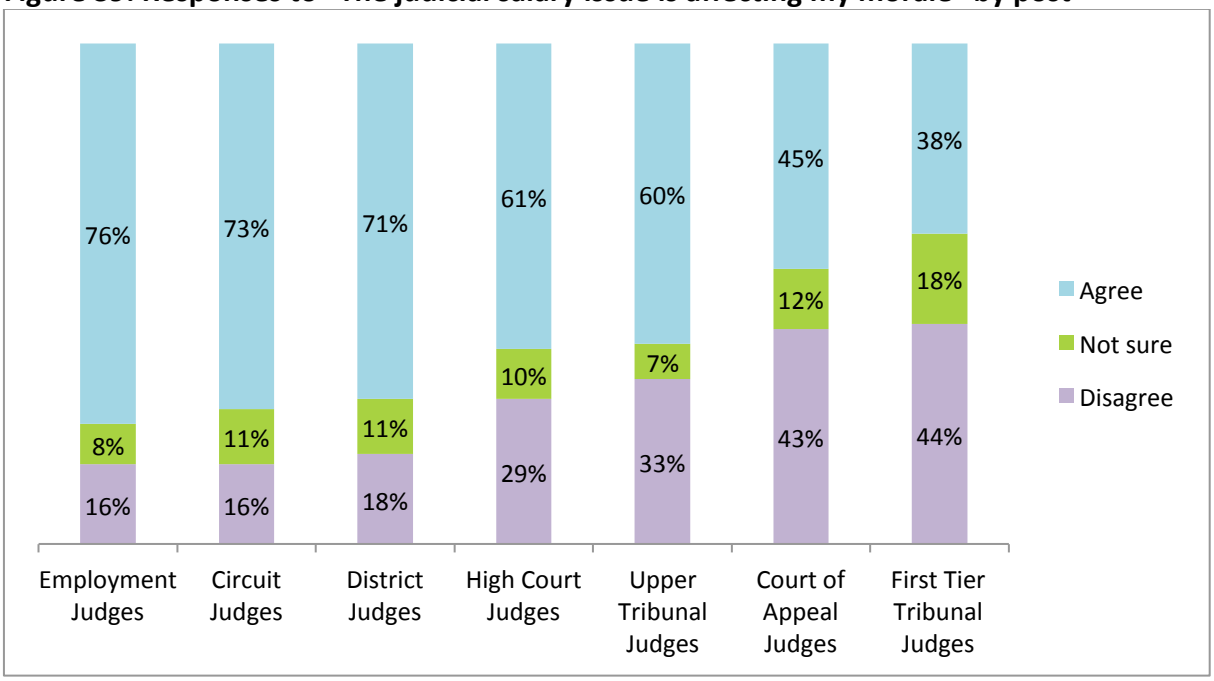


"The judicial salary issue is affecting my morale"

There are clear differences by judicial post on the extent to which judges feel the judicial salary is affecting their morale:

- The overwhelming majority of Employment Judges (76%), Circuit Judges (73%) and District Judges (71%) said the salary issue was affecting their morale.
- A majority of High Court Judges (61%) and Upper Tribunal Judges (60%) also said their morale had been affected by the salary issue.
- Only a minority of First Tier Tribunal Judges (38%) and Court of Appeal Judges (45%) said the salary issue was affecting their morale.

Figure 39: Responses to "The judicial salary issue is affecting my morale" by post

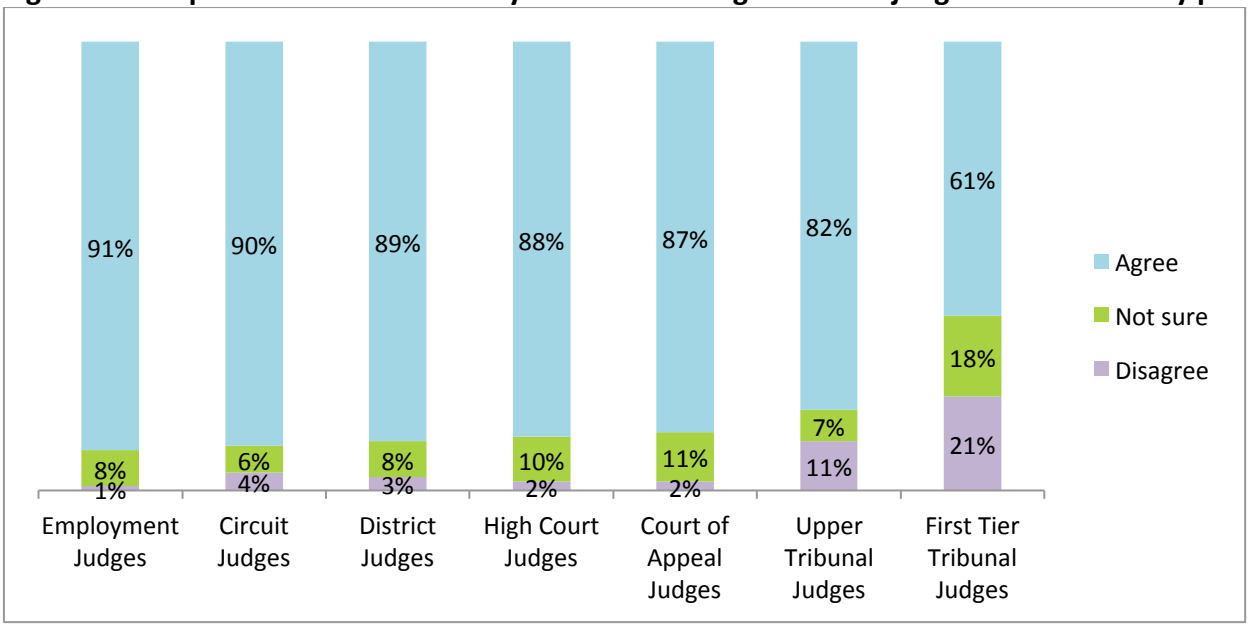


"The judicial salary issue is affecting the morale of judges I work with"

All judges, regardless of post, were in clear agreement that the issue of judicial salaries is affecting the morale of judges with whom they work.

- Virtually all judges in all judicial posts agreed with this statement.
- While most First Tier Tribunal Judges also agreed with the statement that the judicial salary issue was affecting the morale of judges they work with, this was a more qualified majority (61%) in comparison to the other judicial posts.

Figure 40: Responses to "Judicial salary issue is affecting morale of judges I work with" by post



5.2 Judicial Pensions

In 2012 and 2015 government instituted changes to judicial pensions came in to effect, and the survey explored judges' views of the impact of these changes:

- Almost two-thirds of judges (62%) say the change in pensions has affected them personally.
- Almost two-thirds of judges (61%) feel the change in pensions has affected their morale, and an overwhelming majority of all judges (88%) say the change in judicial pensions has affected the morale of judges they work with.
- Judges have divided views about whether some changes to pension entitlements have to be made, with 43% agreeing, 40% disagreeing and 17% uncertain; there has been little change in this view amongst judges since 2014.
- These are virtually identical results to those for salaried judges in Scotland and Northern Ireland in 2016.

Table 20: Judicial views on pensions

	Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
The change in pensions has affected me directly	8%	22%	8%	18%	44%
The change in pensions has affected my morale	8%	22%	9%	21%	40%
The change in pensions has affected the morale of judges I work with	1%	3%	8%	19%	69%
I accept that some changes to pension entitlements have to be made	19%	21%	17%	37%	6%

Table 21: Judicial views on pension changes: 2016 and 2014 compared[8]

	Agree **2016** JAS	Agree **2014** JAS
I accept that some changes to pension entitlements have to be made	43%	42%

[8] This is one question on pensions that appeared in identical form on both the 2014 JAS and 2016 JAS.

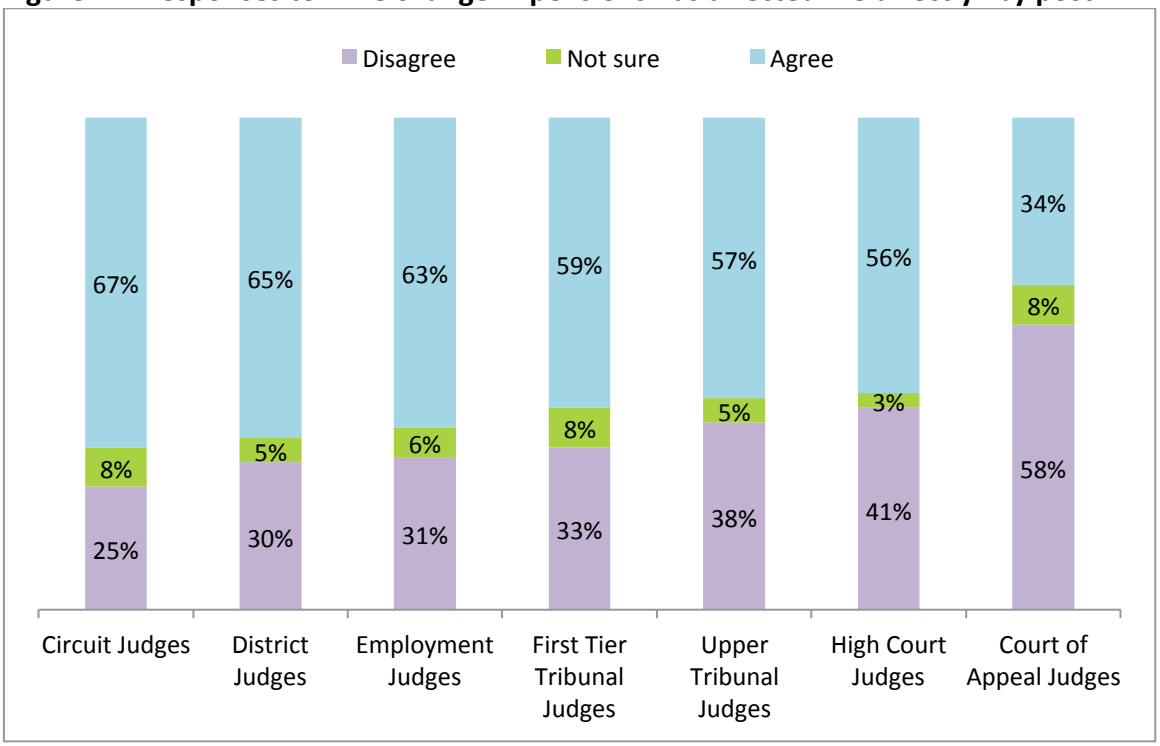
By Post

"The change in pensions has affected me directly"

While a majority of all but Court of Appeal Judges said the change in pensions had affected them directly, there were some differences in the level of impact based on judicial post.

- Circuit Judges (67%), District Judges (65%) and Employment Judges (63%) have the largest proportion of judges who say they have been directly affected by the change in pensions.
- A majority of First Tier Tribunal (59%), Upper Tribunal (57%) and High Court (56%) judges also say they have been directly affected.
- Only a third (34%) of Court of Appeal Judges say the pension changes have affected them personally. This is likely to reflect the fact that many Court of Appeal judges will be amongst the longest serving judges, and therefore their date of first appointment to the judiciary means the recent pension changes may not affect as many of them as judges in other posts.

Figure 41: Responses to "The change in pensions has affected me directly" by post

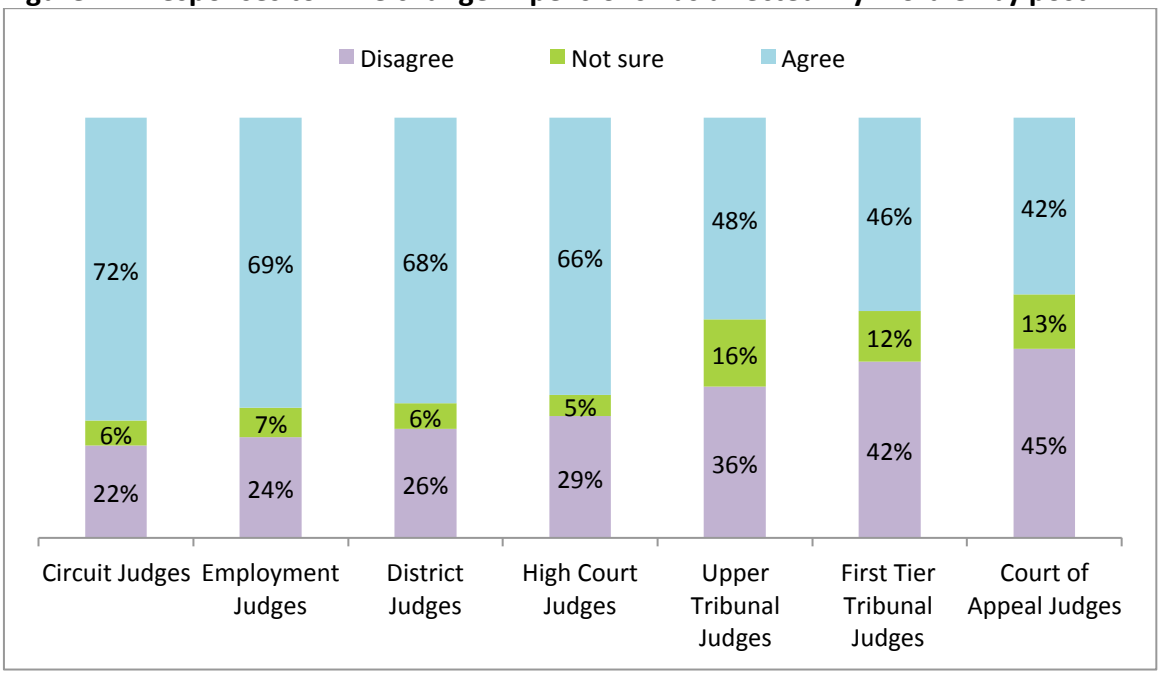


"The change in pensions has affected my morale"

There are substantial differences between judicial posts on the extent to which judges feel that the change in pensions has affected their morale.

- A majority of Circuit Judges (72%), District Judges (69%), Employment Judges (68%) and High Court Judges (66%) said that the pension changes had affected their morale.
- It is perhaps not surprising that the Circuit, District and Employment Judges were most likely to say that the pension changes had affected their morale, as judges in these 3 judicial posts had the largest proportion of judges that said they were directly affected by the pension changes (see above).
- However, for both High Court Judges and Court of Appeal Judges a larger portion said the pension changes had affected their morale compared with the proportion of those judges who said they were directly affected by the changes. This provides some indication of the wider impact of the pension changes on the judiciary, including those not directly affected financially by the pension changes.
- A minority of Court of Appeal Judges (42%), First Tier Tribunal Judges (46%) and Upper Tribunal Judges (48%) said the pension changes had affected their own morale.

Figure 42: Responses to "The change in pensions has affected my morale" by post

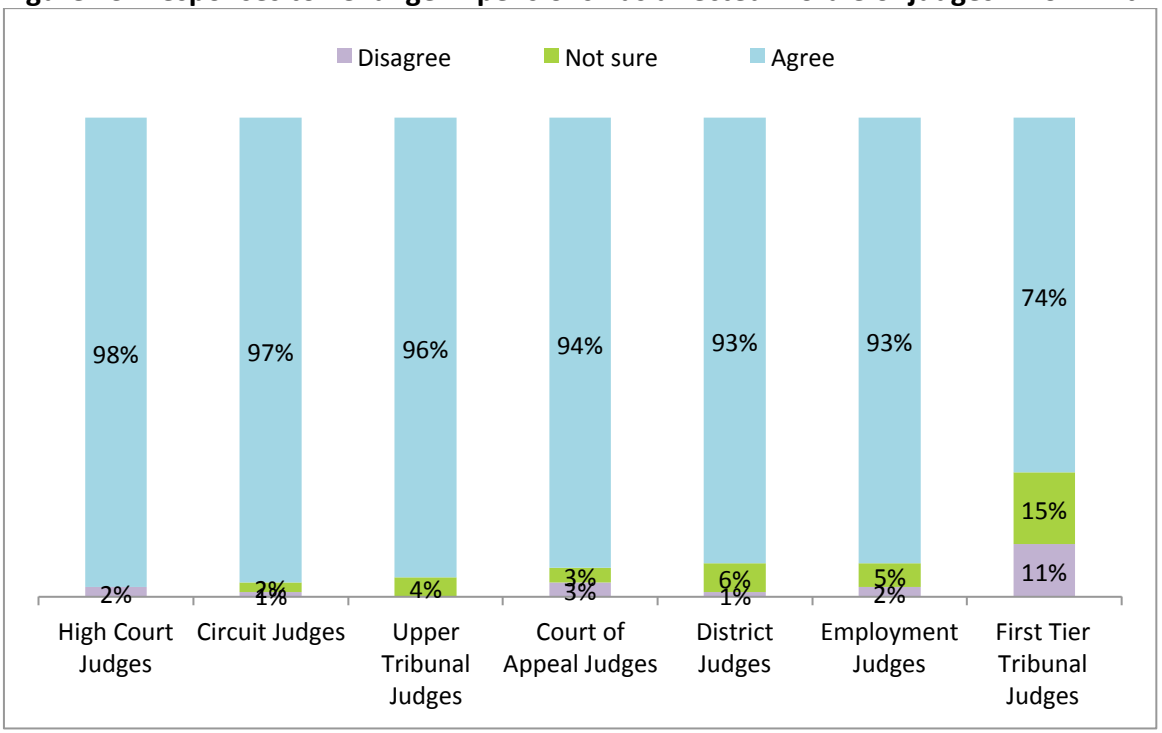


"The change in pensions has affected the morale of judges I work with"

Virtually all judges in all judicial posts said that the pensions changes had affected the morale of judges that they work with.

- Over 90% of all judges in all judicial posts, except First Tier Tribunal Judges, said pension changes had affected the morale of fellow judges, although a clear majority of First Tier Tribunal Judges agreed.
- Three-quarters (74%) of First Tier Tribunal Judges said the pensions changes had affected the judges they work with.

Figure 43: Responses to "Change in pensions has affected morale of judges I work with" by post

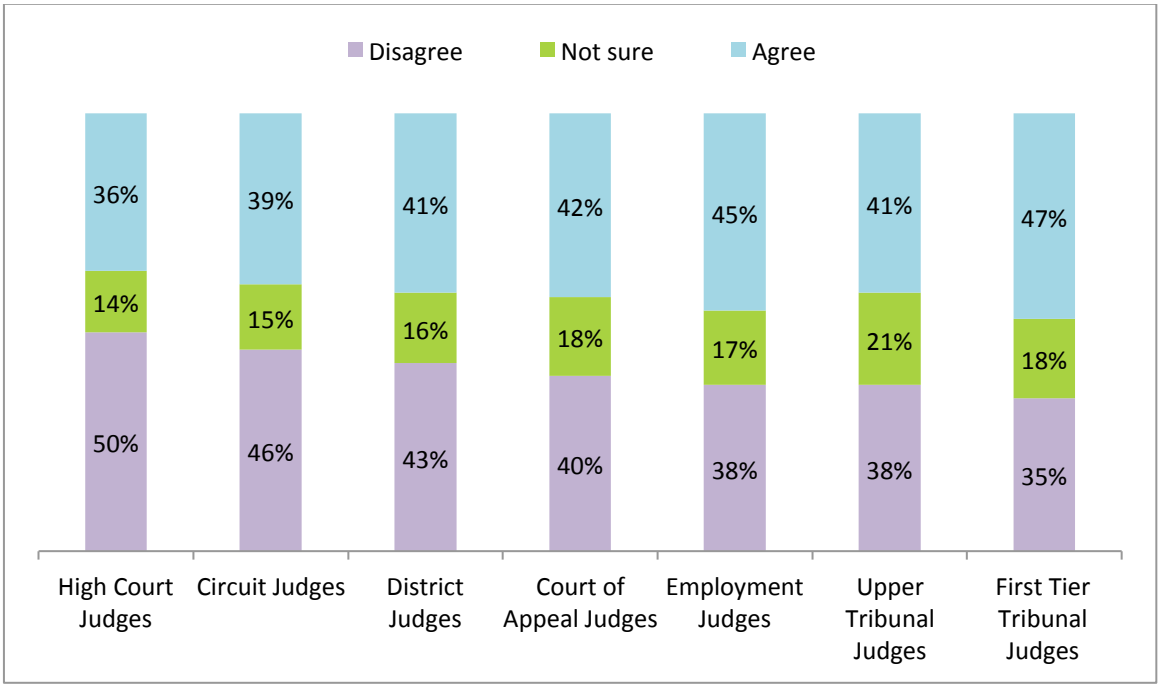


"I accept that some changes to pension entitlements have to be made"

Judges in all the different judicial posts are clearly divided over whether some changes to pension entitlements had to be made.

- Judges in posts in the courts judiciary were less likely than judges in tribunal posts to accept that some pension changes have to be made.
- Those most likely to accept that changes have to be made are First Tier Tribunal Judges (47%).
- Those least likely to accept that changes have to be made are High Court Judges (50%).

Figure 44: Responses by post to "I accept that some changes to pension entitlements have to be made"



5.3 Combined Effects of Pay & Pensions Reform, Out of Hours Work & Employment Options

The 2016 JAS also looked at how the pay and pension issues combined are affecting judges, and explored the extent to which judges would take certain actions to address this if they were able. Unlike any other profession, judges have limited employment options. Once judges take up a salaried post in England and Wales they cannot returning to practice if they decide to leave the judiciary, and while in post judges cannot supplement their income with any other form of work.

- Almost three-quarters of all salaried judges (74%) feel that their pay and pension entitlement combined does not adequately reflect the work they have done and will do before retirement. This has increased from 2014 when it was 78%.
- A majority of judges (51%) feel that the amount of out of hours work they are required to do in their job is affecting them; this has increased substantially from 2014 when it was 29%. However, this question was phrased differently in 2014 and this may have been a factor in the increase[9].
- Judges are evenly divided over whether they would leave the judiciary if this was a viable option, but the proportion of judges in 2016 that said they would leave if it was a viable option (42%) has almost doubled from 2014 (23%). However, this question was phrased differently in 2014 and this may have been a factor in the increase[10].
- Judges are evenly divided over whether they would pursue out of court work to earn additional income if this was an option. The proportion of judges in 2016 that would do so is almost the same as it was in 2014 (40%).
- These 2016 results for judges in England and Wales courts and UK tribunals are virtually identical to those for judges in Scotland and Northern Ireland in 2016.

Table 22: Judges' views on pay and pension changes, out of hours work, employment options

	Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement	4%	10%	12%	28%	46%
The amount of out of hours work required to do the job is affecting me	6%	28%	15%	28%	23%
If I felt that leaving the judiciary was a viable option I would consider doing so	14%	26%	18%	21%	21%
If I could earn additional income through out of court work I would pursue this option	15%	23%	20%	22%	20%

[9] In the 2014 JAS this statement was phrased as: *Salary is not the issue. It is the amount of out of hours work required to do the job that affects me.*

[10] In the 2014 JAS this statement was phrased as: *I would consider leaving the judiciary to go back to some kind of legal practice.*

Table 23: Views on pay & pension, out of hours work and employment options: 2016 and 2014

	Agree 2016 JAS	Agree 2014 JAS
My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement	74%	78%
The amount of out of hours work required to do the job is affecting me	51%	29%
If I felt that leaving the judiciary was a viable option I would consider doing so	42%	23%
If I could earn additional income through out of court work I would pursue this option	42%	40%

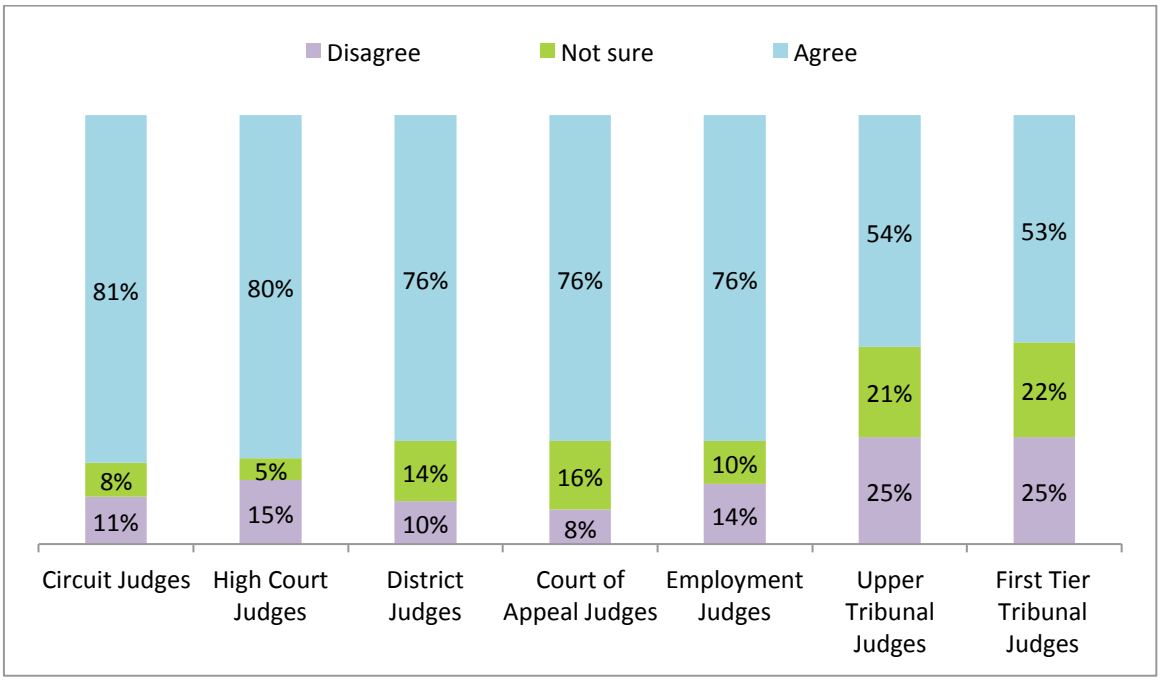
By Post

"My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement"

A majority of judges in all judicial posts felt their pay and pension entitlement does not adequately reflect the work they have done and will do before retirement, but there are differences between judges in the courts Judiciary and most tribunal judges.

- Over three-quarters of judges in all judicial posts in the courts judiciary and Employment Judges agreed with this statement.
- While a majority of judges in the Upper Tribunal (54%) and First Tier Tribunal (53%) also agreed, these were qualified majorities, where a quarter disagreed and almost another quarter were not sure.

Figure 45: Responses by post to "My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement"

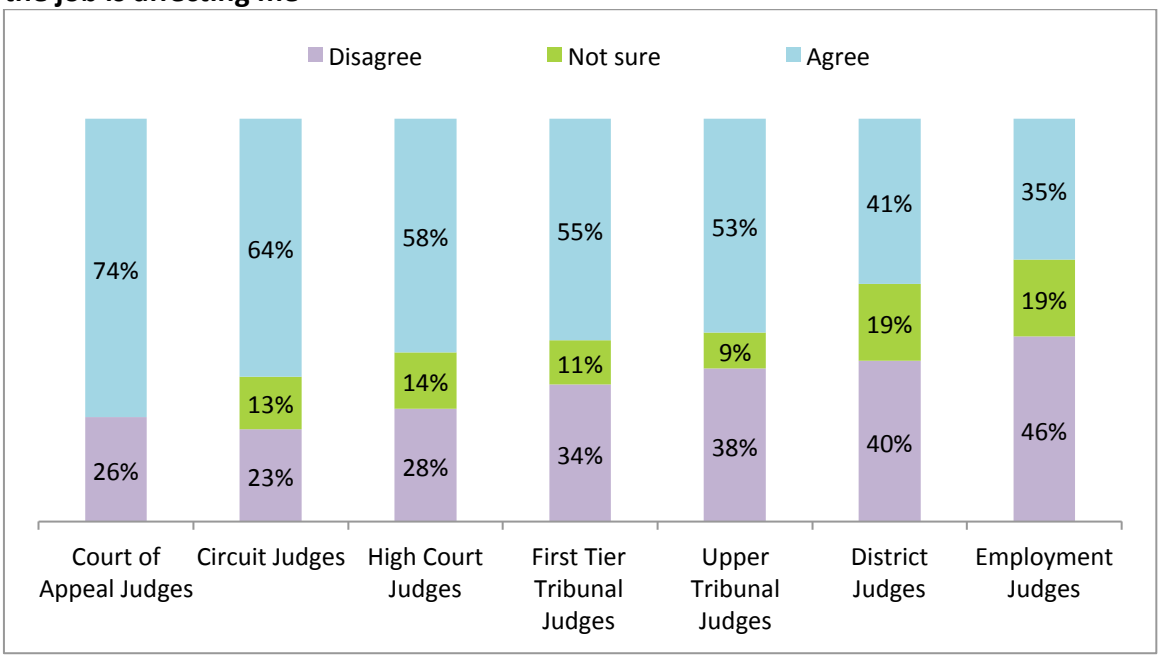


"The amount of out of hours work required to do the job is affecting me"

The impact of out of hours work required to do their job has a greater impact on judges in certain judicial posts than others.

- Three-quarters (74%) of Court of Appeal Judges, two-thirds (64%) of Circuit Judges and more than half of High Court Judges, First Tier Tribunal Judges and Upper Tribunal Judges say they are affected by the amount of out of hours work their job requires.
- Only 41% of District Judges and 35% of Employment Judges say they are affected by out of hours work.

Figure 46: Responses by post to "The amount of out of hours work required to do the job is affecting me"

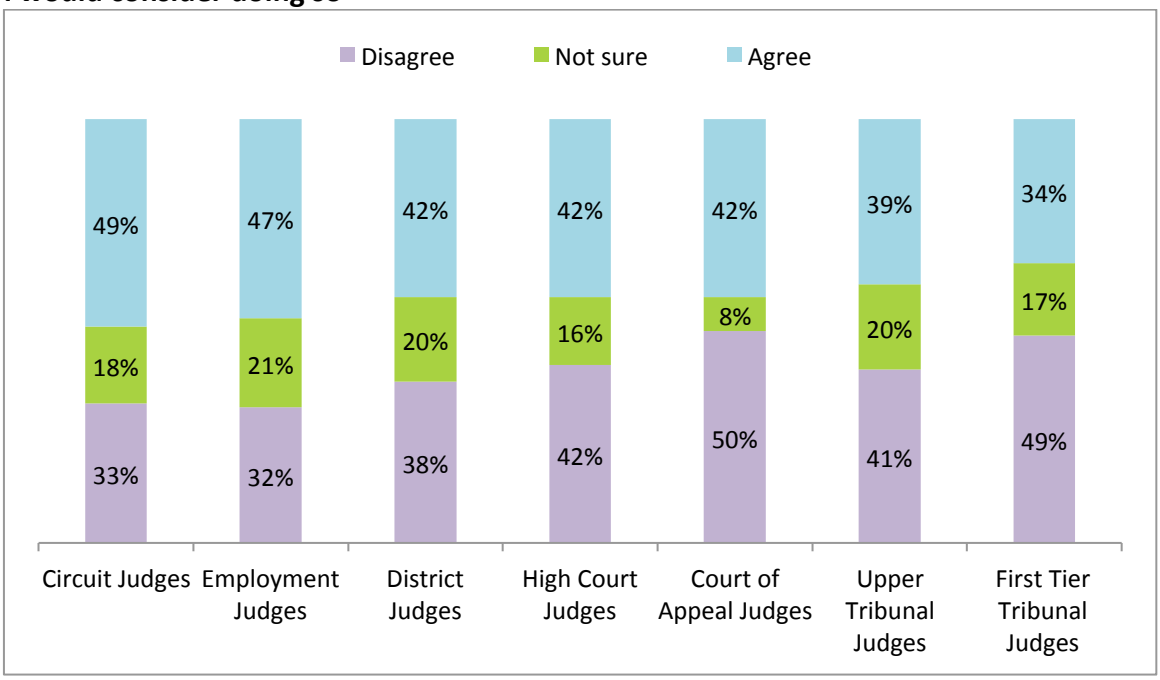


"If I felt that leaving the judiciary was a viable option I would consider doing so"
This question was asked in the unique employment context for the salaried judiciary in England and Wales, which prevents judges from returning to practice law once they have taken up a salaried judicial position should they subsequently decided to leave the judiciary.

While judges in each of the judicial posts are quite divided about whether they would consider leaving the judiciary if it was a viable option, a substantial proportion of judges in all judicial posts said they would consider leaving if such an option were viable. There were some differences between some judicial post holders on the extent to which judges would consider leaving:

- Almost half of all Circuit Judges (49%) and Employment Judges (47%) said they would consider leaving the judiciary if doing so was a viable option.
- Only a third of First Tier Tribunal Judges (34%) said they would consider leaving if it were a viable option.

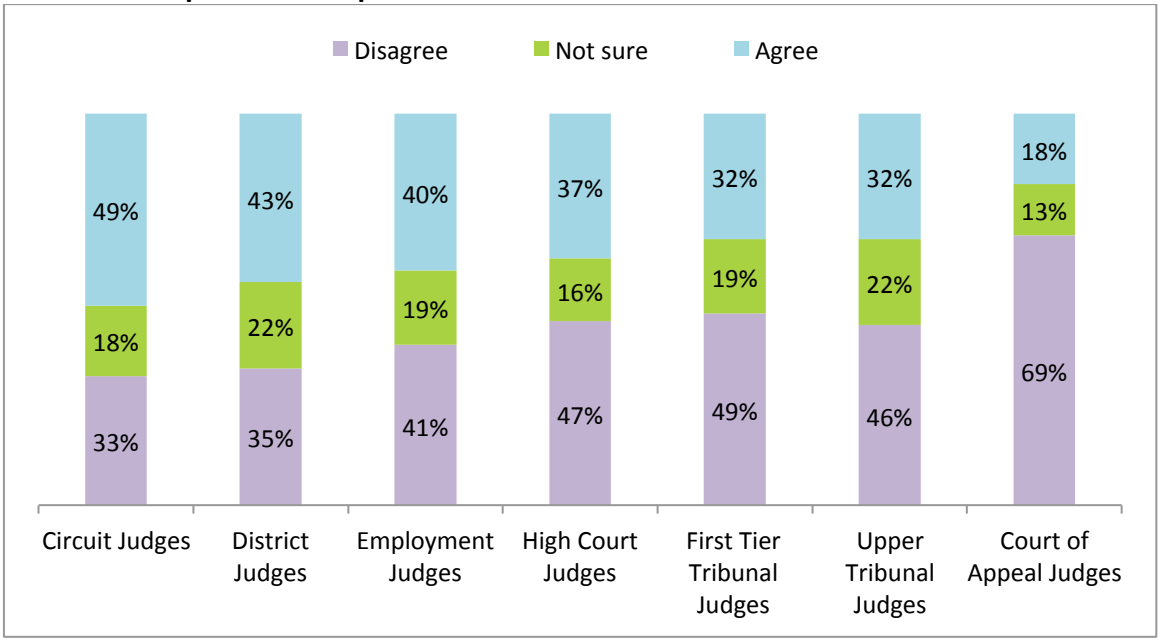
Figure 47: Responses by post to "If I felt that leaving the judiciary was a viable option I would consider doing so"



"If I could earn additional income through out of court work I would pursue this option"[11]
This question was asked in the context of employment rules that preclude salaried judges from earning addition income beyond their judicial salary.

- This is also another issue where judges in each of the judicial posts are divided in their views, with the exception of Court of Appeal Judges.
- While almost half of all Circuit Judges (49%) and District Judges (43%) would pursue paid out of court work if this was possible, only 18% of Court of Appeal Judges would do so.

Figure 48: Responses by post to "If I could earn additional income through out of court work I would pursue this option"



[11] No gender differences were found in relation to either of the out of hours work questions.

6. Opportunities, Support, Training and Personal Development

6.1 Opportunities and support in judges' working lives

In the 2014 JAS judges were asked about the availability of certain opportunities in their working life (work flexibility, career progression, etc.). These questions were repeated in the 2016 JAS, but judges were asked first how important these opportunities were to them. This provides a more helpful indication of whether those specific aspects that are most important to judges in their working life are being provided. In addition new questions were included in the 2016 JAS, which address the need for and availability of support for dealing with stressful conditions at work.

Table 24: Importance to judges of specific opportunities

To what extent do you feel the following are important to you?	Important	Not sure	Not important
Time to discuss work with colleagues	91%	4%	5%
Support for dealing with stressful conditions at work	72%	15%	13%
Opportunities for career progression	61%	11%	28%
Opportunities to work part-time	48%	11%	41%
Opportunities for flexible working hours	44%	13%	43%
Opportunities to sit in other jurisdictions	44%	17%	39%

A majority of judges said **3 opportunities and support measures were most important** to them:

- Time to discuss work with colleagues (91%), support for dealing with stressful conditions at work (72%) and opportunities for career progression (61%).
- These are very similar results to those for judges in Scotland and Northern Ireland in 2016.

Table 25: Availability of opportunities or support for judges

Rate the availability of the following opportunities or support	Non-Existent	Poor	Adequate	Good	Excellent
Time to discuss work with colleagues	5%	31%	44%	17%	3%
Support for dealing with stressful conditions at work	24%	35%	33%	7%	<1%
Opportunities for career progression	23%	38%	31%	7%	<1%
Opportunities to work part-time	38%	17%	22%	15%	8%
Opportunities for flexible working hours	54%	14%	19%	10%	3%
Opportunities to sit in other jurisdictions	29%	26%	32%	11%	2%

A majority of judges said **opportunities were not sufficient in the 3 areas that were most important** to them:

- Even though almost all judges (91%) said **time to discuss work with colleagues** was important, only 20% said the opportunities for this were Good or Excellent while almost half (44%) said they were Adequate.
- Even though almost three-quarters (72%) said **support for dealing with stressful work conditions** was important, most (59%) said this support was either Non-existent or Poor.
- Even though almost two-thirds of judges (61%) said **opportunities for career progression** were important, most judges (61%) said this support was either Non-existent or Poor.
- These are very similar results to those for judges in Scotland and Northern Ireland.

By Post

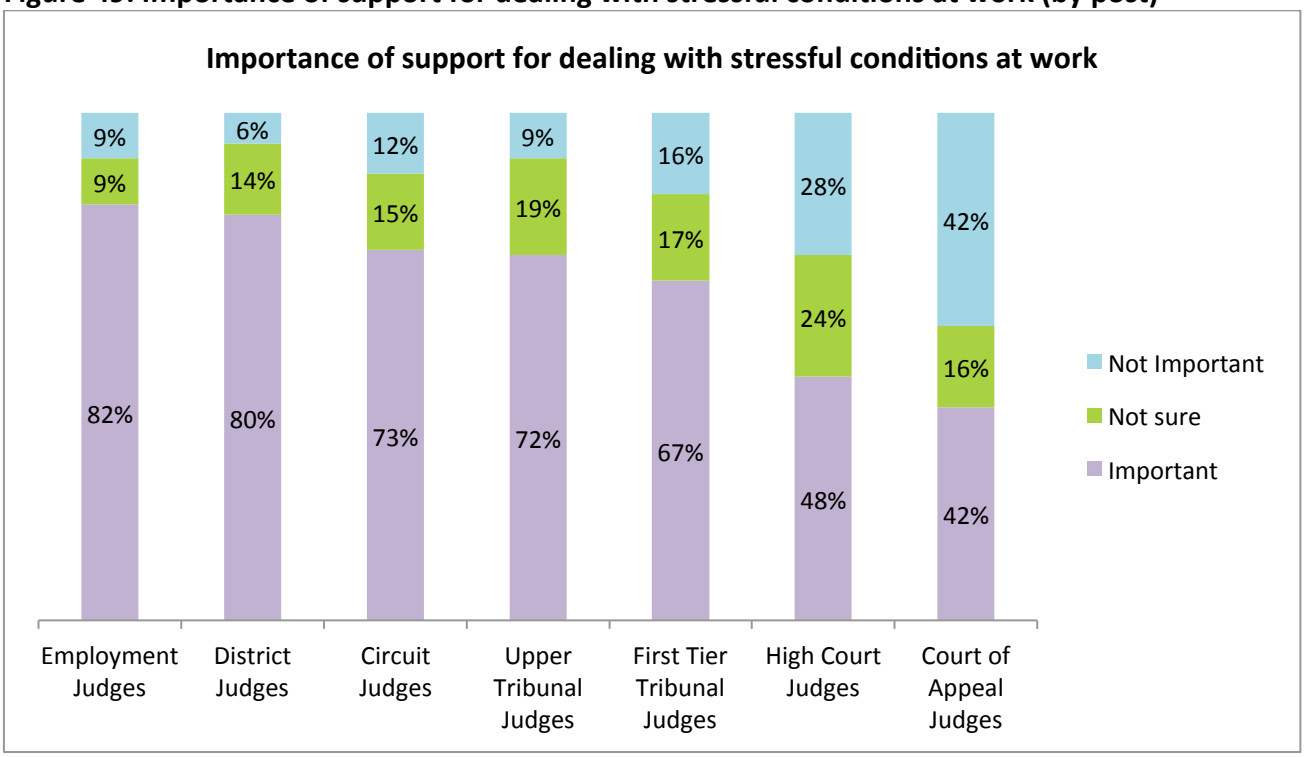
Support for dealing with stressful conditions at work

Support for dealing with stressful conditions at work and time to discuss work with colleagues are the two areas judges identified in the survey that they feel are most important to them. While most judges feel they already have a reasonable amount of time to discuss work with colleagues, many clearly feel they do not have sufficient support for dealing with stressful conditions at work. This applies to judges in almost all judicial posts, but it is rated as important by very large majorities of judges in judicial posts where there are the largest number of judges in England and Wales. Given this, it is explored in more detail here.

Importance

Figure 49 shows that the overwhelming majority of judges in all judicial posts, with the exception of High Court and Court of Appeal Judges, said that support for dealing with stressful conditions at work was important to them. And almost half of High Court and Court of Appeal Judges said this was important to them.

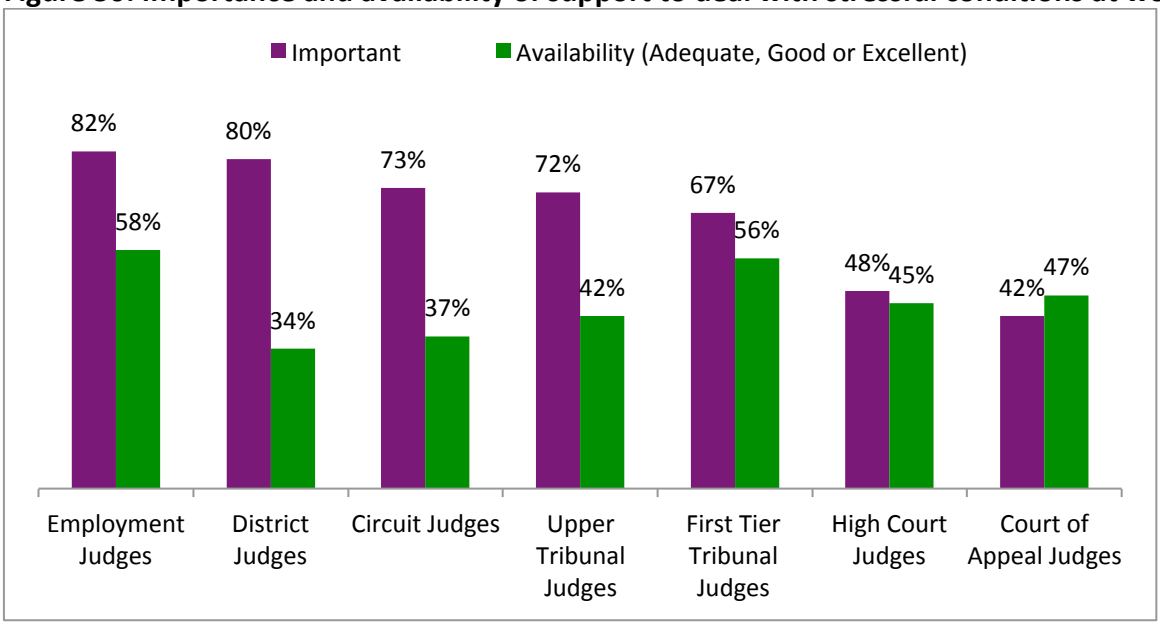
Figure 49: Importance of support for dealing with stressful conditions at work (by post)



Availability

While large majorities of Employment Judges, District Judges, Circuit Judges and Upper Tribunal Judges indicated that support for dealing with stressful conditions at work was important to them, these are the judicial posts where the smallest proportion of judges felt that such support was actually available to them. In comparison to other aspects of judicial working life that are clearly problematic for most judges but are beyond the judiciary's control, such as pay and pensions, this is an issue the judiciary may be able to address under its 2005 remit for judicial welfare.

Figure 50: Importance and availability of support to deal with stressful conditions at work



Opportunities for career progression

Importance

A majority of judges in all judicial posts, with the exception of the Court of Appeal, said the opportunity for career progression was important to them.

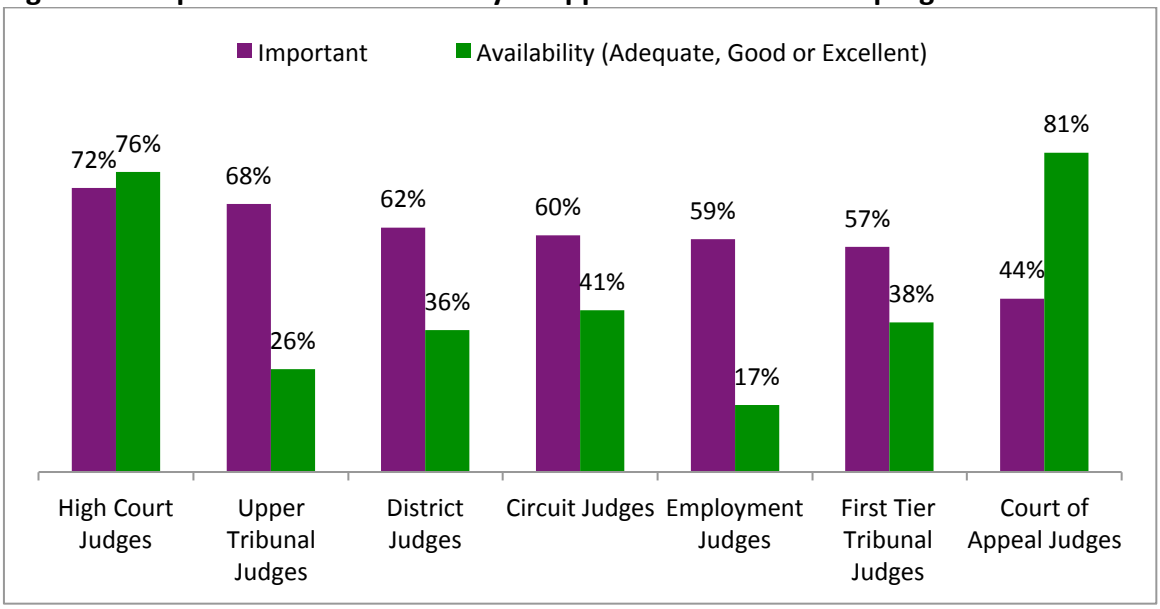
- It was most important for High Court Judges (72%) and Upper Tribunal Judges (68%).
- It was least important for Court of Appeal Judges (44%), who are judges that have reached the highest judicial post in England and Wales (the Supreme Court being a UK court).

Availability

The opportunities for career progression were perceived to be lowest amongst judges in many judicial posts where this was felt to be most important:

- While a clear majority of Upper Tribunal, District, Circuit, Employment and First Tier Tribunal Judges felt opportunities for career progression were important to them, only small minorities of judges in in any of these posts said such opportunities were available to them.

Figure 51: Importance and availability of opportunities for career progression



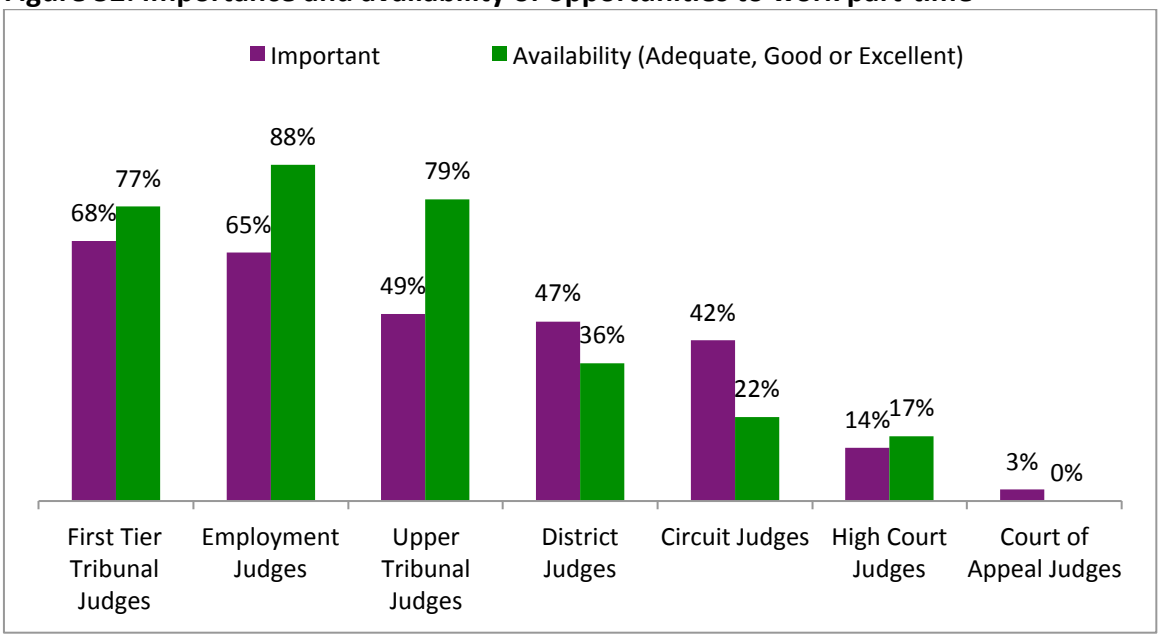
Opportunities to work part-time

Importance and Availability

The opportunity to work part-time was only rated as important by a majority of judges in tribunals:

- First Tier Tribunal Judges (68%) and Employment Judges (65%) and almost half (49%) of all Upper Tribunal Judges said it was important to them.
- A majority of judges in all these tribunals said that the opportunity to work part-time was available to them.

Figure 52: Importance and availability of opportunities to work part-time



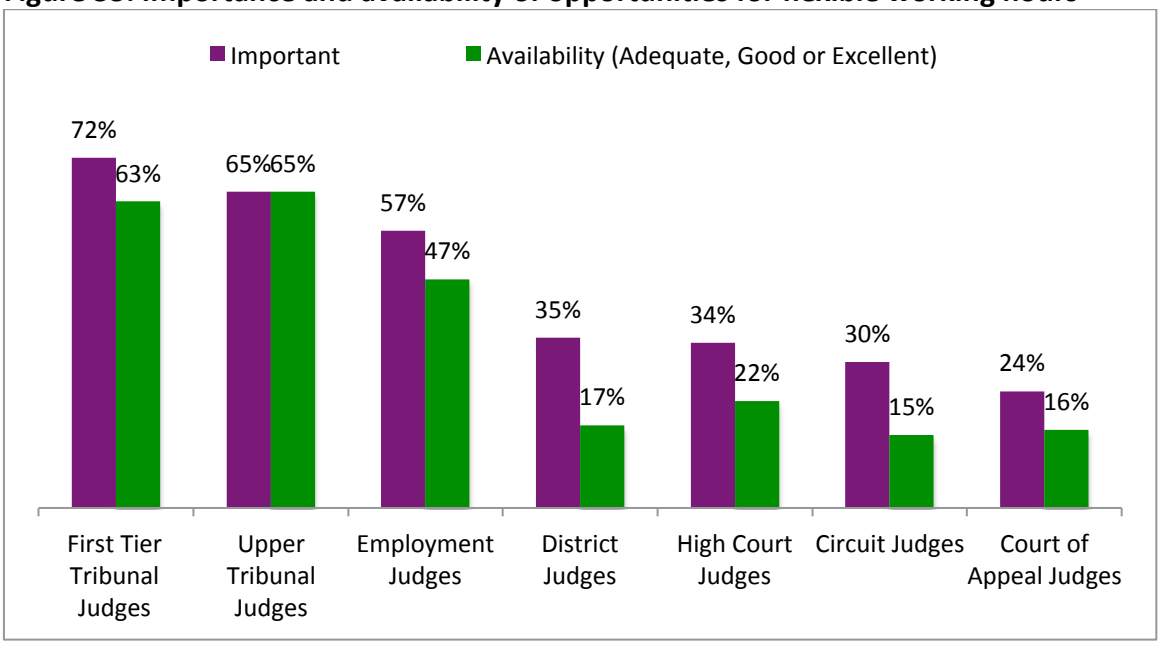
Opportunities for flexible working hours

Importance and Availability

Flexible working appears to be important primarily only to most tribunal judges.

- Opportunities for flexible working hours are most important to First Tier Tribunal Judges (72%), followed by Upper Tribunal Judges (65%) and Employment Judges (57%).
- There was no substantial divide between the proportion of judges saying the opportunity for flexible working hours was important to them and the proportion who said that this opportunity existed for them.

Figure 53: Importance and availability of opportunities for flexible working hours



Opportunities to sit in other jurisdictions

Importance

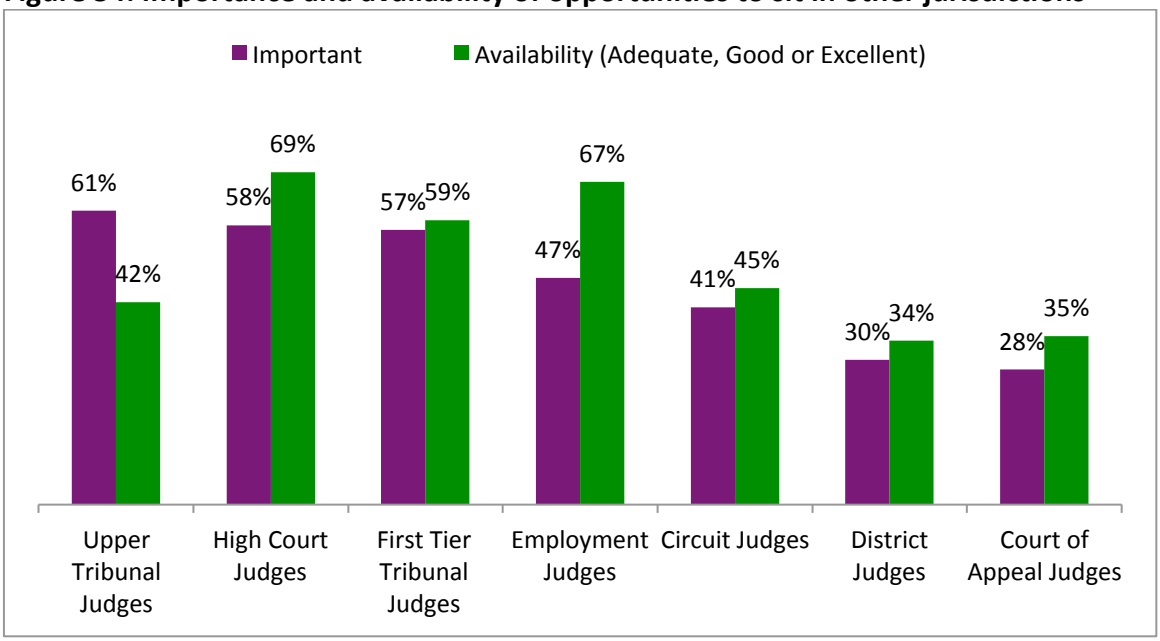
There was great variability in the extent to which judges in different judicial posts felt the opportunity to sit in other jurisdictions was important to them.

- A majority of High Court Judges (58%), Upper Tribunal Judges (61%) and First Tier Tribunal Judges (57%) said this opportunity was important to them.
- Close to a majority of Employment Judges (47%) and Circuit Judges (41%) said the opportunity to sit in other jurisdictions was important to them.

Availability

Upper Tribunal Judges were the only judicial post where the opportunities to sit in other jurisdictions was rated as important by a majority (61%) but where such opportunities were not felt to be sufficiently available (42%).

Figure 54: Importance and availability of opportunities to sit in other jurisdictions



6.2 Training & Personal Development

Judges were asked to indicate their satisfaction with aspects of their training and personal development:

- Most judges are satisfied with the quality of the judicial training (74%) they receive and the range of training available (61%).
- Only a minority of judges are satisfied with the time available to undertake judicial training (45%) and the opportunities in general for personal development (32%).
- These findings from the 2016 JAS are almost identical to the 2014 JAS.

Table 26: Satisfaction with training and personal development

To what extent are you satisfied with the following?	Not satisfied at all	Could be better	Satisfied	Completely satisfied
Quality of judicial training	4%	22%	57%	17%
Range of judicial training available	7%	32%	53%	8%
Time to undertake training	17%	37%	39%	6%
Opportunities for personal development	22%	46%	30%	2%

By Post

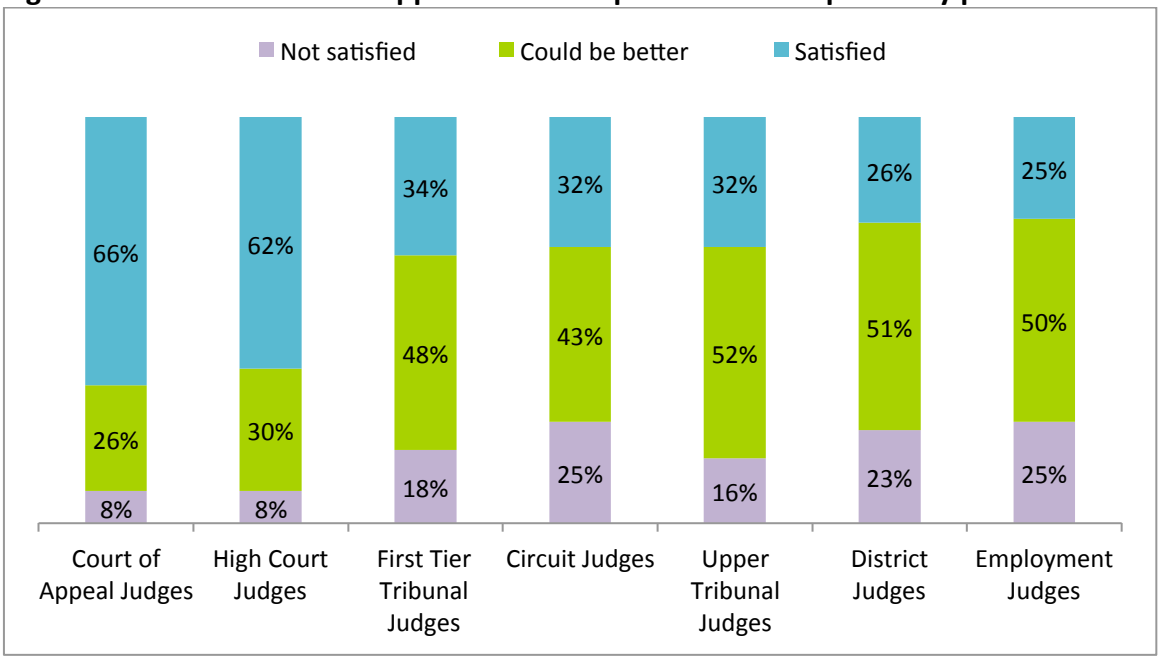
For most of these issues differences did emerge between judges in different judicial posts.

Opportunities for personal development

There were clear differences on this issue between judges in the Court of Appeal and High Court and all other judges:

- Two-thirds of Court of Appeal (66%) and High Court (62%) Judges are satisfied with the opportunities they currently have for personal development.
- Approximately half of judges in all other judicial posts say the opportunities for personal development could be better.
- Only a small proportion of judges in all judicial posts say they are not satisfied with the opportunities for personal development.

Figure 55: Satisfaction with opportunities for personal development by post

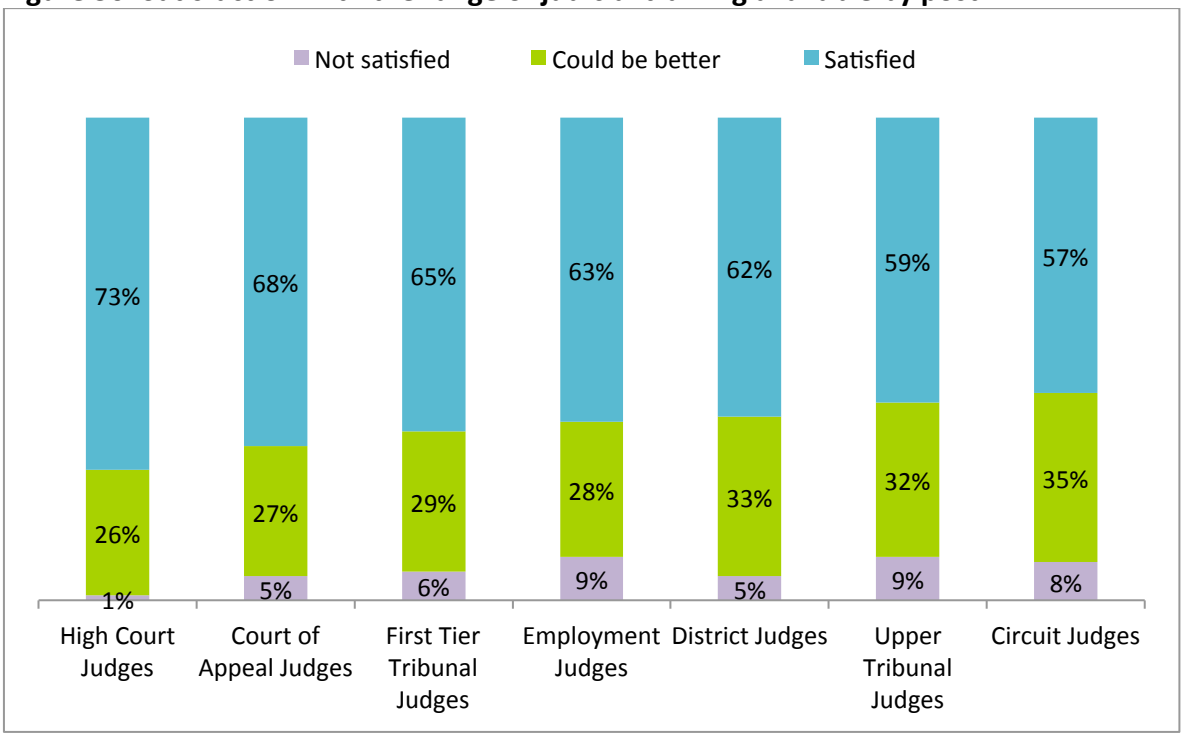


Range of judicial training available

There was a fairly consistent pattern of view amongst judges in different judicial posts about how satisfied they are with the range of judicial training available:

- A majority of judges in all judicial posts said they were satisfied with the range of judicial training available. This was highest amongst High Court Judges (73%) and lowest amongst Circuit Judges (57%).
- Between a quarter and a third of judges in all judicial posts said the range of training could be better.

Figure 56: Satisfaction with the range of judicial training available by post

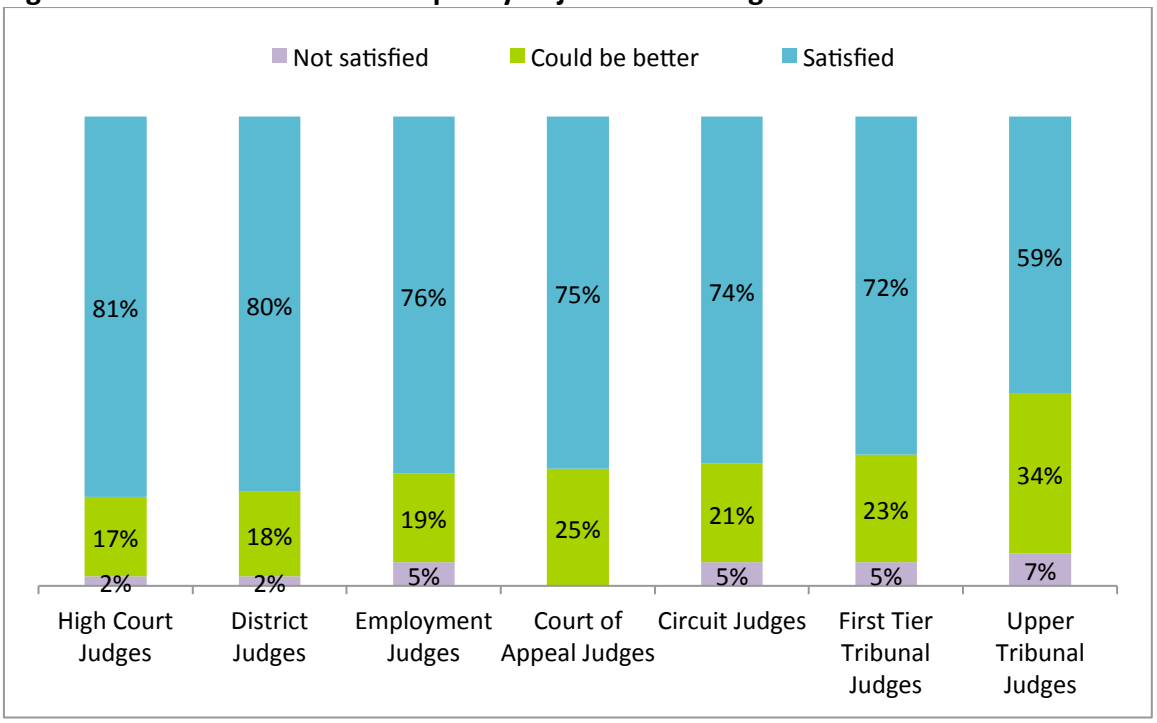


Quality of judicial training available

There was widespread satisfaction with the quality of judicial training available across all judicial posts:

- Approximately three-quarters of judges in all judicial posts (except Upper Tribunal Judges) said they were satisfied with the quality of judicial training available to them.
- A majority (59%) of Upper Tribunal Judges were satisfied with the quality of judicial training available, but a third (34%) said it could be better.

Figure 57: Satisfaction with the quality of judicial training available

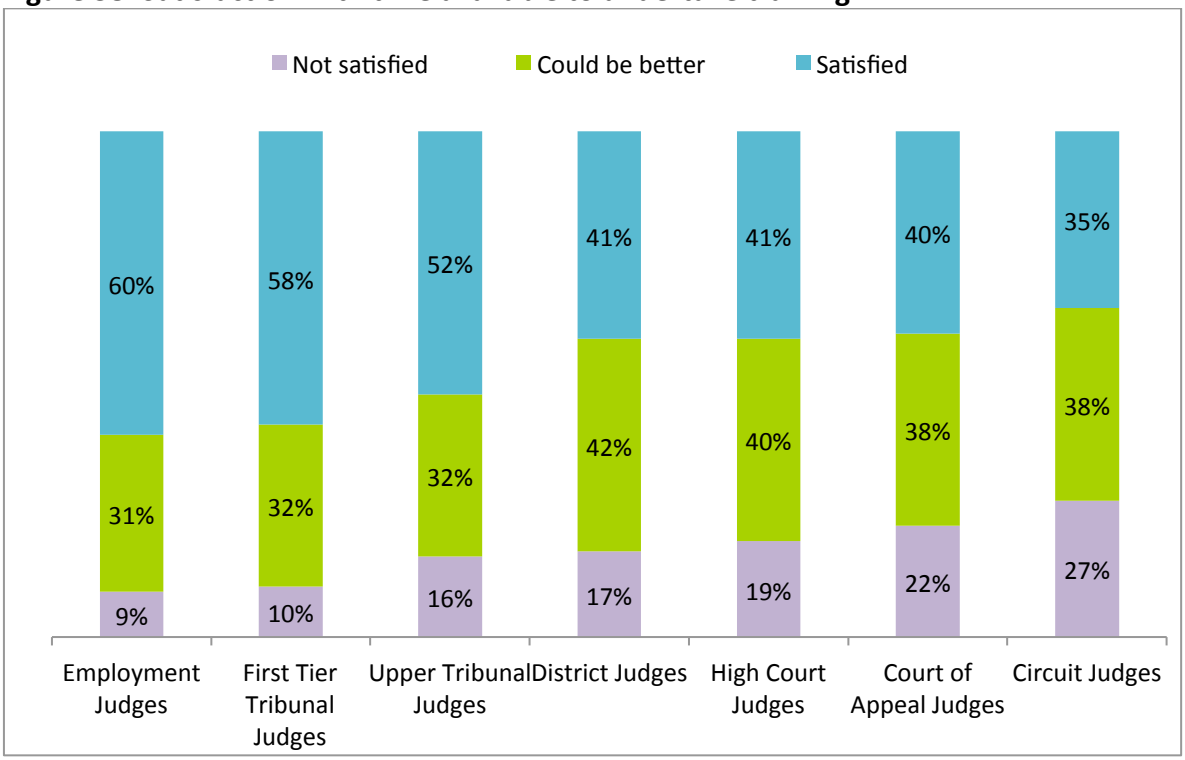


Time available to undertake training

There were differences in the extent to which judges in different judicial posts were satisfied with the time available to them to undertake training:

- While a majority of tribunal judges were satisfied with the time available to undertake training, only a minority of judges in all posts in the courts judiciary were satisfied with this.

Figure 58: Satisfaction with time available to undertake training



6.3 Aspects of Job Satisfaction

Judges were asked about how satisfied they are with 3 aspects of their job (the challenge, variety of work and sense of achievement), repeating the same questions asked in 2014:

- Three-quarters of judges are satisfied with the challenge of their job (77%) and the variety of their work (73%), and there has been no change in this from 2014.
- Since 2014 there is a lower level of satisfaction in the sense of achievement judges have in their job, with close to a majority of judges (45%) expressing dissatisfaction with the sense of achievement they have in their work, and this level of dissatisfaction has increased from 2014 when it was 38%.

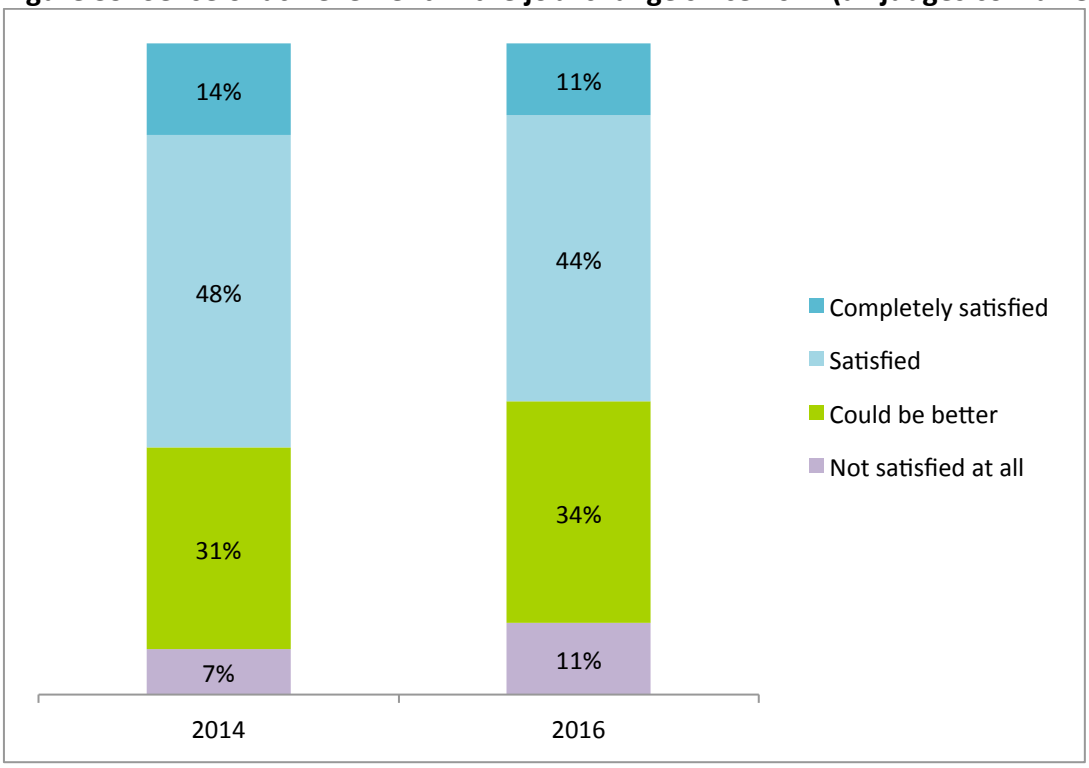
Table 27: Satisfaction with aspects of the job (all judges combined)

To what extent are you satisfied with the following?	Not satisfied at all	Could be better	Satisfied	Completely satisfied
Challenge of the job	5%	18%	59%	18%
Variety of work	6%	21%	57%	16%
Sense of achievement in the job	11%	34%	44%	11%

Sense of achievement in the job

As noted above, this is the one area where some change has occurred when looking at all judges combined. There were increases in those who are not satisfied at all with the sense of achievement in their job (up 4%) or feel their sense of satisfaction could be better (up 3%), resulting in a 7% drop in judges who say they are satisfied with the sense of achievement they have in their job.

Figure 59: Sense of achievement in the job: change since 2014 (all judges combined)



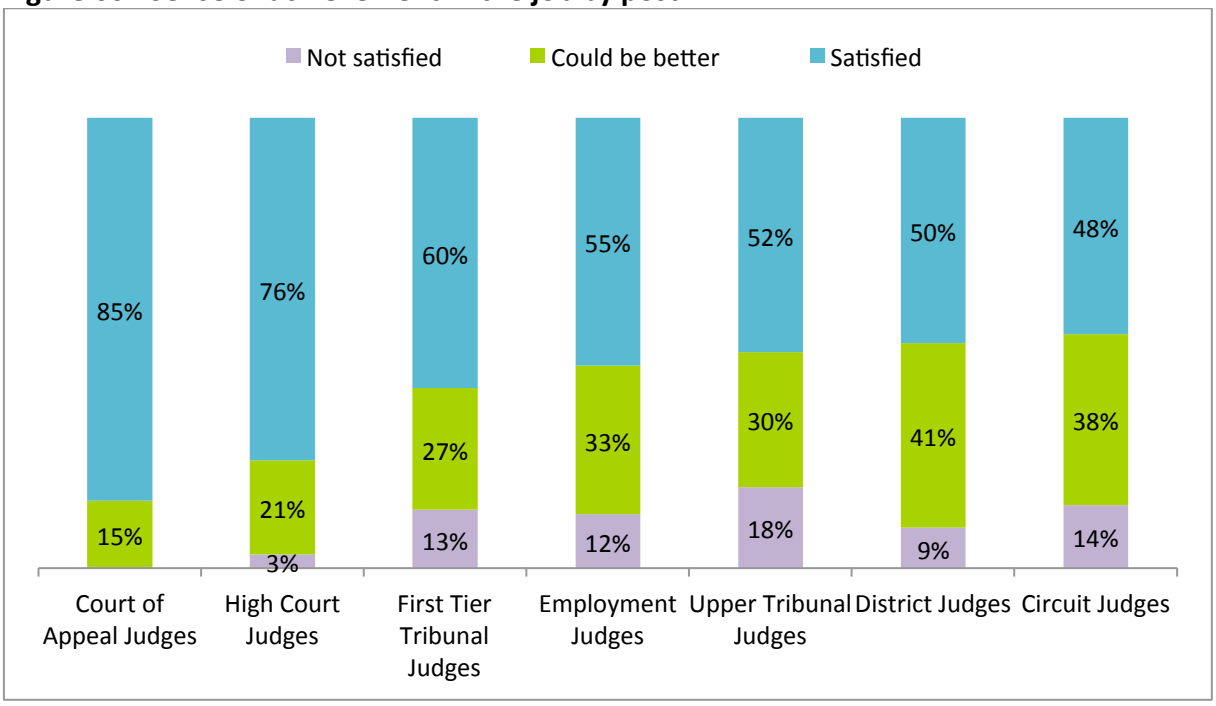
By Post

Sense of achievement in the job

There are substantial differences between judicial posts in the extent to which judges said they were satisfied with the sense of achievement in their job:

- The overwhelming majority of Court of Appeal Judges (85%) and High Court Judges (76%) were satisfied with the sense of achievement in their job.
- Only a minority of Circuit Judges (48%), half of District Judges (50%) and just over half of Upper Tribunal Judges (52%) were satisfied with the sense of achievement in their job.

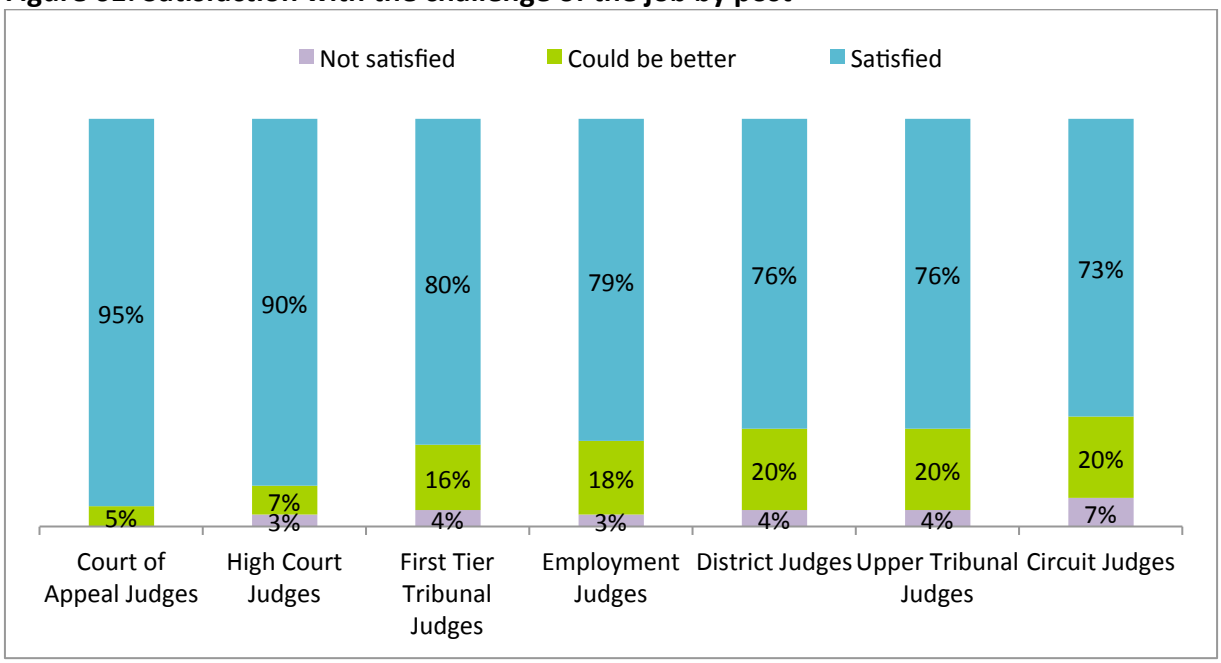
Figure 60: Sense of achievement in the job by post



Challenge of the job

The overwhelming majority of judges in all judicial posts were satisfied with the challenge of their job.

Figure 61: Satisfaction with the challenge of the job by post

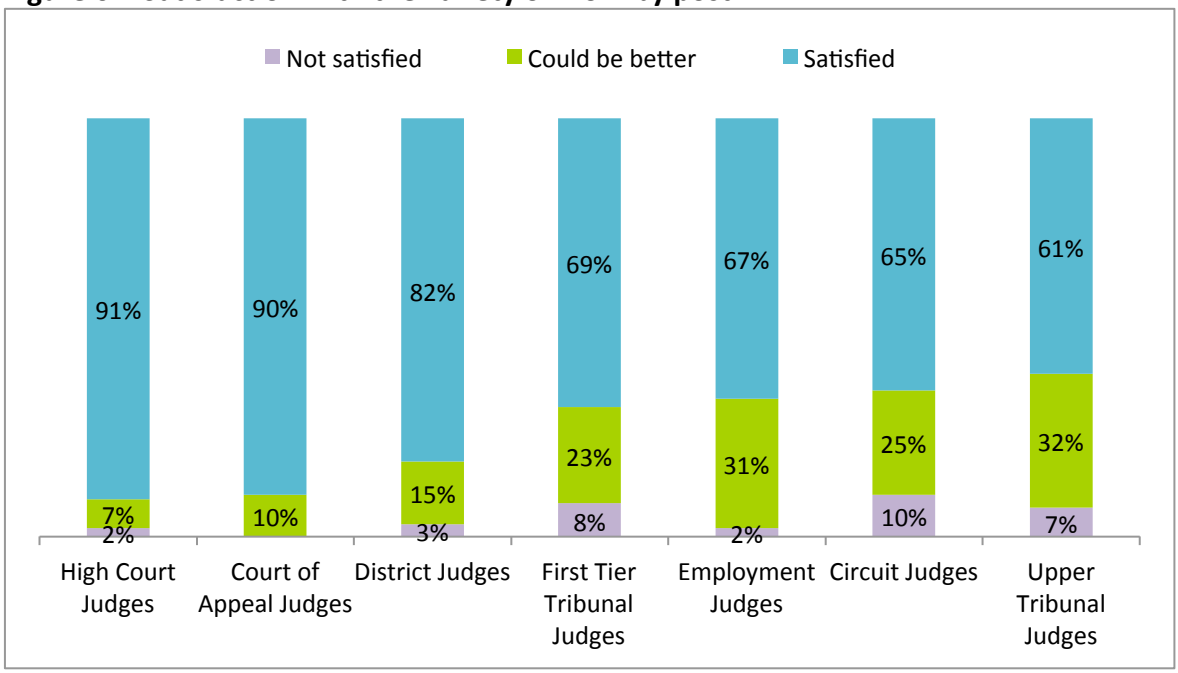


Variety of work

There is a substantial variation in the extent to which judges in different judicial posts are satisfied with their variety of work.

- Satisfaction in the variety of work is highest amongst High Court, Court of Appeal and District Judges, where almost all judges said they are satisfied.
- While a majority of judges in other judicial posts are satisfied with the variety of work, the satisfaction levels are lowest amongst tribunal judges and Circuit Judges.

Figure 62: Satisfaction with the variety of work by post



7. Change in the Judiciary

The 2016 JAS repeated several questions from the 2014 JAS about the changes being experienced by the judges in their working lives.

7.1 Change since appointment

Most judges (90%) feel their job has changed since they were first appointed in ways that affect them, and there is very little change in judges' views on this since 2014 (89%).

- A majority of judges (51%) said there has been a **large amount of change** in their job that has affected them since they were first appointed.

Table 28: Change in job since first appointed

To what extent do you feel your job has changed since you were first appointed?	2016 JAS	2014 JAS	% change since 2014
It has changed completely	14%	9%	+5%
There has been a large amount of change	51%	51%	0%
There been some change which affects me	25%	29%	-4%
Very small amount and does not affect me	5%	6%	-1%
It has not changed at all	5%	5%	0%

7.2 General views on change in the judiciary

Judges were also asked to respond to a number of statements about change in the judiciary:

- Over three-quarters of all judges (78%) felt that some change is needed in the judiciary, but almost all judges (88%) said that the judiciary needs to have control over policy changes that affect judges,
- Over two thirds of judges (69%) said that too much change has been imposed on the judiciary in recent years, and a majority of judges (52%) said that the amount of change in recent years has brought judges to breaking point
- Judges were divided over whether the judiciary manages change well
- But more than three-quarters of judges (76%) said that despite any reservations they may have about changes to the judiciary they still enjoyed their job as a judge.

Table 29: Judges general views on change in the judiciary

	Strongly Disagree	Disagree	Not Sure	Agree	Strongly Agree
The judiciary manages change well	7%	28%	25%	36%	4%
Too much change has been imposed on the judiciary in recent years	1%	12%	18%	41%	28%
Some change is needed in the judiciary	1%	6%	15%	70%	8%
The amount of change in recent years has brought judges to breaking point	2%	18%	28%	28%	24%
The judiciary needs to have control over policy changes that affect judges	0%	3%	9%	38%	50%
Despite any reservations I may have about changes in the judiciary I still enjoy my job as a judge	3%	6%	15%	52%	24%

7.3 Changes that concern judges most

Judges were asked to indicate which changes in the judiciary concerned them most. A majority of all judges are most concerned by the following changes to the judiciary:

- Staff reductions, judicial morale, the increase in litigants in person, fiscal constraints, stressful working conditions, and the ability to attract the best people into the judiciary.
- Increase in litigants in person has risen to the 3rd highest concern on the list (from 5th in 2014).

Table 30: Changes of greatest concern to judges (2016 and 2014)

What changes to the judiciary concern you most?	2016 JAS (most concerned by the following changes)	2014 JAS (what are the judiciary's main future challenges)
Staff reductions	88%	92%
Judicial morale	83%	86%
Increase in litigants in person	71%	77%
Fiscal constraints	60%	81%
Stressful working conditions	56%	----
Ability to attract the best people into the judiciary	56%	78%
Loss of judicial independence	50%	65%
Loss of experienced judges	48%	56%
Court closures	45%	----
Personal safety for judges	34%	34%
Introduction of digital working in courts	26%	----
Reduction in face-to-face hearings	25%	----

Changes that concern judges most by judicial post

Judicial morale and staff reductions were consistently rated of most concern by judges in all judicial posts.

Figure 63: Extent of concern about judicial morale by post

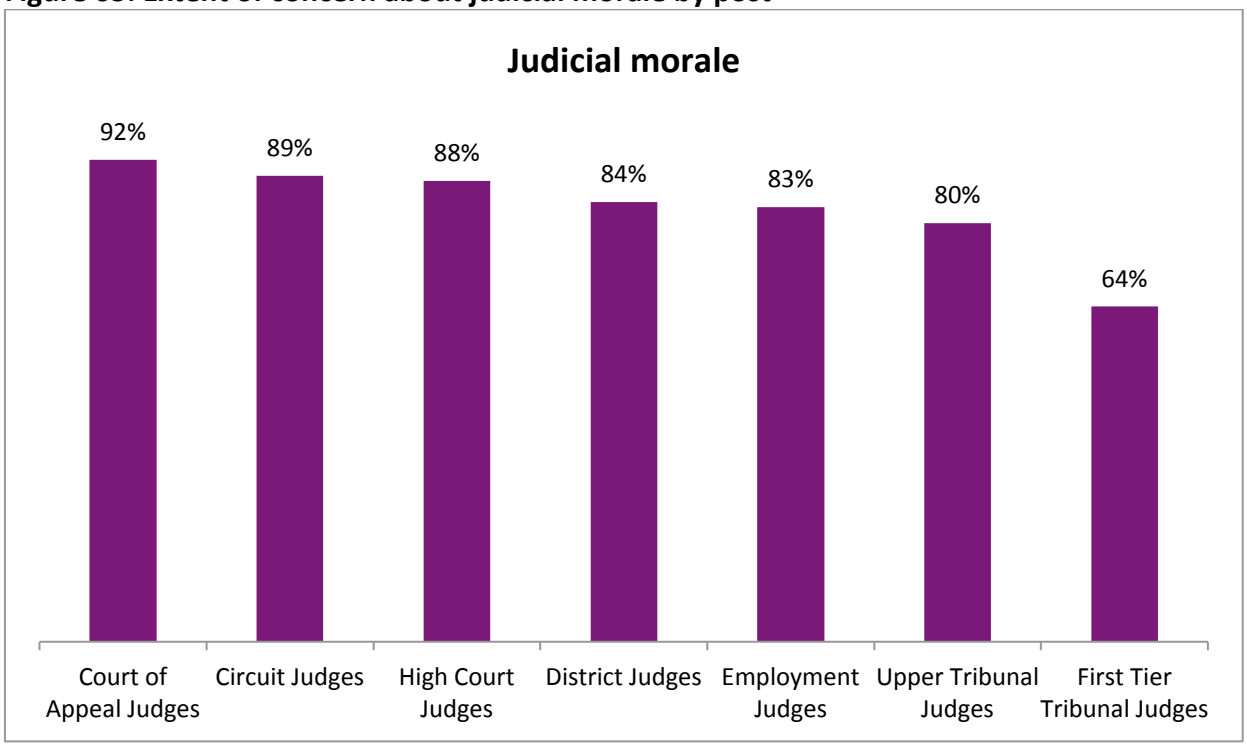
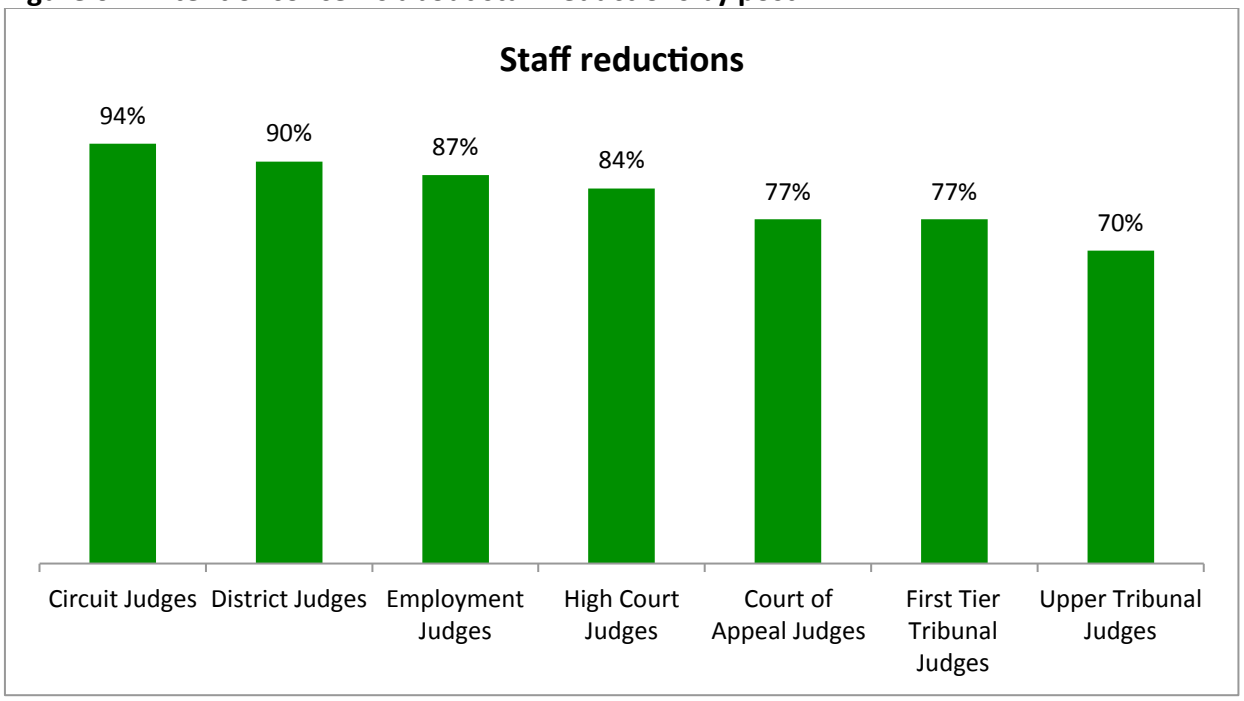


Figure 64: Extent of concerns about staff reductions by post



The issues of next greatest concern to a majority of judges in most judicial posts were attracting the best people to the judiciary and the increase in litigants in person, followed by fiscal constraints, the loss of experienced judges, court closures and loss of judicial independence.

Figure 65: Extent of concerns about attracting the best people to the judiciary by post

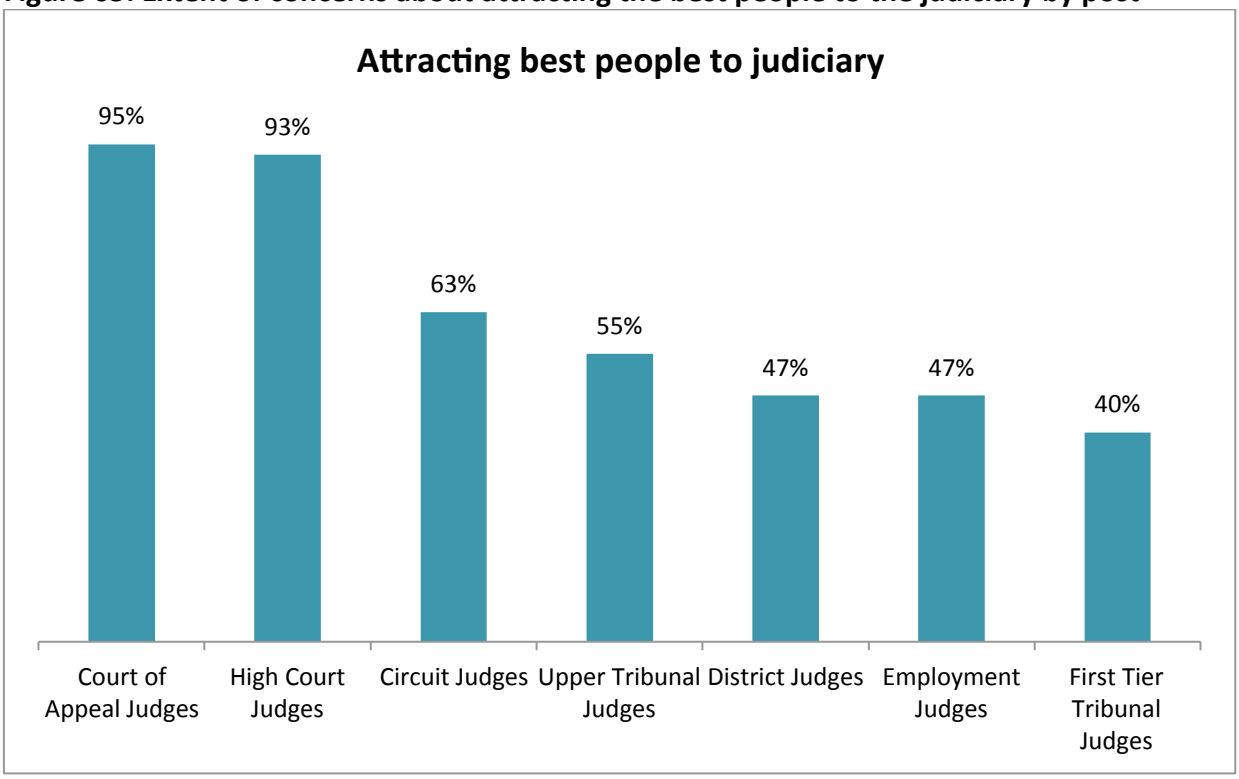


Figure 66: Extent of concerns about litigants in person by post

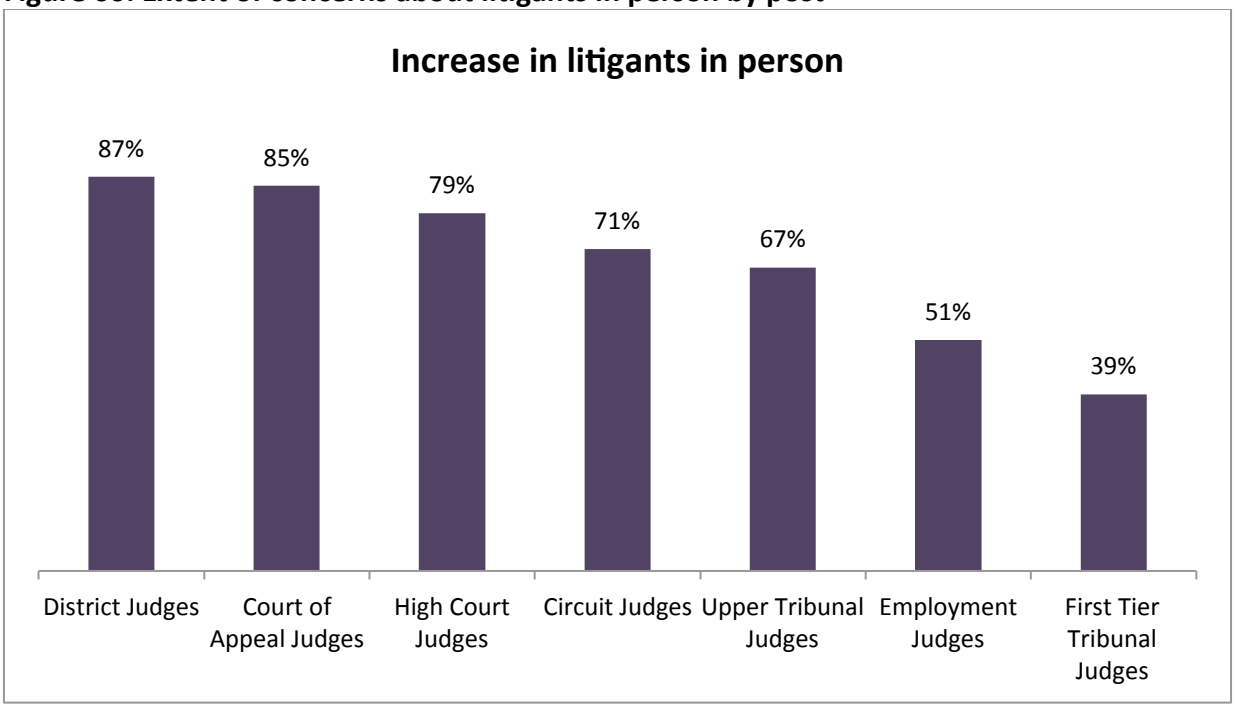


Figure 67: Extent of concerns about fiscal constraints by post

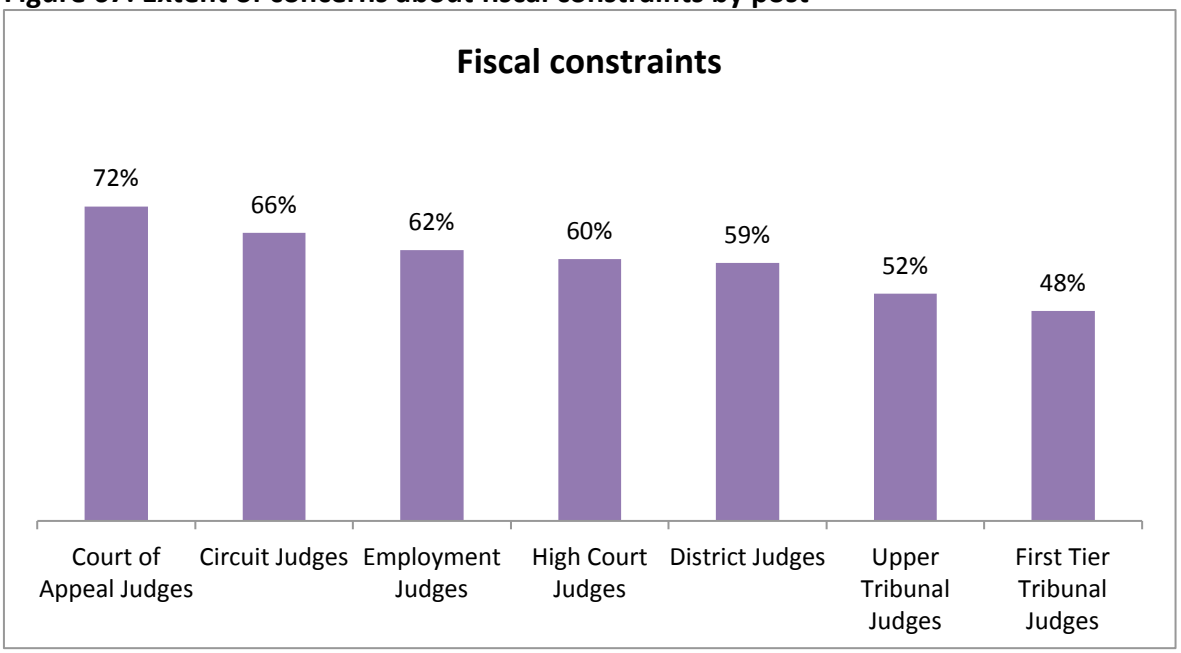


Figure 68: Extent of concerns about loss of experienced judges by post

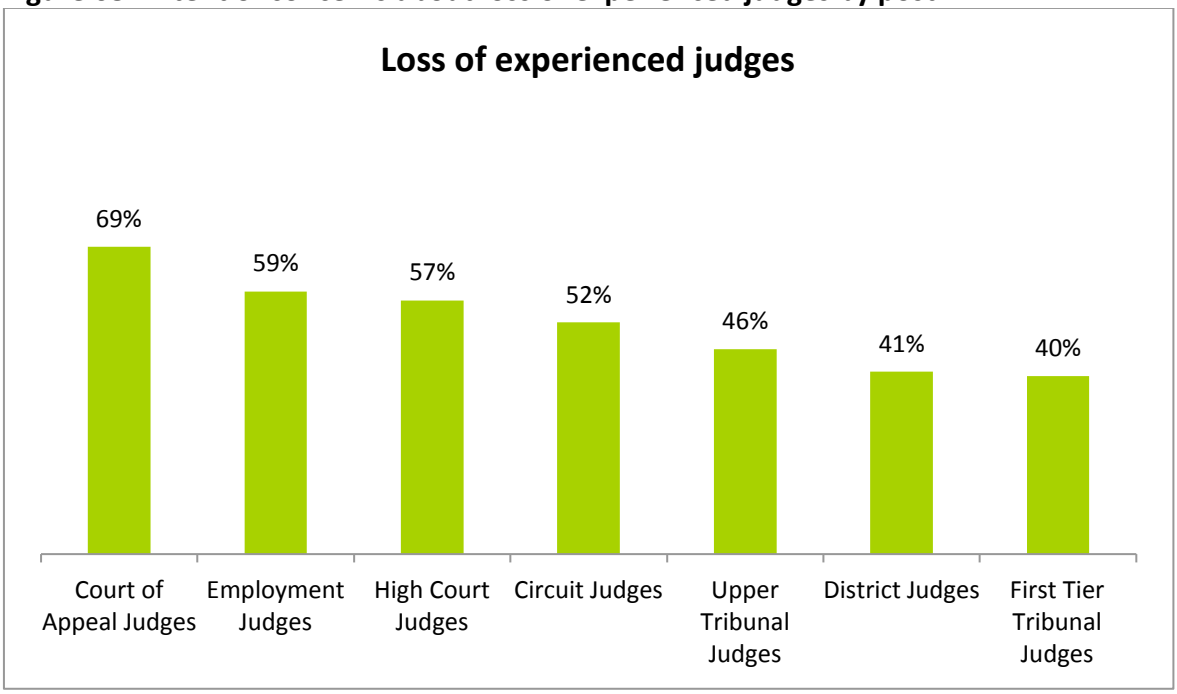


Figure 69: Extent of concerns about loss of judicial independence by post

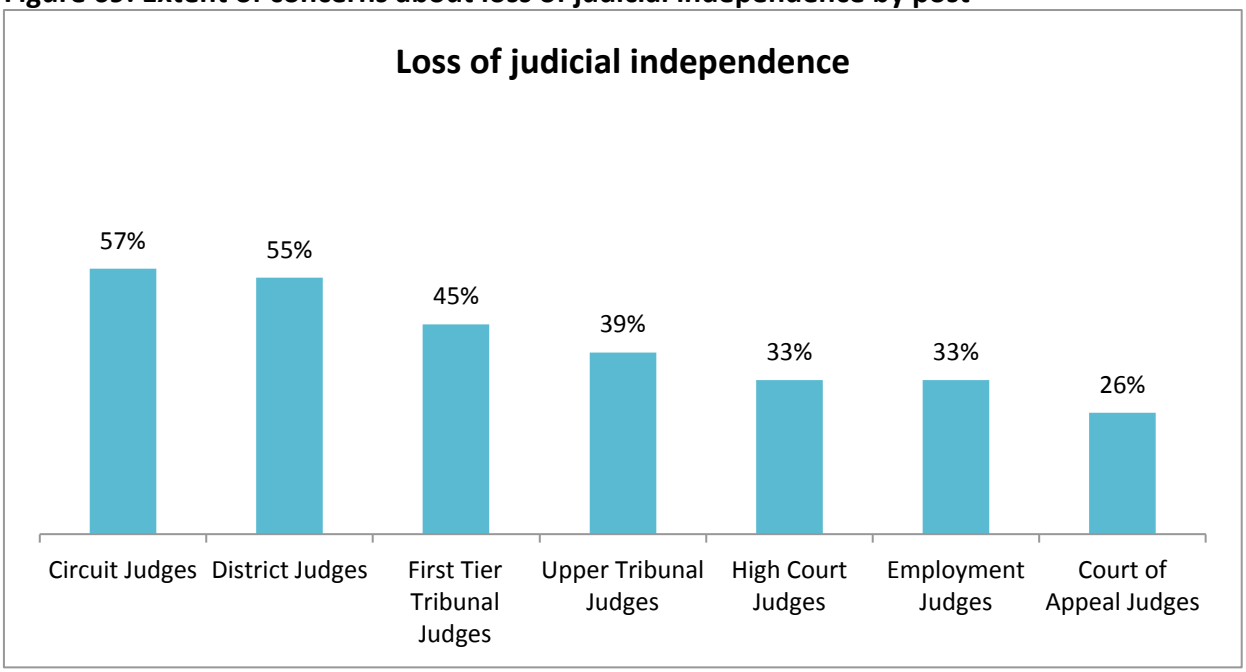
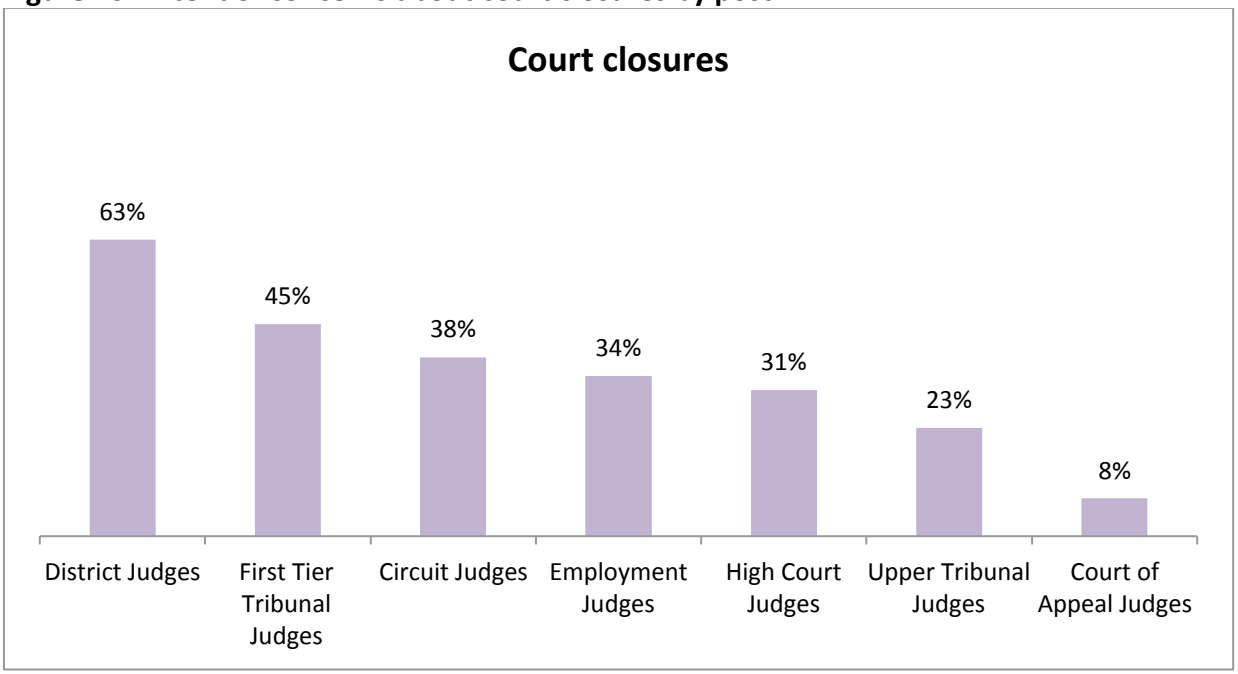


Figure 70: Extent of concerns about court closures by post



Personal safety, reduction in face-to-face hearings and the introduction of digital working in courts were not of most concern to most judges in almost all judicial posts. The one exception was personal safety for District Judges, where 51% rated this as an issue of most concern.

Figure 71: Extent of concerns about personal safety by post

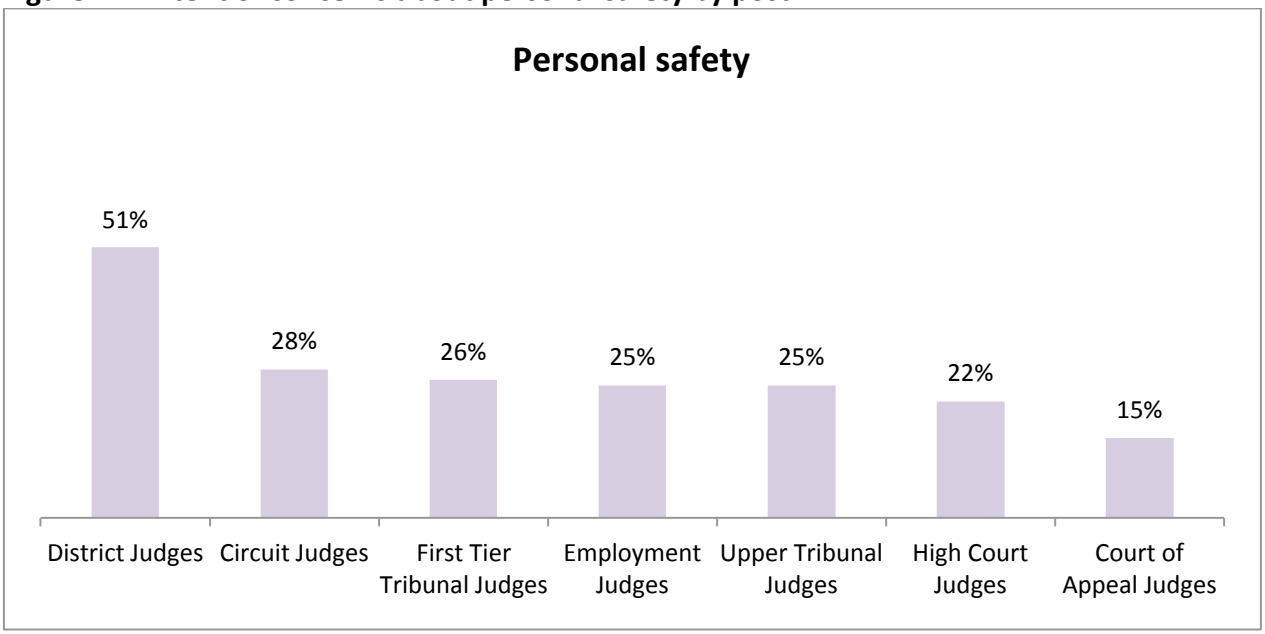


Figure 72: Extent of concerns about reduction in face-to-face hearings by post

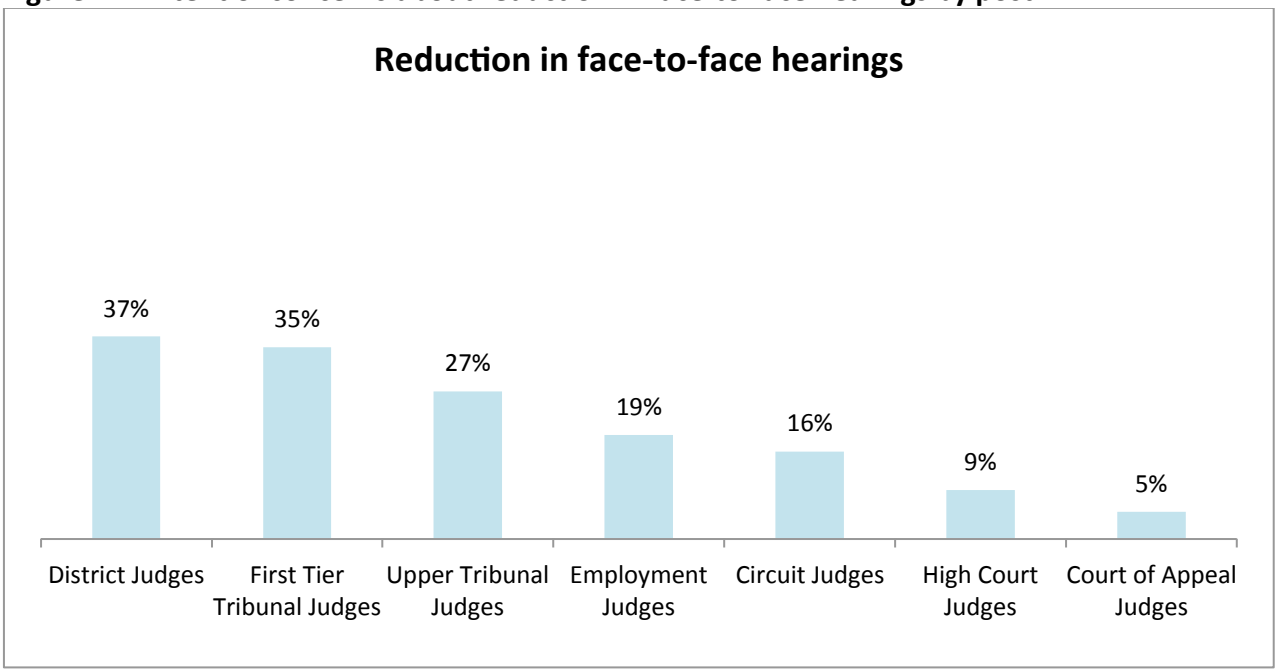
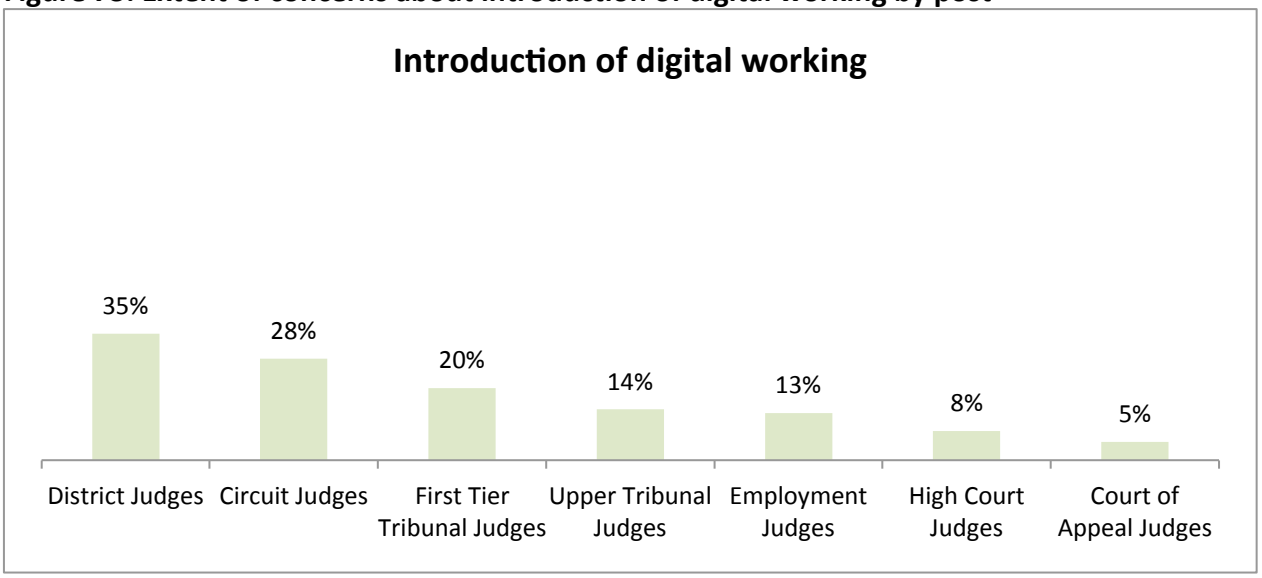


Figure 73: Extent of concerns about introduction of digital working by post



8. Future Planning

The 2016 JAS repeated several questions from the 2014 JAS about judges' plans for staying in the judiciary until they reach compulsory retirement age.

8.1 Plans for early departure from the judiciary

Judges were asked if they were considering leaving the judiciary in the next 5 years other than by reaching compulsory retirement age:

- Of those judges that will not reach compulsory retirement age in the next 5 years, over a third (36%) said they were considering it, and almost a quarter (23%) are currently undecided.
- There has been an increase of 4% since 2014 in those considering leaving the judiciary early in the next 5 years.
- The proportion of judges in England and Wales that are considering leaving the judiciary early within the next 5 years is similar to the proportion in Scotland (39%) and Northern Ireland (40%), but England and Wales is the only jurisdiction to see a discernible increase in this proportion since 2014 (+5%).

Table 31: Plans for early departure from the judiciary

Are you considering leaving the judiciary early in the next 5 years?	2016 JAS	2014 JAS	% change from 2014
Yes	36%	31%	+5%
Currently undecided	23%	22%	+1%
No	41%	47%	-6%

8.2 Factors promoting early departures

The following table shows the factors a majority of judges said were those that **would make them more likely to leave the judiciary early**. These are similar results to those for judges in Scotland and Northern Ireland.

Table 32: Factors promoting early departures

What factors would make you more likely to leave the judiciary early	2016 JAS
Limits on pay awards	68%
Reduction in pension benefits	68%
Increase in workload	57%
Further demands for out of hours work	54%
Stressful working conditions	54%
Reduction in administrative support	51%

8.3 Factors encouraging judicial retention

The 3 factors a majority of judges said would make them more likely to **remain in the judiciary** are:

- Higher remuneration (80%)
- Settled position on pension entitlements (57%)
- Better administrative support (56%)

These are similar results to those for judges in Scotland and Northern Ireland in 2016.

8.4 More Detailed Analysis of Judges' Early Departure Intentions

Courts and Tribunals

A higher percentage of courts judges (37%) than tribunal judges (32%) are intending to leave the judiciary early in the next 5 years, but the real differences emerge by individual judicial post.

By Post

The highest proportions of judges intending to leave the judiciary early in the next 5 years are found amongst High Court Judges (47%), Court of Appeal Judges (41%) and Circuit Judges (40%). These findings for the High Court are of particular importance, given the number of compulsory retirements that will occur in the High Court in this period (27) alongside some recruitment challenges for the High Court experienced in recent years.

Figure 74: Intentions to leave the judiciary early within the next 5 years by post

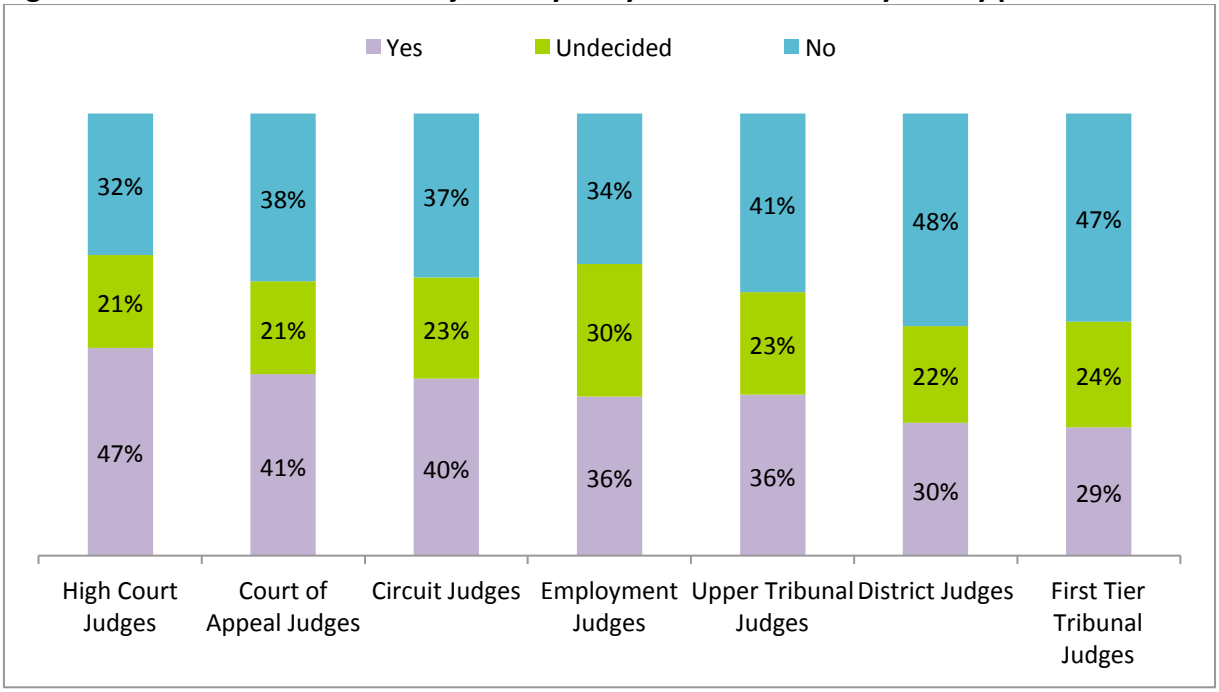


Table 33: Numbers of judges considering leaving in the next 5 years (by post)

	Those judges who said they were considering leaving the judiciary early in the next 5 years	
District Judges	117	
Circuit Judges	189	
High Court Judges	42	
Court of Appeal Judges	12	
Other[12]	13	
Total for Courts		**373**
First Tier Tribunal Judges	51	
Employment Judges	39	
Upper Tribunal Judges	17	
Total for Tribunals		**107**
TOTAL		**480**

[12] This includes Judge Advocates General, Masters, Registrars and Costs Judges.

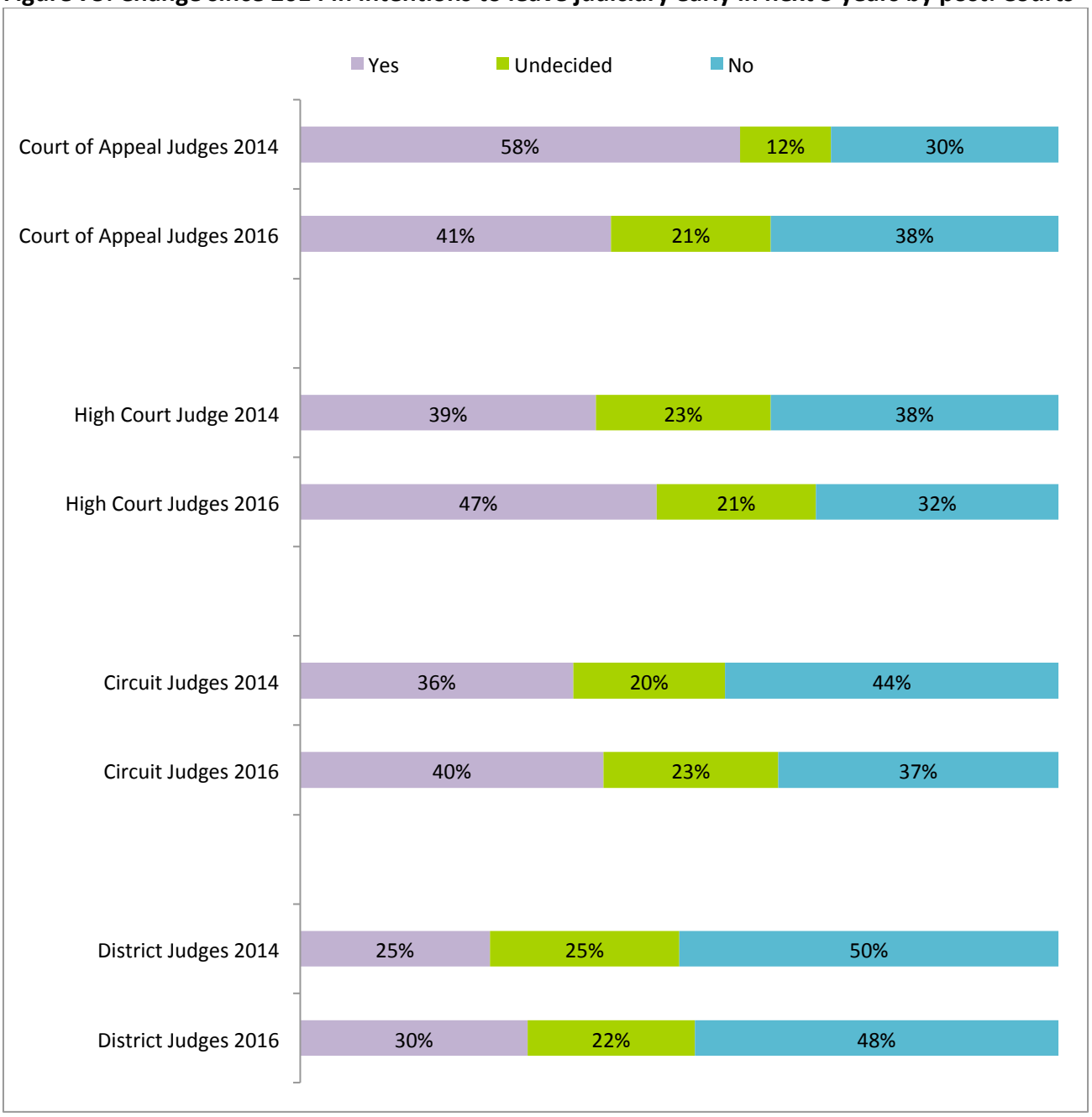
Comparison to 2014 JAS results

With the exception of Court of Appeal Judges, the proportion of judges saying they are considering leaving the judiciary early in the next 5 years has increased for every other judicial post in both the courts and tribunals judiciary.

Courts Judiciary

- **The proportion of High Court Judges considering leaving early in the next 5 years has increased by 8% (the highest increase in the courts judiciary) and amounts to 42 judges.**
- The proportion of District Judges considering leaving early by 2021 has increased by 5% and amounts to 117 judges.
- The proportion of Circuit Judges considering leaving early by 2021 has increased by 4% and amounts to 189 judges.

Figure 75: Change since 2014 in intentions to leave judiciary early in next 5 years by post: Courts



Tribunals Judiciary

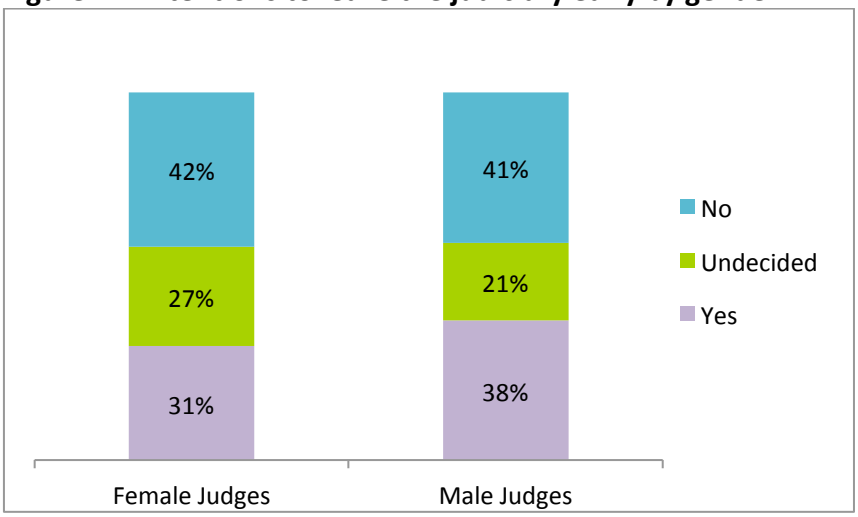
- **The proportion of Upper Tribunal Judges considering leaving early in the next 5 years has increased by 19% (the highest increase of any judicial post), and amounts to 17 judges.**
- The proportion of Employment Judges considering leaving early has increased by 10%, and amounts to 39 judges.
- The proportion of First Tier Tribunal Judges considering leaving early has increased by 3%, and amounts to 51 judges.

Figure 76: Change since 2014 in intentions to leave judiciary in next 5 years by post: Tribunals

By Gender

While there is little difference between male and female judges in their intentions to leave the judiciary early in the next 5 years, it is concerning given the efforts to increase female representation in the judiciary that almost a third (31%) of all female judges are currently considering leaving the judiciary early in the next 5 years. This amounts to 144 of 472 female judges who took part in the survey and are not scheduled to retire in the next 5 years.

Figure 77: Intentions to leave the judiciary early by gender



By Ethnicity

While there is little difference between White and Black and Minority Ethnic (BAME) judges in their intentions to leave the judiciary early in the next 5 years, it is also concerning given the efforts to increase BAME representation in the judiciary that over a third (39%) of all BAME judges are considering leaving in the next 5 years. This amounts to 30 of the 77 BAME judges who took part in the survey and are not scheduled to reach retirement age in the next 5 years.

Figure 78: Intentions to leave the judiciary early by ethnicity

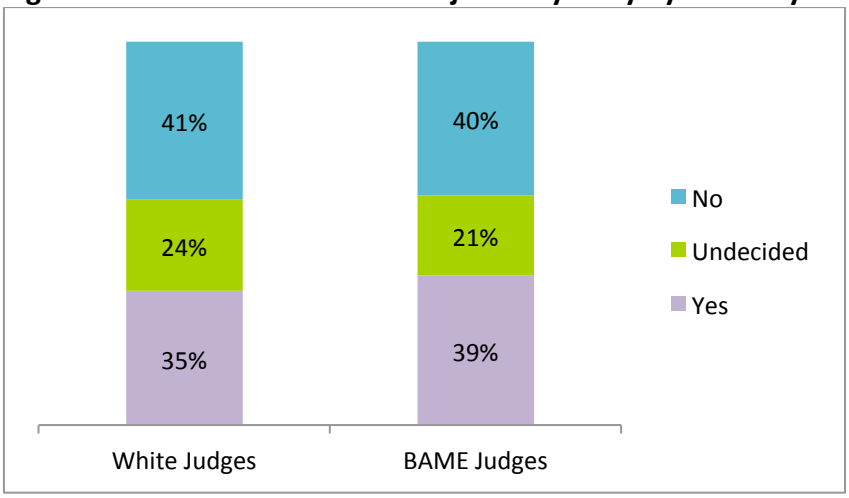


Table 34: Number of judges and early retirement intentions by gender and ethnicity

	Yes	Undecided	No	Will be retired
Female Judges	144	128	200	47
Male Judges	323	180	350	199
White Judges	440	292	513	240
BAME Judges	30	16	31	6

By Length of Service

While it might reasonably be expected that a judge's date of first appointment to a salaried judicial post would be related to intentions to leave the judiciary before full retirement age in the next 5 years, there are some results to note on this issue:

- Over a quarter of all judges who have been in the judiciary for only 2-4 years are already considering leaving early within the next 5 years.
- Almost half of all judges who have been in the judiciary between 7-11 years are considering leaving early in the next 5 years.
- Over half of all judges who have been in the judiciary between 12-14 years are considering leaving early in the next 5 years.

Figure 79: Intentions to leave the judiciary early within the next 5 years by date of appointment

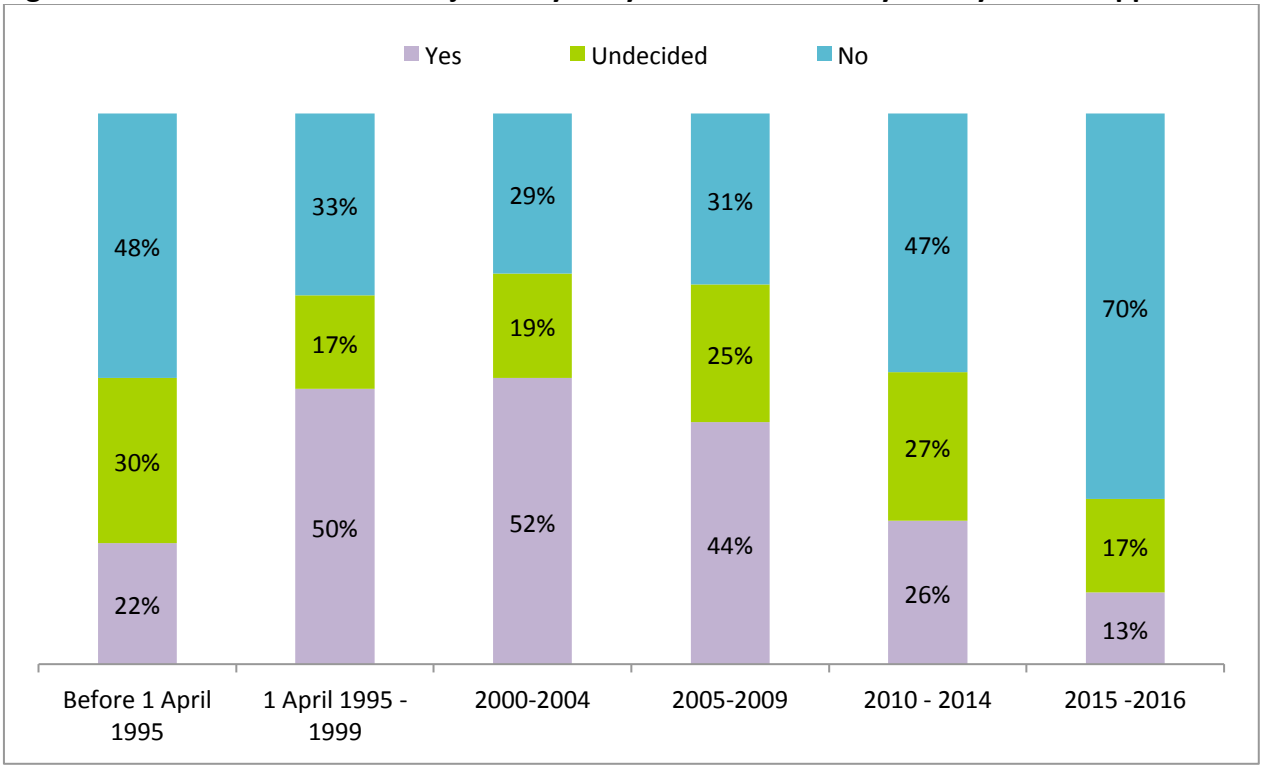


Table 35: Judges intending to leave early by date of first appointment to the salaried judiciary

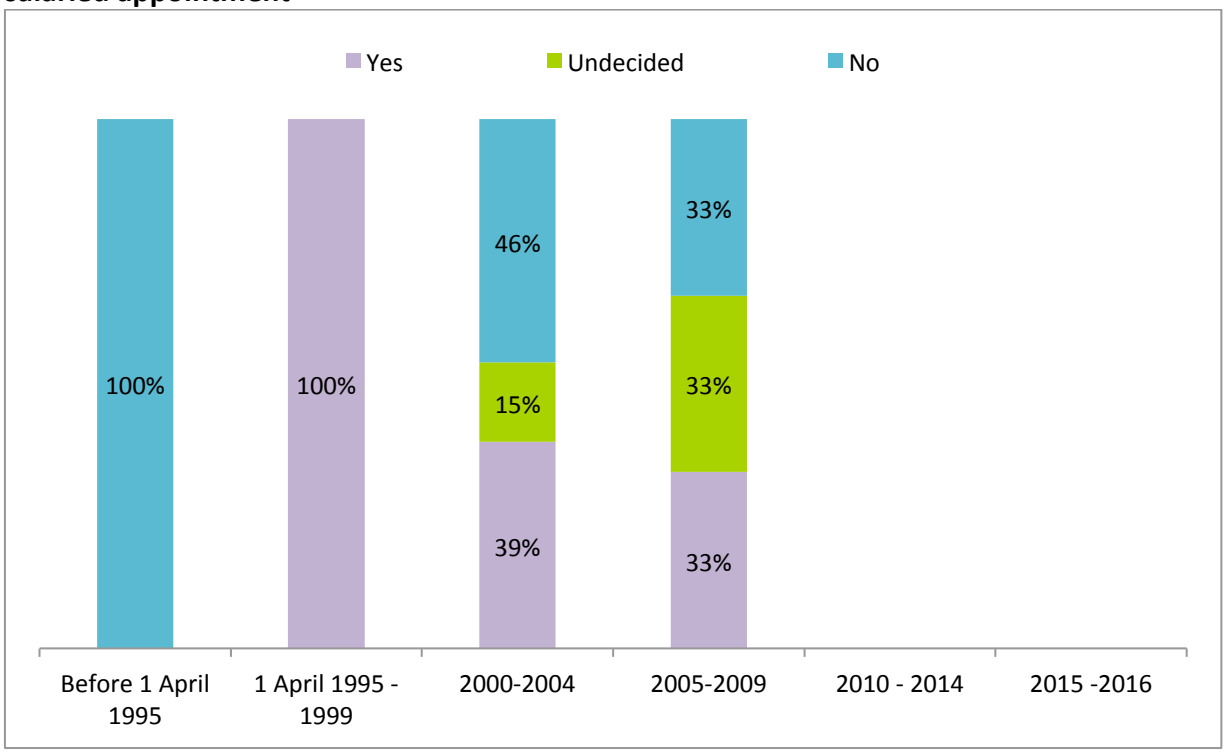
	Considering leaving early in the next 5 years	Currently undecided about leaving in the next 5 years	Not considering leaving early in the next 5 years
Before 1 April 1995	8	11	18
1 April 1995 - 1999	50	17	33
2000-2004	133	48	75
2005-2009	148	84	107
2010 - 2014	122	130	225
2015 -2016	17	21	88
Total number	**478**	**311**	**546**

Intentions to Retire Early in Next 5 Years by Post and Date of First Appointment to Salaried Post

The following explores how judges' intentions to leave the judiciary early are related to judicial post and date of joining the salaried judiciary.

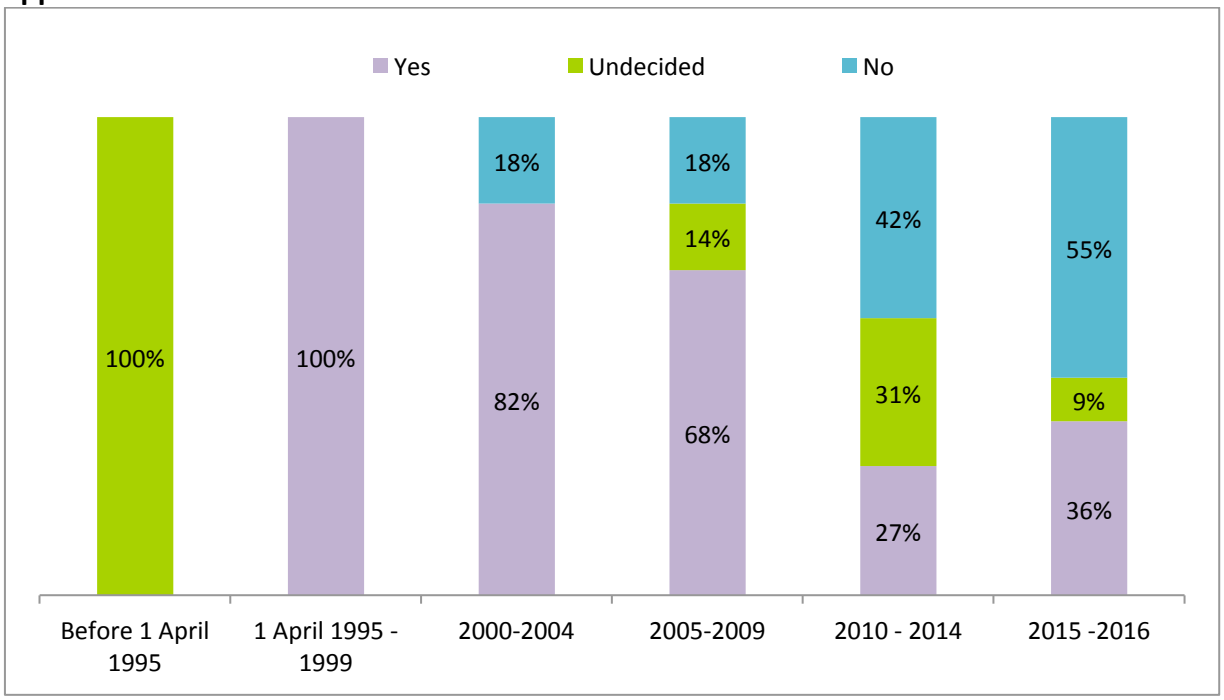
Court of Appeal Judges

Figure 80: Court of Appeal Judges intentions to retire early in next 5 years by date of first salaried appointment



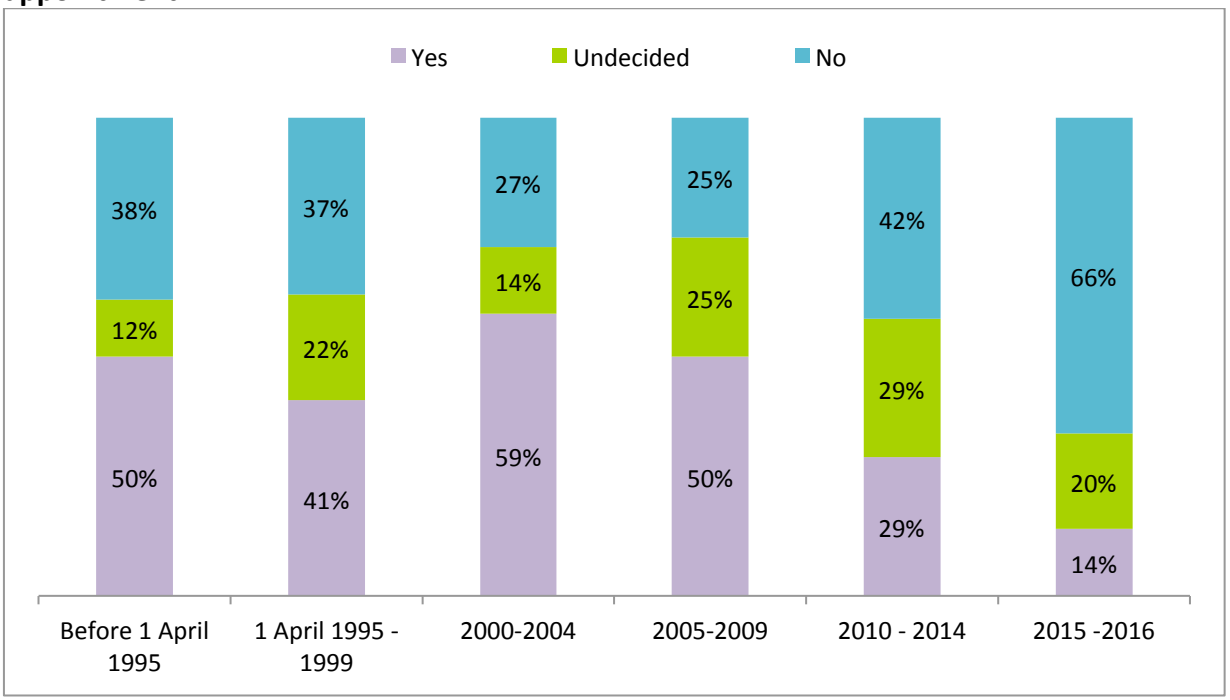
High Court Judges

Figure 81: High Court Judges intentions to retire early in next 5 years by date of first salaried appointment



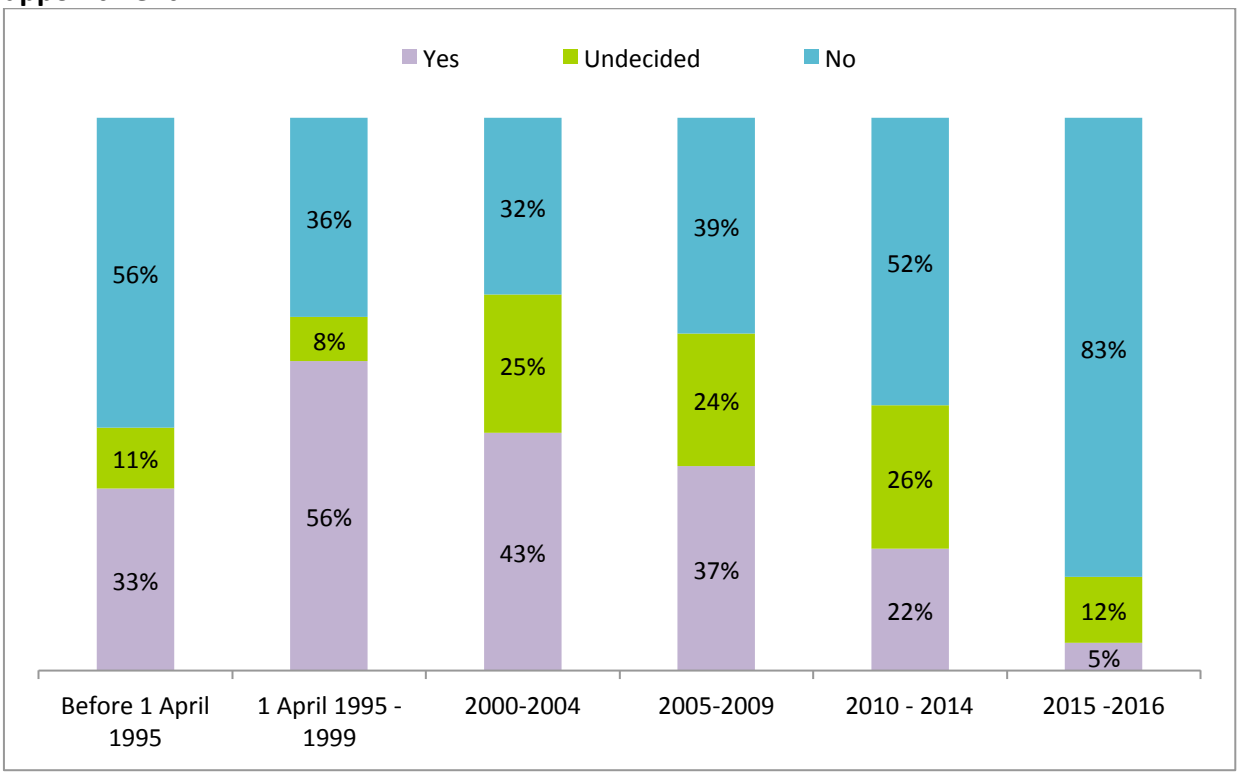
Circuit Judges

Figure 82: Circuit Judges intentions to retire early in next 5 years by date of first salaried appointment



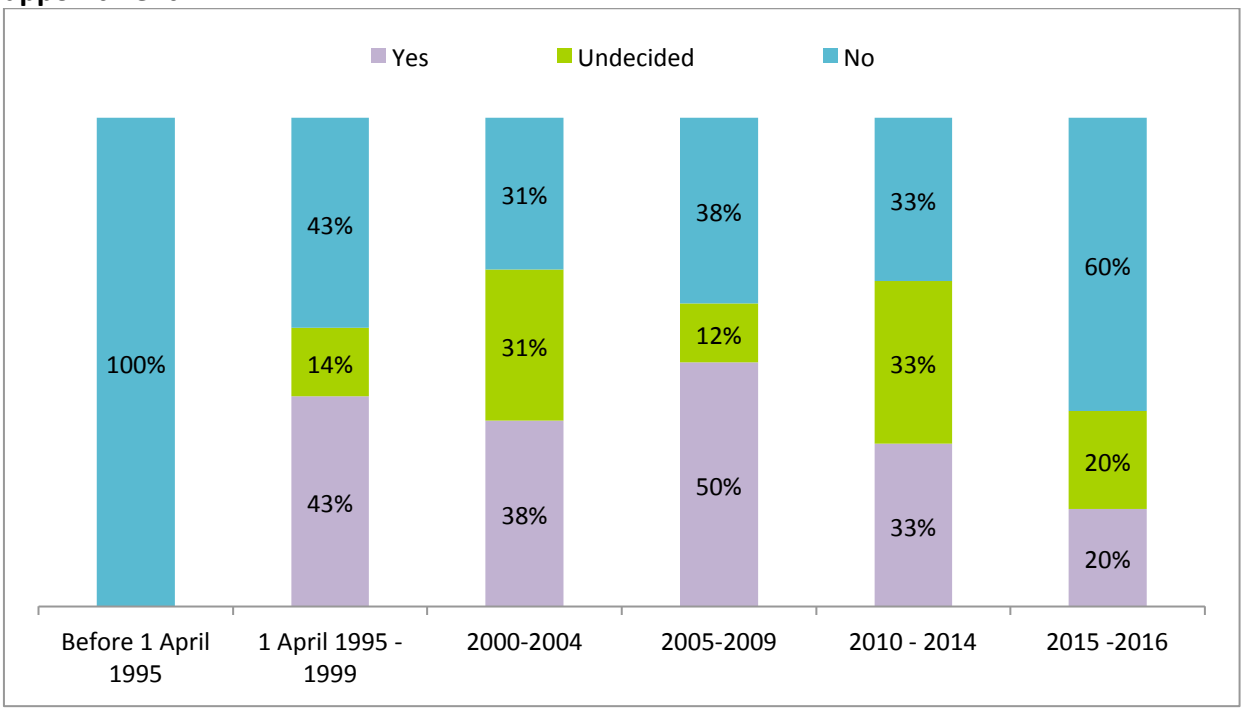
District Judges

Figure 83: District Judges intentions to retire early in next 5 years by date of first salaried appointment



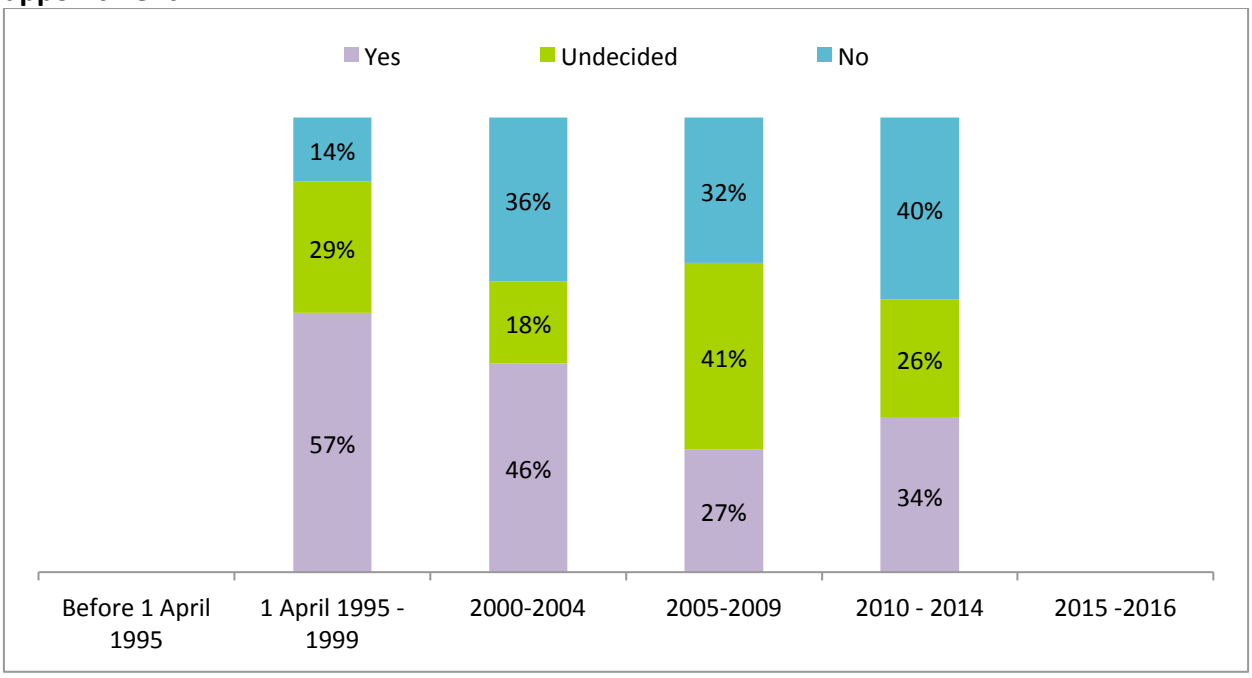
Upper Tribunal Judges

Figure 84: Upper Tribunal Judges intentions to retire early in next 5 years by date of first salaried appointment



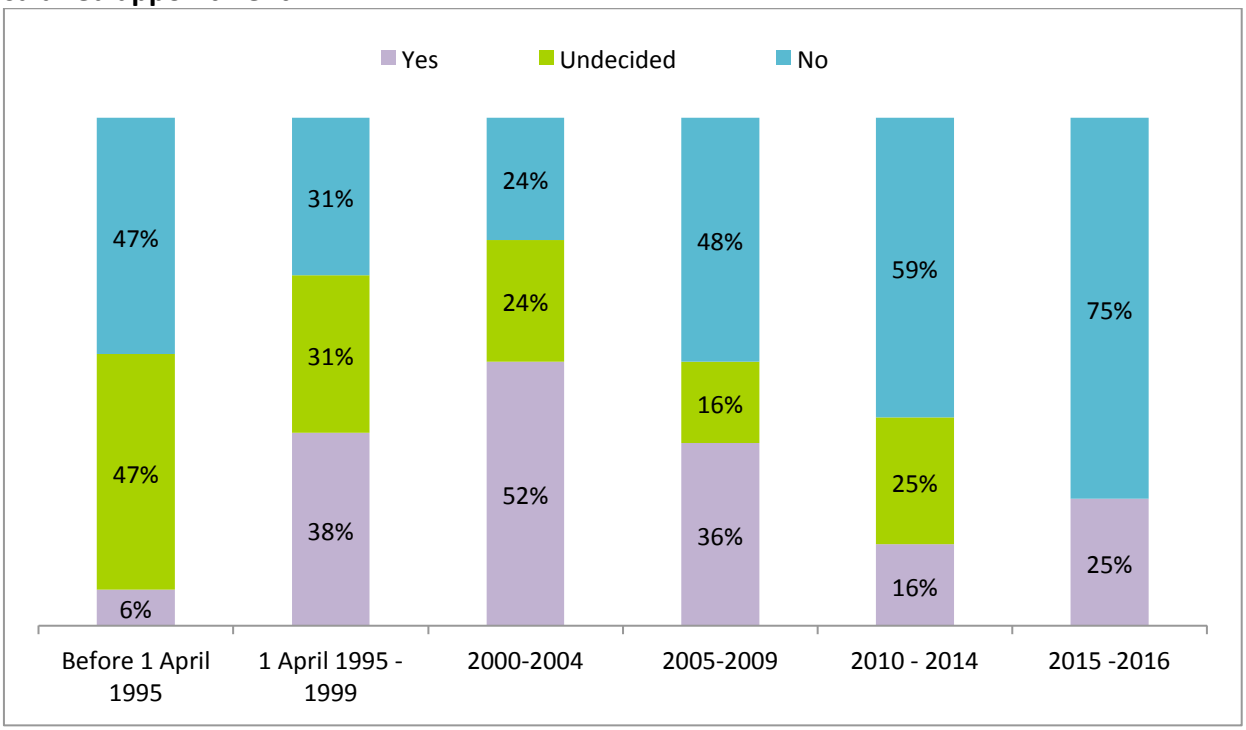
Employment Judges

Figure 85: Employment Judges intentions to retire early in next 5 years by date of first salaried appointment



First Tier Tribunal Judges

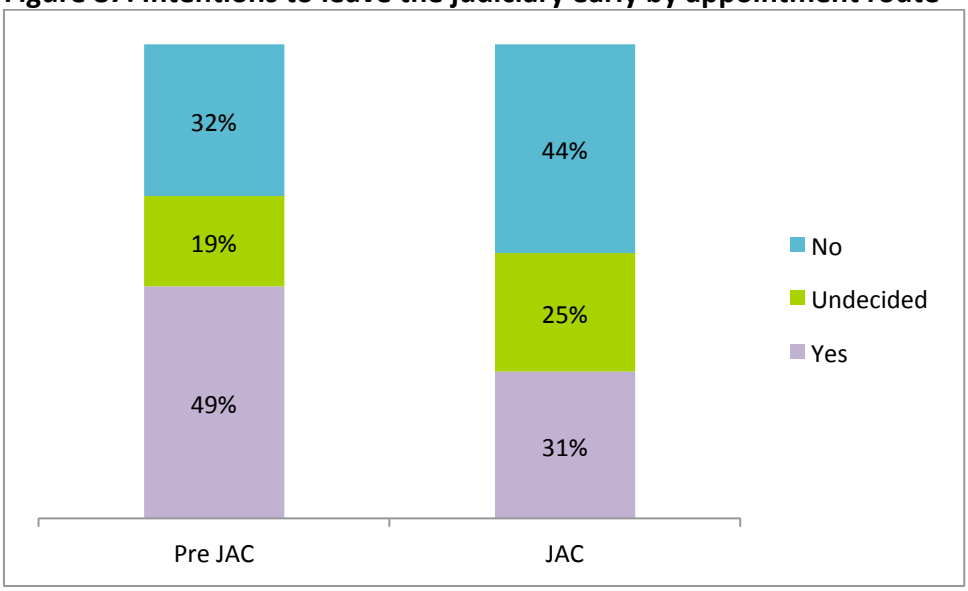
Figure 86: First Tier Tribunal Judges intentions to retire early in next 5 years by date of first salaried appointment



Pre JAC appointments and JAC appointments

Looking at the relationship between appointment route and intentions to leave the judiciary early in the next five years, the largest proportion of judges intending to leave early are those appointed under the pre-2005 judicial appointments process (49%). This may be reasonable to expect, as these are judges who are more likely to be closer to retirement age. However, over half (56%) of all judges appointed via the new Judicial Appointments Commission (JAC) process introduced in 2005 are now either considering leaving the judiciary early within the next 5 years (31%) or are currently undecided about this (25%).

Figure 87: Intentions to leave the judiciary early by appointment route



8.5 Factors that would make judges more likely to leave

The following examines the factors that judges said would make them more likely to leave the judiciary early in the next 5 years. The responses are broken down according to whether the judges said they were already considering leaving early, were currently undecided or were not intending to leave early.

Figure 88: Factors that would make judges already considering leaving early more likely to leave

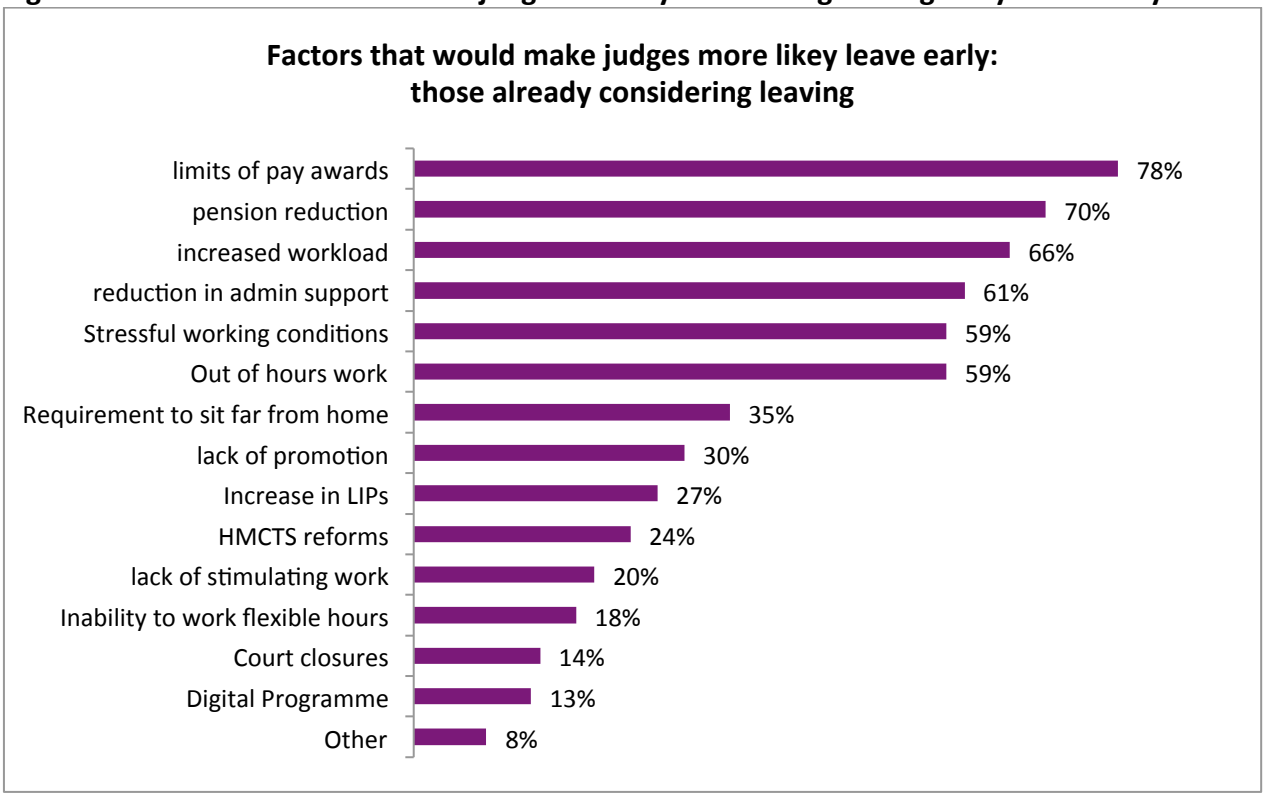


Figure 89: Factors that would make judges who are currently undecided more likely to leave

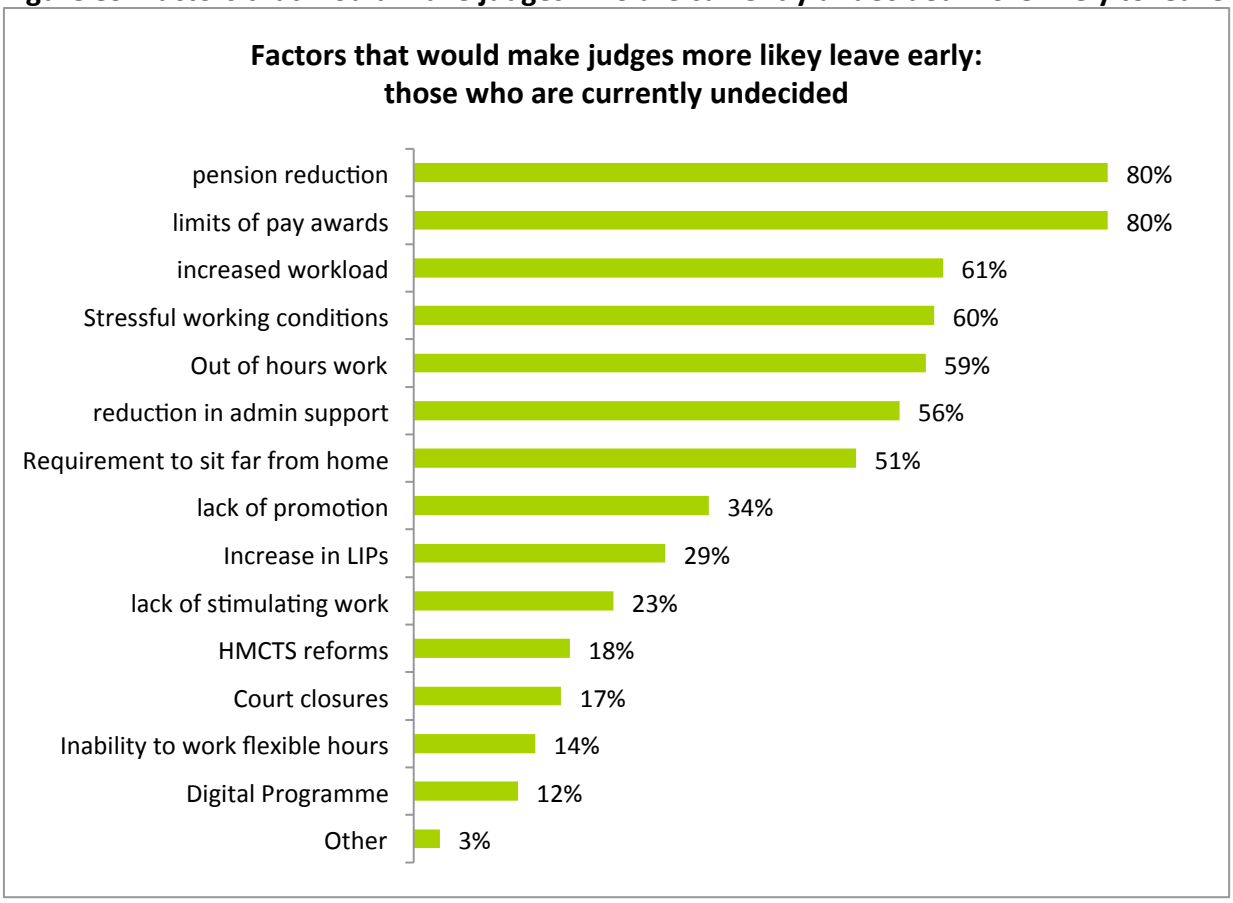
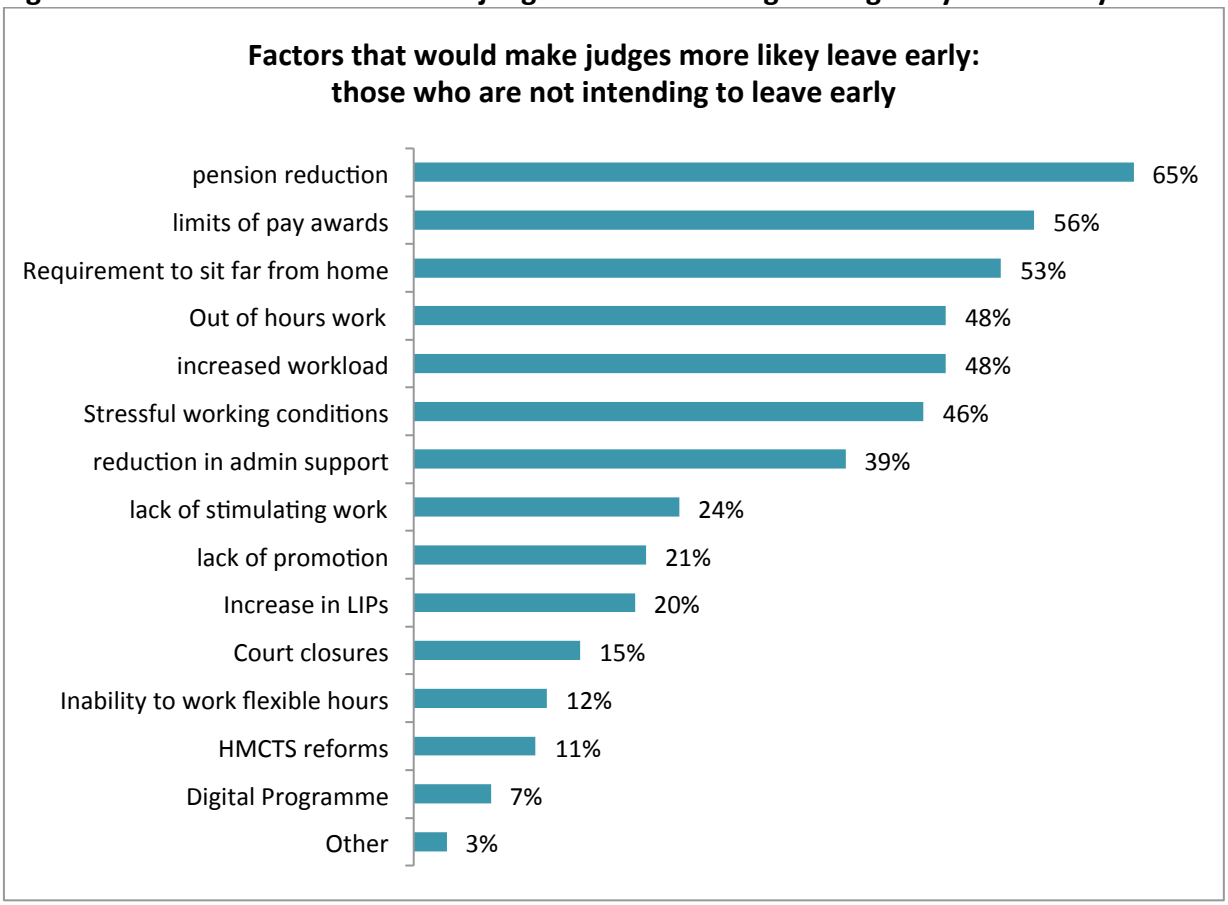


Figure 90: Factors that would make judges not considering leaving early more likely to leave



9. Joining the Judiciary

9.1 In retrospect would you have applied?

A new question was asked in the 2016 JAS to try to assess the extent to which judges may now regret joining the judiciary. Judges were asked: *Knowing what you know now about your job as a judge would you still have applied?*

A majority of judges (61%) said they would still have applied; almost a third (27%) were unsure, and a small minority (12%) said they would not have applied.

Table 36: Retrospective view of applying to the judiciary

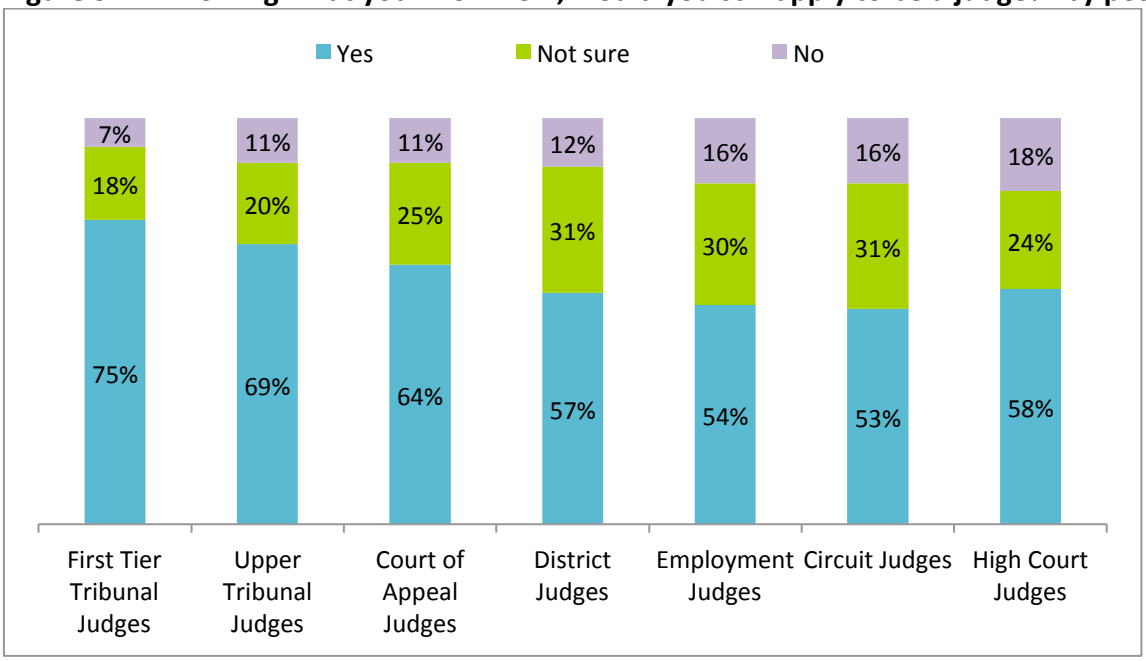
Knowing what you know now, would you still have applied to be a judge?	2016 JAS
Yes	61%
Not sure	27%
No	12%

By Post

The judicial posts with the highest percentage of judges who said they would not have applied knowing what they now know about their job were High Court, Circuit and Employment Judges.

- Amongst High Court Judges, 18% said they would not have applied and another 24% said they were not sure if they would have applied.
- Amongst Circuit Judges, 16% said they would not have applied and another 31% said they were not sure if they would have applied.
- Amongst Employment Judges, 16% said they would not have applied and another 30% said they were not sure if they would have applied.

Figure 91: "Knowing what you know now, would you still apply to be a judge?" by post



9.2 Recommending the Judiciary as a Job

In 2014, judges were asked the reasons why they would encourage suitable people to apply to join the judiciary, but they were not asked directly whether they would do so. A new question was asked in the 2016 JAS: *Would you encourage suitable people to apply to join the judiciary?*

Just over a majority of judges (57%) said they would encourage suitable people to apply to the judiciary, but a large proportion (43%) said they would either not encourage suitable people to apply (17%) or were not sure if they would do so (26%).

Table 37: Willingness to encourage applications

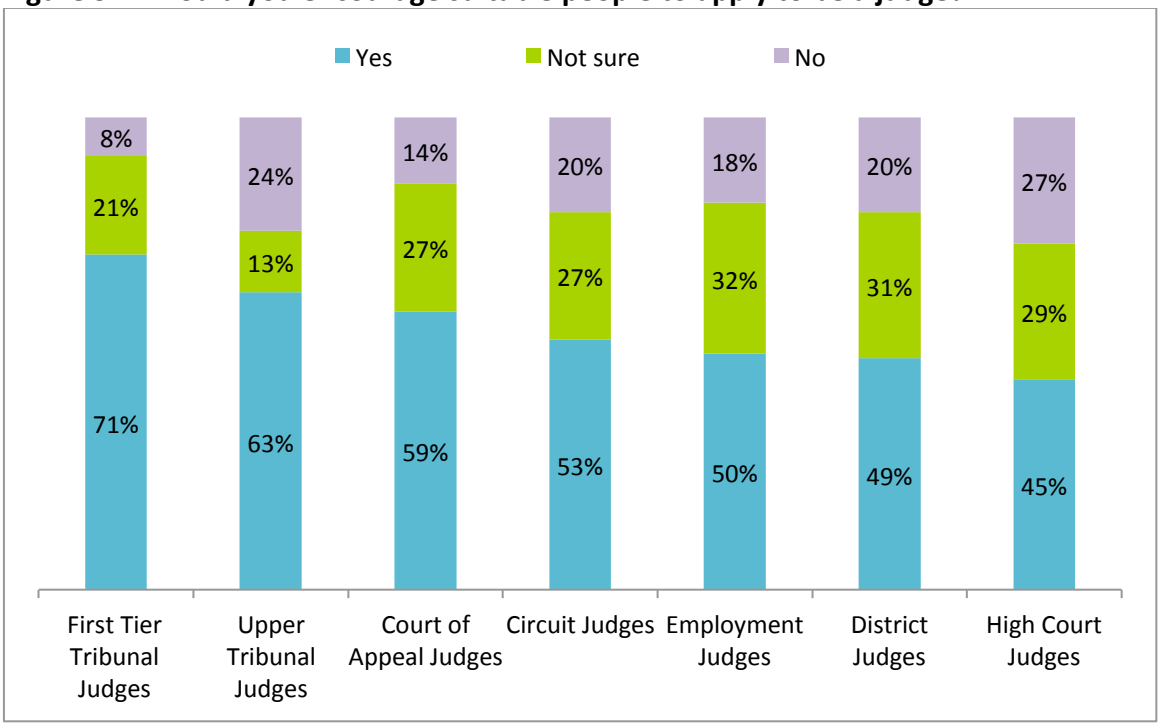
Would you encourage suitable people to apply to join the judiciary?	2016 JAS
Yes	57%
Not sure	26%
No	17%

By Post

There are clear differences by judicial post, with First Tier Tribunal Judges most likely to encourage suitable people to apply (71%), and High Court Judges least likely to encourage suitable people to apply (45%).

- Over half (56%) of High Court Judges and over half (51%) of District Judges either would not or are not sure whether they would encourage suitable people to apply to be a judge.
- Half (50%) of Employment Judges would not or are not sure whether they would encourage suitable people to apply to be a judge.
- Almost half (47%) of Circuit Judges either would not or are not sure whether they would encourage suitable people to apply to be a judge.

Figure 92: Would you encourage suitable people to apply to be a judge?



When asked the **reasons why they would encourage suitable applicants** to apply to join the judiciary, a majority of judges gave 4 reasons:

- Chance to contribute to justice being done (79%)
- Challenge of the work (75%)
- Intellectual satisfaction (70%)
- Public Service (70%)

When asked the **reasons why they would discourage suitable applicants** to apply to join the judiciary, a majority of judges gave 5 reasons:

- Likelihood of further reduction in pension entitlements (73%)
- Reduction in income (65%)
- Constant policy changes (57%)
- Lack of administrative support (52%)
- Feeling of being an employee or civil servant (51%)

The reasons are very consistent with judges' responses to the 2014 JAS.

- The only substantial change is the increase of 6% from 2014 to 2016 in the proportion of judges who said the "poor quality of physical work environment" is a reason they would discourage people from applying to be a judge.

Table 38: Reasons judges would discourage suitable people from applying to the judiciary

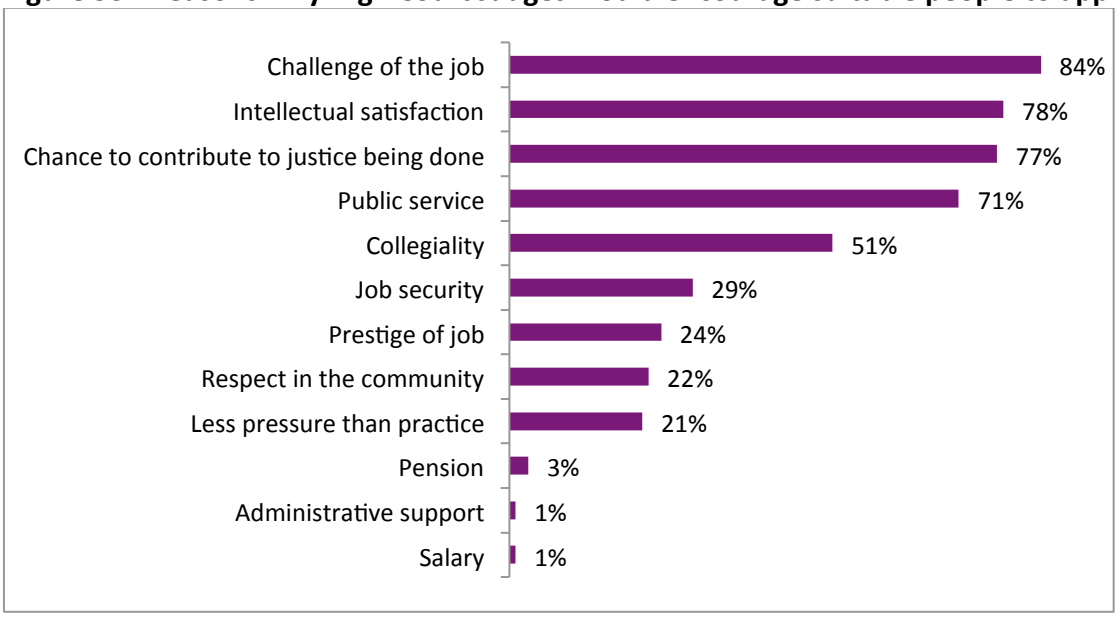
	2016 JAS	2014 JAS	change
Likelihood of further reduction in pension entitlements	73%	76%	-3%
Reduction in income	65%	69%	-4%
Constant policy changes	57%	60%	-3%
Lack of administrative support	52%	54%	-2%
Feeling of being an employee or civil servant	51%	49%	+2%
Lack of personal control over working time	41%	41%	-----
Isolation of job	38%	39%	-1%
Poor quality of physical work environment	34%	28%	+6%
Too few opportunities for promotion	34%	34%	-----
Increase in litigants in person	33%	N/A	
Too much out of hours work required to do the job	28%	28%	-----
Rigid hierarchical work environment	26%	23%	+3%

More detailed analysis of High Court Responses

Given that High Court Judges were least likely to say that they would recommend suitable applicants apply to the High Court and given the current recruitment issues in relation to the High Court, a more detailed analysis of High Court responses was carried out.

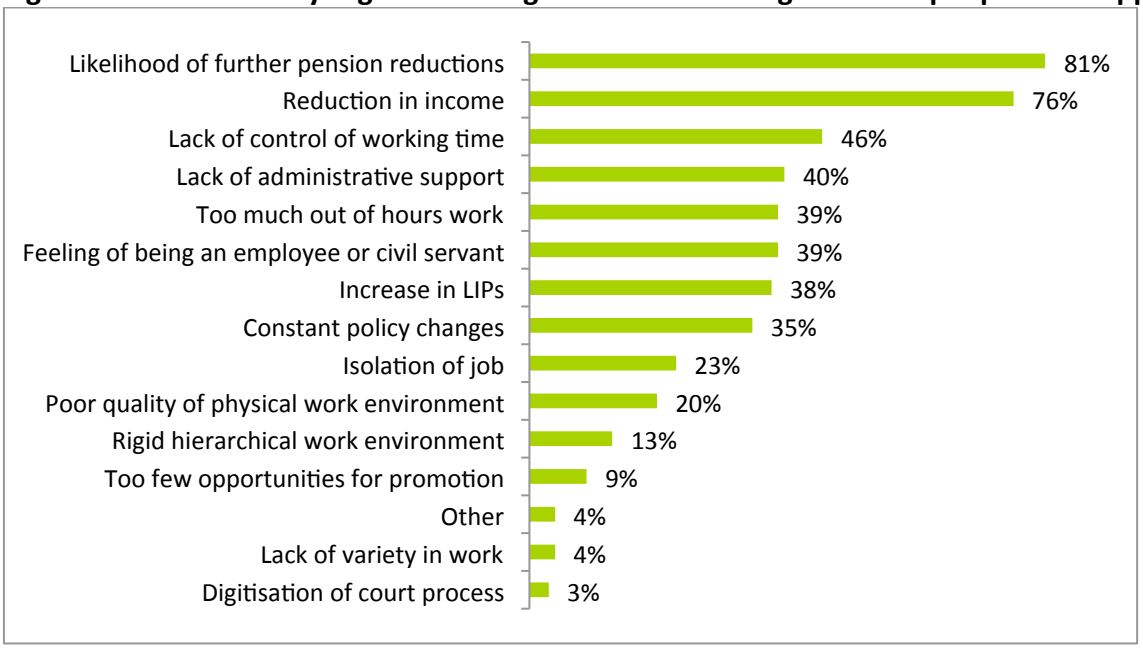
If High Court Judges were to encourage suitable applicants to apply they would focus on the challenge, intellectual satisfaction, chance to contribute to justice being done and public service aspects of the job as encouragement to apply.

Figure 93: Reasons why High Court Judges would encourage suitable people to apply



It is quite clear that pension and pay are the overriding reasons why current High Court Judges would discourage suitable candidates from applying to the High Court bench.

Figure 94: Reasons why High Court Judges would discourage suitable people from applying



10. Leadership

10.1 Extent of leadership work undertaken

Only a small proportion of judges (17%) hold formal leadership positions in the judiciary. **But close to a majority of all judges (44%) currently undertake additional responsibilities that are not formal leadership roles.**

10.2 Willingness to take on a leadership role

- Over a third of judges (39%) are interested in taking on more leadership responsibilities, but 14% feel there are no leadership roles available in their jurisdiction.
- Just over half of all judges (53%) are not interested in taking on more leadership responsibilities, but for 14% of these judges it is because they already have enough leadership responsibilities and 18% are not interested at the present time.

Table 39: Willingness to take on leadership responsibilities

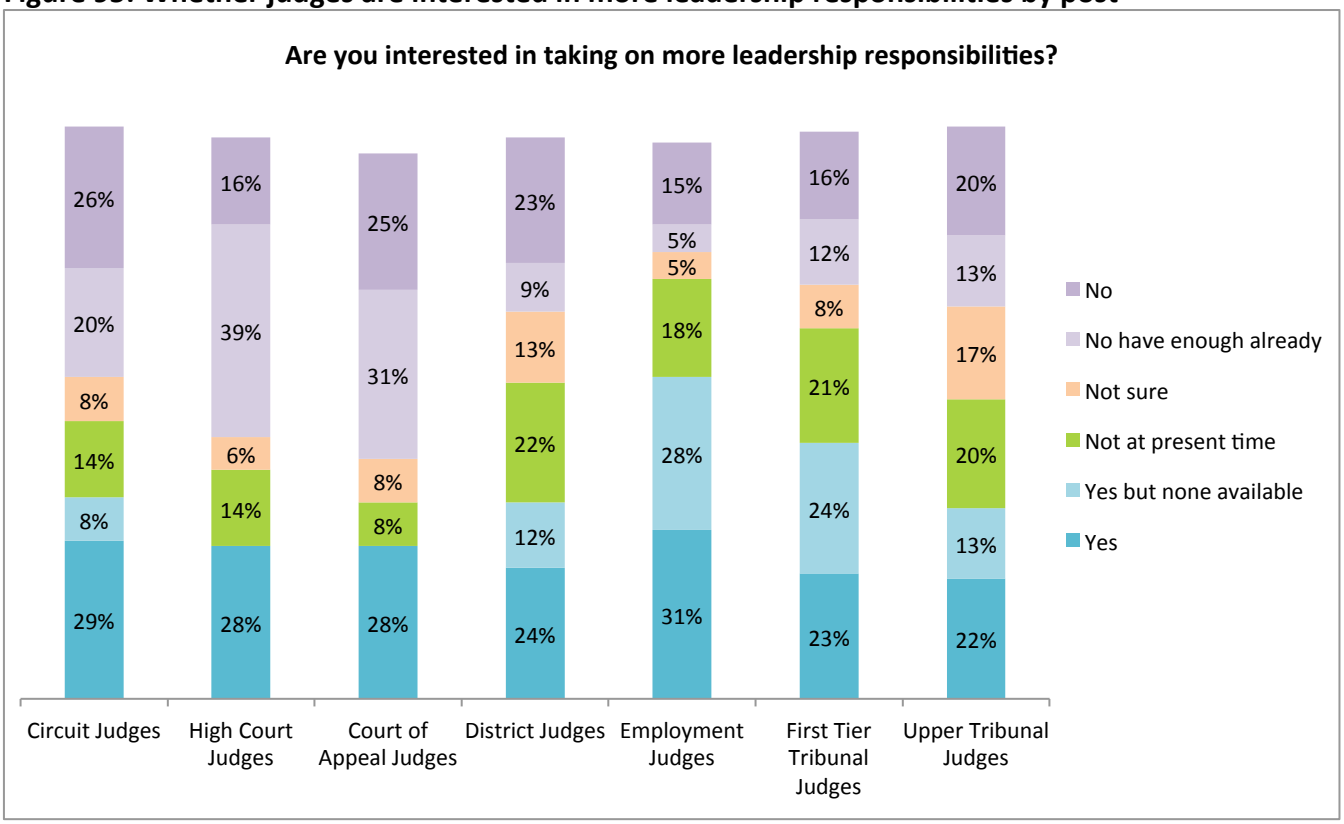
Are you interested in taking on more leadership responsibilities?	2016 JAS
Yes	25%
Yes but none are currently available in my jurisdiction	14%
Not sure	8%
Not at the present time	18%
No because I have enough leadership responsibilities already	14%
No	21%

By Post

There are some substantial differences when this is broken down by judicial post.

- The largest proportion of judges who said "No because I have enough leadership responsibilities already" were High Court Judges (39%) and Court of Appeal judges (31%), but judges in these posts also had a higher proportion of judges who said they would like to take on more leadership responsibilities (both at 28%).
- The highest proportion of judges who said they would like to take on more leadership responsibilities were Employment Judges (31%), but they were also the largest proportion of judges that said there were currently no leadership roles available to them (28%).
- Almost a third of Circuit Judges (29%) said they were interested in taking on more leadership responsibilities, but almost the same amount (26%) said they were not interested.
- District Judges were split between those who said Yes (24%), Not at the present time (22%) and No (23%).

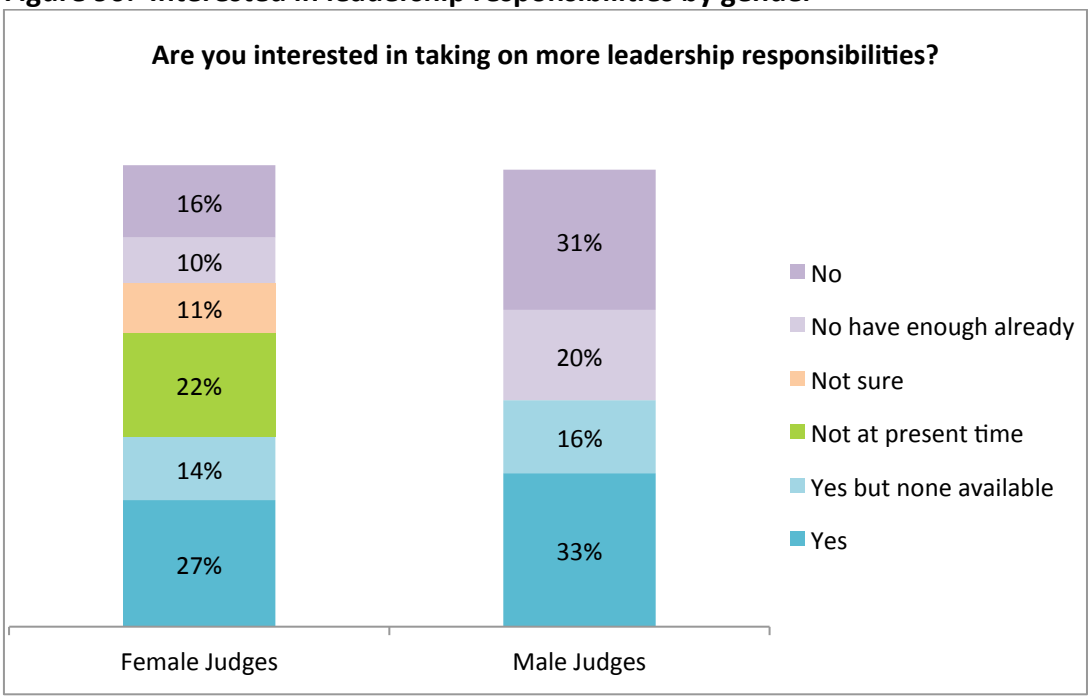
Figure 95: Whether judges are interested in more leadership responsibilities by post



By Gender

There were some differences by gender, with more male judges (50%) interested in taking on leadership responsibilities compared with 42% of female judges. However, this may simply reflect the greater proportion of male judges at senior levels in the judiciary. This is reflected in the fact that twice as many male judges (20%) than female judges (10%) said they had enough leadership responsibilities.

Figure 96: Interested in leadership responsibilities by gender



10.3 Allocation of leadership roles

Judges were asked if they felt judicial leadership roles were allocated fairly:

- A majority of judges (54%) said they **did not know enough about how leadership roles were allocated** to say whether it was fair; this reflects a notable increase (+12%) since 2014 when a minority of judges (42%) held this view.

Table 40: Fairness of allocation of leadership roles

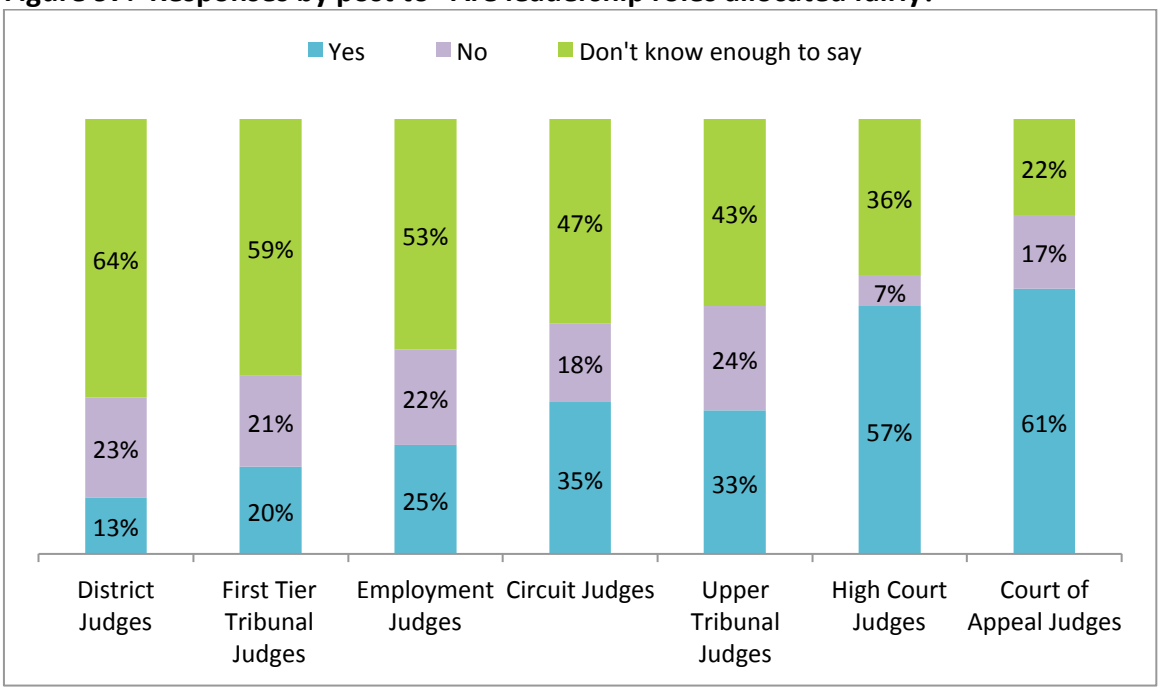
Are leadership roles in the judiciary allocated fairly?	2016 JAS	2014 JAS	% change since 2014
Yes	26%	30%	-4%
No	20%	28%	-8%
I do not know enough about how it is done to say	54%	42%	+12%

By Post

There are clear differences between judicial posts in relation to this issue. To a large extent judges in the more senior ranks of the judiciary had confidence that leadership roles were allocated fairly, while judges in other ranks were most likely to say that they did not know enough about how leadership roles were allocated to say whether the process was fair or not.

- Only amongst two judicial posts (the two most senior posts) did a majority of judges say they felt leadership roles were allocated fairly: Court of Appeal Judges (61%) and High Court Judges (57%).
- A majority of District Judges (64%), First Tier Tribunal Judges (59%) and Employment Judges (53%) said they did not know enough about how leadership roles were allocation to say whether the process was fair or not.
- Amongst Circuit Judges and Upper Tribunal Judges just under a majority of judges said they did not know enough about how leadership roles were allocation to say whether the process was fair or not, but a third said they felt the process was fair.

Figure 97: Responses by post to "Are leadership roles allocated fairly?"



10.4 Training for those in current leadership positions

Judges who currently undertake leadership duties were asked if they would welcome training in several specific areas.

A majority of judges said they would welcome training in 2 areas:

- Two-thirds (66%) would welcome training on managing colleagues.
- Over half (61%) would welcome training on working with government policy makers.

Over a third (39%) would welcome training on media communications.

Table 41: Areas where leadership judges would welcome training

	2016 JAS
Managing colleagues	66%
Working with government policy makers	61%
Media communications	39%

11. Survey Respondents

11.1 Work status: full-time versus part-time salaried judges

Figure 98: Work status of survey respondents by courts and tribunals

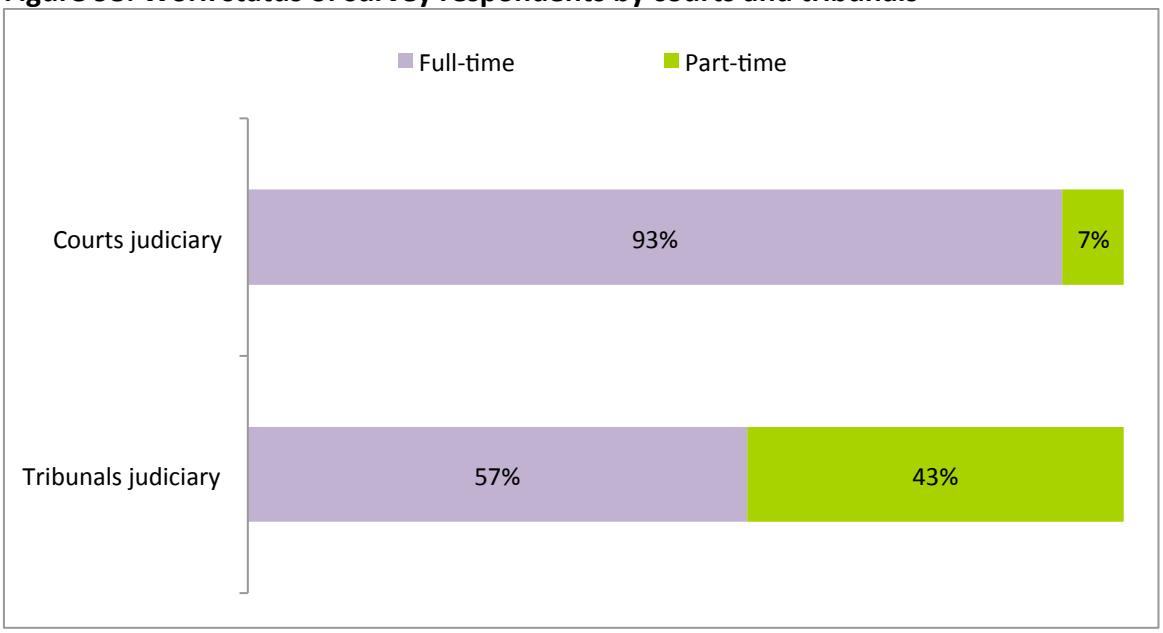
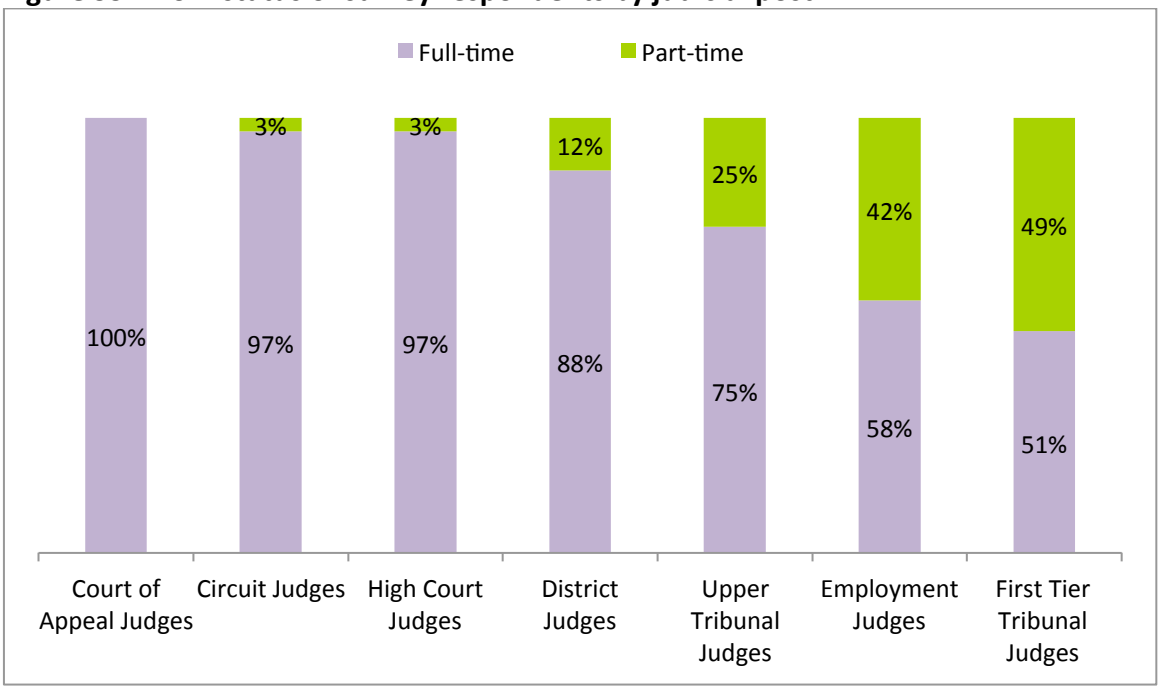
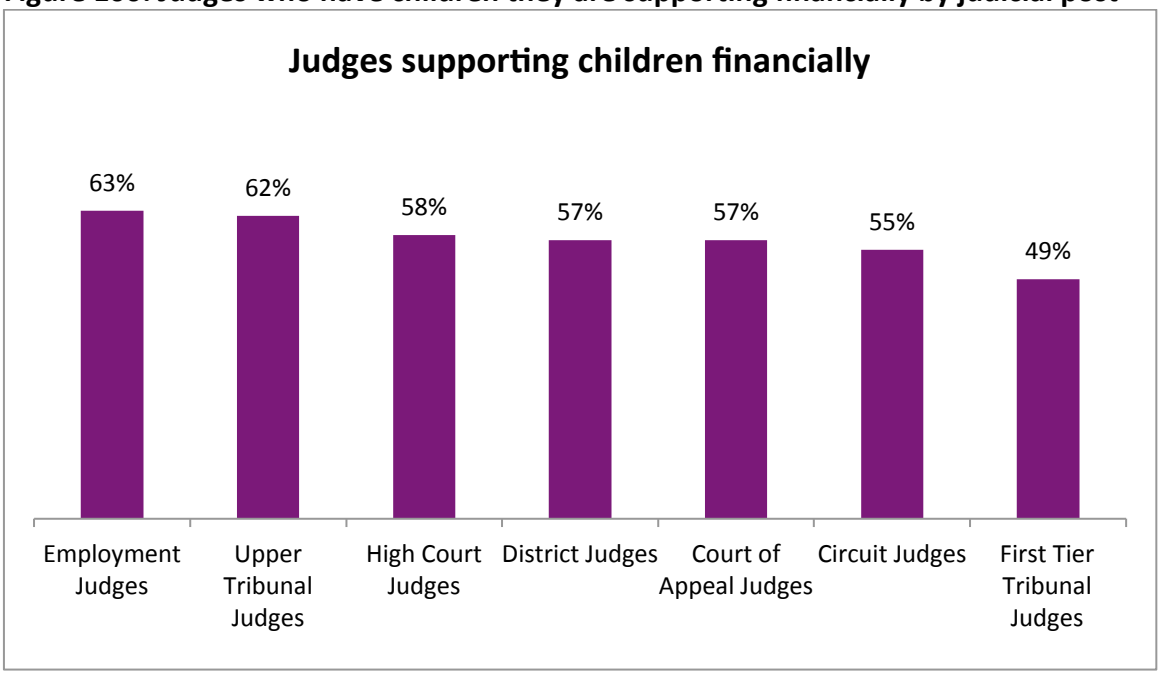


Figure 99: Work status of survey respondents by judicial post



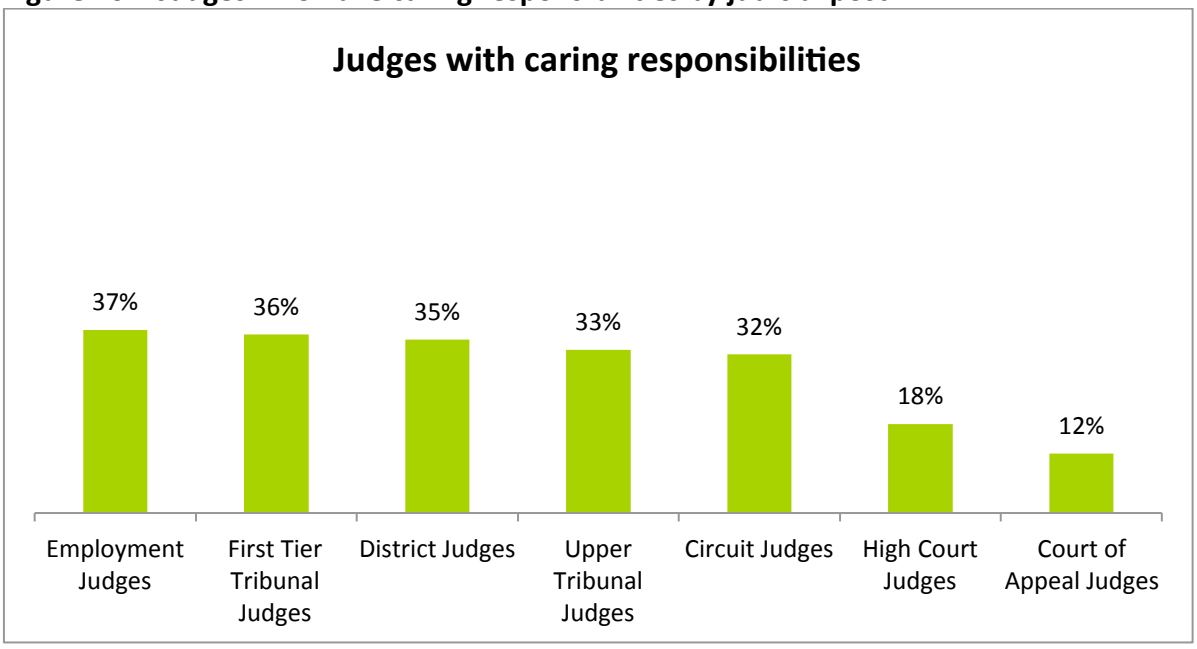
11.2 Financial dependants

Figure 100: Judges who have children they are supporting financially by judicial post



11.3 Caring responsibilities

Figure 101: Judges who have caring responsibilities by judicial post



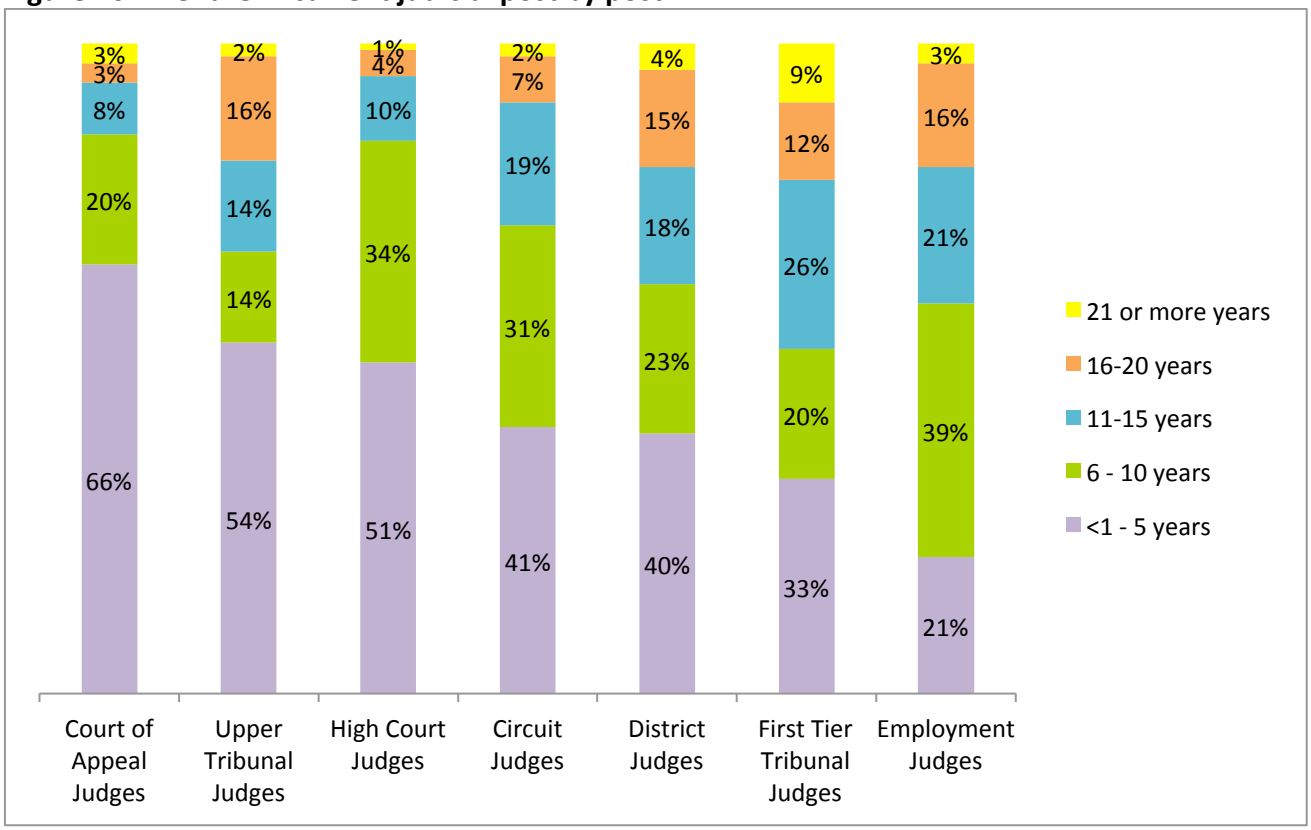
11.4 Date of first appointment to a salaried judicial post

Table 42: Date of first appointment to a salaried judicial post by post

	Before 1 April 1995	1 April 1995 - 1999	2000-2004	2005-2009	2010-2014	2015-2016
District Judges	4%	13%	17%	20%	37%	9%
Circuit Judges	3%	9%	21%	29%	27%	11%
High Court Judges	2%	4%	14%	27%	43%	10%
Court of Appeal Judges	8%	15%	44%	33%	0%	0%
First Tier Tribunal Judges	10%	10%	30%	17%	31%	2%
Employment Judges	1%	10%	29%	32%	28%	0%
Upper Tribunal Judges	5%	19%	26%	14%	25%	11%

11.5 Tenure in current post

Figure 102: Tenure in current judicial post by post



12. The Survey

- 92% of all the judges who completed the survey said it was about the right length.
- Almost all (90%) said it either took less than 10 minutes to complete (50%) or less than 20 minutes to complete (40%).





https://opinio.ucl.ac.uk/s?s=43424&tr=9632787&dt=desktop

2016 Judicial Attitude Survey

The Judicial Institute of University College London (UCL) is running this **2016 Judicial Attitude Survey (JAS)** on behalf of the Lord Chief Justice of England and Wales, the Lord President of Scotland, the Lord Chief Justice of Northern Ireland and the Senior President of Tribunals, with a view to informing and supporting their **submissions to the Senior Salaries Review Body (SSRB)**.

SSRB Response to the 2014 Judicial Attitude Survey

As you may recall, in 2014 the first ever UK Judicial Attitude Survey was conducted to assist with that year's submissions to the SSRB. In its 2015 report the **SSRB highlighted the value of the JAS** to its work:

"*We welcome the first UK Judicial Attitude Survey, which provides a comprehensive evidence base from which to draw conclusions about judicial motivation and morale. The Survey also provides a base from which to measure change against in future.*

In its most recent report in April 2016, the SSRB reiterated the value of the JAS to its work, saying "*We also regard regular judicial attitude surveys as essential and welcome the LCJ's intention to undertake another one this year.*"

2016 Judicial Attitude Survey (JAS)

The 2016 survey includes some of the same questions judges were asked in 2014, which will help to assess any recent changes in judicial attitudes. But the survey also includes **a number of new questions** about major changes taking place in the

includes **a number of new questions** about major changes taking place in the judiciary (eg, Digital reform and HMCTS reform programme policies).

The invitation to participate in this survey is being sent to **all salaried members of the judiciary** in England and Wales, Scotland and Northern Ireland. It is not being sent to any other members of the judiciary.

This survey is designed to enable salaried members of the judiciary to provide feedback on their **views and experience of serving as a judge**.

The survey is **completely voluntary and anonymous**. Your survey responses **cannot be traced back** to you personally.

Use of the Survey

UCL has undertaken in writing not to use any information collected in its research, save with the express consent of the Lord Chief Justices, Lord President and Senior President of Tribunals. The anonymised, collated data will be held by the Judicial Offices of each jurisdiction.

Publication or disclosure, either in whole or in part, of any survey responses may be included in the formal response to the SSRB or other public bodies. Disclosure of submitted information may also be requested in accordance with, for instance, the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2001. Where such disclosure is sought UCL and/or the Judicial Offices undertake to take such steps as appropriate and as they believe applicable to seek exemptions from such disclosure.

Thank you for taking the time to do the survey, which should take 5-10 minutes.

Your participation in this survey and your answers to the following questions will

2016 Judicial Attitude Survey

Your Judicial Post

1. **Please indicate which is the main judicial post you currently hold.**

   (***If you have multiple posts please select what you consider your main post and you can provide any further details in the box below***)

   - ○ First Tier Tribunal Judge
   - ○ Employment Judge
   - ○ Upper Tribunal Judge
   - ○ District Judge (Civil or Magistrates)
   - ○ Circuit Judge
   - ○ High Court Judge (Chancery)
   - ○ High Court Judge (Family)
   - ○ High Court Judge (Queen's Bench)
   - ○ Lord or Lady Justice of Appeal or Head of Division
   - ○ Master
   - ○ Registrar
   - ○ Judge Advocate General (including Vice and Assistant JAG)
   - ○ Other (please specify in box below)

2. **When were you first appointed to the SALARIED judiciary?**

   - ○ Before 1 April 1995
   - ○ 1 April 1995 - 1999

- ○ 2000 - 2004
- ○ 2005 - 2009
- ○ 2010 - 2014
- ○ 2015 - 2016

3. **How long have you been in your current judicial post (ie, the post you indicated in Question 1)?**

- ○ Less than 1 year
- ○ 1-5 years
- ○ 6-10 years
- ○ 11-15 years
- ○ 16-20 years
- ○ 21-25 years
- ○ 26-30 years
- ○ Over 30 years

4. **Are you:**

- ○ Full-time salaried judge
- ○ Part-time salaried judge
- ○ Other (please specify in the box below)

5. **On 1 April 2012, what was your age in YEARS and MONTHS?**

On 1 April 2012, my age was _____ **years and** _____ **months.**

2016 Judicial Attitude Survey

Working Conditions

6. **How would you rate working conditions in the judiciary compared with 2 years ago?**

- ○ Significantly worse
- ○ Worse
- ○ About the same
- ○ Better
- ○ Significantly better
- ○ Not applicable to me (I was not in the judiciary 2 years ago)

7. **Please provide an assessment of the following working conditions at the main court or tribunal where you work:**

	Poor	Adequate	Good	Excellent
Amount of administrative support	○	○	○	○
Quality of administrative support	○	○	○	○
Morale of court or tribunal staff	○	○	○	○
Physical quality of the building	○	○	○	○
Maintenance of the building	○	○	○	○
Physical quality of your personal work space	○	○	○	○
Space to meet and interact with other judges	○	○	○	○
Security at your court or tribunal	○	○	○	○

8. **How would you assess your case workload over the last 12 months?**

- ○ Too high
- ○ Manageable

- ○ Too low

9. **How would you assess your judicial workload that does <u>not</u> include your casework over the last 12 months?**

- ○ Too high
- ○ Manageable
- ○ Too low
- ○ I do not have any judicial work outside of my casework

10. **To what extent do you feel the following are important to you?**

	Important	Not sure	Not important
Opportunities for flexible working hours	○	○	○
Opportunities to work part-time	○	○	○
Time to discuss work with colleagues	○	○	○
Opportunities to sit in other jurisdictions	○	○	○
Opportunities for career progression	○	○	○
Support for dealing with stressful conditions at work	○	○	○

11. **Please assess the availability of each of the following in your current judicial post:**

	Non-existent	Poor	Adequate	Good	Excellent
Opportunities for flexible working hours	○	○	○	○	○
Opportunities to work part-time	○	○	○	○	○
Time to discuss work with colleagues	○	○	○	○	○
Opportunities to sit in other jurisdictions	○	○	○	○	○

Opportunities for career progression	○	○	○	○	○
Support for dealing with stressful conditions at work	○	○	○	○	○

12. **Are you ever concerned about your personal security as a result of your judicial role?**

(***Please select as many options as apply to you***)

- ☐ Yes, sometimes when I am in court
- ☐ Yes, sometimes outside of court
- ☐ Yes, sometimes on social media
- ☐ No

Please feel free to comment about your personal security as a judge

13. **If you have a declared disability, have you requested that reasonable adjustments be made at your court or tribunal to enable you to do your job to the best of your ability?**

- ○ Yes
- ○ No
- ○ Not applicable to me

If you answered YES, please indicate in the box below if the adjustments requested have been made to your satisfaction:

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2016 Judicial Attitude Survey

Salary and Pensions

14. **The following explores your views on salary, pension provisions and your income options.**

    (***If possible please provide a response to each statement)***

	Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
I am paid a reasonable salary for the work I do.	○	○	○	○	○
I have had a loss of net earnings over the last 2 years.	○	○	○	○	○
The judicial salary issue is affecting my morale.	○	○	○	○	○
The judicial salary issue is affecting the morale of judges I work with.	○	○	○	○	○
The change in pension entitlements has affected me directly.	○	○	○	○	○
The change in pensions has affected my morale.	○	○	○	○	○
The change in pensions has affected the morale of judges I work with.	○	○	○	○	○
I accept that some changes to pension provisions have to be made.	○	○	○	○	○
My pay and pension entitlement does not adequately reflect the work I have done and will do before retirement.	○	○	○	○	○
The amount of out of hours work required to do the job is affecting me.	○	○	○	○	○
If I felt that leaving the judiciary was a viable option I would consider	○	○	○	○	○

doing so.					
If I could earn additional income through out of court work I would pursue this option.	○	○	○	○	○

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2016 Judicial Attitude Survey

Judicial Resources & the New Digital Programme

15. **Please provide an assessment of the following resources available to you <u>at the main court or tribunal where you work</u>:**

	Poor	Adequate	Good	Excellent
Standard of IT equipment provided for you personally to use (ie, laptop, desktop computer)	○	○	○	○
Standard of IT equipment used in your court or tribunal (eg, video playback and video link equipment, tele-conferencing)	○	○	○	○
Internet access	○	○	○	○
IT support	○	○	○	○

If you answered "Poor" for any of the questions please feel free to provide further details

16. **Are you regularly required to use electronic files and bundles (eg, Digital Case System "DCS" or other forms of electronic working)?**

- ○ Yes
- ○ No (if No please skip to Question 19)

17. **If you answered Yes to Question 16, please rate the "usability" of the DCS (or other form of electronic working that you use)**

- ○ Poor
- ○ Adequate

- ◯ Good
- ◯ Excellent

Please feel free to provide further details about the usability of DCS

18. **If you answered Yes to Question 16 please assess the training you received on how to use DCS (or other form of electronic working that you use).**

- ◯ I did not receive any training on how to use DCS (or other electronic system)
- ◯ Training provided to me on DCS (or other system) was Poor
- ◯ Training provided to me on DCS (or other system) was Adequate
- ◯ Training provided to me on DCS (or other system) was Good
- ◯ Training provided to me on DCS (or other system) was Excellent

Please feel free to provide any further comments on DCS training

19. **Are you on e-Judiciary?**

- ◯ Yes
- ◯ No (if No please skip to Question 21)

20. **If you answered Yes to Question 19, please rate the quality of e-Judiciary.**

- ◯ Poor
- ◯ Adequate
- ◯ Good
- ◯ Excellent

Please feel free to provide further details about your experience of e-Judiciary

21. **Is there Wifi available in you court?**

- ○ Yes
- ○ No (if No please skip to Question 23 in the next section)

22. **If you answered Yes to Question 21, please rate the quality of the Wifi service in your court.**

- ○ Poor
- ○ Adequate
- ○ Good
- ○ Excellent

Please feel free to provide further details about the Wifi in your court

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2016 Judicial Attitude Survey

Training and Personal Development

23. **In my judicial role I am encouraged to use my talents to the full.**

Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
○	○	○	○	○

24. **To what extent are you satisfied with the following:**

	Not satisfied at all	Could be better	Satisfied	Completely satisfied
Opportunities for personal development	○	○	○	○
Range of judicial training available	○	○	○	○
Quality of judicial training available	○	○	○	○
Time available to undertake judicial training	○	○	○	○
Sense of achievement in the job	○	○	○	○
Challenge of the job	○	○	○	○
Variety of work	○	○	○	○

Please feel free to provide any further comments on these specific issues

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2016 Judicial Attitude Survey

Change in the Judiciary

25. **To what extent do you feel that your job as a judge has changed since you were first appointed to a salaried post?**

- ○ It has not changed at all
- ○ It has only changed a very small amount and this does not affect me
- ○ There has been some change which affects me
- ○ There has been a large amount of change
- ○ It has changed completely

26. **The following statements explore your view of changes in your job as a judge.**

(***If possible please provide a response to each statement***)

	Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
The judiciary manages change well.	○	○	○	○	○
Too much change has been imposed on the judiciary in recent years.	○	○	○	○	○
Some change is needed in the judiciary.	○	○	○	○	○
The amount of change in recent years has brought judges to breaking point.	○	○	○	○	○
The judiciary needs to have control over policy changes that affect judges.	○	○	○	○	○
Despite any reservations I may have about changes in the judiciary I still	○	○	○	○	○

enjoy being a judge.					

27. **What changes in the judiciary concern you most?**

(***Please select as many options as apply to you***)

- [ ] Court closures
- [ ] Increase in litigants in person
- [ ] Staff reductions
- [ ] Introduction of digital working in court
- [ ] Fiscal constraints
- [ ] Loss of experienced judges
- [ ] Personal safety for judges
- [ ] Judicial morale
- [ ] Reduction in face-to-face hearings
- [ ] Ability to attract the best people into the judiciary
- [ ] Loss of judicial independence
- [ ] Stressful working conditions
- [ ] Other (please specify in the box below)

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2016 Judicial Attitude Survey

Future Planning

28. **Might you consider leaving the judiciary in the next 5 years other than by reaching full retirement age?**

- ○ Yes
- ○ No
- ○ I am currently undecided about this
- ○ I will reach full retirement age in the next 5 years

29. **Which of the following factors would make you more likely to leave the judiciary before full retirement age?**

(*Please select as many options as apply to you*).

- ☐ Increase in workload
- ☐ Lack of promotion
- ☐ Limits on pay awards
- ☐ Reduction in pension benefits
- ☐ Reduction in administrative support
- ☐ Further demands for out of hours working
- ☐ Lack of stimulating work
- ☐ Increase in litigants in person
- ☐ Stressful working conditions
- ☐ Requirement to sit in a location too far from home
- ☐ Court closures
- ☐ Inability to work more flexible hours
- ☐ Introduction of the Digital Programme

- [ ] HMCTS Reform Programme
- [ ] Other (please specify in the box below)

Please feel free to provide a further comment:

30. **Which of the following factors would make you more likely to remain in the judiciary until full retirement age?**

(***Please select as many options as apply to you***).

- [ ] Promotion to a higher post
- [ ] Change of work location
- [ ] Higher remuneration
- [ ] Better administrative support
- [ ] Reduction in workload
- [ ] Increased flexibility in working hours
- [ ] Greater variation in work
- [ ] Greater leadership responsibilities
- [ ] Settled position on pension entitlements
- [ ] Support for dealing with stressful working conditions
- [ ] Opportunity for sabbatical
- [ ] Opportunity to work part-time
- [ ] Reduction in litigants in person
- [ ] Introduction of the Digital Programme
- [ ] HMCTS Reform Programme
- [ ] Other (please specify in the box below)

Please feel free to provide a further comment:

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2016 Judicial Attitude Survey

Being a Member of the Judiciary

31. **As a judge I feel valued by:**

(***Please select as many options as reflect your view***)

- [ ] Public
- [ ] Government
- [ ] Legal profession
- [ ] Parties in cases that appear before me
- [ ] Court staff
- [ ] Media
- [ ] Judicial colleagues at my court
- [ ] Senior leadership in the judiciary

32. **As a judge I feel I provide an important service to society.**

Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
○	○	○	○	○

33. **I feel a strong personal attachment to being a member of the judiciary.**

Strongly Disagree	Disagree	Not sure	Agree	Strongly Agree
○	○	○	○	○

34. **I feel I have an important job that I am committed to doing as well as I possibly can.**

Strongly disagree	Disagree	Not sure	Agree	Strongly Agree

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2016 Judicial Attitude Survey

Joining the judiciary

35. **Knowing what you know now about your job as a judge would you still have applied?**

- ○ Yes
- ○ No
- ○ Not sure

36. **Would you encourage suitable people to apply to join the judiciary?**

- ○ Yes
- ○ No
- ○ Not sure

37. **The reasons I would encourage suitable people to apply to join the judiciary are:**

(***Please select as many options as reflect your view***)

- ☐ Challenge of the work
- ☐ Sense of collegiality
- ☐ Job security
- ☐ Intellectual satisfaction
- ☐ Salary
- ☐ Public service
- ☐ Respect in the community
- ☐ Pension

- [ ] Administrative support
- [ ] Less pressurised environment than practice
- [ ] Prestige of the job
- [ ] Chance to contribute to justice being done
- [ ] Other (please specify in the box below)

Please feel free to provide a further comment:

38. **The reasons I would <u>discourage</u> suitable people from applying to join the judiciary are:**

(***Please select as many options as reflect your view***)

- [ ] Isolation of the job
- [ ] Constant policy changes
- [ ] Lack of variety in the work
- [ ] Likelihood of further reduction in pension entitlements
- [ ] Lack of personal control over working time
- [ ] Rigid hierarchical work environment
- [ ] Reduction in income
- [ ] Lack of administrative support
- [ ] Poor quality of physical work environment
- [ ] Feeling of being an employee or civil servant
- [ ] Too much out of hours work required to do the job
- [ ] Too few opportunities for promotion
- [ ] Increase in litigants in person
- [ ] Digitisation of the court process

- [ ] Other (please specify in the box below)

Please feel free to provide a further comment:

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2016 Judicial Attitude Survey

Leadership

39. **Do you hold a leadership position in the judiciary (e.g., Resident or Regional Judge, President or Deputy/Vice President, Head of Division, Presider, etc.)?**

- ○ Yes
- ○ No

40. **Do you undertake any additional responsibilities as a judge that are not formal leadership roles (e.g., Chair of a judicial committee, Judicial College duties etc.)?**

- ○ Yes
- ○ No

41. **Would you be interested in taking on more leadership responsibilities in your judicial role?**

- ☐ Yes
- ☐ Yes but there are none available in my jurisdiction
- ☐ No
- ☐ No because I have enough leadership responsibilities already
- ☐ Not sure
- ☐ Not at the present time

42. **Do you feel that judicial leadership roles are allocated fairly?**

- ○ Yes
- ○ No
- ○ I do not know enough about how it is done to say

43. **If you hold a formal leadership position or have any informal leadership responsibilities would you welcome any executive training in any of the following areas?**

- [ ] Media communications
- [ ] Managing colleagues
- [ ] Working with government policy makers
- [ ] Other issues related to my leadership role (please specify in the box below)

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2016 Judicial Attitude Survey

General Information

44. **Before being appointed to the judiciary what type of legal employment were you in?**
(***Please tick as many answers as apply to you***)

- [ ] Barrister
- [ ] Employed lawyer
- [ ] Legal academic
- [ ] Legal executive
- [ ] QC
- [ ] Solicitor
- [ ] Other (please specify in the box below if you would like to)

45. **Do you have children you support financially?**

- ( ) Yes
- ( ) No

46. **Do you have caring responsibilities for a family member(s)?**

- ( ) Yes
- ( ) No

47. **Are you:**

- ○ Male
- ○ Female

48. **What is your ethnic group?**

- ○ White - English
- ○ White - Welsh
- ○ White - Scottish
- ○ White - Irish
- ○ White - Other
- ○ Mixed - White and Black Caribbean
- ○ Mixed - White and Black African
- ○ Mixed - White and Asian
- ○ Mixed - any other mixed background
- ○ Asian - Indian
- ○ Asian - Pakistani
- ○ Asian - Bangladeshi
- ○ Asian - any other Asian background
- ○ Black - Caribbean
- ○ Black - African
- ○ Black - any other Black background
- ○ Chinese
- ○ Any other ethnic group

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2016 Judicial Attitude Survey

The Survey

49. **This survey was:**

- ○ Too long
- ○ About the right length
- ○ Not long enough

50. **How long did it take you to complete this survey?**

- ○ Less than 5 minutes
- ○ Less than 10 minutes
- ○ Less than 20 minutes
- ○ Less than 30 minutes
- ○ 30 minutes or longer

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2016 Judicial Attitude Survey

Thank you for taking part in the 2016 Judicial Attitude Survey. Your answers have been received.

Your participation has been extremely valuable and very much appreciated.

TAB 6

PANEL SESSION 13

" Can We Keep Pretending That Judicial Wellness Is Not A Problem?" By Lady Hale of Richmond, President, UK Supreme Court

I wonder about my credentials for talking about this subject? I come from the best resourced court in one of the wealthiest countries in the Commonwealth. I run a very small organisation of 12 Justices and around 50 staff (plus security staff and cleaners): not like the Lord Chief Justice of England and Wales, with responsibility for 4000 odd judges and a court service which is facing massive challenges. Yet even we, in Supreme Court of the United Kingdom, have some Justices who need careful nurturing to get the best out of them. I am very grateful to Karly for providing empirical evidence for my impressionistic observations of the picture in the United Kingdom.

The short answer to the question posed is 'if – which is not admitted – we are still pretending that judicial wellness is not a problem, then we should stop it at once'. And if judicial wellness is a problem in the UK, with all its resources, how much more so must it be in many other Commonwealth countries? (I am aware of work being done here in Australia, for example by the Judicial College of Victoria, which is ahead of the UK). But is it just a first world problem, while the judiciary in other countries have so many more pressing challenges to deal with?

I have been struck, when looking at the programme of this Conference, by how many of the sessions do have a bearing, direct or indirect, on the topic of judicial wellness: 'Strengthening and defending judicial independence' (Monday afternoon), 'Judicial work and domestic life: managing the boundaries' (Monday afternoon), 'Mentoring new Judges and Magistrates' (Tuesday afternoon), 'What is the need for judicial education' (Wednesday morning), and 'A comparative study of judicial terms, conditions and emoluments in the Commonwealth' (Wednesday afternoon). The Attorney General of Queensland was surely right to pick up on this theme in her inspiring remarks at the Reception on Monday.

In the UK, becoming a Judge, particularly a High Court Judge, used to be the pinnacle of a barrister's career. Depending on his area of practice, he might suffer a loss of earnings, but he would still be comparatively well paid. And the pension was extremely attractive – difficult if not impossible to match on the personal pension market. The level of support from court staff did vary with the level of judge but it was good enough. There were many loyal and efficient people in the court service who took a genuine pride in their role. Legal aid meant that, at least in the higher courts, the parties had proper legal representation. By and large, cases which ought to settle did settle. There was also the sense that the judicial role was respected, not only by other judges and the court staff, but by the public, and even the media and politicians.

It is very difficult to say any of that now, at least in England and Wales. Some stark realities emerge from the 2016 UK Judicial Attitude Survey, conducted by Professor Cheryl Thomas of University College, London, who also conducted a similar survey in 2014. The report covers salaried judges in courts and tribunals in England and Wales (between them 86% of all salaried judges in the UK). We do, of course, also have a large number of part time fee paid judges, and some part time salaried judges, who may see things rather differently.

The gap between what some – though by no means all – successful barristers can earn at the Bar and their judicial salaries has widened. Over three quarters of serving judges said that they have had a net loss of earnings over the last two years. The pension is no longer the attraction it

once was – in fact for any judge who has sensibly built up a good personal pension in practice it is scarcely worth having at all. Worse than that, the rules were changed in such a way as to affect the younger serving judges – those who had signed up for the job on the basis that they would have a particular pension entitlement which has now been taken away from them. 62% of serving judges said that the change in pensions had affected them personally. A similar percentage said that the changes in pay and pensions had affected their own morale and even more said that it had affected the morale of the judges they worked with (is this an interesting example of presenting oneself as stronger than one's colleagues?). This has had the further effect of eroding trust between the judiciary and the executive.

The Ministry of Justice suffered some of the most severe cuts in the whole public service in the 2010 to 2015 government's austerity drive. Many court buildings are dilapidated and ill-maintained. The court service has been cut so drastically that the judges no longer have the same level of administrative support – often, for example, district judges have no staff member in the room with them. 64% of judges rated the morale of the court staff as poor, 42% said that the level of administrative support was poor. Half of all judges have sometimes felt concerned about their personal security in court. Three quarters felt that they had experienced a deterioration in their working conditions since 2014 – though not as great as they had experienced between 2009 and 2014.

Legal aid – not only for representation in court but also for all forms of legal advice and help - has been withdrawn from whole areas of work – including the great majority of private family law disputes, between husband and wife, mother and father. This has led to a huge increase in litigants in person and to cases coming to court which would never have come to court before (not everyone realises that lawyers settle cases and they also refer cases for mediation and other forms of Alternative Dispute Resolution). So the character of the work has changed, especially in the Crown and county courts. Another change has been the huge increase in cases involving sex abuse – both in the family courts where it has always featured to some extent and in the criminal courts with the increase in prosecutions for historic sex crimes. Vicarious trauma has been identified in the USA as a source of pressure on judges (Chamberlain and Miller, 2009). 90% of judges in the UCL survey felt that their job had changed since they were first appointed.

Nevertheless, virtually all judges felt that they provided an important service to society and showed a deep commitment to their job, despite the strong levels of disenchantment with certain aspects of it. Most also felt valued by their judicial colleagues, by the court staff, by the legal profession and by the parties in the cases before them (in that order). Less than half (43%) felt valued by the public and almost none felt valued by the UK Government (2%) or by the media (3%). But this did vary between different judicial posts. Generally speaking, the sense of being valued was higher at higher levels of the judiciary - although I do wonder whether there is a certain correlation between feeling satisfied with oneself and feeling valued by others!

Social media also add to the pressures on judges – the Lord Chief Justice has said (in the BBC radio programme, Law in Action, in November 2017) that judges are being put under "intolerable pressure" by social media users who criticise their decisions. Some of us defend ourselves against this by having nothing to do with social media, but this could risk our being seen as out of touch with the modern world – "what is snapchat?" being the modern equivalent of "who are the Beatles?".

All this has had its effect. First, there is a growing crisis in recruitment, especially to the High Court bench, but beginning to affect other tiers as well. It has not proved possible to fill all the vacancies in recent competitions with suitably qualified candidates. This year there were 25 vacancies but only 10 suitable candidates, leaving 15 vacancies out of a complement of 108, and there will be further retirements in the pipeline. The Judicial Appointments Commission, the Lord Chancellor and the Lord Chief Justice are determined not to sacrifice quality. But this does mean that deputy judges are increasingly being called upon to do work which would normally be done by High Court judges. This too is a form of sacrificing quality. Worryingly, over a quarter (27%) of High Court judges said that they would not encourage suitably qualified people to apply to be a judge.

Second, more and more judges are taking or considering taking early retirement. In the 2016 survey, 36% said they were considering leaving the judiciary early in the next five years, an increase of 5% from the 2014 survey. More than half cited stressful working conditions among the factors making them more likely to leave the judiciary early. Perhaps curiously, High Court and Court of Appeal judges were more likely than others to be considering this. Women were less likely than men to be doing so (31% and 38% respectively) but it is concerning that nearly one third of women judges are thinking of leaving the profession early, given that we want to increase the recruitment of women to the judiciary. Of course, thinking of early retirement and actually taking it are two different things, but it is worrying that so many are even thinking of it.

Third, and this gets to the heart of today's question, judges are having to take time away from court because of stress-related illnesses. But it is difficult to tell whether this is increasing. The standard measure of sickness absence is "Average Working Days Lost" per staff year – ie the number of working days lost to sickness in a 12-month period per person on average, taking into account the full time equivalence of part timers and people who joined or left during the year. But we don't have the figures to enable us to do that. We can only show the total numbers of working days lost, so it is difficult to interpret the figures. But what we can look at are the number of days lost, the number of incidences of sick leave, and the number of individuals who took sick leave. So, from 2015/16 to 2016/17, the number of days lost went up, but not by a great deal for full time salaried judges (6,947 to 7,238 for fulltime salaried court judges; 2,375 to 2,728 for full time salaried tribunal judges; 1,730 to 2,723 for part time salaried judges). But the number of incidences of sickness absence rose much more (from 540 to 908; 728 to 1,140; 192 to 254), as did the number of individuals affected (328 to 445; 429 to 564; 103 to 128). Most of these absences were due to physical illnesses or injuries. Indeed, for full time salaried judges, the percentage of days lost because of mental illness or stress fell from 19% to 17%, although the number of individuals affected rose from 18 to 22. For part time salaried judges, the percentage of days lost due to mental illness or stress is considerably higher, but it too fell from 37% to 32%, and the individuals affected from 9 to 8. It is of course possible that some physical ailments are in fact stress-related and that judges, like many others, are reluctant to ascribe their problems to stress.

Absence is, of course, only part of the story. Judges may manifest their unwellness in many other ways – they may become irritable or impatient with litigants and lawyers, they may delay hearing cases, they may delay making decisions, they may take an inordinate time to produce their judgments. Or they may suffer in silence until things become unbearable.

Dealing with sickness absence and other manifestations of unwellness is a problem, because of the importance we attach to security of tenure at all levels of the judiciary as a means of

securing the independence of the judiciary. The inability of a judge to perform the role has to be pretty severe and permanent to justify removal from office. But at the same time, public confidence in the judiciary has to be maintained.

The answer has to be to make efforts to build resilience in the serving judiciary. There may have been a tendency in the past – perhaps there still is – to think that, because our judiciary is recruited from people who have already made a successful career in the legal profession, they must all by definition be naturally tough and resilient people. The Bar, in particular, is a very stressful profession, so how can anyone who has succeeded there find it difficult to handle the stresses of a judicial career? I don't think that our judicial leaders any longer take that view.

In 2017, the Judicial Executive Board approved an enhanced welfare programme to ensure that judges are properly supported, especially when dealing with a diet of traumatic cases. This includes an annual one to one welfare conversation for judges hearing traumatic cases; one to one resilience coaching for senior leadership judges; a judicial helpline which is available 24 hours a day and 365 days a year (https://intranet.judiciary.uk/organisation-of-the-judiciary/judicial-office/hr-for-the-judiciary/casework.the-judicial-helpline); and both face to face and on-line training.

The Judicial College for England and Wales began face to face training of judges in stress and resilience awareness in 2013 at its cross-jurisdiction seminars in judge-craft, entitled *The Business of Judging*. This is now also used in jurisdiction-specific training events and as part of the Judicial Leadership and Development Programme. An on-line introduction to stress and resilience programme was launched in August 2018, which enables judges to access training and support at any time: (https://judicialcollege.judiciary.gov.uk/course/view.php?id=2941).

Both the face to face and the on-line programmes invite judges to do four things.

First, to identify their greatest source of pressure, by reference to the six factors identified by the Health and Safety Executive that can lead to work-related stress if not managed properly: demands, control, support, relationships, role and change (http://www/hse.gov.uk/stress/causes.htm). It could be, for example, that one reason why people who could handle the demands of a busy practice find it harder to handle the demands of a judicial life is the loss of control involved in the latter.

Second, to complete the free online i-resilience questionnaire developed by Professors Cary Cooper and Ivan Robertson (https://www.robertsoncooper-com/resilience), albeit in general rather than by reference to the particular conditions of the judiciary or particular judicial posts.

Third, to consider how to strengthen their resilience in the light of the four key components of resilience identified by Professors Cooper and Robertson:

1. Confidence: Having feelings of competence, effectiveness in coping with stressful situations and strong self-esteem are inherent to feeling resilient. The frequency with which individuals experience positive and negative emotions is also key.

2. Purposefulness: Having a clear sense of purpose, clear values, drive and direction help individuals to persist and achieve in the face of setbacks.

3. Adaptability: Flexibility and adapting to changing situations which are beyond our

control are essential to maintaining resilience. Resilient individuals are able to cope well with change and their recovery from its impact tends to be quicker.

4. Social Support: Building good relationships with others and seeking support can help individuals overcome adverse situations rather than trying to cope on their own.

Fourth, to access sources of support from the Judicial Office, LawCare (a charity offering support for lawyers), the nominated welfare judge for courts and tribunals and their leadership judges.

I must confess to having downloaded the questionnaire and done my best to answer it honestly. The difficulty was that the questions were not related to my actual role, so it was often necessary to give a neutral or non-committal answer. The Report made interesting reading – on most characteristics deemed relevant to the four ingredients of resilience, my answers were either neutral or helped my resilience; the only one identified as hindering my resilience was my degree of emotional awareness – ie not good enough – though it was not clear whether this was awareness of my own or other people's emotions. Quite a blow to my self-image; but everything else was pretty encouraging, so I can live with it. I might even get to work on the possible areas identified: including "feeling sympathetic or sorry for others may interfere with addressing firmly any performance issues that are adding to workload problems". Just so.

Discussing this with friends in academia, I discovered that the University of Lincoln has a "wellness button" on its staff computers, so that members of staff can click on it and get away from the stresses of their lives for a while. Sounds like a good idea to me.

But I come back to where I started. How much of this makes sense to all of you here? And how much of it is a first world worry from a judiciary which is still, whatever the problems, relatively well resourced, well-respected and whose independence is not under serious threat?

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TAB 7

Press release

Government acts urgently to protect judicial recruitment

Immediate steps to tackle emerging and unprecedented recruitment issues in the senior judiciary have today (5 June 2019) been set out by the government.

From:
Ministry of Justice (https://www.gov.uk/government/organisations/ministry-of-justice)
Published:
5 June 2019

- unprecedented recruitment issues force government intervention
- more than 10% of High Court judicial positions vacant, and the Chancery Division, which handles major commercial cases, is already 20% below strength and will be up to 40% below strength by the end of the year without urgent action
- temporary recruitment and retention allowance introduced to prevent delays to life-changing decisions in the courts

An independent, effective judiciary is vital for upholding the rule of law for everyone. Every day, judges take decisions on critically important issues that directly impact on people’s lives, from delivering justice for victims to deciding care arrangements for vulnerable children.

For the first time ever in consecutive recruitment campaigns, vacancies in the High Court and at the Circuit bench have had to be left unfilled, raising the risk of vulnerable people waiting longer for life-changing decisions. The impact is already being felt in the family courts, where a shortfall of judges is contributing to significant delays in child care proceedings.

This government is committed to delivering world class public services and taking action when the evidence requires it to ensure their continued delivery. That is why today a series of policies have been announced to support recruitment and retention in the judiciary, to ensure our courts and tribunals system can continue to deliver important services.

Similarly, the government will consult on measures designed to address pension tax disincentives that may encourage senior clinicians to limit or reduce their workloads while participating in the NHS Pension Scheme.

Responding to a major review from the Senior Salaries Review Body (SSRB), the Ministry of Justice (MOJ) has introduced a temporary recruitment and retention allowance at 25% for High Court judges and 15% for Circuit and Upper Tribunal judges who are eligible for the new pension scheme 2015.

This measure will affect only about a quarter of the salaried judiciary and aims to resolve the immediate recruitment issue until a long-term, sustainable, pension-based solution can be implemented for all judges.

It replaces the existing allowance of 11% for High Court judges and falls below SSRB's recommendation of a 32% permanent salary increase for High Court judges and 22% for Circuit and Upper Tribunal judges covered by the new pension scheme. This strikes a balance between an appropriate investment of public funds and addressing serious recruitment and retention problems.

Lord Chancellor David Gauke said:

> Our judges are a cornerstone of our democratic society - their experience draws billions of pounds worth of business to the UK, and without them people cannot get justice.
>
> We have reached a critical point. There are too many vacancies and with the retirement of many judges looming; we must act now before we see a serious impact on our courts and tribunals.
>
> Judges are in a unique position and once they join the bench are not permitted to return to practice. Without the best legal minds in these seats, everyone that uses our courts will suffer, as will our international reputation.
>
> This temporary allowance, pending long-term pension scheme change, will enable us to continue to attract the brightest and best and prevent delays to potentially life-changing decisions.

The country's most difficult and complex cases are heard by our most experienced judges: safeguarding vulnerable victims against serious violence or child abuse; dealing with gang violence cases involving multiple defendants; and complex fraud cases that can last years.

In practice, delays to the system can mean:

- Victims of serious violence and sexual abuse having to wait longer to see the perpetrators brought to justice

- Care proceedings taking longer, meaning that vulnerable children are left in the dark about their future for longer
- Individuals affected by the decisions of Immigration and Asylum Tribunals having to wait longer to know where they and their families will live in future
- And parties involved in complex commercial cases, who have placed their confidence in the legal system to provide certainty and resolve disputes quickly, are left waiting for answers, damaging business and enterprise.

High Court, Circuit and Upper Tribunal judges in particular play a pivotal role in the justice system but currently more than 10% of High Court judicial positions remain vacant. As things stand the Chancery Division of the High Court is already 20% below strength and will be up to 40% below strength by the end of the year without urgent action.

Today's announcement responds to a major review from SSRB, submitted last autumn, which identified clear evidence of significant and growing recruitment and retention problems among the judiciary, particularly at senior levels. It found that, by joining the judiciary from private practice, some new judges took a pay cut of up to two-thirds.

While the robustness of the recruitment process rightly reflects the fact that judges must be of the highest calibre to make these life changing decisions, the government's proposal ensures that making a career change remains attractive and will prevent the slowing of cases through the courts, leaving vulnerable people and children at risk.

Today's package also includes a 2% pay award for all members of the judiciary in 2019/20. This was made following careful consideration of SSRB's overall evidence.

In addition, the government fully endorses the work that the Lord Chief Justice and Senior President of Tribunals are leading to strengthen leadership and support career development in support of the modern judiciary.

This includes taking practical steps by encouraging and supporting eligible candidates from under-represented groups to successfully apply for judicial office; supporting career progression for existing judges; growing leadership capability within the judiciary by implementing appraisals and career discussions; developing new training for leadership judges; and giving leadership judges the data and tools they need to drive performance in the system.

Notes to editors

- Last October SSRB recommended a 32% allowance for High Court judges, 22% for Circuit judges and 8% for District Judges (https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018) covered by the new judicial pension scheme 2015 to combat the emerging recruitment problem
- The government's package of measures in response to SSRB is a temporary measure that aims to resolve this issue until a sustainable, pension-based solution can be implemented for the whole judiciary. The full response can be read (https://www.gov.uk/government/publications/government-response-to-ssrb-major-review) on GOV.UK.

- There are around 1,850 salaried judges in England and Wales. About a quarter are expected to be eligible for this allowance - of whom around only 60 qualify for the higher allowance.
- The UK judiciary is respected throughout the world for its independence, integrity and quality. Foreign litigants are involved in 76% of cases in the Commercial Court, page 28, available at: www.thecityuk.com/assets/2018/Reports-PDF/86e1b87840/Legal-excellence-internationally-renowned-UK-legal-services-2018.pdf (https://www.thecityuk.com/assets/2018/Reports-PDF/86e1b87840/Legal-excellence-internationally-renowned-UK-legal-services-2018.pdf).
- Research suggests that the reputation and recognition of English judges is one of the main reasons for litigants choosing to bring cases in London Queen Mary University of London and White & Case, '2018 International Arbitration Survey: The Evolution of International Arbitration', (2018), page.9 (https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-18.pdf).
- Legal services contribute around £25 billion to the UK economy. The sector employs well over 311,000 people in the UK, two-thirds of whom are located outside London. Recent research (https://portland-communications.com/publications/commercial-courts-report-2019/) found that, over the past year, the commercial courts had a record-breaking year, hearing 258 cases - a 63 per cent increase from 2017/18.
- For further information please contact the Ministry of Justice newsdesk on 0203 334 3536.

Published 5 June 2019

Related content

- Letter to awarding organisations: confidential assessment materials (https://www.gov.uk/government/publications/letter-to-awarding-organisations-confidential-assessment-materials)
- Qualitative Evidence on Barriers to and Facilitators of Women's Participation in Higher or Growing Productivity and Male-Dominated Labor Market Sectors in Low- and Middle-Income Countries (https://www.gov.uk/research-for-development-outputs/qualitative-evidence-on-barriers-to-and-facilitators-of-women-s-participation-in-higher-or-growing-productivity-and-male-dominated-labor-market-sectors-in-low-and-middle-income-countries)

Explore the topic

- Justice system transparency (https://www.gov.uk/crime-justice-and-law/justice-system-transparency)

TAB 8

February 14, 2012

PRIVILEGED & CONFIDENTIAL

Judicial Compensation and Benefits Commission
99 Metcalfe Street, Suite 812
Ottawa, Ontario
K1A 1E3

Attn: Mrs. Suzanne Labbé, Executive Director

Dear Members of the Commission:

Re: Valuation of the Judicial Annuity

As requested, we have prepared this letter to provide an opinion on the methods and assumptions used by Mr. Harripaul Pannu in his December 13, 2011 report and by Mr. Brian FitzGerald in his January 27, 2012 letter on the valuation of the judicial annuity. In particular, the Commission wishes to review the economic assumptions underlying these valuations, considering the progression of interest rates since the first quadrennial commission, and the valuation of ancillary benefits including the disability and death benefits. Our observations and comments are as follows.

Methodology

Both Messrs Pannu and FitzGerald estimated the compensation value of the judicial annuity as a level percentage of pay over a judge's career in the judiciary. The compensation value is the employer paid portion of the judicial annuity. That is the total value of the annuity reduced by the value of the judges' own contributions. This actuarial method is appropriate for compensation benchmarking purposes and for purposes of comparing the value of different pension plans.

It should be noted, however, that the results of such an analysis are not comparable to the results prepared for funding or accounting purposes as a different actuarial method is generally used for these purposes. For funding or accounting purposes, the current service cost is determined as the value of the projected pension allocated to the one year period immediately following the valuation date. Technically with this method, the pension cost for one individual, expressed in dollars or as a percentage of salary, increases each year as the individual gets older. However, the average pension cost for a group of individuals will tend to remain stable over time to the extent that the average age of the group remains constant, as older participants retire and are replaced by younger ones.

Valuation Results

The compensation value of the judicial annuity varies significantly with the age at appointment as illustrated in the graphic on page 4 of Mr. FitzGerald letter dated January 27, 2012. The compensation value, excluding any disability or pre-retirement death benefit, increases from approximately 15% of salary for judges appointed at the age of 40 to more than 55% of salary for judges appointed at the age of 65.

For a judge appointed at the age of 52 which is the average age at which judges were appointed in the period from January 1, 1997 to March 31, 2011, we have estimated the compensation value of the judicial annuity to be 23.5% of salary using the actuarial assumptions described in Mr. Pannu's report dated December 13, 2011.

Given the geometric progression of the compensation value by age at appointment, the average compensation value of the judicial annuity for the 745 judges appointed between January 1, 1997 and March 31, 2011 may be greater than the value calculated for a single judge appointed at the average age of 52 (23.5% of salary) . In order to estimate the average value of the judicial annuity, Mr. Pannu grouped the 745 judges in seven age groups. The compensation value was then estimated for each age group. Finally, a weighted average compensation value was determined taking into account the weight of each age group determined on the basis of the number of judges in that group. Using the same methodology, we have estimated the weighted average compensation value to be 24.7% of salary determined as follows.

Age at Appointment	Distribution of Appointments	Value of the Judicial Annuity (Our Estimate)	Weighted Average Value
Under 44	5.2 %	16.2%	0.8%
44 - 47	20.7 %	18.7%	3.9%
48 -51	24.0 %	22.0%	5.3%
52 -55	25.0 %	25.0%	6.2%
56 - 59	16.9 %	29.3%	5.0%
60 – 63	6.7 %	40.5%	2.7%
64 and older	1.5 %	55.3%	.8%
	100%		24.7%

This estimated weighted average compensation value (**24.7%** of salary) compares to the **23.8%** of salary calculated by Mr. FitzGerald and the **27.2%** of salary calculated by Mr. Pannu.

The differences among these three results is greater than would normally be expected given that they were all produced using the same actuarial methods and assumptions, the same age groups and the same

distribution of appointments. Part of the differences could be attributable to the approach used to estimate the value of the judicial annuity within each age group.

For instance, we understand that Mr. FitzGerald assumed that judicial appointments at any given age were made at the exact age whereas we assumed that the appointments at any given age were distributed uniformly over the year, thus increasing the average age at appointment by 0.5 year. Except for that difference, our results are fairly consistent with those of Mr. FitzGerald.

Disability Benefits

Mr. Pannu estimated the value of the disability benefit under the Pension Plan for the Federally Appointed Judges to be 9.7% of salary. No mention was made of an offsetting reduction in the value of the retirement benefits which looks like an omission.

On the other hand, Mr. FitzGerald estimated the value of the same benefits as 3% of salary partially offset by a reduction of 1.1% of salary in the value of the retirement benefit for a net increase of 1.9% of salary. His estimate was made using disability rates equal to 50% of the rates established by OSFI and used by Mr. Pannu on the basis of the better than expected experience of judges over the last several years. Further, Mr. FitzGerald argued that since the disability benefits can be provided either inside or outside of a pension plan possibly through insured arrangements, its valuation should be made as part of a broader benchmarking exercise including group insurance benefits.

Using the disability rates established by OSFI with no adjustment, we estimated the value of the disability benefits to be 7.5% of salary partially offset by a reduction of 4.9% of salary in the value of the retirement benefit for a net increase of 2.6 % of salary. Given the better than expected disability experience of judges some discount does seem appropriate. However, it is difficult to give full credibility to a few years of experience of the relatively small number of judges. Nevertheless, it is safe to conclude that the net additional value of the disability benefits is between 2.0% and 2.5% of salary.

Finally, we agree with the comment made by Mr. FitzGerald to the effect that the valuation of the disability benefits should be made as part of a broader benchmarking exercise including group insurance benefits.

From anecdotal evidence obtained through informal discussions, we understand that insured long term insurance benefits at several of the larger law firms are paid by the individual partners to ensure that the disability benefits are received on a tax free basis. If that is the case, the employer paid portion of these benefits and the resulting compensation value are nil.

Pre and Post Retirement Death Benefits

For the sake of simplicity, Mr. Pannu assumed no mortality before retirement. Using the same assumptions as Mr. Pannu, Mr.FitzGerald also assumed no mortality before retirement. This is a common assumption made when the pre-retirement death benefit is the commuted value of the deceased member's pension.

However, the pre-retirement death benefits under the Pension Plan for the Federally Appointed Judges are more generous than that of a typical pension plan. An eligible surviving spouse is entitled to a survivor pension equal to one-third of the judge's annual salary plus a lump sum amount equal to one-sixth of the annual salary. In addition, eligible surviving children may also receive survivor pensions while they qualify.

On the other hand, Mr. Pannu assumed that 100% of judges will be married at retirement. Eligible surviving spouses are entitled to a survivor pension of one-half of the pensioner's annuity. However, if there is no eligible surviving spouse, the death benefits is a return of the judge's own contributions with interest in excess of the benefits paid.

Using a more realistic assumption that, say, 90% of judges will have an eligible surviving spouse, instead of 100%, would more than offset the value of the pre-retirement death benefits, thus resulting in a minor reduction in the estimated compensation value of the judicial annuity.

Economic Assumptions

Generally, the economic assumptions adopted by an actuary must be independently reasonable and appropriate in the aggregate.

Although there is always a range of acceptable assumptions, I agree with Mr. FitzGerald that an actuary should, for compensation benchmarking purposes, use best estimate assumptions. For instance, provisions for adverse deviations which may be appropriate for funding purposes would not be appropriate for compensation benchmarking purposes.

The economic assumptions used by Mr. Pannu in 2003, 2007 and 2011 for his actuarial valuations of the judicial annuity are as follows.

	Inflation	Salary Increases	Interest Rate	Real Interest Rate
2003 & 2007	2.0%	3.0%	6.00%	4.00%
2011	2.0%	3.0%	5.75%	3.75%

Considering the fact that the judicial annuity is based on final salary and the judicial annuity is fully indexed to the increases in the Consumer Price Index, the determining economic assumptions are the real interest rate (the interest rate in excess of inflation) and the expected salary increases in excess of inflation. The expected salary increases in excess of inflation should reflect expected national productivity gains and are generally assumed to be around 1% per year. However, the real interest rate assumption can vary more widely and has a very significant impact on the valuation results.

For example, the economic assumptions adopted by The Office of the Chief Actuary of Canada for the valuation of the Pension Plan for the Federally Appointed Judges are summarized in the following table with the initial and ultimate assumptions shown separately. The initial rates are generally applied in the first year following the valuation date and are gradually increased or reduced to reach the ultimate rates after a certain number of years varying from 5 to 15 years.

Valuation Date	Inflation	Salary Increase	Interest Rate	Real Interest Rate
March 31, 2001	2.6% / 3.0%	3.3% / 4.0%	7.25% / 7.25%	4.65% / 4.25%
March 31, 2004	2.0% / 2.7%	1.7% / 3.9%	6.30% / 7.00%	4.30% / 4.30%
March 31, 2007	2.0% / 2.5%	2.4% / 3.8%	4.47% / 5.35%	2.47% / 2.85%
March 31, 2010	2.0% / 2.4%	2.7% / 3.6%	4.40% / 5.20%	2.40% / 2.80%

The Pension Plan for the Federally Appointed Judges is not a registered pension plan and is not funded. The interest rate assumption adopted by OSFI is based on the expected interest earned on a notional portfolio of long term Canada bonds built over an extended period of time. The interest rate on this notional portfolio has been declining gradually over the last several years and should continue to decline over the next few years considering the current level of interest rates. In contrast, the interest rate assumption adopted by Mr. Pannu is more consistent with the expected long term annual investment return on a diversified tax sheltered portfolio.

The following table shows the average inflation rate and the average yield to maturity on long term Canada bonds, compounded semi-annually, for the 12 month periods preceding each of the last four quadrennial commissions in nominal terms and in real terms, net of inflation.

Year	Average Inflation Rate	Average YTM on Long Term Canada Bonds (CANSIM V122544)	Average YTM on Long Term Canada Bonds Net of Inflation	Average YTM on Long Term Real Return Canada Bonds (CANSIM V122553)
1999	1.8%	5.7%	3.9%	4.1%
2003	2.8%	5.3%	2.5%	3.1%
2007	2.2%	4.3%	2.1%	2.0%
2011	2.9%	3.3%	0.4%	1.0%

Interest rates on long term Canada bonds and on real return bonds have been declining gradually for more than 20 years. The yield to maturity on long term Canada bonds is now reaching levels not seen since the 1940s.

Current interest rates on long term Canada bonds are used, with certain adjustments, for purposes of calculating the solvency liabilities of registered pension plans and the transfer value of termination benefits. Current interest rates on quality corporate bonds are also used in the private sector for the valuation of registered pension plans for accounting purposes.

However, in establishing a level of compensation taking into account the value of the judicial annuity, there is considerable merit in using best estimate long term assumptions taking into account current interest rates and expected future changes. Section 1720 of the Canadian Institute of Actuaries' Standards of Practice contains the following statements.

> *".03.4 - A reasonable assumption would reflect current conditions as of the calculation date but would not necessarily have to continue to reflect current conditions persisting into the future. For example, if current interest rates are extremely high or low in relation to past rates or future expectation, it would not be unreasonable to assume that interest rates change over time."*
>
> *".03.5 - The actuary's use of independently reasonable assumptions may result in the assumptions not being reasonable in the aggregate. In such event, the requirement for assumptions to be appropriate in the aggregate would be more important than the requirement for independently reasonable assumptions. Certain assumptions may then be modified and may not be independently reasonable. However, when an assumption is prescribed, it would not be appropriate to compensate for this prescription by modifying other assumptions."*

Nevertheless, there is considerable merit in making stakeholders aware of the *market value* of the judicial annuity based on current interest rates even if we know that such value could fluctuate widely over time.

Impact of Alternate Valuation Interest Rates

In order to illustrate the impact of alternate valuation interest rate assumptions, we have estimated the value of the judicial annuity under the following scenarios.

	Inflation	Salary Increases	Interest Rate	Real Interest Rate
Initial Scenario	2.0%	3.0%	5.75%	3.75%
OSFI Inspired Scenario	2.0%	3.0%	4.75%	2.75%
Market Value Scenario	2.0%	3.0%	3.00%	1.00%

The estimated value of the judicial annuity under each of these three valuation interest rate scenarios, excluding disability benefits, is as follows. All other assumptions are identical to the assumptions described in Mr. Pannu's report assuming no mortality or disability before retirement.

	Estimated Value of the Judicial Annuity as a percentage of salary
Initial Scenario	24.7%
OSFI Inspired Scenario	30.7%
Market Value Scenario	44.4%

These scenarios can be viewed as constituting a range of acceptable assumptions for the valuation of the judicial annuity. Considering the current interest rates and anticipated future changes, the Commission could adopt an intermediate scenario as its best estimate.

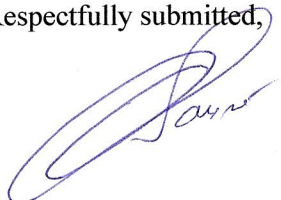
In my opinion,

- the data on which our analysis is based are sufficient and reliable for purposes of this valuation;
- the actuarial methods and assumptions used in our analysis are appropriate, in aggregate, for purposes of this valuation.

This report has been prepared, and my opinions given, in accordance with generally accepted actuarial practices in Canada.

The undersigned remains available to answer any questions that you may have on this report.

Respectfully submitted,



André Sauvé, F.S.A., F.C.I.A.