

SSRB Review of Tribunals' Judiciary Remuneration 2008 (Report No. 66)

Government Response to SSRB Recommendations

Recommendation 1: we recommend that the Senior President, Deputy Senior President, tribunal judges, Professionally Qualified Members and Expert Members in the Upper Tribunal should be paid according to their salary groups and the judicial salary structure as published in our annual *Report on Senior Salaries*.

- Senior President - salary group 2 (on the assumption that this post will not be rotated among Members of the senior judiciary);
- Deputy Senior President - salary group 5;
- Chamber Presidents in the Upper Tribunal (unless they are High Court Judges) - salary group 5;
- Judicial posts in the Upper Tribunal – (including judges who also sit in the First-tier Tribunal) – salary group 6.1;
- Surveyor Members of the Lands Tribunal, who sit in the Upper Tribunal - salary group 6.2. (If, in future, there were to be other Professionally Qualified Members sitting in the Upper Tribunal, they should also be placed in salary group 6.2); and
- Expert Members who sit in the Upper Tribunal - salary group 7.

Response: *the Government accepts the recommendations as they apply to legally-qualified salaried judiciary (bullets 1-4) with the following qualification: Chamber Presidents will be assigned to salary groups according to the weight of their judicial management responsibilities, with salary group 5 being the normal grouping for the larger chambers.*

Given the current economic and public expenditure climate, the recommendations that relate to non-legally qualified tribunal members (bullets 5 & 6) have not been accepted. This is in particular because there is no market-based justification for increasing their remuneration and there is significant variation in the role of non-legal members. For this reason, non-legally qualified members will continue to be assigned to their current pay grouping and will not be linked to the new salary structure. The Government will, however, be prepared to review any specific recruitment and retention issues, which might arise, with any targeted salary or fee supplements being paid at the discretion of the Lord Chancellor.

Recommendation 2: we recommended that tribunal judges, Professionally Qualified Members and Expert Members in the First-tier Tribunal should be paid according to their salary groups and the judicial salary structure as published in our annual *Report on Senior Salaries*.

- First-tier Chamber Presidents who will also sit in the Upper Tribunal – salary group 5;
- First-tier judges with management responsibilities – salary group 6.2;
- Other First-tier judges – salary group 7;
- Chief Medically Qualified Panel Member in the Social Security and Child Support Appeals Tribunal - salary group 6.2 (if there continues to be such a post with management responsibilities in the final structure of tribunals);
- Professionally Qualified Members – a proportion of the rate for salary group 7;
- Expert Members - a proportion of the rate for salary group 7; and
- On the assumption that the Criminal Injuries Compensation Appeals Panel (CICAP) continues to operate as now (i.e. with the role of chairman rotating between Members), and the nature of the job requires it, all CICAP adjudicators – the rate for salary group 7.

Response: *the recommendations that relate to legally-qualified salaried judiciary (bullets 1-3) are accepted with the following qualifications: (a) Chamber Presidents will be assigned to salary groups according to the weight of their judicial management responsibilities, with salary group 5 being the normal grouping for the larger chambers, (b) there will be two tiers of management post between the First-tier judge and the Chamber President with posts assigned to either salary group 6.2 or 6.1 according to the weight of their responsibilities.*

The recommendations that apply to non-legally qualified members (bullets 4-6) have not been accepted for the reasons stated in recommendation 1. The Government will, however, be prepared to review any specific recruitment and retention issues, which might arise, with any targeted salary or fee supplements being paid at the discretion of the Lord Chancellor. For example, he will be reviewing the outcome of the recent recruitment exercise for medical members and considering whether any fee supplement is appropriate. That aside, non-legally qualified members will continue to be assigned to their current pay grouping and there will be no link to the current salary structure.

As the Government is not proposing to increase the fees of non-legally qualified members, it cannot accept the recommendation that all Criminal Injuries Compensation (CIC) members (bullet 7), which include both legally and non-legally qualified members, should be paid at salary group 7. While the current practice of rotating the chairman role between members remains in place then the current fee for all CIC members will continue to apply. However, the Lord Chancellor will review this position should CIC decide to change the way in which they operate.

Recommendation 3: we recommend that posts in the Asylum and Immigration Tribunal should be paid according to their salary groups and the judicial salary structure as published in our annual *Report on Senior Salaries*.

- Deputy President of the Asylum and Immigration Tribunal - salary group 5;
- Senior Immigration Judges - salary group 6.1;
- Designated Immigration Judges - salary group 6.2;
- Immigration Judges - salary group 7;
- Expert Member – a proportion of the rate for salary group 7;
- Special Immigration Appeals Commission Judges - salary group 6.1;
- Special Immigration Appeals Commission Expert Members - salary group 7.

Response: *the recommendations that apply to legally-qualified judiciary (bullets 1-4 & 6) are accepted. However, the Government does not accept those recommendations that apply to non-legally qualified members, as set out in its response to recommendations 1 & 2, and has decided that non-legally qualified members should continue to be assigned to their current pay grouping.*

Recommendation 4: we recommend that posts in the Employment Appeal Tribunal should be paid according to their salary groups and the judicial salary structure as published in our annual *Report on Senior Salaries*.

- Employment Appeal Tribunal Judges - salary group 6.1;
- Employment Appeal Tribunal Expert Members - salary group 7;

Recommendation 5: we recommend that posts in the Employment Tribunals should be paid according to their salary groups and the judicial salary structure as published in our annual *Report on Senior Salaries*.

- Employment Tribunals President - salary group 6.1;
- Employment Tribunals Vice President (Scotland) - salary group 6.2;
- Employment Tribunals Regional Judges (England and Wales) - salary group 6.2;
- Employment Tribunals Judges - salary group 7; and
- Employment Tribunals Expert Members – a proportion of the rate for salary group 7.

Response: *the recommendation that applies to ‘Employment Tribunals Judges – salary group 7’ (recommendation 5 bullet 4) is accepted.*

The remaining recommendations within 4 & 5 are not accepted as they apply to:

(a) Employment Appeal Tribunal Judges, Employment Tribunals President, Vice President, and Regional Judges. The Government considers that these recommendations do not sufficiently reflect the importance and weight of these roles and in the case of Employment Tribunals judiciary, the significant judicial management responsibility held. For this reason these judiciary will continue to be assigned to their current salary groups.

(b) Expert Members within the Employment Appeal Tribunal and Employment Tribunals will continue to be assigned to their current pay groupings, as explained in the responses to recommendation 1 & 2.

Recommendation 6: we recommend that there should be two bands of Professionally Qualified Members: Professional A and Professional B. We recommend that registered medical practitioners, accountants and surveyors should be in professional A. We recommend that the Tribunals Service determine the banding of registered nurses, registered dentists, clinical psychologists, educational psychologists, pharmacologists, veterinary surgeons and registered veterinary practitioners.

Recommendation 7: we recommend that Professionally Qualified Members in the band Professional A should be paid 90 per cent of the rate for salary group 7 and the fees calculated accordingly. We recommend that Professionally Qualified Members in the band Professional B should be paid

75 per cent of the rate for salary group 7 and the fees calculated accordingly.

Recommendation 8: we recommend that Expert Members sitting in the First-tier Tribunal (and the equivalent in the Asylum and Immigration Tribunal and Employment Tribunals) should be paid 60 per cent of the daily fee equivalent to salary group 7.

Response: *the Government does not accept these three recommendations.*

The proposal at recommendation 6 is unlikely to be sufficiently flexible to address the needs of the evolving Tribunals Structure and the Lord Chancellor will need to review the existing arrangements for professionally qualified members once the new structure has become more settled.

As for recommendations 7 and 8, non-legally qualified members will continue to be assigned to their current pay grouping for the reasons set out at the responses to recommendations 1 and 2.

Recommendation 9: we recommend that when First-tier non-legal Members (and their equivalents in the Asylum and Immigration Tribunal and Employment Tribunals), i.e. Professionally Qualified Members and Expert Members, hear cases alone, or act as chairmen, they should be paid as First-tier Judges.

Response: *the Government does not accept this recommendation. The proposal is not sufficiently flexible to allow for the possible range of responsibilities which may be exercised by non-legal members sitting alone. On this basis, the pay arrangements that currently exist will continue to apply.*

Recommendation 10: we recommend that, for those paid on a fee basis, the fee should be deemed to cover a 'professional day', i.e. to include a reasonable amount of preparation and writing-up time. However, Chamber Presidents should have discretion to authorise payment for additional time where essential preparation and writing-up exceed what can reasonably be achieved in a day.

Recommendation 11: we recommend that the divisor for calculating daily fees for tribunal judges, Professionally Qualified Members and Expert Members remain at 220 days.

Response: *both recommendations are accepted for legally qualified salaried and fee-paid judiciary.*

Recommendation 12: we recommend that, in circumstances where recruitment and retention of Professionally Qualified Members or Expert Members is considered to be a problem, a recruitment and retention supplement of up to 20 per cent of the relevant salary or daily fee for Professionally Qualified Members or Expert Members should be payable at the discretion of the Lord Chancellor. The supplement should be time limited and reviewed every two years by the Lord Chancellor.

Response: *the Government will keep under review the need for any recruitment and retention allowances for non-legally qualified members. However, the recommendation may not be sufficiently flexible to address those needs and the level of any supplement will be a matter for the Lord Chancellor to determine as the need arises.*

Recommendation 13: we recommend that salaries should continue to be set by the Review Body on Senior Salaries' annual review of judicial salaries. Our proposals contain a mechanism whereby daily fees are derived automatically from the annual salary of the relevant group of judicial office holders.

Recommendation 14: we recommend that for salaried and fee-paid judicial office holders for whom our recommendations will mean an increase in pay, the Tribunals Service should determine how and when the increases should be paid, over a period not exceeding five years.

Response: *these recommendations are accepted.*

Recommendation 15: we recommend that for salaried judicial office holders who would otherwise see a reduction in pay as a result of our recommendations, their salaries be maintained on a mark-time basis until such time as the pay of the relevant salary group catches up.

Recommendation 16: we recommend that for those fee-paid judicial office holders working under fixed-term appointments whose fees would reduce as a result of our proposals, the Tribunals Service should decide when to apply those reductions, provided that it gives appropriate advance notice to office holders and subject to any relevant legal considerations.

Response: *these recommendations are accepted in so far as they apply to legally qualified judicial office holders. The Lord Chancellor will determine how the salaried office holders who would otherwise see a reduction in pay will be protected.*

Recommendation 17: we recommend that for salaried and fee-paid new appointments, it is for the Tribunals Service to decide when to apply any new rates resulting from our recommendations, bearing in mind any relevant legal considerations.

Response: *the Government accepts this recommendation*

Recommendation 18: we recommend that the remuneration for the Competition Appeals Tribunal should be based on that for the Upper Tribunal, namely that:

- The chairman should be paid the rate for salary group 6.1;
- Professionally Qualified Members should be paid the rate for salary group 6.2; and Expert members should be paid the rate for salary group 7

Response: this recommendation is being handled separately by the Secretary of State for Business, Innovations and Skills.

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Target Salary Structure for Tribunals Judiciary

Salary Group	Salary (April 2009)	Office
Group 2	£206,857	Senior President of Tribunals.
Group 3	£196,707	
Group 4	£172,753	(1)President of the Asylum and Immigration Tribunal. President of the Employment Appeal Tribunal
Group 5	£138,548	Deputy Senior President of Tribunals. (2)Chamber President (First-tier or Upper Tribunal). (1)Deputy President of the Asylum and Immigration Tribunal.2 Permanent Circuit Judge of the Employment Appeals Tribunal. President of the Employment Tribunals (England and Wales). President of the Employment Tribunals (Scotland).
Group 6.1	£128,296	Judge of the Upper Tribunal. Deputy Chamber President. (3)Some First-tier Judges with judicial management responsibilities. (1)Senior Immigration Judge. Regional Chairman of the Employment

Salary Group	Salary (April 2009)	Office
		Tribunals. Vice-President of the Employment Tribunals (Scotland).
Group 6.2	£120,785	Surveyor Member of the Lands Chamber of the Upper Tribunal. President of the War Pensions and Armed Forces Compensation Chamber. (4)Some First-tier Judges with judicial management responsibilities. Designated Immigration Judge.
Group 7	£102,921	Judge of the First-tier Tribunal. Chief Medical Officer, Social Entitlement Chamber. (1)Immigration Judge. Chairman of Employment Tribunals.

Notes

1. The table includes judiciary of the Asylum and Immigration Tribunal in their current roles. However, it is intended that those judiciary will transfer into the new structure in February 2010 subject to parliamentary approval.
2. Chamber Presidents will be assigned to salary groups according to the weight of their judicial management responsibilities, with salary group 5 being the normal grouping for the larger chambers.
3. First-tier judges with judicial management responsibilities at salary group 6.1 include; the former President of Care Standards, Regional Chairs Social Security and Child Support, and the Presidents of the Charity, Gambling (currently a Social Security Chair), Consumer Credit and Estates Agents and Immigration Services Tribunals.

4. First-tier judges with judicial management responsibilities at salary group 6.2 are the former Regional Chairs of Mental Health.
5. A recruitment and retention allowance may also be paid to specified classes of non-legally qualified members at the discretion of the Lord Chancellor, where recruitment or retention problems are encountered.
6. Fee-paid legal members will be paid at a rate of $1/220^{\text{th}}$ of the annual salary for each group.